

# RESPONSE TO FEEDBACK RECEIVED

8 October 2021

## Proposed Exemption Framework for Cross-Border Business Arrangements of Capital Markets Intermediaries Involving Foreign Offices

MAS

Monetary Authority of Singapore

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## 1 Preface

1.1 On 15 March 2021, the Monetary Authority of Singapore (“MAS”) issued a [consultation paper](#) to seek feedback on (i) MAS’ proposal to introduce an exemption framework for cross-border business arrangements between a financial institution (“FI”) in Singapore which is a branch or head office (collectively referred to as the “Singapore Office”) and its foreign head office and/or branch (collectively referred to as the “Foreign Office”) under the Securities and Futures Act (Cap. 289) (“SFA”) and Financial Advisers Act (Cap. 110) (“FAA”) (the “Branch Framework”); and (ii) the proposed notification forms to be submitted to MAS at the point of commencement of the arrangement and on an ongoing basis, as well as the draft regulations and notices, for both the Branch Framework and the exemption framework for cross-border business arrangements between Singapore FIs and their foreign related corporations (“FRCs”) under the SFA and FAA (the “FRC Framework”) (collectively referred to as the “Exemption Frameworks”).

1.2 On 12 May 2021, MAS issued a [second consultation paper](#) to seek feedback on the draft Notices on Prevention of Money Laundering and Countering the Financing of Terrorism (“FRC/FO AML Notices”)<sup>1</sup>, which set out the proposed anti-money laundering and countering the financing of terrorism (“AML/CFT”) requirements under the Exemption Frameworks.

1.3 The two consultations closed on 15 April 2021 and 11 June 2021 respectively. MAS would like to thank all respondents for their contributions. The list of respondents to the two consultations is in Annex A, and the full submissions are provided in Annex B.

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<sup>1</sup> Namely the (i) Notice on Prevention of Money Laundering and Countering the Financing of Terrorism – Specified Holders of a Capital Markets Services Licence and Specified Exempt Persons in relation to Cross-Border Arrangements under the Securities and Futures (Exemption from Requirements) (Cross-Border Arrangements) (Foreign Related Corporations) Regulations, (ii) Notice on Prevention of Money Laundering and Countering the Financing of Terrorism – Licensed Financial Advisers and Specified Exempt Financial Advisers in relation to Cross-Border Arrangements under the Financial Advisers (Exemption from Requirements) (Cross-Border Arrangements) (Foreign Related Corporations) Regulations, (iii) Notice on Prevention of Money Laundering and Countering the Financing of Terrorism – Specified Holders of a Capital Markets Services Licence and Specified Exempt Persons in relation to Cross-Border Arrangements under the Securities and Futures (Exemption from Requirements) (Cross-Border Arrangements) (Foreign Offices) Regulations and (iv) Notice on Prevention of Money Laundering and Countering the Financing of Terrorism – Licensed Financial Advisers and Specified Exempt Financial Advisers in relation to Cross-Border Arrangements under the Financial Advisers (Exemption from Requirements) (Cross-Border Arrangements) (Foreign Offices) Regulations set out as annexes to the Consultation Paper on Proposed AML Notices for Cross-Border Business Arrangements of Capital Markets Intermediaries Under Proposed Exemption Frameworks.

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1.4 Respondents were supportive of our proposal to introduce the Branch Framework which serves to achieve a similar outcome for the Foreign Offices, as with the FRCs of the Singapore FIs under the FRC Framework. MAS has carefully considered the feedback received, and where appropriate, has incorporated them into the final frameworks **which would take effect on 9 October 2021**. MAS will also explain why we will not take up some other feedback in this paper. Comments that are of wider interest, together with MAS' responses, are set out below.

## **2 Scope and Applicability of Branch Framework**

2.1 MAS proposed to introduce an exemption framework for cross-border business arrangements involving Foreign Offices (such arrangements are referred to as “Branch Arrangements”) by exempting Foreign Offices from the applicable business conduct and representative notification requirements under the SFA and FAA, subject to a set of boundary conditions, to achieve a similar outcome for the Foreign Offices, as with the FRCs of the Singapore FIs under the FRC Framework. MAS further clarified that there is no change to the current requirement for individuals who are based overseas and act on behalf of the Singapore Office to be appointed as overseas-based representatives and comply with the relevant requirements. The Branch Framework would apply where the representative is acting on behalf of the Foreign Office.

2.2 Respondents were supportive of the proposal and had no objections to the proposed scope of the Branch Framework.

### *Applicability of Branch Framework*

2.3 Several respondents sought clarifications on whether the Branch Framework would apply under various scenarios (for example, the FI is operating a follow-the-sun model), and requested further guidance on the extra-territorial application of the SFA and FAA. Some respondents also sought guidance on the factors to consider in assessing whether an individual who is based overseas and conducts regulated activities with Singapore customers is considered to be acting on behalf of the Singapore Office or the Foreign Office. Respondents further queried on the treatment for existing representatives of Foreign Offices who are currently notified to MAS as appointed representatives, whether such representatives can continue to be appointed representatives, or should cease their appointments and operate under the Branch Framework when the framework is effected.

2.4 Respondents also asked if there is a need to notify their cross-border arrangements under the Exemption Frameworks if the regulated activity conducted by an FRC/Foreign Office is exempt under the Second Schedule to the Securities and Futures (Licensing and Conduct of Business) Regulations (“SF(LCB)R”).

### *MAS’ response*

2.5 There is no change to the extra-territorial application of the SFA and FAA. The Branch or FRC Framework is relevant where the activities conducted by the Foreign Office/FRC and its representatives are (a) regulated under the SFA and/or FAA; (b) not

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otherwise exempted; and (c) where the extra-territoriality of the Act applies. As such, if the activity conducted by a Foreign Office/FRC is exempt under the Second Schedule to the SF(LCB)R, the Exemption Frameworks do not apply to that activity. Furthermore, it is a question of fact whether the extra-territoriality of the Act applies. FIs should refer to the Guidelines on the Application of Section 339 (Extra-Territoriality) of the Securities and Futures Act (“S339 Guidelines”) ([link](#)), which set out the general principles on the scope and application of the extra-territorial effect of the SFA in relation to cross-border activities, and make their own assessment based on the facts and circumstances of the case.

2.6 For further guidance, please refer to the flowchart in **Annex 1** on the application of the Branch/FRC Framework, and **Annex 2** for illustrations on the application of the Branch/FRC Framework to common cross-border business arrangements raised by respondents.

2.7 Whether an individual based overseas is acting on behalf of the Singapore Office or the Foreign Office in his/her conduct of regulated activities would similarly depend on the facts and circumstances of the case. As a guide, FIs should consider the following factors when assessing if an individual based overseas is acting on behalf of the Singapore Office or the Foreign Office:

- (i) Which office is responsible for the individual’s conduct of regulated activities in Singapore;
- (ii) Which office the individual represents to the customer that he/she is acting for in his/her dealings with the customer; and
- (iii) Which office the customer is contracted with.

For example, consider an individual who is based overseas and has regional responsibilities, where his/her job scope involves conducting regulated activity with customers in Singapore who are contracted with the Singapore Office. If his/her conduct of regulated activity is under the supervisory oversight of the Singapore Office, and in his/her dealings with customers and through the marketing collateral used (such as business card), the individual gives customers an impression that he/she represents the Singapore Office, it is more likely than not that this individual is acting on behalf of the Singapore Office.

2.8 For avoidance of doubt, where an individual is acting on behalf of the Foreign Office in his/her dealings with customers in Singapore, MAS expects the Singapore FI to

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disclose to customers this fact, and that the individual is not subject to MAS' regulation. The Singapore FI should also clarify the recourse available to their customers for any issue which may arise in the customers' dealings with the individual based overseas.

2.9 For an individual who is currently an overseas-based appointed representative, the FI should similarly assess whether the individual is acting on behalf of the Singapore Office or Foreign Office. If it is the former, the individual should remain appointed as an overseas-based representative, and comply with all applicable conduct requirements under the SFA/FAA as an appointed representative. If it is the latter, the Singapore FI should cease his/her appointment and transfer him/her to the Branch Framework. In this process, FIs should inform and explain to the representative's customers accordingly that the representative no longer appears as an appointed representative on MAS' Register of Representatives, and why the representative ceased to be appointed. This is to assure the customers that they could continue to deal with this individual notwithstanding his/her change in regulatory status.

2.10 For avoidance of doubt, the Branch Framework only exempts the Foreign Office and its representatives from the relevant business conduct and representative notification requirements<sup>2</sup> under the SFA and FAA, but not the Singapore Office and its representatives who are involved in the Branch Arrangement.

*Expectations of an acceptable Branch Arrangement*

2.11 Several respondents also sought clarification on whether MAS has any further expectations of an acceptable Branch Arrangement other than what were stipulated in the boundary conditions. For instance, whether there is any requirement for the Singapore Office to have a minimum level of involvement in the Branch Arrangement and whether a formal contractual agreement is required between the Singapore Office and the Foreign Office.

*MAS' response*

2.12 MAS' expectations on the role of the Singapore Office in its cross-border business arrangements with its Foreign Offices are no different from that of the Singapore FI in cross-border business arrangements between the Singapore FI and its FRCs (such

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<sup>2</sup> Please find the full list of exemption in regulations 4(1), 6, 7(1) and 9 of the Securities and Futures (Exemption For Cross-Border Arrangements) (Foreign Offices) Regulations 2021 and regulations 4(1), 4(6), 6(2) and 6(8) of the Financial Advisers (Exemption For Cross-Border Arrangements) (Foreign Offices) Regulations 2021.

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arrangements are referred to as the “FRC Arrangements”)<sup>3</sup>. Similar to an FRC Arrangement, MAS expects the Singapore Office to play a meaningful role in a Branch Arrangement. It is not MAS’ intent to facilitate arrangements where the entities/branches in Singapore are shell entities or have minimal business presence, or arrangements that could undermine regulatory objectives, or pose a risk to financial stability and market confidence.

2.13 In relation to the documentation between the Singapore Office and the Foreign Office, MAS does not prescribe the type of document that needs to be executed to effect the arrangement. However, MAS expects FIs to have in place policies and procedures to govern the terms of cross-border business arrangements under the Branch Framework.

### **3 AML/CFT Requirements**

3.1 As part of the boundary conditions under the Exemption Frameworks, MAS proposed to require the Singapore FI to implement policies and procedures for areas such as (i) conducting customer due diligence (“CDD”); and (ii) maintaining or having access to all CDD records kept overseas by the FRC/Foreign Office that relate to the arrangements, and providing MAS with timely access to these records. These requirements would be effected through the FRC/FO AML Notices.

3.2 Respondents provided feedback on the scope of and terms used within the FRC/FO AML Notices, as well as the standards to be applied for CDD. They also enquired on the applicability of certain requirements in the relevant AML/CFT Notices<sup>4</sup> in the context of the Exemption Frameworks.

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<sup>3</sup> These expectations are currently set out in paragraph 5 of the Guidelines on Applications for Approval of Arrangements under Paragraph 9 of the Third Schedule to the Securities and Futures Act (SFA 04-G03), and paragraph 6 of the Guidelines on Applications for Approval of Arrangements under Paragraph 11 of the First Schedule to the Financial Advisers Act (FAA-G06). Illustrations of the functions the Singapore Entity is expected to perform within the FRC arrangement are set out in Appendix I of the above guidelines. FAQs will be issued in due course to replace the current guidelines, but these expectations remain relevant for the Exemption Frameworks.

<sup>4</sup> As defined in the FRC/FO AML Notices. For example, this refers to MAS Notice SFA 04-N02 for a holder of a capital markets services licence.



3.3 The key feedback received on each of these areas, as well as MAS' response to the feedback, are set out below:

Scope of the FRC/FO AML Notices

3.4 Respondents sought clarification on the entity responsible for performing CDD on the customers of the FRC/Foreign Office, on the sharing of such responsibility between the Singapore FI and the FRC/Foreign Office, and whether the Singapore FI can rely on the FRC/Foreign Office for ongoing monitoring in respect of the AML/CFT requirements. One respondent asked if the Singapore FI can be exempted from the requirements in the FRC/FO AML Notices if it had independently performed CDD on customers under a cross-border arrangement.

3.5 Respondents also enquired on the applicability of the FRC/FO AML Notices in respect of accounts booked with the FRC/Foreign Office, and the frequency of review of such accounts vis-à-vis those booked with the Singapore FI.

MAS' response

3.6 The FRC/FO AML Notices apply specifically to a customer under a cross-border business arrangement who is a "customer" of the FRC/Foreign Office, as defined in the Notices. In this regard, it is possible for a person to be a "customer" of the FRC/Foreign Office (as defined in the FRC/FO AML Notices), even if that person's account is not booked with the FRC/Foreign Office. In respect of all customers under the FRC or Branch Arrangements, the Singapore FI is required to ensure that there are adequate policies and procedures such that the performance of CDD measures is consistent with the requirements in the relevant AML/CFT Notice the Singapore FI is subject to. Either the Singapore FI or the FRC/Foreign Office may perform the CDD measures. Subject to the Singapore FI ensuring the adequacy of these policies and procedures, the Singapore FI itself is not required to perform ongoing monitoring for persons who are solely customers of the FRC/Foreign Office. For clarity, if a customer under a cross-border business arrangement is also a customer of the Singapore FI, the requirements in the relevant AML/CFT Notice that the Singapore FI is subject to will apply to the Singapore FI.

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3.7 Consistent with the corresponding Guidelines<sup>5</sup> to the relevant AML/CFT Notices, the frequency of review of accounts booked with the FRC/Foreign Office should be risk-based.

Standards to be Applied for CDD

3.8 In lieu of requiring the Singapore FI to ensure consistency with the requirements for CDD in the FRC/FO AML Notices, some respondents requested to apply standards set by the Financial Action Task Force ("FATF standards") in the conduct of CDD measures, as the conditions under the relevant AML/CFT Notices for placing reliance on third parties for the conduct of CDD also made reference to the FATF standards. Some asked if the AML/CFT requirements can be taken to be met using the Correspondent Banking Due Diligence Questionnaire ("CBDDQ") by the Wolfsberg Group.

MAS' response

3.9 MAS will maintain the requirement of referencing the standards in the relevant AML/CFT Notices as a baseline to ensure that the same AML/CFT standards are applied in respect of all customers in Singapore, whether they are served by the Singapore FI or the FRC/Foreign Office. These standards for CDD in the relevant AML/CFT Notices apply even if the Singapore FI is relying on third parties for the conduct of CDD for its own customers. As such, the same requirement is imposed in respect of arrangements under the Exemption Frameworks – the Singapore FI must ensure that the measures for performing CDD by the FRC/Foreign Office for customers served under a cross-border business arrangement are consistent with the requirements in the relevant AML/CFT Notice the Singapore FI is subject to. Accordingly, applying alternative standards such as the CBDDQ or FATF standards would not meet the requirements under the FRC/FO AML Notices.

Terms Used in FRC/FO AML Notices

3.10 Respondents sought clarification on the term "CDD measures" used in the FRC/FO AML Notices. Some also suggested to align the definition of "transaction" throughout the FRC/FO AML Notices and sharpen the definition of "customer".

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<sup>5</sup> For example, Guidelines to MAS Notice SFA04-N02 on Prevention of Money Laundering and Countering the Financing of Terrorism.

### MAS' response

3.11 “CDD measures” in the FRC/FO AML Notices refer to the measures set out in the sections on CDD in the relevant AML/CFT Notice applicable to the Singapore FI, and include measures in respect of simplified CDD and enhanced CDD.

3.12 The definition of “transaction” is intentionally excluded from the FRC/FO AML Notices under the SFA (but remains present in those under the FAA) to be consistent with the relevant AML/CFT Notice under the SFA and FAA respectively.

3.13 MAS will amend the definition of “customer” in the FRC/FO AML Notices, to exclude persons that invest into certain investment vehicles to which the Singapore FI provides the regulated activity of fund management. In respect of cross-border arrangements involving the regulated activity of fund management, the Exemption Frameworks are only applicable if the FRC/Foreign Office intends to manage segregated mandates for Singapore customers. The updated definition of “customer” in the FRC/FO AML Notices will continue to include Singapore customers for which the FRC/Foreign Office manages segregated mandates.

### *Applicability of Certain Requirements in Relevant AML/CFT Notices*

3.14 One respondent suggested including in the FRC/FO AML Notices the requirements on record maintenance, compliance, audit and training currently present in the relevant AML/CFT Notices. The respondent also sought clarification on the applicability of requirements on personal data access and correction and suspicious transactions reporting (“STR”) in the relevant AML/CFT Notices, in the context of the Exemption Frameworks.

### MAS' response

3.15 In respect of cross-border business arrangements under the Exemption Frameworks, MAS' primary intent is to require CDD to be performed in a manner consistent with the relevant AML/CFT Notices. Hence, the requirements on record maintenance, compliance, audit and training are not relevant.

3.16 There is no requirement relating to personal data access and correction in the FRC/FO AML Notices. The requirements in the relevant AML/CFT Notices, including those on personal data access and correction, will apply if the customer under the Exemption Frameworks is also a customer of the Singapore FI. For customers who are solely customers of the FRC/Foreign Office under the Exemption Frameworks, the personal data

access and correction requirements under the Personal Data Protection Act 2012 continue to apply.

3.17 There is no STR requirement in the FRC/FO AML Notices. Nevertheless, the STR requirement in the Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act (“CDSA”) (which already applies to the Singapore FI) is also applicable to the FRC/Foreign Office if the conditions under section 39(1) of the CDSA are met in the course of conducting regulated activities or providing financial advisory services in Singapore.

3.18 MAS’ clarifications above do not affect the applicability of any AML/CFT requirements on the FRC/Foreign Office in the jurisdiction from which it operates, imposed by the FRC’s/Foreign Office’s home regulator or otherwise.

## **4 Notification and Reporting Requirements**

4.1 Under the Exemption Frameworks, MAS proposed that Singapore FIs, through respective prescribed forms:

- (i) notify MAS of any cross-border business arrangement and confirm to MAS its compliance with the boundary conditions, within 14 days of commencement of such an arrangement;
- (ii) notify MAS of any changes to the arrangement within 14 days of such a change; and
- (iii) submit annually (a) a certification from an independent assurance function that the boundary conditions have been complied with, and (b) information on the size, type of activities and other relevant metrics to allow for effective and risk-based monitoring of developments by MAS.

4.2 Respondents provided feedback on the manner in which the notification and reporting requirements are operationalised, such as the specific information to be provided, reporting timeline and appropriate signatories to the forms. The key feedback received, as well as MAS’ response to the feedback, are set out as follows:

*Notification Forms for Commencement and Changes to Arrangements – Information Sought and Reporting Timeline*

4.3 Respondents sought clarification on whether MAS must be notified prior to the commencement of a new cross-border business arrangement.

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4.4 Some respondents sought guidance on the appropriate commencement date to be indicated for existing cross-border business arrangements<sup>6</sup> being notified under the Exemption Frameworks. Some other respondents requested that existing approved cross-border business arrangements be “grandfathered”, and not be required to submit a notification of commencement.

4.5 Respondents also asked for clarity on how the name of an arrangement or the relevant business unit should be determined, and whether a single notification form can be used for an arrangement involving multiple entities, for example, a single FRC is part of an arrangement with a few Singapore FIs, or an arrangement between a Singapore FI and multiple FRCs/Foreign Offices.

4.6 Some respondents sought clarification on the list of proposed changes to be notified to MAS, highlighting that the proposed notification of change in particulars form does not contain a field to report changes to the regulatory status of the FRC/Foreign Office and target clientele. Some respondents also requested clarity on the drop-down lists for the fields relating to the addition/cessation of regulated activities under the arrangement.

4.7 Regarding the group shareholding chart requested in the change notification form, one respondent asked if the shareholding chart accompanying a notification on an additional FRC should only reflect the relationship between the Singapore FI and the newly added FRC. The respondent also sought clarification on the circumstances under which the Singapore FI needs to notify MAS of revisions in the Singapore FI’s shareholding chart.

4.8 On the process chain requested in the commencement and change notification forms, some respondents sought clarification on the level of details required and the rationale for requiring such information. In particular, some respondents suggested to include a “N.A.” or “Others” option for the “Custodial Services” function in the process chain for the regulated activity of fund management, highlighting that custodians may be appointed by institutional clients for whom segregated mandates are being managed by the FRC/Foreign Office. One respondent asked about the circumstances under which the Singapore FI needs to notify MAS of changes in the process chain.

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<sup>6</sup> Such as approved arrangements under paragraph 9 of the Third Schedule to the SFA and paragraph 11 of the First Schedule to the FAA, arrangements where the FRCs are exempted under Regulation 65 of the SF(LCB)R and Regulation 32CA of the FAR, and Branch Arrangements involving the regulated activity of dealing in capital markets products that are over-the-counter derivatives contracts.

4.9 As for the declaration in respect of conflicts of interest, one respondent suggested to simplify the required declaration in the commencement notification form as the Singapore FI may not be fully aware of any inherent conflicts at the point of commencement of an arrangement, nor able to foresee potential conflicts in future. Some respondents sought clarification on the information MAS expects the Singapore FI to provide on its assessment of conflicts of interest.

4.10 Lastly, one respondent asked if the timeline for notifying MAS of the commencement of and changes of particulars of a cross-border business arrangement can be extended from 14 calendar days to 15 business days (i.e. 3 weeks).

### MAS' response

4.11 New cross-border business arrangements must be notified to MAS using the prescribed notification of commencement form within 14 days from the commencement date. The notification requirements do not apply to cross-border business arrangements that have yet to commence, although they may be notified to MAS prior to commencement if the boundary conditions are met.

4.12 For existing arrangements seeking to rely on the Exemption Frameworks, Singapore FIs should indicate a commencement date on or after 9 October 2021, being the date they can fully comply with the boundary conditions under the Exemption Frameworks. MAS will update the notification of commencement form with checkboxes for Singapore FIs to indicate if the notification pertains to an existing approved arrangement. There will be no “grandfathering” of existing arrangements from the notification requirements, as it is MAS’ intention to subject all arrangements, new or existing, to the standardised set of boundary conditions under the Exemption Frameworks. Commencement notifications made in respect of existing arrangements would provide a one-time update of the population of active cross-border business arrangements.

4.13 The name of an arrangement or the relevant business unit may be determined by the Singapore FI, so long as it accurately reflects the nature of the arrangement, and in accordance with how the business operations of the Singapore FI and its FRC/Foreign Office are structured. For the purposes of notifying MAS through the prescribed forms, each notification should only be in respect of one Singapore FI. Where multiple Singapore FIs within the same corporate group are involved in the same arrangement, each Singapore FI is required to submit a separate notification in respect of the arrangement.

For avoidance of doubt, each notification by a Singapore FI can include multiple FRCs/Foreign Offices in the same notification form.

4.14 The notification of change in particulars form sets out the relevant changes to a cross-border business arrangement that are intended to be notified to MAS. Should there be changes relating to key exemption requirements such as the regulatory status of the FRC/Foreign Office and target clientele, the Singapore FI must notify MAS of the cessation of the arrangement if it no longer meets the exemption requirements fully. As for the fields relating to addition/cessation of regulated activities under the arrangement, drop-down lists will be provided in the final version of the form for notification of change in particulars, to prevent any ambiguity in terms of the information required.

4.15 Whenever an FRC is added to or removed from a cross-border business arrangement, a complete and accurate group shareholding chart reflecting all FRCs before and after the change should be provided via the notification of change in particulars form. The chart provided should illustrate the relevant change(s), through visual aids and/or footnotes for instance.

4.16 On the process chain requested in the notification forms, Singapore FIs should provide information on functions performed in respect of the regulated activities conducted under the cross-border business arrangement, in line with the existing requirement for approved arrangements under paragraph 9 of the Third Schedule to the SFA and paragraph 11 of the First Schedule to the FAA. If there are changes to the roles of the Singapore FI or the FRC/Foreign Office resulting in changes to the process chain information previously notified, the Singapore FI will be required to notify MAS through the notification of change in particulars form. MAS will incorporate the suggestion to update the notification forms such that it caters for fund management arrangements where the custodian is appointed by the customers.

4.17 MAS will refine the declaration for conflicts of interest within the notification forms, requiring the Singapore FI to declare if it has assessed there to be any conflicts of interest at that juncture, and that it will implement conflicts mitigating measures on an ongoing basis. The Singapore FI should assess for such conflicts arising from its conduct of business as a result of participating in the cross-border business arrangement. Performing conflicts assessments on an ongoing basis is an existing fundamental requirement for all FIs.

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4.18 MAS will retain the timeline of 14 calendar days for notification of commencement of and changes to cross-border business arrangements, to be consistent with various other notification requirements under our regulatory framework.

*Annual Audit Certification – Acceptable Functions, Template and Applicable Cycle*

4.19 Some respondents sought clarification on whether business functions other than internal audit would qualify as an independent assurance function for the purpose of providing the annual audit certification of compliance with boundary conditions under the Exemption Frameworks. One respondent also asked if MAS will prescribe the template and language for the audit certification. Another respondent asked if the audit certification can be provided in accordance with the relevant group or entity's own risk-based internal audit cycle, which may not be on an annual basis.

*MAS' response*

4.20 The audit certification can only be provided by an internal auditor or external auditor, as these functions are not involved in the day-to-day business or control functions, and as such is best placed to provide an independent certification. MAS will not prescribe the template or language for the audit certification, although it should be provided in the English language. Consistent with the audit certification requirement under the current approval framework for FRC Arrangements, MAS will require audit certifications under the Exemption Frameworks to be provided on an annual basis in all instances.

*Annual Reporting Form – Information Sought and Reporting Timeline*

4.21 MAS proposed to collect various metrics indicating the size and scale of cross-border business arrangements, with breakdowns by entity and regulated activity. Respondents asked to do away with the proposed breakdowns or the reporting requirement altogether, citing practical challenges in allocating or tracing such metrics to specific entities or regulated activities.

4.22 On the requirement to report the number of customers, some respondents requested to report the number of onboarded customers instead of active customers<sup>7</sup>. One respondent sought clarification on the how this metric should be reported if there

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<sup>7</sup> For the purposes of annual reporting, these are customers that made at least one transaction during the relevant financial year. For advising on corporate finance and fund management, this would include all customers with existing mandates or investment agreements.



are customers with (i) multiple accounts (e.g. account in individual's name, account under a trust structure and account under a personal investment company), or (ii) joint accounts (e.g. joint account with three joint account holders).

4.23 On the requirement to report the number of representatives, one respondent requested to limit the scope of reporting to foreign representatives who travel to Singapore to conduct regulated activities under the cross-border arrangements. Some respondents sought clarification on whether the number of representatives to be reported should include those who ceased their regulatory status by the end of the financial year. Another respondent asked to remove the need to provide the number of local representatives given that the Singapore FI would have been required to appoint their representatives under the Representative Notification Framework ("RNF").

4.24 Some respondents also asked if the annual reporting requirement applies if there had not been any cross-border transactions conducted under the cross-border business arrangements in the preceding financial year.

4.25 Lastly, some respondents sought clarification on the specific timeline for the first round of annual reporting given differing financial year ends and arrangement commencement dates, and whether there can be extension of the reporting timeline of 5 months after the Singapore FI's financial year end.

### MAS' response

4.26 Considering the practical difficulties faced by the industry in breaking down certain metrics by entity or regulated activity, MAS will allow reporting to be done on a consolidated basis at the arrangement level. The annual reporting form will be updated accordingly.

4.27 To simplify the reporting requirement for number of customers, MAS will require the reporting of the total number of customers (defined as individuals on whose behalf the FRC/Foreign Office carries on regulated activities, or provides financial advisory services) instead of the number of active customers as originally proposed. This should be based on the specific name(s) that the account is registered under. Hence, if a person holds an account in his/her own name, an account under a trust structure and an account under a personal investment company, this should be reported as 3 unique customers. If there is a joint account with three joint account holders, this should be reported as 3 unique customers.

4.28 As activities under cross-border business arrangements can be conducted remotely, it would not be meaningful to only obtain statistics on foreign representatives who travel to Singapore. Accordingly, statistics on all foreign representatives involved in the cross-border business arrangements should be reported. Representatives of the Singapore FI who are involved in the arrangement are to be included for annual reporting as well, even if these representatives are appointed under the RNF. For the avoidance of doubt, appointed representatives under the RNF who are not involved in the cross-border business arrangements should be excluded from the annual reporting. The statistics on the number of representatives should only include representatives who are still involved in the arrangement, and exclude representatives who ceased to be involved in the arrangement over the course of the financial year.

4.29 As long as a cross-border business arrangement had been notified to MAS under the Exemption Frameworks, the annual reporting requirement applies, even if no transactions had occurred under the arrangement in the preceding financial year. This includes the need to provide an audit certification of compliance with the boundary conditions under the Exemption Frameworks.

4.30 Considering that the annual reporting process under the Exemption Frameworks involves new pieces of information, MAS will defer the due date of the first round of annual reporting to 2023. Please refer to **Annex 3** for an illustration of the applicable due dates under various scenarios.

#### *Signatory for Notification and Reporting Forms*

4.31 Some respondents requested to allow the notification and reporting forms to be signed by senior officers (such as the Chief Executive Officer and Head of Compliance) where the Singapore FI is a branch, as the Singapore branch would not have its own directors, and the directors of the legal entity may not be based in Singapore.

#### MAS' response

4.32 The notification and reporting forms are required to be submitted electronically via FormSG. While the forms can be submitted on behalf of the directors of the Singapore FI, the declaration must be made by the directors. Given the feedback that where the Singapore FI is a branch, the Singapore branch would not have its own directors, MAS will allow the declaration for such forms to be made by the Singapore branch's Chief Executive Officer.

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## 5 Other Boundary Conditions

5.1 In addition to the boundary conditions covered above, other boundary conditions proposed relate to:

- (i) Regulatory status of the Singapore FI;
- (ii) Regulatory status of the Foreign Office;
- (iii) Permissible clientele; and
- (iv) Internal controls over the arrangement, including (i) keeping records relating to the arrangements with the Foreign Offices; (ii) maintaining a register of every representative of the Foreign Office under the arrangement; (iii) maintaining or having access to all records kept overseas by the Foreign Offices that relate to the arrangements, and providing MAS with timely access to these records; (iv) marketing and solicitation of customers in Singapore by the Foreign Office and its representative; and (v) handling of customer complaints.

5.2 As the intent of the boundary conditions under the Exemption Frameworks are aligned, MAS' responses below apply to both Exemption Frameworks.

### Regulatory Status of the Singapore FI for product financing and custodial services

5.3 On MAS' proposal to allow Foreign Offices to enter into an arrangement with the Singapore FI to provide product financing or custodial services under the SFA as a complement<sup>8</sup> to the Singapore FI's business of dealing in capital markets products, even if the Singapore FI itself is not licensed or exempt to carry out such activities, one respondent sought clarification on the policy intent behind this exception.

### MAS' response

5.4 This exception is provided as MAS recognises that the regulated activities of product financing and providing custodial services under the SFA do not involve individual representatives. As such, if such activities are complementary to the dealing activities

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<sup>8</sup> The Singapore FI must be licensed or exempted to deal in capital markets products for the same classes of products for which the Foreign Office intends to provide product financing or custodial services under the arrangement.

conducted by the Singapore FI, the Singapore FI is not required to be licensed or exempt for such activities if it is not the party providing such services to customers, in order to enter into an FRC/Branch Arrangement with its FRC/Foreign Office for such activities.

*Regulatory Status of the FRC/Foreign Office*

5.5 On the condition for the FRC/Foreign Office to be licensed, authorised, regulated or supervised by a regulatory body in the foreign jurisdiction where the FRC/Foreign Office is operating from, MAS has previously clarified that the FRC/Foreign Office that is relying on exemptions in respect of the specific activity under the FRC/Branch Arrangement but that is nonetheless licensed, authorised, regulated or supervised in the jurisdiction where it is operating from, will be allowed to conduct that specific activity under the FRC/Branch Arrangement. Respondents sought further clarification on whether FRC/Foreign Office will be allowed to conduct a specific activity under the arrangement if that specific activity is not regulated in the jurisdiction where the FRC/Foreign Office is operating from.

*MAS' response*

5.6 An FRC/Foreign Office which is licensed, authorised, regulated or supervised by a regulatory body in the jurisdiction where it is operating from would satisfy this condition, even when the conduct of a specific activity under the FRC/Branch Arrangement is not specifically regulated in the jurisdiction. For instance, where dealing in over-the-counter derivatives contracts (“OTCD”) is not regulated in a particular jurisdiction, the FRC/Foreign Office would still be allowed to conduct the regulated activity of dealing in OTCD as part of its FRC/Branch Arrangement under the Exemption Frameworks, so long as the FRC/Foreign Office is nonetheless licensed, authorised, regulated or supervised by a regulatory body in the jurisdiction it operates from. On the contrary, if the FRC/Foreign Office is only dealing in OTCD which is not regulated in a particular jurisdiction and hence is not licensed, authorised, regulated or supervised by a regulatory body in its jurisdiction of operation, such FRC/Foreign Office would not fulfil this condition and cannot avail itself of the Exemption Frameworks.

*Accredited Investor Opt-in Process*

5.7 Given the additional complexity in dealing with foreign persons operating under different legal frameworks and regulatory standards, MAS had proposed to restrict the

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clientele under the Exemption Frameworks to non-retail customers<sup>9</sup>, i.e. accredited investors (“AIs”), expert investors and institutional investors, who have the ability to better safeguard their own interests. MAS has previously clarified that the AI opt-in requirements are applicable to customers under the FRC Framework, given the broader policy objective of ensuring that customers make a conscious decision to be treated as AIs and therefore forgo the benefit of certain regulatory safeguards. Respondents sought further clarification on the applicability and implementation of the AI opt-in requirements in relation to the Exemption Frameworks. For instance, whether customers have to opt in to be treated as AIs for the purpose of the Exemption Frameworks under both the SFA and FAA, including arrangements which involve the regulated activity of advising on corporate finance; whether an existing AI opt-in obtained by the FI would continue to be valid unless withdrawn; and whether FIs are required to make specific disclosures in respect of the cross-border arrangements when obtaining the opt-in.

### MAS’ response

5.8 To reiterate, AI opt-in requirements under the Securities and Futures (Classes of Investors) Regulations 2018 (“SF(COI)R”) will apply to customers under the Exemption Frameworks for all in-scope activities under both the SFA and FAA, including the regulated activity of advising on corporate finance under the SFA. Where customers have previously opted to be treated as an AI by the Singapore FI (in the case of the Branch Framework) or FRC (in the case of the FRC Framework) (whichever is applicable), the opt-ins would continue to be valid for the purpose of the Exemption Frameworks unless the consent is withdrawn. Conversely, customers who have not opted to be treated as an AI by the Singapore FI or FRC (as applicable) would have to do so for them to be served under the Exemption Frameworks.

5.9 To provide Singapore FIs/FRCs with sufficient time (if necessary) to obtain the opt-ins from their customers, they will be given two years from the effective date of the Exemption Frameworks, i.e. by 9 October 2023 to obtain the opt-ins. Prior to 9 October 2023, FIs would need to ensure that customers served under the Exemption Frameworks meet the eligibility criteria of “accredited investor” under section 4A(1) of the SFA.

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<sup>9</sup> Where the Singapore FI is restricted to serving specific types of customers, MAS also proposed that the FRC/Branch Arrangements notified under the Exemption Frameworks be restricted to those same types of customers.

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*Internal Controls over the Arrangements*

5.10 On MAS' proposal to require the Singapore FI to have in place policies and procedures to oversee the conduct of the FRC/Foreign Office and its representatives under the FRC/Branch Arrangements, one respondent commented that some of the internal controls may not necessarily be under the direct monitoring and oversight of the Singapore FI, and that the responsibility for oversight and monitoring should lie with both the Singapore FI and the FRC/Foreign Office.

5.11 On the requirement to have policies and procedures in place to maintain a register of every foreign representative of the FRC/Foreign Office (the "Register"), two respondents sought clarification on whether the Register applies to (i) all foreign representatives, or (ii) only foreign representatives who visit Singapore to conduct regulated activities under the FRC/Branch Arrangement; and requested that the Register apply only to the latter, citing operational challenges in identifying all the foreign representatives involved in an FRC/Branch Arrangement, and in keeping the Register up-to-date given potential staff movement. The respondents also requested that the Register be allowed to be maintained outside Singapore as FIs may have centralised processes where such registers are maintained in FRCs/Foreign Offices.

5.12 On the information to be maintained in the Register, MAS has previously clarified that the Register should contain information on the name of the representative and the corresponding FRC/Foreign Office, the date and purpose of visit to Singapore under the arrangement, and the details of regulated activities conducted during the visit. MAS also clarified that information on representatives' qualifications and licences are not required to be maintained in the Register. Respondents sought further clarification on the details and description of activities required to be maintained in the Register and requested confirmation on whether it is still a requirement to assess and document the qualifications of the foreign representatives.

5.13 Specific to the requirement to have policies and procedures in place to keep records relating to the FRC/Branch Arrangements, a respondent sought clarification on whether there is any specified record retention period.

5.14 Specific to the requirement to ensure there are policies and procedures governing the FRC/Branch Arrangement, including for the marketing and solicitation of customers by the FRC/Foreign Office and their representatives, MAS has previously clarified that MAS' policy intent is to ensure that there is proper oversight of these foreign representatives soliciting customers in Singapore and provided some examples on how

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this requirement could be achieved. For instance, having country-specific guidelines on the specific types of information that can be provided to prospects, and/or requiring marketing materials used by the foreign representatives to be approved by the local compliance team. Respondents sought clarification on whether the same guidance applies to the Branch Framework and sought clarity specifically whether approval of marketing materials by the Singapore compliance team is required. A respondent further sought confirmation that there is no restriction on the FRC/Foreign Office and its representatives soliciting or marketing to customers in Singapore for the services provided under the Exemption Frameworks.

### MAS' response

5.15 While relevant controls to oversee and monitor the FRC/Branch Arrangements may be performed by the Singapore FI and/or the FRC/Foreign Office, MAS requires the Singapore FI to be responsible for maintaining oversight of the arrangement, including the conduct of the FRC/Foreign Office and its representatives, given its presence in Singapore and role in the arrangement.

5.16 On the Register, given MAS' requirement for Singapore FIs to ensure policies and procedures are in place to oversee the conduct of the FRC/Foreign Office and their representatives under these arrangements, FIs should be able to identify all such representatives. As such, MAS will retain the requirement for the Register to include all representatives operating under the FRC/Branch Arrangement. Nonetheless, there is no need for a separate register to be maintained in Singapore. The requirement to keep or cause to be kept a Register is met if the Singapore FI is able to generate and provide an up-to-date list of all such representatives, upon MAS' request.

5.17 On the information to be included in the Register, the details and description of activities conducted by the FRC/FO's representative during his visit to Singapore refer to information such as the means through which the representative solicits/ markets to/ services/ advises customers, products involved, number of customers targeted/ served, and the estimated time spent on such regulated activities. On the qualifications of the representatives, as explained in MAS' prior response, MAS will not require information on the representatives' qualifications and licences to be maintained in the Register and have removed this requirement from the set of boundary conditions proposed for the Exemption Frameworks.

5.18 On the record retention period, FIs should follow the requirements of the jurisdiction from which the FRC/Foreign Office operates.

5.19 On the requirement on oversight of Foreign Office’s representatives soliciting customers in Singapore, similar to the FRC Framework, MAS’ intent is for the Singapore FI to have oversight of such representatives who are soliciting customers in Singapore. MAS does not prescribe how the Singapore FI may achieve this. The same guidance and examples on how the Singapore FI can perform this oversight under the FRC Framework apply to the Branch Framework too. These serve as a guide on possible ways of exercising oversight and are not meant to be prescriptive or exhaustive. Further, the approval of marketing materials by the Singapore compliance team is but one example provided on how the Singapore FI can provide oversight, and is not intended to be a requirement.

## **6 Treatment of Existing Arrangements**

6.1 Similar to the six-month transitional period proposed for existing FRC Arrangements to be notified under the FRC Framework, MAS proposed to provide a transitional period of six months for Foreign Offices dealing or advising in specified contracts under an arrangement with the Singapore Office, and relying on the transitional arrangement under Regulation 60 or 61 of the SF(LCB)R and/or Regulation 40BB or 40BC of the Financial Advisers Regulations (“FAR”) which will end on 8 October 2021, to comply with the proposed boundary conditions and submit notifications on such arrangements under the Branch Framework.

6.2 Several respondents requested a longer transition period of 12 months to allow for sufficient time to make the necessary changes to their processes, policies and procedures, given the involvement of Foreign Offices, and potential changes to global policies.

### MAS’ response

6.3 Having considered the feedback, MAS will extend the transition period to 12 months for the Foreign Offices described in paragraph 6.1 to comply with the proposed boundary conditions and submit notifications on such arrangements under the Branch Framework. MAS will also extend the transition period to 12 months for existing approved arrangements under paragraph 9 of the Third Schedule to the SFA and paragraph 11 of the First Schedule to the FAA, and arrangements involving FRCs exempted under Regulation 65 of the SF(LCB)R and Regulation 32CA of the FAR. Singapore FIs will have 12 months to comply with the boundary conditions and submit notifications on such arrangements under the FRC Framework.



## **7 Issuing or Promulgating Research Analyses or Reports**

7.1 MAS proposed to level the playing field for foreign research houses which are FRCs or Foreign Offices. In this regard, Foreign Offices would be exempted from the relevant business conduct and representative notification requirements when they provide the financial advisory service of issuing or promulgating research analyses or reports concerning any investment product to investors in Singapore, subject to similar safeguards currently provided for under regulation 32C of the FAR (“FAR 32C”). Consequently, such Foreign Offices which promulgate or issue research reports will not be subject to MAS’ ex-ante approval nor be required to notify MAS under the ex-post notification framework. With these proposed amendments, all arrangements concerning issuing or promulgating research analyses or reports concerning any investment product will be excluded from the proposed ex-post notification framework for both the FRCs and Foreign Offices.

7.2 One respondent sought clarification on whether with this exemption, Singapore customers could be invited by Singapore FIs to subscribe to research portals of their Foreign Offices.

7.3 Another respondent requested to make it explicit within the regulations that research analysts of foreign research houses or foreign research offices can explain the contents of research reports to their customers. The same respondent also sought clarification on how the latest exemption is intended to interact with the separate licensing exemption in regulation 27(1)(e) of the FAR (“FAR 27(1)(e)”) for providing financial advisory services to institutional investors.

7.4 There was also a query on whether a Foreign Office can be exempted from the relevant business conduct and appointment of representative requirement if the specific activity of promulgating or issuing research report is currently not regulated in the jurisdiction where the Foreign Office is operating from.

### MAS’ response

7.5 All respondents were supportive of the proposal to level the playing field between a foreign research house which is an FRC and one which is a Foreign Office. The exemption from the relevant business conduct and representative notification requirements for Foreign Offices for the financial advisory service of promulgating or issuing research reports is provided for in regulations 4(4), 4(6), 6(6) and 6(8) of the

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Financial Advisers (Exemption For Cross-Border Arrangements) (Foreign Offices) Regulations 2021.

7.6 The policy intent of the proposed exemption for Foreign Offices from the applicable business conduct and representative notification requirements is not to facilitate active solicitation of Singapore customers by the Foreign Offices or their analysts. That said, similar to FAR 32C, Singapore customers are allowed to subscribe to the research reports of the Foreign Office through the Singapore FI without the Foreign Office actively soliciting such business or distributing the research reports to these customers.

7.7 Currently, analysts of foreign research houses are allowed to explain the contents of their research reports and respond to queries on their research reports to Singapore customers without being required to be appointed or notified representatives under FAR 32C. This position is provided for in FAR 32C(1) read with section 23B(1)(b) of the FAA. The same would apply for analysts of Foreign Offices.

7.8 Where a Foreign Office is issuing research reports solely to institutional investors, it is exempted from licensing, business conduct and representative notification requirements. This position is the same, be it under FAR 27(1)(e) or the proposed treatment for Foreign Offices with respect to the financial advisory service of issuing or promulgating research analyses or reports.

7.9 MAS had previously clarified in its response to the consultation paper<sup>10</sup> for FAR 32C that the requirement for the foreign research house to be regulated for the financial advisory service of promulgating or issuing research report only applies if it is a requirement in that jurisdiction. The same position would apply with respect to a Foreign Office, in that the requirement for the Foreign Office to be subjected to regulatory oversight by the foreign regulatory authority will only apply in so far that it is a requirement in that jurisdiction.

## **MONETARY AUTHORITY OF SINGAPORE**

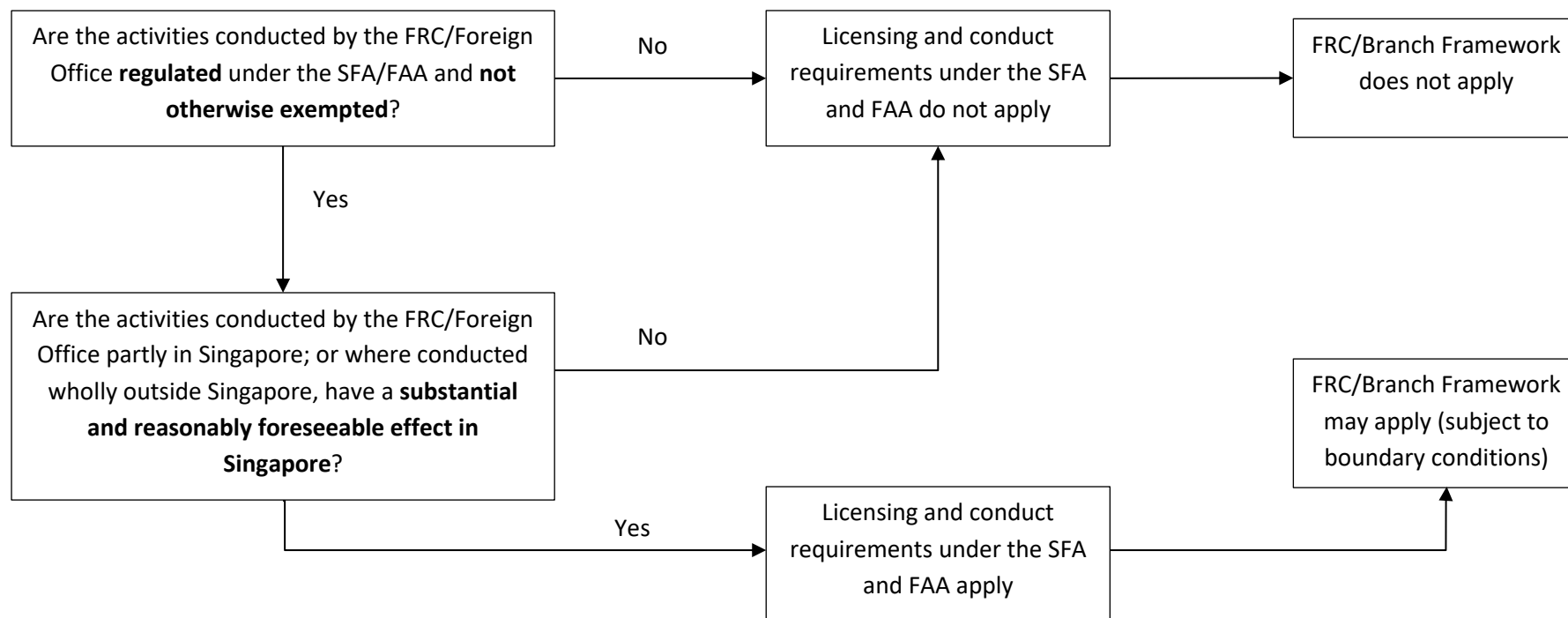
8 October 2021

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<sup>10</sup> Response to Feedback Received for Policy Consultation on Amendments to Securities and Futures Act and the Financial Advisers Act (Consultation Number: P020-2006) for Chapter 2 Licensing and Business Conduct Rules, Section E: Licensing Exemption for Third-Party Foreign Research Houses

**Annex 1**

Flowchart for assessment of cross-border business arrangements involving FRC/Foreign Offices



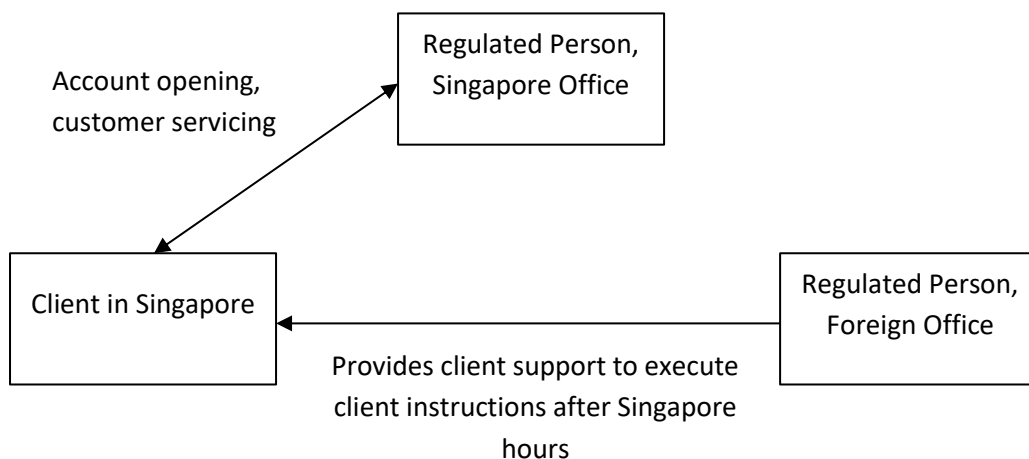
## Annex 2

### Illustrations on the applicability of the FRC and Branch Frameworks

The following illustrations are only intended as a guide for the common cross-border business arrangements raised by respondents; whether or not section 339 of the SFA and the FRC/Branch Framework applies in a specific case would depend on the facts and circumstances of the case.

#### **Illustration 1: Follow-the-sun model**

***The sales and trading desk based in the Foreign Office of a regulated person (e.g. a bank licensed in Singapore, CMS licence holder) (“foreign desk”) supports customers in Singapore and execute trades for these customers when contacted after Singapore trading hours. The foreign desk only responds to request from customers in Singapore, and does not initiate contact with nor solicit business from these customers. The customers are contracted with the Singapore Office.***

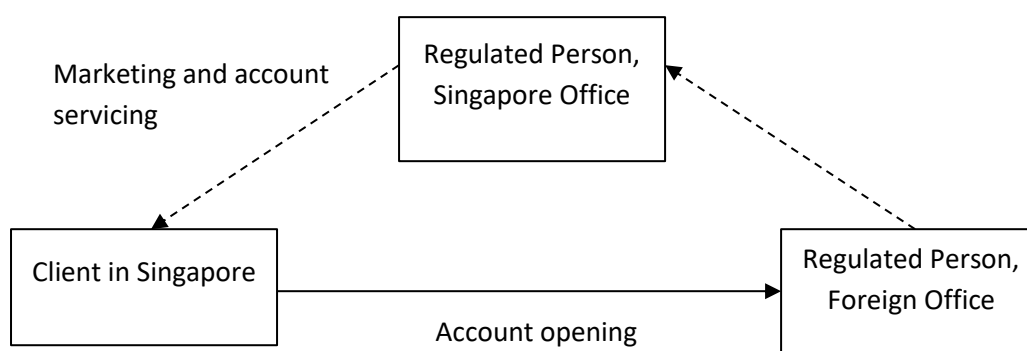


- 1.1 In this scenario, as the foreign desk is responding to unsolicited requests to execute instruction from a client in Singapore, MAS considers the acts of the foreign desk to be outside the scope of the relevant business conduct requirements under the SFA, read with section 339(2) of the SFA. Accordingly, the Branch Framework will not be relevant and the foreign desk may continue with its activities without complying with the business conduct requirements under the SFA. Nonetheless, MAS expects the Singapore Office to disclose clearly to customers that the foreign desk representatives are acting on behalf of the Foreign Office and are not subject to MAS’ regulations. The Singapore Office should also

inform customers of the available recourse for issues which may arise in their dealings with the foreign desk representatives.

**Illustration 2: Referral model**

***The Singapore Office of a regulated person introduces its customer in Singapore to its Foreign Office for products or services that are not offered by the Singapore Office.***



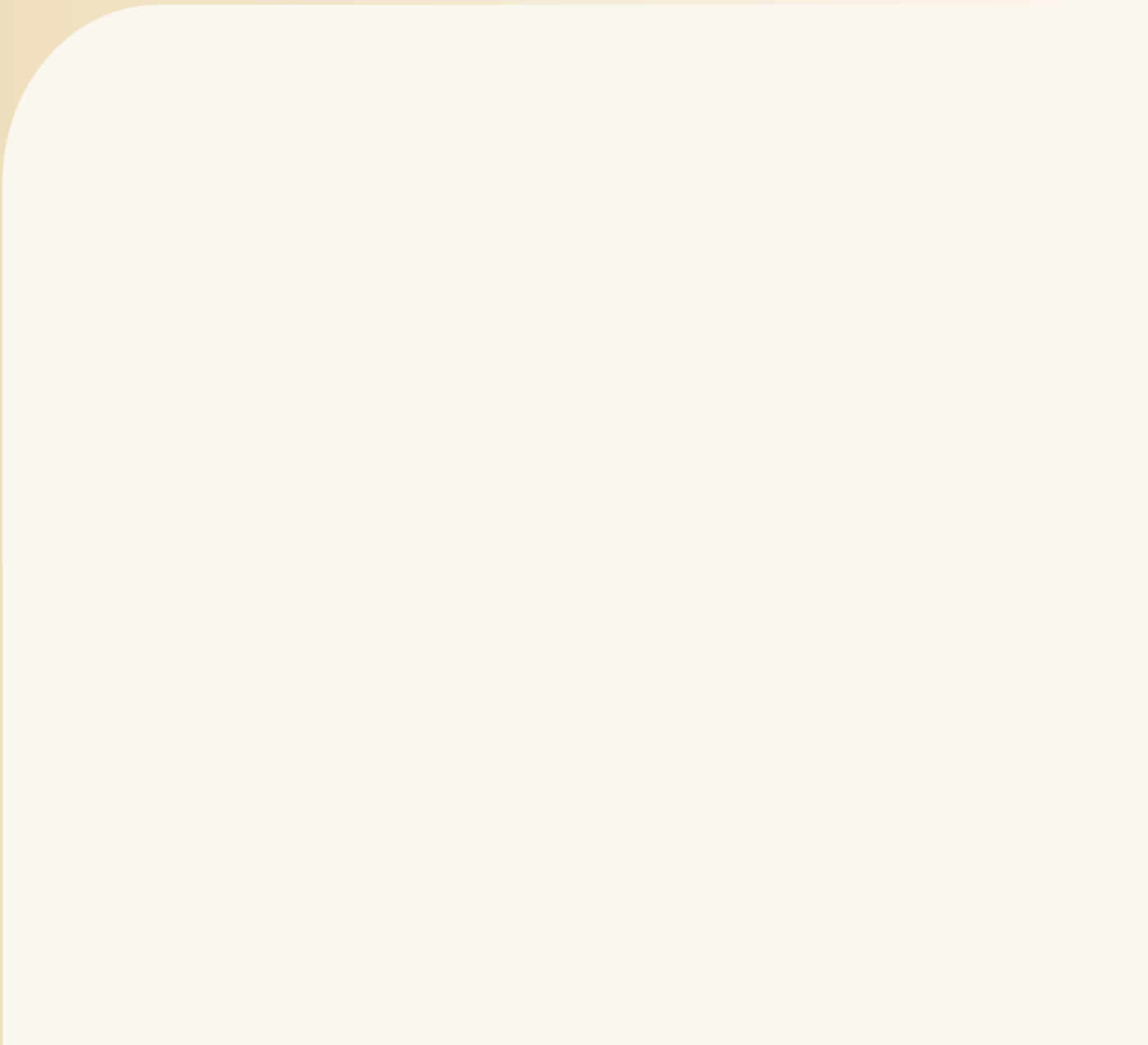
2.1 Where the regulated person in Singapore carries out marketing and solicitation on behalf of or as an agent of its Foreign Office, the acts of the Foreign Office would be within the scope of section 339(2). The Foreign Office would be required to comply with the applicable business conduct requirements and to appoint its representatives on the MAS Register, unless the arrangement has been notified under the Branch Framework.

2.2 Nonetheless, where the regulated person in Singapore does not actively solicit customers on behalf of its Foreign Office, but only shares factual information that its Foreign Office provides certain products and/or services that the customer is enquiring about for which the Singapore Office does not offer, and where the Foreign Office later responds to and accepts unsolicited applications from customers in Singapore, MAS considers the acts of the Foreign Office to be outside the scope of section 339(2) of the SFA. Accordingly, the Branch Framework will not be relevant and the Foreign Office may continue with its activities without complying with the requirements under the SFA. Nonetheless, in such circumstances, MAS expects the Singapore Office to disclose clearly to customers that the Foreign Office and its representatives are not subject to MAS' regulations and the recourse available to customers for issues arising from the customers' dealings with the Foreign Office and its representatives.

**Annex 3**

Applicable Due Dates for First Round of Annual Reporting

	<b>Commencement date of arrangement</b>	<b>Singapore FI's financial year end</b>	<b>Treatment</b>
<b>Scenario 1</b>	November 2021	December	<b>Annual reporting due by May 2023</b> (for financial year ended Dec 2022), instead of May 2022 (for financial year ended 2021) <i>[Annual reporting should cover activities conducted under the arrangement from its commencement in November 2021 to December 2022.]</i>
<b>Scenario 2</b>	November 2021	September	<b>Annual reporting due by February 2023</b> (for financial year ended September 2022) <i>[No further extension as the first round of reporting is already due in 2023. Annual reporting should cover activities conducted under the arrangement from its commencement in November 2021 to September 2022.]</i>
<b>Scenario 3</b>	January 2022	March	<b>Annual reporting due by August 2023</b> (for financial year ended March 2023), instead of August 2022 (for financial year ended March 2022) <i>[Annual reporting should cover activities conducted under the arrangement from its commencement in January 2022 to March 2023.]</i>



Monetary Authority of Singapore