

CONSULTATION PAPER

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Proposed Exemptions for Approved Exchanges and Recognised Market Operators that provide certain Clearing and Settlement Services

MAS

Monetary Authority of Singapore

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1 Preface

1.1 The Monetary Authority of Singapore (“MAS”) sets out in this consultation paper the proposed exemption for an approved exchange or recognised market operator that provides certain clearing and settlement services, from being regulated as an approved clearing house or recognised clearing house under the Securities and Futures Act 2001 (“SFA”).

1.2 MAS invites interested parties to provide their comments and feedback.

Please note that all submissions received will be published and attributed to the respective respondents unless they expressly request MAS not to do so. As such, if respondents would like their whole submission or part of it (but not their identity), or their identity along with their whole submission, to be kept confidential, please expressly state so in the submission to MAS. MAS will only publish non-anonymous submissions. In addition, MAS reserves the right not to publish any submission received where MAS considers it not in the public interest to do so, such as where the submission appears to be libellous or offensive.

1.3 Please submit written comments through the link below by 9 September 2022:

<https://form.gov.sg/62c28104d81376001259fa9d>

1.4 Should you encounter any technical difficulties in your submission, you may submit your comments to –

Markets Policy and Infrastructure Department
Monetary Authority of Singapore
10 Shenton Way, MAS Building
Singapore 079117
Fax: (65) 62203973
Email: RMO_mailbox@mas.gov.sg

2 Introduction

2.1 Under Part 3 of the SFA, MAS regulates persons that establish or operate a clearing facility or hold themselves out as operating a clearing facility, as an approved clearing house (“ACH”) or a recognised clearing house (“RCH”), unless otherwise exempted. The purpose of such regulation is to promote safe and efficient clearing facilities and reduce systemic risks.

2.2 A clearing facility refers to a facility for the clearing or settlement of transactions¹, and “clearing or settlement” is defined in Part 2 of the First Schedule to the SFA. “Clearing or settlement”, in relation to a clearing facility, means any arrangement, process, mechanism or service provided by a person in respect of transactions, by which –

- a. information relating to the terms of those transactions are verified by such person with a view to confirming the transactions;
- b. parties to those transactions substitute, through novation or otherwise, the credit of such person for the credit of the parties;
- c. the obligations of parties under those transactions are calculated, whether or not such calculations include multilateral netting arrangements; or
- d. parties to those transactions meet their obligations under such transactions, including the obligation to deliver, the transfer of funds or the transfer of title to securities between the parties.

However, “clearing or settlement” does not include certain activities that are specifically excluded under Part 2 of the First Schedule to the SFA.

2.3 Recently, MAS has observed the introduction of new business models, where, in the course of operating their market platforms, market operators that are regulated by MAS - i.e. approved exchanges (“AE”) or recognised market operators (“RMO”) - also provide post-trade services such as verifying the transactions conducted on the organised markets² that they operate and calculating the obligations of parties under those transactions, before such transactions are cleared or settled bilaterally between the transacting parties. Under the current SFA regime, as such services may fall within the

¹ Please refer to the definition of “clearing facility” in Part 2 of the First Schedule to the SFA for further details.

² Please refer to the definition of “organised market” in Part 1 of the First Schedule to the SFA for further details.

scope of the clearing or settlement services described in paragraph 2.2 (a) or (c) above, these AEs or RMOs may be considered as establishing or operating a clearing facility, or holding themselves out as operating a clearing facility, and be subjected to regulation by MAS as an ACH or RCH.

2.4 MAS is of the view that such services conducted by the AEs or RMOs do not increase the systemic risks posed by such entities to the wider financial system. MAS thus proposes to exempt AEs and RMOs that conduct such services from regulation as clearing facilities. With this exemption, AEs and RMOs will not, by virtue of providing such services alone, be additionally subject to regulation by MAS as an ACH or RCH. This amendment would facilitate the provision of such services without imposing additional regulatory cost on the AEs or RMOs, that may not be commensurate with the impact on systemic risks. We elaborate below.

3 Recent Developments in Post-Trade Space

3.1 MAS has observed the advent of market platforms that bring together buyers and sellers of products that were traditionally traded bilaterally and over-the-counter (as opposed to being traded on a platform). Many of these newly developed market platforms also utilise new technologies (e.g. blockchain) to facilitate trading and settlement.

3.2 On these market platforms, some AEs or RMOs may provide the post-trade services of verifying a trade conducted on the platform by confirming the terms of the trade (which could fall within the scope of the clearing or settlement service described in paragraph 2.2. (a) above) and/or calculating the obligations of the counterparties under the trade (which could fall within the scope of the clearing or settlement service described in paragraph 2.2 (c) above), after the execution of a trade.³

3.3 However, MAS notes that these AEs or RMOs do not act as a central counterparty and do not clear or settle the trades on a centralised basis – i.e. the AE or RMO does not substitute the credit of the counterparties with the credit of the AE or RMO in respect of the trade (which could fall within the scope of the clearing or settlement service described in paragraph 2.2(b) above), and these AEs or RMOs do not subsequently facilitate the meeting of obligations of the counterparties to the trade, including the obligation to deliver, the transfer of funds or the transfer of title to securities between the

³ For example, after a trade is executed on an AE's or RMO's platform, the AE or RMO generates a report indicating the obligations of the respective counterparties to the trade and sends it to the counterparties to verify and affirm that the trade details are accurate.

counterparties (which could fall within the scope of the clearing or settlement activity described in paragraph 2.2(d) above).

3.4 As such, the risks arising from the post-trade services of such AEs and RMOs do not pose systemic risks in the way they would if the trades were routed to a clearing facility for clearance or settlement by the clearing facility on a *centralised* basis. For example, if a trade was routed to a clearing facility for clearance or settlement by the clearing facility on a centralised basis, disruptions to the clearing facility's trade verification or calculation activities could adversely affect its ability to fulfil its clearing and settlement obligations in an accurate and timely manner, which could, in turn, pose systemic risks, by transmitting risk to its counterparties and the wider market.

4 Proposed Exemption for AEs and RMOs

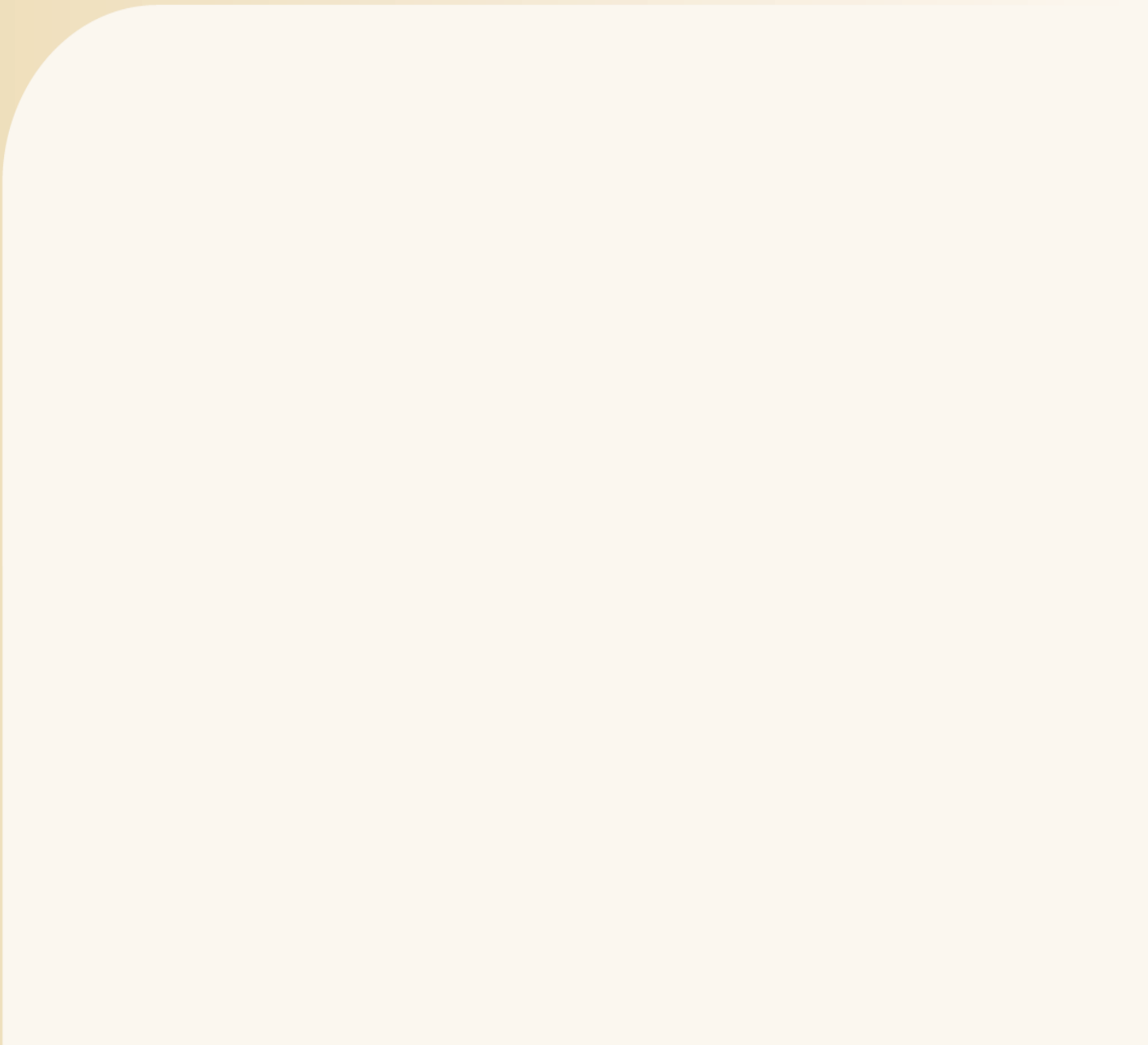
4.1 It is not MAS' intent to impose additional regulatory obligations on AEs and RMOs for the performance of such post-trade services, where the trades are not routed to a clearing facility for clearance or settlement by the clearing facility on a centralised basis. The marginal risks that may arise from such post-trade services can be addressed through MAS' supervision of these entities as AEs or RMOs. As AEs or RMOs, these entities are subject to ongoing requirements relating to operational, technology and cyber risk management as well as operational resilience and business continuity. We note that such an approach is in line with the approach in other reputable jurisdictions. MAS therefore proposes to exempt AEs and RMOs offering such post-trade services from regulation as ACHs or RCHs, by way of a class exemption under section 49(6) of the SFA ("Proposed Regulations"). The Proposed Regulations are set out in **Annex B**.

Question 1. MAS seeks comments on the proposed exemption of an AE or RMO that conducts such post-trade services, from regulation as an ACH or RCH, by way of the Proposed Regulations.

Question 2. MAS seeks comments on whether the Proposed Regulations would provide clarity to an existing AE or RMO conducting such post-trade services (or market operators applying/intending to apply to become an AE or RMO, and intend to conduct such post-trade services) on the scope and extent of regulation in respect of their business.

LIST OF QUESTIONS

- Question 1.** MAS seeks comments on the proposed exemption of an AE or RMO that conducts such post-trade services, from regulation as an ACH or RCH, by way of the Proposed Regulations.....6
- Question 2.** MAS seeks comments on whether the Proposed Regulations would provide clarity to an existing AE or RMO conducting such post-trade services (or market operators applying/intending to apply to become an AE or RMO, and intend to conduct such post-trade services) on the scope and extent of regulation in respect of their business.6



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