

CONSULTATION PAPER

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Proposed Revisions to the Exemption Framework for Cross-Border Business Arrangements of Capital Markets Intermediaries

MAS

Monetary Authority of Singapore

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1 Preface

1.1 The Monetary Authority of Singapore (“MAS”) is proposing changes to the exemption framework for business arrangements between financial institutions in Singapore and their foreign related corporations (the “FRC Framework”). Implemented in 2002, the FRC Framework facilitates arrangements to allow FRCs to provide cross-border financial services to customers in Singapore, without subjecting these FRCs to licensing requirements.

1.2 Currently, financial institutions that wish to enter into such arrangements apply to MAS for approval on a case-by-case basis. Having accumulated experience from reviewing these applications and monitoring the risks arising from these arrangements since 2002, MAS proposes to streamline the FRC Framework by moving from the current ex-ante approval approach to an ex-post notification approach.

1.3 MAS invites comments from all financial institutions and interested parties on the proposed changes.

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 (i) their whole submission or part of it, or (ii) their identity, or both, to be kept confidential, please expressly state so in the submission to MAS. 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.

1.4 Please submit written comments by 31 Jan 2019 to –

Capital Markets Intermediaries Department II
Monetary Authority of Singapore
10 Shenton Way, MAS Building
Singapore 079117
Fax: (65) 6220 3973
Email: FRC_Framework_Consultation@mas.gov.sg

1.5 Electronic submission is encouraged. We would appreciate that you use this suggested format [\[link\]](#) for your submission to ease our collation efforts.

2 Introduction

2.1 Under the Securities and Futures Act (Cap. 289) (“SFA”) and Financial Advisers Act (Cap. 110) (“FAA”), persons conducting regulated activities are required to be licensed¹, unless they are able to qualify for class exemption or have obtained individual exemptions from licensing. Where a foreign person conducts any regulated activity partly in and partly outside Singapore, or where the conduct of the regulated activity takes place wholly outside Singapore but has a substantial and reasonably foreseeable effect in Singapore, that foreign person is subject to the requirement for licensing².

2.2 This extra-territoriality provision is intended to confer jurisdiction over acts conducted outside of Singapore targeted at or made accessible to Singapore investors, placing regulatory requirements on persons performing such acts to safeguard consumers’ interests.

2.3 At the same time, MAS acknowledges that financial institutions have valid commercial reasons to enter into arrangements with their FRCs to leverage on the latter’s global network and expertise, and to provide better service to their customers. Through these arrangements, Singapore customers can access a wider range of financial products and services, some of which are only offered directly by the FRCs due to domestic legal requirements. To facilitate such arrangements, an exemption from licensing³ is available for FRCs of regulated entities⁴ in Singapore (the “Singapore Entity”), on application to MAS on a case-by-case basis⁵. The approval of these arrangements is subject to conditions which require regulated entities in Singapore to implement relevant policies and procedures to mitigate potential risks to customers in Singapore which may arise under cross-border business arrangements.

¹ The requirement for licensing is stated in section 82(1) of the SFA, and section 6(1) of the FAA.

² Section 339 of the SFA and section 90 of the FAA give the respective Acts extra-territorial effect.

³ This exemption is provided under section 82(2) of the SFA read with paragraph 9 of the Third Schedule to the SFA, and paragraph 11 of the First Schedule to the FAA.

⁴ ‘Regulated entities’ comprise persons licensed under section 82(1) of the SFA or section 6(1) of the FAA, and persons exempt from licensing under section 99(1)(a), (b), (c) or (d) of the SFA or section 23 (other than subsection (1)(ea) and (f)) of the FAA.

⁵ MAS’ approach for assessing and approving these business arrangements is set out in the “Guidelines on Applications for Approval of Arrangements Under Paragraph 9 of the Third Schedule to the Securities and Futures Act” (SFA04-G03) and the “Guidelines on Applications for Approval of Arrangements Under Paragraph 11 of the First Schedule to the Financial Advisers Act” (FAA-G06).

2.4 MAS intends to streamline the FRC Framework, by replacing the case-by-case approval with ex-post notification to MAS of these arrangements. Under the proposed framework, regulated entities and their FRCs may commence the conduct of regulated activities under these business arrangements so long as they comply with a set of boundary conditions. These boundary conditions, which will be similar to the conditions that MAS currently imposes for cross-border business arrangements approved by MAS, will be set out in legislation.

2.5 To enable MAS to monitor and address the risks that may arise from such business arrangements under the proposed ex-post notification approach, MAS will require financial institutions to submit relevant attestation and information on a periodic basis. This will include (i) certification on compliance with the boundary conditions to ensure that appropriate safeguards have been established, and (ii) key metrics (to be prescribed) in respect of the arrangements for ongoing monitoring purposes.

2.6 The proposed changes to the FRC Framework are set out in the following sections.

3 Scope of Proposed Framework

3.1 Currently, the following persons can apply for an exemption from licensing for their FRCs, subject to MAS' approval:

- (a) persons licensed under section 82(1) of the SFA ("licensed capital markets intermediaries");
- (b) persons licensed under section 6(1) of the FAA ("licensed financial advisers");
- (c) exempt persons under section 99(1)(a), (b), (c) or (d) of the SFA ("exempt capital markets intermediaries"); and
- (d) exempt persons under section 23 (other than subsections (1)(ea) and (f)) of the FAA ("exempt financial advisers").

Individuals conducting regulated activities on behalf of the FRCs, under the business arrangements between the FRCs and the types of entities stated above, are also exempt from licensing and business conduct requirements.

3.2 Under the proposed ex-post notification approach, regulated Singapore Entities will no longer be required to seek approval from MAS prior to commencing their business arrangements with their FRCs. Instead, they will only be required to notify MAS of the arrangement via a prescribed form within 14 days of commencement, and confirm to MAS on compliance with the boundary conditions (set out in section 4 of this consultation paper).

Inclusion of Exempt Brokers

3.3 Following the amendments to the SFA on 8 October 2018 to regulate over-the-counter ("OTC") derivatives⁶, MAS exempts certain OTC derivatives brokers ("Exempt OTC

⁶ The relevant circular is available at: http://www.mas.gov.sg/Regulations-and-Financial-Stability/Regulations-Guidance-and-Licensing/Securities-Futures-and-Funds-Management/Circulars/2018/MPI-01_2018-Circular-on-Commencement-of-the-Securities-and-Futures-Amendment-Act-2017.aspx.

Derivatives Brokers”⁷) and futures brokers (“Exempt Futures Brokers”⁸) from the need to be licensed (collectively, “Exempt Brokers”).

3.4 Some of these Exempt Brokers held CMS licences prior to 8 October 2018, and have existing FRC arrangements that were approved by MAS. However, FRCs of these exempt brokers are currently not allowed to enter into new business arrangements with these exempt brokers, given that the exemption under paragraph 9 of the Third Schedule to the SFA is only available for FRCs of the types of entities listed in paragraph 3.1. As such, MAS proposes to extend the FRC Framework to Exempt Brokers, i.e. in addition to the entities stated in paragraph 3.1, Exempt Brokers will also be allowed to rely on the FRC Framework for their cross border business arrangements.

Exclusion of Arrangements Involving Issuing or Promulgating Research Reports

3.5 While licensed and exempt financial advisers can seek approval for arrangements with their FRCs for the financial advisory service of issuing or promulgating research analyses or research reports concerning any investment product, foreign research houses have also been able to rely on an exemption from licensing under regulation 32C of the Financial Advisers Regulations⁹ since 2008. Regulation 32C is broader in scope than the exemption under the FRC framework, as it does not require the foreign research house to be related to the financial adviser in Singapore. An FRC can therefore issue or promulgate research reports under an arrangement with its related Singapore entity without having to seek MAS’ approval under the FRC framework, by relying on regulation 32C. As such, arrangements specific to the financial advisory service of issuing or promulgating research reports will be removed from the scope of the proposed FRC framework.

⁷ “Exempt OTC Derivatives Brokers” are persons exempted under paragraph 3A(1)(d) of the Second Schedule to the Securities and Futures (Licensing and Conduct of Business) Regulations.

⁸ “Exempt Futures Brokers” are persons exempted under paragraph 3(1)(d) of the Second Schedule to the Securities and Futures (Licensing and Conduct of Business) Regulations.

⁹ Under regulation 32C of the FAR, a foreign research house shall be exempt from licensing under the FAA, in respect of the issuing or promulgating of research analyses or research reports under an arrangement between the foreign research house and a financial adviser in Singapore, subject to certain conditions, such as (the foreign research house) being regulated in its home jurisdiction, and having appropriate disclaimers in the research materials.

Exclusion of Venture Capital Fund Managers

3.6 MAS proposes to exclude managers of venture capital funds (“VCFMs”)¹⁰ from the scope of the FRC Framework, as it would not be applicable given their business model. Currently, FRCs of licensed fund managers in Singapore are not subject to licensing requirements to offer their managed funds to Singapore customers¹¹. However, these FRCs will be subject to licensing requirements should they manage segregated mandates on behalf of Singapore customers. VCFMs are restricted to managing portfolios of specified products on behalf of venture capital funds as set out in regulation 14(5) of the Securities and Futures (Licensing and Conduct of Business) Regulations i.e. they are not allowed to offer segregated mandates. Since VCFMs would not be able to enter into business arrangements with their FRCs in respect of managing segregated mandates for Singapore customers, the FRC Framework would not apply.

Question 1. MAS seeks comments on the proposed inclusion of Exempt Brokers in the scope of the FRC Framework.

Question 2. MAS seeks comments on the proposed exclusion of arrangements involving issuing or promulgating research reports from the scope of the FRC Framework.

Question 3. MAS seeks comments on the proposed exclusion of VCFMs from the scope of the FRC Framework.

¹⁰ On 20 October 2017, MAS introduced a simplified regulatory framework for VCFMs, exempting them from business conduct requirements typically imposed on licensed fund managers. The relevant media release can be accessed via this link: <http://www.mas.gov.sg/News-and-Publications/Media-Releases/2017/MAS-simplifies-rules-for-managers-of-venture-capital-funds.aspx>.

¹¹ Section 287 of the SFA allows a collective investment scheme constituted outside Singapore to be offered to Singapore customers if, amongst other conditions, the manager of the scheme is licensed or regulated in the jurisdiction of its principal place of business. For schemes constituted outside Singapore and offered to accredited investors (and specific types of investors listed in section 305 of the SFA), the manager of the scheme is similarly required to be licensed or regulated in the jurisdiction of its principal place of business, as set out in the Sixth Schedule to the Securities and Futures (Offers of Investments) (Collective Investment Schemes) Regulations 2005.

4 Boundary Conditions under Proposed Framework

4.1 The boundary conditions for the proposed FRC Framework serve to mitigate the risks from cross-border business arrangements. Most of the proposed boundary conditions currently exist as assessment criteria for arrangements submitted for MAS' approval, as well as conditions imposed on approved arrangements. Although MAS' intention behind the boundary conditions remains unchanged, we are proposing certain refinements to ensure their practicality and effectiveness under the ex-post notification approach. The proposed boundary conditions relate to:

- (a) Notification requirements;
- (b) Regulatory status of the Singapore Entity (i.e. the regulated entity in Singapore);
- (c) Regulatory status of FRCs;
- (d) Permissible clientele under the arrangements;
- (e) Internal controls over the arrangements; and
- (f) Annual reporting requirements.

4.2 To ensure a level playing field, these boundary conditions will also apply to existing arrangements that have been approved by MAS prior to the implementation of the proposed FRC Framework. The treatment of existing arrangements is described in section 5.

Notification Requirements

4.3 As mentioned in paragraph 3.2 of this consultation paper, the Singapore Entities can commence the arrangement(s) with their FRC(s) under the proposed FRC Framework once they have ensured that the proposed boundary conditions are met, without the need for prior approval by MAS. The Singapore Entity is required to notify MAS of the arrangement via a prescribed form, and confirm to MAS its compliance with the boundary conditions, within 14 days of commencement of every such arrangement.

4.4 On an ongoing basis, the Singapore Entity would be required to notify MAS of any material change to the arrangement within 14 days of such a change. These material changes comprise (i) addition of new FRC(s) to the arrangement; (ii) changes in products/services under the arrangement; (iii) changes in the regulatory status of the FRC(s) and its representatives, (iv) changes in shareholding structure such that a FRC

would no longer be a related corporation of the Singapore Entity; (v) reduction or substantial change in the role of the Singapore Entity within the arrangement; and (vi) change in clientele targeted by the FRC(s).

Regulatory Status of the Singapore Entity

4.5 Similar to the current requirement, the Singapore Entity must have the relevant licence or authorisation to conduct the corresponding regulated activities that the FRC intends to undertake in Singapore as part of the proposed arrangement. This is to help ensure that the Singapore entity plays a meaningful role within the arrangement, as it is not MAS' intent to facilitate business arrangements where the Singapore Entity is a shell company, or a marketing outfit with minimal business presence. As an exception, FRCs can enter into an arrangement with the Singapore Entity to provide product financing or custodial services as a complement to the Singapore Entity's business of dealing in capital markets products, even if the Singapore Entity itself does not carry out the activities of product financing or providing custodial services in its local operations.

Regulatory Status of FRCs

4.6 The requirement for the FRC and its representatives to be licensed or authorised in their own jurisdiction in respect of the regulated activities under the business arrangement will be retained. MAS proposes to require an FRC and its representatives to be:

- (a) licensed or authorised in their own jurisdiction in respect of the activities to be performed under the arrangement;
- (b) from a jurisdiction that is supervised for compliance with anti-money laundering and countering the financing of terrorism requirements consistent with standards set by the Financial Action Task Force (FATF); and
- (c) from a jurisdiction that is not subject to UN Security Council sanctions.

Permissible Clientele under the Arrangements

4.7 Customers being served by FRCs as part of cross-border business arrangements may face additional legal and conduct risks by dealing with foreign persons, and may not be able to avail themselves to the safeguards under the SFA and/or FAA, given the differences in applicable legal frameworks and regulatory standards. Hence, MAS will continue to restrict arrangements between Singapore entities and their FRCs to non-retail

customers, i.e. accredited investors (“AI”), expert investors (“EI”) and institutional investors (“II”)¹², as they have the ability to better safeguard their own interests.

4.8 Where the Singapore Entity is restricted to serving specific types of customers, the Singapore Entity and its FRC(s) will only be allowed to serve those same types of customers under the business arrangement. This is because the Singapore Entity is expected to play a substantive role in the business arrangement with the FRC, and as such, it should be subject to the same clientele restrictions under the scope of its licence/authorisation in Singapore. For example, where a CMS licence holder is restricted to serving only AI and/or II, any arrangements with its FRCs should similarly be restricted to serving only AI and/or II (and should not include EI).

Internal Controls over the Arrangements

4.9 To ensure proper oversight of business arrangements between Singapore entities and their FRCs, MAS proposes to require the Singapore Entity to have in place policies and procedures to oversee the conduct of the FRC and its representatives (“Foreign Representative”) under these business arrangements. Existing arrangements approved by MAS are currently subject to similar requirements. These requirements will include:

- (a) The keeping of records relating to the business arrangements with the FRC, consistent with regulation 39 of the Securities and Futures (Licensing and Conduct of Business) Regulations or regulation 25 of the Financial Advisers Regulations, as applicable;
- (b) Maintaining a register in respect of every Foreign Representative containing the following information:
 - i. the duration of every visit to Singapore by the Foreign Representative to carry out the activity under the arrangement;
 - ii. the Foreign Representative’s relevant qualifications (including any updating of the qualifications); and

¹² The definitions of “accredited investors”, “expert investors”, and “institutional investors” are found in section 4A(1) of the SFA, and the Securities and Futures (Classes of Investors) Regulations 2018.

- iii. the status of any licences relating to activities similar to the carrying out of the activity under the arrangement held by the Foreign Representative in any jurisdiction other than Singapore;
- (c) Performing know-your-customer (KYC) due diligence by the Singapore Entity in accordance with MAS' Notice on Prevention of Money Laundering and Countering the Financing of Terrorism (i.e. MAS Notice SFA04-N02, FAA-N06, 314, 626, 824 or 1014, as applicable);
- (d) Maintaining or having access to all records kept overseas by the FRC, that relate to the business arrangements (including KYC documents), and providing MAS with access to these records (in the English language) upon request;
- (e) Ensuring that Foreign Representatives only solicit clients in Singapore through or with appointed representatives of the Singapore Entity; and
- (f) Implementing policies and procedures pertaining to complaints handling.

Annual Reporting Requirements

Annual auditor's certification

4.10 Similar to existing conditions imposed on financial institutions that had applied to establish cross-border business arrangements, the Singapore Entity will be required to submit an annual certification from its external auditors that the boundary conditions under the proposed framework have been complied with. In the event of non-compliance with the boundary conditions, MAS may exercise its powers to require the Singapore Entity to put in place relevant measures to address supervisory concerns, or discontinue the arrangement with its FRC(s).

Collection of data

4.11 To facilitate the monitoring of risks from arrangements effected through the FRC Framework, MAS proposes to introduce a new annual reporting requirement, where information on the size and type of activities (and other relevant metrics) will be collected via a prescribed machine-readable format. This information will allow for effective, risk-based monitoring of ongoing developments in respect of cross-border arrangements.

Question 4. MAS seeks comments on the notification requirements, boundary conditions and ongoing reporting requirements for the proposed FRC Framework, as set out in paragraph 4.

5 Treatment of Existing Approved Arrangements

Applicability of Conditions Under Proposed Framework

5.1 As stated in paragraph 4.2 of this consultation, the boundary conditions under the proposed FRC Framework (the “Revised Conditions”) will be set out in legislation and apply to all existing arrangements already approved by MAS, to ensure a level playing field.

5.2 Singapore Entities with existing arrangements will have to comply with the Revised Conditions under the proposed FRC Framework, after a suitable transition period. This includes providing a complete and updated list of arrangements under the FRC framework to MAS, with an appropriate transition time. MAS will provide more details at a later stage on the type of information to be notified, and the process for notification.

Annex A

LIST OF QUESTIONS

Question 1. MAS seeks comments on the proposed inclusion of Exempt Brokers in the scope of the FRC Framework. 8

Question 2. MAS seeks comments on the proposed exclusion of arrangements involving issuing or promulgating research reports from the scope of the FRC Framework. 8

Question 3. MAS seeks comments on the proposed exclusion of VCFMs from the scope of the FRC Framework. 8

Question 4. MAS seeks comments on the notification requirements, boundary conditions and ongoing reporting requirements for the proposed FRC Framework, as set out in paragraph 4. 13

