



Monetary Authority of Singapore

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## **SECURITIES AND FUTURES ACT (CAP. 289)**

### **FREQUENTLY ASKED QUESTIONS ON THE SECURITIES AND FUTURES (LICENSING AND CONDUCT OF BUSINESS) REGULATIONS**

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**Disclaimer: The FAQs are meant to provide guidance to the industry on MAS' policy and administration of the Securities and Futures Act and regulations. They do not constitute legal advice. MAS expects industry participants to retain their independent legal counsel to advise them on how their business operations should be conducted in order to satisfy the legal/regulatory requirements and to advise them on all applicable laws, rules or regulations of Singapore.**

## **SECURITIES AND FUTURES ACT (CAP. 289)**

### **SECURITIES AND FUTURES (LICENSING AND CONDUCT OF BUSINESS) REGULATIONS**

#### **FREQUENTLY ASKED QUESTIONS**

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##### **A) LICENSING**

**Q1 What types of activities are regulated under the Securities and Futures Act [“SFA”]?**

- A1 The types of activities regulated under the SFA are listed in the Second Schedule to the SFA. They are as follows:
- (a) dealing in securities;
  - (b) trading in futures contracts;
  - (c) leveraged foreign exchange trading;
  - (d) advising on corporate finance;
  - (e) fund management;
  - (ea) real estate investment trust management;
  - (f) securities financing;
  - (g) providing custodial services for securities.

Except for those who are specifically exempted, any person who wishes to conduct any of the above regulated activities will need to obtain the requisite licence under the SFA.

[Updated in Nov 10]

**Q2 What types of licences are granted under the SFA?**

- A2 Under the SFA, a person who wishes to carry on a business in any regulated activity is required to hold a capital markets services [“CMS”] licence for that regulated activity. A CMS licence is granted only to a corporation. An individual who conducts that regulated activity for the holder of a CMS licence is required to be an appointed, provisional or temporary representative of the CMS licence holder for that regulated activity. Please refer to section B below on the Representative Notification Framework for more information on the appointment of representatives.

[Updated in Nov 10]

**Q2a Is there a need for a holder of a CMS licence to renew its licence?**

A2a There is no need for a holder of a CMS licence to renew its licence. The licence is valid until –

- (i) its holder ceases to carry on business in every type of the regulated activities to which the licence relates (which the licence holder would need to notify MAS by submitting Form 7 within 14 days of such cessation);
- (ii) its licence is revoked by MAS; or
- (iii) its licence lapses in accordance with section 95 of the SFA.

[Updated in Nov 10]

**Q2b We understand that the requirement to renew a CMS licence and/or a financial adviser’s licence is no longer required with effect from 26 Nov 2010. If my company holds a licence issued before 26 Nov 2010, can my company continue to conduct regulated activities after the expiry date that is stated on the licence?**

A2b With the amendment to the licensing regime in the SFA and the FAA, which came into effect on 26 Nov 2010, licensees are no longer required to renew their licence(s). If a company holds a valid CMS licence and/or financial adviser’s licence on 26 Nov 2010, it can continue to conduct the regulated activities and/or provide the financial advisory services for which it is licensed, unless it has filed a cessation notification to MAS; or its licence has lapsed; or its licence has been revoked or suspended by MAS.

[Updated in Dec 10]

**Q3 My company is licensed under the SFA, and subsequently wishes to conduct financial advisory activities under the Financial Advisers Act [“FAA”]. Does my company need to apply for a Financial Adviser’s [“FA”] licence under the FAA?**

A3 A CMS licence holder is an exempt Financial Adviser, i.e., it is exempted from the requirement to hold a FA licence in respect of any financial advisory activity it wishes to conduct, so long as such financial advisory activity is not its main business. However, an exempt financial adviser is required to comply with all relevant provisions in the FAA that apply to an exempt financial adviser, including any regulations, notices or guidelines as may be issued under the FAA.

In addition, an exempt financial adviser is required to lodge with the MAS the following forms:

- (a) a notice of commencement of business in Form 26 pursuant to the Financial Advisers Regulations [“FAR”], not later than 14 days prior to the commencement of his business in any financial advisory service or any additional financial advisory service as an exempt financial adviser;
- (b) a notice of change of particulars in Form 27 pursuant to the FAR, providing any change in the particulars required to be notified under (a), not later than 14 days after the date of the change; and
- (c) a notice of cessation of business in any or all financial adviser services in Form 28 pursuant to the FAR, not later than 14 days after the cessation.

[Updated in Nov 10]

**Q4 My company holds a CMS licence under the SFA. If we wish to expand the scope of our business to conduct other regulated activities under the SFA that are not included in our CMS licence, what do we need to do?**

A4 The company is required to apply to MAS to add regulated activities to its CMS licence. The application should be made in prescribed form, which is Form 5 pursuant to Securities and Futures (Licensing and Conduct of Business) Regulations [“SF(LCB)R”], and submitted together with the prescribed application fee. Upon approval, the company shall return its CMS licence to MAS for cancellation, and MAS shall issue a new licence reflecting the new regulated activities to the company. The company shall commence the new regulated activities only after the new licence is issued. The expiry date of the new licence will be the same as that of the old licence.

[Updated in Jul 05]

**Q5 We are a nominee company and we hold our clients' assets as part of the nominee service that we provide. Do we need to hold a CMS licence for providing custodial services?**

A5 No, so long as the nominee company does not hold itself out as providing custodial services for securities, and its business is that of providing nominee services, and the holding of any customer's assets is solely incidental to the nominee services provided by the nominee company. This includes nominee companies which are set up by financial institutions to facilitate the financial institutions' custodial services whereby the nominee companies are used by the financial institutions to provide nominee services in respect of securities held on trust by the financial institutions for the customers of the financial institutions.

[Updated in Oct 02]

**Q6 My company holds a CMS licence for dealing in securities and trading in futures contracts. Can we operate discretionary accounts on behalf of customers?**

A6 The operation of discretionary accounts on behalf of customers for the purpose of trading or investment in securities or futures contracts is considered to be fund management as it allows the persons who operate such accounts to trade and manage the investments in the account on behalf of customers. Under the SFA, fund management is defined to mean undertaking on behalf of customers (a) the management of a portfolio of securities or futures contracts; or (b) foreign exchange trading or leveraged foreign exchange trading for the purpose of managing customer's funds.

Hence, a company that holds a CMS licence for dealing in securities or trading in futures contracts, and wishes to operate discretionary accounts on behalf of its customers, would need to apply to MAS to add the activity of fund management to its licence. Its representatives who intend to operate such discretionary accounts are required to be an appointed, provisional or temporary representative for the regulated activity of fund management.

However, in view of the conflict of interest between dealing and fund management, a representative who is an appointed, provisional or temporary representative in respect of the regulated activity of dealing in securities or trading in futures contracts would not be allowed to operate

discretionary accounts on behalf of his customers. This means that a company which is licensed to engage in both dealing in securities and/or trading in futures contracts and fund management or operating discretionary accounts should have separate representatives to conduct such activities.

[Updated in Nov 10]

**Q7 My company holds a CMS licence to deal in securities and advise on corporate finance. What should we do if we wish to cease dealing in securities?**

A7 The company is required to submit Form 7 to notify MAS of its cessation of business in dealing in securities within 14 days of the cessation. The form should indicate the list of representatives (and the representative numbers of their representatives) who also cease to conduct dealing in securities, and the representatives should sign against their representative number. The company should also return its CMS licence to MAS. MAS will issue a new CMS licence to the company to reflect the remaining regulated activity of advising on corporate finance. The CMS licence holder is not required to individually lodge Form 8 to notify MAS of their representatives' cessation of business in dealing in securities.

[Updated in Nov 10]

**[Q8 and 9 were deleted on 7 August 2012. Please refer to the Guidelines and FAQs on Licensing, Registration And Conduct of Business For Fund Management Companies.]**

**Q10 Do appointments of Chief Executive Officer and Directors, or change in the nature of appointments require MAS' prior approval?**

A10 MAS' prior approval is required for:

- (a) the appointment of a Chief Executive Officer, which refers to any person, by whatever name called, who is principally responsible for the management and conduct of the business of the CMS licence holder in Singapore;
- (b) the appointment of a director of a CMS licence holder which is incorporated in Singapore;

- (c) the appointment of a director of a CMS licence holder that operates in Singapore as a branch office of a foreign company who resides or is to reside in Singapore and/or is directly responsible for the business of the licence holder in Singapore.; and
- (d) the change in nature of appointment from a non-executive director to an executive director of the following persons:
  - (i) a director of a CMS licence holder which is incorporated in Singapore; and
  - (ii) a director of a CMS licence holder that operates in Singapore as a branch office of a foreign company who, at the time of change, resides or is to reside in Singapore and/or is directly responsible for the business of the licence holder in Singapore.

[Updated in Nov 10]

[Q 11 has been deleted.]

**Q12 Our company has been granted a CMS licence to carry on the business of dealing in securities. However, due to possible changes in our business plan, we have decided to hold back the commencement of the proposed activity. Can we continue to hold on to our licence?**

A12 The company will have to explain to MAS why it is unable to commence business in the regulated activity of dealing in securities, and obtain MAS' approval to continue to hold on to the licence. Otherwise, if the company has not commenced business within 6 months from the date of issue of the CMS licence, the company's CMS licence will lapse after the 6-month period.

[Updated in Oct 02]

**Q13 Our company is licensed to conduct both trading in futures contracts and dealing in securities. We have started dealing in securities, but have yet to commence futures trading after 6 months. Will our licence lapse?**

A13 The company has to keep MAS informed of its plan. The company's licence will lapse only in respect of trading in futures contracts, which it has yet to commence after 6 months. Its licence for dealing in securities will still be valid. However, the company has to immediately return its CMS licence to MAS and lodge a notice of cessation of business in futures trading in Form 7 pursuant to the SF(LCB)R, and a new licence reflecting the remaining activity of dealing in securities will be issued to the company.

[Updated in Oct 02]

**[Q14, 15, 16 and 17 have been deleted in Nov 10.]**

**Q18 My company intends to provide securities financing. Do we need to hold a licence under the SFA and the MoneyLenders Act ?**

A18 Securities financing is a regulated activity under the SFA. Any company conducting securities financing would need to hold a CMS licence in respect of securities financing. If the company were granted the CMS licence, it would be exempted from the requirement to hold a Moneylender's licence. However, it will be required to obtain MAS' prior approval to conduct any other moneylending activities.

[Updated in Jul 05]

**Q19 Is the business of securities borrowing and lending subject to the licensing requirement under the SFA?**

A19 Yes, a company that is engaged in the business of securities borrowing and lending is considered to be carrying on a business of dealing in securities. It is therefore required to hold a CMS licence for dealing in securities, unless otherwise exempted. Details of the exemptions from the requirement to hold a CMS licence for dealing in securities can be found in the Second Schedule to the SF(LCB)R.

[Updated in Oct 02]

**[Q20 to 22 were deleted on 7 August 2012. Please refer to the Guidelines and FAQs on Licensing, Registration And Conduct of Business For Fund Management Companies.]**

**Q22A What are the procedures for cessation of business by a licensee?**

A22A A licensee should ensure an orderly winding down of its business prior to cessation. This includes but is not limited to: (i) putting in place communication plans to ensure sufficient notice period has been given to its customers, business partners and other relevant stakeholders regarding its cessation; and (ii) discharging all customer obligations and ensuring that customer assets and/or monies have been accounted for and returned to customers before it ceases. The licensee is also required to return its licence to MAS and to file a notice of cessation of business in the prescribed form (Form 7 of the Securities and Futures (Licensing and Conduct of Business) Regulations) not later than 14 days after the cessation of its business.

[Updated in Apr 12]

**B) REPRESENTATIVE NOTIFICATION FRAMEWORK [“RNF”]**

**Q22a To whom does the RNF apply?**

A22a The RNF applies to individuals who conduct regulated activities under the SFA and the FAA on behalf of holders of CMS licence, licensed financial advisers or financial institutions exempted from licensing under section 23(1)(a) to (e) of the FAA or section 99(1)(a) to (d) of the SFA, as the case may be.

Individuals who deal in securities, or trade in futures contracts or leveraged foreign exchange solely for the account of his principal company which is a CMS licence holder or exempt financial institution (except insurance companies or insurance brokers) or its principal company's related corporation(s), are exempted from the RNF. The exemption is subject to the conditions and restrictions set out in paragraph 8 of the Second Schedule to the SF(LCB)R. Representatives of a CMS licence holder or an exempt financial institution (except insurance companies or insurance brokers) in respect of the activity of securities financing or providing of custodial services for securities are also exempted from the RNF. Please refer to paragraph 8 of the Second Schedule to the SF(LCB)R for details.

[Updated in Nov 10]

**Q22b What documents must a CMS licence holder or exempt financial institution lodge with MAS if it wishes to appoint an individual as an appointed, provisional or temporary representative under the SFA?**

A22b The CMS licence holder or exempt financial institution shall lodge a notice of intent to appoint the individual as an appointed, provisional or temporary representative in Form 3A, 3B or 3C respectively via the Corporations and Representatives System (“CoRe system”), and certify that the individual is fit and proper.

For details on the applicable fees for RNF, please refer to the Third Schedule to the SF(LCB)R and Guidelines on Licence Applications, Representative Notification and Payment of Fees [Guideline No. CMG G01].

[Updated in Nov 10]

**Q22c What documents must a CMS licence holder or exempt financial institution lodge with MAS if it wishes to appoint a provisional representative as an appointed representative after he has satisfied the relevant examination requirements?**

A22c The CMS licence holder shall lodge Form 3D via the CoRe system after the provisional representative has satisfied the examination requirements for the type(s) of regulated activities he has been appointed.

Form 3D shall only be submitted once for the provisional representative by the end of the three month grace period (i.e. before the expiry of the provisional representative status), regardless of how many types of regulated activities he intends to conduct as an appointed representative . The provisional representative should ensure that he has passed all the relevant examination(s) in respect of the regulated activities he intends to conduct as an appointed representative, prior to the submission of Form 3D by his principal to MAS.

[Updated in Nov 10]

**Q22d How are provisional representatives and temporary representatives different from appointed representatives?**

A22d Appointed representatives are required to satisfy relevant examination requirements set out in the Notice on Minimum Entry and Examination Requirements for Representatives of Holders of a Capital Markets Services Licence and Exempt Financial Institutions (Notice No. SFA04-N09). The status as appointed representative is valid until it ceases under the circumstances described in Q22h below.

Temporary representatives are not subject to the examination requirements set out in MAS' Notice No. SFA04-N09. Temporary representatives are individuals appointed by a CMS licence holder or an exempt financial institution (i.e. the principal) to conduct regulated activities on its behalf on a temporary and short-term basis. Such persons will be eligible to be appointed as a temporary representative for a total of 6 months within any 24-month period, with each appointment not lasting more than 3 months. In addition to educational and work experience-related admission criteria, such representatives must be an employee of a related entity of the principal and must be currently licensed, authorised or otherwise regulated for that activity in an overseas jurisdiction with a regulatory regime that is comparable to that of Singapore.

Provisional representatives are given a grace period of three months to complete the requisite examinations applicable to appointed representatives stipulated in MAS' Notice No. SFA04-N09. During the three months grace period, they are allowed to conduct regulated activities. The objective of the provisional representative scheme is to facilitate the relocation of overseas experienced professionals to Singapore and allow them to begin working as soon as possible. In addition to educational and work experience-related admission criteria, provisional representatives must be currently or previously licensed, authorised or otherwise regulated for at least 12 months (and not more than 12 months ago) for the relevant activity in an overseas jurisdiction with a regulatory regime that is comparable to that of Singapore.

The appointment of a provisional representative is valid for a period of up to three months after his name is entered into the MAS Register of Representatives [**“Public Register”**] as a provisional representative. The provisional representative can continue to conduct regulated activities as an appointed representative after –

(i) his principal has notified MAS (within the three-month grace period) of the representative's fulfilment of the relevant examination requirements via a one-time lodgment of Form 3D; and

(ii) his name has been entered in the Public Register of Representatives as an appointed representative.

For both temporary and provisional representatives, the principal is required to provide an undertaking to MAS in relation to the proper supervision of the representative in the conduct of regulated activities.

Please refer to sections 99D, 99E and 99F of the SFA, regulations 3A, 3B and 3C of the SF(LCB)R, and the Notice on Entry Requirements of a Provisional or Temporary Representative (Notice No. SFA04-N10) for details.

[Updated in Nov 10]

**Q22e How would I know whether an individual is an appointed, provisional or temporary representative under the SFA?**

A22e The Public Register on MAS' website lists the status of a representative (as appointed, provisional or temporary representative) of a CMS licence holder or exempt financial institution, and the type of regulated activity(ies) each representative is authorised to conduct. The public can access such information on their representative from the Public Register by keying in his/her representative number, which can be requested from the representative or the representative's principal company.

[Updated in Nov 10]

**Q22f Do appointed, provisional or temporary representatives need to pay annual fees to MAS?**

A22f Appointed or provisional representatives need to pay annual fees, while temporary representatives need to pay temporary representative fees. Please refer to the Third Schedule to the SF(LCB)R and the Guidelines on Licence Applications, Representative Notification and Payment of Fees [Guideline No. CMG-G01] for details. The Guidelines are available on the MAS website at <http://www.mas.gov.sg>.

[Updated in Nov 10]

**Q22g What does a CMS licence holder or exempt financial institution need to do if it wants *its appointed representative* to conduct additional types of regulated activities?**

A22g The CMS licence holder or exempt financial institution will need to lodge a notice to add an additional type of regulated activity(ies) to the appointed representative's existing type of regulated activity(ies) in Form 6 via the CoRe system.

Please refer to section 99L of the SFA and regulation 5 of the SF(LCB)R for details.

[Updated in Nov 10]

**Q22h Under what circumstances will an appointed, provisional or temporary representative cease to be one?**

A22h An appointed representative will cease to be one in respect of any type of regulated activity where:

- (a) the principal notifies MAS of such cessation. Such notification should be made in Form 8 via the CoRe system to MAS no later than the next business day;
- (b) the appointed representative has ceased to act as such representative for a continuous period of one month, and his principal has not notified MAS of his cessation as such representative;
- (c) MAS has revoked the status of the appointed representative;
- (d) the principal ceases to carry on business in that type of regulated activity. The principal needs to notify MAS of such cessation via Form 7; or
- (e) the licence of his principal lapses, the licence is revoked by MAS, or a prohibition order is issued by MAS against his principal prohibiting it from carrying out that type of regulated activity.

The above also apply to temporary and provisional representatives, with the necessary modifications and adaptations. In addition, the status of a provisional or temporary representative is only valid for a maximum of 3 months from the date his name is entered into the Public Register.

Please refer to sections 99D(4), 99E(4), 99F(4) and 99M of the SFA as well as regulations 3B, 3C, 9A and 11B of the SF(LCB)R for details.

[Updated in Nov 10]

**Q22i I ceased to act as an appointed representative to deal in securities and my principal company has notified MAS of my cessation some months ago. If I were to join another principal company to conduct the same regulated activity, is my new principal company required to submit notification to MAS of my appointment as an appointed representative?**

A22i Yes. Your new principal company has to notify MAS of its intent to appoint you as its appointed representative to deal in securities. It can only do so after the date when the cessation of your appointment under the previous principal company has taken effect.

[Updated in Nov 10]

**Q22j I am an appointed representative. Does MAS need to be informed that I have changed my residential address or other personal particulars?**

A22j Yes. An appointed representative, provisional representative or temporary representative is required to inform his principal company of any change in his particulars specified in Form 16 within 7 days after the date of the change of the particulars. The principal company is required to notify MAS of its representative's change of particulars by lodging Form 16 through the CoRe system not later than 14 days after the date of the change of the particulars.

Please refer to section 99H(5) of the SFA and regulation 5 of the SF(LCB)R for more details. [Updated in Nov 10]

**[Q23 to 26 were deleted on 7 August 2012. Please refer to the Guidelines and FAQs on Licensing, Registration And Conduct of Business For Licensed Or Registered Fund Management Companies.]**

**Q27 A registered trust company, in conducting activities under the Trust Companies Act, may undertake the role of a trustee, agent or custodian and may have trust or fiduciary duties to its customers. Is the registered trust company required to obtain a CMS licence when it provides custodial services for securities that is solely incidental to its carrying on of the business for which it is registered under the Trust Companies Act?**

A27 It is not MAS' policy intent to regulate under the SFA trust companies, which are registered under the Trust Companies Act and are conducting regulated activities, such as providing custodial services for securities, that are solely incidental to the business for which they are registered under the Trust Companies Act. Such activities would not require an additional CMS licence under the SFA for the carrying on of business in the regulated activity.

[Updated in Nov 03]

**Q27a Are individuals listed on the Public Register allowed to act for more than one principal company?**

A27a MAS' policy is to not allow individuals listed on the Public Register to concurrently act for more than one principal company, except for appointed representatives who act for principal companies which are related corporations.

The objectives of the one-representative-one-principal rule are two-fold:

- (a) to secure clarity for investors about the status of representatives, the principals they represent, and more importantly, where responsibility rests for complaints and redress; and
- (b) to ensure that principals closely monitor and supervise their representatives at all times.

[Updated in Nov 10]

## **C) PUBLIC REGISTER**

### **Q27b How do I find information on a representative on the Public Register?**

A27b Information relating to a representative will be displayed when his representative number is keyed into the search field of the Public Register. Consumers should request for the representative number from the representative whom they deal with and check against the Public Register for the representative's status and his regulated activities. The Public Register can be accessed at

<http://www.mas.gov.sg/>

[Updated in Nov 10]

## **D) EXEMPTIONS**

**[Q28 and 29 were deleted on 7 August 2012. Please refer to the Guidelines and FAQs on Licensing, Registration And Conduct of Business For Licensed Or Registered Fund Management Companies.]**

## **E) CUSTOMERS' MONEYS AND ASSETS**

### **Q30 Are there similar trust account requirements in the SFA, to those stipulated in the repealed Securities Industry Act and Futures Trading Act?**

A30 Yes, a CMS licence holder is required to deposit customers' moneys and assets into a trust account maintained with a bank, merchant bank or finance company in Singapore. For customers' assets, the holder may also deposit the assets in a trust account maintained with the following institutions:

- a depository agent, only in relation to securities deposited into the CDP system;
- an approved trustee for a collective investment scheme in respect of assets under the collective investment scheme; or
- a company holding a CMS licence to provide custodial services for securities.

[Updated in Oct 02]

**Q31 What is meant by a trust account?**

A31 A trust account is an account that is maintained with the above institutions or other institutions as allowed under the SFA, and is held on trust for the customers. The account must be designated as a trust account or customer's or customers' account which must be distinguished and maintained separately from other accounts that do not contain customers' moneys or assets.

[Updated in Nov 10]

**Q32 Can a CMS licence holder maintain a trust account with an overseas institution?**

A32 Yes, but only in respect of customers' moneys and assets denominated in non-S\$. In addition, the following conditions must be met:

- the institution is licensed, registered or authorized to conduct banking business or, in the case of customers' assets, to act as a custodian in the country where the account is maintained; and
- the CMS licence holder has obtained customer's prior consent.

[Updated in Oct 02]

**Q33 What is the time frame for CMS licence holders to deposit customers' moneys and assets into a trust account?**

A33 CMS licence holders are required to deposit customers' moneys and assets into a trust account by the next business day upon receipt of the moneys/assets or upon notification of the receipt of moneys/assets, whichever is later.

The term "next business day" refers to the next business day of the CMS licence holder. However, if the next business day falls on a day when the institution, with which the trust account is maintained, is not opened for business and the CMS licence holder is unable to deposit customers' moneys or assets into the trust account, the CMS licence holder could deposit the moneys and assets on the next business day of the institution.

[Updated in Oct 02]

**Q34 Are there any specific requirements which a CMS licence holder must observe when it opens a trust account with an institution?**

A34 Yes, the CMS licence holder must obtain a written acknowledgement from the institution, as specified in Regulations 17(1) and 27(1) of the SF(LCB)R, that:

- All moneys and assets deposited are held on trust by the CMS licence holder for its customers; and
- The account is designated as a trust account or customers' account.

In addition, before the CMS licence holder opens a custody account with a custodian, it must conduct due diligence, and be satisfied that the institution is suitable for its customers. It must also maintain records of the grounds on which it has considered the institution to be suitable.

The CMS licence holder that deposits customers' assets with a custodian must also enter into a custody agreement with the institution. Details of the terms and conditions that should be included in the agreement are set out in Regulation 32 of the SF(LCB)R.

[Updated in Oct 02]

**Q35 Can a CMS licence holder keep the interest income or any other entitlements arising from the moneys or assets held in the trust account?**

A35 No, any interest income or other entitlements derived from moneys or assets held in the trust account must be returned to the customers, unless the customers agreed otherwise. However, the CMS licence holder may impose a service charge against the interest earned to cover any cost incurred, so long as the fee imposed is reasonable and the CMS licence holder has disclosed the fee to the customers.

[Updated in Oct 02]

**Q36 Regulation 23 of the SF(LCB)R allows a CMS licence holder to place its own money into the trust account to prevent the trust account from being under-margined or under-funded and to ensure the continued maintenance of the trust account. Can the CMS licence holder subsequently withdraw such money and any interest earned on the money from the trust account?**

A36 Yes, so long as the withdrawal of the money and interest income would not result in the trust account becoming under-margined or under-funded.

[Updated in Oct 02]

**Q37 My company holds a CMS licence and in the course of our business, we hold customers' securities in a trust account. Can we lend out customers' securities or arrange for a custodian to lend out customers' securities?**

A37 Yes, but the company must explain the risk involved to the customers (unless the customers are accredited investors), and obtain the customers' written consent. It must also enter into an agreement with the customers, setting out the terms and conditions for the lending of the securities.

In addition, in respect of any securities lent, the company must obtain from the borrower collateral which must have a value of more than 100% of the market value of the securities lent, unless the customer is an accredited investor and the securities are lent to persons who are accredited investors.

Where the company makes arrangement for a custodian to lend out their customers' securities, it must enter into an agreement with the custodian, and disclose the terms and conditions to the customers.

[Updated in Oct 02]

**Q38 Can a CMS licence holder open omnibus accounts with another financial institution ("third party FI") in which both the CMS licence holder's and its clients' moneys or assets are deposited? Or should separate sub-accounts for the CMS licence holder and its clients be maintained by both the CMS licence holder and the third party FI?**

A38 CMS licence holders are required to keep separate sub-accounts for its clients' moneys or assets if they are acting as the clients' custodians. Where they place these moneys or assets with foreign financial institutions, they should also ensure that separate sub-accounts be maintained by the foreign financial institution where possible.

[Updated in Feb 03]

**Q39 Regulation 18 of the SF(LCB)R requires a company to obtain an acknowledgement from the financial institutions that the moneys held on trust cannot be offset against any debt owned by the company to the financial institution. Can the company be considered to have satisfied this requirement if it issues a letter to the effect of the acknowledgement requirement instead of imposing the acknowledgment requirement prior to the deposit of the moneys?**

A39 Moneys/assets held on trust for customers are assets belonging to the customers which should be protected from being off-set against any debt owed by the company to the financial institution. Hence, the company should ensure that the acknowledgement from the financial institutions is received at the time of opening of the trust account with the financial institution and prior to the deposit of any moneys/assets into the accounts.

[Updated in Feb 03]

**Q40 Do the requirements under Regulation 37 of the SF(LCB)R on daily computation for trust and custody accounts apply only to moneys or assets held for futures trading and leveraged foreign exchange trading and not for other purposes?**

A40 Yes. The requirements under Regulation 37 apply only to moneys or assets held for futures trading and leveraged foreign exchange trading and not for other purposes.

[Updated in Feb 03]

**Q42 What is the difference between Regulation 31 and Regulation 32 of the SF(LCB)R? When are they applicable?**

A42 Regulation 31 of the SF(LCB)R applies when a CMS licence holder provides custodial services to its customers. The licence holder providing the custodial services is required to comply with Regulation 31 of the SFR and notify

customers of the terms and conditions in respect of the custodial services. Regulation 32 of the SF(LCB)R does not apply between the CMS licence holder and the customers in such situations.

Regulation 32 of the SF(LCB)R applies when, instead of providing custodial services directly to its customers, a CMS licence holder assists its customers to deposit their assets with another custodian. The CMS licence holder will have to enter into a custody agreement with the custodian in accordance with Regulation 32 of the SF(LCB)R and inform its customers of the terms and conditions. Since the CMS licence holder does not provide custodial services to its customers directly in such situations, Regulation 31 of the SF(LCB)R does not apply between the CMS licence holder and its customer.

[Updated in Dec 03]

**[Q43 has been deleted.]**

**Q44 Regulation 29 of the SF(LCB)R requires a CMS licence holder to review the suitability of its sub-custodians. How often should the CMS licence holder perform this suitability review?**

A44 CMS licence holders which provide custodial services should conduct due diligence on the suitability of the sub-custodians before opening custody accounts with their sub-custodians. To properly discharge their fiduciary duties to their customers, CMS licence holders should also perform periodic reviews of these sub-custodians at least once a year and maintain appropriate records of these reviews.

[Updated in Dec 06]

**Q45 To comply with Regulation 31 of the SF(LCB)R on customer agreement, a CMS licence holder providing custodial services is required to notify its customers of the terms and conditions that apply to the safe custody of the customer's assets, including applicable fees and costs for the custody of assets. Would verbal notification of the applicable fees suffice?**

A45 As a matter of good practice, CMS licence holders should provide written notifications on applicable fees and charges, for example, CMS licence holders could provide their customers with an information sheet on applicable fees.

[Updated in Dec 06]

## **F) BUSINESS CONDUCT RULES**

**Q46 With regard to the requirements on the keeping of books and records, can such records be kept electronically?**

A46 The word “record” is defined in section 2 of SFA to mean information that is inscribed, stored or otherwise fixed on tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form. Accordingly, such records may be kept electronically.

[Updated in Dec 03]

**Q47 For how long should we keep the books and records?**

A47 Licensees are required to maintain their books and records for at least 5 years.

[Updated in Nov 10]

**Q48 With regard to the requirements on the keeping of books and records, are CMS licence holders required to keep all Bloomberg messages or email communications if there are other forms of records, which would record the relevant transaction, arrangement or agreement?**

A48 In complying with the record keeping requirements under Regulation 39 of the SF(LCB)R, the company may decide on the mode of documentation, which the company deems fit or practicable. Duplicate copies of the same information need not be retained.

[Updated in Feb 03]

**Q49 Regulation 39(3) of the SF(LCB)R requires CMS licence holders to keep a written record of customers’ orders. What basis should be used in determining the time of execution of the order if the order is transmitted to another person, such as an overseas broker, for execution?**

A49 Where an order is transmitted to another person for execution, the time of execution of the order should be based on the time of notification given by that person that the order has been executed.

[Updated in Oct 02]

**Q50 Regulation 39(3) of the SF(LCB)R requires CMS licence holders to keep record of customers' orders "as soon as practicable". What is the interpretation of the phrase "as soon as practicable" in relation to orders that are received off the business premises?**

A50 Written records should be prepared immediately upon receipt, transmission, amendment, cancellation or execution of customer orders, subject to any practice constraints. Where an order cannot be recorded immediately, the company should put in place proper procedures to ensure that reasonable steps are taken to record such orders promptly.

[Updated in Dec 03]

**Q51 Does the requirement to record time of customers' orders in Regulation 39(3) of the SF(LCB)R apply to placement of new securities pursuant to IPOs?**

A51 No.

[Updated in Dec 03]

**Q52 Can companies which execute their proprietary trades and clients' trades under two different and separate business divisions be exempted from Regulation 44 of the SF(LCB)R which requires priority be given to customers' orders?**

A52 Regulation 44 shall not apply to a transaction entered into by the companies if the transaction is entered into in accordance to the business rules or practices of the securities exchange or futures exchange. Companies should refer to the SGX Rule 13.4 and Practice Note 13.4.1 on customer order priority. Companies should institute adequate controls to ensure compliance with the requirement on the priority of customers' orders. Companies may decide on the business structure that would meet this requirement in the most effective manner.

[Updated in Jul 05]

**Q53 Regulation 40 of the SF(LCB)R requires CMS licence holders to send monthly and/or quarterly statement of accounts to their customers. Can CMS licence holders send these statements to their customers electronically?**

A53 Yes, CMS licence holders can send these statements to their customers via electronic means provided that the customers have not opted-out of receiving these statements via electronic means. In this regard, by asking a customer to retrieve his own statement for a specific month or quarter via a URL link, the CMS licence holder would be treated as having sent the statement to his customer via electronic means provided that the information in these statements remains the same regardless of when the customer accesses the URL link during the period that the statements are available online for viewing and retrieval via the URL link (“the URL link validity period”). As a good practice, CMS licence holders should inform their customers of the URL link validity period, and should advise customers to download and save or print their statements for their subsequent reference where necessary.

[Updated in Aug 16]

**Q54 Regulation 40(1A)(b)(i) of the SF(LCB)R exempts CMS licence holders from sending monthly and quarterly statements of accounts to customers who are accredited investors or their related corporations if the licence holders have made the prescribed particulars available to them on a real-time basis in the form of electronic records stored in an electronic facility. What does “real-time basis in the form of electronic records stored in an electronic facility” mean?**

A54 This means that CMS licence holders are exempted from sending monthly and quarterly statements to customers who are accredited investors or their related corporations, if an electronic facility has been made available to these customers and these customers are able to have access to real-time information on this electronic facility at any time.

[Updated in Dec 03]

**Q55 Other than the exemption described in Q54, is there any other exemption given to CMS licence holders from the requirement to send monthly and/or quarterly statement of accounts to customers?**

A55 On the monthly statements, CMS licence holders are not required to send monthly statements to customers if there is no change to the particulars (as specified in Regulation 40(2) of the SF(LCB)R) since the date the last statement was made up to. This means that as long as there is a change to the particulars, the CMS licence holders will have to send the monthly statements, unless they fall within the exemption described in Q54.

On the quarterly statements, CMS licence holders need to send quarterly statements to customers as long as there are assets, futures or leverage foreign exchange trading positions or cash balances in the customers' accounts at the end of the quarter, regardless of whether there has been any change in these particulars, unless they fall within the exemption described in Q54, or the particulars are already reflected in the monthly statement for the last month of that quarter. In other words, if there is no balance in the customers' accounts, CMS licence holders will not need to send a quarterly statement because the change in the particulars in the customers' accounts from some balance to nil balance would have been reflected in the monthly statement.

Where monthly statements are not sent to customers for the last month of the quarter because there has been no change in particulars, CMS licence holders will still need to send quarterly statements if there are some balances in the customers' accounts as at the end of the quarter. In other words, CMS licence holders will not need to send a quarterly statement only if there is no balance in the customers' accounts.

[Updated in Nov 10]

**Q56 If a CMS licence holder engages in both dealing in securities and fund management, do contract notes need to be issued for transactions entered into by the CMS licence holder in its capacity as a fund manager?**

A56 Regulation 42 of the SF(LCB)R only relates to dealing in securities, trading in futures contracts and leveraged foreign exchange trading. Thus, there is no requirement for CMS licence holder to issue any contract notes in relation to its fund management activities.

[Updated in Feb 03]

**Q57 Regulation 42 of the SF(LCB)R requires a CMS licence holder to issue contract notes to the other party to the transaction involving the sale or purchase of securities or futures contracts or a transaction connected with leveraged foreign exchange trading. Who is "the other party to the transaction" referring to? Is it the counter-party or the customer?**

A57 "The other party" refers to either the counterparty or the customer depending on the context of each transaction. For example, where a company trades with a customer as an agent or a principal in local or foreign stocks, a contract note should be issued to the customer in respect of the transaction.

[Updated in Feb 03]

**Q58 Regulation 43 of the SF(LCB)R allows CMS licence holders to grant unsecured credit to their officers and employees. Does this prohibition apply to the borrowing of securities by such persons from the CMS licence holders?**

A58 Yes. Regulation 43 applies to a CMS licence holder that lends securities to its relevant persons. Relevant person means officers and employees of the holder, other than a director who is not its employee. Any unsecured advance unsecured loan or unsecured credit facility granted to the following accounts shall be deemed to be an unsecured advance, unsecured loan or unsecured credit facility granted by the holder to that relevant person:

- (a) the account of a relevant person of the holder;
- (b) an account in which a relevant person of the holder has an interest;
- (c) an account of any person who acts jointly with, under the control of, or in accordance with, the direction of a relevant person of the holder; or
- (d) an account of any connected person of a relevant person of the holder, where the connected person is not himself a relevant person of the holder,

[Updated in Jul 05]

**Q59 Is there a definition of “advance, credit facility or loan” provided in the SFA/SFR?**

A59 You can rely on the ordinary meaning for the above terms; they are not defined in the SFA/SFR. Generally, an advance, credit facility or loan would have been considered to be granted by a CMS licence holder if its customer does not pay the CMS licence holder the amount due of the security on the settlement date.

[Updated in Dec 06]

**Q60 An employee who is also a customer of a CMS licence holder buys or sells shares through the CMS licence holder (his employer):**

**Q60a In the situation where the employee of a CMS licence holder buys a share through the company and the market price of the share moves against the customer (i.e. employee) after execution by the company and before the settlement date for the trade. If there are marked-to-market losses**

**arising from these outstanding trades in an employee's securities account with a CMS licence holder, would this be considered an advance, credit facility or loan?**

A60a When the employee buys a share on day T, he is given until the settlement date, say T+3 for SGX-traded securities, to pay up the amount due agreed to on T. So long as the employee pays the CMS licence holder the amount due on or before the settlement date, despite the fact that the market may have moved against the employee, and that there were marked-to market losses for the period from T to settlement date, there is no loan, advance or credit facility granted by the CMS licence holder for the period from T to settlement date.

[Updated in Dec 06]

**Q60b In the situation where the employee buys a share on T (first trade) value at \$100 and sells the same share on T+1 (second trade) at \$80 before the settlement date, when is the CMS licence holder considered to have granted advance, loan or credit facility to the employee?**

A60b In the above scenario, if the employee has not paid up the difference of \$20 by settlement date (T+3), the CMS licence holder would be considered to have granted an unsecured credit to the employee on T+4.

[Updated in Dec 06]

**Q60c If the employee buys a share but does not pay up by settlement date, when is the CMS licensee considered to have granted advance, loan or credit facility to the employee?**

A60c The CMS licence holder would be deemed to have granted unsecured credit to the employee on the day after settlement is due (for example, T+4). If the CMS licence holder force-sells the share purchased after settlement date and if the proceeds from the forced sale are sufficient to cover the gross purchase price (including commission etc), the CMS licence holder would not be considered to have granted unsecured advance, loan or credit facility. However, if the proceeds from the forced sale are insufficient to cover the customer's loss entirely, the CMS licence holder would be considered to have granted an unsecured advance, loan or credit facility to the customer for the remaining outstanding loss.

[Updated in Dec 06]

**Q60d What happens if before the trade, the CMS licence holder agrees that the customer need not pay the amount that he owes on the usual settlement dates required by the exchange rules but can make payment at later date, would this be regarded as an advance, loan or credit facility?**

A60d Yes. CMS licence holder would still be considered to have granted an advance, loan or credit facility, effective from the settlement date mandated by the rules of the exchange.

[Updated in Dec 06]

**Q61 Why are the requirements in section 121 and parts of section 120 of the SFA has been repealed in the SFA(Amendment) 2005?**

A61 The provisions which have been repealed and re-enacted relate to making recommendations which are governed under the FAA. As such, there is no need to duplicate these requirements in SFA. CMS licence holders who are providing recommendations to clients would be deemed to be conducting regulated activities under the FAA and therefore would be required to lodge a notice of commencement of business as an exempt financial adviser. Exempt financial advisers are expected to comply with the relevant provisions in FAA.

[Updated in Jul 05]

**Q62 Does Regulation 47(1) of the SF(LCB)R, which prohibits withholding or withdrawing of customer orders from the market, prohibit the pooling of customers' orders as well?**

A62 Regulation 47 does not prohibit a CMS licence holder from pooling its customers' orders that it received at the same time. However, the CMS licence holder should not intentionally withhold customers' orders so as to pool them together.

[Updated in Feb 03]

**G) APPLICATION OF SFA AND SF(LCB)R TO BANKS, MERCHANT BANKS AND OTHER FINANCIAL INSTITUTIONS**

**Q63 Are there any requirements under the SFA or SF(LCB)R that apply to a bank or other financial institutions?**

A63 Yes, banks, merchant banks and finance companies that conduct any regulated activity are required to comply with certain business conduct rules in relation to that regulated activity. The rules are specified in Regulation 54 of the SF(LCB)R.

Insurance companies are exempted from the requirement to hold a CMS licence for providing custodial services in respect of units in a collective investment scheme. However, they have to comply with the trust account requirements in relation to the units in a collective investment scheme, which they hold on trust for their customers.

[Updated in Nov 10]

**Q64 Regulation 16 of the SF(LCB)R requires that customers' money be deposited into a trust account, and such money includes money received in respect of leveraged foreign exchange trading or received in the course of the company's business (Regulation 15). Must banks and merchant banks comply with this requirement in relation to money received in the ordinary course of their banking and merchant banking business, including those arising from foreign exchange trading and leveraged foreign exchange trading?**

A64 The trust account requirements apply only to money received in relation to the regulated activities conducted by the banks and merchant banks. The requirements do not apply to money arising from the ordinary course of the banking and merchant banking business of the banks and merchant banks. For example, some banks received money from customers but the customers have yet to give instruction as to the application of the money. Since such money is not meant for any regulated activity, it will not be subject to the trust account requirements.

For banks and merchant banks, the trust account requirements also do not apply to money arising from foreign exchange trading and leveraged foreign exchange trading. Foreign exchange trading (except for foreign exchange trading for the purpose of fund management) is not a regulated activity under the SFA, and is therefore not subject to the trust account requirements. As for leveraged foreign exchange trading, the definition of such trading does not include contracts arranged by a bank or merchant bank in Singapore. Money relating to such contracts is therefore not subject to the trust account requirements.

[Updated in Oct 02]

**Q65 As banks and merchant banks are subject to the trust account requirements in respect of the regulated activities they conduct, must they convert all the deposit accounts of the customers into trust accounts if they conduct regulated activities for such customers?**

A65 No. These accounts are already held in the name of the customers. They need not be designated as trust accounts. They are no different from any other saving or deposit accounts maintained by a customer with the banks or merchant banks.

[Updated in Oct 02]

**Q66 For the purpose of keeping customers' orders confidential as required under Regulation 47(2) of the SF(LCB)R, can banks which have banking secrecy obligations under the Banking Act rely on the exceptions to the banking secrecy obligations set out in Sixth schedule to the Banking Act or Third schedule to the Banking Regulations respectively?**

A66 Yes. Regulation 54(3) of the SF(LCB)R states that to the extent the requirements in the Banking Act conflict with Regulation 47, the Banking Act will prevail. Thus, banks may rely on the exceptions set out in Third schedule to the Banking Act or Third schedule to the Banking Regulations respectively on confidentiality obligations.

[Updated in Jul 05]

**Q67 Can bank, merchant banks or finance companies hold customers' moneys or assets with itself in an account designated as "trust" or "customer" account, instead of having to open a trust account with another bank to satisfy Regulations 17(1) and 29(1) of the SF(LCB)R?**

A67 Yes. Banks, merchant banks and finance companies are specified institutions or custodians, and thus they are allowed to hold customers' moneys or assets with themselves so long as these moneys or assets are deposited into an account designated as "trust" or "customer" and are segregated from their own proprietary moneys or assets.

[Updated in Feb 03]

**H) OTHERS**

**Q68 The definition of “bonds” includes notes, bonds and Treasury Bills, as well as options in respect of these instruments. Does this definition include convertible bonds?**

A68 Yes.

[Updated in Oct 02]

**Q69 Would MAS publish a list of the recognised market operator for purpose of complying with the SFA such as section 120?**

A69 Under section 8(1) of the SFA, MAS would give notice in the Gazette of any recognised market operator. The list of recognised market operators is also published on MAS website.

[Updated in Nov 10]

**Q70 Does the definition of “bonds” include structured instruments and instruments with hybrid features, which are debt instruments issued as bonds?**

A70 For structured instruments or instruments with hybrid features, it would be necessary to consider the particular features and characteristics of the product in order to determine whether it falls within the definition of “bonds”.

[Updated in Feb 03]

[Q71 has been deleted.]

**Q72 Can CMS licence holders and persons exempted from holding a CMS licence receive client referrals/introductions from a third party in an ongoing arrangement, with respect to regulated activities under the SFA?**

A72 Under the SFA, there is no exemption from holding a CMS licence and the representative notification regime for introducers who carry on the business of dealing in securities and/or other activities regulated under the SFA, in the course of introducing clients to a holder of a CMS licence or a person exempted from holding such licence (“**the introducee**”). For example, introducers who carry on the business of inducing or attempting to induce clients to enter into agreements with the introducee with a view to subscribe for securities are subject to licensing and the representative notification regime under the SFA. Introducers who earn commissions based on the volume of transactions entered into by the introduced clients with the introducee may be deemed to be dealing in securities.

There is, however, an exemption from licensing and the representative notification regime for introducers under the FAA. Holders of CMS licence can only appoint introducers under the FAA if they provide financial advisory services to the introduced clients in their capacity as exempt financial advisers. A holder of a CMS licence who is also an exempt financial adviser may not appoint introducers under the FAA if it only executes transactions instructed by the introduced clients without providing any financial advice or recommendation with respect to these transactions. Under the FAA, there are certain requirements that exempt financial advisers and introducers have to satisfy in order to operate under the introducer framework. Please refer to the FAA/FAR FAQs for details of the requirements.

[Updated in Nov 10]

### **Q73 Are crowd funding platforms regulated by MAS in Singapore?**

A73 Crowd funding is a fundraising approach that involves the use of a crowd funding platform<sup>1</sup> to raise a small amount of capital from a large number of individual contributors to finance a specific project or business proposal. In return for their contribution, these individuals could receive a reward or asset.

The type of reward or asset received by the individuals who contributed their capital depends on the crowd funding arrangement. There are different types of crowd funding models, including the following:

- equity-based model, which involves the offer of securities;
- lending-based model, which involves individual contributors making loans to project owners with a promised interest return;
- reward-based model, which involves returns to individual contributors in the form of a merchandise or other non-monetary rewards; and
- donation-based model, which involves no returns as funds raised are in the form of donations.

Where the crowd funding platform facilitates any offer of securities or the provision of advice relating to the securities offering, the person operating the crowd funding platform may be deemed as dealing in securities or advising on corporate finance and may require a capital markets services licence for that regulated activity under the SFA. In addition, where financial advice is provided to investors who wish to purchase the securities, the person may be deemed as providing financial advisory services under the FAA and be required to comply with relevant requirements under the FAA. Where in doubt, any person who wishes to raise funds through crowd funding or to establish and operate a crowd funding platform is encouraged to seek independent legal advice to ensure that the proposed activities are in compliance with all applicable laws, rules and regulations in Singapore. For more information on the regulated activities and licensing requirements under the SFA and FAA, please refer to the Second Schedule of the SFA ([link](#)) and FAA ([link](#)), and MAS' Guidelines on Criteria for the Grant of a Capital Markets Services Licence [Guideline No. SFA04-G01] ([link](#)).

[Updated in Apr 14]

<sup>1</sup>A 'crowd funding platform' connects the general public to project owners and provides the means through which a project owner can raise funds. This would typically include internet websites or public seminars.

**Disclaimer: The FAQs are meant to provide guidance to the industry on MAS' policy and administration of the Securities and Futures Act and regulations. They do not constitute legal advice. MAS expects industry participants to retain their independent legal counsel to advise them on how their business operations should be conducted in order to satisfy the legal/regulatory requirements and to advise them on all applicable laws, rules or regulations of Singapore.**