Monetary Authority of Singapore

SECURITIES AND FUTURES ACT (CAP. 289)

FREQUENTLY ASKED QUESTIONS ON LICENSING AND BUSINESS CONDUCT (OTHER THAN FOR FUND MANAGEMENT COMPANIES)

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SECURITIES AND FUTURES (LICENSING AND CONDUCT OF BUSINESS) REGULATIONS

FREQUENTLY ASKED QUESTIONS ON LICENSING AND BUSINESS CONDUCT (OTHER THAN FOR FUND MANAGEMENT COMPANIES)

[Reissued on 20 May 2024]

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 capital markets products[1];
(b) advising on corporate finance;
(c) fund management;
(d) real estate investment trust management;
(e) product financing;
(f) providing custodial services;
(g) providing credit rating services.

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 on 7 June 2019]

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

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[1] “capital markets products” means any securities, units in a collective investment scheme, derivatives contracts, spot foreign exchange contracts for the purposes of leveraged foreign exchange trading, and such other products as the Authority may prescribe as capital markets products.

activity. Please refer to section B below on the Representative Notification Framework for more information on the appointment of representatives.

Q3 **Is there a need for a holder of a CMS licence to renew its licence?**

A3 A holder of a CMS licence will be issued an electronic licence (e-licence), which is accessible via the CoRe system within MASNET (under "Corporate Lodgement" section). 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.

Q4 **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?**

A4 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.

Q5 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?

A5 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, MAS will issue a new e-licence to reflect the additional regulated activities and its attendant licence conditions. The new e-licence is accessible via CoRe system within MASNET (under “Corporate Lodgement” section), and supersedes the e-licence issued previously. The company shall commence the additional regulated activities only after the new e-licence is issued. The company should take appropriate measures to retain the most current version of the e-licence.

Q6 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?

A6 No, so long as the nominee company does not hold itself out as providing custodial services, 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 specified products held on trust by the financial institutions for the customers of the financial institutions.

Q7 My company holds a CMS licence for dealing in capital markets products. Can we operate discretionary accounts on behalf of customers?

A7 The operation of discretionary accounts on behalf of customers for the purpose of trading or investment in capital markets products 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 managing the property of, or operating, a collective investment scheme, or undertaking on behalf of customers (a) the management of a portfolio of capital markets products; or (b) the entry into spot foreign exchange contracts for the purpose of managing customer's funds.

Hence, a company that holds a CMS licence for dealing in capital markets products, 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 capital markets products 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 capital markets products and fund management or operating discretionary accounts should have separate representatives to conduct such activities.

Q8 Does the regulated activity of dealing in capital markets products include the activity of clearing derivatives contracts?

A8 Yes, unless exempted, persons carrying on business in clearing derivatives contracts are required to hold a CMS licence in dealing in capital markets products that are over-the-counter ("OTC") derivatives contracts or exchange-traded derivatives contracts, as the case may be.

Q9 Does an inter-dealer broker that matches OTC commodity swaps and/or block commodity futures require a CMS licence for dealing in capital markets products that are OTC derivatives contracts or exchange-traded derivatives contracts?

A9 Inter-dealer brokers which match trades between many buyers and many sellers in any capital markets products will be considered as operating an organised market. There are exemptions under the market regulations for inter-dealer brokers who matches trades in OTC commodity derivatives and/or block commodity futures where the buyers and sellers are accredited, expert or institutional investors. An inter-dealer broker exempted from market regulations will also be exempted from the requirement to hold a CMS licence in respect of any regulated activity that is solely incidental to its operation of the organised market.

Q10 Our company has been granted a CMS licence to carry on the business of dealing in capital markets products. 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?

A10 The company may continue to hold on to its licence, provided it commences business within 6 months from the date of issue of the licence. If the company has not commenced business within this 6-month period, the company's licence will lapse at the end of this period. The company should notify MAS by lodging Form 7 of the SF(LCB)R if it is unable to commence business within the 6-month period and its licence lapses. When

the licence lapses, the company should destroy any downloaded or printed copies of the e-licence.

[Updated on 7 June 2019]

Q11 **Our company has been granted a CMS licence to carry on the business of dealing in capital markets products that are securities and exchange-traded derivatives contracts. However, we have only commenced business in dealing in capital markets products that are securities, but not exchange-traded derivatives contracts after 6 months. Will our licence lapse?**

A11 The company's licence will not lapse if it has commenced dealing in capital markets products that are securities but not exchange-traded derivatives contracts after 6 months. However, the company is required to notify MAS of the cessation of its business in dealing in capital markets products that are exchange-traded derivatives contracts by lodging Form 7 of the SF(LCB)R if it has not commenced business after 6 months. MAS will amend the licence condition imposed on the Company to reflect the revised type(s) of capital markets products that the company is allowed to deal in under the regulated activity of dealing in capital markets products.

If however the company has not commenced dealing in both securities and exchange-traded derivatives contracts after 6 months, its licence will lapse. Please refer to Q10 on what the company should do if its licence lapses.

Q12 **Our company is licensed to conduct both dealing in capital markets products and advising on corporate finance. We have started dealing in capital markets products, but have yet to commence advising on corporate finance after 6 months. Will our licence lapse?**

A12 The company's licence will lapse only in respect of advising on corporate finance, which it has yet to commence after 6 months. Its licence for dealing in capital markets products will still be valid. The company has to lodge a notice of cessation of business for advising on corporate finance in Form 7 pursuant to the SF(LCB)R. MAS will issue to the company a new e-licence which reflects the remaining activity of dealing in capital markets products and its attendant conditions. The new

e-licence is accessible via CoRe system within MASNET (under "Corporate Lodgement" section), and will supersede the e-licence issued previously. The company should take appropriate measures to retain the most current version of its e-licence.

Q13 **My company intends to provide product financing. Do we need to hold a licence under the SFA and the MoneyLenders Act?**

A13 Product financing is a regulated activity under the SFA. Any company carrying out business in product financing is required to hold a CMS licence in respect of product financing. A company which holds a CMS licence in product financing is 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.

Q14 **My company intends to issue securities to prospective investors. Do we need to hold a CMS licence under the SFA?**

A14 Companies that issue securities from time to time to finance their business activities would only need to comply with the relevant securities offering requirements. However, some companies may issue securities for investors as part of their day-to-day business activities, and enter into transactions with customers to acquire, subscribe or sell securities. Such activities would be conducted with system, regularity and continuity. For example, in a buy-back scheme where a company continually raises funds from investors with the stated purpose for investors to buy precious metals at discounted prices, and with the promise to repurchase the precious metals from investors at an agreed price on a future date, then depending on how the arrangement is structured, such a company may be regarded as dealing in capital markets products. Companies that conduct regulated activities would need to apply for a CMS licence, unless they are exempted from doing so under the SFA. You may refer to the Second Schedule to the SF(LCB)R for details on exemptions from the requirement to hold a CMS licence. The considerations here will similarly apply to a company that issues other capital

markets products under the SFA, such as collective investment schemes.

[Updated on 13 September 2019]

Q14A My company intends to provide a platform and/or conduct activities to connect companies that are raising funds to finance their business activities to potential investors. Do we need to hold a CMS licence under the SFA?

A14A In respect of a company that facilitates connections of fundraising companies to potential investors, whether a CMS licence is required will depend on whether an offer of capital markets products is made via the platform/channel provided by the company, and the business model and activities carried out by the company. Please refer to the Annex for a flowchart that sets out the factors that should be considered in determining whether such a company requires a CMS licence.

[Updated on 18 July 2022]

Q15 Is the business of specified products borrowing and lending subject to the licensing requirement under the SFA?

A15 Yes, a company that is engaged in the business of specified products borrowing and lending is considered to be carrying on a business of dealing in capital markets products. It is therefore required to hold a CMS licence for dealing in capital markets products in respect of the relevant products (e.g. securities, units in a collective investment scheme), unless otherwise exempted. Details of the exemptions from the requirement to hold a CMS licence for dealing in capital markets products can be found in the Second Schedule to the SF(LCB)R.

Q16 Are crowdfunding platforms regulated by MAS in Singapore?

A16 Crowdfunding is a fundraising approach that involves the use of a crowdfunding platform[2] to raise a small amount of capital from a large number of individual contributors to finance a specific

[2] A 'crowdfunding 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.

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 crowdfunding arrangement. There are different types of crowdfunding models, including the following:

- equity-based model, where individuals invest in shares sold by a company and receive a share of the profits in the form of a dividend or distribution, subject to the company's discretion;
- lending-based model, where individuals lend money to a company and receive the company's legally-binding commitment to repay the loan at pre-determined time intervals and interest rate;
- 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 crowdfunding platform facilitates any offer of securities or undertakes on behalf of investors the management of a portfolio of specified products, the person operating the crowdfunding platform may be deemed as dealing in capital markets products that are securities or conducting fund management and may require a CMS 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 crowdfunding or to establish and operate a crowdfunding 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), MAS' Guidelines on Criteria for the Grant of a Capital Markets Services Licence

other than for Fund Management and Real Estate Investment Trust Management [Guideline No. SFA04-G01] (link) and MAS' Guidelines on Licensing, Registration and Conduct of Business for Fund Management Companies [Guidelines No. SFA04-G05] (link).

[Updated on 7 June 2019]

Q17 Is a person which operates a crowdfunding platform to facilitate invoice factoring activities required to hold a CMS licence under the SFA?

A17 A person that carries on business in any regulated activity under the SFA is required to hold a CMS licence, unless otherwise exempted. Whether a person which operates a crowdfunding platform to facilitate invoice factoring activities ("Operator") is required to hold a CMS licence would depend on the business model of the Operator, including the activities conducted by the Operator and the characteristics and terms of the transactions involved on the platform.

For instance, an Operator is not required to hold a CMS licence if the invoice factoring activities conducted by the Operator on the platform involve –

(a) a creditor (e.g. a merchant) assigning its contractual rights to receive payment from its customer under an invoice (that the creditor had issued to its customer for the supply of goods or services to its customer), to one or more investors on the platform;
(b) the investors agree to pay the creditor to purchase the contractual rights to receive payment from the customer under that invoice; and
(c) the customer is under a contractual obligation to make payment under the invoice to the investors.

In this instance, the Operator is not required to hold a CMS licence for dealing in capital market products that are securities as the sale and purchase of the contractual rights to receive payment under the invoices on the crowdfunding platform does not involve securities.

On the other hand, an Operator will be required to hold a CMS licence for dealing in capital market products that are securities if for example, its invoice factoring activities involve –

(a) a creditor assigning its contractual rights to receive payment from its customer under an invoice to the Operator, and the Operator paying the creditor for the purchase of the contractual rights to receive payment under the invoice; and

(b) the Operator entering into an agreement with investors on its platform, under which the investors are obliged to lend a sum of money to the Operator and the Operator is obliged to repay such amount (with or without interest or a premium) to the investors.

In this instance, the agreement entered into between the Operator with its investors on its platform is a debenture and therefore falls within the definition of "securities" under section 2(1) of the SFA.

Q18 What are the procedures for cessation of business by a licensee? When would MAS cancel the licence?

A18 A capital markets services ("CMS") 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 moneys have been accounted for and returned to customers before it ceases.

The licensee is required to file a notice of cessation of business in Form 7 of the SF(LCB)R not later than 14 days after the cessation of its business. When submitting Form 7, the licensee should also provide MAS with an auditor's certification that the licensee has fully discharged all customer obligations and ensured that customer assets and/or monies have been accounted for and returned to customers before ceasing its business. Where the licensee is not able to provide an auditor's certification, it should engage MAS before filing the cessation, and provide adequate reasons for its inability to secure an auditor's certification.

Upon the receipt of Form 7 and the auditor's certification, MAS will review the submissions to ensure that all customer obligations have been properly discharged or provided for. Upon completion of MAS' review, MAS will inform the licensee via email of the effective date of the licence cancellation. The licensee will be removed from the Financial Institutions Directory on MAS' website on the day immediately after the date of licence cancellation. For the avoidance of doubt, even after the submission of Form 7 to notify MAS that the licensee had ceased conducting regulated activities, the licensee continues to hold a valid CMS licence, and will be required to comply with all relevant regulatory requirements, including being liable for all licence and MASNET fees[3], until such time when MAS issues the notification of cancellation of the licence to the licensee.

The licensee's MASNET account will also be terminated within 7 days of the effective date of the licence cancellation. Please be reminded to retrieve all MASNET notices or invoices prior to the submission of Form 7.

[Updated on 7 June 2019]

Q19 **After the Securities and Futures (Amendment) Act 2017 is effected on 8 October 2018, what type of licence will entities carrying on business in marketing collective investment scheme (CIS) be required to hold?**

A19 After the amendment Act is effected on 8 October 2018, the activity of marketing of CIS will no longer be a type of financial advisory services under the FAA. Instead, entities carrying on business in marketing CIS will be required to hold a CMS licence in dealing in capital markets products that are CIS under the SFA, unless exempted.

Q20 **My company holds a financial adviser's licence under the FAA to conduct only the financial advisory service of marketing of CIS. With the removal of marketing of CIS from the FAA, does my company need to apply for a CMS licence for dealing in capital markets products that are CIS?**

[3] Annual fees for corporate licences and representatives are charged, so long as the licence remains valid as at 1 January of the calendar year, and are non-refundable.

A20 If the company's dealing in CIS is incidental to its provision of financial advisory services in respect of CIS, it will be exempted from holding a CMS licence to deal in capital markets products that are CIS. Otherwise, the company will have to apply and hold a CMS licence to deal in capital markets products that are CIS.

Please refer to Q37 on when the company's dealing in CIS is considered incidental to its provision of financial advisory services in respect of CIS.

Q21 What type of capital markets product will exchange-traded fund ("ETF") and real estate investment trust ("REITs") be classified under? What type of licence will entities carrying on business in dealing in ETF and REITs be required to hold?

A21 ETF and REITs are collective investment schemes. Unless exempted, persons carrying on business in dealing in ETF and/or REITs are required to hold a CMS licence in dealing in capital markets products that are CIS.

Q21A Does the definition of "bonds" include structured instruments and instruments with hybrid features, which are debt instruments issued as bonds?

A21A 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 on 27 February 2020]

Q22 What are the procedures to apply for the acquisition of a CMS licence holder?

A22 Potential acquirers are required to seek MAS' approval before obtaining effective control of CMS licence holders. A person is deemed to have obtained effective control of a CMS licence holder if he, whether acting alone or acting together with any connected person, (a) acquires or holds, directly or indirectly, 20% or more of the issued share capital of the licensee; or (b) controls, directly or indirectly, 20% or more of the voting power of the licensee.

Applications for the acquisition of CMS licence holders have to be submitted to MAS using the form, "Application for Approval to obtain Effective Control of a Holder of Capital Markets Services Licence under Section 97A(2) of the Securities and Futures Act", which is accessible at the MAS website at https://www.mas.gov.sg.

[Updated on 7 June 2019]

Q22A What are the procedures if my company wishes to establish a subsidiary or branch?

A22A A CMS licence holder is required to seek MAS' approval before establishing a subsidiary or branch. In general, MAS will not approve such set-ups, unless there are exceptional reasons. This is because the operations of such entities could have a significant impact on the CMS licence holder and MAS' oversight does not extend to their operations. Any such subsidiary or branch should be established to primarily support the business of the CMS licence holder. The CMS licence holder must also, among others, demonstrate its ability to effectively oversee and take responsibility for the subsidiary's or branch's activities.

[Updated on 14 August 2023]

B) REPRESENTATIVE NOTIFICATION FRAMEWORK

Q23 To whom does the RNF apply?

A23 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 (such as banks licensed under the Banking Act) 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, unless exempted.

Please note that the requirement to appoint representatives does not apply to the regulated activities of product financing and provision of custodial services under the SFA.

Q24 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?

A24 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].

Q25 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?

A25 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.

Q26 How are provisional representatives and temporary representatives different from appointed representatives?

A26 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 Q31 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 three 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-month 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 lodgement 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.

Q27 How would I know whether an individual is an appointed, provisional or temporary representative under the SFA?

A27 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) and/or the type(s) of capital markets products under the regulated activity of dealing in capital markets products each representative is authorised to conduct. The public can access such information on their representative from the Public Register by keying in the representative's name or representative number, which can be requested from the representative or the representative's principal company.

Q28 Do appointed, provisional or temporary representatives need to pay annual fees to MAS?

A28 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.

Q29 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?

A29 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.

Q30 What does a CMS licence holder or exempt financial institution need to do if it wants its appointed representative to carry on business in dealing in capital markets products in respect of additional type(s) of capital markets products?

A30 The CMS licence holder or exempt financial institution will need to lodge a notice to add the additional type(s) of capital markets products in Form 6 via the CoRe system.

Q31 Under what circumstances will an appointed, provisional or temporary representative cease to be one?

A31 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 its 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.

Q32 **I ceased to act as an appointed representative to deal in capital markets products that are 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?**

A32 Yes. Your new principal company has to notify MAS of its intent to appoint you as its appointed representative to deal in capital markets products that are securities.

Q33 **I am an appointed representative. Does MAS need to be informed that I have changed my personal particulars such as contact details?**

A33 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.

Q34 **A licensed 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 licensed 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 licensed under the Trust Companies Act?

A34 It is not MAS' policy intent to regulate under the SFA trust companies, which are licensed under the Trust Companies Act and are providing custodial services that are solely incidental to the business for which they are licensed under the Trust Companies Act. Such licensed trust companies are not required to hold a CMS licence under the SFA for the regulated activity of providing custodial services.

Q35 Are individuals listed on the Public Register allowed to act for more than one principal company?

A35 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:

- 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

- to ensure that principals closely monitor and supervise their representatives at all times.

C) PUBLIC REGISTER

Q36 How do I find information on a representative on the Public Register?

A36 Information relating to a representative will be displayed when his name or representative number is keyed into the search field of the Public Register. Consumers should check against the Public Register for the representative's status and his regulated activities. The Public Register can be accessed at https://eservices.mas.gov.sg/rr.

D) EXEMPTIONS

Q37 We understand that after the implementation of the SF (Amendment) Act 2017 on 8 October 2018, MAS exempts financial advisers who are carrying on business in marketing CIS from the requirement to hold a CMS licence under the SFA for dealing in capital markets products that are CIS when the dealing activity is incidental to their provision of financial advisory services in respect of CIS ("SFA Dealing Exemption"). Can a holder of a financial adviser's licence rely on the SFA Dealing Exemption if it does not provide advice to the customer or the customer does not want to receive any advice from the financial adviser?

A37 Financial advisers who help their customers to transact in a CIS will be exempted from the requirement to hold a CMS licence to deal in capital markets products that are CIS if they have provided advice covering that particular CIS. For instance, if a financial adviser advises that a CIS is not suitable for a customer but the customer insists on buying that CIS, the financial adviser may rely on the SFA Dealing exemption to help the customer transact in that CIS. However, the financial adviser may help the customer to transact only after meeting the safeguards required under the FAA. For instance, the financial adviser has to document the decision of the customer and highlight to the customer in writing that it is the customer's responsibility to ensure the suitability of the CIS selected - please refer to the FAA Notice on Recommendation of Investment Products (FAA-N16) for the safeguards required. Financial advisers who do not provide any advice, and merely facilitate buying or selling of CIS by customers will not be able to rely on the SFA Dealing Exemption and will have to hold a CMS licence to deal in capital markets products that are CIS.

Q38 If an entity deals in futures contracts for its own account, is the entity exempted from the requirement to hold a CMS licence?

A38 Entities trading in futures contracts solely for their own account are exempted from the requirement to hold a CMS licence.

Q39 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?

A39 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 capital markets products 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 capital markets products 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 capital markets products.

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.

E) <u>HANDLING OF CUSTOMERS' MONEYS AND ASSETS</u>

Q40 Are there similar trust account requirements in the SFA, to those stipulated in the repealed Securities Industry Act and Futures Trading Act?

A40 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.

Q41 What is meant by a trust account?

A41 A trust account is an account that is maintained with the above institutions or other institutions as allowed under the SFA and designated as a trust account or a customer's or customers' account. The account must be distinguished and maintained separately from other accounts that do not contain customers' moneys or assets.

Q42 Can a CMS licence holder maintain a trust account with an overseas institution?

A42 Yes, if the following conditions are met –

a) the moneys are not received from the CMS licence holder's retail customers in respect of their transactions in OTCD contracts;
b) the moneys and assets are denominated in non-S$ and are kept with an institution which 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
c) the CMS licence holder has obtained the customer's prior written consent.

Q43 What is the time frame for CMS licence holders to deposit customers' moneys and assets into a trust account?

A43 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.

Q44 Are there any specific requirements which a CMS licence holder must observe when it opens a trust account to deposit customers' moneys with a financial institution in Singapore?

A44 Yes, the CMS licence holder must obtain a written acknowledgement from the financial institution, as specified in Regulations 18(1) of the SF(LCB)R, that:

- all moneys deposited are held on trust by the CMS licence holder for its customers;
- the financial institution cannot exercise any right of set-off against the moneys for any debt owed by the holder to the financial institution; and
- the account is designated as a trust account, or a customer's or customers' account, which must be distinguished and maintained separately from any other account in which the holder deposits its own moneys.

Q45 Are there any specific requirements which a CMS licence holder must observe when it opens a customer account to deposit customers' moneys with a financial institution outside Singapore?

A45 Yes, the CMS licence holder must ensure that the conditions in A42 are met, and obtain a written acknowledgement from the financial institution, as specified in Regulations 18(2) of the SF(LCB)R, that:

- all moneys deposited are held by the CMS licence holder for its customers;
- the financial institution cannot exercise any right of set-off against the moneys for any debt owed by the holder to the financial institution; and
- the account is designated as a trust account, a customer's or customers' account, which must be distinguished and maintained separately from any other account in which the holder deposits its own moneys.

Q46 Is a CMS licence holder required to conduct due diligence on its selected financial institution?

A46 Yes, prior to opening a trust or custody account with a financial institution, the CMS licence holder must conduct due diligence, and satisfy itself of, the suitability of the financial institution to hold customers' moneys or assets, as the case may be. It must also maintain records of the grounds on which it has considered the financial institution to be suitable. On a periodic basis, the CMS licence holder should assess to ensure the continued suitability of its selected financial institution(s).

Q47 Where a CMS licence holder is licensed under the SFA to provide custodian services and maintains the custody account with itself, is the CMS licence holder required to conduct due diligence on itself?

A47 No, a CMS licence holder is not required to conduct due diligence on itself if it maintains the custody account with itself.

However, the CMS licence holder should, before providing custodial services for its customer's assets, notify the customer of the terms and conditions that will apply to the safe custody of the customer's assets, as required under Regulation 31 of the SF(LCB)R.

Q48 Can a CMS licence holder keep the interest income or any other entitlements arising from the moneys or assets held in the trust account?

A48 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.

Q49 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?

A49 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.

Q50 My company holds a CMS licence and in the course of our business, we hold customers' specified products in a custody account. Can we lend out customers' specified products or arrange for a custodian to lend out customers' specified products?

A50 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 specified products.

In addition, in respect of any specified products lent, the company must obtain from the borrower collateral which must have a value of more than 100% of the market value of the specified products lent.

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

Q51 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?

A51 A CMS licence holder can open an omnibus account with third party FI to deposit its own moneys or assets and its customers' moneys or assets, if the CMS licence holder's own moneys or assets are placed in a separate sub-account from its customers' moneys or assets and the separate sub-account satisfies the requirement of a trust or custody account under the SF(LCB)R.

Q52 Regulation 18 of the SF(LCB)R requires a CMS licence holder to obtain an acknowledgement from the financial institution that the moneys held on trust cannot be offset against any debt owed by the CMS licence holder to the financial institution. Can the CMS licence holder be considered to have satisfied this requirement if it issues a letter to the financial institution not to offset any debt owed by the CMS licence holder to the financial institution from the trust account, instead of obtaining the acknowledgment from the financial institution prior to the deposit of the moneys?

A52 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 CMS licence holder to the financial institution. Hence, the acknowledgement should be furnished by the financial institution to the CMS licence holder, and the CMS licence holder should ensure that the acknowledgement from the financial institution 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 account.

[Updated on 27 February 2020]

Q52A Can the company deposit excess moneys or assets from customers with the central counterparties?

A52A As required under Regulations 16 and 26, a company should deposit all moneys and assets received on account of its customers in trust and custody accounts respectively. The company is however allowed under Regulation 19 to in turn deposit such customers' moneys or assets, including excess customers' moneys or assets with central counterparties for specified purposes, for instance for clearing of customers' trades in capital market products with the central counterparties.

For the avoidance of doubt, the additional margins required to be obtained from retail customers for products referencing payment tokens, are not required to be passed to the central counterparties. However, where the company in turn deposits any or all of the additional margins with central counterparties for a purpose allowed under Regulation 19, the company should collect the shortfall in the additional margins from the retail customers. Please note that the company is only allowed to deposit the

additional margins collected in respect of exchange-traded products referencing payment tokens with central counterparties.
[Updated on 27 February 2020]

Q53 What is the difference between Regulation 31 and Regulation 32 of the SF(LCB)R? When are they applicable?

A53 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 SF(LCB)R 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.

Q54 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?

A54 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. The due diligence should be conducted on a periodic basis but no less frequently than once a year.

Q55 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?

A55 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.

F) OTHER BUSINESS CONDUCT RULES

Q56 With regard to the requirements on the keeping of books and records, can such records be kept electronically?

A56 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.

Q57 For how long should we keep the books and records?

A57 Licensees are required to maintain their books and records for at least 5 years.

Q58 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?

A58 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.

Q59 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?

A59 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.

Q60 **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?**

A60 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.

Q61 **Does the requirement to record time of customers' orders in Regulation 39(3) of the SF(LCB)R apply to placement of new specified products pursuant to IPOs?**

A61 No.

Q62 **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?**

A62 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 approved exchange, such as SGX-ST Rule 13.4 and its 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.

Q63 **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?**

A63 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.

Q63A Regulation 40(2) of the SF(LCB)R specifies the types of information to be included in the statement of account that a CMS licence holder is required to furnish to each customer. Is the CMS licence holder required to furnish all the required information in a single consolidated document to customers?

A63A The statement of account is to provide customers with an overview of the activities in the customer's account at periodic intervals. The particulars specified in Regulation 40(2) may be provided to customers at the requisite frequency in separate documents. The CMS licence holder should however be mindful that the information is not provided in such a disperse manner that it becomes difficult for customers to obtain an overview of the activities in their accounts.

[Updated on 27 February 2020]

Q63B Regulation 40(2)(b) of the SF(LCB)R requires CMS licence holders to include in the statement of account information on the net marked-to-market unrealised profits or losses of the customer in derivatives contracts and spot foreign exchange contracts for the purposes of leveraged foreign exchange trading. In respect of such contracts which are over-the-counter, can CMS licence holders provide mark to market valuation information to satisfy this requirement?

A63B Yes, CMS licence holders can provide mark to market valuation information for OTC contracts to satisfy this requirement, if it has assessed that this information represents the unrealised profits and losses of the positions in such contracts. As a matter of good practice, CMS licence holders should clearly define the terms used in its statements of accounts.

[Updated on 27 February 2020]

Q63C Regulation 40(2)(c) and (d) of the SF(LCB)R requires CMS licence holders to include in the statement of account information on the status of every asset in the holder's custody held for the customer as well as movement of every asset of the customer. Is a CMS licence holder required to provide this information in the statement of accounts to customers if it only executes customers' transactions and does not custodise customers' assets?

A63C Regulation 40(2) specifies the information that CMS licence holders should include, where applicable, in statements of accounts provided to customers. In the above scenario, given that the CMS licence holder does not custodise customers' assets, the information set out under Regulation 40(2)(c) and (d) is not applicable and does not need to be included in the statements of accounts provided to customers. For avoidance of doubt, the CMS licence holder should include all other applicable information specified in Regulation 40(2), such as particulars of the transactions entered into by customers, in the statements of accounts provided to customers.

[Updated on 28 September 2021]

Q63D Regulation 40(1) of the SF(LCB)R requires CMS licence holders to furnish to each customer a statement of account on a monthly basis. Does this requirement apply in respect of transactions which are entered into by a Singapore based trader or salesperson for a customer who is contracted with an overseas affiliate of the CMS licence holder?

A63D Regulation 40(1) is applicable to customers who are contracted with the CMS licence holder, regardless of the domiciliation of the customers. In the above scenario, the CMS licence holder is not required to furnish a monthly statement of account to a customer who is contracted with an overseas affiliate.

[Updated on 28 September 2021]

Q63E Regulation 40(2)(e) of the SF(LCB)R requires CMS licence holders to include in the statement of account the movement and balance of money received on account of the customer within the meaning of regulation 15(2). Does this requirement apply to banks, merchant banks and finance companies?

A63E Deposit accounts maintained by customers with banks, merchant banks and finance companies do not fall within the meaning of regulation 15(2) and consequently, regulation 40(2)(e) is not applicable.

[Updated on 28 September 2021]

Q64 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, expert or institutional 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 on an electronic facility. What does "real-time basis in the form of electronic records stored on an electronic facility" mean?

A64 This means that CMS licence holders are exempted from sending monthly and quarterly statements to customers who are accredited, expert or institutional 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.

Q64A Regulation 40(1A)(b)(ii) of the SF(LCB)R exempts CMS licence holders from sending monthly statements of account to customers who are accredited, expert or institutional investors or their related corporations if the customers have requested, in writing, not to receive the statements of account on a monthly basis from the holder. Can a confirmation from customers be treated as a request from the customers?

A64A A confirmation received from customers that they do not wish to receive monthly statements may be treated as a request from the customers.

For customers who are institutional investors, CMS licence holders may obtain this confirmation by including it into the terms and conditions of its contractual agreement with customers.

For customers who are accredited or expert investors, CMS licence holders are required to provide customers with the option to opt out of receiving monthly statements, and obtain a confirmation in writing from customers that they have agreed to opt out.

[Updated on 27 February 2020]

Q65 Other than the exemption described in Q64, is there any other exemption given to CMS licence holders from the requirement to send monthly and/or quarterly statement of accounts to customers?

A65 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, positions in derivatives contracts and spot foreign exchange contracts for the purposes of leveraged foreign exchange trading 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 Q64, 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.

In addition, CMS licence holders are not required to provide monthly and quarterly statements for customers who are institutional investors, with whom the CMS licence holders perform periodic reconciliation in respect of those customers' transactions and positions in capital markets products.

Q66 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 capital markets products. Who is "the other party to the transaction" referring to? Is it the counter-party or the customer?

A66 "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.

Q66A Regulation 42(1AA) of the SF(LCB)R allows CMS licence holders to issue a confirmation in lieu of a contract note for transactions to sell or purchase over-the-counter derivatives ("OTCD") contracts. Is there a time frame within which such a confirmation must be provided?

A66A Financial institutions should provide a confirmation to their counterparties as soon as practicable after the execution of the transaction. Financial institutions are expected to provide confirmations for trades with another financial institution or for standardised trades within a shorter time (e.g. T+1). For bespoke transactions, trade confirmations may take longer. Further guidance on the timing of confirmation, and information to be included in the confirmation is found in the Guidelines on Risk

Mitigation Requirements for Non-Centrally Cleared Over-The-Counter Derivatives Contracts, available on MAS' website.

[Updated on 27 February 2020]

Q67 **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 specified products by such persons from the CMS licence holders?**

A67 Yes. Regulation 43 applies to a CMS licence holder that lends specified products 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.

Q68 **Is there a definition of "advance, credit facility or loan" provided in the SFA/SFR?**

A68 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.

Q69 **An employee who is also a customer of a CMS licence holder buys or sells shares through the CMS licence holder (his employer):**

Q69a **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 trading account with a CMS licence holder, would this be considered an advance, credit facility or loan?

A69a When the employee buys a share on day T, he is given until the settlement date, say T+3 for SGX-traded share, 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.

Q69b 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?

A69b 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.

Q69c 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?

A69c 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.

Q69d 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?

A69d 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.

Q70 Why have the requirements in section 121 and parts of section 120 of the SFA been repealed in the SFA(Amendment) 2005?

A70 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.

Q71 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?

A71 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.

Q71A Does Regulation 45 of the Securities and Futures (Licensing and Conduct of Business) Regulations apply to transactions which involve the use of specified products as collateral?

A71A Regulation 45 governs securities borrowing and lending transactions, where the objective of such transactions is to borrow or lend securities. It is not intended to apply to a

transaction where its objective is to borrow or lend cash or cash-equivalent assets.

The objective of a transaction (e.g. whether it is driven by the need for securities or cash) should be evident from the terms of the agreement governing the transaction. Relevant factors in determining the objective of a transaction include, but are not limited to, the asset on which margining is based, and the mark-to-market requirements imposed on the collateral leg of the transaction. For example, in a transaction where the objective is to borrow securities, margining is based on the amount of securities that are borrowed under the agreement, and mark-to-market requirements are applied on the other leg of the transaction serving as collateral, which could be in the form of cash or other securities, to the transaction. Accordingly, such a transaction will be subject to Regulation 45, including the collateralisation requirements.

Alternately, in a transaction where the objective is to borrow cash, margining is based on the amount of cash that is borrowed under the agreement, and mark-to-market requirements are applied on the collateral leg of the transaction, which could be in the form of a single security or portfolio of securities. Such a transaction will not be subject to Regulation 45.

[Updated in April 2019]

Q71B Should a contract-for-differences ["CFD"] that references a spot precious metal (e.g. gold or silver) in various currencies, be considered as a foreign exchange CFD or commodity CFD for the purposes of compliance with Table 18 of Fourth Schedule to the Securities and Futures (Financial and Margin Requirements)Regulations ["SF(FMR)R"]?

A71B CFD on precious metals denominated in various currencies are considered as CFD on commodities. Correspondingly, the FIs should apply the minimum margin rate applicable to "any other CFDs" which is set at 20%, if the CFD does not have any stop loss features attached.

[Updated on 27 February 2020]

Q71C For marginable Payment Token Derivatives (PTDs), FIs have to collect minimum margin from retail investors, which

is at least 1.5 times the standard amount of margin required by Approved Exchanges (AEs) for a comparable contract, subject to a floor of 50% and a cap of 100% of the notional value of the PTD contract. What would be the minimum margin required in the event of an absence of a comparable contract on AEs e.g. bitcoin futures are no longer offered on any AE?

A71C In such a case, FIs should collect minimum margin of 50% from retail investors, and minimum margin of 20% from accredited, institutional or expert investors.

[Updated on 27 February 2020]

Q71D As the margin requirements for PTD contracts traded on AEs are set by the AEs' Approved Clearing Houses (ACH) in dollar terms, this may result in different daily margin rates for over-the-counter (OTC) PTDs which are expressed as a percentage of the settlement price, notwithstanding that the margin requirements in dollar terms have not been changed. Are FIs expected to change margin rates for OTC PTD contracts daily?

A71D No. Where the ACHs have not changed their margin requirements, FIs are to minimally update their margin rates for OTC PTDs monthly (i.e. by the end of the first business day of each month, with reference to the corresponding margins required by AEs for a comparable contract on the last business day of the previous month). For avoidance of doubt, where there is a change in the ACH's margin requirements (quoted in dollar terms), FIs are to implement the corresponding change to their minimum margin rates within two weeks from the date of change by the ACH.

[Updated on 27 February 2020]

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

Q72 Are there any requirements under the SFA or SF(LCB)R that apply to a bank or other financial institutions?

Q72 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 CIS. However, they have to comply with the trust account requirements in relation to the units in a CIS, which they hold on trust for their customers.

Q73 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?

A73 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.

Q74 Are banks, merchant banks or finance companies required to perform daily computation of customer's moneys and assets per Regulation 37 of the SF(LCB)R?

A74 Banks, merchant banks and finance companies are not required to perform daily computation of customer's moneys given that they are not subject to the requirements on handling of customer's moneys under the SF(LCB)R. They are however, required to perform computation of customer's assets as per Regulation 37 of the SF(LCB)R.

Q75 Can bank, merchant banks or finance companies hold customers' assets with itself in an account designated as "trust" or "customer" account, instead of having to open a custody account with another custodian to satisfy Regulations 27(1) of the SF(LCB)R?

A75 Yes. Banks, merchant banks and finance companies are custodians, and thus they are allowed to hold customers' assets with themselves so long as these assets are deposited into an account designated as "trust" or "customer" and are segregated from their own proprietary assets.

Q76 After the SF(Amendment) Act 2017 is effected on 8 October 2018, if the traders execute OTC derivatives contracts referencing foreign exchange (e.g. foreign exchange swaps and forward transactions) with accredited or institutional investors only, will the bank be required to submit a notification for dealing in capital market products that are OTC derivatives contracts and appoint those traders as appointed representatives?

A76 Yes, the bank will be required to notify MAS on its activity of dealing in capital markets products that are OTC derivatives contracts via Form 26, and ensure that individuals conducting the regulated activity on its behalf are similarly appointed as representatives to dealing in capital markets products that are OTC derivatives contracts.

H) <u>OUTSOURCING ARRANGEMENTS</u>

Q77 Assessment of Service Providers – How should a CMS licence holder assess the suitability of its service provider's employees, or its sub-contractors?

A77 MAS recognises that there could be operational difficulties in assessing sub-contractors for the purpose of meeting the expectations in MAS' Guidelines on Outsourcing. MAS does not expect CMS licence holders to directly assess all sub-contractors, as they may not necessarily have direct contractual nexus. Nonetheless, a CMS licence holder is expected to satisfy itself that its main service providers have acceptable governance process when appointing and relying on sub-contractors, especially when the outsourcing arrangement between the CMS licence holder and the main service provider is material. Some relevant factors to consider could be whether there is proper monitoring of service standards of sub-contractors, and the service providers' track record of dealing with sub-contractors when service standards fall below the agreed thresholds.

A CMS licence holder should also satisfy itself that its service providers have suitable hiring and screening policies for its employees. This may require a higher degree of screening for employees in material outsourcing arrangements and/or in positions where they handle sensitive information. For example, if the compliance function is outsourced, it is in the CMS licence holder's interest to understand how the service provider performs checks on the credentials and relevant experience of its employees. The CMS licence holder is not expected to subject its service provider's employees to MAS' Guidelines on Fit and Proper Criteria, nor directly conduct screening checks on its service providers' employees.

Q78 Intra-group Outsourcing – Are the Outsourcing Guidelines applicable to intra-group outsourcing?

A78 Yes. All financial institutions including CMS licence holders are expected to retain ownership and responsibility over their outsourced functions, regardless of whether the function has been outsourced to external service providers or intra-group entities. CMS licence holders that are part of a group can leverage on group-wide risk control and governance functions, such as the group internal audit function, to assist in their assessment of the areas outsourced to the head office or related companies. For example, if compliance, risk management and/or other support functions are outsourced to the head office/parent company or its related entity, the CMS licence holder can rely on the work of centralised internal auditors in the group that cover these functions. The CMS licence holder is not expected to commission a separate audit on these outsourced functions.

Q79 Submissions of Registers and Reports – Are CMS licence holders required to submit their outsourcing registers to MAS on a yearly basis? What about internal audit/external audit reports concerning the CMS licence holder's outsourced arrangements?

A79 CMS licence holders are not required to submit their outsourcing registers to MAS on a yearly basis. MAS will give reasonable notice to CMS licence holders when MAS requires the registers for our supervisory purposes, and CMS licence

holders are expected to promptly submit a copy of the register. As a matter of good practice, a CMS licence holder should include all outsourcing arrangements in its outsourcing register. This includes intra-group arrangements and material sub-contractors.

Similarly, audit reports on outsourced arrangements are to be submitted upon MAS' request.

I) OTHERS

Q80 Would MAS publish a list of the recognised market operator for purpose of complying with the SFA such as section 120?

A80 Under section 9(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.

Q81 My company holds a CMS licence under the SFA. Are we allowed to mention our licensing/regulatory status on our company's website or marketing materials?

A81 The company should display only factual information pertaining to its licensing/regulatory status on its website and/or any other communications or marketing materials. The company should not misrepresent MAS' role in and/or association with any information presented on the company's website and/or any other communications or marketing materials.

[Updated on 13 September 2023]

Q82 My company holds a CMS licence for dealing in capital markets products and operates as a securities-based crowdfunding (SCF) platform. We are reviewing our website contents and other marketing materials. What should we look out for?

A82 The company should review the information on its website and other marketing materials to ensure compliance with

regulations 46, 46AA, 46AB, 46AC and 46AD of the SF(LCB)R.

The company should not, among others misrepresent the nature and risk profile of the capital markets products it offers to investors. For example, it should not present the loans offered as comparable to financial products of a different risk profile such as fixed or saving deposits and Singapore Savings Bonds, or market the loans as safe, low risk or suitable for risk averse investors when it is not the case.

In addition, where the loans are accompanied by a risk mitigation mechanism (e.g. third party financial guarantees, personal guarantees provided by individuals), the company should provide clear information on the mechanism, such as which risk is mitigated, identity of the party involved, credit standing or worthiness of the party and how the risk is mitigated, so that investors can make an informed decision on their investments. The company should also not market such loans as safe, low risk or suitable for risk averse investors unless this is indeed the case.

[Updated on 13 September 2023]

J) APPOINTMENTS OF CHIEF EXECUTIVE OFFICER AND DIRECTORS

Q83 Do appointments of Chief Executive Officer and Directors, or change in the nature of appointments require MAS' prior approval?

A83 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.

Q84 What are CMS licence holders required to do before seeking MAS' approval for the proposed appointments of Chief Executive Officer and Directors?

A84 The CMS licence holder must satisfy itself that the proposed appointee meets MAS' Guidelines on Fit and Proper Criteria before seeking MAS' approval for such appointments. A non-exhaustive list of checks to be performed includes:
(a) screening for adverse information;
(b) conducting reference checks;
(c) conducting financial probity checks;
(d) assessing if the proposed appointee has the relevant experience for the role; and
(e) assessing if there is any potential conflict of interests from the proposed appointee's outside business interests and substantial shareholdings.
The onus is on the CMS licence holder to determine that the proposed appointee is and remains fit and proper.

[Updated on 7 December 2023]

Q85 What should CMS licence holders do if there is adverse information from the checks conducted on the proposed appointee?

A85 The CMS licence holder should assess the adverse information and take appropriate action to address the adverse information, before seeking MAS' approval for the appointments. This may include instituting conflict management measures to address potential conflict of interests from the proposed appointee's outside business interests, implementing adequate monitoring mechanisms , or taking a decision not to proceed with the appointment. The CMS licence holder's assessment should consider the seriousness of the adverse information and its impact on the effectiveness of the proposed appointee in carrying out his duties in the company, taking into account the role and responsibilities the appointee will assume in the company.

[Updated on 7 December 2023]

Q86 **Will MAS require a CMS licence holder to provide supporting documents for the checks and assessment performed in connection with the appointment of Chief Executive Officer and Directors?**

A86 Yes. MAS may call upon a CMS licence holder at any point in time to provide details and supporting documents relating to the checks and assessment it performed.

[Updated on 7 December 2023]

Q87 **Is there a guidance on what is considered "relevant experience" for Chief Executive Officer and Directors?**

A87 The expectation is for the Chief Executive Officer and Directors to have at least 10 years of relevant experience in the regulated activity or activities that the CMS licence holder carries out, of which 5 years of experience should be in a managerial or supervisory capacity. For example, management experience in non-financial sectors such as manufacturing, food and beverage services, hospitality, wholesale and retail trade should not be considered as relevant experience.

For CMS licence holders dealing in capital markets products for retail investors, the Chief Executive Officer and Directors must possess relevant experience in serving retail customers in capital markets products that the CMS licence holder is licensed to deal with. The relevance of a proposed appointee's experience should

also be assessed in the context of the role that the proposed appointee will perform in the company.

[Updated on 20 May 2024]

Q88 **What if the proposed appointee for Chief Executive Officer or Director falls short of the relevant experience criteria?**

A88 If the proposed appointee falls slightly short of the relevant experience criteria (i.e., by less than one year), the CMS licence holder must ensure that its board of directors collectively possesses sufficient relevant experience to provide the necessary guidance to the appointee with the shortfall in relevant experience.

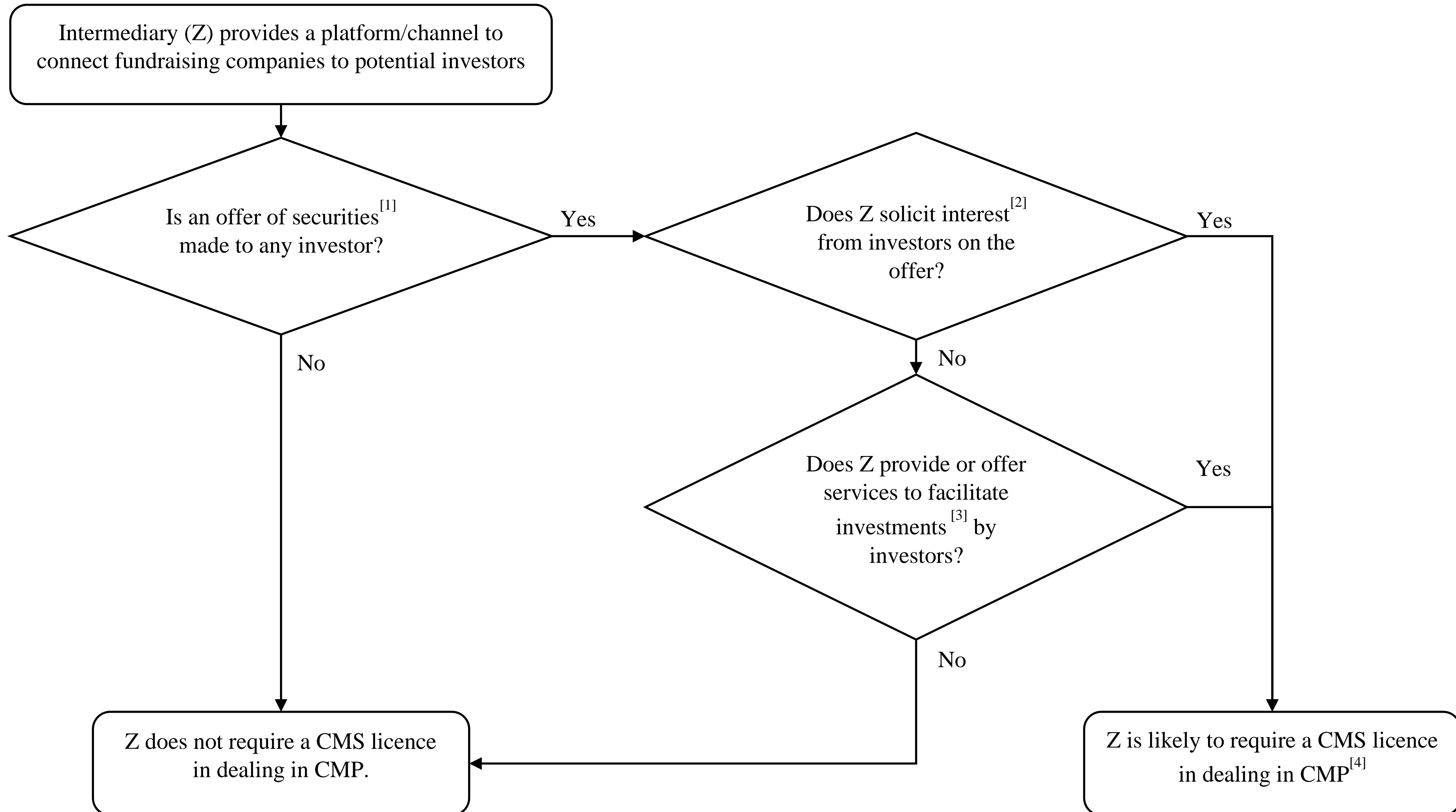
[Updated on 7 December 2023]

Q89 **Are CMS licence holders expected to conduct checks on an ongoing basis for existing Chief Executive Officers and Directors?**

A89 Yes. The onus is on the CMS licence holder to ensure that its Chief Executive Officer and Directors remain fit and proper. The CMS licence holder must institute adequate checks on an ongoing basis, such as performing periodic screening checks, and obtaining annual declarations from its existing appointees. The CMS licence holder must assess the information obtained and take the appropriate action upon knowledge of any adverse information, as set out in A88 above.

[Updated on 7 December 2023]

Annex – Licensing considerations for a company that facilitates connections of fundraising companies to potential investors (Q14A)



[1] As defined in section 239(6) of the Securities and Futures Act ("SFA"), a person makes an offer of any securities or securities-based derivatives contracts if, and only if, as principal —

a. the person makes (either personally or by an agent) an offer to any person in Singapore which upon acceptance would give rise to a contract for the issue or sale of those securities or securities-based derivatives contracts by the first mentioned person or another person with whom the first mentioned person has made arrangements for that issue or sale; or
b. the person invites (either personally or by an agent) any person in Singapore to make an offer which upon acceptance would give rise to a contract for the issue or sale of those securities or securities-based derivatives contracts by the first mentioned person or another person with whom the first mentioned person has made arrangements for that issue or sale.

[2] An intermediary is likely regarded as soliciting interests from investors on an offer of securities if it conducts the following activities:

(i) Contacts investors to convey the offer of securities;
(ii) Contacts investors to solicit their interests in the offer;
(iii) Assists to respond to / liaise with investors' queries on the offer; or
(iv) Assists to negotiate terms of the offer.

An intermediary, such as a corporate secretarial services firm, that passively receives interests from investors as directed by the issuer, or a technology service provider that provides an online avenue for the issuer to gather interests from investors will not be considered as soliciting interests, if it does not perform the above activities.

[3] These are generally services that the investors would otherwise have to perform on their own if they decide to invest in the offer. Such services include:

<u>(i) Due diligence on the issuer / offer</u>
Due diligence is done if the intermediary performs a review to ascertain and provide assurance to investors on the issuers' material representations and financial soundness. For example, due diligence is considered to be performed if the intermediary reviews the financials of the issuer to verify its creditworthiness. In addition, due diligence checks could include conducting background checks on key appointment holders.

An intermediary that performs general evaluation of the issuer's business plan or a general selection of issuers to host on the intermediary's platform (e.g. to cater to the interest of targeted investors) will generally not be considered as performing due diligence.

<u>(ii) Facilitating the investment process</u>
This may include pooling of investments from different investors, setting up a special purpose vehicle to hold the investments, managing the collection of investment monies and disbursing the investment monies to the issuer.

[4] Required if the intermediary's activities are conducted with system, repetition and continuity. An overseas intermediary that operates a platform/channel from wholly outside Singapore should also consider section 339(2) of the SFA, which extends the jurisdiction of the SFA to activities that are wholly outside Singapore but could have a substantial and foreseeable effect in Singapore. For more information, please refer to MAS' Guidelines on the Application of section 339 (Extra-territoriality) of the Securities and Futures Act [SFA 15-G01].