



Monetary Authority of Singapore

Consultation Paper

P007 – July 2023

Consultation Paper on Proposed Amendments to the Payment Services Regulations



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1. Preface

- 1.1. This consultation sets out proposed amendments to the Payment Services Regulations 2019 (“PS Regs”), to implement key segregation and custody requirements for digital payment token (“DPT”) services under the Payment Services Act 2019 (“PS Act”).
- 1.2. The Monetary Authority of Singapore (“MAS”) invites interested parties to provide their comments on the proposals.
- 1.3. Please note that all submissions received will be published and attributed to the respective respondent unless they expressly request MAS not to do so. As such, if respondents would like
 - (a) their whole submission or part of it (but not their identity), or
 - (b) their identity along with their whole submission,to be kept confidential, please expressly state so in the submission to MAS. MAS will only publish non-anonymous submissions. In addition, MAS reserves the right not to publish any submission received where MAS considers it not in the public interest to do so, such as where the submission appears to be libelous or offensive.
- 1.4. Please submit written comments by 3 August 2023 via the link provided [<https://go.gov.sg/mas-dpt-amendment-2023>].
- 1.5. Should you encounter any technical difficulties in your submission, please send your enquiry to capital_markets@mas.gov.sg.



2. Introduction

- 2.1. In the *Consultation Paper on Proposed Regulatory Measures for Digital Payment Token Services* published on 26 October 2022, MAS proposed regulatory measures for licensed and exempt payment service providers¹ that carry on a business of providing a DPT service under the PS Act (collectively known as “DPT service providers” or DPTSPs).
- 2.2. MAS published the *Response to Feedback Received on Proposed Regulatory Measures for Digital Payment Token Services (Part 1)* on 3 July 2023. As noted within, MAS will be amending the PS Regs to implement customer assets segregation and custody requirements. The PS Regs apply to DPTSPs who are licensed under the PS Act (“licensed DPTSPs”) and DPTSPs who are exempt² under Section 13(1)(a), (b), (c), or (d) of the PS Act (“exempt DPTSPs”).
- 2.3. While the PS Regs do not apply to DPTSPs who operate under a transitional exemption pursuant to the Payment Services (Exemption for Specified Period) Regulations 2019, MAS expects them to meet the segregation and custody requirements as well and is engaging them on a supervisory basis to do so.
- 2.4. The remainder of this paper is structured as follows. Chapter 3 sets out the proposed amendments relating to customers’ moneys. Chapter 4 sets out the proposed amendments relating to customers’ assets. Chapter 5 sets out the implementation approach for the proposed amendments.

¹ These include persons who are currently operating under the transitional exemption as they have been providing DPT services before the commencement of the PS Act and have notified MAS pursuant to the Payment Services (Exemption for Specified Period) Regulations 2019. These entities are not licensed under the PS Act but are allowed to continue to provide DPT services while their licence applications are being reviewed by MAS.

² These are banks, merchant banks, finance companies, and persons licensed to carry on the business of issuing credit cards or charge cards in Singapore.



3. Proposed Amendments Relating to Customers' Moneys

- 3.1. Currently, Section 23 of the PS Act provides for the safeguarding of money received from customers, for certain entities licensed under the PS Act. Regulations 14 to 16 of the PS Regs set out further details on the safeguarding requirements for customers' moneys, while Regulation 17 applies those requirements to exempt payment service providers.
- 3.2. To apply the existing safeguarding requirements for customers' moneys to licensed DPTSPs, MAS proposes to introduce Regulations 16A and 16B, which prescribes them within the scope of Section 23.
- 3.3. Pursuant to Regulation 17 (to be amended as described in paragraph 3.4 below), the safeguarding requirements for customers' moneys will consequently also apply to exempt DPTSPs.
- 3.4. Regulations 14, 15, 16, and 17 are amended to include references to licensees (which are not major payment institutions), in addition to the existing references to major payment institutions.



4. Proposed Amendments Relating to Customers' Assets

Background

- 4.1. Section 21A, introduced through the Payment Services (Amendment) Act 2021, empowers MAS to prescribe requirements for licensed DPTSPs, such as for the safeguarding of customers' assets or where MAS considers it necessary or expedient in the interest of the public.

New Regulation 16C

- 4.2. MAS proposes to introduce Regulation 16C, which sets out customer assets segregation and custody requirements for licensed DPTSPs. In drafting Regulation 16C, MAS has drawn reference from the safeguarding requirements under Section 23 of the PS Act, Regulation 16 of the PS Regs, and similar provisions under the Securities and Futures Act 2001 and the Securities and Futures (Licensing and Conduct of Business) Regulations (Rg 10).
- 4.3. The following paragraphs explain the key aspects of Regulation 16C (not necessarily in the order in which they appear within Regulation 16C).
- 4.4. **Handling of customers' assets:**
- (a) Regulation 16C(1) and (2) provide that the licensed DPTSP must deposit the customer's assets in a custody account held on trust for the customer and that the customer's assets cannot be used for the payment of the debts of the licensed DPTSP.
 - (b) Regulation 16C(3)(c) provides that the licensed DPTSP must treat and deal with all assets received from a customer as belonging to the customer and deposit all customers' assets in the custody account.
 - (c) Regulation 16C(3)(h) provides that the licensed DPTSP must apply the customer's assets solely for the purposes agreed to by the customer.
- 4.5. **Commingling of customers' assets:** Regulation 16C(3)(d) provides that the licensed DPTSP must not commingle customers' assets with any other assets, except that the assets belonging to one customer may be commingling with the assets belonging to other customers, as provided under Regulation 16C(4).



- 4.6. **Transfer of customers' assets:** Regulation 16C(3)(g) provides that the licensed DPTSP must not transfer any right, interest, benefit or title in the customer's assets, except where the transfer is in accordance with the customer's written instructions obtained prior to each transfer or is authorised by law, as provided under Regulation 16C(5).
- 4.7. **Disclosures:** Regulation 16C(3)(b)(ii) provides that the licensed DPTSP must disclose to its customer –
- (a) that the customer's assets will be held on behalf of the customer in a custody account with a safeguarding institution;
 - (b) whether or not the customer's assets are commingled with the assets of other customers and, if so, the risks of such commingling;
 - (c) the consequences for the customer in respect of the customer's assets if the safeguarding institution becomes insolvent; and
 - (d) the terms and conditions that would apply to the safeguarding of the customer's assets.
- 4.8. **Record-keeping:** Regulation 16C(3)(i) provides that the licensed DPTSP must record and maintain a separate book entry for each customer in relation to the customer's assets, with the details set out in Regulation 16C(6).
- 4.9. **Reconciliation:** Regulation 16C(11) provides that the licensed DPTSP must conduct daily reconciliation of customers' assets.
- 4.10. **Adequate systems, processes, controls, human resources, and governance arrangements:** Regulation 16C(3)(j) provides that the licensed DPTSP must, in a manner that is commensurate with the nature, scale and complexity of its business, maintain adequate systems, processes, controls, human resources, and governance arrangements to:
- (a) ensure the integrity and security of the transmission and storage of customers' assets; and
 - (b) reduce the risk of any loss of customers' assets belonging to its customers due to fraud or negligence.
- 4.11. **Operational independence:** Regulation 16C(3)(l) provides that the licensed DPTSP must ensure effective controls and segregation of duties to mitigate potential conflicts of interest that may arise from the safeguarding of customers' assets.
- 4.12. **Requirements relating to maintenance of custody account with other persons:** Regulation 16C(9) clarifies that the licensed DPTSP may maintain the custody account itself. Where the licensed DPTSP maintains the custody account with a safeguarding institution other than itself –



- (a) Regulation 16C(3)(a), (e), and (f) provide that the licensed DPTSP must assess and be satisfied of the suitability of the safeguarding institution before opening the custody account with the safeguarding institution and, on an annual basis, keep records of the grounds on which the licensed DPTSP was satisfied;
- (b) Regulation 16C(3)(b)(i) provides that the licensed DPTSP must give written notice to the safeguarding institution and obtain an acknowledgment from the safeguarding institution that –
 - (i) all the customer’s assets deposited in the custody account are held on trust by the licensed DPTSP for the customer;
 - (ii) the safeguarding institution must not claim any lien, right of retention or sale over any asset standing to the credit of the custody account, except where the licensed DPTSP has obtained the customer’s written consent or in respect of any charges as agreed upon in the terms and conditions relating to the administration or custody of the customer’s assets; and
 - (iii) the account is designated as a trust account, or a customer’s or customers’ account.
- (c) Regulation 16C(3)(b)(ii), as mentioned in paragraph 4.7 above, provides for the disclosures that the licensed DPTSP must provide to the customer.

New Regulation 16D

- 4.13. MAS proposes to introduce Regulation 16D, which sets out customer assets segregation and custody requirements for exempt DPTSPs. Regulation 16D is analogous with Regulation 16C, with the necessary modifications to apply the requirements in relation to exempt DPTSPs instead of licensed DPTSPs.



5. Implementation Approach

- 5.1. MAS intends to effect the proposed amendments to the PS Regs by October 2023. Notwithstanding the amendment process for the PS Regs, as MAS' policy positions in relation to segregation and custody requirements have been finalised and published, DPTSPs should prepare to comply with those policy positions by October 2023.
- 5.2. MAS will also publish Guidelines setting out its further expectations on the segregation and custody requirements, on or around the date of publication of the finalised amendments to the PS Regs.

Question 1. MAS seeks comments on the proposed amendments to the Payment Services Regulations.



6. Annex A – List of Questions

Question 1. MAS seeks comments on the proposed amendments to the Payment Services Regulations.

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7. Annex B – Draft Amendments to Payment Services Regulations

THIS VERSION OF THE PROPOSED AMENDMENTS TO THE PAYMENT SERVICES REGULATIONS 2019 IS IN DRAFT FORM AND SUBJECT TO CHANGE. IT IS ALSO SUBJECT TO REVIEW BY THE ATTORNEY GENERAL’S CHAMBERS.

Safeguarding of money received from customer

14.—(1) If a major payment institution or licensee mentioned in section 23(1) or a major payment institution mentioned in section 23(3) of the Act intends to safeguard or safeguards the relevant money of a customer by an undertaking, from a safeguarding institution mentioned in paragraph (a) of the definition of “safeguarding institution” in section 23(14) of the Act, to be fully liable to the customer for the customer’s relevant money, the major payment institution or licensee (as the case may be), must —

- (a) before obtaining an undertaking from the safeguarding institution —
 - (i) assess, and satisfy itself of, the suitability of the safeguarding institution with respect to the giving of the undertaking; and
 - (ii) give written notice to the safeguarding institution and obtain an acknowledgment from the safeguarding institution that the undertaking is being obtained by the major payment institution or licensee (as the case may be) for the purpose of complying with section 23(2) or (4) of the Act, as the case may be;
- (b) ensure that the undertaking is not subject to any condition or restriction in respect of being fully liable to the customer for the relevant money;
- (c) disclose in writing to the customer that the customer’s relevant money is being safeguarded by an undertaking from the safeguarding institution, to be fully liable to the customer for the relevant money;
- (d) assess, and satisfy itself of, the suitability of the safeguarding institution with respect to the giving of the undertaking, on an annual basis subsequent to obtaining the undertaking; and
- (e) keep, for a period of 5 years or longer, records of the grounds on which the major payment institution or licensee (as the case may be) satisfied itself of the safeguarding institution’s suitability under sub-paragraph (a)(i) or (d).

(2) For the purposes of paragraph (a)(ii) of the definition of “safeguarding institution” in section 23(14) of the Act, the prescribed financial institution is either —

- (a) a merchant bank that holds a merchant bank licence, or is treated as having been granted a merchant bank licence, under the Banking Act 1970; or



- (b) a finance company licensed under the Finance Companies Act 1967.

Safeguarding of relevant moneys by guarantee

15.—(1) If a major payment institution or licensee mentioned in section 23(1) or a major payment institution mentioned in section 23(3) of the Act intends to safeguard or safeguards the relevant money of a customer by a guarantee given by a safeguarding institution mentioned in paragraph (b) of the definition of “safeguarding institution” in section 23(14) of the Act for the relevant money, the major payment institution or licensee (as the case may be), must —

- (a) before obtaining a guarantee from the safeguarding institution —
- (i) assess, and satisfy itself of, the suitability of the safeguarding institution with respect to the giving of the guarantee; and
 - (ii) give written notice to the safeguarding institution and obtain an acknowledgment from the safeguarding institution that the guarantee is being obtained by the major payment institution or licensee (as the case may be) for the purpose of complying with section 23(2) or (4) of the Act, as the case may be;
- (b) ensure that —
- (i) the guarantee states that in the event of the insolvency of the major payment institution or licensee (as the case may be), the safeguarding institution assumes a primary liability to pay a sum equal to the amount of the relevant money held by the major payment institution or licensee (as the case may be) at the end of the business day immediately preceding the date the major payment institution or licensee (as the case may be) becomes insolvent; and
 - (ii) there is no other condition or restriction on the immediate paying out of money by the safeguarding institution to a separate trust account held by the major payment institution or licensee (as the case may be) in accordance with section 23(6) of the Act, in the event of the insolvency of the major payment institution or licensee (as the case may be);
- (c) disclose in writing to the customer that the relevant money is being safeguarded by a guarantee given by the safeguarding institution for the relevant money;
- (d) assess, and satisfy itself of, the suitability of the safeguarding institution with respect to the giving of the guarantee, on an annual basis subsequent to obtaining the guarantee; and
- (e) keep, for a period of 5 years or longer, records of the grounds on which the major payment institution or licensee (as the case may be) satisfied itself of the safeguarding institution’s suitability under sub-paragraph (a)(i) or (d).



(2) For the purposes of paragraph (b)(ii) of the definition of “safeguarding institution” in section 23(14) of the Act, the prescribed financial institution is —

- (a) a merchant bank that holds a merchant bank licence, or is treated as having been granted a merchant bank licence, under the Banking Act 1970;
- (b) a finance company licensed under the Finance Companies Act 1967; or
- (c) any financial guarantee insurer as defined in regulation 2 of the Insurance (Financial Guarantee Insurance) Regulations (Rg 6).

Safeguarding of relevant moneys by segregation of funds

16.—(1) If a major payment institution or licensee mentioned in section 23(1) or a major payment institution mentioned in section 23(3) of the Act intends to safeguard or safeguards the relevant money of a customer by depositing the relevant money in a trust account maintained with a safeguarding institution mentioned in paragraph (c) of the definition of “safeguarding institution” in section 23(14) of the Act, the major payment institution or licensee (as the case may be) —

- (a) must, before opening the trust account, assess, and satisfy itself of, the suitability of the safeguarding institution with respect to the depositing of the relevant money in a trust account opened with the safeguarding institution;
- (b) must, before depositing the relevant money in the trust account —
 - (i) give written notice to the safeguarding institution and obtain an acknowledgment from the safeguarding institution that —
 - (A) all moneys deposited in the trust account will be held on trust by the major payment institution or licensee (as the case may be) for its customer and the safeguarding institution cannot exercise any right of set-off against the moneys for any debt owed by the major payment institution or licensee (as the case may be) to the safeguarding institution; and
 - (B) the account is designated as a trust account, or a customer’s or customers’ account, which is distinguishable and maintained separately from any other account maintained with the safeguarding institution in which the major payment institution or licensee (as the case may be) deposits its own moneys; and
 - (ii) disclose in writing to its customer —
 - (A) that the customer’s relevant money will be held by the major payment institution or licensee (as the case may be) on behalf of the customer in a trust account opened with the safeguarding institution;



- (B) whether or not the relevant money received from the customer will be deposited in a trust account together with, and commingled with, the relevant money received by the major payment institution or licensee (as the case may be) from its other customers;
- (C) if the relevant money received from the customer will be deposited in a trust account together with, and commingled with, the relevant money received by the major payment institution or licensee (as the case may be) from its other customers, the risks of such commingling; and
- (D) the consequences for the customer in respect of the relevant money if the safeguarding institution becomes insolvent;

(c) must —

- (i) treat and deal with all the relevant money received from a customer as belonging to the customer; and
 - (ii) deposit all the relevant money in the trust account;
- (d) subject to paragraph (2), must not commingle the relevant money with other moneys;
- (e) must assess, and satisfy itself of, the suitability of the safeguarding institution with respect to the depositing of the relevant money in the trust account maintained with the safeguarding institution, on an annual basis subsequent to the depositing of the relevant money;
- (f) must keep, for a period of 5 years or longer, records of the grounds on which the major payment institution or licensee (as the case may be) satisfied itself of the safeguarding institution's suitability under sub-paragraph (a) or (e); and
- (g) subject to paragraph (3), must not withdraw any money that is deposited in the trust account.

(2) Despite paragraph (1)(d), a major payment institution or licensee (as the case may be) may —

- (a) deposit the relevant money of a customer in a trust account together with, and commingled with, the relevant money received from its other customers;
- (b) advance money to the trust account from its own money to open the trust account; or
- (c) from time to time, advance money to the trust account from its own money to maintain the trust account.

(3) Despite paragraph (1)(g), a major payment institution or licensee (as the case may be) may withdraw money from a trust account opened with a safeguarding institution if —



- (a) the withdrawal of the money will not reduce the amount of the relevant money that is deposited and safeguarded in the trust account;
- (b) the money is for the purpose of reimbursing the major payment institution or licensee (as the case may be) for money that the major payment institution or licensee (as the case may be) has advanced to the trust account from its own money to open or maintain the trust account; or
- (c) the withdrawal of the money (whether or not it is money that belongs to the major payment institution or licensee (as the case may be)) is for the purpose of payment to the customer.

(4) Subject to any agreement between the major payment institution or licensee (as the case may be) and its customer, all interest earned from the maintenance of relevant moneys received from, or on account of, the customer in a trust account accrues to the customer.

(5) Nothing in this regulation is to be construed as avoiding or affecting any lawful claim or lien which any person has in respect of any money held in a trust account in accordance with this regulation or any money belonging to a customer before the money is paid into a trust account.

(6) For the purposes of paragraph (c) of the definition of “safeguarding institution” in section 23(14) of the Act, the prescribed criterion of a person mentioned in that paragraph is —

- (a) the person is a bank that holds a licence granted under section 7 or 79 of the Banking Act 1970;
- (b) the person is a merchant bank that holds a merchant bank licence, or is treated as having been granted a merchant bank licence, under the Banking Act 1970; or
- (c) the person is a finance company licensed under the Finance Companies Act 1967.

Prescribed major payment institution in respect of a prescribed payment service under section 23(1)(b) of the Act

16A. For the purposes of section 23(1)(b) of the Act, the prescribed major payment institution in respect of a prescribed payment service is any major payment institution that carries on a business of providing a digital payment token service.

Prescribed licensee (other than a major payment institution) in respect of a prescribed payment service under section 23(1)(c) of the Act

16B. For the purposes of section 23(1)(c) of the Act, the prescribed licensee (other than a major payment institution) in respect of a prescribed payment service is any standard payment institution that carries on a business of providing a digital payment token service.

Safeguarding of assets (including digital payment tokens) belonging to customers by licensees

16C.—(1) A licensee that provides a digital payment token service must, no later than the next business day after any assets (including digital payment tokens) are received from, or on account of, a customer:



(a) deposit the assets (including digital payment tokens) belonging to the customer in a custody account held on trust for the customer that is maintained with a safeguarding institution; or

(b) return the assets (including digital payment tokens) to the customer.

(2) All assets (including digital payment tokens) deposited in the custody account mentioned in paragraph (1)(a) —

(a) cannot be used for the payment of the debts of the licensee; and

(b) are not liable to be taken under or pursuant to an enforcement order or a process of any court.

(3) A licensee mentioned in paragraph (1)(a) —

(a) must, before opening the custody account, assess, and satisfy itself of, the suitability of the safeguarding institution with respect to the depositing of the assets (including digital payment tokens) belonging to its customers in a custody account opened with the safeguarding institution;

(b) must, before depositing the assets (including digital payment tokens) belonging to a customer in the custody account —

(i) give written notice to the safeguarding institution and obtain an acknowledgment from the safeguarding institution that —

(A) all assets (including digital payment tokens) belonging to its customers deposited in the custody account are held on trust by the licensee for its customer;

(B) the safeguarding institution must not claim any lien, right of retention or sale over any asset (including digital payment tokens) standing to the credit of the custody account, except —

(i) where the licensee has obtained the customer's written consent and notified the safeguarding institution in writing of the written consent; or

(ii) in respect of any charges as agreed upon in the terms and conditions relating to the administration or custody of the asset (including digital payment tokens); and

(C) the account is designated as a trust account, or a customer's or customers' account, which is distinguishable and maintained separately from any other account maintained with the safeguarding institution in which the licensee deposits its own assets (including digital payment tokens); and

(ii) disclose in writing to its customer —

(A) that the assets (including digital payment tokens) belonging to the customer will be held by the licensee on behalf of the customer in a custody account with a safeguarding institution;



- (B) whether or not the assets (including digital payment tokens) belonging to the customer will be deposited in a custody account together with, and commingled with, the assets (including digital payment tokens) received by the licensee from its other customers;
- (C) if the assets (including digital payment tokens) belonging to the customer will be deposited in a custody account together with, and commingled with, the assets (including digital payment tokens) received by the licensee from its other customers, the risks of such commingling;
- (D) the consequences for the customer in respect of the assets (including digital payment tokens) belonging to the customer if the safeguarding institution becomes insolvent;
- (E) where the licensee maintains the custody account itself, the terms and conditions that would apply to the licensee's safeguarding of the customer's assets (including digital payment tokens); and
- (F) where the licensee maintains the custody account with a safeguarding institution, the terms and conditions agreed with the safeguarding institution that would apply to the safeguarding institution's safeguarding of the customer's assets (including digital payment tokens);

(c) must —

- (i) treat and deal with all the assets (including digital payment tokens) received from a customer as belonging to the customer; and
 - (ii) deposit all the assets (including digital payment tokens) belonging to the customer in the custody account;
- (d) subject to paragraph (4), must not commingle the assets (including digital payment tokens) belonging to the customer with other assets (including digital payment tokens);
- (e) must assess, and satisfy itself of, the suitability of the safeguarding institution with respect to the depositing of the assets (including digital payment tokens) belonging to the customer in the custody account maintained with the safeguarding institution, on an annual basis subsequent to the depositing of the assets (including digital payment tokens);
- (f) must keep, for a period of 5 years or longer, records of the grounds on which the licensee satisfied itself of the safeguarding institution's suitability under sub-paragraph (a) or (e);
- (g) subject to paragraph (5), must not transfer any right, interest, benefit or title in the assets (including digital payment tokens) belonging to its customers that are deposited in the custody account to itself or any other person;
- (h) must apply the assets (including digital payment tokens) belonging to the customer that are deposited in the custody account solely for such purpose as may be agreed to by the customer;



- (i) must record and maintain a separate book entry for each customer in relation to the assets (including digital payment tokens) belonging to that customer;
- (j) must, in a manner that is commensurate with the nature, scale and complexity of its business, maintain adequate systems, processes, controls, human resources, and governance arrangements to:
 - (i) ensure the integrity and security of the transmission and storage of assets (including digital payment tokens) belonging to its customers; and
 - (ii) reduce the risk of any loss of assets (including digital payment tokens) belonging to its customers due to fraud or negligence on the part of the licensee or any of the licensee's agents;
- (k) must assess and ensure that the safeguarding institution maintains adequate systems, processes, controls, human resources, and governance arrangements to:
 - (i) ensure the integrity and security of the transmission and storage of assets (including digital payment tokens) belonging to its customers; and
 - (ii) reduce the risk of any loss of assets (including digital payment tokens) belonging to its customers due to fraud or negligence on the part of the safeguarding institution or any of the safeguarding institution's agents; and
- (l) must, in the case where the licensee maintains the custody account itself, ensure effective controls and segregation of duties to mitigate potential conflicts of interest that may arise from the safeguarding of assets (including digital payment tokens) belonging to its customers.

(4) Despite paragraph (3)(d), a licensee may deposit the assets (including digital payment tokens) belonging to a customer in a custody account with, and commingled with, the assets (including digital payment tokens) belonging to its other customers.

(5) Despite paragraph (3)(g), a licensee may transfer any right, interest, benefit or title in the assets (including digital payment tokens) belonging to a customer from a custody account opened with a safeguarding institution if the transfer of the assets (including digital payment tokens) is for the purpose of —

- (a) transferring to any person or digital payment token account in accordance with the customer's written instructions obtained prior to each transfer; or
- (b) making a transfer that is authorised by law.

(6) For the purposes of paragraph (3)(i), the licensee must keep books in the English language which contain the following, where applicable:

- (a) particulars of every transaction carried out on behalf of customers, including —
 - (i) a description and the quantity of the assets (including digital payment tokens) that are the subject of the transaction;
 - (ii) the price and fee arising from the transaction;
 - (iii) the name of the customer on whose behalf the transaction is entered into;



- (iv) the name of the counterparty to the transaction; and
 - (v) the transaction date and settlement or delivery date;
 - (b) particulars of every transaction in which the licensee lends, or arranges for a safeguarding institution to lend, a customer's assets (including digital payment tokens), including —
 - (i) the terms and conditions of the transaction; and
 - (ii) if any collateral is received, a description of the collateral received;
 - (c) a separate record maintained for each customer stating, where applicable —
 - (i) the amount and description of each asset (including digital payment tokens) deposited in the custody account as required under this regulation and the date of such deposit;
 - (ii) the date and quantity of each transfer of assets (including digital payment tokens) from or to the custody account arising from any borrowing or lending activity or otherwise in respect of such assets;
 - (iii) the date, amount and purpose of each transfer of assets (including digital payment tokens) from the custody account;
 - (iv) the date and amount of, and the reason for, each disposal of collateral from the custody account;
 - (v) whether the customer has a custody account maintained by the licensee solely for that customer, or shares the same custody account with other customers of the licensee; and
 - (vi) the names of the safeguarding institutions with whom the licensee deposits any assets (including digital payment tokens) belonging to the customer.

(7) Nothing in this regulation is to be construed as avoiding or affecting any lawful claim or lien which any person has in respect of any assets (including digital payment tokens) held in a custody account in accordance with this regulation or any assets belonging to a customer before the assets (including digital payment tokens) are deposited into a custody account.

(8) In this regulation —

- (a) "assets (including digital payment tokens)" in relation to a licensee, means assets (including digital payment tokens) that are beneficially owned by a customer of the licensee, but does not include money;
- (b) "business day" means any day other than a Saturday, Sunday, public holiday or bank holiday;
- (c) "customer", in relation to a licensee, does not include —
 - (i) the licensee in carrying out any digital payment token service for its own account;
 - (ii) an officer or an employee of the licensee; or



(iii) a related corporation of the licensee with respect to an account belonging to and maintained wholly for the benefit of that related corporation;

(d) “related corporation” has the meaning given by section 4(1) of the Companies Act 1967;

(e) “safeguarding institution” refers to the person that the custody account mentioned in paragraph (1)(a) is maintained with.

(9) Despite paragraph (8)(e), a licensee mentioned in paragraph (1)(a) may maintain the custody account itself.

(10) Paragraphs (3)(a), (3)(b)(i), 3(b)(ii)(F), (3)(e), (3)(f) and (3)(k) shall not apply to a licensee mentioned in paragraph (1)(a) that maintains the custody account itself.

(11) A licensee mentioned in paragraph (1)(a) must, no later than noon of every business day, complete a computation of —

(a) the total amount of assets (including digital payment tokens) deposited in its customers’ custody accounts; and

(b) the total amount of assets (including digital payment tokens) belonging to its customers required under this regulation to be deposited in custody accounts,

as at the end of the previous business day.

(12) A licensee that contravenes paragraph (1), (3) (other than 3(b)(ii)), (6) or (11) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$250,000 and, in the case of a continuing offence, to a further fine not exceeding \$25,000 for every day or part of a day during which the offence continues after conviction.

Safeguarding of assets (including digital payment tokens) belonging to customers by exempt payment service providers

16D.—(1) An exempt payment service provider that provides a digital payment token service must, no later than the next business day after any assets (including digital payment tokens) are received from, or on account of, a customer:

(a) deposit the assets (including digital payment tokens) belonging to the customer in a custody account held on trust for the customer that is maintained with a safeguarding institution; or

(b) return the assets (including digital payment tokens) to the customer.

(2) All assets (including digital payment tokens) deposited in the custody account mentioned in paragraph (1)(a) —

(a) cannot be used for the payment of the debts of the exempt payment service provider; and

(b) are not liable to be taken under or pursuant to an enforcement order or a process of any court.

(3) An exempt payment service provider mentioned in paragraph (1)(a) —



- (a) must, before opening the custody account, assess, and satisfy itself of, the suitability of the safeguarding institution with respect to the depositing of the assets (including digital payment tokens) belonging to its customers in a custody account opened with the safeguarding institution;
- (b) must, before depositing the assets (including digital payment tokens) belonging to a customer in the custody account —
 - (i) give written notice to the safeguarding institution and obtain an acknowledgment from the safeguarding institution that —
 - (A) all assets (including digital payment tokens) belonging to its customers deposited in the custody account are held on trust by the exempt payment service provider for its customer;
 - (B) the safeguarding institution must not claim any lien, right of retention or sale over any asset (including digital payment tokens) standing to the credit of the custody account, except —
 - (i) where the exempt payment service provider has obtained the customer's written consent and notified the safeguarding institution in writing of the written consent; or
 - (ii) in respect of any charges as agreed upon in the terms and conditions relating to the administration or custody of the asset (including digital payment tokens); and
 - (C) the account is designated as a trust account, or a customer's or customers' account, which is distinguishable and maintained separately from any other account maintained with the safeguarding institution in which the exempt payment service provider deposits its own assets (including digital payment tokens); and
 - (ii) disclose in writing to its customer —
 - (A) that the assets (including digital payment tokens) belonging to the customer will be held by the exempt payment service provider on behalf of the customer in a custody account with a safeguarding institution;
 - (B) whether or not the assets (including digital payment tokens) belonging to the customer will be deposited in a custody account together with, and commingled with, the assets (including digital payment tokens) received by the exempt payment service provider from its other customers;
 - (C) if the assets (including digital payment tokens) belonging to the customer will be deposited in a custody account together with, and commingled with, the assets (including digital payment tokens) received by the exempt payment service provider from its other customers, the risks of such commingling;



- (D) the consequences for the customer in respect of the assets (including digital payment tokens) belonging to the customer if the safeguarding institution becomes insolvent;
 - (E) where the exempt payment service provider maintains the custody account itself, the terms and conditions that would apply to the exempt payment service provider’s safeguarding of the customer’s assets (including digital payment tokens); and
 - (F) where the exempt payment service provider maintains the custody account with a safeguarding institution, the terms and conditions agreed with the safeguarding institution that would apply to the safeguarding institution’s safeguarding of the customer’s assets (including digital payment tokens);
- (c) must —
- (i) treat and deal with all the assets (including digital payment tokens) received from a customer as belonging to the customer; and
 - (ii) deposit all the assets (including digital payment tokens) belonging to the customer in the custody account;
- (d) subject to paragraph (4), must not commingle the assets (including digital payment tokens) belonging to the customer with other assets (including digital payment tokens);
- (e) must assess, and satisfy itself of, the suitability of the safeguarding institution with respect to the depositing of the assets (including digital payment tokens) belonging to the customer in the custody account maintained with the safeguarding institution, on an annual basis subsequent to the depositing of the assets (including digital payment tokens);
- (f) must keep, for a period of 5 years or longer, records of the grounds on which the exempt payment service provider satisfied itself of the safeguarding institution’s suitability under sub-paragraph (a) or (e);
- (g) subject to paragraph (5), must not transfer any right, interest, benefit or title in the assets (including digital payment tokens) belonging to its customers that are deposited in the custody account to itself or any other person;
- (h) must apply the assets (including digital payment tokens) belonging to the customer that are deposited in the custody account solely for such purpose as may be agreed to by the customer;
- (i) must record and maintain a separate book entry for each customer in relation to the assets (including digital payment tokens) belonging to that customer;
- (j) must, in a manner that is commensurate with the nature, scale and complexity of its business, maintain adequate systems, processes, controls, human resources, and governance arrangements to:
- (i) ensure the integrity and security of the transmission and storage of assets (including digital payment tokens) belonging to its customers; and



- (ii) reduce the risk of any loss of assets (including digital payment tokens) belonging to its customers due to fraud or negligence on the part of the exempt payment service provider or any of the exempt payment service provider's agents;
- (k) must assess and ensure that the safeguarding institution maintains adequate systems, processes, controls, human resources, and governance arrangements to:
 - (i) ensure the integrity and security of the transmission and storage of assets (including digital payment tokens) belonging to its customers; and
 - (ii) reduce the risk of any loss of assets (including digital payment tokens) belonging to its customers due to fraud or negligence on the part of the safeguarding institution or any of the safeguarding institution's agents; and
- (l) must, in the case where the exempt payment service provider maintains the custody account itself, ensure effective controls and segregation of duties to mitigate potential conflicts of interest that may arise from the safeguarding of assets (including digital payment tokens) belonging to its customers.

(4) Despite paragraph (3)(d), an exempt payment service provider may deposit the assets (including digital payment tokens) belonging to a customer in a custody account with, and commingled with, the assets (including digital payment tokens) belonging to its other customers.

(5) Despite paragraph (3)(g), an exempt payment service provider may transfer any right, interest, benefit or title in the assets (including digital payment tokens) belonging to a customer from a custody account opened with a safeguarding institution if the transfer of the assets (including digital payment tokens) is for the purpose of —

- (a) transferring to any person or digital payment token account in accordance with the customer's written instructions obtained prior to each transfer; or
- (b) making a transfer that is authorised by law.

(6) For the purposes of paragraph (3)(i), the exempt payment service provider must keep books in the English language which contain the following, where applicable:

- (a) particulars of every transaction carried out on behalf of customers, including —
 - (i) a description and the quantity of the assets (including digital payment tokens) that are the subject of the transaction;
 - (ii) the price and fee arising from the transaction;
 - (iii) the name of the customer on whose behalf the transaction is entered into;
 - (iv) the name of the counterparty to the transaction; and
 - (v) the transaction date and settlement or delivery date;
- (b) particulars of every transaction in which the exempt payment service provider lends, or arranges for a safeguarding institution to lend, a customer's assets (including digital payment tokens), including —
 - (i) the terms and conditions of the transaction; and



(ii) if any collateral is received, a description of the collateral received;

(c) a separate record maintained for each customer stating, where applicable —

(i) the amount and description of each asset (including digital payment tokens) deposited in the custody account as required under this regulation and the date of such deposit;

(ii) the date and quantity of each transfer of assets (including digital payment tokens) from or to the custody account arising from any borrowing or lending activity or otherwise in respect of such assets;

(iii) the date, amount and purpose of each transfer of assets (including digital payment tokens) from the custody account;

(iv) the date and amount of, and the reason for, each disposal of collateral from the custody account;

(v) whether the customer has a custody account maintained by the exempt payment service provider solely for that customer, or shares the same custody account with other customers of the exempt payment service provider; and

(vi) the names of the safeguarding institutions with whom the exempt payment service provider deposits any assets (including digital payment tokens) belonging to the customer.

(7) Nothing in this regulation is to be construed as avoiding or affecting any lawful claim or lien which any person has in respect of any assets (including digital payment tokens) held in a custody account in accordance with this regulation or any assets belonging to a customer before the assets (including digital payment tokens) are deposited into a custody account.

(8) In this regulation —

(a) “assets (including digital payment tokens)” in relation to an exempt payment service provider, means assets (including digital payment tokens) that are beneficially owned by a customer of the exempt payment service provider, but does not include money;

(b) “business day” means any day other than a Saturday, Sunday, public holiday or bank holiday;

(c) “customer”, in relation to an exempt payment service provider, does not include —

(i) the exempt payment service provider in carrying out any digital payment token service for its own account;

(ii) an officer or an employee of the exempt payment service provider; or

(iii) a related corporation of the exempt payment service provider with respect to an account belonging to and maintained wholly for the benefit of that related corporation;

(d) “related corporation” has the meaning given by section 4(1) of the Companies Act 1967;

(e) “safeguarding institution” refers to the person that the custody account mentioned in paragraph (1)(a) is maintained with.



(9) Despite paragraph (8)(e), an exempt payment service provider mentioned in paragraph (1)(a) may maintain the custody account itself.

(10) Paragraphs (3)(a), (3)(b)(i), 3(b)(ii)(F), (3)(e), (3)(f) and (3)(k) shall not apply to an exempt payment service provider mentioned in paragraph (1)(a) that maintains the custody account itself.

(11) An exempt payment service provider mentioned in paragraph (1)(a) must, no later than noon of every business day, complete a computation of —

(a) the total amount of assets (including digital payment tokens) deposited in its customers' custody accounts; and

(b) the total amount of assets (including digital payment tokens) belonging to its customers required under this regulation to be deposited in custody accounts,

as at the end of the previous business day.

(12) An exempt payment service provider that contravenes paragraph (1) or (3) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$250,000 and, in the case of a continuing offence, to a further fine not exceeding \$25,000 for every day or part of a day during which the offence continues after conviction.

Application of regulations 14, 15 and 16 to exempt payment service providers

17. For the purposes of section 13(2) of the Act, read with section 23 of the Act —

(a) regulations 14 and 15 apply in relation to an exempt payment service provider as they apply in relation to a major payment institution or licensee; and

(b) regulation 16 applies in relation to an exempt payment service provider as it applies in relation to a major payment institution or licensee, except that where the exempt payment service provider is also a safeguarding institution and the exempt payment service provider intends to safeguard or safeguards the relevant money of a customer by depositing the relevant money in a trust account maintained with itself, the exempt payment service provider need not comply with regulation 16(1)(a), (b)(i), (e) and (f).