

CONSULTATION PAPER

P007-2015
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Consultation on Amendments to Securities and Futures (Exemption from Requirement to Hold Capital Markets Services Licence) Regulations

MAS

Monetary Authority of Singapore

PREFACE

To expand their futures clearing business, central clearing counterparties (“**CCPs**”) operating in Singapore may admit clearing members which are based overseas and do not have physical operations in Singapore (“**Remote Clearing Members**”), in addition to onshore clearing members. To the extent that Remote Clearing Members conduct their business activities outside Singapore and only serve overseas-based customers, the business conduct concerns which they pose are limited. Accordingly, MAS intends to exempt Remote Clearing Members which clear futures contracts on Singapore-based CCPs from the requirement to hold a Capital Markets Services (“**CMS**”) licence in respect of trading in futures contracts under the Securities and Futures Act (“**SFA**”), subject to certain conditions. This paper seeks views on the proposed exemption, including whether the conditions of exemption are adequate to address the risks that may arise from the participation of these Remote Clearing Members in Singapore’s clearing system.

2 MAS invites interested parties to forward their views and comments on the issues outlined in the consultation paper. Written comments should be submitted to:

Capital Markets Intermediaries Department III
Monetary Authority of Singapore
10 Shenton Way
MAS Building
Singapore 079117

Email: remoteclearing@mas.gov.sg
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3 We encourage respondents to provide their feedback via email.

4 MAS requests that all comments and feedback be submitted by 15 May 2015. Please note that any comments received may be made public unless confidentiality is specifically requested.

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1 INTRODUCTION

1.1 In September 2009, the G20 pledged to improve the regulation of the over-the-counter (“**OTC**”) derivative markets as part of a push to strengthen the international financial regulatory system. In particular, the G20 called for all standardised OTC derivatives to be traded on exchanges or electronic trading platforms, where appropriate, and cleared through CCPs. Since then, various major jurisdictions including Singapore have introduced new regulations to tighten regulation of OTC derivatives.

1.2 The OTC regulatory reforms have accelerated the shift in the derivatives market from OTC to exchange-traded, a trend that is commonly known as ‘futuresisation’. Futuresisation in turn creates opportunities for global derivatives exchanges and CCPs to enter new markets to enlarge their customer base. Some of these exchanges and CCPs have begun expanding their footprints in Asia including Singapore.

1.3 MAS recognises it is important that exchanges and CCPs operating in Singapore are able to ride on the futuresisation trend and tap on offshore entities to grow their businesses. With respect to trading, remote trading members (i.e. trading members which are based in other jurisdictions and do not have a physical presence in Singapore) of Singapore-based exchanges are exempt from the requirement to hold a CMS licence for trading in futures contracts, subject to conditions¹. Similarly, MAS is proposing to exempt Remote Clearing Members of Singapore-based CCPs from holding a CMS licence for trading in futures contracts, subject to conditions.

1.4 Notwithstanding the proposed exemption, MAS is of the view that allowing the participation of Remote Clearing Members will pose additional risks to Singapore-based CCPs. It is important for Singapore-based CCPs, in assessing whether to admit Remote Clearing Members, to ensure that they are able to exercise proper supervisory oversight of such members, and to put in place appropriate safeguards to mitigate the additional risks. Singapore-based CCPs should ensure that their Remote Clearing Members are appropriately licenced or regulated in comparable jurisdictions or are otherwise willing to submit themselves to the same requirements that are applicable to onshore clearing members.

¹ The scope and conditions of the exemption are set out in the Securities and Futures (Exemption from Requirement to Hold Capital Markets Services Licence) Regulations.

2 EXEMPTION FROM THE REQUIREMENT TO HOLD A CAPITAL MARKETS SERVICES LICENCE

2.1 By virtue of the extra-territorial provisions under section 339 of the SFA, a Remote Clearing Member of a Singapore-based CCP which clear futures contracts for its customers would be deemed to be carrying on business in trading in futures contracts and would be required to hold a CMS licence², even if its customers are based outside Singapore.

2.2 However, where the Remote Clearing Member conducts its business activities outside Singapore and only serves overseas-based customers, the business conduct concerns which it poses to Singapore customers are limited. Accordingly, MAS intends to exempt a Remote Clearing Member which clears futures contracts on a Singapore-based CCP from the requirement to hold a CMS licence in respect of trading in futures contracts provided the Remote Clearing Member:

- (a) is incorporated outside Singapore;
- (b) does not serve any customer resident in Singapore;
- (c) does not carry on business in providing financial services in Singapore;
- (d) carries on business in a jurisdiction where the relevant regulator has an arrangement with the Authority for information exchange and co-operation in respect of futures supervision; and
- (e) is registered, licensed, approved or otherwise regulated in respect of trading in futures contracts by the relevant regulator in its home jurisdiction.

2.3 The conditions in paragraph 2.2(d) and (e) seek to ensure that the Remote Clearing Member is subject to oversight and supervision in its home jurisdiction, and that MAS is able to obtain information or assistance from the home regulator should the need arise.

² Pursuant to the Second Schedule to the Securities and Futures (Licensing and Conduct of Business) Regulations, a Remote Clearing Member which clears proprietary trades is exempt from the requirement to hold a CMS licence in respect of trading in futures contracts.

2.4 Should a Remote Clearing Member wish to extend its business to serve Singapore-based customers, it would need to establish a physical presence in Singapore and apply for a CMS licence.

2.5 MAS will amend the Securities and Futures (Exemption from Requirement to Hold Capital Markets Services Licence) Regulations (the “Exemption Regulations”) to effect the abovementioned exemption. The draft of the amended Exemption Regulations is set out in Annex 1.

Q1. MAS seeks views on the proposed exemption, including whether the conditions of exemption adequately address the business conduct concerns arising from the participation of Remote Clearing Members in Singapore’s clearing system.



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