

By E-mail

To: SFA_FAA_LegisConsult@mas.gov.sg

June 30, 2017

Dear Sirs and Madams,

Consultation Paper II on Draft Regulations Pursuant to the Securities and Futures Act

The International Swaps and Derivatives Association, Inc. (**ISDA**), the Futures Industry Association (**FIA**) and the Asia Securities Industry & Financial Markets Association (**ASIFMA**) (together the **Associations**) welcome the opportunity to provide feedback to the Monetary Authority of Singapore (**MAS**) on its Consultation Paper II on Draft Regulations Pursuant to the Securities and Futures Act (the **Consultation Paper II**).

Since 1985, ISDA has worked to make the global derivatives markets safer and more efficient. Today, ISDA has over 850 member institutions from 68 countries. These members comprise a broad range of derivatives market participants, including corporations, investment managers, government and supranational entities, insurance companies, energy and commodities firms, and international and regional banks. In addition to market participants, members also include key components of the derivatives market infrastructure, such as exchanges, intermediaries, clearing houses and repositories, as well as law firms, accounting firms and other service providers.

FIA is the leading global trade organisation for the futures, options and centrally cleared derivatives markets, with offices in London, Singapore and Washington, D.C. FIA's membership includes clearing firms, exchanges, clearinghouses, trading firms and commodities specialists from more than 48 countries as well as technology vendors, lawyers and other professionals serving the industry. FIA's mission is to support open, transparent and competitive markets, protect and enhance the integrity of the financial system, and promote high standards of professional conduct. As the principal members of derivatives clearinghouses worldwide, FIA's clearing firm members play a critical role in the reduction of systemic risk in global financial markets.

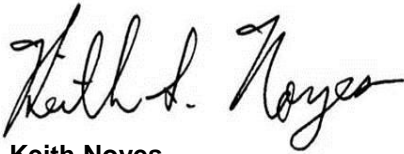
ASIFMA is an independent, regional trade association with more than 100 member firms comprising a diverse range of leading financial institutions from both the buy and sell side, including banks, asset managers, law firms and market infrastructure service providers. Through the GFMA alliance with SIFMA in the US and AFME in Europe, ASIFMA also provides insights on global best practices and standards to benefit the region.

The Associations note that the Securities and Futures (Amendment) Act 2017 (the **Act**) was passed in Parliament on January 9, 2017 and are fully supportive of MAS's efforts to consult on the draft Regulations as set out in Consultation Paper II.

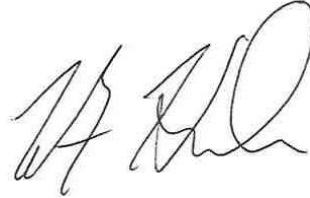
We set out our general comments and more detailed responses to the questions raised in Consultation Paper II in the template provided by MAS and attached as an Appendix to this letter. Our comments are focused on the revised Securities and Futures (Licensing and Conduct of Business) Regulations.

We thank you for this opportunity to respond to Consultation Paper II and we would be happy to discuss with you in greater detail the comments we have provided. Please do not hesitate to contact Keith Noyes, Regional Director, Asia Pacific of ISDA (knoyes@isda.org or at +852 2200 5909), Jing Gu, Senior Counsel of ISDA (jgu@isda.org or at +65 6653 4170), Erryan Abdul Samad, Assistant General Counsel of ISDA (eabdulsamad@isda.org or at +65 6653 4170), Phuong Trinh, General Counsel of FIA (ptrinh@fia.org or at +65 6549 7335) and Wayne Arnold, Executive Director – Head of Policy and Regulatory Affairs (warnold@asifma.org or at +852 2531 6560) if you have any questions.

Yours sincerely,



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RESPONSE TO CONSULTATION PAPER

Please note that all submissions received will be published and attributed to the respective respondents unless they expressly request MAS not to do so. As such, if respondents would like (i) their whole submission or part of it, or (ii) their identity, or both, to be kept confidential, please expressly state so in the submission to MAS. In addition, MAS reserves the right not to publish any submission received where MAS considers it not in the public interest to do so, such as where the submission appears to be libellous or offensive.

Consultation topic:	Draft Regulations Pursuant to the Securities and Futures Act (Consultation Paper II)
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Confidentiality	
I wish to keep the following confidential:	Not applicable. <i>(Please indicate any parts of your submission you would like to be kept confidential, or if you would like your identity to be kept confidential. Your contact information will not be published.)</i>

General comments:

1. We welcome the opportunity to provide feedback and to continue to work with MAS on this important initiative. We will be providing feedback on the revised Securities and Futures (Licensing and Conduct of Business) Regulations (**SF(LCB)R**) and the Securities and Futures (Offers of Investments)(Shares, Debentures and Business Trusts) Regulations 2017 (**SF(OI)(SBDT)R**) only insofar as they concern securities-based derivatives contracts.

2. We note that the SF(LCB)R represents the culmination of, *inter alia*, the following:

(a) MAS's Consultation Paper on Regulatory Framework for Intermediaries Dealing in OTC Derivatives Contracts, Execution-Related Advice, and Marketing of Collective Investment Scheme dated June 3, 2015 together with MAS's Response dated May 26, 2017 (**OTC Response**);

(b) MAS's Consultation Paper on Enhancements to Regulatory Requirements on Protection of Customer's Moneys and Assets dated July 19, 2016 together with MAS's Response dated May 26, 2017;

(c) MAS's Consultation Paper on Review of Regulatory Framework for Unlisted Margined Derivatives Offered to Retail Investors dated May 28, 2012 together with MAS's Response dated March 14, 2014; and

(d) MAS's Consultation Paper on Draft Regulations to Enhance the Regulatory Framework for Unlisted Margined Derivatives Offered to Retail Investors dated March 14, 2014 together with MAS's Response dated May 26, 2017 (**2017 UMDRI Response**).

(collectively, the **Consultation Papers and Responses**).

3. The amendments that we have proposed to the SF(LCB)R are largely to align the SF(LCB)R with the positions set out in the Consultation Papers and Responses. In addition, there are a number of points (not all of which have been incorporated into our proposed amendments to the SF(LCB)R) which we wish to submit for MAS's further re-consideration:

(a) With regard to the classification of customers as accredited investors, we note that MAS plans to introduce an opt-in regime for accredited investors. We would instead propose an opt-out regime. The re-papering exercise associated with an opt-in regime is significant and given the other regulatory-driven demands on banks' resources, not something to be undertaken lightly.

(b) With regard to the application of the customer money and assets protection regime in Part III of the SF(LCB)R, we note that MAS's intention is that:

- the regime will apply to retail customers who will not be given the choice of opting out of the protections afforded by Part III;
- accredited investors, expert investors and institutional investors (**Non-retail Investors**) will have the option of opting out of the protections afforded by Part III.

We would instead propose that moneys and assets of a Non-retail Investor, at least when the Non-retail Investor is dealing with banks and merchant banks, not be subject to Part III unless such Non-retail Investor opts-in to Part III.

(c) In relation to foreign banks, we propose that the risk mitigation requirements for uncleared derivatives contracts be limited to transactions booked in their Singapore branch. We note that in

the OTC Response, MAS has dropped the original prescriptive approach in favour of a principles-based approach. As such, we understand that the question of substituted compliance with the risk mitigation requirements of other jurisdictions would no longer be relevant. However, we would like to seek MAS's assurance that MAS would consider compliance with the risk mitigation requirements of the jurisdictions that are part of the Working Group on Margin Requirements to be sufficient.

4. MAS has stated in the OTC Response that it will grant a 2-year transitional period for compliance with both the licensing and business conduct requirements. However, in the 2017 UMDRI Response, MAS has proposed a different transition period for, *inter alia*, the following:

(a) Amendments to regulation 16 (separate customer money trust accounts for listed and unlisted derivatives) – 18 months.

(b) Amendments to the following regulations in the SF(LCB)R:

- regulation 17 - retail customers' money in connection with unlisted derivatives cannot be held outside Singapore;
- regulation 21 - retail customers cannot agree that its money can be used for onward hedging of unlisted derivatives;
- regulation 35 - retail customers cannot agree that its assets can be used for onward hedging of unlisted derivatives;
- regulation 37 - daily computation of trust and custody accounts extended to dealing in all capital market products; and
- regulation 47BA - holder must act as principal for unlisted derivatives when dealing with retail customers

– 12 months.

We strongly submit that the transition periods for sub-paragraphs (a) and (b) should also be 2 years. Implementation in a piece-meal fashion would be impracticable and counter-productive.

5. We also note that MAS, in the 2017 UMDRI Response, has proposed a 12-month transition period for the imposition of the increased minimum margining requirements for contracts for differences under the revised Securities and Futures (Financing and Margin Requirements for Holders of Capital Markets Services Licences) Regulations and the extension of the application of these requirements to exempt banks, merchant banks and finance companies under the proposed Securities and Futures (Margin Requirements for Exempt Financial Institutions) Regulations (**SF(FMR)R**). First, we would like to emphasize the importance of revising the definition of "contracts for differences" along the lines of what we have proposed in our comments on the SF(LCB)R. As currently defined, all over-the-counter derivatives contracts would be contracts for differences and thus subject to the minimum margin requirements set out in the SF(FMR)R. This would be in conflict with the margin requirements under MAS's Guidelines on Margin Requirements for Non-Centrally Cleared OTC Derivatives Contracts (**MAS's Margin Guidelines**). Secondly, we urge that the transition period be increased to 2 years to align with the implementation of the other requirements (at the very least, insofar as the extension of the SF(FMR)R to exempt banks, merchant banks and finance companies is concerned).

6. We presume that MAS will, in due course, update its FAQs on the SF(LCB)R. We would like to be able to provide input on this.

7. We would like to ask MAS to elaborate on its plans with regard to the Financial Advisers Act (**FAA**) and Regulations (**FAR**) thereunder. Regulation 27A of the FAR exempts a bank or merchant bank from the notification and business conduct requirements under the FAA if it provides advice in connection with contracts or arrangements for the purpose of foreign exchange trading if these are arranged by any bank or merchant bank. We seek MAS's confirmation that this exemption will not be removed. Given that the ramifications of any amendments to the FAA or FAR will be far-reaching, we assume that MAS will in due course, conduct a separate consultation on this. Please confirm. We would also emphasize the need for a similar 2-year transition period.

8. Similarly, we would like to ask MAS to elaborate on its plans with regard to the Commodity Trading Act (**CTA**) and Regulations (**CTR**) thereunder. In addition to commodity brokers, commodity pool operators are regulated under the CTA and CTR. As there is no analogous concept to commodity pool operators under the Act, we would appreciate MAS's elaboration on how the commodity pool operator regime will be transposed under the Act, in particular, on points such as the handling and commingling of customer moneys and assets. Commodity trading advisers are also regulated under the CTA and CTR. We note that in relation to commodity brokers (and we presume commodity pool operators), MAS has confirmed in the OTC Response that there will be a 2-year transition period. We presume that a 2-year transition period will also be afforded to commodity trading advisers when their regulation is migrated from the CTA to the FAA.

9. Further, we seek MAS's clarification of its plans with regard to money brokers licensed under the Monetary Authority of Singapore Act (**MAS Act**). We understand that money brokers that will become regulated as recognised market operators under the Act will no longer need to be licensed as money brokers under the MAS Act. Please advise on the position with regard to money brokers that will not become regulated as recognised market operators under the Act. Their business of broking foreign exchange transactions will now fall within the definition of dealing in capital markets products that are derivatives contracts. Insofar as their money market activities are concerned, where the money market instrument that they deal in is not a bill of exchange or a certificate of deposit issued by a bank or finance company, it would fall within the definition of dealing in capital markets products that are securities. Given that this would be contrary to MAS's philosophy of a single license, we presume that MAS will not require such money brokers to have dual licenses. Thus, does MAS intend to exempt such money brokers from the Act, or to migrate money brokers over to the capital markets intermediaries' regime under the Act? It is relevant to bear in mind the role that money brokers play in relation to "traded" financial benchmarks such as the Singapore Swap Offer Rate – under the proposed Securities and Futures (Financial Benchmarks) Regulations 2017, money brokers will need to be authorised as authorised benchmark submitters.

10. Members have expressed concern that not all the exemptions provided in the Schedule to the CTA have been incorporated into the Second Schedule to the SF(LCB)R. In particular, we note that the exemption in paragraph 1(a) of the Schedule to the CTA and the Finance and Treasury Centre exemption under paragraph 1(d) have not been incorporated. If these exemptions are not incorporated into the Second Schedule to the SF(LCB)R, market participants that are not banks or merchant banks have expressed concern about their ability to continue their activities.

11. "Commodity" is defined in the Act to mean "any produce, item, goods or article" and "any index, right or interest" therein. MAS has the power to prescribe any item including intangible

property as a commodity. We note that MAS in its Response dated February 11, 2015 on the Consultation Paper on the Transfer of Regulatory Oversight of Commodity Derivatives from IE Singapore to MAS dated February 13, 2012 has stated that it will preserve the status quo of regulating only tangible commodity derivatives. We seek MAS's confirmation of this position so that intangible commodity derivatives such as freight, weather and longevity derivatives will not be in-scope.

12. We would like to seek clarification on the process for grand-fathering and extending existing arrangements under paragraph 9 of the Third Schedule to the Act and paragraph 11 of the First Schedule to the FAA. Should members approach MAS bilaterally? Or should they wait for MAS to issue further guidance on the process?

13. We note that MAS, in its OTC Response, has said that it will engage the industry separately on the grand-fathering of existing representatives. We thus assume that members should, in this regard, wait for MAS to issue further guidance on the process. We would like to seek MAS's confirmation that the grand-fathering in relation to minimum academic qualifications and CMFAS examination requirements will apply regardless of any change in employer.

14. We would like to seek confirmation on the following points in regard to the licensing transitional arrangements:

(a) The person is carrying on business of dealing in currency and interest rate derivatives. After the Act comes into force (date 'T'), we assume that the person can expand into other asset classes (e.g. credit, equity or commodity derivatives) during the 2-year transition period.

(b) Given that the Act represents a paradigm shift, there may be banks that decide to restructure their OTC derivatives business by conducting that business in a separate subsidiary (just as there are banks that carry on their securities brokerage business in a separate subsidiary). We assume that such a subsidiary will also be able to benefit from the 2-year transition period even if the transfer of the bank's OTC derivatives business to the subsidiary were to take place after T.

15. We note that under the Act, the offer of "securities-based derivatives contracts" to persons in Singapore will need to comply with the offering rules in Part XIII of the Act.

16. We note that "securities" has been re-defined in the Act to mean shares, debentures, units in a business trust and instruments that confer or represent a legal or beneficial ownership interest in a corporation, partnership or limited liability partnership. In short, securities fundamentally mean instruments that represent or confer an ownership interest in an undertaking or a right to payment or repayment of money. Thus, instruments such as warrants and physically-settled credit-linked notes would not fall within the revised definition of securities. We assume that the rationale for extending the offering rules in Part XIII to securities-based derivatives contracts stems from this. However, as the definition of "securities-based derivatives contracts" means a derivatives contract that includes a security or a securities index as an underlying thing, the offering rules now apply to a much broader swath than appropriate.

17. The offering rules now apply to securities-based derivatives contracts that are futures contracts. We are of the view that this should not be the case. Indeed, the Act includes a definition of "specified securities-based derivatives contracts", that is, securities-based derivatives contracts that are not futures contracts. Our first submission on the offering rules is that only specified securities-based derivatives contracts should be subject to Part XIII of the Act. We

would request that the Act be amended or that MAS exercise its powers under Section 239A(1) of the Act accordingly.

18. Our second submission on the offering rules is that offers of specified securities-based derivatives contracts should be treated as closely related only if they have the same underlying security or securities index or basket, the same start dates, fixing dates and maturity dates, and the same risk and pay-off profiles. In this regard, we propose that regulation 28(1) of the SF(OI)(SDBT)R be amended as set out in our response to Question 7 below.

19. We are also of the view that the prospectus requirements are not well-suited to securities-based derivatives contracts (particularly those that relate to securities indices) and would like to work with MAS to come up with a revised form that would work better for securities-based derivatives contracts.

20. We note that paragraphs (e) to (h) of section 273 of the Act introduces various exemptions from the offering rules for securities-based derivatives contracts. In brief, these exemptions apply if:

- (a) the underlying securities are listed; and
- (b) (i) the securities-based derivatives contract is listed; or
(ii) for a cash-settled securities-based derivatives contract, the disclosure requirements set out in regulation 29A of the Securities and Futures (Offers of Investments) (Shares, Debentures and Business Trusts) Regulations 2017 (SF(OI)(SDBT)R) are complied with.

21. While the above exemptions will provide some relief, we expect that reliance will also be placed on the exemptions provided by section 274 (offers to institutional investors), section 275(1) (offers to accredited investors) and section 275(1A) (large transactions). Given that expert investors are now banded together with institutional investors and accredited investors, we are of the view that the exemption should be extended to offers to expert investors. Section 275(1A) uses a “consideration” of not less than SGD200,000 as the test. We submit that the equivalent in the context of securities-based derivatives contracts should be the “notional amount” of the contract. We would request that MAS amend the relevant provisions in the Act or to the extent appropriate, exercise its powers under Section 239A(1) of the Act accordingly.

22. There is no mention of a transition period in regard to the application of the revised offering rules in Part XIII of the Act and the SF(OI)(SDBT)R. We would request that a similar 2-year transition period be provided, at least in regard to the application of the offering rules to securities-based derivatives contracts.

Question 1. MAS seeks comments on proposed amendments to the SF(LCB)R at Annex B.

Please see the attached draft SF(LCB)R with our amendments/comments marked-up on it and highlighted in yellow. As mentioned in paragraph 3, this does not reflect the entirety of our submissions and we hope to be able to discuss this further with MAS.

Question 2. MAS seeks comments on the proposal to amend regulation 39(2)(a) of the SF(LCB)R such that CMS licensees have to keep the books or documents required under this regulation when they deal with all types of investors.

We have no objections to this.

Question 3. MAS seeks comments on the proposal to limit the application of title transfer collateral arrangement to customers who are accredited, institutional or expert investors.

A crucial point is that nothing in the SF(LCB)R should interfere or otherwise detract from the application of MAS's Margin Guidelines. Subject to MAS accepting our proposed carve-out for any money or assets provided or otherwise dealt with pursuant to or in order to comply with the Margin Guidelines, we do not object to this proposal.

Question 4. MAS seeks comments on the proposal to broaden the exemptions that are currently available to CMS licensees when they deal with accredited and/or institutional investors, such that these exemptions will similarly be available to CMS licensees when they deal with expert investors.

1. We are in full support of this.
2. We would also like to seek MAS's confirmation that it intends to phase-out "high net worth individuals" (HNWI) under MAS's Guidelines on Exemption for Specialised Units Serving High Net Worth Individuals under section 100(2) of the FAA and that the phase-out period will be 2 years. The definition of HNWI is different from the definition of "accredited investor" in that (i) it is a mix of both the current and prospective definition of "accredited investor" and (ii) it has a prospective component in that an individual assessed by the applicant to have the potential to become a HNWI within 2 years can be treated as a HNWI.

Question 5. MAS seeks comments on the proposal to exempt Remote Clearing Members clearing OTC derivatives contracts on Singapore-based CCPs from the requirement to hold a CMS licence, subject to certain conditions.

We have no objections to this proposal but we would like to confirm if MAS will take the same policy approach with respect to clearing of OTC derivatives contracts as MAS is taking with the clearing of futures contracts.

In its Response dated August 5, 2016 on MAS's Consultation Paper on Proposed Amendments to Securities and Futures (Exemption from Requirement to hold Capital Markets Services Licence) Regulations dated April 24, 2015, MAS has set out certain conditions to the licensing exemption as they relate to futures contracts:

- (a) a financial institution which has an affiliate carrying on business in providing financial services in Singapore would not qualify for the exemption and would not be eligible as a remote clearing member of a Singapore-based CCP.

- (b) an overseas financial institution and its Singapore affiliate will not be eligible to apply to MAS for approval of an arrangement under Paragraph 9 of the Third Schedule to the Act if the purpose of the arrangement is to allow the overseas financial institution to clear trades of customers resident in Singapore on Singapore-based CCPs.

MAS also stated that the condition that restricts a remote clearing member from serving any customers resident in Singapore does not preclude the remote clearing member from responding to unsolicited enquiries or applications from customers resident in Singapore.

Will the above approach also be taken for the clearing of OTC derivatives? We support MAS taking the same policy approach for both the clearing of futures contracts and OTC derivatives.

Question 6. MAS seeks comments on the proposal to remove the \$250,000 base capital requirement category.

We have no objections to this.

Question 7. MAS seeks comments on the consequential amendments in the draft SF(OI)(SDBT)R, attached as Annex C, arising from the SF(A) Act.

1. We have reviewed the (SF(OI)(SDBT)R) only insofar as they concern securities-based derivatives contracts.

2. We note that only regulations 27, 28, 29 and 29A relate to securities-based derivatives contracts. We have no particular points of note on these regulations, other than on regulation 28(1) as follows:

“ ... if either –

(A)(i) both offers form part of a single plan of financing;

(ii) both offers are made for the primary benefit of the same person or persons; or

(iii) both offers are made in connection with the same business or in relation to a common business venture; or

(B) both offers of securities-based derivatives contracts have the same underlying thing or underlying things; have the same start dates, fixing dates and maturity dates; and have the same formula or methodology for determining the payment amount to be made and/or the number of securities to be delivered and by whom.

Question 8. MAS seeks comments on the proposed amendments on the disclosure of financial information in a prospectus in the draft SF(OI)(SDBT)R as attached in Annex C.

No comments.

Question 9. MAS seeks comments on the proposed amendments to prescribe the specific information that can be incorporated into a prospectus by reference, and the conditions and restrictions for incorporating information by reference, in the draft SF(OI)(SDBT)R as attached in Annex C.

No comments.

Question 10. MAS seeks comments on a new provision to prescribe the form and content of the OIS required for the prospectus exemption for an offer of securities by a subsidiary of a listed entity, in the draft SF(OI)(SDBT)R as attached in Annex C.

No comments.

Question 11. MAS seeks comments on the proposed amendments to the disclosure requirements set out in the Schedules of the SF(OI)(SDBT)R, as attached in Annex C.

No comments.