ASIFMA Response to MAS Consultation Paper on Proposed Exemption Framework for Cross-Border Business Arrangements of Capital Markets Intermediaries Involving Foreign Offices

15 April 2021

Confidentiality

1. Would you like to keep your identity confidential?

   [ ] Yes

   [X] No

2. Would you like to keep your submission confidential?

   [X] 1. I do not wish to keep my submission confidential

   [ ] 2. I wish to keep my entire submission confidential

   [ ] 3. I wish to keep part of my submission confidential (please expressly specify under each question in the submission)

List of Questions

3. Question 1. MAS seeks comments on the introduction of the proposed Branch Framework, as set out in section 3. (optional)

We are supportive of the proposed Branch Framework, which provides certainty to the position for foreign offices and ensures a level playing field between the FRC framework as well as Foreign Offices.

(A) Scope and application of regulation

In the course of considering the application of the Branch Framework in practical situations, we (noting MAS' comments in paragraph 2.2 of the Consultation Paper) have identified a number of areas where it is unclear if a Foreign Office or a Foreign Subsidiary would come into scope of the SFA and FAA. These situations arise because of shifts in the way that the industry conducts business. Two key factors stand out: (i) technological improvements have resulted in greater centralisation of relationships and functions, such as call centres or other functions, as well as the concentration of product or service specialists in a single location, and (ii) the increasing globalised nature of companies means that they may have relationships with an institution in multiple jurisdictions, and may equally conduct their business on centralised basis or in a manner that is not apparently tied to a specific office or jurisdiction – this in turn creates ambiguity as to whether they are "Singapore clients" for the purposes of the Branch Framework.

We have identified a number of these areas below and summarised the concerns. We are grateful to the MAS for the guidance provided in the Guidelines on the Application of Section 339 (Extra-territoriality) of the Securities and Futures Act, but note that the evolving landscape means that the guidance (last updated in 2014) may not address many scenarios that international financial institutions ("**FIs**") now have to contend with. We would therefore be very keen to engage with the MAS on this, and would be grateful if MAS could provide further guidance on these issue and/or generally consider a broader roundtable discussion on the scope of the extra-territorial reach of Singapore regulations.

(1) Whether arrangements for FIs relying on "follow the sun" models would need to comply with the Branch Framework

MAS has noted that where the conduct of the regulated activity takes place wholly outside Singapore but has a substantial and reasonably foreseeable effect in Singapore, the Foreign Offices are subject to the applicable conduct requirements under the SFA and FAA.

Many global leading FIs provide a seamless market access service to clients with a global presence via a "follow the sun" model, where sales and trading desks located in different jurisdictions can provide client support and execution instructions received from clients globally. It is the preferred model as opposed to setting up a local team in Singapore providing round-the-clock support for a relatively small volume of trades. We understand that some industry players rely on the clients' reverse enquiry (where there is no solicitation by the Foreign Office) to provide such services. In such cases, the foreign representatives would not pro-actively contact clients to provide regulated services but would act based on requests from clients only when contacted by clients, perhaps via a hotline, to execute a certain trade.

In other cases, for example where the FI is involved in banking and mergers and acquisition ("**M&A**") activity, international debt capital markets ("**DCM**") issuances (for instance USD, EUR, GBP issuances) can typically involve a head office (therefore relying on the proposed branch framework) with various functions (such as product coverage or syndicate) being based outside Singapore. Certain client coverage activities will be undertaken by the relevant Singapore based banking team such as in time-zone transaction management, physical attendance at pitch and/or due diligence and/or drafting meetings). Cross-border M&A transactions can include an onshore buyer/seller are working with an offshore seller/buyer with the non-Singapore based team taking the lead advising the onshore client (for instance because of pre-existing global relationship with the client group). The Singapore based team may be providing certain local geographic/sector support in time zone and may attend meetings at which the client is present in Singapore. In these scenarios, since the Singapore-based banking team would not be carrying on business under the Singapore branch, it would not be relying on its Singapore licence. Please could MAS clarify that, provided the Singapore FI is supporting the relevant offshore branch in undertaking permissible business under the Branch Framework, the Singapore FI will not be subject to additional conduct/license/supervision requirements in Singapore (vis-à-vis its Foreign Offices).

Other industry players also rely on the limited persons "exemption" when providing services from wholly offshore (by a FRC or Foreign Office, with no involvement of the Singapore FI), where the services are only provided to a limited number of persons in Singapore (i.e. no more than 20), each of whom qualifies as an "accredited investor" or "institutional investor".

In particular, we note that MAS has stated in paragraph 4.5(a) of the Guidelines on the Application of Section 339 (Extra-Territoriality) of the Securities and Futures Act [SFA 15-G01] that it is not MAS' policy intent to regulate activities that a foreign entity carries on wholly outside Singapore that involve persons in Singapore where the foreign entity is responding to unsolicited enquiries or applications from persons in Singapore.

On the basis that such arrangements are meant to provide support to existing clients, and not to expand active solicitations beyond the Singapore team, we would appreciate if MAS can confirm that such cross-border arrangements are not intended to fall within the Branch Framework.

(2) Clients acting through multiple offices

Multi-national clients frequently deal with banks through multiple different offices. However, certain functions of the client may be centralised – for instance, their trading teams may sit within a certain

office and have authority to book trades out to other offices (or members of the group). In these cases, the decision on where to book the trade may not be taken until as late as the point of trade execution.

Similarly, there are cases where a bank may deal with a fund manager that has discretion to allocate trades between multiple clients or accounts. The bank may not have visibility on the jurisdiction or location of the end client or account until such time that the trade is executed. It is not operationally feasible or possible for the bank to treat the entire arrangement as being in-scope (particularly where the manager and other accounts are located outside Singapore).

We would submit that in the above circumstances, the bank's activities should not be considered to have a substantial or reasonably foreseeable effect in Singapore and would be grateful for further guidance from MAS on this.

(B) Responses on scope of Branch Framework

We have set out below some general comments on the implementation and application of the Branch Framework.

(1) Scope of "business arrangement"

Please could MAS confirm that, as long as the Singapore FI complies with the requirements under the Regulations and the Notices, FIs are otherwise free to determine the roles and level of involvement of the Singapore FI and the Foreign Office.

(2) Regulatory treatment of representatives

Please could MAS provide guidance on when a foreign representative is considered to be acting on behalf of Singapore FI (where the proposed Branch Framework would not apply) or on behalf of the Foreign Office (where the proposed Branch Framework would apply).

In particular:

(a) in the case where the foreign representative engages with clients (regardless of domicile) and the Singapore FI is used purely as a booking centre, would the foreign representative be considered as acting on behalf of Singapore FI? Consequently, if the foreign representative engages with Singapore clients, and the Foreign Office is used as the booking centre, would the foreign representative be considered as acting on behalf of the Foreign Office;

(b) in the case that the only Singapore nexus is the domiciliation of the client (i.e. it is domiciled in Singapore, but the trade is booked outside of Singapore), please could MAS clarify if (in addition to the ask above as to whether this is in scope for Singapore regulations) that representatives dealing with the client's traders would be considered foreign representatives under the Branch Framework. We would submit that this should not be the case, given that the foreign representatives are facing an offshore office of the client and may not have visibility on the booking location; and

(c) in the case that a foreign representative is only informed that it is facing a Singapore-based client post trade allocation, would that foreign representative be deemed as carrying out regulated activity under the Securities and Futures Act, Chapter 289 of Singapore ("**SFA**").

In addition, we understand that the term "representative" is intended to be limited to representatives based outside of Singapore only. Please could MAS confirm this understanding.

(3) Limitation on number of representatives

We would like to confirm whether there are any restrictions on the number of Singapore representatives (that sit within the Singapore FI) that can act on behalf of the Foreign Office in Singapore. We respectfully submit that there should be no restrictions on this number. Transactions may involve both foreign and Singapore-based personnel.

4. Question 2. MAS seeks comments on the proposed scope of the Branch Framework. (optional)

ASIFMA has no comments on this question – please our response to question 1.

5. Question 3. MAS seeks comments on the proposal to amend regulation 32C of the FAR to exempt Foreign Offices in respect of the financial advisory service of issuing or promulgating research analyses or reports concerning any investment product, subject to the same safeguard currently provided for under the regulation. (optional)

We are supportive of the proposal to amend regulation 32C.

6. Question 4. MAS seeks comments on the proposed notification requirement and boundary conditions as set out in paragraph 3.6. (optional)

As a preliminary matter, ASIFMA notes that there are no differences between the boundary conditions for Foreign Offices and FRCs.

(1) Notification requirement (paragraph 3.6(i))

We seek MAS' clarification on when an arrangement has commenced. In particular, we note that Footnote 5 defines "commencement" to mean the date the Foreign Office *commences* or *intends to commence* the conduct of the relevant regulated activity under the proposed arrangement – please could MAS confirm that "intends to commence" refers to the date in which the Foreign Office proposes to commence its operations.

In addition, please could MAS clarify if arrangements that are already in place (e.g. through the informal "branch to branch" exemption that was granted by MAS on a case by case basis) would similarly need to be notified, and if so, when the "commencement" date of such arrangements would be.

(2) Regulatory status of the Foreign Office (paragraph 3.6(iii)(a))

We note that Foreign Offices that are relying on exemptions in respect of the specific activity under the cross-border arrangement but that are nonetheless licensed, authorised, regulated or supervised in the jurisdiction where they are operating from, will be allowed to conduct that specific activity under the cross-border arrangement. Please could MAS clarify if the Foreign Office will be allowed to conduct a

specific activity under the cross-border arrangement if that specific activity is not currently regulated in the jurisdiction where the Foreign Office is operating from?

For example, dealing in OTC derivatives is generally not a regulated activity in Hong Kong and does not require a licence in Hong Kong (aside from certain specific asset classes). It is therefore arguable that Hong Kong offices carrying on dealing in OTC derivatives would not fulfil the requirement in the draft regulations that require them to be "subject to regulatory oversight by a foreign regulatory authority […] **in respect of the activities of its foreign office**" (emphasis added).

We would respectfully submit that where a particular activity or product is not subject to specific regulation in a particular jurisdiction, Foreign Offices that are nonetheless licensed, authorised, regulated or supervised in their jurisdiction of operation should be allowed to conduct the specific activity under the cross-border arrangement, especially where high level regulatory principles continue to apply to the Foreign Office.

We would submit that the same approach should be taken for FRCs. We have also indicated this in our response to Question 8(a) and 8(b).

(3) Internal controls – record keeping requirements (paragraph 3.6(v)(i))

Paragraph 3.6(v)(i) requires the Singapore FIs to keep records of transactions entered into with or on behalf of customers and copies of contracts or agreements entered into with customers under the arrangement. We submit that requiring the Singapore FI to maintain duplicate records of transactions, contracts or agreements may be superfluous. We request that this requirement be deemed to be met as long as the Singapore FI can retrieve such records via internal systems, or from the Foreign Office / FRC.

(4) Internal controls –representative register (paragraph 3.6(v)(ii))

ASIFMA strongly requests for the removal of the requirement to maintain a representative register, and for this to be substituted with a requirement to maintain a visitor log of Foreign Representatives that visit Singapore, for the following reasons:

(a) as described in the response to Question 1, it is often difficult to identify whether a transaction or even a client may be in scope of the Branch Framework. Even if the Foreign Office or FRC were to comply with the Branch Framework at an entity level, it is extremely difficult in many cases to identify the specific Foreign Representatives that would be or may potentially involved in the cross-border arrangements;

(b) a client may be serviced on a team basis which is agnostic to the client's location, for example:

(i) Singapore-based clients may be serviced by any available salesperson or subject matter expert on a particular product at any point in time in the Foreign Office;

(ii) the salesperson serving the client may use a wider team in the Foreign Office or FRC to support the transaction. Some of these team members may be copied on emails to the client, and may as necessary pick up a client request and address the clients' queries directly (e.g. client wants some changes to a presentation deck and the analyst who supports the client representative clarifies and incorporates the changes in a direct communication with the client);

(iii) in DCM or M&A transactions, in addition to offshore product coverage, depending on the sector of the client group a bank may require individuals of an appropriate level of seniority from the relevant sector coverage area (e.g. Healthcare, Natural Resources, Sustainability or Environmental, Consumer Retail etc.). It would not always be clear in advance which members of each coverage area could be providing support on a particular transaction to a Singapore client so the list of these individuals could potentially become unwieldy/impractical.

Any representative in that team may therefore potentially deal with a Singapore client, but this is not a given, and may only be on a once-off basis. As such, it would not be feasible or meaningful to include all the representatives who may potentially deal with Singapore clients or who might speak to a Singapore client once or twice.

(c) historically, Paragraph 9 and Paragraph 11 Approvals have only required a visitor log to be maintained. This provides a very clear nexus of who is in-scope and out-of-scope for the purposes of the log, unlike a general register of every Foreign Representative;

(d) maintaining a representative register in Singapore is duplicative as the Foreign Offices and FRCs will likely be required by their home regulatory authority to maintain a similar list of representatives in their respective jurisdictions. Further, in some jurisdictions (such as Hong Kong), such registers are readily available on the regulatory authority's websites;

(e) given staff movement and changes in portfolios that could occur randomly, and such changes may potentially not be communicated to the local entity promptly and in a timely manner, maintaining such a register would neither be practical nor reflect accurately persons carrying out work on behalf of the Singapore FI. It may also hamper the ability of the Foreign Office / FRC to respond nimbly where movements in personnel are required;

(f) in certain jurisdictions (such as Australia), there is no regulatory requirement for representatives to be licensed as such. Accordingly, maintaining such a register would not be a good gauge of whether a person is licensed or not.

Overall, ASIFMA members take the position that maintaining the representative register in Singapore will unduly increase the regulatory burden on the Singapore FI due to the operational, time and cost challenge of upkeeping the register on an ongoing basis.

We understand the policy concern is to ensure that Foreign Representatives are duly licensed and approved in their home jurisdictions, in connection with ensuring that the Singapore office has internal controls over the arrangement. We would submit that this can be achieved without a register, as the Foreign Office and FRC are licensed and registered. These offices will also maintain full registers of their representatives. The Singapore Office should be able to place reliance on the controls of the Foreign Office / FRC over their representatives generally and to work with the Foreign Office / FRC to address Singapore specific risks or situations (e.g. visits to Singapore). This can be done without having to maintain a specific register of Foreign Representatives by the Singapore office.

In essence, we submit that the better approach is that the Singapore office should work with the Foreign Office and FRC to formulate the written policies and procedures governing the cross-border arrangement (as already required under the Notices) and for the Foreign Office and FRC to take charge of implementing these and ensuring that they are rolled out to the relevant representatives as necessary, rather than trying to identify specific representatives.

As such, we strongly request that the requirement to maintain a representative register be removed.

In place, we would request that the requirement be revised as such:

(a) for the Singapore FI to internally obtain an assurance from its Foreign Office and/or FRC the foreign representatives are licensed or otherwise exempt from such licensing requirements, and for the Singapore FI to work with the Foreign Office and/or FRC on written policies and procedures for cross-border arrangements;

(b) for the Singapore FI to, upon request from the MAS, furnish a copy of such registers that are already maintained by the Foreign Office and FRCs; and

(c) for the Singapore FI to maintain a visitor log of to keep track of the foreign representatives that visit Singapore.

Should MAS be unable to waive this requirement, ASIFMA be grateful for the opportunity to have a further dialogue with the MAS on this point, to address the aforementioned difficulties in maintaining the register.

(5) Internal controls – conducting customer due diligence (paragraph 3.6(v)(iii))

With respect to footnote 11, please could MAS confirm if an internal assessment by the Singapore FI to document the justification and rationale for onboarding a client will be sufficient to meet the expectation that the Singapore FI had ensured "that the policies and procedures in place relating to the conduct of customer due diligence under the Branch Arrangement are at least as stringent as the requirements in the relevant AML Notice."

(6) Internal controls - marketing and solicitation by the Foreign Office and its representatives (paragraph 3.6(v)(v))

We would be grateful if the MAS could provide additional guidance on the policies and procedures expected with respect to marketing and solicitation of customers in Singapore by the Foreign Office and its representatives. We note that the MAS had, in paragraph 7.19 of the Response to Feedback Received - Proposed Revisions to the Exemption Framework for Cross-Border Business Arrangements of Capital Markets Intermediaries (5 June 2020) ("**Response**"), provided examples that such policies and procedures could include (e.g. having country-specific guidelines on the specific types of information that can be provided to prospects, requiring marketing materials used by foreign representatives to be approved by the local compliance, and physical chaperoning). From a practical perspective, please could MAS confirm that this requirement will be met if marketing materials are in compliance with marketing materials policies established in conjunction with local compliance, and that specific approval of all marketing by the Singapore compliance team is not required.

Similar guidance with respect to the treatment of Foreign Office and its representatives would be appreciated. In addition, we note that there are no specific restrictions imposed on the foreign representatives when such representatives visit Singapore, (including requirements for physical chaperoning with a locally licensed representative), and would like to clarify if MAS would require or expect such restrictions to put in place under the policies or procedures. While physical chaperoning may be a good measure to ensure oversight, it may not always be practical/possible for locally licensed representatives to physically chaperon foreign representatives to all client engagements.

Further, since a temporary representative does not need to be chaperoned by a locally licensed representative when dealing with non-retail clients (regulation 3A(5)(c) and (7) of the Securities and Futures (Licensing and Conduct of Business) Regulations does not currently require this), we would

expect that a foreign representative should similarly not be required to comply with restrictions that would otherwise not be imposed when that foreign representative is registered as a temporary representative to service the same group of customers.

(7) Audit certification and annual reporting requirements (paragraph 3.6(vi))

Please could MAS confirm that, for the purposes of paragraph 3.6(vi) and footnote 12, an internal audit function is considered an Independent Assurance function for the purpose of certification of the boundary conditions.

In addition, some Singapore FIs have highlighted that their audit cycles may not be on an annual basis as these internal audit functions may be covered by the Foreign Office (e.g. head office). Accordingly, please could MAS consider extending the certification requirement for low-risk arrangements to be as per the FI's internal audit cycle?

7. Question 5. MAS seeks comments on extending the proposed Branch Framework to Existing OTCD Branch Arrangements. (optional)

ASIFMA has no comments on this question.

8. Question 6. MAS seeks comments on the transition period of six months to comply with the proposed boundary conditions and submit notifications to MAS for Existing OTCD Branch Arrangements. (optional)

Please see our comments under "Any other comments" ((4) Transitional Periods) that would apply equally to this question.

9. Question 7(a): MAS seeks comments on the proposed Annex A1. (optional)
Please indicate clearly the question in Annex A1 to which your feedback relates.

(1) Accredited Investor ("AI") opt-in requirements

With respect to the AI opt-in requirements, please could MAS clarify if:

(a) the AI opt-in requirements do not apply to the regulations promulgated under the SFA and only to those under the Financial Advisers Act, Chapter 110 of Singapore ("**FAA**");

(b) in the case that the AI opt-in requirements apply to regulated activities both under the SFA and FAA, whether the consent provisions under the existing opt-in framework will be impacted;

(c) whether Foreign Offices can rely on the AI opt-in obtained by the Singapore FI. We would also like to confirm that (i) an existing AI opt-in (for instance, obtained before the cross border arrangement has been put in place), would continue to be valid (unless withdrawn) and (ii) further that FIs are not required to make specific disclosures in respect of the cross-border arrangements when obtaining the opt-in.

(d) whether the permissible clientele boundary conditions do not apply to corporate finance advisory arrangements and transactions where the AI opt-in is not relevant or relied on (for example, in transactions involving investment banking clients such as issuers and sellers of securities in block trades, private placements, initial public offerings, M&A advisory transactions, rights issues and other offerings).

(2) Notification timeline

We note the requirement to notify MAS within 14 days of changes to the cross-border arrangements. Nonetheless, we would like to respectfully request MAS to consider allowing a longer timeline as such changes effected overseas might require more time to be channelled to Singapore. This may further be impacted by public holidays.

We would therefore be grateful if the MAS could consider extending the notification timeline to 15 business days (i.e. 3 weeks), rather than 14 calendar days.

(3) Conflicts of interest – Section 4.1

It appears that the difference between both options is whether the Singapore FI foresees any conflicts of interest to arise from the Arrangement. As it may be too premature to determine with certainty at the point of commencement whether there will be conflicts of interests that may arise, we submit that a sensible approach to this would be to simplify the declaration to whether the Singapore FI is aware of any conflicts of interests at the point of commencement and if yes, the measures that are in place to address the conflicts of interests. Any subsequent changes to this declaration would then be reported as a change of particulars, using the form in Annex A2.

(4) Execution requirements – Section 6

We note that this form must be executed or signed by a Director of the Singapore FI. Singapore branches of foreign incorporated banks do not have "directors" per se. As such, we strongly submit that some flexibility be built into the form, to allow the form to be signed off by other senior officers or delegated persons in the Singapore FI, e.g. the CEO of the Singapore branch, Head of Treasury or an equivalent senior executive officer instead.

(5) Naming of arrangements – Annex A(1)

Please could MAS provide guidance on how the arrangements should be named for the purposes of the Forms. In particular, in the following scenarios:

(a) where the arrangement relates to a single FRC, which is part of an arrangement with multiple Singapore FIs (which may either be licensed or operating under the licensing exemption);

(b) where the arrangement relates to a group arrangement with multiple FRCs and multiple Singapore FIs (which may either be licensed or operating under the licensing exemption).

(6) Process chain information – Annex A(3)

We request for more flexibility in the options available here as there may be arrangements where the process in the process chain is provided by neither the Singapore FI and the Foreign Office or FRC. For example, for fund managers which manage segregated mandates for institutional clients, the custodian is typically appointed by the institutional client. Therefore, to avoid such fund managers from being

constrained by the false dichotomy, we submit that a "N/A" checkbox be included, or for the form to allow for neither option to be selected.

Please could MAS also clarify the level of detail required in this section, and its rationale for requiring such information to be provided. Some FIs are concerned that these processes may be back-office arrangements (e.g. trade confirmation and trade settlement) that may already have been notified to the MAS under the existing regulations (e.g. the Outsourcing framework). As such, there is a concern that this would result in double- reporting to the MAS. Instead, we submit that only function that are regulated activities in Singapore should be subject to the notification requirements.

In addition, fund managers (that rely on the licensing exemption in paragraph 2(1)(a) of the Second Schedule to the Securities and Futures (Licensing and Conduct of Business) Regulations to deal in capital markets products that are units in a collective investment scheme which are managed by its related corporations) should not be required to furnish information in this Annex with respect to such dealing.

In addition, we would be grateful if MAS could clarify the extent of involvement required by the Singapore FI in the cross-border arrangement, in particular, whether the Singapore FI is required to play a substantive role in the proposed cross-border arrangement. For example, we note in Table 1, Appendix I of the MAS Guidelines on Applications for Approval of Arrangements under Paragraph 9 of the Third Schedule to the Securities and Futures Act [SFA 04-G03], that arrangements where the entire process chain is carried out by the foreign entity will not be approved by MAS under the existing FRC framework. There does not appear to be a similar requirement under the proposed frameworks.

We would respectfully submit that, provided the Singapore FI complies with the requirements under the draft Notices to establish the required internal controls, this should be a sufficient minimum level of involvement by the Singapore FI.

10. Question 7(b): MAS seeks comments on the proposed Annex A2. (optional)
Please indicate clearly the question in Annex A2 to which your feedback relates.

(1) Scope of Annex A2

We understand that the notification in Annex A2 relate to specified changes in particulars to previously notified arrangements. Please could MAS clarify that this is the complete list of changes that must be notified to the MAS, as we note that there are other changes listed in paragraph 3.6 of the Consultation Paper that are not specified in this Annex A2.

(2) Notification timeline

Our comments in Question 7(a)(2) will apply.

(3) Conflicts of interest – Section 6.3

Our comments in Question 7(a)(3) will apply. In addition, since Annex A2 is intended to notify the MAS of any changes in particulars to the cross-border arrangements, we propose to simplify this question to require any changes in the conflicts of interests declaration provided in Annex A1 at the point of commencement of the arrangements.

(4) Execution requirements – Section 2

Our comments in Question 7(a)(4) will apply.

(5) Naming of arrangements – Annex A(1)

Our comments in Question 7(a)(5) will apply.

(6) Addition/cessation of regulated activities – Annex A(4)

Please could MAS provide further guidance on the difference between the second column (Addition/Cessation of Regulated Activity/Activities under the Arrangement) and the third column (Regulated Activity/Activities Added/Ceased under the Arrangement)

11. Question 7(c): MAS seeks comments on the proposed Annex A3. (optional)
Please indicate clearly the question in Annex A3 to which your feedback relates.

As a preliminary matter, please could MAS clarify if the objective of the annual declaration is to certify adherence to the requirements under the SFA and FAA and the related regulations, in particular with respect to the notification framework, boundary conditions and internal control arrangements.

(1) Notification timeline

Our comments in Question 7(a)(2) will apply.

(2) Execution requirements – Section 4.1

Our comments in Question 7(a)(4) will apply.

(3) Naming of arrangements – Annex A(1)

Our comments in Question 7(a)(5) will apply.

(4) "Financial year end" – Annex A

Please could MAS confirm that the representatives to be declared in Question 1.1, 1.2 and 2 of Annex A refer to the representatives who are carrying out regulated activities under the cross-border arrangement as at the financial year end. Please also see our comments under Question 1(B)(2) on which representatives should be considered to be involved in the cross-border arrangement.

(5) General reporting requirements – Annex A

To streamline the yearly reporting requirements, we propose providing the data on a consolidated basis for all the approved arrangements which would better facilitate a holistic overview of the regulated activities carried out by Singapore FI vis-à-vis all the FRCs or Foreign Offices.

(6) "Representatives" – Annex A(1.1, 1.2, 2)

Please see our comments under Question 1(B)(2). Given that the regulated activities under the SFA are generally carried out on a team basis and are client location agnostic, it would not be feasible to maintain a register or count of foreign representatives who do not visit Singapore under the arrangement. If the total number of representatives for each foreign desk that may cover Singapore based clients under the arrangement is included, the comparison vis-à-vis the number of local representatives would be misleading.

Further, representatives are typically organized by main business lines/desks (i.e. equity and fixed income) rather than by the type of regulated activity. The product scope of each business line/desk and its representative would include a few capital market products, e.g. an equity salesperson will typically cover shares, futures, equity swaps, ETF. Under the proposed template, such individual would be counted across 4 types of capital markets products. We propose that the breakdown of representatives be done by broad business lines instead.

In addition, please could MAS provide further guidance in the instance where a Singapore FI enters into an arrangement with a Foreign Office such that a client is served jointly by the representatives from both sides – should the revenue generated be apportioned, and if so, what would the approach to apportionment be.

(7) Revenue/AUM declaration – Annex A(3)

We strongly submit that the requirement to declare revenue obtained from the cross-border arrangement be removed as this is practically unfeasible, and would not provide an accurate picture of the importance of the arrangement to the MAS.

First, such businesses are typically bundled together through a transfer pricing model where revenue is pooled is pooled by region/business line and allocated to the respective affiliates within the group including Singapore legal entities based on various perimeters such as contributions to risk capitals and compensations of front office etc, as determined by tax. As such, internally, the FIs may not be able to provide a breakdown of the revenue/AUM as required by the MAS.

Second, these cross-border arrangements are usually part of group arrangements to provide holistic services and client access to various markets. The revenue may not be directly attributable to the number of clients. In addition, some Singapore FIs are neither client-facing nor risk-taking and therefore not generating revenue per se, but are still integral to the process chain. Therefore, the use of revenue to assess the importance/substance of the Singapore Entities vis-à-vis FRCs / Foreign Offices may not provide an accurate picture to the MAS.

Third, revenue is typically organised by business line or desks (e.g. equity and fixed income) rather than by the type of regulated activity. The product scope of each business line/desk and its representative would include a few capital market products. i.e. an equity salesperson will typically cover shares, futures, equity swaps, ETF. Under the proposed template, such revenue streams would be counted across 4 types of capital markets products, which would not present an accurate picture of the revenue generated.

If the MAS is unable to agree to the deletion of the requirement entirely, we submit that the declaration should be for revenue obtained from the arrangement as a whole, i.e. without splitting (a) between the FRC or Foreign Office and the Singapore FI; and (b) among the different regulated activities.
Separately, pleas clarify if the amount of AUM reported be net of encumbrances.

(8) "Customers" – Annex A(3)

Please could MAS provide further guidance on the following points:

(a) how customers with multiple accounts (e.g. a wealth management client that has multiple accounts set up in family members, trusts, or companies) should be accounted for;

(b) how joint accounts should be accounted for;

(c) the scope of "acting as retainer" with respect to a corporate company advising on corporate finance.

In addition, we note that in counting the number of customers, the Singapore FI should only include customers who have made at least one transaction during the company's financial year end. In the event that internal data and systems do not allow the Singapore FI to easily identify whether clients have done a transaction in a particular product during the financial year, we submit that the reporting be based on whether clients are allowed to perform the transaction in the particular products (e.g. clients who have passed the necessary eligibility and suitability checks and have accounts opened to trade the particular products), regardless of whether an actual transaction has been made.

Separately, some FIs are concerned that the definition of "customer" would be widened to include any customer that the Foreign Office services (since Foreign Offices would, under this proposal be considered as the same legal entity as the Singapore FI). Please could MAS clarify if the scope of "customers" under this proposal (and any other regulatory reporting requirement on customers, such as SFR Form 28) will only include arrangements where the customer is booked with or serviced by the Singapore FI (assuming that all customer contracts are signed globally with the foreign head office) regardless or customer domiciliation, or only for Singapore domiciled customers?

12. Question 7(d): MAS seeks comments on the submission timeline for the proposed Branch Framework and notified FRC Framework.

Please could MAS confirm that the first reporting of Annex A3 for an existing FRC Arrangement is intended to be May 2023, for the reporting period Jan-Dec 2022, after the 6-month transition period ends on 8 Apr 2022.

Similarly, for an arrangement that FIs may enter into under the proposed Branch Framework, please could confirm that the first reporting will be due in May 2023, for the reporting period Jan-Dec 2022, notwithstanding that the arrangement may be entered into before Dec 2021?

13. Question 8(a). MAS seeks comments on the draft Regulations and Notices in Annexes B1 to B4. (optional)

(1) Regulatory status of the Foreign Office – Annex B1

Our comments in Question 4(2) will apply.

(2) Obligation to maintain information on the qualification and licensing status of foreign representatives – paragraph 5.2.2(b) of Annex B3

Please see generally our comments at Question 4(4).

We understand from paragraph 7.10 of the Response that MAS will not require information on the foreign representatives' qualifications and licenses to be maintained in the register. This is consistent with paragraph 5.2.2(b) of the draft notice in Annex B3.

We also understand that the Singapore FI can rely on the FRC to maintain this information, although the responsibility for ensuring that the information is maintained lies with the Singapore FI. Given that this obligation is not mentioned in the draft Notices, we would be grateful for MAS' confirmation that it would no longer impose this obligation on the Singapore FI under both the Branch Framework and the FRC Framework.

(3) Maintenance of register outside of Singapore – paragraph 5.2.2(b) of Annex B3

Please see generally our comments at Question 4(4).

We would like to clarify if the information on the foreign representative must be maintained in a single register, or whether it would suffice if the required information exists, in one form or other, and is retrievable upon request. In particular, we would submit that it is more reasonable and practical for the Singapore Entity to rely on the FRC to maintain such information as long as the Singapore Entity has access to such records. We note that this is the position in paragraph 7.10 of the Response.

With increasing global scrutiny on cross border interactions, most large FIs already have in place policies and procedures to monitor travel plans of global employees. These visits would likely be electronically tracked in a system where data of every visit (including total duration spent by a representative in a country) could be easily retrieved. It would seem duplicative to maintain another register of such visits made by the foreign representative to fulfil the regulatory requirement.

14. Question 8(b). MAS seeks comments on the draft Regulations and Notices in Annexes C1 to C4. (optional)

(1) Regulatory status of the Foreign Office – Annex C1

Our comments in Question 4(2) will apply.

(2) Notification of existing cross-border arrangement - Paragraph 4.2 of Annex C3

We request that, in relation to notifications relating to existing cross-border arrangements, only the relevant form *without* the corresponding Annex needs to be submitted to MAS. This is because these are existing arrangements that had already previously obtained approval by the MAS, and we submit that it would not be necessary for the information to be submitted again.

(3) Obligation to maintain information on the qualification and licensing status of foreign representatives – paragraph 5.2.1(b) of Annex C3

Please see generally our comments at Question 4(4).

We understand from paragraph 7.10 of the Response that MAS will not require information on the foreign representatives' qualifications and licenses to be maintained in the register. This is consistent with paragraph 5.2.1(b) of the draft notice in Annex C3.

We also understand that the Singapore FI can rely on the FRC to maintain this information, although the responsibility for ensuring that the information is maintained lies with the Singapore FI. Given that this obligation is not mentioned in the draft notices, we would be grateful for MAS' confirmation that it would no longer impose this obligation on the Singapore FI under both the Branch Framework and the FRC Framework.

15. Question 8(c). MAS seeks comments on the proposed amendments to regulation 32C of the FAR in Annex D. (optional)

(1) Reg 32C(5)(a) of the FAR

Please could MAS clarify the regulatory treatment of a Foreign Office under this regulation 32C(5)(a) in the case that the Foreign Office is or intends to conduct a specific activity under the cross-border arrangement if that specific activity is not currently regulated in the jurisdiction where the Foreign Office is operating from (please see our query at Question 4(2)).

(2) Reg 32C(5)(b)(ii) of the FAR

We understand the requirement for the analyses or report to contain a statement to the effect that the licensed financial adviser or specified exempt financial adviser accepts legal responsibility for the contents of the analysis.

16. Any other comments. (optional)

(1) Harmonisation of FRC Framework and Branch Framework

We note that there is a high degree of harmonisation between the two frameworks and are very supportive of this, as this is important to ensure that there is no regulatory arbitrage between the two regimes.

In particular, we are highly supportive of harmonisation in the following regards:

(a) **Start date** – we are supportive of the proposal that the frameworks be operationalised on the same date;

(b) **List of exemptions** – we are supportive of the proposal to harmonise the exemptions in regulations 3 of Annex B1 and Annex C1 such that the exemptions apply equally to FRCs and Foreign Offices operating under the cross-border arrangement.

(2) Grandfathering arrangements

Given that existing approved Arrangements went through a rigorous review process where a formal application was submitted and thoroughly reviewed by MAS, we respectfully request for a grandfathering of all the existing approved Arrangements with respect to the proposed notification requirements on an ongoing basis. Many of the proposed notification requirements are already captured within the approval conditions where MAS has to be notified in case of any material changes to the approved Arrangement and an independent auditor has to confirm that the FI has processes for such notifications to the MAS. Further, some of such Arrangements have been existing for a long time with processes deeply entrenched (or automated) within the financial institution. Much resources will have to be invested to implement the notification process under this proposal.

(3) Equivalence recognition of examination requirements

We strongly submit that MAS recognises equivalent examinations taken by foreign representatives in their home jurisdictions, as there are high operational costs involved in flying in these foreign representatives to Singapore to sit for the CMFAS examinations. In addition, in light of the continued travel restrictions, it would not be possible for these foreign representatives to fly into Singapore to sit for the CMFAS examinations in the near future. We therefore request for flexibility from the MAS with regard to the CMFAS examination requirements.

(4) Transitional period

ASIFMA understands that MAS intends to implement the proposed Branch Framework on 9 October 2021. ASIFMA requests that sufficient time be given to FIs between MAS' response to the consultation and the effective date of the legislative changes, so that FIs can consider any further changes that may be necessary to its processes required following MAS' response (including distribution of information and changing of its global policies to meet the finalised requirements). These changes can require multiple rounds of discussion and multiple layers of approval (particularly where they concern the

Foreign Offices or FRCs). Therefore, please could MAS consider extending the transition period for existing arrangements to 9 October 2022.

(5) Best efforts basis

ASIFMA also notes that the new reporting requirements (particularly the annual declaration) require institutions to collect and provide a large amount of addition information. As can be seen from the responses above, there are residual areas of uncertainty, especially for computation of number of customers, identification of representatives and transaction amounts. Given that this also involves Foreign Offices or FRCs, it would require new policies and systems to be established across multiple offices to capture and record this information. Institutions will therefore require time to implement the policies and to work out implementation issues with Foreign Offices and FRCs. Where there are a large number of different offices involved, this would require considerable work and coordination, and there would very likely be initial teething problems, where information may be missed or not captured. The Singapore office may not also always be in a position to completely check or verify the accuracy of numbers provided by a Foreign Office and FRC.

ASIFMA members are concerned that, as these requirements are encapsulated in Notices, there are serious penalties attached (including the possibility of incarceration) where information is false or misleading, and that a specific declaration has been included on this point within the notification forms.

ASIFMA members would like to request that that MAS allow financial institutions time to adjust to the new requirements, and waive penalties for situations where financial institutions can demonstrate that they are using best efforts to obtain the documents and information required.

Details of Submitter

17. Name of entity (if applicable)
(Please indicate as N/A if responding in a personal capacity.)

Asia Securities Industry & Financial Markets Association ("**ASIFMA**")

18. Completed by:

Patrick Pang

19. Designation:

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