

Securities and Futures (Licensing and Conduct of Business) Regulation 40	Members' Feedback
<p>(1) The holder of a capital markets services licence shall on a monthly basis furnish to each customer a statement of account containing the particulars referred to in paragraph (2).</p> <p>(1A) Paragraph (1) shall not apply to the holder where</p> <p>(a) there is no change to any of those particulars since the date on which the last statement of account was made up to; or</p> <p>(b) the customer is an accredited investor, an expert investor or an institutional investor, or a related corporation of the holder, and</p> <p>(i) the holder has made available to the customer, on a real-time basis, those particulars in the form of electronic records stored on an electronic facility and the customer has consented to those particulars being made available to him in this manner; or</p> <p>(ii) the customer has requested, in writing, not to receive the statement of account on a monthly basis from the holder</p> <p>(1B) Despite paragraph (1A), where the holder of a capital markets services licence receives a request from a customer for a statement of account mentioned in paragraph (1), the holder must provide the customer with the statement as soon as practicable.</p>	<ul style="list-style-type: none"> As an integral part of wholesale banking business model, global Financial Institutions (“FIs”) are generally operating in multiple countries that customers (which are primarily institutional by nature) are offered different products, especially OTC derivative products, across multiple legal entities in several jurisdictions; service rendered out of Singapore is a subset of the global relationship across the bank. In this regard, members are of the view that the requirement should not be made applicable to OTC derivatives products for the reasons explained below. Customers may trade with / via related entities/branches of the FI whom they have relationships with, depending on their exposures. If the FI only provides a monthly statement showing the truncated position held via the trading activities within the Singapore entity for customers’ exposures, it would be incorrect and not meaningful given that it only contains a portion of their total trades. <p>On the other hand, if FI would like to provide a comprehensive statement comprising all the trades with its related branches/entities, it would be operationally challenging considering that the FI may not be privy to the trade details of other overseas branches/entities. Additionally, there are no equivalent regulatory requirements in other jurisdictions (e.g. Europe), where trades would have been booked (e.g. booking center/head office), for Singapore domiciled clients. This would result in a disparity in information provided to customers.</p> <p>In light of this, the industry suggests MAS to consider limiting the scope of this requirement to only trades that are booked in the Singapore entity so as to overcome the challenges in disparate statement reporting across multiple jurisdictions and truncated statement of positions.</p> <ul style="list-style-type: none"> Particularly, the industry would also like to propose that Institutional Investors (“II”), Accredited Investors (“AI”), Expert Investors (“EI”) and other sophisticated customers shall be fully exempted from receiving both monthly and quarterly statements given that they derive little value from such statements and this would also be in line with other regulatory regimes where more sophisticated class of customers (e.g. MiFID II) are often excluded from requirements that are superfluous to their need. In consideration of the existing information available to customers when they trade securities, members are of the view that the requirement should be provided only on request by customer. For example, AI and EI are already recipients of the trade confirmation/contract notes on their positions held when trading securities. <p>Alternatively, MAS might consider allowing exemption for II/AI/EI clients via a deemed consent route. For example, FIs notify II/AI/EI clients that they will not receive any monthly and quarterly statements by default, unless they specifically request for them. When II/AI/EI clients continue to trade with the FIs, this will imply that</p>

ASIFMA Feedback to SF(LCB)R Regulation 40 – Provision of Statement of Account to Customers

	<p>they agree not to receive the statements. In other words, the monthly and quarterly statements will be provided to customers upon request.</p> <ul style="list-style-type: none"> • Crucially, the industry kindly asks MAS to draw a distinction between “customer” and “counterparty”. For example, where a trade is done on a principal basis versus another firm, the other party to the trade is a “counterparty”. In such cases, the Regulation 40 requirements are extraneous and should not apply. This is opposed to agency trades where a trade is done on behalf of a client or “customer”.
<p>(2) The statement of account referred to in paragraphs (1) and (1B) shall contain, where applicable, the following particulars:</p> <p>(a) transactions to purchase or sell securities or units in a collective investment scheme entered into by the customer and the price at which the transactions are entered into</p> <p>(b) a list of derivatives contracts entered into by the customer and spot foreign exchange contracts for the purposes of leveraged foreign exchange trading entered into by the customer that are outstanding and have not been liquidated, the prices at which such contracts were acquired, and the net unrealised profits or losses of the customer in all such contracts marked to the market</p> <p>(c) the status of every asset in the holder’s custody held for the customer, including any asset deposited with a third party that is used for the lending of specified products under regulation 33 or held as collateral under regulation 34</p> <p>(d) the movement of every asset of the customer, the date of and reasons for such</p>	<ul style="list-style-type: none"> • Most of the information required under Regulation 40(2) have already been provided in other communications to customers, e.g. trade confirmation or contract note which is sent by the execution bank to customers on the back of each trade covers the information required in Regulation 40(2)(a) and (d). <p>Therefore, the industry respectfully submits that a monthly statement of account in this regard is unnecessary and will result in a high cost to banks with little benefit to customers.</p> <ul style="list-style-type: none"> • The requirements have been broadly made applicable to all capital market products including securities and OTC derivatives and Spot FX transaction for the purpose of leverage FX trading and some of them may not be relevant and/or will mislead customers when receipt of such information. For instance, Regulation 40(2)(b) in the context for OTC derivatives (e.g. swaps, NDFS, structured derivatives, foreign exchange contracts, etc.) may result in ambiguity and misleading information where customer maintains exposures in multiple jurisdiction with disparate requirements for reporting to customers. Based on the feedback received from members, it is operationally difficult to monitor and calculate the unrealized profits and losses (“P&L”) for every derivatives contract on an ongoing basis, especially for OTC derivatives which are often netted off with exposure in another account or trading venue. The information may also not be meaningful for certain illiquid or structured products which are meant to be held to maturity or for longer term, i.e. the cost and effort to monitor net unrealised P&L may far outweigh any benefit derived. • The industry views that net unrealized P&L is not an accurate reflection of the value of a contract. For the purpose of Regulation 40(2)(b), the industry also views that Mark to Market (“MTM”) value would be a better indicator than unrealized P&L for derivative contracts. Would MAS kindly confirm that for derivative contracts that has not been liquidated, it would be sufficient to reflect (i) the prices at which such contracts were acquired; and (ii) the MTM value of such contracts in the statement? • Regarding Regulation 40(2)(b), the industry would also like to seek confirmation that dual currency investment could be excluded from the requirement though it involves a currency option packaged with a deposit. The overall unrealized P&L includes that of the deposit with the option, and there is operational difficulty in

ASIFMA Feedback to SF(LCB)R Regulation 40 – Provision of Statement of Account to Customers

<p>movement, and the amount of the asset involved</p> <p>(e) the movement and balance of money received on account of the customer within the meaning of regulation 15(2)</p> <p>(f) a detailed account of all financial charges and credits to the customer’s account during the monthly statement period, unless the detailed account of financial charges and credits has been included in any contract note or tax invoice issued by the holder to the customer</p>	<p>computing the break cost of the deposit (which needs to assume the client terminates before maturity). Additionally, would this include spot FX transactions?</p> <ul style="list-style-type: none"> • The industry would like to seek clarity on whether the meaning of “net unrealized profits or losses” in Regulation 40(2)(b) refers to the net P&L for all the derivatives positions held by the client or only for the individual trades. • The industry would like MAS to elaborate the meaning of “status of every asset” stated in Regulation 40(2)(c)? Additionally, would “third party” include parties where the bank is not the custodian? Would this include asset movement where the bank is not the custodian and whether the movement include settlement of trades (e.g. FX trade settlement)? • With reference to Regulation 40(2)(e), it is stated under <u>Regulation 15(2)(f)(v)</u> that <i>customer money excludes money received from, or on account of, a customer who is an institutional investor, in connection with any non-centrally cleared OTC derivatives contracts which is booked in Singapore.</i> <p>However, this exclusion does not apply to same type of OTC derivatives contracts which are traded in Singapore with institutional investor but booked in the global book. The industry would like to seek clarity from MAS on whether the related money needs to be captured in the statement, and also whether the statement requirement is applicable to transactions traded in Singapore but booked in global book.</p> <ul style="list-style-type: none"> • The industry understands via other forums that MAS does not intend for Regulation 40(2) to apply to banks, merchant banks, and finance companies. It would be appreciated if MAS could clarify this via FAQ. E.g. for asset classes which are not listed in Regulation 40(2), would the statement requirement still be applicable? For assets processed by transfer agency services, would that information need to be reflected in the statement? • For Regulation 40(2)(f): Is it a mandatory field to provide “financial charges and credits” for customer’s account which is used for transaction execution only (i.e. no holding of customer money/asset)? • If MAS considers that a monthly statement is beneficial for certain segments of the industry, the industry would like to learn more about which segment or type of activity it intends for this requirement to apply to. • For asset category accounts, is it MAS’ expectation that the statement of account for each asset class needs to be consolidated into one statement of accounts? Some of ASIFMA members note from the members of Association of Banks in Singapore (“ABS”) that MAS indicated that it would be acceptable to fulfil this requirement via general disclosure in the account statement stating the asset classes which may be sub-
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ASIFMA Feedback to SF(LCB)R Regulation 40 – Provision of Statement of Account to Customers

	<p>custodised with third parties, rather than stating for each security. The industry would be grateful if MAS could clarify this in a published FAQ.</p> <ul style="list-style-type: none"> • The industry would like to seek clarity on whether financial charges and credits include interest rate payment & late payment charges (e.g. overdraft).
<p>(3) Subject to paragraphs (4), (5) and (6), the holder of a capital markets services licence shall furnish to each customer, at the end of every quarter of a calendar year, a statement of account containing, where applicable, the assets, derivatives contracts of the customer and spot foreign exchange contracts for the purposes of leveraged foreign exchange trading of the customer that are outstanding and have not been liquidated and cash balances (if any) of the customer as at the end of that quarter.</p>	<ul style="list-style-type: none"> • The industry would be grateful if MAS could confirm that the “assets” stated in Regulation 40(3) has the same meaning as that of Regulation 40(2)(c). • As mentioned in feedback to Regulation 40(1) above, the industry would like to propose that Institutional Investors (“II”), Accredited Investors (“AI”), Expert Investors (“EI”) and other sophisticated customers shall be fully exempted from receiving both monthly and quarterly statements given that they derive little value from such statements and this would also be in line with other regulatory regimes where more sophisticated class of customers (e.g. MiFID II) are often excluded from requirements that are superfluous to their need. In consideration of the existing information available to customers when they trade securities, members are of the view that the requirement should be provided only on request by customer. For examples, AI and EI are already recipients of the trade confirmation/contract notes on their positions held when trading securities. <p>Alternatively, MAS might consider allowing exemption for II/AI/EI clients via a deemed consent route. For example, FIs notify II/AI/EI clients that they will not receive any monthly and quarterly statements by default, unless they specifically request for them. When II/AI/EI clients continue to trade with the FIs, this will imply that they agree not to receive the statements. In other words, the monthly and quarterly statements will be provided to customers upon request.</p>
<p>(4) Paragraph (3) shall not apply to the holder of a capital markets services licence where —</p> <p>(a) such particulars have been furnished to the customer by the holder in accordance with paragraph (1) for the last month of that quarter; or</p> <p>(b) the holder is exempted from complying with paragraph (1) by virtue of the application of paragraph (1A) (b).</p>	<p>No comments.</p>

ASIFMA Feedback to SF(LCB)R Regulation 40 – Provision of Statement of Account to Customers

<p>(5) Paragraphs (1) and (3) do not apply to a holder of a capital markets services licence for dealing in capital markets products that is a member of an approved clearing house, if the statements of account mentioned in those paragraphs are furnished to the customer by the approved clearing house or a Depository within the meaning of section 81SF of the Act.</p>	<p>No comments.</p>
<p>(6) Paragraphs (1) and (3) do not apply to a holder of a capital markets services licence for dealing in capital markets products all the customers of which are institutional investors, if the holder performs periodic reconciliation, between the holder’s records and its customers’ records, in respect of its customers’ transactions and positions in capital markets products.</p>	<ul style="list-style-type: none"> • For global market transactions, contract note and confirmation of each transaction would be sent to customer, would it be deemed that the FI has performed periodic reconciliation with the customer?
<p>(7) In this regulation —</p> <p>(a) a derivatives contract has not been liquidated if —</p> <ul style="list-style-type: none"> (i) the derivatives contract has not been set off against any other transaction; (ii) any underlying thing of the derivatives contract has not been delivered; (iii) the derivatives contract has not been settled in accordance with the business rules or practices of an organised market or clearing facility; and (iv) the derivatives contract has not been substituted with a cash commodity; and <p>(b) a spot foreign exchange contract for the purposes of leveraged foreign exchange trading has not been liquidated if —</p>	<ul style="list-style-type: none"> • With respect to Regulation 40(7)(a), the settlement date of any underlying deliverables is typically later than the expiry date of the derivatives contract; the delivery of the underlying asset is typically booked as a separate transaction. The industry would like to seek clarity on whether the intention of this section is to require the derivatives contracts to be continually reflected as not expired until such time when any underlying assets are delivered. If so, this would appear to be out of line with market convention on how expired contracts are viewed.

ASIFMA Feedback to SF(LCB)R Regulation 40 – Provision of Statement of Account to Customers

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| <ul style="list-style-type: none">(i) the spot foreign exchange contract for the purposes of leveraged foreign exchange trading has not been set off against any other transaction;(ii) the currency of the spot foreign exchange contract for the purposes of leveraged foreign exchange trading has not been delivered;(iii) the spot foreign exchange contract for the purposes of leveraged foreign exchange trading has not been settled in accordance with the business rules or practices of an organised market or clearing facility; and(iv) the spot foreign exchange contract for the purposes of leveraged foreign exchange trading has not been substituted with a futures contract. | |
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