

Confidentiality

1. Would you like to keep your identity confidential?

Yes

No

2. Would you like to keep your submission confidential?

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. MAS seeks comments on the draft Notices in Annexes A1 to A4. (optional)

(1) Internal Policies

(a) Compliance with FATF requirements

We note that paragraph 4.1 generally requires the Specified Regulated Entity to ensure that there are adequate internal policies, procedures and controls to ensure that the performance of CDD measures by the FRC or foreign office (as the case may be) to prevent money laundering and the financing of terrorism "*is consistent with the requirements set out under the relevant AML/CFT Notice applicable to the Specified Regulated Entity*", in respect of customers of the FRC or foreign office (as the case may be).

This is not the same test applied in regulation 5(b) of the respective draft Regulations (defined below), which provides that the exemption in regulation 3 of the respective draft Regulations will apply if, inter alia, the FRC or foreign office is subject to AML/CFT requirements in the foreign jurisdiction *that are consistent with the standards set by FATF*.

We respectfully submit for the requirement in the draft Notice to be to be aligned with the standard under regulation 5(b) for the following reasons:

(i) Most jurisdictions are FATF member countries that are required to meet FATF standards. Although these standards would be broadly aligned, there may be variances in local implementation.

(ii) Further, most FRCs and foreign offices are required to comply with their parent company group's or head office's AML/CFT policies along with their own local AML/CFT requirements (if operating or incorporated in a jurisdiction which is different from that of its head office or parent company) when performing CDD. The added requirement to comply with Notice requirements will increase the operational challenge for performance of CDD in the case where foreign office(s) or FRC(s) are dealing with Singapore based customers under the proposed Branch Framework and notified FRC framework. Under the current proposal, the FRC or foreign office would need to conduct a gap analysis on its AML/CFT policies

against the MAS Notices, both at the outset and every time there is an update to the MAS Notice or the FRC or foreign office's own policies. To address any gaps, the FRCs or foreign office would need to conduct a separate AML/KYC process with regards to Singapore customers. This would not be operationally possible for most FRCs or foreign offices.

- (iii) We would respectfully submit requiring AML/CFT checks to be done in accordance with FATF standards would address the policy concern about the robustness of AML/CFT requirements. We further note that this would be consistent with the approach taken in existing MAS AML/CFT Notices around reliance and simplified customer due diligence, where Singapore financial institutions ("**FIs**") are (i) not required to inquire about beneficial ownership when dealing with financial institutions established outside Singapore which are subject to and supervised for compliance with FATF consistent standards (for example, paragraphs 6.16(f) and 6.16(g)(i) of MAS Notice 626) and (ii) may rely on third parties to perform AML/CFT where the third party is subject to and supervised for compliance with AML/CFT consistent with FATF standards (for example, paragraphs 9.1(b) and 9.2(a) of MAS Notice 626). We submit that in a cross-border situation, a Singapore FI is similarly relying on the FRC or foreign office to perform the AML/KYC, and the same standard should be applied.
- (iv) Aligning these requirements will help Singapore FIs better comply with the requirements in the Notices as the Singapore FIs can corroborate their assessment with the mutual evaluation reports of the jurisdictions of the FRCs or foreign offices involved in the cross-border arrangements (as the case may be). This will also help the FIs achieve consistency across their customers generally.

Therefore, please could MAS consider that so long as the head office of a foreign office or parent company of a FRC is incorporated in a FATF compliant country, performance of CDD measures by the foreign office or FRC in line FATF standards in respect of Singapore based customers of the foreign office or FRC under the proposed Branch Framework and notified FRC framework respective will satisfy the requirements in the draft Notices.

Please also see sub-paragraph (2) (Scope of Notices) below.

"Regulations" refer to the following:

- (i) draft Securities and Futures (Exemption from Requirements) (Cross-Border Arrangements) (Foreign Offices) Regulations;
 - (ii) draft Financial Advisers (Exemption from Requirements) (Cross-Border Arrangements) (Foreign Offices) Regulations;
 - (iii) draft Securities and Futures (Exemption From Requirements) (Cross-Border Arrangements) (Foreign Related Corporations) Regulations; and
 - (iv) draft Financial Advisers (Exemption From Requirements) (Cross-Border Arrangements) (Foreign Related Corporations) Regulations.
- (b) Internal policies and procedures at least as stringent as the requirements in the Notices

Footnote 2 on Page 5 of the Consultation Paper states that: *"Where the customers of the FRC or Foreign Office are also considered customers of the Singapore FI, as defined in the relevant AML Notice, the Notice requirements would apply. Where the FRC/Foreign Office's*

customers are not customers of the Singapore FI, the Singapore FI will still be required to ensure that the policies and procedures in place relating to the conduct of customer due diligence under the FRC/Branch Arrangement are at least as stringent as the requirements in the relevant AML Notice."

We would be grateful if MAS could issue interpretive guidance on *"policies and procedures....at least as stringent as the requirements in the relevant AML Notice"*.

We further propose that such policies and procedures of FRCs or foreign offices in FATF jurisdictions be deemed "equivalent" to those in the relevant Notices, for the reasons set out above under sub-paragraph (1)(a) (Compliance with FATF requirements) of our response to this question, as well as the following reasons:

(i) regulators/authorities from FATF jurisdictions have committed to comply with the FATF Recommendations and undergo peer mutual evaluations / follow-up reviews to have their regimes continually assessed against the FATF Recommendations. Therefore, the requirements should be sufficiently stringent to address MAS' concerns; and

(ii) given the enhancement of the Wolfsberg questionnaire in recent years, it is further submitted that satisfactory responses to the Wolfsberg questionnaire by regulated customers, alongside local AML KYC, will suffice to meet the "as stringent as" requirements., i.e. there is no need to extend Singapore KYC requirements to Singapore regulated entities facing an FRC or foreign office with no other Singapore touchpoints if they satisfactorily complete the Wolfsberg questionnaire.

(2) Scope of Notices

(a) Non-Singapore booked accounts managed by MAS-licensed representatives offshore

Accounts that are neither booked in or managed in Singapore would typically be subject to offshore regulatory requirements (i.e. the CDD requirements in the jurisdiction that the accounts are booked in or managed in would apply). Please could MAS clarify if its intention is for the AML/CFT standards articulated in the proposed MAS Notices to apply to such accounts as well?

In addition, in the case that MAS accepts our feedback in sub-paragraph (1)(a), please could MAS clarify if the Specified Regulated Entity is required to set out internal policies, procedures and controls to monitor the FRC and foreign office's compliance with FATF standards in relation to such accounts.

(b) FRCs or foreign offices relying on licensing exemptions in the Second Schedule of Securities and Futures (Licensing & Conduct of Business) Regulations ("**SFR**")

Foreign offices or FRCs could have invoked the licensing exemptions as prescribed under SFR for conducting regulated activities in Singapore provided that the stated conditions have been met. An example is the 'bond dealing exemption' in paragraph 2(e) of the Second Schedule to the SFR which does not prescribe similar AML/CFT requirements as under the Notice for entities that are relying on the licensing exemptions in the Second Schedule to the SFR. However, the AML/CFT requirements in the draft Notices will need to be complied with under the proposed Branch Framework and the notified FRC framework.

In light of the fact that the Singapore FI is likely to apply the proposed exemption frameworks for cross-border business arrangement for conducting regulated activities related to OTC derivatives, it appears that there is an uneven playing ground between the

proposed exemption frameworks as compared with existing exemptions granted under the Second Schedule of SFR which have been widely adopted for other regulated activities such as dealing in securities.

In line with our submission in sub-paragraph (1)(a) (Compliance with FATF requirements), we request MAS to consider that so long as the head office of a foreign office or parent company of a FRC is incorporated in a FATF compliant country, performance of CDD measures by the FRC or foreign office in line with the Group AML/CFT policy requirements in respect of Singapore based customers of the foreign office or FRC under the proposed Branch Framework and notified FRC framework respectively will satisfy the requirements in the draft Notices. This ensures that the AML/CFT requirements in the proposed Branch Framework, notified FRC framework and Second Schedule of the SFR will be levelled accordingly.

4. Any other comments: . (optional)

(1) Transition Period

We note that MAS had, in the earlier Consultation Paper on Proposed Exemption Framework for Cross-Border Business Arrangements of Capital Markets Intermediaries Involving Foreign Offices, proposed to implement the proposed Branch Framework on 8 October 2021, and provide FIs with a transition period of 6 months to comply with the proposed boundary conditions and submit notifications on their Existing OTCD Branch Arrangements under the proposed Branch Framework.

In line with our request in the earlier Consultation Paper, ASIFMA requests MAS to consider similarly extending the transition period for the proposals in this Consultation Paper to 9 October 2022, to provide FIs with sufficient time between MAS' response to the consultation and the effective date of the Notices coming into force, so that FIs can consider any further changes that may be necessary to its processes required following MAS' response (including establishing additional CDD processes and controls with their foreign office or FRC as well as communicate with customers for additional information where necessary).

Details of Submitter

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

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

6. Completed by:

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9. Email address for any clarifications

Your contact information will not be published. An acknowledgment email will be sent to the email address upon submission.