Response to ASIFMA letter on Cross-Border Exemption Framework

ASIFMA	MAS response
Scope of Extra-territoriality Framework 2.1 We would like to seek clarification that the extra-territorial scope of the Securities and Futures Act, Chapter 289 of Singapore (the "**SFA**") will not apply to foreign offices and related corporations which act purely as account opening, booking and contracting locations and where all sales and trading activities are carried out by the Singapore FI and there are no overseas-based representatives that will be involved in conducting the regulated activities with Singapore customers. It is common for financial institutions to adopt a centralised booking model, where trades are booked and accounts are opened with a particular office (which may be a foreign office), but for customer servicing to be carried out of the office of the jurisdiction of the client (such as Singapore). In effect, this is an internal arrangement for the bank, and the client has no contact with representatives of the foreign office.	As explained in the response to consultation, whether or not section 339(2) of the SFA and the FRC/Branch Framework applies in a specific case would depend on the facts and circumstances of the case, and FIs should make their own assessment. Please refer to Annex 2 for illustrations on the application of the FRC/Branch Framework to common cross-border business arrangements. Specifically, on the cross-border business arrangements you have described, you may wish to refer to Illustration 2. Where the Singapore FI carries out marketing to and solicitation of Singapore customers on behalf of or as an agent of its FRC/FO and the customers contract with the FRC/FO, the acts of the FRC/FO would be within the scope of section 339(2) read with section 82(1) of the SFA. This is the case even if representatives of the FRC/FO have no contact with the Singapore customers.
Notification of arrangements with Foreign Offices ("**FO**") *Application of transition periods* 2.2 We understand that a Singapore FI that has entered into a business arrangement with its FO to carry on business is dealing in specified contracts and specified over-the-counter derivatives contracts (in reliance on regulations 60 and 61 of the Securities and Futures (Licensing and Conduct of Business) Regulations ("**SF(LCB)R**") respectively) have a 12-month transitional period to notify MAS of the cross-border business arrangement by 8 October 2022. Please could MAS confirm if a similar 12-month transitional period will apply to FOs that have cross-border business arrangements with its Singapore FI generally, e.g. when carrying on business in dealing in other capital markets products (such as	As mentioned in our consultation paper, the transition period is applicable to the OTCD Branch Arrangements which are covered under the transitional arrangement for the regulation of OTCD. FOs that have other cross-border business arrangements with its Singapore FI, and where their activities are caught by the extra-territorial scope of SFA/FAA, should already be complying with the relevant business conduct requirements and individuals who conduct regulated activities would have been appointed as representatives. We will not be able to advise on specific bilateral discussions between the FIs and their respective MAS officers-in-charge. As such, we suggest that these FIs engage their MAS officers-in-charge if they have any specific questions in relation to their existing cross-border business arrangements.

securities and units in a collective investment scheme). On the face of regulations 5 and 8 of the Securities and Futures (Exemption for Cross-Border Arrangements) (Foreign Offices) Regulations 2021, it appears that there is no transitional period for FOs outside the scope of regulation 60 and 61 of the SF(LCB)R. We note that this would similarly be the case in regulations 5 and 7 of the Financial Advisers (Exemption for Cross-Border Arrangements) (Foreign Offices) Regulations 2021 – it appears that there is no transitional period for FOs outside the scope of regulation 40BB and 40BC of the Financial Advisers Regulations ("**FAR**"). FOs would therefore be in the position of having to comply with the representative notification and the relevant business conduct requirements in the SF(LCB)R and FAR (as the case may be), until they can comply with the boundary conditions. However, given that many FOs have existing arrangements with their offices in Singapore, and are generally operating on the basis of a light touch approach pursuant to discussions with MAS (where FOs may not be required to comply with some or all of the business conduct requirement), these FOs would not be in a position to comply with the business conduct requirements and would also need time to implement the boundary conditions and transition their existing arrangements over to the new Exemption Frameworks. Therefore, these FOs with such existing arrangements will similarly require a 12-month transition period.	
2.3 Please could MAS also clarify if new and/or additional representatives can conduct regulated activities on behalf of a FO during this transition period, on the basis that cross-border arrangement will be notified to the MAS before the end of the transition period.	For arrangements which are able to rely on the 12-month transition, foreign representatives (including new/additional representatives) are allowed to carry on the qualifying business on behalf of the FO under such arrangements during the transition period.
Notification and annual reporting requirements for custody banks 2.4 In the case of a custody bank, where custodisation occurs in various markets, please could MAS clarify its expectation on the Singapore FI's notification. In particular, please could MAS clarify the notification requirements (since there are no licensed representatives required for	Given no representatives are required for the provision of custody services, the number of representatives can be factually reported as 0 in the annual reporting form. Please provide references to specific parts of the notification/ annual reporting forms if ASIFMA has further queries.

the provision of custody services) as well as annual reporting requirements on such Singapore FI.	
<u>Annual reporting requirements</u> *Timeline for reporting* 2.5 We note that MAS had, in paragraph 4.30 of the MAS Response, confirmed that the due date of the first round of annual reporting would be deferred to 2023. Annex 3 further provides examples of the applicable due dates for the first round of annual reporting – for example, for an arrangement that commences in November 2021, and the Singapore FI's financial year end is in December, the annual reporting will be due by May 2023 for the financial year ending December 2022. 2.6 Where these FIs have existing paragraph 9/11 arrangements for which a 12-month transition period is provided, and the date of commencement of the arrangement under the new FRC Framework is on 8 October 2022, we would respectfully request MAS to consider having the first round of annual reporting by May 2024 (for the period 8 October 2022 to 31 December 2023) instead of May 2023 (since this would only cover a 2-month period from 8 October to 31 December 2022).	We will not be granting further extensions to the first round of reporting which was already deferred to 2023. Where FIs have existing paragraph 9/11 arrangements for which a 12-month transition period is provided, and the date of commencement of the arrangement under the new FRC Framework is on 8 October 2022, the annual reporting would be due by May 2023 (for financial year ended December 2022).
Reliance on external auditor certification 2.7 Separately, for a Singapore FI which financial year end is in December, and that is currently required to submit an annual certification from the external auditor in respect of its existing paragraph 9/11 arrangements, could MAS confirm that: (a) the last annual certification from the external auditor would be until 31 Dec 2021, even if the commencement date notified to MAS is after 1 Jan 2022 but on or before 8 Oct 2022; and	a) An FI is not required to submit an audit certification in respect of its existing paragraph 9/11 arrangement(s), if it notifies under the Exemption Framework before the certification under the existing framework falls due. Nevertheless, MAS may request audit certifications to cover any gap periods if the need arises. Thereafter, assuming that the FI (with a 31 March financial year end) submits a Form FN in July 2022 to notify MAS of its existing paragraph 9/11 arrangement, the first annual reporting under the Exemption Framework should be submitted by August 2023 and should cover

(b) the external auditor can continue to provide the certification under the Exemption Frameworks via the long-form report, which in the case of banks, is submitted to the MAS within 3 months of financial year-end (i.e. by 31 Mar of every year) pursuant to Section 26(2) of the Banking Act.	activities conducted under the arrangement from its commencement in July 2022 to March 2023. b) As explained in paragraph 4.20 of the response to consultation, MAS will not prescribe the template for the audit certification. The annual reporting form FR (which requires the certification by an independent assurance function to be attached within) is to be submitted not later than 5 months from the end of the financial year. If the audit certification that the Singapore entity has complied with the requirements prescribed under the relevant paragraphs of the regulations and notices[1] is included in the long-form report, the FI should attach the report when submitting the annual reporting form FR.

[1] (i) regulation 6(1) of the Securities and Futures (Exemption for Cross-Border Arrangements) (Foreign Related Corporations) Regulations 2021;
(ii) regulation 6(1) of Financial Advisers (Exemption for Cross-Border Arrangements) (Foreign Related Corporations) Regulations 2021;
(iii) regulation 10(1) of the Securities and Futures (Exemption for Cross-Border Arrangements) (Foreign Office) Regulations 2021;
(iv) regulation 8(1) of Financial Advisers (Exemption for Cross-Border Arrangements) (Foreign Office) Regulations 2021;
(v) paragraph 5 of the Notice on Requirements in relation to Cross-Border Arrangements under the Securities and Futures (Exemption for Cross-Border Arrangements) (Foreign Related Corporations) Regulations 2021 (Notice SFA04-N17);
(vi) paragraph 5 of the Notice on Requirements in relation to Cross-Border Arrangements under the Financial Advisers (Exemption for Cross-Border Arrangements) (Foreign Related Corporations) Regulations 2021 (Notice FAA-N22);
(vii) paragraphs 3, 4 and 5 of the Notice on Prevention of Money Laundering and Countering the Financing of Terrorism – Specified Persons in relation to Cross-Border Arrangements under the Securities and Futures (Exemption for Cross-Border Arrangements) (Foreign Related Corporations) Regulations 2021 (Notice SFA04-N19);
(viii) paragraphs 3, 4 and 5 of the Notice on Prevention of Money Laundering and Countering the Financing Terrorism – Financial Advisers in relation to Cross-Border Arrangements under the Financial Advisers (Exemption for Cross-Border Arrangements) (Foreign Related Corporations) Regulations 2021 (Notice FAA-N24);
(ix) paragraph 5 of the Notice on Requirements in relation to Cross-Border Arrangements under the Securities and Futures (Exemption for Cross-Border Arrangements) (Foreign Offices) Regulations 2021 (Notice SFA04-N18);
(x) paragraph 5 of the Notice on Requirements in relation to Cross-Border Arrangements under the Financial Advisers (Exemption for Cross-Border Arrangements) (Foreign Offices) Regulations 2021 (Notice FAA-N23);
(xi) paragraphs 3, 4 and 5 of the Notice on Prevention of Money Laundering and Countering the Financing of Terrorism – Specified Licence Holders and Specified Exempt Persons in relation to Cross-Border Arrangements under the Securities and Futures (Exemption for Cross-Border Arrangements) (Foreign Offices) Regulations 2021 (Notice SFA04-N20); and/or

Scope of "customer" for the purposes of annual reporting 2.8 We note that the Annex to Form FR defines a "customer" as follows (**emphasis ours**): "*A "customer" refers to* ***a person on whose behalf a Foreign Related Corporation (FRC) or Foreign Office (FO) carries on or will carry on any regulated activity under the SFA,*** *or provides any financial advisory service under the FAA, as part of the cross-border arrangement.*" 2.9 We note however that this definition is inconsistent with the definition of a customer under the relevant anti-money laundering and countering the financing of terrorism notices ("**AML Notices**")[2] that apply to the cross-border framework, which broadly means a person with whom the FO or FRC establishes or intends to establish business relations, or for whom the FO or FRC undertakes or intends to undertake any transaction without an account being open, who is not also a customer of the Singapore FI. 2.10 Based on the above, please could MAS confirm that: (a) if the definition of "customer" for Form FR should be limited to persons who are not customers of the Singapore FI (so if all the customers	"Customer" is defined differently for the two instruments as they serve different purposes. FIs should adhere to the definition of "customer" stated in Form FR when completing the form, which is consistent with the definitions of "customer" under the SFA, and FAA. Please note that the definition of "customer" in Form FR does not exclude individuals who are customers of the Singapore FI. Regardless of whether that customer is also a customer of the Singapore FI, all customers served under the cross-border arrangement should be reported.

(xii) paragraphs 3, 4 and 5 of the Notice on Prevention of Money Laundering and Countering the Financing Terrorism – Licensed Financial Advisers and Specified Exempt Financial Advisers in relation to Cross-Border Arrangements under the Financial Advisers (Exemption for Cross-Border Arrangements) (Foreign Offices) Regulations 2021 (Notice FAA-N25).

[2] For SFA-regulated activities, the MAS Notice SFA 04-N20 to Specified Licence Holders and Specified Exempt Persons in relation to Cross-Border Arrangements under the Securities and Futures (Exemption for Cross-Border Arrangements) (Foreign Offices) Regulations 2021 on Prevention of Money Laundering and Countering the Financing of Terrorism and MAS Notice SFA 04-N19 to Specified Persons in relation to Cross-Border Arrangements under the Securities and Futures (Exemption for Cross-Border Arrangements) (Foreign Related Corporations) Regulations 2021 on Prevention of Money Laundering and Countering the Financing of Terrorism.
For FAA-regulated activities, the Notice FAA-N25 to Licensed Financial Advisers and Specified Exempt Financial Advisers in relation to Cross-Border Arrangements under the Financial Advisers (Exemption for Cross-Border Arrangements) (Foreign Offices) Regulations 2021 on Prevention of Money Laundering and Countering the Financing of Terrorism and Notice FAA-N24 to Specified Financial Advisers in relation to Cross-Border Arrangements under the Financial Advisers (Exemption for Cross-Border Arrangements) (Foreign Related Corporations) Regulations 2021 on Prevention of Money Laundering and Countering the Financing of Terrorism.

are also customers of the Singapore FI, the number of customers to be reported in Form FR would be "zero"); and (b) the reported revenue in Form FR will be computed based on the definition of "customer" in Form FR, and not in the AML Notices.	
<u>AML Requirements</u> 2.11 The applicable AML Notices require the Singapore FI to ensure that there are adequate internal policies, procedures and controls, such that the performance of customer due diligence ("**CDD**") measures by the FRC or FO on the FRC or FO's customers is consistent with AML requirements under the relevant AML Notice applicable to the Singapore FI (for a Singapore bank, for example, that would be MAS Notice 626 on the Prevention of Money Laundering and Countering the Financing of Terrorism – Banks). Please could MAS confirm that, CDD measures (apart from ongoing monitoring) do not have to be retrospectively conducted for customers of a FRC or FO that were onboarded prior to 9 October 2021 or the end of the transition period, as the case may be (i.e. the MAS would not consider that there is a gap in the AML Notice requirements with respect to such customers). This is especially since existing FRC customers that are onboarded prior to 9 October 2021 would have been subject to the applicable AML requirements (including CDD measures) by the FRC. Therefore, any gaps in CDD measures that must be rectified for consistency with the applicable AML Notices would in practice only be conducted at the FRC's customer periodic review cycle, and in any case, should only need to be rectified at the end of the transition period.	We will respond to this query separately.
<u>Accredited Investor ("**AI**") Opt-In Requirements</u> 2.12 We refer to the MAS Response, in particular at paragraph 5.8, where the MAS had stated (**emphasis ours**): "*To reiterate, AI opt-in requirements under the Securities and Futures (Classes of Investors) Regulations 2018 ("SF(COI)R") will apply to customers under the Exemption Frameworks for*	To clarify, the Securities and Futures (Classes of Investors) Regulations 2018 ("SF(COI)R") will be amended such that the AI opt-in requirements will apply to customers under the Exemption Frameworks for all in-scope activities under both the SFA and FAA, including the regulated activity of advising on corporate finance under the SFA.

all in-scope activities under both the SFA and FAA, ***including the regulated activity of advising on corporate finance under the SFA.***" 2.13 Generally, investors who meet the requisite wealth threshold must opt-in to be treated by a financial institution as an AI, in relation to certain statutory provisions known as "consent provisions", as set out in the SF(COI)R. We would like to seek clarity on how the AI opt-in requirements would apply to the Exemption Framework. 2.14 Given that the Exemption Framework exempts the FO and FRC (as the case may be) from applicable business conduct and representative notification requirements under the SFA and FAA, we would note that it would accordingly not be relying on any consent provision with respect to the provision of services to the accredited investor. The SF(COI)R also does not specify the Exemption Framework (or any provision thereof) as a consent provision. Insofar as the FO or FRC is not relying on any consent provisions when dealing with a customer, it appears from a technical reading of the SF(COI)R that the FOs and FRCs are not subject to opt-in requirements pertaining to consent provisions. We would be grateful if the MAS could clarify if there would be a separate requirement outside the SF(COI)R requiring FOs and FRCs to obtain opt-ins from AI clients for the purposes of reliance on the Exemption Framework and if so, whether the FOs and FRCs are required to comply with all the opt-in requirements under the SF(COI)R as though the Exemption Framework were a consent provision? 2.15 In particular, we would like to seek the MAS' guidance on the following: (a) for activities such as the provision of corporate finance activities that do not rely on the consent provisions in the SF(COI)R, or where an institution not relying on the consent provisions, it appears that the AI opt-in requirements have no specific application as there are no consent	As explained in paragraph 5.8 of our response to consultation, where customers have previously opted to be treated as an AI by the Singapore FI (in the case of the Branch Framework) or FRC (in the case of the FRC Framework) (whichever is applicable), the opt-ins would continue to be valid for the purpose of the FRC/Branch Framework (as applicable) unless the consent is withdrawn. Conversely, customers who have not opted to be treated as an AI by the Singapore FI or FRC (as applicable) would have to do so for them to be served under the FRC/Branch Framework. We will provide further clarifications on the consequential amendments to be made to the SF(COI)R in due course.

provisions that apply. We would be grateful for further clarity on how the opt-in would apply in this case; and (b) where an AI has already opted in for all the consent provisions under the SF(COI)R, could MAS please clarify if there would be a requirement to obtain an additional consent specifically for the Exemption Framework, and if so, whether it is also necessary to comply with requirements such as provision an explanation of the effect of the entirety of Exemption Framework?	
<u>Disclosure to customers</u> 2.16 Question 5 of the FAQs clarifies MAS' expectation for the Singapore FI to disclose to customers the fact that an individual, when acting on behalf of an FRC/FO, is not subject to MAS' regulation, and that the Singapore FI should clarify the recourse available to the customers for any issue which may arise in the customers' dealings with the individual based overseas. Please could MAS provide additional guidance on: (a) the level of detail expected in the disclosure; (b) the form of disclosure; and (c) whether the Singapore FI may rely on the FRC/FO to perform such disclosures to customers. 2.17 For example, please could MAS confirm if it would be sufficient for the Singapore FI to mention in its customer agreement that its overseas representatives are not regulated by the MAS, and provide a contact point for customers to reach out to in the event of disputes.	MAS does not prescribe the level of detail or format for disclosures to customers by FIs, which will depend largely on the nature of the services being provided to customers. The appropriateness of disclosures to customers is something that FIs should already be considering as part of effective risk management and sound business practice, and to ensure that customers are kept informed that the persons they are dealing with are not subject to MAS' regulation, and the recourse available for any issues that may arise in their dealings with the persons based overseas.
<u>Information to be recorded in the registers</u> 2.18 Finally, members would be appreciative of additional guidance and clarification on the information that must be recorded in the register of foreign representatives. As stated in ASIFMA's response to the consultation papers previously, maintaining the representative register in	Please refer to paragraphs 5.16 and 5.17 of our response to consultation as well as questions 28, 29 and 30 of our FAQs. As stated in our response to consultation, there is no need for a separate register of foreign representatives to be maintained in Singapore, if there are centralised processes adopted by the group such that the register is maintained by the FRC/FO or other related entities. The requirement to

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. In particular, some of the items that are sought to be captured in the register are onerous to capture and may be of limited utility (for example, it may be difficult to prepare accurate estimates on the time spent by foreign representatives on each regulated activities). 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.	"keep or cause to be kept" a register of foreign representatives is met if the Singapore FI is able to generate and provide an up-to-date list of all such representatives, upon MAS' request. The information that must be recorded in the register of foreign representative is listed in the Notices[3]. This includes: (i) the name of the foreign representative and the FRC/FO that the foreign representative is acting for; (ii) the date(s) of any visit to Singapore by a foreign representative; and (iii) the purpose of any such visit and details and description of any activities conducted by the foreign representative during the visit. As the industry had asked for guidance on the details of the activities conducted that should be recorded in the register, we had provided several examples in question 30 of the FAQs. These are examples and not a prescriptive list. As the Singapore FI is responsible for maintaining oversight of the arrangement, FIs should consider for themselves the types of information that would be useful to oversee and monitor the FRC/Branch arrangement, instead of adopting a 'checklist' approach towards compliance with regulations.

[3] (i) paragraph 5.2.2(b) of the Notice on Requirements in relation to Cross-Border Arrangements under the Securities and Futures (Exemption for Cross-Border Arrangements) (Foreign Related Corporations) Regulations 2021 (Notice SFA04-N17);
(ii) paragraph 5.1.2(b) of the Notice on Requirements in relation to Cross-Border Arrangements under the Financial Advisers (Exemption for Cross-Border Arrangements) (Foreign Related Corporations) Regulations 2021 (Notice FAA-N22);
(iii) paragraph 5.2.1(b) of the Notice on Requirements in relation to Cross-Border Arrangements under the Securities and Futures (Exemption for Cross-Border Arrangements) (Foreign Offices) Regulations 2021 (Notice SFA04-N18);
(iv) paragraph 5.1.1(b) of the Notice on Requirements in relation to Cross-Border Arrangements under the Financial Advisers (Exemption for Cross-Border Arrangements) (Foreign Offices) Regulations 2021 (Notice FAA-N23).