

By Email

1 September 2021

Monetary Authority of Singapore (“MAS”)

ASIFMA Letter to MAS on Regulation 54B of the Securities and Futures (Licensing and Conduct of Business) Regulations and Guidelines on Risk Mitigation Requirements for Non-Centrally Cleared Over-the-Counter Derivatives Contracts

Dear MAS Team

On behalf of the Asia Securities Industry & Financial Markets Association (“ASIFMA”) ¹ and our members, we would like to seek guidance from MAS specifically on (i) section 3 (Trading Relationship Documentation); (ii) section 5 (Valuation); and (iii) section 8 (Dispute Resolution), of MAS’ [Guidelines on Risk Mitigation Requirements for Non-Centrally Cleared Over-the-Counter Derivatives Contracts](#) (“RMR Guidelines”).

Pursuant to [regulation 54B\(1\)\(a\) of the Securities and Futures \(Licensing and Conduct of Business\) Regulations](#) (“Regulation 54B(1)(a)”) read with section 3.1 of the RMR Guidelines, in-scope financial institutions (“In-scope FIs”) shall agree with their counterparties, classified as institutional investors, expert investors or accredited investors under the Securities and Futures Act, a trading relationship documentation prior to, or at the time of, entering into non-centrally cleared over-the-counter derivatives contracts.

Section 3.2 of the RMR Guidelines further sets out material rights and obligations that may be included in this trading relationship documentation. The industry generally has two ways to comply with Regulation 54B(1)(a) read with section 3 of the RMR Guidelines by either executing (a) an ISDA Master Agreement together with portfolio reconciliation (in the case of FI counterparties only) and dispute resolution wording such as the Singapore-specific [Amendment Agreement relating to Singapore MAS Risk Mitigation Requirements](#) (“ISDA Agreement”) which is considered as the industry standard document; or (b) a financial institution specific trading relationship document. However, there are a number of non-financial counterparties (mainly corporates) that are based locally and in this region

¹ ASIFMA is an independent, regional trade association with over 150 member firms comprising a diverse range of leading financial institutions from both the buy and sell side, including banks, asset managers, professional and consulting firms, and market infrastructure service providers. Together, we harness the shared interests of the financial industry to promote the development of liquid, deep and broad capital markets in Asia. ASIFMA advocates stable, innovative, competitive and efficient Asian capital markets that are necessary to support the region’s economic growth. We drive consensus, advocate solutions and effect change around key issues through the collective strength and clarity of one industry voice. Our many initiatives include consultations with regulators and exchanges, development of uniform industry standards, advocacy for enhanced markets through policy papers, and lowering the cost of doing business in the region. Through the GFMA alliance with SIFMA in the United States and AFME in Europe, ASIFMA also provides insights on global best practices and standards to benefit the region.

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that do not have an ISDA Master Agreement or a bespoke trading relationship agreement in place and the above exercises may be the first that they have been requested to execute such agreements (especially for those who execute shorter tenor FX derivatives). As a result, ASIFMA members have been facing pushback from their counterparties on the execution of the required agreements, and negotiations are taking a longer time than expected.

In the same way, sections 5.1 and 8.1 of the RMR Guidelines respectively set out the dispute resolution requirements and where applicable valuation requirements (in the case where bank exchanges margin with its non-FI counterparties) that In-scope FIs have to agree and document with their counterparties. On the basis that non-financial counterparties (mainly corporates) consider the RMR Guidelines and regulation 54B of the Securities and Futures (Licensing and Conduct of Business) Regulations (“**Regulation 54B**”) as not being applicable to them, they have been refusing to execute any documentation or amendment addressing these requirements as well.

Furthermore, ASIFMA members are also facing challenges from other non-financial counterparty segments (i.e., sovereigns, central banks and multilateral development banks), as such counterparties are exempt from risk mitigation requirements prescribed under similar regulations made by regulators within the region (such as HKMA and APRA).

Given the above challenges, there is a growing concern among ASIFMA members, which are mostly the In-scope FIs, that the industry may not be able to fully implement Regulation 54B and the RMR Guidelines before 8 October 2021. This is despite our members’ ongoing efforts to reach out to and educate their counterparties on Regulation 54B and the RMR Guidelines for more than a year. Considering that MAS expects the 8th of October 2021 timeline will proceed as planned, ASIFMA would like to propose the following for MAS’ consideration:

1. Regulatory relief for In-scope FIs to continue dealing in non-centrally cleared over-the-counter derivatives contracts with non-financial counterparties post 8 October 2021

In light of the challenges faced by the industry with regard to non-financial counterparties, ASIFMA members suggest a regulatory relief of at least 6 months for In-scope FIs to continue dealing in non-centrally cleared over-the-counter derivatives contracts with existing non-financial counterparties refusing to be repapered, and/or not agreeing to (i) trading relationship documentation, (ii) the valuation process (in the case where bank exchanges margin with its non-FI counterparties), and/or (iii) the dispute resolution mechanism or process, addressed in Regulation 54B read with the RMR Guidelines post 8 October 2021.

This regulatory relief takes into consideration that:

- In-scope FIs shall continue in their client outreach efforts; and
- In-scope FIs shall promote awareness of the RMR Guidelines and the Regulation 54B.

Given these counterparties are classified as accredited investors, expert investors or institutional investors, the risk that they are not familiar with their rights and obligations is deemed low. Furthermore, trade confirmations covering the necessary terms will be sent to these counterparties.

2. Promoting awareness of risk mitigation requirements under Regulation 54B and RMR Guidelines

The lack of awareness among non-financial counterparties is a factor in the low take-up rate. Therefore, we seek MAS assistance to promote awareness of the risk mitigation requirements. Separately, ASIFMA will also reach the Association of Corporate Treasurers (Singapore) to raise awareness of these requirements.

We appreciate the MAS' consideration of the above and we look forward to hearing from you. Should you have any queries, please do not hesitate to contact Patrick Pang (ppang@asifma.org) and Channette Chan (cchan@asifma.org).

Yours sincerely,



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