

20 December 2022

Monetary Authority of Singapore  
Capital Markets  
10 Shenton Way  
MAS Building  
Singapore 079117

Dear Sir/Madam,

## **RE: ASIFMA response to the MAS' Consultation Paper on the Proposed Regulatory Measures for Digital Payment Token Services Services**

The Asia Securities and Financial Markets Association (“**ASIFMA**”)<sup>1</sup> appreciates the opportunity to respond to the discussion questions set out in the Monetary Authority of Singapore’s (the “**MAS**”) [Consultation Paper on Proposed Regulatory Measures for Digital Payment Token Services](#) (“**DPTs**”) published on 26 October 2022 (the “**Consultation Paper**”). Feedback set out in this response has been collected from ASIFMA’s Fintech Working Group and Crypto Sub-Working Group, which has been closely following global, regional and local developments relating to virtual assets in recent years. We are grateful to ASIFMA law firm member Linklaters Singapore Pte. Ltd. for their support in drafting this response based on input from ASIFMA’s Fintech Working Group and Crypto Sub-Working Group.

### **General comments**

ASIFMA members (“**Members**”) support the MAS’ proposal to establish a regulatory framework for DPTs that is consistent with international standards as they evolve and mature.

Members also encourage the MAS to continue its engagement with global standard-setting bodies and regulators to develop a consistent approach to the definition, categorisation and regulatory treatment of DPTs in order to minimise regulatory arbitrage across jurisdictions and to create a predictable, effective regulatory framework that will be fit for purpose in the long term. This should help to instill consumer confidence and promote investor protection, as well as support innovation in this sector.

ASIFMA wishes to thank the MAS for the opportunity to share this feedback on the Consultation Paper. Members are supportive of continued dialogue between the MAS and the industry as the regulatory regime is being developed to ensure the appropriate calibration of the twin objectives of effectively managing risk while also

---

<sup>1</sup>ASIFMA is an independent, regional trade association with over 160 member firms comprising a diverse range of leading financial institutions from both the buy and sell side, including banks, asset managers, law 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, and competitive 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. More information about ASIFMA can be found at: [www.asifma.org](http://www.asifma.org).

supporting innovation. We welcome the opportunity to contribute to further consultations on DPT regulation in the future.

Unless otherwise defined herein, the terms used in this response have the meanings assigned to them in the Consultation Paper. If you have any further questions or would like to discuss our response in further detail, please contact me.

Sincerely,

A handwritten signature in black ink, appearing to read 'VdLoo', enclosed in a light grey rectangular box.

Laurence Van der Loo  
Executive Director, Technology & Operations  
Asia Securities Industry & Financial Markets Association

## Responses to discussion questions

|  |  |
|--|--|
| Question 1   | <b>MAS seeks comments on the proposed scope of “retail customer” for consumer access measures.</b>   |
| Question 2   | <b>MAS seeks comments on the options for the treatment of DPT holdings for the purpose of determining a customer’s eligibility as an Accredited Investor (AI).</b>   |
| Members have no comments. Members agree it would be useful for the MAS to consult the capital markets industry prior to introducing similar changes to the AI definition in the Securities and Futures Act 2001 (SFA).   |  |
| Question 3   | <b>MAS seeks comments on the proposal to assess the retail customer’s knowledge of the risks of DPT services, as well as the risks to be covered by the assessment. MAS also seeks comments on possible next steps for DPTSPs, should the retail customer be assessed not to have sufficient knowledge of the risks of DPT services.</b> |
| Members were of the view that it may be helpful for DPT firms to issue a crypto certification for / to customers to certify that the retail customer has been assessed to have sufficient knowledge of the risks of DPT services.  |  |
| Question 4   | <b>MAS seeks comments on the proposal to restrict DPTSPs from offering incentives to retail customers.</b>   |
| <p>Members are generally supportive of the proposal that DPTSPs should not offer incentives to retail customers or to any person (e.g. an existing customer or a celebrity) to refer a DPT service to retail customers.</p> <p>However, Members seek clarity on the scope of what a “referral” is intended to capture. For example, where offering of DPTs to retail customers is prohibited in certain overseas jurisdictions, a Member’s affiliate in the relevant overseas jurisdiction may wish to refer the retail customer to its Singapore affiliate in accordance with applicable laws. Would such referrals be captured by this proposed restriction?</p> |  |
| Question 5   | <b>MAS seeks comments on the proposed restrictions on debt-financed and leveraged DPT transactions</b>   |
| Members have no comments.  |  |
| Question 6   | <b>MAS seeks comments on the proposed segregation measures relating to customers’ assets.</b>  |
| Question 7   | <b>MAS seeks comments on whether DPTSPs should be required to appoint an independent custodian to hold customers’ assets. MAS also seeks comments on other control measures that would help to minimise the risk of loss or misuse of customers’ DPTs.</b>   |

|   |  |
|---|--|
| <p><b>Question 8.</b></p>   | <p><b>MAS seeks comments on whether the proposed disclosure and reconciliation measures are appropriate and adequate, and whether any other disclosures would be useful.</b></p> |
| <p>Members are generally supportive of the proposed segregation measures for customers’ assets by DPTSPs. Such measures would be critical particularly given the recent spate of high-profile misconduct cases and interconnectivity within the digital assets ecosystem.</p> <p><u>Independent custodian</u></p> <p>Members were of the view that custody requirements should be the same for both banks and non-banks under the principle of “same activity, same risk, same regulation”. For any provider of digital asset custody services, Members suggested the following three key principles that should be adhered to irrespective of the underlying asset:</p> <p><b>Principle 1 (Separation of Financial Activities):</b> safekeeping operations must be functionally separated from trading and other similar market activities;</p> <p><b>Principle 2 (Segregation of Client Assets):</b> client assets must be segregated at all times from the bank’s (and non-bank’s) proprietary assets to ensure that they are bankruptcy remote; and</p> <p><b>Principle 3 (Proper Control):</b> the custodian must maintain proper control over client assets in order to identify the entitlement holder and to mitigate any ‘single point of failure’ in the record of ownership.</p> <p>Principle 1 above is focused on preventing vertical integration of trading, investing and custody activities within the same legal entity. Members expressed that these functions should be conducted by separate legal entities with appropriate controls to mitigate conflicts of interests. While these may not need to go so far as to prohibit the exchange/ trading entity and the custody entity from being affiliated, they would need to have separate governance structures. In that vein, Members would support an “independent” custodian requirement if it is referred to as a separate legal entity with distinct governance and controls, but not if it further mandated that the separate legal entity be wholly unaffiliated with exchange/ trading entities.</p> <p>In respect of Principle 2 as applied to non-banks, other Members expressed a need to focus on the segregation of customers’ assets from a legal perspective. While Members agree that crypto assets should not be drawn into the bankruptcy estate of the DPTSP, Members felt that the measures should not go so far as to require an independent custodian.</p> <p>In that vein, Members noted that DPTs on deposit in a custodial account with a custodian should not form part of the custodian’s bankruptcy estate in the event of the insolvency of the custodian. If DPTs do form part of the bankruptcy estate of non-bank custodians, Members believe that such custodians should properly disclose the risks to their customers.</p> <p><u>Other matters relating to custodians</u></p> <p>Additionally, Members were of the view that DPTs not supported by a custodian should not be attributed a safekeeping obligation for the custodian, even if such unsupported DPTs are ledgered to</p> |  |

the wallet maintained by the custodian for the customer as digital assets are not credited to a digital wallet in a traditional sense.

Determining whether a digital asset has been allocated to a wallet requires querying the individual ledger for such digital asset, and the custodian may not have built the requisite connection to the ledger of the unsupported digital asset to know that such unsupported digital asset has been ledged to the wallet or to interact with such digital asset. For example, if the custodian only agrees to support Bitcoin and if Binance Coin (“BNB”) is dropped into the wallet, the custodian might not have connectivity to the BNB smart contract/ledger to know if the BNB has been ledged to the custodian wallet or to instruct movements in BNB.

Connecting to every digital asset poses risks to custodians as querying whether a smart contract had ledged anything to a custodian’s wallets requires the custodian to submit a list of its wallets to the smart contract. In the event the smart contract was created by a bad actor or a sanctioned entity, sending such a list creates a potential vulnerability to the custodian.

In respect of the disclosure measures proposed by the MAS, Members were of the view the MAS should emphasise the need for such disclosures to be clear and brought to the attention of retail investors, given that retail investors may not necessarily pay much attention to these disclosures.

**Question 9**

**MAS seeks comments on the proposed risk management controls for customers’ DPTs. MAS also seeks comments on any other measures to safeguard the private keys and storage of customers’ DPTs.**

Members are generally supportive of the proposed risk management control measures for customers’ DPTs and believe these are important to safeguard private keys and storage of customers’ DPTs.

In this regard, Members believe that “attributable loss” (in paragraph 4.12(e) of the consultation paper) should be clearly defined. Members believe that requiring a process for redress and compensation in the event that crypto assets held in custody are lost should be limited to losses caused by the fault of the custodian (e.g., a failure of the custodian to meet its standard of care, fraud on the part of the custodian, willful misconduct, or gross negligence). Some Members also expressed that a separate compensation process in the event of a loss of a customer’s DPTs is not necessary. Instead, client losses should be addressed as a contractual claim under the custody agreement.

Members also expressed that the MAS should focus on technology solutions that are designed to ensure there is no ‘single point of failure’ in the record of ownership of client assets. From this perspective, the temperature of the wallet (e.g. hot / cold) would not be mandated, nor is the amount of assets that need to be held in a particular storage type. Members would support risk disclosure and transparency as to the key management solution that is used by a particular DPTSP.

In addition, Principles 1 and 2 referred to in the answer to Questions 6-8 above would also help this process in that the custodial entity would be solely focused on being a custodian, and would design a key management system that was appropriately protective (more so than would an integrated exchange and custody entity whose main focus would likely be on trading).

In addition, custodians should not be liable to vet the smart contract for all of its hidden features. Custodians should not be strictly liable for any loss in this respect, especially given the potential for losses caused by the nature of a public blockchain. Otherwise, this may discourage traditional custodians from providing services in this area, or it may encourage custodial offerings from special purpose vehicles designed to limit damages, neither of which is desirable from a customer protection perspective.

|                           |  |
|---------------------------|--|
| <p><b>Question 10</b></p> | <p><b>MAS seeks comments on the proposed restriction on DPTSPs not to lend out retail customers’ DPTs. MAS also seeks comments on any other measures to protect customers’ DPTs from the risks of unregulated borrowing and lending by DPTSPs.</b></p> |
| <p><b>Question 11</b></p> | <p><b>MAS seeks comments on the proposed measures to identify and mitigate conflicts of interests. MAS also seeks comments on any other measures to identify and mitigate conflicts of interest.</b></p>   |

Lending/staking

Members have no comments on the proposal to prohibit DPTSPs on lending out retail customers’ DPTs or conducting staking on behalf of retail customers.

Conflicts of interest

Members are supportive of the proposal for DPTSPs to address conflicts of interests issues.

However, Members disagreed with a blanket prohibition on principal liquidity on all DPT trading platforms. Instead, a calibrated approach should be taken. Members envisage that institutional firms may wish to roll out automated workflows and platforms that may potentially fall within the definition of “DPT trading platforms”, which depending on the scope of the specific DPT trading platform (e.g., in terms of product, intended user base, system access and workflow etc) may require provision of liquidity and market making, etc. Members do not support a simplistic prohibition resulting in institutions not being able to provide liquidity on all such trading platforms, although Members acknowledge that such prohibition may well be appropriate in particular circumstances, in which case the MAS can impose as conditions specific to that DPT trading platform.

Members believe that while conflicts of interests risks should certainly be managed, there are other standard practices to address such issues – in particular, providing clear and adequate disclosures, allowing platform users to opt-out of principal liquidity, responsibilities on the platform provider to have a control framework including monitoring and surveillance relating to best-execution and front-running etc.

In that vein, in respect of any disclosure requirements that may be imposed, Members were of the view the MAS should emphasise the need for such disclosures to be clear, given that retail investors may not pay much attention to these disclosures,

|                           |  |
|---------------------------|--|
| <p><b>Question 12</b></p> | <p><b>MAS seeks comments on the proposal for DPT trading platform operators to publish its policies and procedures on the process for selecting, listing, and reviewing DPTs, as well as the relevant governance</b></p> |
|---------------------------|--|

|  |  |
|--|--|
|  | <b>policies. MAS also seeks comments on any other measures or disclosures to enhance market discipline on DPT trading platform operators, with regard to DPTs traded on their trading platforms.</b>   |
| Members have no comments.  |  |
| <b>Question 13</b>   | <b>MAS seeks comments on the proposed complaints handling policies and procedures. MAS also seeks comments on any other measures or disclosures to ensure that customer complaints are dealt with in a fair and timely manner.</b>   |
| Members have no comments.  |  |
| <b>Question 14</b>   | <b>MAS seeks comments on the proposed requirements for DPTSPs to establish a high level of availability and recoverability of critical IT systems that they use to support their business and services. MAS also seeks comments on the proposed incident reporting and customer information protection requirements.</b> |
| <p>Members are generally supportive of the proposal for DPTSPs to establish a high level of availability and recoverability of critical IT systems used to support their businesses.</p> <p>However, Members noted that in DPT transactions, the execution timeframes are a lot longer than what one would expect from a transaction involving fiat currency. Therefore, it should be explored further as to whether the same standards should apply.</p> <p>In this connection, Members believe that the obligation (in paragraph 5.7(d) of the consultation paper) for DPTSPs to <i>“notify the MAS as soon as possible, but not later than 1 hour, upon the discovery of a system malfunction IT security incident, which has a severe and widespread impact on the bank’s operations or materially impacts the bank’s service to its customers, and submit a root cause and impact analysis report to MAS within 14 days”</i> may not be achievable.</p> |  |
| <b>Question 15</b>   | <b>MAS seeks comments on effective systems, procedures and arrangements that DPT trading platform operators should implement, in order to promote fair, orderly, transparent trading of DPTs offered for sale on their trading platform.</b>   |
| <b>Question 16</b>   | <b>MAS seeks comments on effective measures, including the implementation of market surveillance mechanisms, to detect and deter unfair trading practices</b>  |
| Members have no comments.  |  |
| <b>Question 17</b>   | <b>MAS seeks comments on the proposed transition period of 6-9 months. MAS also seeks other comments to facilitate the transition towards the implementation of the regulatory measures.</b>   |
| Members believe that the implementation timeline appears short compared to other consultations that the MAS has issued, and would suggest providing a transition period of at least 12 months.   |  |

|                                   |   |
|-----------------------------------|---|
| <b>Question 18</b>                | <b>MAS seeks comments on any other matters related to the consultation paper.</b> |
| Members have no further comments. |   |