

MAS consults on proposed enhancements to the customer money and assets protection regime

The Monetary Authority of Singapore (MAS) has published the Consultation Paper on Enhancements to Regulatory Requirements on Protection of Customer's Moneys and Assets.

MAS has undertaken a review of the requirements governing the protection of customer's moneys and assets under the Securities and Futures Act (SFA) and its related subsidiary legislation, and proposes to enhance the regulatory regime governing the safeguarding, identification and use of customer's moneys and assets, and those relating to disclosures to customers. The enhancements proposed by MAS take into account the international standards promulgated by the International Organization of Securities Commission and Financial Stability Board.

The final proposals will be effected primarily through amendments to the Securities and Futures (Licensing and Conduct of Business) Regulations (SF(LCB)R), which MAS will separately consult on after considering feedback from this consultation paper.

Current regime

Capital markets services (CMS) licensees that carry on regulated activities under the SFA are required to comply with the SF(LCB)R provisions governing the treatment and handling of moneys (Customer Money Rules) and assets (Customer Asset Rules) received from customers.

In the consultation paper, MAS has proposed to enhance the regulatory regime governing the protection of

customer moneys and assets held by capital markets intermediaries by, *inter alia*:

- extending the application of existing customer protections;
- introducing new customer protections; and
- disapplying certain provisions of the SF(LCB)R to retail customers and licensed banks, merchant banks or finance companies (Singapore FIs)

Key proposals

- Expanded scope of "customer's moneys"
- Extension of due diligence and notification and acknowledgment requirements to overseas deposit-taking institutions and custodians
- New requirement to maintain information systems and controls
- New advance disclosure and risk disclosure requirements
- Extension of daily computation requirement to all CMS licensees
- New requirement to respond reasonably promptly to requests for account statements
- Disapplication of Regulations 16(1)(b) and 26(2) of the SF(LCB)R in respect of retail customers
- Disapplication of Customer Money Rules to Exempt FIs.

that conduct regulated activities under the SFA (Exempt FIs) in light of industry practices and practicalities.

MAS' proposals do not apply to non-centrally cleared over-the-counter derivative contracts within the scope of the Consultation Paper on Margin Requirements for Non-Centrally Cleared OTC Derivatives published by MAS in October 2015.

Scope of customer's moneys

The current definition of customer's moneys under the SF(LCB)R relates only to "money received on account of a customer" of a CMS licensee.

MAS has proposed to extend this definition to include contractual rights arising from transactions entered into by a CMS licensee on behalf of, or with, a customer. MAS does not propose to amend the scope of "customer's assets".

Due diligence on deposit-taking institutions and custodians

Under the SF(LCB)R, a CMS licensee is required to conduct due diligence on a custodian's suitability for its customer or class of customers before opening a custody account with that custodian to deposit the customer's assets. There is, however, no equivalent requirement in respect of deposit-taking institutions that a CMS licensee may choose to deposit customer's moneys with.

To ensure that CMS licensees exercise due care and diligence in their selection of custodians and deposit-taking institutions, MAS has proposed to require CMS licensees to conduct due diligence on the

suitability of a deposit-taking institution before opening a trust account with it for the deposit of customer's moneys handled by the CMS licensee.

MAS has additionally proposed to require CMS licensees to carry out periodic reviews to assess if the custodian or deposit-taking institution with whom they maintain custody accounts or trust accounts, as the case may be, remains suitable for the customer or class of customers.

Notification and acknowledgment requirement

CMS licensees are currently required to give written notice to, and obtain an acknowledgment from, a Singapore FI with which it deposits customer's moneys, confirming that:

- the moneys are deposited in an account that is designated as a trust account or a customer account;
- the moneys are held on trust for the customer and distinguished and maintained separately from the CMS licensee's own moneys; and
- the Singapore FI cannot exercise any right of set-off against the moneys for any debt owed by the CMS licensee to it.

A similar requirement exists in respect of customer's assets deposited with a Singapore FI, a depository agent for the custody of listed securities, an approved trustee for a collective investment scheme or a person licensed to provide custodial services for securities.

To better protect investors, MAS has proposed to extend this requirement to overseas deposit-taking institutions

and custodians where customers' moneys and assets are deposited with such persons.

Information systems and controls

In addition to the existing record-keeping requirements under the SFA and SF(LCB)R, MAS has proposed to require CMS licensees to maintain information systems and controls that can promptly produce, both in normal times and in the event of resolution or insolvency, and in a format that can be understood by an external party, the following salient information:

- location of customer's moneys and assets, how the assets are held, and the identity of all relevant depositories;
- how customer's moneys and assets are segregated at all levels of a holding chain, and the effects of the segregation on the customer's ownership rights;
- the applicable customer's moneys and assets protection rules and resolution or insolvency regime, especially where customer's moneys and assets are held in a foreign jurisdiction; and
- information on outstanding loans of customer's securities arranged by the CMS licensee.

Disclosure requirement

Advance disclosures

For greater transparency, MAS has proposed to require CMS licensees to provide the following disclosures in advance to customers in a clear and easily understood manner:

- the manner in which the CMS licensee holds the customer's moneys and assets (including

type of segregation and the existence of any holding chain), and the risks associated with such arrangements; and

- where the customer's moneys and assets are held in a foreign jurisdiction, the material differences between the foreign and the Singapore customer's moneys and assets protection regime, and the potential consequences of the differences.

Use of customers' assets

CMS licensees are currently required to disclose the risks to, and obtain written consent from, a customer before it loans out the customer's securities. The content of the risk disclosure is not prescribed under the SF(LCB)R.

To help customers make informed decisions, MAS has proposed also to require CMS licensees to provide risk disclosure to, and obtain consent from, a customer before using the customer's assets, including the mortgaging, charging, pledging or re-hypothecating of the customer's assets.

The risk disclosure should include how the grant of rights to the CMS licensee to use the customer's assets would affect the customer's rights over the assets, as well as the protections available to the customer under the SF(LCB)R. The risk disclosure and consent could be provided in the agreement governing the customer's account.

Daily computation requirement

Currently, only a CMS licensee that carries on trading in futures contracts or leveraged foreign exchange trading is required to carry out daily

computations in respect of the moneys and assets deposited in its customers' trust accounts and custody accounts.

To ensure that customer's moneys and assets are accounted for, MAS has proposed to extend the daily computation requirement to all CMS licensees that hold customer's moneys and assets.

Statement of account

CMS licensees are required to provide their customers with monthly and quarterly statements of accounts, except where:

- there is no change to any of the particulars stated in the last statement of account; or
- the customer is an accredited investor, or a related corporation of the CMS licensee, and (i) the CMS licensee has made available to the customer on a real-time basis those particulars in the form of electronic records and the customer has consented to such provision, or (ii) the customer has requested, in writing, not to receive the statements.

MAS has additionally proposed to require CMS licensees to respond reasonably promptly to customers who make a request for their statements of accounts. CMS licensees may impose a reasonable fee for such requests. This would ensure that customers have timely access to information about their moneys and assets held with CMS licensees.

Retail customers

Regulations 16(1)(b) and 26(2) of the SF(LCB)R as currently drafted permit CMS licensees to deposit customer's

moneys and assets in a trust account or any other account directed by the customer. The intention behind these provisions was to provide a customer with the flexibility to ask a CMS licensee to deposit its moneys or assets into an account of its choice, such as an account with another bank.

MAS has observed that, in practice, CMS licensees will typically not allow customers to elect to deposit moneys or assets due to the customer into a bank account that is different to the account that had been earlier designated by the customer for such a purpose. MAS has also observed that some financial institutions have relied on these regulations to obtain a customer's direction to deposit the customer's moneys and assets into any account determined by the financial institution.

To avoid circumventing the intention of the regulations and to protect retail customers who may inadvertently opt out of the protections provided by the SF(LCB)R, MAS has proposed to disapply Regulations 16(1)(b) and 26(2) of the SF(LCB)R to retail customers.

Exempt financial institutions

Exempt FIs are exempted from the requirement to hold a CMS licence, but are nevertheless required to comply with the Customer Money Rules and Customer Asset Rules.

MAS noted that, in practice, Exempt FIs generally would not obtain information on the purpose of a customer's moneys, or place customer's moneys in a trust account (instead of a deposit account). As such, MAS has proposed to disapply the Customer Money Rules to Exempt FIs.

MAS has stated that the customer will be adequately protected where its moneys are held in a deposit account maintained under the customer's own name and where the moneys cannot be withdrawn without the customer's express authorisation.

The Customer Asset Rules will continue to apply to Exempt FIs.

Feedback on the consultation paper

The consultation paper is available on the MAS website. The closing date for the public to submit comments and feedback is 19 August 2016.

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