Annex A

LIST OF RESPONDENTS TO THE CONSULTATION PAPER ON A NEW OMNIBUS ACT FOR THE FINANCIAL SECTOR

1. AAM Advisory Pte. Ltd.
2. Aberdeen Standard Investments (Asia) Limited
3. AIA Singapore Private Limited
4. Allen & Overy LLP, which requested for its submission to be kept confidential
5. Asia Internet Coalition
6. Asia Pacific Holdings Pte. Ltd., Asia Pacific Exchange Pte. Ltd., and Asia Pacific Clear Pte. Ltd.
7. Association of Banks in Singapore
8. Baker Mckenzie. Wong & Leow, which requested for its submission to be kept confidential
9. Blockchain Association of Singapore
10. CFA Society Singapore: Chan Choong Tho, Chan Fook Leong, Maurice Teo
11. Clifford Chance Pte Ltd, which requested for its submission to be kept confidential
12. CME Group Inc.
13. Cynopsis Solutions Pte Ltd
14. Diginex
15. Fireblocks Inc.
16. Frasers Centrepoint Trust, Frasers Logistics & Commercial Trust, and Frasers Hospitality Trust, which requested for their submissions to be kept confidential
17. Global Legal Entity Identifier Foundation
18. Golden Gate Ventures Fund Management
19. HashKey Group
20. HL Bank, which requested for part of its submission to be kept confidential
21. Holland & Marie Pte. Ltd.
22. Ledger SAS, France, and Ledger Technologies SG PTE, Singapore
23. Luno Pte. Ltd., which requested for its submission to be kept confidential
24. Lymon Pte. Ltd.
25. Mastercard Asia/Pacific Pte Ltd, who requested for its submission to be kept confidential
26. Moody's Investors Service Singapore Pte. Ltd.
27. R3
28. RHTLaw Asia LLP, jointly with RHT Compliance Solutions Pte Ltd., which requested for their submissions to be kept confidential

29. Schroder & Co. (Asia) Limited
30. Schroder Investment Management (Singapore) Ltd
31. Securities Association of Singapore, which requested for its submission to be kept confidential
32. Simmons & Simmons JWS on behalf of the Singapore Cryptocurrency and Blockchain Industry Association, which requested for its submission to be kept confidential
33. SingCash Pte Ltd, Telecom Equipment Pte Ltd, Singapore Telecommunications Ltd, Singtel Mobile Singapore Pte Ltd
34. Sumitomo Mitsui Banking Corporation Singapore Branch
35. Swiss Re Asia Pte. Ltd., and Swiss Re International SE Singapore Branch
36. Tokio Marine Life Insurance Singapore
37. WongPartnership LLP
38. Respondent 1, which requested for confidentiality of identity
39. Respondent 2, which requested for confidentiality of identity
40. Respondent 3, which requested for confidentiality of identity
41. Respondent 4, which requested for confidentiality of identity
42. Respondent 5, which requested for confidentiality of identity
43. Respondent 6, which requested for confidentiality of identity
44. Respondent 7, which requested for confidentiality of identity

31 respondents requested for full confidentiality of identity and submission.

Please refer to Annex B for the submissions.

Annex B

FULL SUBMISSIONS FROM RESPONDENTS TO THE CONSULTATION PAPER ON A NEW OMNIBUS ACT FOR THE FINANCIAL SECTOR

S/N	Respondent	Response from Respondent
1.	AAM Advisory Pte. Ltd.	**General comments:** Thank you for the opportunity to feedback. The proposal is meaningful. **Question 1: MAS seeks comments on the proposal to be able to issue a prohibition order to any person.** We refer to the definition of appointee – "acting for, or by arrangement with, the first-mentioned person, who carries on, provides or performs for or on behalf of the first-mentioned person, any activity, business, service or relevant function, whether or not he is remunerated, and whether his remuneration, if any, is by way of salary, wages, commission or otherwise". It will be useful to further elaborate the definition of "appointee" – whether it is limited to outsourced providers and not apply to service providers not on an outsourced basis. If it extends to service providers not on an outsourced basis – does it apply to only bespoke service providers or any service providers (e.g. providers of system or softwares). **Question 2: MAS seeks comments on the proposal to apply the fit and proper test as the sole ground for issuing a PO.** Is it possible if MAS provides more clarity on what is the cause and what is the effect - whether an individual who fails the fit and proper test will be deemed to have misconduct, or after misconduct is determined this test is use to determine whether this misconduct warrant a PO to be issued? If the former, this is an overtly strict application given that it extends beyond regulated persons. For instance when an individual has financial difficulties, it does not mean he has misconduct. If the latter, the financial soundness limb of the fit and proper test has little relation to whether a misconduct has been carried out. Whether a person is financially sound or not, should not determine whether a significant misconduct has taken place.

		We suggest that more consideration can be given to the severity of misconduct. **Question 3: MAS seeks comments on the proposal to be able to prohibit a person who is not fit and proper from engaging in the following four specified functions in addition to regulated activities under the SFA, FAA and IA:** **(a) Handling of funds, including safeguarding or administration of a digital payment token or digital payment token instrument;** **(b) Risk-taking;** **(c) Risk management and control; and** **(d) Critical system administration.** AAM has no comments for this proposal. **Question 4: MAS seeks comments on the proposal to be able to prescribe additional specified functions in subsidiary legislation, for the purpose of protecting trust or deterring misconduct in the financial industry.** We suggest MAS further elaborate the conditions to prescribe additional functions - so that it is more purposeful and not perceived to be an unlimited power given this may affect appointees in and outside Singapore which may necessitates the financial institution to explain to the appointee. **Question 5: MAS seeks comments on the proposal to introduce a regulatory regime for entities created in Singapore that carry on a business of providing VA activities outside of Singapore.** AAM has no comments for this proposal. **Question 6: MAS seeks comments on the proposed definition of DTs as set out in section 2(1) of Annex C:** **(a) a digital payment token; or** **(b) a digital representation of a capital markets product which –** **(i) can be transferred, stored or traded electronically; and** **(ii) satisfies such other characteristics as MAS may prescribe;** **but does not include an excluded digital token.** AAM has no comments for this proposal. **Question 7: MAS seeks comments on:** **(a) The scope of DT services, which are in line with the FATF Standards for VASPs;**

		(b) Whether there are other DT services that should be captured; **(c) Specifically whether there are advisory services provided by DT service providers, relating to the offer or sale of DTs that are used for payment purposes; and** **(d) Specifically whether there are fund management activities involving DTs.** AAM has no comments for this proposal. **Question 8: MAS seeks comments on the proposed licensing and ongoing requirements to be imposed on DT service providers.** AAM has no comments for this proposal. **Question 9: MAS seeks comments on our proposal to align proposed AML/CFT requirements to be imposed on DT service providers with the existing PS Notice 02 for DPT Service Providers, given the similar nature of ML/TF risks of both these activities.** AAM has no comments for this proposal. **Question 10: MAS seeks comments on the proposed powers and the quantum of the maximum penalty for breaches.** AAM has no comments for this proposal. **Question 11: MAS seeks comments on the provision of statutory protection from liability to mediators, adjudicators and employees of an approved dispute resolution scheme operator.** It will be useful if MAS elaborate what constitutes reasonable care and in good faith by an approved dispute resolution scheme operator's mediators, adjudicators and employees.
2.	Aberdeen Standard Investments (Asia) Limited	**General comments:** No comments. **Question 1: MAS seeks comments on the proposal to be able to issue a prohibition order to any person.** No comments.

		Question 2: MAS seeks comments on the proposal to apply the fit and proper test as the sole ground for issuing a PO. No comments. **Question 3: MAS seeks comments on the proposal to be able to prohibit a person who is not fit and proper from engaging in the following four specified functions in addition to regulated activities under the SFA, FAA and IA:** **(a) Handling of funds, including safeguarding or administration of a digital payment token or digital payment token instrument;** **(b) Risk-taking;** **(c) Risk management and control; and** **(d) Critical system administration.** No comments. **Question 4: MAS seeks comments on the proposal to be able to prescribe additional specified functions in subsidiary legislation, for the purpose of protecting trust or deterring misconduct in the financial industry.** No comments. **Question 5: MAS seeks comments on the proposal to introduce a regulatory regime for entities created in Singapore that carry on a business of providing VA activities outside of Singapore.** No comments. **Question 6: MAS seeks comments on the proposed definition of DTs as set out in section 2(1) of Annex C:** **(a) a digital payment token; or** **(b) a digital representation of a capital markets product which –** **(i) can be transferred, stored or traded electronically; and** **(ii) satisfies such other characteristics as MAS may prescribe;** **but does not include an excluded digital token.** No comments. **Question 7: MAS seeks comments on:** **(a) The scope of DT services, which are in line with the FATF Standards for VASPs;** **(b) Whether there are other DT services that should be captured;**

		(c) Specifically whether there are advisory services provided by DT service providers, relating to the offer or sale of DTs that are used for payment purposes; and **(d) Specifically whether there are fund management activities involving DTs.** No comments. **Question 8: MAS seeks comments on the proposed licensing and ongoing equirements to be imposed on DT service providers.** No comments. **Question 9: MAS seeks comments on our proposal to align proposed AML/CFT requirements to be imposed on DT service providers with the existing PS Notice 02 for DPT Service Providers, given the similar nature of ML/TF risks of both these activities.** No comments. **Question 10: MAS seeks comments on the proposed powers and the quantum of the maximum penalty for breaches.** Under paragraph 4.3 of the Consultation Paper, it is stated that "To facilitate MAS' ability to impose TRM requirements on any FI or any class of FIs in relation to the FI's system(s), irrespective of whether the system(s) supports a regulated activity, we propose to introduce powers to issue directions or make regulations on TRM under the new Act." 1. Please could MAS provide more clarity on its expectation on FIs on this front and the expanded scope of systems that would be required to adhere to TRM requirements under the new Act. 2. In view of the expanded scope of systems, please consider the implementation timeline required by FIs to adhere to TRM requirements during the transition process from the old to new Act. A suggestion is to allow FIs to have at least 12 months for the implementation. **Question 11: MAS seeks comments on the provision of statutory protection from liability to mediators, adjudicators and employees of an approved dispute resolution scheme operator.** No comments.
3.	AIA Singapore Private Limited	**General comments:**

		No comments. **Question 1: MAS seeks comments on the proposal to be able to issue a prohibition order to any person.** We agree with MAS that the scope of persons who can be issued with Prohibition Orders (PO) to include former, existing or prospective participants in the financial industry, including employees and service providers of Financial Institutions (FIs). Individuals have the right to appeal to the Minister, if they disagree with the terms of the POs. We would like to propose that MAS clarifies whether 'service providers' include intra-group service providers, sub-contractors, as well as third parties that are not considered outsourced service providers as defined in MAS Outsourcing Guidelines (particularly clause 2(b) in Annex 1). Also, we will like to clarify if those who have been issued PO be listed on the MAS Alert List. If so, what details on the PO will be available? This will aid companies when they are conducting pre-employment screening for potential hires. **Question 2: MAS seeks comments on the proposal to apply the fit and proper test as the sole ground for issuing a PO.** We have no objections on grounds for issuing a PO. Referring to a comprehensive yet non-exhaustive list of criteria should serve to achieve MAS' stated objectives. We would like to confirm if existing provisions relating to the issuance of prohibition orders in IA (section 35V), SFA (sections 101A-101D) and FAA (sections 59-62, and sections 63(2)-(3)) will be repealed / amended for consistency. **Question 3: MAS seeks comments on the proposal to be able to prohibit a person who is not fit and proper from engaging in the following four specified functions in addition to regulated activities under the SFA, FAA and IA:** **(a) Handling of funds, including safeguarding or administration of a digital payment token or digital payment token instrument;** **(b) Risk-taking;** **(c) Risk management and control; and** **(d) Critical system administration.**

		We agree with MAS to extend the PO to include unsuitable persons from taking up positions in the additional four functions to preserve trust in the financial industry. However, we would suggest that MAS provides more clarity on the specific roles and responsibilities of the four specified functions that the person is prohibited to engage in. For example, the extent of the "Risk management and control" function, whether this includes any persons who manages risks (e.g. 1st line) or whether this refers to the Risk and Compliance functions (i.e. 2nd line) and other relevant Risk Committees for all intention and purposes. We would also like to propose that MAS provide clarity on whether "critical system administration" is limited to only critical systems as defined in the TRM Notice 127. Please confirm if existing provisions relating to the issuance of prohibition orders in IA (s.35V), SFA (ss.101A-101D) and FAA (ss.59-62, and ss.63(2)-(3)) will be repealed / amended for consistency. **Question 4: MAS seeks comments on the proposal to be able to prescribe additional specified functions in subsidiary legislation, for the purpose of protecting trust or deterring misconduct in the financial industry.** The additional functions should be prescribed by way of regulations pursuant to the relevant provision allowing for such regulations to be made under the new Act. **Question 5: MAS seeks comments on the proposal to introduce a regulatory regime for entities created in Singapore that carry on a business of providing VA activities outside of Singapore.** Nil. **Question 6: MAS seeks comments on the proposed definition of DTs as set out in section 2(1) of Annex C:** **(a) a digital payment token; or** **(b) a digital representation of a capital markets product which –** **(i) can be transferred, stored or traded electronically; and** **(ii) satisfies such other characteristics as MAS may prescribe;** **but does not include an excluded digital token.** Nil. **Question 7: MAS seeks comments on:**

		(a) The scope of DT services, which are in line with the FATF Standards for VASPs; **(b) Whether there are other DT services that should be captured;** **(c) Specifically whether there are advisory services provided by DT service providers, relating to the offer or sale of DTs that are used for payment purposes; and** **(d) Specifically whether there are fund management activities involving DTs.** Nil. **Question 8: MAS seeks comments on the proposed licensing and ongoing requirements to be imposed on DT service providers.** Nil. **Question 9: MAS seeks comments on our proposal to align proposed AML/CFT requirements to be imposed on DT service providers with the existing PS Notice 02 for DPT Service Providers, given the similar nature of ML/TF risks of both these activities.** Nil. **Question 10: MAS seeks comments on the proposed powers and the quantum of the maximum penalty for breaches.** We have no further comments on MAS' intention to introduce a power to issue directions to or make regulations concerning any FI or class of FIs for the management of technology risks, including cyber security risks, the safe and sound use of technology to deliver financial services, and safe and sound use of technology to protect data. However, it would be useful if MAS can clarify and provide examples on "systems that do not support regulated activities" that can "pose contagion cyber risk to systems that do due to inter-linkages." Separately, MAS has had regard to the maximum financial penalties under the Telecommunications Act (Cap. 323) ("Telecoms Act") and the Personal Data Protection Act 2012 ("PDPA") in proposing a maximum fine of S$1 million for offences under the new Act. It might be worth noting that the S$1 million cap under the Telecoms Act and the PDPA apply to administrative penalties, and are accompanied by provisions for directions to be issued as alternatives for rectifying any non-compliance, whereas the S$1 million cap proposed in Annex D relates to a fine for a statutory offence.

		While legislation allowing for fines up to S$1 million is not without precedent (for instance, an offence under the Terrorism (Suppression of Financing) Act (Cap. 325) may attract a fine of up to S$1 million), the gravity of the offences in question would be relevant in determining the maximum quantum of fine to be prescribed in the Act. There should be a comprehensive framework to guide the enforcement of the potentially large penalty of S$1 million, especially considering the proposed broad powers to issue directions or make regulations concerning any FIs or class of FIs for the management of technology risks. For example, the Personal Data Protection Commission's ("PDPC") Advisory on Enforcement of Data Protection Provisions (PART V: Directions to Secure Compliance) gives guidance on what would be considered aggravating or mitigating factors in PDPC's deliberation on whether to direct payment of a financial penalty and the appropriate quantum. Clarification would be appreciated on whether there are safeguards against overlap of directions issued under the new powers with directions issued pursuant to the existing FI-specific Acts (e.g. the Notices on Technology Risk Management and Cyber Hygiene issued pursuant to the Insurance Act (Cap. 142) and Financial Advisers Act (Cap. 110)) and risk of double sanctions for contravention of directions due to such overlap. **Question 11: MAS seeks comments on the provision of statutory protection from liability to mediators, adjudicators and employees of an approved dispute resolution scheme operator.** The proposed statutory protection is an entrenchment of the protection provided under Rules 33 – 35 of the FIDReC Terms of Reference which state, inter alia, that no claim shall be made by a complainant or an FI against FIDReC and its employees and adjudicators for any matter in connection with or in relation to services provided by FIDReC and any process, mediation, adjudication and/or investigation conducted by FIDReC, and that they shall have no liability in relation to the adjudication process except in cases of fraud. FIs are also to indemnify FIDReC against claims by their employees and representatives. This wide protection is balanced against the complainant's right to take the dispute to court if there is no resolution of the matter following mediation and arbitration. It is clarified at paragraph 5.3 of the consultation paper that the proposed legislation is not intended to protect against "wilful misconduct, negligence, fraud or corruption". The proposed statutory provision at Annex D also mentions "reasonable care" to be taken by mediators, adjudicators and

		employees of FIDReC. As drafted, the protection afforded by the legislation seems narrow since mediators, adjudicators and employees of FIDReC may still be exposed to claims (most likely by complainants) on grounds that a duty of care owed has been breached. Having regard to similar provisions on immunity against liability in the Arbitration Act (Cap. 10, section 59), Community Mediation Centres Act (Cap. 49A, section 17) and the State Courts Act (Cap. 321, section 68), MAS might wish to consider excluding only acts and omissions done in bad faith (which would arguably cover fraud and corruption) and/or arising from wilful misconduct from the statutory protection, to more effectively reinforce the confidence and autonomy of mediators, adjudicators and employees of FIDReC.
4.	Allen & Overy LLP	Respondent wishes to keep entire submission confidential.
5.	Asia Internet Coalition ("AIC")	**Question 6: MAS seeks comments on the proposed definition of DTs as set out in section 2(1) of Annex C:** **(a) a digital payment token; or** **(b) a digital representation of a capital markets product which –** **(i) can be transferred, stored or traded electronically; and** **(ii) satisfies such other characteristics as MAS may prescribe;** **but does not include an excluded digital token.** We propose that MAS consider expanding the definition of digital payment tokens and prescribe for digital assets (specifically "stablecoins") that do not fall under the current definitions of digital payment tokens or e-money. Stablecoins refer to a wide range of instruments but are typically tokens designed for stability of price mechanisms. Certain stablecoins are not clearly categorized as either digital payment tokens, e-money, or digital representations of capital market products. We respectfully submit that stablecoins that do not qualify as e-money should benefit from a more tailored and flexible regulatory approach and it would be appropriate for such stablecoins to be regulated as a specialized subset of digital payment tokens and not be regulated as e-money. **Question 9: MAS seeks comments on our proposal to align proposed AML/CFT requirements to be imposed on DT service providers with the existing PS Notice 02 for DPT Service Providers, given the similar nature of ML/TF risks of both these activities.** We seek MAS' clarification as to the specific types of "technology" as indicated in Section 4 (Harmonised Power to impose requirements on Technology Risk Management) and Annex D (PROPOSED PROVISIONS ON

		HARMONISED POWER TO ISSUE DIRECTIONS OR MAKE REGULATIONS ON TECHNOLOGY RISK MANAGEMENT).
6.	Asia Pacific Holdings Pte. Ltd., Asia Pacific Exchange Pte. Ltd., and Asia Pacific Clear Pte. Ltd. (collectively referred to as "APEX")	**Question 1: MAS seeks comments on the proposal to be able to issue a prohibition order to any person.** APEX would like to understand the rationale and the policy thinking behind the proposed expansion of MAS' power to issue a prohibition order to any person. APEX believes the power to issue a prohibition order to any person may be rather broad as compared to the disciplinary regime in regional competing financial centres such as Hong Kong. In addition, we would like to clarify on the definition of "service providers of FIs" mentioned in paragraph 2.7 of the consultation paper: a. Would this cover only material service providers or all service providers engaged by an FI? b. To whom (e.g. substantial shareholders, directors, officers, key persons, employees, sub-contractors etc.) would this expanded power cover for the service providers? c. Would MAS apply this on service providers based in other jurisdictions? APEX is of the view that this would result in a cumbersome contract review process and difficult due diligence process of its service providers if the scope were kept too wide. Furthermore, due diligence checks performed by APEX can only be on a 'best efforts' basis unless all issued POs are published. Based on the proposed legislation in Annex B section 6, we understand that MAS may publish information on those POs considered necessary or expedient to publish in the interest of the public or section of the public or for the protection of investors. Non-publication of POs could impede FIs' ability to adhere to the effect of POs when employing or entering into any arrangement with persons issued with POs. **Question 10: MAS seeks comments on the proposed powers and the quantum of the maximum penalty for breaches.** We agree with paragraph 4.3 of the consultation paper that systems that do not support regulated activities could pose contagion cyber risk to systems that do due to inter-linkages. However, this may not always be the case in practice as systems supporting different activities are typically separated and segregated into different production environments with no inter-linkages. Hence, we would appreciate a robust industry-wide consultation process

		when MAS intends to issue TRM directions or make regulations on systems that do not support regulated activities.
7.	Association of Banks in Singapore ("ABS")	**Question 1: MAS seeks comments on the proposal to be able to issue a prohibition order to any person.** <u>Full Bank:</u> We like to clarify whether names of individuals issued with POs will be published by MAS to facilitate all banks in drawing reference from the list. <u>Full Bank:</u> Supportive in general. Would request for more guidance to be provided for instances where the PO is issued to an employee of the service provider to the FI, and the FI has limited control over the staffing by the service provider. Particularly, if the FI (despite best effort) will be considered in breach if the individual is not immediately removed from work performed for the FI. <u>Full Bank:</u> In principle, we agree that MAS should have the ability to issue a prohibition order (PO) to any person. While financial institutions (FIs) will comply with POs issued, the primary onus of compliance should lie with persons who are the subject of the POs. In this regard and in light of the added specified functions that MAS wishes to include in the scope of prohibitions under the POs in this Consultation Paper, we anticipate that the Bank may find it challenging to comply with the PO in the following circumstances: FIs have no control over who its service providers employ. While FIs may incorporate these requirements in their contracts with service providers, would use of a service provider who has person (A) in its employ (unknown to the financial institution) result in the FI being in breach of section 3(2) read with section 3(4) of Annex B? This is because the FI may plausibly be seen to have entered into an arrangement to use A's service indirectly. May we request that the *mens rea* of knowledge be incorporated within section 3(2) of Annex B insofar as use of service providers are concerned? <u>Full Bank:</u> • MAS indicates that a PO may be issued against any person. Can we clarify this is not limited to staff who are in client-facing roles and will include staff who are in infrastructure functions (e.g., IT, Operations, Finance)? • Does 'any person' includes interns, staff on short term employment contracts and staff in administrative roles?

		• Based on Section 3(2) and (5) of the proposed provisions on harmonized and expanded power to issue prohibition orders set out in Annex B of the consultation paper, it would appears that MAS will have the power to issue prohibition orders against entities providing services to FIs and FIs that employ/engage the service of such entities may be liable to a fine not exceeding S$100,000. We will appreciate if MAS may clarify the approach to be taken on FIs with existing service agreements in place with such a service provider when the prohibition order is issued. In particular, it will be helpful if MAS will clarify that in such scenarios, impacted FIs will have the opportunity to engage MAS and be given sufficient time to transfer the impacted services back in-house or to another service provider? • With reference to Section 3(6) of the proposed provisions on harmonized and expanded power to issue prohibition orders set out in Annex B of the consultation paper, given that there will be greater need to screening employees against the list of prohibition orders issued by MAS, would MAS consider publishing a consolidated list of prohibition orders on the MAS website. <u>Full Bank:</u> We note that under the proposed power, MAS may issue a PO against "any person" who by his/her misconduct demonstrated the potential to cause harm in Singapore's financial industry. These persons include all employees of FIs, including those who do not conduct activities that are regulated under the SFA, FAA and IA. This is a very wide power. Whilst it is fair that the widened powers enable MAS to impose a PO on FI employees who perform regulated activities under other Acts given there is no such uniform power today and MAS does recognize that POs materially affect individual livelihoods, we would like to highlight the below 5 points for MAS' considerations: • Under the new powers, a clear distinction should be drawn between the FI employees who do not perform regulated activities and those who do, in order to ensure that the penalty meted out on the FI employee who does not conduct regulated activities correlates with the nature of activities he performs, and reflects an appropriate impact assessment on the extent of adverse impact to the public. For instance, it is arguable that there is greater adverse impact caused by a staff who misconducts himself in the course of selling investment products due to potential risk of investment loss on a customer, compared with a staff who misconducts himself when pushing credit cards or mortgage loans to customers. • In the past decade and before, cases involving mis-selling of products outside of investment products are few and far between. We appreciate if MAS could clarify its concerns and rationale for extending the same penalty reach of a PO on FI employees who are selling products other than investment products. It is not clear in the consultation paper why MAS is

		proposing to tighten the conduct rules and subject them to the same PO framework. • Even if MAS intends to tighten the regulations to more closely govern FI employees who are involved in non-regulated activities, we feel that there are other methods, such as tweaking the balance scorecard, which are more appropriate, and would adequately serve as a deterrent, taking into consideration the nature of activities performed. • Questions of public policy concerns, such as financial exclusion could be raised. For instance, a bank staff who was found to breach the Fit and Proper Test by reason of dishonesty and lack of integrity could risk being potentially de-banked by the industry for certain products/services. • Even where no widened powers of PO exist for employees who are not performing regulated activities, all FIs today have employment terms which serve as an effective deterrent against errant misconduct by all employees. We also note that a PO may be issued to former, existing or prospective participants in the financial industry, including employees and service providers of FIs. Regarding prospective participants, we wish to understand if MAS intends to issue POs to persons who do not work in the financial industry (e.g. Multi-national corporation's employee who work in Singapore and has committed fraud). Or if MAS does intend to issue POs to persons who are not even working in Singapore as well? Regarding service providers of FIs, we wish to understand if MAS intends to issue POs to such entities (e.g. storage and archival service provider) and/or employees of such entities. If that were the intention, there may be contractual agreements and arrangements which do not allow timely termination of such services. If this new Act does not require the service providers to review their employment practices to not employ a person who is issued with a PO, there would be challenges faced by the banks and FIs to ensure that persons with PO are not employed by their service providers on an ongoing basis. <u>Full Bank:</u> We are supportive of the proposal as it would be appropriate for the regulator to have enforcement mechanisms to prevent persons who are unfit to engage in a regulated activity from remaining in the industry and causing further harm. We note MAS proposes to "introduce a harmonised and expanded power to issue a prohibition order (PO) against any person who is not fit and proper to engage in regulated activities and identified roles and functions across the

		industry", and that "[u]nder the proposed power, MAS may issue a PO against any person". We respectfully request MAS to clarify whether it intends to be able to issue a PO to any person in the financial industry performing a regulated activity, or will MAS identify a list of roles and functions who may be subject to a PO, irrespective of whether such role or function would be a regulated activity. <u>Full Bank:</u> Supportive in general. Implications on hiring (new hires and re-depolyment of existing staff) The definitions of the functions scoped under the Act are wide and capture a signficantly larger group of employees above the current regulated roles. It would be helpful for MAS to define or provide guidance on the scope of the roles within these functions that can be subject to prohibition orders or allow for the employer to define which specific role within the stated functions will be captured under the PO. For roles outside of the specified functions – It would be helpful if MAS could articulate guidance/benchmarks for employers to assess of employability of individuals or staff issued with PO, but to be hired/considered for roles outside of the specified functions. This will allow financial institutions to adopt a risk-based approach in setting internal guidelines/processes to assess employability of individuals or feasibility of redeployment of staff issued prohibition orders. <u>Qualifying Full Bank:</u> Page no 5, point 2.1 - In the 1st line it is mentioned on MAS issuing prohibition orders ("POs") to bar persons from conducting certain activities or from holding key roles in FIs for a period of time. Will this be continued in the new regime? Prohibition orders are released on MAS website. We suggest MAS to create a register of PO issued for easy reference of FI's as currently the onus is on individual to inform the employer on any such PO issued on the individual. Will the PO be issued to persons based outside of Singapore? <u>Qualifying Full Bank:</u> We agree that MAS should be able to issue a prohibition order to any person. Currently, information on Prohibition Orders are found under the "Enforcement Actions" of the MAS website. However, as a prohibition order could be issued to persons who have been sanctioned by other authorities

		e.g. the Council for Estate Agencies, MAS might want to consider creating a new public Register of Prohibition Orders. This would facilitate the screening of persons to ascertain whether a Prohibition Order issued to a specified person is still effective. We would like to seek clarification as to an overseas person is intended to be included in the scope. <u>Wholesale Bank:</u> We understand that the proposed provisions aim to keep out persons who have demonstrated by their misconduct that they have the potential to cause harm to the financial industry. In addition to persons who engage in regulated activities, given that the relevant functions as defined in the proposed provisions would have covered the key risks areas that could potentially impact the financial industry, suggest considering to include the definition of person and to align the definition to the role performing the relevant functions. <u>Wholesale Bank:</u> We would like to seek clarity on the definition and scope of "any person", whether it refers to "relevant person" under the current MAS Guidelines on Fit and Proper Criteria or it means that the definition of "relevant person" will be revised and expanded in MAS Guidelines on Fit and Proper Criteria. On the other hand, whether it simply refers to all former, current and prospective employees and service providers (located in Singapore or overseas) who performs the relevant function or provides the relevant service. In addition, we would also like to seek clarity on the term "prospective" and if there is any consideration on the degree of certainty that the prospective party will be on-boarded by the FI. <u>Wholesale Bank:</u> • Given that the PO can materially affect a person's livelihood, we would like to understand how MAS intends to perform a holistic assessment for prospective participants and service providers who are not employed a FI and/or who are not based in Singapore.In addition, while the new PO regime serves to preserve trust and deter misconduct in Singapore's financial industry, would the new regime have an unintended impact on the overall level of creative/innovative thinking and interest in the industry? • Currently, CMS license holders and banks are required to report to the MAS on the misconduct of representatives according to SFA04-11. Given that the new PO regime will be extended to any persons, would FIs be

		required to report the misconducts of non-representatives to MAS? If so, are the types of misconduct the same as those listed in SFA04-11? • Is pure negligence considered as a factor for "Competence and Capability" under the MAS Fit and Proper Criteria? <u>Wholesale Bank:</u> We respectfully submit that the power to issue a prohibition order ("PO") to "any person" is <u>too wide-ranging</u>, and as a result, FIs will not be able to put in place meaningful mechanisms to address the effect of the law. POs should be limited to "relevant persons" as defined in MAS Guidelines on F&P (FSG-G01) who are subject to the MAS fit & proper criteria. As currently drafted, we respectfully would like to clarify if it is proposed that a PO can be issued against someone who is not working in the financial industry and where there is no evidence of that person having any present intention of ever working in the financial industry. How will the MAS ensure that this is not overly oppressive – will there be mechanisms to prevent undue exercise of this authority? The current Register of Representatives only tracks Representatives. We would like to clarify how the Authority plans to track persons in scope of this requirement where the PO will be expanded against non-Representatives? We would like the Authority to clarify how this will impact the FIs hiring process – is an additional step now needed to verify the PO (or Fit and Proper) status of non-representatives as well? We would like the Authority to clarify how this new requirement will impact role changes and how the PO will apply. For example, if a licensed representative was PO'd, can he/she take up a role in critical system administration function? From the wordings in the Consultation Paper, it appears the PO will be role specific, but does it have any bearings on his employability for other roles that are in scope of the PO? We respectfully request that the Authority provide further guidance in this area. Given the wide scope of the PO powers, we would like the Authority to clarify if the PO powers can apply to employees based outside Singapore and for the Authority to prescribe, in what situations an employee/non-employee providing a service can come under a prohibition order for persons who have demonstrated by their misconduct that they have the potential to cause harm.

		Wholesale Bank: It was mentioned in the consultation paper that MAS' current PO powers reside only in the Securities and Futures Act ("SFA"), Financial Advisers Act ("FAA") and Guidelines on Individual Accountability and Conduct ("IAC"), and MAS proposes to introduce a harmonised and expanded power to issue a prohibition order ("PO") against any person who is not fit and proper to engage in regulated activities and identified roles and functions across the financial industry in the new Omnibus Act ("OA"). We would like to clarify if there will be any further alignments in administering the expanded MAS powers to issue PO under the OA with existing powers under the SFA, FAA and IA. Is the intention to extend the same expectations currently applicable to persons licensed to perform regulated activities, to this new category of personnel performing "relevant functions" under the OA? Currently, MAS can already exercise a wide range of actions, including issuing warning or reprimand letters, imposing supervisory conditions, directing a Financial Institution ("FI") to remove its director or executive officer, compounding an offence, revoking an FI's licence, imposing civil penalties, or referring cases to the Attorney's General Chambers for criminal prosecution. We would like to clarify how these new powers would align to the proposed IA Guidelines, as well as existing powers of the MAS under the Banking Act (e.g. section 67 - Offences by directors, employees and agents) Wholesale Bank: We would like to clarify the circumstances under which an individual's manager would be penalised under the new proposal. **Question 2: MAS seeks comments on the proposal to apply the fit and proper test as the sole ground for issuing a PO.** Foreign Bank: • The current misconduct reporting framework is only applicable to individuals conducting regulated activities. Are FIs expected to report misconduct committed by staff performing non-regulated activities going forward? • The SFA Notice on Reporting of Misconduct of Representatives by Holders of CMSL and Exempt FIs and FAA Notice on Reporting of Misconduct of Representatives by Financial Advisers set out the misconduct reporting scope (e.g., types of misconduct committed), format of reporting and reporting timeframe (e.g., no later than 14 days after discovery of the misconduct). We would like to seek guidance on the scope, format and

		timeframe for reporting of misconduct committed by staff performing non-regulated activities. • Individuals conducting non-regulated activities are not subject to the same level of prerequisites (e.g., minimum entry and examination requirements, registrations with MAS) and ongoing obligations (e.g., fit and proper, continuous education requirements) as compared to individuals who conduct regulated activities. Hence, if we apply the same enforcement action of issuance of PO to individuals who conduct non-regulated activities, it can potentially be deemed as "too harsh" and an "unfair" system. <u>Full Bank:</u> 1) The MAS' Guidelines on Fit and Proper Criteria (Guideline No: FSG-G01) only covers relevant persons, i.e.: (i) a chief executive officer or deputy chief executive officer; (ii) Head of Treasury; or (iii) any other officer by whatever name described, who has responsibilities or functions similar to any of the persons referred to in sub-paragraph (i) or (ii), of the bank; for the case of a non-locally incorporated bank. Given that Prohibition Orders ("PO") can be served on anyone, including, in the words of the CP, employees and service providers of FIs, are FIs expected to extend Fit and Proper checks to all employees, as well as employees of our Service Providers? We would like to know, to what extent are FIs expected to check on persons working for and with the FI, so as to prevent potential reputational risks to the FI by being associated with individuals who are served a PO. 2) The conditions stated for issuance of PO, i.e. i) Honesty, integrity and reputation; ii) Competence and capability; and iii) Financial soundness, are also too punitive. While it is understandable for such persons who fail such a test not to be put up for the key positions in a FI prior to his/her appointment, but it is too onerous to expect the same standards of every single employee of the FI, or even the Service Providers. Some of the contentious points include: a) Para 13(d) of MAS' Guidelines on Fit and Proper Criteria (Guideline No: FSG-G01): If the person is a subject of a complaint made reasonably and in good faith relating to MAS regulated activity, but is eventually cleared of wrongdoing, is MAS going to then issue a PO on this person? b) Para 13(o)(iv) of Guideline No: FSG-G01: If the person is asked to resign from employment, which is common nowadays due to restructuring and for companies to prevent paying benefits, or that

		the resignation stems from difference in opinion with the Management but has nothing to do with the person's honesty, integrity or reputation, is MAS going to issue a PO on this person, despite stating in this CP that "We (MAS) recognise that POs materially affect individual livelihoods"? c) Para 14 of Guideline No: FSG-G01: The expectations on suitable qualifications, experience, skills and knowledge to carry out a role may be relevant for senior officers regarded as "relevant persons" as stated above, but since this Act is applicable to everyone, is it fair to expect this from less senior staff? In that case, are FIs not allowed to hire fresh grads and mid-career switchers with no prior experience in the role they are performing, despite asking employees and employers to keep an open mind to accept and train such job seekers? Or are internal transfer of roles not allowed if the new role is markedly different from the employee's previous role? d) Para 15 of Guideline No: FSG-G01: The expectations on financial soundness is reasonable given that "relevant persons" are of a level of seniority and should be relatively well remunerated, but is it reasonable to expect less senior level employees to be of financial soundness? Many employees in the finance industry are earning below median salaries, or could be made a bankrupt but finding their way back to societal acceptance through gaining employment. Given that this paragraph also covers discharged bankrupts, is it fair that FIs are not allowed to employ such persons although they have been discharged from bankruptcy? e) Is the education level of an individual considered in the Fit and Proper Assessment, especially taking into account the position that the person is in? 3) Can MAS further elaborate how the Fit and Proper Test will be conducted for the current and prospective employee of FIs? 4) While the aggrieved individual who has been issued PO can appeal to the Minister, will the FI be allowed to employ such persons, pending the outcome of the appeal? 5) As of now, only the CEO, Deputy CEO and the Head of Treasury are subject to Fit and Proper Assessment by MAS prior to employment. If this Omnibus Act is implemented, will MAS expand their scope of Fit and Proper checks to include other management positions prior to their employment as well? And will such checks be conducted during the Employment Pass (EP) application process for employees who are foreigners?

		Full Bank: Besides regulated staff regulated under SFA and FAA, does this mean that all banks must put through fit and proper test for all new potential hires, existing staff and vendors that undertake activities specified under clause 2.10? Full Bank: Supportive in general. Would request for consideration of just applying the first element "Honesty, integrity and reputation" as grounds for issuing PO, as the remaining two elements may just preclude the individual from contributing to the financial industry in certain segments/function or at a particular point in time (until he regains financial stability). This especially in consideration of para 2.7 of the consultation, wherein the PO can be issued to an employee of the service provider of the FI. Full Bank: • The Bank is supportive of a consistent test being applied across all FI with regards to the issuance of a PO. • We propose that objective/quantifiable factors within the scope of fit and proper criteria be considered for purpose of issuing a prohibition order (PO). • We also seek MAS' clarification as to whether MAS would place reliance on a financial institution (FI)'s internal investigations outcome and decision for purpose of assessing whether a PO will be issued. Full Bank: We note that financial soundness is one of the 3 criteria in the fit and proper test. By applying this test to all employees (in the FIs and service providers), FIs may enforce the checking of credit bureau records for all employees. There were previous instances in the news where employees had felt that such credit checks by employers are intrusive. It may also cause an unexpected scenario where people with financial difficulties may not be able to find employment in the financial industry or even in entities that provide services to FIs. MAS may wish to reduce the weightage of the "financial soundness" criteria in the consideration of issuing a PO. Full Bank: We are supportive of the proposal to apply the fit and proper test. However, it would be rather onerous for the Bank if we will be expected to perform fit and proper person checks on all or most of our employees, instead of just key personnel and appointed representatives set out in the MAS Guidelines on Fit and Proper Criteria. The new Act read with the said MAS Guidelines should clearly set out exactly which employees banks will need to assess and monitor for compliance with the said MAS Guidelines going forward.

		We respectfully request MAS to clarify: 1. Whether MAS intends to expand the existing list of "relevant persons", as defined in the said MAS Guidelines, to include all persons who are engaged in the four specified functions set out in para 2.10 of the consultation paper. 2. Whether MAS will be removing the PO-related provisions from the Securities and Futures Act (Cap. 289), Financial Advisors Act (Cap. 110) and Insurance Act (Cap. 142). <u>Full Bank:</u> Implications on the Bank's duty to ensure employees are fit & proper Currently the expectation by MAS is that employers would perform due diligence checks at hiring and/or during the employment of our employees, to ensure they are fulfil the fit and proper test particularly for those performing regulated roles. In view of the reach of the PO (i.e. issue to any person) and the expanded effect of the PO (i.e. list of specified functions) using a principles based approach (i.e. fit and proper test) as the grounds for issuing a PO would be challenging to execute to cover the expanded scope of employees captured under the specified functions to potentially all employees. Moreover decision making may not be expedient given that judgement call will need to be taken in the assessment of fit and proper against these principles. E.g. financial indebtedness – this component is arguably the most intrusive amongst the 3 criteria particularly for prospective hires. MAS potentially has access to Credit Bureau data and other regulatory submissions on individual bank staff indebtedness, would default by an employee already trigger grounds for issuing a PO, or for the bank to consider a staff as not fit and proper? A consideration for MAS is if they could perhaps consider having substantiated misconduct (regardless of materiality) as a trigger point for the fit and proper test to be applied as a criteria for which a PO should be issued. In deciding how to operationalise the issue of prohibition orders for an expanded segment of the financial sector MAS should consider the impact of a publication of prohibition orders may have not just on the livelihood of the subject of the PO, but also on other aspects of life e.g. access to basic banking, given that the individual poses some degree of financial crime risk. This is particularly so in the event that the individual is found to be not fit and proper on grounds of integrity. However, without a public register of prohibition orders it would be difficult for banks to identify prospective hires with existing POs.

		Qualifying Full Bank: Page no 6, point 2.8 – MAS' Guidelines on Fit and Proper Criteria (Guideline No: FSG-G01) currently defines to whom the guideline applies. If it is proposed to expand to cover persons regulated under other Acts administered by MAS then FSG-G01 to also be revised to cover relevant persons under other Acts. The above mentioned guideline (if revised) to also cover whether the same will apply to persons based out of Singapore. Wholesale Bank: We support the use and alignment to fit and proper criteria in the MAS Guidelines. We would like to seek clarity on the expectation on FIs to incorporate fit and proper criteria into contracts and agreements. In particular, as it relates to "any person" mentioned in this consultation paper, please clarify how the FIs are expected to implement the fit and proper criteria in their third party arrangements (outsourcing and/or non-outsourcing agreements). Will there be any guidance, for instance in MAS Guidelines on Outsourcing, on the specific contractual terms. Wholesale Bank: IOSCO recommends that Financial Regulators' expectations are that FIs will take the measures necessary to ensure that fitness, propriety or other qualification tests are met on a continuous basis by its representatives. We respectfully submit to enquire whether the onus of performing the fit & proper test and making the judgement of whether one qualifies for issuance of a PO will lie with FI or MAS? We would respectfully request that the Authority considers disclosure of the criteria and thresholds that it sets when the Authority is satisfied that the person is not a fit and proper person in accordance with the Guidelines on Fit and Proper Criteria issued by the Authority. We respectfully submit that the current fit and proper test can be very subjectively interpreted and applied. For example will failure of any of the following FSG-G01 criteria (or any of the factors listed under each broad criteria) result in a finding by the Authority that the individual is no longer fit and proper: (a) honesty, integrity and reputation; (b) competence and capability; (c) financial soundness? We respectfully seek clarification as to whether FIs would be required to conduct an assessment as to whether a person is fit and proper and whether the Authority will then rely on the FI's assessment in its consideration as to whether to issue a Prohibition Order. If so, will MAS provide any "safe harbour" provisions to FIs against any lawsuit filed by defendant in relation to

		the assessment conducted by the FI. This will assist the role that the Authority can play in both providing a facilitative framework for FIs to address the issue of rolling bad apples and taking appropriate action when regulatory standards are not adhered to. We respectfully would like the Authority to clarify, in the assessment of integrity, for instance, how will the Authority determine that someone has insufficient integrity to work in the financial industry? We respectfully would like the Authority to clarify whether the POs will continue to be published and available on MAS website for viewing internationally and indefinitely, above and beyond the length of the PO issued against an individual? We respectfully would like the Authority to clarify whether the issuance of a PO may be taken into account in considering an individual's credit rating, employability by other employers in Singapore or internationally, or even in a civil or criminal trial when he or she is either a witness or the accused, or whether there will be any statutory restriction on the use and the implication of such POs? We respectfully would like the Authority to clarify on any additional limitations on the applicability of the PO, for example, whether the PO is issued only to those who have acted with malicious behaviour or negligence or specifically to decision makers of authority (e.g. fulfilling the definition of CMF and MRP in IAC)? <u>Wholesale Bank:</u> We would like to clarify how these new powers reconcile with the existing Representation Notification Framework ("RNF"). Would the existing framework surrounding background screening and self-declaration suffice in assessing the fitness and proprietary of an individual in performing both regulated activities and those in relevant functions? Are there any further enhancements required on the way background screening and reference checks are currently undertaken for licensed persons? Currently the PO notifications are issued on a piece-mail basis, and there may be more frequent 'entries' to the PO listing. We propose that the MAS provide a central list against which Human Resources can screen against to minimize the additional costs operational burdens to banks. <u>Wholesale Bank:</u> We request that the MAS provide further clarifications on the specified activities that would fall under "relevant functions". For example, what type of functions would fall into the categories of 'handling of funds, risk taking,

		risk management and control, critical system administration'? Is the widened of scope intent to include also operations teams and risk functions, such as COO (Chief Operation Office / Business Managers), DCO (Divisional Control Officers) etc.? Para 2.7 of the consultation states that MAS proposes to issue a PO against any person, including former, existing and prospective participants in the financial industry, including employees and service providers of FIs. Does the MAS intend to include FI's outsourced service providers as one of the relevant function? We note this was however not included in the draft legislation. We also like the MAS to clarify the risk that these measures are intending to mitigate: • What is the risk with "the handling of funds" that banks should be concerned of? • Is "Risk Taking" intended to cover residual employees that are performing regulated activities but not covered under SFA or FAA? • Is "Risk management & control" wide enough to cover any employee performing a second line of defence role? • Is the intention of the OA to expand the powers of the MAS to all employees (with limited exclusions e.g. secretaries?)? • Will/Should the "relevant functions" be aligned to the core management functions in the proposed IAC guidelines?For example, would the new category of 'Material Risk Personnel' also fall into the category of 'Risk taking' function? If "relevant functions" are references made in specific notices issued by the MAS, we propose for those to be specified for clarity. For consistency and to avoid confusion, we propose for the MAS to align the definitions across the various legislations, such as IAC, OA, Banking Act ("BA") and Notices (e.g. MAS 643). Lastly, we would like to clarify if there is an expectation that firms will need to undertake a detailed accountability mapping exercise to provide greater transparency and clarity on roles, responsibilities and expectations from all staff. **Question 3: MAS seeks comments on the proposal to be able to prohibit a person who is not fit and proper from engaging in the following four specified functions in addition to regulated activities under the SFA, FAA and IA:** **(a) Handling of funds, including safeguarding or administration of a digital payment token or digital payment token instrument;**

		(b) Risk-taking; **(c) Risk management and control; and** **(d) Critical system administration.** <u>Full Bank:</u> 1) In actual practice, an individual issued with a PO for one specified function will be deemed unsuitable for employment for any role within the Financial Sector, or even outside of it. For example, someone being served a PO on risk management and control, is very likely to be denied any opportunity to work in a risk-taking role or even handling of funds, even if the individual is not barred by the MAS from the role. This is because the negative connotations that come with something like a PO, which is served by the authorities, will cast doubt over the person's overall suitability for employment within the Financial Sector, or even outside of the Financial Sector. 2) With the implementation of this Act, will the Guidelines on Individual Accountability and Conduct be implemented? Section 3(2): 3) How is it possible to ensure that the bank does not employ or enter into an arrangement with the person(s) served with PO, if it is of an indirect nature? For example, if the bank uses an external data storage system but the employee of our service provider is served a PO such that he is barred from such critical function (i.e. Critical system administration), how are we supposed to know that there are such a person working with our service provider? Are there any provisions to protect FIs from entering into such an arrangement unknowingly, and could not be avoided from a reasonable basis. Section 3(8): 4) If the PO does not affect any prior agreement, transaction or arrangement entered into by a person served with it, how is the FI able to avoid being punished under S3(2) if it wishes to terminate such agreement, transaction or arrangement upon knowledge that it has entered into it with an individual served with a PO, but is not allowed to under this section? <u>Full Bank:</u> We would like to request for a more prescriptive definition of (b) Risk-taking. <u>Full Bank:</u>

		• We seek MAS' clarifications on examples of activities that may be subject to prohibition orders under "Critical system administration", given such activities tend to be operational in nature. • We seek MAS' clarification as to whether and how the proposed regime would apply to senior managers and material risk takers under the proposed MAS Guidelines on Individual Accountability and Conduct. <u>Full Bank:</u> • Can we suggest for MAS to provide examples of roles and functions which perform such activities? For handling of funds, does this refer to Operation roles who need to handle funds for settlement of trades? For "risk-taking", does this refer to front office roles including those conducting business activities that are currently not regulated by SFA and FAA? For example corporate bankers dealing with corporate loans and trade finances transactions or retail bankers? • In view of MAS implementing its individual accountability framework, would MAS consider aligning the specific functions with those captured within the to-be issued individual accountability framework? In particular, it may be good to limit the scope of the prohibition orders to only roles of a certain seniority. Based on the current definitions of "risk taking" and "risk-management and control", it would appear that the prohibition orders may prevent an individual from taking on entry-level roles as well. <u>Full Bank:</u> To enhance understanding, we would appreciate if examples in relation to (b) could be provided. Would the concept of risk-taking be aligned with the "material risk personnel" as specified in the proposed Guidelines on Individual Accountability and Conduct? <u>Full Bank:</u> The specified functions are broad and it would be helpful for MAS to define or allow for employers to define which specific role within these functions will be captured under the PO. Overall – if MAS can articulate the baseline definitions, this help ensure that there is a level playing field/consistency in how employers define the specific roles within the specified functions. <u>Full Bank:</u> (a) Handling of funds, including safeguarding or administration of a digital payment token or digital payment token instrument "Handling of funds" is defined broadly in Annex B ("handling of funds", in relation to a function of a financial institution, means any function that is responsible for the safekeeping or administration of customer funds

		belonging to the financial institution) that it would cover majority of the bank's employees. The Bank would like to clarify if this specified function would only apply to regulated activities. The Bank would also appreciate further guidance on the term "customer funds" and would like to know if it includes cash handling and / or fund portfolio management. In addition, if the intent of issuing a PO is in consideration of a serious misconduct, the Bank suggests that clearer guidelines on when a PO would be applied (e.g. severity of the contribution to the breach) should be defined. (b) Risk-taking Similarly, "risk-taking" is defined broadly in Annex B ("risk taking", in relation to a function in a financial institution, means a function that is responsible for taking actions that result in a financial institution undertaking any specified risk in the course of the business of the financial institution) that it would cover majority of the Bank's functions, as banking is about balancing risks and rewards. In this connection, will acceptance of a low residual risk be deemed as falling within the definition of "risk-taking"? The Bank would further like to understand if risk acceptance within the Bank's established set of risk management policies and risk appetite will be exempted. (c) Risk management and control "Risk management and control" is also defined broadly in Annex B. The Bank would like to know if this function applies only to regulated activities. The proposed definition in Annex B implies that any non-compliance to established policies and procedures or any implementation of inadequate policies and procedures will subject any relevant persons in that breach to be potentially issued a PO. However, not every oversight may lead to a major impact to the Bank's reputation or service delivery to customers. It may not necessarily be a serious misconduct as well. The Bank has a set of Code of Conduct that applies to all staff. It lays out the disciplinary actions against the severity and role / contribution of the act(s) of the individual staff. Similarly, the Bank suggests that clearer guidelines on when a PO would be applied (e.g. severity of the contribution to the breach) should be defined.

		(d) Critical system administration The Bank would like MAS' clarification on whether MAS will be including the Notice on Technology Risk Management (TRM) and Notice on Cyber Hygiene into the applicability of Guidelines for Fit and Proper Criteria. If the intent of issuing a PO is in consideration of a serious misconduct or where oversight led to a major impact to the Bank's reputation or service delivery to customers, the Bank suggests that clearer guidelines on the circumstances under which a PO would be applied (e.g. severity of the contribution to the breach) should be defined. With regard to the definition of (d) "Critical system administration", the Bank would appreciate MAS' clarification on whether it is limited to the set of Critical Information Infrastructure (CII) systems submitted to MAS. The Bank would also like to know what "administration" refers to and if it is limited to technical system administration. In general The Bank would appreciate clarity from MAS on whether the expanded scope of prohibition under the POs would cover specific senior job titles (e.g. Head of Risk Management / ED / MD) within the four specified functions or all roles / job titles / rank involved in these specified functions (e.g. middle management). <u>Qualifying Bank:</u> Page 6-7, point 2.10 – 1. Please define and provide examples on "handling of funds" "risk taking" "Critical system administration" 2. As the Fit and Proper criteria would go beyond the scope of SFA & FA to individuals who carry out activities not covered under SFA FA as well such as staff in Operations / IT / Finance / Risk / Admin departments, will the same be applicable to persons or for persons above a certain grade. 3. Will the above be applicable to outsourced service providers Page 7, point 2.12 – 1. The new act to provide clarification on whether FI's can appoint such persons prohibited from doing from activities, roles and functions and in which other activities or roles or function can the person be appointed with examples. 2. The Bank wanted to understand that if there is any prohibition issued for certain activity whether the same will be disclosed to the Banks so as to not employ the said person for the said activity as well where he is not competent. <u>Wholesale Bank:</u>

		We would like to seek clarity on whether the MAS Guidelines on Fit and Proper Criteria will be updated to take into account the proposed specified functions or include specific guidance on fit and proper criteria for these functions. We noted the broad definition of "handling of funds" and "risk taking" and would like to request illustrative examples or detailed guidance be provided for clarity and in avoidance of doubts. In particular, where it relates to front office and back office staff performing the "handling of funds" and "risk taking" functions. In addition, we would also like to seek clarity on whether this is regardless the specified functions are performed or provided by outsourced service providers (intra-group or external third party). <u>Wholesale Bank:</u> 1. We understand that MAS' intention is to widen the pool of staff performing the relevant functions to subject them to PO checks. We would like to seek MAS clarification/confirmation that under this new regulation, the scope of the checks for these staff is only limited to the PO checks. FIs will not be required to perform the same standard of fit and proper evaluations (beyond their existing internal processes) or misconduct reporting, like those for MAS licensed staff. 2. In para 2.7, it was mentioned that the PO issuance could include service providers of FIs. Can MAS further define "service providers"? Is it limited to those that provide material services to the relevant functions? Also, would these include 3rd party and intra-group service providers to which the Singapore FI has outsourced the relevant functions? What would be the fit and proper standards for an entity? It would be difficult for the Singapore FI to perform PO checks against 3rd party service providers staff, or even against staff of overseas intra-group entities, who are performing the relevant functions on our behalf. For intra-group, it is possible that either Head Office or regional processing centres may be performing the relevant functions for all branches/entities within the group. It would be operationally difficult to keep track or perform PO checks on such staff. 3. Currently, POs are issued via ad-hoc MAS circulars and tracking of the PO is manually performed by FIs. Given the new Act will likely trigger more POs to be issued, we suggest that MAS publish the PO via a public register (similar to the MAS licensed reps register) such that FIs can access the readily available database at any time. <u>Wholesale Bank:</u> We respectfully submit for the Authority to clarify which roles fall within the scope of "Relevant Functions" will need to be defined clearly, as there is no clear guidance in the proposed draft regulations. As the setup is different

		across FIs, this requirement might create ambiguity and treatment might vary across the different FIs. For example, certain roles considered Critical system administration in one FI may not be the case for another FI. We respectfully submit for the Authority to clarify whether certain roles, as part of Risk taking, Risk Management and control, Critical system administration functions, should take into consideration the size of the FIs and authority of the individuals. In this aspect, the fit and proper criteria is expected to be slightly different from licensed representatives where the criteria is based on regulated activities. We respectfully submit for the Authority to clarify if the scope of the PO were to be extended to other individuals under Annex B, we need to consider if all the 3 areas of the fit and proper criteria would be applicable. For example, the financial soundness arguably might not be applicable to certain roles under "Relevant Function" if they do not involve handling of money. For example, low level roles involving critical system administration and risk management and control. We respectfully submit that in certain situations, we recognise the importance of applying the financial soundness test to certain functions such as risk management where they are in a position to give approval or accept material risks. This is to avoid the situation where individuals in these functions might be induced financially to provide the approval if they are not financially sound. Therefore, we would suggest the Authority should provide greater clarity on how FIs are expected to apply the fit and proper criteria across these functions. With respect to licensed representatives, we understand there are defined standards to ensure competency, i.e. IBF standards, CMFAS paper, CACS etc. There are also Continuous Personal Development (CPD) hours. We respectfully submit to clarify that it is currently not clear if the Authority would roll out similar requirement for roles under "Relevant Functions" as If these requirements were to be rolled out, it might introduce additional operational costs and pressure for FIs, especially smaller ones, who traditionally need to manage such requirements for licensed representatives only. We respectfully submit that although we note the Authority must not make a prohibition order against a person without giving the person an opportunity to be heard, there should be procedural fairness in the decision making and that the legislation provide appropriate measures as well as the right of a person who has been issued a prohibition order to seek a review before the

		order is issued. We respectfully submit that the time given to seek such a review should be longer than the 30 days provided in the draft legislation. We respectfully would like the Authority to further clarify further what is meant by a role in 'risk management and control', as this is wide enough to encompass anyone working in a financial institution such a role can be in all lines of defence. We respectfully would like the Authority to clarify further on the roles and/or ranks a PO can apply to persons in Technology group function of a FI. For example, we would like to recommend exclusion of System Administrator roles; as inclusion of such roles would bring a large percentage of Technology group function employees directly within the scope of the PO if it include all ranks, including those that are junior and less experienced to those that are senior and experienced. <u>Wholesale Bank:</u> We request that the MAS provide further clarifications on the specified activities that would fall under "relevant functions". For example, what type of functions would fall into the categories of 'handling of funds, risk taking, risk management and control, critical system administration'? Is the widened of scope intent to include also operations teams and risk functions, such as COO (Chief Operation Office / Business Managers), DCO (Divisional Control Officers) etc.? Para 2.7 of the consultation states that MAS proposes to issue a PO against any person, including former, existing and prospective participants in the financial industry, including employees and service providers of FIs. Does the MAS intend to include FI's outsourced service providers as one of the relevant function? We note this was however not included in the draft legislation. We also like the MAS to clarify the risk that these measures are intending to mitigate: • What is the risk with "the handling of funds" that banks should be concerned of? • Is "Risk Taking" intended to cover residual employees that are performing regulated activities but not covered under SFA or FAA? • Is "Risk management & control" wide enough to cover any employee performing a second line of defence role? • Is the intention of the OA to expand the powers of the MAS to all employees (with limited exclusions e.g. secretaries?)? • Will/Should the "relevant functions" be aligned to the core management functions in the proposed IAC guidelines?For example, would the new

		category of 'Material Risk Personnel' also fall into the category of 'Risk taking' function? If "relevant functions" are references made in specific notices issued by the MAS, we propose for those to be specified for clarity. For consistency and to avoid confusion, we propose for the MAS to align the definitions across the various legislations, such as IAC, OA, Banking Act ("BA") and Notices (e.g. MAS 643). Lastly, we would like to clarify if there is an expectation that firms will need to undertake a detailed accountability mapping exercise to provide greater transparency and clarity on roles, responsibilities and expectations from all staff. <u>Wholesale Bank:</u> 1. We suggest that "Financial Benchmark administration" and "Financial Benchmark submission" be included as the "regulated activities" under the SFA, as they are regulated under Part VIAA FINANCIAL BENCHMARKS of the SFA, but not specified as "Regulated Activities" in the Second Schedule to the SFA. In addition, the effects of prohibition orders issued under section 123ZZC(1) of the SFA will only impact the administration and submission of designated benchmarks (see section 123ZZC(3) and 123ZZD of the SFA), but not prescribed financial benchmarks e.g. SORA. Comments related to Annex B of the Consultation Paper 2. We propose the inclusion of "Handling of customer's assets" as another specified function, and its definition as follows: "handling of customer's assets", in relation to a function of a financial institution, means any function that is responsible for the safekeeping or administration of customer's assets that are beneficially owned by a customer of a financial institution 3. We also propose the addition of the following as part of the definition of the "risk-management and control": "(d) the auditing, reviewing or testing of activities, transactions, processes and procedures to ensure compliance by the financial institution with the relevant legal and regulatory requirements in the jurisdictions that it conducts business in"

		The above will cover the functions of internal/external audit, and compliance review or testing. **Question 4: MAS seeks comments on the proposal to be able to prescribe additional specified functions in subsidiary legislation, for the purpose of protecting trust or deterring misconduct in the financial industry.** Full Bank: While the Bank is supportive of the ability of MAS to act swiftly by prescribing additional specified functions in subsidiary legislation, the sole criteria of "for the purpose of protecting trust or deterring misconduct in the financial industry" used in the proposed definition of "relevant function" in section 1 of Annex B is very wide. We propose MAS consider using "any other function, subject to existing regulatory oversight, critical to the integrity and functioning of the financial institution which the Authority may prescribe" instead. This would be in line with MAS' explanation in the consultation with respect to designating the other four specified functions. Full Bank: These additional specific functions should come with guidance and/or baseline definitions to drive consistency in how employers define the additional roles and respond to POs. Wholesale Bank: We would like to request MAS to consider some time allowance for FIs to conduct a more comprehensive assessment in relation to the new additional specified functions before implementation. Wholesale Bank: We note Authority wishes to add the specified functions in the Consultation Paper as it does not want undesirable individuals to work in what it considers to be critical roles in the financial industry. We would like the Authority to clarify whether the Authority, in any event, has the ability to add to the 'relevant functions' at any time, 'for the purpose of protecting trust or deterring misconduct in the financial industry'? We respectfully submit that the existing regulations (MAS Act, SFA and FAA) are predominantly targeted at traditional financial service conducted via face-to-face, emails and calls. As such, the focus is mainly on licensed representatives, FIs senior management and substantial shareholders. The expansion of the Authority's enforcement powers to cover a much wider audience may limits the effectiveness of these regulations to address threats outside of the specified functions in the Consultation Paper. If the specified functions changes periodically, it may inhibit the Authority's ability to address

		new and emerging threats as it required time to amend the provisions of the Act. For example, Is it the MAS' intention to expressly regulate/license these 'specified functions' (and those other functions that may be notified via subsidiary legislation, as proposed) in the future via changes to the definitions of Relevant Persons and Relevant Functions in the Omnibus Act? We respectfully submit for the Authority to clarify given there is an expanded list of 'additional specified functions' that are now in scope for a prohibition order, is it the Authority's intention to also change the definition of "Relevant Persons" under the current 'Guidelines on Fit and Proper Criteria' to cover these 'additional specified functions'? We respectfully submit for the Authority to clarify whether its intention is to expand the present misconduct reporting regime to include persons in the 'additional specified functions', given that these roles will also need to adhere to 'fit and proper criteria'? Presently, any misconduct by individuals in these roles would generally not be required to be reported to MAS. **Question 5: MAS seeks comments on the proposal to introduce a regulatory regime for entities created in Singapore that carry on a business of providing VA activities outside of Singapore.** <u>Full Bank:</u> MAS has stated its intent to introduce a new class of FIs (DTSPs) that are created in Singapore, but which are carrying on a business of providing VA activities outside of Singapore. • MAS may wish to clarify whether the new DTSP classification would extend to Singapore legal entities who may have full ownership and/or control of, but are separate legal entities from, a VASP incorporated in a foreign jurisdiction. The setting up of multiple new shell-like legal entities for each jurisdiction—which are in turn controlled by another centralised legal entity—appears (from literature) to be a common modus operandi for VASP operators to circumvent tighter VASP regulatory regimes, and could be subject to abuse for fraud and money laundering. In which case the current proposal by MAS may not lend itself well to the effective mitigation of ML/TF risks arising from such structures as it only addresses direct provision of DT activities by Singapore entities. <u>Wholesale Bank:</u> 1. We would like to clarify whether there would be exemptions for banks e.g. foreign banks with branches in Singapore, offering DT products/services to overseas by way of their existing regulated activities (SFA/FAA), to be exempted from the licensing and AML/CFT requirement in the new Act? Given there are existing regulations which cover licensing

		and AML/CFT provisions for banks, we suggest MAS considers exempting banks who provide DT products/services to overseas, as part of their existing SFA/FAA regulated activities. 2. The current Payment Services Act is already regulating Digital Token Payment. For consistency and reduced ambiguity, can we suggest for MAS to incorporate the licensing/regulating of DT service providers providing overseas business, into the Payment Services Act, rather than in the new Omnibus Act? <u>Wholesale Bank:</u> We respectfully submit for the Authority to clarify how to it would deal with any overlaps between token-based regulatory regimes defined by Singapore (for activities outside of Singapore) and that of other jurisdictions. For example, if a FI licensed in Singapore issues, and distributes a tokenized bond to investors overseas only, would the FI still be required to comply with the licensing and ongoing requirements under the Omnibus Act? How do we reconcile the overseas' DT-based regulation/s with the Singapore regulation? We respectfully request the Authority to provide clear guidelines to follow if there were conflicting / competing jurisdiction requirements. **Question 6: MAS seeks comments on the proposed definition of DTs as set out in section 2(1) of Annex C:** **(a) a digital payment token; or** **(b) a digital representation of a capital markets product which –** **(i) can be transferred, stored or traded electronically; and** **(ii) satisfies such other characteristics as MAS may prescribe;** **but does not include an excluded digital token.** <u>Full Bank:</u> What is the intended coverage of "excluded digital token"? Will this be anything that is not covered by the definition of DTs i.e. where they are neither a digital payment token (DPT) or digital capital markets product token (DCMPT)? We would like to suggest that a more holistic and defined framework be established for the issuance and governance of asset-backed tokens for physical assets in the various sectors of the economy besides DPT and DCMPT. The definition of DTs could thus include asset-backed tokens which may be liquid or illiquid, and which may not be related to payments or capital markets products, and be more aligned to the FATF's broad definition of virtual assets as a "digital representation of value that can be digitally traded, or transferred, and can be used for payment or investment purposes". <u>Full Bank:</u>

		The definition is appropriate. • As a practical consideration, given the broad scope of the proposed DT definition which potentially encompasses any digitally represented capital markets products which may be issued by a legal entity overseas, it would be important for MAS to adopt a risk-based approach and consider the practical challenges of applying this framework across all Singapore entities for activities conducted internationally. • MAS may consider providing clear Guidance to banks and financial institutions on its expectations for CDD and monitoring in relation Singapore customers who may be involved to various extents in the issuance of overseas DT capital markets products. Clarity on the approach is important to avoid potential industry derisking. • MAS may consider providing clarity on exempted capital market products as the FATF Guidance's definition of virtual assets to exclude digital representations of securities and other financial assets that are already covered elsewhere in the FATF Recommendations. Similarly, examples on digital representation of capital market products would be helpful to banks and FIs. • A Singapore-incorporated fintech could participate in many ways in the technological or developmental process of primary market issuance of a DT capital markets product overseas, or in related secondary market operations, and potentially fall into this definition despite having little or no direct control over the sale and distribution of the underlying asset. <u>Full Bank:</u> To seek greater clarity on (b) as there is a certain degree of ambiguity associated with the term "digital representation of a capital markets product" especially given that the characteristics in (b)(ii) have not been defined. Conceptually it may be clearer to link the definition to the common understanding that a digital token is a cryptographically-secured digital representation of value as opposed to a product. <u>Qualifying Bank:</u> We would like to seek clarification as to what kind of digital token will be recognised as "excluded digital token".Based on the definition, it appears that a scripless securities is a digital token. <u>Qualifying Bank:</u> Please provide clarity on point b of the definition with examples <u>Wholesale Bank:</u> MAS proposes to define digital token as (a) a digital payment token; or (b) a digital representation of a capital markets product which – (i) can be transferred, stored or traded electronically; and (ii) satisfies such other

		characteristics as MAS may prescribe. For (b), we would appreciate it if MAS could provide some examples. Would they include scriptless shares and securities which are transferred/stored/traded electronically? If so, would MAS-regulated banks be in scope of the new regulations if it offers (b) in Singapore and/or overseas? <u>Wholesale Bank:</u> We respectfully submit, we are generally agreeable to the definition of DTs. <u>Wholesale Bank:</u> We will appreciate if MAS would provide more clarity of the type on the products that would fall within the scope "digital representation of a capital market product". We assume it is not the intent of MAS to include any products that are traded on an exchange/ organized market which does in any physical settlement of the underlying. <u>Wholesale Bank:</u> Can MAS further define what kind of products would be caught as "digital representation of a capital markets product"? To underline the contrast vis a vis derivatives, if any. **Question 7: MAS seeks comments on:** **(a) The scope of DT services, which are in line with the FATF Standards for VASPs;** **(b) Whether there are other DT services that should be captured;** **(c) Specifically whether there are advisory services provided by DT service providers, relating to the offer or sale of DTs that are used for payment purposes; and** **(d) Specifically whether there are fund management activities involving DTs.** <u>Full Bank:</u> With reference to paragraph 3.12(e) under scope of DT services as extracted below: *(e) Safeguarding or administration of a DT or DT instrument, where the service provider has control over the DT or the DT associated with the DT instrument,* the scope may not have captured fund administration/ transfer agency services for tokenised funds, since point (e) requires the service provider to have control over the DT which would not be the case for fund administration/ transfer agency services. Only trustee or custodian would have control over the DT or DT instrument.

		The service of providing tokenisation through the use of blockchain and/ or smart contract technology etc for clients also does not seem to be captured within the scope DT services. Would such service providers be regulated as well? Full Bank: On (b) MAS may wish to clearly set out in Guidance on the full range and extent of DT services that are captured, and importantly set out the due diligence expectations on banks and financial institutions in Singapore who may have customers offering such overseas DT services. Some considerations would include (but are not limited to) the following: • Will banks and financial institutions be expected to perform KYCC? • Will banks and financial institutions be required to perform blockchain monitoring on DT service activity regardless of whether these are centralised or decentralised blockchains? • Will there be CDD exemptions for regulated FIs in Singapore that conduct DPT/DT services? • Are there correspondent banking requirements that would apply where DT activity is facilitated by regulated financial institutions (both overseas and in Singapore) that may partner banks for the sale and distribution of DT products? Wholesale Bank: We respectfully submit, we are generally agreeable to the scope and DT services to be captured. Wholesale Bank: We do not have any comments on the scope of DT services. On (c) and (d), we would like to propose that advisory services and fund management activities relating to DTs be in scope of the regulations. **Question 8: MAS seeks comments on the proposed licensing and ongoing requirements to be imposed on DT service providers.** Full Bank: In relation to paragraph 10(3) in Annex C, would there be challenges for the DT service providers to keep a record of all transactions at a permanent place of business, as transactions related to digital tokens would be recorded on a distributed ledger digitally, and it may not be uncommon for such providers to work from home as well. The following comments are not specifically related to the scope specified in this paper relating to activities carried out Singapore. They are more generic

		comments relating to the licensing and standards of service providers in general for consideration: • We would like to suggest segregation of duties across digital token providers.For instance, issuers of these tokens should not be the liquidity providers/exchange of such DTs. • Could we also suggest common standards be established for adherence by DT service providers to ensure some amount of interoperability of digital tokens issued across various platforms.There should not be a case of vendor lock-in or one institution having a significantly large market share, if such common standards/ interoperability are not established. <u>Full Bank:</u> For the duration of keeping transaction records, we suggest for MAS to specify the minimum requirement. MAS may consider to clarify in Guidance whether it is reasonable and practicable to require licensing in Singapore for activities conducted entirely overseas, and how such entities would be expected to comply with ongoing requirements including CDD record-keeping. MAS may consider to also clarify in Guidance on whether there is an expectation for FIs in Singapore to require declaration from their customer base on involvement in the conduct of DT activities elsewhere in the world. Regarding the exempted businesses as stated under para 4(3)(a) of the Annex C, MAS may consider expanding on the exemptions to include VASP as a business the person is deemed to be carrying on under section 82(1) of the Securities and Futures Act (Cap. 289), as the provision of custodian services is akin to the DT service "Safeguarding or administration of a DT or DT instrument, where the service provider has control over the DT or the DT associated with the DT instrument". <u>Wholesale Bank:</u> We respectfully submit for the Authority to clarify whether the regulatory regime / licensing / ongoing requirements on DT service providers, is primarily intended to apply to exempt regulated financial institutions who are already licensed under Banking / PSA / capital markets / financial advisory licenses, and applies the respective applicable AML/CFT requirements? For example, If a regulated FI were to, in the future, offer DT-services (e.g. do a tokenized bond issuance in SG), then the nature of the activity itself is no different than doing a normal bond issuance. The FI would already need to follow the existing requirements as set out by its various licenses (incl KYC/AML) in SG and any cross-border related rules. As noted under para 3.6 of the Consultation Paper, MAS' current legislation would already capture an entity

		that carries on a business of conducting certain VA activities in Singapore, regardless of whether the entity is created in Singapore. **Question 9: MAS seeks comments on our proposal to align proposed AML/CFT requirements to be imposed on DT service providers with the existing PS Notice 02 for DPT Service Providers, given the similar nature of ML/TF risks of both these activities.** <u>Full Bank:</u> Question 9 appears to suggest that MAS is prepared to align the ML/TF risks posed by DPT service providers with DTSPs, which we can agree with in view of the analogous risk exposures. • However, as an extension of the aforementioned feedback, MAS may also wish to clarify in Guidance how banks should assess the ML/TF risks posed by legal entities who have partial (i.e. many existing DT issuances are by JVs or consortiums) or substantial stakeholderships in foreign VASPs, and if/whether such entities should be regarded as de facto VASPs themselves. <u>Full Bank:</u> Supportive as this gives effect to the FATF guidance and ensures a level playing field. MAS should clarify whether a DPT service provider subject to PSN02 which also offers services to customers outside of Singapore will also be required to be subject to licensing requirements for DT service providers and the attendant AML/CFT requirements for DT service providers, in addition to those relating to its DPT license. It is proposed that if the financial institution is already regulated for AML/CFT purposes in Singapore or as a RMO or under the SFA will not need to hold a DT license separately. <u>Wholesale Bank:</u> We respectfully submit we are supportive of the proposal. <u>Wholesale Bank:</u> We agree with MAS' proposal to align AML/CFT requirements with PS Notice 02. **Question 10: MAS seeks comments on the proposed powers and the quantum of the maximum penalty for breaches.** <u>Full Bank:</u> For a foreign FI with small retail presence in Singapore, which parts of the TRM Guidelines will MAS be focusing on with regard to the newly legislated

		powers to issue directions or regulations in this proposed Omnibus Act? If and when such directions or regulations are being imposed on the FI, how much time are the FI granted to rectify the issues identified by MAS? <u>Full Bank:</u> We are supportive of the proposed powers but note that the quantum of the maximum penalty of S$1 million proposed for a breach is ten times that of the current maximum penalty of $100,000. In the case of a continuing offence, the further proposed fine of $100,000 for every day or part thereof during which the offence continues after conviction is also ten times that of the current $10,000. We respectfully request that the quantum of the maximum penalty for breaches be reconsidered in light of the current challenging environment that the industry is operating in. If MAS remains minded to proceed with the proposed penalty, could MAS list out the factors/guidelines that will be taken into consideration in determining the quantum of the fine to be imposed? For example, a cyber-incident may result in non-compliances in more than one Notices. For the purpose of computing the maximum penalty under the proposed Omnibus Act, we seek clarification whether the maximum penalty for an incident resulting in non-compliances under various Notices e.g. MAS Notice on Cyber Hygiene, MAS Notice on Technology Risk Management, etc. will be capped at S$1 million. Under such circumstances, how will non-compliances with related Guidelines be taken into consideration, if any? <u>Full Bank:</u> As there are 3 similar acts which will specify Technology Risk Management requirements, we are hoping if MAS being the sectoral regulator could provide clarity on how the 3 acts (Omnibus Act, PDPA, CSA) would be harmonised and applicable for the banks and FIs. <u>Full Bank:</u> We note that MAS' intention is to allow for broad powers to impose technology risk management (TRM) requirements on any financial institution (FI) or class of FIs in relation to the FI's systems, irrespective of whether such systems support a regulated activity, given that systems that do not support regulated activities can pose contagion cyber risks to systems that do support regulated activities due to inter-linkages. We respectfully request MAS to clarify the following: 1. Whether the MAS can provide guidance on and/or define what are the systems that are potentially in scope of the proposed powers. For example, what would the MAS consider to be "systems that do not support regulated activities"?

		2. Whether "systems that do not support regulated activities" may be excluded from the scope of the proposed powers if they do not have any inter-linkages or interconnect with systems that do support regulated activities. 3. Whether MAS can consider limiting the scope of the proposed powers to the systems with such inter-linkages/interconnection to other systems where the ultimate impact is that operations or customers are severely and materially affected. 4. Related to the above points, whether the scope of the proposed legislation would apply to systems used by Singapore entities that are hosted/located outside of Singapore. <u>Full Bank:</u> In relation to Technology Risk Management, the extension of powers to all systems appears to address data breach risk (reference is made to Para 4.3 of the Consultation Paper on "contagion risk"). There should be clarity as to how the handling of data breach incidents interact with other regulators/legislation who also deal with this aspect (e.g. PDPC and CSA) in terms of notification and enforcement powers/penalties. Outside of the respective legislation, there could be room for harmonisation of breach handling between the sectorial agency (i.e. MAS) and the general regulators (i.e. PDPA and CSA). It would be useful if the various regulatory authorities set out how such coordination and interaction works in practice. <u>Full Bank:</u> Consultation Paper • Paragraph 4.3 If the concern is regarding disruption risk to essential financial services and potential impact to FIs' critical systems and cyber security breaches, the Bank suggests that a distinction should be made between critical systems and systems that do not support a regulated activity. Specifically, the Bank would like to suggest that TRM regulations and MAS Notice 644 TRM will continue to be confined to critical systems supporting regulated activities. • Paragraph 4.5 The Bank urges MAS to consider a reasonable implementation period when issuing a directive or regulation relating to use of any new technology. The Bank encourages industry-level discussions with MAS to work on drafting guidelines to manage emerging risks and technology. • Paragraph 4.6 As FIs are regulated by MAS, the Bank suggests that harmonisation be made between the proposed Omnibus Act and other Acts (e.g. PDPA and Cyber Security Act) to reduce compliance complexity and to avoid possible

		duplication of coverage and imposition of penalty for the same breach under separate legislation. Given that MAS is the regulator for FIs, penalty for breaches are suggested to be covered wholly under the proposed Omnibus Act. This will avoid duplication of coverage and imposition penalty for the same breach incident under separate legislation. Please could MAS clarify whether fines could be compounded. Annex D • Paragraph 1 a) MAS usually provides clarity through its issuance of Notices stating specific requirements. The proposed write-up in paragraph 4.3 of the Consultation Paper or Paragraph (1) in Annex D is open-ended and we would request MAS to be more specific in the areas which this could be applied. This allows Financial Institutions (FIs) to be able to proactively address these areas. As MAS would like to introduce powers to issue directions or make regulations on TRM concerning any FI or class of FIs, we would appreciate it if MAS could clarify whether the same penalties will apply across FIs so as to ensure a level playing field. Similarly, will MAS draft regulations or standards that are applicable to different classes of FIs? b) Currently, MAS already has the authority to direct FIs to resolve issues identified. The Bank would like to understand the rationale behind the need for a penalty to be associated with these directions issued by MAS. c) The Bank would also appreciate clarity from MAS in terms of the types of directions that could be issued. Would the regulations refer to the Notices issued by MAS? • Paragraph 2 a) Would the target date for complying with the directions issued by MAS to FIs be negotiable as the efforts to address compliance may be extensive and need to be assessed? Where FI anticipates a delay in the resolution, would there be a process whereby MAS could be consulted to extend the timeline for resolution? b) The penalty proposed by MAS is a 10-fold increase in terms of the fine (not exceeding $1 million) as well as the further fine (of $100,000) imposed for every day or part of a day during which the offence continues after conviction. This is a big jump from the previous fine of $100,000 and a further fine not exceeding $10,000 stated in the

		current MAS Banking Act. As an FI, the Bank takes MAS' directions seriously regardless of penalties and will take prompt actions to address them. The Bank's view is that the 10-fold increase is too massive. Could MAS provide more details on how the fines may be assigned for the Bank to understand the rationale of the 10-fold increase? Could MAS allow due consideration of the actions concerned in imposing the further fine each day be that of not exceeding $100,000? Could the fines be compounded. <u>Qualifying Full Bank:</u> We would like to seek clarification as to 1. how the proposed power to issue directions or make regulations on technology risk management will interplay with the existing Tech-Risk Notices; 2. whether MAS intends to impose TRM requirements only on systems that are inter-linked with critical systems; 3. whether a FI is expected to maintain a register on systems that are inter-linked with critical systems; and 4. whether, in relation to data protection, MAS and PDPC could separately impose its respective monetary penalty for the same incident. <u>Qualifying Full Bank:</u> The Bank proposes that the penalty for breaches to be determined by taking into consideration of the real severity of the breach and the real impact to customers caused by the breach. In addition, seek MAS' clarifications on the trigger conditions, the structure of the penalty regime and if the further fine (for every day or part of day during which the offence continues after conviction) means the whole period until a breach is rectified. <u>Qualifying Full Bank:</u> Page 18, point 4.3 – TRM guideline to clarify whether the RTO of 4 hours be applicable for the non-critical system and whether such incident has to be informed to MAS? To provide examples on the coverage of various type of systems that covers regulated activities Page 88, point 2 - To provide examples on how the fines will be applied to FIs incase of breach of TRM. Will RTO breach of 4 hours be considered in point no 1 of Annex D. <u>Wholesale Bank:</u> We would like to seek clarity on the definition and scope of system(s) that do not support regulated activities and request for illustrative examples to be

		provided in avoidance of doubt. Regarding the issue of directions or make regulations on TRM under the new Act, we appreciate if the MAS can set out clear guidance and expectation on the FIs' obligations in relation to such system(s), especially those non-critical system(s), with respect to TRM requirements as well as the timelines for implementation. We have noted and no further comment on the maximum penalty. <u>Wholesale Bank:</u> • As MAS intends to introduce a power to issue directions to or make regulations concerning any FI or class of FIs for the management of technology risks, including cyber security risks, the safe and sound use of technology to deliver financial services, and safe and sound use of technology to protect data, could we understand if MAS has any immediate plans to issue other technology-related Notices under the Omnibus Act for banks, in addition to MAS Notice 644 which is issued under the Banking Act? If so, we would appreciate if MAS could provide more details of the scope/areas of intended regulation for banks. • In particular, we would like to understand if MAS is planning to convert the expectations in the TRM Guidelines into Notice requirements? As the TRM Guidelines consists of a set of best practices which are adopted (where appropriate) to ensure sound IT practices, taking into account the services provided in the market, risk exposure and appetite, converting these into Notice requirements may affect the FI's ability to operate in a sustainable cost-risk model. • If the TRM Guidelines will not be converted into Notice requirements, would any non-compliance against the TRM Guidelines amount to a breach of the Omnibus Act? • Given that the proposed Omnibus Act may have considerable impacts on FIs, could we understand what is the intended effective/implementation date of this Act? • MAS intends to introduce a power to issue directions to or make regulations concerning any FI or class of FIs for the management of technology risks, including cyber security risks, the safe and sound use of technology to deliver financial services, and safe and sound use of technology to protect data. Given that there are existing regulations governing similar areas such as the PDPA, Banking Act and Cyber Security Act, would MAS be coordinating with the respective agencies to align the reporting requirements and penalties? <u>Wholesale Bank:</u> We respectfully submit that the powers are too wide, which presents a real risk of over-regulation and gives rise to uncertainty for the affected FIs. For example, "technology risk" in section (1)(a) of Annex D is completely unqualified, but can give rise to substantial fines, including continuing

		fines. We respectfully request the Authority to consider that "technology risks" be limited to "technology risks which may materially affect Singapore clients, or materially impact the stability of the FI or the financial market in Singapore". Similarly, the use of the term "data" in section (1)(c) of Annex D should be qualified to "data which materially impacts the stability of the FI or the financial market in Singapore". We respectfully submit for the Authority to clarify whether could fines likely be levied for non-compliance to Notice 644 and 655, or additionally for non-compliance to guidelines ? For instance, will the Authority be able to elaborate how a breach of Notice 644 might be handled if a critical system exceeded its 4 hour downtime in a 12 month period? In consideration of the upcoming IAC, we respectfully submit whether it will be the Authority's' intention to expressly regulate/license fines are to be borne by licensed entities, or accountable individuals? With regard to the statement, "This is because systems that do not support regulated activities can pose contagion cyber risk to systems that do due to inter-linkages. " we respectfully submit for the Authority to clarify whether it will indicating which TRM Guideline requirements will fall under the scope of contagion risk where the scope would be beyond the applications supporting regulated entities? Additionally, would Authority be penalise if FIs take a risk based approach in defining the scope of TRM guidelines? We note that extending the definition of applicability to 'systems that do not support regulated activities' will increase the number of impacted systems significantly. We respectfully submit for the Authority to clarify on the applicability of such definition with regards to specific systems supporting specific banking functions? Additionally, would the Authority penalise if FIs take a risk based approach in defining the scope of systems that do not support regulated activities? We note that extending the scope of TRM guidelines to 'systems that do not support regulated activities' will require significant time, effort and budgets to ensure compliance; we respectfully submit whether the Authority will be supportive and consider extended remediation timelines for compliance? For example, where remediation efforts when applied at global scale, and will require more than 12 months to remediate? We respectfully submit for the Authority to clarify whether the Omnibus Act would extend to cover outsource service providers in the context of TRM? If so what would be the criteria at which they could be considered in scope?

		Wholesale Bank: We would like to request for clarification on the scope of assets that are subject to regulation (para 4.3). In the case of a global organisation are these assets that are located in Singapore or does this also include those that are outside to Singapore? What is considered "inter-linked"? Does this also apply to systems that do not directly support regulated activities? At present the Singapore management teams provide a closer level of governance associated with Bank systems that support regulated activities, and rely on global governance functions to provide the wider governance of Bank systems. Does the MAS expect that the Singapore management teams will need to provide an increase level of Singapore governance of all Bank systems? **Question 11: MAS seeks comments on the provision of statutory protection from liability to mediators, adjudicators and employees of an approved dispute resolution scheme operator.** Full Bank: The Bank is supportive of the provision of the statutory protection from liability conferred on mediators, adjudicators and employees of an approved dispute resolution scheme operator. Qualifying Bank: We note that: • The proposal, as set out in Paragraphs 5.1 to 5.4 and Annex E of the consultation paper, will bring the level of protection for employees, adjudicators and mediators of an approved dispute resolution scheme operator in line with that of other public dispute resolution bodies. • Under the new provision in Annex E,a mediator, adjudicator or employee of an operator of an approved dispute resolution scheme will not be liable for an act or omission done with reasonable care and in good faith, but will continue to be liable for acts involving wilful misconduct, negligence, fraud or corruption. The above proposal seems sensible, as it would be fair to accord similar statutory protection to FIDREC employees, adjudicators and mediators as available to those in other public dispute resolution bodies, so as to give them greater confidence and peace of mind to carry out their roles. Additionally, the proposed provision is reasonable as it only provides protection from liability to the extent that the foregoing persons carry out their duties with reasonable care and good faith, and they are not protected for acts involving wilful misconduct, negligence, fraud or corruption. Wholesale Bank

		We respectfully submit we are supportive of the proposal.
8.	Baker Mckenzie. Wong & Leow	Respondent wishes to keep entire submission confidential.
9.	Blockchain Association of Singapore ("BAS")	**General Comments:** BAS' Regulatory and Compliance Sub-Committee organised a webinar with 86 registrants, around 40 participants from about 30 companies, mainly payment services firms. A panel of the Sub-Committee members, comprising senior regulatory and compliance representatives from the community, had led discussion of issues during the Webinar. **Question 1: MAS seeks comments on the proposal to be able to issue a prohibition order to any person.** • Participants at our Webinar generally felt that in light of the grave impact of Prohibition Orders ("POs") on prohibited persons, in terms of livelihood and reputation, the starting point should be one of circumspect before casting the regulatory driftnet for POs. • Concerns were particularly raised about extending POs to service providers to financial institutions, as this could potentially be extremely wide, reaching out service providers such as law firms, IT firms, audit firms, compliance consultancy, business processing outsourcing providers, courier services etc. This approach is also somewhat inconsistent with responsibilities of service providers, as set out in the Outsourcing Guidelines. While an FI may delegate certain day-to-day functions to service providers, the responsibilities continue to rest with the institution, its board and senior management. The extension of the scope of PO to service providers appears to be incongruent with the policy approach under the Outsourcing Guidelines. • A suggestion was made to instead align the scope of POs on the Individual Accountability regime, which had been proposed by the Authority in a Consultation Paper dated 26 Apr 2018. Here, MAS has prescribed certain senior roles within a financial institution for which there can be individual accountability. These are persons whose lapses can cause harm to the financial institution. The underlying policy considerations for POs and the individual accountability regime should be closely aligned. • Another feedback received was that the broadened width of PO regime would cause operational difficulties for financial institutions ("FIs"). FIs have the responsibility of making sure that all hires (and with this proposal, even service providers) are not subject to any POs. The CP has not set out details on how this particular issue will be operationalized.

		• We seek clarification whether MAS, as a matter of enforcement policy, will publish ***all*** POs issued? If proposal is to broaden to employee and service providers, there should logically be a consolidated public list of POs, including information on prohibited employees of FIs and service providers to facilitate compliance. The current approach of disseminating prohibited persons over MASNET, and the publication of select POs will make compliance less practicable. However, there may be other policy considerations that may discourage against the publication of all POs. • We request for MAS to provide greater and better clarity before it is implemented because of its wide-ranging implications. **Question 2: MAS seeks comments on the proposal to apply the fit and proper test as the sole ground for issuing a PO**. • Participants at our Webinar generally felt that in light of the grave and serious impact of POs on prohibited persons, both in terms of livelihood and reputation, the approach is that POs should only be issued for egregious breaches. This would, to our understanding, be consistent with the approach currently taken by the MAS. • The pegging of applying the fit and proper test as sole ground for issuing a PO could be overly broad and cause unfair outcomes. It is noteworthy that Section 101A of the Securities and Futures Act ('SFA") and the corresponding provision in the Financial Advisers Act ("FAA"), make no explicit reference to the Fit and Proper Guidelines as a grounds for issuing POs, typically referring to instance where MAS suspends or revokes licences, or where offences under the Act, or offences involving fraud or dishonesty, have been committed. • Fundamentally, the Fit and Proper Guidelines do not have the force of law, and are deliberately couched in a "loose" and wide manner. Where there are issues triggered by the fit and proper guidelines, the guidelines do NOT automatically bar such persons from participating in regulated activities. The Guidelines are designed to provide mechanisms allowing for disclosure of such fit and proper issues (as evident in the licensing forms) by FIs or individuals, and allowing for explanation by the FI or person concerned, including to put in place mitigating measures to be put into place by financial institutions. In other words, even if there are Fit and Proper issues, the FIs and the individuals concerned can still be allowed to participate in regulated activities. • As an illustration of the "over inclusive" approach in the Fit and Proper Guidelines, the Guidelines also include instances where fit and proper matters are not yet determined, but are still preliminary in nature: o Where a person is subject to a complaint in good faith (even before the determination of the merits of the complaint);

		○ A person who is subject to investigations (even before the outcome of the investigations is decided); ○ Someone who is in a position of conflicts of interest (even if such conflicts can be mitigated against); ○ Someone who has not met requirements of educational qualification or experience (which can be remedied by the licensee taking up courses, or upon the passage of time); and ○ Someone who is unable to fulfil his financial obligations (which can be remedied). • Participants at our Webinar generally felt that pegging the grounds for POs on fit and proper guidelines solely are overly wide and subject to ambiguity. While we note that there are factors considered by the MAS before issuing a PO, it may not be prudent to provide overly wide discretionary powers on the issuance of a PO, which has severe repercussions for affected persons. • We note that in relation to a previous policy pronouncement by MAS, in response to a Consultation Paper on the Securities and Futures (Amendment) Bill, MAS has stated that "does not take the issuance of a PO lightly" and that a Prohibition Order "will be issued ***where a serious offence has been committed***" [1]. • Further, MAS' own Enforcement Monograph, which sets out MAS' enforcement policy, further states that Prohibition Orders are usually "employed in more serious cases of misconduct" [2]. • We agree with the above earlier two articulations of policy that POs are meant for serious offences and urge the Authority to reconsider the proposition that POs can be issued for breaches of Fit and Proper Guidelines. • As a related point, It would appear that the expectation is on the FI to disclose incidents which happened in the organization or in associated companies, for example, an affiliated branch. This would mean that FIs would err on the side of caution and disclose everything, which can potentially be onerous. We would suggest that MAS provide more guidance on the need to disclose fit and proper issues for licence holders (particularly under the PSA) and affiliated companies. [1] MAS Response to Consultation Paper dated 11 October 2007. [2] Paragraph 7.14 of the Enforcement Monograph. **Question 3: MAS seeks comments on the proposal to be able to prohibit a person who is not fit and proper from engaging in the following four specified functions in addition to regulated activities under the SFA, FAA and IA:** **(a) Handling of funds, including safeguarding or administration of a digital payment token or digital payment token instrument;**

		(b) Risk-taking; **(c) Risk management and control; and** **(d) Critical system administration.** • The feedback from participants at the Webinar is that these additional four areas (over and above the existing approach of covering regulated activities under the SFA/FAA/IA) may be overly broad. • For instance, risk management as a function is typically handled as a team, with varying layers of functions and levels of seniority of persons. While there is merit for suggesting a person who has been prohibited should not function as Chief Financial Officer or a Chief Risk Officer, it would be overly broad to extend it to junior officer whose role is for instance, data aggregation. We would instead suggest an alignment of policies with the individual accountability regime and peg roles that a prohibited person cannot take up with those roles for which individual accountability is pegged. **Question 4: MAS seeks comments on the proposal to be able to prescribe additional specified functions in subsidiary legislation, for the purpose of protecting trust or deterring misconduct in the financial industry.** • We would suggest that the principles for these additional specified functions be clearly articulated in the main Omnibus Act, to make the underlying policy intent clear. **Question 5: MAS seeks comments on the proposal to introduce a regulatory regime for entities created in Singapore that carry on a business of providing VA activities outside of Singapore.** • Participants at our Webinar felt that these activities should more appropriately be folded under the Payment Services Act ("PSA"), and that these companies be subject to the same admission and ongoing business conduct requirements as licensed payment services firms. This would level the playing field for VASPs and avoid introducing a bifurcated regulatory regime based on whether the business of providing VA activities is inside or outside of Singapore. • Given that these are Singapore incorporated companies, there would be a reputational risk to Singapore if these companies engage in unfair business dealing (say in not protecting customer assets), or say have issues with their Technology Risk Management framework. These are areas which do not seem to be covered under the proposed framework under the Omnibus Act. • Also, we note that in relation to the SFA, Section 339(1) of the Act already contemplates instances for acts which take place partly within and partly outside Singapore. This would suggest that a platform that offers digital

		capital markets products, which is based in Singapore, and offers these to non-Singapore resident clients, would *already* be caught by the licensing and other business conduct requirement under the SFA. • We seek clarification whether current licence holders under the PSA or the SFA would be granted a statutory exemption under the Omnibus Act (e.g. in relation to activities with non-Singapore resident clients). **Question 6: MAS seeks comments on the proposed definition of DTs as set out in section 2(1) of Annex C:** **(a) a digital payment token; or** **(b) a digital representation of a capital markets product which –** **(i) can be transferred, stored or traded electronically; and** **(ii) satisfies such other characteristics as MAS may prescribe;** **but does not include an excluded digital token.** • We repeat our earlier submission that the concept of digital tokens should be covered under the current PSA and SFA. Otherwise, this would result in cryptocurrencies being potentially covered under three different legislation (each with their own set of admission and ongoing business conduct criteria), which will not be expedient. • Further, we would seek clarity on whether a token (for instance a utility token) that currently does not fall under the definition of a capital markets product under the SFA, nor a digital payment token ("DPT") under the PSA, could fall under the definition of a digital token under the proposed Omnibus Act, and if so, what are the criteria. This is important to ensure that tokens which does not fall within the definition of DPTs or e-money under the PSA and accordingly unregulated tokens falls within digital excluded tokens and will not be subject to the regulatory regime under the Omnibus Act. • Such category of excluded digital token (i.e. not regulated under SFA and PSA) are not legally obliged to comply with MAS Notices PSN-02. However, under para 3.3 of MAS Guide to Digital Token Offerings dated 26 May 2020, it was stated that such token issuers will have to comply with Corruption, Drug Trafficking and other Serious Offences (Confiscation of Benefits) Act ("CDSA") and the Terrorism (Suppression of Financing) Act ("TSOFA"). To align the standards and measures adopted to implement customer due diligence process, required of such excluded digital tokens, it would be helpful for MAS to clarify if the AML and CFT measures specified in in PSN-02 can serve as a guide to comply with CDSA and TSOFA. **Question 7: MAS seeks comments on:** **(a) The scope of DT services, which are in line with the FATF Standards for VASPs;**

		(b) Whether there are other DT services that should be captured; **(c) Specifically whether there are advisory services provided by DT service providers, relating to the offer or sale of DTs that are used for payment purposes; and** **(d) Specifically whether there are fund management activities involving DTs.** • Participants strongly felt that these activities should be dealt under the current PSA framework. Otherwise, there will be a complex arrangement where digital tokens could potentially fall under the PSA, the SFA, or under the Omnibus Act. **Question 8: MAS seeks comments on the proposed licensing and ongoing requirements to be imposed on DT service providers.** • Participants strongly felt that the licensing and ongoing requirements should be dealt under the current PSA or SFA framework. **Question 9: MAS seeks comments on our proposal to align proposed AML/CFT requirements to be imposed on DT service providers with the existing PS Notice 02 for DPT Service Providers, given the similar nature of ML/TF risks of both these activities.** • Participants strongly felt that the licensing and ongoing requirements should be dealt under the current PSA or SFA framework. **Question 10: MAS seeks comments on the proposed powers and the quantum of the maximum penalty for breaches.** • Participants feel that the maximum penalty for TRM breaches at S$1 million for a breach is too high (particularly where there are multiple breaches, which could give rise to multiple fines). It is unclear from the Consultation Paper whether there are incidents of rampant breaches of TRM breaches that warrant the proposed increase in penalty. It seems incongruous to slap a huge penalty when a flexible framework on TRM (as set out in the TRM Guidelines) has been put in place. • Participants noted that technology risks are front and centre for any FI relying on technology. Where FIs are heavily reliant on technology to deliver services, FIs are naturally subject to serious reputational and business risks from technology failures and disruptions to online financial services. As such, it is not necessary to increase the maximum penalty for TRM breaches in order to signal the importance of TRM for FIs. • More importantly, the increase in maximum penalty for TRM breaches may inadvertently serve to discourage the adoption of technology in the

		financial services industry, which is incongruent with the Smart Nation drive and potentially regressive. • Further, given the current pandemic environment, participants felt that it may be more helpful that MAS takes a more supportive and facilitative approach by helping financial institutions in capacity building initiatives (for instance, growing the talent pool of cyber security or IT risk professionals) rather than focusing on the enhancing penalties. • We note that the Singapore Fintech Association has set out a Digital Self-Assessment Framework for FinTech service providers, to self-assess themselves to determine that it is compliant with TRM requirements. If shortly after that, MAS proposes to raise the fine quantum to S$1 million, this could inadvertently send an adverse message to FIs which are working with these service providers, which would potentially be exposed to regulatory risk of this S$1 million penalty? The willingness to work with these start-up companies will be affected. • Lastly, if MAS believes that a maximum penalty of S$1 million is warranted to signal the importance of TRM, we suggest that such high maximum penalty be restricted only to systemically important FIs so that the penalty is commensurate with the impact to large number of customers. **Question 11: MAS seeks comments on the provision of statutory protection from liability to mediators, adjudicators and employees of an approved dispute resolution scheme operator.** • Participants are generally supportive. These are essential for such persons to effectively perform their duties.
10.	CFA Society Singapore: Chan Choong Tho, Chan Fook Leong, Maurice Teo	**General comments:** No comments. **Question 1: MAS seeks comments on the proposal to be able to issue a prohibition order to any person.** CFA Society Singapore is supportive of the proposal. Any person who have committed serious misconduct in the financial industry should come under the purview of MAS. The regulator must have the power to sanction such persons to safeguard the financial industry. However, CFA Society Singapore seeks clarification from MAS on the following: • Paragraph 2.7 of the consultation paper states: "We envisage that persons who can cause harm would primarily be former, existing or

		prospective participants in the financial industry, including employees and service providers of FIs." We seek clarification if a PO also applies to: 1. Individuals supporting the financial industry who are not directly regulated by MAS (e.g. auditors and consultants). 2. Individuals in the technology sector - given the convergence of information technology and finance, individuals in the technology sector may be involved in consulting, product manufacturing, testing, validation, marketing and distribution. 3. Individuals residing outside of Singapore who may be a citizen or non-citizen. 4. Employees, service providers and contractors who are not frontline staff but are deemed to have played a part in committing the misconduct. **Question 2: MAS seeks comments on the proposal to apply the fit and proper test as the sole ground for issuing a PO.** The fit and proper criteria, specifically item (a) Honesty, integrity and reputation, is comprehensive for the purpose of assessing whether a person ought to be issued with a PO. However, any individual who is issued a PO will very unlikely continue to be hired or re-hired in any financial institution in Singapore. No management or hiring manager will want to take the risk associated with the PO stigma. Given the severe impact on a person's livelihood when issued with a PO, the burden of proof could be higher that a person is indeed not fit and proper. **Question 3: MAS seeks comments on the proposal to be able to prohibit a person who is not fit and proper from engaging in the following four specified functions in addition to regulated activities under the SFA, FAA and IA:** **(a) Handling of funds, including safeguarding or administration of a digital payment token or digital payment token instrument;** **(b) Risk-taking;** **(c) Risk management and control; and** **(d) Critical system administration.** As the above functions in items (a) to (d) are critical to the functioning of financial institutions, it follows that MAS should prohibit persons not fit and proper from performing these functions.

		Question 4: MAS seeks comments on the proposal to be able to prescribe additional specified functions in subsidiary legislation, for the purpose of protecting trust or deterring misconduct in the financial industry. We are in agreement with the above if the additional specified functions are deemed critical to the functioning of financial institutions. We also seek guidance from MAS on the availability of a register of individuals who have been issued a PO for the purpose of screening prospective hires for financial institutions. **Question 5: MAS seeks comments on the proposal to introduce a regulatory regime for entities created in Singapore that carry on a business of providing VA activities outside of Singapore.** No comments. **Question 6: MAS seeks comments on the proposed definition of DTs as set out in section 2(1) of Annex C:** **(a) a digital payment token; or** **(b) a digital representation of a capital markets product which –** **(i) can be transferred, stored or traded electronically; and** **(ii) satisfies such other characteristics as MAS may prescribe;** **but does not include an excluded digital token.** No comments. **Question 7: MAS seeks comments on:** **(a) The scope of DT services, which are in line with the FATF Standards for VASPs;** **(b) Whether there are other DT services that should be captured;** **(c) Specifically whether there are advisory services provided by DT service providers, relating to the offer or sale of DTs that are used for payment purposes; and** **(d) Specifically whether there are fund management activities involving DTs.** Table 1 in the consultation paper states: "Inducing or attempting to induce any person to enter into or to offer to enter into any agreement for or with a view to buying or selling any DTs in exchange for any money or any other DTs (whether of the same or a different type)". With reference to the above, we seek clarification from MAS if the above includes advertising and marketing (such as a website carrying banners

		promoting DTs or Google/Facebook/LinkedIn carrying DT advertisements). And if the website owner(s) or technology platforms such as Google/Facebook/LinkedIn or the advertiser are deemed to be "inducing or attempting to induce any person to enter into or to offer to enter into any agreement for or with a view to buying or selling any DTs in exchange for any money or any other DTs (whether of the same or a different type)". **Question 8: MAS seeks comments on the proposed licensing and ongoing requirements to be imposed on DT service providers.** No comments. **Question 9: MAS seeks comments on our proposal to align proposed AML/CFT requirements to be imposed on DT service providers with the existing PS Notice 02 for DPT Service Providers, given the similar nature of ML/TF risks of both these activities.** No comments. **Question 10: MAS seeks comments on the proposed powers and the quantum of the maximum penalty for breaches.** No comments. **Question 11: MAS seeks comments on the provision of statutory protection from liability to mediators, adjudicators and employees of an approved dispute resolution scheme operator.** No comments.
11.	Clifford Chance Pte Ltd	Respondent wishes to keep entire submission confidential.
12.	CME Group Inc.	**<u>General Comments</u>** CME Group Inc. ("CME Group") appreciates the opportunity to provide comments to the Monetary Authority of Singapore ("MAS") on several proposals in its Consultation Paper on a New Omnibus Act for the Financial Sector ("Consultation"). CME Group acknowledges that the MAS requires appropriate powers to supervise financial market infrastructures ("FMIs") in Singapore and the wider Singaporean financial sector. However, we believe the distinction between onshore and offshore FMIs is critical and that mutual deference between the

MAS and an offshore FMI's home country regulator is necessary to avoid conflicting, inconsistent or duplicative requirements.

Overview

In 2009, the Group of 20 ("G-20") leaders committed "to take action at the national and international level to raise standards together so that our national authorities implement global standards consistently in a way that ensures a level playing field and avoids fragmentation of markets, protectionism, and regulatory arbitrage."[1] In September 2013, G-20 leaders declared that "jurisdictions and regulators should be able to defer to each other when it is justified by the quality of their respective regulatory and enforcement regimes, based on similar outcomes, in a non-discriminatory way, paying due respect to home country regulatory regimes."[2] In recent years the United States ("U.S.") Department of the Treasury, Commodity Futures Trading Commission ("CFTC") and Financial Stability Oversight Council have renewed their commitment to these principles of international comity and mutual deference among comparable regulatory frameworks.[3]

The Consultation signals that the MAS could be considering an opposite direction by empowering the agency to exercise supervisory powers with respect to non-Singaporean FMIs' personnel and governance decisions and technology risk management. It is not clear whether the intent of the Consultation is to make such powers available even with respect to offshore FMIs that are properly subject to comparable legal and regulatory standards in their home jurisdictions. However, to the extent that is the case we urge the MAS to instead adopt an approach to cross-border regulation of FMIs that relies on mutual regulatory deference and provide exemptions from such requirements for offshore FMIs that are subject to comparably robust regulatory frameworks in their home country.

The Consultation's stated purpose is to address emerging risks and challenges in the financial sector, but CME Group's view is that the application of these proposed powers to offshore FMIs could have a destabilizing effect by precluding the deference and comity that is fundamental to the cross-border operation of FMIs. We note the risk that applying such powers to offshore FMIs could undermine or conflict with the governance and technology risk management measures determined to be appropriate by those FMIs in accordance with their home country regulator.

Lastly, we note that global regulators appear increasingly supportive of a mutual deference approach to the cross-border regulation of FMIs. U.S. regulators and officials raised their concern that inconsistent or incompatible regulation of FMIs could increase financial stability risk,[4] a view that we discuss further below. The CFTC has finalized amendments to its Part 30

framework,[5] which codified mutual deference decades ago, to better ensure international comity is accounted for when exercising its exemptive authority.[6] U.S. policymakers and Congress have expressed a keen interest in cross border regulatory proposals in other jurisdictions and expressed support for the European Commission's recent decision to step back from its original proposals to directly apply EU regulation to non-EU CCPs.[7] Finally, CME Group has engaged with Australian authorities and expressed its concerns about a similar proposal to extraterritorially apply Australian regulations, including those that concern the fitness and propriety of CME Group's directors and officers.[8] We have had a constructive dialogue and are optimistic that the Australian regulators will adopt a mutually deferential approach in the final rules. In order to avoid unnecessary and burdensome regulation as well as any escalation of the already complex multi-lateral dialogue on cross-border regulation, we respectfully request that the MAS clarify and, if necessary, reconsider the applicability of its proposals to offshore FMIs that are already subject to comparable regulations in their home country.

I. The Role and Importance of Mutual Deference

CME Group has long advocated that a policy of mutual deference is central to well-functioning cross-border regulatory regimes.[9] A lack of mutual deference can result in conflicting requirements applicable to a single FMI. Mutual deference reduces financial stability risk[10] and market fragmentation; whereas extraterritorial application of domestic regulations creates a disincentive to offshore FMI participation—which increases systemic risk and reduces market access and may altogether prevent access by participants domiciled outside of the FMI's home jurisdiction. In some instances, the proposals outlined in the Consultation call into question how an offshore FMI would operate pursuant to such measures, potentially forcing them to either comply with requirements that are incompatible with their domestic legal regimes. Although similar powers exist in general form today under the Securities and Futures Act ("SFA") the Consultation raises the spectre of a more extraterritorial approach by the MAS, which risks upsetting the current cross-border balance of regulatory power without any apparent benefit to the governance or risk management of comparably regulated offshore FMIs. To protect against these negative outcomes, CME Group has consistently supported an approach of mutual deference by regulators of FMIs across the globe.

For decades, a policy of mutual deference for comparable regulatory frameworks has allowed market participants worldwide to hedge their business risks via exchange-traded derivatives markets.[11] The CFTC in particular has long permitted offshore markets and clearing houses to offer U.S. futures participants access without being subject to direct CFTC

		supervision or oversight. In addition, the CFTC has proposed to extend its deferential approach to swaps markets and clearing houses.[12] At the same time, recognizing the importance of *mutual* deference, and as described above, U.S. lawmakers have been extremely focused on the proposals and actions of foreign policy-makers. We are thankful that this focus has led to a positive result with the EU and are hopeful that the attention of U.S. lawmakers will continue to drive mutually beneficial results going forward between the U.S. and other jurisdictions. Three proposals in the Consultation implicate the principle of mutual deference that has underpinned the successful cross-border regulation of derivatives for decades. To that end, CME Group offers the specific comments to Questions 1 and 10 below. Because the MAS' inspection powers discussed in Section 6 of the Consultation are not covered by any of the questions below, we offer our comments to that proposal here. Under the existing Memorandum of Understanding governing information sharing between the MAS and the CFTC ("MOU"),[13] the MAS does not have investigatory and on-site inspection powers over U.S. FMIs. The Consultation could be read to propose direct investigatory and on-site inspections powers over U.S. FMIs, which appears inconsistent with the terms of the MOU. Even more concerning, the investigatory and on-site inspection powers provided to the MAS under the Consultation do not appear to include standard limitations as to the type and relevance of material that can be inspected, the usual protections of legal professional or other applicable privilege, or the need for the MAS to have first identified a suspected infringement. In the case of an offshore FMI, if the exercise of the proposed power resulted in the MAS removing records and data critical to the operation of the FMI, this may undermine the proper operation of the FMI and in doing so present a risk to financial stability. We respectfully suggest that offshore FMIs be carved out or exempted from this requirement for the reasons outlined above. [1] Group of 20 Leaders' Statement, The Pittsburgh Summit at 2 (Sept. 2009), *available at* http://www.fsb.org/wpcontent/uploads/g20_leaders_declaration_pittsburgh_2009.pdf. [2] Group of 20 Leaders' Declaration, Saint Petersburg Summit at 17 (Sept. 2013), *available at* https://www.fsb.org/wp-content/uploads/g20_leaders_declaration_saint_petersburg_2013.pdf. [3] *See e.g.*, U.S. Dep't. Treasury, A Financial System that Creates Economic Opportunities, Capital Markets; Report to President Donald J. Trump (Oct. 6, 2017) (proposing core principles for regulation to make it efficient, effective and appropriately tailored and to promote a level playing field internationally), *available at* https://home.treasury.gov/system/files/136/A-Financial-System-Capital-Markets-

		FINAL-FINAL.pdf; Comparability Determination for the European Union: Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants; Notification of Determination, 82 Fed. Reg. 48394, 48396 (Oct. 18, 2017) (noting that "[i]nstead of demanding strict uniformity with the [CFTC's] margin requirements, the [CFTC] evaluates the objectives and outcomes of the foreign margin requirements in light of foreign regulator(s)' supervisory and enforcement authority."); Exemption From Derivatives Clearing Organization Registration [hereinafter, Exempt DCO Proposal], 83 Fed. Reg. 39923 (proposed Aug. 13, 2018) (proposing to codify exemption for non-systemically important offshore clearing houses based primarily on home regulatory framework's adherence to the PFMIs); Swap Execution Facilities and Trade Execution Requirement, 83 Fed. Reg. 61946, 61957 (proposed Nov. 30, 2018) (noting the CFTC's intent to achieve "additional comparability determinations with foreign regulators regarding their respective regulatory frameworks for swap trading venues located within their respective jurisdictions"); Registration With Alternative Compliance for Non-U.S. Derivatives Clearing Organizations [hereinafter, Alternative DCO Registration Proposal], 84 Fed. Reg. 34819 (proposed July 19, 2019) (proposing regulations that would allow non-systemically important offshore clearing houses "to register as a DCO and, in most instances, comply with the applicable legal requirements in its home country as an alternative means of complying with the DCO Core Principles [established in the Commodity Exchange Act]"); Exemption From Derivatives Clearing Organization Registration [hereinafter, Supplemental Exempt DCO Proposal], 84 Fed. Reg. 35456 (proposed July 23, 2019) (proposing to bolster the framework to exempt non-U.S. clearing houses from the requirement to register as a DCO when clearing swaps by allowing them to also clear for U.S. customers); Financial Stability Oversight Council, 2019 Annual Report [hereinafter FSOC Report] 10 ("The [FSOC] encourages engagement by Treasury, CFTC, and SEC with foreign counterparts to address the potential for inconsistent regulatory requirements or supervision to pose risks to U.S. financial stability and encourages cooperation in the oversight and regulation of FMUs across jurisdictions"), *available at* https://home.treasury.gov/system/files/261/FSOC2019AnnualReport.pdf. [4] FSOC notes that "[s]upervision of U.S. CCPs by multiple regulators has the potential to introduce inconsistent or incompatible regulation or supervision" and "jurisdiction-to-jurisdiction inconsistencies could increase financial stability risk." *See* FSOC Report, *supra* note 3 at 106, 116. [5] *See* 17 CFR Part 30 (establishing regulations designed to carry out Congress's intent that foreign futures and foreign options products offered or sold in the U.S. be subject to regulatory safeguards comparable to those applicable to domestic transactions), *available at* https://www.ecfr.gov/cgi-bin/textidx?SID=5c12ab162f00d531e3d3b634745b016d&mc=true&tpl=/ecfrbrowse/Title17/17cfr30_main_02.tpl. [6] Foreign Futures and Options Transactions; Final Rule, 85 Fed. Reg. 15359, 15360 March 18, 2020) (codifying CFTC authority to terminate exemptive relief under Part 30 in certain circumstances, including "a lack of comity relating to the execution or clearing of any commodity interest subject to the Commission's exclusive jurisdiction"). [7] *See* Chairman Roberts Applauds CFTC-European Commission Announcement on Clearinghouses, (June 11, 2020) ("I applaud Chairman Tarbert and the CFTC for their tireless work to ensure U.S.-based clearinghouses are not subject to burdensome and duplicative European rules and regulations."), *available at*

		https://www.agriculture.senate.gov/newsroom/rep/press/release/chairman-roberts-applauds-cftc-europeancommission-announcement-on-clearinghouses; Chairman Scott, Ranking Member Scott Welcome Actions to Clarify EU Supervisory Oversight of U.S.-Based Clearing Houses, (June 11, 2020) ("I believe this proposal will empower the CFTC and European regulators to uphold a cooperative framework and will promote strength and stability in global derivatives markets,"), *available at* https://davidscott.house.gov/news/documentsingle.aspx?DocumentID=399402. *See also* Statement of CFTC Chairman Heath P. Tarbert on the European Commission's Draft Delegated Acts, (June 11, 2020), *available at* https://www.cftc.gov/PressRoom/PressReleases/8181-20?utm_source=govdelivery. [8] *See* Letter from Bryan Durkin, President, CME Group, to Australian Council of Financial Regulators (Dec. 20, 2019) (responding to Consultation on FMI Regulatory Reforms which proposed extraterritorial application of local rules), *available at* https://www.cfr.gov.au/publications/consultations/2019/consultation-on-financialmarket-infrastructure-regulatory-reforms/submissions/cme-group.pdf. [9] *See, e.g.*, Letter from Sunil Cutinho, President, CME Clearing, to Valdis Dombrovskis, Vice-President for the Euro & Social Dialogue, European Comm'n (Oct. 30, 2017) (responding to EMIR 2.2. proposal), *available at* https://ec.europa.eu/info/law/better-regulation/initiatives/com-2017-331/feedback/F7443_en?p_id=30988*; see also* Letter from Sunil Cutinho, President, CME Clearing, to Christopher Kirkpatrick, Secretary of CFTC (Aug. 5, 2019) (responding to Foreign Futures and Options Transactions proposed rulemaking), *available at* https://comments.cftc.gov/PublicComments/ViewComment.aspx?id=62153&SearchText; Letter from Sunil Cutinho, President CME Clearing, to Christopher Kirkpatrick, Secretary of CFTC (Nov. 22, 2019) (responding to Supplemental Exempt DCO Proposal), *available at* https://comments.cftc.gov/PublicComments/ViewComment.aspx?id=62260&SearchText. [10] See FSOC Report, *supra* note 3 at 116. [11] *See* 17 CFR § 30.7 (permitting a foreign broker to clear derivatives listed on a foreign board of trade for U.S. customers via an FCM that has established an omnibus account with the foreign broker and where such broker is a clearing member of the foreign CCP clearing the contracts); 17 CFR § 30.10 (permitting persons located outside the U.S., who are subject to a comparable regulatory framework in the country in which they are located, to seek an exemption from CFTC regulations requiring FCM registration), *available at* https://www.ecfr.gov/cgi-bin/textidx?SID=5c12ab162f00d531e3d3b634745b016d&mc=true&tpl=/ecfrbrowse/Title17/17cfr30_main_02.tpl. [12] *See* Exempt DCO Proposal, Alternative DCO Registration Proposal & Supplemental Exempt DCO Proposal *supra*, note 2. [13] *See* Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information (May 16, 2000), *available at* https://www.cftc.gov/sites/default/files/idc/groups/public/@internationalaffairs/documents/file/smas00.pdf. **Question 1: MAS seeks comments on the proposal to be able to issue a prohibition order to any person.**

		We understand that the MAS' existing power to issue prohibition orders ("POs") pursuant to the Securities and Futures Act is currently limited to Capital Markets License holders and authorized benchmark administrators.[14] With respect to recognised market operators ("RMOs") and recognised clearing houses ("RCHs"), the MAS' power to remove an officer appears limited to entities that are a "Singapore corporation", which we interpret to mean a corporation that is incorporated in Singapore. The Consultation proposes to expand the MAS' power to issue a PO against 'any person', presumably including persons associated with the operations of an offshore FMI that may be registered as an RMO or RCH. CME Group and its regulated subsidiaries, including those with regulatory standing in Singapore,[15] are subject to robust governance fitness standards which, by law, are the controlling standards for CME Group personnel and must remain so notwithstanding the proposals in the Consultation. By way of example, the U.S. Commodity Exchange Act ("CEA") governs CME Group's U.S. exchanges and clearing house that hold Singapore licenses and establishes governance fitness standards for these U.S.-regulated FMIs. The controlling CEA provisions are crafted to respect the balance of state and federal supervision that is inherent in the U.S. federal system. The MAS' proposed power to issue a PO against any person associated with an FMI would reflect a very different balance—one that is not supported in the U.S., where such matters are generally reserved to state (in the case of CME, Delaware), rather than national, authorities. This distinction again emphasizes the with local legal and regulatory structures, and a foreign regulator's assertion of authority creates a significant risk of conflicting requirements for the offshore FMI. As a systemically important derivatives clearing organization ("SIDCO") in the U.S., the Board of Directors of CME and the Board of CME Group (collectively, the "Board"),[16] must comply with governance requirements established by the U.S. Congress in the CEA and by the CFTC in its regulations. CME Group's status as a company listed on the NASDAQ Global Select Market also subjects its Board to listing standards developed for public companies by the U.S. Securities and Exchange Commission ("SEC"). Independent of these regulatory requirements, CME Group has taken numerous additional steps that are designed to ensure that its directors, officers and employees are subject to the highest standards, including policies, principles, handbooks, questionnaires, codes, bylaws and rules that were included among the RMO and RCH applications submitted by CME Group entities. Finally, we note that the MAS' proposal could introduce a constraint on the governance rights of shareholders to elect members of an offshore FMI's board. Sections 43(2) and 81P(1) of the SFA appear to contemplate this

		outcome for local entities but we caution against extraterritorial application of such powers and urge the MAS to clarify and, if necessary, to reconsider its proposal with respect to offshore FMIs and either except or exempt them from such powers.[17] The commonly accepted basic rights of shareholders, as described by the Organisation for Economic Co-operation and Development ("OECD"), include the right to elect members of the management body. We encourage the MAS to reconsider this proposal given the potential constraint it imposes on the rights of an offshore FMI's shareholders. Corporate governance and personnel decisions of an offshore FMI deserve the highest degree of regulatory deference. We respectfully suggest that an approach based on mutual regulatory deference would be superior to an extraterritorial approach. Doing so will best foster efficient, liquid markets for the hedging and risk management needs of financial market stakeholders. [14] *See* Securities and Futures Act (cap 289) §§ 101A & 123ZZC, respectively. [15] Chicago Mercantile Exchange Inc. ("CME") is authorized as a Recognised Clearing House and a Recognised Market Operator ("RMO"); Board of Trade of the City of Chicago, Inc. ('CBOT'), New York Mercantile Exchange, Inc. ('NYMEX') and Commodity Exchange Inc. ('COMEX'); BrokerTec Americas LLC and BrokerTec Europe Limited are each recognised as RMOs. [16] The Boards of CME Group and CME are comprised of the same directors. *See* Amended and Restated By-Laws of Chicago Mercantile Exchange Inc. [CME], Art. II. Section 2.1 ("[T]he Board of Directors shall at all times be comprised of the same Directors as those of CME Group Inc…"), *available at* https://www.cmegroup.com/rulebook/files/CME-Bylaws.pdf. [17] *See* Securities and Futures Act (cap. 289) Sections 46AAG(1) & 75(3) (permitting the MAS to exempt RMOs and RCHs from any provision of Parts II or III of the SFA, respectively). **Question 2: MAS seeks comments on the proposal to apply the fit and proper test as the sole ground for issuing a PO.** No specific comment. **Question 3: MAS seeks comments on the proposal to be able to prohibit a person who is not fit and proper from engaging in the following four specified functions in addition to regulated activities under the SFA, FAA and IA:** **(a) Handling of funds, including safeguarding or administration of a digital payment token or digital payment token instrument;** **(b) Risk-taking;** **(c) Risk management and control; and** **(d) Critical system administration.**

		No specific comment. **Question 4: MAS seeks comments on the proposal to be able to prescribe additional specified functions in subsidiary legislation, for the purpose of protecting trust or deterring misconduct in the financial industry.** No specific comment. **Question 5: MAS seeks comments on the proposal to introduce a regulatory regime for entities created in Singapore that carry on a business of providing VA activities outside of Singapore.** No specific comment. **Question 6: MAS seeks comments on the proposed definition of DTs as set out in section 2(1) of Annex C:** **(a) a digital payment token; or** **(b) a digital representation of a capital markets product which –** **(i) can be transferred, stored or traded electronically; and** **(ii) satisfies such other characteristics as MAS may prescribe;** **but does not include an excluded digital token.** No specific comment. **Question 7: MAS seeks comments on:** **(a) The scope of DT services, which are in line with the FATF Standards for VASPs;** **(b) Whether there are other DT services that should be captured;** **(c) Specifically whether there are advisory services provided by DT service providers, relating to the offer or sale of DTs that are used for payment purposes; and** **(d) Specifically whether there are fund management activities involving DTs.** No specific comment. **Question 8: MAS seeks comments on the proposed licensing and ongoing requirements to be imposed on DT service providers.** No specific comment. **Question 9: MAS seeks comments on our proposal to align proposed AML/CFT requirements to be imposed on DT service providers with the**

		existing PS Notice 02 for DPT Service Providers, given the similar nature of ML/TF risks of both these activities. No specific comment. **Question 10: MAS seeks comments on the proposed powers and the quantum of the maximum penalty for breaches.** The Consultation proposes to (1) establish the MAS' power to issue directions to or make regulations concerning any financial institution or class of financial institutions for technology risk management ("TRM"), including cyber security risks, safe and sound use of technology and protection of data; and (2) establish a significant maximum penalty for breaches of requirements. As with the proposed power to issue POs against 'any person', issuing such directions against an RCH or RMO would represent a considerable step toward direct regulation of offshore FMIs. CME Group questions the appropriateness of the MAS' power to require an offshore FMI to change its TRM practices to facilitate domestic considerations relevant to the Singapore market, if that is the Consultation's intent. Exercise of the MAS' powers in this regard would likely conflict with the authority granted to the home country regulator of the FMI, which must be able to adopt and apply appropriate regulations that take into account the home country legal regime, market structure and trading practices. Different jurisdictions will naturally have different requirements, but that does not mean those requirements deviate from internationally agreed-upon standards. The rationale for the Committee on Payments and Market Infrastructures ("CPMI") and International Organization of Securities Commissions' ("IOSCO") Principles for financial market infrastructures ("PFMIs"),[18] which set out globally agreed upon standards for FMI risk management, is to allow policy-makers to tailor their regulatory frameworks to the unique characteristics of their markets. The Consultation proposes to establish the MAS' ability to direct FMIs in relation to specific matters where it reasonably considers action is necessary to support emerging risks for the Singaporean financial system. Such directions may include amending the FMI's TRM practices, potentially including offshore FMIs. Each CME Group entity to which such powers could be applied is subject to its own regulatory requirements and standards for risk management, and specifically technology risk management as it relates to the safety and soundness of its operations. For example, each of CME Group's designated contract markets ("DCMs") and its DCO must establish and maintain a program of risk analysis and oversight with respect to its operations and automated systems to identify and minimize sources of

		operational risk through its development of appropriate controls and procedures and its development of automated systems that are reliable, secure, and have adequate scalable capacity.[19] If the Consultation proposes that the MAS have powers to direct an offshore FMI in a range of circumstances, this would create the potential for regulatory conflict between Singapore and the FMI's home country regulator, thus increasing the potential for risks to arise.[20] For example, where a CME Group FMI is managing a security incident in accordance with its established policies, procedures and local requirements, and possibly also in coordination with its home country supervisory authorities, the MAS could potentially issue a direction imposing obligations that conflict with those home country requirements. Such a direction could contradict or undermine applicable security incident management policies and procedures that accord with the FMI's home country regulator's system safeguards requirements. Given the widespread local implementation of international standards such as the PFMIs, including Principle 17 on operational risk,[21] and the potential for regulatory conflict from imposing local requirements on offshore FMIs, we do not believe such powers are appropriately reserved to or exercised by a non-primary regulator. It would be more appropriate for the MAS to defer to an offshore FMI's home regulatory authorities and industry best practices for TRM in order to avoid contradictory or incompatible requirements on those FMIs, especially those with a global footprint. To the extent the MAS seeks to influence the personnel decisions or TRM practices of an offshore FMI we suggest that it should do so via the cooperation framework established with the home country regulator(s) of such entity, not directly as appears contemplated in the Consultation. As above, we believe that excepting or exempting comparably regulated offshore FMIs from such powers is appropriate. [18] Committee on Payment and Settlement Systems (later renamed the Committee on Payments and Market Infrastructures) and Technical Committee of the International Organization of Securities Commissions, Principles for Financial Market Infrastructures (Apr. 2012) [hereafter "PFMI"], *available at* https://www.bis.org/cpmi/info_pfmi.htm. [19] *See* 7 USC § 7(d)(20); 7 USC § 7a-1(c)(2)(I), respectively. [20] *See* FSOC Report, *supra* note 3 at 116 ("[J]urisdictional variations in implementing the PFMI can pose challenges if conflicting expectations are applicable simultaneously to a single CCP. At times, inconsistencies among jurisdictions' implementation of the PFMI may be reconcilable by authorities, but some jurisdiction-to-jurisdiction inconsistencies could increase financial stability risk."). [21] *See* PFMI, supra note 17, Principle 17: "An FMI should identify the plausible sources of operational risk, both internal and external, and mitigate their impact through the use of appropriate systems, policies, procedures, and controls. Systems should be

		designed to ensure a high degree of security and operational reliability and should have adequate, scalable capacity…" **Question 11: MAS seeks comments on the provision of statutory protection from liability to mediators, adjudicators and employees of an approved dispute resolution scheme operator.** No specific comment.
13.	Cynopsis Solutions Pte Ltd	**Question 1: MAS seeks comments on the proposal to be able to issue a prohibition order to any person.** In general, we agree with the concept of expanding the scope of prohibition order (PO) issuance beyond what it is currently. However, we are of the view that in conjunction with the expanded scope, there need to be better clarity on expectation of standards from certain specified persons to be subject to the expanded PO rather than a blanket "any person". Fit and proper criteria is well established but serves as a very generic framework only. In this regard, we refer to a previous consultation paper on 26 April 2018 "Guidelines on Individual Accountability and Conduct (IAC)". To our knowledge, there was no further update regarding planned implementation of the said proposed Guideline since its conclusion in 2019. We believe that with the timely implementation of the IAC as the minimum expectation of fit and proper standards targeting specified persons such as those fulfilling core management roles and functions, the proposed PO regime will gain better traction as an ultimate consequence if such person fails to carry out his responsibilities properly. The rationale and effects of issuing a PO (one form of consequence management) have to be tied in with a clear articulation and expectation of desired outcomes (stipulated in the 5 Outcomes in the Guidelines on IAC). As such, we submit that MAS may consider the effects of the previous proposed Guidelines on IAC and link it to this proposed PO scope expansion. Also, we would like to clarify what are the circumstances that would be considered by MAS before a new PO is issued to a person. Some questions to consider: 1) Where the FIs have proper disciplinary actions, such as warning letters, taken against certain employees for failure to discharge his/her risk control function for example, would MAS take this into consideration before issuing a PO against that person should the case come to MAS' attention?

		2) Under Paragraph 2.4, MAS mentioned that a PO can materially affect individual livelihoods and noted a risk-proportionate approach. We agree with the need to consider each case on its own merits and demerits but would like to clarify when a PO is issued against an individual, will the PO be made available on MAS website like the current practice or will it be a "blacklist" that will only be circulated amongst FI? While we note that MAS intention is just to restrict an individual for one certain function, this would also potentially affect the individual livelihood for his/her next role when a PO issued against them is made public. 3) The proposed expansion to include "any person" to be issued a PO is too wide. Would this include outsourced service providers to FIs for risk management and control functions? We believe that the regulatory intent should exclude such categories of persons who are not employees of the FIs given that accountability and responsibility of Compliance will always remain within the FI itself. However, if MAS' intention is to include external service providers within the broad definition of "any person", we believe that it may result in unintended consequence of unfairly "penalisiing" Singapore-based service providers given the ease of enforcement actions against such person based and operate his business in Singapore. Overseas service providers such as software vendors and risk consultants etc. may be out of reach even though they may have failed in their duties to the FIs who have engaged them. **Question 2: MAS seeks comments on the proposal to apply the fit and proper test as the sole ground for issuing a PO.** We submit that whilst fit and proper criteria is a comprehensive framework to determine if a person meets minimum expectation, we do not think it should be the sole ground for issuance of a PO. Refer to (1) above. **Question 3: MAS seeks comments on the proposal to be able to prohibit a person who is not fit and proper from engaging in the following four specified functions in addition to regulated activities under the SFA, FAA and IA:** **(a) Handling of funds, including safeguarding or administration of a digital payment token or digital payment token instrument;** **(b) Risk-taking;** **(c) Risk management and control; and** **(d) Critical system administration.**

		We agree with the approach taken by MAS to specify certain functions deemed as critical and thus needing persons who are fit and proper to fill these roles. However, some of these functions are relatively broad. For example, in larger FIs, categories (b) and (c) comprises 11 different risk types that are often managed by dispersed teams globally and may involve hundreds of people. On the contrary, in smaller FIs, this may be handled by a very small local team without having the deep knowledge and expertise in every pertinent risk category. As such, we suggest that MAS link this back to the previous Guidelines on IAC so that it is more contained and manageable at the onset for every relevant FI category regardless of size and complexity. **Question 4: MAS seeks comments on the proposal to be able to prescribe additional specified functions in subsidiary legislation, for the purpose of protecting trust or deterring misconduct in the financial industry.** No comments. **Question 5: MAS seeks comments on the proposal to introduce a regulatory regime for entities created in Singapore that carry on a business of providing VA activities outside of Singapore.** We agreed with this proposal as it is important for Singapore not to be used as a front where foreigners incorporate their entities here but carry out most of the management decision outside of Singapore with business development work targeting both Singapore residents or otherwise. Benchmarking to international standards such as FATF requirements is necessary to ensure Singapore stays at the forefront of regulatory developments globally. **Question 6: MAS seeks comments on the proposed definition of DTs as set out in section 2(1) of Annex C:** **(a) a digital payment token; or** **(b) a digital representation of a capital markets product which –** **(i) can be transferred, stored or traded electronically; and** **(ii) satisfies such other characteristics as MAS may prescribe;** **but does not include an excluded digital token.** Whist MAS has set out its overall rationale in this consultation paper, we are of the view that with the creation DT under the New Omnibus Act, it appears that “cryptocurrency” as a widely known financial instrument and often used synonymously with “virtual assets”, has now attained coverage under 3

		legislations in Singapore. Would amending existing Payment Services Act and Securities and Futures Act be a more expedient and harmonised approach towards in-scoping the proposed activities rather than enacting a new legislation for it? This potentially creates regulatory complications for FIs licensed under 1 legislation but want to extend activities into another. Or a change in business model may potentially result in FIs finding itself needing license under a different legislation. If not already done so, MAS may wish to consider the potential effects of any existing business operating in Singapore that may inadvertently be caught by 2 or 3 of the relevant legislations, namely, PSA, SFA and this New Omnibus Act. **Question 7: MAS seeks comments on:** **(a) The scope of DT services, which are in line with the FATF Standards for VASPs;** **(b) Whether there are other DT services that should be captured;** **(c) Specifically whether there are advisory services provided by DT service providers, relating to the offer or sale of DTs that are used for payment purposes; and** **(d) Specifically whether there are fund management activities involving DTs.** See above. No further comment. **Question 8: MAS seeks comments on the proposed licensing and ongoing requirements to be imposed on DT service providers.** All the points that are mentioned by MAS under this portion are welcomed and it is important to keep track on the existing and ongoing condition of the DT service providers. **Question 9: MAS seeks comments on our proposal to align proposed AML/CFT requirements to be imposed on DT service providers with the existing PS Notice 02 for DPT Service Providers, given the similar nature of ML/TF risks of both these activities.** This is welcomed. No further comment. **Question 10**: **MAS seeks comments on the proposed powers and the quantum of the maximum penalty for breaches.** Whilst we agree with the overall stronger emphasis on technology risk management, we are of the view that there is a need to strike a right balance

		between encouraging good technology risk practices within the financial sector versus the need for a heavy monetary penalty. In our view, the propose S$1m maximum penalty is excessive. Besides TRM, there are Outsourcing Notice and Guidelines as well as Cyber Hygiene requirements, all of which work towards building Singapore into a safer digital financial service centre. In our opinion, the need for any regulator to propose a significant increase in penalty quantum is often driven by an observation of systemic or wide-spread non-compliance of such requirements. Based on published news in recent years, we are not aware of any such situation in Singapore that warrants a significant increase in maximum penalty in this regard. Furthermore, MAS has recently worked with Singapore FinTech Association (SFA) to develop a Compliance Self-Assessment toolkit to make it "easier" for FinTech service providers to engage with traditional FIs. We are of the view that increasing the maximum penalty at this point will create an unintended consequence of having FIs recoiling to be extremely prudent when dealing with FinTech service providers. Worse still, some will even try to "pass-on" this increased penalty cost to FinTech service providers. Finally, we believe that in a critical TRM breach situation, the reputation hit to the FI involved is far greater than any monetary penalty that the regulator may imposed. As such ,we urge the MAS to re-consider this proposal. **Question 11: MAS seeks comments on the provision of statutory protection from liability to mediators, adjudicators and employees of an approved dispute resolution scheme operator.** No further comment.
14.	Diginex	**Question 1: MAS seeks comments on the proposal to be able to issue a prohibition order to any person.** Broadening the scope of POs beyond the SFA, FAA, and IA should be seen as an approach to encourage firms and their staff to take greater responsibility for their actions rather than as purely an enforcement regime. The broadened scope to include emerging innovative sectors, such as those firms licensed under the PSA, may promote greater robustness, credibility, and financial soundness for a licensed firm, which in turn will further promote Singapore as a sound and progressive financial centre.

		However, the MAS may wish to consider that unlike traditional financial services already covered, the emerging financial sectors often build their proposition through partnership where certain services may be provided by a third party outside Singapore. In this case, any PO may need to be carefully considered and targeted towards the appropriate relevant function being provided by the financial institution. Further, many small innovative financial service firms often operate from a lean basis in the 'start-up' phase, and the breadth of the PO relevant functions may limit the ability of a firm to operate from the start-up position if the costs to employ all pre-requisite experience at the outset are prohibitive. This, then, may limit the extent to which Singapore can offer innovative financial services. The MAS may wish to consider the effect this might have on innovation, and how best to balance the use of POs and regulations, notices, and guidelines through a risk-based approach to ensure financially sound governance that will allow financial innovation to flourish. **Question 2: MAS seeks comments on the proposal to apply the fit and proper test as the sole ground for issuing a PO.** The Fit and Proper Test as a well-defined standard in Singapore would provide the most appropriate, quantifiable method for assessing the sole grounds for issuing a PO. However, the practical outcome of this approach may be a noticeable skill shortage for innovative financial sectors in Singapore that will require upskilling or importing of suitably qualified staff. For example, senior compliance staff with DPT knowledge and experience at a senior level may be more challenging to find than a senior compliance hire with strong AML experience who may be hired without DPT knowledge and experience and may subsequently cross-train into the role. The Fit and Proper Test then, in providing an objective baseline, may alter the hiring practices of innovative financial service firms, and the MAS may wish to consider to what degree and over what time period a hire may be afforded to obtain the necessary crosstrained knowledge and experience. **Question 3: MAS seeks comments on the proposal to be able to prohibit a person who is not fit and proper from engaging in the following four specified functions in addition to regulated activities under the SFA, FAA and IA:** **(a) Handling of funds, including safeguarding or administration of a digital payment token or digital payment token instrument;** **(b) Risk-taking;**

		(c) Risk management and control; and **(d) Critical system administration.** The functions listed above are consistent with MAS' approach under regulations, notices, and guidance. As firms are responsible for ensuring prudence in the above areas, it therefore follows that accountability by the firm and staff would follow and the extension of the PO would encompass that. **Question 4: MAS seeks comments on the proposal to be able to prescribe additional specified functions in subsidiary legislation, for the purpose of protecting trust or deterring misconduct in the financial industry.** Such an approach to allowing for a rapid response is important, particularly given the pace at which financial services innovation is progressing. MAS may wish to ensure that it provides for a reasonable period of time by when a firm must comply should such an additional specified function be prescribed, with due regard to the response to Question 2. **Question 5: MAS seeks comments on the proposal to introduce a regulatory regime for entities created in Singapore that carry on a business of providing VA activities outside of Singapore.** MAS is seeking to harmonise its regulatory approach to the FATF standards and in so doing also prevent regulatory arbitrage. In this regard, the approach is supported. It is unclear from the consultation and the draft legislation how this might interact with the current provisions of the PSA where a VASP may provide DPT services either within or outside Singapore. It is also unclear as to whether a VASP may ultimately end up being regulated for the same activities from two different jurisdictions. We request whether MAS can provide examples of entity structures it wishes to capture within the new regulatory structure, as well as how the existing frameworks and the new OA would interact with one another on such entity structures. **Question 6: MAS seeks comments on the proposed definition of DTs as set out in section 2(1) of Annex C:** **(a) a digital payment token; or** **(b) a digital representation of a capital markets product which –** **(i) can be transferred, stored or traded electronically; and** **(ii) satisfies such other characteristics as MAS may prescribe;** **but does not include an excluded digital token.**

		The proposed definition provides for a clear alignment with both the existing legislative framework as well as the FATF definition. Whilst such an approach demonstrates a clear approach towards DTs, the consequences of the approach may reshape how the industry currently operates. It is not clear whether this definition will also apply to the PSA, the SFA or stand alone for those VASPs that would be captured by the OA (i.e. those operating from rather than in Singapore). MAS may also wish to consider how existing VASPs will be permitted to continue to operate whilst transitioning into a new regulatory framework (for example, through a transitional exemption period), and the implications such an approach may have on the VASPs' existing business models in the short to medium term. A robust, clear regulatory framework can enhance innovation and attract institutional adoption. During this phase as this innovative financial services industry matures there is a substantial imbalance in international regulatory approaches and the degree to which VASPs must comply. To this end, competition can be stifled should a firm be subject to a significantly greater regulatory framework that its peers. MAS may wish to consider how firms that operate within its framework can both demonstrate a robust approach towards financial innovation whilst still being able to compete in an international marketplace. **Question 7: MAS seeks comments on:** **(a) The scope of DT services, which are in line with the FATF Standards for VASPs;** **(b) Whether there are other DT services that should be captured;** **(c) Specifically whether there are advisory services provided by DT service providers, relating to the offer or sale of DTs that are used for payment purposes; and** **(d) Specifically whether there are fund management activities involving DTs.** It would appear from the narrative provided in 3.10 to 3.14 of the consultation that the purpose would be to regulate entities operating from (but not in) Singapore for ML/TF risks. However, as described in 3.11, firms operating within Singapore would be subject to the PSA and / or SFA whilst firms operating outside Singapore would be subject to the OA. The MAS may wish to consider ensuring both approaches are harmonised for VASPs that operate in and those that operate from Singapore.

		With respect to fund management activities, it may be considered that as DPTs and DTs more broadly are an emerging asset class, that a similar approach to traditional fund services are applied in terms of the activities that should be captured. **Question 8: MAS seeks comments on the proposed licensing and ongoing requirements to be imposed on DT service providers.** The proposed licensing and ongoing requirements appear in keeping with other regulatory regimes. However, MAS may wish to consider 3.17(c) and the requirement to keep all transactions at the permanent place of business. Many innovative financial services businesses now maximise the use of technology, such as cloud infrastructures, and as such a cloud infrastructure may be considered an extension to the permanent place of business. Otherwise, to require a draw-down of all transactions to a physical premises may introduce new risks and cost overhead, including data security risks that previously would have existed in a cloud-only environment. **Question 9: MAS seeks comments on our proposal to align proposed AML/CFT requirements to be imposed on DT service providers with the existing PS Notice 02 for DPT Service Providers, given the similar nature of ML/TF risks of both these activities.** As discussed earlier in this response, MAS may wish to consider that there is consistency with those VASPs licensed under the OA and those under the PSA / SFA to ensure that all firms are subject to the same requirements and so prevent regulatory arbitrage simply through including / excluding Singapore as a market. However, MAS may wish to be mindful that a VASP may ultimately be licensed in multiple jurisdictions and unless harmonised internationally an ML/TF regime may need to be selected by a VASP based on where the entity initially establishes a presence or where the customers are based. MAS may also wish to consider how firms transition between regulatory regimes should a firm alter its business model to either include or exclude Singaporean residents. **Question 10: MAS seeks comments on the proposed powers and the quantum of the maximum penalty for breaches.** MAS has a robust TRM approach, with clear guidelines already established. However, it is appreciated that technology risk can evolve rapidly and MAS much be in a position to be able to rapidly adapt guidance in this regard.

		In a similar way to the PO, the intent here should be to encourage firms towards the safe and sound use of technology to deliver financial services, and safe and sound use of technology to protect data rather than solely on enforcement. MAS may wish to consider that whilst TRM is comprehensive it required time and highly sophisticated skills to implement effectively. Rapid changes to the TRM should also ensure firms have sufficient time to (a) source skills to implement, if required and (b) implement ahead of any enforcement From a quantum perspective, as this has been aligned to other government agencies the figure would appear well-proposed. **Question 11: MAS seeks comments on the provision of statutory protection from liability to mediators, adjudicators and employees of an approved dispute resolution scheme operator.** The proposal would appear reasonable.
15.	Fireblocks Inc.	**General comments:** Fireblocks Inc. ("Fireblocks") is a US-headquartered firm that operates an electronic, blockchain-based platform to facilitate the non-custodial storage and customer-directed transfer of digital tokens ("DTs"). The Fireblocks platform allows customers to streamline the management of their holdings of DTs across third-party exchanges, over-the-counter dealers, counterparties, hot wallets, and custodians within a single trusted administrative environment. Although historically Fireblocks has not actively marketed its platform to Singapore-based customers, a certain number of such customers have opted to use the platform and as such, Fireblocks' technology now forms an important component in the security infrastructure of the DT ecosystem in Singapore. As a provider of software services to DT market participants, Fireblocks welcomes the MAS' proposed introduction of the new Omnibus Act, which we anticipate will only further strengthen the Singapore regulatory framework and reinforce Singapore's standing as a leading financial centre. In light of the importance and potential impact of the new Omnibus Act on DT market participants in Singapore, we believe it is imperative that the scope of the proposed new licensing framework for DT service providers be clarified along the lines suggested in this consultation response. We set out below our further commentary on this point, as a response to Question 7(a) of the MAS consultation.

		Question 1: MAS seeks comments on the proposal to be able to issue a prohibition order to any person. No comments. **Question 2: MAS seeks comments on the proposal to apply the fit and proper test as the sole ground for issuing a PO.** No comments. **Question 3: MAS seeks comments on the proposal to be able to prohibit a person who is not fit and proper from engaging in the following four specified functions in addition to regulated activities under the SFA, FAA and IA:** **(a) Handling of funds, including safeguarding or administration of a digital payment token or digital payment token instrument;** **(b) Risk-taking;** **(c) Risk management and control; and** **(d) Critical system administration.** No comments. **Question 4: MAS seeks comments on the proposal to be able to prescribe additional specified functions in subsidiary legislation, for the purpose of protecting trust or deterring misconduct in the financial industry.** No comments. **Question 5: MAS seeks comments on the proposal to introduce a regulatory regime for entities created in Singapore that carry on a business of providing VA activities outside of Singapore.** No comments. **Question 6: MAS seeks comments on the proposed definition of DTs as set out in section 2(1) of Annex C:** **(a) a digital payment token; or** **(b) a digital representation of a capital markets product which –** **(i) can be transferred, stored or traded electronically; and** **(ii) satisfies such other characteristics as MAS may prescribe;** **but does not include an excluded digital token.** No comments.

		Question 7: MAS seeks comments on: **(a) The scope of DT services, which are in line with the FATF Standards for VASPs;** **(b) Whether there are other DT services that should be captured;** **(c) Specifically whether there are advisory services provided by DT service providers, relating to the offer or sale of DTs that are used for payment purposes; and** **(d) Specifically whether there are fund management activities involving DTs.** By way of response to question 7(a) above, Fireblocks wishes to comment on the proposed DT service of safeguarding or administration of (i) a DT where the service provider has control over the DT, or (ii) a DT instrument where the service provider has control over the DT associated with the DT instrument (Paragraph 1(f), Part 1, First Schedule to the Omnibus Act). Our view is that the definitional scope of this service should be clarified to make clear that it does not apply to firms like Fireblocks that provide non-custodial wallets and which do not have exclusive or independent control of the private key associated with DTs in the wallet. As discussed below, the operating model for non-custodial wallet providers like Fireblocks differs from that of custodians in many key respects, including the ability of the service provider to independently access, administer and control DTs in the customer's wallet. We believe our suggested reading of the definitional scope of this service preserves these important differences. In contrast to custodial wallet service providers, whose services are primarily characterised by storage of the customer's DT assets in a wallet controlled to a significant extent by the custodian itself in addition to the customer, the "non-custodial wallets" we refer to and which Fireblocks provides typically have the following features: • To access the wallet, the customer will require multiple private keys (e.g. four key shares, or another number as determined by the customer), via multi-party computation ("MPC") transaction signing technology. A corresponding number of authorised users may be designated by the customer to authorise the use of the respective key shares. • The non-custodial wallet provider may spread these key shares across different platforms, so that they are each hosted by a different cloud service provider, a feature that adds redundancy and further decentralises control. • The customer will maintain at least one private key share, which is not visible to or accessible by the non-custodial wallet provider.

		• In addition to the private key share, the customer will also maintain one or more backup recovery keys, the ability to generate such backup recovery keys, such that, even in the case that the private key share is lost by the customer, the customer can access the wallet without the non-custodial wallet provider's assistance. • While the non-custodial wallet provider will retain part of the customer's cryptographic key shares as part of its MPC authentication process, the provider will never be able to access control the wallet, and will only contribute its portion of the MPC authentication. This setup allows the customer to access the wallet with full control via a) transaction signing utilising their private key share or b) using the backup recovery key to obtain access to the wallet and remove assets from the Fireblocks infrastructure for transaction signing, in either case without any involvement or reliance on the Fireblocks team. Unlike a custodial model, here the customer can access the wallet with or without the assistance of the non-custodial wallet provider. • The wallet is provided as software as a service, and the non-custodial wallet provider will not have control over the DT balances the customer holds in the wallet, or of DT transfers the customer makes to or receives from third parties. <u>Position under the Omnibus Act</u> We take the view that the non-custodial wallet service described above should not fall within the scope of the proposed DT safeguarding or administration service under the Omnibus Act as it does not involve the wallet provider exercising any "control" over the DT, either directly or via a DT instrument (i.e. a private key). This is because the non-custodial wallet provider is never able to access the wallet and can only contribute key shares as part of the MPC process, whereas the customer can access the wallet with or without the non-custodial wallet service provider's key shares. The software governing the wallet and licensed by the customer is designed to ensure that the non-custodial wallet provider can never exercise exclusive or independent control over the private key associated with the DTs in the wallet and, therefore, the provider is never in a position to unilaterally conduct operations or direct transactions in respect of DTs in the wallet. This reading should not be affected by the clarification in the Omnibus Act that "a person is deemed to have control over a digital token if the person has control over the digital token jointly with one or more persons" (Paragraph 4, Part 3, First Schedule to the Omnibus Act). Our reading of this clarification is that a wallet provider would be deemed to have "control" over a DT jointly with one or more persons where both the wallet provider has exclusive or independent control of the private key associated with DTs such that it can independently conduct operations and one or more other persons are also

		able to exercise such control, either independently or with the wallet provider's authorisation. The situation seemingly intended to be covered under this clarification, therefore, does not reflect the operating model features for a non-custodial wallet service of the kind provided by Fireblocks, as described above, and we view its inclusion as part of the Omnibus Act as consistent with the position we take in this consultation response. As an alternative to reading the non-custodial wallet model as falling within the proposed clarification, we believe that a service of the above description that supports the provision of a DT service by another person and does not involve the wallet provider entering into possession of any money or DT would ordinarily qualify as a "technical service" that it is excluded from the definition of a DT service under Paragraph 2(a), Part 2, First Schedule to the Omnibus Act. We note that we would expect this reading of the safeguarding and administration service to be applied consistently under both the Omnibus Act and the Payment Services Act (once amended to accommodate this additional service). <u>Position under other relevant frameworks</u> For completeness, we also note that from a regulatory policy perspective, the above reading appears consistent with the position expressed in the FATF Guidance for a Risk-Based Approach to Virtual Assets and Virtual Asset Service Providers, dated 21 June 2019 (the "**FATF Standards for VASPs**"), as well as Title 23, Chapter I, Part 200 of the New York State Department of Financial Services' BitLicence Law (the "**NYSDFS BitLicense Law**"), each of which we briefly outline as follows: • The FATF Standards for VASPs state that in the context of safekeeping and/or administration of virtual assets ("**VAs**") or instruments enabling control over VAs, "countries should account for services or business models that combine the function of safeguarding the value of a customer's VAs with the power to manage or transmit the VAs independently from the owner, under the assumption that such management and transmission will only be done according to the owner's/customer's instructions. Safekeeping and administration services include persons that have exclusive or independent control of the private key associated with VAs belonging to another person or exclusive and independent control of smart contracts to which they are not a party that involve VAs belonging to another person" (paragraph 41). The guidance subsequently states that "the FATF does not seek to regulate as VASPs natural or legal persons that provide ancillary services or products to a virtual asset network, including hardware wallet manufacturers and non-custodial wallets […]" (paragraph 48).

		• Similarly, under the NYSDFS BitLicense Law, we would take the view that a firm which provides a non-custodial wallet meeting the above description would not be "storing, holding or maintaining custody or control of virtual currency on behalf of others", and would not be "controlling" or "administering" virtual currency. This is because the firm only provides software enabling a customer to store digital assets in an online wallet, and the firm cannot unlock the customer's online wallet or access the customer's digital assets, whereas the customer can unilaterally access and administer digital assets. Similarly to the proposed Omnibus Act, the NYSDFS BitLicense Law recognises that the development and dissemination of software in and of itself does not constitute virtual currency business activity. We would welcome any guidance the MAS is able to provide to confirm the position we have set out in this consultation response, which we believe would give non-custodial wallet providers much-needed clarity on their Singapore regulatory position. **Question 8: MAS seeks comments on the proposed licensing and ongoing requirements to be imposed on DT service providers.** No comments, other than those set out in response to question 7(a) above. **Question 9: MAS seeks comments on our proposal to align proposed AML/CFT requirements to be imposed on DT service providers with the existing PS Notice 02 for DPT Service Providers, given the similar nature of ML/TF risks of both these activities.** No comments. **Question 10: MAS seeks comments on the proposed powers and the quantum of the maximum penalty for breaches.** No comments. **Question 11: MAS seeks comments on the provision of statutory protection from liability to mediators, adjudicators and employees of an approved dispute resolution scheme operator.** No comments.
16.	Frasers Centrepoint Trust, Frasers	Respondents wish to keep entire submission confidential.

	Logistics & Commercial Trust, and Frasers Hospitality Trust	
17.	Global Legal Entity Identifier Foundation (GLEIF)	**General comments:** The Global Legal Entity Identifier Foundation (GLEIF) is pleased to provide comments to the Monetary Authority of Singapore Consultation Paper on a New Omnibus Act for the Financial Sector. GLEIF will focus its comments on the use of the Legal Entity Identifier (LEI) to regulate virtual asset service providers (VASPs) created in Singapore for anti-money laundering and countering of financing of terrorism (AML/CFT) purposes. GLEIF would like to respond the Question 5: *MAS seeks comments on the proposal to introduce a regulatory regime for entities created in Singapore that carry on a business of providing VA activities outside of Singapore.* **Question 5: MAS seeks comments on the proposal to introduce a regulatory regime for entities created in Singapore that carry on a business of providing VA activities outside of Singapore.** GLEIF agrees that the licensing and registration of the VASP in the jurisdiction where it is created is an essential step to curb anonymity and reduce the ML/FT risks. Ideally, all jurisdictions shall apply this requirement so as to prevent regulatory arbitrage worldwide. GLEIF suggests that any global problem requires a coordinated global solution. The Legal Entity Identifier (LEI), is the global solution for the identification of all legal entities on a global scale in a standardized way, regardless of their jurisdiction of business formation or legal form. The Global LEI System was created to respond to the global challenges in legal entity management worldwide after the financial crisis of 2008 and the inability of regulators to identify parties to transactions across markets, products, and regions for regulatory reporting and supervision. This hindered the ability to evaluate systemic and emerging risk, to identify trends, and to take corrective steps in a timely manner. The Global LEI System is overseen by the LEI Regulatory Oversight Committee, a group of 71 public authorities with full membership and 19 observers from more than 50 countries. Singapore is represented by Mr. Andrew Tan, Lead Economist, Macroeconomic Surveillance, from the Monetary Authority of Singapore. The LEI, a global standard (ISO 17442), could be leveraged by all regulators across jurisdictions for uniquely identifying entities providing/involving virtual

		asset services. If all regulators worldwide require an LEI for each licensed and registered VASP, (i) anonymity of these new players and the risks that this could pose would be eliminated; (ii) LEIs of VASPs could be used by regulators to facilitate communication with each other; which would ensure precision in the identification of the entity in question (iii) updates to both entity and relationship data of VASPs could be tracked (e.g. headquarter address change) relative to this provider via the open, publicly available Global LEI Repository. Therefore, GLEIF suggests MAS consider adding the LEI as a precondition for an entity applying for VASP licensing and registration. GLEIF would like to provide information on its work in the Joint Working Group on interVASP Messaging Standards (JWG). Recently, the LEI was adopted as an optional field in interVASP Messaging Standard IVMS101. The interVASP messaging standard is intended for use in the exchange of required data between VASPs. This opens the door for leveraging the LEI to bring transparency and enhance consumer protection for crypto-assets and tokenization transactions. Lastly, GLEIF would like to bring to the attention of the MAS the recently published Stage 2 report to the G20: Enhancing cross-border payments: building blocks of a global roadmap. The report highlights that the most significant enhancements are likely to arise if over time all building blocks are advanced and implemented in a coordinated manner. While providing a globally standardized approach supporting the LEI for legal entities and establishing proxy registers based on unique identifiers is part of the Building Block D, Increase data quality and straight through processing by enhancing data and market practices; ensuring more effective and robust implementation and application of AML/CFT frameworks while continuing to pursue a risk-based approach is placed under *Block B: Coordinate regulatory, supervisory and oversight frameworks*. In parallel to standardization and harmonization efforts for transparent, resilient and secure financial markets at the global level, use cases for the LEI are constantly increasing. Therefore, GLEIF urges MAS to consider the LEI mandate for all licensed and registered VASPs.
18.	Golden Gate Ventures Fund Management	**General Comments:** Regarding the digital payments/crypto/blockchain industry I'd strongly urge you to NOT step in with further regulations at this point. We fund young blockchain and crypto startups and in our view this industry is set to become of equal importance if not MORE important in terms of economic impact than the invention of the internet itself.

		Singapore has a unique opportunity at this moment in time to foster this innovation and become a world leader before moving in with regulations. This industry is still nascent and of insignificant size to warrant further overhead for startups. Furthermore this movement is global, it's digital and it's peer 2 peer. This means that over the long term the industry will move, morph and adapt to avoid regulatory capture rendering regulations pointless if they drive away the entrepreneurs building these technologies from Singapore. We strongly urge you to welcome this new internet of value, it will bring tremendous economic opportunity and wealth to nations who embrace this new reality. Those who fight it will stand to lose. There are very good reasons found in 1990's regulations as to why most value from internet startups has been captured in the US. **Question 5: MAS seeks comments on the proposal to introduce a regulatory regime for entities created in Singapore that carry on a business of providing VA activities outside of Singapore.** Disagree, it would drive out tech companies that clearly cater to overseas domestic markets and bring talent, skills and jobs to Singapore. **Question 7: MAS seeks comments on:** **(a) The scope of DT services, which are in line with the FATF Standards for VASPs;** FATF rules are regulatory overreach and will result in massive data leaks and privacy breaches of unsuspecting citizens. There is no organization in the world that can guarantee to keep data 100% secure, exchanging personal identifiable information internationally through various standards will only lead to big overheads for innovators and identity theft for consumers. **(b) Whether there are other DT services that should be captured;** No, DT services are about personal responsibility and sovereignty. Through the use of cryptography people can control their own data. If they don't want this responsibility they can continue to make use of the well established traditional financial infrastructure. **(c) Specifically whether there are advisory services provided by DT service providers, relating to the offer or sale of DTs that are used for payment purposes.** Distributed networks require token mechanics in order to function. That often means entrepreneurs who bootstrap these networks before

		handing over control to their communities will raise funds through Simple Agreements for Future Tokens (SAFTS) or distribute tokens directly to their communities. These tokens do not represent a security and in any case should be allowed to be held by managers specializing in DLT technologies and corresponding startups. **Question 8: MAS seeks comments on the proposed licensing and ongoing requirements to be imposed on DT service providers.** Current requirements are already strict and of considerable overhead to young and innovative companies in the crypto industry. Further requirements will only drive these companies offshore and consumers to widely available unregulated alternatives where they will have no protections at all. **Question 9: MAS seeks comments on our proposal to align proposed AML/CFT requirements to be imposed on DT service providers with the existing PS Notice 02 for DPT Service Providers, given the similar nature of ML/TF risks of both these activities.** Object to stringent requirements at this stage. Rather give these companies a sandbox or exemptions for a number of years or below certain transaction amounts. In the meantime work with home grown companies like Merkle Science to really understand the rapidly changing landscape. Current AML/CFT crypto transactions are negligible compared to traditional fiat transactions.
19.	HashKey Group	**General Comments:** Whilst we applaud the MAS for consulting on a framework for a difficult and fast evolving industry, we have some reservations as to the current and proposed regulatory framework. As it is now possible to tokenise practically any type of underlying thing and industry players are moving towards offering multiple digital asset classes, we find that the categories used to specify which digital assets are to be regulated somewhat arbitrary. We believe that all players in the digital space as well as the traditional financial services space should be regulated properly and comply with the rules and legislation of Singapore. We believe that anyone facilitating the trading of, dealing in, or otherwise transacting in all types of digital asset products, including digital payment token instruments, virtual assets, and crypto derivatives products should and must be licensed before they can operate in Singapore. Currently, the MAS does not license cryptocurrency derivative providers, thus allowing these players to operate unfettered while disadvantaging other providers who wish to operate in a regulated space, creating an unfair and unlevel playing field. With this in mind, we respectfully beseech the MAS to regulate

		without fear or favour and license the various players in Singapore that wish to operate from the country. **Question 1: MAS seeks comments on the proposal to be able to issue a prohibition order to any person.** We are generally supportive of the expansion of MAS's ability to issue prohibition orders to any person, extending to former, existing or prospective participants in the financial industry, including employees and service providers of FIs. However, this power must be used judiciously and fairly with the caveats in place for proper and due process. In particular, we respectfully request that MAS provides more detailed guidelines as to how this would work in relation to former participants, including to persons no longer licensed, as well as those parties that are not licensed and operating in Singapore. These may be bad actors and may bilk investors globally of funds or coins and therefore should also be subject to regulation as well as prohibition. **Question 2: MAS seeks comments on the proposal to apply the fit and proper test as the sole ground for issuing a PO.** We note that the fit and proper criteria are broad and wide-ranging, and the amendments thus have the effect of giving MAS a very wide discretion in making prohibition orders. The far-reaching effects of a prohibition order on individuals affected (which MAS has acknowledged in the consultation paper), coupled with the lack of guidance as to how the fit and proper criteria will be applied in assessing when a prohibition order is made, may make some appointment holders uncomfortable with holding positions in FIs given the liability that they are potentially exposed to. We respectfully request that the MAS provide further guidance as to how the fit and proper criteria will be applied. In particular, with regard to the application of the fit and proper test to the digital assets industry, we respectfully suggest that the fit and proper criteria be updated to better suit persons in the digital assets space. As the digital assets industry is very new, individuals in this space tend to be younger, with different relevant expertise, and little to no prior experience in traditional regulated financial services. **Question 3: MAS seeks comments on the proposal to be able to prohibit a person who is not fit and proper from engaging in the following four specified functions in addition to regulated activities under the SFA, FAA and IA:**

		(a) Handling of funds, including safeguarding or administration of a digital payment token or digital payment token instrument; **(b) Risk-taking;** **(c) Risk management and control; and** **(d) Critical system administration.** In certain cases, the operational staff on the ground engaged in some of the specified functions listed above may be junior and inexperienced, potentially acting under instruction or influence from their superiors to engage in bad behaviour without fully understanding the consequences and effects of their actions. We would be grateful if the MAS could consider whether such persons should be exempted from being issued a prohibition order in such cases where they were in the control of their superiors – due process would be important. **Question 4: MAS seeks comments on the proposal to be able to prescribe additional specified functions in subsidiary legislation, for the purpose of protecting trust or deterring misconduct in the financial industry.** No comment. **Question 5: MAS seeks comments on the proposal to introduce a regulatory regime for entities created in Singapore that carry on a business of providing VA activities outside of Singapore.** We welcome this proposal as it would bring Singapore closer in line with the newest FATF Standards and create a more level playing field. **Question 6: MAS seeks comments on the proposed definition of DTs as set out in section 2(1) of Annex C:** **(a) a digital payment token; or** **(b) a digital representation of a capital markets product which –** **(i) can be transferred, stored or traded electronically; and** **(ii) satisfies such other characteristics as MAS may prescribe;** **but does not include an excluded digital token.** We would be grateful if MAS could clarify what types of tokens it intends to exclude under the definition of "excluded digital token", and in particular, whether it will include limited purpose digital payment tokens and limited purpose e-money as defined under the PSA. We also respectfully request the MAS to consider specifically addressing the regulation of stablecoins (including currency-backed stablecoins which MAS had previously clarified would be regulated as e-money), as these potentially

		pose similar ML/TF risks as DPTs. As noted in our introductory comments, MAS may also wish to consider regulating crypto derivatives products that do not constitute capital markets products under the proposed and/or existing regulatory framework, as these category of products currently fall into a lacuna. **Question 7: MAS seeks comments on:** **(a) The scope of DT services, which are in line with the FATF Standards for VASPs;** **(b) Whether there are other DT services that should be captured;** **(c) Specifically whether there are advisory services provided by DT service providers, relating to the offer or sale of DTs that are used for payment purposes; and** **(d) Specifically whether there are fund management activities involving DTs.** We are generally supportive of the above proposals. We respectfully request that the MAS clarify (with examples if possible) which category would apply to the following activities: (i) the operation of DT wallets; and (ii) DT term deposit services, where users deposit DTs for a fixed amount of time and receive a fixed amount of interest in respect of the deposited DT, similar to a traditional fixed deposit. We note further that there has been growing interest in DT advisory and fund management activities in Singapore, including but not limited to: (i) fund management businesses specifically focusing on DT assets; and (ii) DT exchange-traded funds or unit trusts (similar to the Grayscale Bitcoin Trust BTC). We respectfully request that MAS clarify if the proposed legislation would cover the above activities and consider if specific categories should be created for the abovementioned activities. We note also that MAS has not directly addressed whether and how it would regulate developers of decentralised DT services – for example, where a company develops a decentralised software network that can be utilised by anyone for decentralised DT services (such as trading) without the developer company being further involved after its launch. While further adoption of decentralised DT services will require higher performant blockchain technologies, blockchain transaction performance is projected to increase over the coming years, potentially increasing the adoption of decentralised DT services. As such, we recommend that MAS also consider how it might regulate such decentralised DT service providers, and whether or not this needs to be addressed in its DT services scope.

		Question 8: MAS seeks comments on the proposed licensing and ongoing requirements to be imposed on DT service providers. No comment. **Question 9: MAS seeks comments on our proposal to align proposed AML/CFT requirements to be imposed on DT service providers with the existing PS Notice 02 for DPT Service Providers, given the similar nature of ML/TF risks of both these activities.** No comment. **Question 10: MAS seeks comments on the proposed powers and the quantum of the maximum penalty for breaches.** No comment. **Question 11: MAS seeks comments on the provision of statutory protection from liability to mediators, adjudicators and employees of an approved dispute resolution scheme operator.** No comment.
20.	HL Bank	Respondent requested for part of its submission to be kept confidential. **Question 1: MAS seeks comments on the proposal to be able to issue a prohibition order to any person.** Supportive in general. Would request for more guidance to be provided for instances where the PO is issued to an employee of the service provider to the FI, and the FI has limited control over the staffing by the service provider. Particularly, if the FI (despite best effort) will be considered in breach if the individual is not immeditaely removed from work performed for the FI. **Question 2: MAS seeks comments on the proposal to apply the fit and proper test as the sole ground for issuing a PO.** Supportive in general. Would request for consideration of just applying the first element "Honesty, integrity and reputation" as grounds for issuing PO, as the remaining two elements may just preclude the individual from contributing to the financial industry in certain segments/function or at a particular point in time (until he regains financial stability). This especially in

		consideration of para 2.7 of the consultation, wherein the PO can be issued to an employee of the service provider of the FI. **Question 3: MAS seeks comments on the proposal to be able to prohibit a person who is not fit and proper from engaging in the following four specified functions in addition to regulated activities under the SFA, FAA and IA:** **(a) Handling of funds, including safeguarding or administration of a digital payment token or digital payment token instrument;** **(b) Risk-taking;** **(c) Risk management and control; and** **(d) Critical system administration.** Supportive. **Question 4: MAS seeks comments on the proposal to be able to prescribe additional specified functions in subsidiary legislation, for the purpose of protecting trust or deterring misconduct in the financial industry.** Supportive. **Question 5: MAS seeks comments on the proposal to introduce a regulatory regime for entities created in Singapore that carry on a business of providing VA activities outside of Singapore.** Supportive. **Question 6: MAS seeks comments on the proposed definition of DTs as set out in section 2(1) of Annex C:** **(a) a digital payment token; or** **(b) a digital representation of a capital markets product which –** **(i) can be transferred, stored or traded electronically; and** **(ii) satisfies such other characteristics as MAS may prescribe;** **but does not include an excluded digital token.** Supportive. **Question 7: MAS seeks comments on:** **(a) The scope of DT services, which are in line with the FATF Standards for VASPs;** **(b) Whether there are other DT services that should be captured;** **(c) Specifically whether there are advisory services provided by DT service providers, relating to the offer or sale of DTs that are used for payment purposes; and**

		(d) Specifically whether there are fund management activities involving DTs. Supportive. **Question 8: MAS seeks comments on the proposed licensing and ongoing requirements to be imposed on DT service providers.** Supportive. **Question 9: MAS seeks comments on our proposal to align proposed AML/CFT requirements to be imposed on DT service providers with the existing PS Notice 02 for DPT Service Providers, given the similar nature of ML/TF risks of both these activities.** Supportive. **Question 10: MAS seeks comments on the proposed powers and the quantum of the maximum penalty for breaches.** Supportive. **Question 11: MAS seeks comments on the provision of statutory protection from liability to mediators, adjudicators and employees of an approved dispute resolution scheme operator.** Supportive.
21.	Holland & Marie Pte. Ltd.	**Question 3: MAS seeks comments on the proposal to be able to prohibit a person who is not fit and proper from engaging in the following four specified functions in addition to regulated activities under the SFA, FAA and IA:** **(a) Handling of funds, including safeguarding or administration of a digital payment token or digital payment token instrument;** **(b) Risk-taking;** **(c) Risk management and control; and** **(d) Critical system administration.** Could the MAS clarify what it means to "perform" a relevant function in section 3(2)(b) of Annex B? We would propose that the provision of any service relating to a relevant function that is not considered an "outsourcing arrangement" as such term is defined in the Guidelines on Outsourcing be excluded from the activities to which a prohibition may apply.

		In general, if a person's activities would not involve taking on management function or responsibility of a relevant function for a financial institution (for example advisory services, independent consulting services or drafting services (writing compliance policies or procedures to be approved by a financial institution)), we would propose that such activities be excluded from the activities to which the prohibition may apply. **Question 4: MAS seeks comments on the proposal to be able to prescribe additional specified functions in subsidiary legislation, for the purpose of protecting trust or deterring misconduct in the financial industry.** We would propose that the provision of any service relating to a relevant function that is not considered an "outsourcing arrangement" as such term is defined in the Guidelines on Outsourcing be excluded from the activities to which a prohibition may apply. **Question 5: MAS seeks comments on the proposal to introduce a regulatory regime for entities created in Singapore that carry on a business of providing VA activities outside of Singapore.** Could the MAS clarify whether having no customers or clients in Singapore would be sufficient by itself to establish whether the FI is providing services outside of Singapore? **Question 7: MAS seeks comments on:** **(a) The scope of DT services, which are in line with the FATF Standards for VASPs;** **(b) Whether there are other DT services that should be captured;** **(c) Specifically whether there are advisory services provided by DT service providers, relating to the offer or sale of DTs that are used for payment purposes; and** **(d) Specifically whether there are fund management activities involving DTs.** Could the MAS clarify whether advisory services relating to the offer or sale of DTs would include services such as compliance consulting or public relations? Under the Securities and Futures Act, giving advice concerning compliance relating to the raising of funds constitutes the regulated activity of advising on corporate finance. We note that in Table 1 of the Consultation Paper, the MAS has said it does not intend to include "professional legal or accounting-related advisory services which are subject to their own AML/CFT requirements from their respective regulators".

		However, many service providers in Singapore that are not subject to any industry-specific AML-CFT requirements offer advisory services to companies (located both in and outside Singapore) that offer or sell digital tokens in the ordinary course of their business. The MAS' illustrative exclusion of professional legal and accounting related advisory services raises the question of whether advisory services provided by firms that that are not subject to industry-specific AML/CFT requirements (such as compliance advisory firms) would constitute the digital token service of "any service relating to the offer or sale of digital tokens".
22.	Ledger SAS, France, and Ledger Technologies SG PTE, Singapore	**General comments:** <u>Presentation of Ledger</u> Ledger is an international company headquartered in France that has established itself as one of the world leaders in the market of non-custodial virtual assets safeguarding solutions for individuals and companies. On this market, Ledger has developed a leading position, with certified and insured products, subjected to the most sophisticated security and resilience tests. For individuals, Ledger providers the "Ledger Nano" solution, a hardware wallet that is used for the storage of and transactions in popular virtual assets. Among its offerings, "Ledger Nano S" has sold more than 1,5 million copies worldwide. In Feburary 2019, it obtained a first-level security certification from the French National Security and Information Systems Authority (ANSSI). For companies, Ledger provides the "Ledger Vault", a multi-authorization virtual asset wallet management solution enabling financial institutions to build virtual asset operations securely. Both solutions are non-custodial, meaning that Ledger does not have acess to the virtual assets of its clients (individual or companies) nor control them in any what whatsoever. Ledger has its head office in Paris and develops its international activities through its entities based in New York and Singapore. Overall, Ledger employs around 200 people. In May 2018, Ledger, the global investment bank Nomura and pioneer investment house Global Advisors, the parent company of Coinshares, concluded a partnership in order to create Komainu, a new venture to bring together the traditional and disruptive worlds of asset custody, paving the way for secure and compliant institutional investment in virtual assets.

		In September 2019, Ledger was selected to integrate the "Next 40" and the "French Tech 120". It is thus positioned among the French leaders in the field of advanced technologies with a strong international growth potential. The ambition regarding the market in Singapore and more generally in APAC are as follows: Ledger has established its Asia headquarter in Singapore to contribute to the growth of the virtual asset industry in the country and Asia Pacific. Asia has an enormous growth opportunity as the continent represents more than 50% of the world's population with many unbanked. Singapore as a leading financial hub and situated right in the centre of Asia, is introducing progressive regulations on the new disruptive technology and is in the forefront of driving the institutional adoption of blockchain and digital assets. Singapore has been attracting an increasing number of virtual assets services providers ("VASPs") due to the country's stable business environment and forward-looking regulatory landscape. Many global companies are also seeking to be licensed under Singapore's Payment Services Act. While already having partnered with some of the most prominent VASPs, custodian and banks in the region, Ledger will continue to help financial institutions to manage their digital assets in compliance with the various regulations being introduced in multiple jurisdictions; especially around prevention of theft and mismanagement of assets. With its strong foothold in the Asian market and especially at Singapore, Ledger welcomes the Monetary Authority of Singapore ("MAS") intention to introduce a new omnibus Act (the "New Act Proposal") including provisions for regulating virtual asset services providers ("VASPs") created in Singapore for anti-money laundering and countering of financing of terrorism ("AML-CFT") purposes. Ledger is therefore keen to comment on this consultation paper. We understand that one of the purposes of the introduction of the New Act Proposal is to implement Financial Action Task Force ("**FATF**") revised standards for VASPs. We understand also that the intention of the MAS is to align Singapore AML-CFT regulation of VASPs with the FAFT's standards, and especially in accordance with its interpretative note to recommendation 15 that requires VASPs to be licensed or registered in the jurisdictions where they are created. Ledger considers that it is of the utmost importance to address the risks of AML-CFT in the virtual assets environment. However, the regulation to be

		enacted for this purpose shall be framed by taking into account the actual level of risks generated by this ecosystem. It shall be tailored to the specificities of this market, its market players and their international dimension. It needs therefore to be proportionate and adapted, without merely extending the regulatory framework applicable in the banking and financial sector. Blockchain technology underlying the virtual assets ecosystem has its own specificities that prevent a mere transposition *mutatis mutandis* of banking rules. More generally, in regulating VASPs, emphasis should be put on the security of the solution they use, to ensure that stability of this new market and the protection fo VASPs' clients. In this document, we would like to share our observations and recommendations on the modalities of the implementation of these recommendations. **Question 1: MAS seeks comments on the proposal to be able to issue a prohibition order to any person.** N/A **Question 2: MAS seeks comments on the proposal to apply the fit and proper test as the sole ground for issuing a PO.** N/A **Question 3: MAS seeks comments on the proposal to be able to prohibit a person who is not fit and proper from engaging in the following four specified functions in addition to regulated activities under the SFA, FAA and IA:** **(a) Handling of funds, including safeguarding or administration of a digital payment token or digital payment token instrument;** **(b) Risk-taking;** **(c) Risk management and control; and** **(d) Critical system administration.** N/A **Question 4: MAS seeks comments on the proposal to be able to prescribe additional specified functions in subsidiary legislation, for the purpose of protecting trust or deterring misconduct in the financial industry.** N/A

		Question 5: MAS seeks comments on the proposal to introduce a regulatory regime for entities created in Singapore that carry on a business of providing VA activities outside of Singapore. The virtual assets market is growing rapidly and represents one of the most promising segments of the digital world. It is imperative to measure its potential, without exaggerating the risks that may exist, which often remain misunderstood. In particular, emphasis should be put on its international dimension. In the context of international competition on the virtual-assets market and the importance for Singapore to remain competitive and attractive for the virtual assets ecosystem, the New Act Proposal shall take into account the following aspects: - it shall clearly define the scope of entities that fall within its perimeter; and - it shall be innovation-friendly and facilitate the international activities of the entities that it regulates. In consideration of the international competition characterizing the virtual assets ecosystem, it shall not disadvantage entities choosing to be located in Singapore to develop activities at international level over their competitors located in other jurisdictions. As it is envisaged in Europe, Ledger would greatly support the introduction of a global regulatory framework in Asia, where VASPs governed in their jurisdiction by local standards inspired by the FATF's recommendations would be automatically allowed to provide services in other Asian jurisdictions implementing equivalent standards. In the context of the development of the New Act Proposal, Ledger would hence support the introduction of a system of mutual recognition of license allowing a VASP regulated in Asia to provide services in other countries based on the license obtained in the country of origin. **Question 6: MAS seeks comments on the proposed definition of DTs as set out in section 2(1) of Annex C:** **(a) a digital payment token; or** **(b) a digital representation of a capital markets product which –** **(i) can be transferred, stored or traded electronically; and** **(ii) satisfies such other characteristics as MAS may prescribe;** **but does not include an excluded digital token.**

		Ledger welcomes the fact that "*digital payment token*" such as bitcoin are included in the definition of the term "*digital tokens*" ("Digital Tokens") provided in Section 2(1) of Annex C of the New Act Proposal. However, we understand that the scope of this definition is broader than that currently adopted by the FATF in its enhanced recommendations[1] as the latter does not include digital representations of fiat currencies, securities and other financial assets that are already covered elsewhere in the FATF recommendations. In our view, it is important to make a clear distinction among virtual assets between: - virtual assets with the same characteristics as traditional financial asset classes such as securities, bonds, units in a collective investment scheme and derivatives. Based on this analysis – which puts the substance of the asset above its form – the main focus should be on the nature of the rights embedded in the asset. The services provided in relation to this category of virtual assets should be regulated as services provided in relation to traditional financial assets; and - virtual assets such as bitcoin or token issued by initial coin offering excluding those meeting the characteristics of financial assets aforementioned. The FATF's recommendation is expected to apply to this category of assets only. Therefore, the scope of the New Act Proposal should be clarified as follows: - in consistency with the FATF's recommendation, it should exclude virtual assets with the same characteristics as traditional financial assets; and - it should clarify the notion of "*excluded digital token*", which is not precisely defined in the New Act Proposal. [1] FATF, International Standards on combating money laundering and the financing of terrorism & proliferation, the FATF Recommendations, p. 62: "*A virtual asset is a digital representation of value that can be digitally traded, or transferred, and can be used for payment or investment purposes. Virtual assets do not include digital representations of fiat currencies, securities and other financial assets that are already covered elsewhere in the FATF Recommendations."* **Question 7: MAS seeks comments on:** **(a) The scope of DT services, which are in line with the FATF Standards for VASPs;** **(b) Whether there are other DT services that should be captured;** **(c) Specifically whether there are advisory services provided by DT service providers, relating to the offer or sale of DTs that are used for payment purposes; and** **(d) Specifically whether there are fund management activities involving DTs.**

		Broadly speaking, Ledger supports the proposed definition of "*digital tokens services*" in the New Act Proposal. Ledger also supports the definition of the different services considered not to be digital token services and especially the exclusion of "*the service provided by any technical service provider that supports the provision of any digital token service, but not at any time enter into possession of any money or digital token [which consists in] providing and maintaining any terminal or device used for any digital token service*."[2] Ledger considers of the utmost importance that the regulation applicable to VASPs in terms of AML-CTF only applies to entities that may be involved in potential money laundering or terrorism financing ("ML/TF") when providing services to their clients. It should not apply to other market players, such as providers of technological solutions such as Ledger as they are never in control of the virtual assets of their clients.[3] Regarding the service of safeguarding or administration of digital token or digital token instrument (the "Custody Service") provided by the New Act Proposal, the objective at hand should be to capture the service providers safekeeping virtual assets on behalf of their owners (commonly referred to as "*custodian wallet provider*"). It should not apply for example to mere providers of technological solutions which allow owners of virtual assets (in the case commonly referred to as the "self-custody"). Therefore, Ledger considers that the following additional clarifications are needed to ensure that the New Act Proposal captures the appropriate entities. - **Regarding the definition of the Custody Service and the expression 'control over' used to define the Custody Service.** Pursuant to the New Act Proposal, this service is defined as: "*safeguarding or administration of (i) a digital token where the service provider has control over the digital token; or (ii) a digital token instrument where the service provider has control over the digital token associated with the digital token instrument.*"[4] The notion of '*control over'* should be defined more specifically. It should be limited to the capacity for the VASP to: o define the rules, agreed upon with the virtual assets' owner, governing the transfer of the said virtual assets; and o initiate and perform the transfer of virtual assets upon the request of their owners according to a pre-defined governance.

		Such clarification excludes providers of pure technological solutions (as Ledger), which do not have the capacity (both technical and legal) to initiate and perform the transfer of virtual assets. It remains sufficiently broad so as not to pre-empt actual and future technological developments. It is also compatible with multi-signature solutions, where the signing responsibility is distributed among multiple operators. In such context, the entities that should be considered as providing the Custody Service should be limited to those in charge of defining the governance applicable to the transfer of virtual assets. - **Regarding the exclusion of the definition of Custody Service and the notion of "*possession of any money or digital token*."[5]** Once again, it is important to regulate actors who are in charge of the governance applicable for the safekeeping and the transfer of virtual assets. The technological service providers – who set up the technical system of governance of the means of access – should not be regulated as providing the Custody Service. Therefore, the notion of "having possession of the digital tokens" should be construed restrictively. It should be defined as "having control" over the Digital Tokens, as defined above. This would ensure consistency and leave no room for interpretation. In addition, (i) services of "*facilitating the exchange of digital tokens*" or (ii) services of "*inducing or attempting to induce any person to enter into or to offer to enter into any agreement for or with a view to buying or selling any digital tokens in exchange for any money or any other digital tokens*"[6] should not be interpreted more widely than in the FATF's enhanced recommendations. [2] New Act Proposal, First Schedule, Part 2, Services that are not digital token services, 2(a), p. 82. [3] In this regard, Europol, the European Union's law enforcement agency which aim is to achieve a safer Europe for the benefit of all the EU citizens, highlighted that "*real cases and theory indicate that the use of virtual currencies to launder the proceeds of crime may require the use of cash at some stage in the process. This is largely due to the fact that virtual currencies require 'cashing in' in order to acquire them, or 'cashing out' in order to spend them"*. Europol, *Why is cash still king? A strategic report on the use of cash by criminal groups as a facilitator for money laundering,* 2015 (https://www.europol.europa.eu/publications-documents/why-cash-is-still-king-strategic-report-use-of-cash-criminal-groups-facilitator-for-money-laundering).

[4] New Act Proposal, First Schedule, Part 1, Services that are digital token services, p. 81.
[5] New Act Proposal, First Schedule, Part 2, Services that are not digital token services, 2(a), p. 82.
[6] New Act Proposal, First Schedule, Part 1, Services that are digital token services, p. 81.

Question 8: MAS seeks comments on the proposed licensing and ongoing requirements to be imposed on DT service providers.

In implementing the FATF's enhanced recommendations, regulators should take into consideration the characteristics of the virtual assets' market, which is still nascent and maturing.

In particular, the risks of ML/TF in the virtual assets' market remains limited and out of all proportion to those associated with virtual assets.[7] Pursuant to a risk-based approach, the regulatory regime should be adapted to this level of risk.

Globally, the criteria for granting the said license should be further clarified. More specifically, concrete and objective criteria should be specified by the MAS to ensure that applicants, and especially new entrants on the market, be in a position to assess the expected compliance costs (for example in terms of legal support, AML-CFT procedures or staff)[8].

More specifically, the obligation for VASPs to have a meaningful presence in Singapore should not be overly cumbersome. It should be proportionate to the size of the activities and the risks it may generate.

For the Singaporean framework to be attractive and flexible, Ledger recommends that the New Act Proposal do not require the licensing process to be accompanied by an ex-ante control of the AML-CFT procedures in place. In our view, only an ex-post approach makes it possible to establish a credible legal framework while avoiding costly and timeconsuming ex-ante review procedures that are incompatible with the dynamism of the market and the reality of the risks involved.

It seems also crucial to include provisions that will require licensees to assess the security and reliability of the technology they use through rigorous control by competent authorities and certification mechanisms. In our view, security should play a central role in the requirements applicable to virtual assets ecosystem, to cope with the ongoing evolution of the technology and to address the related concerns in terms of market integrity and investor protection.

		In this regard, Ledger largely supports the technology-neutral approach chosen by the MAS to regulate VASPs especially when they provide Custody Services. No requirement shall indeed impose a particular technology for the custody of virtual assets (e.g., hot or cold storage solutions). Indeed, it is in our view not accurate to state that cold solutions would be more secure than hot solutions (i.e. connected to the internet). We would like to submit to the MAS the attached presentation that Ledger has put together to explain the common mistake leading some regulators to adopt this binary distinction between hot and cold storage solutions (Appendix: Hot and Cold presentation by Ledger). We would like also to quote the article that explains the risk to make security rely on this binary solution (https://blog.ledger.com/welcome-tradeoffs/). For Licensees, the amount of the annual fees due to the MAS shall take into account their size, which can often be very small on this new market. This is key for the New Act Proposal to be innovation-friendly and attractive in the context of international competition. Finally, sanctions for VASPs failing to comply with the regime to be introduced by the New Act Proposal should be proportionate to the size of VASPs and the risks attached to such failure. Given the recent nature of the regime and the different questions it raised with regards to its implementation, the sanctions indicated in the New Act Proposal seem high and could deter market-players to develop activities in Asia. [7] Landeau's Report on crypto-assets published in July 2018 and prepared at the request of the French Minister of Economy, p. 41 (https://www.economic.gouv.fr/files/files/2019/Rapport_LandauVF.pdf). [8] The New Act Proposal provides for example that a licence may only be granted if "the Authority (…) is satisfied that the public interest will be served by the granting of the licence; and (iv) is satisfied that the applicant meets such other criteria for the grant of the licence as the Authority considers relevant". **Question 9: MAS seeks comments on our proposal to align proposed AML/CFT requirements to be imposed on DT service providers with the existing PS Notice 02 for DPT Service Providers, given the similar nature of ML/TF risks of both these activities.** As other sectors, the development of the virtual assets' market can generate risks in terms of ML/TF. But, as indicated above, these risks must be put into perspective in the light of the limited size of the global market. In addition, these risks must be assessed case by case and depend on the conditions in which transactions are performed. The MAS should refrain from

		considering that all transactions relating to virtual assets services systematically carry higher inherent ML/TF risks. Furthermore, the new framework should refrain from purely replicating rules applicable in the banking & financial area if not relevant for the virtual assets market. The content of the AML-CFT requirements and their implementation shall be realistic by taking into account the specificities of this new market. More precisely, a particular attention should be drawn on the so-called “Travel Rule". The Travel Rule obliges VASPs to collect information on the originators of virtual assets transfers (or their beneficiaries) and to pass this information on to other VASPs. - In practice, the existing technical solutions used by market players do not allow full security of the information transmitted. - Even in countries where the Travel Rule is deemed to be fully implemented (such as the United States and Switzerland), VASPs do not apply it for reasons of technical feasibility. - In terms of data security, it could be dangerous to oblige actors to automatically transmit highly sensitive information to VASPs who may not be subject to the same rules in their own country. This raises Data Protection issues which are not solved yet. It should also be noted that Blockchain technology allows traceability of the transaction: most blockchains are inherently transparent. Forensic organizations have already dismantled crime networks using blockchains specifically thanks to the open and transparent nature of the blockchain technology (see for example https://www.justice.gov/opa/pr/south-korean-national-and-hundreds-others-chargedworldwide- takedown-largest-darknet-child). At this stage, and for all of these reasons, Ledger considers that the implementation of the Travel Rule should be applied on a “best effort” basis. We welcome your intention to issue a specific notice to VASPs on AML-CFT. Ledger remains naturally at the disposal of the MAS and the public authorities of Singapore to further discuss the content of this notice, or any other topic that may be of interest for the MAS. **Question 10: MAS seeks comments on the proposed powers and the quantum of the maximum penalty for breaches.** N/A

		Question 11: MAS seeks comments on the provision of statutory protection from liability to mediators, adjudicators and employees of an approved dispute resolution scheme operator. N/A
23.	Luno Pte. Ltd.	Respondent wishes to keep entire submission confidential.
24.	Lymon Pte. Ltd.	**General comments:** We do not have any comments. **Question 1: MAS seeks comments on the proposal to be able to issue a prohibition order to any person.** We note from paragraph 1.1 of the MAS Guidelines on Outsourcing ("Outsourcing Guidelines"), that "Outsourcing does not diminish the obligations of an institution, and those of its board and senior management to comply with relevant laws and regulations in Singapore" and we read this to mean that the FI is ultimately responsible for the outsourcing arrangement. Hence, we would like to respectfully clarify if MAS' proposal to be able to issue POs to service providers ("SPs") would come to mean that MAS would have regulatory purview over the service providers as well? We note that this does not seem aligned with MAS' current stance set out in the Outsourcing Guidelines. Further, in the event that a PO is issued to an SP, we would appreciate MAS' clarification on whether MAS will be inclined to issue a PO to the FI employee(s) overseeing the outsourcing arrangement, in light of the likely competency breach on the part of the FI employee(s). **Question 2: MAS seeks comments on the proposal to apply the fit and proper test as the sole ground for issuing a PO.** We would appreciate MAS' clarification on whether there will be a minimum competency level expected of SPs. For example, a minimum of 5 years' relevant experience in providing the service to a financial institution. In addition, we respectfully propose that MAS exclude the financial soundness criteria from the grounds for issuing a PO, as it does not appear to fit in with MAS' intention of issuing a PO for misconduct. We are of the view that the financial soundness criteria would be more applicable for assessing whether a SP is suitable to provide services to the FIs, and this assessment should be

		performed by the FIs themselves when engaging SPs, as set out in the Outsourcing Guidelines. **Question 3: MAS seeks comments on the proposal to be able to prohibit a person who is not fit and proper from engaging in the following four specified functions in addition to regulated activities under the SFA, FAA and IA:** **(a) Handling of funds, including safeguarding or administration of a digital payment token or digital payment token instrument;** **(b) Risk-taking;** **(c) Risk management and control; and** **(d) Critical system administration.** We would appreciate MAS' clarification on whether materiality thresholds will be introduced for the specified functions, similar to other regulatory bodies? For example, the Personal Data Protection Commission ("PDPC") requires a notification to PDPC if there is a personal data breach which affects 500 or more individuals. **Question 4: MAS seeks comments on the proposal to be able to prescribe additional specified functions in subsidiary legislation, for the purpose of protecting trust or deterring misconduct in the financial industry.** We do not have any comments. **Question 5: MAS seeks comments on the proposal to introduce a regulatory regime for entities created in Singapore that carry on a business of providing VA activities outside of Singapore.** We agree with MAS' proposal. **Question 6: MAS seeks comments on the proposed definition of DTs as set out in section 2(1) of Annex C:** **(a) a digital payment token; or** **(b) a digital representation of a capital markets product which –** **(i) can be transferred, stored or traded electronically; and** **(ii) satisfies such other characteristics as MAS may prescribe;** **but does not include an excluded digital token.** We do not have any comments. **Question 7: MAS seeks comments on:** **(a) The scope of DT services, which are in line with the FATF Standards for VASPs;**

		(b) Whether there are other DT services that should be captured; **(c) Specifically whether there are advisory services provided by DT service providers, relating to the offer or sale of DTs that are used for payment purposes; and** **(d) Specifically whether there are fund management activities involving DTs.** We have noted an increasing trend of pure cryptoassets funds, and respectfully seek MAS' clarification of its regulatory intent for such funds and/ or fund management companies which manage collective investment schemes where the underlying investments are cryptoassets. **Question 8: MAS seeks comments on the proposed licensing and ongoing requirements to be imposed on DT service providers.** We respectfully propose that MAS prescribe the requirement that DT SPs have a designated responsible person to handle the compliance matters of the company. **Question 9: MAS seeks comments on our proposal to align proposed AML/CFT requirements to be imposed on DT service providers with the existing PS Notice 02 for DPT Service Providers, given the similar nature of ML/TF risks of both these activities.** We agree with MAS' proposal. **Question 10: MAS seeks comments on the proposed powers and the quantum of the maximum penalty for breaches.** We do not have any comments. **Question 11: MAS seeks comments on the provision of statutory protection from liability to mediators, adjudicators and employees of an approved dispute resolution scheme operator.** We respectfully propose that such parties (especially disgruntled employees) conversely, be liable for these acts not done in good faith.
25.	Mastercard Asia/Pacific Pte Ltd	Respondent wishes to keep entire submission confidential.
26.	Moody's Investors Service	**Question 10: MAS seeks comments on the proposed powers and the quantum of the maximum penalty for breaches.**

	Singapore Pte. Ltd. ("MIS Singapore")	MIS Singapore refers to MAS' proposal to introduce a power to issue directions or make regulations for the management of technology risk by registered FIs as set out in the proposed legislative provisions in Annex D of the Consultation Paper. We note from paragraph 4.3 of the Consultation Paper that MAS' rationale is to address cyber risk contagion through inter-linkages from information technology systems in the regulated entity. Given the wide remit of the proposed authority and the potential material implications for FIs running systems on a global basis, we would request that the proposed broad power be subject to two important limitations: (i) any new regulations or directions be subject to public comment before implementation; and (ii) any new regulations or directions be issued in accordance with the MAS' objective of ensuring financial stability. We have proposed amendments to the relevant section below for consideration: PROPOSED PROVISIONS ON HARMONISED POWER TO ISSUE DIRECTIONS OR MAKE REGULATIONS ON TECHNOLOGY RISK MANAGEMENT **Power of Authority in relation to technology risk management** (1) The Authority may, from time to time, following a public consultation, issue such directions or make such regulations to promote financial stability concerning any financial institution or class of financial institutions as the Authority considers necessary for – a) the management of technology risks, including cyber security risks; b) the safe and sound use of technology to deliver financial services; and c) safe and sound use of technology to protect data. (2) A financial institution which fails to comply with a direction issued to it under subsection (1) or contravenes any regulation made under subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $1 million and, in the case of a continuing offence, to a further fine of $100,000 for every day or part of a day during which the offence continues after conviction. (3) In this section, "financial institution" has the same meaning as in [section 27A(6) read with section 27A(7) of the MAS Act].
27.	R3	**Question 3: MAS seeks comments on the proposal to be able to prohibit a person who is not fit and proper from engaging in the following four**

		specified functions in addition to regulated activities under the SFA, FAA and IA: **(a) Handling of funds, including safeguarding or administration of a digital payment token or digital payment token instrument;** **(b) Risk-taking;** **(c) Risk management and control; and** **(d) Critical system administration.** The four specified functions are crucial to the integrity of financial markets and, therefore, only persons who are fit and proper should be permitted to engage in them. MAS's added regulatory oversight helps to ensure trust and integrity in Singapore's financial industry which further supports its growth and development. This in turn also benefits all companies in the financial ecosystem enabling them to operate seamlessly. **Question 4: MAS seeks comments on the proposal to be able to prescribe additional specified functions in subsidiary legislation, for the purpose of protecting trust or deterring misconduct in the financial industry.** We believe that it is important for MAS to be able to take action to respond swiftly as the financial industry develops and new risks emerge. This will help to ensure that as the financial sector evolves, MAS can continue to adapt to new potential risks as they arise. Therefore, we do support MAS having the ability to prescribe additional functions in subsidiary legislation, but emphasize that such power should be exercised reasonably and exclusively for the purpose of maintaining market integrity, which includes consumer protection. **Question 5: MAS seeks comments on the proposal to introduce a regulatory regime for entities created in Singapore that carry on a business of providing VA activities outside of Singapore.** Virtual assets and related financial services have the potential to spur financial innovation and efficiency and improve financial inclusion, but some also create new opportunities for criminals and terrorists to launder their proceeds or finance their illicit activities. Without proper regulation, virtual assets risk becoming a safe haven for the financial transactions of criminals and terrorists. The Financial Action Task Force (FATF) has established that there is significant money laundering and terrorism financing risk associated with virtual assets.

		Transactions are instant, non-face-to-face, cross jurisdictional and largely anonymous hence there was the need to bring them within the scope of regulation. Through FATF's efforts in closely monitoring the developments in the crypto sphere, countries have started to regulate the virtual asset sector, with some limiting virtual asset activities. However, the majority of countries have not taken any action as yet. These gaps in the global regulatory system have created significant opportunities for criminals and terrorists to commit abuse. International cooperation between supervising jurisdictions is critical. Countries should have in place relevant channels for sharing information as appropriate to support the identification and sanctioning of unlicensed or unregistered virtual asset service providers. However, we also need to recognize that many of the key players in virtual asset markets remain outside of the scope of EU's 5th Anti-Money Laundering Directive, leaving blind spots in the fight against money laundering, terrorist financing and tax evasion. Therefore, R3 agrees with MAS's proposal to introduce a regulatory regime for entities created in Singapore providing virtual asset (VA) activities outside of Singapore, as this will ensure added transparency of virtual asset transactions and keep funds with links to crime and terrorism out of the crypto sphere. Today, many virtual asset service providers are perceived as 'risky business' and denied access to bank accounts and other regular financial services. Though this regulatory regime could start out as challenging for the sector, it will ultimately increase trust and allow virtual assets to evolve as a robust and viable means to transfer value. We also believe that a strong rule of law in Singapore will provide legal certainty and comfort for transactions undertaken in virtual assets. Corda is a permissioned platform, which mitigates AML/CFT risk by disallowing anonymity. As such, the owners of data are known and receive data that each has the right to see, facilitating compliance with applicable regulations **Question 6: MAS seeks comments on the proposed definition of DTs as set out in section 2(1) of Annex C:** **(a) a digital payment token; or** **(b) a digital representation of a capital markets product which –** **(i) can be transferred, stored or traded electronically; and** **(ii) satisfies such other characteristics as MAS may prescribe;** **but does not include an excluded digital token.** We note that MAS is proposing to define DTs in the same manner as defined by the FATF especially since MAS is adhering to FATF's standards on AML/CFT.

		A common set of terms enables regulators to apply regulation consistently across jurisdictions and limits regulatory arbitrage for market participants, while providing certainty and consistency. However, it is important to emphasise that a definition and resulting regulatory regime should not create a scenario in which the same instrument in digital form is subject to heightened regulation from when it is in traditional form. Also, it is important to ensure that there is no regulatory confusion created by the development of a second and potentially overlapping regime for some assets. **Question 7: MAS seeks comments on:** **(a) The scope of DT services, which are in line with the FATF Standards for VASPs;** **(b) Whether there are other DT services that should be captured;** **(c) Specifically whether there are advisory services provided by DT service providers, relating to the offer or sale of DTs that are used for payment purposes; and** **(d) Specifically whether there are fund management activities involving DTs.** DT services are a new sector in most jurisdictions and face significant AML/CFT risks. FATF has taken action and set standards to respond to the risk that legitimate services offered by DTs will be abused by criminals and terrorists to launder money and finance terrorist acts. The FATF also plays a central role in combating AML/CFT by setting global standards, assisting jurisdictions in implementing financial provisions of the United Nations Security Council resolutions on terrorism, and evaluating countries' abilities to prevent, detect, investigate and prosecute the financing of terrorism. However, the effective adherence and global implementation of these standards by all countries is what that will ensure virtual asset technologies and businesses continue to grow and innovate in a responsible way, and create a level playing field. It will prevent criminals or terrorists seeking out and exploiting jurisdictions with weak or no supervision. Therefore, we agree with MAS' adherence to the FATF Standards and using it as a basis to scope DT services. **Question 9: MAS seeks comments on our proposal to align proposed AML/CFT requirements to be imposed on DT service providers with the existing PS Notice 02 for DPT Service Providers, given the similar nature of ML/TF risks of both these activities.**

		Simplicity is key in designing frameworks. Layering additional regulation on top of already robust and effective frameworks would only complicate the industry and inhibit innovation with no resulting upside. Therefore, we believe that MAS' approach to align the proposed AML/CFT requirements to be imposed on DT service providers with the existing PS Notice 02 for DPT Service Providers, given the similar nature of ML/TF risks of both these activities, is the correct one, with the principle of 'same risk, same activity, same treatment' being one we whole heartedly support.
28.	RHTLaw Asia LLP, jointly with RHT Compliance Solutions Pte Ltd.	Respondent wishes to keep entire submission confidential.
29.	Schroder & Co. (Asia) Limited	**Question 1: MAS seeks comments on the proposal to be able to issue a prohibition order to any person.** Nil **Question 2: MAS seeks comments on the proposal to apply the fit and proper test as the sole ground for issuing a PO.** The elements used in the fit and proper test may not be entirely appropriate for the functions specified under question 3 below or para 2.10 (a)-(d). para 2.10 (a)-(d). para 2.10 (a)-(d). para 2.10 (a)-(d). Also, it is not apparent how the fit and proper test takes into account the severity of the misconduct and its impact on the financial industry. **Question 3: MAS seeks comments on the proposal to be able to prohibit a person who is not fit and proper from engaging in the following four specified functions in addition to regulated activities under the SFA, FAA and IA:** **(a) Handling of funds, including safeguarding or administration of a digital payment token or digital payment token instrument;** **(b) Risk-taking;** **(c) Risk management and control; and** **(d) Critical system administration.** 1. In relation to point b), it might be worth prescribing the functions as most functions would involve certain elements of risk taking. 2. How would the Fit and Proper be conducted by MAS (e.g. is it the expectation for Banks to report errors and breaches to MAS by staff of

		the above mentioned functions) and in what circumstances will MAS perform a Fit and Proper assessment on the persons falling within the above mentioned categories? 3. Unlike front line function, the incentive to flout rules and regulations are invariably less for supporting / control functions and by expanding the PO orders to the such other functions (specifically risk management and control functions), it may be perceived that the risks involved does not commensurate with the reward associated with the role. This may inadvertently have an undesired effect on the industry as people within those functions may be less open to new business initiatives, thereby by curtailing business growth and improvements in efficiency and also limiting the local pool of candidates willing to take up such roles. As such, it should be considered that such assessment be left to the Banks to make. **Question 4: MAS seeks comments on the proposal to be able to prescribe additional specified functions in subsidiary legislation, for the purpose of protecting trust or deterring misconduct in the financial industry.** Nil **Question 5: MAS seeks comments on the proposal to introduce a regulatory regime for entities created in Singapore that carry on a business of providing VA activities outside of Singapore.** Nil **Question 6: MAS seeks comments on the proposed definition of DTs as set out in section 2(1) of Annex C:** **(a) a digital payment token; or** **(b) a digital representation of a capital markets product which –** **(i) can be transferred, stored or traded electronically; and** **(ii) satisfies such other characteristics as MAS may prescribe;** **but does not include an excluded digital token.** Nil **Question 7: MAS seeks comments on:** **(a) The scope of DT services, which are in line with the FATF Standards for VASPs;** **(b) Whether there are other DT services that should be captured;** **(c) Specifically whether there are advisory services provided by DT service providers, relating to the offer or sale of DTs that are used for payment purposes; and**

		(d) Specifically whether there are fund management activities involving DTs. Nil **Question 8: MAS seeks comments on the proposed licensing and ongoing requirements to be imposed on DT service providers.** Nil **Question 9: MAS seeks comments on our proposal to align proposed AML/CFT requirements to be imposed on DT service providers with the existing PS Notice 02 for DPT Service Providers, given the similar nature of ML/TF risks of both these activities.** Nil **Question 10: MAS seeks comments on the proposed powers and the quantum of the maximum penalty for breaches.** Nil **Question 11: MAS seeks comments on the provision of statutory protection from liability to mediators, adjudicators and employees of an approved dispute resolution scheme operator.** Nil
30.	Schroder Investment Management (Singapore) Ltd	**Question 1: MAS seeks comments on the proposal to be able to issue a prohibition order to any person.** We note MAS' proposal to give itself new powers to be able to issue a PO against any person for a breach of the fit and proper criteria and would like to request for MAS' clarification on the following please: - Under the new proposal, how does MAS intend to monitor non-licensed employees for breaches of fit and proper criteria? - Does the firm have to report all breaches of fit and proper criteria to MAS for non-licensed employees, going forward? - Does the firm have the discretion to assess what needs to be reported based on our interpretation of the fit & proper criteria? - If an employee is issued with a PO, does that give the firm grounds to dismiss the employee or reassign the employee to other areas of responsibility? Or does the firm have discretion to decide on what is the appropriate outcome or is it directed by MAS?

		Question 2: MAS seeks comments on the proposal to apply the fit and proper test as the sole ground for issuing a PO. Please refer to comments in Question 1 above. **Question 3: MAS seeks comments on the proposal to be able to prohibit a person who is not fit and proper from engaging in the following four specified functions in addition to regulated activities under the SFA, FAA and IA:** **(a) Handling of funds, including safeguarding or administration of a digital payment token or digital payment token instrument;** **(b) Risk-taking;** **(c) Risk management and control; and** **(d) Critical system administration.** In terms of the four additional specified functions which MAS wants to include, we would like to request that MAS set out specific definitions to guide the industry. For example, does "Critical System Administration" include anyone that has some form of responsibility for the FI's HR or Trading system? This will help guide the industry on what roles the individual is allowed to be hired for, despite the PO in place. We would also like to clarify if the hiring of such individuals would require MAS' pre-approval. **Question 4: MAS seeks comments on the proposal to be able to prescribe additional specified functions in subsidiary legislation, for the purpose of protecting trust or deterring misconduct in the financial industry.** No comments. **Question 5: MAS seeks comments on the proposal to introduce a regulatory regime for entities created in Singapore that carry on a business of providing VA activities outside of Singapore.** No comments. **Question 6: MAS seeks comments on the proposed definition of DTs as set out in section 2(1) of Annex C:** **(a) a digital payment token; or** **(b) a digital representation of a capital markets product which –** **(i) can be transferred, stored or traded electronically; and** **(ii) satisfies such other characteristics as MAS may prescribe;** **but does not include an excluded digital token.**

		No comments. **Question 7: MAS seeks comments on:** **(a) The scope of DT services, which are in line with the FATF Standards for VASPs;** **(b) Whether there are other DT services that should be captured;** **(c) Specifically whether there are advisory services provided by DT service providers, relating to the offer or sale of DTs that are used for payment purposes; and** **(d) Specifically whether there are fund management activities involving DTs.** No comments. **Question 8: MAS seeks comments on the proposed licensing and ongoing requirements to be imposed on DT service providers.** No comments. **Question 9: MAS seeks comments on our proposal to align proposed AML/CFT requirements to be imposed on DT service providers with the existing PS Notice 02 for DPT Service Providers, given the similar nature of ML/TF risks of both these activities.** No comments. **Question 10: MAS seeks comments on the proposed powers and the quantum of the maximum penalty for breaches.** <u>On the proposed powers to issue directions or make regulations:</u> Technology that does not support a regulated activity may pose contagion cyber risks due to inter-linkages, hence the proposed powers to regulate such systems is appropriate. However we also recognise that there may be systems with no inter-linkage to systems supporting regulated activity, and that such systems would pose a lower risk to overall business operations. Hence we would suggest that MAS provides us with the flexibility to adopt a risk-based approach to the application of TRM requirements on such low-risk systems. <u>On the quantum of the maximum penalty breach:</u> Aligning penalties to those already specified in the Telecommunications Act and PDPA is appropriate.

		Question 11: MAS seeks comments on the provision of statutory protection from liability to mediators, adjudicators and employees of an approved dispute resolution scheme operator. No comments.
31.	Securities Association of Singapore	Respondent wishes to keep entire submission confidential.
32.	Simmons & Simmons JWS on behalf of the Singapore Cryptocurrency and Blockchain Industry Association	Respondent wishes to keep entire submission confidential.
33.	SingCash Pte Ltd, Telecom Equipment Pte Ltd, Singapore Telecommunications Ltd Singtel Mobile Singapore Pte Ltd (collectively, "Singtel")	**Question 1: MAS seeks comments on the proposal to be able to issue a prohibition order to any person.** Singtel is concerned that whilst the MAS should have the powers to issue POs, it is not clear how the MAS intends to determine whether a person is one that has contravened the Fit and Proper test. To be clear, we are not debating the merits of the Fit and Proper criteria. Singtel is concerned that the reference to "any person" to whom the MAS may issue a PO is very wide and not clear. See elaboration in response to Q3. We also note that the scope of persons may extend to Service Providers and the effect of the PO may be to prohibit an FI from engaging such persons and a fine of up to $100,000 (see para 3(4) Annex B). From a compliance angle, how would an FI know (apart from our own internal checks based on publicly available information) if we were engaging such a person? Would the MAS be providing a register? Based on the consultation paper publications of PO notifications appear discretionary (see pg 30 para 6 and para 8 pg 26). Secondly, if an existing Service Provider were issued a PO, and to avoid business disruption, we would need time to replace such Service Provider. We propose that where this does not jeopardise public security interests, there be a reasonable handover period to avoid such disruption. Same comment applies to a PO on an individual whose removal may cause severe service disruption (e.g. removal of individual employees of corporate agents under the Insurance Act).

		Question 2: MAS seeks comments on the proposal to apply the fit and proper test as the sole ground for issuing a PO. – **Question 3: MAS seeks comments on the proposal to be able to prohibit a person who is not fit and proper from engaging in the following four specified functions in addition to regulated activities under the SFA, FAA and IA:** **(a) Handling of funds, including safeguarding or administration of a digital payment token or digital payment token instrument;** **(b) Risk-taking;** **(c) Risk management and control; and** **(d) Critical system administration.** Singtel refers the MAS to our response to Q1. Whilst we appreciate the MAS for drawing up the functions that would be covered under the PO, we note that there will be some grey areas. For example, handling of funds, in the way as defined, would prohibit even a minor clerical staff, who may be too junior to be subject to the Fit and Proper criteria. The same applies to less senior staff who are handling activities that fall within the definition of the relevant functions set out above. We propose that relevant persons here are only persons who are authorised to make the above decisions based on the relevant companies' authority matrix. In addition, MAS may wish to set out guidelines on this. **Question 4: MAS seeks comments on the proposal to be able to prescribe additional specified functions in subsidiary legislation, for the purpose of protecting trust or deterring misconduct in the financial industry.** – **Question 5: MAS seeks comments on the proposal to introduce a regulatory regime for entities created in Singapore that carry on a business of providing VA activities outside of Singapore.** – **Question 6: MAS seeks comments on the proposed definition of DTs as set out in section 2(1) of Annex C:** **(a) a digital payment token; or** **(b) a digital representation of a capital markets product which –** **(i) can be transferred, stored or traded electronically; and** **(ii) satisfies such other characteristics as MAS may prescribe;** **but does not include an excluded digital token.** – **Question 7: MAS seeks comments on:**

		(a) The scope of DT services, which are in line with the FATF Standards for VASPs; **(b) Whether there are other DT services that should be captured;** **(c) Specifically whether there are advisory services provided by DT service providers, relating to the offer or sale of DTs that are used for payment purposes; and** **(d) Specifically whether there are fund management activities involving DTs.** – **Question 8: MAS seeks comments on the proposed licensing and ongoing requirements to be imposed on DT service providers.** – **Question 9: MAS seeks comments on our proposal to align proposed AML/CFT requirements to be imposed on DT service providers with the existing PS Notice 02 for DPT Service Providers, given the similar nature of ML/TF risks of both these activities.** – **Question 10: MAS seeks comments on the proposed powers and the quantum of the maximum penalty for breaches.** Singtel notes that this relates to the MAS proposed powers to issue directions to or make regulations concerning any FI or class of FIs for the management of technology risks, including cyber security risks, the safe and sound use of technology to deliver financial services, and safe and sound use of technology to protect data and impose a maximum penalty of S$1M, with the draft legislative provisions for TRM in Annex D. Singtel/FIs request that the relevant new or updated TRM regulations be completed and made known to FIs first before MAS gazettes its new powers to issues directions under Annex D. This is to enable FIs to first know what their obligations are before considering MAS's new powers and fines to be imposed for breach. Singtel also notes MAS's wide power to impose requirements on FI's systems "irrespective of whether the system(s) supports a regulated activity", because such systems may "pose contagion cyber risk due to interlinkages. Clarity is sought on what the reference to FI Systems includes. If it includes systems that are already regulated by other authorities and legislature (e.g. Telecommunications Act and Cyber Security Act) we propose that MAS takes into account such other requirements to avoid an overlap and over regulation.

		Question 11: MAS seeks comments on the provision of statutory protection from liability to mediators, adjudicators and employees of an approved dispute resolution scheme operator. – **<u>Other comments</u>** Singtel notes that in the Annex F relating to Proposed Provisions on Inspection Powers, the MAS is proposing to assume inspection powers in relation to compliance by the financial institution as well as its subsidiary, branch, agency or office outside Singapore for the purpose of determining with the directions issued and the regulations made under [section in Annex D – relating to Proposed Provisions on Harmonised Power to Issue Directions or Make Regulations on Technology Risk Management. We refer the MAS to our response in Q10. Similarly, we would like to understand our TRM obligations before considering MAS's further rights to inspect etc.
34.	Sumitomo Mitsui Banking Corporation Singapore Branch	**General Comments** In relation to the proposed duty to use reasonable care to not provide false information to MAS, we would appreciate it if MAS could set out some of the factors that it would take into account in determining whether a bank can be said to have exercised reasonable care when providing information to MAS. **Question 1: MAS seeks comments on the proposal to be able to issue a prohibition order to any person.** In para 2.6 of the Consultation Paper, we note that MAS envisages that the scope of persons who may be issued with a prohibition order to also include the service providers of the financial institution (FI). In this regard, we would like to clarify if it would suffice for FIs to conduct due diligence checks on its service providers and rely on the service providers to conduct the relevant checks on its employees. **Question 2: MAS seeks comments on the proposal to apply the fit and proper test as the sole ground for issuing a PO.** NA **Question 3: MAS seeks comments on the proposal to be able to prohibit a person who is not fit and proper from engaging in the following four specified functions in addition to regulated activities under the SFA, FAA and IA:** **(a) Handling of funds, including safeguarding or administration of a digital payment token or digital payment token instrument;** **(b) Risk-taking;** **(c) Risk management and control; and** **(d) Critical system administration.**

		NA **Question 4: MAS seeks comments on the proposal to be able to prescribe additional specified functions in subsidiary legislation, for the purpose of protecting trust or deterring misconduct in the financial industry.** NA **Question 5: MAS seeks comments on the proposal to introduce a regulatory regime for entities created in Singapore that carry on a business of providing VA activities outside of Singapore.** NA **Question 6: MAS seeks comments on the proposed definition of DTs as set out in section 2(1) of Annex C:** **(a) a digital payment token; or** **(b) a digital representation of a capital markets product which –** **(i) can be transferred, stored or traded electronically; and** **(ii) satisfies such other characteristics as MAS may prescribe;** **but does not include an excluded digital token.** NA **Question 7: MAS seeks comments on:** **(a) The scope of DT services, which are in line with the FATF Standards for VASPs;** **(b) Whether there are other DT services that should be captured;** **(c) Specifically whether there are advisory services provided by DT service providers, relating to the offer or sale of DTs that are used for payment purposes; and** **(d) Specifically whether there are fund management activities involving DTs.** NA **Question 8: MAS seeks comments on the proposed licensing and ongoing requirements to be imposed on DT service providers.** NA **Question 9: MAS seeks comments on our proposal to align proposed AML/CFT requirements to be imposed on DT service providers with the existing PS Notice 02 for DPT Service Providers, given the similar nature of ML/TF risks of both these activities.** NA **Question 10: MAS seeks comments on the proposed powers and the quantum of the maximum penalty for breaches.**

		NA **Question 11: MAS seeks comments on the provision of statutory protection from liability to mediators, adjudicators and employees of an approved dispute resolution scheme operator.** NA
35.	Swiss Re Asia Pte. Ltd., and Swiss Re International SE Singapore Branch	**General comments.** Please see comments provided in questions below. **Question 1: MAS seeks comments on the proposal to be able to issue a prohibition order to any person.** • Current wording of proposed Section 2(1) under Annex B refers to "any person" being issued with a prohibition order (PO) and is not scoped to confine the person to whom the PO may be made against as (i) one who conducts the regulated activities under SFA, FAA and IA and to whom a PO may be issued; and (ii) those who carry out the expanded activities proposed i.e. a. Handling of funds, including safeguarding or administration of a digital payment token ("DPT") or digital payment token instrument; b. Risk-taking; c. Risk management and control; and d. Critical system administration Without such clarification, the wide reference to "any person" could refer to any employee within an FI who may not be in any such risk taking or risk management and control roles but by virtue of being employed by an FI that conducts regulated activities, could be caught under the currently proposed wording of section 2(1). Additionally, Section 2(1) refers to a PO issued to any person who is not a fit and proper person in accordance with Guidelines on Fit & Proper Criteria issued by the MAS. Following from the point raised above, if "any person" is not defined and scoped, this could mean that all employees of a FI may be subject to the fit and proper criteria. Currently, the MAS Guidelines on Fit and Proper Criteria is applicable to relevant persons in relation to the carrying out of regulated activity. We propose that MAS considers aligning the 'relevant persons' set out in the MAS Guidelines on Fit and Proper Criteria with the purpose of assessing whether a person ought to be issued with a PO. In this regard, we suggest that Section 2(1) be re-worded to refer to the relevant persons who are defined in the MAS Guidelines on Fit and Proper Criteria. Please also see response to questions 3 & 4.

		Question 2: MAS seeks comments on the proposal to apply the fit and proper test as the sole ground for issuing a PO. We propose that a more stringent measure be applied on the Fit & Proper criteria to support a PO being issued. The PO has far reaching consequences on an individual's livelihood, reputation and future professional career. Therefore, the instances of a PO being issued should be in exceptional circumstances where there has been gross personal misconduct on the part of the individual involving dishonesty and integrity lapses. The Fit & Proper criteria provides for circumstances where there have been instances of a warning being made against the individual. This suggests that notwithstanding any findings made against the individual, he/she has been given a further opportunity by virtue of a warning being issued (see Fit & Proper Criteria para 13 (k)). Under the Fit & Proper criteria, one criteria cited is where the individual has been subject to a complaint, but the outcome of the complaint may finally not reflect any misdoings on the part of the individual (see Fit & Proper Criteria para 13 (d)). There is also an instance cited in the Fit & Proper criteria where the individual may be subject to any civil judgement, which may not necessarily point to any personal misconduct (see Fit & Proper Criteria para 13 (g)). The Fit & Proper criteria also includes circumstances in which an individual has been a director, partner or substantial shareholder in a business that has gone into liquidation or insolvency which also may not be due to any personal misconduct on the part of the individual (see Fit & Proper Criteria para 13 (o)(iii)). Given the above, its our view that the criteria for issuing a PO should not be just based on the Fit & Proper criteria which is widely worded and may not be attributable to a personal misconduct on the part of the individual. Instead the PO should be restricted to circumstances under such criteria which is attributable to gross personal misconduct on the part of the individual. This threshold should commensurate with the far reaching consequence of a PO being issued to an individual. **Question 3: MAS seeks comments on the proposal to be able to prohibit a person who is not fit and proper from engaging in the following four specified functions in addition to regulated activities under the SFA, FAA and IA:**

		(a) Handling of funds, including safeguarding or administration of a digital payment token or digital payment token instrument; **(b) Risk-taking;** **(c) Risk management and control; and** **(d) Critical system administration.** "Risk-taking" is widely worded and would mean that every underwriter, for example, even with the lowest underwriting authority will be caught under the PO criteria. "Risk- management and control" is also too widely worded under the proposed Section 2(1) i.e. Annex B as it would mean for example that the entire risk management function, business functions that establish process controls will be caught under the PO. Establishment of processes and controls to ensure business efficiency as well as compliance with laws and regulations lies with different functions across the organization. There is no one function that is solely responsible for the development and implementation of policies and procedures for compliance of laws and regulations as it cuts across many functions such as business and operations, compliance, legal, IT as examples. Similarly, “critical system administration” is also widely worded to refer to the maintenance or operation of a critical system by persons granted privileged access to the system systems. Specified roles or decision-makers over such systems should be identified. The PO should be targeted at individuals who have the authority to take material decisions on behalf of the company and not pegged to functions. In this regard, we suggest that MAS consider prescribing specified roles under the definition of 'relevant persons' in the MAS Guidelines on Fit and Proper Criteria which would cover roles within an FI that have the authority to take material decisions on behalf of the FI and for which the fit & proper criteria would apply and accordingly a PO may be issued against such a relevant person in circumstances of gross personal misconduct. **Question 4: MAS seeks comments on the proposal to be able to prescribe additional specified functions in subsidiary legislation, for the purpose of protecting trust or deterring misconduct in the financial industry.** Please see responses provided above in Question 3. **Question 5: MAS seeks comments on the proposal to introduce a regulatory regime for entities created in Singapore that carry on a business of providing VA activities outside of Singapore.** No further comments.

		Question 6: MAS seeks comments on the proposed definition of DTs as set out in section 2(1) of Annex C: **(a) a digital payment token; or** **(b) a digital representation of a capital markets product which –** **(i) can be transferred, stored or traded electronically; and** **(ii) satisfies such other characteristics as MAS may prescribe;** **but does not include an excluded digital token.** No further comments. **Question 7: MAS seeks comments on:** **(a) The scope of DT services, which are in line with the FATF Standards for VASPs;** **(b) Whether there are other DT services that should be captured;** **(c) Specifically whether there are advisory services provided by DT service providers, relating to the offer or sale of DTs that are used for payment purposes; and** **(d) Specifically whether there are fund management activities involving DTs.** No further comments. **Question 8: MAS seeks comments on the proposed licensing and ongoing requirements to be imposed on DT service providers.** No further comments. **Question 9: MAS seeks comments on our proposal to align proposed AML/CFT requirements to be imposed on DT service providers with the existing PS Notice 02 for DPT Service Providers, given the similar nature of ML/TF risks of both these activities.** No further comments. **Question 10: MAS seeks comments on the proposed powers and the quantum of the maximum penalty for breaches.** a. Paragraph 4.3 of the CP : FIs like our Company has made significant investment and has adopted robust measures (e.g. physical/logical partitioning of networks, physical/logical access management) to prevent widespread of any IT compromise. It is recommended to provide examples of the type of connectivity IT systems have for 2 or more IT systems to be considered to have "inter-linkages". b. Paragraph 4.6 of the CP: Generally, the penalty should be aligned to the size of the FIs; for example, if the revenue of a FI is SGD$10m; a SGD$1m fine will be detrimental to the survival of the FI. It would be good to have more clarity on what makes up the composition framework in the next version of the consultation paper.

		Question 11: MAS seeks comments on the provision of statutory protection from liability to mediators, adjudicators and employees of an approved dispute resolution scheme operator. No further comments.
36.	Tokio Marine Life Insurance Singapore	**Question 1: MAS seeks comments on the proposal to be able to issue a prohibition order to any person.** TMLS agrees with the proposal to introduce a harmonised and expanded power to issue PO against any person, who is not fit and proper, to engage in regulated activities. This will reduce the risk of a person charged with misconduct to commit similar offences in another financial institution. **Question 2: MAS seeks comments on the proposal to apply the fit and proper test as the sole ground for issuing a PO.** TMLS agrees with the proposal as the fit and proper test is comprehensive in nature and should provide MAS with sufficient scope of coverage. **Question 3: MAS seeks comments on the proposal to be able to prohibit a person who is not fit and proper from engaging in the following four specified functions in addition to regulated activities under the SFA, FAA and IA:** **(a) Handling of funds, including safeguarding or administration of a digital payment token or digital payment token instrument;** **(b) Risk-taking;** **(c) Risk management and control; and** **(d) Critical system administration.** TMLS agrees with the proposal to expand the scope to include the above-mentioned specified functions, in addition to the regulated activities under the SFA, FAA and IA. TMLS also notes that the draft section 3(8) provides that a prohibition order would not have the effect of invalidating anything done by the person against whom it is issued. However, TMLS would like MAS to elaborate on its consideration and interpretation of "critical systems administration". As some systems may be outsourced for management and administration, this would imply that outsourced vendors of an FI would have to be subjected under this proposed Act. To facilitate easier checking by the entire industry, TMLS would like to suggest that MAS maintain a central database system for individuals issued with a PO. This would be similar to the RNF system, and access would be granted to FIs to perform the necessary checks, instead of relying on the published POs on MAS' website.

		Question 4: MAS seeks comments on the proposal to be able to prescribe additional specified functions in subsidiary legislation, for the purpose of protecting trust or deterring misconduct in the financial industry. TMLS agrees with the proposal to include prescription of additional specified functions in subsidiary legislation, for the purpose of protecting trust or deterring misconduct in the financial industry. **Question 5: MAS seeks comments on the proposal to introduce a regulatory regime for entities created in Singapore that carry on a business of providing VA activities outside of Singapore.** TMLS agrees with MAS' proposal to introduce a regulatory regime for entities created in Singapore that carry on a business of providing VA activities outside of Singapore to mitigate ML risks. **Question 6: MAS seeks comments on the proposed definition of DTs as set out in section 2(1) of Annex C:** **(a) a digital payment token; or** **(b) a digital representation of a capital markets product which –** **(i) can be transferred, stored or traded electronically; and** **(ii) satisfies such other characteristics as MAS may prescribe;** **but does not include an excluded digital token.** No comments. **Question 7: MAS seeks comments on:** **(a) The scope of DT services, which are in line with the FATF Standards for VASPs;** **(b) Whether there are other DT services that should be captured;** **(c) Specifically whether there are advisory services provided by DT service providers, relating to the offer or sale of DTs that are used for payment purposes; and** **(d) Specifically whether there are fund management activities involving DTs.** (a) No comments (b) No comments (c) At this juncture, "Digital Payment Token" (DPT) could fall under the scope of "any other product as may be prescribed" under the definition of "investment product" under FAA. TMLS would seek clarification from MAS if DPT would also be considered as an investment product under FAA. (d) There is an article published in 2019 on Portal Asset Management (boutique firm) announcing the launch of its first fund focused on cryptocurrency and blockchain assets for HNW individuals. More info:

		https://www.internationalinvestment.net/news/4006931/singapore-boutique-launches-cryptocurrency-fund-hnwis Although such fund management activities involving DTs may not gain popularity that quickly in the retail market, it is nonetheless logical for fund houses to adopt a more "easily acceptable" approach for the retail market should they wish to embark on fund management activities. This could possibly be through Exchange Traded Funds (ETFs). **Question 8: MAS seeks comments on the proposed licensing and ongoing requirements to be imposed on DT service providers.** No comments. **Question 9: MAS seeks comments on our proposal to align proposed AML/CFT requirements to be imposed on DT service providers with the existing PS Notice 02 for DPT Service Providers, given the similar nature of ML/TF risks of both these activities.** No comments. **Question 10: MAS seeks comments on the proposed powers and the quantum of the maximum penalty for breaches.** The proposed maximum penalty is consistent with powers granted to other regulators (such as the PDPC). However, the proposed subsection 1(c) under Annex D, when a data breach is involved, could result in a situation whereby a fine is imposed both by the PDPC, as well as MAS, for the same data breach. It would be worthwhile to clarify that subsection 1(c) is already under the jurisdiction of the PDPC and should be removed. It is further noted that MAS intends to use a composition framework to determine an appropriate penalty, which takes into account the severity of the breach. This would suggest the maximum penalty would be imposed only in exceptional cases. As there are varying degrees of compliance to the TRM Guidelines, TMLS would like to seek clarification from MAS in terms of its expectations vis-a-vis its issuance of directions or make such regulations under subsection 1(a) and 1(b) of Annex D. Will MAS, for example, provide further guidance and issue consultation papers to illustrate the expected norms and measures to be in place? **Question 11: MAS seeks comments on the provision of statutory protection from liability to mediators, adjudicators and employees of an approved dispute resolution scheme operator.** This would be consistent with the immunity afforded to judicial officers. However, financial institutions, unlike customers, are bound by FIDReC adjudications. There is thus an unequal position such that customers still have

		recourse to the Courts while financial institutions may not appeal a decision that in its view is manifestly unjust. Further, the draft subsection (6A) does not make it clear that, as stated in paragraph 5.3 of the Consultation Paper, wilful misconduct, negligence, fraud or corruption will not be covered. Another important ground that should be included as an exception would be apparent bias. TMLS proposes to include the words "Nothing in this section shall operate as a bar to liability in respect of wilful misconduct, negligence, fraud, corruption or apparent bias".
37.	WongPartnership LLP	**General Comments** We thank you for this opportunity to provide our feedback to the Consultation Paper. As a law firm, our views on the new Omnibus Act ("Omnibus Act") for the financial sector are formulated predominantly from a legal and regulatory perspective. Unless the context requires otherwise, all terms not defined in our comments below shall have the meaning ascribed to them in the Consultation Paper. **Question 1: MAS seeks comments on the proposal to be able to issue a prohibition order to any person.** In paragraphs 2.1 to 2.9 of the Consultation Paper, MAS proposes to introduce a general power to issue POs against any person, and applying the fit and proper test as the sole ground for issuing a PO. The draft legislative provisions for the proposed general power are set out in Annex B to the Consultation Paper. MAS' powers to issue POs are currently contained in: (a) s.101A of the SFA; (b) s.59 of the FAA; and (c) s.35V of the IA. We understand the proposed approach of having a provision in the Omnibus Act that gives MAS the power to issue POs as part of its enforcement powers in respect of all financial sectors that is currently subject to MAS' regulation (in contradistinction with the current approach of having discrete provisions in the separate legislations regulating the different financial sectors) and in that context, for MAS to be able to issue a PO "to any person" (instead of specific defined persons, as is presently the approach under s.101A of the SFA). **Question 2: MAS seeks comments on the proposal to apply the fit and proper test as the sole ground for issuing a PO.**

		Presently, each of the relevant sections in the SFA, FAA and IA relating to MAS' powers to issue POs, sets out specific grounds for the issuance of the same. For instance, s.35V(1)(b) of the IA sets out specific acts of misconduct (in sub-sections (i) to (vi)) which are grounds for MAS to issue a PO to prohibit any person from carrying on business as an insurance intermediary or from taking part, directly or indirectly, in the management of any insurance intermediary. We are supportive of rationalising the different grounds for issuing POs in respect of each regulated sector and using the fit and proper criteria (comprising the elements of (i) honesty, integrity and reputation; (ii) competence and capability; and (c) financial soundness) as the sole ground. While the question if a person is fit and proper is necessarily a fact specific inquiry, and to that extent, instances of misconduct that indicate that a person is not fit and proper may vary across the regulated sectors, the broad elements under the fit and proper criteria are suitable assessment criteria and also encapsulate the discrete grounds currently applied. We note that the UK also adopts the fitness and propriety test and the most important considerations in this assessment being the same elements of (i) honesty, integrity and reputation; (ii) competence and capability; and (c) financial soundness. (See s.56 of the UK Financial Services & Markets Act, and FIT 1.3.1(b) of the FCA Handbook.) **Question 3: MAS seeks comments on the proposal to be able to prohibit a person who is not fit and proper from engaging in the following four specified functions in addition to regulated activities under the SFA, FAA and IA:** **(a) Handling of funds, including safeguarding or administration of a digital payment token or digital payment token instrument;** **(b) Risk-taking;** **(c) Risk management and control; and** **(d) Critical system administration.** We have no comments on this proposal. We consider that the proposal raises primarily questions of public policy. **Question 4: MAS seeks comments on the proposal to be able to prescribe additional specified functions in subsidiary legislation, for the purpose of protecting trust or deterring misconduct in the financial industry.** We have no comments on this proposal. We consider that the proposal raises primarily questions of public policy. **Question 5: MAS seeks comments on the proposal to introduce a regulatory regime for entities created in Singapore that carry on a business of providing VA activities outside of Singapore.**

		We are supportive of MAS' proposal to regulate VASPs created in Singapore that carry on a business of providing VA activities outside of Singapore ("**foreign-facing VASPs**"). By aligning Singapore's AML/CFT regulations with the FATF Standards, MAS will play an important role in mitigating regulatory arbitrage and combating ML/TF risks globally. Given the anonymity, speed and cross border nature of VA activities, it is especially important for regulators around the world to align their AML/CFT regulations and ensure that every VASP will be regulated for ML/TF risks by at least one jurisdiction. One concern with this proposal is that a foreign-facing VASP could be subject to double regulation, if the foreign jurisdictions in which the foreign-facing VASP has operations or customers also regulate the VASP. This may escalate compliance costs for the VASP and could potentially subject the VASP to two or more sets of inconsistent or conflicting regulations. In this regard, MAS may wish to consider implementing a substituted compliance regime, whereby a foreign-facing VASP that is subject to regulation and supervision in a foreign jurisdiction with equivalent AML/CFT regulations, would be exempt from the licensing and other regulatory requirements under the Omnibus Act that would otherwise apply to it. **Question 6: MAS seeks comments on the proposed definition of DTs as set out in section 2(1) of Annex C:** **(a) a digital payment token; or** **(b) a digital representation of a capital markets product which –** **(i) can be transferred, stored or traded electronically; and** **(ii) satisfies such other characteristics as MAS may prescribe;** **but does not include an excluded digital token.** We have two points of clarification that we would like to seek from MAS. *First point of clarification – the phrase ""digital representation of a capital markets product …"" in the proposed definition of DT vs the characterisation approach described in the ICO Guide* We note from paragraph 2.2 of MAS' A Guide to Digital Token Offerings (last updated 26 May 2020) ("ICO Guide"), that "MAS will examine the *structure and characteristics of, including the rights attached to, a digital token* in determining if the digital token is a type of capital markets products under the SFA". Further, paragraph 2.3 of the ICO Guide sets out a non-exhaustive list of instances in which a digital token may constitute certain capital markets products – for example, a digital token may constitute a debenture, where "it *constitutes or evidences the indebtedness of the issuer of the digital token* in respect of any money that is or may be lent to the issuer by a token holder". Underpinning the characterisation approach described in paragraphs 2.2 and 2.3 of the ICO Guide appears to be a policy that if a digital token has

		characteristics and risks which are similar to a traditional capital markets product, MAS would like to regulate such digital token as if it is such traditional capital markets product. In light of this, we would like to seek MAS' clarification on how the phrase "*digital representation* of a capital markets product …" in the proposed definition of DT would gel with the characterisation approach described in the ICO Guide? We note that the use of the term "digital representation" is consistent with the definition of "virtual asset" under the FATF Standards. However, based on a literal reading, the term "digital representation" would not convey the characterisation approach described in the ICO Guide, in which MAS may regulate a digital token as if it is a traditional capital markets product if the digital token has a structure, characteristics and/or rights that are similar to such traditional capital markets product. Does MAS intend to adopt a different approach in determining whether a DT would constitute a capital markets product for purposes of the Omnibus Act? *Second point of clarification – definition of "virtual assets" under the FATF Standards and the regulatory treatment of commodity-linked DTs* From the Consultation Paper, we understand that MAS intends to align Singapore's AML/CFT regulation and supervision of VASPs with the enhanced Recommendation 15 of the FATF Standards. In this regard, we noticed that in the interpretive note to Recommendation 15, FATF suggested that in applying the FATF Recommendations, countries should consider VAs as, among others, "funds or other assets". "Funds or other assets", in turn, is defined under the FATF Standards to mean, among other things, any assets, including, but not limited to, financial assets, economic resources (including oil and other natural resources), property of every kind, whether tangible or intangible, movable or immovable, however, acquired. In other words, FATF contemplates that VAs have the potential to be characterised as a broad variety of assets. In particular, we would point out that a DT that represents a commodity, or is structured as a spot commodity contract (collectively, "**commodity-linked DTs**"), could fall within the ambit of VAs subject to Recommendation 15 of the FATF Standards. Further, if we employ the characterisation approach described in the ICO Guide to the application of the Commodity Trading Act (Chapter 48A of Singapore) ("**CTA**") to commodity-linked DTs, persons who deal in commodity-linked DTs could be subject to licensing requirements under the CTA. As MAS intends to align Singapore's AML/CFT regulation and supervision of VASPs with the enhanced Recommendation 15, we would like to seek MAS'

		clarification on the regulatory treatment of commodity-linked DTs. Does MAS intend to include commodity-linked DTs within the scope of DTs under the Omnibus Act, or work with Enterprise Singapore to amend the scope of the CTA so that it would regulate foreign-facing VASPs that deal in commodity-linked DTs for ML/TF risks? **Question 7: MAS seeks comments on:** **(a) The scope of DT services, which are in line with the FATF Standards for VASPs;** **(b) Whether there are other DT services that should be captured;** **(c) Specifically whether there are advisory services provided by DT service providers, relating to the offer or sale of DTs that are used for payment purposes; and** **(d) Specifically whether there are fund management activities involving DTs.** (a) *The scope of DT services, which are in line with the FATF standards for VASPs* We note that the DT services described in paragraph 1(a) to (f) of Part 1 of the First Schedule to the draft Omnibus Act track the revised definition of "digital payment token service" proposed by MAS in the Consultation Paper on the Payment Services Act 2019: Proposed Amendments to the Act, issued on 23 December 2019. However, in aligning the scope of DT services carried on by foreign-facing VASPs with the scope of DPT services under the Payment Services Act 2019 (No. 2 of 2019) ("**PSA**"), the Omnibus Act could end up having a wider regulatory ambit than the SFA in relation to DTs that constitute capital markets products ("**CMP-linked DTs**"). For example, if, in relation to CMP-linked DTs, a foreign-facing VASP provides the services described in paragraph 1(c) and (d) of Part 1 of the First Schedule to the draft Omnibus Act (i.e. accepting CMP-linked DTs for the purposes of transferring, or arranging for the transfer of, the CMP-linked DTs or arranging for the transmission of CMP-linked DTs (where the service provider does not come into possession of the DTs)), it would appear that the foreign-facing VASP would be subject to licensing requirements under the Omnibus Act. On the other hand, if, in relation to CMP-linked DTs, a VASP provides such services in Singapore, such services would not be regulated under the SFA. Similarly, if, in relation to CMP-linked DTs, a foreign-facing VASP provides the service described in paragraph 1(f) of Part 1 of the First Schedule to the draft Omnibus Act (i.e. safeguarding or administration of a CMP-linked DT or CMP-linked DT instrument, where the service provider has control over the CMP-

		linked DT or the CMP-linked DT associated with the CMP-linked DT instrument), it would appear that the foreign-facing VASP would be subject to licensing requirements under the Omnibus Act. On the other hand, if, in relation to CMP-linked DTs, a VASP provides such service in Singapore, such service may potentially fall within the scope of the regulated activity of "providing custodial services" under the SFA, but only in relation to "specified products" which is a subset of capital markets products. We would like to seek MAS' clarification on whether it is intentional for the Omnibus Act to have a wider regulatory ambit than the SFA with respect to CMP-linked DTs. (b) *Whether there are other DT services that should be captured* We have no specific comments on this sub-question, apart from our related query concerning the regulatory treatment of commodity-linked DTs. Please refer to our query raised in our response to question 6 above. (c) *Specifically whether there are advisory services provided by DT service providers, relating to the offer or sale of DTs that are used for payment purposes* We are aware of entities that provide advisory services to ICO issuers. It is possible that certain types of digital tokens offered by an ICO issuer will be used for payment and other purposes on a proposed blockchain. (d) *Specifically whether there are fund management activities involving DTs* Over the course of our work, we have come across fund managers whose fund management activities involved DTs or cryptocurrencies. One such fund manager managed a portfolio comprising, among other things, cryptocurrencies, where investments were made through digital tokens, crypto assets or fiat currencies. **Question 8: MAS seeks comments on the proposed licensing and ongoing requirements to be imposed on DT service providers.** We have no specific comments on the proposed licensing and ongoing requirements to be imposed on DT service providers, which we note are broadly aligned with those applicable to DPT service providers under the PSA. Such alignment seems sensible as both DPT and DT service providers would be primarily regulated for ML/TF risks, and the blockchain technology underpinning both DPTs and DTs would give rise to similar concerns with the anonymity, speed and cross border nature of DPT and DT transactions. Accordingly, we would expect the prudential and supervisory requirements applicable to DT service providers to be similar to those applicable to DPT service providers.

		Question 9: MAS seeks comments on our proposal to align proposed AML/CFT requirements to be imposed on DT service providers with the existing PS Notice 02 for DPT Service Providers, given the similar nature of ML/TF risks of both these activities. We agree with MAS' proposal to align the proposed AML/CFT requirements to be imposed on DT service providers with the existing PS Notice 02 for DPT service providers. As mentioned in our comment to Question 8, the blockchain technology underpinning both DPTs and DTs would give rise to similar ML/TF risks associated with DPT and DT transactions. Accordingly, it would be sensible for the AML/CFT requirements applicable to DT service providers to be aligned with those applicable to DPT service providers under the PS Notice 02. **Question 10: MAS seeks comments on the proposed powers and the quantum of the maximum penalty for breaches.** In paragraph 4 of the Consultation Paper, MAS proposes to introduce a general power to issue directions to or make regulations concerning any FI or class of FIs for the management of technology risks in relation to the FI's system(s) irrespective of whether the system(s) supports a regulated activity, including cyber security risks, the safe and sound use of technology to deliver financial services, and safe and sound use of technology to protect data. In this regard, MAS further proposes that the maximum penalty for breaches of regulations and notices (including the Notices on Technology Risk Management and Notices on Cyber Hygiene) issued be S$1 million. In principle, we agree with MAS's proposal to harmonise its power to impose requirements on technology risk management. However, we would like to highlight some concerns in respect of this proposal: (a) <u>Regulation of FI's System(s) not Supporting Regulated Activity</u> While we understand the need for MAS to introduce a general power to issue directions or make regulations for the management of technology risks concerning "inter-linked" FI system(s) supporting regulated services so as to allow MAS to adequately address any contagion cyber security risks to the system(s) supporting regulated services, the proposed general power does not differentiate between (i) FI's system(s) supporting regulated activities as well as "inter-linked" system(s) therewith; and (ii) FI's system(s) that are not "inter-linked" with the FI's system(s) supporting a regulated activity (i.e. "airgapped" systems). By extending the scope of MAS' powers to regulate such "air-gapped" systems, this may impose unnecessary compliance costs on the FIs to address any enhanced obligations in respect of these "air-gapped"

		systems, even though these "air-gapped" systems should pose minimal to no contagion cyber security risks to the FI's system(s) supporting regulated services. In particular, FIs ought to be given some flexibility on their own cybersecurity risk management strategy, and be given the option to structure their system(s) in such a manner so as to optimise cost-efficiency and minimise their cybersecurity risk, which may include "air-gapping" certain FI system(s) from the system(s) supporting a regulated activity. In this regard, FIs should not be unfairly prejudiced in respect of their preferred cybersecurity risk management strategy and be required to comply with enhanced compliance obligations even in respect of these "air-gapped" systems. MAS' approach towards such contagion cyber risks should be similarly aligned with other cybersecurity legislative frameworks such as the Cybersecurity Act 2018 (No. 9 of 2018) ("**Cybersecurity Act**"). In recognition of the same contagion cyber security risks, the Cybersecurity Act imposes obligations on owners of critical information infrastructure ("**CII Owners**") in respect of the designated critical information infrastructure ("**CII**") as well as any computer or computer system under the owner's control that is interconnected with or that communicates with the critical information infrastructure ("**Interconnected Systems**"). However, the Cybersecurity Act does not impose similar obligations on the CII Owners in respect of all of their other computer systems. For example, Section 14 of the Cybersecurity Act provides inter alia that the owner of a critical information infrastructure will only be required to establish mechanisms and processes to detect cybersecurity threats and incidents in respect of the CII as well as to notify the Commissioner of prescribed cybersecurity incidents and/or other types of cybersecurity incidents in respect of the CII as well as Interconnected Systems. Accordingly, we would respectfully submit that MAS should consider: (i) limiting the scope of MAS's proposed general powers and MAS's technology risk management framework to "regulated financial systems" (i.e. identified FI system(s) that support regulated activities) and computer or computer system under the owner's control that is interconnected with or that communicates with the "regulated financial systems". This balanced approach will ensure that MAS will be able to regulate FI's system(s) "inter-linked" with system(s) supporting regulated activities so as to minimise the contagion cyber security risks while ensuring that the same enhanced compliance obligations are not

		unnecessarily imposed on system(s) with no contagion cyber security risks to the system(s) supporting regulated activities; and (ii) adopting a risk-based approach in the technology risk management of FI's systems. In other words, the more onerous compliance obligations should only be imposed on the FI's system(s) which are determined to be more critical to the FI's operations and with higher cyber-risks. For example, under Regulation 6 of the Cybersecurity (Critical Information Infrastructure) Regulations 2018, a cybersecurity risk assessment will only need to be conducted in respect of CII and not the Interconnected Systems. (b) <u>Financial Penalties</u> While we note that the higher financial penalty of S$1 million was to ensure that the maximum penalty for breaches of the Notices on Technology Risk Management will be commensurate with the most serious types of breaches that can be committed by FIs, we would like to highlight the following: (i) given that three potential legislative frameworks that may potentially regulate the management of technology risks in respect of the FI's system(s) (i.e. (1) the newly proposed Omnibus Act and MAS' technology risks management framework in respect of the FI's system(s); (2) the Personal Data Protection Act 2012 (No. 26 of 2012) ("**<u>PDPA</u>**") in respect of the FI's collection, use or disclosure of personal data; and (3) the Cybersecurity Act in respect of the FI's CII (where applicable)), there are concerns over the increased financial penalty as well as the coherence of the penalty framework amongst the different legislative frameworks. In particular, the financial penalties for breaches of obligations under the Cybersecurity Act in respect of CIIs involved in the provision of essential services in Singapore is significantly lower than MAS's proposed increased financial penalty of S$1 million. For example, Section 15(8) of the Cybersecurity Act provides that any CII owner who, without reasonable excuse, fails to notify the Commissioner of the occurrence of cybersecurity incidents as prescribed shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $100,000 or to imprisonment for a term not exceeding 2 years or to both. In addition, there is also a lack of clarity over how each of the different government agencies (i.e. MAS, the Cyber Security Agency of Singapore and the Personal Data Protection Commission) will be

		involved in dealing with the management of technology risks by FIs and the enforcement of the FIs' obligations under each of the different legislative frameworks. In particular, there are concerns that FIs may be unduly punished by various agencies under each of the respective legislative frameworks in respect of a single data breach; (ii) the proposed financial penalties do not differentiate between the different breaches of the FI's obligations under the new Omnibus Act and the technology risk management framework as well as the severity of the different breaches. By way of contrast, under the General Data Protection Regulation ("**GDPR**") regime, depending on the provisions of the GDPR which are breached, administrative fines range from 10,000,000 EUR or, in the case of an undertaking, up to 2% of the total worldwide annual turnover of the preceding financial year, whichever is higher to administrative fines up to 20,000,000 EUR, or in the case of an undertaking, up to 4 % of the total worldwide annual turnover of the preceding financial year, whichever is higher; and (iii) there is also a lack of clarity as to what are the relevant factors that MAS would consider in the imposition of the financial penalty under the new Omnibus Act and the technology risk management framework. Accordingly, we would respectfully submit that MAS may consider *inter alia:* (i) reformulating the increased financial penalty to be capped in a tiered fashion, depending on the severity of the relevant FI's breach of its obligations under the new Omnibus Act and the technology risk management framework (ii) introduce other enforcement options in lieu of financial penalties, such as voluntary undertakings so as to provide MAS with more enforcement flexibility when dealing with less severe breaches; and (iii) issuing guidelines to clarify (1) what will constitute a breach of the new Omnibus Act and the technology risk management framework so as to attract financial penalties; (2) MAS's enforcement approach vis-à-vis the Cyber Security Agency of Singapore and the Personal Data Protection Commission for the management of technology risks by FIs under the new proposed Omnibus Act, the PDPA and the Cybersecurity Act (where applicable); and (3) what are the relevant factors that MAS will take into consideration in meting out the financial penalties.

		Question 11: MAS seeks comments on the provision of statutory protection from liability to mediators, adjudicators and employees of an approved dispute resolution scheme operator. The proposed scope of the statutory protection is set out in Annex E to the Consultation Paper. It extends to acts done or omitted to be done "*with reasonable care and in good faith in the course of or in connection with any mediation or adjudication of a dispute under the approved dispute resolution scheme*". We are supportive of the proposed provision, which we consider strikes the right balance in protecting members of the public as well as mediators, adjudicators and employees of an approved dispute resolution scheme operator who have properly discharged their functions.
38.	Respondent 1	**Question 3: MAS seeks comments on the proposal to be able to prohibit a person who is not fit and proper from engaging in the following four specified functions in addition to regulated activities under the SFA, FAA and IA:** **(a) Handling of funds, including safeguarding or administration of a digital payment token or digital payment token instrument;** **(b) Risk-taking;** **(c) Risk management and control; and** **(d) Critical system administration.** Prohibition Orders (PO) – Section 2.7 and 2.10 • Is the issuance of a PO limited to only an individual or entity in Singapore or could there be instances where the PO could be extended to individuals or service providers located overseas but also responsible in the risk management and control as well as management of critical system administration in Singapore as part of the company's global approach? • For individuals in the capacity of risk management and control, would that entail the risk management governance function, risk owners, control owners and control performers whether based in Singapore or overseas?
39.	Respondent 2	**Question 1: MAS seeks comments on the proposal to be able to issue a prohibition order to any person.** No comments. **Question 2: MAS seeks comments on the proposal to apply the fit and proper test as the sole ground for issuing a PO.** No comments.

		Question 3: MAS seeks comments on the proposal to be able to prohibit a person who is not fit and proper from engaging in the following four specified functions in addition to regulated activities under the SFA, FAA and IA: **(a) Handling of funds, including safeguarding or administration of a digital payment token or digital payment token instrument;** **(b) Risk-taking;** **(c) Risk management and control; and** **(d) Critical system administration.** No comments. **Question 4: MAS seeks comments on the proposal to be able to prescribe additional specified functions in subsidiary legislation, for the purpose of protecting trust or deterring misconduct in the financial industry.** No comments. **Question 5: MAS seeks comments on the proposal to introduce a regulatory regime for entities created in Singapore that carry on a business of providing VA activities outside of Singapore.** We support MAS' proposal of requiring entities that are incorporated in Singapore which are carrying on a business of providing VA activities outside of Singapore to be regulated. The danger, as MAS has already identified, is regulatory arbitrage which might ultimately sully the reputation of MAS. However, the scope of the Omnibus Act, as currently drafted, does not take into consideration situations where the Singapore entity is only the latest entity of a VASP with existing global operations. The regulatory arbitrage risk is the same. In fact, the risk is higher because these existing VASPs already has more established operations outside of Singapore (including countries like Uganda, Ukraine, Nigeria, Venezuela etc.) and they are looking to be licensed in Singapore so that they can promote themselves globally as a "MAS licensed" entity. In this case, the scope of the Omnibus Act will not cover the VASP global operations because its Singapore entity does not "carry on a business of providing VA activities outside of Singapore". This is a reverse form of regulatory arbitrage. For example, a VASP in incorporated in Seychelles has operations in China, Uganda and Mexico. It incorporates a Singapore subsidiary that is licensed under PS Act. The Singapore subsidiary only serves Singapore customers. The VASP promotes itself globally as a "MAS licensed" entity, which is technically

		correct. Its customers in China, who are less regulatory sophisticated, might be gaslighted into believing that its Chinese operations follows the MAS standards. A cunning VASP will "right size" or even operate its Singapore entity at a loss to obtain and maintain its PS Act license because it knows that it can leverage on the MAS name to make its profits elsewhere. This could similarly happen with an Omnibus Act licensee, where the lines of demarcation are blurred between it and its overseas related and affiliated entities under common control. A VASP with existing global operations have subsidiaries and/or related companies so closely interconnected that it is difficult to distinguish the SG licensee under the Omnibus Act from other activities conducted within the group. To ensure that the VASP cannot leverage on MAS name for its extraneous global operations and stop this form of reverse regulatory arbitrage, we propose that the definition of "person" in Section 4(5) be expanded to include (i) Singapore licensee that has common directors and/or controllers of the VASP that has overseas operations via other non-Singapore entities; (ii) Singapore licensee is a franchisee of the VASP that has overseas operations via other non-Singapore entities; (iii) the Singapore licensee that uses or licenses the same "brand name" or "business name" of the VASP that has overseas operations; (iv) the Singapore licensee has full or partial access to the VASP's global customer base for liquidity purposes; and (v) the Singapore licensee that uses or relies on or licenses the same back-end operations like order management system, trading engine, settlement facilities of the VASP that has overseas operations. Given the difficulty in delineating overseas operations of the Singapore licensee from those of its related companies outside Singapore, we propose that MAS require the overseas operations of the controlled group, its subsidiaries and related/affiliated companies be considered part of the scope of activities of the Singapore licensee under the Omnibus Act where the delineation cannot be practically ascertained and/or enforced, and follow the same requirements as PSN02, failing which the Singapore licensee should be divested 100% or independently operated, or have a different name from the global VASP, and to give a letter of representation to the MAS accordingly. In Section 4(3), there is an express exclusion for any person that is in the business of capital markets product regulated activity, which is defined in Section 4(5) to mean any "regulated activity" or "operating an organized market". The latter two are defined under the SFA. Does it mean that there will be exclusion if these activities are undertaken by persons licensed under

		SFA or the foreign jurisdiction equivalent of SFA? The drafting is not clear to us as to whether MAS is exempting DT entities dealing in capital mkt products which is covered by SFA or foreign jurisdiction equivalent of SFA. **<u>Regulate USDT for AML risk</u>** MAS has in December 2019 sought feedback on, amongst other, the regulation of stablecoins - whether the same regulatory protection as e-money should apply and the regulation to introduce to maintain the stability of the value of a stablecoin. We are of the view that more attention should be focused on regulating stablecoin for susceptibility to AML risk, particularly the USDT. USDT is used as a mean to bypass the traditional banking system. Many of the crypto exchanges that are unable to obtain banking services due to their heightened risk of being used in illicit activity, offer settlement in USDT. The use of USDT as a settlement currency provide high AML risks. Bad actors can effortlessly swap their illicit cash proceeds into USDT since there is no questions asked by Tether Foundation. The USDT can be used to buy or speculate in other cryptocurrencies as part of layering and then converted back into cash on exchanges. Bad actors using USDT can avoid the U.S. dollar sanction or another layer of AML/CFT control at bank if they deal in fiat currency. Stricter supervision and heighten regulation should apply on these cryptocurrency exchanges that that permit the use of USDT as settlement currency. The Tether foundation and Bitfinex exchange (which is the official issuer of USDT) generally perform lax customer due diligences and KYC oversight at the issuance. There has been little or no transactional monitoring on the intermediaries using USDT including at the redemption stage. Indeed, it is an open secret in the crypto industry that USDT is used as a settlement currency to "pump and dump" crypto currencies at little or no costs because the Tether foundation and Bitfinex would "issue" USDT for less than its notional value for use in such nefarious schemes in exchange for a cut of the profits. We propose that MAS requires cryptocurrency exchanges that permits the use of USDT should also be required to establish have AML compliance measures to monitor large volume of USDT activity and identify related high risk transactions on an ongoing basis. **<u>Regulate the use of USDT by PS Act licensee to avoid deceptive or misleading transactions</u>** Tether has widely publicised that USDT is pegged 1:1 to U.S. dollar whilst its common knowledge that USDT are not 100% backed by actual dollars. There

		is no professional audit of the reserves and therefore the credibility of the peg is questionable. That being the case, there is a risk that the cryptocurrency transactions are being trade or settled with less than the notional amount or even fraudulently. If MAS decides to permit the use of USDT as a settlement token by the PS Act licensees, we urge MAS to impose audit and fiat currency reserves requirement on the PS Act licensees to ensure that each USDT that is used is 1:1 backed by US dollars. We noted that in December 2019 the MAS has sought public consultation on the PS Act 2019: Scope of E-money and DPT, in particular the treatment of stablecoins. The public consultation closed on 28 January 2020 and the feedback as to whether stablecoins will be considered as Emoney or DPT is yet to be published. As discussed above, many VASPs or crypto exchanges are trading USDT or USDC stablecoins which purportedly have a 1:1 backing against the USD by the issuers but this is not proven, and regulations are not applied yet to ensure user protection and AML. We would suggest that the MAS confirm its interpretation of stablecoins and implement regulations accordingly, alongside the amendments to the PS Act and the roll out of the Omnibus Act. In our view, the private issuance of stablecoins by exchanges cannot represent an effective claim on the issuer, no matter how it represents that there is 1:1 backing, unless there is regulatory oversight and ensuing insurance cover. **Question 6: MAS seeks comments on the proposed definition of DTs as set out in section 2(1) of Annex C:** **(a) a digital payment token; or** **(b) a digital representation of a capital markets product which –** **(i) can be transferred, stored or traded electronically; and** **(ii) satisfies such other characteristics as MAS may prescribe;** **but does not include an excluded digital token.** No comments. **Question 7: MAS seeks comments on:** **(a) The scope of DT services, which are in line with the FATF Standards for VASPs;** **(b) Whether there are other DT services that should be captured;**

		(c) Specifically whether there are advisory services provided by DT service providers, relating to the offer or sale of DTs that are used for payment purposes; and **(d) Specifically whether there are fund management activities involving DTs.** No comments. **Question 8: MAS seeks comments on the proposed licensing and ongoing requirements to be imposed on DT service providers.** No comments. **Question 9: MAS seeks comments on our proposal to align proposed AML/CFT requirements to be imposed on DT service providers with the existing PS Notice 02 for DPT Service Providers, given the similar nature of ML/TF risks of both these activities.** Given the intent of MAS proposal is to mitigate money laundering and terrorism financing risks, the regulation and supervision under the proposed Omnibus Act should be as stringent as that of the Payment Services Act. Otherwise, a DT service provider regulated under the Omnibus Act can gain unfair regulatory advantage over DPT service provider regulated under Payment Services Act, notwithstanding both service providers are regulated by MAS. **Question 10: MAS seeks comments on the proposed powers and the quantum of the maximum penalty for breaches.** No comments. **Question 11: MAS seeks comments on the provision of statutory protection from liability to mediators, adjudicators and employees of an approved dispute resolution scheme operator.** No comments.
40.	Respondent 3	**Question 1: MAS seeks comments on the proposal to be able to issue a prohibition order to any person.** 1. The 'former participant' being referred here: a. Does it mean that MAS expect FIs to perform fit & proper due diligence with the individual's past employers? If yes, what is the expected time frame?

b. Does it mean that MAS may issue PO to individuals regarding their past employments? If yes, what is the expected time frame?

> 2.7 We envisage that persons who can cause harm would primarily be former, existing or prospective participants in the financial industry, including employees and service providers of FIs.

2. Would MAS be publishing the PO news to the public?

> (7) The Authority shall keep, in such form as it thinks fit, records on persons against whom prohibition orders are made under this section.
>
> (8) The Authority may publish the records referred to in subsection (7), or any part of them, in such manner as the Authority considers appropriate.

Question 2: MAS seeks comments on the proposal to apply the fit and proper test as the sole ground for issuing a PO.

1. If MAS intend to apply fit and proper test as the sole ground for issuing a PO, does it mean that FI need to also apply fit & proper test when hiring staff, including junior level staff? (Currently the MAS Guidelines on Fit and Proper Criteria is applicable to 'relevant person' as defined by MAS in the Guidelines).
2. In addition, does MAS require FIs to perform regular monitoring or implement regular declaration by staff to ensure they are fit and proper, similar to that performed for directors?

Question 3: MAS seeks comments on the proposal to be able to prohibit a person who is not fit and proper from engaging in the following four specified functions in addition to regulated activities under the SFA, FAA and IA:

(a) Handling of funds, including safeguarding or administration of a digital payment token or digital payment token instrument;
(b) Risk-taking;
(c) Risk management and control; and
(d) Critical system administration.

1. Does MAS require FIs to seek MAS approval before hiring staff to perform the four specified functions?

Question 4: MAS seeks comments on the proposal to be able to prescribe additional specified functions in subsidiary legislation, for the purpose of protecting trust or deterring misconduct in the financial industry.

No comment.

		Question 5: MAS seeks comments on the proposal to introduce a regulatory regime for entities created in Singapore that carry on a business of providing VA activities outside of Singapore. No comment. **Question 6: MAS seeks comments on the proposed definition of DTs as set out in section 2(1) of Annex C:** **(a) a digital payment token; or** **(b) a digital representation of a capital markets product which –** **(i) can be transferred, stored or traded electronically; and** **(ii) satisfies such other characteristics as MAS may prescribe;** **but does not include an excluded digital token.** No comment. **Question 7: MAS seeks comments on:** **(a) The scope of DT services, which are in line with the FATF Standards for VASPs;** **(b) Whether there are other DT services that should be captured;** **(c) Specifically whether there are advisory services provided by DT service providers, relating to the offer or sale of DTs that are used for payment purposes; and** **(d) Specifically whether there are fund management activities involving DTs.** No comment. **Question 8: MAS seeks comments on the proposed licensing and ongoing requirements to be imposed on DT service providers.** No comment. **Question 9: MAS seeks comments on our proposal to align proposed AML/CFT requirements to be imposed on DT service providers with the existing PS Notice 02 for DPT Service Providers, given the similar nature of ML/TF risks of both these activities.** No comment. **Question 10: MAS seeks comments on the proposed powers and the quantum of the maximum penalty for breaches.** 1. Suggest MAS to include clarity on what kind of technology breaches that will warrant penalties by MAS. **Question 11: MAS seeks comments on the provision of statutory protection from liability to mediators, adjudicators and employees of an approved dispute resolution scheme operator.** No comment.

41.	Respondent 4	**General comments:** No comments. **Question 1: MAS seeks comments on the proposal to be able to issue a prohibition order to any person.** In principle, we agree that MAS should have the ability to issue a prohibition order (PO) to any person. While financial institutions (FIs) will comply with POs issued, the primary onus of compliance should lie with persons who are the subject of the POs. In this regard and in light of the added specified functions that MAS wishes to include in the scope of prohibitions under the POs in this Consultation Paper, we anticipate that the [Redacted] may find it challenging to comply with the PO in the following circumstances: FIs have no control over who its service providers employ. While FIs may incorporate these requirements in their contracts with service providers, would use of a service provider who has person (A) in its employ (unknown to the financial institution) result in the FI being in breach of section 3(2) read with section 3(4) of Annex B? This is because the FI may plausibly be seen to have entered into an arrangement to use A's service indirectly. May we request that the mens rea of knowledge be incorporated within section 3(2) of Annex B insofar as use of service providers are concerned? **Question 2: MAS seeks comments on the proposal to apply the fit and proper test as the sole ground for issuing a PO.** The [Redacted] is supportive of a consistent test being applied across all FI with regards to the issuance of a PO. • We propose that objective/quantifiable factors within the scope of fit and proper criteria be considered for purpose of issuing a prohibition order (PO). • We also seek MAS' clarification as to whether MAS would place reliance on a financial institution (FI)'s internal investigations outcome and decision for purpose of assessing whether a PO will be issued. **Question 3: MAS seeks comments on the proposal to be able to prohibit a person who is not fit and proper from engaging in the following four specified functions in addition to regulated activities under the SFA, FAA and IA:** **(a) Handling of funds, including safeguarding or administration of a digital payment token or digital payment token instrument;**

		(b) Risk-taking; **(c) Risk management and control; and** **(d) Critical system administration.** • We seek MAS' clarifications on examples of activities that may be subject to prohibition orders under "Critical system administrator", given that such activities tend to be operational in nature. • We seek MAS' clarification as to whether and how the proposed regime would apply to senior manages and material risk takers under the proposed MAS Guidelines on Individual Accountability and Conduct. **Question 4: MAS seeks comments on the proposal to be able to prescribe additional specified functions in subsidiary legislation, for the purpose of protecting trust or deterring misconduct in the financial industry.** While the [Redacted] is supportive of the ability of MAS to act swiftly by prescribing additional specified functions in subsidiary legislation, the sole criteria of "for the purpose of protecting trust or deterring misconduct in the financial industry" used in the proposed definition of "relevant function" in section 1 of Annex B is very wide. We propose MAS consider using "any other function, subject to existing regulatory oversight, critical to the integrity and functioning of the financial institution which the Authority may prescribe" instead. This would be in line with MAS' explanation in the consultation with respect to designating the other four specified functions. **Question 5: MAS seeks comments on the proposal to introduce a regulatory regime for entities created in Singapore that carry on a business of providing VA activities outside of Singapore.** No comments. **Question 6: MAS seeks comments on the proposed definition of DTs as set out in section 2(1) of Annex C:** **(a) a digital payment token; or** **(b) a digital representation of a capital markets product which –** **(i) can be transferred, stored or traded electronically; and** **(ii) satisfies such other characteristics as MAS may prescribe;** **but does not include an excluded digital token.** What is the intended coverage of "excluded digital token"? Will this be anything that is not covered by the definition of DTs i.e. where they are neither a digital payment token (DPT) or digital capital markets product token (DCMPT)?

		We would like to suggest that a more holistic and defined framework be established for the issuance and governance of asset-backed tokens for physical assets in the various sectors of the economy besides DPT and DCMPT. The definition of DTs could thus include asset-backed tokens which may be liquid or illiquid, and which may not be related to payments or capital markets products, and be more aligned to the FATF's broad definition of virtual assets as a "digital representation of value that can be digitally traded, or transferred, and can be used for payment or investment purposes". **Question 7: MAS seeks comments on:** **(a) The scope of DT services, which are in line with the FATF Standards for VASPs;** **(b) Whether there are other DT services that should be captured;** **(c) Specifically whether there are advisory services provided by DT service providers, relating to the offer or sale of DTs that are used for payment purposes; and** **(d) Specifically whether there are fund management activities involving DTs.** With reference to paragraph 3.12(e) under scope of DT services as extracted below: *(e) Safeguarding or administration of a DT or DT instrument, where the service provider has control over the DT or the DT associated with the DT instrument,* the scope may not have captured fund administration/ transfer agency services for tokenised funds, since point (e) requires the service provider to have control over the DT which would not be the case for fund administration/ transfer agency services. Only trustee or custodian would have control over the DT or DT instrument. The service of providing tokenisation through the use of blockchain and/ or smart contract technology etc for clients also does not seem to be captured within the scope DT services. Would such service providers be regulated as well? **Question 8: MAS seeks comments on the proposed licensing and ongoing requirements to be imposed on DT service providers.** In relation to paragraph 10(3) in Annex C, would there be challenges for the DT service providers to keep a record of all transactions at a permanent place of business, as transactions related to digital tokens would be recorded on a distributed ledger digitally, and it may not be uncommon for such providers to work from home as well.

		The following comments are not specifically related to the scope specified in this paper relating to activities carried out Singapore. They are more generic comments relating to the licensing and standards of service providers in general for consideration: • We would like to suggest segregation of duties across digital token providers. For instance, issuers of these tokens should not be the liquidity providers/exchange of such DTs. • Could we also suggest common standards be established for adherence by DT service providers to ensure some amount of interoperability of digital tokens issued across various platforms. There should not be a case of vendor lock-in or one institution having a significantly large market share, if such common standards/interoperability are not established. **Question 9: MAS seeks comments on our proposal to align proposed AML/CFT requirements to be imposed on DT service providers with the existing PS Notice 02 for DPT Service Providers, given the similar nature of ML/TF risks of both these activities.** No comments. **Question 10: MAS seeks comments on the proposed powers and the quantum of the maximum penalty for breaches.** We are supportive of the proposed powers but note that the quantum of the maximum penalty of S$1 million proposed for a breach is ten times that of the current maximum penalty of $100,000. In the case of a continuing offence, the further proposed fine of $100,000 for every day or part thereof during which the offence continues after conviction is also ten times that of the current $10,000. We respectfully request that the quantum of the maximum penalty for breaches be reconsidered in light of the current challenging environment that the industry is operating in. If MAS remains minded to proceed with the proposed penalty, could MAS list out the factors/guidelines that will be taken into consideration in determining the quantum of the fine to be imposed? A cyber incident may result in non-compliances in more than one Notices. For the purpose of computing the maximum penalty under the proposed Omnibus Act, we seek clarification whether the maximum penalty for an incident resulting in non-compliances under various Notices e.g. MAS Notice on Cyber Hygiene, MAS Notice on Technology Risk Management, etc. will be capped at S$1 million. Under such circumstances, would non-compliances with related Guidelines be taken into consideration, if any?

		Question 11: MAS seeks comments on the provision of statutory protection from liability to mediators, adjudicators and employees of an approved dispute resolution scheme operator. The [Redacted] is supportive of the provision of the statutory protection from liability conferred on mediators, adjudicators and employees of an approved dispute resolution scheme operator.
42.	Respondent 5	**General comments:** Nil. **Question 1: MAS seeks comments on the proposal to be able to issue a prohibition order to any person.** We are aligned with MAS' proposal to expand its power to issue a PO against any person who is not fit and proper to engage in regulated activities and identified roles and functions across the financial industry. Please clarify whether: 1. MAS would explicitly inform the relevant industry for which the PO will be applicable and not leave it for our interpretation. For example, if a PO is issued under Banking Act and needs to be applied to the Insurance Act or vice versa, will MAS inform all the insurance companies of the PO against an individual or an entity. 2. MAS would inform the relevant industry regarding the positions for which the PO is applicable for and accordingly the individual is prohibited from only those positions. **Question 2: MAS seeks comments on the proposal to apply the fit and proper test as the sole ground for issuing a PO.** We would like to seek the following clarifications: 1. The Fit and Proper criterion is applicable only to relevant persons in relation to the carrying out of any activity regulated by the MAS. So, does MAS intend to apply the Fit and Proper Criterion to any person working in the Financial Industry? And are we expecting changes to the Guidelines on Fit and Proper Criterion (FSG-G01) 2. While we are aligned for the use of Honesty, Integrity and reputation and Financial soundness as criterion for issuing a PO, but the criterion for Competency and Capability is more appropriate to assess the fitness of an individual for the role and responsibility it is considered for and hence we would request MAS to not use Competency and Capability as one of the criterion for ussing a PO.

		Question 3: MAS seeks comments on the proposal to be able to prohibit a person who is not fit and proper from engaging in the following four specified functions in addition to regulated activities under the SFA, FAA and IA: **(a) Handling of funds, including safeguarding or administration of a digital payment token or digital payment token instrument;** **(b) Risk-taking;** **(c) Risk management and control; and** **(d) Critical system administration.** MAS proposes to add specified functions such as risk management and control as well as critical system administration to the scope of prohibition under the POs. The scope is very wide. We propose that only those whose role will pose a high risk to these functions should be subject to the POs. We need clarification on the following: • Bullet a) we would need to understand whether this is restricted to only front counter staff and the contact centre staff who are liaising with the customers and collecting money or would this also include finance and collections team who manages the banking transactions and collection of funds through intermediaries? • Bullet b) whether this will be similar to the CMF/MRT defined under the proposed IAC Guidelines and hence each FI can apply the PO to such positions? • Bullet c) we would need to understand if there are no defined critical system in the organization how would this be applied to the FI? In relation to the inclusion of the four functions, would the scope also include offshore personnel that performs these duties? In cases where outsourcing is involved, can MAS clarify how these assessments or prohibition orders would be implemented? With respect to "2.11 Each of these functions is critical to the integrity and functioning of FIs, and it is important that MAS is able to prohibit persons who are not fit and proper from performing these functions." Can MAS clarify the seniority involved in the assessment of the fit and proper of these persons? Would it be limited to the head of function/department or is expected to cover a wider pool across those functions? **Question 4: MAS seeks comments on the proposal to be able to prescribe additional specified functions in subsidiary legislation, for the purpose of protecting trust or deterring misconduct in the financial industry.** We have no comments.

		Question 5: MAS seeks comments on the proposal to introduce a regulatory regime for entities created in Singapore that carry on a business of providing VA activities outside of Singapore. Not applicable **Question 6: MAS seeks comments on the proposed definition of DTs as set out in section 2(1) of Annex C:** **(a) a digital payment token; or** **(b) a digital representation of a capital markets product which –** **(i) can be transferred, stored or traded electronically; and** **(ii) satisfies such other characteristics as MAS may prescribe;** **but does not include an excluded digital token.** Not applicable. **Question 7: MAS seeks comments on:** **(a) The scope of DT services, which are in line with the FATF Standards for VASPs;** **(b) Whether there are other DT services that should be captured;** **(c) Specifically whether there are advisory services provided by DT service providers, relating to the offer or sale of DTs that are used for payment purposes; and** **(d) Specifically whether there are fund management activities involving DTs.** No comments. **Question 8: MAS seeks comments on the proposed licensing and ongoing requirements to be imposed on DT service providers.** No comments. **Question 9: MAS seeks comments on our proposal to align proposed AML/CFT requirements to be imposed on DT service providers with the existing PS Notice 02 for DPT Service Providers, given the similar nature of ML/TF risks of both these activities.** No comments. **Question 10: MAS seeks comments on the proposed powers and the quantum of the maximum penalty for breaches.**

		In the case of continuing offence, a further fine of $100,000 per day will be imposed. We would like to clarify if a FI will be given sufficient time to comply with a direction from MAS. As the daily fine is significant, a FI should not be found in a position where it is not given sufficient time to meet the direction and a daily fine is imposed. If the non-compliance is not intentional, we would propose that no fine will be imposed. The proposal is for TRM requirements to be expanded to systems which may not support a regulated activity. It may be the case that all of [Redacted] systems support a regulated activity, in which case this particular section of the proposal on TRM requirements would not apply to [Redacted]. However, I would be grateful if we could have some confirmation on this point. The other part of this proposal on TRM requirements is that it gives the power to MAS to issue directions in relation to a breach of notices relating to technology risks, including a maximum financial penalty of $1 million. My comment to this would be to ask for clarification that where a breach potentially falls under the ambit of MAS proposed powers and the enforcement powers of other authorities (such as the PDPC), that the intention is for only one of the authorities to exercise its investigative and enforcement powers and that FIs would not be liable to enforcement action by 2 (or more) authorities for the same actions which potentially lead to a breach. **Question 11: MAS seeks comments on the provision of statutory protection from liability to mediators, adjudicators and employees of an approved dispute resolution scheme operator.** No comments.
43.	Respondent 6	**General comments:** Although this new overarching Act will make the regulatory structure more complicated, we welcome the streamlining and uniform regulation of financial regulations across different financial activities to the extent possible and adequate. Joint regulations prevent the occurrence of unintended preferential treatment due to non-aligned regulations. **Question 1: MAS seeks comments on the proposal to be able to issue a prohibition order to any person.** The prohibition order should only be issued against a person that has clear nexus to a financial institution, e.g. an employee, director, representative or shareholder of a financial institution or who is applying to become such. A

		person that is not connected to a financial institution should not be issued a prohibition order; e.g. any person becoming insolvent or committing an offence related to dishonesty outside the financial sector. Section 3(5) Draft Omnibus Act requires a person against whom the prohibition order is issued to inform its representatives and appointees. Where the prohibition order is issued against an entity, this information obligation is indispensable. In case of the person being an individual, the question however arises who the representatives and appointees are that need to be informed. **Question 2: MAS seeks comments on the proposal to apply the fit and proper test as the sole ground for issuing a PO.** Given the more severe consequences of a PO than the fit & proper assessment by a financial institution, namely the publication of the name, we advocate for higher thresholds for a PO than for fit & proper. The Omnibus Act itself should provide indications when the higher threshold is reached. Minor infringements that may put the fit & proper status in question, e.g. dismissal due to occasional use of personal email, should not necessarily result in a PO. Solvency problems should not result in general POs. Solvency problems may indicate that the person is not suitable for senior management or for risk management but may still be suitable for other positions. **Question 3: MAS seeks comments on the proposal to be able to prohibit a person who is not fit and proper from engaging in the following four specified functions in addition to regulated activities under the SFA, FAA and IA:** **(a) Handling of funds, including safeguarding or administration of a digital payment token or digital payment token instrument;** **(b) Risk-taking;** **(c) Risk management and control; and** **(d) Critical system administration.** We support MAS' initiative to extend the effect of POs across all financial services as well as to target specific activities for which the individual is not suitable. **Question 4: MAS seeks comments on the proposal to be able to prescribe additional specified functions in subsidiary legislation, for the purpose of protecting trust or deterring misconduct in the financial industry.**

		Financial services are constantly evolving, at a high pace in particular in fintech. We therefore support MAS' intention to be able to quickly subject critical positions to POs. **Question 5: MAS seeks comments on the proposal to introduce a regulatory regime for entities created in Singapore that carry on a business of providing VA activities outside of Singapore.** We support MAS initiative to subject entities in Singapore that carry on a business of providing VA activities outside of Singapore. As long as the company is registered in Singapore, there is a reputational risk for the financial centre Singapore. **Question 6: MAS seeks comments on the proposed definition of DTs as set out in section 2(1) of Annex C:** **(a) a digital payment token; or** **(b) a digital representation of a capital markets product which –** **(i) can be transferred, stored or traded electronically; and** **(ii) satisfies such other characteristics as MAS may prescribe;** **but does not include an excluded digital token.** Instead of creating a new definition for DTs, we advocate the alignment to existing definitions under Singapore laws and regulations. Moreover, the technology used or the form of record should not matter. A digital representation of a capital markets product should be subject to the same regulations as a capital markets product (plus additional factors regarding technology risk management). **Question 7: MAS seeks comments on:** **(a) The scope of DT services, which are in line with the FATF Standards for VASPs;** **(b) Whether there are other DT services that should be captured;** **(c) Specifically whether there are advisory services provided by DT service providers, relating to the offer or sale of DTs that are used for payment purposes; and** **(d) Specifically whether there are fund management activities involving DTs.** Instead of creating new types of regulated financial activities, we advocate the integration of DT services in the respective existing regulated financial activity. Again, the technology used in carrying out the activity should not matter (aside from technology risk management).

		Further, we advocate that an act carried out by an entity registered in Singapore is considered to be partially carried out in Singapore and will thus be subject to the SFA (sec. 339(1) SFA) where the activity is regulated in the SFA. The reach of other Acts could be expanded to align to this concept. In our view, fund management activities can involve DTs, namely where a PE or VC fund management company is allowed to custodise securities. The PE or VC fund could thus custodise the digital representation of the security. **Question 8: MAS seeks comments on the proposed licensing and ongoing requirements to be imposed on DT service providers.** We support MAS approach that the DT providers must meet minimum requirements focused on a meaningful presence in Singapore. We also support the notion that a provider that offers its services and carries out all operating activities exclusively outside Singapore is subject to lower requirements than a fully licenced entity in Singapore. However, we advocate that the same approach should be taken for all financial institutions. **Question 9: MAS seeks comments on our proposal to align proposed AML/CFT requirements to be imposed on DT service providers with the existing PS Notice 02 for DPT Service Providers, given the similar nature of ML/TF risks of both these activities.** Because DT service providers will carry out their activities in other jurisdictions, they should most of all be subject to the AML/CFT regulations of the respective jurisdictions. Nonetheless, because DT service providers are incorporated in Singapore and benefit of the reputation of the financial centre Singapore, that they also put at risk, they should be held to apply equivalent AML/CFT standards, e.g. regulations meeting FATF standards, with Singapore PS AML/CFT regulations as a fallback. **Question 10: MAS seeks comments on the proposed powers and the quantum of the maximum penalty for breaches.** We welcome the consolidation of MAS' powers to regulate technology risk management under the Omnibus Act. Technology risks are similar across the different financial activities and systems can be used for activities regulated by multiple Acts. While a penalty of SGD 1m can weigh very heavily on a small financial institution, it can be negligible to a large financial institution. We therefore

		advocate that the maximum penalty be measured as a multiple of the financial institution's revenues or profit. **Question 11: MAS seeks comments on the provision of statutory protection from liability to mediators, adjudicators and employees of an approved dispute resolution scheme operator.** We support the protection from liability to mediators, adjudicators and employees of an approved dispute resolution scheme operator.
44.	Respondent 7	**Question 1: MAS seeks comments on the proposal to be able to issue a prohibition order to any person.** No concerns from [*Redacted*]. **Question 2: MAS seeks comments on the proposal to apply the fit and proper test as the sole ground for issuing a PO.** No concerns from [*Redacted*]. **Question 3: MAS seeks comments on the proposal to be able to prohibit a person who is not fit and proper from engaging in the following four specified functions in addition to regulated activities under the SFA, FAA and IA:** **(a) Handling of funds, including safeguarding or administration of a digital payment token or digital payment token instrument;** **(b) Risk-taking;** **(c) Risk management and control; and** **(d) Critical system administration.** No concerns from [*Redacted*] for any of the above 4 roles. **Question 4: MAS seeks comments on the proposal to be able to prescribe additional specified functions in subsidiary legislation, for the purpose of protecting trust or deterring misconduct in the financial industry.** No concerns from [*Redacted*]. **Question 5: MAS seeks comments on the proposal to introduce a regulatory regime for entities created in Singapore that carry on a business of providing VA activities outside of Singapore.** No concerns from [*Redacted*].

		Question 6: MAS seeks comments on the proposed definition of DTs as set out in section 2(1) of Annex C: **(a) a digital payment token; or** **(b) a digital representation of a capital markets product which –** **(i) can be transferred, stored or traded electronically; and** **(ii) satisfies such other characteristics as MAS may prescribe;** **but does not include an excluded digital token.** No concerns from [*Redacted*] for any of the above provisions. **Question 7: MAS seeks comments on:** **(a) The scope of DT services, which are in line with the FATF Standards for VASPs;** **(b) Whether there are other DT services that should be captured;** **(c) Specifically whether there are advisory services provided by DT service providers, relating to the offer or sale of DTs that are used for payment purposes; and** **(d) Specifically whether there are fund management activities involving DTs.** No concerns from [*Redacted*] for any of the above provisions. **Question 8: MAS seeks comments on the proposed licensing and ongoing requirements to be imposed on DT service providers.** No concerns from [*Redacted*]. **Question 9: MAS seeks comments on our proposal to align proposed AML/CFT requirements to be imposed on DT service providers with the existing PS Notice 02 for DPT Service Providers, given the similar nature of ML/TF risks of both these activities.** No concerns from [*Redacted*]. **Question 10: MAS seeks comments on the proposed powers and the quantum of the maximum penalty for breaches.** MAS proposes to "*impose TRM requirements on any FI or any class of FIs in relation to the FI's system(s), irrespective of whether the system(s) supports a regulated activity, we propose to introduce powers to issue directions or make regulations on TRM under the new Act.*" We acknowledge the highly-interconnected nature of security risk among systems, but the language here is very broad and could be interpreted to

		cover systems that are not related to regulated activities, relevant to our Singapore operations, and not located in Singapore facilities. The significant increase in fine is an adequate incentive for an FI to manage these systemic risks diligently. **Question 11: MAS seeks comments on the provision of statutory protection from liability to mediators, adjudicators and employees of an approved dispute resolution scheme operator.** No concerns from [*Redacted*].