RESPONSE TO FEEDBACK RECEIVED

May 2020

Proposed Regulatory Approach for Derivatives Contracts on Payment Tokens

Monetary Authority of Singapore

Contents

1 Preface

1.1 On 20 November 2019, MAS issued a consultation paper setting out its proposed regulatory approach under the Securities and Futures Act ("**SFA**") for derivatives contracts that reference payment tokens as underlying assets ("**Payment Token Derivatives**").

1.2 The consultation period closed on 20 December 2019. MAS would like to thank all respondents for their contributions. The list of respondents is enclosed as Annex A and the submissions are enclosed as Annex B.[1]

1.3 MAS has considered carefully the feedback received, and has incorporated them where appropriate. Comments that are of wider interest, together with MAS' responses, are set out below.

2 Regulatory Approach for Payment Token Derivatives under the SFA

2.1 Respondents were broadly supportive of MAS' proposed approach to regulate Payment Token Derivatives offered by an Approved Exchange (**"AE"**) and not to regulate Payment Token Derivatives offered by other entities (**"non-AE"** Payment Token Derivatives).

(a) Regulating Payment Token Derivatives offered by an Approved Exchange

2.2 A few respondents suggested that MAS should not regulate Payment Token Derivatives yet, as they considered that payment tokens have not proven to be successful in their intended purpose of functioning as a form of currency. Other respondents however suggested that MAS expand its regulatory ambit to also include non-AE Payment Token Derivatives, while imposing lighter regulatory requirements on these entities than those imposed on AEs.

MAS' Response

2.3 MAS agrees that Payment Token Derivatives *as a general asset class* are not yet suitable to be regulated. Payment tokens tend to exhibit high volatility and are intrinsically difficult to value and the same applies to Payment Token Derivatives. As the product is not suitable for retail investors, MAS reiterates its caution to investors of the risks of trading payment tokens and Payment Token Derivatives.

[1] Certain names and submissions have been omitted on request of confidentiality by the respondents.

2.4 Nevertheless, MAS will still regulate Payment Token Derivatives that are offered on an AE. AEs are systemically important trading facilities, and MAS views it important to have effective oversight over products offered on AEs due to its risk of contagion to the wider financial system.

2.5 At this point, MAS will not regulate non-AE Payment Token Derivatives. MAS is of the view that regulating Payment Token Derivatives offered by non-AE entities (including digital payment token service providers under the Payment Services Act[2] ("**PS Act**")) will confer misplaced confidence in such highly volatile products that could lead to a wider offering to retail investors. MAS also notes that retail participation in such products remains relatively low, and will continue to monitor developments in this area.

2.6 This calibrated approach also provides institutional investors a regulated alternative to gain exposure to the underlying assets, while the industry transforms and develops alternative products that may be suitable to a wider group of investors.

(b) Other regulatory clarifications

2.7 One respondent suggested that MAS have a recognition process for Payment Token Derivatives offered by overseas exchanges.

2.8 A few respondents also sought clarification on the regulatory requirements for custodising the underlying payment tokens of the Payment Token Derivatives.

2.9 A few respondents also suggested that MAS introduce investor protection measures in the spot payment token markets.

MAS' Response

2.10 MAS is of the view that while overseas exchanges are not prohibited by MAS from offering Payment Token Derivatives, such Payment Token Derivatives will not be regulated by MAS under the SFA.

2.11 MAS does not directly regulate the custody of payment tokens under the SFA. Nevertheless, where payment token custody services are provided in relation to AE

[2] The PS Act's requirements are right-sized to cover the risks posed by the payment activities of payment service providers. PS Act licensees therefore should not offer Payment Token Derivatives under its suite of activities as the risks associated with Payment Token Derivatives are not intended to be addressed by the PS Act.

Payment Token Derivatives, MAS will require that the AE be responsible for the appointment of the custodian and that the custodian be properly regulated.[3]

2.12 For the spot payment token markets, MAS regulates certain activities relating to "digital payment tokens" under the PS Act. The appropriate scope of regulatory requirements for such activities had previously been considered.[4] MAS had also issued a consultation paper[5] on 23 December 2019 which discussed, among other things, powers to impose user protection measures on certain digital payment token service providers, and will be responding to that consultation in due course.

3 Additional Measures for Retail Investors

3.1 Respondents were broadly supportive of MAS' additional measures for retail investors.

(a) Feedback on additional measures for products referencing Payment Tokens

3.2 Some respondents suggested that the additional measures, which include restrictions on advertising and the imposition of 1.5x minimum margin requirement for retail investors, may drive retail investors to unregulated entities and lead to a loss of competitiveness for SFA-regulated intermediaries offering Payment Token Derivatives.

3.3 Some respondents also suggested to allow SFA-regulated intermediaries offering Payment Token Derivatives to determine their own margin rates for non-retail investors, in accordance with their credit risk management policies.

MAS' Response

3.4 As highlighted in the consultation paper, MAS is of the view that Payment Token Derivatives are not suitable for most retail investors. As such, MAS has introduced additional measures for retail investors who trade Payment Token Derivatives with FIs regulated under the SFA. In addition, MAS discourages retail investors from trading with unregulated entities which could be fraudulent. Retail investors forgo the regulatory safeguards under the SFA when they trade with unregulated entities and do so at their own risk. MAS will continue to step up consumer education efforts (e.g. via MoneySENSE)

[3] This means that the custodian must be subject to similar regulation that a custodian of securities or other capital markets products is subject to.

[4] Consultation Paper on Proposed Payment Services Bill, 20 November 2017.

[5] Consultation on the Payment Services Act: Proposed Amendments to the Act.

to caution investors not only against the high risks of trading Payment Token Derivatives, but also against dealings with unregulated entities.

3.5 While SFA-regulated intermediaries are already required to have in place robust credit risk management policies, MAS is of the view that a prescribed baseline margin requirement is still necessary to prevent investors, particularly retail investors, from being overly leveraged and at the same time to institute a reasonable level of risk management for the FIs. Considering that non-retail investors are likely to have a greater financial capacity to withstand losses, the margin requirements applicable to non-retail investors are lower than those for retail investors.

3.6 MAS has also updated its FAQs on Licensing and Business Conduct (Other than for Fund Management Companies) to clarify various operational aspects of the additional measures.[6]

(b) Alternative suggestions

3.7 Some respondents suggested other alternative measures to reduce retail participation, such as:

(a) setting a high minimum investment amount for Payment Token Derivatives;

(b) allowing retail investors to trade Payment Token Derivatives only on a pre-funded basis, i.e. fully margined; and

(c) disallowing retail investors from trading Payment Token Derivatives.

MAS' Response

3.8 MAS has carefully considered these options, both prior to publishing the consultation paper and after having received feedback on these options. MAS considers that setting a high minimum investment amount could have the unintended consequence of pushing investors to allocate more money to Payment Token Derivatives in order to meet the minimum amount, which may lead to even larger investment losses.

3.9 As for the other two suggestions, while they are reasonable ones, they are also more heavy-handed than the ones MAS had proposed. At this point, MAS is of the view

[6] Please refer to Questions 52A, 71C, and 71D, which address the appropriate handling of additional margins, the requisite margin rates in the absence of comparable contracts on AEs, and the frequency at which to update margin rates, respectively.

that the additional measures MAS had introduced are sufficient to discourage retail investors from trading in Payment Token Derivatives, and commensurate with the current level of risks to retail investors.

3.10 MAS will continue to review the effectiveness and sufficiency of the measures, monitor industry developments and assess whether they should be supplemented or substituted by other options such as those suggested by the respondents.

4 Amendments to Subsidiary Legislation

4.1 Some respondents sought clarification on the difference between the definition of "payment token" and the definition of "digital payment token" under the PS Act.

4.2 Other respondents sought clarification on whether certain examples[7] were to be considered as "payment token" derivatives.

4.3 One respondent suggested MAS to include derivatives on other tokens such as utility tokens, and to publish a list of tokens for which the derivatives are within regulatory scope.

MAS' Response

4.4 As explained in the consultation paper, the proposed definition of "payment token" is for the purposes of the SFA, and does not affect the definitions of payment tokens or similar terms (if any) found in any other Acts.

4.5 A derivatives contract referencing a token which value is permanently fixed to one or more currencies is not considered a Payment Token Derivative, and thus not subject to the additional measures for retail investors. However, it is still a derivatives contract regulated[8] under the SFA.

4.6 In respect of utility tokens, MAS will look through to the underlying that these tokens represent. MAS will regulate the derivatives of such utility tokens under the SFA if

[7] Respondents referred to such examples as "derivatives on fiat-backed stablecoins" or "stablecoin derivatives".

[8] As it is a derivatives contract based on currency.

the tokens are within the scope of an underlying thing that currently attracts regulation under the SFA[9].

4.7 MAS does not consider it necessary to publish a list of regulated derivatives of tokens. This is in line with MAS' general stance of not endorsing specific products. Interested persons should make their own assessment as to whether their activities fall within regulatory scope and whether they are in compliance with regulatory requirements.

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[9] Any of the following –

(a) a unit in a collective investment scheme;

(b) a commodity;

(c) a financial instrument, i.e. any currency, currency index, interest rate, interest rate instrument, interest rate index, securities, securities index, a group or groups of such financial instruments;

(d) the credit of any person; or

(e) an underlying thing prescribed by MAS, i.e. intangible property in the case of a futures contract traded on an organised market established or operated by any approved exchange or recognised market operator.

Annex A

LIST OF RESPONDENTS TO THE CONSULTATION PAPER ON DRAFT REGULATIONS FOR MANDATORY TRADING OF DERIVATIVES CONTRACTS

1. Allen & Overy LLP, who requested confidentiality of submission
2. CFA Society Singapore
3. Clifford Chance Pte. Ltd., who requested confidentiality of submission
4. Diginex
5. DRW Singapore Pte. Ltd.
6. Ethikom Consultancy Private Limited
7. Eversheds Harry Elias, who requested confidentiality of submission
8. GAIN Capital Singapore Pte. Ltd.
9. ICE Futures Singapore, with Bakkt Trust Company LLC, who requested confidentiality of submission
10. Lex Futurus
11. NTUC Income Insurance Co-operative Limited
12. OANDA Asia Pacific Pte Ltd
13. Victor Looi Yi En, who requested confidentiality of submission
14. The World Federation of Exchanges
15. 2 respondents requested confidentiality of their identity
16. 5 respondents requested confidentiality of their identity and submission

Please refer to Annex B for the submissions.

Annex B

FULL SUBMISSIONS FROM RESPONDENTS TO THE CONSULTATION PAPER ON DRAFT REGULATIONS FOR MANDATORY TRADING OF DERIVATIVES CONTRACTS

Note: The table below only includes submissions for which respondents did not request confidentiality.

S/N	Respondent	Full Response from Respondent
2	CFA Society Singapore	**General comments:** The consensus amongst respondents from CFA Society Singapore members points to concerns on digital tokens as a form of payment. Although digital tokens are promising, concerns were raised on various fronts: 1) Digital tokens may be just hype. 2) Digital tokens may facilitate illegitimate businesses, fraud, crime and money laundering. 3) Credibility and integrity of the financial system may be compromised including a hit to the reputation of the financial sector due to various incidents such as stolen e-wallets, and the reasons cited in point #2. In view of the concerns raised above, we welcome MAS approach to proceed with caution on digital tokens and its derivatives. **Question 1:** There was a range of response - from expression of dismay on the possibility of indirectly legitimising digital coins as a form of payment despite them being a promising technology to growing acceptance of and interest in digital tokens. The market capitalisation of leading digital payment tokens is estimated to be in the billions of US$. As such, there is a possibility that trading volumes and open interest of successful futures product can be multiples of the primary spot market. However, if Digital Payment Token Derivatives were to be offered to retail investors, the 'Know Your Customer' step and process becomes even more important due to the risks associated with the product. The derivatives must be suitable for the retail investor. He or she must have the risk appetite and willingness to allocate a portion of funds to the derivatives. MAS should perhaps also limit

		the quantum of leverage offered to retail investors with regards to these derivatives including scrutinising the leverage offering requirements. In conclusion, we welcome the recognition that MAS needs to regulate digital coins and its derivatives due issues raised throughout this document - it is conceptually a good start. As one respondent puts it, "Having a regulatory framework will be important for the responsible and safe development of these products and ultimately benefit users and service providers in the future".
4	Diginex	**Question 1:** We welcome the fact that MAS has been proactive in providing a regulatory framework for Digital Payment Token derivatives. Currently, Diginex has no plans to apply for Approved Exchange status so these new regulations will have limited impact on our current business operations or short to medium term plans. However, similar to the desires of MAS, we are aligned in wanting to bring institutional investors to the digital asset market and the addition of further guidelines from such a regulator is a positive step forward. We believe DPT futures and options are a fundamental building block of an institutional grade asset class. Despite the inherent risks in certain trading options trading strategies a fully functioning derivatives market that allows for volatility based products owned by educated investors will, by the nature of gamma hedging, actually increase liquidity in, and eventually serve to reduce the volatility of, the underlying asset price. The paper currently intends to regulate derivatives related to DPTs under the scope of the SFA when traded on an AE, but to not prevent other venues from offering such products. We believe this approach would have the dual effect of adding some standards and rigidity to the market without the stifling of innovation that outright prohibition can often cause. Following a successful introduction of regulation on AE's we would be open to expansion of regulation to lower levels of trading venues, such as RMO's, subject to another public consultation period that we would participate in. Despite Diginex's trading venue option not falling under the jurisdiction of this proposed change we will proactively consider implementing many of the regulations that are being suggested in order to ensure that our levels of commitment to providing a sound marketplace for DPTs remain intact. Some examples of which would

		be to adhere to the leverage/margin requirements, but also to provide educational content for retail investors to ensure that they have the prerequisite knowledge and understanding of the products before trading. We also have no concerns providing additional risk warnings to retail investors but would like to understand further what restrictions on advertising the MAS is considering.
5	DRW Singapore Pte. Ltd.	**Question 1:** 1. As per Annex B, it is proposed to add "payment token" category under the definition of "underlying thing". **Q. Will the exemption from requirement to hold capital markets services licence to deal in capital markets products that are futures contracts, be applicable to derivative contracts on payment tokens? i.e. Will proprietary trading firms continue to be exempted from the requirement to hold a capital market service license for dealing in derivative contracts on payment tokens for its own account or an account belonging to and maintained wholly for the benefit of a related corporation or connected person?** 2. To reduce the amplification of losses experienced by retail investors, MAS' regulated financial institutions will have to collect from retail investors 1.5 times the standard amount of margin required for contracts offered by Approved Exchanges, subject to a floor of 50%. The margin requirement is proposed to be supplemented with other measures such as tailored risk warnings and restrictions on advertising. **Q. Does MAS propose to introduce a separate category/standards for 'professional investors" or "accredited investors" with the purpose of having more lighter and relaxed standards for this category of investors?** 3. MAS has received enquiries for payment token derivatives to be listed and traded on approved exchanges in Singapore. **Q. Will brokerage firms (who are currently licensed in Singapore under the category of Dealing in Capital Market Products that are futures contracts) be able to offer their services under their current license, for derivative contracts on payment tokens? Or will they require a separate license or qualification?** **Q. Can institutions licensed under the Payment Services Act trade these derivatives contracts on payment tokens?**

		Q. Are the derivatives contracts on payment tokens proposed to be cash settled futures (US CME style) or physical delivered futures (Bakkt/ErisX)?
6	Ethikom Consultancy Private Limited	**General comments:** We conducted a regulatory meetup on 9 December 2020 which was attended by 59 attendees from 48 companies (including representatives from cryptocurrency exchanges, Blockchain companies, financial institutions, compliance and risk professionals and RegTech firms). The submissions below summarize the comments we received. **Question 1:** The MAS CP's proposal is not regulate DPT derivatives for now (for non-approved exchanges), given that these products are not systemically significant and that most platforms are "generally ready to develop and adopt processes and controls that are sufficiently robust to ensure the reliability and efficiency of transactions" in DPT Derivatives." MAS had considered that DPT Derivatives as a general asset class are "not suitable to be legitimised and accorded a regulatory status at this point in time." There were mixed reactions from participants on such an approach. Some participants at the Meetup agree that regulatory oversight should not come in right at the outset, the other view is that MAS' messaging could, in a perverse manner, lead to "a race to the bottom" – as the messaging seems to be that regulations will not kick in until the industry is ready. • **We would suggest that MAS considers indicating a timeline within which regulations will be imposed – this will encourage the industry to level up and get itself ready for regulations.** Further, as DPT exchanges are set to be regulated with effect from January 28, 2020 with the commencement of the Payment Services Act, it would be anomalous if they are not required to be regulated for offering payment token derivatives (as the DPT activities will be regulated).

		• **We would also like to seek clarification from the MAS whether it will be putting in place consumer protection requirements for DPT exchanges and intermediaries going forward (the previous policy position was to focus on AML/CFT and TRM compliance, rather than consumer protection).** We also noted that the CP mentioned that guidelines offering DPT derivatives for retail investors will only apply to financial institutions conducting activities under the Securities and Futures Act, but, curiously, they won't apply to crypto exchanges. Crypto exchanges are more likely to be the ones to offer crypto derivatives rather than financial institutions. • **We seek clarification whether these guidelines will apply to DPT exchanges or other intermediaries.** • **A participant at the Meetup also asked if MAS intends to regulate the activities of clearing and settlement of DPT derivatives.** In the CP, MAS had deemed payment token derivatives to be unsuitable for retail investors. In relation to conventional investment products which are of higher risk, MAS has put in place a comprehensive regulatory framework for such specified investment products being offered to retail investors (e.g. the focus on product and customer suitability, products highlights sheet, special CMFAS modules for reps advising or dealing with such products, guidelines on advertising/marketing and customer knowledge assessment). • **While DPT derivatives are of higher risk, we seek clarification whether MAS intends to put a similar framework as the existing regime for specified investment products. SIPs could pose very high risk for retail investors (including elements of leverage). This may be a more balanced approach (in line with the disclosure-based regime that Singapore has) rather than to take a blanket view that these products are not suited for retail investors.**
8	GAIN Capital Singapore Pte. Ltd	**Question 1:** **<u>Comment 1</u>** Trading of Payment Token and its derivatives have indeed garnered interests from Singapore investors (retail and non-retail investors) in

		recent years. We welcome this timely Consultation Paper ("CP") and its proposals to safeguard the interests of Retail Investors trading in Payment-Token derivatives ("PTDs"). One of the proposals is that FIs will have to collect from Retail Investors 1.5 times the standard amount of margin required for contracts offered by Approved Exchanges ("1.5x margin requirement"), subject to a floor of 50%. For non-retail investors (Accredited Investors, Expert Investors & Institutional Investors), FIs should collect minimum margins for trading in over-the-counter PTDs which are at least equal to the standard margins required by Approved Exchanges for a comparable contract. As of now, ICE Singapore is the only Approved Exchange (out of four) that is launching Bitcoin Futures on 9 December 2019. This also means that FIs offering PTDs will have only one data source to monitor the margin rate to meet the regulatory requirements. It is not uncommon for Exchanges to delist its products due to commercial reasons. In the event that none of the Approved Exchanges are offering PTDs, how should FIs benchmark its margin rate? Unless more Approved Exchanges are planning to offer PTDs going forward, we are of the view that MAS should expand the listing i.e. to include established exchanges operating in Country or Territory in Group A Exchanges. MAS should be aware that we are operating in a borderless environment. Singapore investors, regardless retail or non-retail, have no restrictions in opening trading account to trade PTDs with foreign brokerages. Some of these brokerages that are incorporated or established outside Singapore is not subject to and supervised for compliance with AML/CFT requirements consistent with standards set by the FATF. As such, their margin rate on CFDs products, not just PTDs, may be much lower than the ones prescribe by MAS. The proposals set out in this CP to protect Retail Investors would be counter-intuitive if they decide to trade PTDs with foreign brokerages that offer lower margin rates. We note that in established jurisdictions such as EU and Japan, their margin rates for PTDs are set based on a risk-based approach, in particular for their Professional Investors. (EU; Retail Investors – min 50%, Professional Investors – Up to FIs' risk management and appetite. Japan; Retail and Professional Investors – min 25%). Hence, we suggest MAS to relook at the proposals for the margin rate, including to allow FIs to set its own margin rate for Accredited Investors/Expert Investors/Institutional Investors to maintain the competitiveness of Singapore brokerages. **<u>Comment 2</u>**

		We note that the Circular (CMI 26/2019) dated 20 November 2019 requires financial institutions ("FIs") to provide and display the payment-token specific risk warnings in a prominent manner, including specific information as required under Para 8 (i) & (ii). We are of the opinion that MAS should prescribe such specific risk warnings to ensure consistency amongst brokerages in Singapore. **<u>Comment 3</u>** Unlike Table 18 of the SF(FMR)R where the margin rates are prescribe clearly, the margin rate (% or dollar value) prescribe by the Approved Exchanges may not be easily available. We would appreciate it if MAS could provide more guidance on how FIs may access information on the margin rates (% or dollar value) prescribe by the Approved Exchanges.
10	Lex Futurus	Derivative contract concept written on a cryptographic payment token is still at an early development stage, and thus a largely unregulated blockchain/Distributed Ledger Technology (DLT)[10] capital market investment strategic innovation, which many national securities regulators across jurisdictions are grappling with, and making attempts and concerted efforts to comprehend and therefore regulate. The inherent difference here is that payment tokens themselves are not capital market investment products and services; they are currencies i.e. cryptocurrencies within a monetary regulatory remit. As noted in this Consultation Report, derivatives built on security tokens (securities) known as security token derivatives, are regulated under the extant Securities and Futures Act (SFA) as the principal securities enactment in Singapore. The fact that security tokens and security token derivatives are already regulated leaves payment tokens and payment token derivatives[11]. The last taxon is

[10] Blockchain is a type of Distributed Ledger Technology (DLT) invented in 2009 by a physically unknown entity with the name of Satoshi Nakamoto around the Global Financial Crisis period 2007 - 2008. The GFC was occasioned principally by unregulated derivatives contracts proliferation at that time. Available at https://www.google.com.ng/url?sa=t&source=web&rct=j&url=https://www.thebalance.com/role-of-derivatives-in-creating-mortgage-crisis-3970477&ved=2ahUKEwiH0Y-D78PmAhWpxYUKHUq_DcgQFjABegQIDhAG&usg=AOvVaw3PrCOnzTmw9QecKFuSOrax. Accessed at 10:03am GMT on the 20th December, 2019.

[11] Our Nigerian member law firm made a comment through one of our lawyers Boulevard A. Aladetoyinbo, Esq. on the International Organization of Securities Commissions (IOSCO) Consultation Report titled "Public Comment on Issues, Risks and Regulatory Considerations Relating to Crypto-Asset Trading Platforms" on the 29th July, 2019 where he clarified a number of essential data-point issues for the international securities standard-setting body. Giles Ward, Senior Policy Advisor at the IOSCO General Secretariat duly acknowledged receipt of the comment on the 31st July, 2019. In the IOSCO Report itself, crypto-assets are

		consumer utility token, which is only used to access a blockchain platform goods and services, and nothing more. The last third taxon is not a financial instrument in a financial capital market context and according to statutory intendment. **"underlying thing" as a digital token** One of the questions for regulatory consideration is what constitutes an "underlying thing" within the scope and meaning of "underlying thing" under Section 2 of the Securities and Futures (Prescribed Underlying Thing) Regulation draft amendments which seeks "to categorically include Payment Token Derivatives offered by Approved Exchanges within the scope of the SFA". The Regulations defines "any intangible property" to be an "underlying thing", which is also defined as meaning "any digital representation of value…, expressed as a unit.''. As far as "underlying thing" goes in the cryptographic token contextual semantics, they are "digital units secured through public key cryptography"[12], be they payment token, security token, or even DLT platform access utility token which as previously noted, is not the regulatory concern of the Monetary Authority of Singapore (MAS). Thus, this "underlying thing" can be currency, currency index, commodity or commodity index, security or security index, interest rate or interest rate instrument[13]. Does MAS consider whether the payment token in the "payment token derivative" that it seeks to regulate through "Approved Exchanges" is regulated ab initio as any of currency or currency index, commodity or commodity index, security or security index? If this is not a primary consideration for payment token derivative contract regulation, where does MAS' regulatory power originate from?

defined as "a type of private asset that depends primarily on cryptography and DLT or similar technology as part of its perceived or inherent value, and can represent an asset such as a currency, commodity or security, or be a derivative on a commodity". The IOSCO Report is available at https://www.google.com.ng/url?sa=t&source=web&rct=j&url=https://www.iosco.org/library/pubdocs/pdf/IOSCOPD627.pdf&ved=2ahUKEwiSxbDT6sPmAhXIyYUKHU61DYIQFjAAegQIBxAC&usg=AOvVaw1ONtXsW66zJoNno0dJAc1d, while the Lex Futurus Group comment can be accessed at https://www.linkedin.com/pulse/iosco-consultation-paper-public-comment-lex-futurus-a-aladetoyinbo, and the MAS can learn a thing or two from there.

[12] Preamble to the H.R.2144-Token Taxonomy Act 2019. Available at https://www.congress.gov/bill/116th-congress/house-bill/2144/text?format=txt. Accessed at 00:29am (GMT) on the 20th December, 2019.

[13] Available at https://www.google.com.ng/search?sxsrf=ACYBGNRKRGZqs7ACRHcPy4gwioJThUOhQQ%3A1576799231700&ei=_wv8XaWXKpq71fAPp4292A8&q=What+is+a+derivative%3F&oq=What+is+a+derivative%3F&gs_l=mobile-gws-wiz-serp.3..0l2j0i20i263j0l5.147514.203562..203606...2.1..5.330.14222.252j3.....32....1.....8..0i71j30i10j0i67j0i10j35i362i39j35i39j0i273j46j46i10.1dF_pqdkglQ#imgdii=SDVHsF9uh2PWiM:&imgrc=SDVHsF9uh2PWiM:. Accessed at 00:59am (GMT) on the 20th December, 2019.

		Payment token as "underlying thing" Cryptographic payment token as an underlying for a financial derivative contract instrument is further underscored by the fast-growing regulatory interest across jurisdictions, corporates, and international organisations in recent memory[14]. These crypto-asset derivatives as stated earlier though not mostly regulated for now, the growing regulatory interest tempo in them is a sustainable momentum long-term. **Criticising the payment token derivatives contracts regulatory move by MAS** The reason(s) adduced for this regulatory move by the Monetary Authority of Singapore (MAS) stemmed from the fact that both domestic and international institutional investor demand for crypto-asset derivative contract financial instrument for investment purposes is on the uptick. Granted. But this reason only should not be the driving force and trigger for regulation of these payment token derivative contract products, as complementarity and requisite triggers should have been found in additional factors and reasons like considered observation and education for regulators overtime before conclusion to regulate payment token derivatives for investors, while leaving space for flexibility to accommodate future technological changes and advances. Another downside risk expressed many a time is the distributed ledger technology crypto-asset innovation growth stifling in the process, as the entire technology itself is yet both embryonic and blossoming, though it is being maximised by corporations, citizens

[14] The International Swaps and Derivatives Association (ISDA) puts out a legal framework titled "Legal Guidelines for Smart Derivatives Contracts: Introduction", which sets out applicable rules for smart contract-enabled DLT crypto-asset transactions leveraged for financial contract derivatives.

Available at https://www.isda.org/2019/01/30/legal-guidelines-for-smart-derivatives-contracts-introducti on/ Accessed at 01:51am (GMT) on the 20th December, 2019. The Financial Conduct Authority (FCA), the United Kingdom's national securities regulator in a series of preliminary regulatory steps, banned CfD derivatives that reference "exchange tokens" (bitcoin etc), while the European Securities and Markets Authority (ESMA) placed restrictions on them. Available at https://financefeeds.com/fca-considers-banning-sale-derivatives-referencing-exchange-tokens-bitcoin/, https://financefeeds.com/esma-agrees-extend-cfd-restrictions-three-months/. Accessed at 02:37am on the 20th December, 2019. The Depository Trust and Clearing Corporation (DTCC) "replatforms" on DLT its Trade Information Warehouse (TIW) which "covers major global derivatives dealers and 2,500 buy-side firms in 70 countries", according to its data. The DTCC as a post-trade financial services giant processes 1.5 quadrillion "worth of post-trade transaction workflow" all of which it seeks to move into a DLT and commence operation in 2020. It had to postpone trial with the 15 world's largest banks due to the Brexit delay. Available at https://www.google.com.ng/ amp/s/www.coindesk.com/11-trillion-bet-dtcc-clear-derivatives-blockchain-tech%3famp=1

		and governments like the People's Republic of China (PBoC), and quite a few forward-looking progressive jurisdictions who are starting to recognise the potentials and promises of an emergent crypto-asset-operated capitalism. Why would MAS not borrow a leaf from the United States which has contemplated the idea to not introduce superfluous rules for crypto-asset derivatives regulation in order to somewhat preserve and maintain the sanctity of the extant applicable laws? In this breath, a principles-based crypto-asset derivatives regulatory approach in contradistinction to a highly prescriptive rules-based regulatory approach has been advocated, though they may complement because of their overlapping nature and realities, and more precisely market participants characteristics, "quality of the regulator", market maturity and dynamics[15]. **Has MAS considered risks such as exchange hacks?** There have been a lot of hacks of all types that range from social engineering hacks to data breaches[16] of crypto-asset exchanges, where customer funds have always been the victim - outright theft and loss. Regarding investor fund protection, on these "Approved Exchanges", what measures to instil and sustain investor confidence had MAS put in place? For payment token derivatives transactions, custody and clearinghouse[17] activities for instance, there are existential operational risks for which a strategic regulatory protection measure must be put in place to maintain and preserve the emergent payment token financial contract derivatives market integrity long-term.

[15] Heath Tarbet, the Chairman, US Commodity Futures Trading Commission (CFTC) supports this approach. According to Mr. Tarbet, "Principles-based regulation involves moving away from detailed, prescriptive rules and relying more on high-level, broadly-stated principles to set standards for regulated firms and products". Available at https://www.cftc.gov/PressRoom/PressReleases/8081-19. Accessed at 09:43am (GMT), 18th December, 2019. His predecessor Christopher Giancarlo favours crypto-asset also, and has a position that there should be a "do no harm" mindset in any regulatory approach. See also https://bitcoinexchangeguide.com/is-cftc-tarbert-becoming-crypto-step-dad-saying-derivatives-need-more-principles-not-rules/. Accessed at 09:59am (GMT), 18th December, 2019. The US CFTC has been regulating the space as such. This is evidenced by a licence it granted to a crypto-asset exchange service provider as a clearinghouse(entity that take on and manage post-trade counterparty credit risk known as Derivatives Clearing Organisation (DCO) July, 2019. And also https://bitcoinexchangeguide.com/td-ameritrade-backed-crypto-exchange-erisx-rolls-out-digital-currency-futures-trading-today/. Accessed at 10:03am (GMT), 18th December, 2019.

[16] Available at https://selfkey.org/list-of-cryptocurrency-exchange-hacks/. Accessed at 03:03am (GMT) on the 20th December, 2019.

[17] "For instance, core principles have been central to our evaluation of clearinghouses that would clear derivatives resulting in delivery of Bitcoin. Digital assets face the unique operational risk of a systems hack that could result in loss or theft.".Supra at note 4.

		Has MAS outlined, understood and critically evaluated the potential risks involved in crypto-asset derivative contract transactions? As a way to complement its present effort, what measures has the MAS put in place? Has the MAS brought enforcement actions against fraudsters and unauthorised entities who offer crypto-asset derivatives, issued warnings, banned these unauthorised products etc as a way to discourage fraudulent behaviour, preserve market integrity, protect investors, instil confidence in the market, engender and strengthen market integrity et al? **"Approved Exchanges"** The "Approved Exchanges", which "are regulated as systemically important trading platforms under the Securities and Futures Act, and of which "There are currently four Approved Exchanges in Singapore: Asia Pacific Exchange Pte Ltd., ICE Futures Singapore Pte Ltd., Singapore Exchange Derivatives Trading Limited, and Singapore Exchange Securities Trading Limited, are they centralised exchanges, decentralised exchanges or hybrid exchanges? There are requisite questions and issues that come up regarding the configuration, features and functionalities of an "Approved Exchange" infrastructure which segue among others to their security architecture, attack resilience, both short-term and long-term implications of which are investor protection, investor confidence, market integrity et al. Questions on the "Approved Exchanges" on which payment token derivatives are to be issued, traded, settled, cleared and probably custodied range from whether the four "Approved Exchanges" are Crypto-asset Trading Platforms (CTPs) with high encryption grade decentralised cryptographic system in the nature of a Web 3.0 crypto-exchange platform, to the smart contract token standard with which the payment token derivatives transactions will be implemented among others. We do hope that this comment contribution would be of immense benefit and assistance in the general effort of the Monetary Authority of Singapore (MAS) "to categorically include Payment Token Derivatives offered by Approved Exchanges within the scope of the" Securities and Futures Act (SFA) of Singapore.
11	NTUC Income Insurance Co-operative Limited	Nil

12	OANDA Asia Pacific Pte Ltd	**General comments:** OAP welcomes the opportunity to provide feedback on the above consultation paper. Below please find our general comments: <u>Margin setting:</u> In determining margin requirements, OAP applies margin rates based on the requirements stipulated in Table 18 of the Fourth Schedule of the Securities and Futures (Financial and Margin Requirements for Holders of Capital Markets Services Licences) Regulations ("Table 18"). Currently, OAP has interpreted the margin requirements for cryptocurrency products based on the 'Any other CFD without stop-loss features' category in Table 18, but, based on OAP's own risk assessment of the product, has always applied a margin rate much higher than the stipulated minimum in Table 18. In terms of setting margins for cryptocurrency products offered as a CFD, the consultation paper proposes that CFD firms should have regard to Payment Token Derivative products offered on an Approved Exchange, or by other entities (for example, Recognised Market Operators like the Chicago Mercantile Exchange). CFD product providers generally determine margin requirements by applying a set margin percentage to the total notional value of the transaction, where the notional value changes continuously (and therefore so too does the margin requirement). Futures exchanges, however, generally apply a set dollar figure for margin requirement, which the exchanges may from time to time change or update (i.e.: the margin requirement is not continuously marked-to-market as is the case with CFD products). For the former, the margin percentage is static, whereas for the latter, the margin percentage is dynamic (dynamic because the 'good faith deposit' is, by and large, static, but the notional value it supports changes continuously with changing market prices). OAP's systems are not designed to have as an input a dynamic margin requirement; instead, our input is a set margin percentage (per product) on which the system will dynamically calculate overall margin requirement based on the marked-to-market notional value of the position. At the time of writing, ICE Singapore, which is an Approved Exchange, applies a static dollar figure as margin requirement for its Bakkt Bitcoin product. In contrast, the CME's Bitcoin product, as detailed on their website in the "CME Bitcoin Futures Frequently Asked Questions" section, stipulates that the margin requirement to be a set percentage (at the time of writing, 37%). However, reviewing the margin requirements on a day-to-day basis shows that the percentage is not always 37%. For example, on 10 December 2019, CME was quoting their Bitcoin Futures product at 7,385. The margin requirement published on the CME website at the same time was 14,386

		(equivalent to 2,877.20 per coin). This translates to a margin percentage of 38.96%. Similarly, for ICE Singapore, the margin requirement on 10 December 2019 was 2,850 and the product was priced at 7,340 (translating into a margin percentage of 38.82%). On the basis that the actual rate for both ICE Singapore and the CME change frequently (and, in the case of ICE Singapore, continuously), how are CFD firms to determine what the standard amount of margin should be? Firms may very quickly be on the wrong side of the requirement and thereby hold deficient amounts to support cryptocurrency positions. This both disadvantages the clients and practitioners. It will also be operationally challenging to constantly change the margin rate, specifically in instances where the total margin requirement is above the 50% floor. Currently, Table 18 clearly states what minimum percentages a firm should apply for each product. However, as detailed in the foregoing, the proposed standard margin percentage for cryptocurrency would be an ever-changing value. We believe this method introduces complexity to the computation of the standard margin (and, by extension, the final margin once the 1.5x additional margin requirement is applied). OAP recommends that the requirement fall in line with the current Table 18 methodology of setting a minimum requirement, rather than adding complexity to the overall derivation of margin requirement for this one asset class. This is also in line with approaches in other jurisdictions (notably, the European Securities and Markets Authority) where products, including cryptocurrency, are subject to a minimum margin requirement (at the time of writing, for cryptocurrencies this is set at 50%). We would recommend a minimum margin rate of 50%, with the view to product providers applying their own risk assessments to determine rates above that minimum, if appropriate. This, we believe, is the approach taken by the industry today and gives product providers flexibility to operate within a set framework that has regard to good risk management practices. We also believe that this standardised approach is already well understood by the investing community in Singapore and reduces confusion about what the applicable margin rate is (where the consultation paper also proposes that margins be subject to a 50% floor). If firms have to frequently update their clients on margin changes for cryptocurrency products, where such changes are usually communicated by email, we believe such communications (and other important communications) will be ignored, forgotten or simply deleted. We further believe that the potential for lack of clarity on the client's side will lead to increased complaints, creating burden on other departments within the business. The extent to which unsatisfied complainants escalate to FIDReC is also significantly increased, placing further burden on product providers.

		Lastly, in relation to Table 18 requirements, there is an opportunity for margin relief that can be offered by product providers who offer guaranteed stop loss facilities. Is it intended that a guaranteed stop loss facility will be available on cryptocurrency products? <u>Marketing:</u> The restrictions proposed on marketing activities will place firms like OAP at a competitive disadvantage. Already MAS regulated firms compete in the social media space with offshore brokers, but the proposed restriction placed on advertising frees up those offshore providers to operate without competition. The number of CFD firms offering a cryptocurrency product in Singapore speaks to the fact that clients wish to transact in this product. The lack of visibility of the product through media channels to the investing community in Singapore by Singapore providers may lead the investing community to believe that Singapore firms do not offer such a product and that the only providers of such products are based offshore. The unintended consequence of this is that clients will seek offshore product providers for this purpose and thereby lose regulatory protections ordinarily afforded to them onshore. This harms Singapore's competitiveness and, to some extent, limits the ability for practitioners to innovate new products for their clients. For example, some firms have made some headway towards creating new basket products, made up of a blend of bitcoin and altcoin products (either on a market cap weighted basis or a price weighted basis). Offshore providers who create such products will have free reign to showcase such product innovation to the detriment of equivalent locally offered products. <u>Tailored risk warnings:</u> Will the MAS be providing guidance on the content of the risk warnings specific for cryptocurrency products? Is it anticipated that the risks will be different to those already covered in the MAS's Form 13 and the CFD Risk Fact Sheet? **Question 1:** OAP has no concern with the proposed amendments to SF(PUT)R to include cryptocurrency products and in particular the inclusion of payment token derivatives offered on an Approved Exchange. This is in line with other exchanges globally who already offer access to centrally cleared cryptocurrency products. However, given that the over-the-counter products can (and often do) obtain liquidity from these venues, it would seem logical that regulatory status is extended to the over-the-counter products as well. Other than ICE Singapore, exchange-traded products tend to have high notional

		values, which exposes retail investors to greater commitments in those products. Over-the-counter providers have the flexibility to offer smaller notional trade sizes (and, in some cases, a half or tenth of the size of a single coin), thereby limiting market exposure and overall risk. To continue to consider them as unregulated products (whilst the exchange-traded products are given legitimacy) diminishes the value over-the-counter products offered to the investing community.
14	The World Federation of Exchanges	**Question 1:** The World Federation of Exchanges welcomes the opportunity to submit its response to the Monetary Authority of Singapore regarding the proposal to allow Payment Token Derivatives to be traded on Approved Exchanges and to regulate the activity under the Securities and Futures Act. As supported in the consultation paper, established exchanges offer a venue whereby exchange-traded and centrally cleared derivatives are subject to pre- and post-trade risk management standards set by the exchange listing and CCP clearing the trades. These risk management standards include practices that are deliberately designed to foster safe and efficient markets. Prices on exchanges are transparent and, whether based on a central limit order book or other mechanisms, a diverse set of market participants can transact with each other in a healthy pool of liquidity to ensure a robust, transparent and easily understood price. The resulting price discovery allows a targeted transfer of risks. Moreover, in order to help preserve market integrity, exchanges will also employ mechanisms to prevent inappropriately excessive price movements. With regard to post-trade, a CCP ensures that those who bring counterparty credit risk to the system mitigate it, through the CCP becoming the counterparty to both sides of a derivatives transaction and posting margin and other resources. The CCP acts as a neutral party to calculate and facilitate the daily exchange of funds to account for mark-to-market price moves (i.e., variation margin/settlement); the posting of initial margin to cover future price moves; and the establishment of a default fund to cover tail risks, among other risk management practices. And the CCP reduces exposures across the market, by means of multilateral netting, bringing a positive externality to the financial system as well as a massive benefit to individual participants. In view of the services provided by the market infrastructure represented by the WFE, it is welcome that established regulated

		market infrastructure would be recognised as the appropriate market operators to conduct, and instil, the high standards required for the trading of derivatives contracts on Payment Tokens. The WFE takes note that the MAS will consider the issue of regulating Payment Token Derivatives offered by "other types of entities at an appropriate stage, taking into account the industry's general readiness to meet our standards and the systemic risks that they pose". The WFE recognises the MAS's concerns with the suitability of trading Payment Token Derivatives for retail investors. The volatility associated with some such products may, understandably, encourage regulators to consider safeguards for the purposes of consumer protection and to implement measures which seek to mitigate the associated risks. However, the WFE would encourage the MAS to keep its proposed measures under review (potentially on a set time period) as the market evolves. Reviewing the application of such measures may also be a mechanism by which to encourage the market itself to grow in the direction of greater regulatory adherence and a better governed environment. This is likely to be an important consideration, from not only an international competitiveness stance but also in order to ensure that there is the ability to respond to and adopt any forthcoming global regulatory approach to crypto asset regulation (as promoted by international standard setting bodies). Enabling such a potential international approach to be implemented in the future would be key to ensuring regulatory coherence and conforming to international standards which promote enhanced global trade. It should also be recognised that this is an innovative and new market which is likely to mature as it grows and becomes more established. However, it will also be important to enable cross-border trade for all regulated market infrastructure who meet the high international standards that can be expected to emerge over time. As such, the WFE would recommend specific inclusion and greater clarity on how third-country recognition (as a Recognised Market Operator) processes would function to enable third-country (or foreign corporations) market infrastructure to trade Payment Token Derivatives. This would be beneficial in ensuring open markets and avoiding potential international market fragmentation. This would also further ensure that an appropriate level-playing field, for all aforementioned regulated exchanges, is embedded within the proposed policy in terms of its transparency and application of approach. Finally, the WFE would suggest that those trading platforms offering Payment Token Derivatives which do not fall within the high

		regulatory standards associated with established market infrastructure should be unable to offer such products to institutional or retail investors. Often, there is a concern about the credibility and unauthorised activities associated with such unregulated platforms. In order to avoid unnecessary potential harm to investors, those who do not comply or fulfil the needs of MAS's regulatory criteria should be prohibited from offering or trading such products in the marketplace or at least restricted. An approach such as this will ensure that the additional processes, safeguards and extra investment required by our members, due to their systemic importance as central market infrastructure, is not undermined by unregulated platforms freely offering the same services without having to make that investment or provide the right protections for the customer.


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