RESPONSE TO FEEDBACK RECEIVED

15 January 2020

Proposed AML/CFT requirements for Variable Capital Companies

Monetary Authority of Singapore

Contents

Defined Terms

AML/CFT	Anti-money laundering and countering the financing of terrorism
CDD	Customer Due Diligence
EFI	Eligible Financial Institution
FATF	Financial Action Task Force
FI	Financial institution
VCC	A Variable Capital Company

1 Preface

1.1 On 30 April 2019, MAS issued a consultation paper on the proposed Notice to variable capital companies (VCCs) on anti-money laundering and countering the financing of terrorism (AML/CFT).

1.2 The consultation closed on 30 May 2019, and MAS would like to thank all respondents for their contributions. Respondents broadly agreed with the majority of MAS' proposals. There were some areas where respondents requested greater clarity or made alternative suggestions. Comments that are of wider interest, together with MAS' responses, are set out in sections 2 to 4 below. The list of respondents is in Annex A and their submissions are provided in Annex B.

2 VCC's arrangement with an eligible financial institution (EFI)

2.1 The sole object of a VCC is to be a vehicle for collective investment scheme(s). As a VCC will have its own legal personality, it could be misused as a conduit for money laundering or terrorism financing (ML/TF) purposes. However, a VCC is expected to have minimal or no full-time staff of its own to adequately conduct AML/CFT measures. MAS therefore proposed in the VCC AML/CFT Notice that a VCC must appoint an EFI, to conduct the necessary checks to comply with the relevant portions of the VCC AML/CFT Notice.

2.2 Several respondents sought clarification on the delineation of AML/CFT responsibilities between the VCC and its EFI, in particular whether:

a a VCC should have its own AML/CFT policies, or should use those of its EFI;

b a VCC would be expected to have a group of senior management staff and an AML/CFT compliance officer;

c a VCC may rely on the EFI's internal audit and record-keeping functions; and

d a VCC that has multiple fund distributors may appoint them as its EFIs.

MAS' Response

2.3 In practice, we expect fund managers will want to use the flexible VCC structure, and to set up several VCCs. However, as each VCC is a separate legal entity, it will be responsible for its activities, and have to comply with the proposed requirements in the VCC AML/CFT Notice. A VCC should therefore have its own AML/CFT policies that are tailored for implementation by the EFI, to effectively mitigate the VCC's AML/CFT risks.

However, given similarities in their business activities, a VCC may, as relevant, adapt and modify the policies of its EFI.

2.4 MAS will hold the VCC responsible for any breaches of its AML/CFT requirements, and take the appropriate supervisory actions under the VCC Act. When considering the VCC's breaches, MAS will also review the EFI's role and calibrate our actions accordingly. Where the lapse by the VCC is also linked to breaches of the EFI's AML/CFT obligations under the latter's own AML/CFT Notice, MAS will take the appropriate supervisory actions against the EFI.

2.5 MAS will not require a VCC to have dedicated employees. References to "senior management" in the VCC AML/CFT Notice would refer to the VCC's director(s) or any individual the VCC's board has appointed to act as its senior management. A VCC should also appoint a suitably qualified AML/CFT compliance officer – this could be the VCC's director(s) or any person the VCC's board has appointed as its AML/CFT compliance officer. A VCC may rely on the EFI for its internal audit, training and record-keeping functions, including the maintenance of the VCC's register of beneficial owners. The EFI may in turn outsource these functions to other firms. Nevertheless, the VCC will remain ultimately responsible for the proper execution of these functions. These issues will also be made clear in the accompanying Guidelines to the VCC AML/CFT Notice.

2.6 A VCC should only appoint a single EFI; it is not allowed to have multiple EFIs. In arrangements where one or more distributors are engaged to market a VCC's fund(s), the distributors may use omnibus accounts in their own name to invest in the VCC. In this scenario, the distributors would be the VCC's customer(s). It follows that the VCC should identify and verify the underlying investors for whom the distributor is investing on behalf of, in accordance with the requirements in the VCC AML/CFT Notice, as the underlying investors would be the beneficial owners of the VCC. Please refer to paragraph 4.4 for additional clarification on this arrangement.

3 AML/CFT measures for existing customers of acquiring VCCs or re-domiciled VCCs

3.1 MAS has proposed for VCCs which are acquiring another VCC or a fund to be able to rely on the CDD measures performed by the other VCC or fund, if the acquiring VCC is satisfied with the AML/CFT measures that have been performed. A respondent asked if reliance on CDD measures performed would apply if the customer of the VCC is already a customer of the EFI. Another respondent asked whether re-domiciled VCCs would be able to rely on the CDD measures it had earlier performed as a foreign corporate entity. Two respondents also asked if the members of the foreign corporate entity prior to its re-

domiciliation as a VCC would be considered the VCC's customers, and suggested that the VCC AML/CFT Notice be amended to reflect this more clearly, if so.

MAS' Response

3.2 A VCC may rely on the customer due diligence measures already performed by its EFI, subject to the conditions set out under paragraph 10 of the VCC AML/CFT Notice, if the member of the VCC is also a customer of its EFI. Separately, as existing members of a re-domiciled VCC prior to its re-domiciliation would need to be entered into the VCC's register of members under section 17 of the VCC Act, such persons will be considered the VCC's customers for the purposes of the VCC AML/CFT Notice, and this will be clarified in the Guidelines to the VCC AML/CFT Notice. The VCC shall conduct on-going monitoring and periodic review of these members, as with customers on-boarded after re-domiciliation. A re-domiciled VCC need not re-perform CDD measures on all its members, as long as it has assessed that the measures previously performed are in line with the requirements in the VCC AML/CFT Notice. Where the measures fall short, the VCC should take steps to bring the level of CDD in line with the VCC AML/CFT Notice. Where the VCC's review reveals additional risks, it should also put in place other measures to mitigate the ML/TF risks of the affected members. However, if the VCC has reasonable grounds to suspect that the assets or funds of a customer are illicit proceeds, the VCC shall file an STR and take the appropriate risk mitigation measures, including not establishing or maintaining business relations with the customer.

4 Definition of terms in the VCC AML/CFT Notice

4.1 MAS has proposed definitions of "customers" and "business relations" in the context of VCCs. Several respondents have requested further guidance on the differences between a VCC's "member", "customer" and "beneficial owner" (of both the VCC and its customer). Two respondents have suggested that a member that has been on-boarded through an FI that is a fund distributor should not be considered the VCC's customer, citing the definition of "customer" in MAS Notice SFA04-N02 for Capital Markets Intermediaries (CMIs).

MAS' Response

4.2 A VCC's customer includes a member of the VCC, as described in section 17 of the VCC Act[1], as well as prospective members of a VCC. As clarified in paragraph 3.2 above, this includes members of a foreign corporate entity from before its re-domiciliation as a VCC.

4.3 Accordingly, the beneficial owners of a VCC's members are also the beneficial owners of its existing customers. As a corporate entity, the VCC is required to maintain a register of its beneficial owners. In addition, to comply with the AML/CFT requirements set out in the Notice, a VCC is required to identify and verify the beneficial owners of its customers.

4.4 A VCC's units or shares may be distributed through a fund distributor, which holds the units or shares on behalf of underlying investors under omnibus accounts in its own name. In this scenario, the fund distributor would be a customer of the VCC. However, the relevant beneficial ownership checks should be focused on the underlying investors who invest in the VCC. Where the distributor meets one or more of the criteria in paragraph 7.15 of the VCC AML/CFT Notice (e.g. an FI subject to and supervised by MAS for compliance with AML/CFT requirements consistent with the standards set by the FATF), the VCC will not be required to inquire about the underlying investors. In addition, where the distributor acts purely as an introducer and does not invest in the VCC on behalf of any investor (i.e. the investor invests directly into the VCC), the distributor would not be a customer of the VCC. Where the distributor has conducted due diligence on these investors, the VCC may consider placing reliance on the measures performed by the distributor, provided the conditions in paragraph 10 of the VCC AML/CFT Notice have been met. This will be clarified in the Guidelines to the VCC AML/CFT Notice.

MONETARY AUTHORITY OF SINGAPORE

15 January 2020

[1] s17 of the VCC Act states that members of the VCC include subscribers to the constitution of a VCC who have agreed to become members of the VCC, and every other person who agrees to become a member of a VCC.

Annex A

LIST OF RESPONDENTS TO THE CONSULTATION PAPER ON

PROPOSED AML/CFT REQUIREMENTS FOR VARIABLE CAPITAL COMPANIES

1. Alternative Investment Management Association Limited (AIMA)
2. Benoy Philip (Benoy)
3. CFA Society Singapore (CFAS)
4. DMS Governance (Singapore) Pte. Ltd. (DMS) who requested for confidentiality of submission
5. Schroders Investment Management (Singapore) Ltd (Schroders)
6. Singapore Fund Administrators Association (SFAA)
7. Singapore Private Equity and Venture Capital Association (SVCA)
8. The Northern Trust Company Singapore Branch (TNTCS)
9. Respondent A who requested for confidentiality of identity
10. Respondent B who requested for confidentiality of identity and submission
11. Respondent C who requested for confidentiality of identity and submission
12. Respondent D who requested for confidentiality of identity and submission
13. Respondent E who requested for confidentiality of identity and submission
14. Respondent F who requested for confidentiality of identity and submission
15. Respondent G who requested for confidentiality of identity and submission
16. Respondent H who requested for confidentiality of identity and submission

Please refer to Annex B for the submissions.

Annex B

SUBMISSIONS FROM RESPONDENTS TO THE CONSULTATION PAPER ON THE PROPOSED AML/CFT REQUIREMENTS FOR VARIABLE CAPITAL COMPANIES

S/N	Respondent	Responses from respondent
1	The Alternative Investment Management Association Limited	**Question 1: With respect to paragraph 2.4 of the consultation paper, MAS seeks comments that the requirement for a VCC to appoint an eligible financial institution shall not extend to paragraph 3 (Underlying Principles), paragraph 4 (Eligible FIs) and paragraph 10 (Reliance on Third Parties) of the Notice, as these are obligations that are applicable to only the VCC.** We wish to seek clarification from the MAS on the interaction of the obligation to appoint an eligible financial institution in paragraph 4.1 with certain obligations in the Draft Notice to Variable Capital Companies on the Prevention of Money Laundering and Countering the Financing of Terrorism (the "**Notice**"). As a general principle, additional guidance as to the (overlapping) roles of the VCC and eligible financial institution could be provided in the guidelines to the Notice, which we assume will also be promulgated by the MAS in due course. *Policies and Procedures* We note from paragraph 2.5 that the MAS anticipates that where the VCC is required to put in place internal policies and procedures, the VCC would largely adapt the policies and procedures of the eligible financial institution that it has appointed. As per the draft Notice, the internal policies and procedures include requirements under: (a) paragraph 5.3(a) for a VCC to develop and implement policies, procedures and controls, which are approved by senior management, to enable the VCC to effectively manage and mitigate the risks that have been identified by the VCC or notified to it by the Authority or other relevant authorities in Singapore; (b) paragraph 7.29 for a VCC to put in place and implement adequate systems and processes to: (i) monitor business relations monitor its business relations with customers; and (ii) detect and report suspicious, complex, unusually large or unusual patterns of transactions. and detect and report suspicious transactions; (c) paragraph 7.34 for a VCC to develop policies and procedures to address any specific risks associated with non-face-to-face business relations with a customer or transactions for a customer;

S/N	Respondent	Responses from respondent
		(d) paragraph 9.2 for a VCC to put in place appropriate internal risk management systems, policies, procedures and controls to identify PEPs; (e) paragraph 9.5 for a VCC to implement appropriate internal risk management systems, policies, procedures and controls to determine if business relations with or transactions for any customer present a higher risk for money laundering or terrorism financing; and (f) paragraph 14 for a VCC to develop and implement adequate internal and group policies, procedures and controls to help prevent money laundering and terrorism financing and communicate these to its employees. We would like to clarify whether the intention is to require VCCs to have their own set of policies and procedures, distinct from policies and procedures the eligible financial institution engaged by the VCC will maintain pursuant to its own AML/CFT obligations. The concern is that this may be duplicative, given that the eligible financial institution is required pursuant to paragraph 4.1 to carry out the checks and perform the necessary procedures in any case. It would be preferable to provide flexibility for VCCs to be able to either: (a) put in place their own policies, procedures and controls; or (b) rely on policies, procedures and controls put in place by the eligible financial institution in relation to the VCC (which would be augmented as appropriate to address any specific requirements of VCCs). We anticipate that any such augmentation would be more cost effective than duplicating the policies and procedures. Given that we anticipate that a variety of VCCs may be constituted, ranging from large VCCs comprising numerous sub-funds to a newly established fund manager using the VCC on a standalone basis as a fund vehicle, this would provide flexibility for VCCs across the private funds space to increase operational synergises and reduce costs for investors, especially considering that some VCCs may be thinly staffed from an operational perspective. *Senior Management Approvals* We would like to confirm whether the requirements in the Notice for senior management approval, when read with paragraph 4.1, refer to the senior management of the VCC or that of the eligible financial institution. These include requirements under: (a) paragraph 9.3(a) for a VCC to obtain approval from senior management to establish or continue business relations with a customer who is a PEP or linked with a PEP; and (b) paragraph 5.3(a) for a VCC to obtain senior management approval for the policies, procedures and controls mentioned.

S/N	Respondent	Responses from respondent
		Given that VCC and its senior management are ultimately responsible we would assume that approvals should be sought from the senior management of the VCC. *Retention of Records/Maintenance of Registers* Paragraph 11.1 sets out a requirement for a VCC to maintain and retain records of certain data, documents and information under the Notice. Paragraphs 7.27 and 7.21 require the maintenance of certain registers. Given that an eligible financial institution will be appointed by the VCC to carry out checks and perform the measures set out in the Notice, would the VCC be in compliance with its record keeping obligations and register maintenance obligations if such data, documents and information and beneficial owner/nominee director registers are retained by the eligible financial institution, subject ultimately to the oversight of the VCC? *Suspicious Transaction Reporting Point and AML/CFT Compliance Officer* Paragraph 13.1 sets out a requirement for a VCC to establish a single reference point to whom suspicious transactions should be referred for possible onward referral to STRO via STRs and paragraph 14.9 sets out a requirement for the VCC to develop appropriate compliance management arrangements, including at least, the appointment of an AML/CFT compliance officer at the management level. Do these obligations fall within the scope of "measures" to be performed by the eligible financial institution pursuant to paragraph 4.1? While qualified personnel with compliance and AML/CFT expertise are likely to be sited in the eligible financial institution, given the variety of VCCs, it would be preferable to provide flexibility for VCCs to have the option of either appointing these persons internally, or engaging the eligible financial institution to designate their own persons on behalf of the VCC. It is unlikely for most VCCs to have employees. **Question 2: MAS seeks comments on the proposed definitions of "business relations" and "customer", in relation to a VCC, and whether it appropriately captures the scope of customer** *Definition of "contact"* We would suggest clarifying the scope of the definition of "contact" within the definition of "business relations". For example, is this intended to capture any contact, whether in person, in writing, over email or voice communications?

S/N	Respondent	Responses from respondent
		Prospective VCC members We note that the intention is for CDD to be conducted on all members and prospective members of a VCC. To better capture this, we would suggest that the definition of "business relations" be expanded as follows: means any direct or indirect contact between a VCC and a person (whether a natural person, legal person or legal arrangement) that results, or is intended to result, in the entering or maintaining of such person's particulars in the register of members under section 17 of the VCC Act. (insertions in underline) The insertions would serve to clarify that prospective members of the VCC would also be customers of the VCC. As currently drafted, the definition of customer and business relations are slightly ambiguous and could be construed as only applying to persons which ultimately are admitted as members of the VCC. *Definition of Customer* As currently drafted, the definition of business relations (and hence customer) could potentially, in certain edge cases, exclude existing customers of a VCC with whom the VCC did not establish business relations (e.g. where a foreign corporate entity is redomiciled into Singapore as a VCC but there has been no contact with investors for the purposes of maintaining their particulars in the register). To better ensure that all members and prospective members of a VCC would be subject to CDD and ongoing monitoring, we would suggest that the definition of "customer" be expanded as follows: means a person (whether a natural person, legal person or legal arrangement): *(i)* with whom the VCC establishes or intends to establish business relations; or (*ii) whose particulars are maintained in the register of members of the VCC under section 17 of the VCC Act* (insertions in underline) **Question 3: MAS seeks comments on the proposed scope of requirements on the registers of beneficial owners of a VCC and its nominee directors set out in paragraphs 3.4 to 3.6, including on the prescribed places where a VCC should maintain these registers, as set out in paragraph 3.5(a)** No specific comments. **Question 4: MAS seeks comments on the whether there are other circumstances under which a VCC may acquire an entity or structure other than another VCC or a fund whereby the VCC may wish to rely**

S/N	Respondent	Responses from respondent
		on existing CDD measures already performed, which are not currently covered by the scope of the VCC AML/CFT Notice *Re-domiciliation* We would suggest that the provisions of paragraph 7.37 should be extended to situations where a foreign corporate fund has re-domiciled as a VCC, given that the risks posed are similar to that when acquiring the business of a non-Singapore fund. *Adequacy of AML/CFT measures* With regard to the term "adequacy of AML/CFT measures" in paragraph 7.37 (b), it is unclear whether this is intended to refer to AML/CFT measures as set out under the VCC AML Notice. If this is the case, we note that this would render the beneficial/efficiency impact of paragraph 7.37 nugatory in the context of funds whose customers were not subject to Singapore AML/CFT standards. We would suggest that the reference to "adequacy of AML/CFT measures" should be read as a reference AML/CFT measures that are consistent with standards set by the FATF. *Engagement of Distributors* We highlight that where the VCC is distributed through distribution platforms/distribution arrangements, the VCC would not be in a position to complete CDD checks and it would have to rely on CDD checks performed by the distributor. In this regard we assume that the existing guidance on distributors (similar to that set out in paragraph 2-3(b) of the Guidelines to MAS Notice SFA04-N02 on Prevention of Money Laundering and Countering the Financing of Terrorism) will be expected to apply to VCCs and would be replicated in the VCC AML Guidelines. **Question 5. MAS seeks comments on whether any of the above concepts could be relevant to VCCs, and hence should instead be included in the proposed VCC AML/CFT Notice.** No specific comments. **Question 6. MAS seeks comments, other than those listed above, on the proposed VCC AML/CFT Notice set out in Annex B** *Scope of Eligible Financial Institutions* We note that the MAS intends to permit a range of financial institutions regulated by the MAS for AML/CFT purposes to be appointed by VCCs to conduct the necessary checks and perform the

S/N	Respondent	Responses from respondent
		measures under the VCC AML/CFT Notice ("**eligible financial institutions**"), as set out below: (a) Banks in Singapore licensed under section 7 of the Banking Act (Cap. 19). (b) Merchant banks approved under section 28 of the Monetary Authority of Singapore Act (Cap. 186). (c) Finance companies licensed under section 6 of the Finance Companies Act (Cap. 108). (d) Financial advisers licensed under section 6 of the Financial Advisers Act (Cap. 110) except those which only provide advice by issuing or promulgating research analyses or research reports, whether in electronic, print or other form, concerning any investment product. (e) Holders of a capital markets services licence under section 82 of the Securities and Futures Act (Cap. 289). (f) Fund management companies registered under paragraph 5(1)(i) of the Second Schedule to the Securities and Futures (Licensing and Conduct of Business) Regulations (Rg. 10). (g) Persons exempted under section 23(1)(f) of the Financial Advisers Act read with regulation 27(1)(d) of the Financial Advisers Regulations (Rg. 2) except those which only provide advice by issuing or promulgating research analyses or research reports, whether in electronic, print or other form, concerning any investment product. (h) Persons exempted under section 99(1)(h) of the Securities and Futures Act read with paragraph 7(1)(b) of the Second Schedule to the Securities and Futures (Licensing and Conduct of Business) Regulations. (i) Approved trustees approved under section 289 of the Securities and Futures Act. (j) Trust companies licensed under section 5 of the Trust Companies Act (Cap. 336). (k) Direct life insurers licensed under section 8 of the Insurance Act (Cap. 142). (l) Insurance brokers registered under the Insurance Act which, by virtue of such registration, are exempted under section 23(1)(c) of the Financial Advisers Act except those which only provide advice by issuing or promulgating research analyses or research reports, whether in electronic, print or other form, concerning any investment product. We note that the range of eligible financial institutions is broader that the financial institutions which are permitted under the VCC Act to act as managers of a VCC (being the entities listed at (a), (b), (c), (e) – which are holders of capital markets services licences for fund management, and (f)).

S/N	Respondent	Responses from respondent
		We further note that certain of the eligible financial institutions would be likely to be involved as distributors of VCCs (including the entities listed at (d), (g), (k) and (l)) and that approved trustees (listed at (i)) would be likely to be involved as administrators of VCCs. We would like to clarify whether there is any broader policy intent behind the broad list of eligible financial institutions (other than that they are regulated by the MAS for AML/CFT purposes). More clarity on the policy intent in this regard would be helpful. *Engagement of Multiple Eligible Financial Institutions* Is it the intention that multiple eligible financial institutions may be appointed by the VCC to carry out checks and perform measures (e.g. where a number of distributors are engaged by the VCC each distributor can carry out AML/CFT checks on its own customers), or is the VCC limited to appointing a single eligible financial institution. *Outsourcing* We would like to confirm that the intention is not to restrict the ability of the appointed eligible financial institution to itself engage an outsourced service provider (such as compliance firms and fund administrators) to perform CDD measures, retain records, or maintain nominee director/beneficial ownership registers (subject to the guidelines on outsourcing and other applicable laws and regulations).
2	Benoy Philip	**General comments:** 1). VCC Manager will have significant motivation to grow VCC's AUM, for several reasons including the fund management fee structure generally being either variable in nature or having a variable component. 2). VCC and its Board, in my assessment, will have much less motivation to gather Direct AUM (ie AUM gathering other than through appointed licenced fund distributors), on account of various reasons such as fixed compensation and potential conflicts that may arise. Further, VCC Board, from a risk mitigation point of view will be more inclined to have AUM gathering conducted through appointed licenced distributors. 3). Any Direct AUM gathering by the VCC should go through a joint AML/CFT sign off by both (i) VCC Manager (being its de-facto eligible financial institution) and (ii) one authorised signatory of VCC Board. 4). As envisaged in the proposed regulation, VCC can be responsible for AML/CFT matters. However, AML/CFT aspects attributable to any

S/N	Respondent	Responses from respondent
		Direct AUM gathering by the VCC be approved jointly by its Manager and VCC Board. VCC Board should put in place a suitable standard operating procedure for this. 5). In relation to AUM (ie Distributor AUM), gathered on behalf of a VCC by its appointed eligible financial institution acting as distributor, the responsibility for AML/CFT sign-off will be on such appointed fund distributor. **Question 1: With respect to paragraph 2.4 of the consultation paper, MAS seeks comments that the requirement for a VCC to appoint an eligible financial institution shall not extend to paragraph 3 (Underlying Principles), paragraph 4 (Eligible FIs) and paragraph 10 (Reliance on Third Parties) of the Notice, as these are obligations that are applicable to only the VCC.** Response: no specific points to add, except it is a welcome move. The Manager associated with the VCC should be treated as it's "de-facto" eligible financial institution. **Question 2: MAS seeks comments on the proposed definitions of "business relations" and "customer", in relation to a VCC, and whether it appropriately captures the scope of customer activities conducted by a VCC.** Response: The scope of "business relations" be expanded to capture (i) holders of Debenture issued by a VCC or a sub-fund. The term Debenture as per the Act will also cover "debenture stock, bonds, notes and any other securities of a VCC whether constituting a charge on the assets of the VCC or not". Suggested modification as follows "business relations" means any direct or indirect contact between a VCC and a person (whether a natural person, legal person or legal arrangement) that results in the entering or maintaining of such person's particulars in the register of members under section 17 of the VCC Act; or otherwise required to enter or maintain adequate records to capture particulars of holders of debenture or any other securities issued by the VCC or a sub-fund; **Rationale….** Holders of debenture (ie: debenture stock, bond, note or other securities) or any other securities issued by the VCC or a sub fund should also be brought under the purview of the proposed AML/CFT Notice meant for VCCs. **Question 3: MAS seeks comments on the proposed scope of requirements on the registers of beneficial owners of a VCC and its nominee directors set out in paragraphs 3.4 to 3.6, including on the**

S/N	Respondent	Responses from respondent
		prescribed places where a VCC should maintain these registers, as set out in paragraph 3.5(a) Response: no specific points to add. **Question 4: MAS seeks comments on the whether there are other circumstances under which a VCC may acquire an entity or structure other than another VCC or a fund whereby the VCC may wish to rely on existing CDD measures already performed, which are not currently covered by the scope of the VCC AML/CFT Notice** Response: no specific points to add **Question 5. MAS seeks comments on whether any of the above concepts could be relevant to VCCs, and hence should instead be included in the proposed VCC AML/CFT Notice.** Response: no specific points to add, except that the VCC may undertake transactions for its members, <u>its debenture holders</u> (ie; holders of debenture stock, bond, note, or other securities) and holders of other securities issued by the VCC or a sub-fund. **Question 6. MAS seeks comments, other than those listed above, on the proposed VCC AML/CFT Notice set out in Annex B** Response: no specific points to add.
3	CFA Society Singapore	**General comments:** **Question 1: With respect to paragraph 2.4 of the consultation paper, MAS seeks comments that the requirement for a VCC to appoint an eligible financial institution shall not extend to paragraph 3 (Underlying Principles), paragraph 4 (Eligible FIs) and paragraph 10 (Reliance on Third Parties) of the Notice, as these are obligations that are applicable to only the VCC.** Paragraph 2.4 states that the VCC is an investment vehicle. We note that investment vehicles are usually passive structures with a board of directors, and staff if any, who do not undertake operating and management decisions although we do not preclude other instances where the board and staff of investment vehicles do make such decisions. As such, where the VCC is operated by a licensed fund manager, the fund manager will be subjected to the MAS Notice to Capital Market Licensees and Exempt Persons on Prevention of Money Laundering and Countering the Financing of Terrorism (MAS Notice No. SFA 04-N02) which have similar obligations relating to

S/N	Respondent	Responses from respondent
		paragraph 3 (Underlying Principles) and paragraph 10 (Reliance on Third Parties). By virtue of the above, we agree that paragraphs 3, 4 and 10 are applicable only to the VCC. Given that VCC is a passive investment vehicle where decisions are typically made by the eligible financial institution, we also seek MAS clarification which party would be held accountable (the VCC, its directors and members, or the eligible financial institution) if any of the obligations set out in the Notice (particularly paragraphs 3, 4 and 10) are breached. **Question 2: MAS seeks comments on the proposed definitions of "business relations" and "customer", in relation to a VCC, and whether it appropriately captures the scope of customer activities conducted by a VCC.** We note that the definition intends to define customers of the VCC as investors who invest into the fund, which appears to be consistent with the MAS Notice SFA 04-N02 definition of customer for a fund manager. **Question 3: MAS seeks comments on the proposed scope of requirements on the registers of beneficial owners of a VCC and its nominee directors set out in paragraphs 3.4 to 3.6, including on the prescribed places where a VCC should maintain these registers, as set out in paragraph 3.5(a)** We agree with 3.4 and 3.5. Additional related comments: Paragraph 3.5(a) - MAS may consider augmenting the term "where applicable" to paragraph 3.5 (a). **Question 4: MAS seeks comments on the whether there are other circumstances under which a VCC may acquire an entity or structure other than another VCC or a fund whereby the VCC may wish to rely on existing CDD measures already performed, which are not currently covered by the scope of the VCC AML/CFT Notice** We agree with 3.8. The acquiring VCC can rely on the CDD that has already been performed by the target VCC. In the event that the transfer of the management of an overseas investment vehicle to a VCC is facilitated by an overseas subsidiary or branch of the eligible custodian bank/financial institution in Singapore that has been/is contractually mandated to administer the VCC, a confirmation or affidavit by the overseas financial entity (along with documentary proof) evidencing the prevalence of comprehensive CDD measures similar to MAS' requirements is required. This might suffice in lieu of a completely new

S/N	Respondent	Responses from respondent
		CDD exercise at the time of transfer. This would also not preclude subsequent periodic CDD reviews. **Question 5. MAS seeks comments on whether any of the above concepts could be relevant to VCCs, and hence should instead be included in the proposed VCC AML/CFT Notice.** Given that the VCC is an investment vehicle which is typically a passive structure with a board of directors, and staff if any, who do not undertake operating and management decisions, we are of the opinion that the concepts relating to this question are not relevant. **Question 6. MAS seeks comments, other than those listed above, on the proposed VCC AML/CFT Notice set out in Annex B** No further comment
4	Schroders Investment Management (Singapore) Ltd	**General comments:** **Question 1: With respect to paragraph 2.4 of the consultation paper, MAS seeks comments that the requirement for a VCC to appoint an eligible financial institution shall not extend to paragraph 3 (Underlying Principles), paragraph 4 (Eligible FIs) and paragraph 10 (Reliance on Third Parties) of the Notice, as these are obligations that are applicable to only the VCC.** While it is reasonable to treat a VCC as a legal entity with corresponding AML/CFT obligations, realistically VCCs are set up by fund managers who are responsible for managing the investments and onboarding of investors. While VCCs have a board of directors for oversight, VCCs would function more like a holding entity hence it would be impractical to expect VCCs to apply paragraph 3 of the draft Notice as the ultimate decision makers are the fund managers. We propose to allow VCCs to rely fully on the fund manager for all AML/CFT obligations including paragraph 3, given that the Eligible FI would be a FI regulated by MAS and is thus expected to comply with the AML/CFT standards set by MAS. **Question 2: MAS seeks comments on the proposed definitions of "business relations" and "customer", in relation to a VCC, and whether it appropriately captures the scope of customer activities conducted by a VCC.** No comments.

S/N	Respondent	Responses from respondent
		Question 3: MAS seeks comments on the proposed scope of requirements on the registers of beneficial owners of a VCC and its nominee directors set out in paragraphs 3.4 to 3.6, including on the prescribed places where a VCC should maintain these registers, as set out in paragraph 3.5(a) No comments. **Question 4: MAS seeks comments on the whether there are other circumstances under which a VCC may acquire an entity or structure other than another VCC or a fund whereby the VCC may wish to rely on existing CDD measures already performed, which are not currently covered by the scope of the VCC AML/CFT Notice** No comments. **Question 5. MAS seeks comments on whether any of the above concepts could be relevant to VCCs, and hence should instead be included in the proposed VCC AML/CFT Notice.** No comments. **Question 6. MAS seeks comments, other than those listed above, on the proposed VCC AML/CFT Notice set out in Annex B** We would like to seek clarification on the following please: - On the record keeping requirement set out in paragraph 11, can the VCC rely on the fund manager to keep the relevant records? - On the suspicious transactions reporting requirements set out in paragraph 13, can the VCC rely on the fund manager to report any STR, given that the fund manager would be privy to the same transactions related to the VCC and the fund manager as an Eligible FI would be obliged to report the STR under its AML obligations? - On paragraph 14 on internal policies, while the consult paper mentioned that a VCC could adapt AML policies and procedures of the Eligible FI that it has appointed, we are of the view that this would eventually become a paper exercise given that the AML due diligence process would be carried out at the fund manager's level. As such, we suggest that VCCs be allowed to rely fully on the fund manager for its AML obligations, without having to set up its own AML policies and procedures.
5	Singapore Fund Administrators	**General comments:**

S/N	Respondent	Responses from respondent
	Association (SFAA)	**Question 1: With respect to paragraph 2.4 of the consultation paper, MAS seeks comments that the requirement for a VCC to appoint an eligible financial institution shall not extend to paragraph 3 (Underlying Principles), paragraph 4 (Eligible FIs) and paragraph 10 (Reliance on Third Parties) of the Notice, as these are obligations that are applicable to only the VCC.** **Question 2: MAS seeks comments on the proposed definitions of "business relations" and "customer", in relation to a VCC, and whether it appropriately captures the scope of customer activities conducted by a VCC.** Under 3.2, the definition of "customer" should not be limited to persons with whom the VCC "establishes or intends" to establish relations but also persons with whom the VCC "has established" relations to allow to cover scenario where the VCC had already established relation with a customer prior to become a VCC (eg migration or conversion of a foreign entity into a VCC). **Question 3: MAS seeks comments on the proposed scope of requirements on the registers of beneficial owners of a VCC and its nominee directors set out in paragraphs 3.4 to 3.6, including on the prescribed places where a VCC should maintain these registers, as set out in paragraph 3.5(a)** **Question 4: MAS seeks comments on the whether there are other circumstances under which a VCC may acquire an entity or structure other than another VCC or a fund whereby the VCC may wish to rely on existing CDD measures already performed, which are not currently covered by the scope of the VCC AML/CFT Notice** **Question 5. MAS seeks comments on whether any of the above concepts could be relevant to VCCs, and hence should instead be included in the proposed VCC AML/CFT Notice.** **Question 6. MAS seeks comments, other than those listed above, on the proposed VCC AML/CFT Notice set out in Annex B** 1) Under 2.6 the Eligible Financial Institution (EFI) list should include compliance firms and fund administrators. Under

S/N	Respondent	Responses from respondent
		the current environment a fund manager can delegate the AML/KYC documentation collection and review process to a fund administrator but still be held responsible for the overall process and the submission to MAS, we would like this process to remain the same as a lot of our members are not financial institutions 2) Under 3.5, the reference to "identity number" should not include "unique" as the identity number is always unique. It can be confusing to use the wording "unique" as this may refer to other ID numbers.
6	Singapore Venture Capital & Private Equity Association	**General comments:** This response to the Consultation Paper on the Proposed Notice on Prevention of Money Laundering and Countering the Financing of Terrorism for Variable Capital Companies ("**VCC**") has been prepared by the Advocacy Committee of the Singapore Private Equity and Venture Capital Association ("**SVCA**") with feedback from members of SVCA. The members of our advocacy committee include fund managers, law firms, tax advisers and compliance advisers. Additional details about the advocacy committee are available at: https://www.svca.org.sg/sub-committees. The responses we provide assume the perspective of the private equity fund and venture capital fund industry. We seek MAS' clarification on the following general point: **Paragraph 2.5 of the draft Notice to Variable Capital Companies on the Prevention of Money Laundering and Countering the Financing of Terrorism (the "AML Notice")** Is it MAS' intention to require VCCs to have their own separate set of policies and procedures, distinct from the policies and procedures the eligible financial institution engaged by the VCC will maintain pursuant to its own AML/CFT obligations? The concern here is that such requirement may be duplicative, given that the eligible financial institution is required pursuant to paragraph 4.1 of the AML Notice to carry out the checks and perform the necessary procedures in any case. It would be preferable to provide flexibility for VCCs to be able to either: (a) put in place their own policies, procedures and controls; or (b) rely on policies, procedures and controls put in place by the eligible financial institution in relation to the VCC (which would be augmented as appropriate to address any specific requirements of VCCs).

S/N	Respondent	Responses from respondent
		It is submitted that this would provide flexibility for VCCs across the private funds space to increase operational synergies and reduce costs for investors. To add to this point, it is noted that VCCs have the sole purpose of being a fund investment vehicle for collective investment and VCCs are likely to be thinly staffed or may not have employees who can attend to the policies and procedures. If the intention is to require VCCs to maintain and carry out its own distinct set of AML/CFT policies and procedures separate from the eligible financial institution engaged by the VCC, it will lead to additional costs because the VCCs will need to maintain its own AML/CFT compliance function. To elaborate on this point further, we have inferred from the AML Notice that executive director of the VCC will be required to carry out the VCC's AML/CFT obligations in the event that the VCC does not employ any other employees for the purposes of carrying out such AML/CFT compliance function. Please consider whether this will have an effect on the pool of talent available to be executive directors of VCCs (as they will need to have suitable qualifications/experience). In addition, the fact that the eligible financial institution will be subject to its own AML/CFT obligations means that there is a possibility of double jeopardy and it should be clarified how MAS will consider whether to take action against the VCC or the eligible financial institution, or both. In the case where MAS may want to act against both entities, we seek MAS' clarification and guidance on how MAS will apportion the liability for the same breach in AML/CFT obligation. To elaborate further on this point, we note that executive directors of the VCC are likely to also be a director of the VCC's fund manager. Please clarify whether such executive director is subject to the possibility of extra liability due to the double imposition of AML/CFT obligations. **Question 1: With respect to paragraph 2.4 of the consultation paper, MAS seeks comments that the requirement for a VCC to appoint an eligible financial institution shall not extend to paragraph 3 (Underlying Principles), paragraph 4 (Eligible FIs) and paragraph 10 (Reliance on Third Parties) of the Notice, as these are obligations that are applicable to only the VCC.** We would like to verify whether it is MAS' intention that multiple eligible financial institutions may be appointed by one VCC to carry out checks and perform measures (e.g. where a number of distributors are engaged by the VCC, each distributor can carry out AML/CFT checks on its own customers), or is a VCC limited to appointing a single eligible financial institution?

S/N	Respondent	Responses from respondent
		Next, we seek MAS' clarification that the intention is not to restrict the ability of the appointed eligible financial institution to itself engage an outsourced service provider to perform CDD measures (subject to the guidelines on outsourcing and other applicable laws and regulations). We propose that footnote 3 of the AML Notice be set out in the main text. **Question 2: MAS seeks comments on the proposed definitions of "business relations" and "customer", in relation to a VCC, and whether it appropriately captures the scope of customer activities conducted by a VCC.** We have no comment on this. **Question 3: MAS seeks comments on the proposed scope of requirements on the registers of beneficial owners of a VCC and its nominee directors set out in paragraphs 3.4 to 3.6, including on the prescribed places where a VCC should maintain these registers, as set out in paragraph 3.5(a)** We have no comment on this. **Question 4: MAS seeks comments on the whether there are other circumstances under which a VCC may acquire an entity or structure other than another VCC or a fund whereby the VCC may wish to rely on existing CDD measures already performed, which are not currently covered by the scope of the VCC AML/CFT Notice** We have no comment on this. **Question 5. MAS seeks comments on whether any of the above concepts could be relevant to VCCs, and hence should instead be included in the proposed VCC AML/CFT Notice.** We have no comment on this. **Question 6. MAS seeks comments, other than those listed above, on the proposed VCC AML/CFT Notice set out in Annex B** In addition to our comments above, we seek MAS' clarification on the interaction of the obligations of the eligible financial institution (pursuant to paragraph 4.1 of the AML Notice to carry out checks and perform measures) with certain obligations in the AML Notice imposed on the VCC. Further clarification is required as to which entity (whether the VCC or the eligible financial institution) should carry out the obligations under the AML Notice.

S/N	Respondent	Responses from respondent
		In particular, please refer to the following sections of the AML Notice: • Senior management approvals pursuant to paragraphs 9.3(a) and 5.3 (a) of the AML Notice Please clarify whether this refers to the senior management of the VCC or the eligible financial institution. In addition, paragraph 7.33 of the AML Notice also makes reference to "senior management" and it should be clarified whether this refers to the VCC or the eligible financial institution. • Record retention obligations pursuant to paragraph 11.1 Please clarify whether records be retained by the VCC or the eligible financial institution (or both). • Establishing a STR reporting point pursuant to paragraph 13.1 Please clarify whether this should this be established by the VCC or the eligible financial institution (or both). • Appointment of an AML/CFT compliance officer at the management level pursuant to paragraph 14.9 Another point of clarification is paragraph 14.9 of the AML Notice, where it is stated that there should be an appointment of an AML/CFT compliance officer at the "management level". We seek MAS' clarification whether this will be satisfied if an AML/CFT compliance officer is appointed at the management level of the eligible financial institution, or in particular, by the fund manager appointed by the VCC. Paragraph 14.10 of the AML Notice also contemplates that the VCC will be required to employ suitably qualified persons to discharge the VCC's AML requirements and obligations and we seek MAS' clarification whether this may be satisfied by the eligible financial institution on behalf of the VCC. To elaborate on the above, given that we anticipate that a variety of VCCs may be constituted, ranging from large VCCs comprising numerous sub-funds to a newly established fund manager using the VCC on a standalone basis as a fund vehicle, it would be preferable to provide flexibility for VCCs to determine for themselves whether they or the eligible financial institutions would be best placed to carry out these obligations. As mentioned above, we note that VCCs are likely to be thinly staffed or may not have employees who can attend to these obligations, and requiring additional staffing could impose an operational cost burden and discourage the use of VCCs.

S/N	Respondent	Responses from respondent
		Finally, we note that the AML Notice refers to "committee of management of the VCC" in the definition of "officer". Please clarify what is meant by this committee of management and whether it is a committee of the VCC or the eligible financial institution, or both.
7	The Northern Trust Company Singapore Branch	**General comments:** **Question 1: With respect to paragraph 2.4 of the consultation paper, MAS seeks comments that the requirement for a VCC to appoint an eligible financial institution shall not extend to paragraph 3 (Underlying Principles), paragraph 4 (Eligible FIs) and paragraph 10 (Reliance on Third Parties) of the Notice, as these are obligations that are applicable to only the VCC.** We would like to seek clarifications on whether this would mean that the rest of the paragraphs in the Notice (with the exception of paragraphs 3, 4 and 10) are to be performed by the appointed eligible FI on behalf of the VCC. For example, providing senior management approvals for high risk relationships, filing of suspicious transaction reports, and appointment of AML/CFT officer. **Question 2: MAS seeks comments on the proposed definitions of "business relations" and "customer", in relation to a VCC, and whether it appropriately captures the scope of customer activities conducted by a VCC.** "Customer" as defined in the Proposed AML/CFT for VCCs includes persons with whom the VCC intends to establish business relations, and "business relations" include any contact (direct or indirect) between a person and the VCC that results in the entering or maintaining of such person's particulars in the register of members. In this regard, we would like to clarify to what extent is a VCC expected to conduct CDD measures on a potential customer based on MAS' proposed *"intends to establish business relations*" in the "Customer" definition, as such potential customers may not necessarily be included in the register of members. **Question 3: MAS seeks comments on the proposed scope of requirements on the registers of beneficial owners of a VCC and its nominee directors set out in paragraphs 3.4 to 3.6, including on the prescribed places where a VCC should maintain these registers, as set out in paragraph 3.5(a)** We would like to seek clarifications on the following two areas: Firstly, on the prescribed places where the registers should be maintained, in the context where the eligible FI had outsourced the AML/CFT function to another entity ("outsourced service provider"),

S/N	Respondent	Responses from respondent
		can the registered office of the outsourced service provider be one of the prescribed places where the registers are maintained? Secondly, the requirement to maintain a register of beneficial owners and nominee directors incorporating information as stipulated in paragraphs 7.19 and 7.23 of the Proposed AML/CFT VCC Notice, respectively appears to be more a corporate secretarial requirement vis-à-vis AML/CFT. Would the maintenance of such information be excluded from the requirements of Personal Data Protection Act as stipulated in paragraph 12 of the Proposed AML/CFT VCC Notice. **Question 4: MAS seeks comments on the whether there are other circumstances under which a VCC may acquire an entity or structure other than another VCC or a fund whereby the VCC may wish to rely on existing CDD measures already performed, which are not currently covered by the scope of the VCC AML/CFT Notice** Nil. **Question 5. MAS seeks comments on whether any of the above concepts could be relevant to VCCs, and hence should instead be included in the proposed VCC AML/CFT Notice.** Nil. **Question 6. MAS seeks comments, other than those listed above, on the proposed VCC AML/CFT Notice set out in Annex B** We would like to seek clarifications on the following areas: Firstly, where the VCC engages an eligible FI for purposes of conducting the checks and performing the measures to comply with the proposed Notice, is this engagement considered as a reliance on third party or as an outsourcing activity from the VCC perspective? Secondly, is the VCC allowed to rely on the eligible FI to conduct ongoing monitoring of business relations with customers? Thirdly, where the eligible FI conducts the checks and measures in accordance with the policies and procedures established by the VCC, but the policies and procedures do not meet the AML/CFT obligations set out in the VCC AML/CFT Notice, will the eligible FI be subject to supervisory action by MAS?
8	Respondent A	**General comments:** **Question 1: With respect to paragraph 2.4 of the consultation paper, MAS seeks comments that the requirement for a VCC to appoint an eligible financial institution shall not extend to paragraph 3 (Underlying Principles), paragraph 4 (Eligible FIs) and**

S/N	Respondent	Responses from respondent
		paragraph 10 (Reliance on Third Parties) of the Notice, as these are obligations that are applicable to only the VCC. **I**t is common for trustees of Cayman domiciled alternative funds, for example, to require AML/CFT be carried out by regulated entities, not necessarily in the jurisdiction of domicile but in an equivalent jurisdiction or even a FATF jurisdiction. It may be difficult for a VCC that is an alternative fund to comply and limit their choice of financial institutions to the current list in Table 1 where only locally regulated entities are in scope. For example in cases where the service provider jurisdiction is deemed an equivalent jurisdiction to the fund domicile jurisdiction and the service provider entity is regulated, it is acceptable to apply the AML/ CFT standards of the service provider's jurisdiction. Would MAS consider expanding the scope to include service providers in jurisdictions that would apply equivalent AML & CFT standards? **Question 2: MAS seeks comments on the proposed definitions of "business relations" and "customer", in relation to a VCC, and whether it appropriately captures the scope of customer activities conducted by a VCC.** As the VCC structures can sometimes involve umbrella and feeder funds, further clarification and alignment of usage would be welcomed on the definition of 'customers', 'members', 'investors', 'beneficial owners'. As para 3.1 of the Consultation paper provides that '*MAS expects CDD to be conducted on all the VCC's members (including prospective members) whether at a fund or sub-fund level. , this will help* avoid confusion where each term may effectively mean the same entity. A VCC must also conduct due diligence on the beneficial owners of its customers, connected parties and natural persons appointed to act on behalf of its customers' We seek clarification and where possible alignment of the terms used; would: • *"beneficial owner", in relation to a VCC does it refers to members/investors of VCC?* • *"beneficial owner", in relation to a customer of a VCC does it refers members/investors of VCC?* • *"customer" in relation to a VCC, does it means a person (whether a natural person, legal person or legal*

S/N	Respondent	Responses from respondent
		arrangement) with whom the VCC establishes or intends to establish business relations; or does it refers members/investors of VCC(i.e. registered unit holders, participating members of the umbrella and/or sub-fund/s)? As the VCC is an investment vehicle, presumably the VCC's customers will be the registered unit holders / members. Where the VCC has sub-funds, is the VCC required to maintain separate member registers for each sub-fund? Paragraph 3.1 of the Consultation paper also requires CDD to be conducted on prospective members. What are the Authority's expectations where a contractual relationship has not been established and thus the identification and verification cannot be completed? **Question 3: MAS seeks comments on the proposed scope of requirements on the registers of beneficial owners of a VCC and its nominee directors set out in paragraphs 3.4 to 3.6, including on the prescribed places where a VCC should maintain these registers, as set out in paragraph 3.5(a)** No comments **Question 4: MAS seeks comments on the whether there are other circumstances under which a VCC may acquire an entity or structure other than another VCC or a fund whereby the VCC may wish to rely on existing CDD measures already performed, which are not currently covered by the scope of the VCC AML/CFT Notice** No comment **Question 5. MAS seeks comments on whether any of the above concepts could be relevant to VCCs, and hence should instead be included in the proposed VCC AML/CFT Notice.** The concept could be relevant if the VCC receives a payment, e.g. subscription proceeds for an investor from an unknown third party or is requested to make payments to a third unknown party, e.g. redemption payment for an investor. Generally such instructions to or from unknown third parties should be prohibited. **Question 6. MAS seeks comments, other than those listed above, on the proposed VCC AML/CFT Notice set out in Annex B** In addition to comments in Question 1, we suggest that the obligations in paragraphs 5, 6 and 11 to 14 should likewise remain with the VCC where there can be no delegation of such

S/N	Respondent	Responses from respondent
		responsibilities to an eligible Financial Institution (FI). Regarding paragraph 5 and 6 it is envisaged that VCCs will delegate their AML/CFT obligations to an FI listed in Appendix 1. However, the FI may not have the ability to define a VCC Risk Assessment program for all the VCC vehicles it manages. Nor should a third party FI be required to document a risk assessment for each VCC. The onus on the third party FI (presumably the VCC manager) is too onerous and falls outside the scope of a 'delegated' or outsourced service. Regarding paragraph 14 of the Notice, whilst the Authority has set out that the VCC may adopt the policies and procedures of the eligible FI, it is envisaged that the VCC will assess to determine if they are adequate and 'tap on the internal audit and compliance resources of the eligible financial institution'. Due to intellectual property considerations, some FIs may not share their internal policies and procedures with external third parties. As such, the VCC should just place reliance on the eligible FI pursuant to paragraph 10 of the notice. In addition, in light of the Authority's intention expressed in paragraph 2.6 of the Consultation paper which provides that *'In addition, MAS may take separate supervisory action against or sanction the eligible financial institution where it has been found to be in breach of the requirements under its own AML / CFT obligations'*, the responsibility placed on the eligible FI appears to be too onerous given that the VCC is placing reliance pursuant to paragraph 10. Delegation of AML services to an eligible FI should be limited to paragraphs 7 to 9 of the proposed notice. Alternatively, the Authority should propose a prescriptive guideline setting out the expectation of the VCC and the eligible FI in a delegation arrangement which places the ultimate responsibility of compliance with the Notice on the VCC as stated in paragraph 2.4.

Monetary Authority of Singapore