

SECURITIES AND FUTURES (AMENDMENT) BILL 2016 MOVED IN SINGAPORE PARLIAMENT FOR SECOND READING

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Legal Briefings

On 9 January 2017, the MAS [announced](#) the Second Reading of the *Securities and Futures (Amendment) Bill 2016* (**Bill**) in the Singaporean Parliament. The Bill introduces wide-ranging amendments aimed at strengthening the regulation of over-the-counter (**OTC**) derivatives markets, enhancing regulatory safeguards for retail investors, enhancing the credibility and transparency of Singapore capital markets, and strengthening the enforcement regime against market misconduct.

This article provides an overview of some of the key changes to the *Securities and Futures Act* (**SFA**), which were based on extensive consultation with the industry in the period between 2012 and 2015.

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1. Regulatory oversight of OTC derivatives

The Bill completes the MAS' two-phase review to implement OTC derivatives regulatory reforms, in line with recommendations made by the [Financial Stability Board \(FSB\)](#) and the [Group of Twenty \(G20\)](#) to strengthen the regulation of OTC derivatives markets following the 2008 global financial crisis. The first phase of legislative amendments was passed in November 2012.

The MAS will be empowered to require that certain OTC derivatives products that meet prescribed criteria be traded on organised trading facilities (**OTFs**) authorised by the MAS. This is the last key component of OTC derivatives reforms recommended by the FSB and G20 to improve transparency in the derivatives market, and complements the MAS' existing powers to require reporting of trade information and central clearing of certain OTC derivatives contracts.

Financial institutions should watch this space as the MAS has stated that it will consider liquidity conditions in Singapore and international developments in determining the timing and scope of implementing the trading requirement in Singapore.

The MAS has also stated that it will also allow derivatives products to be listed and traded on OTFs without the need for case-by-case approval. Market operators should consider whether their contract designs satisfy conditions required for fair, orderly and transparent trading for certification.

2. Enhanced safeguards for retail investors

The MAS will be empowered to prescribe non-conventional investment products, such as gold buy-back arrangements, as "debentures" to ensure that such products are accorded the same regulatory safeguards as investors in capital markets products.

The definition for a collective investment scheme (**CIS**) has also been amended such that there need not be pooling of investors' contributions and scheme profits for an arrangement to be regarded as a CIS, so long as the scheme property is collectively managed. These amendments will align Singapore's CIS regulations with UK and Hong Kong regulations.

Further, financial institutions should note that the Bill refines the definitions of accredited investors (**AIs**) and institutional investors (**IIs**):

The wealth criteria to qualify as an AI has been tightened such that the net equity of the individual's primary residence can only contribute up to S\$1 million of the current S\$2 million net personal assets threshold. Alternatively, individuals will be able to qualify as an AI if they have S\$1 million of financial assets (net of any related liabilities).

Individuals that meet the AI criteria will now have to opt-in to purchase AI-only products. AI-eligible investors who do not opt-in will generally benefit from the regulatory safeguards afforded to general retail investors, but will not be able to access AI-only products.

- The II definition will be widened to include entities professionally active in the capital markets, such as financial institutions regulated by foreign regulators, foreign central governments and sovereign wealth funds.

3. Credibility and transparency of capital markets

To enhance the efficacy of the price discovery process, the MAS has announced that they will be implementing new requirements for market participants to disclose short-sell orders to the relevant exchange and report short positions above specified thresholds to the MAS. Aggregated short-sell orders and short positions will be published.

The MAS will also be introducing a new framework for financial benchmarks. MAS will have the power to designate key financial benchmarks and to regulate administrators of, and submitters who contribute information required to compute, such designated benchmarks.

Banks should note that they may now be directed by MAS to submit information required to compute the designated benchmarks to the benchmark administrators.

Criminal sanctions and civil penalties will also be introduced to deter manipulation of financial benchmarks.

4. Stronger enforcement regime against market misconduct

The Bill will clarify that the SFA prohibits disclosures where a material aspect of the statement is false or misleading and is likely to have an effect on the market price of the securities, securities-based derivatives contract or CIS unit, regardless of the significance of the price effect.

The Bill will introduce a statutory definition of "persons who commonly invest" to better reflect market participants who are accustomed to or likely to invest in securities. This will allow the courts to consider different classes of such persons when using the term as a reference point in assessing whether particular information is generally available and whether it is likely to have a material price impact by influencing the behavior of common investors.

The Bill standardises the maximum penalty that can be awarded in all civil penalty cases to the greater of (i) S\$2 million, or (ii) 3 times the amount of benefits gained or losses avoided. This ensures that the civil penalty quantum that can be awarded is commensurate with the gravity of the misconduct, and is not unduly limited by the value of the benefit gained or loss avoided by the offender.

The MAS' civil penalty claims will now have priority over private unsecured claims that accrue subsequent to the contravention of the SFA, in alignment with the priority that is accorded to government claims under section 10(1) of the *Government Proceedings Act*. This will strengthen the MAS' ability to resist attempts to divert funds frozen by the MAS for satisfaction of civil penalties imposed under the SFA towards satisfaction of the contravening person's private debts.

5. Conclusion

The amendments introduced by the Bill are aimed at ensuring that Singapore's capital market regulatory framework keeps pace with market developments and international standards. The MAS will likely issue further updates to clarify the various specific areas of reform.

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