

# MAS CONSULTS ON DRAFT REGULATIONS PURSUANT TO THE SECURITIES AND FUTURES ACT

22 June 2017 | Singapore

Legal Briefings - By **Siddhartha Sivaramakrishnan, Nicola Yeomans, Indraneil Ghosh, Grace Chong and Sandra Tsao (Prolegis)**

---

The Monetary Authority of Singapore (**MAS**) recently published two consultation papers on [28 April 2017](#) and [26 May 2017](#) (together, the **Consultation Papers**) to consult on draft regulations supporting the implementation of legislative amendments introduced by the Securities and Futures (Amendment) Act 2017 (**SF Amendment Act**).

The legislative amendments were passed in the Singapore Parliament on 9 January 2017 to bring the Singapore capital markets regulatory framework in line with international standards. Our previous bulletin on the amendments can be found [here](#).

The Consultation Papers propose regulations on:

New Securities and Futures (Markets) Regulations (**SF(M)R**);

New Securities and Futures (Financial Benchmarks) Regulations (**SF(FB)R**);

Amendments to the Securities and Futures (Offers of Investments) (Collective Investment Schemes) Regulations 2005 (**SF(OI)(CIS)R**) to implement changes under Part XIII of the SFA in relation to funds, including real estate investment trusts (**REITs**);

Amendments to the Securities and Futures (Licensing and Conduct of Business) Regulations (**SF(LCB)(R)**); and

New Securities and Futures (Offers of Investments) (Shares, Debentures and Business Trusts) Regulations 2017 (**SF(OI)(SDBT)(R)**).

This bulletin summarises the MAS' key proposals in the Consultation Papers. Responses to the first paper closed on 2 June 2017. Submissions for the second Consultation Paper close on 23 June 2017.

## **KEY AMENDMENTS PROPOSED BY THE FIRST CONSULTATION PAPER**

### **New Securities and Futures (Market) Regulations (SF(M)R)**

The MAS is seeking to repeal and reissue the existing Securities and Futures (Markets) Regulations 2005 with the SF(M)R in order to operationalise Part II of the SFA which provides for the regulation of approved exchanges (**AE**) and recognised market operators (**RMO**).

The SF(M)R will apply to operators of all organised markets, including those involved in the trading of OTC derivatives. To achieve greater transparency, the minimum admission requirements for corporations operating organised markets as approved exchanges (**AE**) or recognised market operators (**RMO**) will be set out in the SF(M)R.

To support better outcomes for customers and more clearly define aspects of market efficiency, MAS is also proposing market operators have in place measures to ensure bid and offer handling and execution on a fair and objective basis, and to facilitate execution of customer orders in the customer's interest.

Further, MAS is proposing to exempt from regulation facilities which engage with customers to broker "block futures" or "negotiated large trades" as an AE or RMO if the entities are regulated as brokers or Capital Market Services licence holders.

MAS is also proposing to implement the following transitional arrangements for operators facilitating the trading of OTC derivatives:

3 months for the entity to assess whether it operates an organised market, and if so, to notify MAS of its intention to apply for AE or RMO status; and

Having notified MAS, another 9 months for the entity to submit its application.

## **New Securities and Futures (Financial Benchmarks) Regulations (SF(FB)R)**

The SF(FB)R will operationalise the new Part VIAA of the SFA, which provides for the regulation of administrators of, and submitters who contribute information required to compute, designated financial benchmarks.

Each designated benchmark administrator will be required to establish an oversight committee responsible for the maintenance and governance of the designated benchmark (**Oversight Committee**).

To ensure the Oversight Committee remains independent, at least one-third of the Committee must comprise of persons who are not directors, key management officers or substantial shareholders of the benchmark administrator or submitter. Appointment to the Oversight Committee will also require MAS approval.

An independent external party is also required to audit the benchmark submission process annually. Benchmark administrators will therefore be required to engage an independent external auditor to review its administration process annually. The independent external auditor must first be approved by the Oversight Committee.

The MAS will provide a six month transition period for existing benchmark administrators and benchmark submitters in relation to the Singapore Interbank Offered Rate and Singapore Swap Offer Rate benchmarks.

Banks who are already regulated by the MAS will be exempt benchmark submitters. Exempt benchmark submitters will have up to six months to inform the MAS of their intention to carry on its business.

## **Securities and Futures (Offers of Investments) (Collective Investment Schemes) Regulations 2005 (SF(OI)(CIS)R)**

The MAS is seeking to broaden factors that it may consider in respect of foreign funds, and to refine certain regulations relating to real estate investment trusts (**REITs**).

In relation to collective investment schemes (**CIS**), the proposed amendments to the SF(OI)(CIS)R include introducing:

Additional factors that MAS may take into account when recognising a foreign fund for offer to retail investors; and

Conditions for exempting physical asset funds that are offered to accredited investors from fund authorisation and prospectus registration requirements.

In relation to REITs, under the current regulations, a fund advertisement, publication and prospectus must not contain any information on past performance based on simulated results of a hypothetical fund. To provide greater clarity, MAS will amend the relevant regulations to make it clear that the restriction does not apply to the disclosure of pro forma financial information.

MAS is also proposing draft amendments to the SF(OI)(CIS)R to allow REITs to have managers who are licensed or regulated to carry out REIT management activities in their principal place of business.

## **KEY AMENDMENTS PROPOSED BY THE SECOND CONSULTATION PAPER**

### **Securities and Futures (Licensing and Conduct of Business) Regulations (SF(LCB)R)**

The proposed amendments primarily introduce licensing exemptions and business conduct requirements for entities dealing in OTC derivatives contracts, and enhanced requirements for protecting customers' moneys and assets.

The MAS has previously proposed to remove the regulated activity of marketing CIS and to expand the scope of the relevant licensing exemptions so that dealings in CIS are only regulated by the SFA.

To ensure a level playing field for all entities, the MAS will introduce a requirement in the SF(LCB)R that financial advisers seeking to rely on the relevant exemptions comply with the business conduct requirements applicable to CIS dealings and business conduct requirements.

MAS is also making amendments:

To require record keeping for accredited investors;

To limit the use of title transfer collateral arrangements to customers who are accredited, institutional or expert investors; and

To broaden the exemptions available for dealing with expert investors.

### **New Securities and Futures (Offers of Investments) (Shares, Debentures and Business Trusts) Regulations 2017 (SF(OI)(SDBT)R)**

The MAS will be amending the Securities and Futures (Offers of Investments) (Shares and Debentures) Regulations 2005 and Securities and Futures (Offers of Investments) (Business Trusts) (No. 2) Regulations 2005 to collapse the requirements under both regulations into a new regulation, SF(OI)(SDBT)R.

The new regulation will introduce changes to the provisions on accounting standards for the preparation of financial statements to be included in a prospectus, and new provisions to allow for the incorporation of specific information into a prospectus (by reference to a separate document).

### **Other proposals**

The MAS is also seeking comments on other proposals as follows:

To exempt Remote Clearing Members which clear OTC derivatives contracts on Singapore-based central counterparties from the requirement to hold a CMS licence for dealing in capital markets products; and

To remove the S\$250,000 minimum base capital requirement for holders of a CMS licence on the basis that such licence holders will likely satisfy the S\$50,000 base capital requirement.

### **CONCLUSION**

The MAS has indicated in both Consultation Papers that it intends to operationalise the amendments to the SFA by 2018. The broad amendments proposed under the draft regulations reflect an intention to bring the Singapore capital markets regulatory framework in line with international standards and best practices.

---

*Herbert Smith Freehills LLP has a Formal Law Alliance (FLA) with Singapore law firm Prolegis LLC, which provides clients with access to Singapore law advice from Prolegis. The FLA allows the two firms to deliver a complementary and seamless legal service.*



# LEGAL NOTICE

The contents of this publication are for reference purposes only and may not be current as at the date of accessing this publication. They do not constitute legal advice and should not be relied upon as such. Specific legal advice about your specific circumstances should always be sought separately before taking any action based on this publication.

© Herbert Smith Freehills 2022

---

**SUBSCRIBE TO STAY UP-TO-DATE WITH INSIGHTS, LEGAL UPDATES, EVENTS, AND MORE**

Close

© HERBERT SMITH FREEHILLS LLP 2022