



The Monetary Authority of Singapore

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# **THE SECURITIES AND FUTURES ACT 2001**

## **CONSULTATION DOCUMENT**

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# INTRODUCTION

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The impetus for the Securities and Futures Act (SFA) is the introduction of structural policy reforms in the supervision of Singapore's capital markets which would require a substantial rewriting of our existing laws. There is also a need to update the present legislation governing the capital markets to keep abreast of the many developments that have taken place since their enactment.

Among these reforms are the revamp of the existing framework for authorisation of markets and licensing of intermediaries, a redefinition of the scope of regulated activities, and improvements in the market enforcement regime. The introduction of these structural reforms warrant major legislative changes, and best accomplished by the introduction of new legislation.

With the merger of the Stock Exchange of Singapore (SES) and Singapore International Monetary Exchange (SIMEX) into the Singapore Exchange (SGX), there is a parallel need to consolidate and rationalize our securities and futures legislation - this will be done in the proposed SFA which consolidates provisions in the Securities Industry Act (SIA) and the Futures Trading Act (FTA). The corporate fund raising and unit trust provisions currently in the Companies Act will be migrated to the SFA for the same reason.

MAS recognises the importance of giving exposure to intended changes in practice and legislation in the securities and futures industry. Consultation with market participants can lead to better-formed policies. MAS is therefore inviting comments from the public on the various new policy initiatives introduced in the SFA, as well as its provisions.

**IMPORTANT DISCLAIMER:** This version of the SFA is in draft form and subject to change. It is also subject to review by the Attorney-General's Chambers before being presented to Parliament.

# Part 1

## EXECUTIVE SUMMARY

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### SUMMARY OF MAJOR POLICY REFORMS

The following table summarizes the more material reforms to be introduced under the SFA. The detailed descriptions are found in the ensuing parts of this document:

<b>POLICY INITIATIVE</b>	<b>PART REFERENCE</b>
<p data-bbox="248 911 951 982"><b>Single Licensing Framework for Securities and Futures Market Intermediaries</b></p> <p data-bbox="248 1026 979 1352">The SFA will revamp the existing licensing framework and introduce a modular single licensing framework for the securities and futures intermediaries. Market intermediaries would, in future, only need a single licence to conduct a broad range of financial activities, such as securities dealing, futures trading, fund management, corporate finance advising, securities margin financing, and providing custodial services for securities.</p> <p data-bbox="248 1398 989 1688">Financial institutions such as banks, merchant banks, finance companies and insurance companies, which are already supervised by MAS under other legislation will not need to be separately licensed under the SFA in respect of their securities and futures businesses. However, these institutions will be required to meet certain business conduct rules that are imposed on SFA licencees.</p>	Part 2

POLICY INITIATIVE	PART REFERENCE
<p><b>Redefinition of Securities Dealing, Futures Broking, and Markets; and Recognition of Trading System Providers as operators of Markets, including Systems Operated by Overseas Exchanges</b></p> <p>Advances in telecommunication technology and globalization have led to more cross-border trade, especially in the electronic realm. Cross-border financial services become increasingly available to Singapore-based investors and market participants.</p> <p>The advent of new electronic financial services deconstructs traditional value chains. This requires a redefinition of the present scope of regulated activities under the SIA and FTA, which were not drafted with these new platforms in mind.</p> <p>In order to keep abreast of these developments, the SFA will therefore update the definitions of securities dealing, futures broking, as well as securities and futures markets. Electronic trading systems may be approved as Recognised Trading System Providers (ReTS Providers).</p> <p>Overseas market operators and capital market services providers which target Singapore will be subject to our regulatory regime. Acts performed overseas that have effect in Singapore will be subject to our jurisdiction.</p> <p>The SFA will introduce an authorisation regime for overseas stock and futures exchanges offering products in Singapore. Previously, overseas exchanges were accessible only through intermediaries, which are regulated. Increasingly, overseas exchanges are becoming more directly accessible to investors in Singapore. Our existing practice of "exempting" such overseas exchanges from our laws may not longer be appropriate. Such overseas exchanges will now be authorised as ReTS Providers. The new approach will allow MAS to have a more direct regulatory reach over</p>	<p>Part 3</p>

<b>POLICY INITIATIVE</b>	<b>PART REFERENCE</b>
<p>such overseas exchanges. MAS will define the reach of such exchanges to our investors. The same authorisation regime will also apply to non-traditional providers of electronic trading systems that are in effect operating a market in Singapore.</p> <p>These revisions, together with the single licensing framework provides flexibility for new business models. They also provide clarity and certainty to market participants on our regulatory scope and facilitate the development of new businesses and electronic services in Singapore.</p>	
<p><b>Legal and Regulatory Framework for Clearing and Settlement of Securities and Futures</b></p> <p>The SFA will introduce a legal and regulatory reach for securities and futures clearing and settlement institutions in Singapore. The SIA is presently not explicit on the regulatory reach of MAS on clearing and settlement institutions, although there is such a provision in the FTA for futures clearing institutions.</p> <p>The SFA will also extend exception to the general laws of insolvency to all approved clearing and settlement houses.</p>	Part 4
<p><b>Corporate Finance Provisions</b></p> <p>The proposed amendments under this section are largely to implement the recommendations made by the Corporate Finance Committee (CFC) which have been accepted by the Government, <i>ie</i> to consolidate all securities laws in a single legislation, and strengthen the corporate disclosure regime.</p> <p>In this regard:</p> <ul style="list-style-type: none"> <li>◦ All the provisions relating to the securities market (on corporate fund-raising, disclosure, take-overs and share hawking) presently found in the Companies Act (Cap 50, 1994 Rev Edn) will be migrated to the SFA;</li> </ul>	Part 5

<b>POLICY INITIATIVE</b>	<b>PART REFERENCE</b>
<ul style="list-style-type: none"> <li>◦ The following non-statutory requirements currently in the SGX Listing Manual will be made legal obligations: <ul style="list-style-type: none"> <li>⇒ the continuous disclosure of material information by listed companies; and</li> <li>⇒ the notification, to SGX, of any acquisition of or changes to substantial shareholdings in listed companies;</li> </ul> </li> <li>◦ The prospectus provisions presently found in the Companies Act will be amended with a view to enhancing market accountability, and raising the standard of prospectus disclosure. Issuers will be required to lodge their prospectuses with MAS. Such prospectuses will be given a 2 -week period for public exposure before they are registered. MAS may refuse to register a prospectus if it does not comply with the statutory disclosure requirements of the Act or it is not in the public interest to do so. MAS will also be empowered to stop an offer if the registered prospectus is later found to be misleading or deficient.</li> </ul>	
<p><b>Collective Investment Scheme Provisions – Transfer and Streamlining</b></p> <p>Pursuant to CFC recommendations, the provisions relating to unit trusts will be transferred from the Companies Act to the SFA. The definition of "interests" (other than shares and debentures) will be refined and updated.</p> <p>The SFA will provide for MAS to authorise all collective investment schemes to be offered to the public in Singapore, instead of the current requirement for the approval of trust deeds of schemes.</p> <p>The SFA will provide an alternative for foreign funds to be offered directly, instead of through a feeder fund structure.</p>	Part 6

POLICY INITIATIVE	PART REFERENCE
<p>The SFA will provide for a one-off approval of trustees of collective investment schemes, instead of the present practice of approvals for each scheme.</p>	
<p><b>Fines for Offences</b></p> <p>The SFA proposes to raise the fines for most offences and introduce penalties for continuing offences, where appropriate. The fines in most cases will be raised by a factor of five while those for continuing offences will be ten percent of that for the main offences.</p> <p>A general provision, providing that corporations will be fined twice the amount imposed on individuals, will also be introduced.</p>	Part 7
<p><b>Extension of Civil Fines/Civil Remedies to Other Forms of Market Misconduct</b></p> <p>The SFA will extend the civil fine/civil remedy regime which is presently available only for insider trading to other forms of market misconduct - market rigging, market manipulation, the publishing of false or misleading information and the employment of fraud and deceit in dealing. This will complement the present framework of criminal offences for such misconduct.</p> <p>Like the present provisions for insider trading, MAS will be empowered to bring an action in Court against a defendant to obtain judgement for a civil penalty. The offender will also be liable for civil damages to investors who suffer losses as a result of the contravening act.</p>	Part 8
<p><b>Extra Territorial Provision for Market Misconduct Offences</b></p> <p>The SFA will introduce an extra-territorial jurisdiction provision for market misconduct offences. This is a codification of present judicial pronouncements in common law jurisdictions that a foreign act is justiciable in a country if it has an effect in the country (the "effects doctrine"). This is the practice in other major financial centres. The SFA will therefore confer</p>	Part 9

<b>POLICY INITIATIVE</b>	<b>PART REFERENCE</b>
<p>on us jurisdiction on acts outside Singapore that has an effect in Singapore.</p> <p>The SFA will specifically confer jurisdiction over:</p> <ul style="list-style-type: none"> <li>◦ conduct within Singapore in relation to securities or futures contracts traded and listed overseas; and</li> <li>◦ conduct outside Singapore in relation to securities or futures contracts listed or traded in Singapore.</li> </ul> <p>The first limb will deter perpetrators of market misconduct from using Singapore as a "haven" for their illegal activities. This is again a codification of judicial case-law, which confers jurisdiction in Singapore for continuous acts originating from Singapore. The second aspect will confer us jurisdiction over overseas activities that affect the integrity of Singapore's markets.</p> <p>The enforcement of these extra-territorial provisions will be facilitated by various regulatory Memoranda of Understanding entered between MAS and foreign regulators.</p>	

<b>POLICY INITIATIVE</b>	<b>PART REFERENCE</b>
<p><b>Enforcement Powers for MAS Officers</b></p> <p>MAS will enforce the civil remedy regime for market misconduct. Under current legislation, MAS has limited powers to investigate suspected violations of market misconduct. To enable MAS to carry out its enforcement function effectively, the SFA proposes to enhance the investigative powers of MAS officers.</p> <p>Specific provisions will be provided for MAS to obtain information and records relevant for an investigation. MAS will be given powers to compel the production of documents and records, to conduct search and seizure with a warrant from the Court and to record statements.</p>	
<p><b>Review of Insider Trading Provisions</b></p> <p>The SFA will redefine our present laws on insider trading.</p> <p>The present provisions are based on the defendant's connection with the company and make only the insider and the tippee (a person acting in concert with the insider) liable for insider trading.</p> <p>The new insider trading provisions in the SFA will no longer depend on proof of a person's connection with the company. The test will instead shift to the core essence of the offence – trading while in possession of undisclosed market sensitive information by the defendant, irrespective of his connection with the company.</p> <p>The new provisions will also tighten the <i>mens rea</i> (mental intent) test for directors and connected persons.</p>	Part 10
<p><b>Appeal Processes</b></p> <p>There is some dichotomy, under the SIA and FTA, in relation to provisions relating to appeals (by licencees, exchanges or aggrieved persons) from decisions made by MAS. The SFA will rationalize these appeal</p>	Part 11

<b>POLICY INITIATIVE</b>	<b>PART REFERENCE</b>
<p>provisions.</p> <p>The SFA will introduce an independent Advisory Panel to advise the Minister on appeals against decisions of MAS.</p>	

## Part 2

# SINGLE LICENSING REGIME FOR INTERMEDIARIES

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1. The current licensing framework under the SIA categorises market intermediaries into dealers and investment advisers according to their business functions within the securities and asset management industry. A similar framework was adopted for the financial futures industry in the FTA, which classifies futures market intermediaries into futures brokers, futures trading advisers and futures pool operators. Although the existing licensing framework has met many of our regulatory objectives, it is unable to meet the changing demands of a rapidly-evolving financial industry. One of the main inadequacies of the existing framework is the unwieldiness that is caused where a single entity is required to hold all 5 different types of licences in order to offer a complete range of services. Moreover, the rigidity of the present framework makes it unable to accommodate the break down of the value chain of financial market services, inhibiting the offering of new financial services and market innovation.
  
2. The proposed single licensing framework adopts a modular approach, which will allow for:
  - (a) a range of regulated activities that are more differentiated to accommodate the business needs of the intermediaries; and
  
  - (b) a gradated scale of capital and compliance requirements commensurate with the risk exposure of each type of activity.
  
3. Market intermediaries will be issued a single licence to conduct a specified range of regulated activities, which will comprise the following:
  - dealing in securities;
  - trading in futures contracts;
  - trading in leveraged foreign exchange contracts;
  - providing asset management services;

- advising on corporate finance;
  - providing securities financing; and
  - providing custodial services in securities.
4. The list of regulated activities would be prescribed by way of a **Schedule** to the Act. Any future amendments to the definition of regulated activities in the Schedule would be done by way of notification in the Government Gazette.
5. The SFA will grant exemptions to banks, merchant banks, finance companies and insurance companies from the licensing regime as they are already supervised by MAS under their respective principal Acts and/or MAS directives. This would minimise regulatory overlap and reduce compliance costs for these institutions. However, the supervision of securities and futures activities undertaken by these exempted institutions should parallel the supervision of licensed corporations. This is to apply uniform standards for functionally similar activities across the financial industry and to ensure a level playing field for all market participants. Hence, these exempted institutions will be required to comply with certain provisions in the proposed Act. Additional provision will also be made for MAS to issue notice in writing to direct the exempted institutions to comply with business conduct requirements in any regulated activity.

#### **PREVIOUS PUBLIC CONSULTATION**

6. A consultation paper on the single licensing framework was sent to various industry bodies, lawyers and approved fund managers in August 2000 and placed on MAS' website for comments. The respondents were supportive of the overall structure of the new licensing framework. In particular, the respondents supported our proposals on the list of regulated activities; imposing similar requirements for all securities and futures market participants; and extending the duration of the licence from 1 to 3 years. However, there were concerns about the specific requirements under the new framework and some respondents had sought details of the requirements. MAS will provide additional details on the licensing framework, such as licence fee for each regulated activity and record keeping requirements, in the Regulations to the proposed SFA.

## Part 3

# REDEFINITION OF REGULATED ACTIVITIES, RECOGNISED TRADING SYSTEM PROVIDERS, OVERSEAS EXCHANGE-OPERATED ELECTRONIC TRADING SYSTEMS

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1. Advances in technology have spurred the emergence of new trading systems, both domestically and across national borders. These new trading systems, often referred to as “Alternative Trading Systems” (ATS), can deliver a range of services: from acting as an intermediary (e.g. collecting investors’ orders and routing them), to providing trading platforms performing a wide range of functions of an exchange.
2. These ATS enable exchanges and intermediaries to establish cross-border access to Singapore investors, raising the question of whether they are establishing a market or engaged in securities dealing/futures trading in Singapore.
3. Some of these ATS are also deconstructing the trading value chain and creating new business models that do not fit into existing definitions of "dealing", "trading" or "markets" intended for traditional brick-and-mortar participants performing segregated functions. Examples range from electronic bulletin boards that provide information on buying/selling interests in trades to be concluded off-platform to electronic communication networks that route as well as match trades in listed securities. Furthermore, there is a need to clarify whether these new electronic market operators should be regulated as markets in Singapore and for new regulatory requirements to be set in order to regulate such electronic operators, which are not full-fledged exchanges.
4. Our proposed regulatory response is to authorise any person operating an ATS in Singapore either as:

- an **intermediary**, subject to capital markets services licensing requirements, if it predominantly conducts securities dealing or futures trading activities with or without some form of market-like functions like trade matching; or
  - a **Recognised Trading System Provider (ReTS Provider)**, a new authorisation category, if the main function of the ATS is the provision of a market. This category will apply to non-exchange markets eg bulletin boards operated by new market players, as well as traditional overseas exchanges operating an ATS in Singapore.
5. The proposed regime is intended to be a broad authorisation framework, providing for greater flexibility in administration by the MAS. Given the range of ATS and continuing evolving market forms and business models, MAS needs to respond appropriately to address the specific risks of individual market operators.
  6. We will refine the existing definition of a stock or futures market, in line with our proposed authorisation regime, as well as to provide greater clarity. The breadth of the present definitions may inadvertently include the operations of a dealer or broker. To facilitate the development of electronic trading infrastructures, we need to refine our regulatory approach by exempting non-multilateral markets operated by ATS which predominantly operate as intermediaries from having to be approved as exchanges.

#### **ATS OPERATED BY OVERSEAS EXCHANGES**

7. There is an increasing interest among Singapore investors in trading securities and futures contracts directly on overseas exchanges. There are two ways to admit overseas exchanges under the current legislation - either to approve them as exchanges or to exempt them from our laws. Neither approach is fully satisfactory. The "approval route" would subject the overseas exchanges to the whole gamut of requirements under the SIA or FTA when they do not maintain significant operations in Singapore, except in the form of trading terminals. The "exemption route" gives the impression that these exchanges are beyond the reach of MAS' regulation, when this is also not the case. The latter route is our current practice.

8. The SFA will introduce an authorisation process for overseas stock and futures exchanges to operate an ATS in Singapore. They will be authorised as ReTS Providers.

## Part 4

# LEGAL AND REGULATORY FRAMEWORK FOR CLEARING AND SETTLEMENT INSTITUTIONS

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1. The SIA is presently not explicit on the regulatory reach of MAS on clearing and settlement institutions. The FTA, however, provides that any clearing house for a futures market shall be subject to MAS' approval and regulatory oversight. This dichotomy of approach will be aligned in the SFA.
2. The SFA will introduce a legal and regulatory framework for clearing and settlement institutions in the securities and futures markets. Such institutions will require MAS' approval.
3. The SFA will also create an exception to the laws of insolvency for all transactions that are cleared and settled through approved clearing institutions. The insolvency regime could create legal uncertainty, with far-reaching systemic effects on the capital markets, in the event of insolvency of members of a clearing house. The exception is aimed at safeguarding the clearing and settlement system of clearing houses. The insolvency of a member will not be allowed to disrupt the clearing and settlement of trades already executed. This approach is consistent with the practice in other major international financial centres.

## Part 5

# CORPORATE FINANCE

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### **CORPORATE FINANCE PROVISIONS**

1. In November 1998, the Government accepted recommendations made by the Corporate Finance Committee (“CFC”) to consolidate all securities laws in a single legislation and strengthen the corporate disclosure regime. This part of the SFA implements the CFC's recommendations by bringing together all the provisions pertaining to the securities market (on corporate fund-raising, disclosure, take-overs and share hawking) currently in the Companies Act (Cap 50, 1994 Rev Edn) under the purview of MAS as the securities regulator. Concurrently, some of the provisions to be migrated to the SFA will be amended with a view to enhancing market accountability, and raising the standard of prospectus disclosure. Existing SGX listing rules on continuing disclosure by listed companies and notification of substantial shareholdings in them will be made statutory requirements.

### **CORPORATE FUND-RAISING & PROSPECTUSES**

2. Procedures for registering prospectuses will be updated. All prospectuses lodged with MAS will be registered not earlier than 14 days and not later than 28 days after lodgment, unless rejected for registration due to non-compliance with the statutory disclosure requirements or on grounds of public interest. No applications for the underlying securities may be accepted during the lodgment period. The lodgment period provides the opportunity for regulatory review and public scrutiny and comment. Such regulatory review will focus on compliance with the legal requirements on prospectus disclosure. There will be no vetting of prospectuses to determine if they contain any inaccurate information or factual errors. Issuers and their advisers must bear the responsibility for ensuring adequate and accurate disclosure.
3. The SFA will empower MAS to issue a stop order and prevent further issues of securities if a prospectus is found to be misleading or in any way deficient after it has been registered. Investors who have subscribed for securities on the basis of the deficient prospectus would be allowed to withdraw their applications (or, if the securities have already been issued, to return the securities to the issuer) and have their monies refunded. This right of

withdrawal also extends to cases where issuers have lodged supplementary or replacement prospectuses<sup>1</sup>. Such provisions are necessary for efficient and effective enforcement in a disclosure-based regulatory regime.

#### **CONTINUING DISCLOSURE OF MATERIAL INFORMATION BY LISTED CORPORATIONS**

4. The SFA will make the continuous disclosure of material information by listed corporations, currently a non-statutory requirement in the SGX Listing Manual, a legal obligation. This is a CFC recommendation to strengthen corporate disclosure as we shift to a disclosure-based regime.
5. If a listed corporation *intentionally, recklessly or negligently* fails to notify a securities exchange of material information, it would be liable to pay a civil penalty. Further, where the contravention is *intentional or reckless*, this could give rise to a criminal offence.

#### **NOTIFICATION OF SUBSTANTIAL SHAREHOLDINGS IN LISTED COMPANIES**

6. Currently, notification of substantial shareholdings (5% or more of a company's issued capital) and changes in such shareholdings go through a two-stage process where a substantial shareholder notifies the listed company within 2 days and the listed company, as required by the Listing Manual, in turn announces the substantial shareholding to SGX. With the new Act, it will be a legal requirement for the substantial shareholder to notify SGX directly of his substantial shareholdings in listed companies and changes in such shareholdings within 2 days. He will still be required to notify the listed company within 2 days under the Companies Act.

#### **TAKE-OVERS**

7. The existing provisions in the Companies Act governing company take-overs and mergers will be rationalised when they are transferred to the SFA. Only those provisions that empower MAS to promulgate, and the Securities Industry Council (the "SIC") to administer, the Singapore Code on Take-overs and Mergers (the "Singapore Code") as well as provisions on penalties for non-compliance with the law will be retained in the SFA. Other provisions relating to procedures, time-table and documentation will be consolidated in the Singapore Code.

<sup>1</sup> Australia and US have similar practices.

## Part 6

# COLLECTIVE INVESTMENT SCHEMES

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1. Pursuant to the CFC recommendations, the provisions presently found in the Companies Act relating to *interests* would be transferred to the SFA.

### DEFINITIONS AND SCOPE OF REGULATION

2. The SFA will replace the term "*interests* other than shares" with "collective investment schemes" (CIS) which include unit trusts, mutual funds and other investment arrangements. This will give greater clarity as to the intended scope of the provision. The definition of "investment arrangements" expressly excludes arrangements such as franchises, chit funds and life insurance contracts. To provide for flexibility, MAS may by notification in a gazette include or exclude certain arrangements from the definition of "investment arrangements".

### APPROVAL OF COLLECTIVE INVESTMENT SCHEMES

3. "*Interests*" such as unit trusts are currently regulated, *inter alia* through the approval of a trust deed which must contain certain covenants. This is out of step with international practice where regulators authorise funds which meet basic requirements, *eg* in the case of a unit trust there must be a manager and an independent trustee and participants must be entitled to redeem their units at net asset value.
4. Under the SFA, MAS will approve a collective investment scheme constituted in or outside Singapore if it meets the prescribed requirements. In the case of a scheme constituted in Singapore, the proposed requirements are as follows: there must be a manager, trustee, trust deed and the scheme, manager or trustee must comply with the CIS regulations and a non-statutory Code, where applicable.
5. It is proposed that schemes constituted outside Singapore will be eligible to be considered for offer in Singapore directly, *ie* without a feeder fund structure, if:
  - (a) the offeror *ie* the mutual fund company or in the case of a unit trust, the manager is registered as a foreign company in Singapore. This is to

ensure that the offeror will be subject to the jurisdiction of Singapore courts;

- (b) the laws and practices of the jurisdictions under which the scheme and its manager are constituted give Singapore investors protection equivalent to that afforded under this Act; and
  - (c) an agent, which may be one of the persons appointed by the foreign company pursuant to the requirements of the Companies Act, is appointed to perform tasks such as facilitating the issue and redemption of units, maintaining a register of investors and sending periodic reports to investors.
6. The SFA will empower MAS to withdraw or suspend the approval of schemes whose managers fail to comply with the Act, Regulations or a non-statutory Code which will set out operational requirements for funds. The present provisions in the Handbook on Unit Trusts, which are already observed by the industry, will form a substantial part of the Code. MAS may also withdraw approval for a scheme if it becomes aware that information submitted in respect of the application for approval was materially false or misleading, and the offeror may be required to refund all subscription monies.

#### **ONE-OFF APPROVAL OF TRUSTEES**

7. This seeks to improve the efficiency of the approval process for trustees of unit trusts. Under the present provisions, a company that seeks to act as a trustee for a specific scheme is required to be specifically approved by the Minister in respect of each scheme. Such case-by-case approval is cumbersome and inefficient. The SFA will provide for one-off approval of trustees - once approved, the trustee may act for any collective investment scheme without requiring any further approval.
8. In order to facilitate on-going supervision of such approved trustees by the MAS, the SFA will empower MAS to inspect trustees and require returns from them. The contents of such returns will be spelt out in the Regulations.

#### **INVESTMENTS IN COMPANIES RELATED TO THE MANAGER OR TRUSTEE**

9. The Companies Act presently prohibits a scheme, including a unit trust, from investing in or lending to the management company, the trustee or their representatives, or to any company (except a bank) related to either of them. This provision seeks to prevent a manager of a scheme from investing the funds of the trust in related companies without regard to their investment

merit. Banks are excluded from the prohibition so as to allow funds to place deposits with related banks.

10. We will require that only deposits with (and not equity or bond investments in) related banks are permitted. Unit trusts with investments in related banks would be given 12 months to divest.
11. Other proposals in the SFA include:
  - (a) provisions to empower MAS to promulgate a non-statutory **Code** to set out operational requirements for funds such as investment guidelines, issue of periodic reports to unit-holders and time-period for investors to receive redemption proceeds. While failure to comply with the Code may not in itself be an offence, MAS may reprimand offenders, suspend or prohibit them from making further offers.
  - (b) certain requirements such as the detailed criteria for approval of trustees and reports to be submitted by them will not be set out in the principal legislation but in **Regulations**
  - (c) institutions licensed and supervised by MAS such as banks **need not be public companies** incorporated in Singapore to manage collective investment schemes; and
  - (d) offers of collective investment schemes to **sophisticated and institutional/professional investors** will not have to comply with the requirements of the Act, subject to disclosure in marketing/offering material that the offer is exempted from the requirements relating to CIS.

## **Part 7**

# **FINES**

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### **RAISING OF FINES**

1. The penalties for non-compliance with provisions of the SIA and FTA have remained largely unchanged since their enactment, except for offences relating to market misconduct. In March 2000, the fines for such offences were raised by a factor of five to \$250,000 for an individual and \$500,000 for a body corporate. While existing custodial sentences remain appropriate, the fines for most other offences in the legislation no longer provide sufficient deterrent against contravention. Moreover, there is a need to rationalize existing penalties for certain provisions in the FTA with parallel provisions found in the SIA.
2. The SFA proposes to raise the fines for most offences. In line with the increase in penalties for market misconduct offences, the fines for the other offences will increase by a similar factor of five. We will also introduce continuing penalties, where appropriate. For these, the penalties will be an amount of ten percent of the fines for the main offences. The SFA will also harmonize the differences in penalties for parallel provisions under existing legislation.

### **FINES FOR BODY CORPORATES**

3. In addition, the SFA introduces a general provision in Part XV (Miscellaneous) to provide that a body corporate may be liable to pay a fine of up to twice the amount payable by individuals. The higher fine for body corporates is appropriate, as unlike individuals, sentences of imprisonment cannot be imposed on them. Further, body corporates have greater financial resources. A higher fine is necessary to achieve a deterrent and punitive effect.

## Part 8

# CIVIL FINES/REMEDIES FOR MARKET MISCONDUCT

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1. Our present approach against market misconduct in both securities and futures contracts is presently founded on a criminal prosecution regime. In March 2000, MAS introduced the concept of civil actions for insider trading. Other than being a criminal offence, insider trading can also give rise to two distinct types of independent civil actions:
  - ⊖ A civil fine regime enforceable by MAS; and
  - ⊖ The filing of civil claims for damages by individual investors who had traded contemporaneously with the insider.
  
2. The introduction of civil fines and remedies for insider trading, a follow-up to the recommendations of the CFC, was mainly premised on the fact that it is oftentimes difficult to secure a criminal conviction for such offence, given the criminal burden of proof of "beyond reasonable doubt". In contrast, the civil actions require a lower burden of proof of "on a balance of probabilities". The civil remedy regime thus complements the criminal regime for insider trading in providing additional deterrent and punitive effect.
  
3. Like insider trading, other forms of market misconduct (such as market rigging, market manipulation and the dissemination of false or misleading information) are serious offences that can adversely affect the integrity of our capital markets to the detriment of investors. Their seriousness is reflected in the severe criminal sanctions for such conduct. A person convicted for market misconduct is liable to a fine not exceeding \$250,000 or an imprisonment term not exceeding 7 years in the case of an individual or a fine not exceeding \$500,000 for a body corporate. However, unlike insider trading, the only avenue of dealing with these other market transgressions is through a criminal prosecution, which faces the difficulty of having to prove a case based on the criminal burden of proof.

4. The present approach for insider trading will be extended to other forms of market misconduct under Part XII. We see this as a logical extension. Under the SFA, such market abuses can thus give rise to independent civil actions by MAS or by "contemporaneous" investors, besides being criminal offences. This approach is consistent with international practice <sup>2</sup>.
5. Under the civil fine regime, MAS will be empowered to bring an action against a contravening person to obtain a civil penalty. Where the action is successful, the court may impose a penalty of up to three times the amount of profit gained or loss avoided by the person, subject to a minimum sum of \$50,000 for an individual or \$100,000 for a body corporate. Where there is no gain or loss on the part of a contravening person, a civil penalty ranging from \$50,000 to \$250,000 may be imposed.
6. "Contemporaneous" investors will be allowed to seek damages from a contravening person through independent civil actions. For such claims, the damages sought will be limited to the amount of gain made or loss avoided by the contravening person. These investors can also submit claims on the coattails of a successful civil action by MAS or a criminal conviction, without having to re-prove the elements of the offence.

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<sup>2</sup> The UK has adopted civil measures against market abuses in their Financial Services and Market Act 2000 to complement parallel criminal provisions. In Hong Kong, the Securities and Futures Bill will extend civil sanctions from insider trading to other forms of market misconduct. The three-pronged approach is also similar to the framework used in the US.

## Part 9

# EXTRA-TERRITORIAL JURISDICTION

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1. Globalization and advances in info-communication technologies have made traditional borders less meaningful in securities and futures transactions. Likewise, crimes involving these transactions may no longer be anchored in any specific jurisdiction. Persons located overseas can more easily commit crimes that affect the integrity of our securities and futures markets. Conversely, persons here can conduct transactions that are detrimental to markets outside Singapore.
2. The SFA will introduce an extra-territorial jurisdiction clause for market misconduct offences. Specifically, it will confer jurisdiction over:
  - Conduct within Singapore in relation to foreign securities or futures contracts listed or traded overseas; and
  - Conduct outside Singapore in relation to securities or futures contracts listed or traded in Singapore.
3. Extra territorial jurisdiction is not new to our jurisprudence. The clause is a codification of present judicial pronouncements under common law, which confers jurisdiction in Singapore for continuous acts originating from Singapore and for acts outside Singapore that is capable of having an effect here (the "effects doctrine").
4. The first limb in the extra territorial jurisdiction clause aims to deter perpetrators of market misconduct from using Singapore as a "haven" for their illegal activities. We will make clear that Singapore will deal with such misconduct with the full force of our law, even though the adverse effect is on an overseas market. The second limb gives us jurisdiction over overseas activities that affect the integrity of our capital markets and aims to deter persons overseas from engaging in activities harmful to our capital markets.

Regulators of major financial centres have also asserted jurisdiction over acts conducted overseas that have an effect on their markets<sup>3</sup>.

5. The enforcement of these extra territorial provisions in the SFA will be facilitated by various regulatory Memoranda of Understanding ("MOUs") entered between MAS and foreign regulators. Through the MOUs, we make arrangements for mutual cooperation and assistance with other regulators.

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<sup>3</sup> In the UK, provisions in the Financial Services and Markets Act 2000 can apply to acts of those abroad in relation to foreign traded securities or futures if that conduct has an effect in the UK. In Australia, insider trading and market manipulation provisions apply not only to acts committed outside Australia in relation to Australian traded securities and futures contracts, but also acts within Australia in relation to foreign contracts. US provisions cover both acts of those abroad that affect its markets and acts in US that affect overseas markets. In Hong Kong, the Securities and Futures Bill will introduce extra territorial jurisdiction for market misconduct offences.

## Part 10

# INSIDER TRADING - REDEFINITION

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1. The SFA will redefine our present laws on insider trading. The present provisions are based on the defendant's connection with the company. Further, the present provisions make only the insider and the tippee (a person acting in concert with the insider) liable for insider trading. There is difficulty in extending liability to others who are further down the information chain, but who knowingly possess inside information and trade on it.

### INFORMATION-CONNECTED APPROACH

2. The new insider trading provisions in the SFA will no longer depend on the proof of a person's connection with the company. The test will instead shift to the core essence of the offence, *ie* trading while in possession of undisclosed market sensitive information by the defendant, irrespective of his connection with the company. The scope of insider trading would therefore not just be restricted to the insider and the tippee, but to all persons who knowingly possess inside information, and who trade on it.

### MENTAL INTENT TEST

3. The new provisions will also tighten the *mens rea* (mental intent) test for directors and connected persons. Once it has been proven that they have actual or constructive knowledge of the fact of the inside information, they would be deemed to know that the information in their possession is undisclosed and is price-sensitive, but this would be a rebuttable presumption. Such an approach will introduce greater discipline for those in fiduciary positions.

### PUBLIC CONSULTATION

4. MAS has previously conducted a public consultation exercise on insider trading. Most respondents were supportive of the approach. We have

incorporated some proposed amendments to the insider trading provisions, including the following:

- Insertion of a definition of "purchase" of securities;
- Making it clear that the exemption for the redemption and the further issue of collective investment schemes applies not just to trustees, but to managers;
- Drafting changes to reflect the intent that the provisions apply equally to civil fines proceedings and civil claims;
- Inclusion of exemption for purchases pursuant to legal requirements; and
- Inclusion of exemption for information communicated pursuant to legal requirements.

## Part 11

# APPEAL PROCESSES

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### **INDEPENDENT ADVISORY PANEL**

1. The SFA will introduce an independent advisory panel which will make recommendations to the Minister in the event of appeals lodged against the decisions of MAS where they do not relate to exchanges and clearing houses. The Minister will still retain the final discretion in the determination of appeals.
2. We envisage that the Appeal Panel will constitute industry representatives, senior lawyers and a district judge. The appeal process is designed to balance the involvement of the industry (or market discipline) against the need for the Minister's direct involvement in the supervision of the capital markets, especially where they relate to critical issues of public policy and systemic concerns such as exchanges and clearing houses.

### **RATIONALISATION OF APPEAL PROCESSES**

3. There is some dichotomy, under the SIA and FTA, in relation to provisions relating to appeals (by licencees, exchanges or aggrieved persons) against decisions made by MAS. This dichotomy either relates to the subject matter of the appeal (*eg* an issue which is appealable under the SIA may not be appealable under the FTA), or the forum of appeal for a similar subject matter (whether heard by the Minister or a Court of Law). The SFA will rationalize these appeal provisions.