

# CONSULTATION PAPER

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## Consultation Paper on Regulations for Short Selling

MAS

Monetary Authority of Singapore

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## 1 Preface

1.1 Short selling, the sale of securities that one does not own at the time of the sale, allows market participants who hold negative views on a company's share price to express their views by selling the company's shares. Thus, short selling can enhance the price discovery process and maintain market discipline.

1.2 The role that short selling plays in the market is also recognised by IOSCO, the international standard setting body for securities market. In line with IOSCO's report on the "Regulation of Short Selling"<sup>1</sup>, MAS is introducing requirements to enhance transparency on the level of short selling in securities listed on Singapore's approved exchanges.

1.3 As part of the Securities and Futures (Amendment) Bill 2016<sup>2</sup>, market participants will be required to (i) specifically mark short sell orders to the relevant exchange<sup>3</sup>; and (ii) report short positions above specified thresholds to MAS. Aggregate information on short sell orders and short positions will be published.

1.4 The detailed short selling reporting requirements are set out in the draft Securities and Futures (Short Selling) Regulations 2017 ("Regulations") in **Annex B** and the draft Guidelines on the Regulation of Short Selling ("Guidelines") in **Annex C**.

1.5 MAS invites interested parties to submit their views and comments on the draft Regulations and Guidelines in this paper.

**Please note that all submissions received will be published and attributed to the respective respondents unless they expressly request MAS not to do so. As such, if respondents would like (i) their whole submission or part of it, or (ii) their identity, or both, to be kept confidential, please expressly state so in the submission to MAS. In addition, MAS reserves the right not to publish any submission received where MAS considers it not in the public interest to do so, such as where the submission appears to be libellous or offensive.**

1.6 Please submit written comments by 27 January 2017 to –

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<sup>1</sup> <http://www.iosco.org/library/pubdocs/pdf/IOSCOPD292.pdf>

<sup>2</sup> [https://www.parliament.gov.sg/sites/default/files/Securities%20and%20Futures%20\(Amendment\)%20Bill%2035-2016.pdf](https://www.parliament.gov.sg/sites/default/files/Securities%20and%20Futures%20(Amendment)%20Bill%2035-2016.pdf). The relevant provisions on short selling can be found on pages 220 to 226.

<sup>3</sup> This gives statutory backing to SGX's current trading rules on short order marking, where short sell orders are required to be marked before submitting such orders to SGX.

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1.7 Electronic submission is encouraged. We would appreciate that you use this [template](#) for your submission to ease our collation efforts.

## 2 Regulations for Short Selling

### Specified capital markets products

2.1 MAS intends to scope the short order marking and short position reporting requirements to specified capital markets products, which refer to:

- (a) shares of a corporation whose primary listing is on an approved exchange; and
- (b) shares of a corporation whose secondary listing is on an approved exchange where –
  - (i) the shares of the corporation is a constituent of an index specified in the Second Schedule<sup>4</sup> of the Regulations; or
  - (ii) the corporation is specified in the Third Schedule<sup>5</sup> of the Regulations.

2.2 It is MAS' view that in addition to primary listed shares, certain secondary listed shares on approved exchanges could also attract significant interest from market participants. An example would be a secondary listed share that is a constituent of a local stock market index. Another example would be a secondary listed share that used to be a constituent of a local stock market index. As these secondary listed shares may attract significant interest from market participants, it is MAS' intention to subject these to short position and short sell order reporting requirements as well.

**Question 1.** MAS seeks comments on the scope of capital market products that will be subject to short selling reporting requirements, specifically on the proposal to scope in both primary listed shares and certain specified secondary listed shares.

### Disclosing of short sell orders

2.3 Similar to current market practice, a person (A) who places a short sell order on an approved exchange must, before or at the time of the short sell order, disclose that the order is a short sell order.

#### *Placement of orders on another person's behalf*

2.4 Where another person B (e.g. a broker) places a short sell order on A's behalf, B should enter the order only after A has disclosed to B whether the order is a short-sell

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<sup>4</sup> At this point in time, only the FTSE Straits Times Index will be specified in the First Schedule.

<sup>5</sup> At this point, MAS does not intend to specify any corporation in the Second Schedule.

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order. In turn, B must, before or at the time of the short sell order, disclose to the approved exchange that the order is a short sell order.

*Sellers with some securities on hand*

2.5 In line with current practice, market participants are expected to split partial short orders, where they own some but not the full quantity of securities to be sold, into two separate orders with the short-sell order marked accordingly. For example, if a market participant owns 100 shares but would like to sell 300 shares, the market participant should submit two orders – (i) a sell order of 100 shares, which should not be marked as a short order, and (ii) a sell order of 200, which should be marked as a short order.

*Publication of short sell orders*

2.6 Where orders to short sell have been disclosed to an approved exchange, MAS intends to require the approved exchange to publish, before the start of each trading day, the aggregate volume of short sell orders matched and executed on the preceding trading day and in respect of each specified capital markets product.

*Exemption from the requirement to mark short sell orders*

2.7 MAS has received feedback that designated market makers and registered market makers should be exempted from marking short sell orders as market makers' short sell order activity does not represent actual short sell interest. Therefore, MAS proposes to exempt these market makers from the requirement to mark short sell orders in respect of their market making activities. Removing market makers' short sell orders will avoid potential misrepresentation to the market on the level of short sell interest.

**Question 2.** MAS seeks comments on the proposed requirements to disclose short sell orders.

Reporting of short positions

*Calculation of short position*

2.8 MAS intends to define a reportable short position as a short position that is equivalent to or more than the lower of the following thresholds:

- (a) 0.05% of the outstanding shares in the relevant class of shares of the corporation; or
- (b) S\$1,000,000 in aggregate value of the outstanding shares in the relevant class of shares of the corporation.

2.9 The short position, regardless of whether the position has been settled, should be calculated on position day. "Position day" means the last day of each calendar week (typically a Friday) that the approved exchange is open for trading in the relevant class of shares of the corporation.

2.10 MAS will be excluding derivatives for the purposes of calculating a short position as of a position day. For example, positions that may result from an option which has not been exercised as of position day should not be included in the calculation of a short position. Similarly, positions that may result from a warrant that has not been exercised as of position day should not be included in the calculation of a short position.

*Persons with reporting responsibility*

2.11 The reporting obligations will be imposed on the legal owners of the shares, and not on persons with beneficial ownership of the shares or who control the shares. This means that, in the case of a trust or unit trust, the obligation to report short sell orders and short positions rests on the trustee. For funds structured as companies, the reporting obligation will be imposed on the company.

2.12 To avoid double counting and to minimise reporting burden, MAS intends to require only the immediate legal owner to report short orders and short positions without a look through to intermediate or ultimate owners. This reporting approach also does not affect the aggregated information on short sell orders and short positions that will be published.

*Exemption from the requirement to report short positions*

2.13 MAS has received feedback that designated market makers be exempted from reporting short positions. As such market makers are bound by rules of an approved exchange to make markets, their short positions may be due to such obligations and thus may not necessarily reflect their views of the shares of the corporation. Hence, MAS proposes to exempt designated market makers from reporting short positions acquired in the course of their market making activities.

2.14 In contrast, MAS is aware that there are other market makers registered with approved exchanges with a contractual obligation to make markets. As such market making activities are commercial arrangements that do not necessarily oblige the market makers to hold on to short positions beyond the end of the trading day, one view is that such short positions may reflect the market makers' views of the stocks.

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*Delegation*

2.15 A short position holder (A) will be permitted to get an agent (B) to report the short positions on A's behalf.

*Short Position Reporting Timelines and Process*

2.16 A person who has a reportable short position shall report his short position to MAS two business days after the position day. The identity of the person (A) with a reportable short position, and if applicable, that of person B who has been authorised by A to lodge the report on A's behalf shall also be provided to MAS.

2.17 The short position report shall be lodged with MAS via the Short Position Reporting System (SPRS) on MAS' website.

**Question 3.** MAS seeks comments on the proposed requirements to report short positions, in particular:

- (a) for reporting responsibility to lie with the legal owner of the short positions;
- (b) for designated market makers to be exempted from the requirement to report short positions;
- (c) whether registered market makers should be required to report short positions or be exempted; and
- (d) for short positions to be reported two business days after the position day.

Institutional participants with multiple trading desks

2.18 MAS has received feedback that institutional participants may have different trading decision practices, which may in turn affect the aggregation basis. For example, an institutional investor may make its trading decision at a legal entity level, or it may have different trading units or desks that make trading decisions independently, where trades reflect different desks' independent sentiments about the shares of a corporation.

2.19 As institutional participants operate different trading decision models, MAS intends to provide flexibility by allowing institutional participants to determine at which level (i.e. legal entity basis or trading desk basis) their orders or positions should be aggregated. Some examples are shown below:

Legal entity basis – In a proprietary trading firm, a portfolio manager is responsible for all three trading desks. As he is the key decision maker for trading decisions, positions should be aggregated across the three trading desks at the proprietary trading firm level as the trading decisions reflect his view on the securities in the funds.



Trading desk basis – In a proprietary trading firm, each trading desk may have a different mandate and trade independently of other desks. The firm may choose to report the short positions of each trading desk separately.

2.20 Where an institutional participant chooses not to aggregate orders or positions at the legal entity level, orders or positions should be aggregated at the highest possible level where trading decisions share the same influence (e.g. same portfolio manager). The considerations determining the level of aggregation must be documented. Care must also be taken to ensure that orders and positions are not double counted i.e. a short order or position reported by one trading desk should not be reported by another trading desk.

2.21 Reporting has to be made on a consistent basis. For example, an institutional participant should not be aggregating at a trading desk level in one reporting period, and at the entity level in the next reporting period when trading decisions are consistently made at a trading desk level.

2.22 For the purpose of short position reporting at trading desk level, trading desks will have to report all short positions, even if the short positions at the individual trading desk level do not exceed the thresholds referred to in paragraph 2.8 of this consultation paper. This is to avoid a situation where positions that exceed the thresholds at the entity level, but which are not exceeded to at the trading desks level are not reported. Not applying the thresholds at the trading desk level will ensure that transparency on such positions can still be achieved, while balancing the industry's need for flexibility to report positions reflective of their trading decisions practices.

2.23 To report short positions at the trading desk level, institutional participants will have to register and set up separate reporting identities in SPRS for each trading desk. If such institutional participants decide, after due deliberation to change how short positions are aggregated in order to reflect changes in the way trading decisions are made, new reporting identities should be set up for each new level of aggregation.

**Question 4.** MAS seeks comments on the proposal for institutional entities with multiple trading desks to be given the flexibility to report at trading desk level instead of at entity level, provided:

- (a) the trading desks make trading decisions independently of one another;
- (b) aggregation and reporting will consistently be made at the trading desk level; and
- (c) in the case of short position reporting, the trading desks report all short positions even if these are less than the lower of (i) 0.05% of each class of outstanding shares, and (ii) S\$1,000,000 in aggregate value of each class of outstanding shares.

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Investors with multiple fund managers that have discretionary mandates

2.24 Similar to an institutional entity with many different trading desks, an investor could also be in a position of having many different independent fund managers managing his funds for him under different, segregated accounts with separate discretionary mandates.

2.25 In such a scenario, the investor could report his short sell orders and aggregate short positions at his level. Alternatively, given that the trading decisions are made by the fund managers independently of him, MAS intends to allow the investor to elect to report short orders or positions at the fund manager's level. Care must be taken to ensure that orders and positions are not double counted i.e. a short order or position reported by one fund manager should not be reported by the investor or another person.

2.26 Where an investor chooses to have his orders or positions reported at the fund manager's level, reporting has to be made on a consistent basis. For example, an investor should not be aggregating at his level in one reporting period, and at the fund manager's level in the next reporting period.

2.27 For the purpose of short position reporting at fund manager level, a fund manager will have to report all short positions that it entered into for the investor, even if the short positions at the fund manager level do not exceed the thresholds referred to in paragraph 2.8 of this consultation paper. This is to avoid a situation where positions that exceed the thresholds at the investor level but which are not exceeded to at the fund manager level are not reported. Not applying the thresholds at the fund manager level will ensure that transparency on such positions can still be achieved, while giving investors the flexibility to report positions at their fund managers' level.

**Question 5.** MAS seeks comments on the proposal for investors with multiple fund managers, each with a discretionary mandate, to be given the flexibility to report at fund manager level instead of at entity level, provided:

- (a) the fund managers make trading decisions independently of the investor;
- (b) aggregation and reporting will consistently be made at the fund manager level; and
- (c) in the case of short position reporting, each fund manager reports all short positions entered into for that investor, even if these are less than the lower of (i) 0.05% of each class of outstanding shares, and (ii) S\$1,000,000 in aggregate value of each class of outstanding shares.

### Implementation timeline

2.28 MAS intends to publish the finalised Regulations four months before the Regulations take effect. This is to give the industry time to become familiar with the Regulations, before the Regulations come into force. In addition, the SPRS will be made available on MAS' website in Q1 2017 for voluntary reporting. Market participants are encouraged to begin registering accounts and using the SPRS on a voluntary basis from Q1 2017 to familiarise themselves with the system, before the reporting requirements come into force.

**Question 6.** MAS seeks comments on the proposed implementation timeline.

**Annex A****LIST OF QUESTIONS**

**Question 1.** MAS seeks comments on the scope of capital market products that will be subject to short selling reporting requirements, specifically on the proposal to scope in both primary listed shares and certain specified secondary listed shares.....5

**Question 2.** MAS seeks comments on the proposed requirements to disclose short sell orders. ....6

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- (c) in the case of short position reporting, the trading desks report all short positions even if these are less than the lower of (i) 0.05% of each class of outstanding shares, and (ii) S\$1,000,000 in aggregate value of each class of outstanding shares. ....9

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- (c) in the case of short position reporting, each fund manager reports all short positions entered into for that investor, even if these are less than the lower of (i) 0.05% of each class of outstanding shares, and (ii) S\$1,000,000 in aggregate value of each class of outstanding shares...10

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**Annex B**

**DRAFT SECURITIES AND FUTURES (SHORT SELLING) REGULATIONS 2017**

**[DRAFT AND SUBJECT TO CHANGE]**

[\(Link to draft Regulations\)](#)

**Annex C**

**DRAFT GUIDELINES FOR REGULATION OF SHORT SELLING**

**[DRAFT AND SUBJECT TO CHANGE]**

[\(Link to draft Guidelines\)](#)

