CONSULTATION PAPER

P015 - 2012 Aug 2012

Consultation Paper II on Proposed Amendments to the Securities and Futures Act on Regulation of OTC Derivatives



Monetary Authority of Singapore

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PREFACE

- On 13 February 2012, MAS issued a Consultation Paper on the proposed regulation of OTC derivatives. The proposals included expanding the scope of the Securities and Futures Act, Chapter 289 (the "SFA") to regulate OTC derivatives by
 - (i) mandating the central clearing and reporting of OTC derivatives;
 - (ii) extending the current regulatory regimes for market operators, clearing facilities and capital market intermediaries to OTC derivatives; and
 - (iii) introducing a new regulatory regime for trade repositories.
- To give effect to the above policy proposals, MAS will be consulting on the relevant draft legislative amendments in phases. This second set of draft legislative amendments¹ concerns the mandatory central clearing and reporting of OTC derivatives transactions as follows:
 - (i) the New Part IIIC(Clearing Obligation) of the SFA; and
 - (ii) the New Part IIID (Reporting Obligation) of the SFA.
- 3 MAS invites interested parties to provide their comments and feedback on the draft legislative amendments to:

Macroeconomic Surveillance Department Monetary Authority of Singapore 10 Shenton Way MAS Building Singapore 079117

Email: derivatives@mas.gov.sg

Fax: (65) 6225 1350

MAS requests that all comments and feedback be submitted by 31 Aug 2012.

¹ The first set of draft legislative amendments on the proposed regulatory regimes for clearing facilities and trade repositories was issued for public consultation on 23 May 2012.

4 Please note that all submissions received may be made public unless confidentiality is specifically requested for whole or part of the submission.

INTRODUCTION

To implement the reforms relating to mandatory clearing and reporting of OTC derivatives set out in the Consultation Paper and response document, MAS proposes to introduce new Part IIIC (Clearing Obligation) and Part IIID (Reporting Obligation) of the SFA. We are also seeking comments for a revised definition of derivative contracts, taking into account feedback from the first set of legislative amendments to the SFA.

PART A: NEW PART IIIC (CLEARING OBLIGATION) OF THE SFA

- The new Part IIIC will set out requirements under the clearing obligation. The clearing obligation will cover specified entities dealing in specified clearable derivatives contracts.
- As stated in the policy consultation on OTC derivatives dated 13 February 2012, MAS intends to subject financial institutions and non-financial entities above certain thresholds to the clearing obligation. MAS will prescribe specified entities, and exempt entities who deal in derivative contracts that fall below certain thresholds. MAS will consult on the subsidiary legislation setting out the proposed thresholds after further study.
- 4 MAS proposes to provide for both top-down and bottom-up approaches to identify derivatives contracts that would be subject to the clearing obligation. Detailed guidance on how eligible CCPs can submit applications under the bottom-up approach to include certain derivatives contracts for mandatory central clearing will be set out in guidelines to be issued at a later date. To facilitate the process of determining the products and entities to be subjected to the clearing obligation, MAS also proposes to provide for powers to request for information from relevant persons.
- MAS proposes to require mandatory clearing for derivative contracts where at least one leg of the contract is booked in Singapore and where either (a) both parties to the contract are resident or have presence in Singapore; or (b) where one party to the contract is resident or has presence in Singapore and the other party would have been subject to the clearing mandate if it had been resident or had presence in Singapore.
- The draft legislation also includes a deemed-compliance provision to address the issue of possible overlapping or conflicting clearing obligations in multiple jurisdictions for cross-border trades.

- As there is currently no international consensus on issues such as the backloading of existing transactions, the treatment of pension schemes, intra-group trades and the specific scope of OTC regulations (e.g. booking or trading basis), MAS will continue to monitor developments in these areas and consult on draft legislation on these matters at a later stage.
- 8 The new Part IIIC is set out in **Annex 1**.

PART B: NEW PART IIID (REPORTING OBLIGATION) OF THE SFA

- 9 The new Part IIID will introduce the reporting obligation and relevant requirements.
- MAS intends to subject financial institutions, as well as non-financial entities above a certain threshold, to the reporting mandate. MAS will prescribe specified entities, and exempt non-financial entities who deal in derivative contracts that fall below certain thresholds. MAS will consult on the subsidiary legislation setting out the proposed thresholds after further study.
- The draft legislation clarifies that the reporting obligation also applies to specified parties acting as agents in a derivatives transaction. This is in line with the goal of increasing transparency in the OTC derivatives market.
- MAS proposes that the reporting obligation be applied to derivative contracts that are either booked or traded in Singapore. MAS will consult at a later stage on the specific criteria (such as the definitions of trading and booking) to be set out in the subsidiary legislation.
- 13 The new Part IIID is set out in **Annex 2**.

INVITATION FOR COMMENTS

- MAS would like to invite comments on the following:
 - (i) the New Part IIIC (Clearing Obligation) of the SFA attached at **Annex 1**; and
 - (ii) the New Part IIID (Reporting Obligation) of the SFA attached at Annex 2

