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# Enforcement

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Monetary Authority of Singapore

September 2018



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# ENFORCEMENT

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	<b>Contents</b>	<b>Page</b>
1	Introduction .....	2
2	The Role Of Enforcement Within MAS' Oversight Of The Financial Industry .....	3
3	The Role Of Other Government Agencies And Organisations .....	5
4	Early Detection of Breaches of Laws and Regulations .....	7
5	Investigations .....	12
6	Enforcement Actions.....	15
7	Conclusion.....	21

## 1 Introduction

- 1.1 This Monograph outlines the approach that the Monetary Authority of Singapore (“MAS”) takes towards enforcement, the role that enforcement plays in the wider objective of financial industry oversight and the key areas of MAS’ enforcement practice and powers across the financial industry.
- 1.2 As Singapore’s financial industry grows in size and complexity, it is not possible to prevent all regulatory breaches. MAS recognises the need to have the capability to take swift action to investigate and punish serious misconduct, thereby deterring unethical and illegal behaviour.
- 1.3 On 1 August 2016, MAS established a dedicated Enforcement Department to centralise MAS’ enforcement functions and capabilities in order to enhance consistency and expertise in the enforcement functions across the banking, insurance, capital markets and other sectors regulated by MAS.
- 1.4 The Enforcement Department is responsible for enforcement actions arising from breaches of laws and regulations administered by MAS,<sup>1</sup> and it works with the supervisory departments within MAS as well as key external stakeholders to manage three main elements of enforcement work, namely (i) detection; (ii) investigation; and (iii) taking of enforcement action (where appropriate) for these breaches.
- 1.5 The Enforcement Monograph comprises five sections:
- a. The role of enforcement within MAS’ oversight of the financial industry;
  - b. The role of other government agencies and organisations in the enforcement of laws and regulations under MAS’ purview;
  - c. How MAS proactively identifies breaches of laws and regulations;
  - d. MAS’ investigative approach; and
  - e. The range of enforcement actions available to MAS as well as the underlying principles which guide MAS’ use of enforcement actions.
- 1.6 This Monograph supersedes the “Capital Markets Enforcement” Monograph (dated January 2016), which covered enforcement within the capital markets.

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<sup>1</sup> The Schedule to the Monetary Authority of Singapore Act, Chapter 186 (“MAS Act”), sets out the list of written laws which come under MAS’ purview.

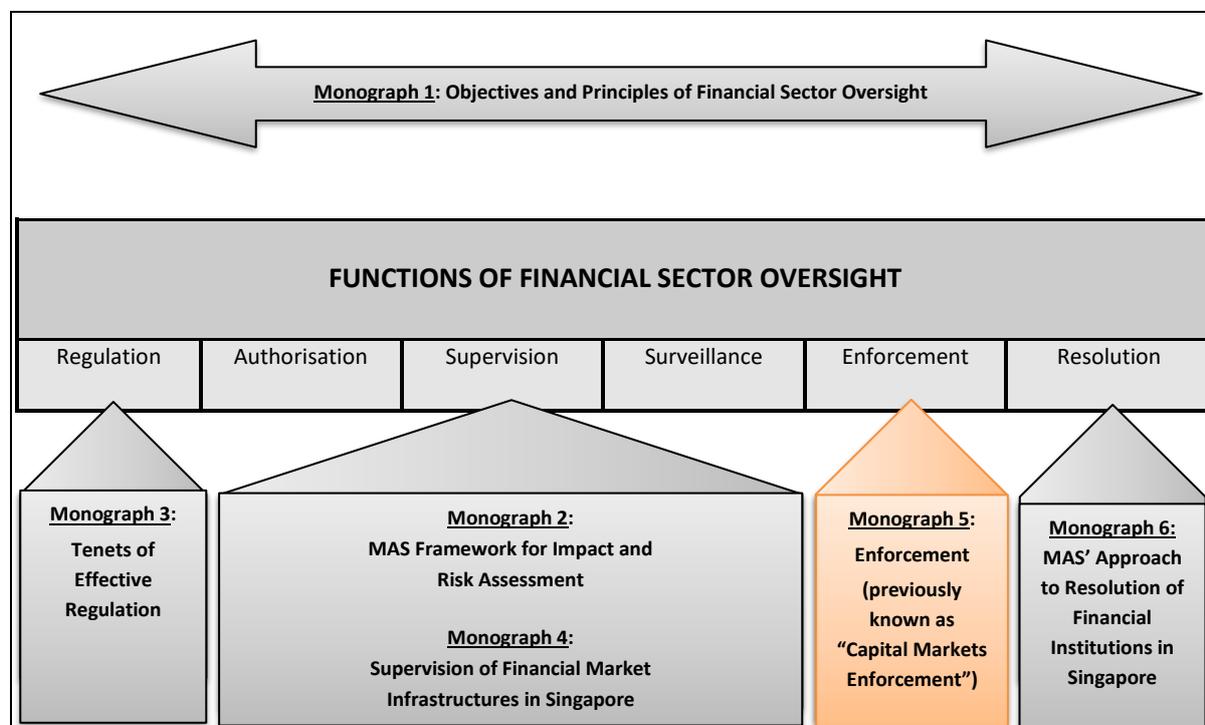
## 2 The Role Of Enforcement Within MAS' Oversight Of The Financial Industry

- 2.1 As the integrated regulator and supervisor of the financial industry, one of MAS' principal objectives under the MAS Act is to foster a sound and reputable financial centre, and to promote financial stability.<sup>2</sup> MAS' enforcement function plays a key role in achieving this objective.
- 2.2 MAS is committed to administering an enforcement regime that fosters high standards of professional conduct and delivers fair and robust enforcement outcomes to deter misconduct and preserve investor confidence. MAS' enforcement approach has three aims:
- a. early detection of misconduct and breaches of law;
  - b. effective deterrence; and
  - c. shaping business and market conduct.
- 2.3 Enforcement actions are not just about taking financial institutions and individuals to task for breaches of law and misconduct, but can also be used to shape the behaviour of stakeholders and participants in the financial industry by deterring others from engaging in similar misconduct.
- 2.4 Enforcement is closely connected with other oversight functions, such as (a) the setting of regulatory rules and standards; (b) the regulatory regime authorising persons (*i.e.* regulated financial institutions and their representatives) to offer financial services; (c) the risk-based supervision of regulated financial institutions and their representatives; (d) the surveillance of the financial system including the approved exchanges<sup>3</sup>; and (e) the orderly resolution of non-viable financial institutions.
- 2.5 The diagram at Exhibit 1 sets out a visual summary of the MAS monographs on the other functions of financial sector oversight, and how enforcement fits within the overall framework.

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<sup>2</sup> See section 4(1)(b) of the MAS Act

<sup>3</sup> As defined in section 2(1) of the Securities and Futures Act, Chapter 289 ("SFA")

*Exhibit 1: MAS Monographs on Financial Sector Oversight*

- 2.6 The enforcement function, in particular, is closely connected to the supervision and surveillance functions. Potential breaches of the law are often brought to the attention of the Enforcement Department through the supervisory and surveillance functions. Certain enforcement actions, such as revoking the licences of regulated financial institutions or banning individuals from the financial industry, have a strong supervisory angle and the inputs of the supervisory departments are often sought in these decisions. Collectively, these three functions work together to detect, investigate and take enforcement action in respect of breaches of MAS-administered laws and regulations.

### **3 The Role Of Other Government Agencies And Organisations**

3.1 MAS works closely with other law enforcement agencies and stakeholders, including the Commercial Affairs Department (“**CAD**”), the Attorney-General’s Chambers (“**AGC**”) and the Self-Regulatory Organisations (“**SROs**”), to ensure that breaches of MAS-administered laws and regulations are swiftly detected, thoroughly investigated and effectively addressed.

3.2 We briefly set out the role and responsibilities of AGC, CAD and the SROs, where relevant to MAS’ enforcement function, below.

#### **(a) CAD**

3.3 CAD is the principal law enforcement agency for the criminal investigation of financial crimes and money laundering offences in Singapore. CAD’s remit includes investigating criminal offences under MAS-administered laws and regulations.

3.4 Under the MAS-CAD joint investigation arrangement (“**Joint Investigation Arrangement**”), MAS and CAD jointly investigate offences under the SFA and the Financial Advisers Act, Chapter 110 (“**FAA**”). Details of the Joint Investigation Arrangement are set out below at 5.8.

#### **(b) AGC**

3.5 As the Public Prosecutor, the Attorney-General has the discretionary power to institute criminal proceedings for any offence, including offences under MAS-administered laws and regulations. AGC also maintains oversight of MAS’ exercise of its power to compound offences under the Acts that it administers.

3.6 Where MAS wishes to institute civil penalty proceedings for breaches under Acts administered by the MAS, it must obtain the prior consent of the Public Prosecutor. Once the Public Prosecutor’s consent is given, MAS may choose to engage AGC to act as its legal representative in these matters.

3.7 MAS also regularly consults AGC on a range of enforcement matters, to ensure that there is consistency and robustness in the enforcement decisions that we take.

***(c) The Self-Regulatory Organisations***

- 3.8 SROs are organisations that perform some regulatory functions. For example, in the area of securities and derivatives trading, the approved exchanges are SROs, with rules governing both its members (business rules) and listed companies (listing rules). The International Organisation of Securities Commissions (“**IOSCO**”) has recognised that self-regulation may be a valuable complement to the regulator in achieving the objectives of securities regulation.<sup>4</sup>
- 3.9 In Singapore’s financial industry, MAS works in partnership with SROs in the supervisory and enforcement process, which is an approach similar to that taken in other jurisdictions. In the context of securities and derivatives trading, the approved exchanges are responsible for administering their respective listing rules, exercising supervision over their members, and ensuring fair and orderly trading of their listed products.
- 3.10 The approved exchanges are also an important source of market intelligence for MAS. They undertake market surveillance of their respective marketplace and conduct preliminary assessment of possible misconduct such as market abuse, and where appropriate, refer these matters to MAS for review. Notwithstanding the regulatory function of the approved exchanges, MAS maintains supervisory oversight of them and is empowered to inspect and/or issue directions to any approved exchange under the SFA.

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<sup>4</sup> See Principles 6 and 7 of the IOSCO’s paper titled Objectives and Principles of Securities Regulation, May 2017.

#### 4 Early Detection of Breaches of Laws and Regulations

4.1 The first element of MAS' approach to enforcement is the early detection of breaches. Early detection allows MAS to promptly take the necessary actions to disrupt the breach or introduce remediation measures before the breach escalates and results in systemic and adverse consequences.

4.2 Having multiple channels for gathering intelligence and information can help in the early detection of breaches. These channels include the following, which we discuss in greater detail below:

- a. risk-focused supervision of financial institutions;
- b. market surveillance of trading activities and supervision of listed issuers as carried out by the approved exchanges;
- c. surveillance carried out by MAS;
- d. intelligence received through the Suspicious Transaction Reporting Office ("STRO");
- e. misconduct reporting by financial institutions;
- f. consumer feedback and public complaints;
- g. cross-border collaboration between MAS and foreign regulators; and
- h. intelligence gathered from MAS' interactions with market participants.

##### **(a) Risk-focused supervision of financial institutions**

4.3 As the integrated supervisor of the financial industry, MAS closely supervises its financial institutions through regular inspections, reviews and company visits. This applies to all regulated financial institutions across the banking, insurance and capital markets sectors.

4.4 MAS' supervisory approach is one that is risk-focused, stakeholder-reliant, disclosure-based and supportive of enterprise. As part of MAS' risk-based supervisory approach, MAS evaluates the adequacy of a financial institution's risk management in the context of the financial institution's risks and business profiles.

Based on this assessment, MAS develops a supervisory plan that is commensurate with the financial institution's risk profile. The level of supervisory attention given by MAS therefore varies amongst financial institutions, taking into account the financial institution's systemic importance.

4.5 MAS aims to detect issues early and to take action before they result in serious infringements. For example, where inspections reveal weaknesses in a financial institution's controls and business practices, MAS will require the financial institution to implement measures to effectively address those weaknesses. Where issues are observed to commonly occur across several financial institutions, MAS may send out industry-wide circulars, or engage industry members collectively on these common issues in order to enhance overall standards in the industry. This helps to minimise the risk of breaches and misconduct arising from weaknesses in the internal controls and business practices of financial institutions.

4.6 Where suspected breaches of laws and regulations are detected through MAS' supervisory activities, further investigations are conducted by the enforcement function. On determining that breaches have been committed, the breaches are assessed to determine whether enforcement action is necessary. Where enforcement action is necessary, the action taken is proportionate to the risks posed to MAS' objectives of regulation and supervision.

***(b) Market surveillance of trading activities and supervision of listed issuers as carried out by approved exchanges***

4.7 The approved exchanges conduct market surveillance on their markets by monitoring trading activity on the exchanges as well as collecting and analysing transactional data. Market surveillance is vital to the detection of market abuse and manipulative practices which may affect the orderliness and integrity of the market. The approved exchanges also supervise the listed issuers' compliance with disclosure requirements under the listing rules.

***(c) Surveillance carried out by MAS***

4.8 MAS has its own surveillance capabilities and it conducts surveillance of trading activities in securities issued by SGX and derivatives linked to such securities<sup>5</sup>. MAS devotes substantial resources to performing its surveillance and forensic work, to facilitate the detection of potential market misconduct at an earlier stage and to

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<sup>5</sup> This mitigates the risks of conflict of interests which may arise from SGX conducting surveillance on the trading in its own securities and derivatives.

preserve the integrity of evidence gathered as part of its investigations into suspected breaches. MAS leverages technology and data analytics to enhance its surveillance ability – this is critical in enabling MAS to detect breaches, in particular market misconduct offences under Part XII of the SFA.

***(d) Intelligence from the STRO***

- 4.9 The STRO, which resides within CAD, is the financial intelligence unit (“**FIU**”) of Singapore and is the central agency in Singapore for receiving, analysing and disseminating Suspicious Transaction Reports (“**STRs**”), Cash Movement Reports (“**CMRs**”) and Cash Transaction Reports (“**CTRs**”).
- 4.10 CMRs and CTRs are threshold reports that are required to be filed with the STRO based on movements or transactions of cash above a prescribed monetary amount. STRs are filed where a person knows or has reason to suspect that any property directly or indirectly represents the proceeds of criminal conduct, or was used or intended to be used in connection with criminal conduct, and the knowledge or suspicion arose during the course of the person’s trade, profession, business or employment<sup>6</sup>.
- 4.11 In addition to STRs, CMRs and CTRs filed locally, the STRO also receives information from its foreign counterparts. Thus, the STRO database contains financial intelligence information that can be crucial in investigations into a variety of crimes, across the banking, insurance and capital markets sectors.

***(e) Misconduct reporting by financial institutions***

- 4.12 Financial institutions are responsible for supervising the conduct of their staff and have a duty to ensure that their representatives conduct themselves in accordance with all applicable regulatory requirements. In the event of misconduct by a representative, the financial institution is required to investigate the facts and circumstances of that misconduct, and submit a report to MAS.
- 4.13 Where necessary, the financial institution is expected to take appropriate disciplinary action against a representative found guilty of misconduct. The receipt of such information allows MAS to assess the need for regulatory action against the individual involved, such as a prohibition order. It also allows MAS to engage the

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<sup>6</sup> Section 39(1) of the Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act, Chapter 65A, makes it mandatory for a person to lodge a STR if he, in the course of his trade, profession, business or employment, knows or has reasonable grounds to suspect that any property may constitute the proceeds of or may be connected to the commission of serious offences, which includes market misconduct offences under Part XII of the SFA and contraventions of specific regulations under the MAS Act. The failure to file the STR may itself constitute a criminal offence.

financial institution on the measures that it would take or has taken to detect and prevent similar misconduct.

**(f) Consumer feedback and public complaints**

- 4.14 If credible and sufficiently detailed, feedback and complaints from the public can provide a complementary source of intelligence which may be leveraged to enhance enforcement detection capabilities. The public may provide feedback or submit its complaints to MAS in writing, by telephone and via MAS' website. Dedicated officers collate the feedback and complaints, and work together with the supervisory departments and the Enforcement Department within MAS to provide prompt responses.
- 4.15 Where breaches of laws and regulations are uncovered against regulated entities, MAS may take regulatory or enforcement actions. Where the feedback or complaint concerns a possible breach by an unregulated entity operating in the financial sector, MAS will forward the information to the appropriate law enforcement agency responsible for investigating the breach.

**(g) Intelligence gathered from MAS' interactions with market participants**

- 4.16 As with consumer feedback and public complaints, information gathered from interactions with market participants can also provide a complementary and valuable source of intelligence.

**(h) Cross-border collaboration with foreign regulators**

- 4.17 Given the increasingly global nature of the financial industry, with products being traded across jurisdictions and financial institutions operating across borders, it is imperative that regulators cooperate in sharing information and intelligence. MAS is a signatory to several Memoranda of Understanding ("**MoU**"), both bilateral and multilateral, with various foreign counterparts, which facilitates cross-border cooperation in supervision and enforcement, principally by establishing a channel for the sharing of information among the regulators.
- 4.18 One example of a multilateral information sharing MoU that MAS is a signatory to is the IOSCO Multilateral Memorandum of Understanding ("**MMoU**"). IOSCO is the international body of securities and derivatives regulators, and is regarded as the global standard-setter for the securities and derivatives sector. As a signatory to the

IOSCO MMoU, MAS is able to obtain assistance and information from fellow signatory regulators for the purpose of enforcing and securing compliance with securities and derivatives laws in Singapore. In the same vein, MAS provides assistance to other IOSCO MMoU signatories for the purpose of enforcing and securing compliance with securities and derivatives laws in their respective jurisdictions.

- 4.19 MAS is also a signatory to the IOSCO Enhanced MMoU (“**EMMoU**”), which provides for additional forms of assistance that signatories can receive from each other, e.g. audit work papers, internet service provider records and telephone records.
- 4.20 The mutual assistance among IOSCO MMoU and EMMoU signatories also includes the provision of information on an unsolicited basis, which may concern possible breaches of the law of the receiving signatory.
- 4.21 Similar global platforms for information sharing are also available to the STRO and SGX:
- STRO is a member of the Egmont Group of Financial Intelligence Units, which is a forum for FIUs around the world to enhance support to their respective governments in the fight against money laundering and other serious financial crimes. FIUs which are members of the Egmont Group exchange information at an international level in support of law enforcement efforts against financial crime.
  - SGX is a member of the Inter-market Surveillance Group, an international information-sharing cooperative subscribed to by exchanges worldwide. This allows SGX to obtain information from its foreign counterparts for the purpose of detecting possible market abuse in cases with cross-border elements.
- 4.22 The international networks of cooperation maintained by MAS, STRO and SGX enable faster and more extensive information and intelligence gathering to help fight market misconduct, money laundering and other serious financial crimes that transcend borders.

## 5 Investigations

### *(a) How we select matters for formal investigation*

- 5.1 As MAS regulates more than 1,500 financial institutions of varying sizes and systemic importance in Singapore, and is responsible for 23 primary statutes, it is necessary that MAS prioritises its resources in the areas which pose more significant threat to MAS' principal objectives. MAS carefully considers how to respond to all potential breaches of the law, and formal investigation of a matter is only undertaken after careful consideration of a range of factors, which include:
- a. The seriousness of the misconduct, including the extent of harm or loss caused by the misconduct;
  - b. The public interest in pursuing the misconduct; and
  - c. The availability of evidence required to prove the misconduct.

#### *The seriousness of the misconduct, including the extent of harm or loss caused by the misconduct*

- 5.2 MAS assesses the seriousness of the alleged misconduct and the extent of harm or loss caused by the misconduct, directly or indirectly, to the victims or stakeholders involved. This may vary depending on the nature of the misconduct in question and MAS' regulatory priorities at the time.
- 5.3 In the area of market misconduct in securities and derivatives trading, MAS assesses the extent of harm or loss caused based on the impact of the misconduct on the securities or derivatives market, as the case may be. For example, in respect of the offence of market rigging under section 197 of the SFA, MAS assesses the impact on the relevant security counter caused by the market rigging transactions. Where applicable, MAS may also consider the quantum of illegally-acquired profit made by the offender, as well as the loss caused to victims of the misconduct.
- 5.4 With respect to misconduct in regulated financial institutions or by regulated financial institutions or representatives, MAS assesses if there is any adverse impact on the customers of the regulated financial institutions or representatives, as the case may be, and if the misconduct casts serious doubt on whether the financial institution or the representative remains fit and proper to conduct the regulated activities. Even if the investigations do not result in enforcement action, MAS may

still follow up with the regulated institution or individual to address any shortcomings which do not meet MAS' standards.

*The public interest in pursuing the misconduct*

- 5.5 Even where there is no quantifiable harm or loss caused by the misconduct to victims or stakeholders, MAS may nevertheless choose to investigate and take enforcement action if there is a public interest in so doing. The public interest may include instances where the misconduct results in reputational damage to Singapore or the misconduct indicates a breakdown or serious lapses in controls and processes within the financial institution. MAS may also consider whether the misconduct is widespread, part of a growing trend or has caused significant investor harm, and whether enforcement action will send a credible deterrent message to the industry.

*The availability of evidence required to prove the misconduct*

- 5.6 In determining if formal investigations should be conducted, MAS considers whether there is reasonable suspicion of an offence, whether admissible evidence of an offence can be obtained and the quality of the evidence that is likely to be obtained.

***(b) The investigation powers available to MAS***

- 5.7 MAS has recourse to both criminal investigation powers under the Criminal Procedure Code, Chapter 68 ("**CPC**"), and statutory investigation powers as prescribed under the written laws which MAS administers.

*Exercise of criminal investigation powers by MAS as part of the Joint Investigation Arrangement*

- 5.8 Since 17 March 2015, MAS has criminal investigation powers under the CPC to jointly investigate breaches of market misconduct offences under Part XII of the SFA with the CAD under the Joint Investigation Arrangement. On 17 March 2018, the scope of the Joint Investigation Arrangement was extended to cover all offences under the SFA and the FAA.
- 5.9 Under the Joint Investigation Arrangement, when MAS or CAD detects or receives a complaint of a suspected offence under the SFA or the FAA, an assessment is made as to whether the matter warrants an investigation. If an investigation is warranted, a joint team comprising officers from both MAS and CAD is formed. At the conclusion of the investigations, actions that may be taken include prosecution or where available, civil penalty action.

- 5.10 As part of the Joint Investigation Arrangement, certain MAS officers are gazetted as Commercial Affairs Officers under the Police Force Act, Chapter 235, and vested with criminal investigation powers under the CPC. Such powers include the ability to:
- a. obtain documents;
  - b. record statements from persons under investigation or persons who may have information to assist in investigations;
  - c. arrest and conduct search and seizure of property;
  - d. direct a financial institution not to allow any dealings in respect of property in an account or safe deposit box with the financial institution;
  - e. access, inspect and decrypt the data contained in the computers and devices where computers and electronic devices are seized; and
  - f. require suspects to surrender their travel documents to prevent suspects from leaving the country.
- 5.11 The Joint Investigation Arrangement enhances the enforcement process for capital markets offences as both MAS and CAD are jointly responsible for investigating these offences. By consolidating the resources, expertise and capabilities of MAS and CAD, significant synergies are drawn from MAS' expertise as a financial regulator and CAD's expertise as a financial crime investigation and intelligence unit.

MAS' statutory investigation powers

- 5.12 Besides criminal investigation powers, MAS may also exercise statutory investigation powers available to it under the written laws which it administers.<sup>7</sup> These powers of investigation are statute-specific and tailored to the needs of the particular written law.

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<sup>7</sup> Criminal investigation powers under the CPC are generally more extensive than the statutory investigation powers provided for under other written laws.

## 6 Enforcement Actions

6.1 After investigations are complete, MAS assesses if the evidence is sufficient to pursue an enforcement action, and if so, the choice of enforcement action to pursue. There are a range of enforcement actions which MAS may pursue, namely:

- a. refer a case for criminal prosecution;
- b. civil penalty action;
- c. withdrawal or suspension of licence or regulatory status;
- d. removal from office;
- e. prohibition orders;
- f. compositions;
- g. reprimands; and/or
- h. warnings/letters of advice.

6.2 With the exception of criminal prosecution where only AGC may institute criminal proceedings, the remaining enforcement actions may be undertaken in the name of MAS. In choosing the type of enforcement action to apply, MAS takes into account the full range of facts and circumstances of each case, including the harm caused by the breach, the culpability of the offender, the compliance record of the offender, the degree of cooperation shown, and any other relevant facts relating to the offence. MAS uses the range of enforcement tools at its disposal to calibrate the actions taken to fit the nature of the misconduct and the circumstances in each case.

6.3 Decisions to pursue enforcement actions are thoroughly reviewed to ensure that they are appropriate and fair. These decisions are deliberated by management committees, which also set strategic directions on investigation and enforcement matters across the banking, insurance and capital markets sectors. For enforcement actions that require bringing a case to the courts, the AGC reviews the matter before deciding whether to commence a criminal prosecution or to give the Public Prosecutor's consent for MAS to commence civil penalty action.

6.4 When assessing the type and the extent of the enforcement action to impose, MAS' primary objective is to achieve deterrence and prevent future harm. The

enforcement action must be adequate to deter the offender from re-offending, and also deter others from engaging in similar violations and misconduct.

6.5 Deterrence is crucial because it can shape behaviour and in turn reduce the chances of poor controls and misconduct in the financial industry. A robust enforcement regime provides a credible deterrent to misconduct if the potential costs of committing the unlawful act are perceived to outweigh the potential benefits. At the same time, MAS is careful to ensure that any enforcement action taken would be commensurate with the seriousness of the misconduct and the culpability of the offender.

6.6 The types of enforcement actions and the publication of such actions by MAS are elaborated on below.

***(a) Types of enforcement actions***

*Criminal prosecutions*

6.7 As part of the Joint Investigation Arrangement with CAD into suspected offences under the SFA and the FAA, MAS will not hesitate, where appropriate, to seek stiff imprisonment terms or fines for serious offences that have been referred to the AGC for criminal prosecution.

6.8 For criminal offences under MAS-administered written laws that are not covered under the Joint Investigation Arrangement, MAS may refer these to CAD for criminal investigation, or to AGC with a view to take criminal prosecution.

*Civil penalties*

6.9 MAS is empowered to take civil penalty action in respect of disclosure offences under Part VII of the SFA and market misconduct offences under Part XII of the SFA. The civil penalty regime serves as an effective enforcement tool that augments the criminal law regime in deterring breaches.

6.10 In a civil penalty action, the contravention only needs to be proven on a balance of probabilities, which is a lower threshold than the criminal standard of proving beyond a reasonable doubt. In determining if civil penalty action is the appropriate enforcement measure, MAS takes into account factors such as the evidential strength of the case, the severity of the offence and its impact on the market, as well as whether the imposition of a civil penalty is a fair and proportionate outcome that

will achieve credible deterrence. MAS is required to seek the consent of the Public Prosecutor in order to commence a civil penalty action<sup>8</sup>.

- 6.11 Where a civil penalty is ordered pursuant to court action, MAS may make submissions to the court as to the appropriate quantum of penalty to be ordered. In the case of market misconduct offences, the penalty can be up to three times the amount of profit made or the amount of loss avoided as a result of the contravention<sup>9</sup>. There is a prescribed statutory minimum civil penalty amount of \$50,000 for an individual or \$100,000 for a corporation<sup>10</sup>, and the civil penalty can be up to \$2 million for each contravention<sup>11</sup>. Civil penalty judgments can be enforced by MAS like any civil court judgment. MAS may commence execution proceedings, including bankruptcy proceedings, in the event of non-satisfaction of the judgment debt.
- 6.12 In cases where there is a possibility of an out-of-court settlement<sup>12</sup>, MAS expects the person who contravened the disclosure of interests or market conduct provisions to provide an admission of liability<sup>13</sup>. The admission of liability is an important aspect of the settlement, as the reputational consequences that result from the admission can have a deterrent effect on the public, especially industry professionals and representatives of financial institutions, from engaging in similar misconduct.
- 6.13 In determining the civil penalty settlement amount, MAS considers a wide range of factors to ensure that it arrives at a fair and proportionate sum that reflects the gravity of the contravention and the circumstances of each case. The factors include, but are not limited to, the following:
- a. The degree of market impact – the loss or risk of loss caused to the market or identified participants; the impact of contravention on the general orderliness of the market; duration and frequency of the contravention;
  - b. The difficulty of detecting the activity in question – whether the person deliberately concealed his unlawful act (e.g. using sophisticated trading methods or by withholding information); and

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<sup>8</sup> Sections 137ZD(1) and 232(1) of the SFA

<sup>9</sup> Section 232(2)(a) of the SFA

<sup>10</sup> Section 232(2)(b) of the SFA

<sup>11</sup> Section 232(3) of the SFA

<sup>12</sup> Section 232(5) of the SFA

<sup>13</sup> Even though the law allows MAS to settle with the contravening person without an admission of liability (see sections 232(4) and (5) of the SFA), it has consistently been MAS' policy to enter into civil penalty settlement agreements only on the basis of an admission of liability

- c. Prior misconduct – whether the person had been previously investigated or had enforcement action taken against him (whether civil or criminal action) for similar offences.

Revocation or suspension of regulatory status

- 6.14 MAS is committed to safeguarding the integrity and reputation of Singapore as a financial centre. MAS may choose to revoke or suspend the regulatory status of financial institutions under circumstances such as:
- a. where the institution is found to have widespread control failures;
  - b. where the institution has pervasive patterns of non-compliance; or
  - c. where the institution has ineffective governance over its operations such that there is gross misconduct by its staff or serious breaches of laws and regulations under MAS' purview.

Removals

- 6.15 MAS may direct the removal of directors and officers under the relevant legislation. Generally, these provisions cover persons occupying positions of authority or responsibility. In egregious cases where an individual has failed to discharge the duties of his office, MAS may direct the financial institution to remove the director or executive officer from his office or employment if MAS is satisfied that such a removal would be in the interests of the public or for the protection of the financial institution's stakeholders<sup>14</sup>. MAS determines the period for which the individual should remain removed from his office or employment, taking into consideration factors such as the severity of the misconduct and the impact as a result of the non-performance of his duties.

Prohibition orders

- 6.16 MAS may issue prohibition orders to bar persons from conducting regulated activities, or from taking part in the management of, acting as a director of or becoming a substantial shareholder of a licensed or exempt financial institution in Singapore<sup>15</sup>. These orders do not require court sanction and are generally employed in serious cases of misconduct, and where there is a need to protect the financial industry from the subject of the order, and to deter others from engaging in similar

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<sup>14</sup> For an example, see section 54 of the Banking Act, Chapter 19

<sup>15</sup> Section 101A of the SFA; Section 59 of the FAA; Section 35V of the IA

misconduct. MAS determines the duration of the prohibition order based on the facts and circumstances of each case, including the severity and the effect of the misconduct.

### Compositions

- 6.17 A composition is essentially a financial penalty. MAS may compound an offence which is prescribed as a compoundable offence under the relevant legislation. The composition sum offered is fixed with reference to the fine prescribed for that particular offence<sup>16</sup>. Compositions are offered in lieu of prosecution in cases where the misconduct is of low or moderate seriousness. In instances where the offer of composition is not accepted by the subject, criminal proceedings may be instituted against the offender in court.

### Reprimands

- 6.18 A reprimand is a form of supervisory warning that carries a higher signature than an ordinary supervisory warning or letter of advice. MAS may issue reprimands where failures in a financial institution's internal compliance function or its control systems poses potential risks to its business, market participants or investors. MAS aims to intervene early with the issuance of reprimands, before the failures result in serious lapses which may warrant harsher enforcement actions.
- 6.19 MAS also has the power to reprimand financial institutions and their representatives where MAS is satisfied that the financial institution or its representative is guilty of misconduct and that such a reprimand would be necessary in the interests of the public or for the protection of investors<sup>17</sup>. Reprimands issued by MAS may be published or issued privately to the subject.

### Warnings/letters of advice

- 6.20 In cases of misconduct of relatively lower degrees of severity, MAS may issue warnings or letters of advice to the offender. Warnings and letters of advice are generally not published, but the fact that the offender has been previously warned or advised by MAS may be taken into account in any future investigations and enforcement actions against the same person.

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<sup>16</sup> For an example, see section 336 of the SFA

<sup>17</sup> For an example, see section 334 of the SFA

***(b) Publication of enforcement actions***

6.21 MAS does not publish information about every enforcement action that it takes. However where it is appropriate, MAS may decide to publish certain enforcement actions. In determining whether to publish an enforcement action, MAS considers various factors, including:

- Whether the misconduct was committed wilfully, intentionally or dishonestly;
- Whether it was perpetrated by a recalcitrant offender;
- Whether publication is necessary to protect the reputation of Singapore as a financial centre;
- Whether a deterrent message needs to be sent to the industry; and
- Whether publication is necessary to safeguard the interests of the financial institution's stakeholders.

6.22 MAS publishes its enforcement actions in the "Enforcement Actions" section of the MAS' website<sup>18</sup>. The publication typically sets out the salient facts and circumstances of the case as well as the enforcement action taken, and is intended to enhance the public's understanding of the conduct that is expected of persons in the financial industry, and the consequences of engaging in unlawful conduct.

6.23 MAS does not, as a matter of course, publish information about ongoing investigations. This is done to maintain the confidentiality of information obtained during investigations, and to ensure that the investigative process is not unduly prejudiced by publicity.

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<sup>18</sup> <http://www.mas.gov.sg/News-and-Publications/Enforcement-Actions.aspx>

## **7 Conclusion**

- 7.1 MAS is committed to taking strong regulatory actions against financial institutions and individuals who have breached laws and regulations under its purview, and will publish the enforcement actions taken, if warranted. MAS does not tolerate the abuse of Singapore's financial system for illicit purposes and will not hesitate to take punitive actions in order to maintain Singapore's reputation as a clean and reputable financial centre.

*Exhibit 2: The process of detection of breaches, investigation and enforcement*

<b>1. Detection of Breaches</b>	<b>Risk-focused supervision</b>	<b>Market surveillance of trading activities and supervision of listed issuer by approved exchanges</b>	<b>Suspicious Transaction Reports</b>	<b>Misconduct Reporting</b>	<b>Consumer feedback and public complaints</b>	<b>Cross-border collaborations</b>
	MAS detects possible breaches of laws and regulations in its supervision of regulated entities	Approved exchanges carry out real-time and post-trade monitoring of trading activity to detect trading irregularities and supervise listed issuers' compliance with disclosure requirements under the listing rules	Suspicious Transaction Reports are filed with STRO	Misconduct reports filed by financial institutions on their representatives	MAS reviews public feedback and complaints on the financial industry	MAS receives referrals from its foreign counterparts on suspicious activities
<b>2. Investigation</b>	<b>When breaches of MAS-administered laws and regulations are suspected</b>					
	<b>Investigations under MAS-administered legislation</b>			<b>Criminal investigations</b>		
	<ul style="list-style-type: none"> <li>MAS reviews the matter, exercising supervisory, investigation and information gathering powers under MAS-administered legislation where warranted</li> <li>MAS may also obtain ancillary or interlocutory orders, including orders freezing suspects' assets or other injunctions from court</li> <li>Cases may be referred to CAD for criminal investigation</li> </ul>			<ul style="list-style-type: none"> <li>Joint investigations with CAD for offences under the SFA and the FAA under the Joint Investigation Arrangement</li> <li>Exercise of criminal investigation powers under the CPC, including search and seizure of documents and evidence, interviews with suspects, etc.</li> </ul>		
<b>3. Enforcement actions</b>	<b>When enforcement action is warranted</b>					
	<b>Civil Penalty</b>		<b>Criminal Prosecution</b>		<b>Regulatory or administrative actions</b>	
	<ul style="list-style-type: none"> <li>Civil court action brought by MAS against the suspect</li> <li><b>OR</b></li> <li>Settlement (with admission of liability)</li> </ul>		<ul style="list-style-type: none"> <li>Prosecution against the subject by Public Prosecutor</li> </ul>		<ul style="list-style-type: none"> <li>Withdrawals of regulatory status</li> <li>Offer of composition, in lieu of prosecution</li> <li>Removal of officer from office or employment</li> <li>Issuance of prohibition orders</li> <li>Issuance of reprimands</li> <li>Issuance of warnings/letters of advice</li> </ul>	
	<b>Publication</b>					
Press release on civil penalty, prosecution or other actions						