

# RESPONSE TO FEEDBACK RECEIVED

November 2016

## Response to Feedback Received – Proposed Amendments to the Securities and Futures Act on Regulation of Financial Benchmarks

MAS

Monetary Authority of Singapore

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## 1 Preface

1.1 On 29 July 2014, MAS issued a Consultation Paper on Proposed Amendments to the Securities and Futures Act on Regulation of Financial Benchmarks. The draft legislative amendments would implement policy proposals set out in the 14 June 2013 Consultation Paper on Proposed Regulatory Framework for Financial Benchmarks aimed at safeguarding the credibility and reliability of financial benchmarks in Singapore. The two key thrusts of the proposed regulatory framework are:

- The manipulation of any financial benchmark in Singapore will be made liable to criminal and civil sanctions under the Securities and Futures Act (SFA). This will apply to acts of manipulation: (i) of financial benchmarks administered in Singapore, regardless of where the acts took place, and (ii) acts occurring within Singapore regardless of whether the financial benchmarks are administered in Singapore or overseas.
- Administrators and submitters of financial benchmarks designated by MAS will be subject to regulation, including licensing requirements. MAS will designate key financial benchmarks, based on their systemic importance and susceptibility to manipulation.

1.2 The consultation closed on 29 August 2014. MAS would like to thank all respondents for their contributions. The list of respondents is in the **Annex**.

1.3 The finalised amendments to the SFA to implement the regulatory framework for financial benchmarks are contained in the proposed Securities and Futures (Amendment) Bill 2016 ("the Bill"), which has been introduced in Parliament today. The Bill can be accessed at the following link:

- [https://www.parliament.gov.sg/sites/default/files/Securities%20and%20Future%20\(Amendment\)%20Bill%2035-2016.pdf](https://www.parliament.gov.sg/sites/default/files/Securities%20and%20Future%20(Amendment)%20Bill%2035-2016.pdf)

1.4 The Bill incorporates feedback received on proposed amendments to the SFA in the July 2014 consultation paper, where MAS agreed with the feedback. Comments that are of wider interest, together with MAS' responses are set out below.

## 2 Definition of financial benchmarks

2.1 MAS proposed draft amendments to section 2 of the SFA to introduce a new definition of "financial benchmark", along with other definitions to implement the regulatory framework for financial benchmarks.

2.2 A respondent suggested for MAS to clarify if the definition of a financial benchmark will include opening and closing prices, daily settlement prices and final settlement prices, and that all centrally-cleared derivative contracts, including those traded over-the-counter (OTC), should be excluded from the definition of a financial benchmark. Another respondent sought clarification on whether proprietary indices or rates used internally by financial institutions but made available to clients upon request or for the purposes of explaining the methodology to clients would be considered to have been “made available to the public” under the financial benchmark definition and hence be considered as such.

#### MAS’ Response

2.3 The Bill sets out that a financial benchmark does not include the price of a capital markets product e.g. security. The price of an OTC derivative contract, centrally-cleared or otherwise, would thus generally not be considered a financial benchmark. Similarly, opening price, closing price, daily settlement price and final settlement price would not be considered financial benchmarks insofar as each is a price of a single capital markets product.

2.4 The term “made available to the public” is meant to apply broadly and will include scenarios where a price, rate, index or value is made available to clients or prospective clients. However, the Bill sets out that a price, rate, index or value determined by a person which is intended to be for the person’s exclusive use in transactions or agreements entered into, or to be entered into, by the person, would not be considered a financial benchmark, even if said price, rate, index or value is made available to the clients or wider public.

### **3 Definition of administering a financial benchmark and administering a designated benchmark**

3.1 To set the scope of benchmark setting activities and thus persons who could be subject to regulation should the benchmark they set be subsequently designated by MAS for regulation, MAS proposed to introduce definitions for “administering a financial benchmark” and “administering a designated benchmark”.

3.2 One respondent noted that the respective definitions for administering a financial benchmark and a designated benchmark include “collecting, analysing or processing information or expressions of opinion” for the purpose of determining a financial benchmark or designated benchmark, as the case may be. The respondent sought clarity on whether a person providing and analysing information reasonably necessary for providing information in relation to a financial benchmark or a designated

benchmark as a benchmark submitter will be considered to be administering a financial benchmark or designated benchmark.

#### MAS' Response

3.3 MAS does not intend for a submitter carrying on any act that is necessary or incidental to providing information in relation to a financial benchmark or a designated benchmark to be regulated as an administrator of the benchmark. The definitions for "administering a financial benchmark" and "administering a designated benchmark" in the Bill accordingly excludes any act that is necessary or incidental to providing information in relation to a financial benchmark or designated benchmark, as the case may be.

## **4 Process for designation of financial benchmarks**

4.1 To allow for a more proportionate approach where only the setting of key financial benchmarks would be subject to regulation, MAS proposed to amend the SFA to have powers to designate a financial benchmark as a "designated benchmark" where it is appropriate, taking into consideration the benchmark's systemic importance or susceptibility to manipulation, or where it is in the interest of the public to do so.

4.2 Some respondents suggested that MAS should carry out public consultations prior to designating additional benchmarks given the particularities of certain types of benchmarks, such as commodities benchmarks. One respondent also commented that the implication of regulation from other jurisdictions which may have an extra-territorial effect be taken into consideration in designating a benchmark.

4.3 Another respondent suggested that MAS should provide a detailed set of factors that MAS will consider in deciding whether to designate a benchmark.

#### MAS' Response

4.4 For a start, MAS intends only to designate the Singapore Interbank Offered Rates (SIBOR) and Swap Offered Rates (SOR) as key benchmarks. MAS agrees with the respondents' suggestions and intends to conduct consultations before designating further benchmarks (other than SIBOR and SOR) and subjecting the setting of these benchmarks to regulation. Depending on the market impact, potential stakeholders involved and specific circumstances relating to the particular benchmark, MAS may conduct a more limited consultation involving relevant stakeholders where appropriate.

4.5 Given the diversity of benchmarks, it would not be practical for MAS to set out a comprehensive list of factors which MAS will consider in deciding whether to designate a

benchmark. When proposing to designate a new benchmark, MAS intends to set out the rationale for doing so as part of the consultation process and will consider feedback received prior to deciding whether to proceed with the proposed designation.

4.6 When assessing whether it is necessary to designate a benchmark, MAS may require information from persons such as the administrator, submitters and users of the benchmark as well as persons involved in transactions in the underlying market. The Bill thus provides for MAS to obtain information concerning any financial benchmark and the market underlying a benchmark from any person who MAS believes on reasonable grounds is capable of providing the relevant information.

## **5 Designating a person as submitter to a designated benchmark**

5.1 MAS proposed powers to direct persons, including financial institutions, to provide information in relation to designated benchmarks, to be exercised in the event that such action is necessary to ensure market functionality.

5.2 Some respondents provided feedback that a person so directed by MAS to be a designated benchmark submitter should be provided sufficient time to commence submissions to the administrator of the designated benchmark. One respondent suggested that MAS re-consider the requirement for persons to provide submissions pending the outcome of an appeal to the Minister against the designation.

5.3 Another respondent suggested that the powers of MAS to designate a submitter to provide submissions to a designated benchmark should be limited to corporations with a permanent establishment in Singapore.

### MAS' Response

5.4 MAS intends to provide designated submitters with a reasonable period to commence submissions, where appropriate. The time period may vary taking into consideration factors including whether the person was previously an authorised or exempt benchmark submitter and should have the necessary set-up in place to provide the submissions.

5.5 As explained in our response to the policy consultation, MAS holds the view that the setting of financial benchmarks should be industry-led and that voluntary contribution is preferred. MAS intends to use the powers to designate benchmark submitter judiciously and will take into account factors such as the expertise and ability of the person to provide the necessary information before exercising the powers. Any person so designated is likely to have a significant impact on market functionality should he stop providing information

for the calculation of a designated benchmark. The Bill thus retains the requirement for persons to comply with the requirements of being a designated benchmark submitter pending an appeal to the Minister.

5.6 To provide a sense of persons whom MAS may designate to be a submitter, the Bill sets out a list of class of persons who could be so designated. MAS will take into consideration the place of operation of a particular person, and the impact the person has on the credibility of a designated benchmark, when deciding whether to designate the person as a designated submitter.

## **6 Guidance on governance and other requirements and Code of Conduct**

6.1 In responses to the consultation, some respondents requested for greater details to be provided in relation to the admission and ongoing requirements to which administrators of and submitter to designated benchmarks would be subject. Examples include audit requirements and areas to be covered under a Code of Conduct for Submitters.

### MAS' Response

6.2 Governance and other requirements such as those in relation to a Code of Conduct for Submitters will be set out in regulations, after the Bill is passed by Parliament. MAS will consult on the draft regulations in due course.

## **7 Prohibition against the manipulation of financial benchmarks and the making of false or misleading statements**

7.1 MAS proposed for a Division 2A to be introduced under Part XII of the SFA, to create new criminal offences and civil sanctions relating to the manipulation (or attempted manipulation) of financial benchmarks.

7.2 Respondents generally expressed support for such provisions, but some suggested that a safe harbour be provided for inadvertent, good faith errors.

### MAS' Response

7.3 As set out in "Response to Feedback Received – Public Consultation on Proposed Regulatory Framework for Financial Benchmark" published on 29 July 2014, MAS intends for the state of mind of an accused to be a key element in determining liability under the proposed offences. MAS has refined the drafting of the relevant provisions so that in order for a person to be liable under the relevant provisions, it is necessary for a person to know

that his conduct will create or will be likely to create, a false or misleading appearance, his statement, information, or opinion, is false or misleading in a material particular or he is reckless to whether his conduct or statement is so.

## **MONETARY AUTHORITY OF SINGAPORE**

7 November 2016

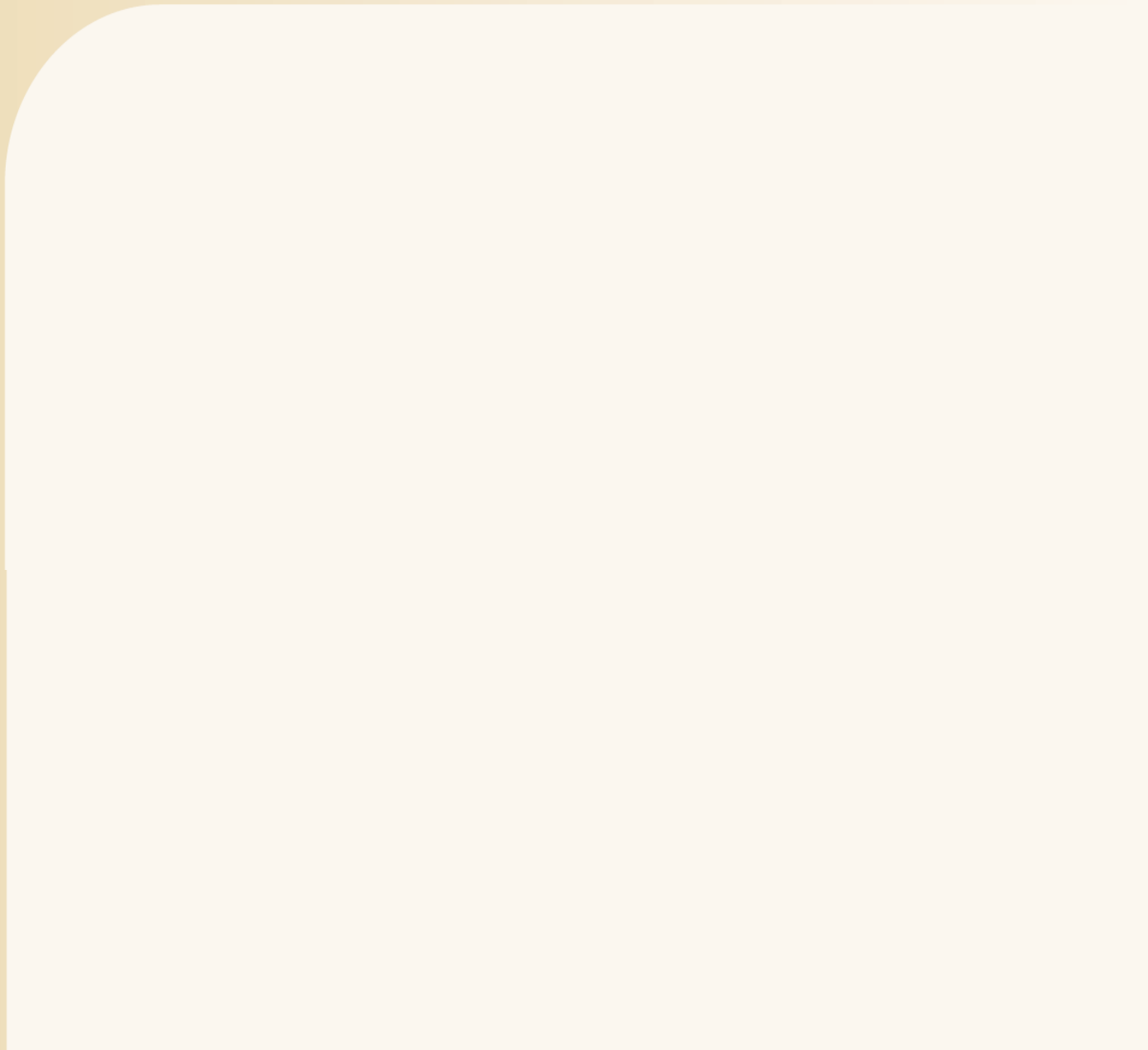


**Annex**

**LIST OF RESPONDENTS TO THE CONSULTATION PAPER ON PROPOSED  
AMENDMENTS TO THE SECURITIES AND FUTURES ACT ON REGULATION  
OF FINANCIAL BENCHMARKS**

1. Argus Media Ltd
2. ICIS, Reed Business Information Ltd
3. MSCI
4. Thomson Reuters
5. CME Group Inc
6. Singapore Exchange (SGX)
7. Citibank NA Singapore Branch (Citibank)
8. UBS AG
9. Deutsche Bank AG
10. Royal Bank of Scotland Group Plc (RBS)
11. Standard Chartered Bank (SCB)
12. United Overseas Bank (UOB)
13. Clifford Chance Pte Ltd

\*This list includes only the names of respondents who did not request that their submissions be kept confidential.



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