

CONSULTATION PAPER

P003 - 2012

Feb 2012

Proposed Regulation of OTC Derivatives

MAS

Monetary Authority of Singapore

PREFACE

Following the global financial crisis, the G20 committed to improve the regulation and supervision of over-the-counter (“OTC”) derivatives markets as part of efforts to strengthen the international financial regulatory system.

2 MAS announced in July 2011 that it will meet the objectives set by G20 as well as recommendations by the Financial Stability Board (“FSB”) on the implementation of these objectives. MAS proposes to expand the scope of the Securities and Futures Act, Chapter 289 (“SFA”) to regulate OTC derivatives as follows:

- (a) mandate the central clearing and reporting of OTC derivatives;
- (b) extend the current regulatory regimes for market operators, clearing facilities and capital markets intermediaries to OTC derivatives; and
- (c) introduce a new regulatory regime for trade repositories.

3 MAS invites interested parties to forward their views and comments on the issues outlined in this consultation paper. Written comments should be submitted to:

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4 MAS requests that all comments and feedback be submitted by 26 March 2012. Please note that all submissions received may be made public unless confidentiality is specifically requested for.

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1 INTRODUCTION

1.1 Following the global financial crisis, the G20 pledged in September 2009 to strengthen the international financial regulatory system.¹ In particular, the G20 committed to improve the OTC derivative markets, and called for specific reforms:

“All standardised OTC derivative contracts should be traded on exchanges or electronic trading platforms, where appropriate, and cleared through central counterparties by end-2012 at the latest. OTC derivative contracts should be reported to trade repositories. Non-centrally cleared contracts should be subject to higher capital requirements.”

1.2 Internationally, jurisdictions such as the United States (“US”), the European Union (“EU”), Japan and Australia have passed or are in the process of consulting on legislation for OTC derivative markets. MAS announced in July 2011² that it will meet the objectives set by G20 as well as recommendations by the FSB³ on the implementation of these objectives.

1.3 MAS has reviewed the state of the OTC derivative markets in Singapore and considered how it may meet the G20 objectives in the context of the domestic market and MAS’ regulatory objectives. In developing its proposals, MAS has taken into consideration ongoing international developments. MAS is also engaged in ongoing work on OTC derivative reforms carried out by the FSB and various international bodies such as the International Organisation of Securities Commissions (“IOSCO”), the Committee on Payment Systems and Settlements (“CPSS”) and the Committee on the Global Financial System (“CGFS”). In particular, MAS participates in the IOSCO Taskforce for OTC Derivatives Regulation, the CPSS-IOSCO Review of Standards for Financial Market Infrastructure and the OTC Derivatives Regulators’ Forum.

1.4 To implement the FSB recommendations effectively, MAS proposes to expand the scope of the SFA to mandate central clearing and reporting of OTC derivative contracts, as well as regulate market operators, clearing facilities, trade repositories and market intermediaries for OTC derivative contracts. The proposals address the four key thrusts of the FSB recommendations as follows:

¹ G20 Leaders’ Statement, The Pittsburgh Summit, 24-25 Sep 2009.

² Opening Remarks by Managing Director Ravi Menon, MAS’ Annual Report 2010/2011 Press Conference, 21 Jul 2011.

³ Implementing OTC Derivatives Market Reforms, FSB, 25 Oct 2010.

(a) Standardise OTC derivative contracts

MAS is working with the Singapore Foreign Exchange Markets Committee to encourage standardisation of OTC derivative products.

(b) Mandate central clearing of all standardised OTC derivative contracts

MAS proposes to introduce legislation to provide for the mandatory central clearing of OTC derivative contracts on regulated central counterparties.

(c) Move OTC derivative contracts trading to platforms where appropriate

MAS proposes not to introduce a trading mandate at this stage. MAS is currently working with the industry to better understand the costs and benefits of a trading mandate, taking into consideration the characteristics of the Singapore market, and will consult on this at a later juncture.

(d) Report trades to trade repositories

MAS proposes to introduce legislation to provide for the mandatory reporting of OTC derivative contracts to regulated trade repositories.

1.5 MAS also considered amendments to relevant parts of the SFA arising from the regulation of OTC derivatives, and intends to make further changes to align the treatment for OTC derivatives with that for securities and futures where appropriate. The proposals in this consultation paper will focus on the key policy positions for the implementation of OTC derivative market reforms.

2 PROPOSAL FOR EXPANDING THE SCOPE OF THE SFA TO REGULATE OTC DERIVATIVES

2.1 To implement the OTC derivative reforms effectively, MAS proposes to expand the scope of the SFA to regulate OTC derivative activities. This enables MAS to supervise and enhance oversight of participants in the OTC derivative market, some of whom do not currently fall under any regulatory framework.

2.2 MAS proposes to introduce a new class of instruments – “derivative contracts” – in the SFA. This new class will encompass the five major underlying asset classes where derivatives are currently traded over-the-counter – commodities⁴, credit, equities, foreign exchange and interest rates – and will enable MAS to bring the vast majority of the derivative market within the ambit of the SFA.

2.3 While recognising that various terms are used (such as OTC derivatives, OTC derivative contracts), the term “derivative contracts”⁵ will generally be used to refer to these contracts, for the purposes of this consultation paper. The term “OTC derivative market” will refer to the broader ecosystem where derivative contracts are currently transacted.

2.4 Overlaps may exist between the existing definitions of “securities” and “futures contracts”, and the proposed definition of “derivative contracts”. MAS will consider amendments to relevant parts of the SFA at a later stage to align the treatment for securities and futures contracts and derivative contracts.

Question 1: MAS seeks views on the proposal to expand the scope of SFA to cover derivative contracts on commodities, credit, equities, foreign exchange and interest rates.

⁴ MAS and International Enterprise Singapore Board propose to transfer the oversight of commodity derivatives from the Commodity Trading Act to the SFA.

⁵ These other terms (OTC derivatives, OTC derivative contracts), when used in the consultation paper, should be taken to refer to the same products as those described in Paragraph 2.2.

3 CLEARING MANDATE

3.0.1 This section sets out the proposed requirements for mandatory central clearing of derivative contracts. A central counterparty (“CCP”) is a clearing facility that provides a service by which a party to a transaction substitutes, through novation or otherwise, the credit of the clearing facility for the credit of its counterpart to the transaction. CCPs allow for multilateral netting of transactions and thus reduce counterparty credit risk in the OTC derivative market.

3.1 SCOPE OF CLEARING OBLIGATION – PRODUCTS

3.1.1 MAS recognises that not all products may be suitable for mandatory central clearing by a CCP. For instance, certain products may not be sufficiently standardised or have adequate liquidity to warrant central clearing. Mandating these products to be cleared via a CCP may inadvertently result in new risks. Similar to the US and the EU, we propose to adopt the following approaches to determine products for mandatory central clearing:

- (a) A bottom-up approach where an eligible CCP⁶ (“Requestor”) submits to MAS a written application (“Application”) requesting MAS to consider a product, or set of products, for mandatory central clearing; and
- (b) A top-down approach where MAS initiates a review to determine such products.

Bottom-Up Approach

3.1.2 The Application should contain all information necessary for MAS to evaluate the request, including the following:

- (a) Information on product(s) for which the Requestor has been authorised to clear and that is to be considered for mandatory central clearing;
- (b) The reasons why the product(s) should be considered for mandatory central clearing;

⁶ An eligible CCP refers to a CCP that is either approved or recognised by MAS to provide clearing services to entities subject to clearing obligations in respect of relevant derivative contracts in Singapore. (Please see Section 7.)

- (c) Whether the product(s) is traded on regulated trading platforms, OTC, or both;
- (d) Details of the Requestor's risk management framework; and
- (e) The timeframe in which the Requestor can begin clearing the product.

3.1.3 Upon receiving a valid Application, MAS will notify the public of the Application on its website and issue a public consultation to invite comments from the public. In addition, as part of its review process, MAS may request relevant information from other market infrastructure providers (such as trading platforms, confirmation platforms, compression providers, and trade repositories) and market participants. Publicly available information may also be considered.

3.1.4 MAS will assess the Application, taking into account the following criteria:

- (a) Level of systemic risk posed by the product(s);
- (b) Product characteristics and level of standardisation of contractual terms and operational processes;
- (c) Depth and liquidity of the market for the product(s);
- (d) Availability of fair, reliable and generally accepted pricing sources;
- (e) Robustness of the Requestor's risk management systems; and
- (f) International regulatory approach towards such product(s) and anti-competitive considerations.

3.1.5 The above criteria are largely similar to assessment criteria adopted by other major jurisdictions. For instance, in assessing if a product should be mandated for central clearing, the US proposed factors such as the effect on mitigating systemic risks, existence of outstanding notional exposures, trading liquidity etc⁷ while Australia will consider factors such as (i) viability of central

⁷ CFTC has proposed the following criteria in reviewing OTC derivatives for mandatory clearing: (1) The existence of significant outstanding notional exposures, trading liquidity, and

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clearing for that product (ii) reduction of systemic risks; and (iii) international harmonisation of clearing requirements across product classes.

3.1.6 Upon completing its review, MAS will inform the Requestor in writing on whether the Application has been approved. MAS will also publish the outcome of the review on its website.

Top-Down Approach

3.1.7 Under the top-down approach, MAS will initiate a review taking into account the factors proposed in paragraph 3.1.4 as well as the availability of eligible CCPs to clear the product(s). MAS will then issue a public consultation to seek views on mandating central clearing of the products.

3.1.8 If MAS determines that the product(s) should be subject to mandatory central clearing but there is no existing CCP to clear such product(s), MAS will investigate the reasons behind the lack of a CCP, and take appropriate action where necessary. This could include issuing a request for proposal for a CCP to clear the product in Singapore. After MAS has completed its review, it will communicate its decision on MAS' website.

3.1.9 From a preliminary review, MAS notes that SGD interest rate swaps ("IRS"), USD IRS and non-deliverable forwards ("NDFs") denominated in selected Asian currencies appear to fulfil the proposed criteria in paragraph 3.1.4. We would like to seek views on the feasibility of mandating central clearing for these products

Question 2: MAS seeks views on:

- (i) the proposal to adopt top-down and bottom-up approaches to identify products suitable for mandatory central clearing;**

adequate pricing data; (2) the availability of rule framework, capacity, operational expertise and resources, and credit support infrastructure to clear the contract on terms that are consistent with the material terms and trading conventions on which the contract is then traded; (3) the effect on the mitigation of systemic risk, taking into account the size of the market for such contract and the resources of the CCP available to clear the contract; (4) the effect on competition, including appropriate fees and charges applied to clearing; and (5) the existence of reasonable legal certainty in the event of the insolvency of the relevant CCP or one or more of its clearing members with regard to the treatment of customer and swap counterparty positions, funds, and property. For more information, please refer to CFTC's final rule here:

<http://www.cftc.gov/ucm/groups/public/@lrfederalregister/documents/file/2011-18663a.pdf>

- (ii) the proposed criteria (paragraph 3.1.4) for determining whether a product is suitable for mandatory central clearing by a CCP; and**
- (iii) the feasibility of mandating central clearing for SGD IRS, USD IRS, and NDFs in selected Asian currencies.**

Foreign Exchange Forwards and Swaps

3.1.10 MAS proposes to exempt foreign exchange forwards and swaps from the clearing obligation. The main source of systemic risk arising from these products is settlement risk, and there is already an established international settlement process to mitigate such risk. Other foreign exchange derivatives such as currency options, non-deliverable forwards and currency swaps are not exempted. The proposed exemption is in line with the US's approach to exempt these instruments from the clearing and trading requirements under the Dodd-Frank Act.

Question 3: MAS seeks views on the proposal to exempt foreign exchange forwards and swaps from mandatory central clearing.

3.2 SCOPE OF CLEARING OBLIGATION – CONTRACTS

3.2.1 As most activities in OTC derivatives are global in nature, a derivative contract may be traded in one jurisdiction but booked in a different jurisdiction. MAS proposes to require central clearing for all derivative contracts where at least one leg of the contract is booked in Singapore and either:

- (a) both parties to the contract are resident or have presence in Singapore and are subject to the clearing mandate (see section 3.3 below); or
- (b) one party to the contract is resident or has presence in Singapore and is subject to the clearing mandate, and the other party would have been subject to the clearing mandate if it had been resident or had presence in Singapore.

Anti-evasion

3.2.2 The scope of the clearing obligation is not meant to include any derivative contract between two entities who are neither resident nor has a presence in Singapore unless such an obligation is necessary or appropriate to prevent the evasion of Singapore's derivatives regulations.

Question 4: MAS seeks views on the proposal to require transactions which fulfil the criteria stated in paragraphs 3.2.1 and 3.2.2 to be subject to the clearing obligation.

3.3 SCOPE OF CLEARING OBLIGATION – ENTITIES

3.3.1 MAS recognises that there is a need to balance the benefits of central clearing against the costs that central clearing may impose upon market participants.⁸ We therefore propose to require all financial entities and non-financial entities above relevant thresholds to clear derivative contracts that are subject to the central clearing requirement through an eligible CCP. The proposal is similar to those by other jurisdictions such as the EU and the US.

3.3.2 Financial entities refer to financial institutions ("FIs") regulated by MAS. Non-financial entities refer to persons resident or having a presence in Singapore, that are not regulated by MAS. Examples of such counterparties include sole proprietors, partnerships and companies incorporated or based in Singapore.

3.3.3 Recognising that derivative contracts are not widely used by all financial entities, we propose to exclude from the clearing mandate financial entities that are determined to have minimal exposure in derivative contracts. This determination should take into account the size of the financial entity's derivative exposures in aggregate and by product class.

3.3.4 For non-financial entities, the clearing threshold should take into account:

- (a) Size of the non-financial entity's total assets; and

⁸ In particular, non-financial entities typically do not engage in OTC derivatives transactions other than to hedge exposures arising from the ordinary course of their commercial business.

- (b) Size of the non-financial entity's derivative exposures in aggregate and by product class.

3.3.5 Further, MAS notes that derivative contracts enable customised hedging of risks. For instance, entities with large capital investments over a long horizon, such as airlines, shipping companies and infrastructure builders, rely on interest rate and other derivatives to manage their exposures to financial risks. We propose to exclude hedging transactions by non-financial entities when calculating the size of their derivative exposures for the purposes of the clearing threshold. Hedging transactions refer to transactions which qualify for hedging treatment under Singapore Financial Reporting Standards or other internationally accepted reporting standards such as those of International Accounting Standards Board or US Financial Accounting Standards Board.

3.3.6 Following public consultation, MAS will determine the appropriate clearing thresholds for both financial and non-financial entities, taking into account relevant industry-specific characteristics.

Question 5: MAS seeks views on the proposed scope of entities to be subject to clearing obligations and on the factors to be taken into account when determining the clearing thresholds.

Public Bodies

3.3.7 The policy functions of public bodies require them to maintain the flexibility to respond to a variety of circumstances, which may be constrained if they are subject to the central clearing requirement. For example, some central banks have highlighted the need for confidentiality in central bank trades as these trades often have significant information content for market participants. Subjecting such entities to mandatory central clearing will unnecessarily constrain them in performing their roles effectively. Further, some public entities have pointed out that they are generally regarded as posing lower credit risk than CCPs, so subjecting them to the central clearing requirement does not improve risk management. In particular, as central banks are monopoly suppliers of their domestic currencies, their creditworthiness in respect of transactions denominated in domestic currencies would normally not be questioned. Taking into account the above

considerations, MAS proposes to exempt the following entities from that the scope of the clearing obligations:

- (a) Central banks and central governments⁹; and
- (b) Supra-national organisations such as the Bank for International Settlements, the International Monetary Fund, the World Bank and multilateral development banks.

Question 6: MAS seeks views on the proposal to exempt certain public bodies from the clearing obligation.

Intra-group Trades

3.3.8 Singapore is an important international funding and risk management centre for FIs and companies. Some corporate groups manage the risks of their affiliated companies from a centralised risk management centre to achieve efficient and effective enterprise-wide risk management. Transactions conducted among affiliated companies within the same corporate group for such purpose may be termed as intra-group transactions in the context of this consultation paper.

3.3.9 MAS recognises that subjecting intra-group trades to the clearing obligation could result in increased risk management costs and inadvertently reduce the incentives for effective risk management within corporate groups. In view of this, MAS is considering exempting intra-group transactions from mandatory central clearing.

3.3.10 However, material intra-group transactions do represent possibilities for contagion within a corporate group and could potentially complicate the resolution of defaults, if there are no proper risk mitigation measures to monitor and manage the operational and credit risks arising from such transactions. We note that the EU has proposed to require intra-group trades exempted from the clearing obligation to be subject to bilateral

⁹ For Singapore, this refers to Singapore Government ministries, statutory boards and other non-profit state-owned bodies that have explicit guarantee arrangements provided by the Singapore Government.

collateralisation unless strict conditions¹⁰ are met. MAS is inclined to adopt a similar approach under which intra-group transactions exempted from the clearing obligation will be subject to appropriate collateralisation requirements.

Question 7: MAS seeks views on:

- (i) the proposal to exempt intra-group trades of both financial and non-financial entities from the clearing obligation but subject these trades to appropriate collateralisation requirements;**
- (ii) whether such a proposal would pose any implementation issues; and**
- (iii) whether there are other appropriate risk mitigating measures, apart from subjecting the exempt intra-group trades to collateralisation requirements.**

Pension Schemes

3.3.11 Some jurisdictions have proposed to grant pension schemes some relief from clearing obligations. For instance, the US has excluded positions held by employee benefit plans from the calculation of clearing thresholds while the EU has proposed a transitional exemption for pension schemes from the clearing obligation. The EU notes that pension schemes tend to hold less cash in order to maximise the returns from their investments. Subjecting pension schemes to mandatory central clearing could result in them having to divest a proportion of their assets to meet margin calls. This would have an impact on their returns. While there could potentially be pension-like products offered by private entities in Singapore, social security savings are mainly held within the CPF scheme managed by the Central Provident Fund Board (“CPF Board”). Being a statutory board, CPF Board will already be exempted from the clearing obligation (see paragraph 3.3.7 above). As such, MAS expects the proposed clearing obligation to have minimal impact on these products, and is not minded to provide an exemption unless there is sufficient evidence that the issues raised in the US and the EU are also applicable in Singapore’s context.

¹⁰ The conditions include: (a) no impediments to prompt transfer of own funds and repayment of liabilities between counterparties, and (b) the counterparties practise sound risk management.

Question 8: MAS seeks view on the proposal not to exclude pension schemes from clearing requirements.

3.4 LOCALATIONAL REQUIREMENTS FOR CLEARING

3.4.1 While OTC derivative markets are global in nature, there are some justifications for considering a requirement that certain products be cleared at a domestic CCP. Central clearing at domestic CCPs may have certain benefits in markets where local participants play a dominant role or where there are special market needs.¹¹ Some jurisdictions have also cited financial stability concerns (e.g. limited intervention powers available to regulators with regard to foreign CCPs could exacerbate financial stress in the event of failure of foreign CCPs) and access issues (e.g. local participants may not be able to gain direct access to foreign CCPs) as reasons for requiring clearing through domestic CCPs only.

3.4.2 However, requirements for domestic clearing may result in fragmentation of liquidity and reduction of benefits of central clearing. Having multiple domestic CCPs across jurisdictions could also limit the scope for multilateral netting and risk reduction, resulting in more fragmented clearing and thereby increasing system-wide counterparty risk.

3.4.3 MAS is of the view that the financial stability concerns raised in paragraph 3.4.1 can be addressed through supervisory cooperation and coordination (e.g. establishment of common international standards and arrangements such as supervisory colleges/MOUs). With regard to access configuration, MAS notes that there are both benefits and costs to direct and indirect clearing. MAS recognises that there is a need to provide market participants with flexibility in choosing clearing arrangements without compromising financial stability. As noted by CGFS, the relative costs of direct versus indirect clearing will be influenced by the standards currently being developed by the CPSS, IOSCO and the BCBS, as well as by the market response to those standards and their implementation by national regulators. MAS also notes that the FSB has established an OTC Derivatives Coordination Workgroup whose initial focus will be on establishing safeguards to support a global approach to central clearing. MAS will continue to monitor relevant developments in this area in achieving the G20 outcomes.

¹¹ The macrofinancial implications of alternative configurations for access to central counterparties in OTC derivatives markets, Committee on the Global Financial System, Nov 2011, <http://www.bis.org/publ/cgfs46.pdf>

3.4.4 On balance, we propose not to require central clearing through only domestic CCPs as doing so could limit choices for market participants, lead to fragmentation of liquidity, reduce netting benefits and increase costs for FIs currently clearing with foreign CCPs. MAS intends to address the oversight of foreign CCPs under a recognition framework, further discussed in Section 7.

Question 9: MAS seeks views on the proposal not to require central clearing through only domestic CCPs.

3.5 BACKLOADING OF OUTSTANDING CONTRACTS

3.5.1 The FSB suggested that regulators should consider applying the clearing obligation not only to new derivative contracts but also to outstanding derivative contracts where practicable.¹² While backloading could impose costs on participants, it could also (a) increase potential netting benefits for counterparties; and (b) reduce counterparty risks for products which are systemically important. We note that the EU has proposed to require backloading of outstanding derivative contracts with remaining maturities above a certain threshold. Similarly, MAS proposes to require backloading of outstanding derivative contracts with remaining maturity of more than one year for products which are subject to mandatory central clearing.

Question 10: MAS seeks views on:

- (i) **the proposal to require backloading of outstanding derivative contracts with remaining maturity of more than one year; and**
- (ii) **any potential implementation challenges in requiring backloading of outstanding derivative contracts.**

3.6 RISK MITIGATION MEASURES FOR DERIVATIVE CONTRACTS

3.6.1 All financial entities that enter into derivative contracts not cleared by a CCP should ensure that appropriate procedures and arrangements are in place to identify, monitor and mitigate all risks arising from such transactions. Financial entities should maintain adequate levels of financial buffers, such as

¹² Implementing OTC Derivatives Market Reforms, FSB, 25 October 2010.

capital and margins, that appropriately reflect and are proportionate to the risks arising from non-centrally cleared derivative contracts.

3.6.2 With respect to capital requirements, the rules for counterparty credit risk under the Basel III capital framework will strengthen the bank capital requirements for non-centrally cleared derivative contracts relative to centrally-cleared derivative contracts. MAS will be implementing the Basel III recommendations for banks and will also make appropriate changes to the relevant capital frameworks for other regulated FIs to maintain broad alignment with Basel III. MAS is currently consulting on the implementation of Basel III requirements for banks for non-centrally cleared derivative contracts¹³ and will consult on other changes in this area at a later date¹⁴.

3.6.3 For margin requirements, MAS will be taking into account upcoming international standards on margin requirements for non-centrally cleared derivatives¹⁵ and will consult on the proposed regulatory changes to implement these standards in due course.

3.7 NEXT STEPS

3.7.1 The FSB has recommended that IOSCO, working with other authorities as appropriate, coordinate the application of mandatory central clearing requirements at both entity and product levels, as well as any exemptions from them, to minimise the potential for regulatory arbitrage.¹⁶ MAS will continue to take into consideration international regulatory developments where appropriate, when developing its regulatory framework.

¹³ The consultation paper on Proposed Amendments to MAS Notice 637 to Implement Basel III Capital Standards in Singapore was issued on 28 December 2011 and will close on 17 February 2012.

¹⁴ The Basel Committee on Banking Supervision (“BCBS”) issued a consultative document on “Capitalisation on bank exposures to central counterparties” in November 2011 (refer to press release <http://www.bis.org/press/p111102.htm>). MAS will issue a consultation on the capital requirements for banks’ exposures to central counterparties at a later date.

¹⁵ Representatives of the BCBS, CGFS, CPSS, and IOSCO have formed a working group to look into setting standards for non-centrally cleared derivatives; a consultative report is expected to be published by June 2012.

¹⁶ Implementing OTC Derivatives Market Reforms, FSB, 25 October 2010

4 REPORTING MANDATE

4.0.1 Reporting of derivative contracts to a trade repository (“TR”) enhances regulators’ ability to – (a) assess systemic risk; and (b) conduct resolution activities. Some jurisdictions have also noted that the data collected could potentially be used for market surveillance and enforcement as well as for the supervision of market participants. This section sets out proposed requirements for mandatory reporting of derivative contracts.

4.1 SCOPE OF REPORTING OBLIGATION – PRODUCTS

4.1.1 We propose that derivative contracts across all asset classes be reported to TRs. However, MAS sees merit in phasing the implementation of reporting requirements by product or asset class as this will allow time for the development of stakeholder consensus globally on critical issues such as data content and access, as well as permit refinements over time. MAS proposes to prioritise products/asset classes having regard to: (a) the significance of the product/asset class in Singapore’s OTC derivative market; (b) the significance of Singapore-based trading of the product/asset class in the global OTC derivative markets; and (c) international developments in OTC derivatives reporting.

4.1.2 Interest rate and foreign exchange derivatives form a significant share of Singapore’s OTC derivative market. Singapore is also a trading hub for energy products in the Asian time zone. Although energy traders here tend to focus on physical trading and OTC energy derivatives account for only a small share of the total OTC derivatives market in Singapore, OTC energy derivatives trading in Singapore could be more significant relative to the Asian OTC energy derivatives market. Therefore, we propose to prioritise the following products/asset classes for mandatory reporting: (a) interest rate derivatives; (b) foreign exchange derivatives; and (c) oil derivatives.

Question 11: MAS seeks views on the proposal to implement the reporting obligation in phases, specifically on the proposal to include interest rate, foreign exchange and oil derivative contracts in the first phase.

4.2 SCOPE OF REPORTING OBLIGATION – CONTRACTS

4.2.1 OTC derivative markets are largely global in nature and entail a significant amount of cross-border activity. As such, transactions often involve market participants across different jurisdictions, and information on these activities may consequently be relevant to multiple regulatory authorities.

4.2.2 Information on all derivative contracts that are related to Singapore would include contracts booked in Singapore, denominated in Singapore dollars or where the underlying reference entity is resident or have presence in Singapore, as well as contracts traded by market participants resident or having presence in Singapore. However, we note that there are practical impediments to MAS enforcing reporting obligations on entities that are neither resident nor have a presence in Singapore. As such, it is important that reporting obligations are implemented rigorously by regulators worldwide and for MAS to have timely and comprehensive access to all relevant data. In this regard, the FSB has requested CPSS and IOSCO to coordinate with relevant authorities to take forward the work on authorities' access to TR data.¹⁷

4.2.3 MAS proposes that all contracts subject to the reporting mandate and are booked or traded in Singapore be reported to an eligible TR.¹⁸ As for information on contracts transacted between entities that are neither resident nor have a presence in Singapore but in which MAS has an interest, MAS will look to obtain relevant data from the TRs in collaboration with other regulators.

Question 12: MAS seeks views on the proposal to require all transactions booked or traded in Singapore to be reported.

4.3 SCOPE OF REPORTING OBLIGATION – ENTITIES

4.3.1 Similar to the EU, MAS proposes to require all financial entities, as well as non-financial entities above a certain threshold to report their

¹⁷ OTC Derivatives Market Reforms – Progress Report on Implementation, FSB, October 2011, http://www.financialstabilityboard.org/publications/r_111011b.pdf

¹⁸ An eligible TR is a TR that is either approved or recognised by MAS to provide trade reporting services to entities subject to reporting obligations in respect of relevant derivative contracts in Singapore. (Please see Section 7.) In the event that there is no eligible TR to collect the required information, the entity may be required to report directly to MAS.

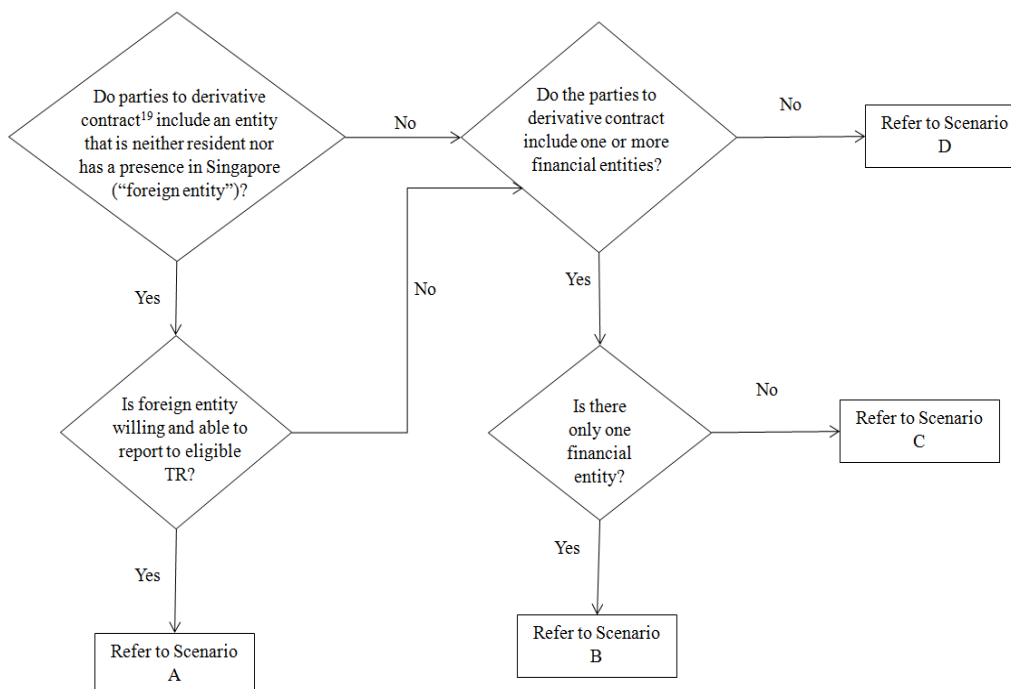
derivative contracts to eligible TRs. The definitions of “financial entity” and “non-financial entity” are as proposed in paragraph 3.3.2. For Singapore-incorporated banks, we further propose that the reporting obligation apply on a group-wide basis for effective consolidated supervision.

4.3.2 As mentioned in paragraph 3.3.5, non-financial entities typically do not engage in derivative transactions other than to hedge exposures arising from the ordinary course of their commercial businesses. To reduce reporting burden on small corporates with minimal derivative activities, we propose that only non-financial entities above a certain reporting threshold be subject to the reporting mandate. We propose that this threshold takes into account the asset size of the non-financial entity.

Question 13: MAS seeks views on:

- (i) the proposal to require reporting by all financial entities, as well as non-financial entities above a reporting threshold; and**
- (ii) the proposal to determine the reporting threshold based on the asset size of the non-financial entity.**

4.3.3 TRs may allow for single-sided reporting (i.e. reporting by one party only). For single-sided reporting, we propose the following protocol:

Figure 1: Protocol for single-sided reporting

Scenario	Party to Report (“Reporting Party”)
A	The reporting obligation may be fulfilled by the foreign entity.
B	The financial entity is required to report the transaction.
C	The financial entities may elect one party amongst themselves to report the transaction.
D	The non-financial entities may elect one party amongst themselves to report the transaction.

However, MAS expects all the parties to the derivative contract to retain responsibility for the timeliness and accuracy of the information submitted.

4.3.4 Financial and non-financial entities may also use a third party (e.g. CCP or electronic trading platform) to report on their behalf and fulfil their reporting obligations. As in the case of single-sided reporting, MAS requires the original parties to retain responsibility for the timeliness and accuracy of the information submitted.

Question 14: MAS seeks views on the proposed protocols for single-sided reporting and for the use of third party service providers to fulfil reporting obligations.

Public Bodies

4.3.5 As stated in paragraph 3.3.7, some public bodies have highlighted the need for confidentiality to perform their roles effectively. Consistent with the approach in other jurisdictions, MAS proposes to exempt the public bodies listed in paragraph 3.3.7 from the reporting obligation.

Question 15: MAS seeks views on the proposal to exempt certain public bodies from the reporting obligation.

4.4 SCOPE OF REPORTING OBLIGATION – INFORMATION TO BE REPORTED

4.4.1 MAS proposes to follow international standards on data reporting to (a) allow data to be collected in a manner which facilitates meaningful aggregation across jurisdictions; and (b) reduce compliance costs incurred by entities with reporting obligations in multiple jurisdictions. In this regard, we note that CPSS and IOSCO have issued a Report on OTC Derivatives Data Reporting and Aggregation Requirements (“Data Aggregation Report”)¹⁹ to provide guidance to regulators.

4.4.2 As noted in the Data Aggregation Report, transaction-level data should be reported to TRs to facilitate the objectives of trade reporting. Such data include at least transaction economics, counterparty information, information on the underlying entity, operational data and event data. MAS proposes to require reporting of transaction-level data, with the level of granularity to be in accordance with international standards.

4.4.3 The Data Aggregation Report also noted that there are two approaches with regards to specifying the content of data that needs to be reported. These are: (a) the functional approach; and (b) the data field approach. We propose to follow CPSS-IOSCO’s recommendation to adopt a combination of both approaches. The Annex contains an illustrative list of potential broad functional categories, with each category populated with minimum data fields to be included for reporting.

4.4.4 Derivative contracts may be active over long periods of time, during which the terms of the contracts may change before expiration. MAS proposes that parties to a derivative contract be required to provide

¹⁹ Report on OTC Derivatives Data Reporting and Aggregation Requirements – Final Report, CPSS-IOSCO, January 2012

information updates to the eligible TR to ensure that TR data on the transaction remains accurate throughout the life of the transaction.

4.4.5 To facilitate data aggregation, parties to derivative contracts are encouraged to adopt unique identifiers as far as possible. We note that there are international initiatives in this regard. MAS is supportive of these initiatives and would like to seek stakeholders' views on the feasibility of adopting these initiatives in Singapore's context.

Legal Entity Identifier

4.4.6 As highlighted in the Data Aggregation Report, having a form of legal entity aggregation would allow authorities to view and analyse the potential systemic risk arising from derivative contracts across multiple legal entities sharing common affiliation. This can help authorities better assess contagion or concentration risks. In this regard, we note that there is an industry-led, international consultation process underway, aimed at creating a legal entity identifier ("LEI") which would be used for identifying parties in a derivative contract. MAS supports the international adoption of LEI by FIs for the purpose of reporting their derivative contracts

Product Classification System

4.4.7 In addition to LEI, the Data Aggregation Report recommended the development of a standard product classification system to facilitate the aggregation of derivatives data. The FSB has also advocated that the industry develop a standard product classification system in consultation with relevant regulatory bodies. MAS supports the international adoption of such a product classification system and will continue to monitor developments in this area.

Question 16: MAS seeks views on the proposal to adopt international data reporting and aggregation standards recommended by CPSS-IOSCO, including the requirement for parties to derivative contracts to provide information updates to the TR to ensure that TR data on the transaction remains accurate through the life of the transaction.

Question 17: MAS seeks views on the adoption of an LEI and a product classification system aligned with international standards.

4.5 TIMELINESS OF REPORTING

4.5.1 Prompt reporting of derivative contracts allows regulators to have effective oversight of the markets under their purview. However, we note that real-time reporting may not be technologically feasible or cost-efficient at this current juncture. As such, we propose that entities report a derivative contract (and any subsequent updates) within one business day of the transaction.

Question 18: MAS seeks views on the proposal to require reporting of contracts (and any updates) within one business day of the transaction.

4.6 BACKLOADING OF OUTSTANDING CONTRACTS

4.6.1 MAS proposes that relevant pre-existing derivative contracts be reported to eligible TRs. This will allow the authorities to have an accurate view of the OTC derivative market. However, to mitigate the reporting burden, MAS proposes to require backloading of pre-existing contracts with remaining maturity of greater than one year.

Question 19: MAS seeks views on the proposal to backload relevant pre-existing derivative contracts with remaining maturity of more than one year.

4.7 LOCATIONAL REQUIREMENTS FOR TRADE REPOSITORY

4.7.1 MAS notes that some jurisdictions have required or are proposing to require trade reporting to a domestic TR. Reporting to domestic TRs could accord regulators timely and comprehensive access to data, which is important for both regular surveillance and times of crisis. However, mandating reporting to domestic TRs could result in data fragmentation globally and impose additional costs and effort on entities subject to reporting requirements in multiple jurisdictions for cross-border trades and foreign financial entities operating in Singapore. MAS notes that the FSB has called on CPSS and IOSCO to work on regulators' access to TR data, including providing guidance on appropriate levels of access for regulators and addressing data access concerns raised by regulators. Subject to the development and adoption of an effective international data access framework

for regulators, MAS proposes not to require reporting to domestic TRs only. Entities may report their derivative contracts to foreign TRs recognised by MAS. MAS intends to address the oversight of foreign TRs under a recognition framework, further discussed in Section 8.

Question 20: MAS seeks views on the proposal not to require reporting to domestic TRs only.

5 TRADING MANDATE

5.1 The G20 Leaders agreed that all standardised OTC derivative contracts should be traded on exchanges or electronic trading platforms, where appropriate. As discussed in the IOSCO Report on Trading of OTC Derivatives²⁰, possible benefits of trading on organised platforms include market centralisation, reduction in trading cost, as well as more resilient liquidity. The report, however, also notes that these benefits are counterbalanced by costs such as restriction of trading venue choice (e.g. some participants may not meet access requirements or may not wish to incur the costs involved in accessing such venues), limitations on platforms (e.g. regulatory prescriptions on trading platform characteristics could dampen development of additional trading functionalities and/or reduce the current universe of trading platforms, thereby inhibiting competition between platform providers) and costs of change/uncertainty. The report also noted that standardisation and liquidity are two factors that may determine if a product is suitable for trading on an organised platform and the type of organised platform that may provide a practicable venue for trading. IOSCO identifies three options to move OTC derivatives trades to organised platforms – (i) encouraging and establishing targets for market initiatives; (ii) regulatory disincentives; and (iii) regulatory mandates.

5.2 In the US, the Commodity Futures Trading Commission and Securities and Exchange Commission have specified that if an OTC derivative contract is subject to mandatory central clearing, such a contract must also be traded on a Swap Execution Facility or a Designated Contract Market. In Europe, the revised Markets in Financial Instruments Directive is proposing to require sufficiently liquid OTC derivatives to be traded on exchanges or Organised Trading Facilities. These proposals are predicated on the larger and more liquid markets in the US and Europe, which collectively account for the bulk of global derivative contracts. To-date, we note that other jurisdictions have not proposed similar requirements concerning the mandatory trading of OTC derivatives on exchanges or electronic trading platforms.

5.3 Taking note of the analysis in the IOSCO Report on Trading of OTC Derivatives, MAS proposes not to introduce a trading mandate at this stage. MAS will work with the industry to study further whether such a trading mandate can be practicable, and can provide benefits over and above those from standardisation, central clearing and reporting of derivative contracts to

²⁰ Report on Trading of OTC Derivatives, IOSCO, February 2010, <http://www.iosco.org/library/pubdocs/pdf/IOSCOPD345.pdf>

TRs, taking into consideration the characteristics of the OTC derivative market in Singapore. MAS will also continue to engage the industry on suitable initiatives to encourage trading on organised platforms. MAS will monitor international developments closely, and consult on whether to introduce a trading mandate at an appropriate juncture.

Question 21: MAS seeks views on the proposal not to impose a trading mandate at this stage.

Question 22: MAS seeks comments on the benefits and costs of introducing a trading mandate, taking into consideration the characteristics of the derivative markets in Singapore, and alternatives to a trading mandate, in moving derivative contracts to be traded on organised platforms.

6 PROPOSALS FOR THE REGULATORY FRAMEWORK FOR MARKET OPERATORS

6.0.1 Trading of derivative contracts on exchanges or electronic trading platforms enhances transparency and is a key objective of the FSB recommendations. Regulation of such centralised trading platforms is an IOSCO recommendation²¹ and is intended to ensure that the benefits of transparency are realised. The proposals in this section seek to enhance the current regulatory regime and extend it to operators of derivative contract markets (henceforth called “derivative markets”).

6.1 DEFINITION OF DERIVATIVE MARKETS

6.1.1 Platforms that facilitate the fair, orderly and transparent trading of derivative contracts provide price discovery and are important mechanisms in enhancing efficient market functioning. MAS intends to regulate such platforms under the SFA to ensure that the market operators operate their platforms responsibly.

6.1.2 Similar to existing securities markets and futures markets, MAS intends to regulate trading platforms for derivative contracts which exhibit the following key attributes:

- (a) systematic and recurring transactions are made on the trading platform;
- (b) bids and offers interact on the trading platform, allowing for the comparison and competition of bids and offers; in this respect, trading platforms may operate “request for quote” (“RFQ”), “indication of interest” (“IOI”) systems or other electronic systems, which allow for dissemination of potential bids or offers between buyers and sellers;
- (c) buyers and sellers have reasonable expectations of transacting based on the information on the trading platform; and
- (d) the trading platform allows for the conclusion of transactions based on prices provided on the trading platform, regardless

²¹ Report on Trading of OTC Derivatives, IOSCO, February 2010, <http://www.iosco.org/library/pubdocs/pdf/IOSCOPD345.pdf>

of whether the final negotiation or execution of transactions is done outside the trading platform.

6.1.3 Platforms which are operated by a single dealer for the purposes of making quotes and transacting with its clients on a “one-to-many” basis will not be regulated as a derivative market.

6.1.4 MAS will adopt a technology-neutral approach in regulating derivative markets. The key attributes set out in paragraph 6.1.2 will apply equally to facilities with physical trading floors as well as electronic trading platforms; electronic conduits to a market, if they do not exhibit other attributes of a market set out above, will not be regulated.

Question 23: MAS seeks views on the proposed scope of the definition of “derivative market”.

6.2 REGULATORY REGIME FOR DERIVATIVE MARKET OPERATORS

Admission

6.2.1 Entities which intend to establish or operate derivative markets for the purposes of the SFA will be required to seek authorisation from MAS prior to establishment or operation. The current two-tier regulatory regime will be extended to such entities: corporations operating markets that are systemically-important will be regulated by MAS as approved exchanges (“AE”), while corporations operating other markets will be regulated as recognised market operators (“RMO”).

Ongoing Obligations

6.2.2 We propose to subject each derivative market operator to the basic requirements applicable to AEs or RMOs operating futures markets. These include the requirements to:

- (a) as far as is reasonably practicable, ensure that the market is fair, orderly and transparent;
- (b) manage any risks associated with its business and operations prudently;

- (c) not act contrary to the interests of the public, having particular regard to the interests of the investing public; and
- (d) have sufficient financial, human and system resources to:
 - (i) operate a fair, orderly and transparent market;
 - (ii) meet contingencies or disasters; and
 - (iii) provide adequate security arrangements.

6.2.3 As per the current two-tier regulatory regime, an AE operating a derivative market will be required to comply with additional requirements (beyond those currently imposed on RMOs) as set out below:

- (a) ensure that access for participation in its facilities is subject to criteria that are fair and objective, and that are designed to ensure the orderly functioning of its market or markets and to protect the interests of its investing public;
- (b) maintain business rules that make satisfactory provision for a fair, orderly and transparent market in derivative contracts that are traded through its facilities, and the proper regulation and supervision of its members;
- (c) enforce compliance with its business rules; and
- (d) ensure that it appoints or employs fit and proper persons as its chief executive officer, directors and key management officers.

Question 24: MAS seeks views on the proposal to extend the existing two-tier regulatory regime to derivative market operators.

6.3 REFINEMENTS TO RMO REGIME

6.3.1 Many existing RMOs, as well as derivative markets, are based overseas with no physical presence in Singapore, and offer investors in Singapore access only through electronic means. Compared to locally-

incorporated RMOs where MAS is the home regulator, a host regulator's ability to directly supervise overseas RMOs is somewhat limited. Accordingly, MAS intends to make a differentiation in the manner in which locally-incorporated RMOs and overseas RMOs are regulated.

6.3.2 Currently, as the home regulator for locally-incorporated RMOs, MAS imposes a higher set of standards and exercises closer oversight via conditions imposed on the RMO, over and above the basic RMO obligations under the SFA. MAS intends to set out the key additional requirements in legislation.

6.3.3 For overseas RMOs, in order to ensure a level playing field, MAS intends to subject these overseas RMOs to similar additional requirements. However, given the limits to which MAS can assume direct oversight over these overseas RMOs, MAS will place reliance on the home regulatory regimes of the overseas RMOs, and coordination between MAS and the home regulators to supervise such overseas RMOs.

6.3.4 Accordingly, the key changes affecting locally-incorporated RMOs and overseas RMOs include:

Additional requirements on both types of RMOs

- (a) All RMOs will be required to ensure that access for participation in its facilities is subject to criteria that are fair and objective, and that are designed to ensure the orderly functioning of its market or markets and to protect the interests of its investing public.
- (b) All RMOs will be required to maintain certain provisions in their business rules as relevant, including criteria for admission to membership, continuing requirements for members, terms and conditions for trading, the manner in which trades are effected, measures to deal with and prevent manipulation, and arrangements for clearing and settlement of trades.
- (c) All RMOs will be required to maintain confidentiality of user information (refer to section 21 of the SFA).

Powers of MAS over RMOs

- (a) Locally-incorporated RMOs will be required to notify MAS of proposals to amend the provisions required by MAS to be maintained in business rules. For overseas RMOs, they need not notify MAS of these rule changes, if their rule changes are subject to review by their home regulators, or are otherwise subject to comparable regimes.
- (b) The existing power to approve the trading of instruments, contracts and transactions on an RMO, provided for under section 42 of the SFA, will apply only to locally-incorporated RMOs.
- (c) The existing power to remove officers of an RMO under section 44 of the SFA, will apply only to locally-incorporated RMOs.

Admission Criteria

In addition to current admission requirements:

- (a) RMO and relevant key officers should have sufficient experience relevant to the operation of a market, with at least 5 years of track record;
- (b) minimum base capital; and
- (c) maintain minimum financial resources adequate to meet risk capital requirements to address operational risks, investment risks and counterparty risks.

Reliance on home regulator of overseas RMO

- (a) All requirements imposed on an overseas RMO will be deemed to be met if it is subject to comparable requirements in its home jurisdiction, its home regulator has signed a memorandum of understanding (MOU) with MAS, and it submits a self-assessment report on a regular basis. If the SFA imposes a higher standard than the home jurisdiction of the overseas RMO, the RMO will be required to comply with the higher standard.

6.3.5 Should MAS determine that there is a need to do so, we may require the overseas RMO to set up a subsidiary in Singapore to be regulated as a locally-incorporated RMO or an AE. In general, MAS will reserve such powers for cases where it may not be sufficient to place reliance on the home regulator of the overseas RMO.

Question 25: MAS seeks views on the proposed refinements of the RMO regime for locally-incorporated and overseas RMOs.

7 PROPOSALS FOR THE REGULATORY FRAMEWORK FOR CLEARING FACILITIES

7.0.1 Clearing facilities may perform a chain of clearing or settlement functions, encompassing confirmation of transactions, substitution of credit, calculation of obligations, or otherwise facilitating the settlement of transactions. Clearing of transactions on clearing facilities thus allows participants to reduce their operational and counterparty risks.

7.0.2 Following the global financial crisis, there is increasing international recognition of the systemic importance of such centralised facilities. In particular, clearing facilities performing the role of central counterparties or of facilitating securities settlement are generally presumed to be systemically-important financial market infrastructure.²² The proposals in this section seek to recalibrate the current approach to the regulation of clearing facilities to achieve MAS' regulatory objectives as well as to bring persons operating clearing facilities for derivative contracts (henceforth called derivatives clearing facilities) within MAS' regulatory purview.

7.1 DEFINITION OF DERIVATIVES CLEARING FACILITIES

7.1.1 The current definition of "clearing facility" refers to facilities for the clearing or settlement of transactions in securities or futures contracts transactions. MAS proposes to extend the definition to facilities for the clearing or settlement of derivative contracts.

Question 26: MAS seeks views on the proposed amendment of the definition of "clearing facility" to include the clearing and settlement of derivative contracts.

7.2 NEW AUTHORISATION FRAMEWORK FOR CLEARING FACILITIES

7.2.1 Under the current approach for regulating clearing facilities, a person is required to notify MAS of its intention to establish or operate a clearing facility 60 days before such establishment or operation. MAS may designate such a person as a designated clearing house, and subject it to regulation

²² Principles for Financial Market Infrastructure (Consultative Report), CPSS-IOSCO, 10 March 2011

under the SFA. Otherwise, MAS maintains only information-gathering powers over non-designated clearing facilities.

7.2.2 MAS has reviewed the current approach. International standards are moving towards a general presumption of systemic importance of clearing facilities performing the role of central counterparties or securities settlement²³. The failure of clearing facilities which provide upstream or downstream clearing or settlement services in connection with a systemically-important clearing facility could also impact market participants, and contribute to or worsen a crisis. Participants of a clearing facility are, on their own, unlikely to have sufficient information to assess the safety and efficiency of a clearing facility. A basic regulatory regime with oversight powers across all clearing facilities would ensure that participants have some assurance of regulatory oversight of the functioning of clearing facilities.

7.2.3 In view of the above, MAS intends to move from a designation approach to an authorisation framework for all clearing facilities. In developing the authorisation framework, we propose a two-tier regulatory regime similar to the regime for market operators: approved clearing houses and recognised clearing houses:

(a) Approved clearing house (“ACH”)

MAS proposes that systemically-important clearing facilities be regulated as ACHs. In particular, all clearing facilities performing the role of CCPs will generally be considered to be systemically-important. An ACH will be subject to the same rigorous standards applicable to existing designated clearing houses.

(b) Recognised clearing house (“RCH”)

MAS proposes for all other clearing facilities to be regulated as RCHs. Such RCHs will be subject to a basic set of general obligations consistent with ensuring the safe and efficient operation of their clearing facilities. MAS will have oversight powers over such entities, including flexibility to calibrate the obligations imposed on such entities as appropriate.

7.2.4 Persons who are based overseas but operate clearing facilities for participants in Singapore, to the extent that the acts of such persons are

²³ Implementing OTC Derivatives Market Reforms, FSB, 25 October 2010.

treated as if they were carried out in Singapore for the purposes of section 339 (Extra-territoriality of Act) of the SFA, are required to comply with the SFA and seek authorisation under the regulatory regime for clearing facilities. In line with the proposal for overseas RMOs, such persons, including persons operating CCPs, will be regulated as overseas RCHs, distinct from locally-incorporated RCHs. In summary, the regulatory regime for locally-incorporated RCHs and overseas RCHs will include:

General Requirements

- (a) as far as is reasonably practicable, operate a safe and efficient clearing facility;
- (b) manage any risks associated with its business and operations prudently;
- (c) not act contrary to the interests of the public, having particular regard to the interests of the investing public;
- (d) have sufficient financial, human and system resources to:
 - (i) operate a safe and efficient clearing facility;
 - (ii) meet contingencies or disasters; and
 - (iii) provide adequate security arrangements.
- (e) ensure that access for participation in its facilities is subject to criteria that are fair and objective, and that are designed to ensure the safe and efficient functioning of its facilities and to protect the interests of its investing public;
- (f) maintain certain provisions in their business rules as relevant, including criteria for access for participation, continuing requirements for participants, terms and conditions for clearing, and matters relating to risks, including the handling of defaults;
- (g) comply with obligations pertaining to protection of customers' money and assets (refer to sections 62, 63 and 64 of the SFA for similar provisions) where they handle customers' money and assets;

- (h) maintain confidentiality of user information (refer to section 68 of the SFA).

Powers of MAS over RCHs

- (a) Locally-incorporated RCHs will be required to notify MAS of proposals to amend the provisions required by MAS to be maintained in business rules. Overseas RCHs will not need to do so, if their rule changes are subject to review by their home regulators or are otherwise subject to comparable regimes.
- (b) Locally-incorporated RCHs will be required to seek MAS' approval before undertaking the clearing of any new instrument, contract or transaction, similar to the provision for RMOs under section 42 of the SFA.
- (c) MAS will have powers to remove officers of a locally-incorporated RCH, similar to those under section 44 of the SFA.

Admission criteria

In addition to general admission requirements pertaining to the fit and proper standards of the applicant:

- (a) RCH and relevant key officers should have sufficient experience relevant to the operation of a clearing facility, with at least 5 years of track record;
- (b) minimum base capital; and
- (c) maintain minimum financial resources adequate to meet risk capital requirements to address operational risks, investment risks and counterparty risks.

Reliance on home regulator of overseas RCH

- (a) All requirements imposed on an overseas RCH will be deemed to be met if it is subject to comparable obligations in its home jurisdiction, its home regulator has signed a

memorandum of understanding (MOU) with MAS, and it submits a self-assessment report on a regular basis. If the SFA imposes a higher standard than the home jurisdiction of the overseas RCH, the RCH will be required to comply with the higher standard.

- (b) For an overseas RCH performing the role of a central counterparty, a comparable regime is one that subjects the RCH to standards on par with that of an ACH under the SFA.

7.2.5 Similar to the approach for overseas RMOs, should MAS determine that there is a need to do so, we may require an overseas RCH to set up a subsidiary in Singapore to be regulated as a locally-incorporated RCH or an ACH. In general, MAS will reserve such powers for cases where it may not be sufficient to place reliance on the home regulator of the overseas RCH.

7.2.6 In particular, for the clearing of derivative contracts subject to the central clearing mandate, the requirement to seek MAS' approval for clearing fees, currently provided for under regulation 16 of the Securities and Futures (Clearing Facilities) Regulations in relation to designated clearing houses, will be imposed on all CCPs that clear or settle such mandated products.

Question 27: MAS seeks views on the proposed authorisation framework for clearing facilities.

7.3 APPLICATION OF INSOLVENCY PROTECTION

7.3.1 In view of the increased importance of clearing facilities as centralised facilities concentrating risks in the capital markets sector, and the danger of unwinding of transactions causing knock-on effects amongst highly connected capital markets participants, MAS proposes to extend the insolvency protection currently provided to designated clearing houses under Division 4 (Insolvency) of Part III of the SFA to all ACHs and RCHs. This will remove uncertainty and avoid difficulties in interpretation in the case of multiple clearing facilities being involved in the clearing or settlement of a transaction.

Question 28: MAS seeks views on the proposal to extend insolvency protection to all ACHs and RCHs.

8 PROPOSALS FOR THE REGULATORY FRAMEWORK FOR TRADE REPOSITORIES

8.0.1 A TR is a facility which collects and disseminates information about trades transacted by market participants. A TR performs a crucial role in the aggregation of data regarding trades transacted by market participants, provides transparency to the investing public and relevant authorities on trading activities, and facilitates risk reduction and operational efficiency for market participants. The proposals in this section seek to introduce a regulatory framework to promote the safe and efficient operation of TRs.

8.1 SCOPE OF REGULATION OF TRADE REPOSITORIES

8.1.1 Given the systemic importance of TRs, MAS intends to require TRs to be regulated, similar to the approach for markets and clearing facilities. However, it is not intended that all entities which collect and/ or disseminate data be regulated, as data collected for private use or for research or other purposes need not be subject to regulation. It is necessary to regulate only TRs which facilitate market participants' compliance with the reporting mandate as set out in Section 4 of this consultation paper.

8.1.2 Accordingly, MAS proposes to define a TR that is subject to regulation under the SFA as a facility for the collection and dissemination of data on derivative contracts that are subject to the reporting mandate. A facility which intends to facilitate the compliance by its participants with the reporting mandate will be required to seek authorisation by MAS, as the reporting mandate can be fulfilled only by reporting to an authorised TR. Where a trading platform or a clearing facility regulated by MAS also acts as a TR, participants are not considered to have complied with the reporting mandate unless the trading platform or clearing facility is also authorised by MAS as a TR.

Question 29: MAS seeks views on the proposed definition of trade repositories to be regulated under the SFA.

8.2 NEW AUTHORISATION FRAMEWORK FOR TRADE REPOSITORIES

8.2.1 TRs relevant to the compliance with the reporting mandate by participants will have to be authorised by MAS and be subject to regulation

under a single-tier regulatory regime. Similar to the proposed regimes for markets and clearing houses, a set of tailored provisions will be specified for overseas TRs. The two categories of TRs are:

(a) Approved trade repository (“ATR”)

MAS proposes for locally-incorporated TRs to be regulated as ATRs. Participants may fulfil the reporting mandate by reporting to an ATR. An ATR will be subject to rigorous standards on risk management and to requirements relating to the collection, maintenance and dissemination of data. Once international standards on TRs are finalised, the proposed standards and requirements may be adapted to ensure alignment with international standards where appropriate.

(b) Recognised overseas trade repository (“ROTR”)

MAS proposes for foreign-incorporated TRs to be regulated as ROTRs. Participants may also fulfil the reporting mandate by reporting to an ROTR. An ROTR will be subject to the same standards imposed on ATRs.

8.2.2 The regulatory framework for locally-incorporated ATRs and ROTRs will include:

Requirements on ATRs and ROTRs

- (a) as far as is reasonably practicable, operate a safe and efficient TR;
- (b) manage any risks associated with its business and operations prudently;
- (c) not act contrary to the interests of the public, having particular regard to the interests of the investing public;
- (d) have sufficient financial, human and system resources to:
 - (i) operate a safe and efficient TR;
 - (ii) meet contingencies or disasters; and

- (iii) provide adequate security arrangements;
- (e) have adequate processes for data collection, maintenance and dissemination;
- (f) provide adequate transparency of information to the public and relevant authorities, including MAS and foreign regulators where appropriate;
- (g) ensure that access for participation in its facility is subject to criteria that are fair and objective, and are designed to ensure the safe and efficient functioning of its facility and to protect the interests of its investing public;
- (h) maintain certain provisions in their business rules as relevant, including criteria for admission to membership, continuing requirements for members, terms and conditions for reporting, and matters relating to risks;
- (i) maintain confidentiality of user information, similar to sections 21 and 68 of the SFA in respect of markets and clearing facilities.

Powers of MAS over ATRs and ROTRs

- (a) Locally-incorporated ATRs will be required to notify MAS of proposals to amend the provisions required by MAS to be maintained in business rules. ROTRs will not need to do so, if their rule changes are subject to review by their home regulators, or are otherwise subject to comparable regimes.
- (b) MAS may direct ATRs to accept certain classes of instruments for reporting. MAS will also have powers to remove officers of an ATR, similar to that provided for AEs, locally-incorporated RMOs, ACHs and locally-incorporated RCHs.
- (c) MAS will have the power to approve fees charged by an ATR in respect of the reporting of transactions subject to the reporting mandate.

Admission criteria

- (a) In addition to general admission requirements pertaining to the fit and proper standards of the applicant, MAS is considering imposing minimum base capital requirements and governance standards on ATRs and ROTRs. This is in view of the systemic-importance of ATRs and ROTRs, and to align the regulatory framework for TRs with the treatment for systemically-important AEs and DCHs.

Reliance on home regulator of ROTR

- (a) All requirements imposed on an ROTR will be deemed to be met if it is subject to comparable obligations in its home jurisdiction, its home regulator has signed a memorandum of understanding (MOU) with MAS, and it submits a self-assessment report on a regular basis. If the SFA imposes a higher standard than that in the home jurisdiction of the ROTR, the ROTR will be required to comply with the higher standard.

8.2.3 The US has required foreign regulators requesting data from a TR licensed in its jurisdiction to indemnify the TR and the regulator for any expenses arising from litigation related to the data provided by the TR. MAS notes that one of the key objectives of TRs is to enhance transparency to relevant authorities and the public. Under the proposed regime, ATRs and ROTRs will already be required to comply with requirements relating to data collection and maintenance to ensure their accuracy and integrity. Requiring an indemnity may also create hurdles for regulators in mandating reporting to a TR, as it becomes a barrier to data access. As such, MAS is not inclined to require foreign regulators to provide indemnification to an ATR or ROTR and to MAS prior to obtaining data from the ATR or ROTR.

Question 30: MAS seeks views on the proposed authorisation framework for trade repositories, including whether to impose minimum base capital requirements and governance standards on trade repositories.

Question 31: MAS seeks views on the proposal to not require foreign regulators to provide indemnification to an ATR/ROTR and MAS prior to obtaining data from the ATR/ROTR

9 PROPOSALS FOR THE REGULATORY FRAMEWORK FOR CAPITAL MARKETS INTERMEDIARIES

9.0.1 Capital markets intermediaries play an important role by facilitating trading of derivative contracts (as defined in section 2) among the different market participants (e.g. by helping customers to clear their derivative contracts through a central clearing facility). It is thus necessary that strengthening the foundation of the OTC derivative market involves the regulation of intermediaries in the market. The proposals in this section seek to introduce a regulatory framework to ensure the proper regulation of intermediaries dealing in derivative contracts.

9.1 SCOPE OF REGULATION OF CAPITAL MARKETS INTERMEDIARIES

9.1.1 There are two main groups of capital markets intermediaries operating in the OTC derivative market – banks licensed under the Banking Act, and non-bank intermediaries. Licensed banks are major participants in the Singapore OTC derivative market, and their derivatives activities are already regulated by MAS, as part of MAS’ supervision of banks. On the other hand, non-bank intermediaries which deal in derivatives contracts²⁴ fall outside the current regulatory purview of MAS.

9.1.2 To bridge the regulatory gap that would otherwise exist for non-bank intermediaries, MAS proposes to license non-bank intermediaries which deal in derivative contracts where the underlying is equity, interest rate, foreign exchange²⁵, credit or commodity. Non-bank intermediaries will have to hold a Capital Markets Services [“CMS”] licence under the SFA to conduct dealing in derivative contracts²⁶.

²⁴ Other than instruments which already fall under the current scope of “securities”, “futures” and “leveraged foreign exchange trading” in the SFA. An entity which wishes to conduct the regulated activity of “dealing in securities”, “trading in futures contracts” or “leveraged foreign exchange trading” is required to hold a capital markets services licence under the SFA. Please refer to paragraph 9.1.5 for further details.

²⁵ As a result, the conduct of leveraged foreign exchange trading by banks, which is currently not included as a regulated activity under the SFA, will be brought into the SFA. This is to ensure that the SFA is applied consistently to banks, and between banks and non-bank intermediaries, for all types of foreign exchange derivatives as well as other derivative contracts.

²⁶ In addition, as a consequence of the expansion of SFA to include derivative contracts, fund managers which manage funds investing into derivative contracts will need to hold a CMS licence for “fund management”. The SFA currently requires fund managers to hold a CMS licence for “fund management” if they manage funds investing into securities or futures contracts, or if they undertake foreign exchange or leveraged foreign exchange trading for the purpose of managing the customers’ funds.

9.1.3 MAS considers it important that intermediaries serving the derivative market are reputable entities with strong financial standing. Consequently, MAS proposes to adopt a stringent licensing approach under the SFA. Only entities with an established track record and parentage, and which are reputable and financially strong will be granted a CMS licence.

9.1.4 In addition, MAS proposes that “dealing in derivative contracts” includes the following activities, whether conducted as principal or agent:

- (a) Making or offering to make with any person, or inducing or attempting to induce any person to enter into, or to offer to enter into any agreement in respect of a derivative contract; or
- (b) Soliciting or accepting any order for, or otherwise dealing in, a derivative contract.

9.1.5 MAS notes that dealing in certain types of derivative contracts is already caught as a regulated activity under the SFA. For instance, dealing in equity derivatives may fall under the regulated activity of “dealing in securities”, while dealing in foreign exchange derivatives on a leveraged basis falls under the regulated activity of “leveraged foreign exchange trading”. It is MAS’ intent to rationalise the scope of the regulated activities to eliminate the overlaps and provide clarity to the industry. We will consult on this at a later stage.

Question 32: MAS seeks views on:

- (i) the proposal to regulate non-bank intermediaries dealing in derivative contracts as CMS licensees under the SFA; and**
- (ii) the proposed scope of activities for dealing in derivative contracts.**

Exemption for certain intermediaries

9.1.6 MAS recognises that there are certain intermediaries which play the role of a broker in a derivative contract. A broker facilitates the conclusion of a derivative contract between two counterparties, and does not take on any

principal position²⁷ in the contract. The broker also does not hold any customer's position, margin or account, and typically services only licensed FIs. Given that the broker deals only with sophisticated participants and poses minimal risk impact, MAS proposes to exempt the broker from licensing under the SFA, provided that it:

- (a) does not take on any principal position;
- (b) does not hold any customer's position, margin or account in its books; and
- (c) deals only with institutional investors.

Question 33: MAS seeks views on the proposed exemption for derivative brokers.

9.2 END-USERS NOT TO BE REGULATED

9.2.1 Another group of participants in the OTC derivative market is the end-users. End-users may include commercial enterprises, not-for-profit associations or other entities. End-users are typically price-takers, instead of price-makers. End-users are not in the business of making a market (e.g. by responding to a request for quote). Neither are end-users in the business of providing an intermediating function (e.g. by helping a customer to clear its derivative contract on a clearing house). As a consequence, MAS is proposing not to regulate end-users as CMS licensees under the SFA.

9.2.2 To the extent that end-users may hold large positions in derivative contracts and pose a potential systemic risk to the financial system, our focus is to understand and monitor their exposures in derivative contracts. In this respect, MAS has proposed under Section 4.3 that the trade reporting requirement will apply to the "larger" non-financial participants (i.e. those whose exposures exceed the reporting threshold). In addition, where the derivative contracts are carried out with a FI (such as a bank or non-bank intermediary) licensed by MAS, the FI will have to adhere to the applicable risk management requirements and guidelines. The FI should put in place

²⁷ This does not include a situation where the entity enters into a derivative contract, and thereafter enters into a back-to-back transaction, which offsets or hedges the entity's exposure to the first contract. While the entity's net risk exposure could be zero, this does not negate the fact that the entity is still holding a principal position in the derivative contract.

proper controls, systems and limits (e.g. proper credit risk assessment) to govern its business in derivative contracts.

Question 34: MAS seeks views on the proposal not to regulate end-users as CMS licensees under the SFA.

ANNEX: Illustrative List of Data Fields (Extracted from CPSS-IOSCO Data Aggregation Report Annex 2)

Operational Data	
Transaction number	
Master Agreement Type	The type of master agreement that was executed.
Master Agreement Date	Date of the Master Agreement.
Settlement agent of the reporting counterparty	ID of the settlement agent.
Settlement agent of the non-reporting counterparty	ID of the settlement agent.
Cleared	An indicator of whether a contract has been cleared.
Clearing Entity	Name of the Clearing Organization where a contract was cleared.
Clearing Exemption	Y/N. Are one or more counterparties to the contract transaction exempted from clearing?
Confirmed	An indicator of whether a contract has been confirmed by both parties.
Electronic platform traded	An indicator of whether a contract has traded on an electronic platform.
Electronically matched	An indicator of whether a contract has been electronically matched.
Product information	
Contract type	E.g. swap, swaption, forwards, options, basis swap, index swap, basket swap, other.
Grade	Grade of product being delivered
Option type	E.g. put, call, straddle.
Option Style	American, European, Bermudan, Asian.
Counterparty information	
Identifier of reporting counterparty	
Identifier of non reporting counterparty	
Counterparty Origin	Indicator of whether a transaction was done on behalf of a customer or house account.
Parent Counterparty	The parent company of the counterparty.
Parent Originator	The parent company of the originator.
Underlier information	
Registering authority	Authority with which the underlying security is registered.
Security type	The underlying security type, viz, debt, stock etc.
Country of issuer	
Transaction economics	
Effective Date or Start Date	The date a contract becomes effective or starts.
Maturity, Termination, or End Date	The day a contract expires.
Settlement Method	The agreed upon way of settlement
Delivery Type	Deliverable or Non-deliverable.
The amount and currency or currencies of any up-front payment	

A description of the payment streams of each counterparty	like coupons
Notional Amount/Total Notional Quantity	Total currency amount or total quantity in the unit of measure of an underlying commodity.
Notional Currency/Price Currency	Notional Currency.
Payer (fixed rate)	Is the reporting party a fixed rate payer? Yes/No/Not applicable.
Direction	For swaps—if the principal is paying or receiving the fixed rate. For float-to-float and fixed-to-fixed swaps, it is unspecified. For non-swap instruments and swaptions, the instrument that was bought or sold.
Fixed rate.	
Fixed rate day count fraction.	
Fixed leg payment frequency	How often will the payments on fixed leg be made.
Floating rate payment frequency.	
Floating rate reset frequency.	
Floating rate index name/rate period.	
Currency 1	ISO Code.
Currency 2	ISO Code.
Notional amount 1	For currency one.
Notional amount 2	For currency two.
Settlement currency	If applicable.
Exchange rate 1	At the moment of trade/agreement.
Exchange rate 2	At the moment of trade/agreement, if applicable.
Call, put or cancellation date	Information needed to determine when a call, put, or cancellation may occur with respect to a transaction.
Option Expiration Date	Expiration date of the option.
Option Premium	Fixed premium paid by the buyer to the seller.
Option Premium currency	The currency used to compute the premium.
Strike Price (Cap/Floor rate)	The strike price of the option.
Value for Options	This value of the option at the end of every business day.
Any other primary economic term(s) matched by the counterparties in verifying the swap	
Event data	
Order Entry Timestamp	The time and date when the order was entered.
Submission of order entry timestamp	The time and date when the order was sent to the platform to be executed.
Execution Timestamp	The time and date a contract was executed on a platform.
Submission Timestamp for clearing	The time and date when a contract was submitted to a clearing organization.
Clearing Timestamp	The time and date a contract was cleared.
Reporting date	The time and date the transaction was submitted to the TR



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