

RESPONSE TO FEEDBACK RECEIVED – CONSULTATION ON POLICY REFORMS ON REGULATION OF OTC DERIVATIVES

General comments

On 13 February 2012, MAS issued a Consultation Paper inviting comments on proposals relating to the regulation of OTC derivatives. The consultation closed on 9 April 2012.

MAS has reviewed the feedback received. As some of the proposals require further study and consideration, MAS will release our response to feedback in phases. This first set of MAS' responses addresses feedback on the proposals to:

- (a) extend the current regulatory regime for clearing facilities to OTC derivatives; and
- (b) introduce a new regulatory regime for trade repositories.

Comments which are of wider interest, together with MAS' responses are highlighted below.

The Annex lists the respondents who gave feedback on the above proposals. We thank all respondents for their comments.

**COMMENTS ON:
CONSULTATION PAPER SECTION 7: PROPOSALS FOR THE
REGULATORY FRAMEWORK FOR CLEARING FACILITIES**

A Proposed Amendment to the Definition of “Clearing Facility” to Include the Clearing and Settlement of Derivatives Contracts

Most respondents expressed support for this proposal.

Several respondents requested that MAS consider excluding from the definition of “clearing facility” services such as trade confirmation, matching and settlement services, as these are not central counterparty clearing services.

MAS’ Response

The services included in the definition of “clearing facility” reflect the chain of activities immediately following execution of transactions in securities, futures or derivatives contracts. The failure of any of these activities may lead to a delay in the settlement of transactions, and increase counterparty risks for participants involved. It is therefore important to ensure that such activities are subject to regulatory oversight.

MAS recognises that the spectrum of activities in the definition of “clearing facility” may pose different risks in the settlement of transactions. MAS intends to take a risk-based approach towards the regulation of clearing facilities. We have proposed to achieve this via the adoption of a two-tier regulatory regime, where systemically-important clearing facilities will be regulated as approved clearing houses and subject to the most rigorous standards, and other clearing facilities will be subject to a basic set of obligations more appropriate to the risks they pose. In determining the regulatory tier for a clearing facility, MAS will look at a number of factors, including the risk profile, nature and scope of activities of the clearing facility.

B Proposed Authorisation Framework for Clearing Facilities

A few respondents commented that MAS’ regulatory regime should ensure a level playing field at all times, and that overseas clearing facilities should demonstrate comparability or equivalence of standards with local clearing facilities. Several respondents were concerned that overseas clearing facilities may not be able to obtain recognition if requirements under the Securities and Futures Act (“SFA”) differed from requirements in their home jurisdictions.

Some respondents highlighted the importance of protection of customers’ money and assets handled by a clearing facility, through segregation and

portability of clients' money and assets upon the failure of a member of a clearing facility.

MAS' response

Following the global financial crisis, there has been increased recognition of the systemic importance of clearing facilities performing the role of central counterparties. International standard-setting bodies have worked to update and strengthen the risk management and related standards applicable to such systemically important financial market infrastructures. The proposed regulatory regime for clearing facilities is in line with the new standards, which are expected to be adopted internationally by end 2012. This ensures a level playing field across all clearing facilities.

In recognising an overseas clearing facility, MAS will consider whether the overseas clearing facility is, in its home jurisdiction, subject to regulation and supervision comparable to the standards under the SFA, and whether adequate arrangements exist for cooperation between MAS and the home supervisory authority of the overseas clearing facility. Where appropriate, MAS may subject the recognition of an overseas clearing facility to conditions or restrictions calibrated to address specific regulatory concerns.

We note respondents' comments on the issue of segregation and portability of customers' money and assets. Currently, the SFA requires a designated clearing house to segregate customers' money and assets, from the money and assets of the clearing member deposited with the designated clearing house, and to hold such customers' money and assets in trust for the customers. The designated clearing house is permitted to provide this segregation on an omnibus basis. We note there have been recent developments in some jurisdictions for segregation to be provided on an individual customer basis; however, there are differing approaches for OTC derivatives and futures contracts. As international norms on the appropriate model of segregation and portability of customers' money and assets are still evolving, we will study this issue further to examine if our existing segregation requirements provide adequate protection for customers, and will seek public comments on this matter at a later stage.

C Extension of Insolvency Protection to all Clearing Facilities

Most respondents expressed support for this proposal.

Some respondents also suggested that MAS consider imposing "living will" policies and procedures on clearing facilities performing the role of central counterparties, to plan for orderly winding down of centrally cleared transactions in the event of insolvency of the clearing facility.

MAS' response

We agree that “living will” policies and procedures are important to ensure orderly winding down in an insolvency situation. We intend to have such requirements in place, in line with international standards.

**COMMENTS ON:
CONSULTATION PAPER SECTION 8: PROPOSALS FOR THE
REGULATORY FRAMEWORK FOR TRADE REPOSITORIES**

A Scope for Regulation of Trade Repositories

Respondents generally supported MAS' proposed definition of trade repositories.

B New Authorisation Framework for Trade Repositories

Several respondents commented that the proposed framework should not be too restrictive on overseas trade repositories whose home regulators reciprocate recognition under their own regulations.

Respondents generally agree that regulators need access to information on market participants' activities in order to have a comprehensive view of the markets, and effectively oversee the financial system.

A few respondents have some concerns over confidentiality of information reported, and emphasised the need for trade repositories to establish, maintain and enforce confidentiality protections, policies and procedures. In particular, some respondents commented that confidential information which a trade repository receives should be used solely for the purpose of fulfilling its regulatory obligations, and limited access should only be given to parties who need to know such information to fulfil their regulatory obligations.

MAS' Response

In licensing an overseas trade repository, MAS will consider whether the overseas trade repository is, in its home jurisdiction, subject to regulation and supervision comparable to the standards under the SFA. The new requirements under the SFA will be in line with international standards. Similar to the approach for recognition of overseas clearing facilities, MAS will take into account the existence of corresponding requirements imposed in the home jurisdiction on an overseas trade repository, and consider the level to which MAS' regulatory objectives are achieved, in assessing an application by the overseas trade repository.

We agree confidentiality of information is a valid concern. The draft legislation will require licensed trade repositories as well as their officers and employees to safeguard the confidentiality of user information. International work is ongoing regarding data access to a trade repository. MAS intends to ensure that appropriate protections are put in place, in line with international best practice.

C Indemnification by Foreign Regulators

Most respondents agreed with MAS' proposal not to require foreign regulators to provide indemnification to MAS, or to a trade repository regulated by MAS, prior to obtaining data from the trade repository. They noted that such indemnification will create hurdles for regulators in mandating reporting to a trade repository.

MONETARY AUTHORITY OF SINGAPORE

23 May 2012

ANNEX

LIST OF RESPONDENTS TO SECTIONS 7 AND 8 OF THE CONSULTATION ON POLICY REFORMS ON REGULATION OF OTC DERIVATIVES

- The Association of Banks in Singapore
- The Alternative Investment Management Association Limited – Singapore Branch
- Argus Media Ltd
- Ashurst LLP
- Aviva Investors Asia Pte Ltd
- BP Singapore Pte Limited
- CapitalTrack Ltd.
- Citibank, N.A., Singapore Branch
- Citicorp Investment Bank (Singapore) Limited
- Citibank Singapore Ltd
- Citigroup Global Markets Singapore Pte. Ltd.
- Citigroup Global Markets Singapore Securities Pte. Ltd.
- Cleartrade Exchange Pte Ltd
- CME Group Inc.
- The Depository Trust & Clearing Corporation
- Ernst & Young LLP
- European Chamber of Commerce (Singapore)
- Financial Services Committee, European Chamber of Commerce (Singapore)
- Global Foreign Exchange Division (GFXD) of the Global Financial Markets Association (GFMA)
- ICAP AP (Singapore) Pte Ltd
- Intercontinental Exchange, Inc.
- IG Asia Pte Ltd
- CMC Markets Singapore Pte Ltd
- GFT Global Markets Asia Pte Ltd
- IG Asia Pte Ltd
- OANDA Asia Pacific Pte Ltd
- Phillip Securities Pte Ltd
- International Swaps and Derivatives Association, Inc.
- LCH Clearnet Group Limited
- Managed Funds Association
- MarkitSERV
- Mizuho Corporate Bank, Ltd.
- NOS Clearing ASA
- Groups A, F and G, International Corporate Finance Course 2012, Faculty of Law, National University of Singapore
- OCBC Bank
- The Royal Bank of Scotland plc
- REGIS-TR
- Singapore Money Brokers Association

- Singapore Mercantile Exchange
- State Street Bank and Trust Company
- Thomson Reuters
- TriOptima AB
- Wong Partnership LLP

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