

**RESPONSE TO
FEEDBACK RECEIVED**

28 Sep 2018

**Response to Feedback
Received –
Draft Regulations
Pursuant to Securities
and Futures Act**

MAS

Monetary Authority of Singapore

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1 Preface

1.1 On 28 April 2017, MAS issued the first of two consultation papers on draft regulations pursuant to the Securities and Futures Act (“SFA”). The draft regulations will operationalise the amendments to the SFA under the Securities and Futures (Amendment) Act 2017 (“SF(A)A”). The amendments give effect to policy proposals aimed at ensuring that the capital markets regulatory framework in Singapore keeps pace with market developments and is aligned to international standards and best practices. In particular, the amendments will:

- (a) bring under MAS’ regulatory ambit operators of organised markets that offer OTC derivatives for trade;
- (b) provide for the regulation of administrators of, and submitters who contribute information required to compute, designated financial benchmarks; and
- (c) operationalise changes to Part XIII of the SFA, as well as widen the range of factors that may be taken into account when considering whether to recognise a foreign fund for offer to the public, and to refine certain regulatory provisions in relation to REITs.

1.2 The consultation period closed on 2 June 2017, and MAS would like to thank all respondents for their contributions. The list of respondents is provided in **Annex A**.

1.3 MAS has considered carefully the feedback received, and will incorporate them where it has agreed with the feedback. Comments that are of wider interest, together with MAS’ responses, are set out below.

2 New Securities and Futures (Organised Markets) Regulations 2018

2.1 Introduction

2.1.1 Respondents were generally supportive of the new Securities and Futures (Organised Markets) Regulations (“SF(OM)R”), which will replace the existing set of regulations due to the repeal and re-enactment of Part II of the SFA arising from the SF(A)A. The new SF(OM)R extends the regulatory regime to operators of organised markets for the trading of OTC derivatives.

2.2 Definition of “organised market”

2.2.1 Some respondents noted that the definition of an “organised market” was broad, and could include a wide range of facilities that may not perform a price discovery function, such as post-trade compression service providers.

MAS’ Response

2.2.2 MAS will update the Markets Guidelines to set out its interpretation of the new definition of “organised market”. This would broadly be consistent with the existing interpretation of a “market”, as set out in the existing Markets Guidelines.

2.2.3 MAS considers price discovery and formation to be a key element of an organised market. MAS does not intend to capture facilities that do not contribute to price discovery as an “organised market”.

2.3 Minimum admission requirements

2.3.1 Respondents were generally supportive of MAS’ proposal to set out the base capital requirements in the SF(OM)R. One respondent sought clarification on whether the base capital requirements apply to a foreign corporation applying to be a recognised market operator (“RMO”).

MAS’ Response

2.3.2 The requirement for an RMO applicant to be able to maintain a base capital of \$500,000 only applies to corporations that are incorporated in Singapore. As for a foreign corporation applying to be an RMO, MAS assesses whether the foreign corporation is subject to a comparable home regulatory regime that considers the financial strength of that foreign corporation.

2.4 Requirements on the execution of orders by market operators

2.4.1 Some respondents requested for further guidance on how market operators should comply with the best execution requirements. One respondent commented that the requirement to execute “in the customer’s interest” could suggest a subjective requirement.

MAS’ Response

2.4.2 The requirements will require market operators to establish and implement procedures to identify information that would facilitate their participants’ compliance with the obligation to execute customers’ orders on the best available terms, and to make such information available to its participants.

2.4.3 MAS will publish the requirements relating to execution of orders by market operators separately in a Notice, and will also provide further guidance on these requirements in the Markets Guidelines.

2.5 Exemption for certain entities facilitating the matching of trades

2.5.1 Some respondents sought greater clarity on how the proposed exemption from the licensing requirement under section 7(1) of the SFA would operate, and how it should interact with the regulatory regime for capital market intermediaries in Part IV of the SFA.

2.5.2 A respondent also suggested that inter-dealer brokers should not be required to be licensed and regulated as operating an organised market, so long as such activities are solely incidental to their regulated activities under Part IV of the SFA. It suggested that MAS’ proposed exemption should not be limited to “block futures” or “negotiated large trades”.

MAS’ Response

2.5.3 MAS will simplify the exemption criteria to exempt an entity from the licensing requirement in Part II if:

- (a) it facilitates the matching of commodity-based OTC derivatives contracts and commodity-based block futures contracts only; and
- (b) the participants on its facilities are accredited investors, expert investors, and institutional investors only.

2.5.4 Inter-dealer brokers which may be subject to the regulatory regime for organised markets and capital market intermediaries should engage MAS to discuss their licensing needs during the initial transition period after the SF(A)A takes effect.

3 New Securities and Futures (Financial Benchmarks) Regulations

3.1 Introduction

3.1.1 In implementing the regulatory regime for financial benchmarks, MAS will be designating SIBOR and SOR¹ as designated benchmarks, as indicated in MAS' Response to Feedback received on the Proposed Amendments to the Securities and Futures Act on Regulation of Financial Benchmarks published on 7 November 2016. This will be effected through the Securities and Futures (Designated Benchmarks) Order 2018. Requirements on a benchmark administrator and benchmark submitter of a designated benchmark are set out in the Securities and Futures (Financial Benchmarks) Regulations ["SF(FB)R"]. Respondents were generally supportive of the SF(FB)R.

3.2 Obligation on benchmark administrators to establish an Oversight Committee

3.2.1 Respondents were generally supportive of the proposals for the establishment of an Oversight Committee by each benchmark administrator. One respondent sought clarification on the responsibilities of the Oversight Committee, and another asked whether specific experience or qualifications were required for appointments to the Oversight Committee.

MAS' Response

3.2.2 The Oversight Committee acts as the governing body responsible for the design of the financial benchmark and oversees the administration of the benchmark by the benchmark administrator. As such, individuals representing the various stakeholders relevant to the financial benchmark, such as the benchmark administrator, benchmark submitters as well as users of the benchmark, should be represented on the Oversight Committee.

¹ SOR is computed based on a traded methodology, and the relevant underlying interbank trades for the computation of SOR are conducted through money brokers. As provided in MAS' response to feedback received for the June 2013 consultation paper on proposed regulatory framework for financial benchmarks, the scope of submitters for SOR will be confined to money brokers.

3.2.3 Given the diversity of such representatives, MAS does not intend to prescribe the specific experience or qualifications required of an appointee to the Oversight Committee. In approving an appointee, MAS will have regard to whether an appointee is a fit and proper person to be appointed as a member of the Oversight Committee, in the context of the intended role as a representation of a relevant stakeholder. The Guidelines on Fit and Proper Criteria (Guideline No. FSG-G01) set out MAS' expectations of a fit and proper person.

3.3 Requirement for an independent external audit of benchmark submitters

3.3.1 While respondents appreciated the importance of independent audits, some highlighted the cost impact of annually engaging external auditors to review compliance matters. Several respondents suggested allowing their internal audit function to conduct the audit instead, or for external auditors to be engaged periodically, rather than annually.

MAS' Response

3.3.2 In relation to SIBOR, MAS will allow the annual audits to be performed by internal auditors who are independent of the benchmark submission process, but require the submitters to engage an external auditor on a periodic basis, e.g. once every three years.

3.3.3 In consideration of the nature of SOR's calculation methodology, MAS will not require external auditors to be engaged on a periodic basis at the onset. Nonetheless, MAS may specifically require a benchmark submitter to engage an external auditor to review its compliance with the benchmark submission procedures and requirements where necessary. MAS will continue to monitor the need for external audit requirements to be imposed on submitters to SOR.

3.3.4 The Notice on the Submission of Periodic Reports for Benchmark Submitters will be issued to set out details on the requirements pertaining to external and internal audits.

3.4 Transition arrangements

3.4.1 Respondents were generally supportive of the proposed six-month transition period to submit applications to MAS. One respondent requested for a longer transition period to comply with the new regulatory requirements.

MAS' Response

3.4.2 In operationalising the new financial benchmarks regulatory regime, MAS notes that there are two main groups of entities that will be regulated: the benchmark administrator of SIBOR and SOR (ABS Benchmarks Administration Co Pte Ltd), and financial institutions regulated by MAS which are submitters for either SIBOR or SOR.

3.4.3 Given that MAS has been in discussions with ABS Benchmarks Administration Co Pte Ltd on its licensing requirements, and that financial institutions regulated by MAS will be exempted from the authorisation requirement for benchmark submitters, MAS will simplify the transition arrangements as follows:

- (a) Within three months from the commencement of the regime, an existing benchmark administrator must submit its application to be authorised as an authorised benchmark administrator. MAS will continue to engage ABS Benchmarks Administration Co Pte Ltd to facilitate an expedient transition to compliance with the financial benchmarks regulatory regime within 12 months from the commencement of the regime;
- (b) An existing benchmark submitter which is, or will become², a financial institution regulated by MAS will be granted an exempt benchmark submitter status and given 12 months from the commencement of the regime to comply with its obligations as an exempt benchmark submitter. Exempt benchmark submitters need not submit applications to be authorised benchmark submitters. However, an existing benchmark submitter which is a financial institution regulated by MAS must notify MAS of its activity as a submitter within three months from the commencement of the regime.

² This refers to a benchmark submitter who may become regulated by MAS as an entity mentioned in section 123ZH(1)(a), (b), (c), (d), (e), (f), (g), (h) or (i) of the SFA, and this includes a person who has an outstanding application with MAS or intends to, within 12 months from the commencement of the regime, submit an application to MAS for that regulatory status. For instance, a money broker who will be submitting an application to MAS to be a recognised market operator under the SFA.

3.5 Comments on the draft SF(FB)R

3.5.1 MAS also sought comments on the draft SF(FB)R.

(i) *Obligation to maintain records of representatives under regulations 12 and 20³*

3.5.2 On the requirement to maintain records of representatives, a few respondents asked whether representatives are limited to individuals who are responsible for the decision making and final submission of information for determination of benchmarks.

MAS' Response

3.5.3 The definition of "representative" in relation to a benchmark administrator or submitter refers to a person who carries out the activity of administering a designated benchmark or providing information in relation to a designated benchmark, as the case may be, other than work ordinarily performed by accountants, clerks or cashiers. Such a representative is not limited to a person who is a decision maker or the final submitter of information.

(ii) *Obligation of exempt benchmark submitters to notify Authority of certain matters under regulation 19⁴*

3.5.4 A number of respondents suggested that exempt benchmark submitters, which are already regulated by MAS and subject to similar notification requirements, should not be required to notify MAS of the same matters under the benchmarks regime.

MAS' Response

3.5.5 MAS agrees with the respondents. Amendments have been made to the SF(FB)R such that exempt benchmark submitters need not notify MAS of some matters which they are already required to notify MAS under other legislation.

³ These were previously reflected in regulation 6 in Annex C of Consultation Paper I on Draft Regulations Pursuant to the Securities and Futures Act issued on 28 April 2017.

⁴ This was previously reflected in regulation 22 in Annex C of Consultation Paper I on Draft Regulations Pursuant to the Securities and Futures Act issued on 28 April 2017.

(a) Other comments

3.5.6 A few respondents sought clarification as to whether a third party engaged by an authorised benchmark administrator to perform certain functions, such as the calculation of a benchmark, would be required to be authorised as an authorised benchmark administrator.

MAS' Response

3.5.7 Generally, MAS does not expect to authorise more than one administrator for any one benchmark. MAS will authorise as the benchmark administrator the primary party responsible for controlling the development of the definition and methodology of determining a benchmark, including the engagement of third parties to perform component activities such as benchmark calculation.

4 Amendments to the Securities and Futures (Offers of Investments) (Collective Investment Schemes) Regulations 2005

4.1 Introduction

4.1.1 Respondents were generally in agreement with the proposed amendments to the Securities and Futures (Offers of Investments) (Collective Investment Schemes) Regulations 2005 (“SF(OI)(CIS)R”), which include:

- (a) the additional factors that MAS may take into account when recognising a foreign fund for offer to retail investors;
- (b) the conditions that a Physical Assets Fund⁵ must satisfy to rely on the exemption, from prospectus and authorisation/recognition requirements under section 305 of the SFA;
- (c) allowing Real Estate Investment Trusts (“REITs”) to publish pro forma financial information; and
- (d) allowing restricted schemes in the form of REITs to have managers who are licensed or regulated to carry out REIT management activities in their principal place of business.

4.2 Proposed Recognition Factors

(i) Characteristics of the Constituent Documents

4.2.1 Most respondents sought clarification on how MAS would evaluate the additional factors (e.g. provisions in the fund’s constituent documents), when assessing whether to recognise a foreign fund. One respondent asked whether MAS would apply the same weightage to each of the factors and whether foreign funds would have to satisfy all the requirements under the Code on Collective Investment Schemes (“CIS Code”) to achieve equivalence with authorised funds. Some respondents suggested that MAS issue guidelines to elaborate on how it would consider these additional factors.

⁵ A collective investment scheme that does not invest in “capital markets products” as defined under section 2 of the SFA as amended by paragraph 3(f) of the Securities and Futures (Amendment) Act 2017.

MAS' Response

4.2.2 MAS will consider all factors in totality when assessing whether the characteristics of or clauses in a foreign fund's investment policy, constituent documents or trustee oversight afford to investors a comparable level of protection as that provided in authorised funds. Generally, when assessing a fund for recognition, MAS will consider, on a case-by-case basis, the investment restrictions and safeguards that the fund, its operator and independent oversight body, are subject to. In particular, MAS will consider whether the clauses are consistent with the local requirements relating to collective investment schemes, as well as the International Organisation of Securities Commissions ("IOSCO") Objectives and Principles of Securities Regulation relating to enforcement, cooperation and collective investment schemes. MAS may consider issuing guidelines in the future after we have assessed sufficient cases of such nature.

(ii) Implications on Existing Foreign Funds

4.2.3 Some respondents asked whether the proposed amendments to the recognition criteria would have any implication on existing foreign recognised funds, and if so, whether these funds would be grandfathered or a transition period granted.

MAS' Response

4.2.4 The proposed amendments will not affect the existing foreign funds that have been recognised by MAS. The proposed amendments are intended to provide MAS with the flexibility to take into account factors, other than the laws and practices under which a foreign fund is governed, when considering whether to recognise new foreign funds for offer to retail investors.

(iii) Annual attestation by Foreign Funds

4.2.5 Several respondents asked whether the recognition status of the fund will be affected if, post-recognition, the fund amends its contractual or constituent documents. One respondent commented that the proposed amendments may lead to lower investor protection as a fund could change its contractual or constituent documents from time to time. The respondent enquired whether MAS expects a foreign fund to attest, annually or when relevant, that the fund's investment policy and/or constituent documents afford to investors in Singapore equivalent protection to that provided to them for comparable authorised schemes.

MAS' Response

4.2.6 MAS agrees that a change in the foreign fund's investment policy or constituent documents could potentially lower the level of protection accorded to investors. A foreign

fund recognised on a case-by-case basis should not alter its investment policy or constituent documents such that the level of protection accorded to investors is no longer equivalent to that provided to them for comparable authorised schemes. MAS will therefore require responsible persons of recognised foreign funds, whose governing laws do not accord adequate investor protection, to confirm to MAS whenever:

- (a) the fund's investment policy and/or constituent documents are changed, that the changes would not lower the level of protection accorded to investors as at the time of recognition; and
- (b) during the fund's annual prospectus update, that there has been no change to the fund's investment policy and constituent documents that would lower the level of protection accorded to investors as at the time of recognition.

This requirement would be imposed as a condition for recognition and for the continued offer of the fund in Singapore.

4.3 Exemption for Physical Assets Funds

(i) Publication of Restricted Non-Capital Markets Products Schemes

4.3.1 A majority of the respondents suggested that MAS publish a list of Physical Assets Funds that are offered to accredited investors in reliance of the exemption under section 305 of the SFA ("Restricted Non-Capital Markets Products Schemes" or "Restricted (Non-CMP) Schemes"), in order to facilitate verification of the scheme's exempt status by investors, fund managers and distributors. Respondents also asked why these schemes will not be published on MAS' CISNet portal ("CISNet"), when the schemes would be subject to similar requirements as other restricted Singapore and restricted foreign schemes.

MAS' Response

4.3.2 In order for a restricted scheme to be entered into the list of restricted scheme on CISNet, the scheme must be managed by a licensed fund manager. As the fund manager of a Restricted (Non-CMP) Scheme will be exempted from licensing requirements, it will not be appropriate for such schemes to be entered into the list of restricted schemes or published on CISNET. For the purpose of monitoring market developments, MAS will require the responsible person for a Restricted (Non-CMP) Scheme to furnish via CISNET fund information, e.g. place of constitution, fund structure, fund type, etc. (similar to the information provided for restricted Singapore and restricted foreign schemes) and the information memorandum issued in connection with an offer of units in the fund.

Restricted (Non-CMP) Schemes will be required to lodge an annual declaration with MAS via CISNET to update its fund information.

(ii) Clientele Restrictions

4.3.3 One respondent sought clarification as to whether a Restricted (Non-CMP) Scheme could be offered to retail investors overseas. The respondent also suggested that the exemption should apply to offers made to the trustee of a trust whose sole purpose was to hold investments, and where each beneficiary of the trust was an accredited investor.

4.3.4 Another respondent asked whether a Physical Assets Fund which has a regulated or licensed fund manager can be entered into the list of restricted schemes, and offered to accredited and other investors under section 305 of the SFA.

MAS' Response

4.3.5 MAS would like to clarify that a Restricted (Non-CMP) Scheme would not be precluded from being offered to retail investors overseas. Separately, MAS will broaden the scope of the exemption such that it applies to an offer made to a "relevant person" as defined under section 305(5) of the SFA (instead of just "accredited investors" as originally proposed). A "relevant person" would include a corporation or a trustee of a trust whose sole business is to hold investments and whose beneficiaries or shareholders are all accredited investors.

4.3.6 A Physical Assets Fund can be entered into the list of restricted schemes if it is able to satisfy all the applicable requirements e.g. having a regulated or licensed manager which is a fit and proper person.

(iii) Other Issues

4.3.7 One respondent asked whether a Restricted (Non-CMP) Scheme may invest or hold physical assets through a special purpose vehicle ("SPV") i.e. the scheme will hold shares in the SPV which in turn holds the physical assets.

4.3.8 Several respondents asked about the consequences if the responsible person failed to file the annual declaration. One respondent suggested that the requirement to file the annual declaration should not apply to a Restricted (Non-CMP) Scheme that has been wound up, dissolved or terminated. The respondent also suggested that the notification obligations of a Restricted (Non-CMP) Scheme, in the event of winding up, dissolution or termination, to be aligned with other restricted schemes.

MAS' Response

4.3.9 A Restricted (Non-CMP) Scheme may invest in or hold physical assets through SPVs. MAS will amend the definition of the Restricted (Non-CMP) Scheme to clarify this.

4.3.10 The requirement to file an annual declaration will apply so long as a Restricted (Non-CMP) Scheme is offered to investors in Singapore. This requirement will cease to apply in the case where the scheme has been wound up or dissolved or where offers of units in the scheme have been terminated.

4.3.11 MAS also agrees that the winding up and termination notification requirements should be aligned across all restricted schemes. The responsible person of a Restricted (Non-CMP) Scheme will therefore be required to notify MAS of the scheme's winding up, dissolution or termination within 14 days in accordance with Regulation 7 of the Sixth Schedule to the SF(OI)(CIS)R.

4.4 Disclosure of pro forma financial information by a REIT

4.4.1 Respondents were supportive of the proposed amendment to clarify that the restriction on the disclosure of past performance based on simulated results of a hypothetical fund does not extend to the disclosure of pro forma financial information by a REIT.

MAS' Response

4.4.2 MAS will proceed with the proposed amendment.

4.5 Allowing Restricted Funds to have managers who are licensed to carry out REIT management activities

4.5.1 Respondents were supportive of the proposed amendment to allow restricted schemes in the form of REITS to have managers who are licensed or regulated to carry out REIT management activities in their principal place of business.

MAS' Response

4.5.2 MAS will proceed with the proposed amendment.

Annex A

**LIST OF RESPONDENTS TO THE CONSULTATION PAPER ON
DRAFT REGULATIONS PURSUANT TO THE SECURITIES AND FUTURES ACT**

1. Allianz Global Investors Singapore Limited
2. BNP Paribas SG*
3. Citibank N.A., Singapore Branch
4. Clifford Chance Pte. Ltd.
5. DBS Bank Ltd
6. Eastspring Investments (Singapore) Limited
7. Fullerton Fund Management Company Ltd
8. ICE Futures Singapore Pte. Ltd.
9. International Swaps and Derivatives Association, Inc. (ISDA); Asia Securities Industry & Financial Markets Association (ASIFMA); and Futures Industry Association (FIA)
10. Investment Management Association of Singapore
11. The Hongkong and Shanghai Banking Corporation Limited, Singapore Branch*
12. HSBC Bank (Singapore) Limited*
13. Mizuho Bank, Ltd
14. NEX Optimisation, including TriOptima AB and Reset Private Limited*
15. Standard Chartered Bank*
16. Singapore Exchange Limited*
17. Sumitomo Mitsui Banking Corporation, Singapore Branch
18. WongPartnership LLP
19. Respondent A
20. Respondent B
21. 4 respondents requested confidentiality of their identity and submission

(* denotes entities which have requested to keep their submissions but not their identities confidential)

Please refer to Annex B for the submissions.

