

# CONSULTATION PAPER

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## Consultation Paper on Draft Regulations Pursuant to the Securities and Futures Act for Reporting of Derivatives Contracts

MAS

Monetary Authority of Singapore

## **DRAFT REGULATIONS PURSUANT TO THE SECURITIES AND FUTURES ACT FOR REPORTING OF DERIVATIVES CONTRACTS**

### **PREFACE**

1 The Securities and Futures (Amendment) Act 2012 [“SF(A) Act 2012”] was passed by Parliament on 15 November 2012 which, among others, gave effect to policy proposals relating to regulation of over-the-counter (“OTC”) derivatives. These involve –

- (a) introducing a new regulatory regime for trade repositories;
- (b) extending the regulatory regime for clearing facilities to OTC derivatives; and
- (c) mandating reporting and clearing of certain OTC derivatives transactions.

2 MAS is now consulting on draft Regulations in support of amendments contained in the SF(A) Act 2012 relating to the new Part VIA of the Securities and Futures Act (Cap. 289) (“SFA”).

3 MAS invites interested parties to provide their comments and feedback on the draft Regulations to:

Macroeconomic Surveillance Department  
Monetary Authority of Singapore  
10 Shenton Way  
MAS Building  
Singapore 079117

Email: [derivatives@mas.gov.sg](mailto:derivatives@mas.gov.sg)

Fax: (65) 6225 1350

MAS requests that all comments and feedback be submitted by 24 July 2013.

4 Please note that all submissions received may be made public unless confidentiality is specifically requested for whole or part of the submission.

## **INTRODUCTION**

1 MAS' policy proposals in relation to the regulation of OTC derivatives<sup>1</sup> were set out in our consultation paper of 13 February 2012 ("policy consultation paper"). To implement the policy proposals, MAS consulted on the draft Securities and Futures (Amendment) Bill 2012 on 23 May 2012 and 3 August 2012 respectively. The Bill was subsequently passed by Parliament on 15 November 2012.

2 Pursuant to the changes introduced in the SF(A) Act 2012 to give effect to the policy proposals relating to the regulation of OTC derivatives, MAS will be issuing a new Securities and Futures (Reporting of Derivatives Contracts) Regulations 2013 ["SF(RDC)R"]. The draft SF(RDC)R (in the **Annex**) will operationalise the new Part VIA of the SFA, which imposes an obligation on specified persons to report specified derivatives contracts.

### **(A) SPECIFIED DERIVATIVES CONTRACTS**

3 Reporting of derivatives contracts to a trade repository assists regulators in achieving multiple important objectives, including (a) assessing systemic risk and financial stability, (b) conducting market surveillance and enforcement, (c) supervising market participants, and (d) conducting resolution activities. As some of these objectives require MAS to have access to data on derivatives contracts that are traded in but not necessarily booked in Singapore, MAS proposes to require derivatives contracts which are traded in Singapore and/or booked in Singapore by specified persons to be reported to a licensed trade repository ("LTR") or licensed foreign trade repository ("LFTR")<sup>2</sup>. MAS proposes to define the term "traded in Singapore" as the execution of the specified

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<sup>1</sup> Pursuant to the changes introduced in the SF(A) Act 2012, the scope of the SFA will be expanded to regulate OTC derivatives, which are generally referred to under the definition of "derivatives contracts" in the SFA.

<sup>2</sup> Please refer to regulation 5(1) of the draft SF(RDC)R

derivatives contract by any trading desk (of a specified person<sup>3</sup>) located in Singapore. Trades which are marketed, originated or arranged in Singapore but not executed via a trading desk or booked in Singapore will not be included in the scope of the reporting obligations under SFA.

4 To allow regulators to form an accurate view of outstanding derivatives contracts for the purpose of monitoring systemic risk and supervising market participants, MAS will also require outstanding derivatives contracts with remaining maturity of not less than one year to be backloaded to a LTR or LFTR.

## **(B) NON-FINANCIAL SPECIFIED PERSON**

5 To implement the reporting obligation in a manner which does not impose undue burden on smaller non-financial entities, MAS proposes to subject a non-financial specified person (“NFSP”) to the reporting obligation only when his aggregate gross notional amount of specified derivatives contracts traded in Singapore or aggregate gross notional amount of specified derivatives contracts booked in Singapore exceeds the reporting threshold. The proposed reporting threshold is S\$8 billion; however, it will be subject to periodic review to ensure that the threshold remains relevant. Once an NFSP exceeds the reporting threshold, he must notify MAS no later than one calendar month from the end of the quarter the threshold is exceeded.

6 Under the draft SF(RDC)R, an NFSP ceases to be subject to the reporting obligation when both his aggregate gross notional amounts of specified derivatives contract traded in Singapore and his aggregate gross notional amounts of specified derivatives contract booked in Singapore fall below the reporting threshold for four consecutive quarters. This is intended to minimise the unintended effect of temporary fluctuations in derivatives volumes of the non-financial entities. Notwithstanding the cessation of reporting obligation, the NFSP will be required to continue reporting any

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<sup>3</sup>“Specified person” is defined under section 124 of the SFA and regulation 6 of the draft SF(RDC)R

amendment, modification, variation or change to the information of all specified derivatives contracts that it had previously reported to the LTR or LFTR, even after it has ceased to be subject to the reporting obligation. The rationale of this requirement is to ensure that information on the specified derivatives contracts that were reported to the LTR or LFTR remain updated so as to allow MAS to form an accurate picture of the OTC derivatives market.

### **(C) INFORMATION TO BE REPORTED**

7 When developing the list of data fields to be reported, MAS has sought as far as possible to adopt the guidance set out by the Committee on Payment and Settlement Systems and the International Organization of Securities Commissions (“CPSS-IOSCO”)<sup>4</sup>. MAS has also reviewed the scope of information to be collected by other major jurisdictions such as the US, EU, Canada and Australia, while taking into account our data needs for regulatory purposes. The Second Schedule and the Third Schedule of the draft SF(RDC)R set out the information required to be reported.

8 MAS recognises that NFSPs may not have captured or kept proper records of all the information listed in the Second Schedule for outstanding trades. Therefore for the purpose of backloading outstanding trades, MAS has proposed a simplified set of data fields in the Third Schedule for NFSPs to report. However, the Third Schedule is not applicable to financial specified persons<sup>5</sup>, as they usually have better data systems to store and keep track of a more complete set of information on outstanding trades for risk management and regulatory purposes.

9 Some industry players have highlighted anticipated challenges regarding the reporting of collateral information. Nonetheless, MAS is of the view that collateral

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<sup>4</sup> Refer to CPSS-IOSCO Report on OTC Derivatives Data Reporting and Aggregation Requirements – Final Report (January 2012), <http://www.bis.org/publ/cpss100.pdf>

<sup>5</sup> Refers to specified persons who are not NFSPs

information is critical to trade reporting, and invites public and industry feedback on the proposal to require collateral information to be reported.

*Data aggregation standards*

10 As stated in the policy consultation paper, MAS supports international initiatives to adopt unique identifiers to facilitate data aggregation. As such, MAS proposes to require specified persons to report, where available, (i) Legal Entity Identifier (“LEI”), (ii) Universal Transaction Identifier (“UTI”), and (iii) Universal Product Identifiers (“UPI”). We note that the global LEI system (“GLEIS”) is expected to be launched in late 2013. In the interim, entities can apply for pre-LEIs through pre-Local Operating Units (“LOUs”)<sup>6</sup>, as these pre-LEIs are expected to transit to LEIs once the GLEIS is in operation.

*Domestic confidentiality provision*

11 During our initial consultation on the reporting obligation in the policy consultation paper, concerns were expressed regarding the domestic confidentiality provisions in the Banking Act (“BA”). We note that the BA allows banks to report counterparty information for the purpose of trade reporting without breaching banking confidentiality, once the customer’s written consent is obtained.<sup>7</sup> In addition, industry initiatives such as the ISDA 2013 Reporting Protocol<sup>8</sup> by the International Swap and Derivatives Association (“ISDA”) are available to assist banks in obtaining written consent.

12 Banks have provided further feedback that there remain a number of challenges to securing customer consent for all customers. Customers may also withdraw consent, after it has been given. As trade reporting is an important element of the global OTC derivatives reform and is of critical importance to promote transparency in the OTC

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<sup>6</sup> To access a list of pre-LOU and updates on GLEIS, please refer to the official website of The Legal Entity Identifier Regulatory Oversight Committee at <http://www.leiroc.org/>

<sup>7</sup> Please refer to the Third Schedule of the Banking Act.

<sup>8</sup> Please refer to <https://www2.isda.org/functional-areas/protocol-management/protocol/14>

derivatives market, MAS is considering legislative changes to allow banks to report client identity in OTC derivatives transactions without breaching banking confidentiality.

13 As any legislative amendment may only be effected after the implementation of Singapore's reporting mandate, banks will not be able to report client identity for OTC derivatives transactions where clients have not given consent. MAS will consider providing temporary exemptions to banks, so that these banks need not disclose client identity when reporting such transactions.

14 MAS has also received feedback that regulation 47(2) of the Securities and Futures (Licensing and Conduct of Business) Regulations ("SF(LCB)R")<sup>9</sup> may prevent trade reporting, as it does not allow for disclosure of a customer's order except under specific conditions. MAS wishes to clarify that "customer's order" is not intended to include information on completed OTC derivatives transactions, and is looking into making the necessary amendments to facilitate trade reporting.

## **(D) FORM AND MANNER OF REPORTING**

### *Timeliness of reporting*

15 As set out in the policy consultation paper, MAS proposes to require newly executed specified derivatives contracts to be reported by the close of the next business day of the reporting entity following the execution, modification or termination of the specified derivatives contract. For outstanding derivatives contracts, MAS would require backloading of these contracts to be completed within six months from the date which a specified person is required to start reporting trades in the prescribed asset class (see para. 16 below).

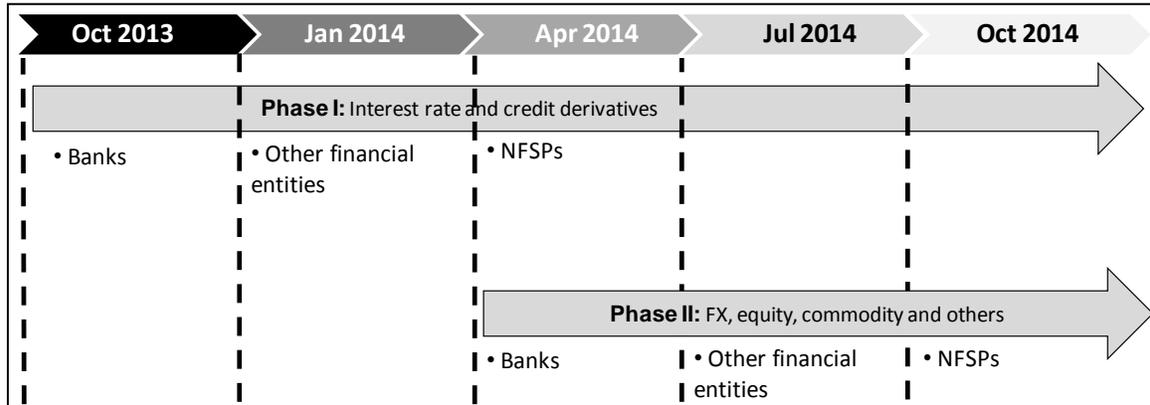
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<sup>9</sup> Regulation 47(2) of the SF(LCB)R states that the holder of a capital markets services licence to deal in securities, trade in futures contract or carry out leveraged foreign exchange trading, or the representative of such a holder, shall not divulge information relating to a customer's order held by it, unless the disclosure:

- (a) is necessary for the effective execution of the order;
- (b) is permitted under the rules of the relevant securities exchange, futures exchange, clearing house or recognised trading system provider, as the case may be; or
- (c) is required by the Authority under the Act or these Regulations

*Phases of implementation*

16 MAS proposes to phase in the reporting obligation by asset class and by the type of specified person. The proposed implementation schedule of the reporting obligation is as follows:-



MAS will take into consideration factors such as industry readiness, availability of trade repository infrastructure and international developments before finalising the phases of implementation.

17 With regard to the asset classes included under each phase, MAS proposes to require interest rates and credit derivatives contracts to be reported in Phase I, and other asset classes of derivatives contracts including foreign exchange, equity and commodity in Phase II. This is in line with the approach adopted in other jurisdictions such as the US, EU and Australia. Moreover, as the levels of standardisation for interest rate and credit derivatives contracts are higher, commencing the reporting obligation with these two asset classes would allow for smoother phase-in. The relevant asset classes to be reported will be prescribed in the First Schedule of the draft SF(RDC)R.

18 In addition, MAS recognises that different segments of market participants may require different transition periods to prepare for trade reporting. We are therefore also proposing to introduce the reporting obligation in phases for different classes of market participants. Under the draft SF(RDC)R, specified persons are broadly

categorised as: (i) banks, (ii) other financial entities, and (iii) NFSPs. MAS intends to provide transition periods of one month, three months and six months for banks, other financial entities and NFSPs respectively to report after the relevant asset class is prescribed in the First Schedule of the draft SF(RDC)R. The Fourth Schedule of the draft SF(RDC)R will prescribe the relevant dates for each category of specified person to commence reporting of each prescribed asset class.

19 Under the draft SF(RDC)R, Phase I is scheduled to begin on 1 October 2013. Accordingly, banks are expected to commence reporting of interest rate and credit derivatives contract on 31 October 2013, followed by other financial entities on 31 January 2013 and NFSPs on 31 April 2013.

## **(F) OTHER ISSUES**

20 MAS noted that some respondents to the policy consultation paper have raised concerns over extraterritoriality and potential duplicative reporting for cross-border trades. To ease the reporting burden for cross-border trades, MAS proposes to allow specified persons who are complying with comparable reporting regimes in foreign jurisdictions to be deemed as having complied with section 125 of SFA. This is predicated on MAS having full access to data reported by such persons under a comparable reporting regime. In this regard, we note that CPSS-IOSCO will be providing further guidance on authorities' access to data<sup>10</sup>. In addition, as developments on treatment of cross-border trades are still on-going, MAS will await further international consensus before issuing regulations pertaining to substituted compliance under Section 128 of the SFA.

21 The Financial Stability Board ("FSB") recently highlighted the issue of privacy laws and blocking statutes in certain jurisdictions which restrict or limit counterparties

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<sup>10</sup> Refer to CPSS-IOSCO, Authorities' Access to Trade Repository Data – Consultative Report(11 April 2013), <http://www.bis.org/press/p130411a.htm>

from reporting information relating to OTC derivatives contracts to a TR. Some financial institutions in Singapore have also indicated that such restrictions exist in a number of foreign jurisdictions which their counterparties are located. MAS is considering possible temporary solutions to this issue, while work to identify permanent solutions is ongoing at the FSB and other international fora.

## **INVITATION FOR COMMENTS**

22           MAS would like to invite comments on the draft SF(RDC)R attached in the **Annex**.