

CONSULTATION PAPER

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Consultation Paper I on Draft Regulations Pursuant to the Securities and Futures Act

MAS

Monetary Authority of Singapore

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1 Preface

1.1 The Securities and Futures (Amendment) Act 2017 [“SF(A) Act”] was passed in Parliament on 9 January 2017 which gave 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.

1.2 Given the wide-ranging amendments to the Securities and Futures Act (“SFA”), the Monetary Authority of Singapore (“MAS”) will consult on draft Regulations to support the implementation of the legislative amendments in two phases.

1.3 The proposed regulations set out in this consultation are –

- (a) New Securities and Futures (Markets) Regulations [“SF(M)R”];
- (b) New Securities and Futures (Financial Benchmarks) Regulations [“SF(FB)R”]; and
- (c) Amendments to the Securities and Futures (Offers of Investments) (Collective Investment Schemes) Regulations 2005 [“SF(OI)(CIS)R”] to implement changes under Part XIII of the SFA in relation to funds, including real estate investment trusts [“REITs”].

1.4 MAS invites comments from all financial institutions and other interested parties.

Please note that all submissions received will be published and attributed to the respective respondents unless they expressly request MAS not to do so. As such, if respondents would like (i) their whole submission or part of it, or (ii) their identity, or both, to be kept confidential, please expressly state so in the submission to MAS. In addition, MAS reserves the right not to publish any submission received where MAS considers it not in the public interest to do so, such as where the submission appears to be libellous or offensive.

1.5 Please submit written comments by 2 June 2017 via email to SFA_FAA_LegisConsult@mas.gov.sg. We would appreciate that you use this [template](#) for your submission to ease our collation efforts.

2 Defined Terms

AE	Approved exchange
AI	Accredited investors as defined under section 4A of the SFA
CISNet	Online notification system set out under https://masnetsvc2.mas.gov.sg/cisnet that allows fund managers to notify MAS of their intention to offer Restricted Funds to AI and other investors under section 305 of the SFA and the Sixth Schedule to the SF(OI)(CIS)R
II	Institutional investors as defined under section 4A of the SFA
MAS	Monetary Authority of Singapore
OTC	Over-the-counter
Physical Asset Fund	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 2016
REIT	Real estate investment trust
Restricted Fund	A fund or REIT that is exempted under section 305 of the SFA from authorisation or recognition and prospectus registration requirements
RMO	Recognised market operator
SIBOR	Singapore Interbank Offered Rate
SFA	Securities and Futures Act (Cap. 289)
SF(A) Act	Securities and Futures (Amendment) Act 2017
SF(FB)R	Securities and Futures (Financial Benchmarks) Regulations
SF(M)R	Securities and Futures (Markets) Regulations

SF(OI)(CIS)R	Securities and Futures (Offers of Investments) (Collective Investment Schemes) Regulations 2005
SGX	Singapore Exchange Limited
SOR	Singapore Swap Offer Rate

3 Introduction

3.1 The SF(A) Act was passed by Parliament on 9 January 2017. It provides MAS with legislative powers under the SFA to complete MAS' two-phase review to implement over-the-counter ("OTC") derivatives regulatory reforms. It also introduces amendments aimed at enhancing regulatory safeguards for retail investors, enhancing the credibility and transparency of the capital markets, and strengthening MAS' ability to take enforcement action against market misconduct.

3.2 To support the implementation of these wide-ranging amendments, amendments to subsidiary legislation and other legislative instruments have to be made to reflect key amendments such as:

- (a) Changes to product definitions in Part I of the SFA;
- (b) Repeal and re-enactment of Part II of the SFA to apply the markets regime to OTC derivatives;
- (c) Changes to Part IV of the SFA and the Second Schedule to the SFA to extend the capital markets services licensing regime to OTC derivatives;
- (d) Changes to other Parts of the SFA, as well as the Financial Advisers Act, arising from the key changes above.

3.3 MAS intends to operationalise the amendments to the SFA by 2018, and as part of this process, will consult the public on significant draft regulations in two phases. MAS will issue the second consultation paper on other draft regulations in May 2017.

3.4 Pursuant to the changes introduced in the SF(A) Act, MAS is seeking comments on the following draft regulations:

- (a) *New SF(M)R*
MAS will be repealing and reissuing the existing Securities and Futures (Markets) Regulations 2005 with the new SF(M)R, to operationalise Part II of the SFA which provides for the regulation of approved exchanges ("AE") and recognised market operators ("RMO").
- (b) *New SF(FB)R*
MAS will be issuing a new SF(FB)R to operationalise the new Part VIAA of the SFA, which provides for the regulation of administrators of, and submitters who contribute information required to compute, designated financial benchmarks.

(c) *Amendments to SF(OI)(CIS)R*

MAS will be amending the SF(OI)(CIS)R to operationalise changes to Part XIII of the SFA, as well as changes to widen the range of factors that may be taken into account when considering whether to recognise a foreign fund (a collective investment scheme), for offer to the public, and to refine certain regulatory provisions in relation to REITs.

3.5 The draft SF(M)R, SF(FB)R, and SF(OI)(CIS)R are set out in Annexes B, C and D, and key areas introduced in the following sections.

4 New Securities and Futures (Markets) Regulations

4.1 The new SF(M)R will apply the regulatory regime to operators of all organised markets, including operators of organised markets for the trading of OTC derivatives. The SF(M)R sets out requirements on the admission of corporations operating organised markets as AEs and RMOs, as well as the ongoing requirements on AEs and RMOs. Key issues are discussed below.

Question 1. MAS seeks comments on the draft SF(M)R at Annex B.

Minimum Admission Requirements

4.2 Organised markets are centralised facilities that bring together multiple market participants and are important for the continuing functioning of the capital markets. Entities intending to operate organised markets in Singapore should thus demonstrate financial commitment and strength to provide confidence to market participants of their stability, as well as the ability to operate a fair, orderly and transparent organised market on an ongoing basis.

4.3 To ensure a base level of financial commitment and resources, applicants seeking to be admitted as an AE are currently required to maintain a minimum base capital of \$10 million. For RMOs, a lower base capital requirement of \$500,000 is applicable. These requirements are currently imposed administratively through conditions on approval or recognition as an AE or RMO. We intend to set out these requirements in the Regulations to explicitly inform potential applicants of their admission requirements.

4.4 We also take the opportunity to provide more transparency on how potential applicants to be AEs and RMOs are assessed. The key criteria would be the applicant's demonstration of its ability to meet its statutory obligations as an AE or RMO. MAS would also take into consideration whether an application has –

- (a) an established track record in the business or in a related business for at least the past five years;
- (b) key officers and directors with sufficient experience relevant to the operation of the business; and
- (c) a statement of how the corporation intends to comply with its statutory obligations, e.g. presence of adequate and appropriate risk management practices and policies, sufficiency of financial, human, and system resources.

Question 2. MAS seeks comments on the proposed minimum admission requirements for market operators.

Execution in the Customer's Interests

4.5 To support better outcomes for customers and more clearly define aspects of market efficiency, MAS is proposing to formalise requirements for a market operator to have in place measures to ensure that its handling and execution of bids and offers is conducted on a fair and objective basis, and takes into account the interests of market participants. Handling and execution of bids and offers is a basic function of the operation of an organised market, and such measures are part and parcel of ensuring the fairness and orderliness of the organised market, for example, through the matching of best bids and offers in accordance with price-time priority.

4.6 MAS also proposes to require a market operator to have in place measures to facilitate its members' execution of customer orders in the customer's interest. Such facilitation could be in the form of disclosure of post-trade data on transactions executed on its organised market, allowing intermediaries and customers to assess matching outcomes.

<p>Question 3. MAS seeks comments on the proposed requirements on market operators to have in place measures to –</p> <ul style="list-style-type: none">(a) ensure the handling and execution of bids and offers on a fair and objective basis, and take into account the interests of market participants; and(b) facilitate execution of customer orders in the customer's interest.
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Miscellaneous amendments

4.7 MAS is also fine-tuning certain regulations for alignment with corresponding regulations in the Securities and Futures (Clearing Facilities) Regulations 2012:

- (a) Defining the circumstances in which an RMO may disclose user information or transaction information, where the obligation to maintain confidentiality under section 39 of the SFA does not apply.
- (b) Requiring an AE or RMO which intends to cancel its approval or recognition as an AE or RMO to submit an application to MAS no later than three months before the expected date of cancellation.

Application of Part II to OTC Derivatives

4.8 With the application of the new Part II of the SFA to organised markets for the trading of OTC derivatives, MAS reiterates that it is not our intent to regulate as AEs or RMOs, entities that facilitate the transactions of OTC derivatives in a way that is more akin to market intermediation as opposed to that of operating an organised market.

4.9 MAS had previously indicated in our Response to Feedback Received on Proposed Amendments to the Securities and Futures Act¹ that it would provide further guidance on when an operator of a facility in relation to OTC derivatives would be considered to be operating an organised market. In doing so, MAS would consider how buyers and sellers are brought together, and noted that much of such activities would be more akin to providing broking activities rather than operating a market. This was particularly the case for many “voice-assisted” facilities.

4.10 MAS recognises that some of these facilities may establish an electronic utility or “screen” that aids their “voice-assisted” functions. There are also “voice-assisted” facilities which broker transactions for customers who intend to trade derivatives which are already available for trading on an established organised market operated by an AE or an RMO, i.e. a traditional exchange. On the other hand, there are facilities which operate as the only available platform for the trading of certain OTC derivatives.

4.11 In consideration of the above, MAS is of the view that facilities which engage with customers to broke “block futures” or “negotiated large trades” for the purposes of registering such trades on an established organised market operated by an AE or RMO (whether foreign or local) are providing intermediation services in relation to exchange-traded derivatives. Such facilities would not constitute organised markets for the trading of OTC derivatives. This would be the case regardless of whether the entity conducts the broking activities through “voice-assisted” or electronic means. MAS considers that it may therefore be appropriate to exempt an entity from Part II of the SFA if it is subject to Part IV of the SFA in respect of its activity of broking of “block futures” or “negotiated large trades” for exchange-traded derivatives contracts.

4.12 Conversely, an entity that operates a facility to match trades in respect of products that are not exchange-traded derivatives contracts (i.e. products already listed for trading on a traditional exchange) would be operating an organised market falling within the scope of Part II of the SFA and would thus require approval or recognition as an AE or RMO. This would be the case regardless of whether the facility operates through “voice-assisted” or electronic means. Examples of such products could include currency non-deliverable forwards which are not listed on any AE or RMO.

Question 4. MAS seeks comments on the exemption of an entity from Part II of the SFA if it is subject to Part IV of the SFA in respect of its activity of broking of “block futures” or “negotiated large trades” for exchange-traded derivatives contracts.

¹ Published 7 November 2016

Transitional arrangements

4.13 MAS notes that many entities engaged in facilitating the trading of OTC derivatives are not currently subject to regulation. MAS will provide a transition period for operators of such facilities to assess whether they would be caught as operating organised markets under the amended SFA, and to make the necessary arrangements to achieve compliance with the relevant provisions.

4.14 An entity that is in operation at point of the commencement of the SF(A) Act (time "T") will have three months to assess whether it carries out the operation of an organised market (i.e. T+3 months), and if so to notify MAS of its intention to apply for an AE or RMO status, as the case may be.

4.15 Having notified MAS, the entity will be given another nine months to submit its application to MAS (i.e. within T+12 months). In the interim, it may continue to operate its business as usual, until MAS approves or rejects its application.

4.16 An entity whose activities constitutes the operation of an organised market but does not notify MAS of its intention to apply for an AE or RMO status by T+3 months, or does not submit a completed application by the end of T+12 months, will have to cease operations by T+12 months.

Question 5. MAS seeks comments on the transitional arrangements for operators of OTC derivatives organised markets.

5 New Securities and Futures (Financial Benchmarks) Regulations

5.1 In implementing the regulatory regime for financial 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, MAS intends to designate SIBOR and SOR as designated benchmarks. MAS will be issuing the SF(FB)R to operationalise the regime. The proposed regulations set out admission, ongoing and other requirements which administrators of and submitters to designated benchmarks would be subject to. Key regulations are discussed below.

Obligation on benchmark administrators to establish an Oversight Committee

5.2 Every benchmark administrator will be required to establish an Oversight Committee, to be responsible for the maintenance and governance of the designated benchmark.

5.3 The responsibilities of the Oversight Committee will include reviewing the adequacy of –

- (a) the design of the designated benchmark;
- (b) the Code on designated benchmark which is developed by the benchmark administrator to set out the standards to be adhered to by submitters of the designated benchmark;
- (c) the arrangements in place to govern the administration of the designated benchmark;
- (d) the measures put in place to maintain confidentiality of all information or expressions of opinion used for the purpose of determining the designated benchmark; and
- (e) the external and internal audit function of the benchmark administrator in relation to administering a designated benchmark, in particular the scope and results of audits as well as the independence and objectivity of the external auditors.

5.4 To ensure sufficient independence in the Oversight Committee, MAS proposes to require at least one-third of the membership of the Oversight Committee be comprised of persons who are not directors, key management officers or substantial shareholders of the benchmark administrator and benchmark submitters who provide information to the benchmark administrator in respect of that particular designated benchmark.

5.5 A benchmark administrator would be required to obtain MAS' approval prior to appointing a person to the Oversight Committee.

Question 6. MAS seeks comments on requiring a benchmark administrator to establish an oversight committee responsible for the maintenance and governance of the designated benchmark.

Question 7. MAS seeks comments on requiring at least one-third of the membership of the Oversight Committee be persons who are not directors, key management officers or substantial shareholders of the benchmark administrator and benchmark submitters who provide information to the benchmark administrator in respect of that particular designated benchmark.

Requirement for an independent external audit of benchmark administrators and benchmark submitters

5.6 MAS considers it important for an independent external party to audit the benchmark submission process of benchmark submitters. This takes into account the scale of deficiencies in governance and risk management observed in MAS' review of the benchmarks submission processes of banks in 2012/2013.

5.7 Similarly, benchmark administrators will also be required to engage an independent external auditor to review its benchmark administration process. Such a review is expected to encompass the adherence by the benchmark administrator or submitter to its policies and procedures for its benchmark administration or submission process, as the case may be, and to the relevant laws and regulations.

5.8 For both benchmark administrators and submitters, MAS intends that the baseline frequency for such an audit would be annual. In the case of a benchmark administrator, the external auditor to be appointed must be approved by the Oversight Committee of the benchmark administrator.

Question 8. MAS seeks comments on the requirement for an independent external audit of benchmark administrators and benchmark submitters.

Transition arrangements

5.9 To avoid disruption to the activities of existing benchmark administrators and benchmark submitters in relation to the SIBOR and SOR benchmarks, MAS will provide for a period of up to 6 months from the commencement of the regulatory regime for such existing benchmark administrators and submitters to submit applications to MAS. These entities will be allowed to continue their operations until their applications have been approved by MAS.

5.10 Benchmark submitters who are already subject to regulation by MAS, such as banks, will be exempt benchmark submitters. Exempt benchmark submitters will have up

to 6 months to inform MAS that they are carrying on a business or activity of providing information in relation to a designated benchmark.

Question 9. MAS seeks comments on providing a transition period for benchmark administrators and submitters.

Question 10. MAS seeks comments on the proposed SF(FB)R attached at Annex C.

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

6.1 MAS is seeking comments on the draft amendments to the SF(OI)(CIS)R. These amendments include –

- (a) the additional factors that MAS may take into account when recognising a foreign fund for offer to retail investors; and
- (b) the conditions for exempting Physical Asset Funds that are offered to AIs from fund authorisation and prospectus registration requirements.

6.2 In addition, MAS is also consulting on other proposed changes pertaining to collective investment schemes (that did not arise from the SF(A) Act), in order to improve operational efficiency. These amendments are, namely, to –

- (a) allow REITs to publish pro forma financial information; and
- (b) allow Restricted Funds 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.

Question 11. MAS seeks comments on the draft SF(OI)(CIS)R attached at Annex D.

Additional factors for recognising foreign funds

6.3 MAS had previously consulted on the proposal 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 the foreign fund for offer to retail investors under section 287 of the SFA². As set out in our response to the consultation, generally respondents did not object to this proposal³. The additional factors that MAS is now proposing to have regard to, when considering whether to recognise a foreign fund, are namely:

² See paragraph 4.4 of MAS' policy consultation paper dated 11 February 2015 (Revised on 16 February 2015) -

<http://www.mas.gov.sg/~media/MAS/News%20and%20Publications/Consultation%20Papers/Consultation%20Paper%20on%20Proposed%20Amendments%20to%20the%20SFA%20Revised%20on%2016%20Feb%202015.pdf>

³ See paragraph 4.3 of MAS' Response to Feedback Received on Proposed Amendments to the SFA dated 7 November 2016 -

<http://www.mas.gov.sg/~media/MAS/News%20and%20Publications/Consultation%20Papers/Consultation%20Response%20Proposed%20Amendments%20to%20SFA.pdf> at paragraph

- (a) the investment policy of the fund;
- (b) the fund's constituent documents;
- (c) the oversight provided by the trustee or an equivalent oversight body;
and
- (d) whether these factors set out in (a) – (c), either taken individually or collectively, would accord to investors protection at least equivalent to that provided under authorised schemes.

Question 12. MAS seeks comments on the three proposed factors which MAS may take into account when considering whether to recognise a foreign fund, other than the laws and practices under which a foreign fund is governed.

Physical Assets Funds offered to AIs

6.4 MAS had previously consulted on the proposed class exemption from licencing requirements for managers of Physical Assets Funds that are only offered to AIs or IIs⁴, and is now consulting on the conditions that Physical Assets Funds must satisfy before being exempted from fund authorisation and prospectus registration requirements under Section 305 of the SFA.

6.5 MAS proposes to require Physical Assets Funds offered to AIs to lodge an information memorandum⁵, furnish certain basic fund information to MAS, and to lodge an annual declaration on MAS' CISNet portal. These requirements are the same as the present requirements imposed for Restricted Funds, including the lodgement fees payable. Physical Assets Funds who comply with the conditions would not be required to be entered into the list of Restricted Funds maintained by MAS on CISNet.

6.6 With regard to the information memorandum lodged, MAS further proposes to require a Physical Assets Fund to disclose in its information memorandum that–

- (a) the Physical Assets Fund is exempted and has not been entered into a list of Restricted Schemes maintained by MAS; and
- (b) MAS has not approved the Physical Assets Fund or its manager in respect of the management of the fund.

⁴ See MAS' policy consultation paper dated 11 February 2015, paragraph 2.5.9, and MAS' response to feedback received on the consultation dated 7 November 2016, paragraphs 2.5.22 and 2.5.23.

⁵ The information memorandum would be subject to the disclosure requirements set out in Regulation 1(2) of the Sixth Schedule to the SF(OI)(CIS)R.

Question 13. MAS seeks comments on the proposed conditions that Physical Assets Funds offered to AIs must satisfy, before being exempted from fund authorisation and prospectus registration requirements under Section 305 of the SFA.

Pro forma financial information of REITs

6.7 Under Regulation 25(7) of and Paragraph 51 of the Third Schedule to the SF(OI)(CIS)R, a fund advertisement, publication and prospectus must not contain any information on past performance based on simulated results of a hypothetical fund.

6.8 MAS has received requests for clarifications on whether the above restriction applies to pro forma financial information prepared by REITs, for the purpose of disclosure in their initial public offering prospectuses, as required under SGX's listing rules⁶.

6.9 The restriction on disclosure of past performance based on simulated results of a hypothetical fund is to disallow the back-testing of simulated data, and not intended to exclude pro forma past financial information⁷. To provide greater clarity to market practitioners, MAS will amend Regulation 25(7) of the SF(OI)(CIS)R and Paragraph 51 of the Third Schedule to the SF(OI)(CIS)R to make it clear that the restriction does not apply to the disclosure of pro forma financial information by a REIT.

Question 14. MAS seeks comments on the drafting of the amendments 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.

⁶ Under SGX Listing Rule 609(a), when a REIT is listed, pro forma group accounts must be presented in addition to the annual combined audited accounts, where applicable. The pro forma financial information must provide investors with information about the impact of the proposed group structure by illustrating how that group structure might have affected the financial information presented in the prospectus, had the group structure been put in place at the commencement of the period being reported on or, in the case of a pro forma balance sheet, at the date reported on.

Under Rule 609(b), the pro forma income statement should be presented for the latest 3 financial years and for the most recent interim period (if applicable) as if the restructured group had been in existence at the beginning of the period reported on. The pro forma statement of financial position should be presented as at the date to which the most recent pro forma income statement has been made up.

⁷ See Paragraph 9.3 of MAS' response dated 8 April 2011 to feedback received on the policy consultation dated 17 May 2010 on proposed amendments to the Code on Collective Investment Schemes. URL: <http://www.mas.gov.sg/News-and-Publications/Consultation-Paper/2010/Consultation-Paper-on-Amendments-to-the-Code-on-Collective-Investment-Schemes.aspx>

Restricted Funds managed by licensed REIT managers

6.10 Under Paragraphs 3(1)(a)(i) of the Sixth Schedule to the SF(OI)(CIS)R, a manager of a Restricted Fund must be licensed or regulated to carry out fund management activities in its principal place of business.

6.11 A manager of a REIT would not legally meet this requirement as a REIT management licence is distinct from a fund management licence under the SFA.

6.12 The policy intent behind the requirement for a regulated manager is to ensure that managers of Restricted Funds are competent and properly regulated. A licensed REIT manager and a licensed fund manager are subject to similar competency and regulatory requirements under the SFA. Therefore, MAS has been allowing on a case-by-case application basis, Restricted Funds 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 proposes to amend the SF(OI)(CIS)R to reflect this policy intent.

Question 15. MAS seeks comments on the draft amendments to allow Restricted Funds 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.

Annex A

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Annex B

Draft Securities and Futures (Markets) Regulations

[DISCLAIMER: THIS VERSION OF THE AMENDMENTS IS IN DRAFT FORM AND SUBJECT TO CHANGE. IT IS ALSO SUBJECT TO REVIEW BY THE ATTORNEY-GENERAL'S CHAMBERS.]

[\[Link to draft Securities and Futures \(Markets\) Regulations\]](#)

Annex C

Draft Securities and Futures (Financial Benchmarks) Regulations

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[\[Link to draft Securities and Futures \(Financial Benchmarks\) Regulations\]](#)

Annex D

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

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[\[Link to draft Securities and Futures \(Offers of Investments\) \(Collective Investment Schemes\) Regulations 2005\]](#)

