

# CONSULTATION PAPER

P007 - 2013

June 2013

## Proposed Regulatory Framework for Financial Benchmarks

MAS

Monetary Authority of Singapore

## PREFACE

MAS proposes to establish a regulatory framework for financial benchmarks to safeguard the credibility and reliability of financial benchmarks in Singapore.

2 This Consultation Paper sets out the rationale and key elements of our proposed regulatory approach which includes introducing criminal and civil sanctions to deter and penalise manipulation of financial benchmarks, and regulating benchmark setting activities for key benchmarks administered in Singapore.

3 MAS invites interested parties to forward their views and comments on the proposed regulatory framework for financial benchmarks.

4 Electronic submissions of comments are encouraged. All written comments should be submitted to:

Capital Markets Policy Division  
Capital Markets Department  
Monetary Authority of Singapore  
10 Shenton Way, MAS Building  
Singapore 079117  
Email: [financialbenchmarks@mas.gov.sg](mailto:financialbenchmarks@mas.gov.sg)  
Fax: (65) 6225 1350

All comments and feedback should be submitted to MAS by 15 July 2013.

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

## 1 INTRODUCTION

1.1 Financial benchmarks play an important role in the financial system's core functions of pricing and allocation of risk and capital. Various financial instruments such as loans, exchange traded funds and derivative contracts directly reference their prices to financial benchmarks. It is thus important that financial benchmarks are credible and reliable, to ensure public confidence that financial markets remain sound and efficient.

1.2 A number of regulators, including MAS, have investigated or taken enforcement actions in relation to attempted manipulation of Inter-Bank Offered Rates ("**IBORs**"). Following these developments internationally, the International Organisation of Securities Commissions ("**IOSCO**")<sup>1</sup> has issued its proposed Principles for Financial Benchmarks ("**IOSCO Principles**") for public consultation.<sup>2</sup> These Principles are directed at benchmarks used in financial markets, and articulates policy guidance to strengthen governance processes, accountability mechanisms and quality of benchmark design. IOSCO recognises that a one-size-fits-all regulatory approach towards financial benchmarks may not be appropriate given the diversity of types of financial benchmarks; instead, jurisdictions should tailor regulatory action based on factors including economic and financial stability impact, and investor and retail exposure.

1.3 In the United Kingdom, the Financial Conduct Authority has, since 2 April 2013, implemented a regulatory framework for benchmark setting activities for the London Inter-Bank Offered Rates ("**LIBOR**"). Under this regime, administrators and submitters of LIBOR are subject to regulatory requirements to strengthen governance and controls,<sup>3</sup> and criminal sanctions apply to any persons found guilty of LIBOR manipulation.

1.4 In Europe, the European Commission has amended its proposals for a Regulation and Directive on market manipulation to prohibit any person from manipulating any financial benchmark through providing or transmitting

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<sup>1</sup> IOSCO is the global standard setter for the securities sector. IOSCO's objectives includes cooperation among this members to develop, implement and promote adherence to internationally recognised and consistent standards of securities regulation, oversight and enforcement in order to maintain fair, efficient and transparent markets. MAS is a member of the IOSCO Board, which is its executive decision making body.

<sup>2</sup> See <http://www.iosco.org/library/pubdocs/pdf/IOSCOPD409.pdf>

<sup>3</sup> See <http://www.fca.org.uk/your-fca/documents/fsa-ps13-06-the-regulation-and-supervision-of-benchmarks>

false or misleading inputs or impressions, or any action which manipulates the calculation of a benchmark. The amended proposal on market abuse which includes benchmark manipulation was agreed by the European Justice Ministers on 7 December 2012.<sup>4</sup>

1.5 To deter and penalise attempts to manipulate any financial benchmark, and to safeguard the credibility and reliability of key financial benchmarks in Singapore, MAS intends to introduce a regulatory framework for the setting of financial benchmarks. The framework will be effected via amendments to the Securities and Futures Act (“SFA”). Key elements of the proposed framework are as follows:

- (i) Introduce criminal and civil sanctions for manipulation<sup>5</sup> of any financial benchmark.
- (ii) Provide legal powers to designate key financial benchmarks and subject their Administrators and Submitters to regulation.
- (iii) Issue best practice guidance for other benchmarks consistent with IOSCO Principles.
- (iv) Provide legal powers to compel entities to be Submitters to designated benchmarks.

Details of the proposed regulatory framework are elaborated in the following sections.

## 2 DEFINITION OF FINANCIAL BENCHMARK

2.1 MAS proposes to introduce a definition of “financial benchmarks” in the SFA. Recognising the diversity in types of financial benchmarks that financial instruments and contracts are referenced off in the industry, the proposed definition is crafted in a broad manner.

2.2 We propose to define “financial benchmark” as:

- (1) Any price, estimate, rate, index or value that is –

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<sup>4</sup> See [http://europa.eu/rapid/press-release\\_MEMO-12-963\\_en.htm?locale=en](http://europa.eu/rapid/press-release_MEMO-12-963_en.htm?locale=en); and [http://europa.eu/rapid/press-release\\_MEMO-12-595\\_en.htm](http://europa.eu/rapid/press-release_MEMO-12-595_en.htm)

<sup>5</sup> For the purposes of this Consultation Paper, references to manipulation include any act that is intended or likely to create a false or misleading appearance with respect to the price, value or level of a financial benchmark

- (a) Calculated periodically using a formula or other methodology;  
and
- (b) Used for reference to determine –
  - (i) the interest payable or other sums due on deposits or loan agreements;
  - (ii) the price, value or performance of any capital markets product as defined under the SFA or investment product as defined under the Financial Advisers Act (“**FAA**”); or
  - (iii) the price, value or performance of any product offered by any entities regulated by MAS;
- (2) Or such other price, estimate, index or value as MAS may prescribe.

2.3 We believe this definition captures the general understanding of what constitutes a financial benchmark in the context of the financial industry. This is also broadly consistent with the definition of “benchmark” in the proposed IOSCO Principles.

**Q1: MAS seeks views on the proposed definition of “financial benchmark”.**

### **3 INTRODUCTION OF CRIMINAL AND CIVIL SANCTIONS FOR MANIPULATION OF FINANCIAL BENCHMARKS**

3.1 Financial benchmarks play an important role in the functioning of the financial system. Hence, the need to maintain their integrity and deter potential manipulators is no less than it is for listed securities or financial instruments. Benchmark manipulation could amount to an offence under existing legislation (e.g SFA, Penal Code) depending on the factual circumstances and taking into account the intended or likely consequences of the conduct involved. However, relying on the existing patchwork of laws may not be sufficient to deal with all possible cases of benchmark manipulation and ensure adequate deterrence against such conduct.

3.2 To address possible gaps and to send a clear signal that manipulation of any financial benchmark is unacceptable, MAS proposes that the market conduct provisions under Part XII of the SFA be expanded to include a new division which prohibits specifically the manipulation of any financial benchmark. The proposed provisions will be similar to the existing provisions in the SFA against false trading and manipulation of securities, and allow for similar criminal or civil penalty sanctions to be imposed on persons who manipulate financial benchmarks. This is in line with regulatory developments in Europe, as well as existing legal provisions in the United States<sup>6</sup>.

3.3 To safeguard Singapore's reputation as a sound financial centre, the prohibition will cover the manipulation of any financial benchmark administered in Singapore, regardless of whether the offender is located in Singapore or overseas; and manipulation by any person in Singapore of any financial benchmark administered in Singapore or overseas. In cases where the offenders engage in misconduct within corporate entities, the corporate entity will also be subject to criminal liability if the manipulation was committed with the consent or connivance of the corporate entity, and civil liability if the corporate entity was negligent in failing to prevent or detect the offender's misconduct.

**Q2: MAS seeks views on the proposal to amend the SFA to prohibit specifically the manipulation of financial benchmarks and to introduce criminal and civil sanctions for such misconduct.**

## **4 REGULATION OF KEY FINANCIAL BENCHMARKS**

### ***Power to prescribe benchmarks for regulation***

4.1 Like other major jurisdictions (except, until recently, the UK), Singapore currently does not regulate benchmark setting activities. As financial benchmarks are typically developed by the industry in response to market needs, we have relied on industry self-governance of the activities relating to the administration of benchmarks, and the processes for the

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<sup>6</sup> See Title 18, United States Code Section 1343 (Fraud by wire, radio, or television), and Sections 6(c), 6(d) and 9(a)(2) of the Commodity Exchange Act (CEA).

submission of data inputs for benchmark computation. In light of recent reviews globally, MAS is of the view that there is scope for benchmark setting activities to be enhanced through a formal regulatory framework.

4.2 Given the broad definition of a financial benchmark however, MAS does not intend to regulate the setting of all financial benchmarks. Such a broad application of the regulatory framework, without consideration for the market impact and risk profile of a financial benchmark, would not be the most efficient use of regulatory resources. Instead, MAS considers that a calibrated approach focusing on certain financial benchmarks would be a more proportionate regulatory response.

4.3 Therefore, MAS proposes to regulate the activities related to the setting of key financial benchmarks designated by MAS (“**designated benchmarks**”). MAS proposes to introduce powers under the SFA to designate a financial benchmark, the setting of which will be subject to regulation, taking into account the following considerations:

- (i) Systemic Importance. A financial benchmark would generally be considered systemically important if any disruption to its credibility or reliability could potentially result in significant economic and financial stability impact.
- (ii) Susceptibility to Manipulation. In reviewing a financial benchmark against this consideration, MAS will take into account factors including the degree of discretion involved in the benchmark setting process. For example, a financial benchmark based on data from independently observable transactions on approved exchanges would generally be less vulnerable to manipulation.

Where MAS considers it necessary in the interest of the public, we may also designate any financial benchmark and subject the activities related to setting such benchmarks to regulation.

4.4 MAS will subject the Administrator(s) and Submitters of designated benchmarks to regulation under a new Part of the SFA. The scope and key features of the proposed regulatory regime are elaborated in sections 5 and 6.

**Q3: MAS seeks views on the proposal to regulate benchmark setting activities relating to “designated benchmarks”, where such benchmarks will be designated based on the consideration of the factors stated in paragraph 4.3.**

***SIBOR, SGD SOR and FX Benchmarks to be designated benchmarks***

4.5 MAS proposes to designate the following financial benchmarks presently administered by the Association of Banks in Singapore (“**ABS**”):

- (i) Singapore Interbank Offered Rate (“**SIBOR**”); and
- (ii) Swap Offer Rate (“**SOR**”).

4.6 SIBOR and SOR are key interest rates reflecting the cost of bank borrowing in Singapore, and are benchmarks that are systemically important to Singapore’s financial system. They are widely referenced in both corporate and retail loan contracts. We therefore propose to regulate the setting of these benchmarks to maintain confidence in the credibility and reliability of these benchmarks.

4.7 ABS also administers foreign exchange spot benchmarks (“**FX Benchmarks**”) which are largely used in the Non-Deliverable Foreign Exchange Forwards (“**NDFs**”) market. The participants in this market are typically institutional investors, hence any disruption to the setting of an FX benchmark may not have as significant an impact to the public compared to the interest rate benchmarks. However, we note that such FX Benchmarks are currently computed based on surveyed inputs which entail a degree of discretion. MAS is of the view that the process of FX benchmarks setting could benefit from enhanced governance and controls under the proposed regulatory framework. Thus, we propose to include FX Benchmarks as designated benchmarks, and for the benchmark setting activities around FX benchmarks to be regulated as well.

**Q4: MAS seeks views on the proposal for SIBOR, SOR and FX Benchmarks to be designated, thus subjecting the benchmark setting activities related to these benchmarks to regulation.**



***Best practice guidance for other financial benchmarks***

4.8 Benchmark setting activities relating to benchmarks which are not designated will not be subject to direct regulation. However, to encourage the financial industry and administrators of other financial benchmarks to adopt benchmark setting practices that are consistent with the IOSCO Principles, MAS proposes to issue best practice guidance to regulated financial institutions such as banks, insurance companies, capital markets services licensees, money-brokers, designated clearing houses and approved exchanges, to only use a financial benchmark if they are satisfied that the administrator of the benchmark has effectively implemented the IOSCO Principles. This serves to further strengthen investors' confidence in the financial instruments or products offered by these financial institutions.

4.9 In addition, MAS will periodically assess the need to designate other financial benchmarks, having regard to the considerations stated in paragraph 4.3.

**Q5: MAS seeks views on the proposal to issue best practice guidance to regulated financial institutions to only use a financial benchmark if it is satisfied that the benchmark administrator has effectively implemented the IOSCO Principles.**

## **5 REGULATORY REGIME FOR ADMINISTRATORS OF DESIGNATED BENCHMARKS**

***Licensing requirement***

5.1 We propose to introduce a new regulatory regime for the administration of designated benchmarks under a new Part of the SFA. Any entity carrying out the activity of “administering a designated benchmark” (“**Administrator**”) will be subject to regulation by MAS.

5.2 An entity would be “administering a designated benchmark” if it carries out any of the following activities –

- (i) Controlling the development or review of the definition of a designated benchmark or the methodology for the determination of a designated benchmark;

- (ii) Administering the arrangements for determining a designated benchmark;
- (iii) Collecting, analyzing or processing information or expressions of opinion for the purpose of determining a designated benchmark;
- (iv) Determining a designated benchmark through the application of a formula or other method of calculation to the information or expressions of opinion provided for that purpose; or
- (v) Monitoring and conducting surveillance of information or expressions of opinion provided for the determination of a designated benchmark.

5.3 Each of the activities set out in paragraph 5.2 are crucial in the benchmark setting process. To maintain the credibility and reliability of a designated benchmark, MAS intends to impose a licensing requirement on any entity carrying out any of the above activities. Where the above activities are carried out by more than one entity in respect of a designated benchmark, all the entities involved will be required to be licensed by MAS.

#### ***Admission criteria***

5.4 We propose the following admission criteria for Administrators of designated benchmarks.

- (i) Legal Person:  
It must be a corporation and have a permanent physical office in Singapore.
- (ii) Fit and Proper:  
It must satisfy MAS that itself, its directors and senior management are fit and proper to carry out the activities of administering a designated benchmark, having regard to the *Guidelines on Fit and Proper Criteria (FSG-G01)*<sup>7</sup>.
- (iii) Financial Resources:  
It must at all times ensure that it has sufficient financial resources to cover operating costs of administering its benchmark for no less

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<sup>7</sup> See

[http://www.mas.gov.sg/~media/MAS/Regulations%20and%20Financial%20Stability/Regulations%20Guidance%20and%20Licensing/Securities%20Futures%20and%20Fund%20Management/IIID%20Guidelines/CRA\\_Guidelines%20on%20Fit%20and%20Proper%20Criteria%20amendments17%20Jan%202012.pdf](http://www.mas.gov.sg/~media/MAS/Regulations%20and%20Financial%20Stability/Regulations%20Guidance%20and%20Licensing/Securities%20Futures%20and%20Fund%20Management/IIID%20Guidelines/CRA_Guidelines%20on%20Fit%20and%20Proper%20Criteria%20amendments17%20Jan%202012.pdf)

than six months. This is to ensure that the entity has sufficient resources to discharge its obligations as an Administrator, and to ensure the continuity of the designated benchmark in order to prevent market disruptions.

### ***Other Ongoing Requirements***

5.5 In addition, Administrators will also be subject to the following ongoing requirements which are developed with reference to the proposed IOSCO Principles. MAS will be provided with powers to conduct inspections of Administrators to allow for regular supervision to safeguard the integrity of the benchmark setting process.

(i) Governance

- Establish measures to ensure the confidentiality of benchmark submissions received from Submitters until such information is made public in accordance with its procedures.
- Put in place effective arrangements for regular monitoring and surveillance of benchmark submissions to identify any market anomalies or suspected breaches of practice standards.
- Establish and maintain effective arrangements to identify and mitigate actual and potential conflicts of interest, and whistle-blowing procedures to allow any person to report suspected misconduct.
- Develop a Code of Conduct for Submitters. The Code must be approved by MAS, and must cover areas including:
  - Policies and procedures for pre-submission validation of inputs.
  - Clear guidance for a hierarchy of data inputs and the appropriate exercise of expert judgment.
  - Policies and procedures for Submitters to submit all relevant data.
  - Effective governance arrangements to identify and mitigate actual and potential conflicts of interests, including setting out the criteria for individuals who can submit and the internal sign-offs required.

(ii) Oversight Committee

- Establish a committee responsible for the oversight of the benchmark design, integrity of the benchmark determination and governance framework, and the Code of Conduct for Submitters.

- Persons who are independent of the management of the Administrator and Submitters (“**independent persons**”) must make up at least one-third of the oversight committee.
  - This oversight committee must also include balanced representation from relevant stakeholders such as representatives from the board of directors of the Administrator, Submitters, users of the benchmark, and financial market infrastructure providers<sup>8</sup>.
  - All members of the oversight committee must be approved by MAS.
  - Notify MAS without delay where it suspects any person of misconduct that may involve manipulation of the designated benchmark it administers.
- (iii) Fit and Proper:  
Ensure that individuals involved in the activity of administering a designated benchmark are fit and proper.
- (iv) Disclosure  
Publish quarterly aggregate statistics outlining the activity in the underlying market relevant to the designated benchmark.
- (v) Availability of benchmark  
Ensure uninterrupted publication of the benchmark rate, and that the most recent rates are publicly available within a reasonable time.
- (vi) Outsourcing  
Put in place appropriate policies and procedures for effective oversight of outsourcing arrangements where third parties are engaged in accordance with *MAS Guidelines on Outsourcing*.<sup>9</sup> This includes written contractual agreement setting out clear standards of service expected of the third parties.

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<sup>8</sup> This refers to payment systems, central counterparty, securities settlement systems, central securities depositories, and trade repositories. See <http://www.bis.org/publ/cpss101a.pdf>.

<sup>9</sup> See <http://www.mas.gov.sg/~media/MAS/Regulations%20and%20Financial%20Stability/Regulatory%20and%20Supervisory%20Framework/Risk%20Management/Outsourcing20Guidelines.pdf>

(vii) External Audits

Appoint an independent external auditor with the appropriate expertise and which is approved by its oversight committee, to conduct a yearly review of the Administrator's adherence to its stated policies and procedures, and the relevant laws and regulations. A report from the auditor must be submitted to MAS.

(viii) Record Keeping

Keep written records of relevant underlying market data, submissions received from Submitters, and published benchmark rates for a period of no less than five years.

(ix) Transition Protocols

- Put in place clear policies and procedures to address transition issues arising if a benchmark or tenor of a benchmark be terminated due to changes in underlying market conditions.
- This includes procedures for the maintenance of parallel benchmarks to exist for a defined period of time, and policies defining the period of time in which a benchmark should continue to be produced after the announcement of its termination.

5.6 Where multiple entities are involved in administering a designated benchmark, it may not be necessary or practicable to apply all the requirements above to each of the entities involved. For example, where an entity (A) develops the methodology for determining a designated benchmark but enters into an agreement with another entity (B) to calculate the designated benchmark according to its methodology, both entities will need to be licensed as an Administrator and subject to regulation by MAS. However, the requirements to develop a Code of Conduct for Submitters and to form an oversight committee may not be relevant for entity B. In such cases, MAS would consider exempting entity B from certain requirements which are not applicable.

**Q6: MAS seeks views on the proposal to require entities carrying out the regulated activity of “administering a designated benchmark” to be licensed by MAS.**

**Q7: MAS seeks views on the proposed admission and ongoing requirements for Administrators.**

## **6 REGULATORY REGIME FOR SUBMITTERS TO DESIGNATED BENCHMARKS**

6.1 MAS further proposes to regulate the activity of submitting inputs for the determination of a designated benchmark. Any entity that carries out the activity of “providing or transmitting information or expressions of opinion to an Administrator, or to another entity which transmits such information to the Administrator in connection with a designated benchmark” (“**Submitters**”), will be required to obtain a licence from MAS under a new Part of the SFA, or be exempt from the requirement to apply for a licence<sup>10</sup>. The criteria for authorization will be as follows:

- (i) Legal Person:  
It must be a corporation and have a permanent physical office in Singapore.
- (ii) Fit and Proper:  
It must satisfy MAS that itself, its directors and senior management fulfil the *Guidelines on Fit and Proper Criteria (FSG-G01)*.

### ***Ongoing Requirements***

6.2 In addition, to safeguard the integrity of the inputs submission process and to enhance accountability of Submitters, MAS proposes to impose the following ongoing requirements on Submitters. MAS will be provided with powers to conduct inspections of all Submitters to allow for regular supervision of compliance with the requirements.

- (i) Governance
  - Comply with the relevant Code of Conduct for Submitters developed by the Administrator.

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<sup>10</sup> Financial institutions already subject to regulation and licensing requirements under legislation administered by MAS will generally be exempt from the requirement to apply for a licence to be a Submitter.

- Notify MAS without delay where it suspects any person of misconduct that may involve manipulation of a designated benchmark.
- (ii) Fit and Proper  
Ensure that individuals responsible for the activity of providing submissions to benchmarks are fit and proper.
- (iii) Record Keeping
- Keep written records of its benchmark submissions and all information used to derive each benchmark submission for no less than five years.
  - The written records must include names and roles of individuals responsible for the submission and the supervision of the submission process.
  - Keep written records of individual traders, trading desks, and the Submitter's aggregated exposures to instruments which reference designated benchmarks if any.
- (iv) External Audit  
Appoint an independent external auditor with the appropriate expertise to conduct a yearly review of the Submitter's adherence to its stated policies and procedures pertaining to benchmark submissions and the relevant laws and regulations. A report from the auditor must be submitted to MAS.

**Q8: MAS seeks views on the proposed regulation of Submitters.**

**Q9: MAS seeks views on the proposed admission and ongoing requirements for Submitters of designated benchmarks.**

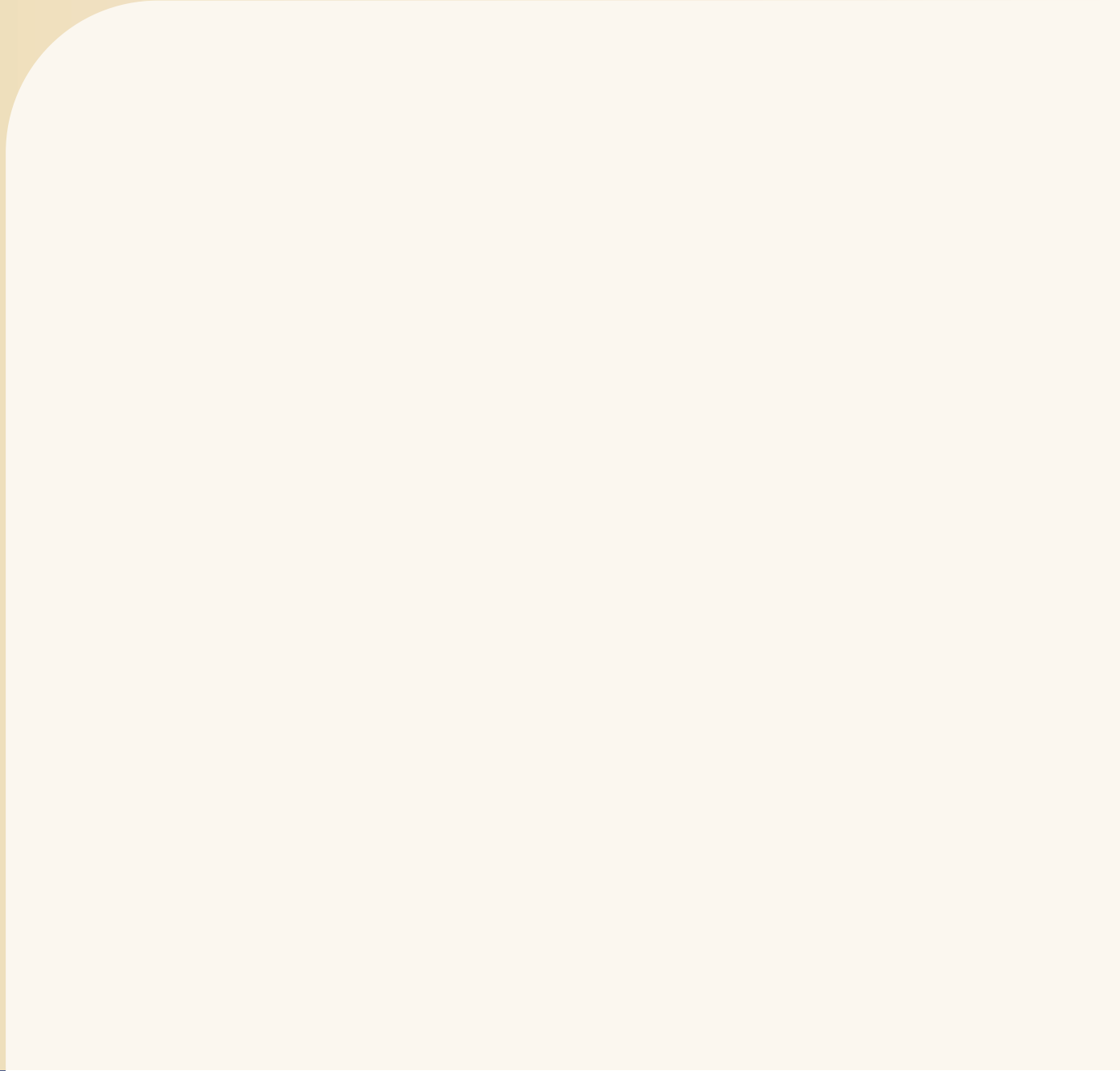
## **7 POWERS TO COMPEL ENTITIES TO BE SUBMITTERS TO DESIGNATED BENCHMARKS**

7.1 As references developed by the industry according to market needs, MAS is of the view that designated benchmarks should remain industry-led and voluntary contributions by Submitters is preferred. However, as the benchmarks are publicly available, and Submitters will be subject to regulation, there is an incentive for market participants to free-ride on the benchmark constructed without bearing responsibility for its construction.

7.2 The continued publication and reliability of designated benchmarks is important to ensure proper market functionality. A pool of Submitters that is too small could impact the accuracy and representativeness of the benchmark and increase the risk of manipulation. In this regard, MAS proposes to enhance its powers to compel entities to be Submitters to designated benchmarks should the need arise in order to ensure the reliability of the benchmark construction. In doing so, we will set out criteria to identify the appropriate entities, taking into account the specific methodology for the designated benchmark as set out by the Administrator.

**Q10: MAS seeks views on the proposal to include powers to compel entities to be Submitters to designated benchmarks.**





Monetary Authority of Singapore