

CONSULTATION PAPER

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Consultation Paper on
Proposed Amendments to the
Securities and Futures Act on
Regulation of
Financial Benchmarks

MAS

Monetary Authority of Singapore

TABLE OF CONTENTS

PREFACE **ii**

INTRODUCTION **iii**

ANNEX 1:
DRAFT AMENDMENTS TO SECTION 2 OF THE SFA

ANNEX 2:
NEW PART VIAA (FINANCIAL BENCHMARKS) OF THE SFA
DIVISION 1 - DESIGNATION OF FINANCIAL BENCHMARKS
DIVISION 2 - ADMINISTRATOR LICENSING

ANNEX 3:
NEW PART VIAA (FINANCIAL BENCHMARKS) OF THE SFA
DIVISION 3 - SUBMITTER AUTHORISATION

ANNEX 4:
NEW PART VIAA (FINANCIAL BENCHMARKS) OF THE SFA
DIVISION 4 - GENERAL POWERS

ANNEX 5:
NEW PART VIAA (FINANCIAL BENCHMARKS) OF THE SFA
DIVISION 5 - POWER TO DIRECT SUBMISSIONS

ANNEX 6:
DRAFT AMENDMENTS TO PART IX (SUPERVISION AND INVESTIGATION),
PART X (ASSISTANCE TO FOREIGN REGULATORY AUTHORITIES) & PART
XII (MARKET CONDUCT) OF THE SFA

ANNEX 7:
DRAFT CONSEQUENTIAL AMENDMENTS TO THE SFA

PREFACE

On 14 June 2013, MAS issued a Consultation Paper setting out the proposed regulatory framework for financial benchmarks. The regulatory framework is aimed at safeguarding the credibility and reliability of financial benchmarks in Singapore. Key elements of the proposed framework were (i) to introduce criminal and civil sanctions under the Securities and Futures Act ("**SFA**") to deter and penalise benchmark manipulation; and (ii) to subject the benchmark setting activities for key financial benchmarks designated by MAS to regulation.

2 To effect the policy proposals set out in the Consultation Paper and the corresponding response paper, MAS is now consulting on the draft legislative amendments to the SFA to bring the regulation of benchmark setting activities into MAS' regulatory ambit.

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

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

MAS requests that all comments and feedback be submitted by 29 Aug 2014.

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

INTRODUCTION

To provide the requisite legal powers to introduce a new regulatory framework for financial benchmarks, MAS proposes to -

- (a) amend section 2 of the SFA
- (b) introduce a new Part VIAA (Financial Benchmarks) with the following Divisions:
 - (i) Designation of Financial Benchmarks
 - (ii) Administrator Licensing
 - (iii) Submitter Authorisation
 - (iv) General Powers
 - (v) Power to Direct Submissions
- (c) amend Part IX (Supervision and Investigation), Part X (Assistance to Foreign Regulatory Authorities) and Part XII (Market Conduct) of the SFA.

2 As a result of the proposed new Part VIAA and the amendments to Part IX, X and XII, consequential amendments to various sections of the SFA are also proposed.

DRAFT AMENDMENTS TO SECTION 2 OF THE SFA

3 The draft amendments to section 2 of the SFA set out in **Annex 1** will introduce the relevant definitions required in the new regulatory regime for benchmarks. Apart from the definition of a "financial benchmark", these amendments include providing definitions for "administering a financial benchmark" and "providing information in relation to a financial benchmark", which set out the scope of benchmark setting activities carried out by a benchmark administrator and submitter respectively. These activities, if carried out in relation to a designated benchmark, will be subject to regulation.

NEW PART VIAA (FINANCIAL BENCHMARKS) OF THE SFA

Division 1 - Designation of Financial Benchmarks

4 The new Part VIAA will introduce a "designation approach" under which the setting of designated financial benchmarks will be subject to regulatory oversight. As stated in our earlier Consultation Paper of 14 June 2013, we do not intend to regulate the setting of all financial benchmarks. Instead, MAS considers a calibrated approach

focusing on key financial benchmarks as a more proportionate regulatory response. Hence, we propose to amend the SFA to provide MAS with the powers to designate a financial benchmark as a "designated benchmark" where it is appropriate taking into consideration the benchmark's systemic importance or susceptibility to manipulation, or where it is in the interest of the public to do so.

Division 2 – Administrator Licensing

5 To safeguard the integrity of the activities involved in the setting of a designated benchmark, MAS will introduce a licensing regime for the administrator of a designated benchmark. Any person carrying out the activity of administering a designated benchmark will be required to hold a benchmark administration licence. As proposed in our earlier Consultation Paper, where more than one entity is involved in carrying out the activity of administering a designated benchmark, all the entities involved will be required to be licensed by MAS and be subject to the relevant ongoing regulatory requirements.

6 Divisions 1 and 2 of the new Part VIAA is set out in **Annex 2**.

Division 3 – Submitter Authorisation

7 To enhance the accountability of submitters involved in providing information in relation to a designated benchmark, we will introduce an authorisation regime for submitters to a designated benchmark. Any entity carrying out the activity of providing information in relation to a designated benchmark will be required to be authorised, unless it is otherwise exempted. Division 3 of the new Part VIAA is set out in **Annex 3**.

Division 4 – General Powers

8 Division 4 of the New Part VIAA will provide MAS with the powers to make regulations, issue written directions, and make prohibition orders in respect of relevant persons involved in the benchmark setting activities of a designated benchmark. Further regulatory requirements applicable to an administrator and submitter of a designated benchmark as set out in our earlier Consultation Paper¹ will be effected via subsidiary regulations after the proposed amendments to the SFA are effected. MAS will consult on

¹ Examples of ongoing requirements for an administrator include putting in place a robust governance mechanism, developing a MAS-approved Code of Conduct for submitters, establishing an oversight committee, and conducting an annual independent external audit. For a submitter, examples include requiring compliance with the relevant Code of Conduct for Submitters, ensuring that individuals responsible for providing submissions to a designated benchmark are fit and proper, keeping relevant written records in relation to its benchmark submissions, and conducting an annual independent external audit.

the drafting of such subsidiary legislation at a later stage. Division 4 of the new Part VIAA is set out in **Annex 4**.

Division 5 – Power to Direct Submissions

9 Division 5 of the new Part VIAA will provide MAS with the powers to direct persons, including financial institutions, to provide information in relation to designated benchmarks. While we hold the view that the setting of financial benchmarks should be industry-led and that voluntary contribution is preferred, the powers are intended to be exercised should the need arise to ensure market functionality. MAS will take into account factors such as the market footprint and the expertise of the person to be directed before exercising the powers. Division 5 of the new Part VIAA is set out in **Annex 5**.

DRAFT AMENDMENTS TO PART IX, PART X, & PART XII OF THE SFA

Part IX - Supervisory and Investigative Powers

10 The amendments to Part IX of the SFA will extend MAS' supervisory and investigative powers pertaining to financial benchmarks. Such amendments are in-line with MAS' intention to create and supervise a regulatory regime for financial benchmarks.

Part X – Assistance to Foreign Regulators

11 Amendments are also necessary under Part X of the SFA to render assistance to foreign regulators for supervision, investigation or enforcement actions pertaining to financial benchmarks.

Part XII – Market Conduct

12 A new Division 2A will be introduced under Part XII of the SFA to create new criminal offences and civil sanctions relating to the manipulation (or attempted manipulation) of financial benchmarks. In this regard, we have proposed that the making of a false or misleading statement or the creation of a false or misleading appearance will be criminalised if a person intends, knows or is reckless as to his actions.

13 The draft amendments to Part IX, Part X and Part XII of the SFA are set out in **Annex 6**.

DRAFT CONSEQUENTIAL AMENDMENTS TO THE SFA

14 As a result of the extension of MAS' regulatory ambit to include benchmark setting activities, consequential amendments would also need to be made to the SFA. These draft consequential amendments are set out in **Annex 7**.

INVITATION FOR COMMENTS

15 MAS invites comments on the draft legislative amendments to effect the regulatory framework for financial benchmarks as set out in **Annexes 1 - 7**.

16 Concurrently, we note that the international regulatory landscape towards financial benchmarks is evolving, and there is a potential that other jurisdictions may impose accompanying extra-territorial requirements on benchmark administrators in Singapore whose financial benchmarks are used in the respective overseas jurisdictions. This may have business continuity implications on some benchmark administrators which administer financial benchmarks that are used across national boundaries from their Singapore offices. In this regard, **MAS would like to seek further views whether there are other types of financial benchmarks apart from those proposed to be designated by MAS², whose administrators may benefit from a separate voluntary registration regime with MAS, so as to facilitate them to continue their Singapore operations.** MAS will take such feedback into consideration as we finalise our draft amendments to the SFA.

² In the earlier Consultation Paper of 14 June 2013, we had proposed to designate the Singapore Interbank Offered Rate (SIBOR), Swap Offer Rate (SOR) and foreign exchange spot benchmarks ("FX Benchmarks") administered by the Association of Banks in Singapore (ABS) as "designated benchmarks".



Monetary Authority of Singapore