

CONSULTATION PAPER

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# Review of Securities Market Structure and Practices

MAS

Monetary Authority of Singapore

**SGX**   
SINGAPORE EXCHANGE

## PREFACE

This consultation paper sets out broad policy proposals to introduce improvements to various market functions and trading practices in the securities market in Singapore. The proposals follow an extensive review conducted by the Monetary Authority of Singapore (“MAS”) and the Singapore Exchange Limited (“SGX”), and are aimed at promoting fair, orderly and transparent trading in Singapore’s securities market.

2 MAS and SGX invite interested parties to forward their views and comments on the issues outlined in this consultation paper. Written comments should be submitted to –

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

3 MAS and SGX request that all comments and feedback be submitted by 2 May 2014. Please note that all submissions received may be made public unless confidentiality is specifically requested for.

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# 1 INTRODUCTION

1.1 As announced by MAS and SGX previously, we have conducted a review of the securities market structure and practices following unusual trading activities in three stocks that were listed on the SGX Mainboard – Blumont Group Limited, Asiasons Capital Limited and LionGold Corporation. Increased volatility was also observed in certain segments of the market following that event.

1.2 MAS and SGX are of the view that our securities market remains sound and continues to facilitate fair, orderly and transparent trading of the securities listed on Singapore Exchange Securities Trading Limited (“SGX-ST”). This conclusion is in line with the assessment under the International Monetary Fund (“IMF”) Financial Sector Assessment Program (“FSAP”). In its report published in November 2013, IMF found that Singapore’s securities sector presents a generally high level of compliance with international standards<sup>1</sup>.

1.3 In addition, MAS and SGX reviewed SGX’s self-regulatory function over the past year. The review concluded that there are sufficient measures in place to manage potential areas of conflicts. This was recognised in the November 2013 IMF report, which noted that “self-regulation by exchanges remains an integral part of the regulatory framework and is subject to effective supervision”.

1.4 While the securities market and the SGX model of self-regulation are fundamentally sound, MAS and SGX have identified three key areas of possible enhancements, namely:

- Measures to promote orderly trading and responsible investing;
- Enhancements to improve transparency of market intervention measures; and
- Framework to strengthen the process for admitting new listings and enforcing against listing rule breaches.

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<sup>1</sup> Singapore was assessed against the Committee on Payment and Settlement Systems (“CPSS”) - International Organization of Securities Commissions (“IOSCO”) Principles for Financial Market Infrastructures (“PFMI”) and the IOSCO Objectives and Principles of Securities Regulation under the IMF FSAP. The FSAP report can be accessed through the following link: <http://www.imf.org/external/pubs/ft/scr/2013/cr13325.pdf>

1.5 This consultation paper discusses broad proposals addressing each of the identified areas in turn. In summary, these are:

- (A) Promoting Orderly Trading and Responsible Investing
  - (i) Minimum trading price for issuers listed on SGX Mainboard
  - (ii) Collateral requirements for securities trading
  - (iii) Short position reporting requirements
  
- (B) Improving Transparency of Intervention Measures<sup>2</sup>
  - (iv) Transparency of trading restrictions imposed by securities intermediaries
  
- (C) Strengthening the process for admitting new listings and enforcing against listing rule breaches
  - (v) Reinforcing the SGX listings and enforcement framework

1.6 This consultation paper sets out the concepts and suggests possible implementation approaches. Further consultation may be undertaken, depending on the specific proposal and taking into account feedback received from the public consultation. Where MAS or SGX subsequently implements a specific proposal, consultation of the regulatory requirements or operational rules – where appropriate – will be undertaken.

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<sup>2</sup> SGX has separately issued an announcement on the enhancements to regulatory tools to uphold market integrity. These include enhancements to its public query process where there are unusual price or volume movements detected in a stock, introducing a “Trade with Caution” announcement when issuers are unable to explain the unusual trading activities, as well as providing clarifications on its powers to suspend and designate securities.

## 2 MINIMUM TRADING PRICE FOR ISSUERS LISTED ON THE SGX MAINBOARD

2.1 Low price securities are generally associated with the risk of high volatility, as a small absolute change in the share price of a low price security may lead to a high percentage of gains or losses. This in turn makes low price securities more susceptible to excessive speculation and potential market manipulation. In addition, market impact cost is generally higher in low price securities due to lower liquidity in these securities and tick sizes constituting a higher percentage of market price.

### Minimum Trading Price Proposal

2.2 To address the risks mentioned in paragraph 2.1, MAS and SGX are considering whether to introduce the concept of a minimum trading price as a continuing listing requirement for issuers listed on the Mainboard<sup>3</sup>. The requirement of a minimum share price is not new. Under the SGX Listing Rules, SGX has, since 10 August 2012, imposed a minimum initial public offering (“IPO”) issue price requirement of S\$0.50 per share for Mainboard listings. However, in subsequent trading, the share price may fall materially below the minimum IPO issue price.

2.3 Separately, SGX has received broad public support in an earlier public consultation to reduce the standard board lot size for trading of securities on SGX-ST from 1,000 to 100 units<sup>4</sup>. A smaller standard board lot size will make investments in high priced companies more affordable for retail investors and help them build more balanced investment portfolios<sup>5</sup>. However, it may potentially exacerbate the above-mentioned risks associated with low price securities. As such, there is an added impetus to consider the introduction of a minimum trading price.

2.4 There is currently no universal approach towards the application of a minimum trading price. Markets in the US require the average closing price or the minimum bid price of a security to be maintained at or above US\$1. Considering that the current minimum IPO issue price for Mainboard issuers

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<sup>3</sup> The minimum trading price requirement is not proposed to apply to issuers listed on Catalist.

<sup>4</sup> SGX Consultation Paper on Reduction in Board Lot Size dated 19 August 2013.

<sup>5</sup> A reduced board lot size would also enhance risk management for investors by allowing them greater precision in the positions they take. With reduced barriers to trading, there should also be improved market liquidity and price discovery.

is set at S\$0.50, a possible initial range for the threshold could be around S\$0.10 to S\$0.20.

### **Possible model for introduction of a minimum trading price**

2.5 The concept of a minimum trading price could be introduced as a continuing listing requirement that an issuer's volume weighted average share price ("VWAP") does not fall below a specified minimum trading share price for 180 consecutive calendar days.

2.6 The issuer will be given a reasonable period of time (e.g. 36 months) (the "cure period") to comply with the minimum trading price requirement. This ensures that issuers and investors have sufficient time to analyse the implications of the measure on them and to take appropriate action. During this time, issuers would be expected to take proactive steps to comply with the minimum trading price requirement. They will be required to provide to shareholders quarterly public updates on the progress of their plans. Any such issuer will have the flexibility to decide on the most appropriate course of action for itself and its shareholders. For example, it may seek to comply with the minimum trading price requirement by undertaking a share consolidation exercise<sup>6</sup>.

2.7 If an issuer is unable to comply with the minimum trading price at the end of the specified cure period, the issuer may be delisted from the Mainboard. The following options may be available for investors to exit their investments:

- (a) an exit alternative as required under SGX Listing Rule 1309 ("Exit Offer") is extended to the issuer's shareholders; or
- (b) if there are minority shareholders remaining after the Exit Offer, the trading of the issuer's shares will be transferred to an alternative trading facility, to facilitate shareholders' exit from the delisted issuer in an organised manner (the "Trading Facility").

2.8 One possible operating model for the Trading Facility is for the trading to be based on periodic auctions (e.g. weekly, monthly or quarterly). In this regard, we have considered that trading in delisted shares may be less liquid. As such, periodic auctions have the advantage of being able to pool

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<sup>6</sup> Issuers may also seek to raise the attractiveness and value of the company through corporate actions such as business restructuring, reverse takeover or recapitalisation.

multiple orders for simultaneous execution. To minimise disruptions to investors, shares of delisted issuers on the Trading Facility could continue to be custodied with the Central Depository (Pte) Limited (“CDP”).

## **Considerations for a Minimum Trading Price**

2.9 The concept of introducing a minimum trading price as a continuing listing requirement is still at the exploratory stage. We have set out one possible model for implementing a minimum trading price, if such a concept is to be introduced. We remain open to alternative proposals and welcome any comments and feedback on the considerations that should be taken into account in the development of the proposal.

2.10 Based on a possible initial minimum trading price of S\$0.10 to S\$0.20 and the model described above, about 130 to 230 issuers may be potentially affected. Nonetheless, most of these issuers can raise their share prices above the minimum trading price through share consolidation, which is neither an unusual nor difficult exercise for issuers to undertake. Further, if the proposal to reduce the standard board lot size from 1,000 to 100 is implemented, a 10 to 1 consolidation would raise the share prices of most of these issuers above the minimum trading price and enable their shareholders to continue trading in standard lot sizes. Less than 20 issuers would encounter difficulty in maintaining the board lot sizes for shareholders through a 10 to 1 consolidation. To reduce any impact to issuers, SGX is prepared to waive all corporate action fees payable by issuers in relation to share consolidation for two years, if a minimum trading price is introduced.

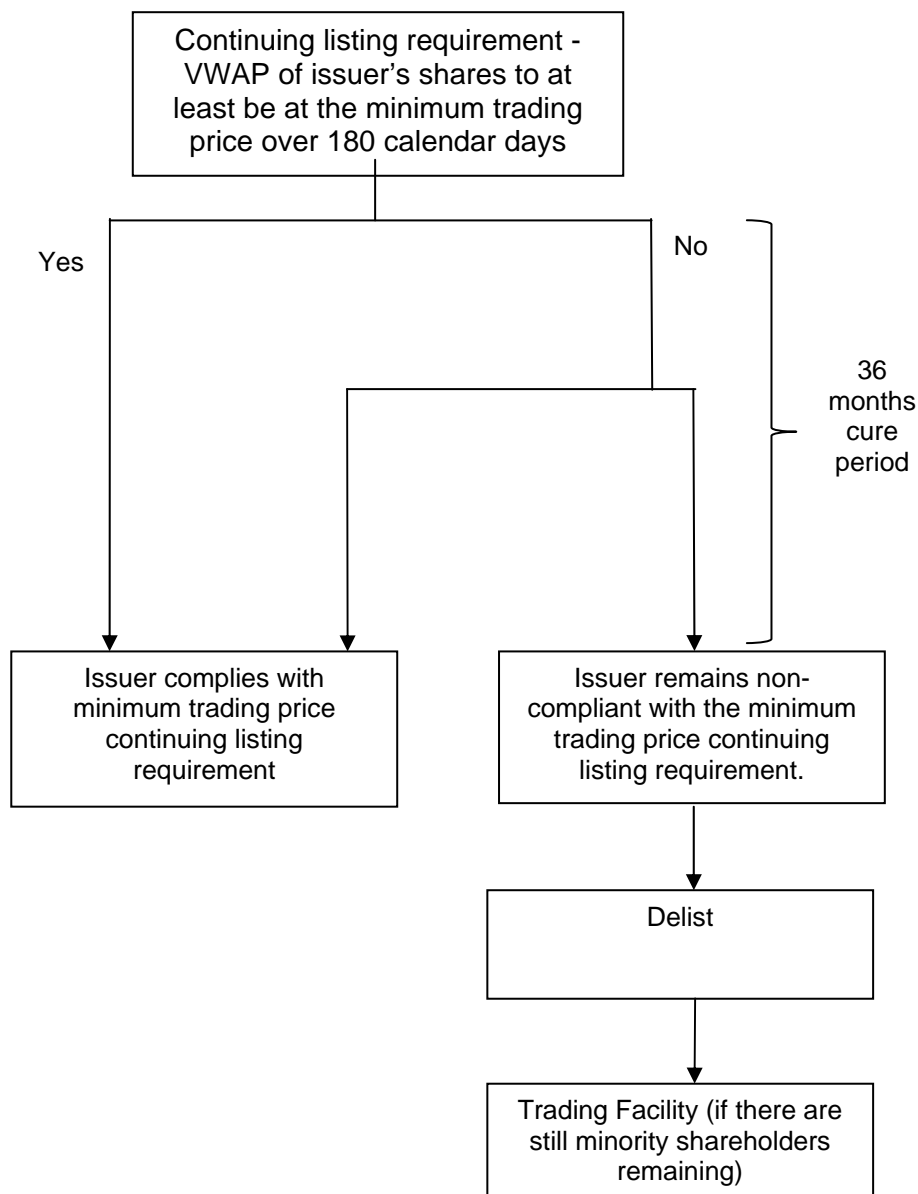
2.11 An issuer may also seek to list on Catalist, if it is able to satisfy Catalist listing requirements and appoint a full sponsor for the listing.

2.12 Another important consideration is that shareholders would still be able to liquidate their investments if an issuer is unable to comply with the minimum trading price requirement at the end of the specified cure period and is delisted from the Mainboard. Shareholders should be protected through the availability of an Exit Offer and Trading Facility.

2.13 An appropriate transition period of at least 12 months will be provided, if the proposal of minimum trading price is implemented, to give issuers and investors sufficient time to analyse the implications of the measure on them and to take appropriate action.



2.14 The diagram below gives an illustration of the outcomes that could take place based on the model described above:



**Question 1: MAS and SGX seek views on:**

- (i) the proposed concept of a minimum trading price as a continuing listing requirement for issuers listed on the Mainboard;**
- (ii) the appropriate threshold for the minimum trading price; and**
- (iii) the possible model for the introduction of the minimum trading price, including:**
  - (a) whether a cure period of 36 months is sufficient to allow affected issuers to take remedial actions; and**
  - (b) the proposed introduction of an alternative facility for the trading of delisted shares.**

### 3 COLLATERAL REQUIREMENTS FOR SECURITIES TRADING

3.1 Based on statistics from October 2012 to October 2013, about 31% of total trading value on SGX is due to contra trading. The practice of contra trading has attracted various comments from market participants. Some market participants have called for the removal of contra trading in Singapore, which in their view, is directly linked to excessive speculative activity by investors. Other participants expressed the contrary view that contra trading facilitates efficiency through net settlement of outstanding amounts. It also contributes to the liquidity of the market.

3.2 Contra trading as commonly understood by market participants refers to the trading practice by securities intermediaries in Singapore comprising three main features:

- (a) customers do not have to put up any collateral for their trades;
- (b) a buy transaction on trade day T is offset by a sale transaction of the same security within the settlement cycle of T+3, or vice versa; and
- (c) the offsetting trades are settled on a net basis.

3.3 We have considered the various views expressed against and in support of contra trading as well as the credit risk management practices currently in place. Trading on unsecured credit can introduce systemic risk to the securities market. To address the credit risk exposure as a clearing house, CDP took steps in January 2013 to implement securities margining<sup>7</sup> on its securities clearing members. To further enhance the robustness and resilience of the securities markets, SGX intends to shorten the settlement cycle from T+3 to T+2 days by 2016. This brings CDP in line with developments in other major financial markets<sup>8</sup>, further reduces the credit risk exposures to the settlement system and improves capital efficiency<sup>9</sup>. The

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<sup>7</sup> Securities margining requires each clearing member to deposit collateral with CDP based on the level of exposure contributed by each member's portfolio of outstanding positions.

<sup>8</sup> The US has explored a shortening of the securities settlement cycle to T+2 while Europe will be required to shorten the securities settlement cycle to T+2, with effect from 2015. Hong Kong and Germany are already on the T+2 settlement cycle.

<sup>9</sup> This is also consistent with the recommendation to evaluate the merits of a shortened settlement cycle, arising from the recent IMF FSAP. SGX will be issuing a public consultation paper on the implementation details at a later stage.

shortening of the securities settlement cycle to T+2 days will also reduce the period in which credit can be extended to customers by intermediaries.

3.4 In turn, the securities intermediaries manage their credit risks in several ways. These include:

- (a) setting trading limits on their customers' accounts, based on credit assessment of their customers;
- (b) for customers that are serviced by remisiers, requiring from remisiers a minimum amount of collateral<sup>10</sup> with the intermediary for their customers' trades. In the event customers default on their losses, the intermediary will call on the remisiers' collateral to recover any losses; and
- (c) where necessary, requiring customers to post collateral for their trades as a means of limiting their trading exposure.

3.5 While securities intermediaries have managed their risk exposures adequately and the financial position of the intermediaries have remained sound, we are of the view that appropriate enhancements to the existing credit risk management practices can be made. For instance, remisiers are currently fully liable for the losses incurred by their customers. The financial impact on remisiers can be substantial in the event their customers default. Some market participants have highlighted that this may not be fair or appropriate.

3.6 From a financial prudence and investor protection standpoint, it is important that market practices encourage discipline and considered investment choices by investors, while reinforcing the robustness and sustainability of our securities market. The provision of unsecured credit to customers with remisiers being liable to intermediaries for customer losses is an area of risk where further mitigating measures may be needed.

### **Collateral Requirements on Investors**

3.7 To reduce the risk posed to remisiers and customers, and the reliance by intermediaries on remisiers to bear the credit risks of investors, we consider having a minimum level of collateral requirement for securities trading to be posted by customers as a sound and appropriate measure. Collateral posted by customers can serve to cover or mitigate the risk of

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<sup>10</sup> Under SGX-ST Rule 7.6.1, a remisier is required to place a minimum sum of \$30,000 as collateral with the securities trading member.

losses incurred after force-selling or buying in, should customers fail to settle their trades. Overall, this will contribute to a more robust, resilient and sustainable infrastructure, which is beneficial for the long term development of our securities market.

3.8 We therefore propose to require securities intermediaries (including banks) authorised in Singapore to deal in securities to impose minimum collateral on their customers for trading in both SGX-listed and foreign listed securities. Specifically, we propose that:

- (a) intermediaries collect collateral directly from each customer based on the customer's open position, appropriate to the volatility of the securities traded and the credit profile of the customer, subject to a minimum collateral of 5% of the customer's open position;
- (b) the collateral be collected from customers no later than the end of trade day (T); and
- (c) the collateral be in the form of cash, marketable securities<sup>11</sup> or a guarantee from a bank operating in Singapore.

3.9 We consider it likely that intermediaries will in practice require customers to provide a minimum amount of collateral prior to granting an appropriate trading limit.

3.10 There are already existing collateral requirements for trading in other financial instruments such as futures contracts and margined securities and derivatives (e.g. contracts-for-differences or "CFDs" and leveraged foreign exchange). The proposal to impose collateral for securities trading will plug the gap between the current practice of uncollateralised trading in the securities market and these financial instruments. Collateralised trading for listed securities is also widely practised in other jurisdictions. Taking into account current collateral levels already being set in our regulations, we consider a 5% requirement as a baseline to be appropriate. Securities intermediaries can require more collateral from their customers if they deem it necessary. Where warranted, MAS may also set higher collateral requirements on an intermediary, if it has not put in place adequate risk management processes to manage the exposure to its customers' trading activities.

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<sup>11</sup> As set out in the Notice on Risk Based Capital Adequacy Requirements for Holders of Capital Markets Services Licences [SFA 04-N13] which intermediaries can use to reduce counterparty exposure.

## Excluded Investors and Transactions

3.11 We propose to exempt institutional investors<sup>12</sup> (“IIs”) from the collateral requirements. IIs and their intermediaries have internal risk management frameworks and safeguards, which are appropriately calibrated for their specific exposures and investment activities. Many IIs settle their trades via a simultaneous payment and delivery of securities (“delivery versus payment” or “DVP”). Under a DVP system, the custodian / settlement banks, play a critical role in meeting the payment and delivery obligations. This reduces the settlement risks posed to intermediaries. In view of these practices, a separate collateral requirement is not required for IIs.

3.12 In addition, many IIs fulfil important market making and liquidity provision functions in the securities market. The benefits they bring in terms of price discovery and provision of liquidity<sup>13</sup> may be impacted by the imposition of collateral requirement for their trades in fulfilling these roles. This would not be beneficial to the efficient and proper functioning of the market and wider financial system.

## Enhanced Safeguards for Customers’ Assets

3.13 With the proposed collateralised trading, intermediaries will consequently hold more customers’ assets from the collateral posted by customers. There are existing segregation and trust account safeguards in place under the Securities and Futures Act (“SFA”) which separates the holding of customers’ assets from the intermediaries’ own assets. Nonetheless, we propose to enhance the current regime to provide additional protection of customers’ assets held by the intermediaries.

3.14 Subject to the customer’s prior consent, intermediaries are currently allowed to deposit customer assets which are denominated in a foreign currency, in a trust account maintained with a custodian outside Singapore that is authorised to act as a custodian in the country where the account is maintained. To enhance the protection of customers’ assets, and to facilitate a quick recovery of assets in the event of insolvency of an intermediary, in

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<sup>12</sup> These will include institutional investors defined under section 4 of the SFA, financial services institutions that are authorised, licensed or regulated in Singapore or a foreign jurisdiction, central governments and governmental agencies of foreign states, supranational governmental organisations, sovereign wealth funds and designated market makers approved by the SGX.

<sup>13</sup> For a market to function properly and efficiently, market makers need to take positions in securities. For example, if a liquidity imbalance in the market drives the market price away from its fair value, the market maker needs to buy or sell to right the market.

respect of cash collateral that may be deposited by customers as collateral for securities trading, we propose to require securities intermediaries to hold such collateral in trust accounts with licensed banks in Singapore at all times.

3.15 The proposal will not apply in respect of foreign securities pledged by customers as collateral with securities intermediaries. This is in consideration of the fact that foreign securities are generally required to be custodied in the relevant jurisdiction in accounts maintained by the Singapore intermediary with the foreign central depository or authorised custodian. In this regard, existing segregation safeguards required under the SFA will continue to apply.

**Question 2: MAS and SGX seek views on:**

- (i) the proposal for securities intermediaries (including banks) authorised to deal in securities under the SFA to impose collateral requirements for securities trading based on a minimum collateral requirement of 5% of customers' open positions;**
- (ii) the proposal for the collateral to be collected from customers no later than the end of trade day (T);**
- (iii) the proposal for the collateral be in the form of cash, marketable securities or a guarantee from a bank operating in Singapore;**
- (iv) whether any other types of investors shall be excluded from the collateral requirements apart from institutional investors; and**
- (v) the proposed enhancement to the trust account requirements i.e. for securities intermediaries to maintain customer cash collateral in trust accounts with licensed banks in Singapore.**



## 4 SHORT POSITION REPORTING REQUIREMENTS

4.1 Short selling<sup>14</sup> enhances the price discovery process by allowing market participants who hold negative views on a company's share price (but do not own its shares) to express their views by selling the company's shares. Without the ability to short-sell, securities prices could be systematically biased upwards, as only positive or neutral views will be incorporated.

4.2 The important role that short selling plays in the market is recognised by IOSCO, the international standard-setting body for the securities markets, in its 2009 report on the Regulation of Short Selling<sup>15</sup>. The report also sets out principles for the regulation of short selling, to provide a consistent international regulatory approach towards short selling. The objectives of the principles are focused on enforcing settlement discipline and providing transparency of short selling. Specifically, IOSCO has identified two main classes of disclosure regimes for short selling: (i) the position reporting regime; and (ii) the marking regime.

4.3 Under a short position reporting regime, short position holders must report their net short positions once it has crossed a certain threshold. Under a marking regime, each short sale order must be marked as such before it can be traded. We note that most jurisdictions have opted for a position reporting regime and in some cases, have implemented both short position reporting and marking of short sell orders<sup>16</sup>.

4.4 Singapore's policy stance on short selling recognises the importance of short selling in maintaining market discipline. Hence, we have not imposed legislative restrictions on short selling. Instead, we have mitigated potential disruptive effect through other means<sup>17</sup>. For example, to

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<sup>14</sup> Short selling is the sale of securities that one does not own at the time of sale. Short selling may either be covered or uncovered. Covered short sellers have, at the time of sale, made arrangements to deliver their securities for settlement. Conversely, uncovered short sellers have not made such arrangements at the time of sale, although they may subsequently obtain securities for delivery.

<sup>15</sup> IOSCO has acknowledged, in its report on the Regulation of Short Selling, that short selling plays an important role in the market for a variety of reasons, such as providing more efficient price discovery, mitigating market bubbles, increasing market liquidity and facilitating risk management activities.

<sup>16</sup> Jurisdictions which have implemented both position reporting and marking include Australia, Hong Kong and Japan.

<sup>17</sup> The risk of settlement failure arising from naked short selling is mitigated by CDP's buying-in mechanism. CDP purchases the securities on behalf of sellers who not possess

improve transparency in short selling activity, SGX introduced a marking regime in March 2013, where participants are required to mark short sell orders before submitting them to the exchange.

4.5 We propose to complement the marking regime with a short position reporting regime to further improve transparency. Under a short position reporting regime, net short positions for all securities listed on SGX Mainboard and Catalist which require delivery of underlying securities to be reported. Participants would need to include derivatives which could require delivery of an underlying security (e.g. exchange-listed options).

4.6 Taking into consideration international practices<sup>18</sup>, we propose two short position reporting options as follows:

- (a) Aggregate position reporting: Investors with net short positions that are the lower of 0.05% or S\$100,000 of issued shares of a listed entity would be required to report weekly. The aggregated short positions would be published on a weekly basis without revealing investor identity;
- (b) Public disclosure of short positions: Short position holders would be required to report their net short positions by T+2 days, if their net short position exceeds 0.5% of issued shares, and for every subsequent change in position of 0.1% or more. The identity of short position holders and their net short positions would be published on an ongoing basis.

4.7 There are pros and cons to each of the two short position reporting options. Information on aggregate short positions provides insight to the overall sentiment in a company's securities and allows investors to make more informed trading decisions. However, the low reporting threshold – necessary to ensure accuracy of aggregated figures – may impose substantial regulatory burden on market participants, including individual retail investors.

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securities for delivery on settlement day. The seller who failed to deliver is charged the cost of the purchase and an additional penalty, which is significant.

<sup>18</sup> Australia and Hong Kong have adopted aggregate position reporting, where short positions that exceed 0.01% and 0.02% of issued shares respectively have to be reported and aggregated for publication. The EU and Japan have adopted a two tiered disclosure regime – private disclosure is made to the regulator for all short positions that exceed 0.2% of issued shares, while positions that exceeding 0.5% will be disclosed publicly.

4.8 On the other hand, public disclosure of short positions allows participants to gain early notice of substantial build-ups of short positions and their potential unwinding. The higher reporting threshold limits the regulatory burden to only substantial short position holders, who are likely to be institutional investors. However, market participants could be discouraged from establishing short positions as disclosure of their identity could arguably lead to them being squeezed into covering their positions.

**Question 3: MAS and SGX seek views on:**

- (i) the proposal to introduce short positions reporting to complement the current short-selling marking regime; and**
- (ii) the effectiveness and cons of the two proposed reporting options:**
  - (a) Aggregate position reporting: Investors with net short positions that are the lower of 0.05% or S\$100,000 of issued shares of a listed entity would be required to report weekly. The aggregated short positions would be published on a weekly basis without revealing investor identity;**
  - (b) Public disclosure of short positions: Short position holders would be required to report their net short positions publicly by T+2 days, if their net short position exceeds 0.5% of issued shares, and for every subsequent change in position of 0.1% or more. The identity of short position holders and their net short positions would be published on an ongoing basis.**

## 5 TRANSPARENCY OF TRADING RESTRICTIONS IMPOSED BY SECURITIES INTERMEDIARIES

5.1 As part of its risk management, a securities intermediary may take steps to manage its exposure to its customers' trading activities in a particular security. This may be due to the intermediary managing concentration risks by limiting additional exposure to the security, credit risk arising from a particular customer, or extreme price movements in the security. For example, the intermediary may limit its customers' exposure to a security by requiring them to fully pay for their purchases before their orders are accepted. The upfront payment protects the intermediary, in the event large trading losses are incurred by its customers.

5.2 Currently, intermediaries manage trading restrictions in different ways, due to their varying risk appetite and customer base. Each intermediary may have a different list of securities placed on trading restrictions, as they may have different concentration risk exposure in a particular security or credit exposure to their customers. This could also arise due to intermediaries taking different views on the trading behaviour of each security. As a result, some intermediaries may impose trading restrictions on all customers, while others may set limits on specific customers with large outstanding positions.

5.3 The manner in which intermediaries disseminate information on trading restrictions to customers also differs across intermediaries. Some intermediaries make announcements on their public website, or through their trading portal which are accessible only by their customers, while other intermediaries may only inform affected customers through their trading representatives or remisiers. This has raised concerns regarding information asymmetry in the dissemination of trading restrictions imposed by intermediaries.

### **Proposal to disseminate information on trading restrictions on the SGX website**

5.4 To ensure fair and transparent dissemination of information on trading restrictions to investors, we propose to require trading restrictions imposed by securities intermediaries (including banks) on all customers for any security listed on SGX, to be announced through the SGX website. All announcements should generally be made outside market trading hours. This proposal, however, is not intended to apply to cases where the intermediary

may want to impose specific control measures to manage its exposure to certain customers only.

**Question 4: MAS and SGX seek views on:**

- (i) the proposal to require securities intermediaries and bank intermediaries authorised to deal in securities under the SFA to announce trading restrictions imposed for SGX-listed securities on all their customers through the SGX website; and**
- (ii) the circumstances under which the proposed dissemination of trading restrictions on the SGX website should not apply.**

## 6 REINFORCING THE SGX LISTINGS AND ENFORCEMENT FRAMEWORK

6.1 In its role as the listing authority, SGX reviews and approves applications for listing. SGX also regulates issuers after their admission to the securities market. There is a range of sanctions available to SGX in relation to contraventions of the listing rules by issuers, directors, key executive officers and issue managers.

6.2 There have been comments that SGX's dual role as both a commercial for-profit entity and a regulator of issuers, may give rise to actual or perceived conflicts of interests, as well as questions concerning the effectiveness of enforcement actions taken in relation to incidents of corporate malfeasance.

6.3 Over the past year, MAS and SGX have studied the regulatory models of international exchanges. Most jurisdictions have adopted self-regulation by stock exchanges, with varying degrees of regulatory responsibilities. Self-regulation has the benefit of being more responsive and efficient than regulation by statutory regulators, given the exchanges' proximity to the industry. In particular, given that exchanges possess more intimate market knowledge and industry process expertise, they are better able to develop rules and form decisions that are more calibrated to address the issues at hand. In addition, as exchanges are more attuned to industry developments, they are able to update regulatory frameworks in a more timely manner and respond faster to changing business environments.

6.4 While SGX performs the role of a self-regulatory organisation, there are statutory and internal safeguards to mitigate the potential conflicts between the exchanges' regulatory role and their commercial objectives. For example, in terms of statutory safeguards, the performance of SGX's regulatory functions is supervised by MAS. In addition, SGX has statutory obligations to maintain a fair, orderly and transparent market. Internally, SGX has measures in place to ensure that potential areas of conflicts are adequately managed. This system of safeguards is centred on the Regulatory Conflicts Committee<sup>19</sup> ("RCC"), a board committee comprising independent directors. Any situation in which a potential conflict is identified, including

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<sup>19</sup> The RCC has certain functions and reporting responsibilities under the Securities and Futures Regulations 2005 (Corporate Governance of Approved Exchanges, Designated Clearing Houses and Approved Holding Companies).

listing applications which may raise regulatory conflicts or expose SGX to reputational risks, are referred to the RCC for its decision.

6.5 While the current safeguards have served to manage potential conflicts of interest, SGX and MAS propose to further strengthen SGX's current listings and enforcement framework. This will be done through the introduction of additional checks and balances, and the expansion of existing enforcement powers for breaches of the listing rules.

### **Establishment of the Listings Advisory Committee**

6.6 To address concerns about SGX's perceived and actual conflicts of interests in relation to its role as the listing authority, we propose to establish an independent Listings Advisory Committee ("LAC") to consider listing policy issues and listing applications that meet certain referral criteria. This supplements SGX's existing internal committees in the listing review process. The establishment of the LAC will also introduce practitioner experience and know-how to the decision-making process in relation to listing matters.

6.7 The LAC will comprise 15 members, which will consist of representatives selected from a range of backgrounds, including but not limited to investment banking, corporate advisory, accounting and legal professionals, and representatives from the investment community. Members will be appointed by the SGX Board in consultation with MAS. The LAC will be staffed by a secretariat which will act under the direction of the LAC Chairman or Vice-Chairman (in the absence of the Chairman).

6.8 Listing applications will continue to be reviewed and approved by SGX. Applications that do not meet the admission criteria will be rejected and will not be referred to the LAC. However, cases which meet the criteria for referral to the LAC ("Referral Criteria") would be submitted to the LAC for review and its advice. We propose that the Referral Criteria encompass cases that:

- (a) Present novel or unprecedented issues<sup>20</sup>;
- (b) Require specialised expertise<sup>21</sup>; or
- (c) Involve matters of public interest<sup>22</sup>.

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<sup>20</sup> Listing applications with novel or unprecedented issues may involve applicants from new jurisdictions or sectors and proposed listings with unusual features or structures.

<sup>21</sup> Listing applications that require specialised expertise may, for example, involve applicants operating in a highly regulated industry on which various restrictions are imposed.

6.9 If SGX decides to depart from the LAC's advice on any particular matter, it will refer the case to the RCC. The RCC may in turn refer the matter to the SGX Board, presenting the LAC's advice and the SGX's reasons for its recommendation. The RCC or the SGX Board will remain the final decision-maker on listing matters. SGX remains accountable for its listing decisions.

6.10 SGX will also keep the LAC informed of the listing applications that have not been referred to it by SGX and the LAC may choose to review these applications if there are issues that it considers appropriate for review and comments. SGX will also refer other matters to the LAC for advice, such as significant regulatory policy issues in relation to listing matters.

6.11 For greater transparency and documentation of the matters referred to the LAC, periodic reports (e.g. half-yearly and annual reports) will be published on the SGX website in respect of matters referred to the LAC and the work done by LAC.

### **Establishment of the Listings Disciplinary Committee**

6.12 To improve transparency of SGX's disciplinary process and ensure fair and independent administration of sanctions, we propose to establish an independent Listings Disciplinary Committee ("LDC"). The LDC will hear formal charges brought by SGX against parties who are alleged to have breached listing rules and be empowered to impose regulatory sanctions for breaches of the listing rules. These parties will include issuers, directors, key executive officers and issue managers.

6.13 The establishment of the LDC will result in the separation of the investigatory function, which continues to be led or directed by SGX, from the adjudicatory function, ensuring impartiality and due process.

6.14 The sanctions available to the LDC will encompass all those available to SGX, and will also include the powers to issue public reprimands, impose fines against issuers and deny them the use of market facilities. Details of the proposed powers for the LDC are elaborated in paragraph 6.23.

6.15 The LDC will adopt a structure that is similar to the existing independent disciplinary committees related to the other SGX rulebooks concerned with SGX members, sponsors and other market participants. In

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<sup>22</sup> This would include matters that might expose SGX to reputational risks or that are high profile in nature.



this regard, the LDC will be constituted by the Chairman or Vice Chairman of the existing SGX Disciplinary Committee by drawing five members from the SGX Disciplinary Committee for each case. Additional members with listings-related experience may be appointed to SGX Disciplinary Committee to augment its expertise in this area.

6.16 All decisions of the LDC will be published on the SGX website.

### **Establishment of the Listings Appeals Committee**

6.17 We also propose to establish an independent Listings Appeals Committee (“LApC”) to provide an avenue of appeal for (i) parties against whom the LDC has imposed sanctions; and (ii) issuers against certain regulatory decisions by SGX. This will be consistent with the objective of ensuring due process and transparency of the disciplinary process, and providing parties with an independent avenue of appeal.

6.18 The LApC will have all the powers of the LDC and may overturn, vary or uphold the decisions or penalties imposed by the LDC. The LApC will also hear appeals against certain decisions made by SGX relating to continuing listing obligations. Specifically, the LApC will consider appeals from:

- (a) Parties against whom LDC’s decisions are made;
- (b) Issuers against SGX’s decisions to delist them; and
- (c) Issuers against SGX’s decisions in respect of certain listing rules (e.g. rejection of an application to exit the watch-list, and rejection of a trading resumption proposal).

6.19 The Chairman of the LApC has the power to refuse an appeal against a decision of the LDC if he is of the view that (i) the matter has been sufficiently considered by the LDC; (ii) there has been no procedural unfairness in arriving at the LDC’s decisions, or (iii) there is no relevant new evidence which was not presented to the LDC. The decisions of the LApC shall be final and binding.

6.20 As with the LDC, it is envisaged that the LApC will adopt a structure similar to the existing independent appeals committee related to the other SGX rulebooks. The LApC will be constituted by the Chairman or Vice Chairman of the existing SGX Appeals Committee by drawing five members from the SGX Appeals Committee for each case. Additional members with

listings-related experience may be appointed to SGX Appeals Committee to augment its expertise in this area.

6.21 All decisions of the LApC will be published on the SGX website.

## **Strengthening the Listings Enforcement Framework**

6.22 Presently, the sanctions available to SGX<sup>23</sup> are confined to those provided for in the listing rules, which are brought to bear through a contractual relationship with issuers. To enhance SGX's ability to effectively enforce the rules, we propose to introduce a wider range of sanctions that will be available to the LDC, LApC, and SGX.

### Provide powers for the LDC and LApC

6.23 In conjunction with the proposed establishment of the LDC and LApC, we propose that these new committees be given SGX's existing enforcement powers for breaches of listing rules<sup>24</sup>, and also new powers to:

- (a) Impose a fine not exceeding S\$250,000 on issuers for each breach of the listing rules (subject to a cap of S\$1 million for any series of breaches resulting from the same hearing or conduct); and
- (b) Impose restrictions or conditions on activities that the issuers may undertake, including the denial of market facilities for a specified period (for example, issuers may be restricted from conducting secondary fund-raising).

### *Imposition of Fines*

6.24 The ability to impose fines is an important regulatory tool that can be calibrated for use in a wide range of situations, such as where public reprimands are not appropriate or sufficient, or where suspensions or delistings would be considered too harsh. In jurisdictions where front-line regulators have fining powers (e.g. New Zealand and Malaysia), we observe that these powers have been applied in the following circumstances:

- (a) Failure to make an immediate announcement of material information (e.g. cessation of significant operations, default in payment of various credit facilities);

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<sup>23</sup> SGX's existing enforcement powers include issuing a warning, private/public reprimand, requiring remedial action for non-compliance, suspension of trading, and delisting of issuers.

<sup>24</sup> SGX's existing enforcement power to issue a public reprimand will be one that may only be exercised by the LDC and LApC.

- (b) Failure to comply with related party transaction rules (e.g. ensuring prior shareholder approval); and
- (c) Delay in the issue of financial statements, especially annual reports (including but not limited not keeping the market informed during such delays).

6.25 In this regard, we note that fines of up to NZ\$500,000 and MYR 1 million may be imposed by New Zealand Stock Exchange and Bursa Malaysia respectively for serious breaches of listing rules. Currently, the upper limit that may be imposed by the SGX Disciplinary Committee is S\$250,000. In line with the quantum of fines that is provided for in other SGX rulebooks and taking into consideration the practices in other jurisdictions, we propose to allow a fine not exceeding S\$250,000 that may be imposed by the LDC and LApC for each breach by an issuer of any of the listing rules. The fine shall not exceed S\$1 million for any series of breaches presented at the same hearing or conduct.

6.26 Presently, all fines collected by SGX (through its existing fining powers under other SGX rulebooks) are not taken into SGX's revenue. This will also be the case for fines imposed by the LDC and LApC. Part of any fines collected may be utilised to fund the running of the LAC, LDC and LApC<sup>25</sup>.

*Denial of the facilities of the market ("Cold Shoulder" rule)*

6.27 We propose that a "Denial of the facilities of the market" order may be issued by the LDC and LApC under which an issuer is denied access to the facilities of the market for a specified period if the issuer is found to have failed to discharge its obligations under the listing rules. For example, SGX could suspend an issuer's additional listing application relating to the issuance of new shares.

Widen SGX's range of existing disciplinary actions

*Offer of composition for breaches of listing rules*

6.28 We propose that SGX be equipped with the discretion to make an offer of composition<sup>26</sup> in relation to breaches of the listing rules that (i) do not constitute breaches of the SFA, and (ii) are relatively minor, and are

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<sup>25</sup> This is also observed in New Zealand, where the NZ Markets Disciplinary Tribunal Rules provide that fines collected may be used to fund the costs and expenses of the NZ Markets Disciplinary Tribunal and the Appeal Panel.

<sup>26</sup> Currently, SGX's Securities Trading and Futures Trading Rules provide for composition of breaches.

administrative or technical in nature. The ability to offer composition fines for breaches of the listing rules will provide an alternative means of allowing an issuer to resolve a rule breach without going through the process of LDC hearings. This proposal is intended to facilitate efficient resolution of breaches which are administrative or technical in nature, but where SGX is of the view that the issuance of a private reminder or warning is not sufficient.

6.29 The amount of composition that SGX may offer shall not exceed S\$10,000 for each breach. Upon acceptance of the offer of composition, the issuer shall be deemed to have committed the breach and to have waived its rights for an appeal against the regulatory action. No further proceedings shall be taken against the issuer in respect of the breach. However, disciplinary proceedings may be commenced against the relevant issuer through the LDC if the stipulated period for the offer of composition lapses. Composition fines received will be handled in the same manner as those levied by the LDC as described in paragraph 6.26.

*Widen SGX's power to take remedial action for non-compliance*

6.30 We also propose to widen SGX's power to require remedial action for non-compliance by issuers, to include, but not limited to requiring a compliance programme to be undertaken, requiring the appointment of an independent adviser to minority shareholders, requiring a mandatory education or training programme to be undertaken by directors or key executive officers of an issuer, and requiring an independent review of internal controls and processes.

Separate consultation on amendments to SGX's listing rules

6.31 As the proposals on strengthening SGX's enforcement powers and to establish the LDC and LApC will require a number of amendments to be made to the listing rules, SGX will conduct a separate consultation on the rule amendments at a later stage, taking into account the feedback on the policy consultation.

**Question 5: MAS and SGX seek views on:**

- (i) the proposals to establish the Listings Advisory Committee, Listings Disciplinary Committee and Listings Appeals Committees; and**
- (ii) the proposed expansion of SGX's range of sanctions for listing rule breaches, to:**
  - (a) include powers for the LDC and LApC to issue public reprimands, impose fines on issuers, and impose conditions/restrictions on activities that issuers may undertake; and**
  - (b) widen SGX's range of disciplinary actions to include offers of compositions for minor and technical listing rule breaches, and widening the range of remedial actions for non-compliance.**



Monetary Authority of Singapore

