
CAPITAL MARKETS ENFORCEMENT

Monetary Authority of Singapore

JANUARY 2016



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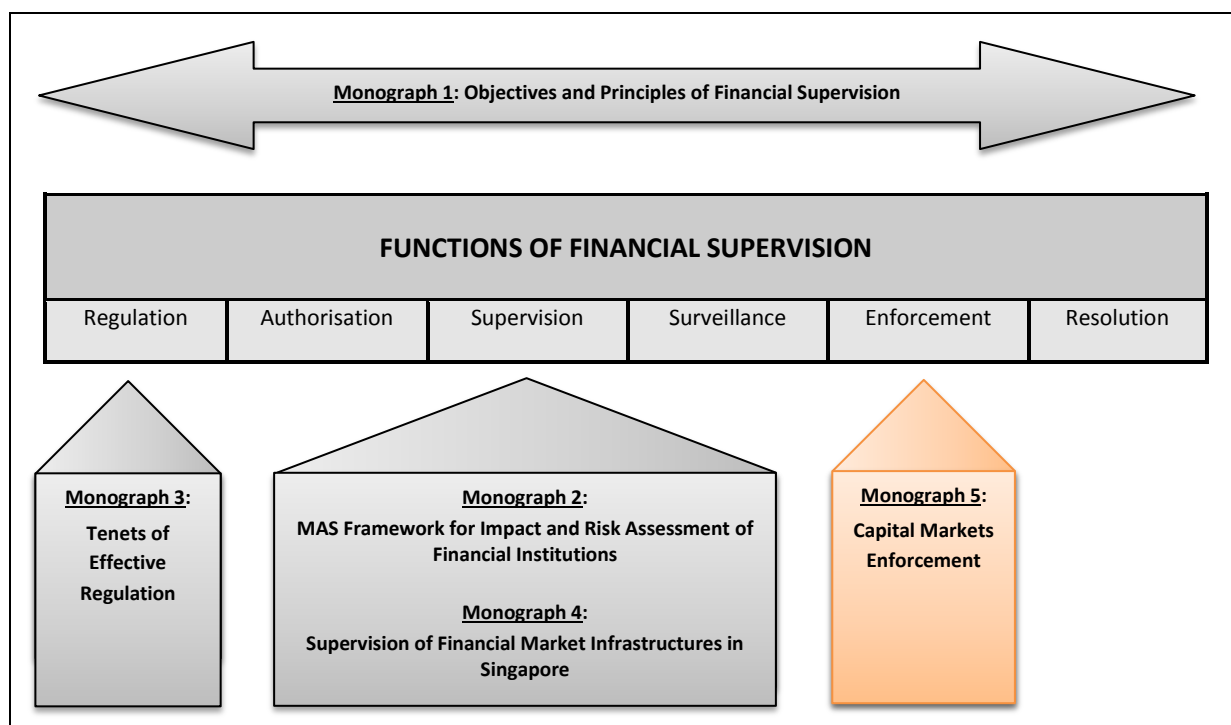
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MONETARY AUTHORITY OF SINGAPORE

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1 Introduction

- 1.1 One of the principal objectives of the Monetary Authority of Singapore (“MAS”) under the Monetary Authority of Singapore Act, Chapter 186 is to foster a sound and reputable financial centre. As the integrated regulator of Singapore’s financial sector, MAS supervises financial institutions and their representatives and regulated activities in Singapore’s financial sector, including Singapore’s capital markets. MAS seeks to establish sound regulation and supervision of a high standard that allows well-managed risk-taking and innovation, and which emphasises the stable and sustainable development of the financial sector. Specifically, in supervising the capital markets, MAS seeks to promote fair, efficient and transparent markets within which discipline, enterprise and innovation can thrive in order to support trade and economic growth.
- 1.2 MAS has previously issued a number of focused monographs setting out the detailed approaches underpinning specific functions that come under the broad rubric of financial supervision. In April 2004, a monograph titled “Objectives and Principles of Financial Supervision in Singapore” was issued. This sets out the objectives, functions and principles of MAS’ financial supervision mandate. The second was the “MAS Framework for Impact and Risk Assessment of Financial Institutions” which was issued in April 2007 and discusses the methodology MAS uses in assessing the risk and impact of individual financial institutions through offsite and onsite supervision. The third monograph titled “Tenets of Effective Regulation” was issued in June 2010 and addresses the regulation function in financial supervision. In January 2013, a fourth monograph titled “Supervision of Financial Market Infrastructures in Singapore” was issued and outlines MAS’ approach in supervising financial market infrastructures. This monograph, titled “Capital Markets Enforcement”, addresses the role of enforcement in the supervision of Singapore’s capital markets.

Exhibit 1: MAS Monographs on Financial Supervision

1.3 The overarching objective of MAS' enforcement function is to bring about enforcement outcomes that are effective, proportionate and fair. To that end, MAS' enforcement approach is informed by three principles of MAS' enforcement philosophy:¹

- a. early detection and rectification of breaches of laws;
- b. shaping business and capital markets conduct; and
- c. effective deterrence.

1.4 This monograph explains the aims of MAS' enforcement function, MAS' enforcement approach and how these three principles are applied in its enforcement work. It also describes how MAS works with other agencies in Singapore and foreign regulators to enforce the law against offenders who commit misconduct in the capital markets.

1.5 The monograph can be broadly divided into three parts. The first part of the monograph (Section 2) explains the importance of an effective capital markets enforcement regime. The second part of the monograph (Section 3) provides an overview of the role played by the three main players in capital markets

¹ See the IMF country report no. 13/344 on Singapore titled "Detailed Assessment of Implementation – IOSCO objectives and principles of securities regulation" dated December 2013 at pages 79-80.

enforcement, namely MAS, the Commercial Affairs Department (“CAD”) of the Singapore Police Force as well as the Approved Exchanges.² The third and final part of the monograph (Sections 4-8) relates to MAS’ enforcement approach which can be broadly divided into the following four segments:

- a. early detection and rectification of breaches of laws through risk-focused supervision;
- b. surveillance;
- c. investigations; and
- d. enforcement.

1.6 The four segments can be seen as different parts of the entire spectrum of MAS’ enforcement process. In respect of the first segment, MAS’ supervision of financial institutions facilitates the early detection of any breaches or potential breaches of laws involving these institutions. Where breaches are detected at an early stage, swift rectification measures can be taken before they escalate into more serious infringements.

1.7 The second segment relates to surveillance, through which MAS detects potential market misconduct offences, some of which may lead to further investigation. These two segments reflect a key principle underpinning MAS’ enforcement process, which is the early detection and rectification of breaches.

1.8 The third segment discusses aspects of MAS’ investigations into potential market misconduct offences, including the powers available to MAS and the confidential nature of investigations. MAS will spare no effort to investigate possible misconduct and take appropriate action against offenders.

1.9 The fourth segment discusses the enforcement actions available to MAS upon completion of investigations. MAS will not hesitate to take firm action against any contravention of market misconduct rules that could disrupt the smooth functioning of fair, orderly and transparent capital markets, or cause harm to other market participants. Through this process, MAS seeks to instil discipline and shape conduct in the capital markets.

² As of January 2016, the Approved Exchanges as defined in section 2 of the Securities and Futures Act (Cap 289) and approved under section 8(1) of the said Act are the Singapore Exchange Securities Trading Limited, the Singapore Exchange Derivatives Trading Limited and ICE Futures Singapore Pte Ltd.

- 1.10 The primary objective of enforcement actions is to achieve effective deterrence. Enforcement outcomes must be adequate to deter the offender from re-offending, and also deter others from engaging in similar misconduct. Effective deterrence is crucial because it can modify behaviour and reduce market misconduct to create an environment in which fair and efficient capital markets can thrive.

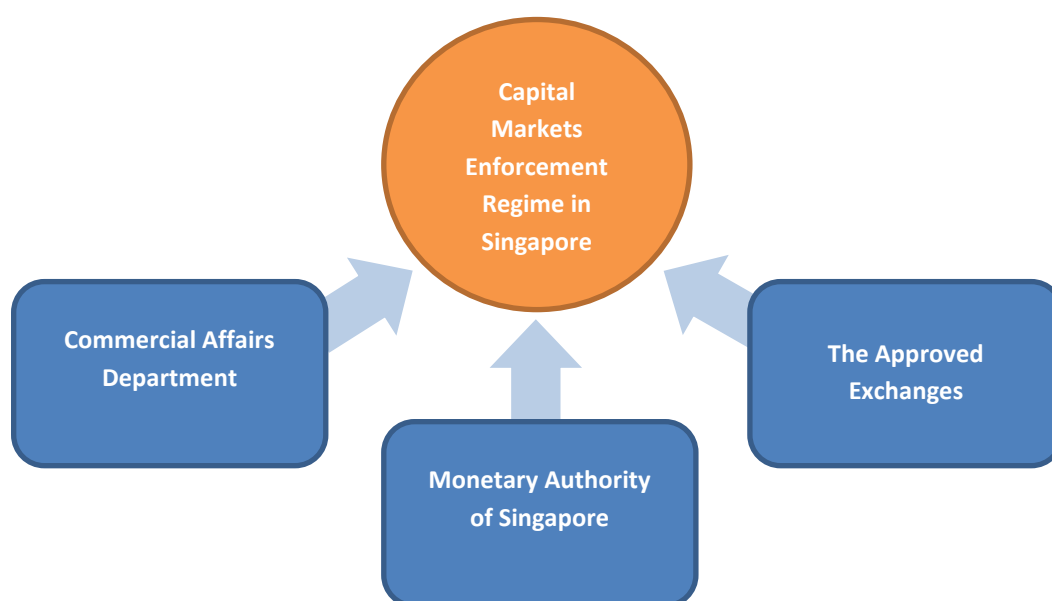
2 The Importance of an Effective Capital Markets Enforcement Regime

- 2.1 Capital markets regulation has two main elements: first, a sound legal framework, and second, an effective supervisory and enforcement regime.
- 2.2 Comprehensive laws and regulations form the foundation upon which an effective supervisory and capital markets enforcement regime is built. A clear and well-developed legal framework gives the regulator the necessary powers to detect, investigate and sanction unlawful conduct. It also fosters legal certainty, so that the financial sector and market participants, including the public, understand their rights, obligations and remedies.
- 2.3 Supervision and enforcement serve to uphold the legal framework. Supervision is closely linked to enforcement. Supervision can be considered an *ex ante* process that seeks to detect and minimise the impact of lapses in internal controls and processes as well as breaches of laws involving financial institutions at an early stage.
- 2.4 Enforcement, on the other hand, punishes breaches of laws and misconduct. It targets wrongdoers who attempt to exploit the markets or gain unfairly at the expense of their customers or other investors. Enforcement also shapes the behaviour of market participants by deterring others from engaging in similar misconduct in future. The ability of the regulator to effectively discharge its enforcement responsibilities and its track record of enforcement actions contribute to the credibility and effectiveness of the regulatory system.
- 2.5 Enforcement is a key pillar of MAS' regulatory mandate. MAS is committed to administering a capital markets enforcement regime that fosters high standards of professional conduct and delivers fair and robust enforcement outcomes to deter misconduct and preserve investor confidence.

3 Government Agencies and Other Organisations Responsible for Capital Markets Enforcement in Singapore

3.1 There is a three-pronged approach to capital markets enforcement in Singapore, as illustrated in the diagram below. MAS, CAD and the Approved Exchanges work closely together to ensure that any market misconduct is swiftly detected, thoroughly investigated and effectively dealt with.

Exhibit 2: Government Agencies and Other Organisations Responsible for Capital Markets Enforcement in Singapore



MAS

3.2 MAS is the integrated regulator and supervisor of the financial services sector. A key component of MAS' regulatory and supervisory mandate involves taking enforcement actions for breaches of laws under its purview.

3.3 In capital markets enforcement, MAS reviews suspected breaches of laws and regulations under the Securities and Futures Act, Chapter 289 ("SFA"), the Financial Advisers Act, Chapter 110 ("FAA"), the Insurance Act, Chapter 142 ("IA"), and the Trust Companies Act, Chapter 336 ("TCA"). MAS has the power to impose a number of administrative sanctions against financial institutions and representatives such as the suspension or revocation of licences or exemptions, the issuance of prohibition orders, reprimands and warnings, and the offering of

composition on non-custodial offences. Where criminal action is more appropriate for offences under these Acts, the cases are referred to CAD for investigation.

- 3.4 MAS is also empowered to take civil penalty action or conduct criminal investigations into market misconduct offences under Part XII of the SFA, including offences of insider trading, market manipulation, making false or misleading disclosures and a failure to provide continuous disclosure. The powers of investigation are exercised under the Criminal Procedure Code, Chapter 68 (“CPC”), and such investigations are conducted jointly with CAD. This may lead to criminal prosecution that is brought by the Attorney-General’s Chambers (“AGC”) in the name of the Public Prosecutor or civil penalty action brought in the name of MAS. More information on the joint investigations with CAD can be found in paragraphs 3.6 to 3.10 below.

CAD

- 3.5 CAD is the principal law enforcement agency for the criminal investigation of white-collar crime in Singapore. In particular, it investigates market misconduct offences committed under Part XII of the SFA jointly with MAS. CAD also investigates breaches of other securities laws and related regulations. These range from entities conducting regulated activities without a licence, to the public offering of investments without a prospectus. CAD exercises investigation powers under the CPC. Likewise, cases investigated by CAD may lead to prosecution that is brought by the AGC in the name of the Public Prosecutor.

MAS and CAD – Joint Investigations into Market Misconduct Offences under Part XII of the SFA

- 3.6 With effect from 17 March 2015, MAS and CAD embarked on a joint investigations arrangement (“**Joint Investigations**”) to optimise investigations into market misconduct offences committed under Part XII of the SFA.
- 3.7 Previously each agency would conduct its own investigations with MAS pursuing civil penalty actions and CAD pursuing criminal prosecutions. With Joint Investigations, MAS and CAD now jointly investigate all potential market misconduct offences committed under Part XII of the SFA from the outset. The decision on whether a case is subject to criminal prosecution or civil penalty action will be made when investigations have concluded.

- 3.8 When MAS or CAD detects or receives a complaint of suspected market misconduct, an assessment is made as to whether the matter warrants further investigations. If further investigations are warranted, a joint team comprising officers from both agencies is formed. Actions that may be taken at the conclusion of investigations include criminal prosecution, civil penalty action or other regulatory or administrative actions. Section 7 provides an elaboration of all the enforcement actions available to MAS after investigations are completed.
- 3.9 Joint Investigations enhance the enforcement process with both agencies jointly responsible for tackling misconduct in the capital markets. Under this arrangement, MAS officers are gazetted as Commercial Affairs Officers and vested with criminal investigation powers under the CPC. Such powers include the ability to search premises and seize items, as well as to order that financial institutions monitor client accounts.
- 3.10 Under the arrangement, MAS and CAD have consolidated their securities fraud investigative resources and expertise, drawing significant synergies from MAS' role as a financial regulator and CAD's financial crime investigation and intelligence capabilities. As an integrated financial regulator, MAS' insights in supervising the financial sector complement and support its investigative and enforcement functions. Conversely, CAD's investigative and enforcement functions help to inform regulatory and policy design. Joint investigations have allowed for greater coordination in the formulation of policies in the area of market misconduct.
- 3.11 For more information on the powers available to MAS under Joint Investigations, please refer to paragraphs 6.2 to 6.4 below.

The Approved Exchanges

- 3.12 Self-regulatory organisations ("**SROs**") are non-government organisations that carry out some regulatory functions. In many jurisdictions, SROs are an integral part of the enforcement process and often undertake the role of front-line supervisors of the market.³ The Approved Exchanges perform this SRO function for Singapore's capital markets.
- 3.13 As of January 2016, there are three Approved Exchanges in Singapore. They are the Singapore Exchange Securities Trading Limited ("**SGX-ST**"), the Singapore

³ The International Organisation of Securities Commission (IOSCO)'s Objectives and Principles of Securities Regulation, Principles 6 and 7, recognise that self-regulation may be a valuable complement to the regulator in achieving the objectives of securities regulation.

Exchange Derivatives Trading Limited (“**SGX-DT**”) and ICE Futures Singapore Pte Ltd (“**ICE**”). SGX-ST and SGX-DT will be referred to collectively as “**SGX**”.

- 3.14 As SROs, SGX and ICE are responsible for administering their respective rules, exercising supervision over their members, and ensuring the fair and orderly trading of their traded products. SGX is empowered to take disciplinary action or impose sanctions on exchange members or listed companies for breach of its trading or listing rules. Similarly, ICE is empowered to take disciplinary action or impose sanctions on exchange members for breach of its rules.
- 3.15 The proximity of the Approved Exchanges to their respective markets and their front-line interface with the industry enables them to respond quickly to situations which arise in a live market. MAS maintains supervisory oversight of the Approved Exchanges and is empowered to inspect and issue directions to the Approved Exchanges under the SFA.
- 3.16 The Approved Exchanges undertake frontline monitoring of trading activities in their respective markets and conduct preliminary assessment of possible misconduct. Suspicious cases are then referred to MAS for review.

4 Early Detection and Rectification of Breaches of Laws through Risk-Focused Supervision

4.1 MAS seeks early detection of control weaknesses in financial institutions and possible misconduct in these institutions and markets. This enables MAS to take prompt action, including disrupting misconduct or requiring rectification of breaches of laws before any lapses escalate into more serious infringements.

4.2 As mentioned in MAS' previous monograph on the "*Objectives and Principles of Financial Supervision in Singapore*"⁴, MAS' supervisory approach is one that is risk-focused, stakeholder-reliant, disclosure-based and supportive of enterprise. This similarly applies to conduct supervision. As part of MAS' risk-based supervisory approach, MAS evaluates the adequacy of a financial institution's internal controls to detect and rectify breaches. Based on this assessment, MAS develops a supervisory plan that is commensurate with the financial institution's risk profile and control effectiveness. The level of supervisory attention given by MAS may therefore vary between financial institutions.

4.3 MAS aims to detect potential conduct issues or problems early and take action before they result in serious breaches. For example, where inspections reveal weaknesses in a financial institution's controls and business practices, MAS will require it to implement measures to effectively address those weaknesses. Where issues are observed to be common across several institutions, MAS may send out industry-wide circulars, or engage industry members collectively on these common issues in order to enhance overall standards in the industry. This helps to minimise the risk of market misconduct arising from weaknesses in the internal controls and business practices of financial institutions.

⁴ MAS has previously published a monograph on "*Objectives and Principles of Financial Supervision in Singapore*", April 2004 (revised in April 2013).

5 Surveillance

5.1 Having multiple channels for gathering information can help in the early detection of misconduct in the capital markets. MAS relies on a broad surveillance network which includes the following:

- a. market surveillance of trading activities carried out by Approved Exchanges on a real time basis;
- b. suspicious transaction reports lodged by financial institutions with the Suspicious Transaction Reporting Office (“**STRO**”) that is located within CAD;
- c. misconduct reporting by financial institutions;
- d. established channels for the public to provide feedback or lodge complaints in relation to the financial industry;
- e. inspections on licensees and company visits by the MAS supervision departments;
- f. information from foreign securities regulators under the International Organisation of Securities Commissions (“**IOSCO**”) Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information (“**MMOU**”); and
- g. intelligence gathered from MAS’ interactions with market participants.

Market surveillance

5.2 Market surveillance refers to the monitoring of trading activity on the Approved Exchanges and the subsequent collection and analysis of transactional data. Market surveillance is vital to the detection of market abuse and manipulative practices which may affect the orderliness and integrity of the market.

5.3 *SGX’s front-line market surveillance* – SGX conducts front-line market surveillance for both securities and derivatives which are traded on the SGX-ST and SGX-DT. Using sophisticated electronic automated systems, SGX performs daily surveillance of trading activities in its markets on a real-time basis. The surveillance systems are designed with customised parameters and alerts which are triggered when unusual trading activity or trading irregularities occur. The electronic surveillance systems allows for an audit of the execution and trading of all orders and transactions on the organised markets. Where alerts are triggered, SGX’s dedicated surveillance analysts review the alerts and conduct post-trade analytics to evaluate and identify orders or transactions that may warrant further review and possible investigations.

- 5.4 SGX is a member of the Inter-market Surveillance Group (“**ISG**”), an international information-sharing cooperative subscribed to by other exchanges worldwide. This allows SGX to obtain information from its foreign counterparts for the purpose of detecting possible market abuse in cases with cross-border elements. SGX may also gather information from its members or listed entities.
- 5.5 SGX also has an enforcement function. Alerts which have been evaluated by surveillance analysts for further review are referred to the enforcement unit of SGX. SGX’s surveillance and enforcement functions work hand-in-hand in ensuring that trading irregularities are detected swiftly, investigated and appropriately dealt with. Any case that potentially contravenes Part XII of the SFA will be reported to MAS.
- 5.6 *ICE’s front-line market surveillance* – like SGX, ICE conducts front-line surveillance for its traded products by using sophisticated electronic automated systems to perform daily surveillance of trading activities in its markets on a real-time and post-trade basis. The surveillance systems are designed with customised parameters and alerts which are triggered when unusual trading activity or trading irregularities occur. Alerts which have been evaluated by surveillance analysts for further review are referred to the enforcement unit within ICE. For its front-line market surveillance operations, ICE leverages on the expertise of its offices in the United Kingdom and the USA.
- 5.7 *MAS’ role* – when MAS receives referrals from the Approved Exchanges on possible market misconduct cases, MAS will review the findings of the Approved Exchanges and determine if further investigations are warranted. For offences outside Part XII of the SFA, MAS may also refer the case to CAD for investigations if a criminal prosecution is warranted.
- 5.8 MAS exercises supervisory oversight of the Approved Exchanges’ surveillance and enforcement functions. MAS also conducts surveillance of trading activities in securities issued by SGX and the derivatives linked to such securities.⁵

Market intelligence

- 5.9 Besides market surveillance of trading activity on the Approved Exchanges, MAS relies on various sources of market intelligence to facilitate the detection of possible market misconduct.

⁵ This avoids any possible issues of conflict which may arise from SGX conducting surveillance on the trading in its own securities and derivatives.

(a) Supervision of licensees by MAS

- 5.10 As the integrated supervisor of the financial industry, MAS closely supervises its financial institutions through regular inspections, reviews and company visits. Where suspected breaches of laws are detected through its supervisory activities, MAS will determine whether to investigate further, and ultimately, if enforcement actions are warranted.

(b) Misconduct reporting

- 5.11 Financial institutions are primarily responsible for supervising the conduct of their staff. In particular, financial institutions have a duty to ensure that their representatives conduct themselves in accordance with all applicable regulatory requirements. In the event of misconduct by a representative, the financial institution is required to investigate the facts and circumstances of that misconduct, and submit a report to MAS. Where necessary, the financial institution is also expected to take appropriate disciplinary action against a representative found guilty of misconduct. The receipt of such information allows MAS to assess the need for formal sanctions against the individual involved. It also allows MAS to check that the financial institution implements relevant measures to prevent similar offences from recurring.

(c) Consumer feedback and public complaints

- 5.12 Feedback and complaints from the public provide a complementary source of intelligence which can be leveraged upon to enhance detection capabilities. There are established channels for the public to provide information to MAS. The public can provide feedback or complain to MAS in writing, by telephone and via the MAS website. Dedicated officers collate the feedback and complaints, and work together with the supervisory departments within MAS to respond to consumers promptly. Where breaches of laws are uncovered, MAS will take appropriate regulatory or enforcement actions.

(d) Intelligence from the Suspicious Transaction Reporting Office

- 5.13 The STRO is the financial intelligence unit (“**FIU**”) of Singapore. It is the central agency in Singapore for receiving, analysing and disseminating Suspicious Transaction Reports (“**STRs**”), Cash Movement Reports (“**CMRs**”) and Cash Transaction Reports (“**CTRs**”).

- 5.14 CMRs and CTRs are threshold reports that are required to be filed with STRO based on movements or transactions of cash above a prescribed monetary amount. STRs are made where a person knows or has reason to suspect that any property is directly or indirectly connected to criminal conduct, and the knowledge or suspicion arose during the course of the person's trade, profession, business or employment.
- 5.15 In addition to STRs, CMRs and CTRs filed locally, STRO also receives information from its foreign counterparts. Thus, the STRO database contains financial intelligence information that can be crucial in investigations into a variety of crimes.
- 5.16 Being the first-line of defence, financial institutions and professionals such as lawyers and accountants play a critical role in reporting suspicious transactions given their proximity to clients and the handling of their transactions. The legal requirement to lodge STRs requires these frontline operators in the financial industry to be vigilant in detecting suspicious financial transactions and exercise diligence in filing STRs.⁶

(e) Cross-border collaborations

- 5.17 Given the increasingly global nature of capital markets, with products being listed or traded across jurisdictions, it is imperative that securities regulators worldwide cooperate in sharing information and intelligence. MAS is a signatory to the IOSCO MMOU, which facilitates cross-border co-operation in the area of enforcement, principally by establishing a channel for the sharing of information among the regulators. Such sharing of information and intelligence need not always originate from a specific request from a regulator; MAS regularly receives and shares information with its foreign counterparts on an unsolicited basis. Such unsolicited referrals received from foreign counterparts include reporting on suspicious activities conducted by persons or entities based in Singapore or through accounts maintained in Singapore.
- 5.18 Similarly, the STRO is a member of the Egmont Group of Financial Intelligence Units, which is a forum for FIUs around the world to enhance support to their respective governments in the fight against money laundering and other serious

⁶ Section 39(1) of the Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act (Cap 65A) makes it mandatory for a person to lodge a STR if he, in the course of his business or employment, knows or has reason to suspect that any property may constitute the proceeds of or may be connected to the commission of serious offences, which includes market misconduct offences under Part XII of the SFA. The failure to file the STR may itself constitute a criminal offence.

financial crimes. FIUs which are members of the Egmont Group, exchange information at an international level in support of respective law enforcement efforts against financial crime. At the same time, SGX is a member of the ISG, which is a platform to share information among the various international exchanges for the purposes of detecting possible abuse in the markets.

- 5.19 Such international networks allow MAS, together with CAD and the Approved Exchanges, to obtain information and intelligence relating to possible market misconduct that transcends borders.

6 Investigations

6.1 MAS takes a serious view of all market misconduct and is committed to keeping its markets fair, orderly and transparent so that all market participants have confidence in the integrity of its markets. Any suspected market misconduct detected through its surveillance network is thoroughly reviewed. Investigations are launched where there is a reasonable suspicion of market misconduct, followed by enforcement actions where appropriate.

Joint investigations with CAD into market misconduct offences under Part XII of the SFA

6.2 MAS and CAD conduct Joint Investigations into market misconduct offences under Part XII of the SFA using criminal investigation powers. To optimise the use of its investigative and enforcement resources, MAS would consider a range of factors in deciding whether to commence investigations. These factors include the seriousness of the alleged misconduct, its market impact and the likelihood of harm to market participants.

6.3 When investigations commence, MAS has at its disposal all available criminal investigation powers under the CPC including:

- a. the power to obtain documents;
- b. the power to record statements from persons under investigation or persons who may have information to assist in investigations;
- c. the power to arrest and to conduct search and seizure;
- d. the power to access, inspect and decrypt the data contained in the computers and devices where computers and electronic devices are seized; and
- e. the power to require suspects to surrender their travel documents to prevent suspects from leaving the country.

6.4 In addition, MAS has the power to apply to the court for an order to freeze the monies and securities of suspects and prohibit their transfers within and out of jurisdiction.⁷ MAS is also empowered to seek a wide range of other injunctive reliefs, where necessary. These include court orders restraining a person from

⁷ Section 324 of the SFA and section 99 of the FAA.

carrying on a business dealing in securities or restraining a person from trading, and court orders declaring a contract relating to securities void.⁸

Investigations into contraventions other than under Part XII of the SFA

6.5 MAS is vested with a suite of supervisory and investigation powers under the SFA, FAA, IA and TCA. For offences outside Part XII of the SFA, MAS may impose administrative actions for breaches under these Acts. Investigations under these Acts (other than Part XII of the SFA) are usually triggered by potential breaches uncovered through MAS' supervisory activities. For example, MAS may conduct inquiries or investigations into potential mis-selling of investment products⁹ following an inspection of a financial institution. Where the offence is of a serious nature, MAS may also refer the case to CAD for criminal investigation.

Nature of investigations

6.6 Market misconduct offences are often complex and difficult to establish. Cases of suspected securities fraud and misconduct typically require investigators to secure evidence from multiple sources, including trading and telecommunication records. Interviewing suspects, collating and analysing the evidence to build a strong case that can withstand challenges in court requires careful planning and time. In cases involving larger scale misconduct over a prolonged period of time, investigators have to review voluminous data and records.

6.7 The increasingly cross-border nature of securities offences also means that the evidence to be secured may be found in different parts of the world. MAS may thus require the assistance of its foreign counterparts in procuring such evidence. Although international collaboration in investigations among securities regulators has significantly improved through the work of IOSCO, having to obtain evidence from other jurisdictions will lengthen the investigation process.

6.8 These challenges mean market misconduct investigations typically require investment of substantial time and resources to secure a positive enforcement outcome. Notwithstanding these challenges, MAS will spare no effort in pursuing investigations into suspected market misconduct.

⁸ Section 325 of the SFA and section 98 of the FAA.

⁹ Section 71 of the FAA.

Confidentiality of investigations

- 6.9 While MAS invests significant resources in its investigations, investors may not hear about the investigations because MAS, like other investigation authorities, conducts its investigations away from the public eye. Maintaining confidentiality of investigations is critical to preserve the integrity and ensure the effectiveness of investigations. Any premature disclosure may compromise on-going probes and jeopardise the outcome of MAS' investigations, for instance, by allowing suspects to destroy documentary evidence or tailor their oral evidence when questioned, or by alerting other possible offenders who may abscond or dissipate their ill-gotten assets.
- 6.10 Apart from safeguarding the integrity and efficacy of investigations, maintaining confidentiality of the investigation process is also crucial from the perspective of the subjects under investigation. Premature disclosures before the close of investigations may unfairly penalise and cast unfair aspersions on individuals and companies being investigated, with reputational consequences that may not be easily reversed if the investigations result in no further action being taken. Confidentiality is thus necessary to ensure that an adverse inference is not drawn against an entity or person under investigation before the completion of the investigation or initiation of enforcement action.
- 6.11 As such, the general approach adopted by MAS is to maintain strict confidentiality of on-going investigations, and the public should not expect to be updated on the status and progress of investigations. This is similar to the practices of other enforcement agencies and foreign regulators.
- 6.12 There may, however, be instances where MAS may issue statements about an on-going investigation when it is in the public interest to do so. In making such a decision, MAS will weigh the objective of such disclosure in allaying public concerns and promoting confidence in the market, against the risk of jeopardising the outcome of investigations and any potential prejudice which may be caused to the suspect or third parties.

7 Enforcement

- 7.1 In cases where enforcement sanctions are warranted, the primary objective is to achieve effective deterrence. The sanctions must be adequate to deter the offender from re-offending, and also deter others from engaging in similar misconduct. Effective deterrence is crucial because it can modify behaviour and reduce market misconduct to create an environment in which fair and efficient markets can thrive.
- 7.2 A robust sanctioning regime provides an effective deterrent to market misconduct if the potential costs of committing the unlawful act are perceived to outweigh the potential benefits. Besides deterrence, the sanctions imposed must also be commensurate with the seriousness of the misconduct. To this end, MAS is empowered with a variety of sanctioning powers which can be applied to a wide range of misconduct.
- 7.3 MAS can pursue a wide range of enforcement sanctions, which include:
- a. criminal sanctions (imprisonment or a fine);
 - b. civil penalties (court action or settlement);
 - c. prohibition orders;
 - d. compositions;
 - e. reprimands; and
 - f. warnings.
- 7.4 MAS determines the severity of the sanction to be imposed based on the nature and type of misconduct, the profile of the wrongdoer, and the specific facts and circumstances of each individual case. Errant behaviour by industry professionals and representatives of financial institutions are generally regarded as more serious, as these individuals are in a position of trust and confidence that they should not abuse. In addition, repeat offenders can expect more severe sanctions for not heeding initial warnings.

Criminal sanctions

- 7.5 As part of Joint Investigations with CAD into market misconduct offences under Part XII of the SFA, MAS will not hesitate to seek custodial sentences for serious market misconduct by way of criminal prosecution.

7.6 Under the law, a person who commits any of the market misconduct offences under Part XII of the SFA is liable to be punished with a maximum imprisonment of up to 7 years or a maximum fine of up to \$250,000, or to both, in respect of each offence committed. In appropriate cases, the Singapore Courts have imposed stiff sentences, including imprisonment terms, for such misconduct. There is judicial recognition that white-collar securities crimes are not “victimless” crimes which are somehow less severe than crimes against persons. The High Court has recognised that fines may not be an adequate punishment in egregious offences that can have a real impact on the market.¹⁰ In such cases, imprisonment terms carry a more effective deterrent message than the imposition of fines.

Civil penalty actions

7.7 MAS may also choose to bring civil penalty actions in court for market misconduct under Part XII of the SFA. Such civil penalty actions by MAS complement criminal prosecution by allowing actions to be taken against market misconduct as long as the contravention can be proven on a balance of probabilities, which is a lower threshold than the criminal standard of proof.

7.8 At the close of investigations, MAS will carefully consider if civil penalty action is the appropriate enforcement measure, taking into account factors such as the evidential strength of the case, the severity of the misconduct and its impact on the market, as well as whether the imposition of a civil penalty is a fair and proportionate sanction that will achieve effective deterrence.

7.9 If MAS decides to commence civil penalty action in court, it will seek the consent of the Public Prosecutor to do so.¹¹ Where a civil penalty is ordered pursuant to court action, it is the court which determines the quantum, taking into account MAS’ submissions.

7.10 The civil penalty can be up to three times the amount of profit made or up to three times the amount of loss avoided from the misconduct.¹² Where there are significant illicit gains, the civil penalty imposed will be significant, thus ensuring that the penalty reflects the severity of the offence. In cases where no financial gains can be identified, the civil penalty can be up to \$2 million for each

¹⁰ *Public Prosecutor v Wang Ziyi Able* [2008] 2 SLR 1082.

¹¹ Section 232(1) of the SFA.

¹² Section 232(2)(a) of the SFA.

contravention.¹³ There is a prescribed statutory minimum civil penalty amount of \$50,000 for an individual or \$100,000 for a corporation that infringes the law.¹⁴

- 7.11 Civil penalty judgments can be enforced by MAS like any civil court judgment. MAS may commence execution proceedings, including bankruptcy proceedings, in the event of non-satisfaction of the judgment debt. The civil penalty thus serves as an effective enforcement sanction that augments the criminal law regime in deterring serious market abuse.
- 7.12 Even in cases where there is a possibility of an out-of-court settlement¹⁵, MAS requires the person who contravened the market misconduct provisions to admit liability.¹⁶ MAS believes it is important for a person who has committed market misconduct to accept their culpability. The admission of liability would also have reputational consequences that would deter other market participants, especially industry professionals and representatives of financial institutions, from committing similar market misconduct.
- 7.13 Where there is a settlement of the civil penalty, the quantum is decided by MAS in consultation with AGC. When determining the civil penalty amount, MAS considers a wide range of factors to ensure that it arrives at a fair and proportionate sum that reflects the gravity of the misconduct and the circumstances of each case. The factors MAS considers include the:
- a. seriousness of market impact – loss or risk of loss caused to the market or identified participants; impact of misconduct on the general orderliness of the market;
 - b. duration and frequency of the contravention;
 - c. conduct following the contravention – whether the person brought the misconduct to MAS’ attention; the degree of co-operation the person showed during MAS’ investigations; any remedial steps taken by the person; readiness of the person to enter into a civil penalty settlement;
 - d. difficulty of detecting the activity in question – whether the person deliberately concealed his misconduct (e.g. using sophisticated trading methods or by withholding information);

¹³ Section 232(3) of the SFA.

¹⁴ Section 232(2)(b) of the SFA.

¹⁵ Section 232(1) of the SFA.

¹⁶ Even though the law allows MAS to settle with the contravening person without an admission of liability (see section 232(4) and (5) of the SFA), it has consistently been MAS’ policy to enter into civil penalty settlement agreements only on the basis of an admission of liability.

- e. prior misconduct – whether the person had been previously investigated, warned or had action taken against them (whether civil or criminal action) for similar misconduct; and
- f. group offences – where the offence was committed by more than one person, the role played by the person in the misconduct (e.g. whether the person played an active or passive role in the offence).

Prohibition orders

- 7.14 Prohibition orders are used to bar persons from conducting regulated activities, taking part in the management, and acting as a director or becoming a substantial shareholder of a licensed or exempt financial institution in Singapore.¹⁷ These orders do not require court sanction and they are usually employed in more serious cases of misconduct. Individuals found guilty of such serious misconduct do not meet MAS' fit and proper¹⁸ requirements. Banning these persons from the industry is necessary to preserve the integrity of the markets, and to protect consumers and investors. MAS will determine the duration of the prohibition order based on the facts and circumstances of each case, including the severity and the effect of the misconduct.

Compositions, reprimands and warnings

- 7.15 Compositions, reprimands and warnings are administrative sanctions issued by MAS without the need to go to court. In determining whether a composition, reprimand or warning should be administered, MAS takes into account the full range of facts and circumstances of each case, including the effect of the breach (on the industry or consumers), the compliance record of the offender, the degree of cooperation shown, and the circumstances that gave rise to the offence.
- 7.16 MAS may compound an offence which is prescribed as a compoundable offence under the relevant legislation and seek to retrieve an amount with reference to the fine prescribed by that particular offence.¹⁹ Compositions are in lieu of prosecution in cases where the misconduct is of less or moderate seriousness. Acceptance of compositions does not amount to a guilty plea. In instances where the offer of composition is not accepted, MAS and AGC may proceed to prosecute the suspect in court.

¹⁷ Section 101A of the SFA; Section 59 of the FAA. Section 35V of the IA.

¹⁸ See Guidelines on Fit and Proper Criteria [Guideline No. FSG-G01].

¹⁹ For an example, see section 336 of the SFA.

- 7.17 MAS may issue reprimands where, for instance, there are failures in a financial institution's internal compliance function or its control systems. Such failures may have a knock-on effect in a number of different areas of the financial institution, posing potential risks to its business and to market participants and investors. Intervening early through reprimands before the failures result in serious lapses which may warrant harsher enforcement actions reflects MAS' pre-emptive approach to supervision. MAS also has the power to reprimand representatives of financial institutions where MAS is satisfied that a representative is guilty of misconduct and that such a reprimand would be in the interests of the public and for the protection of investors.²⁰
- 7.18 MAS has the discretion to make reprimands public if it is deemed to be in the public interest to do so. Situations in which MAS may decide to make a reprimand public include formal actions taken for significant breaches of laws or regulatory requirements and failures to take remedial action upon repeated warnings from MAS. Reprimands may also be made public in order to send a deterrent message to the industry or to safeguard the interests of the clients of a financial institution.
- 7.19 In less serious cases of misconduct or breaches, MAS may issue letters of warnings to the wrongdoer. Warnings are usually given in cases of first time breaches with low impact on the market and are not published. The fact that the person has been previously warned by MAS would be taken into account in any future investigations and enforcement actions against the same person.
- 7.20 MAS uses the range of enforcement tools at its disposal to calibrate sanctions to fit the nature of the misconduct and the circumstances in each individual case. MAS' ability to apply sanctions consistently in a fair and proportionate manner enhances the credibility of its enforcement regime.

Disciplinary action taken by SGX

- 7.21 SGX has the power to investigate and take disciplinary action against trading members, issue managers, financial advisers, sponsors and registered professionals or their directors, trading representatives, officers or employees if they contravene any of SGX's trading rules. The forms of disciplinary action, which are imposed by a disciplinary committee, include:

²⁰ For an example, see section 334 of the SFA.

- a. expulsion or suspension from membership or registration;
- b. imposing an administrative fine not exceeding \$250,000;
- c. issuing a public or private reprimand;
- d. requiring that the entity or individual undertake an education program or a compliance program;
- e. imposing restrictions or conditions on the activities of the entity or individual;
- f. requiring the entity or individual to pay penalties; and
- g. requiring a director to step down from the day-to-day conduct of the business of a trading member.

7.22 Committees with members independent of SGX have been established to improve the transparency of its disciplinary process and enhance its ability to enforce the listing rules. The Listings Disciplinary Committee and the Listings Appeals Committee comprise existing members of the SGX Disciplinary Committee and SGX Appeals Committee respectively, as well as other members with relevant listings-related experience. The Listings Disciplinary Committee will hear charges brought by SGX against parties for breaches of listing rules and can impose regulatory sanctions if the breaches are made out. The Listings Appeals Committee will hear appeals from parties who are subject to sanctions by the Listings Disciplinary Committee, and from issuers which are subject to certain SGX regulatory decisions. These committees have been given powers to sanction issuers who breach the listing rules. Besides suspending or de-listing the issuer, these committees may:

- a. issue a public reprimand;
- b. issue a fine of up to \$250,000 on issuers for each breach of the listing rules; and
- c. impose restrictions or conditions on activities that the issuers may undertake, including the denial of market facilities for a specified period.

7.23 SGX itself has the discretion to make an offer of composition of up to \$10,000 for breaches of the listing rules that are minor and administrative or technical in nature. This allows SGX to deal with such breaches expediently. It can also take other forms of remedial action against issuers who fail to comply with SGX's listing rules, such as requiring the issuer to undertake a compliance programme or to appoint an independent party to review its internal controls and processes.

Disciplinary action taken by ICE

- 7.24 ICE also has the power to investigate trading members, representatives of trading members, market makers and persons participating in a market maker programme if they contravene any of ICE's rules. Where there is sufficient evidence, ICE may recommend that its Authorisation, Rules and Conduct Committee ("**ARC Committee**") commence disciplinary proceedings against the member or individual. The actions that may be imposed by ICE or the ARC Committee include:
- a. issuing private written warnings;
 - b. commencing disciplinary proceedings;
 - c. in the case of the ARC Committee, referring matters back to ICE for further enquiry;
 - d. where appropriate, reporting findings to other relevant exchanges, clearing houses or regulatory bodies (including the MAS); and
 - e. publishing findings in the interests of the public or the market in general.
- 7.25 Where the ARC Committee deems that there are sufficient indicators to show a breach of ICE's rules, it may proceed with disciplinary proceedings, where the matter is referred to the Disciplinary Panel. The Disciplinary Panel is appointed by ICE and does not include members of the ARC Committee. The sanctions which may be imposed by the Disciplinary Panel include:
- a. issuing a public or private warning or reprimand;
 - b. issuing a public or private notice of censure;
 - c. disqualification of a member or an individual from representation, membership or appointment (as the case may be) on a panel or committee of ICE;
 - d. a fine of any amount, to be paid on such terms as may be prescribed by ICE;
 - e. suspension or curtailment of an individual to enter the market for up to 36 months;
 - f. recommendation to ICE that a member be expelled or to permanently remove an individual's right to access ICE's trading facilities; and
 - g. issuing an order requiring a member to take such steps that it deems necessary, including a requirement to pay compensation or restitution to persons affected by the member's misconduct.
- 7.26 The ARC Committee also has the power to hear a case and take summary disciplinary measures itself, instead of referring disciplinary procedures to the Disciplinary Panel. The sanctions which may be imposed by the ARC Committee are the same as those that may be imposed by the Disciplinary Panel, except that

it cannot recommend the expulsion of a member or individual, the maximum period of suspension is limited to three calendar months and the maximum fines it may impose are \$50,000 for an individual and \$100,000 for a member in respect of each offence committed.

- 7.27 To sum up, there is a wide spectrum of enforcement sanctions that can be imposed not only through enforcement actions by MAS but also through CAD and the Approved Exchanges. In taking enforcement actions, all parties seek to ensure that the penalty meted is commensurate with the gravity of the misconduct, coordinating their actions with each other where appropriate.

Publication of enforcement actions

- 7.28 To achieve effective deterrence, there must be public knowledge of MAS' enforcement actions in serious cases of market misconduct. To this end, MAS issues press releases at the conclusion of a civil penalty trial or when a civil penalty settlement has been entered into. In the public interest, MAS may also issue press releases on prosecution or civil penalty actions that MAS is taking. In addition, MAS also issues press releases on prohibition orders and compositions relating to market misconduct offences. Reprimands are normally not publicised unless it is in the public interest to do so. Supervisory warnings are not published.
- 7.29 Press releases set out the facts and circumstances of each case and describe how the conduct in question contravenes the relevant legislation. It enhances public understanding of the conduct that is expected of them. These press releases also state the penalties imposed so that market participants and the public are aware of the serious consequences of engaging in market misconduct. MAS and CAD also regularly publish summaries of the enforcement actions in their annual reports.

8 Sustaining Fair, Orderly and Transparent Capital Markets

- 8.1 Sustaining a fair, orderly and transparent securities and derivatives market is a continuous journey. Challenges in enforcement will evolve with technological innovations and increased complexity in business models and trading strategies. MAS will continually seek to strengthen its capabilities across the entire enforcement continuum – from detecting and rectifying poor internal controls at financial institutions, to surveillance of the markets, to investigating suspected market misconduct, and finally to taking enforcement actions that support effective deterrence.

Exhibit 3: The Process of Capital Markets Surveillance, Investigations and Enforcement under Part XII of the SFA

