Consultation Paper on Draft Regulations Pursuant to the Securities and Futures Act for Trade Repositories and Clearing Facilities
DRAFT REGULATIONS PURSUANT TO THE SECURITIES AND FUTURES ACT FOR TRADE REPOSITORIES AND CLEARING FACILITIES

PREFACE

1 The Securities and Futures (Amendment) Act 2012 [“SF(A) Act 2012”] was passed in Parliament on 15 November 2012 which, among others, gave effect to policy proposals relating to regulation of over-the-counter (“OTC”) derivatives. These involve –
(a) introducing a new regulatory regime for trade repositories;
(b) extending the regulatory regime for clearing facilities to OTC derivatives; and
(c) mandating reporting and clearing of certain OTC derivatives transactions.

2 MAS is now consulting on draft Regulations in support of amendments contained in the SF(A) Act 2012 relating to the new Part IIA and Part III of the Securities and Futures Act (Cap. 289) (“SFA”).

3 MAS invites interested parties to provide their comments and feedback on the draft Regulations to:
  
  Capital Markets Policy Division
  Capital Markets Department
  Monetary Authority of Singapore
  10 Shenton Way
  MAS Building
  Singapore 079117

  Email: SFA_FAA_LegisConsult@mas.gov.sg
  Fax: (65) 6225 1350

MAS requests that all comments and feedback be submitted by 8 February 2013.

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

1  MAS’ policy proposals in relation to the regulation of OTC derivatives\(^1\) were set out in our consultation paper of 13 February 2012. To implement the policy proposals, MAS consulted on the draft Securities and Futures (Amendment) Bill 2012 on 23 May 2012 and 3 August 2012 respectively. The draft Bill was subsequently passed in Parliament on 15 November 2012.

2  Pursuant to the changes introduced in the SF(A) Act 2012 to give effect to the policy proposals relating to the regulation of OTC derivatives, MAS will be issuing a new Securities and Futures (Trade Repositories) Regulations 2013 [“SF(TR)R”], and repealing and replacing the Securities and Futures (Clearing Facilities) Regulations 2005 with the Securities and Futures (Clearing Facilities) Regulations 2013 [“SF(CF)R”].

3  The regulatory regime set out in the proposed Regulations is aligned with the Principles of Financial Market Infrastructure (“PFMI”)\(^2\). The PFMI, published in April 2012, serves as the internationally-accepted benchmark for addressing risks and efficiency in financial market infrastructures (“FMIs”)\(^3\).

4  The draft SF(TR)R (at Annex 1) will operationalise the new Part IIA of the SFA, which provides for the regulation of licensed trade repositories (“LTR”) and

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\(^1\) Pursuant to the changes introduced in the SF(A) Act 2012, the scope of the SFA will be expanded to regulate OTC derivatives, which are generally referred to under the definition of “derivatives contracts” in the SFA.

\(^2\) The PFMI was issued by the Committee on Payment and Settlement Systems (“CPSS”) and the International Organisation of Securities Commissions (“IOSCO”) in April 2012, following a comprehensive review of three pre-existing sets of standards – the Core Principles for Systemically Important Payment Systems, the Recommendations for Securities Settlement Systems, and the Recommendations for Central Counterparties.

\(^3\) An FMI is defined, under the PFMI, as a multilateral system among participating institutions, including the operator of the system, used for the purposes of clearing, settling, or recording payments, securities, derivatives or other financial transactions.
licensed foreign trade repositories (“LFTR”). The SF(TR)R sets out requirements on the admission of trade repositories as LTRs or LFTRs, as well as the ongoing requirements on LTRs and LFTRs.

5 The draft SF(CF)R (at Annex 2) will operationalise the new Part III of the SFA, which provides for the regulation of approved clearing houses (“ACH”) and recognised clearing houses (“RCH”). Similar to the SF(TR)R, the SF(CF)R sets out requirements on the admission of persons operating clearing facilities as ACHs or RCHs, as well as the ongoing requirements on ACHs and RCHs.

6 In addition, the Securities and Futures (Clearing Facilities) (Transition and Savings) [“SF(CF)(T&S)R”] (at Annex 3) is proposed, to provide for the transition of existing persons operating clearing facilities to the new regulatory regime.

(A) MINIMUM ADMISSION REQUIREMENTS

7 Trade repositories and clearing facilities provide key centralised functions for the capital markets and could cause disruptions in the financial sector if not properly managed. Corporations intending to operate clearing facility or trade repository functions in Singapore should demonstrate a minimum level of financial commitment and strength, as well as the ability to function safely and efficiently on an ongoing basis. We propose that an applicant seeking to be admitted as an LTR, LFTR, ACH or RCH should be required to – (a) have a minimum base capital; and (b) demonstrate its ability to fulfil its statutory obligations as an LTR, LFTR, ACH or RCH, as the case may be.

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4 Pursuant to the changes introduced in the SF(A) Act 2012, a corporation incorporated in Singapore may apply to MAS to be licensed as an LTR. A corporation which is incorporated or formed outside Singapore may apply to MAS to be licensed as an LFTR.

5 Pursuant to the changes introduced in the SF(A) Act 2012, a corporation incorporated in Singapore may apply to MAS to be approved as an ACH or recognised as an RCH. A corporation which is incorporated or formed outside Singapore may apply to MAS to be recognised as an RCH.
Meeting the minimum base capital requirement

8 Currently, approved exchanges and designated clearing houses ("DCH") are subject to licence conditions to maintain a minimum base capital of $10 million. In line with this approach, under the proposed SF(TR)R and SF(CF)R, an applicant seeking to be admitted as an LTR or ACH will be required to have a minimum base capital of $10 million. For LFTRs and RCHs, which comprise entities incorporated or formed outside Singapore and non-systemically important local clearing facilities, a lower base capital requirement of $5 million will apply. This will ensure a basic level of financial commitment and resources to provide confidence to market participants.

Meeting statutory obligations

9 An applicant will also be required to demonstrate its ability to meet its statutory obligations as an LTR, LFTR, ACH or RCH, as the case may be. MAS considers such ability to be generally evidenced by –

(a) an established track record in the business or in a related business for at least the past five years;

(b) key officers and directors with sufficient experience relevant to the operation of the business; and

(c) a statement of how the corporation intends to comply with its statutory obligations, e.g. presence of adequate and appropriate risk management practices and policies, sufficiency of financial, human, and system resources.

(B) CANCELLATION OF LICENCE, APPROVAL, OR RECOGNITION

10 Recognising that an orderly winding down or cessation of services is necessary to avoid disruptions in the financial system, the proposed SF(TR)R and SF(CF)R will require LTRs, LFTRs, ACHs and RCHs, which intend to cancel their licence, approval or recognition to submit an application to MAS no later than three
months before the expected date of cancellation. This period is intended to provide time for MAS to examine and consider the impact of the cancellation, and to work with the entity to facilitate an orderly exit from the Singapore capital markets.

**C) RECOVERY AND RESOLUTION PLANNING**

11 The PFMI requires an FMI to “identify scenarios that may potentially prevent it from being able to provide its critical operations and services as a going concern and... prepare appropriate plans for its recovery or orderly wind-down... The plan should contain, among other elements, a substantive summary of the key recovery or orderly wind-down strategies, the identification of the FMI’s critical operations and services, and a description of the measures needed to implement the key strategies.”

Accordingly, MAS proposes for each LTR and ACH, being a locally-incorporated FMI subject to regulation by MAS as its home regulator, to have in place a plan of action (referred to as a recovery and resolution plan) setting out procedures and establishing systems necessary to restore its ability to operate as a going concern and to ensure the orderly winding down of the FMI.

**(D) SEGREGATION AND PORTABILITY OF CUSTOMERS’ MONEY AND ASSETS**

12 With the impending implementation of mandatory clearing of OTC derivatives contracts, MAS aims to strengthen the segregation\(^6\) and portability\(^7\) of customers’ money and assets held with ACHs or RCHs. Internationally, US and

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\(^6\) Segregation refers to the requirement by which a designated clearing house (“DCH”), under the current regime, is to account for money or assets deposited with or paid to it by its members, in respect of or in relation to the contracts of customers of such members, on an aggregated basis, separate from other types of money and assets received by the DCH from its members.

\(^7\) Portability refers to the ability of the DCH, in the event of default of a member, to transfer non-defaulting customers’ open positions and/or money and assets from that defaulting member to a non-defaulting member. This provides continuity by allowing non-defaulting customers to maintain their open positions and enables them to continue trading.
European regulators have introduced requirements to facilitate the segregation and portability of customers’ money held in respect of OTC derivatives contracts. The US Commodity Futures Trading Commission has required segregation and portability of customers’ monies in respect of OTC derivatives contracts, via a ‘legally separate, operationally-commingled’ (‘LSOC”) model. Under the LSOC model, the clearing house must segregate, on its books and records, individual customers’ money and assets from its own obligations and obligations of other customers, while allowing all customers’ money and assets to be operationally commingled in a single bank account that is separate from its own account. The European Securities and Markets Authority has required that customers be provided the option of greater segregation and portability of customers’ money through individual client segregation, whereby clearing houses keep separate records and accounts enabling assets and positions held for the account of a customer to be distinguished from those held for other customers. In line with these developments, MAS proposes enhanced protections for customers’ money and assets, particularly for OTC derivatives. The existing protections in place for DCH in respect of securities and futures contracts will remain largely similar. MAS will continue to monitor international developments, and propose further changes as appropriate.

**Segregation of customers’ money**

Currently, DCHs are not required to keep books identifying the money and assets of individual customers of members. Under the proposed SF(CF)R, MAS will require ACHs and RCHs, at the minimum, to allow each member to choose, in respect of OTC derivatives contracts, whether the ACH or RCH should identify the money and assets of that customer on its books, or to aggregate the money and assets with those of other customers of the member (i.e. an optional LSOC model). Members can then offer customers this option accordingly. MAS does not intend to require the physical segregation of such money and assets, which may be commingled in a trust account or custody account containing money and assets of other customers, as determined by the ACH or RCH. Notwithstanding this, an ACH or RCH is at liberty to adopt a higher level
of segregation of customers’ money and assets, as may be appropriate for the nature of its customers.

14 Where a member of an ACH or RCH is a bank, the ACH or RCH will be required to ensure that money and assets of customers of such a member are deposited in an account other than one operated by the member in its role as a bank or custodian. This addresses the risk that should such a member default, customers’ money and assets held in an account operated by that member in its role as a bank or custodian may be frozen and as a result, cannot be quickly accessed and made available to a new member which may take over the servicing of a customer of the defaulted member. This new regulation will be applied to members, for money and assets of customers deposited or paid to it, in respect of all market contracts, including securities and futures contracts.

Permissible use of customers’ money

15 In the event of a default of a member where the failure is directly attributable to the failure of a customer whose money and assets have been individually identified on the books of the ACH or RCH (i.e. a customer who has opted for an LSOC model), the proposed SF(CF)R prohibits the ACH or RCH from using any other customers’ money and assets to meet losses arising from the default. This provides for the non-mutualisation of risks between customers who have opted for an LSOC model and those who have not.

Reconciliation of customers’ money

16 Erroneous records on the amounts of each customer’s money and assets held by an ACH or RCH may delay or impede successful porting of customers’ money and assets in the event of a member default, in particular, in the case of customers who have opted for an LSOC model, the express purpose of which is to facilitate portability. To further safeguard the proper and accurate holdings of such customers’ money and assets where the ACH or RCH keeps books on a per-customer basis, a new regulation to
facilitate the quarterly reconciliation of books maintained by the ACH or RCH against records held by members of the ACH or RCH is proposed. This acts as an additional check to ensure a smooth transfer of customers’ money and assets to a new member should the existing member default.

(E) MISCELLANEOUS AMENDMENTS

17 Other regulations proposed in the new SF(TR)R and SF(CF)R are generally in line with corresponding regulations in the existing Securities and Futures (Markets) Regulations 2005 and Securities and Futures (Clearing Facilities) Regulations 2005. These include regulations on submission of periodic reports, business continuity plans, amendments to business rules, etc. In view of feedback from the industry and in alignment with the PFMI, MAS is also making certain fine-tuning of specific regulations. The key amendments are:

- ACHs and RCHs will be required to notify MAS of their intent to declare or commence default proceedings against their members.
- ACHs will be required to seek MAS’ approval prior to making any changes to their credit and liquidity risk management frameworks and methodologies, including changes to the frameworks and methodologies to determine the margins to manage their risk exposure to participants, the sizing of financial resources available to support a member’s default and the valuation and types of collateral acceptable by the ACHs.
- RCHs will be required to notify MAS of any changes to the nature of the clearing and settlement activities that they conduct. This enables MAS to monitor if RCHs begin or cease to perform FMI functions.
- LTRs and LFTRs will be permitted to disclose user information or transaction information in fewer circumstances relative to ACHs and RCHs. In particular, disclosure to approved holding companies, disclosures for the purpose of disciplinary proceedings, and disclosure of information which is already in
the public domain will not be applicable. The proposed revisions take into account confidentiality concerns specific to the operation of trade repositories.

(F) Transition Measures for Persons Operating Clearing Facilities

18 Transition measures are proposed under the SF(CF)(T&S)R for three categories of persons which operate clearing facilities:

(a) persons operating clearing facilities which have been designated as designated clearing houses on or prior to the date section 7 of the SF(A) Act 2012 commences (“Commencement Date”): these existing designated clearing houses\(^8\) will be deemed to be approved as ACHs.

(b) persons other than designated clearing houses which have notified MAS of their establishment or commencement of operations prior to the Commencement Date: a grace period of 3 months from the Commencement Date will be provided for such persons to submit applications to be recognised as RCHs. From the Commencement Date, each such person shall be deemed to be recognised as an RCH until the date on which MAS approves or rejects its application.

(c) all other persons operating clearing facilities on the Commencement Date: a grace period of 3 months from the Commencement Date will be provided for such persons to submit applications to be approved as ACHs or recognised as RCHs as may be appropriate. From the Commencement Date, each such person shall be deemed to be exempted from requirements under the SFA until the date on which MAS approves or rejects its application. Persons

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\(^8\) To date, there are three existing designated clearing houses, namely, The Central Depository (Pte) Limited, the Singapore Exchange Derivatives Clearing Limited and the Singapore Mercantile Exchange Clearing Corporation Pte Ltd.
which are expected to fall within this category are those operating clearing facilities in respect of derivatives contracts.

**INVITATION FOR COMMENTS**

19 MAS would like to invite comments on the Regulations attached at Annexes 1 to 3.