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Briefing note July 2014

MAS consults on FX derivatives reporting and other amendments to the reporting regime in Singapore

Following the commencement of "Phase I" of its mandatory reporting regime for OTC derivatives contracts, the MAS is now consulting the industry on "Phase II" of the regime in respect of FX derivatives and other proposed changes to the existing reporting regime.

The mandatory reporting regime for OTC derivatives contracts under the Securities and Futures Act (Cap. 289) ("SFA") commenced earlier this year in Singapore. The obligation was phased in, with banks and merchant banks commencing on 1 April 2014 and non-bank financial institutions following on 1 July 2014. This first phase only applies to interest rate derivatives contracts ("IRS") and credit derivatives contracts ("CDS") booked in Singapore and will continue to be rolled out, with non-financial institutions with derivatives contracts above a specified threshold – "significant derivatives holders" – coming on board on 1 October 2014. IRS and CDS traded in Singapore will then become subject to the reporting regime from 1 April 2015, 1 July 2015 and 1 October 2015 for banks/merchant banks, non-bank financial institutions and significant derivatives holders, respectively.

The MAS has now issued its Consultation Paper on Draft Regulations for Reporting of Foreign Exchange Derivatives Contracts. This paper consults the industry on the introduction of "Phase II" of the regime in respect of foreign exchange ("FX") derivatives and also proposes other changes to the existing reporting regime. The introduction of reporting of FX derivatives and changes to the reporting regime will be implemented by way of issuance of new regulations. The MAS proposes to issue a new Securities and Futures (Reporting of Derivatives Contracts) (Amendment) Regulations 2014 ("reporting regulations") by 30 September 2014, which will amend the existing regulations relating to the reporting regime.

We set out below a brief overview of the proposals.

Key issues

- Reporting of FX derivatives to be phased in
- Changes to the "traded in Singapore" nexus definition
- Changes to information to be reported
- Extension and changes to "masking" relief

Phase II – FX derivatives reporting

What is covered?

The MAS proposes to prescribe any "foreign exchange derivatives contract" that is traded in Singapore or booked in Singapore as a "specified derivatives contract" for the purposes of the reporting regime under SFA.

"Foreign exchange derivatives contract" is proposed to be defined as "*a derivatives contract related to currencies or currency indices or a derivative contract whose cash flows are determined by reference to currencies or currency indices but does not include a contract which is settled by the actual delivery of the underlying thing within 2 business days of the execution of such contract*".

Accordingly any FX forward, swap or option related to currencies or currency indices or whose cash flows are determined by reference to currencies or currency indices will be within scope. The MAS has stated that non-deliverable forwards, non-deliverable options and exotic options are all included. However, spot FX derivatives are carved out from the reporting obligation – these are contracts that are settled by actual delivery of the underlying thing within two business days of the execution of the contract.

Who is covered?

The MAS proposes to implement the reporting of FX derivatives in phases. For the time being, the MAS proposes to implement the reporting of FX derivatives for banks and merchant banks only. The MAS proposes to assess the readiness of non-bank entities to report FX derivatives at a later stage. No date for such commencement was proposed.

When does it commence?

Banks and merchant banks will need to report FX derivatives booked in Singapore from 1 April 2015. FX derivatives traded in Singapore (but not booked in Singapore) must be reported from 1 October 2015.

Changes to "traded in Singapore" nexus definition

MAS proposes to amend the existing definition of "traded in Singapore" to read as follows:

"traded in Singapore", in relation to a derivatives contract, means the execution of the derivatives contract by a trader who conducts, or is authorised to conduct on behalf of a specified person activities relating to the execution of derivatives contracts in Singapore for more than 46 days of the preceding quarter, where "quarter" means a period of 3 months beginning on 1st January, 1st April, 1st July or 1st October of any year.

The amendment to the definition is meant to tie the execution of the transaction to a trader, as opposed to a trading desk. The MAS has stated that it "proposes to consider any transaction that is executed by a trader who is generally employed in Singapore, regardless of the trader's physical location at the time of the transaction, as having been traded in Singapore". As such, where a trader who is employed in Singapore as a trader executes transactions while temporarily overseas on a short-term trip, such transaction has to be reported.

Changes to information to be reported

What is covered?

A new Part IV to the First Schedule of the regulations will be included to specify data fields that are relevant to FX derivatives.

In addition, the MAS proposes to expand the list of data fields to be reported across the board to all reportable transactions:

- A new Part IA to the First Schedule of the regulations will expand the data fields to include six additional types of information comprising 27 additional data fields, including information relating to mark-to-market valuation and hedging indication.
- A new Part IB to the First Schedule of the regulations will expand the data fields to include information relating to collateralisation comprising four additional data fields, including information on the value of collateral posted by the specified person to his counterparty.

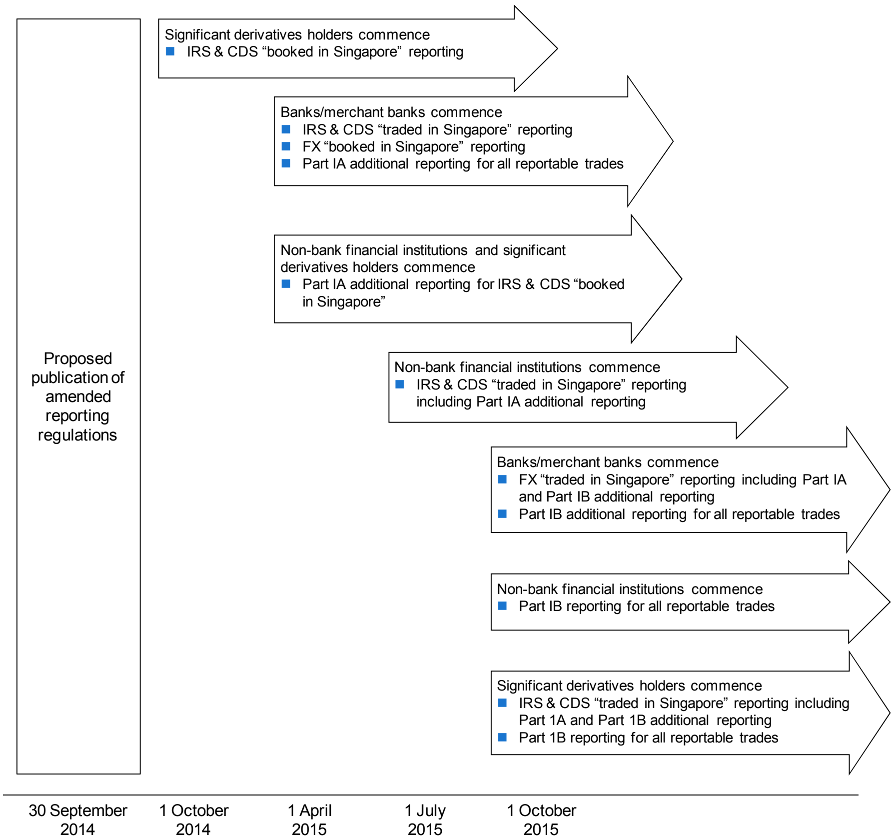
Who is covered?

All specified persons who are subject to the reporting obligation are affected.

When does it commence?

A transition period (from the proposed time of publication of the amended reporting regulations) of six months has been proposed for the commencement of reporting the information set out in Part IA, and of 12 months for the commencement of reporting the information set out in Part IB.

Based on the proposed amended reporting regulations, the timeline for commencement of reporting obligations appears to be as follows:



Changes to "masking" relief

The MAS has proposed to extend the "masking" relief in Regulation 11 of the reporting regulations by a year to November 2015. The MAS has proposed to remove all EU countries from the Fifth Schedule of the reporting regulations.

The consultation closes on **8 August 2014**.

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