

# MAS consults on Proposed Amendments to the Securities and Futures Act on Regulation of Financial Benchmarks in Singapore

Following the issue of a consultation paper in June 2013 setting out the proposed regulatory framework for financial benchmarks, the Monetary Authority of Singapore ("**MAS**") has begun further consultation on the draft legislative amendments to the Securities and Futures Act (Cap. 289) ("**SFA**") to bring the regulation of benchmark setting activities into the MAS's regulatory ambit.

## Proposal for new regulatory framework

On 14 June 2013, the MAS announced a proposed regulatory framework for financial benchmarks, following its completion of a year-long review of the processes relating to banks' benchmark submissions.<sup>1</sup>

There are two key elements to the proposed new regulatory framework:

Firstly, the MAS will introduce specific criminal and civil sanctions under the SFA for manipulation of any financial benchmark. This is expected to apply to acts of manipulation occurring within Singapore and in respect of

financial benchmarks administered in Singapore. It is recognised that financial benchmarks play an important role in the functioning of the financial system. Hence, the need to maintain their integrity and deter potential manipulators is no less than it is for listed securities or financial instruments. Currently, benchmark manipulation could amount to an offence under existing legislation (e.g. the SFA and the Penal Code) depending on the factual circumstances and taking into account the intended or likely consequences of the conduct involved. However, relying on the existing patchwork of laws may not be sufficient to deal with all possible cases of benchmark manipulation and ensure adequate deterrence against such conduct. To address possible gaps and to send a clear signal that manipulation of any financial benchmark is unacceptable, the MAS proposes that the market conduct

## Key points

The proposed amendments to the SFA include:

- the designation of financial benchmarks which will be subject to regulatory oversight
- a licensing regime for the administrator of a designated benchmark
- extension of the MAS's supervisory and investigative powers pertaining to financial benchmarks
- new offences and sanctions relating to the manipulation or attempted manipulation of financial benchmarks.

provisions under Part XII of the SFA be expanded to include a new division which prohibits specifically the manipulation of any financial benchmark. The proposed revisions

<sup>1</sup> Based on its findings in the review, the MAS has taken a range of supervisory actions against banks for deficiencies in the governance, risk management, internal controls, and surveillance systems, relating to these processes. Further details are set out in the MAS's announcement of 14 June 2013.

will be similar to the existing provisions in the SFA against false trading and manipulation of securities, and allow for similar criminal or civil penalty sanctions to be imposed on persons who manipulate financial benchmarks.

Secondly, administrators and submitters of financial benchmarks designated by the MAS will be subject to regulation, including licensing requirements. The MAS will designate key financial benchmarks based on their systemic importance and susceptibility to manipulation. For now, the MAS intends to designate the following financial benchmarks currently administered by the Association of Banks in Singapore ("ABS"): the Singapore Interbank Offered Rate ("SIBOR") and the Swap Offer Rate ("SOR").

### **MAS Response to Public Consultation**

On 29 July 2014, the MAS published its response to the feedback received on the public consultation, addressing the following specific concerns:

#### **1. Definition of Financial Benchmarks**

The MAS clarified that the definition of a financial benchmark does not include benchmarks that are not made available to the public and benchmarks that are only intended for use by its administrator.

The MAS also stated that it intends to consult the public before prescribing any new rate or index as a financial benchmark, save for circumstances where it would be more appropriate to conduct a closed-consultation process involving only the relevant stakeholders.

#### **2. Criminal and Civil Sanctions for Benchmark Manipulation**

The MAS proposes that the mental element for the new offences will be similar to the existing provisions for false trading and marketing rigging i.e. a person is liable if his purpose or one of his purposes for which he does the act is to create a false or misleading appearance, or if he knows or is reckless as to whether the act will be likely to result in the false or misleading appearance.

Criminal or civil penalty will be attributed to the corporate entity where the misconduct is committed with the consent or connivance of the corporate entity. Where the misconduct is attributable to the negligence of the corporate entity, the corporate entity will be subject to civil penalties only. However, if the corporate entity had gained a profit or avoided a loss as a result of the trader's misconduct, it may also be liable to affected third parties.

#### **3. Regulation of Activities Related to the Setting of FX Benchmarks**

The MAS expressed its appreciation of the efforts of the ABS and the Singapore Foreign Exchange Market Committee to strengthen the robustness of Foreign Exchange Spot benchmarks ("FX Benchmarks") through implementing a transaction-based methodology and reducing the degree of discretion involved in setting these benchmarks and hence its vulnerability to manipulation. However, the MAS will continue to monitor the use of FX

Benchmark to determine if it becomes in the public interest to designate such benchmarks.

#### **4. Requirements for Administrators of Designated Benchmarks**

When the regulatory regime for the administrator of a designated benchmark is implemented, the administrator will be required to seek the MAS's approval of its Code of Conduct for Submitters, and although the requirements in respect of the Code of Conduct for Submitters have not been issued, it is expected that the requirements will generally be aligned with the relevant principles under the IOSCO Principles for Financial Benchmarks.

The MAS agreed with some suggestions for imposing additional requirements on an administrator with a view to enhance transparency and ensure minimum standards for the relevant staff involved. These requirements will be incorporated in the regulatory framework via subsidiary legislation or guidelines as appropriate.

#### **5. Requirements for Submitters of Designated Benchmarks**

The MAS acknowledged concerns over rising compliance costs over the proposed record keeping requirements and annual independent external audits requirements for submitters, but maintained that such records are critical to allow for necessary audits and checks to be conducted in order to monitor compliance with the relevant regulatory requirements.

The MAS clarified that banks which transact in the underlying market of a designated benchmark based on a traded methodology but do not submit information for the purpose of determining the benchmark would not be caught as a "submitter", but will still be required to keep written records of their transactions in the underlying market and their exposure to instruments which reference the relevant designated benchmarks.

The MAS explained that regulatory sanctions could range from supervisory warnings, formal reprimands, to fines and revocation of licenses, and these may apply to individuals, supervisors and/or the corporate entity itself, depending on the culpability of the parties involved.

#### 6. Other Financial Benchmarks

The MAS also recognised the diverse types of financial benchmarks and that any regulatory approach covering the broader spectrum of financial benchmarks including commodity benchmarks requires an internationally coordinated approach. The MAS will continue to monitor international regulatory developments on this front, review its regulatory approach and undertake further public consultation if needed.

#### 7. Powers to Direct Persons to be Submitters to Designated Benchmarks

The MAS stated that it will outline criteria, such as the submitter's market footprint and expertise in the underlying market and the administrator's selection criteria that would be considered when

determining if a financial institution is in a position to be a submitter to a designated benchmark. Submitters will also have the right of appeal.

### MAS's Proposed Amendments to the SFA to Introduce a Regulatory Framework for Financial Benchmarks

On 29 July 2014, the MAS released a consultation paper on proposed amendments to the SFA to introduce a regulatory framework for financial benchmarks. We set out a brief overview of the proposed amendments, which can be summarised into three broad categories:

#### 1. Amending section 2 of the SFA

The amendments to section 2 of the SFA will introduce the relevant definitions required in the new regulatory regime for benchmarks such as a "financial benchmark", "administering a financial benchmark" and "providing information in relation to a financial benchmark". The latter two activities, if carried out in relation to a designated benchmark, will be subject to regulation.

#### 2. Introducing a new Part VIAA (Financial Benchmarks) to the SFA, with the following Divisions:

##### (a) Designation of Financial Benchmarks

This will provide the MAS with the powers to designate a financial benchmark as a "designated benchmark" under which the setting of designated benchmarks will be subject to regulatory

oversight. The MAS does not intend to regulate the setting of all financial benchmarks. Instead, the MAS considers a calibrated approach taking into consideration the benchmark's systemic importance or susceptibility to manipulation, or where it is in the interest of the public to do so. As stated above, the MAS intends to designate the SIBOR and the SOR as designated benchmarks.

##### (b) Administrator Licensing

To safeguard the integrity of the designated benchmark, the MAS will introduce a licensing regime for the administrator of a designated benchmark and any person carrying out the activity of administering a designated benchmark will be required to hold a benchmark administration licence.

##### (c) Submitter Authorisation

To enhance the accountability of submitters involved in providing information in relation to a designated benchmark, the MAS will introduce an authorisation regime for submitters to a designated benchmark and any entity carrying out the activity of providing information in relation to a designated benchmark will be required to be authorised, unless it is exempted.

##### (d) General Powers

The MAS will be provided with powers to make regulations, issue written

directions and make prohibition orders in respect of relevant persons involved in the benchmark setting activities of a designated benchmark.

**(e) Power to Direct Submissions**

While the MAS believes that the setting of financial benchmarks should be industry-led and that voluntary contribution is preferred, the powers to direct persons, including financial institutions, to provide information in relation to designated benchmarks are intended to be exercised should the need arise to ensure market functionality. The MAS will take into account factors such as the market footprint and the expertise of the person to be directed before exercising the powers.

**3. Amending Part IX (Supervision and Investigation), Part X (Assistance to Foreign Regulatory Authorities) and Part XII (Market Conduct) of the SFA**

*Firstly*, amendments to Part IX of the SFA will extend the MAS's supervisory and investigative powers pertaining to financial benchmarks.

*Secondly*, amendments under Part X will render assistance to foreign regulators for supervision, investigation or enforcement actions pertaining to financial benchmarks.

*Lastly*, amendments to Part XII will create new offences and civil sanctions relating to the

manipulation (or attempted manipulation) of financial benchmarks, and the MAS proposes that the making of a false or misleading statement or appearance will be criminalised if a person intends, knows or is reckless as to his actions.

The proposed amendments to Parts IX, X and XII of the SFA relate to financial benchmarks generally, i.e. including financial benchmarks which are not designated benchmarks.

In view of other jurisdictions imposing extraterritorial requirements on benchmark administration in Singapore whose financial benchmarks are used in such jurisdictions, the MAS is also seeking views on whether there are other types of financial benchmarks apart from those proposed to be designated by the MAS (the SIBOR and the SOR), whose administrators may benefit from a separate voluntary regime with the MAS in order to facilitate the continuation of their Singapore operations.

**The MAS has invited the public to submit its comments on the draft legislation and views on the issue raised in the above paragraph by 29 August 2014.**

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