



# SINGAPORE

## DETAILED ASSESSMENT OF IMPLEMENTATION—IOSCO OBJECTIVES AND PRINCIPLES OF SECURITIES REGULATION

December 2013

This Detailed Assessment of Implementation on the IOSCO Objectives and Principles of Securities Regulation on Singapore was prepared by a staff team of the International Monetary Fund as background documentation for the periodic consultation with the member country. It is based on the information available at the time it was completed on November 25, 2013. The views expressed in this document are those of the staff team and do not necessarily reflect the views of the government of Singapore or the Executive Board of the IMF.

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## DETAILED ASSESSMENT OF IMPLEMENTATION

November 25, 2013

### IOSCO OBJECTIVES AND PRINCIPLES OF SECURITIES REGULATION

Prepared By  
**Monetary and Capital  
Markets Department**

This Detailed Assessment Report was prepared in the context of an IMF Financial Sector Assessment Program (FSAP) mission in Singapore from April 3-17, 2013, led by Karl Habermeier, IMF and overseen by the Monetary and Capital Markets Department, IMF. Further information on the FSAP program can be found at <http://www.imf.org/external/np/fsap/fssa.aspx>

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## Glossary

ACRA	Accounting and Corporate Regulatory Authority
AGC	Attorney General’s Chambers
AGM	Annual general meeting
AIMA	Alternative Investment Management Association
ASC	Accounting Standards Council
AUM	Assets under management
CAD	Commercial Affairs Department
CDP	Central Depository (Pte) Limited
CFD	Contracts for difference
CIS	Collective investment scheme
CIS Code	Code on Collective Investment Schemes
CMG	Capital Markets Group
CMSL	Capital market services license
CRA	Credit rating agency
ETF	Exchange-traded fund
EXCO	Executive Committee
FAA	Financial Advisers Act
FAL	Financial advisers license
FIDReC	Financial Industry Disputes Resolution Centre Ltd
FMC	Fund management company
FSAP	Financial Sector Assessment Program
IOSCO	International Organization of Securities Commissions
IPO	Initial public offering
MAS	Monetary Authority of Singapore
MD	Managing Director
MFSC	Management Financial Supervision Committee
MoF	Ministry of Finance
MMoU	IOSCO Multilateral Memorandum of Understanding
OIS	Offer Information Statement
OTC	Over the counter
OSA	Official Secrets Act
PAOC	Public Accountants Oversight Committee
PMP	Practice Management Program
REIT	Real estate investment trust
SBGCA	Statutory Bodies and Government Companies (Protection of Secrecy) Act
SFA	Securities and Futures Act
SFRS	Singapore Financial Reporting Standards
SF(OIS)R	Securities and Futures (Offers of Investments)(Shares and Debentures) Regulations
SGX	Singapore Exchange Limited

## SINGAPORE

SGX-DC	Singapore Exchange Derivatives Clearing Limited	Singapore Exchange
SGX-DT	Derivatives Trading Limited	
SGX-ST	Singapore Exchange Securities Trading Limited	
SIAS	Securities Investors Association of Singapore	
SIC	Securities Industry Council	
SMX	Singapore Mercantile Exchange Pte. Ltd.	
SMXCC	Singapore Mercantile Exchange Clearing Corporation	
SRO	Self-Regulatory Organization	
STI	Straits Times Index	
UCITS	Undertakings for the Collective Investment of Transferable Securities	

## EXECUTIVE SUMMARY

Overall compliance with the International Organization of Securities Commissions (IOSCO) Principles is generally high, although the assessors identified some vulnerabilities which need to be resolved. The Monetary Authority of Singapore's (MAS') enforcement philosophy as regards securities markets and the financial intermediaries active therein is cogent, outcomes-focused and well developed. Its enforcement statistics indicate that it has a reasonable success rate in the cases it brings. The Securities and Futures Act (Cap. 289) (SFA) provides an effective framework to enable the sharing of information and cooperation between MAS and foreign regulators on supervisory and enforcement matters. There is a reasonable level of protection of shareholders in Singapore and accounting and auditing standards are high. Singapore devotes considerable resources to ensuring that its standards and their application match global best practice. The regulation of collective investment schemes places strong emphasis on MAS's gatekeeper role and MAS seeks to ensure that it is well informed about all sectors of this market including hedge funds managed from and offered for sale in Singapore. Self-regulation by exchanges remains an integral part of the regulatory framework. There are no restrictions on foreign firms operating in Singapore. Since 2007 foreign firms must incorporate in Singapore but there are no restrictions on the type of business they may conduct and they are regulated under the same requirements as local intermediaries. The retail securities market is an uncomplicated model primarily based around agency trading in the equities market. Most intermediaries retain capital in excess of minimum requirements and the standards of behavior expected of them conform to international standards.

## INTRODUCTION

**1. An assessment of the level of implementation of the IOSCO Principles in Singapore was conducted from April 3–17, 2013 as part of the Financial Sector Assessment Program (FSAP) by Martin Kinsky and Richard Britton, both external MCM experts.** An initial International Organization of Securities Commission (IOSCO) assessment was conducted in 2002 before IOSCO had developed a detailed methodology for carrying out such assessments. Since then there have been numerous changes to primary and secondary legislation in which the authorities have sought to ensure that Singapore remains current with global developments in the regulation of securities markets and in conformity with the IOSCO Principles. They have also sought to ensure that the regulation of securities markets in Singapore contributes to the development of the local market while maintaining high regulatory standards. In its 2004 monograph *Objectives and Principles of Financial Supervision in Singapore*, MAS sets out its objectives and desired outcomes. Specifically the latter are:

- a stable financial system;
- safe and sound intermediaries;
- safe and efficient infrastructure;
- fair, efficient and transparent markets;
- transparent and fair-dealing intermediaries and offerors; and
- well-informed and empowered consumers.

**2. More broadly MAS seeks to establish sound regulation of a high standard that allows well-managed risk taking and innovation, and which emphasizes the stable and sustainable development of the financial services sector.** MAS acknowledges that potential tensions between its regulatory and developmental roles may exist, but it believes that it has established processes in place to ensure that a proper balance is maintained.

## INFORMATION METHODOLOGY USED FOR ASSESSMENT

**3. The assessment was conducted based on the IOSCO Principles and Objectives of Securities Regulation approved in 2010 and the Methodology as updated in 2011.** As has been the standard practice, Principle 38 was not assessed due to the existence of separate standards for securities settlement systems and central counterparties.

**4. The IOSCO methodology requires that assessors not only look at the legal and regulatory framework in place, but also at how it has been implemented in practice.** The global financial crisis reinforced the need for assessors to take a critical look at and to make a

judgment about supervisory practices and to determine whether they are effective enough. Among others, such a judgment involves a review of the inspection programs for different types of supervised entities, the cycle, scope and quality of inspections as well as how the agency follows up on findings, including by using enforcement actions.

- 5. The assessors relied on:** (i) an extensive self-assessment prepared by MAS staff, which included detailed descriptions on the legal basis for the exercise of MAS' powers; (ii) reviews of the relevant legislation and other documents published by MAS and other authorities; (iii) meetings with staff from government authorities: MAS; Accounting and Corporate Regulatory Authority (ACRA); Accounting Standards Council (ASC); Commercial Affairs Department (CAD); and the Securities Industry Council (SIC); and (iv) meetings with the private sector including brokers, fund managers, exchanges, the Alternative Investment Management Association (AIMA), auditors, the Law Society and the Securities Investors Association of Singapore (SIAS). All gave freely of their time and views, for which the assessors are grateful.
- 6. The assessors want to thank MAS and its staff for their full cooperation, willingness to engage in discussions on the many complex issues covered by the methodology and to produce papers and statistics at short notice.**

## REGULATORY STRUCTURE

**7. MAS is the supervisor and regulator of the financial services sector; it is also the central bank.** It is established under the Monetary Authority of Singapore Act (MAS Act) as a body corporate. The MAS Act sets out the governance and management structure of the MAS and its powers, duties and functions, including its powers to determine staff hiring and remuneration policies, its duties and functions to act as the central bank, conduct monetary policy, oversee payment systems and to conduct integrated supervision of the financial services sector. A Financial Sector Development Fund was established under the MAS Act in 1999,<sup>1</sup> controlled and administered by MAS subject to the directions of the Minister-in-charge of MAS, and which has, among its objectives, the development of Singapore as a financial center. MAS is assigned to the Prime Minister's office and the current Minister-in-charge of MAS (and thereby responsible to Parliament for its conduct) is the Deputy Prime Minister who is also the current Chairman of the MAS Board. In his capacity as the Minister-in-charge of MAS, he is also the person to whom certain decisions of the MAS can be appealed.

**8. Other government appointed bodies have relevant regulatory roles.** ACRA is the body responsible for administering the Companies Act, Business Registration Act, Limited Liability Partnerships Act, Limited Partnerships Act and supervising public accountants in Singapore. The ASC is the body charged with formulating financial reporting standards for companies, charities, and

<sup>1</sup> The net assets of the fund for the year ended March 31, 2012 were S\$1,090,400.



cooperative societies. The Competition Commission of Singapore has the objective of maintaining and enhancing efficient market conduct, to promote innovation and competitiveness and to eliminate or control practices having adverse effects on competition in Singapore. These roles include intervention in markets supervised by MAS. The SIC administers the Singapore Code on Take Overs and Mergers.

## LEGAL FRAMEWORK

**9. The principal legislative acts governing the structure and conduct of securities markets and their participants are the Securities and Futures Act (Cap. 289) (SFA) and the Financial Advisors Act (Cap. 110) (FAA).** Further detailed requirements are provided in regulations issued under both acts. These generally are subsidiary legislation unless otherwise stated. The rights of investors in public companies and the duties of directors are contained in the Companies Act (Cap. 50) (CA). Market intermediaries are required to obtain a Capital Market Services License (CMSL) or Financial Adviser's License (FAL) unless they are exempt by virtue of licensing under another Act administered by MAS, such as the Banking or Insurance Acts. While the concept of providing financial services or offering financial advice is defined very broadly in the legislation, a license is issued for specific itemized activities. A person wishing to operate an exchange or clearing facility or a trading platform is required to seek MAS' authorization.

**10. The legislation provides MAS with statutory power to grant exemptive relief from part or all of the provisions of the SFA. MAS can impose conditions on such relief.** A class order relief must be published but individual relief orders do not have to be published, although MAS has stated that its policy is generally to publish such exemptions. MAS publicly provides its criteria for granting such exemptions and quarterly publishes an anonymized list of such exemptions granted.

## MARKET STRUCTURE

### A. Market Intermediaries

**11. As at December 31, 2012 there were 1,110 market intermediaries supervised by MAS. Broadly, comprise seven different classifications, Capital Markets Services licensees (273), Licensed Financial Advisors (62), Registered Fund Management Companies (23), Exempt Fund Managers (517).**<sup>2</sup> Banks and Insurers conducting capital markets services and providing financial advice (128), Exempt Corporate Finance advisers (83) and other financial advisers (24). The large number of exempt fund managers is progressively declining as they become licensed or registered fund managers or exit the industry since licensing or registration is now required. Data on supervised market intermediaries for the past five years is as follows:

<sup>2</sup> Further to enhancements to the regulatory regime, all "Exempt Fund Managers" had to either register with MAS as a Registered Fund Management Company, or apply for a capital markets services license to conduct fund management by February 6, 2013. Those that fail to do so will have to cease business.

**Table 1. Market Intermediaries**

Type of Market Intermediary	2008	2009	2010	2011	2012
CMS licensees	224	223	251	251	273
Licensed FA	71	70	68	65	62
Banks and Insurers conducting capital markets services and providing financial advice	126	127	129	132	128
Exempt Corporate Finance advisers	55	63	69	78	83
Other financial advisers	67	75	38	22	24
EFM	553	486	522	562	517
RFMCs (introduced in 2012)	-	-	-	-	23
Total	1,096	1,044	1,077	1,110	1,110

Source: MAS.

**12. Capital Markets Services licenses are only granted to companies; individuals wishing to conduct a licensed activity for a Capital Markets Services licensee need to be registered as appointed representatives of a licensee.** There are no restrictions on foreign firms operating in Singapore. Since 2006 all new licensees must incorporate in Singapore but there are no restrictions on the type of business they can conduct and they are regulated under the same requirements as local intermediaries.

**13. There are three exchanges that operate as self-regulatory organizations (SROs).** These are the Singapore Exchange Securities Trading Limited (SGX-ST), Singapore Exchange Derivatives Trading Limited (SGX-DT), and Singapore Mercantile Exchange Pte. Ltd. (SMX). All three are supported by their respective clearing and settlement facilities. SGX-ST and SGX-DT are wholly-owned subsidiaries of Singapore Exchange Limited (SGX). SGX is listed on SGX-ST. SGX-ST and SGX-DT have a total of seven securities, 19 derivatives, and 22 securities and derivatives members while there are seven clearing members of SMX and over 50 trading members (including proprietary members). SMX commenced operations in August 2010. Membership figures are as follow:

**SGX****Table 2. Singapore Exchange Limited Members**

Members 1/	12/31/12	12/31/11	12/31/10	12/31/09	12/31/09
Securities	7	10	12	10	11
Derivatives	19	22	20	15	16
Dual	22	21	20	16	16
Total	48	53	52	41	43

Source: SGX.

1/ Excludes proprietary, remote, and dormant (ceasing) members.

**14. During this period, SGX noted an expansion of business plans by members, resulting in existing members taking on additional memberships and converting into dual members.** Some members also rationalized and consolidated their businesses into common legal entities.

## SMX

**Table 3. Singapore Mercantile Exchange Pte. Ltd.**

Membership Category	As of 12/31/2012	As of 12/31/2011	As of 12/31/10
General Clearing/Broker Member	6	6	5
Special Clearing Member	1	1	1
Trade Member	56	43	40
Remote Member	2	0	0
Total	65	50	46

Source: SMX.

**15. The number of clearing members (GCMs and SCMs) stagnated between end 2011 and end-2012.** Numbers may increase further on increase in liquidity and launch of relevant products for clearing members' customer base. For other membership categories there is significant growth which is expected to continue in second half of calendar year 2013 due to the launch of new products.

## B. Collective Investment Schemes

**16. Compared to the funds under management on a discretionary basis in Singapore the assets under management (AUM) for collective investment schemes (CIS) managed in Singapore is small: S\$28 billion versus S\$727 billion (in 2010 according to an MAS survey).**

**Table 4. Number of Authorized and Recognized CIS<sup>3</sup> (offered to retail investors)**

	2007	2008	2009	2010	2011	2012
No. of Authorized CIS	402	355	346	347	328	310
No. of Recognized CIS	546	675	711	779	787	817
Total	948	1,030	1,057	1,126	1,115	1,127

Source: MAS.

**17. There are also 4049 Restricted Schemes<sup>4</sup> notified to MAS with total AUM of S\$24.8 billion (end-2012).** Of these, 400 schemes have been identified as hedge funds<sup>5</sup> and S\$4.6 billion in overseas schemes offered only to institutional investors. Only 30 of these Restricted Schemes are managed in Singapore. Of the 4,049 schemes, 400 (AUM S\$2.65 billion) are identified as hedge funds; 99 (S\$1.2 billion) are money market funds. S\$60.9 billion in AUM defined by MAS as hedge funds are managed in Singapore. These include CIS, (S\$29.4 billion), closed end funds (S\$25.6 billion) and segregated investment mandates. Of these S\$468 million (11 schemes) are CIS which are also offered to and managed for accredited investors in Singapore. A further S\$2.186 billion (389 schemes) in hedge funds classified as CIS are offered in Singapore to accredited investors. All closed end funds constituted on or after July 1, 2013 will be classified and regulated as CIS.

<sup>3</sup> Authorized schemes are domiciled in Singapore. Recognized schemes are domiciled overseas. Both types may be offered to all investors and require a prospectus. Authorised schemes must comply with the relevant investment guidelines in the CIS Code while recognized schemes must be subject to investment guidelines in home jurisdictions that are substantially similar to those in CIS Code.

<sup>7</sup> Restricted schemes are (i) offered only to accredited investors (essentially high net worth individuals) and institutional investors; or (ii) with a minimum transaction amount of S\$200,000; and are subject to resale restrictions. They are notified to MAS which, if satisfied that they meet the MAS requirements admits them to a published list that it maintains.

<sup>5</sup> The total AUM and hedge fund figures are based on close to 80 percent responses to MAS' recent survey.

**Table 5. AUM by Fund Types**  
(In millions of Singapore dollars, end of year)

	2007	2008	2009	2010	2011	As of 10/30/2012
<b>Authorized CIS</b>						
MMF	774	1,313	1,470	1,958	2,067	1,568
Equity	22,306	10,260	17,379	18,620	14,343	14,136
Bonds/Fixed	5,265	4,686	4,282	3,876	8,411	7,259
Income Hedge Fund <sup>6</sup>	93	48	42	32	14	8 <sup>7</sup>
Others	9,379	5,528	6,783	6,430	5,216	5,029
Sub-total	37,817	21,835	29,956	30,916	30,051	28,000
<b>Recognized CIS</b>						
MMF	725	13	15	626	386	8
Equity	7,406	3,355	5,212	6,535	6,716	9,108
Bonds/Fixed	1,137	731	1,216	3,280	4,862	10,828
Income Hedge Fund	-	-	2	1	0.2	0.1
Others	602	683	811	2,033	1,283	2,171
Sub-total	9,870	4,782	7,256	12,475	13,247	22,115
<b>Total</b>	<b>47,687</b>	<b>26,617</b>	<b>37,212</b>	<b>43,391</b>	<b>43,298</b>	<b>50,115</b>

Source: MAS.

<sup>6</sup> The CIS Code defines a hedge fund as "a scheme which aims to achieve a high return through the use of advanced investment strategies." In assessing whether a scheme falls within this definition MAS considers, among other aspects, the following: (a) the use of advanced investment strategies which may involve financial instruments which are not liquid, financial derivatives, concentration of investments, leverage or short selling; Guidance: Advanced investment strategies include market directional, corporate restructuring, convergence trading or opportunistic strategies; and (b) the use of alternative asset classes.

<sup>7</sup> These hedge funds have now closed. No retail hedge funds are currently offered in Singapore (as of April 2013).

**Table 6. Total AUM of ETFs and Total Market Capitalization of REITs (Closed-End Property Funds)**

(In millions of Singapore dollars, end of year)

	2007	2008	2009	2010	2011	2012
<b>ETFs</b>						
Authorized ETFs	N.A.	1,327	2,213	2,422	1,658	2,214
Recognized ETFs	N.A.	602	1,048	2,344	2,455	2,823
<b>Total</b>	N.A.	1,929	3,261	4,766	4,113	5,037
<b>REITs</b>						
Authorized REITs	24,219	10,892	25,818	34,091	32,088	51,036
Recognized REITs	-	-	-	-	-	-
<b>Total</b>	24,219	10,892	25,818	34,091	32,088	51,036

Source: MAS.

### C. Markets

**18. Singapore has three approved exchanges that conduct SRO functions. SGX operates an equities market (SGX-ST) (a main and junior market named Catalist) and derivatives market (SGX-DT) and SMX operates a derivatives market.** While SGX has been operative for some time, SMX has only been in operation since August 2010.

**19. The number of listed companies, trading volumes and values and market capitalization at these exchanges over the past five years is as follows:**

**20. The five years inclusive of 2008 saw the start of the global economic and financial crisis and its aftermath.** From a listings perspective, 2008 was the year of onset, 2009 was full impact and in 2010 and 2011 there was some recovery. 2012 showed early sign of recovery but that turned negative and sharply around the second quarter with investors abandoning the IPO market. Interest however returned towards the end of the year. The number of listings, which are lower than the years before the above period, saw a decline in IPOs reflecting outlook and sentiments. The STI hit a low point around January/February of 2009 before recovering to around 3,000 at the end of December. This was also a year of intensive fund raising by companies. The STI traded sideways in a narrow 200 band till the end of December 2012 year before moving up. This period saw lower liquidity and value. This has improved significantly since then.

**Table 7. SGX—Catalist Turnover and Size**

Catalist	12/31/12	12/31/11	12/31/10	12/31/09 <sup>1/</sup>	12/31/09 <sup>1/</sup>
Trading Volume (million shares)					
Calendar year-to-date	87,142	28,011	38,581	36,400	31,241
Trading Value (In millions of Singapore dollars)					
Calendar year-to-date	7,869	3,536	5,100	6,098	3,783
Market Capitalization (In millions of Singapore dollars)	6,782	5,347	6,462	5,325	3,562
Number of listed companies <sup>2/</sup>	139	137	131	134	134
Source: SGX.					
1/ Includes sponsor-supervised Catalist companies as well as SESDAQ companies which had not appointed sponsors for the purpose of transiting to Catalist.					
2/ Excludes transfers to the Mainboard and delistings.					

**Table 8. SGX—Mainboard Turnover and Size**

Mainboard	12/31/12	12/31/11	12/31/10	12/31/09	12/31/09
Trading Volume (million shares)					
Calendar Year-to-date	364,538	268,677	346,923	425,578	305,074
Trading Value (In millions of Singapore dollars)	307,314	350,133	384,718	369,945	379,951
Market Capitalization (In millions of Singapore dollars)	653,621	539,475	663,746	670,345	381,101
Number of listed companies	637	636	651	639	633
Source: SGX.					

## SMX

**Table 9. SMX—Turnover and Size**

Year	Total Volume (In lots)	Total Turnover (In U.S. dollars)
2010 <sup>1/</sup>	8,333	405.73
2011	1,857,798	63,172.03
2012	2,108,914	71,262.13
2013 <sup>2/</sup>	281,058	12,124.48

Source: SMX.

1/ The data is from October 31, 2010 till end of the calendar year.

2/ The data is until June 17, 2013 from the beginning of the calendar year.

**21. The Exchange was launched on August 31, 2010 with an initial suite of four products. More products were introduced from 2011, and in 2011 and 2012 moderate year-on-year growth occurred.** Though there was significant increase in the number of trading members and users in 2011 and 2012, the market volatility and the overhang of global uncertainty particularly in 2012 hampered growth. In 2013 certainty in global markets resulted in subdued trading volumes year-to-date.

**22. Both exchanges conduct real time surveillance of their markets and are responsible for ensuring that orderly markets are maintained.** There are also 25 Recognized Market Operators (RMOs) operating but only three of them are domestic. These are small markets, with two of the local RMOs operating bond trading platforms and the third trading commodity futures. MAS does not regard RMOs as SROs although they have legal obligations to operate fair, orderly and transparent markets.

**23. Participants in the financial sector in Singapore characterize the overall market as an uncomplicated model primarily based around agency trading in the equities market. Little trading as a principal is conducted by exchange members.**<sup>8</sup> The capital adequacy maintained by intermediaries is considered to be high because additional capital buffers in excess of the minimum are commonly maintained.<sup>9</sup> Short selling is permitted and largely occurs intraday. Short sales must

<sup>8</sup> Trades conducted on exchange as principal are only the trades conducted using the member's own funds. Trades originating from client monies are considered agency transactions. Managed accounts in the case of discretionary fund management consist of client monies.

<sup>9</sup> Many intermediaries maintain buffers in excess of the minimum regulatory capital required as a cushion against market fluctuations and the corresponding potential increase in their capital requirements. For example, when the market falls on a specific day, customers of the intermediary may be subject to margin calls, leading to an increase in risk requirements. A larger capital helps support this increased risk requirement. When there is a capital shortfall, it will take some time for any capital injection from the parent or external fund raising to bring the capital level up to meet with regulatory requirements. Hence, intermediaries will typically maintain capital buffers.

(continued)



be tagged and the aggregate short volume in individual securities is publicly disclosed daily. Contracts for difference (CFD) trading is not conducted on exchange (no CFDs are listed) but the very limited activity which occurs is conducted privately and directly between market intermediaries and their clients. A similar position applies with respect to bond trading, i.e., primarily conducted between market intermediaries and their clients.<sup>10</sup>

**24. High frequency trading and dark pools are not a prevalent feature in Singapore.**

Participants in the local market have not experienced demand for these trading mechanisms although trading is conducted on fully electronic markets and direct electronic access to the exchange markets via brokers is facilitated by their members.

## D. Preconditions for Effective Securities Regulation

### Legal System

**25. Singapore is a republic and has a parliamentary government based on the Westminster model.** Singapore's common law legal system is underpinned by an adherence to the rule of law and an effective and independent judiciary. There are three main sources of law: the Constitution, Legislation (primary and secondary); and the common law (judge-made law).

### Constitution

**26. The Constitution is the supreme law of Singapore and lays down the framework for the three organs of state: the Executive, the Legislature and the Judiciary.** Its provisions are legally entrenched, requiring the support of a two-thirds majority of elected members of Parliament before it may be amended. In addition, at least two-thirds of the total number of votes cast by the electorate in a national referendum is required to amend the discretionary powers of the elected President and the provisions on fundamental liberties set out in the Constitution. The Constitution also provides for an elected President, whose primary role is to safeguard past reserves, i.e., reserves accumulated during previous terms of office of government, and approve the appointment of key civil service personnel.

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<sup>10</sup> Based on MAS' review of the CFD/LFX brokers' trading activities in 2011, most of which are not exchange members, trading volume in CFD and LFX still account for less than 5 percent of total turnover in the cash equity and foreign exchange markets in Singapore. MAS prescribes minimum margin rates and the types of collateral that CFD/LFX brokers can accept from their customers. MAS requires CFD/LFX brokers to furnish a written risk disclosure statement to their customers prior to the customers' opening a trading account and obtain from the customer an acknowledgement that he has received and understood the nature and contents of the risk disclosure statement. As CFD/LFX are considered Specified Investment Products (complex products), CFD/LFX brokers are required to assess the customers' knowledge and experience in trading CFD/LFX before allowing them to trade in these instruments. Where the customers have been assessed to not having the knowledge and experience, the brokers are required to provide advice to the customers.

**Legislation**

**27. The Legislature comprises the President and Parliament and is the legislative authority responsible for enacting legislation.**

**Common law**

**28. Singapore is a common law jurisdiction that supplements the legislation and regulation with the doctrine of judicial precedent (stare decisis).**

**Judiciary**

**29. The Judiciary is one of the three constitutional pillars of government along with the Legislature and the Executive.** The Judiciary's function is to independently administer justice. The Judiciary's role is safeguarded by the Constitution. The Judiciary consists of the Supreme Court as well as the Subordinate Courts. The Supreme Court consists of the Court of Appeal and the High Court, and hears both civil and criminal matters. The Judiciary is headed by the Chief Justice. The Chief Justice, Judges of Appeal, Judges and Judicial Commissioners are appointed by the President.

**Alternative dispute resolution**

**30. Other than formal legal proceedings in court, there are other avenues for the resolution** of disputes. Common forms of alternate dispute resolution in Singapore include arbitration, mediation, and adjudication. MAS also requires all financial institutions which have dealings with retail consumers to be members of an approved dispute resolution scheme. The Financial Industry Disputes Resolution Centre Ltd. (FIDReC) is such an alternative dispute resolution scheme set up to provide an affordable dispute resolution mechanism between consumers and financial institutions. It is an approved dispute resolution scheme under the MAS (Dispute Resolution Schemes) Regulations 2007.

**Business laws****Corporate law**

**31. The Companies Act (Cap. 50) deals with all company related matters, from incorporation, ongoing requirements and also the winding up of companies.** Singapore also has a Business Registration Act (covering certain businesses that are not organized as corporate entities), a Limited Liability Partnership Act, a Limited Partnership Act, and a Business Trust Act giving a wide range of entities through which commercial activities may be conducted. In addition, there are other acts which deal with particular regulated activities.

***Insolvency and bankruptcy law***

**32. Insolvency and bankruptcy laws are mainly set out in the Companies Act (Cap. 50) and the Bankruptcy Act (Cap. 20) respectively.** In addition, there are some provisions in the SFA, Banking Act, and Insurance Act that deal with the winding up of the respectively regulated financial institutions.

***Contract law***

**33. Singapore contractual principles have their roots in English common law contractual principles.** Many of the current statutes dealing with contract laws are English in origin, whether incorporated as a result of section 4 of the Application of English Law Act (Cap. 7A) or modeled after their English counterparts (e.g., Contracts (Rights of Third Parties) Act (Cap. 53B)) or after other common law jurisdictions (e.g., the Consumer Protection (Fair Trading) Act (Cap. 52A)).

***Trust law***

**34. Singapore’s legal system comprises both statutory laws and the common law legal system.** One feature of the common law system is the existence of a dual ownership of property. Ownership of property can be divided into a legal interest and an equitable interest. A trust is based on the concept of legal and equitable ownership and the alienation of property. A trust imposes obligations enforceable in equity on a person, known as “trustee,” to hold and in accordance with the terms of the trust, deal with or exercise rights in property, of which he has the legal or equitable title or over which he has legal control, for the benefit of another known as the beneficiary or the accomplishment of a purpose. There is no central registry for the registration of trusts in Singapore. However, under the Trust Companies Act (Cap. 336) a person who wishes to carry on trust business as defined under the Act must be licensed under the Act as a licensed trust company and be subject to regulation by MAS. In the context of offers of units in a CIS constituted as a unit trust in Singapore, the trustee plays an important role as an independent oversight entity. Under the SFA, MAS will require, as a condition for authorization, a unit trust to have a trustee approved under section 289 of the SFA.

***Consumer protection law***

**35. The Consumer Protection (Fair Trading) Act (Cap. 52A) aims to protect consumers, without adding onerous burden to businesses against unfair practices and to enhance consumer rights.** The Act provides the legislative framework to allow consumers aggrieved by unfair practices to have recourse to civil remedies before the courts. It also provides for a cooling-off period for direct sales and time share contracts, and allows specified bodies to enter voluntary compliance agreements with, or apply for injunction orders against errant traders.

## Legal profession

**36. Under the Legal Profession Act (Cap. 161), admission to the Singapore Bar is confined to “qualified persons.”** Applicants are required to have passed the relevant legal examinations as prescribed by the Singapore Institute of Legal Education. Newly-qualified advocates and solicitors are required to meet continuing professional development requirements. Two statutory bodies serve the legal community in Singapore; The Law Society and the Singapore Academy of Law. 33. The Legal Profession (Professional Conduct) Rules set out the rules of professional conduct for lawyers who are practitioner members of the Law Society. Members of the public can also make complaints about lawyers under the Legal Profession Act.

## Auditing and accounting

**37. Singapore’s accountancy sector is well-developed and is built on international accounting standards and rules.** Accounting and auditing standards and their enforcement are assessed under Principles 18–21 of this report.

## MAIN FINDINGS

**38. Principles relating to the regulator:** The MAS operates to a high standard overall. There are concerns regarding its independence from government, most notably in the composition of the Board, and the transparency of some elements of regulatory decision making and appeals therefrom. The Code of Conduct for staff imposes high standards of personal conduct. On other matters, systemic risk, policing of the perimeter of regulation and conflicts of interest, the Capital Markets Group (CMG) of MAS, which has supervisory responsibility for capital markets and capital market intermediaries, meets IOSCO requirements. Within MAS, the Financial Supervision Group (FSG) has a professional head count of 496. Within FSG, Banking and Insurance Group has 229, Policy, Risk and Surveillance Group has 91 and CMG has 176.

**39. Principles for self-regulation:** The only SROs in the jurisdiction are the three approved exchanges. Their self-regulatory functions are to establish rules on eligibility (admission of members), trading, business conduct and qualification, conduct disciplinary actions, and administer compensation arrangements for investors who suffer loss due to the defalcation or insolvency of members. They also conduct real time front line market surveillance and inspection of members. Suspicious market activity is referred to MAS for action. Exchanges may conduct disciplinary action against their members for breaches of their rules. SGX is responsible for approving listings of initial public offerings (IPOs) but MAS must review and register any prospectus (offer of securities) relating to an IPO. In respect of the listing of derivatives products on SGX and SMX, as required under SFA section 29, MAS has approved each contract specification before permitting trading.

**40. Principles for the enforcement of securities regulation:** MAS has a reasonable record in prosecuting cases of breaches of securities law in the civil courts and, in cooperation with the CAD

and the AGC, its success rate in the criminal cases it brings is high. It has an extensive suite of supervision, inspection, surveillance, and sanctioning powers and its enforcement philosophy is thoughtful and coherent. MAS has made a considerable investment in investor education and, in terms of achieving outcomes which support its regulatory objectives, MAS believes this makes an important contribution to enabling retail investors to better protect themselves.

**41. Principles for cooperation in regulation:** MAS has the authority to share confidential regulatory information with domestic and foreign regulators although there are some statutory requirements that must be fulfilled. MAS is a full signatory to the IOSCO MMoU (signed in October 2005) and it is permitted to share information with a bona fide foreign regulator even if that regulator is not a MMoU signatory. MAS regularly provides information on a timely basis to foreign regulators.

**42. Principles for Issuers:** Through a combination of CA requirements, SFA legislative and regulatory requirements enforced by MAS and SGX Listing Rules, public companies in general and listed companies in particular are subject to detailed standards of accurate disclosure in prospectuses, annual and other periodic reports and via the continuous disclosure regime. There are weaknesses in the timeliness required of some corporate disclosures when considered in the context of emerging global standards and in the enforcement of high standards of corporate governance on unlisted public companies. Monitoring of compliance with and enforcement of the CA by ACRA is appropriately resourced and motivated. Although the 14 days' notice for an annual general meeting (AGM) is short by developing international standards the provision that this must be extended to 21 days when a special resolution is to be voted upon mitigates the problem to some extent, as does the extensive use of the websites of MAS and SGX to publish notices, etc. The control of takeovers and other change of control transactions appear to work well and protects the interests of minority shareholders. Accounting standards are determined, implemented and interpreted by a body, the Accounting Standards Council (ASC), which acts in the public interest. The ASC has issued the Singapore Financial Reporting Standards (SFRS) which are based on IFRS with a small number of modifications to take into account local economic and business circumstances and context. These are not material to the assessment.

**43. Principles for auditors, credit rating agencies, and other information service providers:** Singapore has adopted auditing standards fully based on international standards. Auditors must be independent of the firms they are auditing. Audit standards are overseen by ACRA which was formed in 2004 as a statutory board comprising not more than 15 senior professionals, of which one member must be a public accountant and one member a non-practicing accountant both nominated by the Institute of Certified Public Accountants (ICPAS). ACRA has prescribed a code of ethics based on the code issued by the International Federation of Accountants. Participation in ACRA's Practice Management Program (PMP) (i.e., inspections of audits of financial statements) as a condition for a continued right to practice. If the PMP identifies a failure to comply with standards, remedial action will follow. If the failure is serious or repeated, restrictions on practice, including suspension or cancellation, will result. Since 2012, credit rating agencies (CRAs) operating in Singapore must be licensed by MAS or recognized (if operating from a foreign location) regardless

of whether ratings are to be used for regulatory purposes. MAS has issued a code of conduct with which credit rating agencies (CRAs) must comply.<sup>11</sup> Any person providing research advice must be licensed as a financial adviser.

**44. Principles for collective investment schemes:** All CIS operators domiciled in Singapore must be licensed by or registered with MAS. They are subject to conduct of business, capital and organizational requirements. Enhancements to the regulatory regime are currently being introduced. The MAS requirements and processes for approving CIS are modeled specifically on the equivalent regime for issuers. CIS offered to accredited investors (essentially high net worth individuals) and institutional investors (essentially regulated financial institutions) are exempt from prospectus requirements, the CIS Code and investment guidelines. MAS has a comprehensive system for admitting foreign domiciled schemes that are offered for sale to retail investors and a notification regime, with conditions attached, for schemes offered to accredited investors and institutional investors. The net effect is that MAS is fully informed and can also maintain its gatekeeper role on all operators (and their funds) seeking to do business (management or offering, locally or remotely) in Singapore. There are currently no hedge funds identified as CIS offered to retail investors in Singapore. This appears to be for commercial and not regulatory reasons.

**45. Supervision of CIS operators should be strengthened:** Once the transition to a more comprehensive licensing system for fund management companies has been completed there should be a greater emphasis than was the case before the transition period on more frequent in-depth onsite inspections of operators. Although the system places great reliance on the performance of approved trustees for unit trusts, in the last four years MAS had inspected each of the two largest approved trustees (which handle about 76 percent of Singapore domiciled CIS) only once and has conducted a supervisory visit on one other. There is a case for re-examining the risk assessment of some CIS operators, such as those operating hedge funds of a size which, as a group, may create the potential for systemic risk and excessive market volatility, although that is not the case at present according to MAS's latest survey.

**46. Principles for market intermediaries:** Dealing and advisory activities require a capital markets services or financial adviser's license. Capital, track record and fitness and propriety are key requirements for a license. Applicants must be able to demonstrate adequate arrangements for managing conflicts of interest, internal controls and they must establish risk and compliance monitoring functions and maintain professional indemnity insurance. Minimum capital requirements must be met initially and on an ongoing basis. Direct market access to markets is permitted subject to risk management and other appropriate controls. Client money must be deposited in a separate

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<sup>11</sup> The Code of Conduct for CRAs (the CRA Code) is based on IOSCO requirements of Principle 22. These include:  
 (i) quality and integrity of the rating process;  
 (ii) independence and avoidance of conflicts of interest;  
 (iii) transparency and timeliness of ratings disclosure; and  
 (iv) treatment of confidential information.

trust account and not be co-mingled with the intermediaries' own funds. Regular reporting obligations are required to MAS and the exchanges of which they are a member and monitoring and inspection of them occur by these bodies.

**47. Principles for the secondary markets:** Two market types are permitted: Approved exchanges and recognized market operators (RMOs). Licensing requirements are applicable to both types. Applicants must be fit and proper to conduct operations, maintain capital, and have rules to ensure they conduct fair, orderly and transparent markets. They also must monitor the conduct of their members. Access to the markets they run must be fair, and they must comply with MAS requirements for conducting their operations. The requirements for an approved exchange are more extensive than those for an RMO due to the limited nature of the markets that are maintained by RMOs, and because they are mainly based offshore.

**Table 10. Summary Implementation of the IOSCO Principles—Detailed Assessments**

Principle	Grade	Findings
Principle 1. The responsibilities of the Regulator should be clear and objectively stated.	FI	MAS' responsibilities, powers and authority over capital market activities are set out in detail in the SFA, the FAA, and the respective subsidiary legislation.
Principle 2. The Regulator should be operationally independent and accountable in the exercise of its functions and powers.	PI	The assessors have not heard, read or seen anything to indicate that, to date, political or commercial influence has been used to influence the exercise by MAS staff of their powers and responsibilities. <b>However</b> , the composition of the MAS Board potentially exposes MAS decision making structures and processes on operational matters to interference from senior politicians or at the very least to the public perception that this could be so. In practice there are several checks and balances which limit this possibility as set out in the Code of Conduct for Board members and the operational policy manual for staff. Other matters reflected in this rating are the President's discretionary power to refuse to appoint any person as Chairman, Director or Managing Director of MAS or to refuse to revoke any such appointment if the President does not concur with the recommendation of the Cabinet or Public Service Commission; the minister's power to call for information on MAS' duties and functions (without any further narrowing of those broad based terms); and the minister's power to appoint inspectors to investigate matters which are the responsibility of MAS.
Principle 3. The Regulator should have adequate powers, proper resources and the capacity to perform its functions and exercise its powers.	FI	Within the annual budget allocation for financial supervision the Capital Markets Group (CMG) receives funding appropriate to its responsibilities and the size and complexity of the market. On a head count basis, the CMG appears to have the necessary resources relative to the other supervisory groups and the scope and size of the various tasks it is required to undertake.



Principle	Grade	Findings
Principle 4. The Regulator should adopt clear and consistent regulatory processes.	BI	MAS' policies and procedures for policy formulation and wide consultation before implementation are of a high standard. There are concerns over procedural fairness in the appeals procedures from those decisions by MAS staff which have a significant impact on individuals and firms.
Principle 5. The staff of the Regulator should observe the highest professional standards, including appropriate standards of confidentiality.	FI	The staff code meets the IOSCO requirements concerning personal and familial dealings. Confidentiality requirements are mandated by legislation (OSA and SBGCA). The familial dealing restrictions may be difficult to enforce, as MAS realizes, but the sanction of the staff member possibly losing his or her job (or worse) in the event of a discovered breach is strongly dissuasive. Comprehensive enforcement procedures are in place.
Principle 6. The Regulator should have or contribute to a process to monitor, mitigate and manage systemic risk, appropriate to its mandate.	FI	As part of an integrated regulator and central bank the CMG has been part of the process of monitoring, mitigating, and managing systemic risk for some considerable time, unlike many stand-alone securities regulators. As such it appears to have well developed processes to contribute to the work of MAS in this area. MAS gave several examples which demonstrate that securities market developments which might become sources of systemic risk have been identified early and the appropriate analytical and supervisory measures have been taken. In at least one case (over-the-counter—OTC derivatives clearing) legislative change has been secured to ensure that MAS has the appropriate powers.

Principle	Grade	Findings
Principle 7. The Regulator should have or contribute to a process to review the perimeter of regulation regularly.	FI	MAS has clearly identified and publicly enunciated the need to ensure that its regulation remains appropriate to market developments and that this includes monitoring the arrival of new products and new ways of providing financial services which might, by accident or design, fall just outside current regulatory scope. Its mechanisms which seek to ensure that it remains alert to these changes domestically and internationally are effective and it has few problems in securing timely legislative and regulatory change when it deems it necessary.
Principle 8. The Regulator should seek to ensure that conflicts of interest and misalignment of incentives are avoided, eliminated, disclosed or otherwise managed.	FI	Requirements for the management of conflicts of interest are a key part of the regulatory framework for all regulated entities under the supervision of the CMG. In collaboration with SGX, CMG also addresses the need for listed issuers to disclose and where necessary take steps to mitigate conflicts of interest.
Principle 9. Where the regulatory system makes use of Self-Regulatory Organizations (SROs) that exercise some direct oversight responsibility for their respective areas of competence, such SROs should be subject to the oversight of the Regulator and should observe standards of fairness and confidentiality when exercising powers and delegated responsibilities.	FI	MAS relies on approved exchanges to conduct market surveillance and it expects them to exercise responsibilities in respect to the conduct of the market and their members and enforce their rules to set standards and promote investor protection. These responsibilities are set out in law and MAS monitors their compliance with these obligations. MAS does not delegate any of its responsibilities to the exchanges except with respect to prospectus approvals on SGX's Catalist market (emerging companies).

Principle	Grade	Findings
Principle 10. The Regulator should have comprehensive inspection, investigation and surveillance powers.	FI	MAS has a comprehensive suite of inspection, investigation and surveillance powers. There is no legal impediment to MAS conducting onsite inspections without notice. Inspections can be made on a routine basis or "for cause." In addition, regulated entities are required to maintain relevant books and information for a period of not less than five years. These must contain sufficient detail to explain the transactions and financial positions of its business and must include customer details and other particulars. Day-to-day surveillance of trading activity is conducted by the approved exchanges, under the supervision of MAS. Any person is required to provide MAS with information or produce books relating to any matter under investigation at a specified time and place. MAS is empowered to obtain a search warrant from a magistrate. An accompanying police officer is not required in the conduct of a search.
Principle 11. The Regulator should have comprehensive enforcement powers.	FI	The lack of an administrative power to issue fines for breaches of provisions which fall short of the right or need for MAS to go the court under civil penalty proceedings is an omission when considered internationally. MAS argues that the use of its composition powers (see detailed text), which are not necessarily limited to cases for which a civil penalty is available, can be as small as S\$500 and which require an admission of liability, is a more effective deterrent mechanism for penalizing low significance breaches than a specific power to fine under administrative procedures which would entail providing a mechanism for appeals. Based on the cases presented, the assessors accepted the merit of this argument. Reprimands are not required to be published. However, MAS' policy is generally to publish reprimands for market misconduct including the circumstances justifying the reprimands.

Principle	Grade	Findings
Principle 12. The regulatory system should ensure an effective and credible use of inspection, investigation, surveillance and enforcement powers and implementation of an effective compliance program.	BI	The downgrade arises from gaps identified under the two main supervisory focused Principles, 24 (CIS) and 31 (Intermediaries). The cycle of detailed onsite inspections has been assessed as insufficiently frequent, particularly for entities rated as high or medium high risk in the risk based assessment process. On the positive side, MAS' enforcement philosophy is cogent, coherent, and well developed. Its enforcement statistics indicate that it has a good success rate in the cases it brings.
Principle 13. The Regulator should have authority to share both public and non-public information with domestic and foreign counterparts.	FI	MAS has the legal authority to share public and nonpublic information with domestic and foreign regulators.
Principle 14. Regulators should establish information sharing mechanisms that set out when and how they will share both public and non-public information with their domestic and foreign counterparts.	FI	MAS has entered protocols with the CAD (conduct of criminal investigations) and the AGC (conduct of prosecutions). MAS became a full signatory to the IOSCO MMoU in 2005.
Principle 15. The regulatory system should allow for assistance to be provided to foreign Regulators who need to make inquiries in the discharge of their functions and exercise of their powers.	FI	MAS assists foreign regulators where their requests fall inside of its legal authority to provide confidential information. In rare cases where the requests fall on the borderline, MAS consults with the relevant foreign regulator to clarify the request taking into account the spirit, intent and provisions of the IOSCO MMoU.
Principle 16. There should be full, accurate and timely disclosure of financial results, risk and other information that is material to investors' decisions.	BI	Through a combination of Companies Act requirements, SFA legislative and regulatory requirements enforced by MAS, and SGX Listing Rules, public companies in general, and listed companies in particular are subject to detailed standards of accurate disclosure in prospectuses, annual and other periodic reports and via the continuous disclosure regime. There are weaknesses in the timeliness required of some corporate disclosures when considered in the context of emerging global standards.

Principle	Grade	Findings
Principle 17. Holders of securities in a company should be treated in a fair and equitable manner.	BI	<p>Monitoring of compliance with and enforcement of the CA by ACRA is appropriately resourced and motivated.</p> <p>Although the 14 days' notice for an AGM is short by international standards the provision that this must be extended to 21 days when a special resolution is to be voted upon mitigates the problem to some extent as does the public availability of announcements and related documentation on the MAS and SGX websites.</p> <p>The control of takeovers and other change of control transactions works well and protects the interests of minority shareholders.</p> <p>MAS recognizes the practical problems in establishing the identity of beneficial owners when those owners seek to obscure their identity through, for example, passing ownership through a chain of offshore companies. The recently increased penalties for non-disclosure provide an effective deterrent.</p>
Principle 18. Accounting standards used by issuers to prepare financial statements should be of a high and internationally acceptable quality.	FI	<p>The development, interpretation and enforcement of accounting standards has been undertaken by an independent body acting in the public interest for six years. In terms of local modifications of the International Financial Reporting Standards (IFRS) to meet local conditions there is a general consensus that the differences are few. There appears to have been some changes to meet the needs of the banks, which is not uncommon globally such as in the EU. These are not material to this principle.</p>
Principle 19. Auditors should be subject to adequate levels of oversight.	FI	<p>ACRA oversees the maintenance of auditor standards via a mandatory statutory periodic audit inspection program. International audit standards apply. Failure to comply with the auditing standards would result in consequences ranging from remedial programs to restrictions on the ability to provide audits and suspension and cancellation of a public accountant's license.</p>

Principle	Grade	Findings
Principle 20. Auditors should be independent of the issuing entity that they audit.	FI	A Code of Professional Conduct Standards and Ethics setting out standards for independence is part of the legislation regulating accountants.
Principle 21. Audit standards should be of a high and internationally acceptable quality.	FI	Auditing and assurance standards are equivalent to international standards.
Principle 22. Credit rating agencies should be subject to adequate levels of oversight. The regulatory system should ensure that credit rating agencies whose ratings are used for regulatory purposes are subject to registration and ongoing supervision.	FI	Since 2012 all CRAs require a capital markets services license (irrespective of whether their ratings are used for regulatory purposes). CRAs must comply with MAS's CRA Code of Conduct (which is based on this IOSCO principle) including keeping records and the management and disclosure of conflicts of interest.
Principle 23. Other entities that offer investors analytical or evaluative services should be subject to oversight and regulation appropriate to the impact their activities have on the market or the degree to which the regulatory system relies on them.	FI	Analytical and sell side analysts are required to be licensed as financial advisers and their reports are subject to the same requirements as applicable to all holders of a Financial Advisers license.
Principle 24. The regulatory system should set standards for the eligibility, governance, organization and operational conduct of those who wish to market or operate a collective investment scheme.	BI	The regulatory requirements of authorization, recognition, and notification enables MAS to be well informed about the size and structure of the CIS industry in Singapore and to develop reasonably accurate metrics concerning the risk, systemic and otherwise, inherent in the business. The exercise of the gatekeeping function is rigorous as regards operators and overseas schemes. Once an operator (or scheme) is inside the perimeter the supervisory approach relies heavily on periodic reporting, desk-based surveillance, limited scope company visits, and the deterrence impact of the requirement for licensing of individuals and MAS's other enforcement activities. In-depth onsite inspections are not sufficiently frequent, particularly of operators rated high or medium high risk and approved trustees of unit trusts. The resources for onsite inspections have been limited owing to the demands of a large licensing project that should be completed by mid 2013.

Principle	Grade	Findings
Principle 25. The regulatory system should provide for rules governing the legal form and structure of collective investment schemes and the segregation and protection of client assets.	BI	In the unit trust model as adopted in Singapore the role of the approved trustee is critical. A major failure would damage Singapore's reputation for probity and efficiency. The criticism of the intensity of MAS' onsite inspection of approved trustees set out in P24 is equally valid here.
Principle 26. Regulation should require disclosure, as set forth under the principles for issuers, which is necessary to evaluate the suitability of a collective investment scheme for a particular investor and the value of the investor's interest in the scheme.	FI	MAS describes the securities offering regime as "predominantly disclosure based." MAS also imposes an array of disclosure requirements, through detailed prospectus specifications, Product Highlights Sheets and periodic reports with extensive operational requirements as required by IOSCO Principles.
Principle 27. Regulation should ensure that there is a proper and disclosed basis for asset valuation and the pricing and the redemption of units in a collective investment scheme.	FI	MAS has robust requirements for requiring the disclosure of the valuation of assets of CIS, any changes in valuation methodology, and the calculation of pricing and redemption of units. The obligations it imposes on CIS operators (and trustees) in the mechanisms they must adopt to make such valuations are rigorous and include provisions in the difficult area of the pricing of unquoted or illiquid assets. These include the test that must be applied when selecting third party valuers.
Principle 28. Regulation should ensure that hedge funds and/or hedge funds managers/advisers are subject to appropriate oversight.	BI	MAS processes and requirements meet the standards set out under this principle with respect to authorization/registration and regulation of those who wish to operate hedge funds, allowing the regulator to get an overall picture of the risks posed by each hedge fund and in timely disclosure to investors. However, ongoing supervision has some vulnerability in the area of onsite inspections.

Principle	Grade	Findings
Principle 29. Regulation should provide for minimum entry standards for market intermediaries.	FI	Dealing and advising (and other defined business of financial intermediaries) require a Capital Markets Services or Financial Adviser's license. Applicants must be "fit and proper." Entry requirements include minimum base capital, track record, operation of appropriate risk and compliance monitoring systems and maintenance of professional indemnity insurance.
Principle 30. There should be initial and ongoing capital and other prudential requirements for market intermediaries that reflect the risks that the intermediaries undertake.	FI	Licensees must maintain minimum capital requirements at all times. The financial resources required vary according to their risks and the nature of the license. MAS and the exchanges require compliance with these obligations.
Principle 31. Market intermediaries should be required to establish an internal function that delivers compliance with standards for internal organization and operational conduct, with the aim of protecting the interests of clients and their assets and ensuring proper management of risk, through which management of the intermediary accepts primary responsibility for these matters.	BI	Licensees must observe MAS's Guidelines on Risk Management Practices. They must have written policies for risk management and conflicts of interests, internal control and compliance functions. Clients are protected by "know your customer" obligations and their assets are not to be comingled with the intermediary and are protected by trust account requirements. They are subject to ongoing supervision by MAS and exchanges of which they are a member. The downgrade arises from the gaps identified under Principles, 12 (Enforcement) and 24 (CIS).
Principle 32. There should be procedures for dealing with the failure of a market intermediary in order to minimize damage and loss to investors and to contain systemic risk.	FI	MAS has up to date procedures for dealing with intermediary failure and has been proactive in conducting simulation exercises to familiarize staff with them.
Principle 33. The establishment of trading systems including securities exchanges should be subject to regulatory authorization and oversight.	FI	The establishment of new regulated markets (approved exchanges or recognized market operators) requires MAS' approval and compliance with licensing criteria. Ongoing compliance with the obligations required of the conduct of markets is overseen by MAS.



Principle	Grade	Findings
Principle 34. There should be ongoing regulatory supervision of exchanges and trading systems which should aim to ensure that the integrity of trading is maintained through fair and equitable rules that strike an appropriate balance between the demands of different market participants.	FI	MAS has a suite of supervisory tools that it uses in its ongoing monitoring of compliance by regulated markets with the obligations of law and their license. Exchanges conduct real time market surveillance and they refer instances of market misconduct to MAS for investigation. MAS conducts on and off site oversight of regulated markets.
Principle 35. Regulation should promote transparency of trading.	FI	Exchanges are required to maintain "fair, orderly, and transparent" markets. OTC trading in listed securities in Singapore, other than reportable large transactions conducted by an exchange intermediary pursuant to the exchange's rules, is insignificant. MAS is implementing the recommendations of the G20 concerning OTC derivatives. There is a very small amount of trading in "dark pools."
Principle 36. Regulation should be designed to detect and deter manipulation and other unfair trading practices.	FI	Civil monetary and criminal sanctions can be imposed for unfair market practices (market and price manipulation, insider dealing and front running and wrongful acts). Sanctions have been imposed by exchanges and MAS in respect of unfair practices.
Principle 37. Regulation should aim to ensure the proper management of large exposures, default risk and market disruption.	FI	Large exposures, market disruption and default risk are regulated by the exchanges and MAS via early warning, default procedures and market disruption rules. Short selling is permitted but is monitored and disclosed to the market.
Principle 38. Securities settlement systems and central counterparties should be subject to regulatory and supervisory requirements that are designed to ensure that they are fair, effective and efficient and that they reduce systemic risk.		Not assessed
Fully Implemented (FI) (28), Broadly Implemented (BI) (8) , Partly Implemented (PI)(1) , Not Implemented (NI)(0), Not Applicable (NA)(0)		

## Recommended action plan and authorities' response

### Recommended action plan

**Table 11. Recommended Action Plan to Improve Implementation of the IOSCO Principles**

Principle	Recommended Action
Principle 2	The President's discretionary power to refuse to appoint any person as Chairman, Director or Managing Director of MAS or to refuse to revoke any such appointment if the President does not concur with the recommendation of the Cabinet or Public Service Commission should be reconsidered as should the minister's power to call for information on MAS' duties and functions (without any further narrowing of those broad based terms); and the minister's power to appoint inspectors to investigate matters which are the responsibility of MAS. The core principles of the Code of Conduct for MAS Board members should be set out on the MAS website in order to provide the public with confidence that Board members are required to adhere to high standards of personal conduct in the performance of their duties.
Principle 4	In order to be consistent with good practice in most developed market jurisdictions which operate under common law principles, MAS should permit those subject to a negative decision to present their case in person. Subsequent appeals to the minister should be replaced with a more demonstrably independent process prior to judicial review by the court. Alternative solutions are either the minister surrenders his right to reject the advice of the Appeal Advisory Committee or, preferably, that the Committee is brought "in house" to MAS, its decisions are final (subject to judicial review), and the minister is no longer involved in making these decisions.
Principle 9	Encourage approved exchanges to publish promptly the outcomes of regulatory actions taken against their members, including identifying the parties involved and the behavior being sanctioned.
Principle 11	The lack of an administrative power of MAS to issue fines should be kept under review and change sought if the current arrangements prove inadequate for effective and proportionate enforcement.

Principle	Recommended Action
Principle 12	<p>MAS should increase the frequency of in-depth inspections of CIS and other intermediaries with a high or medium high risk rating as set out in Principles 24 and 31. It should increase its supervision of the main CIS trustees. It should also carry out more random detailed inspection visits on lower rated entities, as well as intensifying thematic visits, mystery shopping, etc. to remind firms that breaches of market conduct or selling practices requirements may have consequences even if clients do not complain to MAS.</p>
Principle 16	<p>MAS should consider imposing an obligation on unlisted public companies which use the prospectus exemption provision to notify MAS of the offer, the funds raised and the number and type of new shareholders who accepted the offer.</p> <p>Reliance on moral suasion exerted by ACRA on unlisted public companies regarding specific and timely disclosure should be replaced with a statutory requirement.</p> <p>MAS should subject monitoring and enforcement of SGX's continuous disclosure obligations by the exchange and its reliance on private warnings to greater scrutiny.</p>
Principle 17	<p>Although the disclosure of shareholdings and changes in holdings by directors and CEOs is consistent with global practice as established by IOSCO, MAS should extend this to senior managers rather than, as at present, subjecting them only to the general 5 percent shareholding disclosure rule applicable to all shareholders. The assessors support setting out the bankruptcy and insolvency provisions in a separate act as is currently under consideration.</p>
Principle 19	<p>ACRA should now make detailed transparency available of the outcome of its PMP reviews at the individual level of those who do not fully satisfy ACRA's requirements, including the nature of the conduct and the names of the parties which engaged in the conduct where weaknesses do not justify suspensions and cancellations.</p>
Principle 20	<p>Correct the gap in the law that permits the Public Accountants Oversight Committee (PAOC) to impose monetary penalties following a complaint but not following the outcome of a PMP.</p>

Principle	Recommended Action
Principle 24	<p>In-depth onsite inspections of CIS operators should be increased in frequency, particularly of operators rate high or medium high risk and also of approved trustees of unit trusts.</p> <p>MAS should take steps to ensure that those who have not applied for licensing or registration (or who have been declined by MAS) under the new enhanced regulatory regime for fund management companies actually exit the industry (or obtain legitimate employment at other licensed or registered entities).</p>
Principle 27	<p>In view of the possibility of conflicts of interest and abuse when pricing unquoted or illiquid assets, as demonstrated by cases in other jurisdictions, MAS should consider reviewing current market practice and, based on its findings, consider whether enhancements to the regulatory requirements are necessary.</p>
Principle 28	<p>As discussed in Principles 12 and 24 as regards CIS generally, MAS should increase the frequency of onsite inspections of operators of hedge funds and consider whether any hedge fund operators rated below High Risk in the risk based supervision framework should be up-rated.</p>
Principle 29	<p>Reconsider use of MAS policy which permits it to not disclose publicly the imposition of sanctions against individual institutions on the basis “they are best dealt with in confidence or if the disclosure of regulatory actions could be viewed as unfair or unduly prejudicial to the subject of the action” (MAS Approach for Publishing Market Conduct Regulatory Actions-2004) because it may harm the future turnover of the institution. Publicly confirm that sanctions which are to be unpublished will only be used in extraordinary cases and not because of reputational impact or alteration of the public perception of the prior good record of the intermediary in the local community that could result from the publicity.</p>
Principle 31	<p>Increase the frequency (cycle) of full MAS inspections of licensed intermediaries in its inspection program, particularly for entities ranked as high risk or medium/high risk.</p>
Principle 34	<p>Encourage the commencement of an ongoing dialogue hosted by MAS involving it, SGX and SMX about emerging developments in the markets and the Singapore financial sector, including the sharing of information about the risks and exposures of clearing members common to both exchanges.</p>
Principle 37	<p>Lower the current threshold for reporting by exchange members of large exposures to customers, currently set at exceeding 20 percent of Average Aggregate Resources of the intermediary.</p>

**Authorities' response to the assessment**

**47. The Singapore authorities welcome the assessment of Singapore's implementation of the IOSCO Objectives and Principles of Securities Regulation, as part of the IMF's FSAP.** The comprehensive review of Singapore's regulatory and supervisory framework for securities regulation allowed the authorities to engage in useful discussions on further enhancements to the framework. The authorities are committed to meeting international standards and best practices, and view this as one of the key components when reviewing the regulatory framework.

**48. The authorities acknowledge the IMF's overall assessment of a generally high level of compliance with the IOSCO Objectives and Principles of Securities Regulation, and note there are some areas that could be improved.** The authorities have taken steps towards implementing some of the IMF's recommendations. ACRA is reviewing key areas of the Accountants Act such as transparency of audit inspections and imposition of financial penalties, to help enhance audit quality and ensure auditor accountability. MAS will also review how it may provide clarity on the Minister-in-charge's power to appoint inspectors under section 151 of the SFA.

**49. MAS notes the assessors' finding that there had been no instance where MAS' operational independence was compromised (Principle 2).** MAS reiterates the fact that it has operational autonomy in the exercise of its powers and functions. The assessors have also observed that MAS has existing checks and balances to ensure operational independence. MAS will keep these checks and balances under review to ensure that it continues to maintain operational independence.

**50. Notwithstanding the above, the assessors had commented that the President's discretionary power to refuse to appoint any person as Chairman, Director or Managing Director of MAS, or to refuse to revoke any such appointment if the President does not concur with the recommendation of the Cabinet or Public Service Commission, was an issue in the assessment of Principle 2, with regard to due process.** In this connection, MAS wishes to make two clarifications. First, the President of Singapore, who is independent of any political party, is elected in a separate Presidential Election from that of the Parliamentary Election (where Members of Parliament are elected and from which the Government is formed). Second, the President's decision could be challenged by Parliament. Parliament may, by way of a resolution passed by not less than two-thirds of the total number of the elected Members of Parliament, override the President's decision. Given the scrutiny by Parliament, the President will be constrained to exercise his discretionary powers judiciously, rationally and must be prepared to state his reasons for doing so.

**51. On the process of appeals to the Minister-in-charge, MAS is of the view that the avenue for recourse is sufficiently independent and accords procedural fairness both to the appellant and the authorities (Principle 4).** The Minister is not involved in day-to-day supervisory matters, and is therefore an independent party to whom appeals can be made. Independence of the appeal process is further underpinned by the composition of the Appeal Advisory Committee (AAC)

which comprises independent external experts with financial industry, legal or accounting background. MAS notes the assessors' observations and remains cognizant of the need to maintain independence of the appeal process.

**52. The assessment recommends that the authorities consider imposing a notification requirement on unlisted public companies that rely on prospectus exemptions to raise funds as well as reviewing the timeline for unlisted public companies to present their accounts (Principle 16 and 17).** The authorities note that unlisted public companies in Singapore are normally closely-held and tend to operate more like private companies. They seldom access the public capital markets for funding. In the event that unlisted public companies undertake private fundraising (by relying on prospectus exemptions), such fundraising will be very limited in scale and reach because of the restrictive conditions attached to these exemptions. As such, the public interest element for unlisted public companies is not as strong as that for listed companies, where the disclosure requirements and reporting timeframe are accordingly more stringent. Notwithstanding the foregoing, the authorities will study the recommendations and, if appropriate, fine-tune the requirements applicable to unlisted public companies.

**53. The authorities note the assessors' recommendation to increase the frequency of inspections of CIS operators and other intermediaries (including approved trustees for CIS) (Principle 12, 24, 25, 28, and 31).** MAS will consider increasing the frequency of inspections of licensed intermediaries and CIS operators. With respect to approved trustees for CIS, MAS considers its current supervisory and inspection program, which places more emphasis on the larger and more active trustees, to be effective and appropriate. Under this program, MAS had over the last three years conducted onsite inspections on trustees which, in aggregate, provide trustee services to more than 75 percent of all authorized CIS. MAS' supervisory and inspection program is complemented by offsite reviews, supervisory visits, and engagement and discussions with trustees on the industry best practices.

**54. The authorities wish to express their appreciation to the IMF and its assessors for the time and effort put in for the assessment.** The authorities will thoroughly consider the recommendations made by the IMF, as they seek to further strengthen operational practices and policies to achieve the outcomes stated in the FSAP assessment, in a manner best suited to Singapore's circumstances.

## DETAILED ASSESSMENT

**55. The purpose of the assessment is primarily to ascertain whether the legal and regulatory securities markets requirements of the country and the operations of the securities regulatory authorities in implementing and enforcing these requirements in practice meet the standards set out in the IOSCO Principles.** The assessment is to be a means of identifying potential gaps, inconsistencies, weaknesses and areas where further powers and/or better implementation of the existing framework may be necessary and used as a basis for establishing priorities for improvements to the current regulatory scheme.

**56. The assessment of the country's observance of each individual principle is made by assigning to it one of the following assessment categories: fully implemented, broadly implemented, partly implemented, not implemented and not applicable.** The IOSCO assessment methodology provides a set of assessment criteria to be met in respect of each principle to achieve the designated benchmarks. The methodology recognizes that the means of implementation may vary depending on the domestic context, structure, and stage of development of the country's capital market and acknowledges that regulatory authorities may implement the Principles in many different ways.

- A principle is considered **fully implemented** when all assessment criteria specified for that principle are generally met without any significant deficiencies.
- A principle is considered **broadly implemented** when the exceptions to meeting the assessment criteria specified for that principle are limited to those specified under the broadly implemented benchmark for that principle and do not substantially affect the overall adequacy of the regulation that the principle is intended to address.
- A principle is considered **partly implemented** when the assessment criteria specified under the partly implemented benchmark for that principle are generally met without any significant deficiencies.
- A principle is considered **not implemented** when major shortcomings (as specified in the not implemented benchmark for that principle) are found in adhering to the assessment criteria specified for that principle.
- A principle is considered **not applicable** when it does not apply because of the nature of the country's securities market and relevant structural, legal, and institutional considerations.

**57. The assessment should always be based on the current situation.** Envisaged changes should not be used as a reason to alter the assessment of implementation and therefore should not be reflected in the grade given to a principle. However, the assessor should elaborate on efforts that are under way to achieve implementation, and what the overall situation would be if the current efforts were successfully implemented. In some cases, the assessor may wish to note that compliance is complete except for a specific exception that is being addressed. In such cases, the assessment might state "Principle x will be fully implemented when..." but even then, the discussion should note how important the exception is with respect to the assessment of overall implementation of the principles.

**Table 12. Detailed Assessment of Implementation of the IOSCO Principles**

<b>Principles Relating to the Regulator</b>	
<b>Principle 1.</b>	The responsibilities of the regulator should be clear and objectively stated.
Description	<p>MAS is the regulator for capital market activities in Singapore. The regulatory and supervisory responsibilities of MAS are clearly and objectively stated in section 4 of the Monetary Authority of Singapore Act (Cap. 186) (MAS Act). Section 4(2)(b) and section 23(8) of the MAS Act state that MAS is responsible for conducting integrated supervision of financial services, including administering the Securities and Futures Act (Cap. 289) (SFA) and the Financial Advisers Act (Cap. 110) (FAA). MAS' responsibilities, powers and authority over capital market activities are set out in detail in the SFA, the FAA, and the respective subsidiary legislation. The FAA sets out the regulatory framework for financial advisers and their representatives. Generally, MAS' powers under the FAA mirror those in the SFA.</p> <p>MAS has statutory powers to issue, where it deems appropriate, regulations, notices, guidelines, codes, policy statements and practice notes to provide guidance on the operation of the provisions of statute, in the furtherance of its regulatory objectives, and in relation to any matter relating to the functions of MAS as set out in section 321 of the SFA. Subsidiary regulations do not need to be approved by Parliament, although they are vetted the Attorney General's Chambers, (AGC) for compliance with Singapore law before issuance. Other interpretative instruments are reviewed by the MAS General Counsel's Office, for consistency with intent and powers accorded under the primary legislation. Section 321 states that <i>"any person who fails to comply with any of the provisions of a code, guideline, policy statement or practice note issued under this section that applies to him shall not of itself render that person liable to criminal proceedings but any such failure may, in any proceedings whether civil or criminal, be relied upon by any party to the proceedings as tending to establish or to negate any liability which is in question in the proceedings."</i> "Any party" includes MAS, which enforces codes, etc. by considering whether the person in breach remains a fit and proper person to hold a license. Sanctions include revoking a license or placing restrictions on the actions that licensed person may carry on. MAS also publishes a list of Frequently Asked Questions (FAQ) of general applicability on the MAS website.</p> <p>Interpretations of MAS' powers are circumscribed by the provisions of the statute, as well as public documents in which the intent behind the statutory powers is explained. These include (i) public consultation papers seeking comments on the policy intent, and drafts of, rules being proposed, as well as MAS' responses to feedback received; (ii) the explanatory brief and Second Reading speech made when the minister-in-charge of MAS introduces the bill in Parliament for the First and Second Reading respectively; and (iii) explanatory statements relating to the provisions in the bill. MAS generally relies on regulations, notices, guidelines, codes, policy statements, practice notes, and FAQs to provide further details on statutory provisions. These are published on MAS' website. In addition, there are</p>



internal guidelines written on operational procedures, which guide employees on how they should perform their functions. MAS' employees are required to adhere to internal policies and procedures outlined by their respective departments when performing their functions.

The legislation under which MAS operates affords it significant discretionary powers in a wide range of situations. In some cases the only constraint is that a decision must be "in the public interest" and in others there is no defined criterion at all. The broadest of these powers is contained in SFA section 337 which states that MAS may, by regulations, exempt any person, capital markets product, matter or transaction, or any class thereof, from all or any of the provisions of this act, subject to such conditions or restrictions as may be prescribed." While a class decision must be made public, a person, product, etc. specific decisions need not be published in the Gazette unless the Act says otherwise. MAS has advised the assessors that as a matter of policy it publishes such exemptive decisions but it is under no obligation to do so or to provide the reasons for its decisions. To provide greater transparency on the nature of exemptions granted which were not published in the Gazette, MAS recently initiated a process of publishing, on a quarterly basis on its website, a list of cases in the preceding quarter where exemptions were granted pursuant to Specific Exemption Powers under the SFA. MAS also publishes an explanation of the circumstances involved. MAS has also published a series of FAQs explaining the exemption process and the criteria it applies for granting exemptions.

The capital markets activities of banks in their own name and not via subsidiaries are largely in the wholesale markets, they can and in some cases do conduct business with retail investors such as providing financial advice and selling OTC traded debentures. In fact out of the 22 financial advisors (total population of 250) which provide over 80 percent of the financial advisory services offered in Singapore, nine of them are banks. This business must be conducted by representatives registered with the MAS to provide these services and who meet the required standard of competence as set by MAS.

The distribution of insurance products with securities market-like features and structured bank deposits (where for example the interest rate is calculated on the performance of a stock market index) are subject to the same regulation as conventional securities market instruments. Business conduct supervision is carried out by the Capital Markets Group (CMG) within MAS on a consistent basis whether the business is carried on by a CMSL holder, an exempt bank, an exempt insurance company, a fund management company or a financial advisor.

MAS may, and does, share information with other agencies such as the CAD, the AGC, the police, and ACRA in their roles as the bodies responsible for administering or enforcing the Companies Act and for supervising public accountants in Singapore. This function is subject to the permissible disclosures specified under the respective legislation administered by MAS. For a detailed discussion on these matters see Principles 13 and 14.

Assessment	Fully implemented
Comments	The assessors have seen no evidence or heard allegations that MAS' exemption powers have been abused or that parties have been disadvantaged through the granting of exemptive relief to a competitor or a competing product that they have not been able to benefit from. The recently enhanced transparency of the process is advantageous to all parties however.
<b>Principle 2.</b>	The regulator should be operationally independent and accountable in the exercise of its functions and powers.
Description	<p><b>Independence</b></p> <p>The MAS Act provides for the establishment of MAS as a body corporate and therefore it is a separate legal person. MAS is legally independent of the executive and legislative branches of the Singapore government. Constitutionally it operates independently of the government and industry when formulating and pursuing its regulatory and supervisory functions. The functioning of MAS is underpinned by the MAS framework which focuses on operational independence and the integrity of public officials in Singapore. Operationally, significant decisions are made within management subject to a committee process for review and approval, as required, on a case by case basis.</p> <p>Under the MAS Act section 7(1) the Board of Directors of MAS is responsible for the policy and general administration of the affairs and business of MAS. Under section 7(2) the Board shall, from time to time, inform the government of the regulatory, supervisory and monetary policies of MAS. Additionally, section 7(4) obliges the Board to furnish the minister with such information as the minister may require in respect of the duties and functions of MAS. The minister also has the power to appoint inspectors to investigate matters which are the responsibility of MAS (SFA section 151). The Board is involved in setting MAS' general direction and not in the day-to-day supervision of financial institutions. The Board is appointed by the President (as described below). The President himself is directly elected by the people and is not affiliated to any political party.</p> <p>The President has appointed a Board composed of current members of the government of Singapore and senior current civil servants. This is not a requirement under the MAS Act. The chairman is the deputy prime minister and minister for finance; the deputy chairman is the Minister for Trade and Industry. At most, only two of the ten members are without direct membership of or close affiliation with the government. A sub-committee of the Board, known as "Chairman's Meeting" has the mandate to decide upon major policy changes relating to the regulatory framework that may have significant social or wider economic impact, as determined by the Management Financial Supervision Committee (MFSC, the Management Committee responsible for the day-to-day supervision of financial institutions). Chairman's Meeting does not make entity specific decisions. The Deputy prime minister (who is also the MAS Chairman) is minister-in-charge of MAS that is the minister responsible to Parliament for the operation of MAS.</p>

Operationally, day-to-day decisions are taken by the Managing Director (MD) as set out in section 9(3) of the MAS Act. The MFSC, the Executive Committee (EXCO) and MD are responsible for day-to-day supervisory matters relating to financial institutions (FI). For example, licensing, inspections and supervisory actions taken against FIs are dealt with entirely within MAS, without consultation with the government. The Deputy Managing Director (DMD) (Financial Supervision) has oversight over these decisions. There are dedicated supervisory groups, each with their own Group Heads who report to the DMD (Financial Supervision). The annual accounts of MAS are audited by the Auditor-General, and both the accounts and a report by the Board of Directors on the work of MAS for the year are required to be presented to the President and to Parliament. MAS has full autonomy in the regulation and supervision of financial institutions under its purview.

As a regulator, MAS does not endorse commercial activities, products, or members of other private organizations. None of the Board members or staff are representatives from the industry, a decision which seeks to ensure that MAS' decisions are independent, and not made to favor any commercial beneficiary. Further support is provided by a range of obligations and constraints. All cabinet members must make a declaration of assets to the prime minister. All MAS Board members are subject to a Code of Conduct which sets standards for personal and professional behavior, external appointments, the treatment of confidential information, receipt of gifts and entertainment and the handling of conflicts of interest (including disclosure of certain directorships and salaried positions to the chairman). The code also sets out a list of investments and transactions which a Board member must disclose to the chairman. Singapore also operates a Corrupt Practices Investigation Bureau with powers to investigate all MAS Board members and staff as they are public officers under the law. The assessors have not seen or heard any allegation or comment questioning the integrity of MAS staff or the Board.

MAS' responsibilities for capital market regulatory policies do not require approval from the government or other government agencies. MAS acts independently, within the limits defined under the respective legislation and subject to the composition of the Board as described above. MAS seeks comments from the public in general, as well as from other agencies on matters which affect them. The final decisions on capital markets regulatory policies rest with MAS. MAS consults the AGC in the drafting of both primary and subsidiary legislation to ensure that the draft is consistent with Singapore Law and the Constitution.

Decisions on day-to-day technical matters are handled by staff in accordance with set procedures. MFSC is responsible for the day-to-day supervisory matters, for example licensing, inspections, and sanctions taken against regulated entities. For major policy changes MAS conducts extensive public consultation to solicit feedback from the respective stakeholders and with other agencies when relevant. For example, MAS took over the regulation of commodity futures from International Enterprise Singapore, a statutory Board under the Ministry of Trade and Industry in 2007. The two agencies had jointly issued a public consultation paper in Nov 2006 prior to proposing legislative

amendments for the transfer.

MAS is self-financing and financially autonomous from the government for its operations. It sets its own budget, and is able to hire employees and advisers to fulfil its functions. MAS is also able to determine all matters relating to their remuneration, and terms and conditions of appointment. Its budget is approved ultimately by the President of Singapore, acting in his discretion. The President has his own appointed Council of Presidential Advisers to advise him and he can request any information from MAS. His statutory obligation is to satisfy himself that the budget does not draw on the past reserves of MAS.

Section 22 of the MAS Act provides for the legal protection of MAS, any director, officer or employee of MAS for anything done, including any statement made, or omitted to be done in good faith. MAS provides legal aid on a full indemnity basis as and when the costs are incurred. This protection continues after an employee leaves MAS.

The process for the appointment and removal of the Chairman, Managing Director of MAS and the Board of Directors is provided for in the MAS Act, as follows:

- The Chairman of MAS is appointed by the President on the recommendation of the Cabinet (section 7).
- The other Board Directors are appointed by the President on the recommendation of the Minister-in-charge of MAS (section 8).
- The Managing Director of MAS is appointed by the President on the advice or recommendation of the Public Service Commission and on such terms and conditions of service as the President may decide (section 9).
- The directors are appointed to hold office for a term not exceeding three years and are eligible for reappointment (section 9).

The President may in his discretion refuse to appoint any person as Chairman, Director or Managing Director of MAS or refuse to revoke any such appointment if the President does not concur with the recommendation of the Cabinet or Public Service Commission.

The reason(s) for a director's removal is publicly disclosed. As specified in section 10(2) of the MAS Act, the President may terminate the appointment of any director if the director:

- resigns his office;
- becomes mentally disordered and incapable of managing himself or his affairs;
- becomes bankrupt or suspends payment to or compounds with his creditors;
- is convicted of an offense involving dishonesty or fraud or moral turpitude;

- is guilty of serious misconduct in relation to his duties;
- is absent, without leave, from three consecutive meetings of the Board; or
- fails to comply with his obligations under the MAS Act.

The MAS Act also provides that a director must not be a director or salaried official of any financial institution supervised by MAS. In addition, directors may not act as delegates on the Board for any commercial, financial, agricultural, industrial or other interests with which they may be connected.

### **Accountability**

MAS is required under section 34 of the MAS Act to include a report on the performance of MAS' functions and duties in its Annual Report, which must be presented to the President and to Parliament within six months from the close of the financial year. The Constitution provides for the Cabinet, which comprises ministers, to be collectively responsible to Parliament. MAS is accountable to Parliament through the minister-in-charge. The MAS Act provides for the Board to inform the government of the regulatory, supervisory, and monetary policies of MAS and furnish the minister-in-charge with information as the Minister may require in respect of the duties and functions of MAS.

MAS is required to present its financial statements, audited by the Auditor-General, and its annual report to Parliament annually. The audited financial statements of MAS also have to be published in the Gazette and transmitted to the President within six months of the financial year end. The MAS Annual Report and the financial statements are made public on the MAS website. The Annual Report lists the key regulatory policies that were introduced during the year. Statistics on the capital markets are also disclosed, such as the number of licensees and the net funds raised in the domestic capital markets.

The Finance Department is responsible for managing MAS' financial resources. Its functions include controlling of payments, receipts, budgeting, and accounting for MAS' overall income, expenditure, assets, and liabilities in the financial statements. MAS has an Internal Audit Department (IAD) to provide an independent and objective assurance of an effective control environment in MAS. To provide for the independence of the internal audit function, the IAD reports functionally to the Audit Committee (AC) and administratively to the MD. To maintain its objectivity, IAD's Charter requires that it shall not be involved in any activities that may jeopardize or appear to jeopardize its independence and objectivity. The Audit Committee independently assesses MAS' internal controls and financial reporting process. The Audit Committee also reviews the reports of MAS' internal and external auditors. Accountability over the use of funds is achieved through internal management accounting and audits by the Auditor-General.

MAS provides written reasons to licensees when a decision affects applicants/holders of

licenses. Such reasons must be in sufficient detail as to enable a person to pursue an appeal if he wishes. This applies to refusing or revoking licenses, as well as when issuing reprimands and directives. Regulatory decisions such as licensing status are made publicly available on the MAS website and significant regulatory actions for market conduct breaches are made public through press releases or the MAS website. MAS maintains and updates a list of enforcement actions on its website, and provides reasons for each of its enforcement actions. There are internal guidelines written on operational procedures which guide officers on how to perform their functions. Staff are required to adhere to internal policies and procedures outlined by their respective line departments when performing their functions. Where there are controversial issues, matters are escalated to department heads/MFSC for review.

MAS provides an opportunity to be heard before making a decision affecting applicants/holders of licenses or an enforcement decision. Submissions can be in writing and can be legally supported. Under MAS-administered legislation, the avenues of appeal against decisions made by MAS are clearly set out. Sections 310 and 311 of the SFA provide for appeals against certain decisions by MAS (for instance a refusal to grant a license or the issuance of a prohibition order) to be made to the Minister-in-charge of MAS (currently the MAS Chairman). The minister is not involved in day-to-day supervisory matters and is therefore an independent party to whom appeals can be made. The appeal includes a review of the merits of the decision. Where an appeal is made to the minister under the SFA, the minister shall within 28 days of his receipt of the appeal, constitute an Appeal Advisory Committee. The Committee (drawn from a panel of eminent (non-governmental) persons) shall conduct a hearing within 28 days from the date that it is constituted and shall give MAS and the appellant a reasonable opportunity to appear before and be heard by the Committee. The Appeal Advisory Committee shall submit to the minister a written report on the appeal within 14 days of the conclusion of the hearing and may make such recommendations as it thinks fit. The minister shall consider the report submitted in making his decision under this section but he shall not be bound by the recommendations in the report. Administrative law reviews (judicial review) of decisions taken by public agencies including MAS are by application by the aggrieved person to the High Court. For a discussion on the impact of this process and the role of the Minister-in-charge of MAS on the issue of "procedural fairness" see Principle 4.

### **Confidentiality**

There are statutory requirements imposed on all MAS staff relating to the handling and custody of classified documents and information under the Official Secrets Act (Chapter 213) (OSA), Statutory Bodies and Government Companies (Protection of Secrecy) Act (Chapter 319) (SBGCA), and the MAS Act. Section 5 of the OSA prohibits wrongful communication of secret information. The application of the OSA is extended to MAS officers when they are in possession of information which was obtained during the course of their work. Section 3 of the SBGCA prohibits persons working for statutory boards such as MAS from making unauthorized disclosure of confidential information obtained during

	<p>the course of their work, while section 14 of the MAS Act prohibits MAS officers from making unauthorized disclosure of any information relating to the affairs of MAS or of any person which he has acquired in the performance of his duties or the exercise of his functions. Confidentiality of investigation reports are safeguarded by provisions under section 152A of the SFA, which prohibits the unauthorized disclosure of reports by MAS officers to third parties. MAS officers are also bound by Part II of the Computer Misuse Act (Chapter 50A) which provides provisions against unauthorized access or modification of computer materials. In addition, MAS observes the Public Sector Data Protection Policy as set out in the internal procedures for ministries and statutory boards. Under the policy, personal data shall not be used or disclosed to a third party for purposes other than those for which it was collected, except with the consent of the individual or as required by law. Internally, confidential information in MAS is also safeguarded by the security classification of information and the handling and storage of classified information, as set out in the staff internal guidelines. In sharing sensitive and classified information, MAS officers ensure that the recipient of the information is aware of the information classification as well as the restrictions regarding its further use or dissemination.</p>
Assessment	Party implemented
Comments	<p>IOSCO Principle 2 states that the regulator should be operationally independent and accountable in the exercise of its powers and functions. The methodology by which the principle is to be assessed requires a positive answer to the questions:</p> <ol style="list-style-type: none"> <li>1. Does the securities regulator have the ability to operate on a day-to-day basis without       <ol style="list-style-type: none"> <li>a. external political interference?</li> <li>b. interference from commercial or other sectoral interests?</li> </ol> </li> </ol> <p>Furthermore IOSCO has defined "interference" as a <i>"formal or informal level and method of contact that affects day-to-day decision making and is unsusceptible to review or scrutiny."</i> The IOSCO methodology does not require evidence of improper conduct or influence since, by its nature such interference is difficult to establish and more difficult to prove. Indeed, the assessors believe that the reason for this view is that this IOSCO Principle is directed at identifying vulnerabilities inherent in structures and processes and not on the efficacy of day to day decision making.</p> <p>The composition of the MAS Board potentially exposes MAS decision making structures and processes on operational matters to interference from senior politicians or at the very least to the public perception that this could be so. In practice there are several checks and balances which limit this possibility. The Code of Conduct for the MAS Board of Directors sets out high standards of personal behavior to which members are required to adhere. It also requires that requests for information from Board members should be made in writing and copied to the Managing Director and the Secretary to the MAS Board. Requests from the Audit Committee should be made through the Head of the Internal Audit Department. MAS' operational policy manual for staff requires that a staff member shall inform the Managing Director and the Secretary to the MAS Board should</p>

	<p>information requests be made by Board members outside these established procedures.</p> <p>The Board members' Code of Conduct also requires Board members to address and disclose (to the Chairman) all conflicts of interest. The Code prohibits a Board member from being a director or salaried official of a regulated entity although they may be able to hold such a position in another entity which has voting power in a regulated entity but where this voting power exceeds 20 percent, the Chairman of MAS must specifically approve.</p> <p>Other matters, such as the minister's power to call for information on MAS' duties and functions (without any further narrowing of those broad based terms) and the minister's power to appoint inspectors to investigate matters which are the responsibility of MAS are also relevant to the assessment of MAS' operational independence. The threat of such an appointment, with the associated implied criticism of the MAS which would attach to it, may be sufficient for MAS to take action itself even when it did not believe an investigation was necessary or appropriate. The power is equivalent to that found in some other jurisdictions whereby the Minister may give the regulator directions to take certain actions—a situation of which IOSCO has been critical in the past. A similar power under the CA was last used in 1995 to investigate the collapse of Barings (Singapore) which suggests its relevance today, even as residual power, is limited and it could be abolished. The assessors do not consider that the President's veto power over the budget to be a significant issue given that the constitutional grounds for rejecting the budget appear limited.</p> <p>However, in reaching this rating, the assessors have had regard to the following.</p> <ol style="list-style-type: none"> <li>1. In the memory and experience of senior MAS staff and even further back there have been no instances where members of the Board have sought to influence decisions of the staff on regulatory matters.</li> <li>2. Senior MAS staff's views that the administrative processes by which all significant regulatory decisions are taken by the relevant committee and therefore not by an individual staff member, preclude influence by a Board member on political, commercial or other grounds.</li> <li>3. The Board generally confines itself to matters of policy and principle but on limited occasions has made enquiries of MAS management for information relating to the affairs of individual entities when they impact on policy matters</li> <li>4. Management's policy is to advise the Board of individual regulatory decisions after they have been taken where in the view of management such information is required to permit the Board to discharge its functions under the MAS Act.</li> </ol>
<b>Principle 3.</b>	The regulator should have adequate powers, proper resources and the capacity to perform its functions and exercise its powers.



Description	<p>MAS has comprehensive powers of licensing, supervision, inspection, investigation and enforcement under the SFA and FAA and adequate resources. The overall budget of MAS is set annually and is built around consideration of economic growth and manpower cost projections. MAS is self-funded. As the central bank its overall budget consists of income and expenditure from foreign investments and Singapore dollar operations as well as currency issuance, operation of the electronic payments system, custody fees, etc. As described in Principle 2, the overall MAS budget is subject to the approval of the President. Prioritization within MAS is the responsibility of the Executive Committee (EXCO). Allocation is essentially pragmatic and based on perceived needs, agreed major projects, etc. For example, in the last two years the CMG has sought and obtained substantial head count increases to deal with increased regulatory responsibilities such as implementing the new regime for (previously exempt) fund management companies and the enhanced regulation of OTC derivative. The planning process is outlined in MAS internal guidelines. The Finance Department reviews the budget submissions by departments and discusses the proposed budget submissions with the departments. The budget for major projects, such as a significant IT upgrade, is agreed as part of the budget process for MAS' capital expenditures by the MD and the Board. Within MAS, the Financial Supervision Group (FSG) has a professional head count of 496. Within FSG, Banking and Insurance Group has 229, Policy, Risk and Surveillance Group has 91 and Capital Markets Group (CMG) has 176.</p> <p>Each department head is fully accountable for the management of funds allocated to his/her department and may utilize its allocation as he/she deems necessary within MAS' existing policy guidelines. Should the need arise, departments may request more resources than originally allocated to them in their budget. If agreed, this may be obtained from other departments with unutilized budget or from a supplementary budget approved by the President.</p> <p>MAS exercises independence in determining its manpower levels and remuneration policies. Section 17 of the MAS Act provides that MAS may appoint employees as it thinks fit, and determine all matters relating to their remuneration and terms and conditions of appointment and employment. MAS may also engage the services of consultants and advisers, and set the terms and conditions of such engagements as it thinks fit. The MAS Board of Directors, appointed by the President, has ultimate responsibility for the personnel policies of MAS.</p> <p>MAS conducts annual manpower planning reviews to ensure that adequate staffing levels are maintained. As part of the reviews, departments work out the human resources and skills required to deliver on the strategic and day-to-day operational objectives of the department, in support of MAS' broader mandate. Any assessed needs for increase in headcount each year are submitted to the Board of Directors for approval. MAS has no difficulty attracting and keeping staff with excellent qualifications and expertise. Entry level professional hires are graduates with at least second class honors degrees from top universities, while mid-career hires generally bring with them relevant experience and</p>
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strong expertise in their respective fields. To attract these candidates, MAS sets its remuneration for staff at a competitive level pegged to the financial industry. MAS' budget for staff remuneration is increased annually taking into account any increase in headcount as well as wage increases needed to keep the organization's wages competitive. To further augment its resources, MAS, from time to time, seconds to and accepts seconded personnel from public organizations such as the IMF and foreign regulators.

A MA undertakes regular assessments of the expertise of its staff. These facilitate early identification of gaps in expertise, and appropriate follow-up actions are taken. The MAS Academy was set up by MAS to centralize in-house professional and leadership training programs for all departments. The Academy aims to inculcate MAS' values and ethics in its officers, and to engage in capacity-building for MAS. It organizes the MAS Diploma in Central Banking to enable entry-level officers to acquire broad-based financial sector knowledge and understanding of MAS' key functions and core values. It systematically rolls out various functional and general development training courses to equip MAS officers of all levels with the skill and knowledge based on identified job competency needs in all departments. The Academy's specialized capital markets courses are a significant part of its work. Functional skills and expertise are further deepened through focused developmental interventions as guided by the Professional Requisites and Outcomes Framework (PROF). In addition to participation in regional and international working groups, meetings and conferences, MAS provides supervisory staff with attachments at large international banks, international bodies and other financial sector regulators. MAS also provide scholarships to officers to pursue postgraduate studies, up to PhD levels.

### **Governance of MAS**

Section 9(3) of the MAS Act provides that "the managing director shall be entrusted with the day-to-day administration of the Authority, and may, subject to this act, make decisions and exercise all powers and do all acts, which may be exercised or done by the Authority under this act or any other written law." The MD carries out duties and responsibilities similar to governors of central banks and heads of financial supervisors, and is accountable to the Board of Directors.

The top level committee is termed the Chairman's Meeting. It is a Board level committee, chaired by the Chairman of MAS. It is the designated forum for taking major policy decisions relating to the objective of financial stability, in addition to its oversight of major changes to microprudential policies. For these purposes, "microprudential" can be defined as supervision that focuses on the stability of the component parts of a financial system. In this context, it does not make entity specific decisions.

Pursuant to section 9(6) of the MAS Act, the MD has formed the MFSC to assist him in the exercise of his powers and the carrying out of his duties in the supervision and regulation of the financial services sector entrusted to him by virtue of section 9(3) of the MAS Act.

The MFSC has been delegated the power to make all supervisory decisions. It serves as a key forum for discussion and decision-making on regulatory and legislative framework for regulated entities, supervisory policies and policy papers. It has the powers to approve or reject license applications, and make decisions on supervisory actions taken against financial institutions. It also determines which of these matters arising out of the forum should be escalated to the MD or to Exco. The MFSC is chaired by the DMD (Financial Supervision) and comprises the Assistant Managing Directors and heads of departments under the Financial Supervision Group, as well as the General Counsel. The departments under the Financial Supervision Group include the Banking Department, Insurance Department, Prudential Policy Department, Specialist Risk Supervision Department, Macroeconomic Surveillance Department, Capital Markets Intermediaries Department (CMI), Investment Intermediaries Department (IID) and Capital Markets Department (CMD). The regulation of the securities market is under the purview of the Capital Markets Group (CMG), comprising the three departments: CMI, IID and CMD. Divisions within these departments perform specific functions to carry out oversight. Where there are cross-functional implications, matters are escalated to the respective department heads. Across the securities sector, the group head will resolve cross-function issues. Major policy changes or initiatives and major supervisory actions are brought to MFSC for approval.

#### **Investor education**

As part of investor education, MAS uses its website to share information and views with the public. It shares its views on macroeconomic conditions through economic research papers, overview of Singapore's financial sector including the relevant legislation/regulations, and statistical data such as industry performance. MAS is also Chair of the public-sector Financial Education Steering Committee (FESC), which spearheads MoneySENSE. This is a national financial education program, and brings together industry and public sector initiatives to enhance the basic financial literacy of consumers. Since its launch in October 2003, MoneySENSE has published over 253 educational articles in the media, organized talks, seminars and workshops that have attracted over 93,000 participants as well as issued 29 consumer guides with a total circulation exceeding 2.2 million. The MoneySENSE program covers three tiers of financial literacy:

- Tier I—Basic Money Management—which covers skills in budgeting and saving, and provides tips on the responsible use of credit;
- Tier II—Financial Planning—to equip Singaporeans with the skills and knowledge to plan for their long-term financial needs; and
- Tier III—Investment Know-How—which imparts knowledge about the different investment products and skills for investing.

MAS also coordinates with the Singapore Exchange (SGX) and various industry bodies in their efforts on investor education, particularly in the basics of investing, products, and selecting investment professionals. Further work is being undertaken to develop means to

	encourage people to turn what they have learned into practice, particularly at key moments in their lives. It is noteworthy that the unit that deals with investor education also handles complaints and is thus well-placed to see where further investor education is necessary.
Assessment	Fully Implemented
Comments	<p>Within the annual budget allocation for financial supervision it appears that CMG receives funding appropriate to its responsibilities and the size and complexity of the market. On a head count basis, the CMG appears to have the necessary resources relative to the other supervisory groups and the scope and size of the various tasks it is required to undertake.</p> <p>The role of the academy in seeking to retain in an accessible form the knowledge and experiences of senior supervisors and others is a project to be welcomed. In a global industry (including its supervisors and regulators) increasingly dominated by relatively young people, the corporate memory can be short and for even comparatively recent problems, their resolution and lessons learned, can vanish from the collective "radar screen."</p> <p>The investor education program is extensive, appears well funded, and continues to evolve. Given the MAS emphasis on the need for investors to take responsibility of their own decisions continued investment in this program is essential.</p>
<b>Principle 4.</b>	The regulator should adopt clear and consistent regulatory processes.
Description	<p>MAS abides by clear, fair and equitable processes in carrying out its functions. This approach is set out in the monograph on the Tenets of Effective Regulation, describing the principles that guide MAS in the development and review of its regulatory framework. Tenet 6: "Clear and Consistent" explains that regulation should be clear so that institutions have certainty and predictability as to their legal obligations. Regulation should be consistent over time and not be subject to frequent or sudden change that causes disruption. Where appropriate, there should be consistent treatment of like activities conducted by institutions of different sectors. MAS has implemented consistent, activity-specific regulation through a common legal framework for regulation. Tenet 3: "Risk Appropriate" also explains that regulation sets down rules of broad application to a particular class of financial institutions so that financial institutions in a given license category carrying on like activities would generally have to meet the same set of regulatory requirements. Further, MAS considers that consequences for regulatory breaches should be clear and proportionate to the risks posed to regulatory objectives. In addition, public bodies, including MAS staff, are required to observe procedural rules that are laid down in the legislative instruments, guidelines and practice notes.</p> <p><b>Policy formulation</b></p> <p>As part of its policy formulation process, MAS posts consultation papers on its website and regularly consults relevant industry associations to understand their concerns and reaction to proposed policies. Consultations take the form of submission of written comments within a specified period. The minimum period for submission of written consultations</p>

generally is 30 days although for substantial or complex changes three months is more typical. As a matter of good practice, a press release is issued to announce the consultation in which proposed changes to the regulatory framework, policies or procedures that are substantial are highlighted. A brief summary of submissions of comments and MAS' responses to the comments will be published on the MAS website either before or at the time of the announcement of changes to the regulatory framework, policies or procedures. MAS may also tap into the expertise of the financial community through the use of specialist multidisciplinary committees, comprising both private and public sector representatives.

When implementing legislation, after policy consultation, the draft legislation is issued for public consultation. In addition to obtaining regulatory changes through Parliament, MAS issues notices, guidelines, codes, policy statements, practice notes and FAQs to provide guidance on the interpretation of the rules. MAS may also explain its regulatory philosophy and the underlying principles for new policies introduced in its press statements and public speeches. All of these are maintained on its website, which is accessible to the public. MAS discloses significant changes in policy through press releases, public speeches, policy consultation papers or guidelines, which are also maintained on its website. The AGC also provides and maintains Singapore Statutes Online, the official Singapore Government website for the online publication of legislation, (<http://statutes.agc.gov.sg>)

Policies are designed based on a range of considerations, including the balance of the costs and benefits. Cost-impact analysis is a component in the process of policy making as set out in the MAS monograph on the Tenets of Effective Regulation (Tenet 5: "Impact Sensitive"). MAS considers the design of regulation to avoid unintended market impact whilst maintaining a high standard of regulation.

#### **Clear and equitable and fair procedures**

As noted MAS is required to observe procedural rules that are laid down in the legislative instruments, guidelines, and practice notes. MAS has established internal procedures when issuing new regulatory policies and in the discharge of its functions. In the discharge of its functions, MAS staff are to adhere to internal guidelines to promote consistency in operational procedures. These are periodically reviewed. These internal guidelines cover areas such as the regulation of securities markets as well as processes for administration of applications, the processing and review of documents, and the conduct of in-house and onsite inspection. All internal policies and procedures may be amended from time to time to suit the changing needs of the industry and the organization.

MAS provides written reasons and an opportunity to be heard, before it makes a decision that may adversely affect applicants/holders of licenses. This applies to refusing or revoking licenses, as well as when issuing reprimands and directions. Regulation 2(2) of the Securities and Futures (Opportunity to be Heard) Regulations states that a person can

	<p>provide a submission written by a lawyer but there is no right to an actual “hearing” in the sense of being physically present and with the right to make verbal representations. Regulatory decisions on matters such as licensing status are made publicly available on the MAS website and significant regulatory actions for market conduct breaches are made public through press releases or the MAS website.</p> <p>MAS maintains and updates a list of enforcement actions on its website, and provides reasons for each of its enforcement action. Under sections 310 and 311 of the SFA, appeals against certain decisions by MAS (for instance a refusal to grant a license or the issuance of a prohibition order) can be made to the minister-in-charge of MAS. The appeal includes a review of the merits of the decision. Under the appeals process and regulations, the minister and the Appeal Advisory Committee are assisted by the secretary who is an employee of MAS but is not from any of the functional groups within MAS, and does not participate nor is involved in regulatory or supervisory administrative decisions made by the Financial Supervisory Group that can be appealed against. Finally, judicial review of decisions taken by public agencies is available under common law by way of application by the aggrieved person to the High Court.</p> <p><b>Transparency and confidentiality</b></p> <p>Confidentiality of investigation reports are safeguarded by provisions under section 152A of the SFA, which prohibits the unauthorized disclosure of reports by MAS officers to third parties. MAS officers are also bound by various statutory provisions and internal procedures relating to the handling and custody of classified documents and information.</p> <p><b>Consistent application of powers</b></p> <p>There are established processes and precedents in place for decision-making, which seek to ensure clear and consistent application of powers by MAS staff. Decisions recommended by staff are reviewed by division heads. Where there are controversial issues or matters that have implications across divisions, decisions are reviewed by the CMI/CMD/IID department head, or CMG group head.</p>
Assessment	Broadly implemented
Comments	<p>The reason for the minor downgrade is that an appeal to the minister-in-charge of MAS, in the case, for example, of a decision by MAS staff to refuse or revoke a license, does not appear to be an appeal to a decision-maker who is independent of the entity whose decision is being appealed, as this person is also, currently, the Chairman of the MAS Board (although he does not have to be). The appeal is a review on the merits. In considering an appeal he is advised by an Appeal Advisory Committee (drawn from a panel of “eminent persons”) who are external experts with financial industry, legal or accounting background who will make a recommendation. The minister is not obliged to accept the recommendation however. Furthermore, the appellant is not told what the Appeal Advisory Committee recommended.</p> <p>Judicial review by the court remains available as is required by IOSCO whether before or</p>

	<p>after an appeal to the minister. This is not a review of the merits of the case but of the legality of the process by which the decision was made.</p> <p>For the Principle to be rated as Fully Implemented, the administrative change required, in the view of the assessors, is either that the minister surrenders his right to reject the advice of the Appeal Advisory Committee or, preferably, that the committee is brought “in house” to MAS, its decisions are final (subject to judicial review), and the minister is no longer involved in making these decisions, as is good global practice.</p> <p>The denial of the right to a personal hearing in the event of a serious matter such as a license revocation is not consistent with good practice in many common law jurisdictions (such as Singapore) with developed markets. This should be reconsidered.</p> <p>The Tenets of Effective Regulation gives the impression that MAS relies too heavily on the financial services industry to provide the data and analysis to support a cost benefit calculation. Such over-reliance on entities with a large commercial interest in overstating the costs and under-estimating the benefits would be unwise. MAS’ staff have assured the assessors that in practice MAS does conduct its own independent analysis before arriving at a conclusion.</p>
<b>Principle 5.</b>	The staff of the regulator should observe the highest professional standards, including appropriate standards of confidentiality.
Description	<p><b>MAS Staff Code of Conduct</b></p> <p>The code sets out the conduct standard expected of MAS employees. It focuses on the core value of integrity, sets out the guiding principles and their rationale. It also provides examples of these principles in action, to assist staff in performing their duties with integrity, honesty, and impartiality. In addition, MAS’ internal procedures set out specific rules relating to potential conflicts of interest situations. For example, staff are required to disclose conflict of interest situations, such as financial indebtedness, investments where privileged information could be misused, and external appointments. Staff are required not take advantage of their position in MAS or information obtained in the course of their employment for personal gain or gain for any other person. A similar though more tailored Code of Conduct applies to members of the MAS Board.</p> <p><b>Investment restrictions</b></p> <p>MAS’ internal guidelines impose extensive restrictions on employees’ rights to invest. The overarching requirement is that staff should not trade actively nor make investment and/or enter into transactions that may suggest a conflict between their functional responsibility in MAS and their own personal interests. Staff in departments or divisions who deal with market sensitive information are not allowed to subscribe for or deal in securities of Singapore listed companies. Supervisory staff, (that is all staff in FSG including policy focused staff), their financially dependent family members and nominees are not permitted to deal in shares, warrants, and other securities of institutions that are licensed,</p>

regulated or otherwise supervised by MAS or in securitization-type arrangements created by special purpose vehicles, where the originator is an institution licensed, regulated or otherwise supervised by MAS. They are not to buy securities offered as private placements and may not deal in securities of companies which have business dealings with the staff or their department. All employees are required to disclose all dealings by completing and lodging with their department heads a copy of the Disclosure of Personal Investment Transaction Form. A confirmation of compliance is required every three years.

Further, all employees are also required to make a declaration of indebtedness/non-indebtedness on appointment; or whenever they become financially indebted. When investing in land or property staff are not permitted to take up discounts or other concessions to buy property if the offers arose on account of acquaintanceship in an official capacity, regardless of whether there were in fact official dealings; or there were or are official dealings between the developer or vendor and the employee or the department. Staff must declare the terms of the purchase of property to the department head/group head/MD. If the disclosed transactions in any of the above categories are deemed to be inappropriate, MAS can direct the relevant staff to take appropriate remedial action.

#### **Statutory requirements on confidentiality**

MAS' staff are bound by requirements of the Official Secrets Act (OSA) and the Statutory Bodies and Government Companies (Protection of Secrecy) Act (SBGCA) covering the safeguarding of official information obtained in the course of work. This continues after they leave MAS for the rest of their lives. All MAS staff are required to complete a written undertaking confirming their understanding of the statutory and MAS-imposed duties of confidentiality. The undertaking must be given on their appointment and re-affirmed every three years. In addition, MAS observes the Public Sector Data Protection Policy on Information Management. Under the policy, personal data shall not be used or disclosed to a third party for purposes other than those for which it was collected, except with the consent of the individual or as required by law. Other data can be disclosed only when authorized by MAS or required by law. If there is any doubt about whether the information may be disclosed to a third party, the department head must be consulted. Individual divisions have established processes and procedures for carrying out their functions. The Internal Audit Dept (IAD) and the auditor-general perform audit checks on MAS' compliance with these established processes and procedures.

#### **Enforcement**

In the event of alleged violations of these requirements MAS has processes in place to review and investigate the allegations. A Committee of Enquiry will be established consisting of the head of HR and the relevant department head, plus an independent staff member. Appropriate disciplinary actions, ranging from reprimands to suspension from duties, dismissal and prosecution under the relevant act will be taken depending on the



	severity of each case. MAS presented evidence that past actions taken against violations of these requirements included warnings and dismissals. Staff are expected to whistle blow if they observe a breach of these requirements by their colleagues and have done so.
Assessment	Fully implemented
Comments	The staff code meets the IOSCO requirements concerning personal and familial dealings. Confidentiality requirements are mandated by legislation (OSA and SBGCA). The familial dealing restrictions may be difficult to enforce, as MAS realizes, but the sanction of the staff member possibly losing his or her job (or worse) in the event of a discovered breach is strongly dissuasive. Comprehensive enforcement procedures are in place.
<b>Principle 6.</b>	The Regulator should have or contribute to a process to monitor, mitigate and manage systemic risk, appropriate to its mandate.
Description	<p>MAS is the integrated financial regulator and central bank in Singapore. As part of its mandate, it is also responsible for the identification and mitigation of systemic risk in the financial system. Under section 4(1)(b) of the MAS Act, one of MAS' principal objects is to foster a sound and reputable financial centre and promote financial stability. Section 4(2)(b) of the MAS Act states that MAS' functions include conducting financial stability surveillance. Internally, there are three fora where Macroeconomic Surveillance Department (MSD) and all supervisory departments (banking, insurance, and capital markets) are represented.</p> <p>Within MAS, CMG works together with MSD to ensure that an overall macroprudential perspective for the capital markets sector is in place. This is achieved through cross-department interaction and information sharing, as well as through the various cross-sector fora such as MFSC, Management Financial Stability Committee (FSC) and EXCO which comprise organization-wide representatives.</p> <p>On an annual basis, MAS publishes a Financial Stability Review (FSR) which contains assessments of risks and vulnerabilities arising from developments in Singapore and the global economy. Increasing emphasis has been placed on review of the capital markets sector—since 2008, analyses pertaining to the capital markets sector have been published in the FSR.</p> <p>Specific examples of the review of systemic risks in the domestic capital markets area are:</p> <p><b>Hedge funds.</b> Since 2009, MAS has been conducting annual surveys to monitor the systemic risks associated with the activities of hedge fund managers operating in Singapore. The survey is extended to the top 50 hedge fund managers in Singapore measured by assets under management. The results of the survey are analyzed jointly by MSD and the Investment Intermediaries Department, and tabled at MFSC and EXCO. Between 2009 and 2011, the results of the survey have shown that the activities of hedge fund managers in Singapore are unlikely to pose systemic risks to Singapore's financial markets or Singapore-based financial institutions.</p>

	<p><b>Exchange traded funds.</b> In 2010, MAS started to look into ETFs that are listed and traded on SGX-ST, focusing on synthetic ETFs because of their opacity and complexity. MAS considered the potential risks that such structures presented to investors as well as systemic risks (e.g., collateral risk triggering a run on ETFs in periods of heightened counterparty risk). MAS studied the common structures of ETFs and the attendant risks of the different methods used by synthetic ETF to track the target indices (e.g., through funded/unfunded swaps or by investing in access products such as participatory notes or derivatives). As a result, MAS increased its surveillance of certain synthetic ETFs by requesting fortnightly reports on the composition of the collateral (i.e., indirect exposures) from the swap-based synthetic ETFs. MAS identified the key risks associated with both direct replication ETFs and swap-based synthetic ETFs.</p> <p>MAS has also monitored retail CIS' exposure to Eurozone related risks and the refinancing risk faced by REITs during the global financial crisis. It currently consulting on an enhanced regulatory regime for the growing retail market in contracts for difference (CFDs) and has developed measures which allow MAS to monitor and assess the systemic risks arising from the clearing of OTC derivatives by Singapore Exchange Derivatives Clearing Limited (SGX-DC).</p> <p>MAS also identifies and evaluates systemically important FIs and subjects them to more intensive oversight. In this respect, approved exchanges, designated clearing houses (DCH), and holding companies of approved exchanges and DCHs are regulated by MAS under the SFA to ensure systemic risks are being managed and mitigated. Legislative amendments to the SFA, passed in November 2012, introduced a new authorization regime for clearing facilities. Under the amended SFA, corporations seeking to establish clearing facilities will be required to seek authorization to be approved clearing houses or recognized clearing houses. Systemically-important clearing facilities will be regulated under the approved clearing house regime, which generally equates to the DCH regime, while other clearing facilities will be regulated as recognized clearing houses. All existing DCHs will be deemed to be approved clearing houses under the new regime. The legislative amendments to the SFA are targeted to be come into operation in Q2 2013.</p> <p>MAS conducts stress tests of individual capital market intermediaries with a particular focus on market risk (which is distinct from the stress tests conducted by clearing houses to test their ability to withstand member defaults) using scenarios that are common with banks and insurance companies in Singapore. These scenarios usually include several types of stresses such as adverse movements in several markets simultaneously and default of large counterparties.</p>
Assessment	Fully implemented
Comments	

<b>Principle 7.</b>	The Regulator should have or contribute to a process to review the perimeter of regulation regularly.
Description	<p><b>Policy review process</b></p> <p>MAS has a process to review and assess whether the regulatory framework adequately addresses risks. In the MAS monograph on Tenets of Effective Regulation, Tenet 4: “Responsive to Change and Cycles” recognizes the need for the regulatory framework to be updated to keep pace with changes in the industry and as new risks emerge. It states that “new risks may not be addressed by current regulation and regulation may need to be updated to address these new emerging risks or to pre-empt a buildup of such risks” and that, as a consequence, “MAS recognizes the need for the regulatory framework to be continually and expeditiously updated to keep pace with changes and developments in the industry.” MAS reviews can be triggered by internal review or feedback from external sources. The policy review process is initiated through various channels:</p> <ul style="list-style-type: none"> <li>• MAS holds regular dialogues with the industry to better understand how the existing regulatory framework affects financial institutions and to identify any emerging risks in the industry. In addition, regular scans of other jurisdictions’ new regulatory policies and regulations are conducted to take stock of international developments. Staff then highlight key developments which may be of application to Singapore and consider specific issues which may be worth evaluating further. In conducting a review MAS will evaluate the effectiveness of past policies and assess if regulatory policies should be amended. Courses of action might include issuing new regulations, taking supervisory action or proposing legislative change.</li> <li>• MAS plays an active role in international and regional fora, participating as members of global bodies such as IMF, World Bank, FSB, BIS, and international standard setting bodies such as the Basel Committee of Banking Supervision (BCBS), the International Association of Insurance Supervisors (IAIS), CPSS, and IOSCO. This allows MAS to keep abreast of the latest developments in the financial sector, and consider policy changes if necessary. At the regional level, MAS engages other regional regulators through both formal and informal avenues. Through regional regulators’ meetings, MAS can learn from the experiences of regulators in the region and assess if regulatory measures being introduced by our counterparties would benefit the capital markets in Singapore if implemented locally. An example of such meetings is the Association of Southeast Asian Nations (ASEAN) Capital Markets Forum.</li> <li>• Other means of gathering, identifying, and assessing the regulatory environment are through review of news articles, industry feedback, mystery shopping, and review of public feedback and queries received.</li> </ul> <p>As part of its policy review, MAS considers how past policies address changing circumstances, and assess if past regulatory policies should be amended. Policy changes</p>

	<p>can be proposed internally and will be reviewed by division or department heads as appropriate. Where there are controversial issues or matters that have implications across divisions, decisions are reviewed by the CMI/CMD/IID department head, or CMG group head. It also considers unregulated products, markets, market participants, and activities as well. If such unregulated products, markets, entities or activities pose a threat to systemic risk, investor protection or efficient and transparent markets, MAS considers the appropriate actions to take to address the threats such as issuing new regulations, taking supervisory action or proposing legislative change.</p> <p><b>Legislative and regulatory change</b></p> <p>If new/amended policies could further limit systemic risk, increase investor protection, or promote efficient and transparent markets, MAS has the authority under the various laws it administers to issue or amend regulations and to issue other instruments. Also, MAS will, when necessary, propose changes to legislation to address regulatory needs. In proposing any legislative amendments, MAS will typically consult the industry on the proposed changes, as well as the draft legislative amendments.</p> <p>In recent years, MAS has made a number of legislative amendments as a result of the review process, including changes to regulation of real estate investment trust (REIT) management, and fund management.</p>
Assessment	Fully implemented
Comments	MAS has clearly identified and publicly enunciated the need to ensure that its regulation remains appropriate to market developments and that this includes monitoring new products and new ways of providing financial services that might, by accident or design, fall outside current regulatory scope. Its mechanisms that seek to ensure that it remains alert to these changes domestically and internationally is effective and has few problems in securing timely legislative and regulatory change when it deems it necessary.
<b>Principle 8.</b>	The Regulator should seek to ensure that conflicts of interest and misalignment of incentives are avoided, eliminated, disclosed or otherwise managed.
Description	<p><b>Regulated Entities</b></p> <p>Licensed intermediaries are required, as part of their license conditions, to conduct their business in such a manner as to avoid conflicts of interests; should such conflicts arise, they are to ensure that any conflicts are resolved fairly and equitably. Management of conflicts, and/or disclosure, is sufficient if MAS believes that this produces the desired outcome. Guidance is set out in various publications that deal with specific situations such as the publication of research and the provision of financial advice. If conflicts cannot be effectively dealt with, MAS will require an intermediary to cease that particular activity. To ensure the license conditions are implemented, MAS' supervisory and enforcement programs explicitly require regulated entities to establish procedures and effective controls and ensure segregation of duties to identify, evaluate and mitigate any potential or actual conflicts of interest that may arise from the operations of the license holder (SF(LCB)R r.13(f)). For instance, in the review of business arrangements or management and representative appointments of regulated entities, MAS considers whether regulated</p>

entities have appropriate conflict avoidance or mitigation measures (e.g., proper segregation of duties, disclosure of any conflicts or remuneration where they may prejudice independence or encourage employees to act other than in the interest of their clients, etc.). MAS focuses on ensuring that regulated entities are aware of their responsibilities with regard to controlling conflicts of interest, both through adequate risk management and control processes as well as providing examples in its guidelines on situations where conflicts of interest may arise. For example, the guidelines on the registration and licensing of fund management companies set out examples of situations in which the clients' interests must be put first. MAS also identifies conflicts of interest in the course of its interaction with regulated entities, (e.g., through inspections, etc.

The (SF(LCB)R) explicitly set out the requirement for licensees to disclose conflicts of interest to the customer concerned where appropriate. Generally the responsibility is on the boards and senior managements of intermediaries subject to MAS supervision, but has also set down requirements such as in the example below. MAS requires any disclosure of conflicts of interest to be done in a clear and accessible manner, e.g., in writing at point of sale or account opening, but the precise avenue of disclosure is generally left to the discretion of the company. In the case of marketing communications or research reports, disclosures are to be included in writing prominently.

MAS has the power to take regulatory action to resolve any actual or potential conflicts of interest. See SFA s101 and FAA s.58. Some measures include imposing stricter disclosure requirements, issuing directives, requiring a segregation of roles within the entity and/or preventing an entity or individual from engaging in a particular activity. For example, in the area of non-independent research, MAS addressed potential conflicts of interests through regulatory requirements such as restriction of the circulation of non-independent reports to accredited and institutional investors only and requiring the labelling of such research as non-independent research. See Regulation 13 of the Securities and Futures (Offers of Investments)(Business Trusts) Regulations 2005, Regulation 31 of the Securities and Futures (Offers of Investments) (Collective Investment Schemes) Regulations, Regulation 15 of Securities and Futures (Offers of Investments)(Shares and Debentures) Regulations 2005.

MAS has also undertaken a structural review of the financial advisory industry, the Financial Advisory Industry Review (FAIR), to promote a culture of fair dealing. Amongst the recommendations the FAIR panel submitted are recommendations for financial advisory firms to ensure that introducing arrangements do not pose conflicts of interest.

The regulatory framework also addresses conflicts of interest involving CIS operators and CRAs as set out in Principles 22 and 24. MAS has power to impose sanctions for breach of requirements.

### **Securities offering**

Singapore has adopted a predominantly disclosure-based regime for securities offering rather than a merit-based regime. Issues relating to conflicts or misalignments are, in the first instance, addressed through disclosure. Issuers making an offer of securities must lodge and register a prospectus with MAS. The prospectus must contain all information that investors and their professional advisers would reasonably require to make an informed assessment of the securities. In particular, the prospectus must disclose conflict of interest situations which pose a significant risk to the issuer, such as the other business activities of a controlling shareholder. In addition, where any of the experts, underwriters and financial advisers involved in the offer has a material interest in the securities being offered or a material economic interest in the issuer (including an interest in the success of the offer), such interest must be fully disclosed in the prospectus. This information will allow investors to assess whether there is any misalignment of incentives in respect of the key parties who are involved in the offer. In the case of an offer of shares or debentures, the prospectus must also disclose past and ongoing material interested person transactions. As part of its review of the prospectus prior to registration, MAS checks that the issuer has made full disclosure of material conflicts of interests and included information on how the conflicts have been, or proposed to be, resolved or mitigated.

In addition, an issuer seeking a listing of its shares on SGX-ST has to submit a listing application (including the prospectus) to SGX-ST for review. In reviewing the listing application, SGX-ST will assess, amongst other things, whether the issuer faces any conflict of interests. This function is reviewed by MAS as part of its oversight of the exchange. SGX-ST requires the issuer to resolve or eliminate all conflict situations prior to listing or within a reasonable time after listing. (SGX-ST Listing Manual 223 and 224). In reviewing an issuer's compliance with its policy on conflicts of interest, the SGX-ST will assess the significance of the conflict vis-à-vis the size and operations of the issuer, whether the interested persons derived any special advantage from the transaction, and whether the conflict can be terminated.

Aside from examining conflicts of interest issues in the course of its review of securities offerings, MAS also monitors international regulatory developments to identify potential issues it may need to address. For instance, MAS has noted that there has been a heightened focus to address potential misalignment of incentives in securitization transactions following the global financial crisis. In this regard, Singapore does not have an active public market for offerings of asset-backed securities.

### **Asset backed securities**

Offers of asset-backed securities are however subject to specific disclosure requirements that are aimed at providing investors with the relevant information to assess the quality and risks of the underlying assets as well as information concerning the origination and selection of the underlying assets. In particular, the prospectus must disclose the key

	<p>characteristics of the assets pool including: (i) cash flow profile (e.g., ageing of cash flows and levels of arrears/defaults); (ii) the maturity dates; (iii) principal and interest payments of the assets; and (iv) any credit enhancements. The prospectus must also spell out the underwriting criteria used to originate the underlying assets as well as the method and criteria by which these assets are selected for the securitization transaction. On an ongoing basis, issuers are required to disclose any information which may materially affect the risks and returns, or the price or value, of the asset-backed securities. MAS has recently implemented (following consultation) a rule which requires the disclosure of any forms of due diligence (including any review, verification or assessment) in respect of underlying assets that have been performed by the issuer, sponsor, originator, underwriter or any third party. The objective of this rule is to encourage parties involved in the offer of the asset-backed securities to conduct more careful due diligence and risk assessment as investors may be less likely to purchase asset-backed securities where the disclosure shows that the extent of due diligence that had been performed is inadequate.</p> <p>Aside from addressing conflict situations, SGX-ST also requires the promoters of an applicant for listing (defined as controlling shareholders and their associates, and executive directors who have a 5 percent interest or more) to provide contractual undertakings to observe a moratorium on the transfer or disposal of their interests in the securities of the issuer for a specified period of time after listing. The purpose of a moratorium is to maintain the promoters' commitment to the applicant and align their interests with that of public shareholders. (SGX-ST Listing Manual, Chapter 2–Part VIII). Post-listing, listed issuers are subject to stringent requirements governing transactions that they enter into with their interested persons. These requirements are designed to guard against the risk that interested persons could influence the issuer (or an entity within the group) to enter into transactions that may adversely affect the interests of the issuer or its shareholders (SGX-ST Listing Manual, Chapter 9).</p> <p>More generally, MAS believes that the regulation of individual representatives of licensees encourages compliant and moderate behavior in individuals, including those whose compensation very largely derives from commission earned from the sale of products.</p>
Assessment	Fully implemented
Comments	<p>In connection with regulated entities, requirements for the management of conflicts of interest are imbedded throughout the IOSCO principles, including the principles for SROs, auditors, CRAs, sell-side analysts, CIS, and market intermediaries. Given the limited guidance by IOSCO on this principle, this assessment has focused on evaluating whether such requirements are in place and whether through its ordinary supervisory programs MAS seeks to ensure that they are met.</p> <p>Requirements for the management of conflicts of interest are a key part of the regulatory framework for all regulated entities under the supervision of the CMG. In collaboration with SGX, MAS also addresses the need for listed issuers to disclose and where necessary take steps to mitigate conflicts of interest.</p>

<b>Principles for Self-Regulation</b>	
<b>Principle 9.</b>	Where the regulatory system makes use of Self-Regulatory Organizations (SROs) that exercise some direct oversight responsibility for their respective areas of competence, such SROs should be subject to the oversight of the Regulator and should observe standards of fairness and confidentiality when exercising powers and delegated responsibilities.
Description	<p><b>Entities that perform SRO functions in Singapore</b></p> <p>Market operators may comprise approved exchanges or recognized market operators (SFA section 6) unless exempted.<sup>12</sup></p> <p>Only the three approved exchanges perform SRO functions<sup>13</sup> in Singapore; SGX-ST, SGX-DT and SMX.<sup>14</sup> The Securities and Futures (Corporate Governance of approved exchanges, Designated Clearing Houses and Approved Holding Companies) Regulations 2005, apply to them. At least one third of the Board must comprise directors who have no management and business relationships, and no relationship with any substantial shareholders of an approved exchange. At least a majority of the Board is to be independent from management and business relationships.</p> <p>The functions of each exchange as SROs are to establish rules on eligibility (admission of members), trading, business conduct and qualification, conduct disciplinary actions, and administer compensation arrangements for investors who suffer loss due to the defalcation or insolvency of members. They also conduct real time front line market surveillance<sup>15</sup> and inspection of members. Suspicious market activity is referred to MAS for action (or if MAS detects irregular trading it may require the exchanges to investigate and report their findings to it). Exchanges may conduct disciplinary action against their members for breaches of their rules.</p> <p>SGX is responsible for approving new listings (it is the listing authority except with respect to derivatives and its own shares) but MAS must review and register any prospectus</p>

<sup>12</sup> One commercial forward delivery facility was exempted because it was technically covered by the definition of market operator but it was not a trading facility. MAS proposes to seek the necessary amendment to the legislation to remove the need for such exemption in the future. The exemption was published in the Government Gazette in 2012.

<sup>13</sup> MAS does not regard RMOs as SROs. Currently only three domestic RMOs have been recognized (two trade bonds and one commodity futures) but they are small. RMOs specified under SF(M)R Regulation 28 are required to maintain trading rules, enforce those rules and monitor the market they conduct, and observe any conditions imposed by MAS on the RMOs operations. Such conditions include reporting trading statistics to MAS and capital requirements. MAS must approve RMOs before they can conduct operations and it monitors their activity on an ongoing basis, including onsite visits and obtaining reports of operations. Overseas based RMOs must be regulated to an acceptable standard (as determined by MAS) in their home jurisdictions. MAS conducted one company visit of a local RMO in 2011 and 2012.

<sup>14</sup> The Singapore Commodity Exchange Limited (an RMO) ceased to operate on August 5, 2011.

<sup>15</sup> Although MAS has an electronic market surveillance system with alerts, it relies on the exchanges to conduct real-time market surveillance for the whole of the markets except for trading in SGX shares listed on SGX-ST.



(offer of securities) relating to a new issue of securities. An issuer undertaking an initial public offering (IPO) and seeking a listing on the SGX-ST must submit a listing application (including the prospectus) to SGX-ST for review, and lodge the prospectus with MAS for registration. The issuer has the choice of submitting the listing application to SGX-ST and the prospectus to MAS concurrently (Concurrent Review), or submitting the listing application to SGX-ST first and lodging the prospectus with MAS after it receives the eligibility-to-list letter from SGX. The Concurrent Review process was introduced in March 2010. Since then, most issuers have made their IPO submissions to SGX and MAS under this Concurrent Review process. See the exception below regarding Catalist market.

SGX-ST will consider whether the listing applicant satisfies the listing requirements and will decide whether to approve or reject the listing application. MAS will review and check that the prospectus complies with statutory disclosure requirements. Under the Concurrent Review process, MAS and SGX-ST identify issues of concerns to both parties.

IPO submissions that are non-compliant or have deal-breaker issues would be rejected or returned at the Concurrent Review stage. IPO submissions are returned to the issuers if there are major issues that have not been addressed or resolved, the submission is incomplete, or the financial statements are not current.

If a listing occurs without an issue of securities (in which case a listing introductory document is required) MAS has no involvement in the listing process.

In respect of the listing of derivatives products on SGX and SMX, MAS to date has exercised its authority to approve every contract specification before trading is permitted.

#### **SRO conditions for approval**

Exchanges require approval from MAS (SFA section 7) unless exempted under section 14 (to date no exchange has been exempted). A license is not issued but the approval is documented in writing to the exchanges and may be subject to conditions. Approval as an exchange carries with it SRO obligations by virtue of the relevant legislative provisions. Applications are reviewed by the MAS staff for compliance with the obligations contained in the SFA and regulations. In the case of the exchanges, the written approval is signed by the group head of CMG after consideration by the MFSC.

The approval criteria (SFA section 16) include:

- Maintain business (and listing) rules that make satisfactory provision for the proper regulation and supervision of its members, and a fair orderly and transparent market;
- Enforce compliance with its business rules (and where appropriate listing rules);
- Ensure that access to participation in its facilities is subject to criteria that are fair

and objective;

- Discharge its obligations in a manner which is not contrary to the interests of the public; and
- Ensure that it has systems and controls for the assessment and management of risks which are appropriate for the scale and nature of its operations.

SF(M)R (Regulation 18) requires an approved exchanges to make provision in its rules for measures setting standards for its members and promoting investor protection, including: admission and continuing requirements for each member; the establishment of compensation arrangements for investors who suffer losses through the defalcation or insolvency of members; and the carrying on of business of the approved exchange with due regard to the interests and protection of the investing public.

This set of basic criteria continues to be applicable to the SRO on an ongoing basis and MAS may take action should there be noncompliance with these provisions at any time. Exchange rules are reviewed upon admission.

#### **Powers of MAS and supervision of SROs**

Once approved, the MAS has the following specific powers over exchanges/markets:

- Authority to inspect books/operations and obtain assistance/explanations (SFA section 150);
- Ability to suspend business operations (also to dismiss executives in authority<sup>16</sup>) (SFA sections 34 and 44 );
- Reprimand an approved exchange which contravenes its own business rules (SFA Section 334);
- Require reports of operations and assistance to MAS (SFA sections 19, 20 and 150); reports include the approved exchange's annual report, quarterly profit and loss accounts and balance sheets, and the auditor's long form report including any findings in relation to the exchange's internal controls and non-compliance with any relevant laws or regulations; and
- Approval of rule changes and direction to change rules (SF(M)R Regulation 19), including the power to require alteration or supplement to the proposed rule amendments.

<sup>16</sup> MAS may direct an approved exchange to remove an officer of the exchange if he has, without reasonable excuse, failed to enforce compliance with the rules of the exchange (SFA section 44).

<p>Regulatory conflicts and anti-competitive behavior by exchanges can be prevented by MAS using these powers.</p> <p>MAS has a supervisory framework to oversee arrangements for the regulation of approved exchanges. This includes an annual self-assessment by approved exchanges of their compliance with obligations under the SFA, onsite inspections,<sup>17</sup> offsite reviews, review of periodic and ad hoc reports submitted, regular dialogues with the approved exchanges, and reviews of the rule amendments of the approved exchange.</p> <p>Exchanges must notify MAS of any disciplinary action taken against a member as soon as practical after the event (SFA section 17).</p> <p><b>Delegation to SROs</b></p> <p>MAS does not delegate any authority to the SROs except with respect to SGX's Catalist market (a sponsor supervised listing platform which replaced the previous second board). SGX has been delegated power as agent of MAS to approve a prospectus for a listing on that market. This authority was granted in 2008 and published in the Government Gazette.</p> <p>The business rules of an approved exchange are deemed to be a binding contract between the approved exchange and its members, as well as amongst the members of the approved exchange (SFA section 24). Approved exchanges may make an application to the court for an order to direct a non-compliant person to comply with its business rules and listing rules (SFA section 25).<sup>18</sup></p> <p><b>Coordination/oversight</b></p> <p>There are no formal MoUs in place with any of the SROs.<sup>19</sup> MAS is of the opinion that such MoUs are not necessary because the nature and functions of the SROs as approved exchanges are set by law. An approved exchange is obliged (SFA section 20) to provide such assistance to MAS as MAS may require for the performance of its functions and duties including provision of returns and information. From an operational perspective, arrangements exist to foster coordination, including regular calls, formal meetings and oversight through offsite reporting and onsite inspections, which has been tailored to the nature of the functions performed by each SRO. MAS does not discuss its inspection program with the approved exchanges however there is interaction and ongoing dialogue between each exchange and MAS and each exchange is aware of the members to be inspected in each forthcoming cycle.</p>
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<sup>17</sup> Annual onsite inspections are conducted. The inspection scope is determined based on an assessment of the risk and impact of the various functions (including regulatory functions) to the approved exchange.

<sup>18</sup> No application for court enforcement has yet been filed.

<sup>19</sup> There are written but not public protocols between MAS and each approved exchange concerning criteria for market abuse referrals detected by surveillance conducted by the exchanges.

**Conflict of interest**

MAS' approval process for an approved exchange requires the exchange to describe and demonstrate how it will have adequate means to deal with any conflicts of interest that may arise (Form 1 of the SF(M)R).

Under the Securities and Futures (Corporate Governance of approved exchanges, Designated Clearing Houses and Approved Holding Companies) Regulations 2005, approved exchanges are required to establish a board-level regulatory conflicts committee. All members of the regulatory conflicts committee must be independent of management and business relationships with the approved exchange, including relationships with the exchange's members.

This committee is responsible for reviewing and reporting to the Board (and MAS) on the adequacy of the arrangements within the approved exchange and its subsidiaries for dealing with any perceived or actual conflict between the commercial interests of the approved exchange or its parent or any of its subsidiaries and the regulatory interest arising from the regulation and supervision of its members. It is also responsible for carrying out regular reviews of the adequacy of the budget and resources of the regulatory and supervisory functions of the approved exchange.

Where the securities of an approved exchange are listed on its own market, MAS acts in place of the approved exchange in making decisions and taking action in relation to the administration of the listing rules (SFA section 30) but only in respect of that entity. Currently, SGX-ST lists the securities of its parent holding company, the Singapore Exchange Limited, on its securities market, and has in place a Deed of Undertaking by the Singapore Exchange Limited and SGX-ST in favor of MAS, concerning the arrangements to address conflicts of interests. The Deed of Undertaking dated March 8, 2007 sets out the listing arrangements, Market Surveillance responsibilities and composition and terms of reference of the Conflicts Committee. The Deed is published on the SGX website.

**Inspections and enforcement actions by the SROs**

All SROs follow a risk-based approach to determine the firms to be subject to inspection on an annual basis.

SGX<sup>20</sup> targets 10 firms per year to inspect with a cycle of two to four years but between formal inspections. SGX staff will visit members on site to check the adequacy of their internal controls. Its inspection program is settled yearly in advance based on monitoring and trend analysis of the members business and issues identified via market intelligence, complaints, and to verify internal controls required by the business rules in respect of the

<sup>20</sup> SGX has a single regulatory group that performs regulatory functions for both SGX-ST and SGX-DT. Each exchange has its own rules.

proper functioning of the members back office.

Details of the inspection plans are not specifically discussed with MAS prior to implementation but ongoing dialogue will ensue if issues develop from the inspections or notification of them in periodic reports is necessary.

For SMX, the cycle is based on variable periods of time of 12 to 18 months, so that every clearing<sup>21</sup> member will be inspected three times in four years. Inspections take one of two forms, full scope or limited scope depending on issues encountered during the preceding period and risk profiling. SMX has six staff dedicated to supervision. A full scope inspection involves three to four staff over a 4–5 week period; limited scope reviews involve the same number of inspectors but the duration is 2–3 weeks. The Trade members presently are subject only to ad hoc inspections if issues arise concerning their trading on the market, however it is proposed to subject them to a cycle of routine inspections in the future.

The following are outcomes achieved by the SROs in respect of inspections of members and enforcement actions:

<b>Universe of Approved Exchange Members Regulated by MAS</b>		
	Singapore Exchange (Securities and Futures Exchanges)	Singapore Mercantile Exchange (Futures Exchange)
Members <sup>1/</sup> as at Dec 31, 2012	Securities–7 Derivatives–19 Dual–22	Derivatives 7
Total	48	7 <sup>2/</sup>
Sources: SGX and SMX.		
1/Excludes proprietary, remote and dormant (ceasing) members.		
2/ Six of SMX members are also SGX members.		

<sup>21</sup> As at April 2013, SMX has seven clearing members, six broker members (trading only) but these are also clearing members. 50 Trade members (proprietary traders) that may be corporate or individuals and two remote members.

		<b>Number of Inspections Conducted</b>					
		2010		2011		2012	
	Number of Inspections Conducted						
	Singapore Exchange	8 (Coverage Dual: 6 Derivatives: 2)		7 (Coverage Dual: 2 Derivatives: 3 Securities: 2)		10 (Coverage Dual: 5 Derivatives: 4 Securities: 1)	
	Singapore Mercantile Exchange	NA#		2		3	
	MAS	5		8		8	
	Regulatory actions taken	2010		2011		2012	
		Public	Non-public	Public	Non-public	Public	Non-public
	- Singapore Exchange	0	20	1	14	1	30
	- Singapore Mercantile Exchange	NA <sup>1/</sup>	NA	0	6	0	2
		Sources: SGX and SMX.					
		1/ Singapore Mercantile Exchange went live in August 2010.					
Assessment	Fully Implemented						
Comments	MAS relies on approved exchanges to regulate the conduct of their markets and their members, set standards, enforce their rules, and promote investor protection. These responsibilities are set out in law and MAS monitors the exchanges' compliance with them. Although regulatory actions are taken and are advised to MAS as part of its monitoring process, the majority of the actions taken in accordance with these self-regulatory obligations are not made public. MAS should encourage exchanges to publish more transparent outcomes of the regulatory actions they have successfully taken against their members, including identifying the parties involved.						
<b>Principles for the Enforcement of Securities Regulation</b>							
<b>Principle 10.</b>	The regulator should have comprehensive inspection, investigation and surveillance powers.						
Description	MAS has a comprehensive suite of inspection, investigation and surveillance powers. SFA section 150 sets out MAS' right to carry out inspections on regards entities and persons subject to its regulation under the SFA: an approved exchange, recognized market operator, exempt market operator, person operating a clearing facility, designated clearing						

house, approved exchange holding company, the holder of a capital markets services license, an exempt person and a representative. An exempt person is defined in SFA section 99 to include a bank, merchant bank, finance company, and insurance company (in respect of fund management for the purpose of carrying out insurance business). It also includes the new categories of Licensed and Registered Fund Management Companies (RFMC). MAS' right to carry out investigations into these entities is out in SFA section 152. MAS has equivalent inspection powers over financial advisers under the FAA section 70 and investigation powers under FAA section 71.

There is no legal impediment to MAS conducting onsite inspections. Inspections can be made on a routine basis or "for cause." There is no legal obligation for MAS to give prior notice of inspection although for routine inspections, the practice is to give reasonable notice. An entity inspected by MAS must provide full access to its books (which includes any record, register, document or other record of information, and any account or accounting record) relating to their business affairs and must provide such information and facilities as may be required to conduct the inspection.

Section 102 of the SFA and section 45 of the FAA requires a regulated entity to maintain its books in sufficient detail to explain the transactions and financial positions of its business. In addition, regulation 39(1) of the SF(LCB)R and regulation 25 of the FAR require the regulated entity to maintain records on transactions including trading of funds and securities in and out of brokerage and bank accounts related to securities transactions. Regulation 39(1) of the SF(LCB)R and regulation 25 of the FAR require a regulated entity to maintain records on the identity of the customers such as particulars and name. In addition, regulated entities are required to maintain relevant books and information for a period of not less than five years: section 102 of the SFA, regulation 5 of the SF(M)R and regulation 26 of the FAR.

Day-to-day surveillance of trading activity is conducted by the approved exchanges, under the supervision of MAS. Exchanges and clearing houses are required to provide MAS with the name of the member that carried out any trades (SFA section 142). MAS also conducts real-time surveillance of trading activity by making use of the widely adopted SMART software system operating on real-time trade data. MAS may issue directions to approved exchanges, which must be complied with (SFA section 46). A person who acquires or disposes of securities or futures contracts is required to disclose to MAS whether he acted for another person, and if so, the name of that other person. In addition, SFA section 142 requires a CMSL holder (or an exempt person) dealing in securities or futures contracts to provide MAS with comprehensive information in relation to any acquisition or disposal of securities or futures contracts including the names of all persons party to or participating in the transaction and the instructions issued to the license holder or exempt person.

SFA section 143(2) provides that MAS may require an officer of a corporation to disclose to MAS any information of which he is aware and which may have affected any dealing that has taken place, or which may affect any dealing that may take place, in securities of,

	<p>or made available by, the corporation. SFA section 163 empowers MAS to require any person to provide information or produce books relating to any matter under investigation at a specified time and place. The person must comply with that requirement.</p> <p>SFA section 164 empowers MAS to obtain a search warrant from a magistrate where MAS has reasonable grounds to suspect that there is, on any particular premises, any book the production of which has been required under section 163, and which has not been produced in compliance with that requirement or which MAS has reasonable grounds to believe will not be produced in compliance with that requirement. An accompanying police officer is not required in the conduct of a search.</p> <p><b>Outsourcing</b></p> <p>SGX-ST, SGX-DT and SMX act as the SROs for securities and futures trading transacted on their markets and could be considered as outsourcing service providers. In terms of ongoing supervision, in addition to the inspection and direction powers referred to above, under section 20 of the SFA, MAS may review the disciplinary actions taken by the exchange against its members and their representatives. MAS has also developed a supervisory framework to implement integrated oversight arrangements for the regulation of the exchanges as described in Principles 9 and 33. The approved exchanges are subject to disclosure and confidentiality requirements that are no less stringent than those applicable to MAS (SFA section 21). MAS may also employ an external auditor to examine a license holder's records. In this case the auditor is subject to oversight by MAS including the confidentiality constraints that apply to MAS. The approved exchanges are required to afford MAS full access to their books (which includes any record, register, document or other record of information, and any account or accounting record) and shall give such information and facilities as may be required by MAS to conduct an inspection: sections 20 and 150 of the SFA. MAS may issue directions to the approved exchanges, which must be complied with. Section 46 of the SFA."</p>
Assessment	Fully implemented
Comments	The extent to which MAS' powers are used and the effectiveness of their use is assessed under the sectoral principles covering collective investment schemes and hedge funds, credit rating agencies (CRA), market intermediaries and secondary markets and under Principle 12 below.
<b>Principle 11.</b>	The regulator should have comprehensive enforcement powers.
Description	Pursuant to sections 142 to 144, 154, and 163 of the SFA MAS has regulatory and investigative power to obtain all data, information, documents, statements and records from persons (whether regulated or unregulated) who may have information relevant to the inquiry or investigation. Generally, all the powers set out here under the SFA are replicated under the FAA.



**Criminal powers**

MAS does not have criminal enforcement powers. It refers suspected criminal offenses to the CAD for investigation and subsequent prosecution by the AGC. The CAD is the primary enforcement agency for the criminal investigation and prosecution of offenses in relation to corporate and securities laws. Sections 204, 213, and 221 of the SFA set out the criminal penalties for contraventions of the provisions prohibiting market misconduct. For each offense, the offender may be subject to a maximum fine of S\$250,000 or to imprisonment of up to seven years or to both. In other cases, for example, a person who does not comply with the SFA s. 163 obligation to provide information or produce books relating to any matter under investigation by MAS shall be liable on conviction to a fine not exceeding S\$50,000 or to imprisonment for a term not exceeding two years or to both. Destruction or removal of books from Singapore can increase the fine to S\$100,000. The CAD has the full range of investigative powers to obtain information, documents, statements and records from any person.

**Civil penalty powers**

Market conduct provisions under Part XII of the SFA and disclosure obligations under Part VII of the SFA may also be enforced by MAS-instituted civil penalty actions, with the consent of the Public Prosecutor, AGC. Consent is necessary to ensure that the AGC's powers to press criminal charges are not fettered by a MAS decision to press for a civil penalty; double jeopardy is not permitted under the Singapore constitution. To avoid unnecessary delays, MAS and the CAD have agreed to a protocol which sets out their understanding of the type of cases that would be appropriate for civil charges without the CAD having to review the evidence and make a decision whether the appropriate route is via civil penalty action or criminal prosecution. As such, situations where a case that is initially investigated by MAS under the civil track but is subsequently transferred to CAD to be prosecuted under the criminal track, or vice versa, are minimised.

The maximum civil penalty is a sum not exceeding three times the amount of the profit that the offender gained or the amount of loss that he avoided as a result of the contravention, subject to a minimum of either S\$50,000 (if the person is not a corporation) or S\$100,000 (if the person is a corporation). Where there is no profit or loss avoided, a penalty of not less than S\$50,000 and not more than S\$2 million may be imposed.

MAS may seek court orders for mandatory or restraining injunctions pursuant to sections 325 and 326 of the SFA. These provisions give MAS the right to obtain an injunction from the court to (for example) freeze a person's assets, if it believes there is a risk that the person will remove assets from the jurisdiction before MAS can initiate its civil case. This power was recently used in a case involving the former chief executive officer of a listed company.

**Administrative sanctions**

MAS has the power to:

- make prohibition orders against regulated persons. Section 101A of the SFA issue written directions. Sections 46, 79, 81ZL, 101, and 293 of the SFA;
- refuse entry, suspend or revoke the license or status of regulated persons. Sections 95 and 99M of the SFA;
- revoke, suspend or withdraw exemptions, authorizations or recognitions in respect of offers of investments. Sections 281, 282ZD, 288, and 307 of the SFA;
- withdraw exemptions from holding a license;
- reprimand for misconduct (SFA section 334); although not required by law, MAS' policy is to make public reprimands for market conduct breaches including the circumstances justifying the reprimands; and
- offer for composition on non-custodial offenses. Composition is akin to settlement, although liability must be admitted. The penalty is usually measured with reference to the stipulated fine. (SFA section 336). As with civil proceedings, the consent of the AGC is required because of the possibility that the AGC may wish to bring a criminal prosecution. Except for minor breaches, compositions are published.

MAS does not have a power to issue administrative fines or other forms of financial penalty apart from late filing fees.

If an exchange member breaches SGX-ST's, SGX-DT's or SMX's rules and by-laws, SGX-ST, SGX-DT and SMX's disciplinary committees are empowered to impose sanctions, including reprimand, private or public, fines, suspension from trading or expulsion from membership or registration. MAS may review the disciplinary actions taken by the exchange against its members and their representatives. MAS has the power to issue a direction to the exchange as regards subsequent cases if it forms the view that the exchange's disciplinary procedures are inadequate. (SFA section 46). For breaches of listing requirements, SGX-ST may issue a private or public reprimand against the listed issuer and/or its directors, suspend or delist the listed issuer.

Pursuant to section 32 of the SFA, if MAS is of the opinion that it is necessary to prohibit trading in certain securities, MAS may give notice in writing (including email) to the approved exchange stating its opinion and the reasons for its opinion. The exchange cannot appeal although other aggrieved parties can. However, the MAS decision stands while the appeal process proceeds. If the approved exchange fails to take any action, MAS may, by notice in writing to the exchange, prohibit trading in those securities for a period

not exceeding 14 days.

As described in Principle 10, MAS has comprehensive powers to obtain all data, information, documents, statements, and records from persons (whether regulated or unregulated) who may have information relevant to an inquiry or investigation. This enables MAS to obtain information sufficient to reconstruct all securities and derivatives transactions, including records of all funds and assets transferred into and out of bank and brokerage accounts relating to those transactions; client identities; full trade details (including timings); and the identities of the licensee and the individual employee(s) who handled the trade. MAS may obtain any other information including documents and bank records. It has the power to obtain information from individuals or entities located in Singapore that identifies persons who beneficially own or control non-natural persons organized in Singapore.

MAS is empowered to take statements or testimonies under oath under section 154 of the SFA. A person is not excused from disclosing information to MAS on the ground that the disclosure of the information might tend to incriminate him, but that statement is generally not admissible in evidence against him in criminal proceedings other than in proceedings for making false or misleading statements. It is admissible in evidence in civil proceedings under SFA Part XII (Market Conduct). A refusal to provide a statement or the furnishing of false or misleading information may, on conviction, result in a fine not exceeding S\$50,000 or to imprisonment for a term not exceeding two years or to both.

#### **Private rights of action**

Private persons may commence civil action to recover losses suffered due to market misconduct (sections 234, 236, 236D, 236G, 236I, and 263L of the SFA). They may also institute civil proceedings for any loss or damage sustained by reason of any untrue statement or misrepresentation in prospectuses (sections 254 and 282O of the SFA). In addition, remedies may also be available under general law, either in contract or tort. A form of collective action is permissible. All plaintiffs have to be identified when the case is initiated. There is also a mechanism whereby multiple plaintiffs who allege they have suffered loss as the result of the criminal actions of a convicted person or a person who has been ordered to pay a civil penalty can have their individual claims dealt with through an expedited process, a “coat-tail action” under section 236 of the SFA.

#### **Beneficial ownership**

There is a two-tier penalty regime for contraventions of the Disclosure of Interests requirements. An upper-tier penalty of up to S\$250,000 or imprisonment for a term not exceeding two years, may be imposed for contraventions which are committed intentionally or recklessly (SFA section 137D(1)). In the case of a continuing offense, a further fine not exceeding \$25,000 for every day or part thereof during which the offense continues after conviction may be levied. This is a stiffer penalty than the fine of up to

	<p>S\$25,000 for contraventions committed under other circumstances (general contravention penalty) (SFA section 137D(2)). Previous cases (5 in 2010–12) were subject to fines up to S\$17,500. No cases have yet been brought under the new regime.</p> <p><b>Information sharing</b></p> <p>Where necessary, MAS may share information with other agencies, subject to the permissible disclosures specified under the respective legislation administered by MAS. Division 4 of Part IX of the SFA provides for the transfer of evidence between MAS and CAD for use in criminal or civil proceedings.</p>
Assessment	Fully implemented
Comments	<p>The issue of reprimands is not subject to mandatory publication, although MAS' policy is generally to make reprimands public for market misconduct. As set out in Principle 29, there are exceptions to this policy.</p> <p>The methodology relating to the enforcement principles requires that the available administrative sanctions be sufficient to be dissuasive. The lack of an administrative power to issue fines for breaches of provisions which fall short of the right or need for MAS to go to the court under civil penalty proceedings is an omission when considered internationally. While MAS thus lacks a full suite of sanctions it argues that the use of its composition powers, which are not necessarily limited to cases for which a civil penalty is available, can be as small as S\$500 and which require an admission of liability, is a more effective mechanism for penalizing low significance breaches than a specific power to fine under administrative procedures which would entail providing provisions for appeals. Based on the cases presented the assessors accepted the merit of this argument. Furthermore, Singapore may be a culture where a public reprimand from an important public authority is more damaging to the person because it has a negative impact on his reputation, than paying a fine that he can easily afford. However, The lack of an administrative power of MAS to issue fines should be kept under review and change sought if the current arrangements prove inadequate for effective and proportional enforcement.</p> <p>The SFA specifically permits MAS to publish reprimands and other regulatory actions in the public interest and as a matter of policy MAS generally publishes its reprimands and the reasons justifying the reprimands. Likewise, while SGX and SMX generally do not publish minor infractions that are administrative or technical in nature, breaches which are severe and brought before their respective disciplinary Committees will be published.</p> <p>MAS recognizes the practical problems in establishing the identity of beneficial owners when those owners seek to obscure their identity through, for example, passing ownership through a chain of offshore companies. But staff believe that the recently introduced (increased penalties for non-disclosure) provide an effective deterrent. The assessors agree.</p>
<b>Principle 12.</b>	The regulatory system should ensure an effective and credible use of inspection, investigation, surveillance and enforcement powers and implementation of an effective

	compliance program.
Description	<p>MAS conducts routine inspections on its licensees. MAS prioritizes inspections through evaluation of the overall risk in terms of inherent risks and control factors. The risk assessment for prioritization of inspection is based on, amongst others, information from review of the companies' internal and external audit findings and previous inspection findings. As documented in MAS' Framework for Impact and Risk Assessment of Financial Institutions, the supervisory assessment of a financial institution's impact and risk determines MAS' supervisory strategy towards that licensee and the supervisory activities in which MAS engages. The assessments of both impact and risk ratings are combined to assign financial institutions to one of four buckets of supervisory significance, depending on the licensees' potential to affect the achievement of MAS' supervisory objectives. Based on the buckets, the appropriate supervisory strategies and the level of supervisory intensity required are determined. The risk rating of the licensees are annually reviewed across peers, as well as for any shifts from the higher risk buckets to the lower risk buckets, by a panel of supervisors led by the department head. Onsite inspection statistics are set out in Principles 24 and 31.</p> <p>MAS' investigation powers are found in Part IX of the Act. These include the power to require any "person" to provide MAS with statements on oath (see section 154 SFA), as well as to order any "person" to produce documents (see section 163 SFA). "Persons" includes any company, association or unincorporated body of persons. MAS' investigation powers encompass not only licensed and registered persons, but also persons not regulated by MAS provided the evidence sought by MAS is relevant to the investigation.</p> <p><b>Complaints handling</b></p> <p>The public can complain to MAS in writing, by telephone and via the MAS website. Complaints are initially collated by the Consumer Issues Division (CSI) which is MAS' frontline for managing consumer complaints against financial institutions. CSI works with relevant supervisory departments (departments) within the MAS to respond to consumers who have issues with, or complaints against financial institutions. The process includes:</p> <p><b><i>Review of consumers' complaints</i></b></p> <p>CSI reviews consumers' complaints and refers them to the relevant supervisory departments when there are alleged breaches of regulations or industry codes. The respective departments may then follow-up with regulatory and enforcement actions. For other complaints, CSI monitors the financial institutions' response to consumers and works with departments to address the issues where necessary. Follow-up actions could include working through industry associations to enhance industry practices, implementing initiatives to inform consumers of their rights and responsibilities, stepping up financial education, and issuing consumer alerts.</p> <p>For issues that do not strictly come under MAS' ambit, such as issues involving financial</p>

institutions' commercial decisions and service standards that do not indicate a clear breach of the regulations, CSI alerts line departments if an issue is wide-spread (possibly of systemic concern) or raises concerns on possible:

- operational risk in the specific financial institution;
- social issues and unfair practices; and
- reputational issues for MAS or the industry.

### ***Responding to consumers***

CSI explains MAS' role and what it can, and cannot do, in its reply to consumers. CSI also advises consumers to go to the financial institution in question first. This approach also allows the financial institution an opportunity to address the consumers' issues. Where a matter cannot be resolved, the consumer can approach the Financial Industry Dispute Resolution Center (FIDReC), an alternative dispute resolution scheme for the financial industry. FIDReC's decision is binding on the financial institution but not on the consumer. If the decision at FIDReC is not satisfactory to the consumer, he is free to pursue other options, including taking legal action. Where matters indicate a possible need for MAS to take action the supervisory departments will investigate into the issues. MAS collates complaints by industry sector rather than by market or product. In 2012, it received 1,131 complaints about banks, 471 about insurance companies, 117 about capital market services licensees, and 26 about licensed financial advisors.

### **Market surveillance**

SGX-ST, SGX-DT, and SMX use electronic automated systems to perform daily surveillance of trading activities in their markets. The surveillance systems are designed to trigger alerts when trading irregularities occur. Where MAS' own surveillance detects possible irregular trading conduct, which the exchanges have not reported to MAS, MAS will require SGX-ST, SGX-DT, and SMX to investigate. SGX-ST, SGX-DT, and SMX will report their investigation findings to MAS regardless of whether they have initiated investigation on their own initiative or required by MAS.

The officers from the exchange review the alerts and identify those that may warrant further investigation. As part of its investigation, the exchange may gather information from their members or the listed entities. The electronic surveillance system used by SGX-ST, SGX-DT, and SMX allows for an audit of the execution and trading of all transactions on their respective markets. MAS also receives suspicious transaction reports filed by financial institutions and complaints from the public. All complaints and referrals received by MAS will be reviewed and assessed to determine whether further action is required. MAS refers potential criminal offenses to the relevant enforcement agency, normally the CAD, for further investigation.

Section 106 of the SFA and section 47 of the FAA requires licensees to appoint an auditor to audit its accounts. In addition, section 107 of the SFA and section 48 of the FAA requires licensees to lodge annual accounts with MAS. The licensee is required to report on its financial accounts to MAS in a form prescribed under Securities and Futures (Financial and Margin Requirements) Regulations (SF(FMR)R) and regulation 23 of the FAR, respectively. The prescribed forms have to be submitted with an auditor's certification that it is satisfied the internal controls are adequate having regard to the nature and size of business, internal controls procedures are designed to ensure compliance with all conditions and restrictions applicable to the licensee, proper records have been maintained and there is no other matter which may adversely affect the licensee's financial position to a material extent. Officers review the submitted forms and identify those which may warrant further investigation.

MAS reviews the quarterly and annual returns submitted by CMS licensees, which include monitoring the following:

- low base capital (i.e., base capital < 120 percent of minimum base capital required);
- low financial resources (i.e., financial resources < 200 percent of total risk requirement);
- high aggregate indebtedness (i.e., aggregate indebtedness > 600 percent of aggregate resources);
- breach of the capital requirements;
- under-segregation of customer funds; or
- significant fluctuation (> 20 percent) in their financial indicators including profit/loss, total shareholders' funds, capital requirements and financial ratios, etc.

In addition, MAS also conducts periodic thematic surveys on licensees.

Pursuant to regulation 13 of the SF(LCB)R and regulation 14 of the FAR, the CEO/directors of a licensed intermediary is responsible for implementing and ensuring compliance with effective written policies on all operational areas of the licensee, including financial policies, accounting and internal controls, internal audit and compliance with laws and rules governing the licensee's operations. He is also responsible for identifying, addressing, and monitoring the risks associated with the trading or business activities of the licensee. The same requirements imposed on CEOs/directors were extended to corporate licensees in March 2013. The rationale was that there may be situations where it may be more appropriate to take the corporate entity rather than the CEO/Directors to task for failure to ensure compliance with all applicable laws, codes of conduct and

standards of good practices Regulation 13 also places responsibility on the CEO and directors of the intermediary to put in place compliance function and arrangements that are commensurate with the nature, scale, and complexity of the business of the intermediary, including specifying the roles and responsibilities of officers and employees of the intermediary in helping to ensure its compliance with all applicable laws, codes of conduct and standards of good practice in order to protect investors and reduce its risk of incurring legal or regulatory sanctions, financial loss, or reputational damage.

Onsite inspections are conducted by MAS to assess the adequacy of licensed intermediaries' internal controls, and risk management policies and procedures. Inspections include assessment of compliance with the business conduct rules such as KYC, suitability, etc? During such inspections, MAS will also review the adequacy of written policies and procedures, segregation of duties and functions, risk identification and management including how the compliance procedures are communicated. This is followed up by offsite review for rectification of any control weaknesses of the regulated entities.

Under sections 236C and 236F of the SFA, MAS can commence civil penalty action against any entity which has been negligent in failing to prevent or detect market misconduct by its employee or officers that has been committed for the benefit of the entity. Under sections 95, 97, and 101A of the SFA, MAS can revoke, remove an officer of the license holder or suspend a CMS license or impose a prohibition order on a regulated entity if MAS has reason to believe that the regulated entity or any of its officers or employees, has not performed its or his duties efficiently, honestly or fairly, or if MAS has reason to believe that the regulated entity is carrying on business in any regulated activity for which it was licensed in a manner that is contrary to the interests of the public. This would include circumstances where the regulated entity fails to reasonably supervise its personnel. Generally, MAS has the authority under section 334 of the SFA to reprimand a regulated entity that is guilty of misconduct if it thinks it necessary in the interest of the public, or a section of the public or for the protection of investors. Although the SFA is silent on the matter, as a matter of policy MAS generally published such reprimands.

### **MAS' enforcement philosophy**

Enforcement is one of the five key functions within MAS which together support MAS' objectives and mission to promote a sound and progressive financial services sector.. The overarching objective of MAS' enforcement program is to bring about enforcement outcomes that are effective, proportionate and fair. The key elements of its enforcement philosophy are as follows.

*Early detection and rectification:* MAS seeks early detection and rectification. Through the process of risk-focused supervision and surveillance, MAS seeks to identify issues and potential problems in its financial institutions and markets and to require their prompt rectification before significant harm or damage is done.



*Shaping business and market conduct:* MAS seeks to ensure that industry and market participants are aware of the rules under which they operate and the boundaries of permissible conduct. MAS impresses upon them that it will not hesitate to take firm action against any person who contravenes its regulations or fails to take proper remedial action despite having been warned by MAS. This is mainly achieved through publication of enforcement actions, statements or speeches by MAS senior management which are widely covered in local media, and also through engagement and dealings with the industry. Through this process, MAS seeks to instil market discipline and shape business and market conduct.

*Effective deterrence:* In cases where enforcement sanctions are warranted, the primary objective is to provide effective deterrence. The sanctions must be adequate to ensure that the offender in question is deterred from re-offending and also to deter others from engaging in similar misconduct. Deterrence is crucial particularly in situations where it is not possible to review every single transaction or investigate and prosecute every possible case of misconduct. Criminal sanctions provide the highest level of deterrence. As such, criminal prosecution, where applicable, are the preferred course of action in the most serious cases.

### ***Calibrated sanctions***

At the same time, other sanctions, such as civil penalties and administrative actions (including warnings, reprimands and compositions), complement criminal prosecutions by providing a comprehensive range of actions to allow for calibrated action in each case to ensure that MAS' regulatory objectives can be achieved. This multi-pronged framework utilizes a broad spectrum of coordinated measures, ranging from early preventive and corrective measures to rigorous punitive actions against wrongdoers, to achieve the objective of bringing about effective, proportionate, and fair enforcement.

### ***Measuring success***

MAS' assessment of whether its enforcement program is effective is carried out at several levels. At the level of the offending firm or individual, any failing or damage must be rectified. For example, if a financial institution is found to have inadequate systems and controls, it will be required to correct those failings before it is permitted to resume normal business operations. In addition, where customers and investors have suffered loss or damage arising from a financial institution's failings, MAS expects the financial institution to provide fair redress for all affected customers and investors. Financial institutions that have committed significant regulatory breaches are subject to higher supervisory intensity and monitored for recidivism.

At the industry and market level, MAS relies on surveillance tools and information sources such as the SROs, inspections, company visits, environmental scans, complaints from

members of the public or other industry players, suspicious transaction reports, information from foreign regulators and mystery shopping exercises. The information and feedback helps MAS to assess the extent and prevalence of particular issues and problems and to calibrate its enforcement program accordingly.

In serious cases of misconduct MAS takes action against those who breach the law. In close collaboration with the CAD, criminal prosecutions have led to a high rate of conviction for market misconduct cases (14 with 2 pending in 2010-12). At the same time, MAS had successfully instituted civil penalty actions before the Singapore courts as well as entered into numerous civil penalty settlements. Importantly, all the settlement agreements entered into with MAS included an admission of liability by the offender. Civil penalty is different from composition (as referred to under Principle 11) and applies to different provisions. Composition powers are exercised pursuant to sections 89 of the FFA and 336 of the SFA, where MAS may in its discretion and in lieu of prosecution, compound any offense, which is prescribed as a compoundable offense by collecting from the persons reasonably suspected of having committed the offense, a sum of money not exceeding the maximum fine prescribed for that offense. If the offender rejects an offer of composition by MAS, MAS will pursue criminal proceedings in court. On the other hand, civil penalty action can be taken in respect of market misconduct contraventions under Part XII of the SFA and pursuant to section 137ZD of the SFA. In situations where MAS has decided to take civil penalty action against a person, and no civil penalty settlement is reached, MAS will commence civil penalty proceedings in court. Other than private administrative sanctions which are reserved for more minor breaches, all enforcement actions are publicized. Coupled with the penalties provided under Singapore law, which include the imposition of custodial sentences, MAS has over 170 officers (as at February 1 2013) in CMG who are responsible for the supervision of regulated activities, investigation of suspected breaches of securities laws and regulations, and undertaking civil penalty breaches for market misconduct. Within this number is a dedicated enforcement team of 14 people headed by a lawyer with experience in criminal enforcement. The maximum civil penalty is a sum not exceeding three times the amount of the profit that the offender gained or the amount of loss that he avoided as a result of the contravention, subject to a minimum of either S\$50,000 (if the person is not a corporation) or S\$100,000 (if the person is a corporation). Where there is no profit or loss avoided, a penalty of not less than S\$50,000 and not more than S\$2 million may be imposed.

In 2011, MAS took public enforcement action in 46 cases. To avoid confusion 46 refers to the number of enforcement cases which were published in the MAS website. On the other hand, the figures in Table 8 set out the total number of enforcement actions taken by MAS based on the number of individual contraventions. For example, a single financial institution could be subject to multiple directions. The figures in Table 8 also include action taken for minor or technical contraventions or non-compliance which were not published. The cases related to matters such as breach of disclosure requirements, insider trading, false trading and late reporting. Arising from the criminal investigations

conducted by CAD, eight persons have been prosecuted in court since January 2011 for various breaches of the securities laws. Six of these persons have already been convicted. Another eleven persons were convicted during the same time period on offenses ranging from false trading to front running (includes prosecutions commenced prior to 2011). Most were sentenced to fines. In 2011, the offenders in the three civil penalty settlement suits each paid a civil penalty \$50,000. From 2008 to 2012, the civil penalties paid ranged from \$50,000 to \$320,000. With regard to the criminal cases, in 2011, one person was sentenced to three weeks imprisonment. From 2008 to 2012, sentences for imprisonment ranged from three weeks to eight months.

In particular, two civil penalty actions by MAS in court were concluded. One case was against a fund manager and its CEO for false trading. The other case was against the ex-Chief Financial Officer (CFO) of a listed company for insider trading. The two cases were notable as they were the first civil penalty actions for false trading and insider trading that had been commenced in court, given that earlier cases had so far been settled with admission of liability and agreement to pay the civil penalty. In the false trading case, the High Court found the fund manager and its CEO liable and ordered them to pay a civil penalty of \$250,000 each. In the insider trading case, the High Court also found the ex-CFO liable and he was ordered to pay was a civil penalty of \$67,500. In both cases, the defendants appealed to the Court of Appeal but the appeals were dismissed and the civil penalty orders were upheld. In another notable case, a company director who traded in the shares of the issuer whilst in possession of non-public information on the involvement of its then CEO in a bribery investigation was convicted and fined a total of S\$200,000. In other criminal cases fines ranged from S\$180,000 and S\$250,000.

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<b>Enforcement Actions Between 2008–12</b>						
Number of Administrative/Regulatory Enforcement Actions						
Year	No. of Criminal Enforcement Prosecution/Convictions	No. of Civil Penalty Enforcement Actions (Settlement/Court Actions)	Composition	Prohibition Order, Suspension/Revocation of License	Reprimands, Letters of Warnings	Specific Directions, Others
2012	4/2	5/0	29	6	301	1
2011	4/4	3/3	50	7/0	219	16
2010	10/10	1/0	41	18/0	9/28	6/0
2009	15/15	3/0	34	8/0	1/189	13/0
2008	4/2	2/0	5/	21/0	4/72	25/0
<p>Source: MAS.</p> <p>Notes:</p> <p>All criminal prosecutions are considered material.</p> <p>All settlements are entered into with admission of liability and agreement to pay civil penalty. All civil penalty actions settlements have to-date been published on the MAS website.</p> <p>MAS had the power and discretion to compound non-custodial offenses under the SFA and the FAA by collecting from a person reasonably suspected of having committed the offense a sum of money not exceeding the maximum fine prescribed for that offense.</p> <p>Non-material cases include cases involving late filing/notification/lodgement and minor administrative errors.</p> <p>All composition cases and civil penalty actions are considered material.</p> <p>Court proceedings for two prosecutions commenced in 2012 have not been completed.</p>						
Assessment	Broadly Implemented					
Comments	<p>The downgrade arises from the same ratings awarded for the two main supervisory focused Principles, 24 (CIS) and 31 (intermediaries) where the cycle of detailed onsite inspections has been assessed by the assessors as insufficiently frequent, particularly for entities rated as high or medium high risk in the risk based assessment process. Any vulnerability here needs to be reflected in the rating for Principle 12. On the positive side, as described by MAS above, its enforcement philosophy is cogent and well developed. Its enforcement statistics indicate that it has a good success rate in the cases it brings.</p>					
<b>Principles for Cooperation in Regulation</b>						
<b>Principle 13.</b>	The regulator should have authority to share both public and non-public information with domestic and foreign counterparts.					
Description	<p><b>Domestic cooperation</b></p> <p>MAS may share confidential information with domestic regulatory authorities provided it follows the principles espoused in the common law that if in the course of performing its public duties, it becomes aware of information that is not generally available, it ought not to disclose the information except for the purpose of and extent necessary to perform its</p>					

public duty or enabling some other public body to perform its public duty. In essence these are relevance and public interest criteria. In accordance with such criteria MAS may share information with other domestic agencies, and does not require a prior request for that to occur.

The main domestic agencies with which MAS shares information are the CAD (white collar crime) and CPIB (the enforcement agency pursuing corrupt practices). If requested by other domestic authorities to provide details of authorization, licenses or approvals issued or granted in order to perform their statutory functions, MAS may provide such information to these authorities, subject to the criteria referred to above. In practice the information sharing requests from agencies other than the CAD/CPIB are few as they routinely use their own powers to obtain evidence of wrongdoing.

SFA section 168B deals with the transfer of evidence between MAS and CAD and the AGC (public prosecutor) and is designed to ensure that evidence provided to the other agency cannot be challenged on grounds of inadmissibility when used in criminal investigations and proceedings. The MAS routinely shares information concerning securities and futures laws breaches with the CAD and the AGC to facilitate investigation and prosecution of such offenses.

### **International cooperation**

SFA/FAA provides the legal foundation that enables MAS to share confidential information with overseas regulators (SFA Sections 170 and 172 of Part X and FAA sections 77–80).

The relevant sections (SFA section 170 and FAA section 78) empower MAS to provide assistance if: the assistance is required to enable the foreign authority to carry out supervision, investigation or enforcement of securities/futures breaches; the material is of sufficient importance and gravity for such purpose and cannot be obtained by other means; an undertaking regarding use is obtained; and the rendering of assistance will not be contrary to the public interest.

In deciding whether to grant assistance, MAS notes whether the alleged act or omission would be a breach of the securities/futures law in Singapore, whether the foreign authority has given or is willing to give an undertaking to comply with a future request by MAS of it for similar assistance and whether the foreign authority undertakes to contribute to costs of MAS in providing the assistance sought (SFA section 171).

MAS may provide any material in its possession, order a person to provide MAS with the information requested by the foreign authority, and order a person to make an oral statement providing the information. Information includes records identifying the person or persons beneficially owning or controlling bank accounts related to securities and derivatives transactions and brokerage accounts as well as the necessary information to reconstruct a transaction, including bank records. MAS may obtain the information from

	<p>any government department or authority so that it can be provided to the foreign authority. Direct transmittal of information may occur from the holder to the foreign authority if the material is required by the foreign authority for investigation or enforcement. MAS does not need to seek external approval to render assistance to its foreign counterparts.</p> <p>SFA/FAA does not prevent MAS from providing assistance to foreign authorities on an unsolicited basis. Dual illegality is not a requirement for providing assistance to foreign regulators under the SFA or FAA.</p> <p>Staff are bound by the the Official Secrets Act (Cap. 213) (OSA), Statutory Bodies and Government Companies (Protection of Secrecy) Act (Cap. 319) (SBGCA), and the MAS Act and internal procedures containing confidentiality obligations relating to the handling and custody of classified documents and information. MAS has internal procedures to ensure consistency in the handling of information requests.</p> <p>When information is requested by a foreign counterpart, MAS obtains from the foreign authority an undertaking governing the use of the information obtained pursuant to its request. The undertaking provides that the regulator will: (a) not use the information for any other purpose than the purpose specified in the request; (b) not disclose to a third party any material received pursuant to the request unless the regulatory authority is compelled to do so by the law or a court of the foreign country; and (c) obtain the prior consent of MAS before disclosing any material received pursuant to the request to any other relevant authority in the foreign country. Any such disclosure only can be made in accordance with conditions imposed by MAS.</p>
Assessment	Fully Implemented
Comments	MAS can share the full range of information set out in Key Questions 1 and 2 of this principle.
<b>Principle 14.</b>	Regulators should establish information sharing mechanisms that set out when and how they will share both public and non-public information with their domestic and foreign counterparts.
Description	<p><b>Domestic cooperation</b></p> <p>As the MAS has the power to share confidential information on the basis described in Principle 13, it has the necessary powers to establish information sharing arrangements. The MAS staff considers that vis-à-vis other domestic agencies formal MOUs are not necessary. MAS is able to share information concerning securities and futures laws violations with the CAD and the AGC to facilitate investigation and prosecution of such offenses. Division 4 of Part IX of SFA specifically provides for the transfer of evidence between MAS and CAD for use in criminal or civil proceedings.</p> <p>Safeguards for protecting confidential information are in place as described above. MAS officers are bound by various statutory provisions and internal procedures relating to the handling and custody of classified documents and information. Under the IOSCO MMOU</p>

which MAS is a signatory to, MAS has committed to keep confidential all requests made under the MMOU the contents of such requests, and any matters arising under the MMOU. This includes confidential information gathered by MAS in the exercise of its functions and powers that is shared with another competent authority. In addition, statutory provisions and internal procedures are imposed on MAS officers to ensure that confidential information, including information that is gathered by MAS pursuant to a request for assistance from another regulator, is protected and not subject to abuse.

### **International cooperation**

SFA Part X provides the MAS with the power to enter into information arrangements with other foreign authorities, subject to the fulfillment of conditions required by the SFA. These conditions are:

- The assistance is intended to enable the foreign authority to carry out supervision, investigation or enforcement;
- The contravention took place after March 2000;
- The foreign authority has given an undertaking regarding use of the information, disclosure of information to third parties and MAS consent for its release;
- The material requested is of sufficient importance and cannot be obtained by other means;
- The matter relates to matters of sufficient gravity; and
- Rendering the assistance sought will not be contrary to the public interest or the interests of the investing public (SFA section 170).

Similar provisions are set out in the FAA.

MAS is a full signatory to the IOSCO MMoU (signed in October 2005). It also will share information with a bona fide foreign regulator even if that regulator is not a MMoU signatory.

Since MAS became a MMoU signatory it does not consider it is necessary to enter into specific bi-lateral MOU information sharing arrangements with foreign regulators. Prior to becoming an MMoU signatory MAS entered into MOU arrangements with a number of overseas market regulators which are still operative. The countries involved are Australia, Japan, United Kingdom, Hong Kong, India, and the United States. MAS is also a signatory to the 1996 Boca Raton multi-lateral MOU for the futures markets and with the European Securities and Markets Authority on the supervision of cross border CRAs.

MAS regularly receives requests for information from foreign authorities. For example, in 2010 MAS received 37 requests from 11 IOSCO MMoU signatories. In 2011, MAS received

	<p>42 requests from 14 regulators and in 2012 it received 49 requests from 14 regulators. All requests were responded to within approximately three weeks of receipt where all necessary information relevant to the request was provided. In 2010, one request was outside the scope of the MMOU. In 2011, assistance was not provided in two cases; one case clarification from the requesting authority was requested but not received and one request was redirected to proceed via the Mutual Legal Assistance Treaty as the legal conditions for provision of assistance under the SFA were not satisfied.</p> <p>In 2012, in three cases assistance was not provided. In two cases requests for clarification from the requesting authority was sought but not received and one request was redirected to proceed via the Mutual Legal Assistance Treaty. In addition, during the period 2010–12 MAS received an additional request from a non-IOSCO MMoU signatory in respect of which MAS provided assistance. Safeguards for information are in place based on the IOSCO MMoU and MAS will obtain from the foreign regulatory authority an undertaking (pursuant to section 170 of the SFA).</p> <p>MAS also attends supervisory colleges hosted by regulators overseas.<sup>22</sup></p>
Assessment	Fully Implemented
Comments	
<b>Principle 15.</b>	The regulatory system should allow for assistance to be provided to foreign regulators who need to make inquiries in the discharge of their functions and exercise of their powers.
Description	<p><b>Legal foundation</b></p> <p>MAS is able to issue production orders to financial institutions to furnish any material that is requested by a foreign regulator as long as the request satisfies the conditions in section 170 of the SFA. There are similar provisions in the FAA sections 77–80. As described above in Principle 13, assistance may be rendered if it is intended to assist the foreign regulator on matters related to investigations and the enforcement of its securities laws, or to enable the foreign regulator to carry out supervision of regulated entities and the issuance of or trading in securities (SFA section 170(b)).</p> <p>MAS is not required to have an independent interest in the matter before assistance can be rendered. SFA may obtain oral statements by compulsion to assist foreign regulators (Section 172(1)(d)). It is an offense if a party refuses to comply with a production order issued by MAS to furnish material that is requested by a foreign regulator (SFA section 173). MAS can apply to court for an injunction to mandate compliance.</p> <p>Section 172(1)(d) of the SFA empowers MAS to obtain oral statements by compulsion to assist foreign regulators, if the required preconditions are met.</p>

<sup>22</sup> See Principle 32. These are supervisory colleges/conferences hosted by lead regulators overseas organized by the Japanese FSA and the annual supervisory colleges/roundtable discussions organized by FINRA in New York.



	<p>If MAS has issued a production order to any party to furnish material that is requested by a foreign regulator, and that party refuses to comply, this is an offense under section 173 of the SFA and section 81 of the FAA. In the face of contravention of the SFA or the FAA, MAS can apply to court to for an injunction to mandate compliance. MAS can also assist in advising a foreign regulator on how to initiate legal proceedings under the Mutual Assistance in Criminal Matters Act (e.g., to freeze assets) or request the assistance of the Attorney General's Chambers.</p> <p>A requesting authority may use the information furnished by MAS if it is for the purposes specified in its request and had been approved by MAS. (Section 170 of the SFA and section 78 of the FAA).</p> <p><b>Practice</b></p> <p>As stated above, MAS is a signatory to the IOSC MMoU and it has not refused a request for information from a foreign counterpart under that MOU (except as detailed above in Principle 14). Assistance that may be rendered includes transmitting to the foreign regulator any material in the possession of MAS that is requested by the foreign regulator or requesting any person to furnish any material that is requested by the foreign regulator.</p>
Assessment	Fully Implemented
Comments	
<b>Principles for Issuers</b>	
<b>Principle 16.</b>	There should be full, accurate and timely disclosure of financial results, risk and other information that is material to investors' decisions.
Description	<p><b>Securities Offering Regulatory Framework</b></p> <p>There are currently about 900 public companies in Singapore not listed on SGX. There is no legal prohibition on unlisted public companies raising funds from the public. However, unlisted public companies intending to raise funds from the public must comply with all applicable requirements under the SFA; the key requirement being the need to prepare and register a prospectus with MAS unless an exemption applies as set out below. Offers made under the exemption for offers to no more than 50 persons within any period of 12 months cannot be accompanied by an advertisement calling attention to the offer. Since the enactment of the SFA in 2001, there have been only three instances of unlisted public companies that sought to raise funds from the public (in 2003, 2004 and 2006). The shares of unlisted public companies are typically closely-held; 94 percent have 50 or fewer shareholders, with the average number of shareholders being fewer than four. They are not listed or traded. In contrast, companies seeking a listing on the SGX Mainboard are required to have a minimum of 500 shareholders at the time of listing, and their shareholders base normally broadens significantly post-listing</p> <p><b>Regime for the offering of securities</b></p> <p>Section 240(1) of the SFA requires all offers of securities to be made in or accompanied</p>

by a prospectus registered with MAS, unless the offer falls within the available exemptions (sections 272 to 280 of the SFA). Examples of such exemptions include:

- A personal offer of securities where the total amount raised within any 12-month period does not exceed \$5 million (section 272A), or an offer of securities made to no more than 50 persons within any period of 12 months (section 272B);
- An offer of securities under specific circumstances, such as an offer:
  - made in connection with a compromise or arrangement, or a Take Over offer (section 273(1)(a),(cb));
  - of securities previously issued, which are listed for quotation and are traded on a securities exchange (that is where no new shares are issued in Singapore) (section 273(1)(d));
  - of securities to employees of the issuer (section 273(1)(f)); and
  - of securities made to institutional investors (section 274) or accredited investors (defined under the SFA to include an individual whose personal net assets exceed \$2 million or whose income in the preceding 12 months is not less than \$300,000, and a corporation with net assets exceeding \$10 million) (section 275).
- An offer of international debentures by a body incorporated outside Singapore whose shares are listed on a list of overseas exchange maintained by MAS to institutional, professional or business investors (section 278).

In practice, foreign corporations, including those that do not issue shares, tend to rely on the prospectus exemptions under section 274 (offers made to institutional investors) and section 275 (offer made to accredited investors) to offer bonds in Singapore.

In all of these cases, MAS could take action under SFA Part XII for misstatements in any information provided to purchasers. SFA section 276 contains measures to prevent leakage of exempt securities into public hands without the provision of a prospectus.

### **Content of prospectuses**

Section 243 of the SFA requires issuers to disclose all information that investors and their professional advisers would reasonably require to make an informed assessment of, among other matters, the rights and liabilities attached to the securities, the assets and liabilities, profits and losses, financial position and performance, and prospects of the issuer. In addition to the general disclosure requirement under section 243 of the SFA, comprehensive and specific disclosure requirements are set out in the Securities and Futures (Offers of Investments)(Shares and Debentures) Regulations 2005 (SF(OIS)R) for shares (Fifth Schedule of the SF(OIS)R) and debentures (Seventh to Tenth Schedules), described below. Further disclosure requirements are also prescribed depending on the nature of the securities offered, such as for convertible debentures, debenture, asset-backed securities, and structured notes.

Specifically, a prospectus for an offer of shares must contain the following:

- Information with respect to the issuer, including:
  - A description of the history, business and organizational structure;
  - Identification of the issuer's directors and key executives, with details of past working experience and compensation;
  - Audited financial statements for the three most recent completed financial years and interim financial statements;
  - Capitalization and indebtedness;
  - Operating and financial review, and prospects;
  - Changes in accounting policies;
  - Substantial shareholders and their interests in the shares;
  - Interested person transactions and conflict or interests; and
  - Material litigation
- A description of the securities being offered, including rights attached to the securities being offered, e.g., voting rights, rights to dividends;
- Risk factors specific to the issuer and its industry, as well as the securities being offered;
- Dilution;
- Use of proceeds;
- Plan of distributions; and
- Summary of the issuer's constituent documents and material contracts (entered into outside the ordinary course of business).

Issuers whose shares are already listed and traded on the SGX-ST, and for which therefore substantial information is in the public domain (via the continuous disclosure regime) may offer of shares or debentures for cash (by means of a rights issue for example) by using an offer information statement which is an abridged version of the prospectus (section 277 of the SFA) as set out in the SF(OIS)R.

#### **Lodgement, review, and registration of a prospectus**

An issuer that intends to make an offer of securities must lodge a prospectus with MAS. The prospectus, once lodged, will be made available on MAS' OPERA website for public comments. OPERA refers to the Offers and Prospectuses Electronic Repository and Access. It is an online database which hosts information and documents on public offers of securities and Take Overs and mergers. OPERA allows members of the public to view and download all documents lodged with MAS (including prospectuses and Take Over documents), and provide comments on prospectuses during the exposure period (prior to registration). There will be prominent disclosure on the OPERA website that the

lodged prospectus has not been registered with MAS and that investors should not apply for the shares on the basis of the lodged prospectus. Prospectuses lodged with MAS are subject to review by MAS' Corporate Finance Division before they are registered. Existing SGX-listed issuers may rely on the prospectus exemption under section 277 of the SFA to undertake fresh offerings of securities (e.g., rights issue or placement of new shares) using an Offer Information Statement (OIS) instead of a prospectus. This is an abridged version of a prospectus. The rationale for this exemption is that investors will have publicly accessible information to evaluate fresh offerings by such issuers which are required to disclose all material information on a continuous basis (which is a listing requirement with statutory backing). The OIS must conform to the specific disclosure requirements in the 16th Schedule of the SF(OIS)(Shares and Debentures) Regulations. The disclosures required include the terms of the securities that are being offered, offer statistics and timetable, use of proceeds, summary of historical financial information, operating and financial review, and application procedures. The OIS is subject to the same statutory liability as a prospectus (s.277(3) of the SFA). Specifically, the issuer and its directors will be subject to criminal liabilities (under e.253) or civil liabilities (under e.254) if there is a false or misleading statement or an omission to state any information required, in the OIS. OIS's are lodged with MAS but are not reviewed, although the statutory liability provisions for mis-statements apply as they do for prospectuses.

While the number of prospectuses lodged vary according to market conditions, around 28–38 are lodged with and reviewed by MAS annually. All prospectuses are reviewed by an officer and a senior officer. A “plain vanilla” equity prospectus can take +/- five days to review. A securities offering by a high profile company and/or with unusual features may take longer. MAS Corporate Finance Division employs 13 people qualified to review prospectuses with a mix of legal, accounting and business skills.

Section 240(8) of the SFA provides that MAS may register a prospectus within the prescribed period (i.e., between the 7<sup>th</sup> and 21<sup>st</sup> day of lodgement and no later by the 28<sup>th</sup> day if an extension of the time period is ordered by MAS. This period can be further extended if the issuer has not satisfactorily addressed the issues raised by MAS. Once MAS registers the prospectus, the OPERA website will be updated with a copy of the registered prospectus. After a prospectus is registered, if the issuer becomes aware of a false or misleading statement, an omission, or a new circumstance has arisen that is materially adverse from an investor's point of view and would have been required to be disclosed in the prospectus, the issuer is required to lodge a supplementary or replacement prospectus.

### **Delivery of the prospectus**

Under section 240(1) of the SFA, any offer of securities to a prospective purchaser must be accompanied by a prospectus. Offers made through Automated Teller Machines (ATM) or other prescribed electronic means (i.e., WAP phones) are exempted from the

prospectus delivery requirement (s280(1)) provided the following conditions are met:

- Prospective investors must be alerted to the availability of the prospectus and where it can be obtained; and
- Prospective investors must be advised to read the prospectus before applying for the securities through the ATMs or WAP phones.

### **Periodic reports**

Listed companies are required to release all announcements (including financial statements) to the market via SGXNET. Members of the public may view and download all announcements (including financial statements) made by listed companies on the SGX website. They are also able to access the annual reports and shareholders circulars issued by listed companies on the SGX website.

Rules 707 to 711 of the SGX-ST Listing Manual set out the requirements for annual reports by listed companies. An issuer must issue its annual report to its shareholders and SGX-ST at least 14 days before the issuer's annual general meeting (which must be held within four months of the end of its financial year). Chapter 12 of the SGX-ST Listing Manual prescribes the information that must be disclosed in the annual report. The annual report must contain sufficient information for a proper understanding of the performance and financial conditions of the issuer and its principal subsidiaries. It must include, among other matters, annual audited consolidated accounts, a review of the operating and financial performance of the issuer and its principal subsidiaries in the last financial year, and any material development since the last interim financial results were disclosed. SGX-ST reviews the annual report and other periodic reports submitted by the issuer and may require additional information to be disclosed if warranted. As part of the MAS oversight of SGX it reviews the adequacy of the exchange's monitoring and enforcement of compliance with its listing rules and can issue directions if dissatisfied.

Rules 705 and 706 of the SGX-ST Listing Manual require an issuer to announce unaudited financial statements (in the format prescribed in Appendix 7.2) for:

- I. in the case of issuers whose market capitalization exceeds S\$75 million, each of the first three quarters within 45 days after the quarter end.
- II. in the case of all other issuers, the first half within 45 days after the relevant financial period.

The quarterly and half-yearly financial statements must contain the information required by Appendix 7.2 of the SGX-ST Listing Manual which include:

- a review of the performance of the group;
- a commentary on the competitive conditions of the industry in which the group operates; and

- details of any changes in the company's share capital.

The issuer's directors must provide a confirmation that nothing has come to their attention which may render the interim financial statements to be false and misleading in any material respect.

Members of the public have access to comprehensive information of all Singapore-incorporated companies (including unlisted public companies) through the ACRA website. For instance, they may obtain a company's Corporate Compliance and Financial Profile (CCFP) which is an electronic report that provides key information about the company's business profile (e.g., principal activities, capital structure, particulars of officers and shareholders), financial profile (e.g., key highlights of financial statements) and financial ratios (liquidity/solvency/profitability/operating efficiency).

Unlisted companies have six months from the end of their financial year to lay their accounts at their annual general meeting under Companies Act requirements.

#### **Corporate actions requiring shareholder approval**

Issuers are required to disclose information to shareholders in order to help them make voting decisions. Rule 1206 of the SGX-ST Listing Manual requires any circular sent to shareholders to contain all information necessary for shareholders to make a properly informed decision. It also sets out the specific information that needs to be disclosed in the circular for the various types of corporate actions. Under the SGX-ST Listing Manual, the following voting decisions will trigger a disclosure requirement:

- Issue of shares or convertible securities are subject to prior approval by shareholders. However, shareholders may approve by ordinary resolution a mandate for the issuer to issue shares or convertible securities up to 50 percent of the listed issuer's existing issued share capital to existing shareholders, of which securities issued other than on a pro-rata basis to existing shareholders must not be more than 20 percent of the listed issuer's existing issued share capital.
- All employee share option schemes require shareholders' approval.
- Shareholders' approval is required for share buy-backs. SGX-ST Listing Manual Rule 883 requires disclosure of the reasons for the proposed share buy-back, details of any share buy-back made by the issuer in the previous 12 months, and whether the shares purchased by the issuer will be cancelled or kept as treasury shares.
- Shareholders' approval is required when the value of the interested person transaction is 5 percent or more of the latest audited net tangible assets and worth at least S\$100,000. For an issuer seeking a general mandate from

shareholders for recurrent interested person transactions, SGX-ST Listing Manual Rule 920 requires disclosure of the nature of the transactions, the rationale for, and benefit to, the entity at risk, the methods or procedures for determining transaction prices, and the independent financial adviser's opinion on whether the transactions will be carried out on normal commercial terms and will not be prejudicial to the interests of the issuer and its minority shareholders.

- A transaction of value exceeding 20 percent of the listed issuer's net assets or net profit before tax requires shareholders' approval. Very substantial acquisitions or reverse Take Overs where the value of the transaction exceeds 100 percent of the listed issuer's net assets or net profit before tax or which would result in a change in control in the listed issuer is also subject to approval by shareholders.

In the case of unlisted companies, the Companies Act (CA) contains provisions that require specific disclosure to be made in the notice of meeting in respect of different types of business. For instance, sections 76C to 76E set out the disclosure required for share buy-back (i.e., details on the share buy-back scheme including the maximum amount of shares that can be bought back, maximum price that can be paid for such purchases, the sources of funding and the impact on the company's financial position), and section 211 sets out the information required for a scheme of arrangement (i.e., information on effect of the scheme of arrangement on the different classes of stakeholders and any material interests of the directors). Apart from statutory requirements, the general law imposes a duty on the directors of a company to inform the members fully and fairly about the matters on which they will have an opportunity to vote. The notice of meeting should include sufficient information so that a member, on reading the notice, can decide whether or not to attend the meeting (in person or by proxy) and, if so, whether to vote for or against the proposed resolution. The members' right to receive a truly informative notice of meeting is a personal right that can be enforced directly by the member.

#### **Other obligations on Singapore-incorporated companies not listed on SGX**

Section 175 of the CA requires every Singapore-incorporated company (which is not listed on a securities exchange in Singapore) to call an annual general meeting at least once in every calendar year and not more than 15 months after the holding of the last preceding annual general meeting. Section 201 of the CA requires the directors of the company to, at every annual general meeting, lay before the meeting full financial statements made up to a date not more than six months before the date of the meeting.

A complete set of financial statements must comprise:

- a statement of financial position as at the end of the period;
- a statement of profit or loss and other comprehensive income for the period;
- a statement of changes in equity for the period;
- a statement of cash flows for the period;

- e. notes, comprising a summary of significant accounting policies and other explanatory information;
- f. comparative information in respect of the preceding period; and
- g. a statement of financial position as at the beginning of the preceding period when an entity applies an accounting policy retrospectively or makes a retrospective restatement of items in its financial statements, or when it reclassifies items in its financial statements. Both the profit and loss account and the balance sheet of the company must be audited with the auditor's report appended to them. These accounts must be prepared in accordance with the Singapore Financial Reporting Standards (SFRS) and must give a true and fair view of the state of affairs of the company. In addition, the accounts must be accompanied by a directors' report signed by at least two directors.

***Notice of meeting and voting decisions***

Under section 177 of the CA, all Singapore incorporated companies must give at least 14 days' notice (or such longer period as provided in the company's articles of association) of shareholders meeting (other than a meeting to pass a special resolution). Section 184 CA requires at least 21 days' notice to be given in the case of shareholder meetings to pass special resolution. In addition, the CA s.185 also requires a special notice of 28 days to be given for certain matters (such as removal of directors under CA s.152 and removal of auditors under CA s.205).

Separately, there are specific provisions in the CA (s.387A and s.387B) to allow (but not to require) public companies to use electronic communications (e.g., by email) to give notices and send documents (e.g., annual reports) to their shareholders. It is for public companies to decide, having regard to their shareholder base, on the most efficient way to communicate with their shareholders. Section 392 of the CA empowers the court, on the application of any person who did not receive the notice of meeting, to declare that proceedings at the meeting to be void. Hence, companies must show that all reasonable steps had been taken to ensure that every shareholder is served with the notice of the meeting.

Listed companies are required by SGX listing rules to release all notices of meetings via SGXNET (which is a system network used by listed companies to disseminate information to the marketplace). Therefore, members of the public (including those overseas) will have access to all notices of meetings (including shareholders circulars) through SGX website upon their release. In addition, SGX's listing rules require listed companies' constitutive documents to provide for all notices of meetings to be also given by advertisement in the daily press. The shareholder base of unlisted public companies is predominantly local residents.

The articles of association of Singapore-incorporated companies normally conform to Table A of the CA (which sets out the default articles of association). Table A contains a



provision that requires a notice of meeting to disclose the nature of the business to be transacted at the meeting (save for customary business such as the declaration of dividend and consideration of accounts/directors' report/auditors' report). The CA also contains various provisions that require specific disclosure to be made in the notice of meeting in respect of different types of business. For instance, sections 76C to 76E set out the disclosure required for share buy-back, and section 211 sets out the information required for a scheme of arrangement under section 210. These requirements ensure that shareholders are given all information necessary to determine how to vote.

### **Advertising of offers**

Section 251 of the SFA provides that before a prospectus is registered, no advertisement or publication directly or indirectly referring to the offer of securities can be made, except:

- i. An advertisement or publication containing only statements that:
  - o identify the securities, the person making the offer, the issuer and the underlying entity (where applicable);
  - o a prospectus for the offer will be made available when the offer is made;
  - o anyone wishing to acquire the securities will need to make an application in the manner set out in the prospectus; and
  - o give information on how to receive a copy of the prospectus.
- ii. Dissemination of a preliminary document that has been lodged with MAS to institutional and accredited investors, for book building purposes. (A preliminary document is a prospectus containing all prescribed information except for the price and number of securities being offered, and any information which is dependent on the final determination of such price and number).
- iii. Presentation of oral or written material on matters contained in a preliminary document to institutional and accredited investors.

After a prospectus is registered, advertisements can be made provided that the following statements are included:

- i. the prospectus in respect of the offer is available for collection; and
- ii. anyone who wishes to acquire the securities will need to make an application in the manner set out in the prospectus.

S.251(9) of the SFA allows the publication of the following information, amongst others, regardless of whether a prospectus has been registered or not:

- i. a disclosure, notice or report required by the SFA or listing rules or other requirements of a securities or futures exchange;
- ii. a notice or report of a general meeting of the issuer;
- iii. a report about the issuer that is published by the issuer, which:
  - o does not contain information that materially affects the affairs of the issuer other than information previously made in a prospectus that has

	<p>been registered, an annual report or a disclosure, notice or report referred to above; and</p> <ul style="list-style-type: none"> <li>○ does not refer (directly or indirectly) to the offer.</li> </ul> <p>iv. a report about the securities published by someone who is not the issuer, a director of the issuer, a person who has an interest in the success of the issue or acting at the instigation of, or by arrangement with, any of the above-mentioned persons;</p> <p>v. a report about the securities published and delivered to institutional investors not later than 14 days prior to the date of lodgement of the prospectus, provided delivery of the report is restricted; and</p> <p>vi. an advertisement or publication in the ordinary course of a business (i.e., normal commercial advertising that does not refer to the offer).</p> <p><b>Specific and timely disclosure</b></p> <p>SGX-ST Listing Manual Rule 703(1) under the heading “Immediate Announcements” requires an issuer to announce information that is likely to materially affect the price or value of its securities or is necessary to avoid the establishment of a false market in the issuer’s securities. An issuer must observe the Corporate Disclosure Policy set out in Appendix 7.1 of the Listing Manual. Appendix 7.1 provides numerous examples of events that are likely to require immediate disclosure such as a merger or acquisition, the declaration or omission of dividends, the acquisition or loss of a significant contract, occurrence of an event of default under a debt financing agreement, etc. Other events requiring immediate disclosure under Rule 704 of the SGX-ST Listing Manual include changes in substantial shareholders’ and directors’ interests in the issuer’s securities; any qualification or emphasis of a matter by the auditors on the issuer’s financial statements; appointment or resignation of any directors, CEO, general manager or other executive officer of equivalent rank, registrar or auditors of the issuer; the date, time and place of any general meeting; the appointment of a receiver or liquidator of the issuer or of any of its subsidiaries; or a proposed alteration to the issuer’s Memorandum and Articles of Association.</p> <p>Rule 705 of the SGX-ST Listing Manual states that an issuer must release, via SGXNET,<sup>23</sup> its unaudited financial results for the full financial year immediately after the figures are available, but no later than 60 days after the relevant financial period. Unaudited financial results for each of the first three quarters or the first half of the financial year must be announced immediately after the figures are available, but no later than 45 days after the quarter end. Unaudited statements must still be prepared according to any of the Singapore Financial Reporting Standards (SFRS), (IFRS, or U.S. Generally Accepted</p>
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<sup>23</sup> SGXNET is an Internet-based submission system that allows issuers to submit their corporate announcements securely to the market.

Accounting Principles (US GAAP). Prior to the issuance of the annual report, Rules 704(5) and (6) of the SGX-ST Listing Manual require the issuer to announce (i) any material adjustments to its unaudited full-year financial statements made by its auditors, and (ii) any qualification or emphasis of a matter by the auditors on the financial statements of the issuer or any of its subsidiaries/associated companies (if the qualification or emphasis of a matter has a material impact on the issuer's consolidated accounts or group's financial position).

In the case of unlisted public companies which generally do not have access to the public capital markets for funding, are not listed or traded and the shares of which are normally closely-held there are no specific statutory requirements. (ACRA, which is Singapore's national regulator of business entities, encourages Singapore companies to adopt best corporate governance practices beyond those that are set out in the law. In particular, ACRA recommends that unlisted companies refer to the Code of Corporate Governance (CG Code) for guidance and adopt those principles that are appropriate or relevant to them as best practice. In this context the CG Code emphasises that a company must recognize the right of shareholders to be sufficiently informed of changes in the company or its business which would be likely to materially affect the price or value of the company's shares.

#### **Financial Information to be disclosed in prospectus**

The SF(OIS)R contains requirements to ensure that the financial information disclosed in the prospectus is sufficiently timely to be useful to investors. The issuer is required to provide audited financial statements for the three most recent completed financial years. The statement of capitalization and indebtedness must be presented no earlier than 60 days prior to the date of lodgement of the prospectus. Further, the issuer is required to disclose any event, which has occurred in the period from the end of the period covered by the most recent financial statements to the latest practicable date (prior to lodgement of the prospectus), which may have a material effect on its financial position and results. Offers of securities must use a prospectus that is not more than six month old from the date of registration of the prospectus with MAS.

The SF(OIS)R requires interim financial information to be included in the prospectus, depending on the length of time between the date of lodgement of the prospectus and the end of the most recent financial year for which audited financial statements have been prepared, as follows:

- If the date of lodgement of the prospectus is more than six months but less than nine months after the end of the most recent completed financial year for which audited statements have been prepared, interim financial statements must cover at least the first three months of the current financial year.
- If the date of lodgement of the prospectus is more than nine months but less

than 12 months after the end of the most recent completed financial year for which audited statements have been prepared, interim financial statements must cover at least the first six months of the current financial year.

- If the date of lodgement of the prospectus is more than 12 months but less than 15 months after the end of the most recent completed financial year for which audited statements have been prepared, interim financial statements must cover at least the first nine months of the current financial year, and the interim financial statements for at least the first three months shall be audited. Furthermore, the interim financial statements for the remaining months of the current financial year are required to be reviewed (but not audited) by the auditors of the company.

In practice, issuers undertaking an initial public offering include in their prospectus audited full year financial statements that are not more than 12-month old at the time the prospectus is lodged.

#### ***Regulatory measures to secure compliance***

The core measures to secure compliance derive from the requirements that issuers intending to undertake an initial public offering and list on SGX-ST must submit (a) a listing application (including the prospectus) to SGX-ST for review; and (b) the prospectus to MAS for review and registration. The SGX-ST considers whether the listing applicant satisfies the listing requirements and decides whether to issue an eligibility-to-list letter (with or without conditions). Listing will not be permitted until all conditions set out in the eligibility-to-list letter have been satisfied and MAS has reviewed and registered the prospectus. Under section 240(13) of the SFA, MAS may refuse to register a prospectus if:

- the prospectus contains a false or misleading statement;
- the prospectus omits information that is required to be disclosed;
- a copy of the prospectus signed by every director of the issuer is not lodged with MAS;
- the prospectus does not comply with the requirements of the SFA;
- written consents of experts whose statement or report is included in the prospectus are not lodged with MAS;
- written consents of issue managers or underwriters are not lodged with MAS; or
- it is not in the public interest to do so.

MAS also has powers under section 242 of the SFA to issue a stop order if:

- the prospectus contains a false and misleading statement;
- there is an omission from the prospectus of any information that is required to be included in it;
- the prospectus does not comply with the requirements of the SFA; or
- it is in the public interest to do so.
- The last stop order was issued in 2003.

The issuer (and its directors), the issue manager and the underwriters are subject to criminal liabilities (section 253) or civil liabilities (section 254) where there is a false or misleading statement, or an omission of any information that is required to be included under section 243, in the prospectus.

<b>Persons Liable for a Prospectus</b>	
Person	Portion of Prospectus
Issuer	Entire contents of the prospectus
Directors of the issuer at the time of the issue of the prospectus.	Entire contents of the prospectus
Persons named in the prospectus as directors or proposed directors of the issue.	Entire contents of the prospectus
Issue manager and underwriter to the issue	Entire contents of the prospectus
Persons named in the prospectus with his consent as having made a statement that is included in the prospectus or having made a statement on which a statement included in the prospectus is based.	Only in respect of the inclusion of the false or misleading statement.
Persons who made the false or misleading statement or omitted to state the information or circumstance.	The false or misleading statement or the statement that is omitted.
Source: MAS.	

Under SFA section 255 a person may avoid civil or criminal legal liability if the person proves that he:

- in respect of a false or misleading statement, made all inquiries that were reasonable in the circumstances, and after doing so, believed on reasonable

grounds that the statement was not false or misleading;

- in respect of an omission, made all inquiries that were reasonable in the circumstances, and after doing so, believed on reasonable grounds that there was no omission from the prospectus;
- in respect of a false or misleading statement or an omission, placed reasonable reliance on information given to him by someone other than his agent or employee (or for an entity, its directors); or
- in respect of a new circumstance which arose since the prospectus was lodged with MAS, was not aware of the matter.

Private individuals and entities may initiate a civil suit on the grounds of misrepresentations in the prospectus or omission of material facts (section 254 of the SFA). Section 254 also states that a person who acquires securities as a result of an offer that was made in or accompanied by a profile statement is taken to have acquired the securities in reliance on both the profile statement and the prospectus for the offer.

#### **Continuous disclosure**

As described above, Rule 703(1) of the SGX-ST Listing Manual requires an issuer to announce information that is likely to materially affect the price or value of its securities or is necessary to avoid the establishment of a false market in the issuer's securities. Section 203 of the SFA provides statutory backing to SGX-ST's continuous disclosure requirements. An issuer who contravenes this provision is liable on conviction to a fine not exceeding \$250,000 or to imprisonment for a term not exceeding seven years or to both. Civil penalty actions are also available to MAS and persons who transacted contemporaneously with the announcement (SFA section 234).

Issuers of debt securities listed on SGX-ST are also subject to continuing disclosure requirements. Under Part VI of chapter 7 of the SGX-ST Listing Manual, a debt issuer must immediately disclose any information which may have a material effect on the price or value of its debt securities or on an investor's decision whether to trade in such debt securities. In October 2010, MAS issued guidelines stating that issuers of unlisted debt securities should provide ongoing disclosures to the holders of the securities. In particular, issuers should immediately disclose any material changes which may affect the risks and returns, or the price or value of the unlisted debentures. MAS is in the process of codifying the guidelines into regulations. In this regard, the general obligation to provide ongoing disclosure of material information has been introduced in the Securities and Futures (Amendment) Act 2012 and the specific disclosure requirements will be promulgated in the accompanying regulations.

The directors of a listed issuer are responsible for the accuracy of the information in

announcements, annual or periodic reports and circulars sent to shareholders. In addition, the directors are required to provide a confirmation that nothing has come to the attention of the Board of directors which may render the interim financial statements to be false and misleading in any material aspect.

SGX-ST adopts a risk-based approach to reviewing announcements, annual or other periodic reports and shareholders' circulars published by listed issuers. Under this approach, greater regulatory attention is focused on areas that pose significant risks and where market transparency, integrity or investor protection may be compromised if the risks materialize. In determining the low and high-risk areas, SGX-ST will assess the likelihood of a risk materializing and the impact it may have. SGX-ST will monitor the situation on an ongoing basis, and if warranted, low-risk areas may be reclassified as high-risk areas. Remedial action may be taken against issuers for an omission, false or misleading disclosure, or non-compliance with listing rules; and advisers who are found not to have exercised due care and diligence. Actions that may be taken against issuers for a breach of listing rules include warnings, reprimands, suspension of trading and delisting. In 2012 SGX issued 486 compliance queries to main board listed issuers. MAS supervises and reviews SGX's performance of its frontline responsibility as part of its offsite and onsite supervision of SGX. MAS' Corporate Finance Division also monitors market developments and reviews media reports on listed companies. MAS works with SGX to address continuing disclosure issues. MAS investigates any potential breaches of the statutory continuous disclosure requirement, and takes enforcement action where it believes it to be warranted. In 2011–13(ytd) Main Board companies were issued with 43 reminders and private warning. No public reprimands/statements or trading suspensions were imposed in 2012/13 and no non-voluntary delistings were made. The Catalyst market has similar results.

### **Derogations**

The SGX-ST Listing Manual Rule 703 provides for limited exceptions from the requirement to make immediate disclosure of material information, namely:

- i. If disclosure of the information results in a breach of law.
- ii. If a reasonable person would not expect it to be disclosed, the information is kept confidential, and one or more of the following applies:
  - o The information concerns an incomplete proposal or negotiation;
  - o The information comprises matters of supposition or is insufficiently definite to warrant disclosure;
  - o The information is generated for the internal management purposes of the entity; or
  - o The information is a trade secret.

The decision on whether to use one of these exceptions is taken by the listed issuer,

	<p>although the issuer can consult SGX on the interpretation of the listing rules. Should any of the conditions in (ii) cease to be satisfied, the exception will similarly cease to be available, and the issuer must disclose the information immediately.</p> <p>Issuers are required to request a trading halt to enable them to disclose material information during trading hours. Sections 218 and 219 of the SFA prohibit trading by a connected person or other persons who are in possession of inside information. The SGX-ST Listing Manual recommends that issuers adopt the following best practices on dealings in securities:</p> <ul style="list-style-type: none"> <li>• A listed issuer should devise and adopt its own internal compliance code to provide guidance to its officers with regard to dealing by the listed issuer and its officer in its securities;</li> <li>• An officer should not deal in his company's securities on short-term considerations; and</li> <li>• A listed issuer and its officers should not deal in the listed issuer's securities during the period commencing two weeks before the announcement of the company financial statements for each of the first three quarters of its financial year and one month before the announcement of the company's full year financial statements (if required to announce quarterly financial statements), or one month before the announcement of the company's half year and full year financial statements (if not required to announce quarterly financial statements).</li> </ul> <p>Issuers must state in their annual report whether and how they have complied with the above best practices on dealings in securities.</p> <p><b>Cross-border matters</b></p> <p>Foreign issuers making an offer of equity or debt securities are subject to the same disclosure standards as local issuers and are consistent with IOSCO's standards.</p>
Assessment	Broadly implemented
Comments	<p>The right of unlisted public companies to raise funds from the public without filing a prospectus with MAS exposes investors and potential investors to risk as regards full and timely disclosure and weak corporate governance. In order to ensure that it is fully informed about capital raising by this technique, MAS should consider imposing an obligation on unlisted public companies which use this exemption to notify MAS of the offer, the funds raised and the number and type of new shareholders who accepted the offer.</p> <p>Monitoring and enforcement of its continuous disclosure obligations by SGX and its reliance on private warnings is an area of MAS supervision of SGX which merits greater scrutiny.</p>



	<p>SGX is currently working on a review of its Listing Rules. It has already received submissions from the Securities Investors Association of Singapore (SIAS) and others. The SGX should be encouraged to vigorously pursue its review of the listing rules. The deadline for publishing an annual report by a listed company is long by some international comparisons, the requirement that unaudited financial results for the full financial year must be published immediately after the figures are available, but no later than 60 days after the relevant financial period is satisfactory, as is the 45 day deadline for the first three quarters (or first half in the case of smaller companies).</p> <p>The six month period for other public companies is excessively long. Generally the moral suasion exerted by ACRA on unlisted public companies regarding specific and timely disclosure, while probably useful in raising standards, is insufficient to secure a fully implemented rating for this principle and Principle 17.</p>
<b>Principle 17.</b>	Holders of securities in a company should be treated in a fair and equitable manner
	<p><b>Rights of shareholders</b></p> <p>Shareholders rights are set out primarily in the Companies Act (Cap. 50) that governs Singapore-incorporated companies. ACRA is the national regulator for business entities and public accountants in Singapore. It monitors and enforces compliance with the Companies Act. It employs around 25 people to monitor compliance and has a legal team of around 10. It can impose financial penalties. MAS and ACRA meet quarterly to discuss matters of mutual interest. They are also members of the Corporate Governance Oversight Committee, an inter-agency committee which reviews developments in corporate governance. In addition the SGX-ST Listing Manual contains provisions for the protection of shareholders. Listed issuers are also required to observe the Code of Corporate Governance (CG Code), issued by MAS, on a “comply or explain” basis. In particular, the CG Code provides that companies should treat all shareholders fairly and equitably, and should recognize, protect and facilitate the exercise of shareholders’ rights. As noted in Principle 16 unlisted public companies are subject only to ACRA’s recommendation that unlisted companies refer to the Code of Corporate Governance (CG Code) for guidance and adopt those principles that are appropriate or relevant to them as best practice. This has no legal or regulatory force.</p> <p>Section 180 of the Companies Act provides that every member has a right to attend any general meeting of the company and to speak and vote on any resolution before the meeting, regardless of any contrary provision in the company’s memorandum or the articles. SGX-ST Listing Manual also requires the articles of association of listed issuers to include a provision that holders of ordinary shares shall be entitled to be present and vote at any general meeting in respect of any share upon which all calls due to the issuer have been paid. The CG Code states that companies should encourage greater shareholder participation at general meetings and provides guidance on the conduct of general meetings. Companies should also prepare minutes of general meetings that include relevant comments or queries from shareholders and responses from the board</p>

and management, and to make these minutes available to shareholders upon request.

Indirect shareholders including overseas investors can exercise their voting rights by giving their voting instructions to the Custodial Firms that provide custodial/nominee services or CPF agent banks, which will have to vote in accordance with those instructions. (CPF investors are local investors that had used their pension money to invest in listed securities which are held in the name of the CPF agent banks). Hence, there is no impediment to overseas investors exercising their voting rights. The CG Code also specifically recommends that companies allow Custodial Firms to appoint more than two proxies so that shareholders who hold shares through such firms can also personally attend the general meetings as proxies. Few have done so and the MoF has recently decided to make this a statutory requirement. Rule 210(7) of the SGX-ST Listing Manual sets out detailed provisions relating to the election of directors which must be set out in the constitutive document of a listed issuer. Sections 26(1) and 37(1) of the Companies Act provide that the company's memorandum and articles may only be altered by a special resolution passed by at least 75 percent of the votes cast. In addition, listed issuers are required under Rule 730 of the SGX-ST Listing Manual to seek SGX approval for a deletion, amendment or addition to their articles of association. The SGX-ST Listing Manual also requires shareholders' approval to be sought for major corporate actions, including changes in capital structure, major acquisition/disposal, interested person transactions, and delisting.

There are provisions under the CA governing fundamental corporate changes including amendments of memorandum and articles of association (section 37), capital reduction (section 78C), and reconstruction, amalgamations and schemes of arrangement (Part VII). Shareholders' approval is required to be sought for these fundamental corporate changes.

Under section 177 of the CA, at least 14 days' notice (or such longer period as provided in the articles) must be given of shareholder meetings (other than a meeting to pass a special resolution). Section 184 requires at least 21 days' notice to be given in the case of shareholder meetings to pass special resolutions.

Legal title in a share of a Singapore-incorporated company is vested in the person to whom the share is issued or transferred and whose name is on the register of members in respect of that share. A person may also have shares registered in the name of a nominee, who will hold as trustee for him. Provisions for title and transfers of shares or other interest are under Division 7 of the CA. Section 128 provides that a company shall not refuse registration of a transfer of shares (and debentures or other interests) if the shares have been transferred or transmitted by act of the parties or operation of law. Shares are freely transferable unless restrictions are imposed by the company's memorandum or articles or a moratorium. The SGX-ST Listing Manual (Rule 210(7), Appendix 2.2) also provides that the articles of association of listed issuers must not have any restriction on the transfer of fully-paid securities except where required by the law,

or SGX-ST's rules, listing rules or by-laws.

The CA provides for the right to participate equitably in dividends and other distribution rights. Once a dividend has been declared, it is immediately payable to shareholders unless the declaration stipulates that the dividend will be payable at a later date. The declaration cannot be revoked and the amount of dividends declared cannot be reduced.

### **Takeovers and other change of control transactions**

All takeovers involving a company, the primary listing of which is in Singapore or which is a Singapore company with more than 50 shareholders and net tangible assets of S\$5 million or more, are governed by the Singapore Code on Take Overs and Mergers (Take Over Code). The Take Over Code also applies to registered business trusts and REITs with a primary listing in Singapore as well as Singapore-registered business trusts with more than 50 unitholders and net tangible assets of S\$5 million or more. While the Take Over Code is non-statutory in nature, it is issued by the MAS under Sections 139(2) and 321 of the SFA. SFA section 140 provides criminal sanction in two circumstances: where a person has no intention to make an offer but gives notice of intent, and where notice has been given but the person does not have reasonable grounds to make the offer.

The provisions of the Take Over Code are administered by the Securities Industry Council (SIC). SIC members are appointed by the minister-in-charge of MAS. Most SIC members are from the private sector, including industry representatives, financial sector professionals and legal experts. SIC is supported by a Secretariat staffed by MAS officers. The Secretariat handles applications for SIC rulings on a day-to-day basis and provides confidential consultation on points of interpretation of the Take Over Code. The 11 person staff review all takeover documents. The SIC is empowered to take evidence under oath with the appropriate penalties for perjury. No appeals are permitted of a decision of the SIC—a ruling that so far has been unchallenged in the courts. In a notable case in 2008 involving a failed Take Over offer (Jade Technologies Holdings Ltd) the SIC declared that a director was not suitable to be a director of a listed company.

The primary objective of the Take Over Code is the fair and equal treatment of all shareholders in a Take Over or merger situation and that they are given sufficient information, advice and time to consider and decide on the offer. The Take Over Code applies to all Take Over and merger transactions however structured. It is organized as a set of General Principles and Rules. The General Principles essentially are standards of good commercial conduct; the Rules effectively are expansions of the General Principles, examples of their application and provide guidance on specific aspects of Take Over procedures.

The principles include:

- Equality of treatment—An offeror must treat all shareholders of the same class in an offeree company equally.
- Information to all shareholders—The offeror, the offeree company, and their respective advisers must not give information to some shareholders that is not made available to all shareholders.
- Sufficient information and time to shareholder—Shareholders should be given sufficient information, advice and time to enable them to reach an informed decision on an offer. No relevant information should be withheld from them.

Take Over and merger transactions are categorized into mandatory offers and voluntary offers (i.e., all other offers). The latter category would include reverse Take Overs, schemes of arrangement, trust schemes, amalgamations, partial offers and also offers by a parent company for shares.

The Competition Commission of Singapore (CCS) may have a role in takeovers. MAS and the CCS have an agreement on how the two agencies will interact and a schedule to the Takeover Code deals with the role of the CCS.

### ***Mandatory offers***

A key provision is Rule 14 on mandatory offers, which is premised upon the principle of fair and equitable treatment of shareholders. Under Rule 14, where (i) a person (together with his concert parties) acquires more than 30 percent of the voting rights of a company; or (ii) if the person, together with his concert parties, holds between 30 percent and 50 percent of the voting rights, and such person acquires an additional 1 percent or more of the voting rights of a company in any six-month period, that person will be required to extend a general offer to all shareholders of the company. Such a general offer must be in cash or include a cash alternative made at the highest price paid by the person and his concert parties for offeree company shares during the offer period and the six months prior to the start of the offer period. This requirement ensures that, where there is a change in control, any premium paid by the offeror to acquire or consolidate such control is extended equally to all shareholders of the company. Rule 14 also applies in cases where a person crosses the 30 percent or 1 percent thresholds as result of corporate actions such as selective capital reductions and share buy-backs. The Companies Act contains procedures for squeeze-out of the minority and the right of the minority to be bought out, in each case once the bidder has acquired 90 percent of the target shares (CA section 215).

### ***Schemes of arrangement***

A scheme of arrangement is a court-approved agreement between a company and its shareholders or creditors (e.g., lenders or debenture holders). It may effect mergers and

amalgamations and may alter shareholder or creditor rights. Take Overs or mergers implemented via a scheme of arrangement under section 210 are subject to safeguards under the CA in addition to those in the Take Over Code. Under the CA a scheme of arrangement is subject to stringent approval thresholds. It must be approved by a majority in number representing three-fourths in value of shareholders present and voting at the meeting. After the requisite approval is obtained, the court may in its discretion sanction the proposal, which will be binding on all members. In sanctioning the scheme of arrangement, the court would have to be satisfied that the scheme of arrangement is fair and reasonable. In this regard, minority shareholders who feel they have been unfairly treated may petition the court not to sanction the scheme of arrangement.

To facilitate the statutory procedures for schemes of arrangement under the Companies Act, the SIC may waive certain provisions of the Take Over Code. These provisions relate mostly to the offer timetable. Nonetheless, all other provisions of the Take Over Code continue to apply, such as equal disclosure of all relevant information to shareholders. In addition, the SIC would require the offeror and its concert parties as well as interested parties to abstain from voting at the meeting to approve the scheme.

#### The Number of Take-Over and Merger Transactions Subject to the Take-Over Code for the Three Years from 2010–12

Type of Transaction	Number of Cases		
	2010	2011	2012
Mandatory Offers	20	16	16
Other Offers	24(3 of which were via schemes of arrangement)	25 (3 of which were via schemes of arrangement)	25 (4 of which were via schemes of arrangement)

Source: MAS.

#### **Holding the company, its directors and senior management accountable**

Under the Companies Act, directors may be held accountable for:

- (i) Breach of fiduciary duties—failure to act in good faith for the benefit of the company; or failure to act for proper purposes of the company; or the director had placed himself in a position of conflict of interest.
- (ii) Breach of duty of care—failure to act with such care as is reasonably to be expected from him, having regard to his knowledge and experience.
- (iii) Minority oppression—conducting the affairs of the company in a manner oppressive to minority shareholders or in disregard of their interests as shareholders of the company. If the court is satisfied that the complaint is a valid

one, the court may, with a view to bringing an end or remedying the matters complained of, make such order as it thinks fit.

Representative actions (a form of class action but with additional conditions) are possible but not common. Shareholders are also entitled to bring an action in the name of or on behalf of the company (known as a common law derivative action) in respect of a wrong done to the company where the wrongdoer is the person who has control of the company and is in a position, or has used such control, to prevent a proper action from being brought against him. In addition to common law derivative action, section 216A of the CA provides for a statutory derivative action. However, the statutory derivative action in section 216A of the CA currently only applies to a Singapore-incorporated company that is listed on an overseas securities exchange. In the recent review of the CA, the Steering Committee had made a recommendation to amend section 216A such that the statutory derivative action is applicable to Singapore-incorporated companies that are listed on a securities exchange, whether in Singapore or overseas. This recommendation has been accepted by the Ministry of Finance.

### **Insolvency**

Under section 290(1) of the CA, a company may be wound up voluntarily by way of a special resolution. If the directors make a declaration of solvency, the winding up proceeds as a members' voluntary winding up, and the members may appoint the liquidator. If the declaration of solvency is not made, the winding up proceeds as a creditors' voluntary winding up. A meeting of creditors must be summoned and the creditors will choose the liquidator. Statutory protections is accorded to shareholders in both court and voluntary winding up.

Under section 325 of the CA, the court may, in respect of all matters relating to a winding up, have regard to the wishes of the creditors or shareholders and may direct meetings of creditors or shareholders to be called to ascertain such wishes. In the case of creditors, regard shall be had to the value of each creditor's debt; in the case of shareholders, regard shall be had to the number of votes held by such shareholders. In addition, under the Bankruptcy Act, any transaction made or done by or against a company, which would have constituted an undervalue transaction or an extortionate credit transaction, or would have amounted to the giving of unfair preference, could be void or voidable in the company's winding up (Section 329 of the CA, read with sections 98, 99 and 103 of the Bankruptcy Act).

### **Disclosure**

#### ***Fundamental corporate changes***

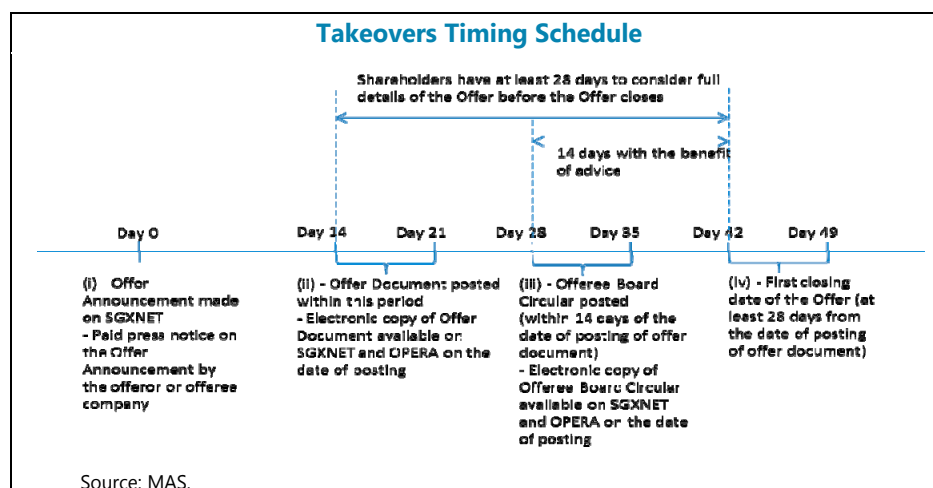
Rule 1206 of the SGX-ST Listing Manual states that any circular sent to shareholders must contain all information necessary to allow shareholders to make a properly

informed decision. Where the issuer undertakes a corporate action that results in fundamental corporate changes (such as a very substantial acquisition or reverse Take Over), Chapter 10 of the SGX-ST Listing Manual requires detailed information about the transaction to be disclosed in the shareholders' circular.

### **Take over bid and change of control transactions**

Rule 8 of the Take Over Code requires that shareholders are given all the facts necessary to make an informed judgment on the merits or demerits of an offer. Rule 23 and Rule 24 of the Take Over Code set out the specific information that should be included in offer documents and offeree board circulars, respectively. Rule 8.2 requires that any document or advertisement addressed to shareholders in connection with an offer or any announcement issued in connection with an offer must, as is the case with a prospectus, be completely accurate and present all information fairly and adequately. Rule 9 also states that such information must be made equally available to all shareholders as nearly as possible at the same time and in the same manner.

The offer timetable and disclosure of documents is set out below. Shareholders have at least 28 days to consider the full details of the offer contained in the offer document, and have the benefit of advice at least 14 days before the offer closes. Overseas shareholders, for whom paper based mail systems are inadequate, have immediate access electronically via OPERA and SGXNET.



Rule 8.1 of the Take Over Code requires shareholders to be given all the facts necessary to make an informed judgment on the merits or demerits of the offer. Such facts must be accurately and fairly presented. Rule 23 and Rule 24 of the Take Over Code set out the specific information that should be included in offer documents and offeree board circulars, respectively. Rule 24.1 of the Take Over Code requires the board of the offeree company to make a recommendation on the offer to shareholders of the company, unless exempted by the SIC. In addition, as required in Rule 24.1, directors of the board must obtain competent independent advice on the offer and make known such advice to

its shareholders in the offeree board circular. With respect to profit forecasts, Rule 25 of the Take Over Code requires that where a profit forecast is made, the profit forecast must be reported on by the auditor (or reporting accountant) and the independent financial adviser. This requirement addresses the concern that the offeree company board may use profit forecasts to defend against an offer, or by an offeror in the case of a securities offer to increase the attractiveness of his offer.

Rule 15 of the Take Over Code requires voluntary offers (i.e., all other offers) to be made at the highest price paid by the offeror and its concert parties during the offer period and in the three months prior to the offer. Shareholders are thus entitled to receive the highest price paid by the offeror and participate equally in the benefits accruing under the offer.

Rule 10 of the Take Over Code prohibits the offeror from entering into arrangements with selected shareholders, dealing in the shares of the offeree company, or entering into arrangements concerning acceptance of an offer, either during an offer or when one is reasonably in contemplation, if there are favorable conditions attached which are not being extended to all shareholders. Under the Code Principle of equal treatment this prohibition can be extended to the six month period before the bid is announced.

Directors of the offeree company who face conflicts of interest situations are required to consult the SIC on whether it is appropriate for them to assume responsibility for any recommendations on the offer that the board may make to shareholders. Rule 5 of the Take Over Code prohibits the board of the offeree company from taking any action which may result in any bona fide offer being frustrated or shareholders being denied an opportunity to decide on the merits of the offer, without prior approval of shareholders in a general meeting. This rule seeks to protect shareholders from being unfairly disadvantaged by any objectionable conduct of directors and ensure that the decision whether or not to accept the offer rests solely with shareholders.

Further, General Principle 13 states that directors of an offeror or an offeree should, in advising their shareholders, have regard to the interests of shareholders as a whole and not to their own interests or those derived from personal or family relationships. The Rules and General Principle seek to ensure that offeree company shareholders receive unbiased advice from directors acting in the best interests of shareholders.

### ***Substantial shareholders***

Part VII of the SFA requires a person who is a substantial shareholder (i.e., a shareholder who holds 5 percent or more interest) to notify the listed company of his shareholding interest within two business days after he becomes a substantial shareholder and subsequently in the event of a change in the percentage level of his interest in the company (resulting in a move across a whole percentage line (e.g., from 5.7–6.3 percent) or when he ceases to be a substantial shareholder. The company is required to notify the



market via an SGXNET announcement within one business day of the receipt of the notification form from the substantial shareholder. Rules 1207(9)(c) and (d) of the SGX-ST Listing Manual requires listed issuers to disclose in their annual report their substantial shareholders and the 20 largest shareholders. The SF(OIS)R requires disclosure of substantial shareholders in a prospectus, including the names, percentage of shares in which each substantial shareholder has an interest (whether direct or deemed) as well as any significant change in the percentage of ownership in the last three years.

The disclosure requirements are also applicable to persons with a deemed interest in the securities (section 4 of the SFA). For instance, a person who is entitled to exercise or control the exercise of any right attached to a share (not being a share of which he is the registered holder) is deemed to have an interest in that share. This included beneficial owners and holders of derivatives where exercise entitles the holder to obtain voting securities. In addition, where a corporation has an interest in shares, the following persons are also deemed to have an interest in those shares at the same time:

- A person who has controlling interest in that corporation;
- A person in accordance with whose directions, instructions or wishes the corporation (or its directors) is accustomed to act; and
- A person who either alone or through together with his associates controls 20 percent or more of the votes in the corporation. A person is deemed to be associated with another person where the other person is accustomed to act in accordance with his instructions.

Failure to disclose relevant beneficial ownership interest and material changes in beneficial ownership is subject to a penalty of S\$250,000 or two years in prison or both and, in the case of a continuing offense, to a further fine not exceeding \$25,000 for every day or part thereof during which the offense continues after conviction, where the failure is intentional or reckless , (SFA section 137(D)).

### ***Holdings of directors and senior managers***

Part VII of the SFA imposes an obligation on a director or CEO of a listed company to notify the company of his interest or change in interest in the securities of the company within two business days after he becomes a director or CEO, or acquires or disposes of an interest in the company (whichever is later). This is an absolute requirement. There is no materiality test. Other persons, such as senior managers, are subject to the substantial shareholder rules set out above. Listed companies are required to impose a code of dealing on the company's officers and the CA specifically prohibits an officer of the company from making improper use of any information acquired by virtue of his position as an officer to gain, directly or indirectly, an advantage for himself or any other person. Any officer who contravenes this prohibition is liable on conviction to a fine not

	<p>exceeding \$5000 or imprisonment for a term not exceeding 12 months (section 157, CA). The company is required to notify the market via an SGXNET announcement within one business day of the receipt of the notification form from the director/CEO.</p> <p>The SF(OIS)R requires that the interests (whether direct or deemed) of directors and the chief executive officer be disclosed in the prospectus. Rule 1207(7) of the SGX-ST Listing Manual requires the interests (whether direct and deemed) of each director to be disclosed in the annual report.</p> <p>MAS has the power to take regulatory and enforcement actions against offenders for breaches of the SFA. Regulatory action may be in the form of a warning or an offer of composition. In addition, depending on the offense, a person who is found to be guilty of an offense could be liable on conviction to a fine or imprisonment.</p> <p><b>Cross-border matters</b></p> <p>The SF(OIS)R requires the prospectus to contain disclosure of:</p> <ul style="list-style-type: none"> <li>(i) a summary of the material provisions in the issuer's constituent document with respect to (a) powers exercisable by the directors, (b) rights, preferences and restrictions attached to each class of shares and (c) action necessary to change the rights;</li> <li>(ii) any limitation on the right to own shares, including limitations on the right of the non-resident or foreign shareholders to hold or exercise voting rights on the shares imposed by law or constituent documents; and</li> <li>(iii) if the law applicable to the issuer in respect of the above areas is significantly different from that in Singapore, an explanation of the effect of the law in these areas.</li> </ul> <p>On an ongoing basis, rule 216 of the SGX-ST Listing Manual requires listed issuers to make an announcement via SGXNET as soon as they become aware of any change in the law of its place of incorporation which may affect or change shareholders' rights or obligations over its securities.</p>
Assessment	Broadly implemented
Comments	<p>The CA appears to be considered as reasonably up-to-date although the bankruptcy and insolvency provisions could usefully be set out in a separate act as is currently under consideration. Monitoring of compliance with and enforcement of the CA by ACRA appears to be appropriately resourced and motivated. As noted in Principle 16 unlisted public companies are subject only to ACRA's recommendation that unlisted companies refer to the Code of Corporate Governance (CG Code) for guidance and adopt those principles that are appropriate or relevant to them as best practice. This has no legal or regulatory force. Although the disclosure of shareholdings and changes in holdings by directors is consistent with emerging global practice, MAS should consider whether this should be extended to senior managers rather than, as at present, subjecting them to the general 5 percent shareholding disclosure rule applicable to all shareholders. Such</p>

	<p>officers (e.g., the CFO, COO, Head of internal audit) are in a position, individually and collectively, to have specific inside knowledge at least as detailed as that of some directors and may be able to act on that information in a variety of ways to their benefit (not necessarily through insider dealing as defined in the criminal law but difficult to detect) without individually breaching the substantial shareholder limit. A code of conduct on staff dealing is unlikely to be as effective as making dealing transparent.</p> <p>The rules governing of takeovers and other change of control transactions appear to work well and protect the interests of minority shareholders. The assessors did not receive complaints or criticisms of the Singapore model.</p> <p>Recent international attention has focused on Temasek linked companies (TLC) where the Singapore Government has a large or controlling stake. The 13 TLCs comprise 20 percent of the SGX-ST market capitalization and thus are significant in the market and in investors' portfolios. MAS staff have assured the assessors that MAS does not provide the TLCs with favorable treatment and indeed has on at least one occasion brought disciplinary action against one for market rule infringements.</p> <p>As noted in Principle 11, MAS recognizes the practical problems in establishing the identity of beneficial owners when those owners seek to obscure their identity through, for example, passing ownership through a chain of offshore companies. The penalties for non-disclosure provide an effective deterrent.</p>
<b>Principle 18.</b>	Accounting standards used by issuers to prepare financial statements should be of a high and internationally acceptable quality.
Description	<p>Issuers are required to include audited financial statements in prospectuses and publicly available annual reports. Issuers making an initial public offer of securities and listed issuers are required under the SFA and SGX listing rules to prepare their financial statements in accordance with the Singapore Financial Reporting Standards (SFRS), the International Financial Reporting Standards (IFRS), or the U.S. Generally Accepted Accounting Principles (U.S. GAAP). All these three financial reporting standards require a complete set of financial statements to be presented. For equity offerings, the prospectus must contain audited profit and loss statements, balance sheet and cash flow statement for each of the three most recent completed financial years. Where the date of lodgement of the prospectus is more than 6 months after the end of the most recent completed financial year, the issuer must disclose the interim financial statements.</p> <p>For offerings of debt securities, the prospectus must contain the audited profit and loss statements, balance sheet and cash flow statement for each of the two most recently completed financial years, or in the case of convertible debt securities, the three most recent completed financial years. Where the date of lodgement of the prospectus is more than six months after the end of the most recent completed financial year, the issuer must disclose the interim financial statements.</p> <p>The SF(OIS)R requires the audited financial statements included in the prospectus to set out the profit and loss statements, balance sheets and cash flow statements, and</p>

includes any attached notes and schedules which are required by the body of accounting standards adopted by the issuer in preparing its financial statements. In addition, the SF(OIS)R requires disclosure of changes in the issuer's equity share capital for the three year period before the latest practicable date of the prospectus, giving details of the price and terms of any issue. Substantial shareholders, and any significant changes in their holdings, must also be disclosed for the same period.

Under the SF(OIS)R, the audited financial statements to be included in a prospectus must be prepared in accordance with SFRS, IFRS, or US GAAP. The SF(OIS)R requires that interim financial statements included in the prospectus to be prepared in a format similar to the format of the audited financial statements, i.e., prepared in accordance with SFRS, IFRS or US GAAP.

As described in Principle 16, SGX-listed issuers are allowed to rely on the exemption in section 277 of the SFA to undertake fresh offerings of securities (e.g., rights issue or placement of new shares) using an offer information statement instead of a prospectus. The offer information statement is essentially an abridged version of a prospectus. This is in recognition that investors will have publicly accessible information to evaluate fresh offerings by such issuers given they are subject to continuous disclosure requirements. In particular, SGX-listed issuers are required to publicly announce their interim and full year financial statements via SGXNET within the stipulated timeframe (45 days for quarterly and 60 days for full year). Such financial statements must comprise, inter alia, a statement of financial position, a statement of the results of operations, a statement of cash flows, and a statement of changes in equity, and comparative information for the preceding financial periods.

Given the foregoing, shareholders or investors subscribing for fresh offerings of securities made by SGX-listed companies have access to the companies' financial statements (which would comprise all the components required by KQ2 of Principle 18). The offer information statement is intended to be a concise document that sets out key information regarding the offering and the company (including key financial highlights) to facilitate shareholders' and investors' assessment of the offering. The selected data must include the line items in the profit and loss statements and balance sheet. The entity must also disclose an evaluation of the material sources and amounts of cash flows from operating, investing, and financing activities for the most recent completed financial year. The above information must also be given in respect of any interim period for which the entity's financial statements have been published.

Rule 1207(5) of the SGX-ST Listing Manual requires the annual report to contain annual audited financial statements. The SGX-ST Listing Manual requires issuers to publicly release on SGXNET their quarterly (or in the case of issuers with market capitalization less than S\$75 million, half-year financial statements) and full year financial statements. The financial statements must in the form presented in the issuer's most recently audited annual financial statements and must include:

- Profit and loss statements (including notes for significant items);
- Balance sheet;
- Cash flow statement; and
- Statement of equity changes (including changes in substantial shareholders).

The financial statements must be presented together with the comparative statements for the corresponding period of the immediately preceding financial year.

Rule 220 of the SGX-ST Listing Manual requires financial statements submitted with the listing application, and future periodic financial reports, to be prepared in accordance with SFRS, IFRS, or US GAAP. IFRS and US GAAP are internationally accepted accounting standards. SFRS is closely aligned with the IFRS. These accounting standards provide comprehensive and consistent information about the financial position, performance and cash flows of an entity that is designed to meet the needs of investors in making economic decisions. Section 201 of the CA requires the financial statements of all Singapore-incorporated companies (including unlisted companies) to comply with the SFRS. The SFRS requires a complete set of financial statements (which would comprise all the components required by KQ2 of Principle 18) to be presented.

FRS 1 (an SFRS standard) states that an entity should only change the presentation of its financial statement if the revised presentation provides information that is reliable and more relevant to users of the financial statement, and the revised presentation is likely to continue, so that comparability is not impaired.

### **Role and functions of the Accounting Standards Council**

With the enactment of the Accounting Standards Act (Chapter 2B) in 2007, the Accounting Standards Council (ASC) (funded by the MoF) was formed to formulate financial reporting standards for companies, charities, cooperative societies and societies. The ASC's mandate is to develop, review, amend and approve financial reporting standards for entities that are under its purview, taking into account:

- The information needs of the stakeholders of the entities;
- Facilitation of comparability, disclosure and transparency;
- Compatibility with relevant international standards; and
- Singapore's reputation as a trusted international business and financial hub.

The broad policy intention of the ASC is to issue SFRS based on IFRS that are issued by the International Accounting Standards Board (IASB). However, while the ASC closely tracks the introduction of new IFRS for possible issuance as new SFRS in Singapore, it

also takes into account the local economic and business circumstances and context as well as the entities to which the new SFRS would apply.

The chairman and members of the ASC are appointed by the MoF to represent the public interest. The ASC comprises representatives from stakeholder groups such as the accounting profession, the users and preparers of financial information, academia, and the government.

### ***Consultation process***

The ASC adopts a formal and rigorous process in prescribing financial reporting standards so as to ensure that the standards prescribed are of a consistent high quality. The various sectors and stakeholders group are given adequate opportunities to express their views. When the IASB issues a discussion paper (DP) or an exposure draft (ED) on new/amendments to existing IFRS or a draft interpretation/amendments to an existing interpretation, the ASC will issue it on the ASC website, inviting public comments. To gather more feedback from constituents, the ASC may also host public outreach meetings between the IASB and the local constituents or set up working groups comprising representatives from certain key affected or interested industries to solicit comments on specific areas covered in the DP, ED or draft interpretation. Upon considering the comments received, the ASC will send the comment letter to IASB and post the letter on the ASC website for public view. The ASC also actively participates in IASB roundtable discussions to share its views with the IASB. The ASC monitors the IASB's re-deliberations on the DP, ED or draft interpretation closely in order to provide final comments to the IASB before the IASB's issuance of the final Standard or Interpretation.

When the IASB issues the final Standard or Interpretation, the ASC reviews it and consider any changes from the earlier ED or draft Interpretation, taking into account the impact on relevant stakeholders. Upon due consideration, the ASC will decide whether to prescribe the new Standard or Interpretation as financial reporting standards in Singapore, in full or with modifications. These standards prescribed by the ASC are published on the ASC website and email alerts are sent to subscribers on the issuance of the standards. The accounting standards applicable to Singapore incorporated companies are the SFRS which are based on the IFRS. In addition to the above process, the ASC also proactively forwards views relating to financial reporting issues to the IASB for the IASB's attention and consideration through various other channels such as representation on the IFRS Advisory Council, participation at standard setters meetings, etc. The ASC also collaborates with national standard setters in the region in reviewing financial reporting issues, especially where there are similar concerns.

### **Compliance with accounting standards**

Under s.201 of the Companies Act, directors of every Singapore incorporated company

	<p>are required to present a set of audited financial statements that comply with the SFRS. ACRA is the national regulator for business entities and public accountants in Singapore. In administering the Companies Act, ACRA monitors and enforces compliance with SFRS by companies incorporated in Singapore. For this purpose, ACRA commenced a Financial Reporting Surveillance Program (FRSP) in 2011. (See also the discussion under Principle 17) ACRA also administers the Accountants Act (Chapter 2) and registers public accountants who act as auditors of companies. Foreign-incorporated companies are not incorporated under the Companies Act, and where they are listed on SGX may adopt IFRS or US GAAP.</p> <p>In addition to the FRSP, SGX-ST undertakes reviews of the interim and full year financial statements of listed entities and can raise questions about the entities' application of accounting principles.</p> <p>Foreign issuers seeking a listing or making an offering of securities in Singapore must prepare their financial statements in accordance with SFRS, IFRS as promulgated by the IASB or U.S. GAAP. The MAS is prepared to accept accounts from companies using a national version of IFRS depending on the significance of any modification.</p>
Assessment	Fully Implemented
Comments	Singapore has had six years' experience of operating under the model whereby enforcement of accounting standards is undertaken by a body acting in the public interest. In terms of local modifications of IFRS to meet local conditions there is a general consensus that the differences are few. There appear to have been some changes to meet the needs of the banks, which is not uncommon globally, such as in the EU. There have also been modifications to revenue recognition to better match the business model of local property developers. They are not material to the rating of Principle 18.
<b>Principles for Auditors, Credit Ratings Agencies, and Other Information Service Providers</b>	
<b>Principle 19.</b>	Auditors should be subject to adequate levels of oversight.
Description	<p><b>Audit of financial statements</b></p> <p>In Singapore, public accountancy services, which include the audit of and reporting on financial statements, are regulated under the Accountants Act. Audit, quality control and independence standards are set by an independent audit regulator, ACRA. ACRA<sup>24</sup></p>

<sup>24</sup> ACRA's charter of responsibilities and powers includes setting registration criteria, standards and professional requirements, operating a practice monitoring program (i.e., audit inspections), complaints, and discipline process. ACRA is self-financing through statutorily set fees for corporate regulation and registration and inspection fees for public accountants. The funding is not reliant on the profession. It has a permanent staff regulating the audit profession of about 20–25 not counting ACRA's legal team which supports enforcement matters.

was formed in 2004 and is constituted as a statutory board under the Ministry of Finance. ACRA's Board comprises not more than 15 senior professionals,<sup>25</sup> of which one member must be a public accountant nominated by the Institute of Certified Public Accountants (ICPAS) and one member must be a non-practicing accountant nominated by ICPAS. The Accountants Act required the ACRA Board to set up the Public Accountants Oversight Committee<sup>26</sup> (PAOC). The PAOC is responsible for administering most of the powers under the Accountants Act.

Audit and reporting on financial statements can only be undertaken by a public accountant registered under the Accountants Act or an accounting firm, corporation or LLP (accounting entities) approved under the Accountants Act by ACRA. As at March 31, 2012, the public interest entities (PIEs) segment was audited by 19 public accounting entities (representing 298 public accountants) and the non-PIE segment was comprised of 605 public accounting entities (representing 651 public accountants). In the PIE segment the Big 4 accounted for 200 of the public accountants.

#### **Framework to oversee quality of auditors' work and standards**

ACRA is self-financing. It collects registration and renewal fees from public accountants, and fees for audit inspections (as prescribed under the Accountants Act). ACRA also obtains revenue as the regulator of companies (under the Companies Act) and businesses' corporate reporting. Amongst other statutory appointments, ACRA's Chief Executive is also statutorily appointed as both the Registrar of Companies and the Registrar of Public Accountants.

Quality control of auditors' work on large companies and issuers of public offering is regulated under the Accountants Act. ACRA, with the approval of the minister, prescribes auditing standards and a code of professional conduct and ethics to be followed by public accountants and accounting entities.

The PAOC approves the auditing standards/pronouncements proposed by ICPAS, which have auditing standards/pronouncements equivalent to those issued by the International Audit and Assurance Standards Board (IAASB) of International Federation of Accountants (IFAC).

The practice has been for the PAOC to adopt standards proposed by the ICPAS after the PAOC has ensured appropriate public consultation and discussion has occurred.<sup>27</sup>

<sup>25</sup> Currently, of the ACRA Board's 15 members, two are practicing public accountants. Other members are, senior business people such as directors, lawyers, academics, the Chief Executive of ACRA, and senior civil servants, including from MAS. The Chairman is the permanent secretary of the MoF.

<sup>26</sup> The PAOC comprises ACRA Board members and a majority of non-public accountants (including the Chairman).

<sup>27</sup> The PAOC is entitled to promulgate its own standards.



The practice arises from an agreement made on the formation of ACRA. The PAOC oversees the ICPAS process for formulating the standards including appointments to the ICPAS Audit and Assurance Standards Committee (AASC), its consultation processes and work plans. The AASC submits all audit and quality control standards to the PAOC for approval. ICPAS assists ACRA by performing PMP audit inspections of auditors with only non-PIE clients but decisions on these inspections are still made by the PAOC.

ACRA has prescribed the Code of Professional Conduct and Ethics, including independence requirements, to be followed by public accountants and accounting entities (the Code is prescribed in the fourth schedule of the Accountants (Public Accountants) Rules. The Code of Professional Conduct and Ethics is based on the Code of Ethics issued by the International Federation of Accountants, with additional Singapore requirements with regard to auditor independence.

The PAOC determines the auditing standards that public accountants are assessed against under its audit inspection program, the Practice Monitoring Program (PMP). The PMP is a statutory process to ensure that auditing standards are complied with. (See the discussion below.)

### **Qualifications**

To register as a public accountant, applicants must meet the requirements as prescribed under Section 10 of the Accountants Act, as follows:

- a. Pass one of a list of prescribed final examinations in accountancy for university degrees or professional qualifications;
- b. Possess at least three years of working experience in a public accounting firm in the areas of accounting, auditing or taxation, most of which must be in auditing and it must include experience under the supervision of a public accountant;
- c. Obtain 40 hours of continuing professional education (CPE) in the previous year that meets the PAOC's syllabus requirements;
- d. Attend a prescribed course on ethics and professional practice; and
- e. Possess membership in ICPAS.

Public accountants must renew their certificate of registration on an annual basis. To do so, public accountants must obtain 120 hours of continuing professional education (CPE) that meets the PAOC's syllabus requirements over a three-year rolling period. In addition, they are entitled to renew their certificate of registration only if they pass any PMP (i.e., an inspection of their audits) conducted during the year.

### **Review program**

ACRA provides independent oversight over auditors by conducting a statutory audit inspection program as well as a disciplinary process. A key regulatory activity undertaken by ACRA is to carry out regular and cyclical reviews of public accounting

firms and public accountants registered with ACRA. These take place at two levels. Public accounting firms operating in the PIE segment are assessed on the firms system of quality control (at the firm level) against the requirements of the Singapore Standards on Quality Control 1 (SSQC 1 effective 2005). This standard is based on the equivalent International Standard on Quality Control issued by IFAC. ACRA also inspects public accountants' audit engagements to assess compliance with the Singapore Standards on Auditing (SSAs). These are based on the equivalent International Standards on Auditing issued by IFAC with necessary modifications for local statutory reporting requirements.

The Accountants Act grants ACRA's reviewers full inspection powers under the PMP and its disciplinary process, and powers of enforcement. ACRA monitors the audit quality of public accountants through its PMP and Firm Reviews.

The PMP is designed to ascertain whether a public accountant has complied with the prescribed standards, methods, procedures and other requirements when providing public accountancy services. It involves a detailed review of the audit engagement files of a public accountant to assess whether the public accountant's work has been conducted in compliance with the relevant auditing standards. As stated above, ACRA also reviews audit firms to obtain an understanding of the accounting entity's system of quality control and the effectiveness of the implementation and/or compliance with the firm's policies. As part of this process, engagement reviews also serve to confirm whether the individual public accountants have adhered to the firm policies, procedures and methodology.

ACRA itself conducts the PMP on auditors of PIEs, including public issuers, every two to three years, depending on the significance and risk of the audit firm. The Big 4 are reviewed every two years. PIEs<sup>28</sup> include companies listed on the SGX-ST or are in the process of issuing its debt or equity instruments for trading on the SGX-ST, entities in regulated financial industries (such as banks, insurance companies, funds, fund managers and securities/brokers/dealers), and other entities which raise funds from the public (such as charities, institutions of a public character and religious organizations). These PMPs are conducted by ACRA staff with a minimum of 10 years' experience. Staff receive ongoing on the job training and at the International Forum for Independent Audit Regulators (IFIAR).

The PMP reviewers conduct onsite PMP reviews and report the findings of their reviews to a sub-committee, the Practice Monitoring Review Committee, which is appointed by the PAOC and is made up of public accountants and laypersons. The Practice Monitoring Review Committee reports and makes recommendations to the PAOC,

<sup>28</sup> An internal working policy that guides ACRA's audit inspection approach states that ACRA may choose to treat the audit of a non-listed public company as a PIE audit.

which is responsible for reaching conclusions about compliance with audit standards and taking decisions on remedial or enforcement orders.

The PAOC may determine the scope of the review that is to be carried out in accordance with the practice, procedures and instructions issued by the PAOC (Section 36 of the Accountants Act). The Accountants Act also requires public accountants under review to produce or afford the reviewer access to documents and records which the reviewer reasonably believes is or may be relevant to the practice review. A reviewer may inspect, examine or make copies of or take any abstract of or extract from any record or document produced.

Non PIE audits reviews are outsourced to ICPAS that are conducted by ICPAS own staff using the methodology required by the PAOC. The PAOC is responsible for the scope, frequency and nature of and conclusions of such reviews. These reviews are conducted on a four to five-year cycle.

In 2012, ACRA implemented a Financial Reporting Surveillance unit to identify financial reports where accounting standards were not applied correctly. Although the unit is small, ACRA believes that such a unit is a worthwhile addition to its oversight responsibilities.

In the 12 months ended March 2011, ACRA inspected 14 public accountants<sup>29</sup> in the PIE segment (and 124 in the non-PIE segment (outsourced)). In the 12 months ended March 2012, ACRA inspected 26 public accountants in the PIE segment (and 159 in the non-PIE segment). The conclusions of those inspections were published in its PMP Report by way of key observations whereby prevalent and significant areas of concern were discussed with the aim of advising public accountants to avoid the deficiencies in the future by "strengthening professional skepticism and audit rigor."<sup>30</sup> In the period April 2010 to March 2012, ACRA issued 11 suspensions and cancellations. These figures are publicly available and the names are revealed.

In the period April 2010 to March 2012, ACRA also received complaints against public accountants a small number of which were dismissed because they did not meet the statutory criteria for referral to the complaints committee or they were dismissed on the merits by that committee. Of the remainder, a number proceed by way of private warning and a number are still in progress awaiting Complaint Committee decision. Information regarding the number of complaints received and the outcome of them is

<sup>29</sup> Public accountants are individuals registered with ACRA, which entitles them to sign audit reports.

<sup>30</sup> The message in the public report is that auditors should use more skepticism to avoid the common audit deficiencies found under the PMP. The reason given for publishing the common findings is to enable all of the profession to know what the common findings are so that they can improve.

not published, unless the result is a suspension or cancellation which is officially gazette.<sup>31</sup>

Market participants interviewed considered the quality of ACRA reviews to be thorough.

### **Enforcement actions**

The Accountants Act sets out a range of consequences to be administered by the PAOC where a public accountant fails to pass the PMP review (section 38 of the Accountants Act). Two types of consequences may follow:

- Conditions may be imposed to restrict the provision of public accountancy services by the public accountant in such manner as the PAOC thinks fit for a period not exceeding two years. Examples of such orders include prohibiting the public accountant from auditing public interest entities for a certain period, or requiring the public accountant's audit work to be reviewed by another suitably qualified person (known as 'hot review'), requiring the public accountant to undergo and satisfactorily complete remedial program as specified by the PAOC, or requiring the public accountant to take other steps as specified by the PAOC to improve the practice of the public accountant or to give such undertaking as the PAOC thinks fit.
- The PAOC may undertake refuse to renew the registration of the public accountant concerned or suspend the registration of the public accountant concerned for a period not exceeding two years, or cancel the registration of the public accountant concerned. These actions apply where the PAOC is of the opinion that it is contrary to the public interest or the interest of the profession of public accountancy for the public accountant to continue in practice, or if the public accountant has failed to comply with any order or requirement of the PAOC under the first category.

Additionally, ACRA provides the audit firm with a report on its quality controls and requires the firm to provide a remedial plan to address deficiencies. The results of the review of the firm also determine the intensity of the PMP reviews of that firm (number and frequency of reviews) in the future.

See also the discussion in Principle 20, below relating to independence requirements under ACRA's Code of Professional Conduct and Ethics which requires an auditor to be independent of its client in fact and appearance, including prohibition of an auditor having financial interests in the client and from providing non-audit services that would compromise independence or the perception of independence.

<sup>31</sup> The complaints process deals with complaints for professional matters and is not the main auditor oversight function, which is the PMP.

	<p><b>Enforcement by MAS</b></p> <p>Enforcement action is the responsibility of ACRA and MAS plays no role in the discharge of this principle (however MAS approves the auditors of banks).</p>
Assessment	Fully Implemented
Comments	<p>As stated above, the conclusions of the PMPs is only disclosed at a high level of generality by way of "key observations." Except for suspensions and cancellations (where identities are revealed) there is little transparency of the identity of the parties involved and the nature and extent of the failure to meet the standards required. Given IOSCO's general attitude toward public transparency and its role in discipline of the system ACRA should now make detailed transparency available of the outcome of its PMP reviews at the individual level of those who do not fully satisfy ACRA's requirements, including the nature of the conduct and the names of the parties which engaged in the conduct.</p>
<b>Principle 20.</b>	Auditors should be independent of the issuing entity that they audit.
Description	<p><b>Standards for independence</b></p> <p>The Singapore legal framework contains basic standards for independence of external auditors (Code of Professional Conduct and Ethics contained in the Fourth Schedule of the Accountants (Public Accountants) Rules, Singapore Standards on Auditing (SSA) 200 and Code of Professional Conduct and Ethics). SGX supplements the Code for listed public companies (see below).</p> <p>ACRA's Code of Professional Conduct and Ethics, is principles-based and requires auditors to be independent of their clients, and contains specific restrictions on firms and individuals regarding financial, business or other relationships with an entity that the firm audits. The effect of the Code includes the following:</p> <ul style="list-style-type: none"> <li>• Audit firms and their networks, the audit team and their immediate family, and all partners in the same office as the audit team, cannot have financial interests in their audit clients.</li> <li>• The audit firm and its network cannot have a close business relationship with its client.</li> <li>• An assurance team must not audit an entity where any of the team has an immediate family member who is a director, officer or employee able to influence the subject matter covered by the financials of the audit client.</li> <li>• There are restrictions and safeguards required around the presence in the audit client of former members or employees of the audit firm and vice versa.</li> <li>• Partners and employees of audit firms cannot serve as officers for the audit client. In addition, the Code deals with the following topics:</li> </ul>

- Self-interest—auditors must not have financial interests in their clients.
- Self-review—audit firms cannot provide any accounting and book keeping services or internal audit services to their listed or public company audit clients and providing such services to other clients is restricted.
- Advocacy—audit firms must not promote, deal in, or underwrite a client’s shares.
- An audit engagement partner cannot audit a listed company for more than five years (under the SGX listing rules).
- Intimidation—there are restrictions relating to audits of clients where former partners have positions. There are also restrictions on the proportion of fees an audit firm can receive from one client.

The code sets out restrictions on audit firms and audit partners and members of audit teams in relation to:

- Material direct/indirect financial interests in the client;
- Loans and guarantees;
- Close business relationships with assurance clients;
- Family and personal relationships;
- Employment with assurance clients;
- Recent service with assurance clients;
- Serving as an officer or director on the board of assurance clients;
- Long association of senior personnel with assurance clients;
- Provision of non-assurance services to assurance clients;
- Preparing accounting records and financial statements;
- Valuation services;
- Provision of taxation services to financial statement audit clients;
- Provision of internal audit services to financial statement audit clients;
- Provision of IT systems services to financial statement audit clients;
- Temporary staff assignments to financial statement audit clients;

- Provision of litigation support services to financial statement audit clients;
- Recruiting senior management;
- Corporate finance and similar activities;
- Fees—relative size;
- Fees—overdue;
- Pricing;
- Contingent fees;
- Gifts and hospitality; and
- Actual or threatened litigation.

The restrictions extend to the spouse of the auditor and related parties. The Code requirements relating to non-assurance services which cover the following topics:

- Provision of non-assurance services to assurance clients
- Preparing accounting records and financial statements
- Valuation services
- Provision of taxation services to financial statement audit clients
- Provision of internal audit services to financial statement audit clients (including Singapore requirements prohibiting the provision of internal audit services to listed audit clients)
- Provision of it systems services to financial statement audit clients (including Singapore requirements prohibiting the provision of certain it services to listed audit clients)
- Temporary staff assignments to financial statement audit clients
- Provision of litigation support services to financial statement audit clients
- Recruiting senior management
- Corporate finance and similar activities

- Fees.

The non-assurance services<sup>32</sup> that an audit firm cannot provide to listed or non-listed public company audit are:

- Internal audit services.
- IT services that involve either the design or implementation, or both, of financial information technology systems that are used to generate information forming part of a client's financial statements.
- Preparing accounting records and financial statements (except in emergency situations provided certain conditions are met).
- Valuation services that involve matters material to the financial statements and a significant degree of subjectivity.
- Promoting, dealing in or underwriting shares (applies to any client).
- Additionally there are restrictions on an audit firm's ability to provide other services.

#### **Auditor rotation**

ACRA, via the Code of Professional Conduct and Ethics, prohibits the engagement partner and quality control review partner from being on an audit engagement for more than seven years. SGX-ST limits audits of listed companies by restricting appointments of an engagement partner to a maximum of five years. The audit partner may return after two years (Rule 713). There is no specific provision limiting the number of audit engagements an auditing entity may conduct, as this issue is left to market forces.

#### **Internal controls**

Audit firms are required to establish and maintain a system of quality controls that includes policies and procedures that address:

- leadership responsibilities for quality within the firm;
- ethical requirements of the firm and its personnel;
- acceptance and continuance of client relationships and specific engagements;
- human resources policies and procedures;

<sup>32</sup> There are also restrictions in relation to all other audit clients.



- engagement performance in accordance with professional standards; and
- monitoring quality control policies and procedures of the firm (SSQC 1).

### **Oversight of the selection process**

Section 10 of the Companies Act requires companies to appoint a public accountant or accounting entity registered with ACRA as its auditor and makes it an offense if the auditor is not independent in certain respects, (e.g., the auditor must not be an officer of the company).

The Companies Act requires every listed company to have an audit committee. Each audit committee should comprise at least three directors, the majority of whom, including the Audit Committee Chairman, should be independent. All members of the audit committee should be non-executive directors, and unrelated to any executive director. The selection of external auditors is made by shareholders' meeting, but with prior consent from the corporate auditors on the recommendation of the Audit Committee (Companies Act section 205). An auditor can only resign or be removed at an annual general or extraordinary meeting. Section 201B of the Companies Act prescribes the duties of the audit committee regarding appointment of auditors.

Principle 12 of the CG Code recommends that the duties of the audit committee should include reviewing the scope and results of the external audit and the independence and objectivity of the external auditors. The CG Code further recommends that the audit committee should review the independence of the external auditors annually and should state (a) the aggregate amount of fees paid to the external auditors for that financial year; and (b) a breakdown of the fees paid in total for audit and non-audit services respectively, or an appropriate negative statement, in the company's Annual Report. Where the external auditors also supply a substantial volume of non-audit services to the company, the audit committee should keep the nature and extent of such services under review, seeking to maintain objectivity. One of the Audit Committee's duties should include making recommendations to the Board on the proposals to the shareholders on the appointment, re-appointment and removal of the external auditors, and approving the remuneration and terms of engagement of the external auditors (CG Guidelines Principle 12.4).

In 2008 a Guidebook for Audit Committees in Singapore was issued (by a special committee of representatives of ACRA, MAS and SGX) recommending that best practice for audit committees of companies listed on SGX-ST would include that the duties of the audit committee include reviewing the independence and objectivity of the external auditors and that the audit committee should review the independence of the external auditors annually.

The SGX-ST listing manual requires that an issuer must disclose in its annual report the

	<p>date of appointment and the name of the audit partner in charge of auditing the issuer and its group of companies. The annual report must include confirmation by the Audit Committee that it has undertaken a review of all non-audit services provided by the auditors and they would not, in the Audit Committee's opinion, affect the independence of the auditors (Rule 1207 (6)—(b), (c)).</p> <p><b>Oversight</b></p> <p>Auditors' independence is overseen by ACRA either through the PMP or the Complaints and Disciplinary (sub-committees of the PAOC) process if a complaint is received.</p> <p>Complaints concerning any improper or dishonorable conduct on the part of a public accountant in the discharge of his professional duty or any improper act or conduct on the part of a public accountant, an accounting corporation, an accounting firm or an accounting LLP, are referred to ACRA for review (via the Registrar of Public Accountants who is the CEO of ACRA). There is discretion to refuse to deal with vexatious or frivolous complaints or ones without merit.</p> <p>The Registrar reviews the complaint to determine if of disciplinary proceedings against the public accountant, or the accounting firm are warranted.</p> <p>The Registrar may either dismiss the complaint or recommend to the PAOC to set up a complaints committee or disciplinary committee, depending on the nature of the complaint.</p> <p>A complaints committee of 4 persons, at least one of which must be a layperson (chosen from a panel of 50 people) has the powers to call upon persons to assist in its inquiry, require any person to produce evidence related to the inquiry and is required to provide its findings to the PAOC. The complaints committee makes recommendations to the PAOC, to take no further action, take certain 'lower level' actions, or, where it considers the matter to be more serious, to set up a disciplinary committee to consider the matter in a formal enquiry.</p> <p>A disciplinary committee can be appointed by the PAOC to conduct a formal inquiry. The disciplinary committee reports its findings and recommendations to the PAOC that may take actions such as cancellation/suspension of registration of the public accountant, revocation/suspension of approval for accounting corporation/firm/LLP, by written censure and by imposing a penalty. Such penalties are a maximum of S\$10,000 for an individual and S\$100,000 for an entity. The PAOC can only impose such penalties following a complaint but not the outcome of a PMP. However, ACRA and the MoF propose to review this issue in the future. In practice, the number of complaints received is small (less than 10 per year).</p>
Assessment	Fully Implemented
Comments	It appears to be an anomaly that the PAOC can only impose monetary penalties

	following a complaint but not the outcome of a PMP. This issue should be reexamined at the next convenient opportunity.
<b>Principle 21.</b>	Audit standards should be of a high and internationally acceptable quality.
Description	<p><b>Standards adopted</b></p> <p>Annual audited financial statements are to be included in annual reports. All companies incorporated under the Companies Act<sup>33</sup> must be audited by a public accountant registered with ACRA or accounting entity approved by ACRA. Public accountants and accounting entities must comply with audit and quality control standards (Rule 1207(5) of the SGX-ST Listing Manual) in respect of listed companies.</p> <p>Singapore's auditing and assurance standards are equivalent to the International Standards on Auditing (ISA) issued by the International Auditing and Assurance Standards Board (IAASB) of IFAC. The Singapore Standards on Auditing (SSA) are similar to the ISA except for some different legislative wording that does not affect substantive audit procedures required and are up to date with the clarified ISA issued by IFAC.</p> <p>For listings on SGX not involving capital raising, the annual financial statements in listing particulars documents may be audited by certified public accountants in accordance with the SSA, ISA or U.S. generally accepted auditing standards (U.S. GAAS), to the extent applicable to the audit of the annual financial statements (Fifth and Seventh Schedules of the SF(OIS)R and Rule 609 of the SGX-ST Listing Manual).</p> <p><b>Organization responsible for standards</b></p> <p>The PAOC is responsible for prescribing the standards to be followed by public accountants and has set the SSA which are up to date with the ISA.</p> <p>The PAOC is assisted in considering the adoption of the ISA by the AASC. The process for setting standards involves discussion with interested parties via an "exposure draft" on which interested parties are invited to comment. AASC works under the supervision of the PAOC and submits proposed SSA to PAOC for approval. The PAOC endorses the AASC's strategic direction and work plan. When finalized, the standards set by AASC are published as SSA.</p>

<sup>33</sup> All companies incorporated under the Companies Act must appoint a public accountant as its auditor to audit its financial statements but there are audit exemptions for exempt private companies (which are private companies with at most 20 shareholders, no corporate shareholders) that have revenue of no more than S\$5 million.

	<p>The AASC<sup>34</sup> cannot comprise more than 51 percent public accountants (appointed by ICPAS) with the other 49 being public members representing users (appointed by the PAOC).</p> <p>The AASC is required to follow due process for the consideration of new audit standards which mirrors the IFAC process, including public consultation on exposure drafts and oversight of this process by the PAOC.</p> <p><b>Mechanism for enforcing compliance with auditing standards</b></p> <p>The main mechanisms to ensure compliance with auditing standards is via the PAOC:</p> <ol style="list-style-type: none"> <li>a. imposing conditions to restrict the provision of public accountancy services by the public accountant in such manner as the thinks fit for a period not exceeding two years;</li> <li>b. requiring the public accountant to undergo and satisfactorily complete remedial program;</li> <li>c. requiring the public accountant to take other steps as specified to improve the practice of the public accountant or to give such undertaking as the PAOC thinks fit;</li> <li>d. refusing to renew the registration of the public accountant concerned;</li> <li>e. suspending the registration of the public accountant concerned for a period not exceeding two years; or</li> <li>f. cancelling the registration of the public accountant concerned.</li> </ol>
Assessment	Fully Implemented
Comments	
<b>Principle 22.</b>	Credit rating agencies should be subject to adequate levels of oversight. The regulatory system should ensure that credit rating agencies whose ratings are used for regulatory purposes are subject to registration and ongoing supervision.
Description	<p><b>CRAs use for regulatory purposes, recognition criteria, and registration</b></p> <p>Since January 2012, only credit ratings from the four major CRAs, namely Moody's, Standard &amp; Poor's, Fitch and A.M. Best Company are recognized for use for regulatory purposes in Singapore. Such regulatory purposes include the computation of capital of banks<sup>35</sup> and insurance companies.</p> <p>The first three conduct operations via locally incorporated entities. A.M. Best has no local</p>

<sup>34</sup> The chair and vice-chair are public accountants appointed by the PAOC.

<sup>35</sup> MAS Notice 637 on Risk Based Capital Adequacy Requirements for Banks Incorporated in Singapore applies. It sets out criteria for the recognition of external credit assessment institutions for regulatory capital computation purposes. Recognition criteria include six elements (Objectivity, Independence, International Access and Transparency, Disclosure, Resources and Credibility) as well as compliance with the IOSCO Code of Conduct Fundamentals for Credit Rating Agencies. Those criteria conform to Basel II and Basel III.

presence and its ratings may only be used for regulatory purposes in the insurance sector. Currently there are no other CRAs operating in Singapore.

As the provision of credit rating services is a regulated activity, all CRAs operating in Singapore are required to hold a CMSL (see details below). A license is required regardless of whether their ratings are used for regulatory purposes. CRAs not operating in Singapore but making ratings available in Singapore from some other jurisdiction must be recognized by MAS if their ratings are used for regulatory purposes. In this case MAS recognizes them if it is satisfied as to the adequacy of the home regulatory arrangements.

For the four licensed CRAs, MAS conducted its own assessment of the adequacy of the regulatory regimes of each country in which each of the credit rating groups have affiliates. All of the licensed CRAs are headquartered in the U.S. MAS took the view that the U.S. SEC regulatory regime complies with the requirements of IOSCO Principle 22.<sup>36</sup>

For future applicants, before allowing the ratings of any other CRA groups to be used for regulatory purposes in Singapore, MAS will ensure that their governing regimes will be subject to the same level of scrutiny as has been applied to the four major agencies referred to above.

### **Definition**

“Providing credit rating services” is a regulated activity under the SFA and is defined under the Second Schedule, which also provides the definition of “credit rating.” All CRAs operating in Singapore are required to hold a CMSL and be subjected to licensing, business conduct and financial requirements under the SFA. For example, they must maintain \$250,000 of base capital. This is regardless of whether their ratings are used for regulatory purposes (SFA section 82).

Anyone acting (or holding himself out as acting) as a representative of the regulated activity of providing credit rating services is required to comply with the procedures under the SFA and be an appointed representative of the CRA.

<sup>36</sup> MAS assessed the U.S. SEC's regulatory regime for CRAs (the four CRA groups are headquartered there) and the U.S. SEC had oversight over the non-U.S. affiliates of the CRAs. MAS reviewed the CRA-related regulations in the U.S., assessed their regime against the requirements in IOSCO Principle 22, and sought clarifications directly from the U.S. SEC before concluding that the U.S. regime complies with the standards in Principle 22. MAS also assessed the adequacy of the CRA regime of each country in which each of the four CRA groups have affiliates. MAS evaluated whether, if the registration status that any affiliate has with the SEC be subsequently removed, the CRA regime of that affiliate's jurisdiction still meets Principle 22. MAS therefore assessed all the countries (numbering over 20) in which the four CRAs groups have affiliates. For completeness, this exercise also included those jurisdictions which had affiliates which were not registered with the U.S. SEC.

**CRA CMS license requirements**

The general requirements for a CMSL license apply to CRAs seeking licensing (SFA section 84(1), read with regulations 4A(3) and 6A of the SF(LCB)R). (See also discussion in Principle 29.) For an application by a CRA the following additional information must be supplied:

- a description of the CRA's business model, rating methodologies and internal code of conduct;
- a description of how the CRA will observe MAS' Code of Conduct for Credit Rating Agencies (CRA Code);
- a written confirmation from the CRA that it, its employees and its appointed representatives are and will continue to be in observance of the CRA Code; and
- where the CRA provides other ancillary services, a list of ancillary services and an explanation as to why such services do not give rise to any conflict of interest with the CRA's credit rating business.

Guidance on the application process is set out in MAS' Guidelines on Criteria of the Grant of a CMSL other than for Fund Management (Guideline No. SFA04-G01).

Licensed CRAs are to:

- i. use rating methodologies that are rigorous, systematic, and, where possible, result in credit ratings that can be subjected to some form of objective validation based on historical experience, including back-testing (paragraph 2.2 of the CRA Code); and
- ii. ensure that they have sufficient resources which are devoted to carry out high-quality credit ratings of all rating targets that it rates (see paragraph 2.9 of the CRA Code).

They must ensure that:

- i. their analysts, individually and collectively, have the appropriate knowledge and experience in developing credit ratings (paragraph 2.8 of the CRA Code); and
- ii. they have sufficient resources to carry out high-quality credit-ratings of all rating targets that they rate, including adopting reasonable measures to ensure that the information they use in assigning a credit rating is of a sufficient quality (paragraph 2.9 of the CRA Code).

In addition, a licensed CRA is required to ensure that:

- i. adequate manpower and financial resources are allocated to monitoring and updating of its credit ratings (paragraph 3.1 of the CRA Code); and
- ii. subsequent monitoring incorporate all cumulative experience obtained (paragraph 3.2 of the CRA Code).

Licensed CRAs are required to distribute, on a non-selective basis, their credit ratings, reports and updates in a timely manner (paragraphs 8.1 and 8.5 of the CRA Code). The licensed CRAs also have to provide information and explanations to assist investors in developing a greater understanding of the credit rating and indicate clearly the rating's attributes and limitations, amongst other requirements (paragraphs 8.4, 8.6–8.9, 8.11, 8.12, and 8.15–8.17 of the CRA Code). A licensed CRA is required to publish sufficient information about the historical default rates of the CRA's rating categories and whether the default rates of these rating categories have changed over time, so that interested parties can understand the historical performance of each category, if and how rating categories have changed, and be able to draw quality comparisons among ratings given by different CRAs (paragraph 8.14 of the CRA Code).

Licensed CRAs must adopt procedures and mechanisms to protect the confidential nature of information and use such information only for credit rating purposes (paragraph 9.1–9.2 of the CRA Code). Restrictions on trading are also imposed on the licensed CRA's employees and family members. These restrictions, which apply also to pending rating actions, are designed to ensure that the use or disclosure of confidential information for purposes other than provision of credit rating services is prohibited (paragraphs 9.4–9.8 of the CRA Code).

### **Regulatory powers**

Failure to comply with the requirements in the SF(LCB)R and SF(FMR)R is an offense (regulation 55 and regulation 28A).

MAS has the same powers under the SFA (section 150(1)) to inspect a licensed CRA as it has for any other licensed entity. Onsite examinations on the CRAs' policies and processes are to be conducted<sup>37</sup> on a regular basis to determine if they are in compliance with regulatory requirements.

Licensed CRAs are bound by their license conditions to comply with the CRA Code. While the CRA Code is non-statutory in nature, contravention of a license condition is an offense (SFA section 88). A failure by a CRA to comply with the CRA Code will also be taken into account by MAS in determining whether the CRA satisfies the requirement that it is fit and proper to remain licensed and whether to revoke or suspend the CRA's license (SFA section 95). Failure to comply with the CRA Code will also be taken into account by MAS in determining whether to impose any conditions or restrictions on the CRA (SFA section 88).

<sup>37</sup> MAS has inspected one licensed CRA and it has scheduled inspections for the two remaining CRAs which will be completed this financial year.

Similarly, a failure by a representative of a CRA to comply with the CRA Code will be taken into account by MAS in determining whether the representative satisfies the requirement that he is fit and proper to remain as an appointed, provisional or temporary representative and whether to revoke or suspend his status as a representative of a CRA (SFA section 99M). The representative's failure to comply with the CRA Code will also be taken into account by MAS in determining whether to impose any conditions or restrictions on the representative (SFA section 99N).

### **Record keeping**

CRA's are required to prepare and preserve books and documents on their credit rating business as part of their internal records (CRA Code paragraph 2.6).

### **Conflict of interest**

Conflict of interest is addressed in the CRA Code. Paragraphs 6.1 and 6.2 of the CRA Code state that CRA's must have written policies and procedures to identify, eliminate, manage and disclose any actual or potential conflicts of interest including those arising from the nature of compensation arrangements. Further, a standard license condition for all CMSL holders (including licensed CRA's) states that "the licensee shall conduct its business in such a manner as to avoid conflicts of interests; and should such conflicts arise, shall ensure that they are resolved fairly and equitably. Contravention of a license condition would be deemed an offense and may cause the license to be revoked (SFA section 95(2)(d)).

A CRA is to ensure that details of its legal structure and ownership are made available to the public on an annual basis (paragraph 10.4). The potential for conflict of interest arising from ancillary business activities of the CRA is addressed in paragraph 5.7 and paragraph 5.8 addresses the potential for conflict of interest arising from the business model of the CRA.<sup>38</sup> Securities and derivatives trading is covered under paragraph 6.7.<sup>39</sup> The various scenarios that could have the potential for conflict of interest arising from the financial interests of the CRA's employees are addressed in Paragraphs 7.1–7.10 of the CRA Code.<sup>40</sup>

<sup>38</sup> Under paragraph 5.7 of the CRA Code, a licensed CRA is required to define what it considers to be an ancillary business and why it cannot reasonably be considered to have the potential to give rise to any conflict of interest with the CRA's rating business. Paragraph 5.8 of the CRA Code bars contingent fee arrangements, i.e., where the amount of fee is determined by the outcome of a transaction or the result of services provided by the licensed CRA.

<sup>39</sup> Paragraph 6.7 of the CRA Code requires that a licensed CRA ensure that it and its representatives and employees do not engage in any dealings in securities or derivatives that can reasonably be considered to have the potential to give rise to any conflict of interest in relation to its CRA business.

<sup>40</sup> The CRA Code also sets out requirements to ensure the independence of representatives and employees, such as: (i) a requirement to structure reporting lines and compensation arrangements to eliminate or effectively manage conflicts of interest (see paragraph 7.1 of the CRA Code); and (ii) strict prohibitions on solicitation of money, gifts or favors amongst others (see paragraph 7.8 of the CRA Code).



	<p>CRA should not refrain from preparing or revising a rating based on any economic, political or other pressures on the CRA (Paragraph 5.1), and CRAs must have different representatives to prepare/revise its credit ratings if the rated entity (e.g., the government of a sovereign country) has oversight functions related to the CRA (Paragraph 6.8).</p> <p>MAS does not have legal powers to interfere with or influence CRAs' rating methodologies or the content of CRAs' credit ratings.</p> <p><b>Offsite supervision (reporting)</b></p> <p>CRA licensees are subject to the same off site supervision and reporting requirements as other licensees. MAS has supplemented these reporting requirements with an annual self-assessment process which addresses factors that are specific to the business of the CRAs. In addition MAS is involved in a cooperative dialogue with the US SEC concerning CRAs.</p> <p><b>Onsite inspections</b></p> <p>In March 2013 MAS conducted an inspection of one CRA and its representatives (examination of rating processes) within a year of its licensing. It proposes to conduct similar inspections of the other two CRAs this year.</p>
Assessment	Fully Implemented
Comments	
<b>Principle 23.</b>	Other entities that offer investors analytical or evaluative services should be subject to oversight and regulation appropriate to the impact their activities have on the market or the degree to which the regulatory system relies on them.
Description	<p><b>Analytical and sell side analysts</b></p> <p>The FAA (Section 6) requires any person acting as financial adviser (FA) in Singapore carrying out any of the following activities to be licensed or authorized:</p> <ul style="list-style-type: none"> <li>• advising others, either directly or through publications or writings, and whether in electronic, print or other form, concerning any investment product; or</li> <li>• advising others by issuing or promulgating research analyses or research reports, whether in electronic, print or other form, concerning any investment product.</li> </ul> <p>Thus, research report providers are subject to the requirements applicable to all holders of a FA license, including requirements on fitness and propriety and performing their functions efficiently, honestly, and fairly.</p>

All entities that offer analytical or evaluative services in respect of financial advisory services are regulated under the FAA.<sup>41</sup> As analytical and sell-side research firms may face conflicts of interest that may compromise their abilities to offer independent and unbiased opinions, MAS has regulations to address such potential conflicts of interest and to govern the issue of research reports. Other than sell-side research firms, corporate finance advisory firms may have research units that issue and distribute pre-deal/pre-new issue research reports on shares and debentures, business trusts and CIS. To ensure that reports do not lack independence where they are issued by the same firm that is acting as the issue manager or placement agent of the offer, the regulations governing the distribution of such reports include "blackout" periods and:

- Restrictions on the circulation of the reports to prevent information access to non-institutional investors because such reports are not subject to the same regulatory safeguards as prospectuses;
- Prominent disclosure on the nature of any material interest in, or any material interest in the issue or sale of the investment products; and
- Prominent disclosure on any relationship between the analyst and the person making the offer which is material in the context of the offer. (Securities and Futures (Offers of Investments) (Business Trusts) Regulations 2005 (SF(BT)R) Regulation 13, Securities and Futures (Offers of Investments) (Collective Investment Schemes) Regulations (SF(CIS)R) Regulation 31 and SF(OIS)R. Regulation 15).

The regulations under the SFA and FAA require securities dealers and research firms to manage any conflicts of interest. FAA requires research firms to disclose any interest in the securities that they cover in their research reports (section 36).

License conditions are imposed on dealers/research firms and their representatives conducting research activities to avoid conflicts of interests, and where such conflicts arise, to resolve them fairly and equitably. Specific conditions can be and have been imposed to address the conflicts of interests arising from sell-side research activities (e.g., disclosure requirements on compensation arrangements). In addition, sell-side research firms that provide securities dealing services on the exchange are subject to the applicable exchange rules, which expressly set out the control measures required to address potential conflicts of interests.

SGX-ST Rule 15.7 also states that a member and its research analysts must disclose any monetary compensation or other benefits receivable in respect of the research report or investment recommendation; and any interest at the date of the dissemination of the research report or investment recommendation in the subject of the report or

<sup>41</sup> Banks are also caught under the FAA and the same rules apply to them, even though they are not required to hold a financial adviser's license.

	<p>recommendation.</p> <p>Under SGX-ST Listing Manual (Rule 15.4) exchange members must separate research from their dealing, corporate finance and back office operations, including separate reporting lines between research and other activities. In addition, the bonus, salary or other forms of compensation to a research analyst should not be based on any corporate finance or dealing transaction.</p> <p>MAS has issued a set of guidelines on mitigating potential conflicts of interest arising from research activities to supplement the existing rules and provide further guidance to the industry. The Guidelines on Addressing Conflicts of Interest Arising from Issuing or Promulgating Research Analyses or Research Reports was issued on April 2, 2013 and covers:</p> <ul style="list-style-type: none"> <li>• Content of internal policies on conflicts and standards of disclosure;</li> <li>• Financial interests and trading activities;</li> <li>• Reporting and compensation of analysts;</li> <li>• Conflict of interest arising from business relationships;</li> <li>• Standards of disclosure of actual and potential conflicts of interest; and</li> <li>• Maintenance of records.</li> </ul> <p>Obligations on conflicts of interest are monitored via the onsite inspections carried out by MAS.<sup>42</sup></p> <p><b>Other information services</b></p> <p>Currently there are no other information services for which MAS has considered necessary the development of regulations to address potential conflicts of interests.</p>
Assessment	Fully Implemented
Comments	
<b>Principles for Collective Investment Schemes</b>	
<b>Principle 24.</b>	The regulatory system should set standards for the eligibility, governance, organization

<sup>42</sup> Conflict of interest is part of the scope of business conduct rules reviewed during onsite inspections. MAS' inspections of retail securities brokers in 2011 and 2012 covered the brokers' key controls in place to prevent conflicts of interests between their dealing and research functions. MAS also conducted thematic inspections of five broker firms in December 2003, in relation to independence of their research activities. An offsite review was conducted between July and August 2004 on the adequacy of disclosure of interests in research reports and compliance with the firms' internal policies on research embargo periods when a related entity is involved in corporate finance activities.

	and operational conduct of those who wish to market or operate a collective investment scheme.
Description	<p><b>The regulatory framework for CIS</b></p> <p>The legislative and regulatory framework under which CIS may be established, managed and offered involves considerable interaction between the various categories of funds and the various categories of those who operate and offer funds. There is, in particular, a large overseas fund segment which can be offered to investors in Singapore. The description under Principles 24 and 28 (hedge funds) therefore need to be read holistically.</p> <p><b>Retail CIS</b></p> <p>MAS approves CIS which are offered to retail investors by granting authorization or recognition. CIS constituted in Singapore are authorized (known as authorized schemes) while CIS constituted outside Singapore are recognized (known as recognized schemes). There are currently 310 authorized schemes and 817 recognized schemes eligible for offer to retail investors. A locally-constituted CIS seeking authorization would have to comply with the requirements under Singapore laws and regulations in full. As discussed below the CIS operator must be an entity licensed to conduct fund management activities or be registered with MAS as a Registered Fund Management Company (RFMC). RFMCs have an AUM of no more than S\$250m and a clientele of no more than 30 accredited investors. While they are exempt from the technical requirement of holding a license, the registration regime nevertheless subjects them, for all intents and purposes, to the same requirements as licensed fund management companies.</p> <p>For an overseas constituted CIS to be accepted as a recognized scheme, MAS must be satisfied that the laws and practices of the jurisdictions under which it is constituted and regulated afford investors in Singapore protection at least equivalent to that provided by the SFA for comparable authorized schemes. (SFA section 287(2)(a)). In assessing the “equivalence” of a jurisdiction, MAS undertakes a comparative assessment of the laws and regulations of that jurisdiction with specific focus on the requirements that are applied to the CIS and CIS operators as well as the adequacy of investor protection safeguards. MAS’ internal Operation Manual sets out the scope of the assessment and the manner in which the assessment is to be undertaken. Among other things, MAS will consider the core investment restrictions, operational requirements (such as valuation, custody, etc.) and investor protection safeguards (such as ongoing reporting, meeting and voting procedures, etc.).</p> <p>MAS also requires a recognized scheme to be domiciled in jurisdictions whose regulators can be relied upon to provide mutual assistance and exchange of information in respect of the scheme. This requirement will be met if the relevant regulator is an Appendix A signatory to the IOSCO. If the regulator is an Appendix B signatory of the IOSCO MMOU, MAS will consider if there is a need to have other forms of cooperation. So far the issue has not arisen. For instance, MAS has a bilateral information sharing agreement with</p>

Commission de Surveillance du Secteur (CSSF), Luxembourg. Close to 85 percent of the recognized schemes offered in Singapore are domiciled in Luxembourg and are regulated by CSSF. MAS has only admitted Undertakings for Collective Investment in Transferable Securities (UCITS) from a limited number of EU jurisdictions on the basis that they have comparable regulatory framework and investors safeguards to Singapore. These are Luxembourg, the United Kingdom, Ireland, France, and Germany. MAS will also consider whether the overseas regulator, based on its past dealings with that regulator, has been generally forthcoming in rendering assistance when called upon.

In addition to assessing the regulatory regime governing the foreign CIS, MAS also evaluates the foreign CIS operator as described below.

Applications for recognition (in respect of schemes constituted outside Singapore) are reviewed on a fund-by-fund basis and are subject to the same rigorous review process as applications for authorization for schemes constituted in Singapore. As part of the recognition process, MAS may also impose conditions on the CIS to ensure that the necessary investor protection safeguards are in place.

All authorized and recognized schemes must lodge and register a prospectus with MAS prior to the offering. The prospectus must be prepared in accordance with the disclosure requirements under the SFA. The same disclosure requirements and standards are applied to the prospectuses of authorized schemes and recognized schemes. (See also the discussion in Principle 26.) All prospectuses are reviewed by MAS before they are registered. Currently MAS has eight staff reviewing new and updated prospectuses (8 and 239 in 2012).

MAS has not had to exercise its power to refuse registration or issue stop orders for CIS prospectuses. MAS will raise concerns about a CIS or a CIS operator during its review of the prospectuses and authorization/recognition applications. There have been instances where prospectuses or applications for authorization/recognition were withdrawn after MAS had raised significant concerns. There were three such withdrawals in 2011 and another two in 2012. These were: (i) a CIS based on a strategy index which was highly complex and which potentially might have circumvented MAS investment restrictions; (ii) two CIS with performance fee calculation methodologies that may have resulted in misalignment of interests; (iii) a CIS that used amortized cost accounting and maintained a constant net asset value as MAS does not permit this type of money market fund (MMF); and (iv) a CIS with a sub-manager that had adverse disciplinary records. In the case of non-standard funds, CIS operators and their advisers typically consult MAS beforehand to seek staff views on whether there are any regulatory concerns. If there are, the CIS operators will not normally proceed with formal submission.

#### ***Non-retail CIS***

Offers of CIS (whether domiciled in Singapore or elsewhere) to non-retail investors are

not subject to authorization/recognition and prospectus requirements or the investment guidelines that are applied to equivalent retail CIS. There are various categories of non-retail investors: institutional investors (essentially regulated entities (SFA section 304A)), accredited investors (essentially high net worth individuals and corporations with more than S\$10 million in net assets (SFA section 305A)). Offers of CIS to these investors are subject to resale restrictions. The rationale is that non-retail investors even when individuals, are generally more sophisticated and knowledgeable than retail investors, which permits MAS to adjust the intensity of supervisory oversight accordingly. However, to enhance the level of transparency in the offers of such schemes, MAS has recently introduced a requirement that the operators prepare and provide an information memorandum to investors (and MAS). The information memorandum must contain salient information about the restricted scheme:

- the scheme's investment objectives, focus and investment approach;
- the risks of subscribing for or purchasing units in the scheme;
- whether the offer of units in the restricted scheme is regulated by any financial supervisory authority and if so, the name of the authority;
- the name and address of the manager and other key parties (such as trustee or custodian) involved with the scheme;
- any redemption conditions or limits and gating structures;
- the existence and conditions of any side letters;
- the past performance of the scheme (or where information on past performance may be obtained);
- where the accounts of the scheme may be obtained; and
- fees and charges payable by the investors and by the scheme.

MAS maintains direct oversight of offers in the non-retail segment primarily by the imposition of a notification regime for these "restricted schemes." Under this regime, a CIS operator must notify MAS of its intention to offer a restricted scheme. The operator must not make the offer until such time that the scheme has been entered into the list of restricted schemes by MAS. MAS will not enter a scheme into the list of restricted schemes unless MAS is satisfied that (i) there is a manager which is licensed or regulated to carry out fund management activities in the jurisdiction of its principal place of business; and (ii) the manager and the persons associated with (or who have influence over) the manager are fit and proper. The operator must appoint a responsible person in Singapore who must ensure that these requirements are met at all times and must provide an annual declaration to MAS on the status of CIS operator's license and financial position, and details of any disciplinary actions taken against the CIS operator.

MAS may refuse to enter a scheme into the list of restricted schemes if it is not in the public interest to do so. MAS may also remove a scheme from the list of restricted schemes or suspend the status of the scheme in situations where (i) information or record submitted to MAS was false or misleading or omitted a material particular; or (ii) MAS is of the view that the continued offer is against public interest or is prejudicial to the participants. This approach allows MAS to exercise regulatory oversight of, and if necessary intervene in, offers of restricted schemes.

At end-2012 there were 4,049 Restricted Schemes notified to MAS with total AUM of S\$24.8 billion.<sup>43</sup> Only 30 are managed in Singapore. Of the 4,049 schemes, 400 (AUM S\$ 2.65 billion) are identified as hedge funds; 99 (S\$ 1.2 billion) are money market funds.

### **Eligibility standards for marketing CIS**

Market intermediaries are either governed under the SFA or the FAA depending on the regulated activities performed. Marketing of CIS is one of the regulated activities regulated under the FAA. Section 6 of the FAA requires a person who carries on the business in marketing of CIS to hold a Financial Adviser license. Licensed financial institutions such as banks and holders of CMSLs are exempted from FAA licensing requirement when they conduct FAA activities, but they are subject to the similar business conduct requirements of the FAA as the licensed financial advisers as stipulated in FAA s.23. These include:

- Section 25—obligation to disclose product information to clients
- Section 26—prohibition from making false or misleading statement
- Section 27— requirement to have a reasonable basis for making recommendation to clients
- Section 28—restrictions relating to handling of client’s money or property
- Section 29—obligation to furnish information to MAS
- Section 36—disclosure of certain interests in securities to clients
- FAA-N16—Notice on Recommendations on Investment Products
- FAA-N03—Notice on Information to Clients and Product Information Disclosure.

Representatives of all licensed and exempt financial advisers are required to be registered with MAS for the specific regulated activities they intend to carry out. Section

<sup>43</sup> This is based on close to 80 percent responses to MAS’ recent survey.

23B of the FAA requires financial advisers to notify MAS when they intend to appoint individuals to conduct regulated activities (in this case, marketing of CIS). The financial advisers have to ensure that their representatives are fit and proper, and meet the competency, financial soundness, and integrity standards set out in MAS Guidelines on Fit and Proper Criteria. Officials (the CEO or a director) of the financial advisers are required to certify that they are satisfied that their representatives meet MAS' fit and proper criteria. Once approved, the names of the individual representatives and the types of regulated activities they are permitted to perform for the financial advisers are posted on the public Register of Representatives on MAS' website. These representatives are subject to the business conduct requirements of the FAA and MAS has powers to take regulatory action or revoke their appointed representative status should they breach these provisions (Section 6 and 23B FAA, and Second Schedule to the FAA).

### **Eligibility standards for operators of CIS**

#### ***CIS constituted in Singapore (authorized schemes)***

For a firm to be eligible to operate a CIS in Singapore (whether authorized schemes offered to retail investors, or restricted schemes offered only to accredited and institutional investors), it must be either a holder of a CMSL for fund management (LFMC) or be a fund management company registered with MAS (RFMC). Until 2012, fund managers serving not more than 30 accredited investors were exempt from holding a license under SFA. This changed effective August 2012 and MAS is engaged in an exercise to move exempt fund managers into an enhanced regulatory regime of licensing and registration as discussed below. LFMCs and RFMCs may do other forms of fund management (e.g., wealth management, family office management) in addition to operating CIS. The great majority of these firms do not operate CIS offered in Singapore. There are currently 53 CIS operators out of a total FMC population of over 400.

LFMCs are further categorized into Retail LFMCs and A/I LFMCs. Retail LFMCs are permitted to carry on business in fund management with retail and all other types of investors while A/I LFMCs are permitted to carry on business in fund management only with accredited or institutional investors (without restriction on the number of investors).

RFMCs are permitted to carry on business in fund management with no more than 30 accredited or institutional investors (of which no more than 15 may be funds or limited partnership fund structures) and the total value of the assets managed must not exceed S\$250 million.

Individuals engaged by a FMC to conduct fund management activity, including the management and advising on CIS, would have to be registered with the MAS. In considering a representative's registration, MAS will consider, among other matters, the qualifications, experience, expertise, honesty, and integrity of the applicant.



A CIS operator must be a fit and proper person in MAS' opinion (SFA section 286). This includes meeting the minimum licensing or registration criteria which include

- competency of key individuals;
- fitness and propriety of its shareholders, directors, representatives and employees,
- minimum base capital,
- having appropriate compliance arrangements and risk management framework;
- adequate oversight by board and senior management of the risk management function;
- procedures to monitor and report risks to management; and
- documentation of risk management policies, procedures and reports. (Guideline SFA 04-G05 on Licensing, Registration and Conduct of Business for Fund Management Companies, Paragraph 3; MAS Guideline FSG-G01 on Fit and Proper Criteria, Paragraphs 8 and 13).

Additional minimum requirements that a CIS operator domiciled in Singapore must meet are minimum competency requirements as follows:

- At least two directors (of whom one must be an executive director), each with at least five years of relevant experience (applicable to all FMCs);
- The CEO must also have at least five years (in the case of an A/I LFMC and RFMC) or 10 years (in the case of a Retail LFMC) of relevant experience;
- At least two (in the case of an A/I LFMC and RFMC) or three (in the case of a Retail LFMC) full-time employees residing in Singapore, each with at least five years of relevant experience; and
- At least two (in the case of an A/I LFMC and RFMC) or three (in the case of a Retail LFMC) representatives who meet the minimum entry and examination requirements.

FMCs are also required to meet ongoing business conduct requirements such as custody of assets, valuation and reporting and measures to mitigate any conflict of interest, as set out in the Securities and Futures (Licensing and Conduct of Business) Regulations and Guideline SFA04-G05 on Licensing, Registration and Conduct of Business for Fund Management Companies.

The CIS operator must satisfy MAS that its shareholders, directors, representatives, and employees, as well as the CIS operator itself, are fit and proper. The factors that are relevant to the assessment of a person's competence and capability, as set out in MAS

Guideline SFA 04-G05 on Licensing, Registration and Conduct of Business for Fund Management Companies and MAS Guideline FSG-G01 on Fit and Proper Criteria, include:

- whether the person has satisfactory past performance or expertise, having regard to the nature of the person's business or duties;
- whether the person has satisfactory educational qualification or experience, relevant skills and knowledge, in relation to the duties that the person is required to perform; and
- where the person assumes concurrent responsibilities, whether such responsibilities would give rise to a conflict of interest or otherwise impair his ability to discharge his duties.

The risk management framework should identify, address and monitor the risks associated with the customer assets that it manages, taking into account the nature and size of its operations as well as the nature of the assets. The CIS operator should also take into account the principles set out in the MAS Guidelines on Risk Management Practices (which are applicable to all financial institutions) and any relevant industry best practices. At the minimum, the risk management framework should address the following:

- The risk management function should be segregated from and independent of the portfolio management function, and should be subject to adequate oversight by the board and senior management;
- All pertinent risks associated with customer assets should be identified and measured;
- There must be procedures to ensure that the identified risks are closely monitored and that management is kept informed of the risk exposures on a continual and timely basis; and
- All policies, procedures and reports relating to the risk management function should be documented.

A CIS operator licensed by or registered with MAS is required to put in place compliance and internal audit arrangements that are commensurate with the nature, scale, and complexity of its business. In addition, all CIS operators licensed or registered by MAS must be subject to independent annual audits, as set out in Guideline SFA04-G05 on Licensing, Registration and Conduct of Business for Fund Management Companies, paragraphs 3.1.5 and 3.1.7.

CIS operators licensed by or registered with MAS must at all times meet the minimum base capital and risk-based capital requirements (where relevant) prescribed by MAS upon being licensed or registered by MAS. Retail LFMCS must meet the minimum base capital requirement of S\$1 million, while A/I LFMCS and RMFCs must meet the minimum

base capital requirement of S\$250,000. Base capital is defined in the Securities and Futures (Financial and Margin Requirements) Regulations as the sum of:

- i. paid-up ordinary share capital;
- ii. paid-up irredeemable and non-cumulative preference share capital; and
- iii. any unappropriated profit or loss in the latest audited accounts of the corporation or the holder (as the case may be), less any interim loss in the latest accounts of the corporation or the holder (as the case may be) and any dividend that has been declared since the latest audited accounts of the corporation or the holder (as the case may be).

In addition, Retail LFCs and A/I LFCs must meet the risk-based capital requirement which require them to maintain financial resources amounting to at least 120 percent of their operational risk requirement. The risk based capital requirement is not imposed on RFMCs. having regard to the limited scale and scope of the RFMC's activities and their reduced operation risks.

***CIS constituted outside Singapore (recognized schemes)***

Unlike an operator of an authorized scheme, the operator of a recognized scheme need not be a holder of a CMSL for fund management if the operator is located outside Singapore. However, it must be licensed or regulated in the jurisdiction of its principal place of business and be a fit and proper person in MAS' opinion. MAS also applies the fit and proper requirement on any person who (i) is or will be employed by or associated with the foreign CIS operator, and (ii) exercises influence over the operator or a related corporation. In assessing whether the foreign CIS operator and its connected persons are fit and proper, MAS considers, amongst others, the past conduct of such persons including whether they have been subject to past disciplinary, regulatory or enforcement actions. The foreign CIS operator is required to provide, in the application form, answers to a detailed list of questions concerning their past conduct.

The foreign CIS operator must also have a representative of the scheme which must also be fit and proper and be a Singapore incorporated company or foreign company registered under the Singapore Companies Act. The representative is responsible for the CIS's compliance with the requirements pertaining to the recognition of the CIS on a continuing basis. The representative is also responsible for the key functions relating to the CIS in Singapore, including facilitating the issuance and redemption of units in the CIS, publishing the sale and purchase prices of units, sending of reports to the participants, maintaining a register of participants and furnishing information and records as MAS may require. The representative would be the party liable where legal redress is sought (SFA section 287).

In addition to the above requirements, the foreign CIS operator (together with its related corporations) must manage at least S\$500 million of discretionary funds in Singapore. This requirement helps ensure that the foreign CIS operator has sufficient nexus with Singapore and allow MAS to have regulatory purchase over the foreign CIS operator.

### ***Offers of listed CIS***

These are exchange traded funds (ETF) and real estate investment trusts (REIT). ETFs are generally open ended while REITs are closed-ended. SGX-ST prescribes eligibility standards for operators of listed CIS, which are over and above those of unlisted CIS. Amongst others, the operator must be reputable, have an established track record in managing investments and have been in operation for at least five years. The persons responsible for managing the investments of the CIS must be reputable, have a track record in investment managing for at least five years, and have satisfactory experience in managing the particular type of CIS for which listing is sought. (SGX-ST Listing Manual, Listing Rules 404(5) and (6)). MAS has also developed and imposed additional disclosure requirements for synthetic ETFs that use a swap contract with a counterparty to give the fund its synthetic nature.

### **CIS governance**

MAS' regulatory framework seeks to promote a high standard of CIS governance to ensure that CIS are organized and operated in the interests of CIS investors. Under the SF(CIS)R, the CIS operator of an authorized scheme has a legal obligation to use its best efforts to carry on and conduct its business in a proper and efficient manner and ensure that the scheme is carried on and conducted in a proper and efficient manner (SF(CIS)R, Regulation 8(2)(a)(i)). The CIS operator is also required, under the CIS Code, to conduct all transactions with or for a scheme at arm's length and consistent with best execution standards. The CIS operator must also ensure that all transactions that it undertakes on behalf of the scheme are consistent with the investment objectives and approach of the scheme (CIS Code, Paragraph 3.1(c) and (d)).

### **The approved trustee**

Separately, CIS operators' activities and conduct are subject to continuous monitoring by the trustee for the scheme. Under the SF(CIS)R, the trustee is required to exercise all diligence and vigilance in safeguarding the rights and interests of participants (SF(CIS)R, Regulation 8(2)(b)(i)). The trustee is also required to inform MAS of any contravention by the CIS operator. An approved trustee is required to meet certain criteria at the time of application and on an ongoing basis. Amongst others, the approved trustee must have a certain minimum amount of paid-up capital and shareholders' funds, be in a sound financial position and have a sufficient number of qualified personnel. The approved trustee is required to report to MAS any breach of the aforementioned criteria within three business days after it becomes aware of the breach (Section 289(3) SFA; SF(CIS)R,

Regulation 5; CIS Code, Chapter 2 paragraph 2.3).

***Requirements for an approved trustee***

An approved trustee must be a public company that meets the following criteria (at the time of application and on an ongoing basis):

- minimum paid-up capital and shareholder funds of \$1 million,
- be in a sound financial position,
- have sufficient qualified personnel with experience in performing the duties of an approved trustee,
- be a fit and proper person (this requirement applies to each officer of the public company),
- obtain professional indemnity insurance (PII) or provide MAS with a performance bond, guarantee or similar instrument.
- In addition, the CIS Code requires an approved trustee for an authorized scheme to be independent of the CIS operator.

***Duties of an approved trustee***

An approved trustee is required to:

- exercise all due care and vigilance in carrying out its functions and duties and in safeguarding the rights and interests of the participants in the scheme;
- take into custody and hold in trust all property of the scheme;
- ensure that all property of the scheme is properly accounted for;
- ensure that the scheme's property is kept distinct from its own property and the property of its other clients;
- inform MAS of any contravention of a legal or regulatory requirement by the scheme's CIS operator;
- keep and maintain a register of the scheme's participants;
- send the scheme's semi-annual and annual accounts and reports to the scheme's participants;
- monitor the payment of any compensation by the CIS operator in the event of a valuation error; and

- notify MAS of the termination or maturity of schemes.

In addition, there are a number of specific legal and regulatory requirements to minimize and address conflict of interest situations that may arise as a result of transactions with connected persons.

The external auditors of licensed operators are also required to provide an opinion on, among other things, whether the internal control procedures of the CIS operators are adequate and whether the operators have complied with the relevant provisions of the SFA and regulations (SF(FMR)R regulation 27(8) / Form 7.

### **Ongoing compliance monitoring**

A CIS operator licensed by or registered with MAS is required to comply with the competency, business conduct and capital requirements on an ongoing basis. The CIS operator is subject to MAS risk-based supervision which has as one objective seeking to ensure that the operator is in compliance with the relevant requirements including business conduct requirements pertaining to independent custody, independent valuation, and having adequate arrangements in place for internal audit, compliance and risk management. The CIS operator must update MAS on material changes (e.g., resignation of its CEO) and submit its annual audited financial statements, along with an auditor's report certifying its compliance with requirements. A CIS operator that fails to meet the applicable requirements must take remedial actions and will be subject to sanctions by MAS, which range from written warnings or reprimands, to compounded fines, and possible the revocation of registration or license.

Approval of a CIS pursuant to Part XIII Section 286 (for authorized schemes) and Section 287 (for recognized schemes) is subject to the CIS meeting the specified requirements at the time of application and at all times thereafter. MAS has the power to refuse to grant authorization or recognition of a scheme if, in its judgement, it does not appear to be in the public interest to do so (Sections 286(5) and 287(4) SFA respectively). MAS also has the powers to revoke, suspend or withdraw the authorization or recognition previously granted to a scheme (SFA section 288). MAS administers the CIS Code which sets out the best practices on management, operation and marketing of schemes that CIS operators and approved trustees are expected to observe. While the CIS Code is non-statutory in nature (in that a failure by a person to comply will not of itself render that person liable to criminal proceedings), a breach of the CIS Code by the CIS operator may be taken into account by MAS in determining whether to revoke or suspend the authorization or recognition of the scheme under section 286 and 287 of the SFA, or to refuse to authorize or recognize new schemes proposed to be offered by the same responsible person. Similarly, a breach of the CIS Code by a trustee may be taken into account by MAS in determining whether to revoke approval granted under section 289 of the SFA or to prohibit the trustee from acting as trustee for any new scheme.

MAS supervises licensed or registered CIS operators on an ongoing basis, through review of periodic returns and inspection of their operations and activities. SFA s. 150 provides MAS with the power to inspect the books of a licensed operator or an exempt person or its representative. Operators are required to maintain books and furnish such information relating to its business which MAS may require (SFA section 102). Where necessary, MAS may require the CIS operator to take remedial actions. In the case of a suspected breach of the laws or regulations, MAS is empowered to investigate the matter and take regulatory or enforcement action, if warranted.

### **Onsite inspections**

MAS conducts onsite inspections and supervisory visits to review the CIS operator's compliance with the relevant regulatory requirements. An onsite inspection involves an in-depth analysis and review of the CIS operator's books, policies and processes and lasts for about 21 to 42 days. A supervisory visit will last for at most one day and is primarily intended for MAS to engage in direct face-to-face interaction with the licensee, as an adjunct to regular offsite supervision. CIS operators rated as High or Medium High by the risk-based supervision program are subject to regular inspection cycles (three and five years, respectively). Additionally, all FMCs (including all CIS operators regardless of risk rating) are subject to both thematic inspections and "for cause" inspections by MAS. Since the financial crisis of 2009, MAS has carried out thematic inspections on FMCs covering:

- i. Product development, distributor oversight and fund administration (conducted from April 2009 to January 2010); and
- ii. Effective segregation and handling of customers' moneys and assets (conducted from May 2009 to January 2010).

All FMCs are also subject to pre-licensing and ongoing supervisory onsite visits by MAS. The latter are less intensive than full onsite inspections referred to above. In preparation for bringing fund managers fully within the regulatory net, MAS appointed external audit firms to conduct industry-wide sweeps of more than 650 FMCs falling within the (now abolished) exempt fund manager regime. Exempt fund managers found to have issues were subject to remedial actions. Following the 2009-11 industry-wide sweep, about 50 exempt fund managers either filed for cessation or had their exempt status removed by MAS.

### **CIS operator regulation in transition**

In 2009, MAS commenced an initiative to tighten the regulatory regime for FMCs. Implementation of this initiative has contributed to the number of inspections tapering down from 2010 to 2012. In 2012, the exempt fund manager (EFM) regime was abolished and business conduct and competency requirements in this sector were strengthened. FMCs operating under the exempt fund manager regime were required to file applications either for registration or licensing. As of the closing date for filing, MAS received 409 applications out of a population of 572 EFMs. Due to the surge in applications, MAS had to temporarily shift the focus of its resources from supervision to

gatekeeping. As at February 6, 2013, 274 EFMs had applied for registration (restricted scope), 134 for an A/I LFMC and 4 for RLFMC. The remaining 163 EFMs did not submit applications. As of March 31, 2013, MAS registered 56 RFMCs, and licensed 22 with A/I licenses and 1 with all investor license. MAS has also refused to register 4 EFMs. From 2010, significant resources have been expended by MAS on industry consultations and policy studies, to see how MAS' regulatory grip over FMCs could be tightened effectively.

#### Figures for the Number of Inspections of CIS Operators

Type of Inspection	2009	2010	2011	2012	2013 (planned)
Onsite regular inspections by MAS	2	2	2	4	9
Onsite thematic inspections by MAS	11	2	3	1	2
Inspections conducted by MAS-appointed auditors	497	94	62	Nil	

Source: MAS.

Inspections typically involve a team of four-six officers and last from three-six weeks. In addition, as described above, MAS appointed audit firms to audit FMCs falling within the (now abolished) exempt fund manager regime.

With the conclusion of the regulatory enhancements and the transition of all exempt fund managers to the regime of registration and licensing, (which is expected to be completed in June 2013), MAS will increase the frequency of inspections.

MAS inspected the two largest approved trustees (which handle about 76 percent of Singapore domiciled CIS) in 2010 and 2011, respectively. In 2012, MAS conducted a one-week supervisory visit to the 4th largest approved trustee (which handles about 7 percent of Singapore domiciled funds) to evaluate its trustee services, fund accounting and custody operations. The third largest approved trustee remains to be inspected. For the remaining smaller approved trustees, MAS will be undertaking offsite review through the use of a self-assessment questionnaire. The self assessment questionnaire will require the approved trustees to evaluate the adequacy of their key processes and how they have discharged their duties and obligations under the SFA and the CIS Code.

#### Offsite monitoring

In its onsite and offsite inspection of the CIS operators and approved trustees, MAS checks for possible breaches of laws or regulations.

The CIS operator and approved trustee of a scheme are obliged to inform MAS within three business days of them becoming aware of any breach legal or regulatory requirements in relation to the CIS operator or the scheme. Under the CIS Code, a CIS



operator also is required to notify MAS of:

- any significant change to the scheme;
- any valuation errors in the calculation of a scheme's NAV per unit; and
- any breach of the guidelines or limits set out in the CIS Code.

Further, the CIS operator is required to notify MAS of organizational changes, including any matter that would affect the fitness and propriety of the CIS operator or any of its officers or representatives, or which may materially and adversely affect its financial position (Guidelines SFA04-G05 on Licensing, Registration and Conduct of Business for Fund Management Companies). Separately, the CIS Code requires the CIS operator to notify MAS (as well as the scheme's existing participants) of any significant change to be made to a scheme not later than 1 month before the change is to take effect. Significant changes would include:

- a change in the investment objective or focus of the scheme or in the investment approach of the CIS operator;
- the replacement, removal or appointment of a manager, sub-manager, investment adviser or trustee to the scheme;
- a variation in the rights or obligations of participants as set out in the trust deed and prospectus, where the variation is materially prejudicial to participants; and
- a change in fund structure.

MAS reviews all such notifications and follows up with the CIS operator.

MAS also requires CIS operators to submit periodic returns including:

- The quarterly (unaudited) statement of assets and liabilities, (Form 1) and the quarterly (unaudited) statement of financial resources and total risk requirement (Form 5), within 14 days of the quarter's end.
- An annual statement of assets and liabilities, statement of financial resources and total risk, the accounts of the operator together with the auditor's report ).
- The annual documents lodged must be accompanied by an auditor's certification for the CIS operator covering reviews of the CIS operators' internal control procedures, procedures for handling customers' monies, customers' records, operation and control of trust accounts and computation of capital requirements.

The SFA requires that all licensed fund management companies maintain adequate records of their business (including records pertaining to the operation of a CIS) for a period of not less than five years.

In particular, section 102 of the SFA provides that a licensed CIS operator must keep its books in a manner that will sufficiently explain the transactions and financial position of its business, and enable true and fair accounts to be prepared. The SF(CIS)R, also requires that the CIS operator to keep such books as will sufficiently explain the transactions and financial position of the scheme (SF(CIS)R, regulation .8(2)(a)(v)). The SF(CIS)R also requires the trustee of an authorized scheme to keep and maintain or cause to be kept and maintained an up-to-date register of the participants of the scheme and make that register available for inspection, free of charge, to the manager of the scheme or any participants.

### **Conflicts of interest and operational conduct**

There are extensive legal and regulatory requirements expressly aimed at minimizing and addressing conflict of interest situations. These include:

- i. Supervisory oversight by MAS performed through onsite inspection by MAS which includes, for example, the review of procedures to ensure that transactions are conducted on an arm's length basis.
- ii. Obligations to minimize conflict of interest and disclose any potential or actual conflicts to their clients. CIS operators are also required to accord priority to transactions made on behalf of the CIS over its own transactions or those made for its connected persons (SF(LCB)R, Regulation 13A).
- iii. Direct prohibition of certain transactions. The CIS Code prohibits the CIS operator from:
  - a. investing the monies of the CIS in its own securities or those of its related corporations, unless the securities are constituents of the scheme's reference benchmark and the benchmark is a widely accepted index constructed by an independent party;
  - b. lending monies of the CIS to itself or to its related corporations;
  - c. retaining any cash or commission rebates arising out of transactions executed for the scheme (including those received from brokers affiliated with the CIS operator); and
  - d. retaining any soft dollars unless certain conditions are met. The conditions are that (i) the retention of the soft dollars will assist the CIS operator in the provision of investment advice or related services to the scheme; (ii) the transactions are carried out on a best execution basis; and (iii) the soft dollars do not arise from the CIS operator entering into unnecessary trades to achieve a sufficient volume to qualify for soft dollars.
- iv. Underwriting by the scheme (this prohibition does not extend to the operator) Independent review by a third party. The CIS operator's activities and conduct are subject to continuous monitoring by the trustee for the scheme, which is required by the SF(CIS)R to exercise all diligence and vigilance in safeguarding the rights and interests of unitholders. The trustee is

	<p>also required to inform MAS of any contravention by the CIS operator of any legal or regulatory requirements in relation to the scheme.</p> <p>v. Disclosure by the CIS operator. The CIS operator must disclose in the scheme's prospectus (i) any actual or potential conflict of interests and how these conflicts will be resolved or mitigated; (ii) all fees and expenses payable by investors or by the scheme; (iii) any soft dollar arrangement (including whether the manager, sub-manager or manager of an underlying fund which accounts for more than 10 percent of the scheme's investments receives or intends to receive soft dollars). On an ongoing basis, the scheme's semi-annual and annual reports must contain disclosure of the amount of related-party transactions and any soft dollars received from each broker which executed transactions for the CIS.</p> <p>vi. Record keeping by the operator. The CIS Code, for example, requires the CIS operator to maintain a record of the instructions to the trustee as to how votes in relation to the scheme's investments should be exercised (CIS Code, Chapter 3—paragraph 3.1(a)). Where the CIS operator faces conflicts of interests in respect of voting rights relating to the scheme's investments, the CIS operator should cause such votes to be exercised in consultation with the trustee (CIS Code, Chapter 3—Paragraph 3.2(c)).</p> <p>vii. Listing Requirements. CIS operators of listed CIS are required to:</p> <ol style="list-style-type: none"> <li>a. observe the requirements on interested person transactions set out in Chapter 9 of the SGX Listing Manual, including making public announcements of any interested person transaction amounting to 3 percent or more of the latest audited NAV of the CIS and obtaining unitholders' approval of any interested person transaction amounting to 5 percent or more of the latest audited NAV of the CIS (SGX-ST Listing Manual, Rules 905(1) and (2), and Rule 906(1)); and</li> <li>b. disclose the aggregate value of interested person transactions entered into during the financial year of the CIS in the annual report of the CIS; (SGX-ST Listing Manual, Rule 907).</li> </ol> <p>viii. Industry self-regulation. Apart from legal or regulatory requirements, CIS operators that are members of the Investment Management Association of Singapore (IMAS) have to adhere, as a condition of membership, to IMAS' Code of Ethics and Standards of Professional Conduct (IMAS Code of Conduct). The IMAS Code of Conduct requires a CIS operator:</p> <ul style="list-style-type: none"> <li>• to conduct its business with integrity and professionalism and act in an ethical manner;</li> <li>• to identify, manage and disclose any conflicts of interest between itself (including its managers or employees) and its clients, or between two different clients;</li> </ul>
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- not to carry out, on behalf of the CIS, transactions with its related company unless such transactions are on arm's length terms, consistent with best execution standards and at a competitive commission rate;
- not to deposit monies, on behalf of the CIS, with its related company unless the interest is received at a rate not less favorable to the CIS than the prevailing commercial rate for a deposit of that size and term (taking into account the credit standing of the deposit-taker);
- not to borrow funds, on behalf of the CIS, from its related company unless the interest and fees charged are no higher than the prevailing commercial rate for a similar loan.

Self-regulation plays a role in the management of conflicts of interest. All CIS operators domiciled in Singapore are currently members of IMAS. The IMAS Code of Conduct also requires a CIS operator to have in place appropriate internal controls on the personal dealings by its employees (including directors). Such controls must include the requirement for prior approval to be obtained before an employee of the CIS operator transacts for his own account and there is proper documentation of such approval and transactions. Furthermore, the CIS operator must give priority to the interests of its clients over those of its employee. Clients' transactions must be satisfied before dealing for employee. Where there is potential conflict between an employee's transaction and those of clients, the employee should immediately report to the senior compliance officer as well as an appropriate senior director who will either resolve the potential conflict or ensure proper disclosure to the clients affected.

#### **Other regulatory obligations**

CIS operators licensed by or registered with MAS have to comply with various business and operational conduct requirements. These include requirements pertaining to independent custody, independent valuation, and having adequate arrangements in place for internal audit, compliance, and risk management.

The CIS Code also sets out other operational obligations that a CIS operator is required to fulfil in its operation of a CIS, including:

- payment of redemption proceeds;
- preparation of accounts and reports;
- exercise of voting rights; and
- notification of significant changes.

The CIS Code requires the CIS operator to have arrangements in place to take all reasonable steps to obtain the best possible result for the scheme, taking into account

certain execution factors such as price, costs, speed, likelihood of execution and settlement, size, nature or any other consideration relevant to the execution of a trade or transaction (CIS Code, Chapter 3—paragraph 3.1(d)).

In addition, the CIS operator is also required to accord priority to transaction for the scheme over those of its connected persons. A CIS operator that does not conduct appropriate trading or failed to make timely allocation of transactions would be in contravention of the aforesaid requirements.

Moreover, the CIS Code explicitly prohibits CIS operators from entering into unnecessary trades in order to achieve a sufficient volume of transactions to qualify for soft dollars (CIS Code, Chapter 3—paragraph 3.2(h)). A CIS operator that engages in churning is in contravention of these requirements.

A CIS operator must also adhere to disclosure requirements that are aimed at increasing the transparency of the trades that the CIS operator carried out on behalf to the scheme. For instance, the semi-annual and annual reports of a scheme must disclose the following:

- the turnover ratios for the period under review and the corresponding period in the previous year;
- any soft dollars received from the brokers which executed transactions for the scheme; and
- a confirmation by the CIS operator that trades were made on a best execution basis and there was no churning of trades.

In addition, the CIS operator is only allowed to acquire permissible investments and enter into transactions which are consistent with the investment objectives and approach of the scheme (CIS Code, Chapter 3—paragraph 3.1(c)(v)). A CIS operator that failed to conduct adequate due diligence when making investments on behalf of the scheme would be in breach of the aforesaid requirements.

- Aside from disclosure, a CIS operator is subject to a number of requirements which are aimed at ensuring that no unauthorized charges or expenses are levied against the scheme or investors and that any rebates, soft dollars or inducements would not conflict with the CIS operator's duty to act in the best interest of investors. These requirements include the following:
  - the CIS operator is explicitly prohibited from making any payment from the scheme if the payment is unfair to, or materially prejudices the interests of, any participant or prospective participant (CIS Code, Chapter 3—paragraph 3.5(a));
- the CIS operator must not charge any marketing or promotion expenses or fees

which have not been provided for in the trust deed to the scheme (CIS Code, Chapter 3—paragraph 3.5(b) and (c));

The CIS operator must not retain for its own account, cash or commission rebates arising out of transactions for the scheme executed in or outside Singapore (CIS Code, Chapter 3—paragraph 3.2(g));

- The CIS operator must not retain any soft dollars unless (i) the soft dollars can reasonably be expected to assist the CIS operator’s provision of investment advice or related services to the scheme; (ii) the transactions have been carried out on a best execution basis; and (iii) soft dollars are not generated from unnecessary trades (CIS Code, Chapter 3—paragraph 3.2(h)).

In addition, any performance fee payable to the CIS operator must meet the following requirements:

- The calculation of the performance fees should be equitable to all participants;
- The performance fee should be calculated and paid after taking into account all other payments;
- Crystallization of performance fees should be no more frequent than once a year;
- The performance should be calculated based on a fulcrum fee or high water mark to prevent excessive performance fees;
- The performance fee should be calculated based on an appropriate benchmark taking into consideration the scheme’s objectives (CIS Code, Chapter 3—paragraph 3.6).

The CIS operator may appoint a sub-manager to manage part or all of the scheme’s property or invest part or all of the scheme’s property in one or more CIS. In the case of a local delegate, the delegate must be a holder of a CMS license for fund management under the SFA. In the case of a foreign delegate, the delegate must be reputable and supervised by an acceptable financial supervisory authority (CIS Code, Chapter 3—paragraph 3.3(d)). The financial strength and fund management capability of the delegate are also relevant considerations. The country of domicile of the delegate must have a good legal infrastructure and a supervisory regime with standards that are consonant with international best practice. To ensure that funds managed by a delegate are invested in line with Singapore requirements, an authorized scheme which is sub-managed must be invested in accordance with the investment guidelines for authorized schemes. Where the authorized scheme is invested in a foreign CIS, the foreign CIS must be a scheme which:

- is constituted and regulated in a jurisdiction where the laws and practices afford to participants in Singapore protection at least equivalent to that afforded to

participants of schemes which are wholly managed in Singapore;

- adheres to investment and borrowing guidelines which are substantially similar to those set out in the CIS Code; and
- has a manager that is reputable and supervised by an acceptable financial supervisory authority.

In addition, prior to entering into any outsourcing arrangements with service providers (including a compliance service provider or a fund administrator), the CIS operator should take into account the requirements set out in the MAS Guidelines on Outsourcing. (MAS Guideline SFA04-G05 on Licensing, Registration and Conduct of Business for Fund Management Companies, paragraph 4.4).

These guidelines set out MAS' expectation of a CIS operator that has entered into outsourcing or is planning to outsource its business activities to a service provider. In particular, the guidelines make it clear that outsourcing does not diminish the obligations of the CIS operator and those of its board and senior management, to comply with relevant laws and regulations in Singapore. The CIS operator should have in place risk management practices to ensure that all relevant laws, regulators, guidelines, and other directions, as well as any conditions of approval, licensing or registration, continue to be met. In addition, the CIS operator should also not engage in outsourcing that results in its internal control, business conduct or reputation being compromised or weakened. The Guidelines also require the CIS operator to take steps to ensure that the delegate employs a high standard of care in performing the function as if the function were not outsourced and conducted within the CIS operator. Furthermore, the CIS operator needs to maintain the capability and appropriate level of monitoring and control over outsourcing such that in the event of disruption or unexpected termination of the outsourcing arrangement, the CIS operators remains able to conduct its business with integrity and competence. Taken together, these requirements ensure that the CIS operator would not be transformed into an 'empty box.'

The principal CIS operator must ensure that:

- adequate procedures are in place to monitor the conduct of its delegate;
- the function delegated or outsourced is performed in a proper and efficient manner; and
- controls are in place to ensure compliance with the trust deed, laws and regulations.

As mentioned above, MAS Guidelines on Outsourcing makes it clear that outsourcing does not diminish the obligations of the CIS operator and those of its board and senior management, to comply with relevant laws and regulations in Singapore. The CIS operator should have in place risk management practices to ensure that all relevant laws, regulators, guidelines, and other directions, as well as any conditions of approval, licensing or registration, continue to be met.

The CIS operator must ensure that the contractual terms and conditions governing relationships, functions, obligations, and responsibilities of the contracting parties in the outsourcing or delegation arrangement are carefully and properly defined in written agreements. Each agreement should allow for renegotiation and renewal to enable the CIS operator to retain an appropriate level of control over the outsourcing or delegation and the right to intervene with appropriate measures to meet its legal and regulatory obligations. The agreement should provide the CIS operator the right to terminate the agreement in events of default, including circumstances when the delegate undergoes a change in ownership, becomes insolvent, goes into liquidation, receivership or judicial management, or when there has been a breach of security, confidentiality or demonstrable deterioration in the ability of the delegate to perform the services as contracted (MAS Guidelines on Outsourcing, paragraph 6.4). The prospectus of a CIS must disclose any function that has been delegated by the CIS operator to a third-party and the identity of the delegate. In particular, the prospectus must specifically disclose:

- where the scheme is sub-managed, the name of the sub-manager;
- where the scheme is a feeder fund or a fund of funds, the name of the manager for each underlying fund; and
- the name of the investment adviser (if any) who advises the CIS operator in its management of the scheme.

MAS may require a CIS operator to modify, make alternative arrangements or re-integrate an outsourcing into the CIS operator where:

- the operator fails or is unable to implement adequate measures to address the risks and deficiencies arising in its outsourcing in a satisfactory and timely manner;
- adverse developments arise from the outsourcing that could significantly affect the operator; or
- MAS' supervisory powers and ability to carry out its supervisory functions are hindered.

The CIS operator must not enter into any outsourcing arrangement which may hinder MAS' supervisory powers over the CIS operator and ability to carry out supervisory functions. Moreover, the CIS operator must ensure that the outsourcing agreement with the delegate must include clauses that allow MAS or an agent appointed by MAS to access both the delegate and the CIS operator to obtain records and documents, of transactions, and information of the CIS operator that have been given to, stored at or processed by the delegate and the right to access any report and finding made on the delegate. In addition, outsourcing outside Singapore should be conducted in a manner which does not hinder efforts to supervise or reconstruct the Singapore activities of the CIS operator (i.e., from its books, accounts and documents) in a timely manner. In particular, a CIS operator is not allowed to outsource a function to jurisdictions where



	<p>prompt access to information by MAS may be impeded by legal or administrative restrictions. A CIS operator that outsources to a service provider outside Singapore must commit to retrieving information readily from the service provider should MAS request for such information. The CIS operator must also confirm in writing to MAS that there are rights of access to the CIS operator's information, reports and findings at the service provider. MAS may require the CIS operator to terminate or make alternative outsourcing arrangements if the ability of MAS to carry out its supervisory functions cannot be assured (MAS Guidelines on Outsourcing, paragraphs 4.1 and 6.9).</p>
Assessment	Broadly implemented
Comments	<p>The regulatory requirements of authorization, recognition and notification enables MAS to be well informed about the size and structure of the CIS industry in Singapore and to develop reasonably accurate metrics concerning the risk, systemic and otherwise, inherent in the business. The exercise of the gatekeeping function appears rigorous as regards operators and overseas schemes.</p> <p>The reason for the minor downgrade is that once an operator (or scheme) is inside the perimeter the supervisory approach seems to rely heavily on periodic reporting, desk-based surveillance, onsite surveillance of limited length (company visits), and the deterrence effects of the requirement for licensing of individuals and MAS's enforcement activities. There have been very few full/in-depth onsite inspections. The position has been somewhat distorted for the last two years as MAS prepared for and is now implementing a large program of licensing and registering fund managers operating under the exempt fund manager regime some of which are CIS operators. As work gradually returns to the "business as normal" model in the second half of 2013 MAS should enhance its onsite regime to exceed the level it was operating at prior to 2010. This should include authorized trustees which are a critical element in MAS' approach to securing compliance by the operator with the regulatory requirements. CIS operators rated as high or medium high should be subject to a full inspection are subject to full inspections more frequently than under the current cycles (three and five years, respectively). It might also be appropriate to consider whether any those managers currently rated below high risk should be up-rated.</p> <p>The figures for license and registration applications under the new enhanced regulatory requirements for FMCs indicates that very few previously exempt FMCs have a business model of offering fund management services to all investors (4 out of 412). The remainder seeks a more restricted permission focused on accredited and institutional investor. Within that group the majority are prepared to accept a strict limit on the number of clients and funds under management. This is consistent with the assessors' understanding of the current structure of the industry as it has been explained by MAS staff and private sector interviewees. Many FMCs are very small (two person businesses). They carry on a diverse mix of activities such as sub-mandate dealings on behalf of, for example, an overseas CIS which invests in the region, managing assets for family and friends, private equity business for a few high net worth individuals, etc.</p>

	MAS is aware of the need to be alert to the risk that those who have not applied for licensing or registration (or who have been declined by MAS) actually exit the industry (or obtain legitimate employment at other licensed or registered entities) and do not continue in the fund management business illicitly.
<b>Principle 25.</b>	The regulatory system should provide for rules governing the legal form and structure of collective investment schemes and the segregation and protection of client assets.
Description	<p>For authorization, the SFA provides that if the CIS is a unit trust, it must comply with the requirements set out in section 286(2) of the SFA as well as the relevant provisions in the SF(CIS)R and the CIS Code. ), a CIS which is constituted as a unit trust must satisfy the following requirements:</p> <ul style="list-style-type: none"> <li>i. be managed by a manager that is fit and proper;</li> <li>ii. have an approved trustee;</li> <li>iii. ensure that its trust deed complies with the requirements in the SF(CIS)R;</li> <li>iv. the scheme, the manager and trustee complies with the CIS Code.</li> </ul> <p>Where a CIS is not a unit trust, section 286(3) of the SFA provides that the manager of the scheme must be licensed or exempted accordingly, and be a fit and proper person. Section 286(4) of the SFA also provides additional powers for MAS to prescribe requirements in respect of the scheme and the manager. MAS has not prescribed any requirements for such schemes as the only domestic schemes that are not unit trusts are REITs, which are closed end structures subject to a special regulatory regime. Recognized schemes managed overseas can be in corporate form.</p> <p><b>Responsibilities of the trustee</b></p> <p>For unit trust CIS, the trustee plays an important role as an independent oversight entity. Under the SFA MAS will require, as a condition for authorization, a unit trust to have a trustee approved under section 289 of the SFA (Approved Trustee).</p> <p>The duties and responsibilities of an approved trustee are set out in the Securities and Futures (Offers of Investments) (Collective Investment Schemes) Regulations 2005 and the Code on Collective Investment Schemes and described above in Principle 24. Amongst other responsibilities, the approved trustee has to (i) inform MAS of any contravention of legal or regulatory requirement by the manager for the scheme within three business days after it becomes aware of the contravention; (ii) take into custody or control all the property of the scheme and hold it in trust for participants; and (iii) ensure that all the property of the scheme is properly accounted for, and (iv) ensure that property of the scheme is kept distinct from its own property or the property of its other clients. The trust deed of the scheme must contain a covenant binding the approved trustee to exercise all due diligence and vigilance in carrying out its functions and duties in safeguarding the rights and interests of the participants of the scheme.</p>

**Legal form/investors' rights**

The SF(CIS)R requires the trust deed of an authorized scheme to contain provisions relating to the structure of the scheme, the nature of the units in the scheme, the investment objective of the scheme and the types of authorized investments and investment restrictions applicable to the scheme as set out in the CIS Code.

The trust deed must contain provisions relating to the rights of investors in the scheme or impediments to the investors exercising their rights, such as the extent of a participant's right to request that the CIS operator redeems his units in the scheme upon request, his right to receive a copy of the audited financial statements within three months of the financial year of the scheme, his rights with respect to the transfer of his units in the scheme and his rights with respect to the convening of meetings. The trust deed must also contain provisions setting out the duties and obligations of the trustee towards the participants of the scheme (SF(CIS)R Regulations 8, 9). For listed CIS, the SGX listing rules require the rights of investors to be set out in the Trust Deed (SGX-ST Listing Manual, Chapter 4, Rule 409(2)).

MAS reviews all prospectuses prior to registration. The SF(CIS)R requires the prospectus of all authorized and recognized schemes to disclose all material information which investors would reasonably require for the purpose of making an informed decision about the merits and risks of the scheme (SF(CIS)R Third Schedule, paragraph 78). This includes clearly setting out the rights of investors in the scheme or impediments to the investors exercising their rights, such as a participant's rights with respect to subscription and redemption and his right to receive annual audited financial statements of the scheme. The prospectus must also contain information about the scheme's legal form and structure, the general risks of investing in the scheme as well as the risks specific to the scheme (SF(CIS)R Third Schedule, Paragraphs 4, 7, 16, 23, and 24).

MAS administers and enforces the relevant SFA and SF(CIS)R requirements relating to the form and structure. In addition, the trust deed of a scheme must include provisions relating to the structure of the scheme and provisions creating a trust (setting out the full particulars of the trust). The trustee has legal obligations to exercise all due care and vigilance in carrying out its functions and duties under the trust deed (including ensuring that the provisions in the trust deed are complied with).

The CIS operator operating an authorized scheme must notify participants of any significant change to the scheme not later than one month before the change is to take effect. In particular, notification will be required for any variation in the rights or obligations of the participants as set out in the trust deed and prospectus. CIS Code, Chapter 3—paragraph 3.2(d). In addition, the CIS operator must obtain participants' approval (by way of an extraordinary resolution) for any modification of the trust deed unless the trustee certifies that the modification (i) does not materially prejudice the participants' interests and does not release the CIS operator from any responsibility to

the participants; (ii) is necessary to comply with statutory or official requirement; or (iii) is to remove obsolete provisions or correct manifest errors (CIS Code, Chapter 3— paragraph 3.2(f)).

The CIS Code sets out restrictions on the type of investments that are permitted, diversification limitations, and limitations on the amount and tenure of borrowings. Examples of investment restrictions are those applicable to authorized MMFs set out in Appendix 2 to the CIS Code. In particular, MMFs' underlying investments may only consist of high quality debt securities and money market instruments, deposits placed with licensed deposit-taking institutions and financial derivatives for the sole purpose of hedging (which itself is narrowly defined by MAS). Additional investment restrictions apply to MMFs that wish to market themselves as short term MMFs. A short-term MMF is only allowed to invest in non-deposit instruments with a remaining term to maturity of not more than 397 calendar days. It must also maintain a dollar-weighted average portfolio maturity that does not exceed 120 calendar days. The dollar-weighted average portfolio maturity is calculated based on each investment's remaining term to maturity and weighted based on its market value. Constant value units are not permitted to be offered by MMFs domiciled in Singapore.

#### **Separation of assets/safekeeping**

The SF(CIS)R requires the approved trustee to take into custody or control all the property of the scheme and hold it in trust for the participants (SF(CIS)R Regulation 7(1)(b)). Only public companies (as defined under CA) which meet the criteria in Regulation 5 of the SF(CIS)R (summarized) may be approved by MAS to act as a trustee for an authorized scheme. Most of the approved trustees in Singapore are subsidiaries of banks. Individuals will not be able to satisfy the requirements to be an approved trustee. The approved trustee is also required to ensure that all the property of the scheme is properly accounted for and that the property is kept distinct from its own property and the property of its other clients (SF(CIS)R Regulation 7(1)(c) and (d)). At common law, trustees are also required to segregate the accounts of each and every trust with which they are entrusted. Although the approved trustee may delegate the safe custody of the scheme's assets to a third-party custodian, the approved trustee remains responsible in the event of misconduct by the entity to whom the trustee had outsourced the safekeeping of those assets if the trustee fails to exercise due care and diligence (MAS Circular on Trustee's Responsibility for Safe Custody of Assets of a CI). The approved trustee must:

- exercise due care and skill in appointing any third-party custodian;
- keep under active review all custodial arrangements, including monitoring that the arrangements address all potential risks to the safekeeping of customers' assets and are being effectively implemented; and
- retain its power to intervene where appropriate. (Trustee Act Sections 41N and 41M;

	<p>MAS Circular on Trustee’s Responsibility for Safe Custody of Assets of a Collective Investment Scheme).</p> <p><b>Independence of the trustee/custody function</b></p> <p>The trustee who is responsible for holding the assets of an authorized scheme in safekeeping is required to be legally and functionally independent of the CIS operator (CIS Code, Chapter 2—paragraph 2.1). They must not be the same legal entity. Independence is otherwise assessed on a case-by-case basis at the time the application for authorization of the scheme is made. Cross-holding and common directors will be taken into account. Generally, the independence requirement will not be met if there are common shareholders holding direct or indirect interests of 20 percent or more in both the trustee and the CIS operator. If there are any factors or relationships that may be expected to affect the ability of the trustee to act independently of the CIS operator they are required to be disclosed at the time the application for scheme’s authorization is made (on the application form).</p> <p>A CIS operator which is a LFMC is required to ensure that the assets under its management are subject to independent custody. Independent custodians include depositories and banks that are suitably licensed, registered or authorized in their respective jurisdictions. The approved trustee may delegate the custodial function to a third party depository or custodian bank (Guidelines on Licensing, Registration and Conduct of Business of Fund Management Companies, paragraph 4.1.1).</p> <p><b>Winding up procedures</b></p> <p>The SFA requires the CIS operator to notify MAS in writing at least seven days before the winding up of an authorized or recognized scheme. Where MAS revokes or withdraws the authorization of a scheme, the CIS operator and the trustee must take the necessary steps to wind up the scheme. In situations where the CIS operator for the scheme is in liquidation or has ceased to carry on business, the trustee must call for a meeting of the participants for purpose of determining an appropriate course of action. If at such meeting a resolution is passed to wind up the scheme, the CIS operator and the trustee must take the necessary steps. The trustee has oversight responsibility over the winding up process and has to monitor that all assets of the scheme have been realised and the resultant proceeds (net of outstanding liabilities) have been distributed to participants in the same proportion as their holdings of units in the scheme. The trustee is also required to furnish a confirmation to MAS that scheme’s assets have been realised and the resultant net proceeds have been distributed within two weeks of the winding up CIS Code, Chapter 2—paragraph 2.3(d). While over the years funds have been wound up on a voluntary and orderly basis, MAS has never had to wind up a fund compulsorily.</p>
Assessment	Broadly Implemented
Comments	In view of the critical importance the regulatory framework for CIS places on trustees, MAS should enhance its supervision of the main trustees as set out under Principle 24. It

	<p>is noteworthy in this context, that the 2011 inspection of a trustee revealed several concerns which required MAS to mandate remedial action. It is essential that MAS satisfies itself that such problems are not widespread since a major failure would damage Singapore's reputation for probity and efficiency. In discussions with members of the financial services community the assessors received comments to the effect that trustees should be expected to know more about the business of the CIS operators that they supervise than is often the case currently (particularly when the operator also markets its schemes) and should be readier to enforce the rights of unit holders.</p>
<b>Principle 26.</b>	<p>Regulation should require disclosure, as set forth under the principles for issuers, which is necessary to evaluate the suitability of a collective investment scheme for a particular investor and the value of the investor's interest in the scheme.</p>
Description	<p><b>Offering documents</b></p> <p>Offers of authorized or recognized schemes must be made in or accompanied by a prospectus which is prepared in accordance with the disclosure requirements as prescribed in the Third Schedule to the SF(CIS)R. As with issuers of shares or debentures, the scheme prospectus must disclose all material information which investors and their professional advisers would reasonably require and expect to find for the purpose of making an informed decision about the merits and risks of the scheme. SF(CIS)R also sets out the specific disclosure requirements that a prospectus must comply with including requirements to disclose information relating to the scheme and the CIS operator (CIS)R Third Schedule).</p> <p>An offer of unlisted CIS or ETFs must be accompanied by a prospectus and a Product Highlights Sheet (PHS) (Sections 240AA and 296 SFA). The PHS is intended to complement the prospectus. It provides the key features and risks of the investment product in a clear and concise manner to help investors understand the information in the prospectus. There are prescribed templates for the PHS which serve as a minimum standard. Key elements include information about the scheme's investment strategy and how the scheme intends to achieve its objective. The PHS must set out the key risks which are either commonly occurring events or which may cause significant losses, or both. Processes and structures which introduce significant risk to the scheme also must be disclosed. PHS must disclose all parties involved in the scheme, including manager, sub-manager, swap counterparty, trustee and custodian, and describe the implications if these parties become insolvent. The PHS must contain information on how often and where valuations are published, how investors can exit from the scheme and what are the risks and costs in doing so.</p> <p><b>Detailed disclosure requirements</b></p> <p>SF(CIS)R Third Schedule sets out comprehensive content requirements for a scheme prospectus as required by this principle. These include the date of registration and expiry date of the prospectus, the place of constitution of the scheme, the name of the trustee</p>

for the scheme and where the trust deed of the scheme may be inspected, the features of each class of units, and the rights or obligations of participants in each class, the name and track record of the operator and any sub-manager which manages 30 percent or more of the asset value of the scheme, the name of any investment adviser who advises the operator in its management of the scheme, and for feeder fund or fund of funds, details of the manager for each underlying fund and in the case of a scheme constituted outside Singapore. The prospectus must state the name and address of the local representative for the scheme.

The method of valuation of investments in the scheme, the time of the day when valuation is to be made and the method of determining the price at which a unit in the scheme may be sold by the CIS operator must be stated in the trust deed of an authorized scheme. The constitutive documents of a recognized scheme must comply with the laws and regulations of the jurisdiction in which the scheme is domiciled. MAS has so far recognized only UCITS schemes from the EU. Under the UCITS Directive, the rules for the valuation of assets must be disclosed in the CIS' prospectus. The prospectus must disclose the procedures for subscription and redemption of the units as well as the procedures for the pricing of units. Information on where investors may obtain the buying and selling prices of units in a scheme and the dealing days to which the prices apply must be stated. The prospectus must also state the dealing deadline, whether pricing is done on a forward or historical basis and must give a numerical example of how the number of units is allotted (in the case of subscription) or the realization amount is calculated. The prospectus must also state where investors may obtain the latest semi-annual or annual accounts. In the case of a new scheme, the prospectus must also state when the participants can expect to receive the semi-annual and annual accounts of the scheme.

The SF(CIS)R sets out requirements for product specific disclosure. For example, the prospectus for a MMF must state (on the cover page) that:

- the purchase of a unit in the MMF is not the same as placing funds on deposit with a bank or deposit-taking company;
- although the manager may seek to maintain or preserve the principal value of the MMF, there can be no assurance that the fund will be able to meet this objective; and
- the MMF is not a guaranteed fund, in that there is no guarantee as to the amount of capital invested or return received.

The SF(CIS)R requires the prospectus to provide a breakdown by type and amount (by percentage of the value of units) of all the fees and charges payable by investors and by the scheme and illustrations on how all fees and charges payable by the investor will affect the number of units (in the case of subscription) and the realization amount (in the case of redemption) that the investor will receive. Where the prospectus contains

disclosure of the scheme's past performance, the calculation of the scheme's return must take into account the subscription fee and realization fee. In addition, the PHS must also disclose all fees and charges payable by the investors and by the scheme and indicate whether the fees are payable once-off or on a per annum basis and whether the fees may later be increased or new fees introduced.

### **Intervention powers**

MAS has the power to refuse to register a prospectus if, for example, the prospectus is found to contain a false or misleading statement, there is an omission of information required to be included, there is an inclusion of information that is prohibited, or if MAS is of the opinion that it is not in the public interest to register the prospectus. (Section 296(10) SFA). Further, MAS may issue a stop order on a prospectus that is already registered if, for example, the prospectus is found to contain a false or misleading statement or if MAS is of the opinion that the prospectus does not comply with the requirements of the SFA. (Section 297(1) SFA) In such a case, MAS may require the CIS operator to refund the subscription monies of the investors. The CIS operator (and its directors) will be subject to criminal liabilities (under section 253 SFA) and civil liabilities (under section 254 SFA) where there is a false or misleading statement, or an omission to state any information required to be included, in the prospectus. Investors may sue seek civil remedy under section 254 SFA. MAS and CAD have agreed procedures for deciding which course, criminal or civil, to pursue in particular cases.

### **Advertising**

Section 300 of the SFA provides that before a prospectus is registered, no advertisement or publication directly or indirectly referring to the offer of units in a scheme can be made, except:

- An advertisement or publication containing brief information that identifies the person making the offer, the operator and the scheme; a statement that anyone wishing to acquire the units will need to make an application in the manner set out in the prospectus; a statement on how to receive a copy of the prospectus; and the investment focus of the scheme.
- Dissemination of a preliminary document that has been lodged with MAS to institutional and accredited investors.
- Presentation of oral or written material on matters contained in a preliminary document to institutional and accredited investors.

Section 300(4) of the SFA allows the publication of the following, amongst others, regardless of whether a prospectus has been registered or not:

- a disclosure, notice or report required by the SFA or listing rules or other



requirements of a securities or futures exchange;

- a notice or report of a general meeting of the scheme's participants or of a general meeting of the CIS operator;
- a report about the scheme that is issued pursuant to the SFA and the CIS Code;
- a report about the units by someone who is not the CIS operator, its agent or distributors;
- a report about the units published and delivered to institutional investors not later than 14 days prior to the date of lodgement of the prospectus, provided delivery of the report is restricted; and
- an advertisement or publication in the ordinary course of a business (i.e., not related to the offer).

After a prospectus is registered, advertisements can be made provided that they do not contain any information that is false or misleading or that cannot be justified on the facts known to the person responsible for the advertisements. The advertisement must also not, whether by the prominence given to specific information or otherwise, create a false or misleading impression about the scheme (Section 300(3C) SFA read with SF(CIS)R Regulation 21). Any person who contravenes the above requirements or who knowingly authorized or permitted the publication or dissemination of an advertisement in contravention of the above requirements is guilty of an offense and is liable on conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 12 months or to both, and, in the case of a continuing offense, to a further fine not exceeding \$5,000 for every day or part thereof during which the offense continues after conviction (Section 300(7) SFA).

### **Ongoing disclosure**

#### ***Prospectus***

The prospectus must be kept up-to-date to take account of any material changes affecting the CIS. A prospectus registered by MAS may not be used to offer a scheme after the expiration of 12 months from the date of registration Section 299 SFA. Furthermore, a CIS operator who offers units in a CIS with a prospectus which has not been updated to take into account a new circumstance that has arisen since the prospectus was lodged with MAS is subject to criminal and civil liabilities. Section 302 read with sections 253 and 254 SFA. The SFA provides for a CIS operator to update the prospectus of a scheme by way of lodging supplementary or replacement prospectuses.

	<p><b>Periodic reports</b></p> <p>Periodic reports of the scheme’s activities (e.g., semi-annual and annual reports) must be prepared by the CIS operator and sent by the trustee to the scheme’s participants. The annual accounts of the scheme and the auditors’ report must be sent within three months from the end of each financial year of the scheme; semi-annual reports must be sent within two months from the end of the period covered by the report. The semi-annual and annual report of an authorized scheme must contain specific information relating to the scheme’s investments, exposure to financial derivatives, related party transactions, performance, expense and turnover ratios, key information on any underlying scheme and soft dollar commissions. The semi-annual and annual report must also contain additional information that is specific to the particular type of the scheme for e.g., MMFs, hedge funds and property funds. The semi-annual and annual accounts of an authorized scheme must be prepared in the manner as prescribed by the Recommended Framework for Unit Trusts issued by the ICPAS (RAP 7). This provides that accounting policies of a scheme should generally comply with recognition and measurement principles of SFRS (which are substantially converged with the International Financial Reporting Standards) CIS Code Chapter 5—paragraph 5.1.1.</p> <p><b>Other sanctions</b></p> <p>Should the CIS deviate from its stated investment objectives, focus and approach, the CIS operator may be exposed to prospectus liability for having made a false or misleading statement in the prospectus (Sections 253 and 254 SFA). Further, the CIS operator is required to notify MAS and existing participants of a change in the scheme’s investment objectives and focus or the CIS operator’s investment approach not later than one month before the change is to take effect. A CIS operator who failed to so notify MAS or existing participants may be deemed to have breached the CIS Code. In addition, if an operator refuses to comply with a MAS request MAS has the power to issue directions by notice in writing to the CIS operator where it appears to be necessary or expedient in the public interest to do so, section 293 SFA.</p>
Assessment	Fully Implemented
Comments	MAS also overlays general disclosure requirements with detailed prospectus specifications, PHS, and periodic reports with extensive operational requirements as required by IOSCO Principles. MAS also ties in the oversight of and requirements on CIS closely into its approach to the issuer principles (16–18).
<b>Principle 27.</b>	Regulation should ensure that there is a proper and disclosed basis for asset valuation and the pricing and the redemption of units in a collective investment scheme.

Description	<p><b>Asset valuation</b></p> <p>The trust deed for authorized schemes must contain provisions specifying full particulars of (i) the method of valuation of investment comprised in the scheme and the time of day when the valuation is to be made; and (ii) the method of determining the price at which a unit in the scheme is to be redeemed (SF(CIS)R Regulation 9(e)(ii) and (iii)). In addition, the prospectus must also state whether pricing is done on a forward or historical basis Any changes to the method of valuation of the scheme’s assets or to the method of determining the price at which a unit in the scheme is to be redeemed must be approved by the trustee. The trustee determines if unit holders should be informed of such a change (SF(CIS)R Regulation 9(f)).</p> <p>If the scheme does not offer dealing every business day, the units in the scheme should be valued every regular dealing day, but in any event, at least once a month (CIS Code, paragraph 6.4(j)).</p> <p>The NAV of a scheme must be calculated on a consistent basis and in accordance with the manner prescribed by the Statement of recommended Accounting Practice (RAP 7) (CIS Code, Chapter 6—paragraph 6.4(b)). This sets out recommendations on the way in which the managers of a unit trust should prepare the unit trust financial statements for unit holders. This RAP is intended to be applicable to all authorized unit trusts in Singapore, regardless of their constitution, size or complexity. It is issued by ICPAS and was most recently updated in June 2012. RAP 7, in turn, states that accounting policies of the CIS should generally comply with recognition and measurement principles of SFRS (which are substantially converged with the IFRS).</p> <p>In the case of a quoted investment, the value of the investment must be based on the official closing price or the transacted price at a cut-off time (specified and applied consistently by the CIS operator) on the organized market on which the investment is quoted, unless such price is not representative or not available. The CIS operator is responsible for determining, with due care and in good faith, whether the price should be considered representative (CIS Code, Chapter 6—paragraph 6.4(h)).</p> <p>In the case of an unquoted investment or quoted investment where the transacted price is not representative or not available, the value of the investment should be based on its fair value. The fair value is defined as the price that the scheme would reasonably expect to receive upon the current sale of the investment. Fair value should be determined with due care and in good faith, and the CIS operator must ensure that the basis for determining the fair value of the investment is documented. (CIS Code, Chapter 6—paragraph 6.4 (f)) Except for quoted investments, all the investment of a scheme should be valued by a person approved by the trustee as qualified to value such assets. The CIS Code requires any valuer appointed to value unquoted securities to be specifically approved by the approved trustee. In practice, MAS expects an approved trustee to appoint a third party valuer who:</p>
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- i. possesses adequate and relevant credentials, experience, and have a good track record;
- ii. has adequate and sound compliance, risk and controls oversight framework in place;
- iii. has sufficient operational resources;
- iv. has sound pricing policy and valuation methodology (e.g., in line with IOSCO valuation principles); and
- v. is independent from the CIS operator.

The approved trustee must also take into account the results of due diligence which the manager has done on the third-party valuer.

The CIS operator, in its duty to conduct the scheme in a proper manner, should ensure that the valuations made are fair and reasonable. (SF(CIS)R Regulation 8(2)(a)B) Further, where the market value or fair value of a material portion of the authorized scheme's assets cannot be determined, the CIS operator should suspend valuation and dealing in the units in the scheme (CIS Code, Chapter 6—paragraph 6.4(h)).

The CIS operator is responsible for keeping books of account of the scheme in a manner that will sufficiently explain the transactions and financial position of the scheme and enable them to be properly audited. The trustee is responsible for causing those accounts to be audited. [SF(CIS)R Regulation 8(2)(a)(v) and 8(2)(b)(ii)]. Auditors, in the exercise of their professional duties in accordance with the SSA (or the equivalent standards), check the valuation of the scheme's assets during the course of a routine audit to verify assertions such as valuation and accuracy. Auditors generally sample over a period of time.

The CIS operator is required to issue, redeem or repurchase units in the scheme at a price arrived at by dividing the NAV of the scheme by the number of units outstanding. The price of units may be adjusted by adding or subtracting, fees and charges, in compliance with the scheme's prospectus or trust deed (SF(CIS)R Regulation 8(2)(ii); CIS Code Chapter 6—paragraph 6.4). The CIS operator is required to publish the value of a unit of the scheme at least once every dealing day (CIS Code, Chapter 6—paragraph 6.4(k)). The prospectus must state where investors may obtain the buying and selling prices of units in the scheme (e.g., website, newspapers) and the dealing days to which the prices apply. Where prices are available from Singapore publications or media, the prospectus must also state the names of such publications or media (SF(CIS)R Third Schedule, paragraph 42). In practice, the prices of all authorized CIS are published at least weekly in the local newspapers and daily on the websites of the CIS operators or distributors.

In carrying out their respective duties, the trustee and the CIS operator should have proper systems in place for the pricing process (such as reconciliation of prices) and to identify and rectify any pricing errors. The relevant requirements concerning valuation

	<p>and pricing (as set out above) are required to be set out in the scheme’s trust deed as binding covenants that the CIS operator and the trustee must satisfy at all times. Under SF(CIS)R Regulation 10, any CIS operator or trustee who fails to comply with these covenants will be guilty of an offense and shall be liable on conviction to a fine not exceeding \$50,000. MAS also has the power to issue directions by notice in writing to the CIS operator and trustee of a scheme where it appears to be necessary or expedient in the public interest to do so (section 293 of the SFA).</p> <p><b>Pricing errors</b></p> <p>When a CIS operator becomes aware of an error in the calculation of the scheme’s NAV per unit, it is required to notify MAS as well as the trustee. A revised valuation should be performed, by the person responsible for the valuation, for each valuation date during the period of when the error occurred to ascertain the size of the error. Where the valuation error represents 0.5 percent or more of the scheme’s NAV per unit after adjustment for the error, the CIS operator is required to compensate (i) affected participants; and (ii) the scheme, for any losses incurred as a result of the valuation error. The CIS operator need not make any compensation if the valuation error represents less than 0.5 percent of the scheme’s NAV per unit. However, if the CIS operator chooses to compensate one or more participants, the CIS operator must compensate all other participants in the scheme on the same basis. The trustee would have to notify MAS when the manager has satisfactorily completed such compensation (CIS Code, Chapter 6—paragraph 6.5).</p> <p><b>Suspensions/terminations</b></p> <p>A CIS operator may suspend the issue or redemption of units in an authorized scheme in exceptional circumstances, which must be disclosed in the prospectus of the scheme (SF(CIS)R Third Schedule, paragraph 43,) if the operator believes that suspension is in the best interest of participants. The suspension should cease as soon as practicable when the exceptional circumstances cease to exist, and in any event, within 21 days of the commencement of the suspension. The suspension may only be extended if the CIS operator satisfies the trustee that the extension is in the best interest of participants. Any such extension is subject to weekly review by trustee CIS Code, Chapter 6—paragraph 6.2(a) and (c)</p> <p>The CIS operator is required to notify MAS of a suspension of a scheme and the reasons for the suspension. The operator and the trustee are required to keep the position under review. The trustee is required to notify MAS once dealing in units of the suspended scheme resumes. (CIS Code, Chapter 6 - Paragraphs 6.2(b) and 6.3). MAS has various regulatory tools and legal powers to deal with such situations as discussed above, including the power to issue directions or take enforcement action.</p>
Assessment	Fully Implemented
Comments	MAS has robust requirements for requiring the disclosure of the valuation of assets of

	<p>CIS, and any changes in valuation methodology and the calculation of pricing and redemption of units. The obligations it imposes on CIS operators (and trustees) in the mechanisms they must adopt to make such valuations appear rigorous and include provisions in the difficult area of the pricing of unquoted or illiquid assets. These include the tests that must be applied when selecting third party valuers. On this last point, in view of the possibility of conflicts of interest and abuse when pricing such assets, as demonstrated by cases in other jurisdictions, MAS should consider reviewing current market practice and, based on its findings, consider whether enhancements to the regulatory requirements are necessary.</p>
<b>Principle 28.</b>	<p>Regulation should ensure that hedge funds and/or hedge funds managers/advisers are subject to appropriate oversight.</p>
Description	<p>Fund management is a regulated activity under the SFA. Under the recent changes to the regulations all FMCs in Singapore, including hedge fund managers, are required to possess the requisite authorization from MAS. FMCs may either apply for a CMSL pursuant to SFA section 82 as a LFMC or register with MAS as a RFMC as described in Principle 24. Registration is available as an alternative only if the following conditions are met: the FMC is carrying on the business of fund management in Singapore on behalf of not more than 30 qualified investors, of which not more than 15 are collective investment schemes, closed-end funds, or limited partnerships; total value of assets managed does not at any time exceed \$250 million; the FMC is registered with MAS and the registration is, and continues to be, published on the MAS website.</p> <p>An FMC seeking to be registered as a RFMC is required to comply with the necessary procedures and requirements prior to the commencement of its business in fund management. (paragraph 5(7) of Second Schedules of the SF(LCB)R).</p> <p>The CIS Code defines a hedge fund as:</p> <p style="padding-left: 40px;">a scheme which aims to achieve a high return through the use of advanced investment strategies. In assessing whether a scheme falls within this Appendix, the authority would consider, among other aspects, the following: (a) the use of advanced investment strategies which may involve financial instruments which are not liquid, financial derivatives, concentration of investments, leverage or short selling; Guidance: Advanced investment strategies include market directional, corporate restructuring, convergence trading or opportunistic strategies; and (b) the use of alternative asset classes.</p> <p>If a hedge fund is classified as a CIS, offers of its units are regulated under the SFA. Hedge funds that are authorized or recognized under section 286 or 287 of the SFA must comply with Appendix 3 of the CIS Code, which sets out the requirements for hedge funds. In particular, under Appendix 3 of the CIS Code, a hedge fund sold to retail investors is subject to a minimum subscription requirement of S\$100,000. There are currently no hedge funds available for sale to retail investors in Singapore. The last such of schemes closed at end 2012 having failed to attract investor interest.</p>

If an operator is prepared to limit the investors who may be offered units in its scheme it can notify MAS and if accepted MAS will enter the scheme on a list of restricted schemes. MAS may deny the request. To be entered into the list of restricted schemes administered by MAS, MAS must be satisfied that:

- the manager for the restricted scheme must be appropriately licensed or exempted;
- the manager for the restricted scheme is a fit and proper person; and
- in the case of a scheme constituted as a unit trust, there is a trustee for the scheme approved under SFA section 289.

The operator of a restricted scheme must provide an annual notification to MAS.

Contents are:

- i. Details of Scheme (structure, scheme type, identity of custodian, global AUM, Singapore AUM) and changes thereof,
- ii. Past disciplinary record (e.g., refused license/ registration, censure, suspension, civil proceedings, etc.),
- iii. Past and current financial standing of the operator (whether a receiver/judicial manager has been appointed). MAS has recently introduced a requirement that it, and investors, must receive an initial information memorandum setting out essential features of the scheme as set out under Principle 24 (non-retail cis).

All forms for the application for a CMSL as a LFMC and for registration as a RFMC are available on the MAS website. The forms clearly state the information required for MAS to assess the application, including information on areas such as:

- applicant's business to be carried out, business plans (indicating the type of fund management activity, the investment strategy or focus, estimated clientele spread, estimated assets under management, approach in handling of customers' moneys and assets, key service providers, areas of conflicts of interests); and
- applicant's directors, key officers, organization structure, shareholders; and audited balance sheet and financial information.

Regulation 13A(1) of the SF(LCB)R imposes significant organization and conduct requirements on LFMCs whether the funds are hedge funds, other CIS or other forms of fund management calibrated to the nature of its business. A LFMC shall, among other requirements:

- put in place a risk management framework that identifies, addresses and monitors the risks associated with assets under its management which is appropriate to the nature, scale and complexity of the assets;
- subject assets under its management to independent valuation for the purpose of determining their respective net asset values;

- segregate assets under management from the proprietary assets of the LFMC and maintain them in a trust account or custody account;
- accord priority to transactions done on behalf of customers; and
- mitigate conflicts of interest arising from the management of assets and where appropriate, disclose such conflicts of interest to the customer concerned.

For RFMCs, similar obligations apply, imposed via regulation 54A of the SF(LCB)R, which imposes various SFA and SF(LCB)R requirements on RFMCs. These include provisions under regulation 13A as well as regulations pertaining to:

- Keeping of books, furnishing of returns and handling of customer assets; and
- Appointment of auditors and lodgement of annual accounts.

MAS also conducts an annual survey to collate information on hedge funds' financial positions, including exposure to counterparties, derivative positions, etc.

#### **Risk warnings and other information**

When a prospectus is required to market a hedge fund, and the manager is domiciled in Singapore even if the fund is constituted overseas, the cover page of the prospectus must clearly state the following:

- that unlike other types of collective investment schemes, the CIS Code does not prescribe investment guidelines for hedge funds;
- that an investment in the hedge fund carries risks of a different nature from other types of collective investment schemes which invest in listed securities and do not engage in short selling; and that the hedge fund may not be suitable for persons who are averse to such risks;
- that in the case where the hedge fund is: (a) not capital guaranteed or capital protected, investors may lose all or a large part of their investment in the hedge fund; or (b) capital guaranteed or capital protected, investors are subject to the credit risk of the guarantor or default risk of the issuer of the securities providing the protection;
- that an investment in the hedge fund is not intended to be a complete investment program for any investor and prospective investors should carefully consider whether an investment in the hedge fund is suitable for them in the light of their own circumstances, financial resources and entire investment program; and
- the frequency of redemption and the period within which realization proceeds will be paid to investors.

Pursuant to Appendix 3 of the CIS Code, the prospectus should also include the following:

- a statement that the manager will ensure that the risk management and monitoring



procedures as well as internal controls are adequate;

- a statement that the manager has the necessary expertise to control and manage the risk;
- the profile and role of the prime broker, if applicable; and
- the material differences between the hedge fund and other types of CIS.

Pursuant to Appendix 3 of the CIS Code, the manager of a hedge fund should also prepare semi-annual and annual audited accounts in the manner prescribed by the Institute of Certified Public Accountants in RAP 7: Reporting Framework for Unit Trusts, as well as quarterly reports disclosing:

- Qualitative report by the manager providing an overview of the management and investments of the scheme for the past quarter and an investment outlook for the next quarter;
- Performance of the scheme covering the following periods: three-month, six-month, one-year, three-year, five-year, 10-year and since inception of the scheme;
- Various financial metrics such as the Sharpe ratio, annualized standard deviation, highest and lowest Net Asset Value (NAV), fund size, NAV per unit;
- Amount of borrowings and other sources of leverage, holdings which are not liquid, amount of seed money;
- Aggregate exposure of the scheme classified by country, industry, asset class or rating of the debt security (if applicable) as at the end of the period under review; and
- Basis of calculation, definition and any assumptions used, wherever appropriate.

Non-retail CIS are required to provide the disclosure set out under Principle 24.

### **Prudential regulation**

The applicable base capital for FMCs, as set out in the First Schedule to the SF(FMR)R, is S\$250,000 for LFMCs serving only accredited or institutional investors and S\$1,000,000 for LFMCs serving retail investors plus a risk based capital requirement which applies to both. With regard to RFMCs, (which have restricted scope) the requirement is just for the base capital requirement of \$250,000. The risk based element is an operational risk requirement based on revenues in line with the Basel II provisions. Regulation 14 of the SF(FMR)R states that, where a LFMC's FR fall below 120 percent of its Total Risk requirement (TRR), it must immediately notify MAS, whereupon MAS may issue directions to the CMSL holder to, among other things, cease fund management activity

	<p>or transfer all or part of any customer’s assets and accounts to one or more other CMSL holders. MAS may also revoke the license of the CMSL holder. A fuller description of the MAS capital requirement for financial intermediaries including fund managers is found under Principle 30.</p> <p><b>Supervision and enforcement</b></p> <p>The LFMC or RFMC, including those that manage hedge funds, must continue to meet the relevant regulatory requirements. If an entity fails to meet these requirements or is otherwise in breach of the law, regulations, etc. MAS has a range of actions it may take as discussed above under Principle 11 and elsewhere.</p> <p><b>International cooperation</b></p> <p>As described under Principles 13–15 MAS has wide ranging powers to request information from FMCs for any purpose, including that of assistance to a foreign regulator. In particular, MAS has the authority to obtain and share with foreign regulators public and non-public information on issues related to investigations and the enforcement of securities laws, or to enable the foreign regulator to carry out supervision and fulfil its regulatory functions, if it is satisfied that the information requested is necessary for the foreign regulator's purpose. Other preconditions for assistance include the gravity of the matter and that rendering assistance is not contrary to public interest. MAS already regularly furnishes information to foreign regulators in response to, among other things, requests under the IOSCO MMOU. The powers provide for MAS to exchange information with other regulators, on such timing or frequency as may be required. The powers to request information apply in respect of any form of information, including non-public information.</p>
Assessment	Broadly implemented
Comments	<p>As set out in Section VI(B) of this report 10 percent of the restricted schemes notified to MAS have been identified by MAS as hedge funds.<sup>44</sup> A total of S\$60.9 billion in AUM, defined by MAS as hedge funds are managed in Singapore. There are currently no retail hedge funds CIS offered to retail investors in Singapore. MAS processes and requirements appear to meet the standards set out for hedge funds under Principle 28.</p> <p>The reason for the minor downgrade is that, as commented upon in Principle 24, while the regulatory requirements enable MAS to be well informed and it exercises a rigorous gatekeeper function, ongoing supervision has some vulnerability in the area of onsite inspections. Also as recommended in Principle 24, it might also be appropriate to consider whether any hedge fund operators rated below High Risk in the risk based supervision framework should be up-rated.</p>

<sup>44</sup> This is based on close to 80 percent responses to MAS’ recent survey.

<b>Principles for Market Intermediaries</b>	
<b>Principle 29.</b>	Regulation should provide for minimum entry standards for market intermediaries.
Description	<p><b>Services and activities subject to registration and entities that can conduct them</b></p> <p>Unless exemption applies (see below), market intermediaries that undertake securities business must be licensed. A person who carries on business in any regulated activity under the SFA and the FAA is required to hold a CMS license and a FA license respectively (SFA section 82, FAA section 6).</p> <p>The SFA or the FAA applies depending on the regulated activities performed. The CMS license or FA license that is issued to the intermediary will specify the regulated activities it is allowed to conduct.</p> <p>The regulated activities which are subject to licensing (SFA and FAA Second Schedules) are:</p> <ul style="list-style-type: none"> <li>• Activities under the SFA: <ul style="list-style-type: none"> <li>○ dealing in securities;</li> <li>○ trading in futures contracts;</li> <li>○ leveraged foreign exchange trading;</li> <li>○ advising on corporate finance;</li> <li>○ fund management;</li> <li>○ real estate investment trust management;</li> <li>○ securities financing;</li> <li>○ providing credit rating services; and</li> <li>○ providing custodial services for securities.</li> </ul> </li> <li>• Activities under the FAA: <ul style="list-style-type: none"> <li>○ advising others, either directly or through publications or writing, concerning any investment product;</li> <li>○ advising others by issuing or promulgating research analyses or research reports concerning any investment product;</li> <li>○ marketing of any collective investment scheme; and</li> <li>○ arranging of any contract of insurance in respect of life policies, other than a contract of reinsurance.</li> </ul> </li> </ul> <p>In addition, representatives of a holder of CMSL or FAL must be registered by MAS for the specific regulated activities they intend to carry out (SFA section 99B and FAA section 23B). Once approved, the names and the type of regulated activities of individuals who are authorized/appointed to act as representatives for the intermediary will be available on the public Register of Representatives on MAS' website.</p>

**Licensed entities**

MAS operates a single licensing regime under which an intermediary needs to only hold a single license as a CMSL or FAL, unless exempted. The legislative framework is designed to provide a single, modular licensing model for consistency in requirements and uniform standards across institutions.<sup>45</sup>

As at December 31, 2012, the total number of market intermediaries supervised by MAS was 1110, however in practice there are seven classifications of intermediaries that comprise this total:

- 273 CMSL holders;
- 62 FAL holders;
- 23 Registered fund managers;
- 517 Exempt fund managers;
- 128 banks and insurers conducting SFA/FAA activities;
- 83 Exempt corporate finance advisers; and
- 24 Exempt financial advisers.

The exempt fund managers are progressively becoming registered fund managers.

A CMSL is only granted to a corporation. Any individual wishing to act as a representative to conduct a licensed activity for a CMSL holder needs to be registered by MAS. Any corporation which carries on the business of providing any of the financial advisory services under the FAA requires an FA license unless it is otherwise exempted. Any individual who provides financial advisory services on behalf of a licensed FA must be registered by MAS.

In the case of corporate finance advisers, corporations that comply with all licensing requirements other than the corporate track record requirement (see Guidelines on criteria for the grant of a CMS license) could be licensed to carry out a limited scope of advisory activities under the Boutique Corporate Advisor Scheme (BCF), however these are small in number and there have been no applications in the last three years. Eligibility requirements including majority shareholding by management staff, key officers located

<sup>45</sup> The holder of a CMS license does not need to hold a separate FA license for the provision of financial advisory services. The carrying on of financial advisory services by the CMS license holder is nonetheless subject to business conduct rules under the FAA.

in Singapore, management expertise criteria, maintenance of professional indemnity insurance, and financial and reporting requirements all apply.

### ***Exemptions from holding a license***

Banks, merchant banks, finance companies and insurance companies are exempt from holding a CMSL and/or an FAL because MAS already regulates them under separate legislation (Banking Act and the Insurance Act) (SFA section 99, FAA section 23). Representatives of these market intermediaries are required to be registered with MAS as either an appointed, temporary or provisional representative on the public Register of Representatives. Representatives exempted from such registration with MAS are those acting on behalf of exempt persons (e.g., the Exempt corporate finance advisers—SF(LCB)R regulation 14(1), and the Exempt financial advisers—FAR regulation 27(1)), those acting on behalf of CMS license holders which provide securities financial or custodial services (SF(LCB)R, paragraph 8 of 2<sup>nd</sup> Schedule). Banks, merchant banks, finance companies, and insurance companies, although classified and referred to as “exempted” in this context,<sup>46</sup> are only exempted from the requirement to obtain a CMSL and/or an FAL. They must comply with similar business conduct requirements that apply to licensees in those categories. This is achieved by legislation (SFA section 99(4) and FAA section 23 (4)) and by way of regulations and notices as conditions and restrictions imposed which the exempt entity or person must comply. Accordingly, MAS has the same powers and supervision responsibilities in respect of them as if they held a CMSL and/or FAL for the activity conducted.

### ***Foreign firms***

There are no restrictions preventing foreign firms from operating in Singapore or limiting the type of business they can conduct because of their “foreign” origin. However since 2007, there have been no licensees granted to foreign firms to provide financial services via a branch (except as a bank). MAS states that it has not prohibited foreign firms from setting up branches but as a matter of practice it has not allowed branches unless the applicants can satisfy MAS that the branch in Singapore would be subject to proper management oversight and be able to comply with all regulations governing its operations. The policy was taken in 2006, and the last branch to be granted a license was in early 2007. There are, however, 11 CMSL and 2 FAL holders that were in operation before 2007 as branches in Singapore. In respect of these branches, they are required to maintain “internalized” capital in Singapore (but in the same form and amount as incorporated licensees).

The home jurisdiction of the branch must be of a satisfactory equivalent regulatory standard in respect of these firms. As in the case for all licensees incorporated in

<sup>46</sup> Exemptions from compliance with legislation and directions may be granted by MAS under SFA section 337.

Singapore, the firm must operate out of a physical office in Singapore (Guidelines on criteria for the grant of a CMS license, paragraph 3.6), its CEO must be resident in Singapore (paragraph 3.11) and it must be primarily engaged in the business of conducting any one of the regulated activities (paragraph 3.7).<sup>47</sup>

### **Registration requirements**

The requirements that applicants for a CMSL or FAL must meet before a license is granted is articulated in legislation, guidelines and forms.<sup>48</sup> In summary the admission criteria are:

- Base capital;
- Physical presence in Singapore;
- Track record;
- Directors and officers minimum experience;
- Minimum number of representatives;
- Parent and major shareholders home country supervision;
- Compliance and management functions;
- Management of conflicts of interest;
- Fitness and propriety;
- Financial soundness;
- Viable business plan; and
- Professional indemnity and undertakings by parent or substantial shareholders.

Applicants must also pay the prescribed fee.

In reviewing applications, MAS considers whether the licensing criteria have been

<sup>47</sup> While this discussion refers to the regulation of branches, the same requirements apply to licensing foreign firms that operate through subsidiaries in Singapore as for any other applicant.

<sup>48</sup> See Guidelines on Criteria for the Grant of a Capital Markets Services License or a Financial Adviser's License, Guidelines on Fit and Proper Criteria, and FAQs. Information on the applicant, its shareholders, its directors and its key officers required for MAS' assessment against the admission standards and "fit and proper" criteria is prescribed in Form 1 regulation 6A of the SF(LCB)R and regulation 7 of the FAR. Information on the CEO, directors and key officers of the applicant required for "fit and proper" assessment is prescribed in Form 11 regulation 12 of the SF(LCB)R and regulation 13 of the FAR.

properly met including:

- whether the applicant or its officers, employees and shareholders are fit and proper persons (e.g., past performance and regulatory track record, relevant qualifications and experience, honesty, integrity and reputation, competence and capability, and financial soundness);
- whether there are circumstances which are likely to lead to improper conduct of business by the applicant, any of its officers, employees or shareholders (SFA Section 86 and FAA section 9);
- whether applicants meet the minimum base capital as set out in the First Schedule, SF(FMR)R and regulation 15 of the FAR, as the case may be;
- whether the applicant has adequate internal compliance systems and processes that are commensurate with the size and complexity of its business to ensure compliance with the law, good practices and professional standards;
- information on the organizational structure and key internal control procedures of the applicant and that the applicant has adequate means and resources of supervising its employees and representatives; and
- any potential conflicts of interest highlighted and the detailed explanation of how such conflicts will be resolved and mitigated.

In terms of key appointment holders, SFA section 96 and FAA section 56 require a licensed intermediary to seek MAS' prior approval for the appointment of its CEO or director in Singapore. SFA section 97A and FAA section 57A require any change in substantial shareholder to seek MAS' prior approval. SFA Section 99B and FAA section 23B also require the intermediary to register its representatives with MAS prior to commencement of any regulated activities.

#### **Registration process**

MAS has documented internal procedures and approval protocols for the review of license applications. All CMSL and FAL applications are assessed by supervisory teams in the CMG that also undertake the ongoing supervision of the applicant to ensure effective follow-through of any supervisory issues. Rotation of the teams members are undertaken from time to time.

Each application is first processed by a designated officer and reviewed by a team leader and then a division head. All applications are approved by the department head after which an in principle approval subject to the satisfaction of conditions will be issued to the license applicant. On satisfaction of the conditions for licensing, the relevant license will be issued. If the department head assesses any application to not fully meet all the admission criteria, the case would be reviewed at the MFSC (a weekly forum chaired by the DMD of Financial Supervision and attended by senior staff and heads of supervisory,

policy and surveillance departments). Usually applicants that do not meet the required standards will withdraw their applications. To date only one formal case of rejection occurred and the rejection was upheld on appeal. If an application is to be rejected, MAS will provide the applicant with written reasons for its decision so that the applicant may exercise its legal rights to contest its decision. Applicants aggrieved by the refusal of MAS to grant (or vary revoke or suspend) a license may within 30 days appeal the decision to the minister (SFA section 98). Judicial review is available to the applicant aggrieved by an adverse decision of the minister, however that is not a review based on the merits of the application. As is usual under administrative law, to successfully challenge a decision the applicant will have to prove denial of due process or procedural fairness occurred.

The status of each application is reported to MFSC quarterly. MAS tracks the time taken to process applications and strives to process applications which are in order and meet the admission criteria within 12 weeks. The timeline will be longer for applications that are incomplete or which require more detailed discussions between MAS and the applicant.

Key processes in the review of applications include conducting:

- regulatory screening checks with other local and foreign authorities for fit and proper assessment of the applicants (and its shareholders, directors or key officers);
- interviews with the management of the applicant and an onsite review at the applicants premises either before or within a short period after the license is granted; and
- Follow up visits or risk based inspections are also undertaken.

MAS recently launched the Corporate E-Lodgement system (CeL) to enable online submission of application forms for license applications from fund managers. The CeL utilizes interactive PDF forms with guidance notes to applicants on how to fill out the forms and built-in validation checks to ensure completeness of the forms prior to submission.

#### **Powers of MAS over securities intermediaries**

MAS has power to refuse the grant of a CMSL or FAL (SFA section 86 and FAA section 9). MAS may refuse the application if, inter alia:

- the applicant or its substantial shareholders is in the course of being wound up or otherwise dissolved;
- the applicant or its substantial shareholders, or any officer has been convicted of an offense involving fraud or dishonesty or the conviction for which involved a finding that it or he has acted fraudulently or dishonestly;



- the education or other qualification or experience of the officers or employees of the applicant in relation to the nature of the duties they are to perform in connection with the holding of the license is not satisfied;
- the applicant or its officers, employees and substantial shareholders are not fit and proper persons;
- the applicant or its substantial shareholders have weak financial standing;
- the applicant does not have past performance records or expertise of the regulated activity the applicant is applying for; or
- there are circumstances which are likely to lead to improper conduct or reflect discredit on the manner of the conduct of business by the applicant, any of its officers, employees or substantial shareholders.

MAS has power to refuse senior management appointments (SFA section 96 and FAA section 56). Grounds of refusal include:

- the appointee is an undischarged bankrupt;
- a prohibition order has been made against the appointee; or
- the appointee has been convicted of an offense involving fraud or dishonesty and punishable with imprisonment for a term of three months or more.

MAS has power to refuse the appointment of any representative by the licensed intermediary to conduct regulated activities, if inter alia:

- the appointee is an undischarged bankrupt;
- the appointee has a judgment debt which has been returned unsatisfied in whole or in part;
- the appointee has been convicted of an offense involving fraud or dishonesty, or has been convicted of an offense under the FAA/SFA;
- the minimum education or other qualification or experience of the appointee having regard to the nature of the duties he is to perform in relation to the regulated activities is not satisfied; or
- the appointee is not a fit and proper person (section 99M of the SFA and section 23J of the FAA).

MAS may vary or impose conditions or restrictions on a licensed intermediary under SFA (section 88(2)) and FAA (section 13(3)). MAS may also issue written directions setting out specific requirements to be complied with by a licensed intermediary (SFA section 101

and FAA section 58).

MAS may suspend or revoke the CMS license or FA license (SFA section 95 and FAA section 19). MAS may revoke a CMSL or a FAL if:

- there exists a ground on which MAS may refuse an application;
- the CMS licensee or FA licensee fails to carry on business in all the regulated activities for which it was licensed;
- MAS has reason to believe that the CMS licensee or FA licensee, or its officers or employees, has not performed its or his duties efficiently, honestly or fairly;
- the CMS licensee or FA licensee has contravened any condition, restriction or written direction issued to it by MAS, or any provision of the SFA/FAA;
- the CMS licensee or FA licensee has failed to satisfy any of its obligations under or arising from the SFA/FAA, or any written direction issued to it by MAS;
- the CMS licensee or FA licensee is carrying on business likely to be detrimental to its clients or contrary to public interest;
- the CMS licensee or FA licensee fails to pay license fees;
- a prohibition order has been made against the CMS licensee or FA licensee;
- the CMS licensee or FA licensee, or any of its officers or employees, has not performed her or his duties efficiently, honestly or fairly;
- MAS has reason to believe that the CMSL or FAL holder has not acted in the best interest of the clients; or
- the CMS licensee or FA licensee has furnished false or misleading information to MAS.

MAS may remove an officer of a licensed intermediary (SFA section 97 and FAA section 57) if the officer has failed to discharge the duties or functions of his office, or willfully contravened the SFA/FAA, or is not a fit and proper person for such office. MAS may vary or impose conditions or restrictions on an appointed representative (SFA section 99N and FAA section 23K). MAS may suspend or revoke the appointed status of the representative (SFA section 99M and FAA section 23J).

### **Material changes**

Under the license conditions imposed, licensed intermediaries are required to report any change in circumstances or seek approval from MAS of matters which may materially affect the ability of the intermediary to carry out its regulated activities in a sound and

proper manner, including:

- any change in shareholding of the licensed intermediary;
- any resignation of its CEO or directors;
- when it becomes aware (a) that it or any of its officers has become the subject of an investigation or legal proceedings; (b) of any offense committed by or disciplinary action taken against it or any of its officers; (c) of any breach of law and regulatory requirements; or (d) of any other matter that would affect its or any of its officers' ability to meet the fit and proper requirements;
- any matter which may adversely affects its financial position to a material extent;
- any purchase, sale or merger of any part of its regulated business;
- when it has fewer than two full-time representatives in respect of the regulated activities it conducts. (SFA section 88(1) and FAA section 13(2)).

The licensed intermediary must notify MAS of any change in information required to be kept in relation to the licensed intermediary, including its corporate name, address of the principal place of business, the scope and type of regulated activities to which its license relates, or any cessation of regulated activities (SFA section 93 and FAA section 18).

Apart from periodic statutory returns required (SF(FMR)R regulation 27 and FAA section 45), the licensed intermediary is also required to notify MAS immediately if it breaches any financial regulatory thresholds (e.g., base capital requirements).

Any change in shareholding that would result in a person obtaining effective control of the licensed intermediary requires the prior approval of MAS (SFA section 97A and FAA section 57A). MAS may issue a written notice of objection requiring the shareholder to cease effective control of the licensed intermediary (SFA section 97B and FAA section 57B).

MAS has power to prevent a person that does not meet the fit and proper requirements from performing regulated activities (SFA section 101A and FAA section 59 set out the circumstances under which MAS may issue a prohibition order against a relevant entity or person, whether permanently or for a specific period of time, from conducting any regulated activity, taking part in the management of, or acting as a director of, or becoming a substantial shareholder of a licensed or exempt intermediary).

CMS licensees and FA licensees are required under their license conditions, to notify MAS of any other changes to their shareholdings and business activities.

	<p><b>Publicly available information</b></p> <p>The Directory of Financial Institutions on the MAS website contains the names of all licensed intermediaries, the names of their senior management, the activities the intermediary is permitted to carry on. The names of those exempted from licensing are also listed.</p> <p>The names and the types of regulated activities of individuals who are authorized/appointed to act as representatives for the intermediary, as well as their regulatory status (including whether they are suspended or prohibited from carrying on regulated activities) are available on the public Register of Representatives on MAS' website.</p> <p>Enforcement actions taken against financial institutions and representatives are published on the MAS website however, not all actions are published. The published policy of MAS is not to disclose dealings with individual institutions where they are best dealt with in confidence or if the disclosure of regulatory actions is unfair or unduly prejudicial to the subject of the action to do so (MAS Approach for Publishing Market Conduct Regulatory Actions—November 9, 2004). However, the MAS policy with respect to reprimands for breaches of market conduct requirements is to publish them, including the circumstances justifying reprimands. Compositions and prohibition orders for breaches of market conduct requirements are also published.</p> <p><b>Investment advisers</b></p> <p>Market intermediaries and investment advisers are regulated according to the types of regulated activities they conduct. Regulatory requirements on record keeping, disclosure and management of conflicts of interest (see Principle 31) are applicable to both holders of a CMSL and FAL.</p> <p>Under the FAR, investment advisers are not permitted to handle client assets unless otherwise provided for. Under FAR (regulation 19), an investment adviser that distributes CIS , is only allowed to receive client money in the form of checks made payable directly to the provider of the collective investment scheme or custodians authorized by the client. The check must be handed over to the provider of the CIS or authorized custodians not later than the next business day. As a FAL holder, such investment advisers are subject to inspections by MAS and other applicable regulatory requirements under the FAA.</p>
Assessment	Fully Implemented
Comments	Given the wide scope of power that MAS may exercise against an intermediary and the range of sanctions available, MAS should consider reviewing its policy regarding publication of actions taken against intermediaries under. MAS Approach for Publishing Market Conduct Regulatory Actions—2004. IOSCO expectations support full transparency of regulatory actions, particularly on enforcement matters. Investors should know about problems with the behavior of intermediaries in the marketplace. Private

	sanctions should not be applied except in extraordinary cases. The normal process should be to publicly disclose all actions.
<b>Principle 30.</b>	There should be initial and ongoing capital and other prudential requirements for market intermediaries that reflect the risks that the intermediaries undertake.
Description	<p><b>Minimum capital requirements</b></p> <p><i>CMSL</i></p> <p>CMS licensees are required to meet a base capital requirement (imposed as a fixed capital requirement) and a financial resources requirement (imposed as a dynamic capital requirement) under the SF(FMR)R. The base capital requirement<sup>49</sup> serves an entry requirement and is included in the financial resources of the CMS licensee used to meet the financial resources requirement. The base capital requirement must be met at all times and varies based on the regulated activities conducted by the CMS licensee from \$250,000 to \$5 million (SF(FMR)R First Schedule). Subordinated debt is not permitted for this purpose.</p> <p>The financial resources requirement is a risk-based and liquidity-adjusted requirement, meant to absorb potential losses as a going concern.<sup>50</sup> CMS licensees are required to hold sufficient financial resources, taking into account illiquidity adjustments, to meet their total risk requirements.</p> <p>CMS licensees that are members of an approved exchange or DCH also have to comply with an aggregate indebtedness requirement in addition to the base requirement and the financial resource requirement under the SF(FMR)R. The base capital, financial resources and aggregate indebtedness requirements are imposed on these members firms under the rules of the exchange. This has been in effect since the 1980s. In practice there is a duplication of prudential obligations for these members, since both MAS and the exchange have jurisdiction to impose, monitor and deal with a breach of the requirements. Both the MAS and exchanges may, however impose higher capital requirements when it considers a CMS licensee or member, as the case may be is subject to higher risks (e.g., SGX imposes a higher base capital requirement on a clearing</p>

<sup>49</sup> Base capital is the sum of:

- (a) paid-up ordinary share capital, paid-up irredeemable and non-cumulative preference share capital, reserve fund and unappropriated profit or loss, as reflected in the latest audited accounts of the CMS licensee; less
- (b) any interim loss in the latest accounts of the CMS licensee and any dividend that has been declared since the latest audited accounts of the CMS licensee.

<sup>50</sup> The financial resources requirement has been designed by taking reference from the capital standards under the Basel framework while taking into account the differences between CMS licensees and banks. Similar to the capital standards under the Basel framework, the financial resources requirement for CMS licensees aims to ensure that capital market intermediaries maintain capital commensurate with their risk profiles and scale of activities. Credit risks, market risks and operational risks, which are addressed under Pillar 1 of the Basel framework, are similarly addressed under the financial resources requirement for CMS licensees. Adjustments are made, for example, given the liquidity needs of CMS licensees which engage in broking activities, non-current assets are required to be deducted in determining the CMS licensees' financial resources.

member which clears both its securities and futures markets). The exchanges do impose a higher early warning notification obligation.

For CMS licensees that are licensed to deal in securities or trade in futures contracts, but are not members of an approved exchange or DCH, or to carry out leveraged foreign exchange trading, an adjusted net capital (ANC) requirement, instead of the financial resources requirement, applies. The ANC requirement is a risk- and liquidity-adjusted measure. ANC is the excess of current assets over liabilities less regulatory deductions for availability, valuation and liquidity of assets. Under the ANC requirement, CMS licensees must ensure that their net capital funds are sufficient to meet the minimum ANC requirement. The net capital funds are calculated after making various adjustments for risks arising from the business (e.g., market risk through deductions of the excess of the book value over the market value of securities held.<sup>51</sup> credit risk through deductions in respect of under-margined futures accounts, and liquidity risk through deduction of non-current assets and unsecured loans) of CMS licensees.<sup>52</sup> Besides these adjustments, the minimum ANC requirement in respect of CMS licensees to trade in futures contracts or carry out leveraged foreign exchange trading is also a percentage of the maintenance margins<sup>53</sup> of customer transactions, and varies with the amount of business undertaken.

MAS recently completed a review of the capital requirements for CMS licensees. The revised framework commenced on April 3, 2013 with a two-year transition period (amendments to the SF(FMR)R and SFA Notice SFA04-N13 on Risk Based Capital Adequacy Requirements for Holders of CMS licensees). Under this new regime the financial resources requirement will be applied to all CMS licensees and the ANC requirement will no longer apply.

#### **FA licensee**

The minimum paid-up capital required of FA licensees depends on the types of financial advisory services provided and is set at S\$150,000 or S\$300,000 (FAR (Regulation 15)).

MAS has recently issued a consultation paper to the industry on a proposal to revise the minimum capital and ongoing financial requirements for FA licensees. The proposed requirements, which include accounting for capital erosion and illiquid assets, are intended to better address liquidity and solvency risks.

<sup>51</sup> Thus the book value of the securities is not taken into account in determining whether the CMS licensee complies with the ANC requirement. This is because any excess of the book value over the market value of securities is required to be deducted in determining the net capital funds of the CMS licensee.

<sup>52</sup> The net capital funds of the CMS licensee are the excess of its current assets over all liabilities. For a CMS licensee subject to the ANC requirement this is computed by taking its shareholders' funds and deducting non-current assets and unsecured loans (including unsecured loans included in the current assets of the CMS licensee, and unsecured loans made to related entities). Further, the CMS licensee is required to maintain a minimum level of net capital funds. The deduction of non-current assets and unsecured loans serves to address liquidity risk. With effect from April 3, 2013, the financial resources requirement will be applied to all CMS licensees, and the ANC requirement is no longer applicable.

<sup>53</sup> The maintenance margin requirement is required by the exchange or the CMS licensee's clearing broker.

**Risks*****CMS license***

The financial resources requirement is adjusted for liquidity and varies according to the business risks undertaken by CMS licensees. CMS licensees need sufficient financial resources<sup>54</sup> to meet their TRR, which includes credit and affiliate risk. The TRR as defined comprises the following categories:

- Counterparty Risk Requirement (CRR)—that addresses the risk of loss associated with settlement failure or the possibility that a counterparty of the CMS licensee may default on its contractual obligations, in whole or in part (generally 8 percent of risk-weighted exposure);
- Position Risk Requirement (PRR)—that addresses the risk of loss from an adverse movement in the market value of the financial instruments held by the CMS licensee (factor of holding);
- Large Exposure Risk Requirement—that addresses the risk of loss arising from concentrated exposure to a single counterparty (exceeding 20 percent of financial resources) or single issuer (exceeding 10 percent of financial resources or percentage of issue size—the limits are based on the CMS licensee’s financial resources or the issue size, not average aggregate resources or AAR);
- Underwriting Risk Requirement—that addresses the risk associated with exposures assumed by the CMS licensee as a result of its underwriting commitments (percentage of exposure depending on the type of security underwritten);
- Operational Risk Requirement (ORR)—that addresses the risk of loss arising from the CMS licensee’s operations, such as deficiencies in the licensee’s control systems or legal and other risks that may arise from its operations (percentage of gross income); and
- Such other requirement as may be imposed by MAS on the CMS licensee.

The firm must have financial resources equal to at least the sum of these requirements.

CMS licensees that are members of an approved exchange or DCH must also meet an aggregate indebtedness requirement. (This requirement limits leverage by these CMS

<sup>54</sup> "Financial resources" is defined as:

(a) the sum of base capital, paid-up irredeemable and cumulative preference share capital, paid-up redeemable preference share capital, revaluation and other reserves, and interim unappropriated profits, less

(b) certain required deductions, such as intangible assets, non-current assets, capital investments in subsidiaries and associates, and unsecured loans made by the CMS licensee.

licensee). Aggregate indebtedness of a CMS licensee is not permitted to exceed 1,200 percent of its aggregate resources. Aggregate indebtedness<sup>55</sup> refers to the liabilities of the CMS licensee, while aggregate resources refer to the excess of the CMS licensee's financial resources after deducting its total risk requirements.

For the ANC requirement various adjustments are made including adjustments for risks arising from the business (e.g., market risk through deductions of the excess of the book value over the market value of securities held, credit risk through deductions in respect of under-margined futures accounts, and liquidity risk through deduction of non-current assets and unsecured loans) of the CMS licensees. Adjusted net capital is the excess of current assets over liabilities less regulatory deductions for availability, valuation and liquidity of assets. Adjusted net capital requirement for dealing in securities is \$250,000. Trading in futures/leveraged forex trading is the higher of \$2 million or a percentage of customers' maintenance margins and customers funds.

#### ***FA licensee***

On an ongoing basis, apart from the minimum paid up capital, an FA licensee's net assets must be at least one-quarter of its relevant annual expenditure of the immediately preceding financial year; or three-quarters of the minimum paid-up capital, whichever is higher (FAR regulation 16).

MAS takes the view that FA licensees pose lower risks than CMS licensees as they do not hold customers' positions and accordingly, FA licensees are required to maintain net asset to address operational risks only.

#### **Reporting of capital adequacy**

All intermediaries are subject to record keeping requirements (SFA section 102 and FAA section 45). They are required to maintain books that will sufficiently explain the transactions and financial position of their business and enable true and fair profit and loss accounts and balance-sheets to be prepared from time to time. MAS may at any time request for the books to be produced.

MAS has power to require regular financial reports from CMS licensees. SGX may also under its rules require additional reporting from members.

#### ***CMS license***

CMS licensees have a statutory obligation to submit returns, using the prescribed forms

<sup>55</sup> For the purposes of computing aggregate indebtedness, total liabilities refer to the total liabilities of the CMS licensee less certain items such as any amount payable on open contracts, any amount payable to a customer in connection with moneys or assets received on account of the customer and maintained in a trust account and any qualifying subordinated loan.



on quarterly and annual basis to provide information on the licensees' financial position and compliance with the capital requirements. The quarterly returns are required to be submitted within 14 days from the end of each quarter and the annual returns within five months from the end of the financial year. The annual returns must be audited and accompanied by an auditor's certification in the prescribed form. CMS licensees are also required to submit their annual audited balance sheet and profit and loss statement, accompanied by an auditor's report in the prescribed form.

CMS licensees who are members of an approved exchange or DCH are also subject to the reporting requirements of the exchange or clearing house e.g., SGX requires returns on a monthly basis, which must be submitted within 14 days from the end of the month.

CMS licensees are required to immediately notify MAS and the approved exchange or DCH of which the CMS licensees are members whenever:

- they fail to comply or become aware that they will fail to comply with the minimum requirement or fall below the early warning level, and
- if any customer account is under margined by an amount that exceeds their aggregate resources.

CMS licensees are also required to notify MAS of any adverse developments in their financial condition. There is an early warning level requirement to give immediate notice when financial resources < 120 percent of total risk requirement. MAS may take specific actions (e.g., restricting the scope of business) against such CMS licensees.

For CMS licensees that are members of an approved exchange or DCH an early warning level requirement applies at 600 percent of aggregate resources. CMS licensees who exceed this warning level are required to notify MAS and SGX immediately.

The approved exchange or DCH also imposes a higher early warning threshold (at 150 percent of financial resources over total risk requirements) on their members. The approved exchange or DCH may take specific actions against the member, including requiring the transfer of any customer's positions, margin or collateral to another member if the member falls below the warning level. The practice has been that if the early warning level of 150 percent is notified to the exchange, the CMS licensee will notify MAS. For the other early warning of 120 percent, both MAS and the exchange will be notified by the member.

#### ***FA licensee***

An FA licensee is required, under one of its license conditions, to immediately inform MAS of any matter which may adversely affect its financial position to a material extent.

FA licensees must submit prescribed forms to MAS on an annual basis (FAR Regulation 23(1)(b)). One form requires a detailed breakdown of the FA licensee's revenue and expenses, for example, fees/commission earned from each type of financial advisory service, interest income, dividend income, bad debts written off, provision for doubt

debts, and Director's remuneration. Another form requires FA licensees to compute their assets and liabilities to ascertain whether they meet the ongoing regulatory financial requirement.

### **Auditing of financial position**

CMS licensees and FA licensees are required to submit annual audited returns, together with an auditor's certification in the prescribed form. These submissions must be accompanied by the annual audited balance sheet and profit and loss statement,<sup>56</sup> and the auditor's report in the prescribed form. (SF(FMR)R Regulation 27, SFA sections 106, 107, FAA sections 47, 48). Auditors have an obligation to notify MAS of contraventions, adverse financial position or irregularities in the accounts (SFA section 108, FAA section 49).

### **Supervision by the MAS of capital adequacy**

Where a CMS licensee or FA licensee has breached the financial requirements, MAS will follow up with the CMS licensee or FA licensee to ensure that it rectifies any shortfall and assess whether to take regulatory action against the CMS licensee or FA licensee.

For instance, in March 2011, upon notification by a CMS licensee that it had breached the AI/AR<sup>57</sup> requirement, MAS followed up with the CMS licensee on the reason for the breach and rectification action taken. The CMS licensee injected additional capital two days after the breach was discovered. MAS issued a "supervisory warning" for the breach in April 2011.

MAS has the authority to impose enhanced reporting requirements. For example, in view of the increased volatility in Japanese securities and indices following the Japanese tsunami in March 2011, MAS required CMS licensees who were clearing members of the SGX and retail CFD dealers to submit their capital ratios on a daily basis.

MAS relies on its offsite monitoring and the inspection process to identify unaffiliated entities and off-balance sheet risk in addition to<sup>58</sup> monitoring the returns and accounts. MAS is for this purpose authorized to obtain reports, conduct inspections and suspend business operations depending on an adverse outcome of any review of capital of the CMS or FA licensee.

In practice, although fully monitored, capital adequacy compliance is not an issue of concern for MAS as almost all licensees are highly capitalized compared to the base

<sup>56</sup> CMS licensees and FA licensees are subject to SFRS and they submit the full set of financial statements required under the SFRS to MAS.

<sup>57</sup> I.e., the aggregate indebtedness requirement. The requirement is expressed as a percentage of aggregate indebtedness over aggregate resources (i.e., AI/AR requirement).

<sup>58</sup> the returns and accounts provide some information (e.g., Form 1 of the returns provides information on guarantees given in respect of related and unrelated entities, off-balance sheet items are also required to be disclosed in accordance with Singapore Financial Reporting Standards in the annual audited accounts of CMS licensees.

	<p>obligations and the majority maintain buffers above the minimum with low external leveraging due to the practice of reliance on internal funding.</p> <p><b>Powers of the MAS in relation to capital requirements</b></p> <p>In respect of breaches of the requirements, MAS may:</p> <ul style="list-style-type: none"> <li>• allow the licensee to continue to operate its business but subject to such conditions as MAS may impose and/or require the licensee to submit weekly statements and reports on a weekly basis or such other intervals as it may require;</li> <li>• restrict the scope of the licensee’s business, require the business to be operated in a certain manner and under certain conditions, require the transfer of customer’s positions and assets to other licensees, or require additional or more frequent reporting from the licensee;</li> <li>• revoke or suspend the license of a licensee if the licensee fails to meet or continues failing to meet the minimum financial requirements; and</li> <li>• issue a written direction to a licensee with respect to the type and frequency of financial returns and other information to be submitted to MAS.( SF(FMR)R Regulation 4, 6, 7, 16, and 17 , SFA section 101 and FAA section 10(2), 19, and 58).</li> </ul> <p>The policy of MAS is to not publicly disclose capital adequacy breaches of licensees that continue in business.</p> <p><b>Risks from affiliated entities and off-balance sheet activities</b></p> <p>The capital requirements apply to the CMS licensee’s dealings with or exposure to its affiliates. The CMS licensee is required under the financial resources requirement to deduct investments in associates or subsidiaries and all unsecured loans made to other entities, including to affiliates, as illiquidity adjustments in determining the amount of its financial resources.</p> <p>Under the ANC requirement, non-current assets, including investments in associates or subsidiaries classified as non-current and unsecured loans are deducted in determining the net capital fund of the CMS licensee.</p>
Assessment	Fully Implemented
Comments	
<b>Principle 31.</b>	Market intermediaries should be required to establish an internal function that delivers compliance with standards for internal organization and operational conduct, with the aim of protecting the interests of clients and their assets and ensuring proper management of risk, through which management of the intermediary accepts primary responsibility for these matters.
Description	<p><b>Role of management</b></p> <p>The MAS Guidelines on Risk Management Practices—Board and senior management</p>

Oversight set out the roles and responsibilities of the Board of Directors and senior management of financial institutions with respect to corporate governance and sound risk management. The roles and responsibilities are further detailed under the Guidelines for Internal Controls, which state that the Board and senior management should establish policies, procedures and processes to provide reasonable assurance on the safety, effectiveness and efficiency of the institution's operations, the reliability of financial and managerial reporting, and compliance with regulatory requirement.

**Admission**

In the license application, applicants have to satisfy MAS that their management and organization structure are appropriate by submitting information on all directors, key officers and their organization chart depicting reporting lines, compliance structure and other relevant information such as the internal audit function. Applicants are also required to submit details of their internal policies and procedures to demonstrate that they have put in place appropriate and adequate internal controls to comply with the requirements of SFA or FAA, including the oversight of their employees and representatives (SF(LCB)R Form 1 and 1A; FAR Form 1).

**Ongoing supervision**

MAS requires intermediaries to obtain its approval for the appointment of CEOs and Directors,<sup>59</sup> or any change in the nature of their appointments and the broader shareholding structure of intermediaries. For each proposed appointment of CEO or director, the intermediary must disclose to MAS if there are any potential conflicts of interests arising from the appointment, including from the appointee's directorships and shareholdings in other entities. Intermediaries are required to obtain MAS' approval for substantial change in their shareholding structure, to make any acquisition of other companies or setting up of branches. They are also required to notify MAS of any material change in their business models. (SFA, section 97A FAA section 57A, and license conditions) and of the resignation or any change in the nature of appointment or country of residence of the CEOs and directors. (SFA section 96, FAA section 56 and license conditions).

Under the MAS Guidelines on Outsourcing, the intermediary is required to notify MAS of any material outsourcing arrangements and must not engage in outsourcing that compromises or weakens its internal control, business conduct or reputation. (See specific comments below regarding the compliance function). The Board and senior management are also expected to evaluate the risks and materiality of all outsourced functions, and develop and implement policies and procedures to mitigate the risks. The intermediary should also establish a structure for the management and control of the outsourced activity.

<sup>59</sup> Unlike SROs where MAS requires approval for senior executive management to be sought from it.

### **Internal controls and risk management requirements**

The regulations under the SFA and FAA require an intermediary and its CEO/director to implement effective written policies on all operational areas that are commensurate to the scale and complexity of the intermediary. This includes, among other topics, policies and procedures for, accounting and internal controls, internal auditing, and putting in place a compliance function and arrangements (including specifying the roles and responsibilities of officers and employees) to ensure compliance with all applicable laws and rules (SF(LCB)R Regulation 13, 13A, and FAR Regulation 14 and 14AA).

When assessing license applications and conducting periodic onsite inspections and offsite reviews of intermediaries, MAS assesses the adequacy and effectiveness of their internal controls, risk management systems and compliance arrangements, taking into consideration the nature, scale, and complexity of the business. Where there are any control weaknesses identified, MAS requires the intermediary to develop rectification plans and monitors it for proper follow-up and implementation of the plans (including validation by independent parties such as internal auditors or external auditors).

On an annual basis, intermediaries are required to submit to MAS an external auditor's report (in addition to the financial audit) certifying that the external auditor is satisfied with regard to the adequacy and effectiveness of the licensees' internal control systems, having regard to their nature and size of business. The external auditor's report is to include any matters which adversely affects or might adversely affect the financial position of the intermediaries or which would constitute breach of the relevant regulatory requirements that the intermediaries are required to comply with under the relevant act.

The guidelines make the chief executive and directors legally responsible for a failure to discharge the duties of his office which include "*...implemented, and ensured compliance with, effective written policies on all operational areas of the holder, including the holder's financial policies, accounting and internal controls, internal auditing and compliance with all laws and rules governing the holder's operations*" (Regulation 13(a)). Management interviewed by the assessors indicated that this legal liability weighs heavily on them as officers.

### **Compliance function**

When assessing license applications, and conducting onsite and offsite reviews of intermediaries, MAS reviews the competence, independence, and work scope of the intermediary's compliance department. This includes an assessment of the compliance department's reports, work programs and working papers to ascertain if the work done is adequate and effective. Although it doesn't approve the compliance staff, it will review their credentials and experience and if these are not adequate in its view, it will make that fact known to the intermediary for attention. MAS' ongoing interaction with the intermediaries' compliance staff on a day-to-day basis also enables it to review the

quality and effectiveness of the compliance function. The compliance function is required to have independent reporting access to the board of the entity and, for higher risk entities, the entity is required to put in place a dedicated compliance function. The adequacy, quality and effectiveness of the compliance function of an intermediary are factored into the annual Common Risk Assessment Framework and Techniques or (CRAFT) assessment of the intermediary.

MAS may also direct the intermediary to engage its internal auditor or an external auditor to assess and confirm that remedial actions taken have been effectively implemented to address the deficiencies identified.

### **Outsourcing**

As stated above, outsourcing of compliance and internal control functions is not prohibited by MAS legislation or guidelines but it applies the benchmark that compliance arrangements and risk management functions must be "*commensurate with the nature, scale and complexity of its business.*" In practice this means that outsourcing for small entities has been permitted and compliance officers in appropriate cases need not be located full time in Singapore. If, however, the intermediary deals with retail clients, outsourcing is not permitted and if the scale of the business demands dedicated full time on site officers outsourcing would be regarded as not fulfilling the obligations in the guidelines.

Licensees are required to establish segregation of staff in the "front" and "back" office. The compliance function may be undertaken by a person whose other functional role does not conflict with that of compliance. In this regard, while the compliance staff are not required to be segregated and dedicated, they must be independent of conflicting roles such as those related to sales or asset management sections. All licensees are required to report immediately to the MAS when there is a breach of the law or regulations detected by the licensee or its directors or officers. In practice such reporting is made by the chief executive and/or head of compliance to the relevant department of MAS.

### **Management of conflicts of interest**

Regulations under the SFA/FAA set out the duties of an intermediary and its CEO/directors, which specifically includes ensuring effective controls and segregation of duties to mitigate potential conflicts of interest that may arise from the operations of the intermediary. (SF(LCB)R Regulations 13 and 13A and FAR Regulations 14 and 14AA).

MAS's assessment may include an assessment of the adequacy and effectiveness of segregation between front and back office functions, proprietary and client trading functions, booking and reconciliation controls, "Chinese walls" between business units with conflicting interests and independence of the compliance function.

In the annual risk-assessment questionnaire (prepared by licensees and used by MAS as

part of its procedures for CRAFT) intermediaries are required to assess and disclose whether the company has proper segregation of duties between functions that pose potential conflicts of interests such as dealing and limit setting, back office and finance as well as between compliance, proprietary trading, corporate finance, and other functions.

MAS guidelines (Guidelines on Risk Management Practices, Guidelines on Standards of Conduct for Financial Advisers and Representatives, Guidelines on Addressing conflicts of interests arising from Issuing Research Analyses) provide specific guidance on its requirements and the segregation controls that FIs should put in place to manage conflicts of interests.

The regulations under the SFA and FAA place the accountability on the intermediary's CEO/director to institute effective controls to address conflicts of interests. All intermediaries have to comply with the license condition that they shall conduct their business in such a manner as to avoid conflicts of interests, and should such conflicts arise, ensure that they are resolved fairly and equitably.

MAS' requirements to have in place policies and procedures to address conflicts of interests are set out in various regulatory instruments. For example, Part IV of SF(LCB)R stipulates disclosure when the market intermediary is acting as a principal in the transaction. SF(LCB)R Regulation 47 stipulates that an intermediary or its representatives which deals in securities, trade in futures contracts or carry out leveraged foreign exchange trading, shall not withhold or withdraw from a market any order or any part of a customer's order for the benefit of itself or himself, or for any other person (this includes any other customer). FAA (Section 36) requires the intermediary to disclose its interest in securities which it is recommending when issuing a circular or other written communication to clients.

Intermediaries providing financial advisory services under the FAA are required under the Notice on Information to Clients and Product Information to disclose to clients any actual or potential conflicts of interests arising from any connection or association with any product provider, including any material information or facts that may compromise its objectivity or independence in its provision of financial advisory services.

The Circular on Due Diligence Checks and Documentation in Respect of the Appointment of Appointed, Provisional and Temporary Representatives sets out MAS' expectations of intermediaries with regard to the due diligence checks on the appointment of their representatives, intermediaries are required to be cognizant of and ensure that there are no conflicts of interest in their representative's personal circumstances, relationship with connected persons, other business interests or work arrangements within the corporation, that will impair the representative's ability to discharge his fair dealing responsibilities.

The Representative Notification System (an online registration system for representatives) is designed to assist MAS in detecting the conduct of multiple regulated

activities by a representative that may pose conflict of interest e.g., dealing in securities (execution) and corporate finance advisory. MAS follows up any alerts generated by this system with the intermediary to find out the scope of the activities of the individual and the steps taken to mitigate or avoid such conflicts.

MAS' inspection programs include detailed assessment and validation of the adequacy of the intermediary's controls in addressing conflicts of interests between itself and its clients or between its clients. For instance, MAS will review the adequacy of intermediary's policy and procedures to ensure fair allocation of securities among customers and representatives for securities placement exercises.

Whenever there is a proposed change in business model or activities, MAS will assess the adequacy of the intermediary's controls in this respect.

### **Direct market access**

Direct Market Access (DEA) is allowed, subject to the risk management and controls as set out under the various exchange rules, such as the SGX-ST Listing Manual, SGX-DT Futures Trading Rules, Central Depository (Pte) Limited (CDP) Rules and SGX-DC Clearing Rules. Customers are not permitted to have direct electronic access to the markets unless sponsored by an exchange member. The exchange member is responsible for the conduct of its client's use of such systems including any transactions that result from a client's electronic access. MAS does not have specific requirements relating to "filters" that an intermediary must maintain but order routing systems must be robust and cannot adversely impact the conduct of the market.

Market intermediaries that are SGX members are required to have effective risk management and controls for DEA trades. They include:

- Minimum customer standards such as financial standing and credit history;
- Legally binding written agreements with DEA customers on the arrangement, including who is responsible for the trades, compliance with market rules, unique identification of each DEA customer and ability to terminate DEA customers' access to the system, if need be;
- Automated pre-trade controls, including having proper internal controls for the setting and modification of any parameters of such automated pre-trade credit checks, error-prevention alerts for possible erroneous entries as well as to monitor daily all orders and credit risks arising from such trades; and
- Automated processes to monitor at firm level whether they are at risk of breaching capital requirements and possible prudential concerns (e.g., exposure to single client, single security, cash flow projection and stress testing) so as to restrict trading activity or inject additional capital if necessary.(SGX-ST Rules 4.5A, 4.6.7A, 11.7, 11.8, 12.3.7, 13.8.9; CDP Clearing Rule 3.9.1; SGX-DT Futures Trading Rules 2.1.2, 2.1.2A, 2.1.2B, 2.6.2A, 2.6.3, 2.6.4, 3.4.3A; SGX-DC Clearing Rule 2.28A.1.3).



For SMX, Singapore Mercantile Exchange Clearing Corporation (SMXCC) monitors trading positions to ensure that clearing members maintain sufficient collateral to cover market risks and collects variation margins for outstanding positions. SMXCC's real time risk management system tracks members' usage of the available collateral against the initial margins requirements and marked-to-market variation margins, and will reduce trading limits accordingly when trades are matched. SMXCC may also collect special margins as necessary or delivery margins for physically delivered contracts.<sup>60</sup>

### **Clients assets**

MAS' regulations seek to protect customer's moneys and assets at a number of levels. For moneys and assets denominated in Singapore Dollars, intermediaries may only use a bank, merchant bank or finance company licensed by MAS to hold trust accounts. For custody accounts, the custodian must be a depository agent, an approved trustee for a CIS or a CMSL holder that are authorized and regulated for their custodian role.

The regulations stipulate that the customers' money and assets are to be deposited in a separate trust account, not to be commingled with the intermediary's own funds, and not used for purposes other than those allowed by the regulations. Customer moneys and assets are to be deposited into the trust/custody account no later than the next business day. The market intermediary is further required to give written notice and obtain acknowledgement from the custodian that (i) moneys/assets are held on trust for the customer and that they cannot be used to offset the intermediary's own debts; and (ii) the account is designated as a trust account or customers' account, which must be distinguished and maintained separately from any other account in which the intermediary deposits its own moneys.

Market intermediaries are required to maintain records of the particulars of every transaction carried out on behalf of customers, as well as the amount and description of each asset paid or deposited in the trust account or custody account. Trust accounting is on a "line-by-line" basis. The intermediary is required to conduct computation and reconciliation of customer moneys and assets maintained in trust and custody accounts on a daily basis. Market intermediaries are required by regulations to provide a statement of account and contract note<sup>61</sup> to the customers, with details of their transactions, positions held and financial charges arising from the transactions. (SFA section 104, SF(LCB)R Part III and Regulations 39, 40, 42).

On a quarterly basis, market intermediaries are required to report to MAS on the amount of money and assets segregated in trust and custody accounts (SF(FMR)R, Regulation 27). On an annual basis, the external auditors are required to certify that the intermediaries have maintained proper records in relations to the safe custody of customers' securities

<sup>60</sup> Applies to trades in general, including DEA trades.

<sup>61</sup> Contract notes, setting out details of the transaction, are required for each trade.

and assets, and their compliance with the trust account regulations. MAS, however, has the power to require daily reports of the moneys and assets held in trust accounts should circumstances warrant.

MAS also has the power to require the intermediary to transfer all or part of any client's margins, collateral, assets and accounts to another market intermediary, if the financial resources of the intermediary fall below the capital adequacy requirement (SF(FMR)R Regulation 4). (See Principle 30).

### **Investors' complaints**

Prior to the grant of an FAL or CMSL, applicants that can deal with retail clients are required to become members of the Financial Industry Disputes Resolution Centre Ltd (FiDReC) (Monetary Authority of Singapore (Dispute Resolution Schemes) Regulations 2007), FiDReC is an independent institution specializing in the resolution of disputes between financial institutions and consumers.

The requirements on the handling of investor complaints are set out in the Guidelines on Risk Management—Internal Controls, Guidelines on Fair Dealing—Board and Senior Management Responsibilities for Delivering Fair Dealing Outcomes to Customers and Guidelines on Standards of Conduct for Financial Advisers and Representatives. These require a formalized complaint handling process, the putting in place of an independent process/unit to ensure that complaints are handled objectively, the setting of service standards to resolve complaints, the maintenance of a register of complaints (to be reviewed by management regularly) and the provision of regular reports to management.<sup>62</sup>

MAS recently issued a consultation paper aimed at raising the standards of practice in the financial advisory industry. Proposals in the consultation paper include the introduction of a set of regulations to address investor complaints.<sup>63</sup>

During onsite inspections, MAS may review the intermediary's policies and procedures on handling of customer complaints, taking into account the procedures for handling

<sup>62</sup> During onsite inspections, market intermediaries are assessed on their compliance with these guidelines and standards of conduct in respect of their complaints handling function. For example, in 2004, 2005, 2009, 2010, and 2011, MAS conducted thematic inspections of market intermediaries which covered the adequacy of their complaint handling processes.

<sup>63</sup> The consultation paper proposes the introduction of new statutory provisions to enhance the investor complaint handling functions in firms providing financial advisory services. These provisions are to supplement the existing requirements set out in the guidelines and code of conduct, such as requiring FIs to give a complainant a final response within a stipulated time period, or if this is not possible due to a complaint's complex nature, to further provide complainants with the reasons for the delay and an indicative timeframe for a final response. Also being considered is requiring intermediaries to specifically designate a person or committee to be responsible for oversight of its complaints handling and resolution mechanisms to strengthen senior management's responsibility, as well as for intermediaries to report complaints data to MAS on a biannual basis for accountability.

customers' complaints, the independence of the staff handling and investigating the complaints, and the adequacy and appropriateness of actions taken to resolve the complaints.

### **Know your customer obligations**

Market Intermediaries are required to perform Customer Due Diligence (CDD) measures when they enter into a business relationship with any customer (Notice to Capital Markets Services Licensees on Prevention of Money Laundering and Countering the Financing of Terrorism and the Notice to Financial Advisers on Prevention of Money Laundering and Countering the Financing of Terrorism). The CDD measures involve obtaining identification documents, as well as conducting the verification using independent and reliable sources (MAS Notice SFA04-N02; FAA Notice FAA-N06).

During onsite inspections of intermediaries' controls in relation to anti-money laundering and countering of financial terrorism (AML/CFT), MAS will assess the adequacy of the CDD measures, such as whether they obtain adequate evidence and satisfactory verification of the identities and legal existence of customers (such as bank statements, utilities bills, national identification documents for individuals, and certificate of incorporation/Board resolutions for corporations).

Under the SFA and FAA, market intermediaries are required to conduct know your client assessments, customer suitability tests and financial needs analysis (in relation to the provision of financial advice). These include collecting information on a customer's educational background, profession and experience/knowledge in investment products, and making an assessment on the customer's financial objectives, risk tolerance, financial situation, and existing investment portfolio before recommending investment products.

In relation to the provision of financial advice, the intermediary is required to have a reasonable basis for recommendations made on any investment product to a client. In particular, the intermediary should give due consideration to the client's investment objectives, financial situation and particular needs (FAA section 27) and they are also required to maintain proper records to demonstrate the basis of their recommendations to the client. (Notice FAA-N16).

Under the FAA Notice on the recommendations and sale of investment products, market intermediaries are required to conduct know your client assessment, which includes collecting and assessing the following information, before providing investment advice to the client:

- Financial objectives of the client;
- Risk tolerance of the client;
- Employment status of the client;
- Financial situation of the client, including assets, liabilities, cash flow and income;

- Source and amount of the client's regular income;
- Financial commitments of the client;
- Current investment portfolio of the client, including any life policy; and
- Whether the amount to be invested is a substantial portion of the client's assets.

#### **Record-keeping obligations**

An intermediary must keep records for not less than five years (SFA section 102 and FAR regulation 26). Such records must be furnished to MAS upon request. SF(LCB)R regulation 39 and FAR regulation 25 specify the types of records, including details of customers, transactions, placement of orders and statements of accounts that the intermediary is required to maintain.

Where an intermediary transacts on behalf of a customer in any investment products that are not in the list of Excluded Investment Products set out in the Notice on Recommendations on Investment Products, collectively called Specified Investment Products (SIP), or provides financial advice in respect of this type of SIP, the intermediary is required to maintain records of all communications with the customer, including a record in the form of a file note or a tape recording of the telephone conversation (Notice SFA04-N12; Notice FAA-N16).

#### **Information to be given to clients**

The business conduct rules and disclosure requirements under the SFA and FAA stipulate that intermediaries obtain written terms of consent or acknowledgement from the customers in relation to specific areas such as the terms and conditions of the agreement with the custodian of the customers' assets, interest arising from the trust account and maintenance of custody account with a foreign custodian for assets denominated in a foreign currency.

The Notice on Information to Clients and Product Information Disclosure (FAA-N03) requires the intermediary to disclose, in writing, to a client all remuneration, including any commission, fee and other benefits, that it has received or will receive that is directly related to (i) the making of any recommendation in respect of an investment product to the client; or (ii) executing a purchase or sale contract relating to a designated investment product on the client's behalf. Intermediaries must provide information on the fees and commissions in the contract note that is to be issued to customers (SF(LCB)R regulation 42). The same information is also available in the monthly statement of account described below.

MAS conducts onsite and offsite reviews of the customer's agreement or written contract of agreement to ensure regulatory compliance with customer record keeping obligations (SF(LCB)R Regulations 21(d), 22(1), 27, 31(1), 32(2), 33(4); Notice FAA-N16).

Intermediaries must issue a monthly statement of account to customers (SF(LCB)R regulation 40). The statement of account is to include, where applicable, the following information on the value and composition of the customer's account or portfolio, including an account of the transactions and balances:

- Securities transactions of the customer and the price at which the transactions were entered into;
- Futures positions and leveraged foreign exchange positions of the customer and the prices at which the positions were acquired, and the net unrealized profits or losses in all futures positions and leveraged foreign exchange positions of the customer marked to market;
- The status of every asset in the intermediary's custody held for the customer,
- The movement of every asset of the customer, the date of and reasons for such movement, and the amount of the asset involved; and
- The movement and balance of money received on account of the customer together with a detailed account of all financial charges and credits to the customer's account during the monthly statement period, unless the detailed account of financial charges and credits has been included in any contract note or tax invoice issued by the intermediary to the customer.

#### **Oversight of compliance with requirements in this principle**

MAS assesses and monitors the appropriateness of an intermediary's management and organization structure on an ongoing basis, as follows:

- During onsite inspections<sup>64</sup> relating to management oversight and compliance function, the intermediary will be assessed on the appropriateness of its organizational structure such as whether there is adequate segregation of duties to mitigate potential conflicts of interest, whether the intermediary has established a robust framework for evaluating and mitigating the risk arising from outsourcing arrangements (including controls over its service providers and other subcontractors) and whether there is an independent compliance function. Onsite inspections are based on CRAFT risk assessments. For this purpose it uses the I-CRAFT framework which translates CRAFT (risk assessment) and an impact assessment into an I-CRAFT distribution which guides the Capital Markets Group how best to focus its supervisory intensity, and conduct onsite inspection and visits.

<sup>64</sup> Onsite inspections are a formal process conducted by a team from MAS which examines in details the books and records and operations of the intermediary. Apart from verbal discussions, a formal written report is also provided at the conclusion of the inspection setting out findings and areas or issues for remediation.

	<p>For this purpose MAS assesses the significance of the intermediary relative to others conducting the same activity to produce a high, medium-high, medium-low and low rating.<sup>65</sup> The combined impact risk determines the I-CRAFT rating which determines the intensity of MAS supervision. Intermediaries rated as high risk will be inspected every three years and medium-high risk will be inspected every five years. Medium-low risk and low risk have no fixed cycle but will be subject to thematic inspections (discussed below) from time to time. Onsite visits comprise an inspection team of between five and six officers and a team leader.</p> <ul style="list-style-type: none"> <li>– During company visits<sup>66</sup> and in its ongoing offsite supervision, MAS receives updates on the intermediary's organization structure and reporting lines, to assess and ensure there is proper segregation of duties and conflict management processes between functions/departments in the front, middle and back office. In accordance with I-CRAFT, intermediaries assess as high or medium-high risk will receive a company visit once a year. Those rated medium-low will receive a company visit once every two years and low risk receive a company visit once every three years.</li> <li>– As part of its annual risk assessment on intermediaries, MAS assesses the quality and effectiveness of oversight by the Board of Directors and Senior Management. MAS will also take into account the appropriateness of the organization structure in terms of relationships and interdependencies between departments, staff, and other entities in the same group, complexity of the business structure, independence and effectiveness of the compliance function, effectiveness of control measures, reliance on outsourcing agreements, oversight of external service provider, and transactions with related parties.</li> </ul> <p>Apart from routine inspections and company visits, MAS also conducts thematic<sup>67</sup> onsite inspections where the intermediaries are chosen in a sample based on the views of the Capital Markets Group concerning topical issues to be reviewed. Results are then factored into the CRAFT assessment process as well as at the intermediary concerned.</p> <p>MAS also conducts "for cause" inspections where it receives intelligence that warrants specific investigation but such inspections are not common. It has also conducted "mystery shopping"<sup>68</sup> exercises to determine the extent of compliance by licensed</p>
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<sup>65</sup> High rating would apply to the top 60 percent of firms by market share, medium rating applies to the middle 30 percent and low is the lowest 10 percent of firms.

<sup>66</sup> MAS staff conducting a visit discuss issues and highlight issues for improvement. Minutes of the visit are not provided to the intermediary but form the basis of written correspondence that confirms to the intermediary any issues requiring its attention.

<sup>67</sup> Specific issues are formally examined in a sample of intermediaries selected for the review.

<sup>68</sup> Independent consultants carried out substantive unannounced mystery shopping in 2006 and 2012 on the financial advisory industry. The mystery shopping exercise was not part of the FAIR review, although the results were

(continued)

intermediaries with their obligations.

MAS may require special purpose audits to be conducted by direction to the intermediary to provide it with an external audit report. The auditor will use MAS powers as agent of it and will utilize methodology provided by MAS for the purpose.

<b>Onsite Supervision by MAS Utilizing its Powers Discussed Above</b>				
	2009	2010	2011	2012
MAS inspections	27	16	28	15
- routine	(4)	(8)	(12)	(9)
- thematic	(23)	(8)	(16)	(6)
Company visits	96	49	74	91
Mystery shopping	-	-	See note 16	See note 16
Source: MAS.				

The onsite inspection is undertaken by a team of five to six persons and its duration has varied between 18 man weeks and 28 man weeks between 2010 and 2012. MAS can follow up post inspections by requiring an independent audit review or certification, commence regulatory action or issue directions and conduct follow up visits and conducting on site validation of processes and procedures.

MAS also conducts routine offsite supervision which involves;

- Annual certification by external auditors;
- Review of reports (internal audit, external audit, misconduct reports, SGX/SMX reports and exposure reports);
- Review of financial returns;
- Review of complaints;
- Special purpose reviews/surveys; and
- Environment scans (formal quarterly reports and day to day reports such as large exposure reports).

#### **Inspections by SROs**

taken into account in FAIR recommendations. The target group was 11 banks and four insurers involving over 500 individuals.

	As indicated in Principle 9, the Exchanges conduct inspections on members which come to complement the inspection program of MAS. They follow a risk based approach to determine the member firms to inspect. In this regard, MAS and the exchanges discuss the names of the members to be inspected each year. Although it may be possible that each of MAS and the exchanges conduct an inspection of the same entity, where this occurs each will be reviewing different issues so that duplication of subject matter of the inspections does not occur.
Assessment	Broadly Implemented
Comments	<p>While the I-Craft system on its face appears reasonable, there is an issue on the statistics provided as to whether the frequency of the MAS inspection program is robust enough having regard to the number of intermediaries that it supervises. While the suite of powers and inspection program types appear more than adequate for the nature and sophistication of the securities and derivatives market in Singapore, the length of the time cycle between onsite inspections should be shorter. The use of themed inspections and company visits, while no doubt beneficial in raising awareness and dispelling complacency by the regulated intermediaries, is not sufficient as they are limited in scope and nature.</p> <p>There is no substitute for a robust and industry wide examination of the conduct of the intermediaries' front and back office compliance with MAS requirements. This can only be satisfactorily achieved if inspectors diligently and compressively regularly examine the books and records of the intermediary onsite and reconcile and verify the accuracy of those records and client transactions by way of a full onsite inspection.</p> <p>Literature available concerning the conduct of securities business in Singapore refers to the historical practice of utilizing commission representatives (remisiers)<sup>69</sup> to generate trading volumes and revenues in circumstances whereby they do not have a fixed cost basis, they may be based in their own premises or travel in the community and share their commission with a regulated intermediary through which they put through their clients' business for execution. If such commission agents continue to operate in Singapore as suggested in the literature,<sup>70</sup> they present additional compliance and supervisory challenges for the licensed intermediaries in conducting their business. Specific inspection of these activities by MAS at the intermediary and at the remisier are desirable as part of a robust inspection program.</p>
<b>Principle 32.</b>	There should be a procedure for dealing with the failure of a market intermediary in order to minimize damage and loss to investors and to contain systemic risk.

<sup>69</sup> The remisier acts as an agent of the licensed intermediary that is responsible for the conduct of its agents. The remisier is also legally responsible for its conduct as a representative of the intermediary.

<sup>70</sup> The extent to which remisiers continue to operate throughout Singapore is unclear, however the publication "Dare to Challenge!—The SIAS Story" by Leong Chan Teik, at Chapter 2 "The Next Challenge" discusses instances of lack of informed decision making by clients suffering loss that acted on the advice of remisiers.



Description	<p><b>Early warning system</b></p> <p>MAS has documented internal plans and procedures to deal with the failure or possible failure of a market intermediary. The manual has been updated 4 times since 2004; the last update took into account issues arising from the Global Financial Crisis and more recently, the collapse of an MF Global subsidiary operating in Singapore. The manual sets out various scenarios that could occur in the local market, contains procedures for staff to follow in each of the scenarios, contains extracts of the relevant provisions of legislation that relate to MAS's powers in such circumstances and includes draft pro forma documentation to assist staff in drafting the necessary documents to exercise such powers.</p> <p>MAS has adopted a structured monitoring and escalation plan, based on a system of early warning signals, indicators and activation triggers. Depending on the stage of the crisis (color coded from green (normal) to red (most extreme)), the corresponding risk management response (e.g., enhanced monitoring, pre-emptive actions, etc.) and communications plan will be activated. In the event of a code Red, in addition to an appropriate response plan, the MAS Crisis Management Team (chaired by MAS' MD) will be activated.</p> <p>MAS' crisis management plans are supported by a regulatory framework of supervisory and resolution powers. Under the SFA/FAA, MAS may take pre-emptive action by issuing directions to a distressed intermediary (e.g., SFA section 101, FAA section 58, SF(FMR)R regulations 4, 6, 7, 9, 10, 11, 13, 14, 16, and 17 ), to instruct the intermediary to implement measures to (among other things) restrain its trading/business activities or ring-fence/transfer customers' moneys and assets, to enable a proper winding-down of the intermediary.</p> <p>MAS is empowered under the MAS Act to:<sup>71</sup></p> <ul style="list-style-type: none"> <li>• take control of an intermediary;</li> <li>• make a determination for the sale or transfer of the assets and liabilities, or transfer of ownership, of a failing intermediary without the prior consent of the intermediary's customers, subject to the minister's approval; and</li> <li>• apply to the High Court to impose a moratorium so that no order can be made for the winding up of the intermediary and no legal proceedings can be commenced against the intermediary.</li> </ul> <p>In determining whether to exercise powers under the MAS Act and the SFA, MAS considers the systemic importance and impact (e.g., an intermediary that has significant investor reach, control over investor moneys, or contagion impact on the financial</p>
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<sup>71</sup> Bill was read in Parliament February 4, 2013 and is now passed.

system) of the distressed intermediary, whether it is in the public interest to do so, and any other matter that MAS considers relevant.

A systematically important and high impact intermediary would generally include a broker dealer that is a member of the securities or futures exchange as its failure may affect the exchange and this may result in a systemic impact on the securities and futures markets and financial sector.

Recent examples of MAS' dealings with distressed intermediaries include those of local subsidiaries of Lehman Brothers and MF Global. In both cases, MAS had issued directions to ring-fence their assets, and press releases to keep all stakeholders informed of developments.

**Plan to deal with the failure of intermediaries and coordination with other authorities**

SGX and SMX have established default management processes and procedures designed to safeguard the integrity of the clearing and settlement operations against financial shocks caused by extraneous events (e.g., an intermediary failure). This includes default management procedures applicable to clearing houses.

SGX and SMX have established default management processes and procedures to safeguard the integrity of the clearing and settlement operations against financial shocks caused by extraneous events (e.g., an intermediary failure).

A DCH is required (SFA section 59) to ensure sufficiency of financial resources to operate a safe and efficient clearing facility, which includes the maintenance of a clearing fund designed to meet potential financial losses which may arise from a simultaneous default of the member to which it has the largest exposure and the next two financially weakest members. In the event of a failure of a member, the DCH applies the clearing fund to ensure that obligations to other members continue to be met, thus mitigating contagion risks. All three designated clearing houses, CDP, SGX-DC and SMXCC, maintain clearing funds and have in place default management procedures to address the failure of a member.

There is no national investors' compensation scheme. However, exchange members trading is covered by fidelity funds (refer below) and intermediaries are required to purchase professional indemnity insurance that is commensurate with the scale of their business. To protect the clients from damages arising from negligence of the intermediary carrying out regulated activities of fund management, advising on corporate finance or the provision of financial advisory services, these intermediaries are also required to purchase professional indemnity insurance that is commensurate with the scale of their business.

Securities exchanges and futures exchanges<sup>72</sup> are required to maintain a fidelity fund (SFA section 176) to be applied for the purpose of compensating any retail investor who suffers pecuniary loss because of an insolvency of an exchange member or a defalcation committed by an exchange member in relation to any client money or assets which has been entrusted to the member or in the event of insolvency of the exchange member.

An intermediary licensed to deal in securities or futures contracts, and which is not a member of an exchange (SFA section 91) must lodge with MAS a security deposit (S\$100,000) which will be applied for defalcations. An additional banker's guarantee can also be required (between S\$2–S\$5 million) as additional safeguards although this is not common.

### **Powers of MAS**

MAS has the power to issue directions of a general or specific nature to the intermediary to comply with such requirements as specified in the directions, if MAS thinks it necessary or expedient in the public interest (SFA section 101 or FAA section 58).

Where the capital of the intermediary falls below certain thresholds, MAS may direct it to do one or more of the following:

- cease any increase in positions, securities financing, funds accepted for management and assets accepted for custody for any account by the intermediary, as the case may be;
- transfer all or part of any customer's positions, margins, collateral, assets, and accounts to one or more other license holders;
- operate its business in such manner and on such conditions as MAS may impose; or
- cease carrying on business in any or all of the regulated activities until such time the intermediary is able to meet the capital requirement (regulations 4, 6, 7, 9, 10, 11, 13, 14, 16, and 17 of the SF(FMR)R).

### **Insolvency and investor protection**

MAS is empowered to appoint a statutory adviser to advise the market intermediary on the proper management of its business and assume control of and manage the business of the market intermediary or appoint a statutory manager to do so.

<sup>72</sup> The fidelity funds are: SGX-ST (S\$31 million), SGX-DT (S\$21 million) and SMX (S\$2 million).

	<p>As stated in Principle 31, intermediaries are required to maintain client trust accounts and account for client assets on a line by line basis. SROs at the clearing house level maintain client assets in trust.</p> <p><b>Practice</b></p> <p>Following the bankruptcy of Lehman Brothers in the U.S. in 2008, MAS issued directions to ring-fence the assets of two Lehman-related market intermediaries in Singapore. MAS issued directions to these Lehman market intermediaries to cease their regulated activities and directions to the intermediaries' Singapore bankers and clearing house to ring-fence the assets of the Lehman entities held.</p> <p>Since the financial crisis, there has been only one nonbank intermediary failure in the Singapore capital markets—MF Global Singapore Pte Ltd (MFGS). The winding down and liquidation of MFGS in Singapore followed from MF Global Holdings Ltd's filing for bankruptcy in the U.S. under Chapter 11 of the U.S. Bankruptcy Code.</p> <p>Following the filing by MF Global Holdings Ltd, MFGS was placed under liquidation. MAS issued directions to MFGS and to its bankers to ring-fence funds and assets of MFGS and customers held in trust and house accounts. It also issued directions to MFGS to cease all their regulated activities unless these activities are related to the closing out of outstanding positions.</p> <p>MAS has conducted two simulation exercises in 2007 (failure of a financial institution) and one in 2012 (business continuity) by way of practice to test its preparedness for a serious unexpected event that would require urgent action to maintain confidence and stability in the local market. SGX took part in one of these exercises.</p> <p>MAS staff attend supervisory colleges/conferences hosted by lead regulators overseas (concerning nonbank/non-insurer intermediaries). Examples include:</p> <ul style="list-style-type: none"> <li>• Annual supervisory colleges of a large group, organized by the Japanese FSA (face-to-face meetings are supplemented by four-monthly conference calls among regulators).</li> <li>• Annual supervisory colleges/roundtable discussions organized by FINRA in New York. In 2011 and 2012, the conferences focused on a number of financial groups.</li> </ul>
Assessment	Fully Implemented
Comments	
<b>Principles for the Secondary Markets</b>	
<b>Principle 33.</b>	The establishment of trading systems including securities exchanges should be subject to regulatory authorization and oversight.
Description	<b>Types of regulated markets</b>

If you operate a market in Singapore, you must be licensed as one of two different types of regulated markets (SFA, section 6):

- An exchange (approved exchange, section 8(1)SFA); and
- A trading system as a recognized market operator (RMO) (section 8(2) of SFA).

SFA may exempt a market operator from the license requirement (section 14 of SFA). The exemption generally is intended only for entities which are either already separately regulated by MAS (under a different license or authorization status) or are not intended to fall within MAS' regulatory scope but technically caught by the definition of "market" under the SFA.

### **Regulated markets**

Under the Guidelines on Regulation of Markets (Guideline No. SFA 02-G01), corporations operating markets that are systemically important will be regulated by MAS as approved exchanges, while other market operators will be regulated as RMOs. The guidelines set out factors specified in regulation seven of the SF(M)R that MAS may assess in reviewing an application for approval or recognition, including the size and structure of the market, the nature of services provided, nature of the securities or futures contracts traded, nature of the investors and whether the corporation is an overseas corporation subject to home regulation, and supervision comparable to the MAS regime. MAS applies a public interest test in deciding individual cases and for cases involving approved exchanges, this takes into account the strategic benefits that will accrue to Singapore.

### **Licensing requirements**

Key criteria assessed by MAS when reviewing an application its key officers and employees, track record, adequacy of resources, systems and procedures, business rules, and risk management processes.

The criteria is as follows:

- Applicants must be "fit and proper" and demonstrate ability to ensure the market is fair orderly and transparent, risks are managed prudently, discharge its obligations under legislation and have sufficient resources (SFA sections 16 and 37).
- Capital must not be less than a base amount (plus a minimum of a number of months operating expenses) for approved exchanges and base capital amount (plus a percentage of annual operating revenue or of annual operating costs, whichever the higher) for domestic RMOs.<sup>73</sup>

<sup>73</sup> The specific capital requirements are only set out in the letter granting MAS approval and are not published.

- Applicants must meet obligations pertaining to the operation of a fair, orderly, and transparent market, manage risks prudently and to ensure due regard for the interests of the public and not act contrary to those interests.
- Applicants must maintain sufficient financial, human and system resources to operate a fair, orderly and transparent market and provide adequate security arrangements (SFA sections 16 and 37).
- Applicants must maintain business rules that make satisfactory provision for a fair, orderly and transparent market in securities or futures contracts that are traded through its facilities and to ensure proper regulation and supervision of its members (SFA Section 16(1)(e)).
- An approved exchange must additionally:
  - Make provisions in its business rules for criteria for the admission of members, continuing requirements for each member, the classes of securities or futures contracts which may be traded, the manner in which trades are effected, and measures to prevent and deal with manipulation, market rigging and artificial market conditions (SF(M)R Regulation 18).
  - Make provisions in its business rules to prohibit or prevent members from engaging in improper conduct and provide for the expulsion, suspension or disciplining of members for conduct inconsistent with just and equitable principles in the transaction of business, or for a contravention of the business rules of the approved exchange (SF(M)R Regulation 18).
  - Establish a fidelity fund (SFA sections 176 and 181). The application of the fund is set out in section 186, including to compensate investors who suffer pecuniary loss due to a defalcation committed by a member of the approved exchange in relation to money or property entrusted to or received by that member. The fund may also be applied in the event of the bankruptcy or winding down of a member (SFA section 186).
  - Either publish or make available upon request, information on services, products, applicable fees, applicable margin requirements, and any arrangement in place to compensate an investor who suffers pecuniary loss as a result of the actions or insolvency of a participant of the approved exchange (SF(M)R Regulation 13).
- Applicants are required to enforce compliance by its participants with its rules and have in place measures to monitor compliance of participants with Part XII of the SFA on market conduct (SF(M)R Regulation 28). MAS may impose this obligation on a specified RMO depending on the nature of the market. Under Regulation 18 of the SF(M)R, the business rules of the approved exchange are required to make

satisfactory provision for the operation of a fair, orderly, and transparent market, and for the proper regulation and supervision of its members. This includes provisions to prohibit or prevent members from engaging in improper conduct and provide for the expulsion, suspension or disciplining of members for conduct inconsistent with just and equitable principles in the transaction of business, or for a contravention of the business rules.

To adequately provide for the taking of action by the approved exchange against members, the business rules are expected to address non-compliance of business rules by members, including such procedures for the taking of actions against participants, such as for the hearing of appeals and for dispute resolution. Under the business rules of SGX-ST, SGX-DT and SMX, disciplinary committees and appeal committees are appointed by the board of directors of the respective exchanges. The rules set out the independence requirement of the committees and their powers, as well as prescribe the proceedings for disciplinary actions and the hearing of appeals (SGX-ST Rules 14.4–14.9, SGX-DT Futures Trading Rules 7.5-7.10, SMX Rules Chapter 8).

For approved exchanges there are shareholder ownership thresholds which MAS considers relevant for its fit and proper criteria and anyone seeking shareholding of such thresholds require MAS' approval. These thresholds are 5 percent, 12 percent, and 20 percent holdings. Approval is required to establish an exchange holding company.<sup>74</sup> Approval is required whether or not the exchange holding company is publicly listed. RMOs because of their nature are not subject to the same requirements but are required to notify MAS of any acquisition or disposal by any person of a substantial shareholding. (SF(M)R Regulation 23(1)(f)).

Regulation 18 of SF(M)R requires the business rules of an approved exchange to make satisfactory provisions for the operation of a fair, orderly and transparent market. MAS' Guidelines on Regulation of Markets state that a fair market should allow for non-discriminatory access to market facilities and information, and bids and offers to be matched on an equitable basis which includes execution in accordance with price-time priority. MAS will review how an approved exchange satisfy these obligations during application and on an ongoing basis. The approved exchange is also required to conduct an annual self-assessment against these obligations. Execution rules and algorithms are disclosed publicly on websites of approved exchanges.

***Additional Licensing requirements—approved exchanges—where principal, settlement, guarantee or performance risks***

<sup>74</sup> SGX is publicly listed. It has no substantial shareholder. SMX has one shareholder. Twenty three per cent of the shares in SGX is held by SEL Holdings Pte Ltd. Section 11(2)(b) of the Exchanges (Demutualization and Merger) Act 1999 states that SEL Holdings Pte Ltd shall not exercise or control the exercise of votes attached to these SGX shares. As such, it is not regarded as a substantial shareholder of SGX.

Risk management systems and controls must be adequate and appropriate for the scale and nature of its operations (SFA section 16A). MAS' approval for position limits it intends to establish is required. An approved exchange must set out in its business rules provisions on the arrangements for the safe and efficient clearing and settlement of trades concluded on a market operated by the approved exchange<sup>75</sup> (SF(M)R Regulation 18). Part III of the SFA sets out a separate regulatory regime for facilities which offer clearing or settlement functions, including assumption of risks as a central counterparty. A market operator which also performs the functions of a clearing facility is subject to Part III of SFA. SFA (Section 55(1)) sets out MAS' powers to designate a person operating a clearing facility as a DCH if it is satisfied that the clearing facility is systemically-important. A DCH is subject to ongoing obligations (section 59) to operate a safe and efficient clearing facility, manage risks prudently, maintain sufficient financial, human and system resources, and further subject to specific requirements (section 61) on ensuring that its risk management systems and controls are adequate and appropriate for the scale and nature of its operations, and to obtain MAS' approval for the position limits which it intends to establish. DCHs are regulated in line with the Principles for Financial Market Infrastructures.

#### ***New authorization regime for clearing facilities***

Legislative amendments to the SFA were passed in November 2012, introducing a new authorization regime for clearing facilities. Under the amended SFA, corporations seeking to establish clearing facilities will be required to be approved as approved clearing houses or recognized as recognized clearing houses. Systemically-important clearing facilities will be regulated under the approved clearing house regime, which generally equates to the DCH regime, while other clearing facilities will be regulated as recognized clearing houses. All existing DCHs will be deemed to be approved as approved clearing houses under the new regime. The legislative amendments to the SFA are expected to come into operation in Q2 2013.

#### ***Licensing/authorization process***

Applications for approval or recognition have to be submitted using SF(M)R Forms #1, 2, and 3, which prescribe the information to be provided. Relevant documents must be attached to the application and are verified by staff of the Capital Markets Department of MAS. In submitting an application for approval or recognition, an applicant is required to describe and demonstrate how the applicant will satisfy its obligations under the SFA, including providing relevant information on key officers and employees (such as

<sup>75</sup> Both requirements apply to an approved exchange even if it does not take on principal, settlement, guarantee or performance risks.



qualifications and experience), its track record in operating a market, systems and procedures, business rules, risk management systems.

MAS reviews the applicant's operational rules, its personnel structure and the kind and type of transactions proposed to be conducted and its ability to comply with obligations under the SFA. The trading system is checked by its information technology (IT) staff to ensure conformity with the operational rules but an independent IT systems evaluation of the trading system is not required. Meetings are held with the applicant and onsite visits may be conducted by MAS as part of the verification process although in practice this does not occur for overseas market operators. In practice onsite visits are conducted for approved exchanges and domestic RMOs.

If an overseas market operator is applying for recognition, it is also required to provide additional information, including (a) names of any supervisory authority that exercises oversight over the overseas market operator in the home jurisdiction; and (b) documentation that would allow MAS to consider if the market operator is subject to sufficiently comparable requirements and supervision under such regulatory regimes as may be applicable.

#### **Ongoing compliance with requirements**

The approval/recognition criteria, respectively, continue to apply after approval/recognition is granted. In essence these are the maintenance of fair, orderly and transparent markets, prudent management of risks, sufficiency of financial, human and system resources, notification to MAS of trading disruptions, submission of financial and audit report and maintenance of a business continuity plan.

#### **Approved exchanges**

Approved exchanges have a number of specific ongoing obligations due to the nature of their operations. An approved exchange must submit annually:

- an auditors' long form report, which includes the findings, if any, of the auditors on the internal controls of the approved exchange, and non-compliance with the SFA;
- a self-assessment report on how the approved exchange has discharged its responsibilities under the SFA; and
- a copy of the balance sheet of the fidelity fund of the approved exchange. (SF(M)R Regulation 10).

MAS' supervisory framework for approved exchanges includes regular monitoring, meetings with senior management, self-assessments and inspection, which are designed to ensure continuous assessment of approved exchanges' discharge of their obligations

under the SFA.

An approved exchange must notify MAS as soon as practicable of any disruption, delay or suspension or termination of any trading procedure or practice, including those resulting from system failure. Reports on such incidents, including the remedial actions and any follow-up actions taken, are required to be submitted to MAS within 14 days of the occurrence of the incident (Regulation 9 of SF(M)R).

An approved exchange must maintain a business continuity plan, which sets out the procedures and establishes the systems necessary to restore fair, orderly and transparent operations, in the event of any disruption to the operations of the market. The approved exchange is required to notify MAS in the case of any activation of the plan and any material change to the plan (SF(M)R Regulation 12).

An exchange is not obliged to report to the MAS every system software change proposed to be conducted, however, if there will be substantial impact on the market because of the degree and scale of the change MAS will expect the exchange to inform it before the change is made, discuss the nature of the change to be made and ensure that the industry is sufficiently prepared for such a change. Major changes, for example a replacement of a market's "trading engine" will usually require a review by MAS and an appropriate sign off by the exchanges' Board. Depending on the nature of the scale of any outsourcing arrangements, certification by external consultants may also be required. In addition, MAS has the authority to order the production of a report or conduct an inspection relating to such matters.

The business rules or the listing rules of an approved exchange must address the classes of securities or futures contracts which may be traded, as well as the terms and conditions under which securities may be listed for quotation by the approved exchange (SF(M)R Regulation 18). Business rules and listing rules are subject to MAS' review (SF(M)R regulation 19).

Approved exchanges must seek approval from MAS for the listing, delisting or to permit trading of futures contracts and other derivatives in respect of any stocks, shares or debentures (SFA section 29). An approved exchange must give MAS prior notice of the intention to amend its business rules or listing rules, including the proposed amendment, its purpose and the date on which it is intended to come into force (SF(M)R Regulation 19). Regulation 19 provides MAS with powers to disallow, alter or supplement the proposed amendment.

MAS has established a product assessment framework which provides guidance to SGX-ST on the due diligence that SGX-ST needs to conduct for new securities products. MAS considers a new product to be one that has not been offered to retail investors in Singapore or which involves material modifications to an existing product (in terms of risks, characteristics or conflicts of interest). In the case of a new product that falls within MAS' prospectus regime and will be traded amongst retail investors, SGX-ST will have to

complete and submit a product assessment form to MAS prior to approving the listing and quotation of the product.

The product assessment entails an evaluation of the following issues:

- the product structure and risks;
- regulatory issues (including exemptions or approvals required from local or foreign regulatory authorities);
- restrictions applicable the product or the underlying assets (such as foreign ownership restrictions, and remittance of proceeds from the disposal of the underlying assets);
- whether and how the product has been offered in other jurisdictions (including the regulatory regime that applies to the product and the target market for the product);
- whether the issuer has conducted due diligence on the distributors and provided sufficient training to them; and
- investor education plans for the new product.

In reviewing SGX's product assessment form, MAS will consider whether the due diligence conducted is satisfactory, and whether safeguards are in place to address any concern in respect of the trading of the new product amongst retail investors.

All approved exchanges must submit the following information for new commodity derivative contracts that they are seeking approval for listing:

- Characteristics of the underlying commodity;
- Contract size;
- Price limit;
- Position limit, including spot month limit;
- Daily and final price settlement methodology;
- Susceptibility to manipulation;
- Acceptability for hedging;
- Roles and obligations of the clearing house and participants;
- Physical delivery procedures;

- Delivery default;
- Exchange-for-Physical/Exchange-for-Swap; and
- Existence of similar contracts at other exchanges.

MAS takes into account economic benefits, features of the underlying market, the contract's terms and conditions, settlement and delivery procedures, and other social economic factors. Contracts that do not serve any economic benefits would be considered a gaming contract and will not be approved.

### **RMOs**

There is no specific ongoing requirement for an RMO to provide an IT report on a periodic basis, however RMOs are required to report any operational incident to MAS. Local RMOs are also required to notify MAS of significant system changes and MAS also has the authority to require them to obtain external certification of major changes but to date this authority has not been exercised.

RMOs are also required to: (i) submit annual reports, and on a bi-annual basis, self-assessment reports (Regulation 24 of the SF(M)R); (ii) maintain business continuity plans (Regulation 25 of the SF(M)R); and (iii) seek MAS' approval for the listing and de-listing of derivatives products (Section 42 of the SFA).

### **Fairness of access**

An approved exchange must ensure that access for participation in its facilities is subject to criteria that are fair and objective, and are designed to ensure the orderly functioning of the market and to protect the interests of the investing public (SFA Section 16 (d)). Its business rules are required to include the criteria for the admission of members as well as continuing requirements for each member (SF(M)R Regulation 18).

Access to RMOs is limited to professional investors that must adhere to the rules for that market as approved by MAS at the time of recognition or as subsequently amended. RMOs are required to maintain fair access for all eligible professional investors. In practice, MAS does not require them to adopt the same fairness obligations as apply to approved exchanges.

The Guidelines on Regulation of Markets states that MAS considers a fair market to be one that:

- is characterized by proper trading practices, non-discriminatory access to market facilities and information;
- does not tilt the playing field in favor of some participants over others; and
- provides investors with greater confidence that they can trade without other

investors having an unfair advantage. In this regard, investors should be able to access quotes for comparison prior to execution on a non-discriminatory basis.

These guidelines further set out that MAS considers that in a transparent market:

- Pre-trade information, such as best bids and offers, should be made available to enable investors to know the transactions they may enter into and at what prices.
- Post-trade information on executed trades should be similarly publicized to reflect the market prices of executed trades.
- In addition, material information such as corporate announcements, required to assess the value of securities or futures contracts, should be readily available to investors in a comprehensible manner and on a timely basis.

#### **Operational information (record keeping, access to information)**

An approved exchange must provide assistance to MAS, including the furnishing of returns and the provision of books and other relevant information as MAS may require (SFA Section 20).

Where MAS considers that an emergency exists or action is necessary to maintain or restore orderly trading, MAS may obtain information about any trading in securities or futures contracts from an officer of a corporation if MAS believes on reasonable grounds that the person is capable of providing relevant information (SFA sections 143 or 144).

All market operators are required to keep all relevant books for a minimum of five years (SF(M)R Regulation 5). Sections 142 to 144, 154, and 163 of SFA provide MAS with regulatory and investigative powers to obtain all data, information, documents, statements and records from persons (whether regulated or unregulated) who may have information relevant to the inquiry or investigation.

The approved exchanges' business rules require a member and its trading representatives to maintain records of the date and time of receipt of each client order which should indicate the name of each client, the specific order quantity and price:

- SGX-ST Rule 12.1.1 states that a trading member must maintain proper records and audit trails relating to order entry and records, security and trading operations.
- SGX-DT members are required to comply with the audit trail and records as specified in Futures Trading Rule 2.6.4 and credit control requirements in Futures Trading Rule 2.6.3.

Members of SMX are required to comply with SMX Rule 4.2 on records, annual accounts and audit, to maintain audit trails of all contracts and all data, forms, books, records for at least five years. Relevant information is made available to market participants and the

	<p>public, an approved exchange shall either publish or make available upon request, information on services, products, applicable fees, applicable margin requirements (SF(M)R Regulation 13).</p> <p>The approved exchanges provide real-time price and trade information on all listed securities, futures and options contracts to market intermediaries for monitoring and risk management purposes. SGX provides intraday real time market trading information to the public via its website. Market information is also available by vendors by way of commercial arrangements. In respect of SMX market participants can access real time data either directly from SMX's trading system or from a market data vendor. The data provided includes the current bid/ask prices and volumes as well as the opening, high, low and last traded prices. Additionally, SMX publishes such data to its website on a continuous basis delayed by 15 minutes, for contracts in which there are quotes. SMX publishes traded volumes on a continuous basis through the day, and on an aggregate basis on the following business day.</p>
Assessment	Fully Implemented
Comments	
<b>Principle 34.</b>	There should be ongoing regulatory supervision of exchanges and trading systems which should aim to ensure that the integrity of trading is maintained through fair and equitable rules that strike an appropriate balance between the demands of different market participants.
Description	<p><b>Market surveillance by the exchanges</b></p> <p>The approved exchanges act as frontline regulators for the regulation and supervision of their markets. They use electronic real-time market surveillance systems with imbedded alerts which collect trading information to conduct daily monitoring of the markets. Each approved exchange reviews the alerts from its systems and identifies those which may warrant further investigation. As part of its investigation, the approved exchange may gather information from its members or the listed entities on its market. Where the exchange's investigation indicates that there is a suspicious activity, the matter will be referred to MAS.</p> <p>In respect of SGX, its Market Surveillance (MS) unit monitors the trading of all listed securities to detect unusual trading activity utilizing the SMARTS system. The two teams responsible for conducting surveillance of SGX securities and derivatives markets come under the same MS unit. Where there is unusual trading activity in a listed security that cannot be explained by known factors, SGX-ST issues a public query to the issuer. The alerts produced are examined by MS for patterns of manipulation of the market, unfair trading practices and insider trading. Any suspicious trading activity will be examined by the exchange, against price volume movements in the market, price sensitive announcements, patterns of trading, and general market intelligence received. If necessary, a preliminary investigation will be conducted and the exchange may request information from members. Where share prices are seen to rise ahead of an</p>

announcement, or other market abuse techniques are detected, a case referral will be documented and sent to MAS. Where information from third parties other than members or listed entities is required, such cases are also referred to MAS.

The number of exchange referrals to MAS concerning suspicious or unfair trading practices varies according to the conditions prevailing in the market and whether the conduct falls within the protocols MAS has entered into with the exchanges (see Principle 9). MAS receives between 30 to 55 referrals each year from exchanges with the bulk concerning low cap equities. Such referrals are treated seriously by MAS Enforcement staff to determine whether further action, including opening up its own investigation is required before the circumstances are discussed with the CAD. SGX have 14 staff dedicated to surveillance and nine for enforcement. SMX has six staff dedicated to inspection and enforcement.

The approved exchanges also perform regular and ad-hoc onsite inspections of their members to ensure that business rules are complied with and adequate internal controls are in place. The approved exchanges also monitor the financial status of members to ensure that they have adequate capital for their operations. Assessments are shared with the members and recommendations made for improvements.

There are no formal agreements between the exchanges to cooperate and share information and the practice to date has not been to meet to discuss market issues or conduct of common members. Each exchange has a dialogue with MAS regarding member supervision and issues, and submits referrals to it regarding suspected abusive market conduct by members and periodic reports. The products traded on each exchange are different, however there are a small number of common members.

#### **Market surveillance by the MAS**

SROs conduct front-line surveillance of market activities as discussed in Principle 9 and above. Where the exchange's investigation indicates there is a suspicious activity, the matter will be referred to MAS. MAS uses intelligence received from exchanges' market monitoring, suspicious transaction reports filed by financial institutions, and from the public to detect unfair trading practices. MAS also maintains an electronic real-time market surveillance system which allows it to obtain market information and intelligence but it does not routinely conduct daily monitoring of the market, except for SGX securities. MAS systems do not generate intraday alerts. Where MAS' own sources of information indicate possible irregular trading conduct, MAS may require the approved exchanges to investigate and report their investigation findings to MAS.

In respect to the trading of SGX securities on its market, MAS performs the front line surveillance function in respect trading pursuant to the Deed of Undertaking (see Principle 9) and for this purpose utilizes its surveillance system to alert it to conduct requiring further examination.

When a referral is received from an exchange and MAS is of the view that it is more suitable for criminal prosecution, it refers it on to the CAD. CAD is the principal white-collar crime investigative agency within the Singapore Police Force that comprise close to 200 professional staff. Its staff includes police officers as well as non-police officers who are gazetted as commercial affairs officers who can exercise police powers to require persons to attend to answer questions, enter premises, seize evidence and make arrests. CAD takes over from the preliminary work completed in the referral and seeks to establish the merits of a case. The size of the team formed to carry out investigations will depend on the complexity of the case but generally comprises a team of four or five professionals.

Once investigation work is completed, the AGC makes the decision whether to prosecute the case. In the event of prosecution, the prosecutor lays charges and presents the case to a single judge (who often has commercial expertise) without a jury. Under a protocol between MAS and CAD, the two agencies will discuss and coordinate with each other in determining whether the referral should be handled as a criminal matter or whether it is more appropriate to be handled as a civil matter. In a situation where MAS decides to proceed with civil penalty action, consent from the public prosecutor, AGC will be required.

To date there have been no referrals to MAS of trading issues by domestic RMOs and the volume of trading on them has been low.

### **Oversight of regulated markets by MAS**

The supervisory tools available to MAS include inspections, offsite reviews, approval requirement for amendments to business rules and derivative products, regular dialogue and regulatory actions under the framework of legislation it administers.

MAS conducts onsite inspections and offsite reviews of the market surveillance, enforcement and member supervision functions of the approved exchanges. Approved exchanges have periodic reporting requirements and specific approval requirements (SFA Sections 16 to 21). MAS requires various reports to be submitted by approved exchanges, including self-assessments on the discharge of statutory obligations, and auditors' reports on the findings on internal controls (SF(M)R regulation 10).

In the case of overseas RMOs, MAS considers (SFA section 9):

- a. whether adequate arrangements exist for cooperation between MAS and the home regulator responsible for the supervision of the overseas market operator; and
- b. whether the operator is, in the home jurisdiction, subject to requirements and supervision comparable, in the degree to which MAS' regulatory objectives (specified in SFA section 5) are achieved, to the requirements and supervision to



which approved exchanges and RMOs are subject under the SFA.

### **Offsite**

There are several mechanisms for offsite supervision:

- There are regular (separate) meetings between the MAS and the approved exchanges;
- Notifications (SFA section 17) of changes in business, financial irregularities (exchange or member), disciplinary actions against members or others matters as directed;
- Periodic reports (SFA section 19), including market statistics (SF(M)R regulation 10);
- Exchanges are required to submit monthly reports on their activities including trading. Exchanges report not just on anomalous trading but on their business affairs including financial and prudential matters, and settlement figures;
- An annual report, including audited financial statements and annual self-assessment questionnaire; and
- Regular communications between the exchanges and the MAS in the form of oral conversations and ad hoc meetings.

In the event of any disruption, delay or suspension or termination of any trading procedure or practice, such as a trading outage resulting from system failure, an approved exchange is required to report the outage as soon as practicable after the occurrence to MAS. The approved exchange is required to submit an incident report to MAS within 14 days of the occurrence that explains the circumstances of the incident, remedial actions and any follow-up actions taken (SF(M)R Regulation 9).

Exchanges are not legally obliged to notify MAS of any trading halt or suspension of trading of a listed security. Exchanges are required to notify MAS of market-wide suspensions. With respect to SGX, suspensions are rare as trading halts are generally used for a minimum period of 30 minutes to a maximum of three days, often at the request of the listed company that wishes to make a market sensitive announcement or where other circumstances justify stopping trading. Thereafter, if required, the halt may be continued by way of formal suspension of trading in the security.

### **Onsite supervision**

MAS conducts annual onsite inspections of approved exchanges to assess compliance with the SFA and make recommendations for improvements. Inspections include SRO functions such as member supervision, market surveillance, as well as market operations functions, based on a risk assessment of functions (SFA section 150).

In the case of RMOs that are local market operators, MAS applies the RMO regime on a risk-based approach, i.e., the regulatory requirements will be commensurate with the risk profile, nature and scope of the functions of the proposed market operations (Guidelines on Regulation of Markets). MAS also has powers to impose additional obligations on the RMOs, depending on the functions undertaken by the market. Such recognition conditions could include restrictions on the types of investors the RMO can provide trading access to, the financial products that may be traded on the RMO, the requirement for the RMO to notify MAS of changes to its business rules and the requirement to submit periodic reports to MAS.

MAS relies on the home regulatory regime of the overseas RMO to ensure comparable supervision is achieved. MAS subjects overseas RMOs to general obligations and specific reporting requirements such as periodic self-assessments to ensure a level of oversight over these RMOs (SFA sections 37 to 41). Overseas RMOs are obliged to notify MAS of any material change to the regulatory requirements imposed on the RMO by any regulatory authority within 14 days of the event (SF(M)R Regulation 23).

#### **Powers of MAS**

MAS has the powers<sup>76</sup> to revoke approval and recognition (SFA section 13) if:

- there exists a ground under section 8(7) on which MAS may refuse an application;
- the corporation does not commence operating its market(s) within 12 months from the date on which it was granted the approval or recognition;
- the corporation ceases to operate its market(s);
- the corporation contravenes any (i) condition or restriction applicable in respect of its approval or recognition; (ii) any direction issued to it by MAS; or (iii) any provision in the SFA;
- the corporation operates in a manner that is contrary to the interests of the public, or
- any information or document provided by the corporation to MAS is false or

<sup>76</sup> As stated in Principle 33 MAS may prescribe periodic reports to be submitted by approved exchanges or RMOs. They are obliged to provide assistance to MAS, including the furnishing of such returns and the provision of books and other relevant information. An approved exchange must notify MAS of the intention to amend its business rules or listing rules. MAS may disallow, alter or supplement the proposed amendment. MAS may at any time, vary or impose conditions and restrictions on an approved exchange or RMO (SFA section 8(5)). MAS has the power to issue directions to market operators.

	misleading.
Assessment	Fully Implemented
Comments	As there are no formal agreements between the exchanges to cooperate and share information, there was been on practice to meet to discuss market issues or conduct of common members. It is suggested that notwithstanding the different nature of the SGX and SMX markets, MAS takes a leadership role and encourages a dialogue among it and the exchanges about emerging developments in its markets and the Singapore financial sector, including sharing information about the clearing members common to both exchanges.
<b>Principle 35.</b>	Regulation should promote transparency of trading.
Description	<p><b>Transparency</b></p> <p><b>Approved exchanges</b></p> <p>SFA requires an approved exchange to ensure that the market it operates is fair, orderly and transparent (section 16). The Guidelines on Regulation of Markets state that MAS considers that in a transparent market:</p> <ul style="list-style-type: none"> <li>• Pre-trade information, such as best bids and offers, should be made available to enable investors to know the transactions they may enter into and at what prices.</li> <li>• Post-trade information on executed trades should be similarly publicized to reflect the market prices of executed trades.</li> <li>• Material information such as corporate announcements, required to assess the value of securities or futures contracts, should be readily available to investors in a comprehensible manner and on a timely basis.</li> </ul> <p>An approved exchange is required to either publish or make available upon request, information on services, products and applicable fees (SF(M)R Regulation 13).</p> <p>The Guidelines on Regulation of Markets considers a fair market to be one that:</p> <ul style="list-style-type: none"> <li>• is characterized by proper trading practices, non-discriminatory access to market facilities and information;</li> <li>• does not tilt the playing field in favor of some participants over others; and</li> <li>• provides investors with greater confidence that they can trade without other investors having an unfair advantage. In this regard, investors should be able to access quotes for comparison prior to execution on a non-discriminatory basis.</li> </ul> <p>The approved exchanges publicize pre trade quotation information, as well as execution prices and volumes via its own website on a real time basis and via market information</p>

dissemination vendors.

### **RMOs**

An RMO is required to either publish or make available upon request, information on services, products and applicable fees (SF(M)R Regulation 26). The SFA does not contain any obligation to publicly disclose market trading information although bids and offers made on an RMO as well as transactions completed in listed securities (and prices) must be disclosed to members of the RMOs. Domestic RMOs will made trading information public via SGX if they are members of it. As the only dark orders are via RMOs, this is dealt with below. Only RMOs that provide a market for Singapore-listed securities are required to report trading information to SGX. There are two and they are dark pool operators. This information must also be provided to the MAS (SFA section 39). There is small demand for trading in overseas based RMO's, however the facility is available if required.

### **OTC**

MAS believes that OTC trading in listed securities, other than reportable large transactions conducted by an intermediary pursuant to the exchange's rules, is insignificant. SGX members are permitted to effect transactions off market by way of "block" or "crossing" trades where more than 50,000 shares or \$150,000 transactions are involved (SGX ST Business Rule 8.7). These must be reported to the exchange<sup>77</sup> and are publicized in the same way as on-exchange transactions.

CFD trading is not conducted on exchange (no CFDs are listed). Very limited activity occurs and trading is conducted privately directly between market intermediaries and their clients. A similar position applies with respect to bond trading, i.e., primarily conducted between market intermediaries and their clients.

### **OTC derivatives<sup>78</sup>**

MAS is implementing the recommendations of the G20 on OTC derivatives reforms:

- The SFA was amended in November 2012 to introduce a new regulatory regime for

<sup>77</sup> Trades must be reported to the exchange, within 10 minutes of the trade if done during market hours, and between 8:30 a.m. to 8:50 a.m. on the next trading day if done after market hours.

<sup>78</sup> CFDs are defined to fall within the definition of "securities" under the SFA and as such, dealing in CFDs is a regulated activity requiring licensing. The SFA also regulates "futures contracts," which are exchange-listed derivatives. OTC derivatives refer to swaps and other off-exchange bilaterally-transacted derivatives trades which are the target of the G20/FSB OTC reforms, covering the equity, interest rates, credit, FX, and commodity asset classes.

trade repositories and expand the regulatory ambit for clearing facilities to OTC derivatives, and to provide powers for MAS to subject certain OTC derivatives contracts to mandatory reporting and central clearing.

- MAS expects to implement mandatory reporting in 3Q 2013 and to commence mandatory clearing by January 2014.
- The Singapore Foreign Exchange Markets Committee (an industry body) has committed to increase standardization of OTC derivatives, starting with interest rate derivatives.
- MAS is studying imposing mandatory trading requirement and regulation of OTC trading platforms, in tandem with developments in regional jurisdictions. MAS conducted a consultation in February 2012 on proposals for OTC derivatives reforms; feedback from the consultation indicated further work is needed, given that Singapore's OTC derivatives market is not as deep or liquid as U.S. or European markets, and a trading mandate may have adverse impact, in fragmenting liquidity and increasing costs for end-users.
- For non-centrally cleared contracts, Singapore has implemented the Basel III requirements on January 1, 2013. Under Basel III, uncleared OTC derivatives would be subject to the CVA risk capital charge which is applicable for all bilateral trades. MAS is a member of the BCBS-IOSCO Workgroup on Margin Requirements, which is undertaking work related to margin requirements for uncleared OTC derivatives. MAS will implement these standards when they are finalized.

#### **Access to information by MAS**

MAS has full access to both pre and post trade information via information and reports provided by exchanges, through SMARTS system and its own market information purchased from a data vendor (exchange trading screens are not available).

#### **Dark pools and high frequency trading**

The Guidelines on Regulation of Markets define transparency as the degree to which information about trading (both pre-trade and post-trade) is made publicly available on a real-time basis.

Dark pools and other alternative trading platforms have emerged as market models which do not provide the same degree of transparency as exchanges. None of the exchanges offer facilities for dark pools. Only a very small number of dark pool operators offer trading of SGX-ST securities and the trading conducted is very small in Singapore. For all domestic RMOs it comprises less than 0.05 percent of the market.

	<p>Dark pool operators for Singapore-listed securities are regulated as RMOs and are subject to recognition conditions, including conditions to report trades in such securities to SGX-ST in accordance with SGX-ST Rule 8.7 on direct business. The rule specifies the conditions under which off-market trades for Singapore-listed securities may be executed and the maximum time limit for reporting such off-market trades.</p> <p>SGX-ST's surveillance process includes the trades reported by dark pools in its monitoring of market trading abuses on SGX-ST.</p> <p>Anecdotal evidence suggests that the volume of high frequency trading in Singapore is low relative to those in U.S. and Europe.</p> <p>MAS supervises SGX-ST, SGX-DT, and SMX, and MAS looks at issues of cross market manipulation between the exchanges. The potential for cross market manipulation between SGX (i.e., SGX-ST and SGX-DT) and SMX is currently low as different products are traded on the exchanges.</p> <p><b>Derogations</b></p> <p>Currently, operators of dark pools in respect of securities listed on the SGX-ST must report each trade<sup>79</sup> to SGX-ST, either as a member of SGX-ST or through a member of SGX-ST to ensure consolidated post-trade transparency. This information forms part of a share's turnover, ensuring a consolidated venue for post-trade information. SGX's total market turnover is reported to the general public.</p> <p>In addition, dark pool operators are required to comply with a threshold on traded volume per security to mitigate market fragmentation. MAS also requires dark pool operators to submit a quarterly report on the trades conducted on its trading platforms and maintain an audit trail of their trades. This provides MAS adequate information to monitor the development of trading on these dark pool operators.</p>
Assessment	Fully Implemented
Comments	
<b>Principle 36.</b>	Regulation should be designed to detect and deter manipulation and other unfair trading practices.
Description	<p><b>Misconduct</b></p> <p>The SFA and SF(LCB)R impose both civil money and criminal penalties for a set of unfair practices in securities (exchanges and RMOs) as follows.</p> <p>A court may make an order for a civil money penalty if MAS and the Public Prosecutor</p>

<sup>79</sup> Dark pools must report each trade within 10 minutes of the trade if done during market hours and between 8:30a.m. to 8:50a.m. on the next trading day if done after market hours.

consent to the order with or without admission of contravention by the person concerned. To date all such orders have been made with admissions of liability by the parties against whom the order has been made.

Similar offenses apply in respect of futures contracts (SFA Division 2 of Part XII). In respect of insider trading, certain attribution of knowledge provisions apply (corporations are taken to possess information which an officer of the corporation possesses when the information came into his possession in the course of his duties).

Civil claims for compensation can be made by persons who suffered loss when contemporaneously trading with the contravening person. The independent cause of action must be taken within six years of the loss (SFA section 234). The court may make an order for compensation against a person whom an action has been brought under the section, if MAS with the consent of the prosecutor has agreed to allow the person to consent to the order.<sup>80</sup> In addition, where a person has been convicted of a market offense, or a civil penalty has been made or the court is satisfied on the balance of probabilities that a contravention of the Part XII has occurred, order disgorgement of any benefit derived by any person from the relevant trades (SFA section 236L).

Offenses and Penalties		
	Civil Money Penalty	Criminal Offenses
Market and price manipulation	The civil penalty is of a sum not exceeding three times the amount of the profit that the offender gained or the amount of loss that he avoided as a result of the contravention, subject to a minimum of either S\$50,000 (if the person is not a corporation) or	SFA sections 197, 198, 206, and 208 (false or misleading appearance of trading or market or price of securities, no change of beneficial ownership, fictitious transactions, or affect or maintain price).  Fine of up to S\$250,000 or jail for up to seven years.

<sup>80</sup> In a civil suit for compensation between an investor and contravening person, there is no requirement for the MAS, public prosecutor and the contravening person to consent to a compensation order by the court. Consent by the MAS, public prosecutor is required when a consent order from the court is being sought pursuant to section 232(4) of the SFA in a civil penalty action brought by the MAS against the offending person.

		S\$100,000 (if the person is a corporation). Where there is no profit or loss avoided, a penalty of not less than S\$50,000 and not more than S\$2 million may be imposed. Section 232 of SFA.	
Misleading information	As above	SFA sections 199, 200, 201, 207, 209 and 210 (make or disseminate false or misleading information).  Fine of up to S\$250,000 or jail for up to seven years.	
Insider dealing <sup>1/</sup>	As above	SFA Division 3 of Part XII (information connected approach).  Fine of up to S\$250,000 or jail for up to seven years.	
Front running		SF(LCB)R Regulation 44	
Wrongful acts and using fraudulent means	As above	SFA Sections 200, 201, 209 and 210.  Fine of up to S\$250,000 or jail for up to seven years.	
Source: MAS.			
1/ Intention to use the insider information is not required to be proved by the prosecution or the plaintiff in a legal action.			

### Mechanisms to detect unfair trading practices

Market surveillance by the MAS and the exchanges and onsite inspections by them, described in Principles 12 and 35 are the main mechanisms used by the authorities to detect unfair trading practices. Civil and criminal sanctions are summarized below.

Criminal and Civil Sanctions						
	2010		2011		2012	
	Civil	Criminal	Civil	Criminal	Civil	Criminal
Market or Price Manipulation (ss. 197, 198, 206, and 208 SFA)	1	1	3	3	1	1
Misleading Information (ss. 199, 200, and 209 SFA)		-		-		-
Insider Trading		2	3	-	3	2 <sup>1/</sup>



(Division 3, Part XII SFA)						(NB: One subject is also charged under s. 197 SFA)
Front Running (Reg. 44 SF(LCB)R or its predecessor, s. 122 SFA)		2		-		-
Other Fraudulent or Deceptive Conduct and Market Abuse (ss. 201, 207, and 210 SFA)		3 (NB: Two subjects are also charged under s. 122 SFA)		1	1	2
Source: MAS.						
1/ Out of the four subjects prosecuted in court in 2012, two of the subjects have been convicted. The charges against the other two subjects are still pending in court.						

SGX-ST, SGX-DT and SMX have the following powers:

- The exchanges may take action to ensure compliance with their rules and listing requirements, and to take investigative actions. Investigations may be undertaken under rule 14.1 of the SGX-ST Rules, rule 7.4 of the Futures Trading Rules and chapter 7 of the SMX Rules.
- The exchanges conduct ad-hoc and regular inspection of their member companies to check for compliance with their rules. The Exchanges are required to refer suspected contravention of the law to the relevant enforcement agencies for investigation. The Exchange's supervisory authority to conduct investigations and inspections of member companies are stipulated in rules 14.1 and 14.2 of the SGX-ST Rules, rules 7.4 and 3.5 of the Futures Trading Rules, and rules 4.5 and chapter 7 of the SMX Rules.
- The exchanges may impose administrative sanctions on their member companies, trading representatives, Catalist sponsors, registered professionals, and on listed issuers and their directors. Disciplinary actions may be taken under rule 14.3 of the SGX-ST Rules, rule 7.2 of the Futures Trading Rules, chapter 3 of the Catalist Rules and rule 8.1 of the SMX Rules.
- In the course of discharging its market surveillance and supervisory functions, if the exchanges find evidence of a possible breach of the law, they may refer the matter to the relevant government authority for criminal investigation and prosecution. This

is an inherent power.

- The exchanges and their Disciplinary Committees have powers to impose these sanctions, such as trading halts, delisting, fines, suspension or revocation of authorization of Sponsors and registered professionals: see chapters 14 and 8 of the SGX-ST Rules, chapter 7 of the Futures Trading Rules, chapters 13 of the Mainboard Rules, chapter 2, 3, and 13 of the Catalist Rules, and chapter 5, 8, and 9 of the SMX Rules.

For breaches of rules, by-laws and listing requirements, it is open to the exchanges to decide whether to take disciplinary actions taking into account the circumstances of each case: see chapter 14 of the SGX-ST Rules, Chapter 7 of the Futures Trading Rules and Chapter 8 of the SMX Rules.

Sanctions in respect of market manipulation and other unfair trading practices may be imposed by exchanges on their members (cautionary warnings, advisories and fines). Regulatory actions taken by SGX and SMX in relation to breaches of conduct rules<sup>81</sup> is set out below:

Exchange Imposed Sanctions						
	2010		2011		2012	
	Public	Non-Public	Public	Non-Public	Public	Non-Public
SGX	0	5	0	4	0	1
SMX	NA	NA	0	4	0	0

Source: MAS.

In practice, MAS will wish to take action first and then leave it to the exchanges to take any additional action they deem appropriate. To date, RMOs have not taken any action concerning manipulative conduct.

### **Cross markets and information sharing**

MAS supervises SGX-ST, SGX-DT and SMX and it will look into any issues of cross market manipulation between the exchanges. The potential for cross market manipulation between SGX (i.e., SGX-ST and SGX-DT) and SMX is currently low as different products are traded on the exchanges.

As indicated in Principle 34, the exchanges have formal arrangements in place for

<sup>81</sup> These are SGX-ST Rule Chapter 13 (Trading Practices and Conduct), SGX Futures Trading Rules Chapter 3 (Conduct of Members Approved Traders and Representatives), SMX Rules Chapter 4 (Conduct of Members) and Chapter 5 (Trading Rules and Contracts Traded). Singapore Mercantile Exchange went live in August 2010.

	<p>reporting, cooperation and exchange of information with MAS.</p> <p>In practice, there are more dealings between SGX and MAS, as SGX is the more established market for cash and derivatives.</p> <p>MAS regularly exchanges information with foreign regulators pursuant to the IOSCO MMoU.</p> <p><b>Futures markets</b></p> <p>Individual large trader positions are monitored by the exchanges on a daily basis and will be reported to MAS on a monthly basis, including name of customer based on a threshold agreed with MAS and the exchanges.</p>
Assessment	Fully Implemented
Comments	
<b>Principle 37.</b>	Regulation should aim to ensure the proper management of large exposures, default risk and market disruption.
Description	<p><b>Monitoring of credit exposures</b></p> <p>The approved exchanges are responsible for monitoring large exposures on a daily basis. MAS performs an oversight role in ensuring that the approved exchanges are discharging their responsibilities.</p> <p>A member is required to notify SGX-ST when it has large exposures to a single customer (SGX-ST Rule 11.7). Notification is required if exposure to a single customer exceeds 20 percent of average aggregate resources. A member is also required to notify SGX-ST (SGX-ST Rule 11.3.9) if its financial resources fall below 150 percent of its total risk requirement (i.e., capital risk charges). SGX-ST has rights under SGX-ST Rule 11.7.1 to impose risk management measures as necessary to reduce a member's risk exposure to a single customer.</p> <p>A member is required to submit to SGX-DT a daily report of open positions (SGX-DT Futures Trading Rule 3.3.18), and upon request by SGX-DT, it must obtain information regarding the ownership and control of open positions within any omnibus account or any sub-account of any omnibus account. SGX-DT also imposes position limits on products to prevent large exposures from building up. Members who require higher position limits must get approval from SGX-DT (which assesses the member's existing exposure and financial condition before approval is given).</p> <p>In the securities market on SGX the day to day process is as follows:</p> <ul style="list-style-type: none"> <li>• large risk exposures to customers are monitored daily and SGX may require additional collateral to be placed the same day that trades are executed;</li> <li>• exposures are aggregated to each individual direct account of clearing members and</li> </ul>

	<p>trading members;</p> <ul style="list-style-type: none"> <li>• its systems track trading accounts identities to trade-by-trade positions and it monitors large exposures the member faces across different accounts for the same customer;</li> <li>• credit concerns with the clearing member and the customer are identified, as well as the clearing member's ability to meet the settlement obligations;</li> <li>• Members engage SGX before they transact large direct business off-market that will subsequently be cleared by SGX;</li> <li>• Where necessary additional margins will be called large exposures are reviewed relative to member's capital;</li> <li>• Members are required to report their exposures to their top 10 customers in their monthly financial submissions to SGX.<sup>82</sup></li> </ul> <p>SGX has received notifications of large exposures from members. From October 2012 to March 2013, SGX received about 50 notifications from Members.</p> <p>SGX monitors risk exposures of customers in the derivatives market on a daily basis. Its risk management system measures and aggregates the exposures of each customer at the account level. Position information of disclosed customers is aggregated at the level of each clearing member, as well as across clearing members, for identification of concentration risks. Where there are significant exposures, SGX determines the need to impose additional risk mitigating measures, and will take into consideration factors such as sufficiency of the clearing fund, whether there are credit concerns over the clearing member or their customers, as well as the clearing member's ability to meet their settlement obligations. Where there is adverse news on a dual customer (i.e., trading on both ST and DT), SGX's evaluation will take into account both ST and DT exposures.</p> <p>At SMX the margin requirement of a clearing member will be the total of the following margins as may be specified by the clearing corporation from time to time:</p> <ul style="list-style-type: none"> <li>• Initial margin;</li> <li>• Variation margin;</li> </ul>
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<sup>82</sup> Members notify SGX when they have large exposures to customers exceeding 20 percent of Average Aggregate Resources (AAR). AAR is the Average of the Aggregate Resources (AR) on the last day of each of the three months preceding the previous month. To derive AR, a member's Total Risk Requirements (TRR) including Large Exposure Requirements, would be deducted from its Financial Resources.

- Delivery margin, and
- Special margin. (SMXCC rule 4.7.1 (6)).

The methods and formula for calculating the above margins and their payment will be determined by the clearing corporation and/or exchange and communicated to the members by way of Notice or such other means as the clearing corporation considers is appropriate. The method of calculation of the margin may include gross position basis, net position basis, and customer level basis or any other method as may be decided by the clearing corporation and/or exchange. Such margin payable shall be paid by a clearing member within such times as may be directed and/or notified and/or prescribed by the clearing corporation and/or exchange.

SMX's trading systems incorporate exposure limit monitoring and alerts. SMX imposes position limits on products to prevent large exposures. Members must have sufficient margin before they are allowed to enter into any positions (SMXCC Rule 3.3.3). Exposure limits prevent members from trading once their initial margins and marked-to-market losses exceed a certain percentage of their monies placed with SMXCC (SMXCC Rule 4.9). SMX places limitations on a member carrying an omnibus account, taking into consideration the number of omnibus accounts carried and the volume of business of the member, the financial condition of the member and the omnibus account holders (SMX Rule 4.11). The member must maintain with SMX a complete list of all such accounts.

MAS' inspection program checks the stress tests conducted by the exchanges (where the emphasis is on market and liquidity risks) and looks at the risk of default under reasonable hypothetical scenarios.

For SGX-ST, the identities of all direct customers are required to be disclosed by members (SGX-ST Rule 12.3.7) and in the case of customers under omnibus accounts, required to be disclosed in the case of large exposures (SGX-ST Rule 11.7).

For SGX-DT, all members are required to report the identity of trading account holders<sup>83</sup> (SGX-DT Futures Trading Rule 3.3.17). A member is required to submit to SGX-DT a daily report of open positions ( SGX-DT Futures Trading Rule 3.3.18), and upon request by SGX-DT, it shall obtain information regarding the ownership and control of open positions within any omnibus account or any sub-account of any omnibus account.

For SMX, members are required to furnish information on their customers' positions and

<sup>83</sup> If a client has open positions with multiple clearing members, SGX will aggregate the client's positions across all these members to determine the risks posed by the client.

exposures on request. Powers are provided under SMX Rule 3.4(1) to require disclosure of information on indirect customers. SMX Notice 3010 also requires members, whose customers wish to have direct trading access through a terminal connected to the SMX trading system, to submit an application to SMX detailing the identities of the customer.

Information relating to exposures is prescribed in the business rules of the approved exchanges. They may take disciplinary action ( SGX-ST Rule 14.3, SGX-DT Futures Trading Rule 7.2, and SMX Rule 8.1), against market participants who fail to provide such relevant information in contravention of business rules and further action as necessary:

- To prescribe additional capital, financial and other requirements on the basis of volume, risk exposure of positions carried and risk concentration ( SGX-ST Rule 11.5.1); and
- Should SGX-DT deem that an adverse event has occurred, including an event that the member's ability to meet its obligations under SGX-DT's rules is materially impacted, or likely to be materially impacted, SGX-DT may exercise power to liquidate positions in a member's house and/or customer account, call for additional margins, or any other action as appropriate to maintain a fair, orderly and transparent market (Futures Trading Rules 7.1.1, 7.3).

SMX may also take action to declare the participant in default and take action against the defaulter, including limiting trading to liquidation or requiring additional margins (SMX Rules 9.3 and 9.4.). SMX may impose conditions on members or customers to cease any further increase in an open position, liquidate an open position or be subject to a higher margin requirement under SMX Rule 5.3.3(3) in relation to position limits, or under SMX Rule 5.16 in the event of emergencies.

Day-to-day surveillance of trading activity is conducted by the approved exchanges. The exchanges and market operators are required to grant MAS full access to their books (which include any record, register, document or other record of information, and any account or accounting record) and shall provide such information and facilities as may be required by MAS to conduct an inspection. On an ongoing basis, MAS' supervisory framework for approved exchanges includes regular monitoring, meetings with senior management, self-assessments and inspection. In particular, MAS engages staff from the approved exchanges on a regular basis.

### **Default procedures**

Default procedures to manage the funds and open positions of defaulting members, including the circumstances under which action may be taken, who may take such action, and the scope of action which may be taken, are set out in the business rules of the clearing facilities providing the clearing and settlement services for the approved exchanges (CDP (Rule 8 of the CDP Clearing Rules), the SGX-DC (Chapter 7A of the SGX-DC Rules) and SMXCC (Chapter 8 of the SMXCC Rules)). These rules are available to all

member firms.

Actions that may be taken by the approved exchanges are:

- declare a member to be a defaulter if it has failed, is unable or unwilling to fulfill its obligations to SGX-ST or its customers, or is apparently insolvent (SGX-ST Rule 14.12.3).
- declare default of a clearing member of SGX-DC(SGX-DT Futures Trading Rule 7.1.1).
- SMX may declare the event of breach as a declared default, SMX may take action under SMX Rule 9.4 against the member for default (SMX Rule 9.2).

The actions to manage the funds and open positions of defaulting members are taken by the clearing facility where the default occurred.

MAS has powers (SFA sections 79,80 and 81) to issue directions to clearing facilities in emergencies and in cases where it may be necessary for ensuring fair, orderly and transparent markets.

In respect of defaulting participants which are CMSL holders regulated by MAS, MAS has powers to take action to revoke or suspend their licenses (SFA section 99M) or to issue directions to the license holders (section 101).

Section 81F of the SFA provides that default procedures shall not be invalid at law by reason only of inconsistency with other laws relating to insolvency, bankruptcy or winding up, and that a relevant office holder or court applying insolvency laws in Singapore shall not prevent or interfere with these default procedures.

### **Segregation**

The three clearing facilities must account for and keep separate, customer funds and assets from other money and assets received from the members. Such customer funds and assets are required to be held in trust for customers and disposed of or used only in respect of contracts of the customers of the members (SFA section 62). Permissible use of customer funds and assets in default procedures are contained in SFA section 63.

### **Market disruption ( price limits, circuit breakers, market halts)**

MAS (and exchanges) have the power to halt the market at an exchange in appropriate circumstances. MAS can do so using its formal powers (SFA sections 32, 34 and 46). However, MAS staff indicated that in practice this has not been necessary as there is constant dialogue with the exchanges.

In addition, the approved exchanges have provisions to deal with excessive volatility in derivatives<sup>84</sup> to prevent wild day-to-day swings and provide a "time-out" in the event of a sharp rise or decline in price. SMX implements risk management measures to minimize excessive volatility. For instance, it has put in place daily price ranges for contracts, which is the maximum price advance or decline allowed during any trading session with reference to previous trading day's settlement price. A maximum single transaction quantity is also applied at the member level per single order entry, to minimize fat finger errors which may cause excessive volatility.

### **Short selling**

Naked short selling is not prohibited by law or by the exchange. There are no uptick rules in Singapore. Securities borrowing and lending facilities are available at the intermediary level but are relatively expensive and not utilized at the retail client level. Some short selling activity occurs, however securities must be delivered on settlement date.

CDP is the only clearing facility for an equity market (SGX-ST) in Singapore. CDP must receive securities on any settlement day from a selling clearing member, by CDP debiting such securities from the clearing account of the selling clearing member before 12:00 midnight on the settlement day (CDP Clearing Rule 6.5.2). In the event of a failure to deliver the securities on the settlement day the CDP must conduct buying-in against a short clearing member without giving prior notice to it. Costs of the buying-in are paid by the short clearing member (CDP Clearing Rule 6.7). Market intermediaries interviewed by the assessors indicated that costs are considerable and provide a disincentive for clients to sell short.

The securities bought-in are:

- credited to the securities account or sub-account of the short clearing member's customer in the case where it is the customer who has not made such securities available in his securities account or sub-account by such time as specified under Rule 6.5.2A, or failed to deliver the securities in accordance with Rule 6.5.2; and
- in any other case, credited to the stock account of the short clearing member.
- The securities bought-in are debited from the short clearing member's customer's securities account or sub-account or the short clearing member's stock account, as

<sup>84</sup> Currently price limits only exist for derivatives markets. SGX has powers to suspend and restrict trading in the securities market if, in its opinion, the market is not orderly, informed or fair (SGX-ST Rule 8.10.1). SGX has issued a consultation paper on June 12, 2013 proposing to introduce dynamic circuit breakers on its securities market.



	<p>the case may be, and credited to the short clearing member's clearing account.</p> <p>SGX members are required to tag and report sales as short sales to the exchange which releases the information to the market. Short sale traded volume and value is aggregated per security and published on a daily basis. SGX also provides a facility for trading members to submit a report of erroneously marked orders. Corrected aggregated short sale volume and value will be published on a weekly basis. The procedures for submission of the report are set out in Appendix 1 of Practice Note 8A.3.3, 8A.4.1, 8A.4.2, 8A.6.2. Rules pertaining to short selling have been published and came into effect in March 2013.</p>
Assessment	Fully Implemented
Comments	<p>Singapore's good track record regarding management of large exposures is noted. So too is the view that capital adequacy compliance is not an issue of concern for MAS as almost all licensees are highly capitalized compared to the base obligations and the majority maintain buffers above the minimum. Notwithstanding those facts and the protections outlined above concerning margining, capital and monitoring and the action that can be taken in respect of large exposures, setting a threshold for reporting of exposures to customers only when these exceed 20 percent of average aggregate resources would appear to be on the high side by international standards. Consideration should be given to lowering this percentage amount and so that exchanges/clearing houses are informed earlier of the potential buildup of large exposures in the interest of ensuring that in the future large exposures do result in financial distress to the market.</p>
<b>Principles Relating to Clearing and Settlement</b>	
<b>Principle 38.</b>	Securities settlement systems and central counterparties should be subject to regulatory and supervisory requirements that are designed to ensure that they are fair, effective and efficient and that they reduce systemic risk.
Description	
Assessment	Not assessed.
Comments	