

## Client Alert

May 2017

### MAS consults on first phase of draft regulations pursuant to the Securities and Futures Act including regulations on markets, financial benchmarks and collective investments schemes

For more information, please contact:

**Stephanie Magnus**

+65 6434 2672

[Stephanie.Magnus](mailto:Stephanie.Magnus@bakermckenzie.com)

[@bakermckenzie.com](https://www.bakermckenzie.com)

**Eunice Tan**

+65 6434 2552

[Eunice.Tan](mailto:Eunice.Tan@bakermckenzie.com)

[@bakermckenzie.com](https://www.bakermckenzie.com)

**Liew Ying Yi**

+65 6434 2288

[YingYi.Liew](mailto:YingYi.Liew@bakermckenzie.com)

[@bakermckenzie.com](https://www.bakermckenzie.com)

On 28 April 2017, the Monetary Authority of Singapore ("MAS") issued the first of two consultation papers on draft regulation to support the implementation of legislative amendments to the Securities and Futures Act ("SFA"), referred to as Consultation Paper I on Draft Regulations Pursuant to the SFA ("Consultation Paper"). This comes shortly after the amendments to the SFA were passed in Parliament on 9 January 2017 ([please click here to see our earlier alert on this](#)). Although these amendments are not yet in force, the MAS has indicated the intention for these amendments to be operationalized by 2018. Meanwhile, we can expect the second consultation paper on remaining draft regulations to be issued in May 2017.

The Consultation Paper proposes regulations on:

- (i) New Securities and Futures (Markets) Regulations ("SF(M)R");
- (ii) New Securities and Futures (Financial Benchmark) Regulations ("SF(FB)R");
- (iii) Amendments to the Securities and Futures (Offer of Investments)(Collective Investment Schemes) Regulations 2005 ("SF(OI)(CIS)R") to implement changes under Part XIII of the FA on funds, including real estate investment trusts ("REITs").

The Consultation Paper can be found [here](#). If you have any comments, further questions or feedback on this, please contact us.

Some key proposals are:

Topic	Key Proposals
<b>Markets Regulations (SF(M)R)</b>	<ul style="list-style-type: none"><li>• Minimum admission requirements for corporations operating organised markets (including derivatives markets) as approved exchanges ("AE") or recognised market operators ("RMO") will be set out in the SF(M)R instead of licence conditions/ approvals</li><li>• Defined key criteria for assessing potential AE/RMO applications will be set out in the SF(M)R, including requirements for established track record for the past 5 years, key officers / directors with sufficient experience and a statement on how the corporation complies with statutory obligations, e.g. risk management, sufficient financial / human resources</li></ul>



	<ul style="list-style-type: none"> <li>• Additional requirements on market operators to have measures to:             <ul style="list-style-type: none"> <li>• ensure the handling and execution of bids and offers on a fair and objective basis and to take into account the interests of market participants;</li> <li>• facilitate execution of customer orders in the customer's interest</li> </ul> </li> <li>• Exemption from regulation as an AE or RMO for facilities which engage with customers to broke "block futures" or negotiated large trades" for the purposes of registering such trades on an established organised market operated by an AE or RMO, where regulated as brokers (or CMS licence holders)</li> <li>• <b>Transitional arrangements for entities in operation at the commencement of the SFA ("T")</b> <table border="1" data-bbox="750 810 1406 1201"> <thead> <tr> <th data-bbox="750 810 1162 936">Transitional Period</th> <th data-bbox="1162 810 1406 936">Timeline</th> </tr> </thead> <tbody> <tr> <td data-bbox="750 936 1162 1113">3 months to assess whether it operates an organised market and if so, to notify MAS whether it intends to apply for AE or RMO</td> <td data-bbox="1162 936 1406 1113">(T+3 months)</td> </tr> <tr> <td data-bbox="750 1113 1162 1201">9 months to submit an application to the MAS</td> <td data-bbox="1162 1113 1406 1201">(T+12 months)</td> </tr> </tbody> </table> <p data-bbox="766 1205 1416 1268"><b>Entities may continue to operate business as usual until MAS approves or rejects their applications</b></p> </li> </ul>	Transitional Period	Timeline	3 months to assess whether it operates an organised market and if so, to notify MAS whether it intends to apply for AE or RMO	(T+3 months)	9 months to submit an application to the MAS	(T+12 months)
Transitional Period	Timeline						
3 months to assess whether it operates an organised market and if so, to notify MAS whether it intends to apply for AE or RMO	(T+3 months)						
9 months to submit an application to the MAS	(T+12 months)						
<p data-bbox="522 1533 688 1625"><b>Financial Benchmarks SF(FB)R</b></p>	<ul style="list-style-type: none"> <li>• The MAS intends to designate SIBOR and SOR as designated benchmarks and the new proposed draft regulations will set out the admission, ongoing and other requirements which administrators and submitters to designated benchmarks will be subject to</li> <li>• Every benchmark administrator will need to establish an Oversight Committee to maintain and govern the designated benchmark</li> <li>• Prior approval from the MAS is required to appoint a person to the Oversight Committee</li> <li>• At least one third of the Oversight Committee must be comprised of persons who are not directors, key management officers or substantial shareholders of the benchmark administrator or benchmark submitters</li> <li>• Independent external audit of benchmark administrators and benchmark submitters required</li> <li>• <b>Transitional arrangements for existing benchmark administrators and benchmark submitters in relation to SIBOR and SOR benchmarks:</b></li> </ul>						



	Transitional Period	Timeline
	6 months to submit an application to the MAS for existing benchmark administrators and submitters	(T+6 months)
	6 months to notify the MAS for exempt benchmark submitters (eg licensed banks)	(T+6 months)
<b>CIS Regulations SF(OI)(CIS)R</b>	<ul style="list-style-type: none"> <li>• In addition to the laws and practices under which a foreign fund is governed, MAS has proposed that the following additional factors be taken into account when recognising a foreign fund for offer to retail investors : (a) investment policy of the fund, (b) fund's constituent documents; (c) oversight by trustee or an equivalent body; and (d) whether the factors in (a) to (c) would accord investors protection at least equivalent to that provided under authorised schemes for Singapore constituted funds offered to retail investors)</li> <li>• Managers of physical assets funds that are offered only to accredited investors or institutional investors may be exempted from fund authorisation and prospectus registration requirements subject to certain conditions, e.g. lodgement of information memorandum which complies with disclosure requirements similar to those applicable to registered restricted funds and lodging an annual declaration with the MAS;</li> <li>• Clarification that restriction on disclosure of past performance based on simulated results of a hypothetical fund does not extend to disclosure of pro forma financial information by a REIT.</li> </ul>	

[www.bakermckenzie.com](http://www.bakermckenzie.com)

Baker McKenzie Wong & Leow  
 8 Marina Boulevard  
 #05-01 Marina Bay Financial Centre  
 Tower 1  
 Singapore 018981

Tel: +65 6338 1888  
 Fax: +65 6337 5100

©2017 Baker & McKenzie. All rights reserved. Baker & McKenzie.Wong & Leow is a member of Baker & McKenzie International, a Swiss Verein with member law firms around the world. In accordance with the common terminology used in professional service organizations, reference to a "partner" means a person who is a partner, or equivalent, in such a law firm. Similarly, reference to an "office" means an office of any such law firm.

This may qualify as "Attorney Advertising" requiring notice in some jurisdictions. Prior results do not guarantee a similar outcome.

This alert is provided as general information and does not constitute legal advice.