

CHANGES TO THE REGULATION OF OVER-THE-COUNTER DERIVATIVES IN SINGAPORE

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Author and Contributor: Bill Jamieson and Benjamin Mui.

In the wake of the global financial crisis, MAS announced plans to improve the regulation and supervision of over-the-counter ("OTC") derivatives to meet the post-crisis objectives set by the G20 and the recommendations of its Financial Stability Board. In February 2012, MAS issued a Consultation Paper on the Proposed Regulation of OTC Derivatives ("Consultation Paper") which proposed to expand the scope of the Securities and Futures Act (Cap. 289) ("SFA") to regulate over-the-counter ("OTC") derivatives. There are four main thrusts:

1. To make mandatory the reporting of OTC derivative contracts,
2. To make mandatory the centralised clearing of OTC derivative contracts,
3. To extend the current regulatory regimes of derivatives market operators, and
4. To regulate capital market intermediaries who deal in derivative contracts.

CNPLaw's update on this CP can be accessed [here](#).

The rules on mandatory reporting and centralised clearing of OTC derivative contracts have been passed into legislation. The Securities and Futures (Amendment) Act 2012, passed on 31 October 2013, added Parts VIA and VIB to the SFA. Part VIA sets out mandatory reporting rules, and Part VIB regulates the clearing of derivative contracts. The rules on extending the regulatory regimes of derivative market operators and regulating capital market intermediaries have not yet been legislated.

Mandatory reporting

The mandatory reporting requirement applies to "specified persons", as defined in Part VIA of the SFA and in the Securities and Futures (Reporting of Derivatives Contracts) Regulations 2013. These "specified persons" are:

1. any bank in Singapore;
2. any subsidiary of a bank incorporated in Singapore;
3. any merchant bank approved as a financial institution;
4. any finance company;
5. any insurance company;
6. any approved trustee;
7. any holder of a capital markets services licence, e.g., licensed fund management companies; or
8. any "significant derivatives holder".

A person is a "significant derivative holder" if he is not a "specified person" within the meaning of (1) to (7) above, is resident in Singapore, is party to the derivative contract and where the aggregate gross notional

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amount of the "specified derivative contracts" they are party to are booked or traded in Singapore in excess of S\$8 billion (the current reporting threshold amount).

"Specified derivative contracts" currently refers to interest rate and credit derivative contracts, but could in future include other asset classes such as foreign exchange, equity and commodity derivative contracts.

Centralised clearing

The rules about the mandatory central clearing of OTC derivative contracts require every "specified person" who is a party to a "specified derivative contract" to cause the derivative contract to be cleared on an approved or recognised facility.

"Specified persons" here are defined separately from the mandatory reporting provisions (above). At the moment, "specified persons" under this part of the SFA are:

1. any bank in Singapore;
2. any subsidiary of a bank incorporated in Singapore;
3. any merchant bank approved as a financial institution;
4. any finance company;
5. any insurance company;
6. any approved trustee; or
7. any holder of a capital markets services licence, e.g., licensed fund management companies.

Unlike the mandatory reporting provisions, the subsidiary regulations for the centralised clearing provisions have not been issued yet. MAS has the power to prescribe in the subsidiary regulations other persons as "specified persons". During the public consultation phase of the amendments, MAS mentioned that it was looking to add non-financial entities to these clearing requirements, although at the moment it is still studying the appropriate clearing thresholds to apply to these entities. MAS has also not yet prescribed what "specified derivatives contracts" will fall under this part of the SFA.

Regulation of derivatives market operators

The Consultation Paper included a proposal to require derivatives market operators to be regulated under the SFA as either "approved exchanges" or "recognised market operators". As at the current date, MAS has not yet proposed any legislative amendments in this regard. However, the Consultation Paper provides some indication as to the approach MAS may take in proposing amendments to the legislation.

Regulation of capital market intermediaries who deal in derivatives contracts

The Consultation Paper also proposed to regulate non-bank capital market intermediaries which deal in derivative contracts. As at the current date, the MAS has not yet proposed any legislative amendments in this regard. However, the Consulting Paper provides some indication as to the approach MAS may take.

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