



THE MONETARY AUTHORITY OF SINGAPORE

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# SECURITIES AND FUTURES ACT (CAP. 289)

## GUIDELINES ON THE REGULATION OF MARKETS

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## **1 PURPOSE OF THESE GUIDELINES**

1.1 These *Guidelines on the Regulation of Markets* (the “Guidelines”) are issued by the Monetary Authority of Singapore (“MAS”) pursuant to section 321 of the *Securities and Futures Act (Cap. 289)* (the “SFA”). These Guidelines aim to provide the industry with a better understanding of how MAS will administer the legislative provisions relating to markets, which are contained in Part II of the SFA.

1.2 These Guidelines should be read in conjunction with the provisions of Part II of the SFA and the *Securities and Futures (Markets) Regulations 2005* (the “SF (Markets) Regs”) and where relevant, other provisions of the SFA.

1.3 The *Guidelines on the Regulation of Markets* issued on 11 September 2002 are revoked.

## **2 OBJECTIVES OF REGULATION OF MARKETS**

2.1 As set out in section 5 of the SFA, MAS' objectives in regulating markets are —

- (a) *to promote fair, orderly and transparent markets;*
- (b) *to facilitate efficient markets for the allocation of capital and the transfer of risks; and*
- (c) *to reduce systemic risk.*

2.2 These objectives support MAS' objectives of supervision set out in the "*Objectives and Principles of Financial Supervision in Singapore*" Monograph<sup>1</sup>. They are also in line with the public policy objectives set out by international standard setting bodies such as the International Organisation of Securities Commissions ("IOSCO"), in its "*Objectives and Principles of Securities Regulation*"<sup>2</sup>.

2.3 The following paragraphs provide guidance on the key concepts encapsulated in MAS' regulatory objectives.

### **Fair, orderly and transparent markets**

2.4 Confidence in the financial system and effective intermediation of financial flows requires that capital markets be fair, orderly and transparent.

2.5 A fair market is one that is characterised by proper trading practices, non-discriminatory access to market facilities and information, and one that does not tilt the playing field in favour of some participants over others. A fair market 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 and bids and offers should be matched on an equitable

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<sup>1</sup> The monograph is available on the website of MAS at "<http://www.mas.gov.sg/>".

<sup>2</sup> For more information on IOSCO, please refer to its website at "<http://www.iosco.org/>".

basis. An equitable basis of matching bids and offers includes, amongst others, execution in accordance with price-time priority.

2.6 An orderly market is one that has robust and reliable procedures and systems that allow for the organised conclusion of transactions and at the same time, minimising the risk of market failure. Orderliness is important because it provides the basis for an expectation that the market will function smoothly on a continued basis.

2.7 Transparency may be defined as the degree to which information about trading (both pre-trade and post-trade) is made publicly available on a real-time basis. 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 publicised 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.

### **Efficient markets**

2.8 Interaction of bids and offers and price discovery are intrinsic to any well-functioning market. Interaction of bids and offers occurs when bids and offers by participants are exposed to competition from bids and offers of other participants. An efficient market is one where this process is reliable and unhindered. By ensuring that the dissemination of relevant information is reflected in the price discovery process, an efficient securities market allows allocation of scarce capital to its most efficient use while an efficient futures market facilitates the transfer of risks to persons most willing to bear them.

### **Systemic risk**

2.9 The objective of reducing systemic risk in regulating markets is essential because systemically-important markets may potentially undermine stability or public confidence in the financial system should the markets fail or are disrupted.

2.10 A market is systemically-important if disruptions to the functioning of the market can trigger or transmit further disruptions among financial market

participants. Disruptions to the fair, orderly and transparent operations of a market may also cause widespread disruptions among financial market participants and may even result in instability of the financial system.

2.11 In order for MAS to achieve its regulatory objectives, it is essential for MAS to assess the systemic importance of markets, and to be cognisant of the risks posed by systemically-important markets. MAS therefore subjects systemically-important markets to appropriate regulation, thereby promoting the operation of fair, orderly and transparent markets.

### **3 SCOPE OF REGULATION OF MARKETS**

3.1 The definitions of the terms “securities market” and “futures market” are contained in Part I of the First Schedule to the SFA.

3.2 The following paragraphs elaborate on some of the key elements of the definitions and how MAS intends to administer Part II of the SFA in relation to the interpretation of these terms.

#### **Technology neutral approach**

3.3 The definitions of the terms “securities market” and “futures market” contain the phrase “whether electronic or otherwise”. This means that all market operators, regardless of whether they operate brick-and-mortar trading floors or fully electronic trading platforms, are subject to the same regulatory regime.

3.4 However, a person is not deemed to be operating a “securities market” or “futures markets” merely by establishing some form of electronic facility. For instance, an electronic order-router operated by a licensed intermediary which does nothing more than mere routing of orders, does not fall within the definition of a market under the SFA (see Illustration 1 below). The SFA is not intended to capture a facility that merely acts as a conduit or a channel of communication to a market, if it does not exhibit the other attributes of a market (the elements of which are set out in the respective definitions). Such a facility is similar to an intermediary using a telephone or facsimile machine to transmit customer orders to the relevant markets.

**Illustration 1 – Electronic order router**

Description of the arrangement:

*A corporation provides an electronic facility that enables clients to input orders for securities and futures contracts through the electronic facility. The facility channels the orders of the clients, without alteration of the information contained, to be matched at the relevant exchanges.*

The corporation may be required to hold a capital market services license for dealing in securities or trading in futures contracts but is not required to be regulated as a market for the provision of the electronic facility. The electronic facility is an additional channel for the corporation to receive and transmit orders to exchanges. The pure order routing facility merely serves as a conduit without any matching of the orders of one client with another.

3.5 Likewise, providers of technology infrastructure or software for order routing facilities or trading facilities will not be subject to the regulatory regime for markets under Part II of the SFA (see Illustration 2 below). Such persons only supply the hardware or software to enable their clients, being licensed intermediaries or market operators, to implement their business models. This is in line with the current treatment of various service providers which provide telephone lines, computer systems, software and other infrastructure facilities.



## **Illustration 2 - Technology service providers**

Description of the arrangement:

*A corporation provides proprietary software that enables licensed intermediaries to place orders for securities and futures contracts listed on overseas securities exchanges or overseas futures exchanges, as the case may be, with overseas intermediaries. The proprietary software also enables the transmission of execution reports back to the licensed intermediaries who entered the orders. The software is installed either on proprietary terminals provided by the corporation or on the computers of the licensed intermediaries. The corporation also provides financial information and news updates to the licensed intermediaries.*

Depending on the actual mechanics of the type of financial information provided and the manner in which it is provided, the corporation may be required to hold a financial adviser's licence. However, the corporation is not required to be regulated as a market operator. A technology service provider merely supplies the infrastructure or software to route orders to the overseas intermediaries, who in turn route the orders to the relevant market. Orders are not executed on the proprietary terminals provided by the corporation.

### **Issued securities**

3.6 The term “*issued securities*” refers to listed or unlisted securities that have been previously offered to investors and which are now available for secondary trading.

3.7 Provisions in Part II of the SFA are not applicable to primary offerings of securities where issuers or corporations issue securities in a one-off transaction (see Illustration 3 below). Primary offerings are regulated through different mechanisms such as disclosure requirements, due diligence process and other regulatory processes. The provisions governing offers of investments are found in Part XIII of the SFA.

### **Illustration 3 – Facility for placement of primary issuance**

Description of the arrangement:

*A corporation provides an electronic facility via a website to facilitate companies to raise funds through primary placement of their securities with investors. This website is made available to both retail and institutional investors in Singapore and financial institutions licensed by MAS.*

The corporation is not required to be regulated as a market operator because the facility facilitates the purchase and sale of previously unissued securities. Since the definition of “securities market” under the SFA is applicable to “issued securities”, the facility is excluded from the definition of “securities market”.

### **Regularly**

3.8 Part II of the SFA is not intended to catch one-off transactions. Offers or invitations need to be made on the facility “regularly”. The term “regularly” refers to systematic and recurring transactions. However, it does not mean that transactions have to be executed at certain specified intervals or continuously.

### **Centralised basis**

3.9 At the heart of the operations of a market is price discovery and formation, and this is a process that occurs when offers or invitations are made on a centralised basis. Price discovery refers to the process of uncovering the full-information value of an asset. With the interaction of bids and offers, participants have a good gauge of the supply and demand for securities, thus allowing the participants to better determine the price. Trading facilities that pool together bids and offers of various market participants allow for the comparison and competition of bids and offers. Under the SFA, markets are not limited to facilities where orders are channelled through a single central order execution, but also extend to those where the interaction of bids and offers are done in a centralised manner (see Illustration 4 below).

#### **Illustration 4 – Centralised price discovery**

Description of the arrangement:

*A corporation operates a fixed income electronic facility that pulls together multiple market makers. Each single market maker posts quotes for government securities. The market maker is able to determine which users are permitted to view its quotes or interact with the market maker. If a customer is so permitted, the customer may view and interact with quotes of multiple market makers using the electronic facility. As such, the electronic facility, by bringing together the quotes of multiple market makers, has facilitated the offer or invitations to sell, purchase or exchange fixed income products on a centralised basis.*

The electronic facility, by facilitating the interaction of bids and offers of the various market makers, is deemed to have performed the price discovery function of a market and the corporation operating this electronic facility will fall within the regulatory framework of Part II of the SFA in respect of its operation of a market in Singapore.

#### **Reasonable expectation**

3.10 Under the SFA, markets are not limited to trade execution or matching mechanisms which result in the acceptance or making of offers to sell, purchase or exchange futures contracts or issued securities directly on the facility itself. The market operator may also fall within the regulatory ambit of Part II of the SFA when the participants provide sufficient information on their identities as well as firm prices and order sizes even though the negotiations between the participants may not eventually result in the conclusion of transactions. The relevant part in the respective definitions of a securities market and a futures market is “...being offers or invitations that are intended or may reasonably be expected, to result, whether directly or indirectly, in the acceptance or making, respectively, of offers to sell, purchase or exchange...”.

3.11 Accordingly, a key consideration is whether buyers and sellers have reasonable expectations that they can transact based on the information posted on the facility. Examples include bulletin boards and electronic

platforms which automate traditional over-the-counter markets. It is common for potential buyers and sellers to post bid or offer information on an electronic facility and for subsequent negotiations to be concluded bilaterally off the facility. As long as the information posted on the facility enables the parties to enter into or conclude, or have a reasonable expectation to enter into or conclude, a transaction, the facility will be treated as a market under the SFA (see Illustration 5 below).

### **Illustration 5 – Electronic trading facilities**

Description of the arrangement:

*A corporation provides an electronic facility for licensed intermediaries and investors in Singapore to trade in corporate and government bonds. These participants can access the trading facility either via a secured website or through proprietary terminals. Participants post firm prices for the order size that they wish to transact. The facility automatically executes and clears a firm-price order if it matches an existing firm-price order. The facility does not settle trades. Settlement is undertaken subsequently between the 2 counterparties. If no match is immediately available, the facility displays the firm orders to all clients.*

Orders with firm prices are automatically matched on the facility and there is a reasonable expectation that orders posted on the facility will lead to the conclusion of a transaction. As the facility is made available to licensed intermediaries and investors in Singapore, MAS will require the corporation providing the facility to be regulated as a market operator under Part II of the SFA.

### **Whether through that place or facility or otherwise**

3.12 A facility where the final negotiation or execution of transactions is done outside the facility will still be treated as a market under Part II of the SFA, where the transactions are concluded based on prices obtained from the facility and the facility exhibits the other attributes of a market, as described in the respective definitions of “securities market” and “futures market” (see Illustration 6 below).

### **Illustration 6 – Bulletin boards**

Description of the arrangement:

*A corporation provides an electronic facility via a website to licensed intermediaries and institutional investors in Singapore. The corporation operating the market also has marketing agents in Singapore. The website contains a “bulletin board” where participants can post indicative prices, volumes, and counters of the securities that they wish to transact in. The facility also enables participants to obtain the identities of interested counterparties either via its website or through other communication means. All subsequent negotiation, trading, clearing and settlement activities by the transacting participants will take place off the website of the corporation. The corporation also does not perform any trade matching or execution.*

The corporation providing the facility is required to be regulated as a market operator under Part II of the SFA even though the execution of trades is done outside the facility, as it is caught within the scope of the definition of “market” under Part I of the First Schedule to the SFA. The information posted on the website and the ability to ascertain the identity of interested counterparties lead to a reasonable expectation that indicative offers or invitations will result in the conclusion of a transaction. As the facility is made available to licensed intermediaries and institutional investors in Singapore, MAS will require the corporation providing the facility to be regulated as a market operator under the SFA.

### **Non-multilateral markets excluded**

3.13 The definitions of the terms “securities market” and “futures market” respectively provide that only a place or facility that brings together many buyers and many sellers on a centralised basis will be regulated as a market. A securities market or futures market, as defined under the SFA, is one that does not include a place or facility used by only one person to make or accept offers or invitations to sell, purchase or exchange securities or futures contracts.

3.14 Accordingly, facilities that operate on a “one-to-many” basis are not required to be regulated as markets. An example is a market-making facility

by an intermediary that takes proprietary positions (see Illustration 7 below). Nonetheless, the intermediary will have to comply with the relevant regulatory requirements applicable to holders of a capital markets services licence.

### **Illustration 7 – Market-making facility**

Description of the arrangement:

*A licensed intermediary, authorised under the SFA to carry on business in the regulated activity of dealing in securities, provides an electronic proprietary market-making facility for its clients to trade in warrants. Each warrant is given a number for identification. Clients will input into the facility the identification number of the warrants and the volume of the warrants which they wish to buy or sell. In return, the licensed intermediary will indicate a price at which it is prepared to trade. If there is a matching order, the intermediary will execute the order against its own inventory.*

The licensed intermediary will not be regulated as a market operator under Part II of the SFA as its facility is not a multilateral market but a “one-to-many” facility.

### **Over-the-counter derivatives**

3.15 The definition of “futures markets” in the SFA excludes “*a place or facility that enables persons to negotiate material terms (in addition to the price) of, and enter into transactions in, futures contracts, where the material terms (in addition to the price) of futures contracts are discretionary and not predetermined by the rules or practices of the place or facility*”. The intent of this exclusion is that markets that trade over-the-counter derivatives are not considered as “futures markets” for the purposes of the SFA.

#### **4 APPLICATION OF SECTION 339 OF THE SFA (EXTRA-TERRITORIALITY)**

4.1 Section 339 of the SFA provides for the circumstances in which an act conducted partly or wholly outside Singapore may constitute an offence of any provision of the SFA. In respect of Part II of the SFA, if an operator of an overseas market falls within the ambit of section 339(1) or (2) of the SFA, it will be required to comply with Part II of the SFA and the operator of the overseas market has to apply to MAS for approval as an approved exchange or recognition as a recognised market operator (the “RMO”).

4.2 The *Guidelines on the Application of Section 339 (Extra-Territoriality) of the Securities and Futures Act* set out the general principles underlying how MAS would apply section 339 of the SFA to the various parts of the SFA, including Part II. Part 4 of these Guidelines provides additional guidance specifically for operators of overseas markets.

4.3 MAS will consider operators of overseas markets that physically locate their trading floor or all or part of their trading infrastructure in Singapore to fall within the ambit of section 339(1) of the SFA. In a case where operators of overseas markets provide direct access to the overseas market to investors in Singapore through screens or terminals placed in Singapore that allow investors to directly make or accept offers or invitations on the overseas market through these screens or terminals (see Illustration 8 below), the operators of the overseas markets will fall within the ambit of section 339(1) of the SFA. For the avoidance of doubt, where an operator of an overseas market neither physically locates its trading infrastructure in Singapore, nor provides direct access to investors in Singapore through screens or terminals placed in Singapore, MAS may still consider the operator of the overseas market to fall within the ambit of s339, based on the factors described in the *Guidelines on the Application of Section 339 (Extra-Territoriality) of the Securities and Futures Act*.

4.4 An investor in Singapore is considered to have direct access to a market if the investor can purchase or sell futures contracts or securities on the market without the assistance or intervention of an overseas intermediary. On the other hand, if an investor in Singapore accesses an overseas market through an intermediary in Singapore who forwards the order to another intermediary in the jurisdiction where the market is located,

the investor in Singapore is not considered to have direct access to the market.

**Illustration 8 – Operator of an overseas market**

Description of the arrangement:

*A corporation is licensed to operate a market in a jurisdiction other than Singapore. The corporation provides proprietary trading terminals for institutional investors to enter orders and effect transactions on the overseas market from the premises of the institutional investors in Singapore. This facility allows the institutional investors to have direct access to the overseas market. Transactions can be effected on the overseas market through the terminals.*

As the terminals are located in Singapore and the institutional investors have direct access to the overseas market operated by the corporation, the corporation operating the overseas exchange will be regulated by MAS as a market operator under the SFA.



## **5 REGULATORY REGIME FOR MARKETS**

5.1 As provided in sections 6 and 14 of the SFA, a person seeking to establish or operate a market in Singapore can only do so if the person is either approved as an approved exchange, recognised as a RMO or exempted as an exempt market operator (“EMO”) by MAS.

5.2 As a general principle, corporations operating markets that are systemically-important will be regulated by MAS as approved exchanges. Corporations operating other markets may be regulated as RMOs or exempted from regulation. Approved exchanges are required to comply with a higher level of statutory obligations than that required of RMOs.

5.3 Prior to establishing or operating a market in Singapore, the market operator needs to apply to MAS either for approval as an approved exchange, recognition as a RMO or exemption as an exempt market operator (“EMO”). The market operator should assess whether it should apply to be an approved exchange or a RMO by considering the factors listed in paragraph 5.4 below in relation to its business model.

### **Factors for consideration**

5.4 In determining whether a market operator should be regulated as an approved exchange or a RMO, MAS will consider whether the market is systemically-important and other relevant circumstances, such as public interest. The factors which MAS considers are as follows:

- (a) *the size and structure, or proposed size and structure, of the market operated by the corporation*

Factors which MAS will take into consideration in relation to the size of the market include the volume and value of transactions conducted on the market, the number of investors trading on the market and the number of participants.

The structure of the market refers to how the market is organised. This includes, amongst others, a member-broker structure and direct participation structure. A market that is organised in a more complex manner, and in a manner which

magnifies its reach or influence, e.g. via a member-broker structure rather than a direct participation structure, could be considered to pose a greater risk.

- (b) *the nature of the services provided, or to be provided, by the market to be operated by the corporation*

This relates to the range of services provided by the market operator, such as the provision of quotes, matching of orders and provision of data services.

- (c) *the nature of the securities or futures contracts traded, or to be traded, on the market to be operated by the corporation*

This relates to the number of classes of securities or futures contracts traded on the market (for example, equities, warrants, options and single stock futures).

- (d) *the nature of the investors or participants, or proposed investors or participants, who may use or have an interest in the market to be operated by the corporation*

The factors here include the level of sophistication of the investors or participants, the systemic importance of the participants and the impact of any failure of the market on the investors or participants and the broader financial sector. A market that is widely used by retail investors is more likely to be considered systemically-important.

- (e) *whether the corporation is regulated by MAS under the SFA or any other written law*

If the corporation operating the market is already regulated under the SFA or any other written law administered by MAS, MAS will assess if its regulatory objectives can be achieved via such other regulatory ambit. For example, if the holder of a capital market services licence operates a market, MAS may choose not to approve or recognise the market operator and instead exempt the market operator from the regulatory regime under Part II of the SFA, with appropriate conditions imposed under the exemption.

- (f) *the parties who may be affected in the event that the market to be operated by the corporation or the corporation itself runs into difficulties*

MAS will consider the nature of the parties who may be affected in the event that the market runs into difficulties. This would include considering if parties beyond the investors or market participants would be affected and the level of sophistication of the parties affected.

- (g) *in the case of a corporation operating an overseas market, whether the corporation, in the country or territory in which the head office or principal place of business of the corporation is situated, is subject to requirements and supervision comparable, in relation to the degree to which the objectives referred to in section 5 of the SFA are achieved, to the requirements and supervision to which market operators are subject under the SFA*

MAS will examine the regulatory regime imposed by the overseas regulator on the overseas market and consider if it achieves similar objectives to the regulatory regime in Singapore. When a market operator is already supervised in its home jurisdiction, and the supervision is comparable to MAS' supervision had the market operator been incorporated in Singapore, the market operator is likely to be recognised as a RMO. This is to minimise duplication of regulatory efforts and compliance costs.

(h) *the interests of the public*

MAS may consider if it is in the interests of the public to approve the corporation operating the market as an approved exchange. Such interests may arise if such approval may further the development of the financial sector or reduce systemic risk in the financial system, of Singapore.

(i) *any other circumstances that MAS may deem relevant.*

MAS retains the flexibility to consider other circumstances, as it may deem relevant.

5.5 The decision as to whether a market should be regulated as an approved exchange or as a RMO, or to be granted an exemption as an EMO, will be based on an analysis of the factors in their entirety and is not solely dependent on any one factor above (see Illustrations 9 and 10 below).

**Illustration 9 – Approved exchanges**

Description of the arrangement:

*A corporation seeks to operate a securities market in Singapore. The person provides proprietary trading terminals for licensed intermediaries to enter orders and effect transactions on the securities market. A large number of classes of securities are traded on the market (for example, equities, structured warrants and exchange traded funds) and the products traded are popular and are widely and heavily traded by both retail and institutional investors. The securities market is the only such facility in Singapore that the corporation operates and the failure of the securities market will affect not just the participants and investors, but also the broader financial sector.*

Due to the broad nature of the activities of the market operator, large number of classes of securities traded on the market and the parties who may be affected in the event that the market runs into difficulties, amongst other factors, the market would be considered as having systemic importance. As such, to meet MAS' regulatory objectives, the corporation operating the securities market would be regulated as an approved exchange.

### **Illustration 10 – Recognised market operator**

Description of the arrangement:

*A corporation provides an electronic facility to trade fixed income products via a website to institutional investors only. The electronic facility allows the institutional investors to post indicative prices, volumes and futures contracts that they wish to transact in. The facility also enables institutional investors to obtain the identities of interested counterparties either via its website or through other communication means. The volume of trades conducted through the electronic is moderately high and the electronic facility offers limited classes of securities for trading, including US government securities and corporate bonds.*

The information posted on the electronic facility and the ability to ascertain the identity of interested counterparties lead to a reasonable expectation that indicative offers or invitations will result in the conclusion of a transaction. Thus, the market would fall within the regulatory ambit of Part II of the SFA. As the electronic facility is only used by institutional investors and the volume of trade is moderately high, the failure of the facility is not likely to have a widespread impact on the broader financial sector since institutional investors are better equipped to manage their risks. Thus, the corporation operating the electronic facility would be regulated as a RMO under Part II of the SFA based on the limited systemic risks it poses.

5.6 The approach in relation to oversight over approved exchanges and RMOs is set out below.

### **Approved exchanges**

5.7 MAS adopts a risk-based approach towards market operators. MAS achieves its regulatory objectives primarily by requiring systemically-important entities to be approved as approved exchanges and subjecting them to a higher level of statutory obligations (in particular, Division 2 of Part II of the SFA). MAS may exempt approved exchanges from compliance with certain requirements if MAS is satisfied that the exemption from compliance with such specific obligations would not hinder the achievement of its regulatory objectives.

## **Recognised markets operators**

5.8 The RMO regime is an application of MAS' risk-based approach towards market operators, matching regulatory requirements to the risks posed by the market. The regulatory requirements will be commensurate with the risk profile, nature and scope of the functions of the proposed market operations. MAS also seeks to ensure that there is no regulatory arbitrage between corporations operating similar market operations with similar risk profiles. Under Division 3 of Part II of the SFA, a small number of minimal obligations are applicable to RMOs. MAS also has powers to impose additional obligations on the RMOs, depending on the functions undertaken by the market. MAS will consider the facts and circumstances of each RMO application in deciding on the appropriate recognition conditions. Such recognition conditions could include, amongst others, restrictions on the types of investors the RMO can provide trading access to, the financial products that the RMO can distribute, the requirement for the RMO to notify MAS of changes to its business and the requirement to submit periodic reports to MAS.

5.9 MAS may, under section 8(1) of the SFA, permit an applicant who is not operating a market of systemic importance to elect to be regulated as an approved exchange if the applicant is able to meet the statutory obligations that are imposed on approved exchanges. However, the operator of a market that is systemically important must be regulated as an approved exchange. It does not have the option of electing to be recognised as a RMO.

5.10 On the same note, MAS recognises that a RMO may grow over time to become systemically important. In such cases, MAS may initiate a review of the regulatory status of the RMO under section 11(5) of the SFA or the RMO may apply to MAS to change its status in accordance with the requirements under section 11(1). The review of the regulatory status of the RMO will be conducted in consultation with the RMO. Similarly, if the systemic importance of an approved exchange reduces over time, MAS may, under section 11(5) of the SFA, initiate a review of the regulatory status of the approved exchange or the approved exchange may apply to change its status in accordance with the requirements under section 11(1) of the SFA.

5.11 Section 8(3) of the SFA allows MAS to consider an application for recognition as a RMO as an application for approval as an approved exchange if MAS is of the view that the applicant is more appropriately

regulated as an approved exchange, taking into account the factors described in paragraph 5.4 above, and vice versa (see also section 11(6)). This would only be done with the consent of the applicant. Such an application process will eliminate the need for re-submission of a new application and payment of additional application fees.

5.12 In the case of an operator of an overseas market applying for recognition as a RMO, it must have an address in Singapore for the service of any notice. MAS will also have to be satisfied that –

- (a) the applicant is willing and able to co-operate with MAS in sharing information and in any other manner as required by MAS;
- (b) adequate arrangements have been made with the regulator of the head office of the applicant on regulatory co-operation;
- (c) the regulatory regime of the head office of the applicant is comparable, in the degree to which the objectives in section 5 of the SFA are achieved, to the requirements and supervision to which approved exchanges and RMOs are subject under the SFA; and
- (d) adequate arrangements have been made between the applicant and a market operator in Singapore in respect of the supervision of corporations trading on both the overseas market and the market in Singapore, if applicable.

5.13 Generally, MAS will consider that adequate arrangements have been made under paragraph 5.12(b) above where there is a memorandum of understanding, or similar formal documentation, on information exchange and mutual assistance between MAS and the home regulator of the applicant.

### **Exempt market operators**

5.14 Pursuant to sections 14(1) and (2) of the SFA, MAS may approve an application to be an EMO from, or exempt, a corporation which wishes to establish or operate a market if, in the opinion of MAS, the regulatory objectives of MAS can be achieved without regulating that corporation as an

approved exchange or a RMO. The scope of activities that an EMO can undertake is narrow. Possible scenarios whereby a market operator may be exempted include the following:

- (a) where the market operator is already separately regulated by MAS. For instance, if the holder of a capital market services licence operates a market, MAS may choose not to regulate the market operator as an approved exchange or RMO, but instead impose appropriate conditions under the exemption; or
- (b) where the market poses little risk to the regulatory objectives of MAS and its failure would cause little or limited impact to the financial sector in general. As such, the costs of regulation may outweigh the benefits of regulating the market (see Illustration 11 below).

#### **Illustration 11 – Exempt market operators**

Description of the arrangement:

*A corporation provides an electronic facility for the distribution of syndicated loans and loan equivalents in both primary and secondary markets. Users of the facility are restricted to institutional investors. Though several products are traded on the market, only one of the products, floating-rate notes (“FRNs”), falls within the definition of “securities” under the SFA. The volumes of FRN trades are small relative to the total volume of FRNs traded in Singapore and to the business of the corporation. There are several other options available to institutional investors wishing to trade FRNs.*

The corporation providing the facility can seek to be an EMO under the SFA as the trading volume is low and their services are only offered to institutional clients. The failure of such a market is likely to have little or limited impact on the participants and the financial markets as there are other avenues to trade FRNs.

5.15 MAS is aware that with time, the operations of an EMO may develop and grow in size and complexity. On a case-by-case basis, MAS will



consider whether there is a need to impose limits on the market activities of an EMO. If the assessment of MAS is that the market activities concerned pose risks to our regulatory objectives, MAS may revoke an exemption granted to an EMO pursuant to the powers of MAS under section 15(1) of the SFA.

5.16 If an EMO wishes to increase the scope of its activities, or if circumstances change and the activities it undertakes pose higher risks than before, the EMO may need to be regulated by MAS as either an approved exchange or a RMO.

### **Holding out as approved exchange or RMO**

5.17 No person shall hold himself out to be an approved exchange or a RMO unless he is so approved or recognised by MAS. In the case where MAS revokes the approved exchange status or RMO status, such a person, if he has held himself out to be an approved exchange or a RMO, shall immediately cease to do so.

### **Title**

5.18 It is provided in section 6(3) of the SFA that except with the written approval of MAS, no person other than an approved exchange may use the title or description “securities exchange”, “stock exchange”, “futures exchange” or “derivatives exchange” in any language. For RMOs who also operate overseas securities or futures exchanges, they have to seek approval from MAS, on a case-by-case basis, to use such title or description. MAS would generally grant its approval to enable the RMO to operate in Singapore without having to change its name. This facilitates the preservation of the brand equity of the RMO.

## **6 OBLIGATIONS OF REGULATED MARKET OPERATORS**

6.1 As set out in Part II of the SFA, approved exchanges and RMOs are required to comply with a list of common obligations which are listed below:

- (a) *as far as is reasonably practicable, operate a fair, orderly and transparent market*

The approved exchange or RMO is obliged to operate a fair, orderly and transparent market and shall not engage in activities or businesses that may conflict with this obligation.

- (b) *manage any risks associated with its business and operations prudently*

The approved exchange or RMO is expected to ensure that –

- (i) appropriate and adequate systems and controls are in place to identify, assess, monitor and manage risks to its market operations;
- (ii) appropriate and adequate emergency procedures and business continuity plans, as described in regulations 12 and 25 of the SF (Markets) Regs, are in place; and
- (iii) there is periodic testing or review of its systems and controls, including its business continuity plans.

Where the approved exchange or RMO also conducts businesses and operations other than that of the operation of its market, the approved exchange or RMO is expected to contain the risks associated with such other businesses and operations from that of its markets operations.

- (c) *in discharging its obligations under this Act, not act contrary to the interests of the public, having particular regard to the interests of the investing public*

The approved exchange or RMO, with regard to the interests of the investing public, should not engage in activities that may compromise its ability to maintain an efficient market or lead to an increase in the systemic risk in the financial system of Singapore.

- (d) *have sufficient financial, human and system resources to —*
  - (i) operate a fair, orderly and transparent market;*
  - (ii) meet contingencies or disasters; and*
  - (iii) provide adequate security arrangements*

The approved exchange or RMO is obliged to give regard to the level of resources available to support the trading activities of its market in varying market conditions, commensurate with the needs of its business and operations.

6.2 In addition to the common obligations discussed above, an approved exchange, being systemically important, is required to comply with additional obligations, which are elaborated as follows:

- (a) *ensure that access for participation in its facilities is subject to criteria that are fair and objective, and that are designed to ensure the orderly functioning of its market or markets and to protect the interests of the investing public*

The approved exchange is obliged to ensure that access to participation in its market is based on criteria that are not unnecessarily restrictive and do not limit access on grounds other than that of risks to the fair, orderly and transparent operations of its market.

- (b) *maintain business rules and, where appropriate, listing rules that make satisfactory provision for —*

- (i) a fair, orderly and transparent market in securities or futures contracts that are traded through its facilities; and*
- (ii) the proper regulation and supervision of its members*

The approved exchange is obliged to maintain business rules in compliance with regulation 18 of the SF (Markets) Regs, which prescribes the various aspects of business rules that would enable the approved exchange to discharge its obligations satisfactorily.

- (c) enforce compliance with its business rules and, where appropriate, its listing rules*

The approved exchange is obliged to have an appropriate and adequate surveillance and enforcement programme in place to –

- (i) effectively monitor compliance by its members with its business rules;*
- (ii) enforce its rules; and*
- (iii) discipline its members in a fair and objective manner.*

- (d) ensure that it appoints or employs fit and proper persons as its chief executive officer, directors and key management officers*

The duties and functions of the key officers are elaborated in regulation 29 of the SF (Markets) Regs.

### **Amendments to the business or listing rules**

6.3 In regulation 19 of the SF (Markets) Regs, an approved exchange, which proposes to amend its business rules or listing rules, shall consult its participants, unless the proposed amendment would only have limited impact on its participants. When considering the impact that a proposed rule amendment would have on its participants, the approved exchange should consider the likely effect that the amendment would have on the rights, obligations, operations and systems of its various participants.

6.4 Generally, MAS would also expect the approved exchange to consult the public on rule amendments that the approved exchange considers likely to affect the interests of the general investing public.

6.5 When undertaking a consultation, the approved exchange should provide potential respondents with a reasonable opportunity to comment on the proposed amendment, including providing an adequate period of notice and an appropriate avenue to provide feedback. When considering the length of period that should be provided to potential respondents, the approved exchange should take into account the complexity and impact that the proposed amendment would have. Generally, the approved exchange should provide a notice period of at least 10 business days, with longer periods for proposed amendments that are relatively more complex or are likely to have more impact.

6.6 Where the approved exchange has undertaken a consultation, it should provide MAS with a summary of the comments received together with the reasons for accepting or rejecting such comments, when submitting a notification under regulation 19(1) of the SF (Markets) Regs. This is in addition to the information required under regulation 19(1)(a) to (c) of the SF (Markets) Regs.

6.7 To the extent reasonably possible, the approved exchange should allow for a reasonable period between the time it publishes the final text of the amendment and the effective date of the amendment. This would allow its participants to put in place any changes necessary to allow the participants to comply with the amended business rules. When considering the length of period that should be provided, the approved exchange should take into account the impact that the proposed amendment would have.

6.8 MAS recognises that there is a possibility that in urgent situations, an approved exchange needs to propose and bring into effect rule amendments within a very short period of time, in order for the approved exchange to maintain fair, orderly and transparent markets. In such situations, MAS may exercise its power to exempt the approved exchange from the requirement to consult its participants under regulation 19(2), pursuant to section 35 of the SFA.