

Singapore Proposes Regulatory Enhancement to Detect Market Abuse

MAS hopes to strengthen controls on market abuse with new client identification and record keeping requirements for FIs.

Key Points:

- In August 2019, the Monetary Authority of Singapore (MAS) proposed four new regulatory requirements for financial institutions (FIs)¹ that deal with capital market products.
- The proposed requirements relate to identification (client identification and client device identification, if mobile trading apps are used) and record keeping (including keeping records of communications relating to broker-assisted orders and trades (O&T) and a register of cash and third-party payments).
- The proposed requirements are consistent with one of the MAS' key enforcement initiatives, designed to disrupt potential market misconduct through broker engagement.
- The new requirements would bring Singapore in line with financial hubs in other developed markets, including Hong Kong, the US, and the UK.

As Singapore's primary financial services regulatory authority, the MAS is responsible for regulating financial institutions and supervising trading activities to detect market misconduct that may affect the orderliness and integrity of the market, and also has the power to investigate and to punish serious misconduct.

The MAS acknowledges that, in the past, it has faced difficulties and delays in identifying clients of FIs that are licensed to deal in capital market products and/or persons who are beneficial owners of O&T executed in omnibus accounts due to insufficient records. In addition, the MAS has noted that changes in technology, particularly the increased use of mobile trading applications, have exacerbated these challenges.

In response, on August 5, 2019 the MAS issued a consultation paper entitled *Requirements on Controls Against Market Abuse (Consultation Paper)*,² which identifies four new requirements to enhance regulations for FIs that are licensed to deal with capital market products. The consultation is open for comments until 5 September 2019.

These four areas of enhancement are summarized and explored in this *Client Alert*.

Client Identification Rule

The MAS has faced challenges in identifying the ultimate beneficial owners (UBOs) of O&T executed through FIs using omnibus accounts that are held in the name of foreign intermediaries, as the UBOs do not fall under the MAS' regulatory purview and the information is not stored in Singapore. Other jurisdictions such as the European Union (EU) and Hong Kong have faced similar challenges, and have taken steps to address these challenges by introducing strict client identification rules for licensed intermediaries in their respective jurisdictions.

The client identification requirement will require FIs to establish arrangements with clients to facilitate the provision of UBO information to the MAS, or to any law enforcement agency, within five business days upon request. FIs must enter into written agreements with clients setting out the clients' obligation to provide the UBO information upon request, notwithstanding any applicable privacy or secrecy law in the client's jurisdiction.

Under the client identification requirement an FI's client will also be able to provide the UBO information directly to the MAS or law enforcement agency if there are sensitivities about the FI handling that information (e.g., if an FI's client is also an FI and does not wish to disclose the identities of its underlying clients to the requesting FI, which could be a competitor).

The core purpose of this new client identification requirement is to encourage FIs to provide promptly key information to the MAS and law enforcement agencies that may be used as evidence in market abuse investigations and/or enforcement actions. This purpose is consistent with one of the main initiatives highlighted in the MAS' March 2019 Enforcement Report. The report indicated that engaging with FIs supports the MAS' enforcement approach, which involves shaping FIs' conduct and culture through disrupting suspicious trading activities. The MAS also noted that FIs are obliged to deter market misconduct by detecting clients' suspicious trading activities.

Records of Communication on O&T

Currently, FIs holding capital markets services licenses are required under the Securities and Futures (Licensing and Conduct of Business) Regulations to keep a written record of clients' orders, including telephone conversations in which O&T may be placed. Records are important as they may serve as critical evidence in the MAS' market abuse investigations.

In practice, most trading representatives enter orders directly into the FI's order management system after receiving the O&T instructions. The FIs do not usually record or retain communication between the person who instructed the O&T and the trading representative, especially if the communication took place via personal devices such as mobile phones.

The MAS will introduce a new requirement for FIs to record all communications between their trading representatives and those instructing the O&T in customers' accounts for any capital market products, even if such communication does not result in an actual transaction. Personal electronic devices may be used if:

- The FI is able to record and retain the original communication, including instant messages
- The trading representatives perform a call-back to the person who instructed the O&T on the FI's recorded telephone line for each O&T

This requirement broadly aligns with requirements in other jurisdictions, such as Australia, the EU, Hong Kong, and the US. FIs must keep all records for five years, in accordance with the record-keeping retention period under section 102(3) of the SFA.

Client Device Identification

Due to the increasing prevalence of self-directed trading through mobile applications, MAS has stated that FIs should enhance their client identification capabilities. In doing so, FIs will be able to capture client identities even when individuals place orders via self-directed trading avenues (e.g., mobile trading applications).

Each mobile application generates an alphanumeric identifier that is unique to the device on which the application is installed (Device ID). For the client device identification will require FIs to capture and record the Device ID for O&T executed via mobile trading applications. As the Device IDs vary on different operating systems — and consistent with the MAS’ technology-neutral approach to regulation — the MAS will not specify which Device ID should be recorded, but will allow the FIs to customize their own systems in order to comply with this new requirement.

Register of Cash and Third-Party Payments

Currently under many FIs’ funding policies, payments to trading accounts may be made in cash and/or by persons who are not the account holder. Although there may be legitimate reasons for the use of cash or third-party payments, investigations into cases of market misconduct have shown that such account funding policies have been exploited in the past.

The MAS proposes to augment existing anti-money laundering rules requiring FIs to maintain a centralized, electronic register of all payments that FIs receive in cash or from third parties into their clients’ accounts. FIs must produce the register to MAS or other law enforcement agency upon request.

The register should contain the following information:

Funding type	Requirements for FI
All cash payments	The FI should record: <ul style="list-style-type: none"> • The identity of the payer (including national identity number, residential address, and contact number) • The reason for paying in cash • The source of funds
Cash payments made by a third party	The FI should record: <ul style="list-style-type: none"> • The relationship of the third party with the account holder

Funding type	Requirements for FI
	<ul style="list-style-type: none"> • Whether the third party exercises trading authority over the account • The reason for making payment on behalf of the account holder
Non-cash payments made by a third party	<p>The FI should document all available details, such as the mode of payment and the name of the counterparty bank and account holder.</p> <p>The FI also should conduct due diligence checks if the amounts exceed SGD\$20,000 in a single instance or over several instances within a rolling one-month period. As part of such due diligence check, the FIs should obtain information about:</p> <ul style="list-style-type: none"> • The identity of the third party, including national identity number, residential address, and contact number • The relationship with the account holder • Whether the third party exercises trading authority over the account • The reason for making payment on behalf of the account holder

Conclusion

Through the enhanced client identification and record-keeping rules, the MAS hopes to strengthen controls against market abuse and address the difficulties FIs face with client identification. The proposed requirements largely mirror similar regulations already in place in Australia, the EU, Hong Kong, and the US. If implemented, the new requirements will require FIs to amend client-facing documentation and to implement additional compliance procedures in order to satisfy the new regulatory requirements.

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Endnotes

- 1 The FIs in scope are all licensed and exempt FIs (*i.e.*, banks, merchant banks, and finance companies that are exempt from holding a capital markets services license under section 99(1)(a), (b), and (c) of the Securities and Futures Act) in Singapore that undertake the regulated activity of dealing in capital markets products.
- 2 The Consultation Paper is available here: <https://www.mas.gov.sg/-/media/MAS/News-and-Publications/Consultation-Papers/05082019-Control-Against-Market-Abuse/Consultation-Paper-on-Requirements-on-Controls-Against-Market-Abuse.pdf> and the template for responses to the consultation is available here: https://www.mas.gov.sg/-/media/MAS/News-and-Publications/Consultation-Papers/05082019-Control-Against-Market-Abuse/Template-for-Feedback_Control-against-Market-Abuse.docx.