
Key Changes to Securities and Futures (Amendment) Bill

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On 8 October 2018, changes were introduced to the Securities and Futures Act (the “SFA”) to keep the Singapore capital markets regulatory framework in pace with market developments and aligned with international standards and best practices. These changes are set out in the Securities and Futures (Amendment) Act 2017 (the “**2017 Amendment Act**”).

BACKGROUND

9 January 2017, the Securities and Futures (Amendment) Bill 2016 was passed by the Parliament. The 2017 Amendment Act was gazetted on 16 February 2017.

Summary of key changes to the SFA effective on 8 October 2018

1. Regulating market operators and market intermediaries for OTC derivatives.
2. Streamlining definitions of investment products and regulated activities: MAS re-organised and introduced simple, principles-based definitions of products in the securities and derivatives industry that are regulated under the SFA. For example, the scope of regulation of “dealing in securities” has been expanded to “dealing in capital markets products” which will cover dealing in, apart from securities, units in a CIS, derivatives contracts and spot foreign exchange contracts for the purposes of leveraged foreign exchange trading.
3. Refining classification of non-retail investor: Individuals qualify as accredited investors (“AIs”) if they have net personal assets of more than S\$2 million. The 2017 Amendment Act changed the way net personal assets are calculated such that the value of an individual’s primary residence (net of any secured loan) can only contribute up to S\$1 million of the net personal assets threshold of S\$2 million. Under the 2017 Amendment Act, individuals also qualify as AIs if they have more than S\$1 million of financial assets (such as bank deposits) net of any related liabilities.
4. An opt-in regime was introduced providing AIs the option of electing AI or retail status, and where retail status is chosen, an AI will benefit from the full range of capital markets regulatory safeguards applicable for retail investors. The 2017 Amendment Act expanded the definition of “institutional investor” to include persons professionally active in the capital markets such as financial institutions regulated by foreign regulators and sovereign wealth funds. Statutory bodies, other than prescribed statutory boards, are no longer deemed institutional investors.
5. Establishing legislative framework for regulation of financial benchmarks: The new framework is intended to promote fair and transparent determination of financial benchmarks and reduce systemic risks. As financial benchmarks play an important role in the pricing of financial instruments and contracts, the new framework aims to safeguard the credibility and reliability of financial benchmarks in Singapore.
6. Section 243 of the SFA now permits specific information to be incorporated in the prospectus by reference to another document that is lodged with MAS together with the prospectus, subject to conditions and restrictions prescribed by regulations.
7. Prospectus exemption for offers of securities by a subsidiary of a listed entity.
8. Widening factors for recognising CIS constituted outside Singapore.
9. Statutory duty of REIT managers to prioritise interests of participants.

10. Stronger enforcement regime against market misconduct:

- Information that is false or misleading in a material particular need not be price sensitive.
- New statutory definition of “persons who commonly invest”.
- Standardisation of civil penalty ceiling: Section 232 of the SFA has been revised to raise the maximum civil penalty that can be awarded in respect of a breach of the market misconduct provisions. If a person has gained a profit or avoided a loss by virtue of his market misconduct, the maximum civil penalty is the greater of either S\$2 million or three times the amount of the profit gained or loss avoided (instead of limiting the maximum civil penalty to the higher of three times the amount of the benefit obtained or S\$50,000). If no profit was gained or loss was avoided as a result of the contravention, the maximum civil penalty is S\$2 million. The minimum civil penalty that must be awarded is S\$100,000, in the case of a corporation, and in any other case S\$50,000.

About the Author

Holland & Marie is a compliance, C-Suite and legal solutions firm based in Singapore. We have extensive experience resolving typical compliance issues including regulatory inspections, satisfying regulatory requirements and maintaining best practices in corporate governance to navigate the rapidly changing regulatory landscape.

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