

## Singapore: Securities and financial advisors amendments

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The Securities and Futures (Amendment) Bill 2009 (SF(A) Bill) and the Financial Advisers (Amendment) Bill 2009 (FA(A) Bill) introducing considerable amendments to the Securities and Futures Act Chapter 289 (SFA) and the Financial Advisers Act Chapter 110 (FAA) were passed in Parliament on January 19 2009. Related amendments are made to the Business Trusts Act Chapter 31 and the Companies Act Chapter 50. Certain sections of the SF(A) Bill came into effect on April 20 2009.

This article considers the effect of these amendments in achieving the objectives of fostering investor confidence and maintaining a sound and efficient financial services industry in Singapore.

The amendments are the result of a public consultation conducted by the Monetary Authority of Singapore (MAS) in February 2008. They cover a few broad aspects, including:

1. Capital markets licensing and business conduct:
  - A continuing licensing regime for holders of the capital markets services (CMS) licence (as compared to a three-year renewable licence), to reduce MAS's administrative burden;
  - A representative notification framework under which MAS will maintain a public register of the representatives of CMS licence holders and of institutions exempt from holding a CMS licence, with the objective that the public will be able to access information of these representatives and the type of regulated activities that they are allowed to conduct;
  - Providing regulatory assistance to foreign regulators, such as where they seek to inspect CMS or exempt licence-holders who are part of foreign corporations.
2. Market misconduct enforcement framework
  - Attribution of criminal and civil liability on corporations, partnerships or limited liability partnerships for market misconduct offences committed by employees for the benefit or with the consent or connivance of such corporate entities;
  - Disgorgement by persons that benefit from contravening trades conducted on their behalf.
3. Enhancement of disclosure requirements
  - Notification requirements have been streamlined so that disclosure of shareholdings by directors, substantial shareholders and CEOs should now be made to the listed corporation, which will in turn inform investors. Where previously these requirements resided in both the SFA and the Companies Act, they have now been rationalised and only arise under the SFA. These requirements will also apply to foreign-incorporated companies with a primary listing on the SGX-ST;
  - The minimum threshold amount for prospectus exemption has been reduced from S\$200,000 (\$136,000) to S\$100,000.
4. Regulatory flexibility to deal with market innovation
  - Definitions of securities and futures contract are amended to enable MAS to prescribe or exclude certain products as securities and futures contracts. MAS can then keep pace with market developments and improve the time to market of new products.

The amendments should be considered with other measures, for instance those introduced by SGX, in consultation with MAS, from December 2008 to facilitate fund-raising measures by listed issuers. Such measures demonstrate a great degree of flexibility on the part of SGX and MAS.

The aims of protecting investors and creating a well-regulated market should be balanced against those of market innovation and competitiveness, particularly against the backdrop of the financial and economic crisis.

During the Bills' passage through Parliament, it was highlighted that a rule-based approach may not always be adequate to deal with fostering market innovation and promoting market regulation, and the challenge was to find a balance with a more principles-based approach.

The creation of a well-managed and transparent financial services industry cannot be met with legal and regulatory reforms alone. Reforms should go in tandem with other related initiatives such as encouraging ongoing investor education and ensuring that the participants in the financial marketplace are aware of their roles and responsibilities and take responsibility for their actions and decisions. The ultimate aim of any such reform should be to create a responsive, accountable and innovative financial industry.

While these amendments are necessary, Singapore should focus on a more comprehensive and integrated approach consisting of reforms as well as other related initiatives, for instance those introduced by the regulatory authorities and financial institutions to facilitate corporate fund raising in these difficult times and improving investor education. A concerted approach will pave the way for the development of Singapore as a mature and sound financial market that rewards both market innovation and promotes investor confidence. Perhaps this is not simply Singapore's challenge alone but one that confronts other financial markets in the world.