

## Foreword

**Tighter regulatory regimes, especially in the combat against money laundering and the financing of terrorism, have become one of the key themes in the regulatory framework for financial centres and financial institutions.**

According to the Financial Action Task Force (FATF), the cost of money laundering and underlying

crime is estimated to be between two and five percent of global GDP. Senior management in financial institutions that implement risk based approach in managing associated money laundering risks are expected to know the key risks impacting their businesses. Equipped with that, they therefore are in a position to advise regulators on the controls that are in place to mitigate these risks.

The release of the revised 40 FATF Recommendations on February 15, 2012 incorporated input by member countries

and featured extensive consultation with the private sector and civil society.

In this issue, we discuss the key changes in the revised FATF recommendations and provide you with other updates on regulatory, accounting and tax changes that you will find relevant.

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### Global topics

Recent KPMG reports, whitepapers and publications from KPMG around the world of relevance to the financial services sector.



## The Financial Action Task Force (FATF) Recommendations 2012

In February 2012, the Financial Action Task Force (FATF) released the revised FATF Recommendations following inputs by member countries and extensive consultation with the private sector and civil society. FATF is an inter-governmental body established in 1989 by the ministers of its member jurisdictions. Its mandate is to set up standards to promote the effective implementation of measures for combating money laundering, terrorist financing, as well as the financing of proliferation of weapons of mass destruction and other related threats to the integrity of the global financial system. Singapore is one of the 36 members comprising of 34 member jurisdictions and two regional organisations. The revisions address new and emerging threats, clarify and strengthen many of the existing obligations, while maintaining the necessary stability and rigour in the Recommendations. The key changes in the revised Recommendations are listed below.

### 1. Risk-Based Approach

FATF recommends that countries implement a risk based approach (RBA) when managing a country's money laundering and terrorist

financing risk to ensure efficient allocation of resources. An RBA essentially requires a country to understand the risk of money laundering and terrorist financing relevant to the country and take action to commensurate with the risks identified. Thus, if lower risk is identified, countries can apply the simplified measures, while if a higher risk is identified, enhanced measures can be applied.

According to a 2011 Global Anti-Money Laundering Survey conducted by KPMG, 91 percent of respondents (made up of anti-money laundering, compliance and other related specialists) replied that their respective banks have implemented RBA to Know Your Clients (KYC) requirements.

By using RBA to manage the risk of money laundering and terrorist financing, there is an expectation that the senior management will understand the key risks impacting their businesses. They are therefore in a position to articulate to regulators the controls that are in place to mitigate these risks. Management must be provided with detailed

matrices and management reporting with respect to the output of their financial institution's systems and controls to successfully engage with regulators on these issues. It is not practical for senior management to have a detailed knowledge of all the inner workings of the program, so they need effective assurance with alert mechanisms to understand where there may be problems.

### 2. Transparency and Beneficial Ownership of Legal Persons and Arrangements

The revised Recommendations have included additional preventive measures to enhance transparency in relation to beneficial ownership and control of legal persons and legal arrangements. Adequate, accurate and current information on the following need to be maintained so that they can be assessed timely by the competent authorities.

- Beneficial ownership and control of legal persons. Where legal persons are able to issue bearer shares or bearer share warrants, or allowed to appoint nominee directors or nominee shareholders, countries should take effective measures to manage the risks of

money laundering and terrorist financing.

- Beneficial ownership and control of legal arrangements such as trusts. Information on the settlor, trustee and beneficiaries will have to be obtained and countries will have to implement measures to prevent the use of such arrangements for money laundering and terrorist financing.

The previous FATF Recommendations did not extend to issuers of bearer warrants, nominee directors and nominee shareholders. In addition, the revised Recommendations also ask that countries consider facilitating the access of the above information by financial institutions, designated non-financial business and professions. These include casino operators, real estate agents, dealers in precious metals and stones, legal professionals and accountants, and trust and company service providers, where such parties are required to perform customer due diligence procedures.

### 3. Politically Exposed Persons (PEPs)

New requirements relating to PEPs have been added to the revised Recommendations. This includes extending enhanced measures to:

- PEPs in their capacity as customers or beneficial owners
- Domestic PEPs or persons who are or have been entrusted with a prominent function by an international organisation such as the United Nations and the World Trade Organisation; and
- Family members or close associates of PEPs.

In addition, senior management approval should also be sought not only when establishing business relationships but also when continuing business relationships with PEPs.

### 4. Targeted Financial Sanctions Related to Proliferation

A new recommendation has been introduced where countries guided by the United Nations Security Council resolutions, are to implement

financial sanctions related to the proliferation of weapons of mass destruction and its financing. These resolutions require countries to freeze funds or other assets that are made directly or indirectly available to any person or entity designated by the United Nations Security Council.

### 5. Terrorist Financing

The revised Recommendations have now integrated all nine Special FATF Recommendations which were previously issued to combat the financing of terrorism.

### 6. Tax Crimes

Tax crimes (related to direct and indirect taxes) have been added to the list of offences listed under the Recommendations' designated categories of offences. In October 2011, Singapore announced its intention to criminalise the laundering of proceeds from serious tax offences. FATF has also clarified that smuggling offences include offences relating to customs and excise duties and taxes.

### 7. More effective International Cooperation

The revised recommendations provide measures to facilitate international co-operation in combating money laundering and terrorist financing in areas such as assisting in investigation, exchanging of information between relevant authorities and freezing and confiscating of illegal assets.

### 8. Operational Standards

The revised recommendations provide greater clarity to the responsibilities and powers of relevant authorities such as supervisors of financial institutions, designated non-financial businesses and professions, financial intelligence units and law enforcement and investigative authorities. This will help in the efficiency of combating money laundering and terrorist financing. Countries and jurisdictions, especially the member states, will definitely consider the implementation of the

revised Recommendations. Indeed, Singapore's Steering Committee for combating money laundering and terrorist financing (Committee) comprise the Ministries of Home Affairs and Finance, and the Monetary Authority of Singapore.

**We believe that one of the key challenges expected to be faced by financial institutions is the timely identification of alleged tax crimes perpetrated by their customers.**

This has signaled the intention to be fully compliant with the revised recommendations. The Committee is likely to conduct industry consultations and work in partnership with the private sector to update the existing AML laws and regulations based on the Singapore Steering Committee's press release dated 16 February 2012.

We believe that one of the key challenges expected to be faced by financial institutions is the timely identification of alleged tax crimes perpetrated by their customers. Financial institutions will need to consider if their current systems and processes enable them to capture such instances. There may be additional costs arising from putting in these necessary measures to ensure that tax crimes perpetrated by customers are promptly identified. Nevertheless, it would be beneficial for institutions to start reviewing their existing framework and measures in place to ensure that they would be able to comply with the requirements under the recommendations. Singapore is a member of FATF and according to the membership policy, a country should provide a written commitment at the political level agreeing to implement all the FATF Recommendations within a reasonable timeframe (three years).

## Regulatory, accounting and tax updates



### Regulatory Updates

#### Changes in the regulations concerning Banks & Merchant Banks

##### Consultation Paper on Covered Bonds Issuance by Banks Incorporated in Singapore

This consultation paper outlines proposed rules by Monetary Authority of Singapore (MAS) relating to the issuance of covered bonds by banks incorporated in Singapore. Covered bonds are debt obligations issued by a bank secured by a pool of assets.

Covered bonds provide an additional source of longer-term funding to an issuing bank. However, covered bonds introduce risks as well because they increase the level of asset encumbrance of issuing banks. This will hence reduce the quantum of assets available to the deposit insurance scheme and depositors in the event of the resolution of an issuing bank.

To mitigate this risk, MAS proposes, amongst others, the following requirements:

1. Banks incorporated in Singapore may issue covered bonds subject to the aggregate value of assets in the cover pool being capped at two percent of the value of total assets of the bank

2. The bank notifies MAS prior to the issuance of the covered bonds and appoints an independent cover pool monitor; and
3. The cover pool monitor should certify annually to MAS that the bank has complied with the proposed two percent cap and other regulatory requirements on covered bonds.

These proposed requirements are set out in the draft Notice to Banks in Annex A of the Consultation Paper.

#### Changes in the regulations concerning Capital Markets Regulations

##### Securities, Futures & Fund Management

- Securities and Futures Act  
Effective 17 January 2012, the MAS introduced necessary legislation to include the provision of credit rating services within the Securities and Futures Act (Cap. 289).
- Code of Conduct for Credit Rating Agencies  
A Code of Conduct for Credit Rating Agencies (Code) that was issued by the MAS came into effect 17 January 2012. This Code applies to holders of a capital markets services licence in respect of providing credit rating services (individually, "CRA") and, where appropriate, to their representatives and employees. The Code is non-statutory in nature. A failure by any person to comply with any requirement in this Code shall not of itself render that person liable to criminal proceedings.

However, a failure by a CRA to comply with this Code will be taken into account by the MAS in determining whether a CRA satisfies the requirement that it is fit and proper to remain licensed and whether to revoke or suspend the CRA's licence under section 95 of the Securities and Futures Act (Cap. 289 ("Act")). Similarly, a failure by a representative of a CRA to comply with this Code will be taken into account by the MAS in determining whether the representative satisfies the requirement that he is fit and proper to remain as an appointed, provisional

or temporary representative and whether to revoke or suspend the status of the representative as an appointed, provisional or temporary representative of a CRA under section 99M of the Act or whether to impose any conditions or restrictions on the representative under section 99N of the Act.

The key areas covered within the Code include:

- Quality and Integrity of the Rating Process
- Independence and Avoidance of Conflicts of Interest
- Responsibilities to the Investing Public and Issuers
- Disclosure of Internal Code of Conduct and Communication with Market Participants

#### Consultation Paper on Transfer of Regulatory Oversight of Commodity Derivatives from IE to MAS

In February 2008, the regulation of commodity futures was transferred from the Commodity Trading Act (CTA) administered by the International Enterprise Singapore Board (IE) to the Securities and Futures Act (SFA) under the purview of the MAS. Regulatory oversight of other commodity derivatives (i.e. commodity forwards, contracts for differences on commodities, leveraged commodity trading – herein referred to as "commodity derivatives") and spot commodity trading remain with IE under the CTA.

This consultation paper issued in February 2012 proposes the transfer of regulatory oversight of commodity derivatives under the CTA to the SFA. Recognising the global trend towards strengthening regulations in over-the-counter (OTC) derivatives, MAS' rationale on the proposed transfer is to provide better synergy and alignment of regulatory approach across the major classes of OTC derivatives, and provide greater clarity to industry participants on the regulatory approach between commodity derivatives and commodity futures.

After the proposed changes are effected, entities which engage in



broking both commodity derivatives and commodity futures will only need a single Capital Markets Service (CMS) licence from MAS, instead of the dual licence required under the current regulatory requirements. Similarly, entities operating markets or clearing facilities for commodity derivatives and commodity futures will only need to seek authorisation from MAS instead of two agencies. This will provide greater clarity and efficiency to the industry.

The key areas covered within this consultation paper are as listed below:

1. Reasons for Proposed Transfer; and
2. Proposed Scope for the Transfer, including –
  - Scope of Regulation under the SFA;
  - Regulation of Spot Commodity Trading;
  - Regulation of Markets;
  - Regulation of Clearing Facilities; and
  - Regulation of Intermediaries.

Subject to the feedback received on this consultation paper, the proposed transfer of regulatory oversight of commodity derivatives from IE under the CTA to MAS under the SFA is targeted for the fourth quarter of 2012.

### Consultation Paper on Proposed Regulation of OTC Derivatives

Following the global financial crisis, the G20 committed to improve the regulation and supervision of over-the-counter (OTC) derivatives markets as part of efforts to strengthen the international financial regulatory system. MAS announced in July 2011 that it will meet the objectives set by G20 as well as recommendations by the Financial Stability Board (FSB) on the implementation of these objectives.

This consultation paper issued in February 2012 proposes to expand the scope of the SFA to regulate OTC derivatives as follows:

- Mandate the central clearing and reporting of OTC derivatives
- Extend the current regulatory regimes for market operators, clearing facilities and capital markets intermediaries to OTC derivatives; and
- Introduce a new regulatory regime for trade repositories.



In addition, MAS considered amendments to relevant parts of the SFA arising from the regulations of OTC derivatives, and intends to make further changes to align the treatment for OTC derivatives with that for securities and futures where appropriate. The proposals in this consultation paper focus on the key policy positions for the implementation of OTC derivative market reforms.

The key areas covered within this consultation paper are as listed below:

- Proposal for Expanding the Scope of the SFA to Regulate OTC Derivatives
- Clearing Mandate
- Reporting Mandate
- Trading Mandate
- Proposals for the Regulatory Framework for Market Operators
- Proposals for the Regulatory Framework for Clearing Facilities
- Proposals for the Regulatory Framework for Trade Repositories; and
- Proposals for the Regulatory Framework for Capital Markets Intermediaries.

## Accounting Updates

### FRS 113 Summary

#### FRS 113 - Fair Value Measurement

On 20 September 2011, the ASC issued FRS 113 Fair Value Measurement. FRS 113 replaces the fair value measurement guidance contained in individual FRSs with a single source of fair value measurement guidance.

FRS 113 defines fair value as the price that would be received to sell an asset or paid to transfer a liability in an

orderly transaction between market participants at the measurement date, i.e. an exit price. The standard applies to assets, liabilities and an entity's own equity instruments that, under other FRSs, are required or permitted to be measured at fair value or when disclosure of fair value is provided.

FRS 113 explains 'how' to measure fair value and does not introduce new requirements to measure assets or liabilities at fair value, nor does it eliminate the practicability exceptions to fair value measurements that currently exist in certain standards.

While it includes descriptions of certain valuation approaches and techniques, it does not establish standards on how valuations should be performed unless there is a quoted price in an active market for an identical asset or liability.

FRS 113 requires a fair value hierarchy, which was introduced by FRS 107, to be applied to all fair value measurements, including fair value measurements for non-financial assets and liabilities.

FRS 113 notes that when inputs are determined based on bid and ask prices, a fair value measurement should use the price in the bid-ask spread that is most representative of fair value. The use of bid prices for long positions and ask prices for short positions is permitted but not required. FRS 39 Financial Instruments: Recognition and Measurement has previously required the use of bid prices for asset positions and ask prices for liability positions.

FRS 113 specifies prospective application for annual periods beginning on or after 1 January 2013. Prospective application will mean that any changes from adjustments to valuation techniques will be recognised in profit or loss in the period of adoption. Entities may be required to disclose the impact, if significant. Comparative disclosures and measurements are not required for the first period of application.

## Tax Updates

### Updates to the Financial Services Sector as announced in Budget 2012

#### 1. Liberalisation of cash distribution requirement for Real Estate Investment Trust (REITs)

A REIT is defined in the Singapore Income Tax Act (SITA) to mean a trust constituted as a collective investment scheme authorised under Section 206 of the Securities and Futures Act (Cap. 289) and listed on the Singapore Exchange which invests or proposes to invest in immovable properties and immovable property-related assets.

Currently, a REIT would not be assessed to tax on its taxable income provided that at least 90 percent of this taxable income is distributed to its unitholders. The distribution must occur in the same financial year in which the income is derived and be made fully in cash.

It is proposed in Budget 2012 that a REIT that makes distributions to unit holders in the form of units can continue to enjoy tax transparency. This is subject to the following conditions:

- Before the distribution, the trustee of the REIT grants the unit holders the option to receive the distributions either in cash or units in that REIT; and
- On the date of distribution, the trustee of the REIT must have sufficient cash to make the entire distribution fully in cash had no

option been given to those unit holders to receive the distribution in units in that REIT.

Unit holders that elect to receive distributions in units will be taxed in the same manner as if they had received the distribution in cash. This change will take effect for distributions made on or after 1 April 2012.

#### 2. Enhancement of liberalised withholding tax exemption regime for specified entities

The broad-based withholding tax exemption scheme is enhanced by including payments relating to any loan or indebtedness that are made by banks, finance companies and certain approved entities to permanent establishments (PE) in Singapore on or after 17 February 2012.

#### 3. Extension of withholding tax exemption for Over-The-Counter (OTC) financial derivatives payments

The withholding tax exemption on all payments made by a financial institution to a person that is neither a Singapore resident nor a PE in Singapore on OTC financial derivatives will be extended to 31 March 2021.

#### 4. Extension of tax deduction for collective impairment provisions

Currently, banks, merchant banks and finance companies may claim tax deduction for collective impairment losses under MAS Notice 612, 1005 and 811 respectively, subject to the provisions of Section 14I of the SITA. These tax concessions will be extended for a further three years till YA 2016 or YA 2017 (depending on the financial year end of the taxpayer).

#### 5. Enhancement of designated investment and specified income lists

The lists of specified income and designated investments for existing

tax incentives such as the Enhanced Tier Tax Incentives for funds and the Financial Sector Incentive have been enhanced to keep up with industry development and changes.

The list of designated investments will be streamlined and expanded to include private trusts that invest wholly in designated investments, freight derivatives and publicly-traded partnerships that do not carry a trade, business, profession and vocation in Singapore.

The list of specified income will be revised into an exclusion list. Unless specifically excluded, all income derived on or after 17 February 2012 from designated investments by the qualifying entities would qualify for tax exemption under the relevant tax incentive scheme.

#### 6. Tax certainty on gains on disposals of equity investments

In order to enhance Singapore's attractiveness as a holding company or headquarter location, upfront certainty on the tax treatment on gains derived from the disposal of equity investments by companies will be provided. Such gains will not be taxed if:

- the divesting company holds a minimum shareholding of 20 percent in the company whose shares are being disposed; and
- the divesting company maintains the minimum 20 percent shareholding for a minimum period of 24 months just prior to the disposal.

For share disposals in other scenarios, the tax treatment of the gains/ losses arising from share disposals will continue to be determined based on a consideration of the facts and circumstances of the case. This change will take effect for companies' disposal of shares on or after 1 June 2012. The scheme will be reviewed after five years.

Further details will be released by the authority by 1 June 2012.

# Global topics



## A Disputed Proposal: An overview of the financial industry's response to the Volcker rule (April 2012)

This publication is highlighting what insurers around the world are doing to start preparing for the forthcoming financial reporting changes.



## First Impressions - Offsetting financial assets and financial liabilities (February 2012)

This edition of First Impressions considers the requirements in Offsetting Financial Assets and Financial Liabilities - Amendments to IAS 32 and Disclosures - Offsetting Financial Assets and Financial Liabilities - Amendments to IFRS 7.



## IFRS Practice Issues: Applying the consolidation model to fund managers

Fund managers face a question: whether or not to consolidate their managed funds under IFRS 10 Consolidated Financial Statements. This publication helps to answer the question by focusing on the key issue.



## Shari'a Compliance Services: Time for compliance not complacency! (February 2012)

KPMG's Global Islamic Finance & Investments Group (GIFIG) now offer an independent Shari'a compliance service, which will help enable our member firm clients to be confident that their operations are carried out in conformity with Shari'a principles.



## FATCA - Recently Released Guidance Will Impact U.S. and non-U.S. Insurance Companies

The Internal Revenue Service and U.S. Department of Treasury issues initial, proposed regulations that are intended to interpret and implement the key provisions of FATCA which was enacted in 2010.



## Evolving Insurance Regulation (February 2012)

The focus of the 2nd edition of Evolving Insurance Regulation extends from risk management and prudential change to include the insurance regulatory reform initiatives currently underway in markets around the world.



## Frontiers in Finance (February 2012)

The turmoil in the financial services industry shows no sign of abating. The worst dangers of the financial crisis have given way to political and regulatory reaction on perhaps an unprecedented scale.



## Private Banking Study 3

KPMG Switzerland has launched their third annually survey of private banking trends. The report looks at how banks across Switzerland, Luxembourg, Austria, Hong Kong and Singapore are positioning themselves to tackle the opportunities ahead.



## Frontiers in Tax - February 2012

In the latest edition of frontiers in tax, it features a focus on alternative investments domicile, operations and tax in alternative investment and FATCA: how it catches private equity and real estate.



## IFRS Banking Newsletter - Fifth edition (April 2012)

The fifth IFRS banking newsletter – 'The Bank Statement' – looks at recovery and resolution plans and revenue recognition proposals.



## IFRS for Investment Funds, Issue 4: Classification of Financial Assets and Liabilities under IFRS 9 (May 2012)

The issues cover such topics as presentation and measurement of financial assets carried at fair value, liability vs equity classification for financial instruments issued by investment funds and segment reporting.



## Financial Instruments Newsletter Issue 1 - April 2012

Highlights the discussions and tentative decisions of the IASB in April 2012 on the financial instruments (IAS 39 replacement) project.



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