

# Commodities regulation in Singapore Part 3: Market conduct

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## Introduction

For commodity groups with operations in Singapore, navigating the regulatory perimeter is becoming ever more complex. Recent years have seen an increase in regulatory requirements affecting commodities businesses, largely owing to reforms driven by the G20 and implemented by the Monetary Authority of Singapore (MAS). Groups operating in this sector therefore need to verify which, if any, of their activities are subject to regulation, and ensure that their regulated activities are conducted in a compliant manner.

This briefing is one of a four-part guide setting out the key Singapore regulatory requirements and restrictions which groups operating in the commodities sector need to be aware of, and the practical steps they can apply to remain compliant. For the first part of this guide, on licensing, please follow this [link](#). For the second part of this guide, on derivatives trade reporting, please follow this [link](#). The fourth part will cover anti-money laundering and countering the financing of terrorism.

This briefing outlines how commodity groups may be affected by the Singapore market misconduct regime and the prohibition on breaching position limits set by exchanges.

## The Singapore market misconduct regime

In conducting their trading activities, and in communicating or receiving information, commodity groups should take account of the market misconduct regime relating to capital markets products (CMPs) and financial benchmarks, as well as the insider trading prohibitions, set out in Part XII of the Securities and Futures Act (Cap. 289) of Singapore (SFA).

This regime has broad extraterritorial effect and applies to activities conducted in Singapore as well as activities which are conducted outside of Singapore but which have Singapore touchpoints. Broadly, wherever there is a Singapore nexus (e.g., the relevant CMP is traded or listed in Singapore), the regime will likely be engaged.

For ease of reference, the annex to this document contains a summary overview of the offences under this regime, including their territorial scope. The following paragraphs outline some key practical considerations which typically arise for commodity groups in connection with the regime.

### Market misconduct offences relating to CMPs

Under the SFA, CMPs include a broad range of investment instruments. In practice, the CMPs which are likely to be the most relevant to groups that engage in commodity-related transactions and hedging activities are 'derivatives contracts' (which include both futures contracts and over-the-counter (OTC) derivatives contracts) and spot foreign exchange (FX) contracts for the purposes of leveraged FX trading.<sup>1</sup> However, to the extent that a commodity group from time to time engages in dealings in other CMP types (i.e., securities and/or units in a collective investment scheme (CIS)), the market misconduct offences relating to these should also be borne in mind.

While many of the market misconduct offences relating to CMPs will be triggered where the person who commits them has a particular state of mind (e.g., knowledge of or recklessness as to the conduct), for practical purposes commodity groups should not only seek to prevent instances of purposeful misconduct (e.g., 'rogue trader' scenarios), but should implement broader organisational and governance safeguards to ensure that, in practice, market misconduct risks are mitigated in connection with their day-to-day operations.

Challenges in navigating the market misconduct offences relating to CMPs frequently arise, for example, where the relevant group trades in physical commodities as well as derivatives contracts which have those same commodities as their underlying. In such case, safeguards should be implemented to mitigate the risk of the group being viewed as manipulating the price of the derivatives contracts (e.g., if its trading in the underlying commodity affects the price of that commodity, and consequently, that of the derivatives contract), or as 'cornering' the underlying commodity (broadly, obtaining a significant market share in the commodity and consequently being able to influence supply or demand in respect thereof). In these

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<sup>1</sup> Under a spot FX contract for the purposes of leveraged FX trading, the parties enter into a spot FX contract pursuant to which one counterparty provides to the other counterparty or the counterparty's agent money, securities, property or other collateral which represents only a part of the value of the spot FX contract.

scenarios, Singapore touchpoints that may give rise to a market manipulation offence under the SFA include, for example, where the underlying commodity or the derivatives contracts are traded in Singapore.

Practical safeguards for the mitigation of risk in this regard may include, as appropriate, organisational separation of the teams which trade the relevant physical commodities and derivatives contracts, respectively (including through information barriers and physical segregation), and/or avoiding the use of internal key performance indicators and incentives that are based on the performance of derivatives contracts linked to physical commodities traded by the same group.

### **Market misconduct offences relating to financial benchmarks**

The market misconduct offences in Part XII of the SFA relating to financial benchmarks have broad extraterritorial application and apply to acts occurring within Singapore in relation to any financial benchmark, and to acts occurring outside Singapore in relation to financial benchmarks that are administered in Singapore.

Safeguards to mitigate the risk of these offences being committed may typically need to be implemented where, for example, a commodity group submits information on its trading activities (e.g., in physical commodities) to a financial benchmark that is used to calculate the price of derivatives contracts which the group enters into. Here, the group will need to ensure it cannot be viewed as manipulating the benchmark or making false or misleading statements to the benchmark administrator, either through its trading activities or through the selective submission or alteration of information submitted to the benchmark.

As in relation to the market misconduct offences regarding CMPs, steps to consider may include organisational separation of the respective teams which (i) conduct physical commodity trading activities, (ii) trade in derivatives contracts that rely on the benchmark, and (iii) submit trade data to the benchmark, and/or avoiding the use of internal key performance indicators and incentives that are based on the performance of the benchmark or of the derivatives contracts that rely on the benchmark.

### **Insider trading offences**

The insider trading offences in the SFA are relevant principally to trading activities in relation to the securities of a corporation in circumstances where the person who conducts or facilitates such trading is in possession of inside information in relation to the corporation. The situations in which a group risks committing an insider trading offence are not limited to the group's commodity-based activities, and may extend to other scenarios that may give rise to inside information being held by individuals within the group and/or its external advisers – for example, where the group is planning a merger or acquisition, or where another non-public event positively or adversely impacts the group's operations.

To mitigate the risk of any insider trading offence being committed, groups should ensure they implement appropriate policies and procedures which prevent any dissemination of, or trading activity on the basis of, inside information. Where appropriate, this may include a requirement for public disclosure of inside information so that the group is 'cleansed' of such information.

### **Regulatory enforcement action**

In its inaugural enforcement report published on 20 March 2019, the MAS confirmed that market misconduct constitutes one of its key areas of focus for enforcement action. The majority of the MAS' pending reviews and investigations in this area relate to insider trading and false trading offences, and penalties imposed in the period from mid-2017 to end-2018 included imprisonment of individuals who had engaged in certain forms of misconduct (specifically, placing sell orders with no intention to fulfil them, and manipulating the price of securities).

Measures which the MAS is implementing to help prevent market misconduct include steps to ensure that brokers, in their capacity as trading intermediaries, are in a position to detect and manage any suspicious behaviour, and using augmented trade analysis tools to identify patterns of potential misconduct. The enforcement report also confirms the MAS' continued international engagement with other regulatory and law enforcement bodies through various cooperation arrangements such as memoranda of understanding, which is particularly key in policing market misconduct frameworks.

### **Prohibition on breaching position limits**

Under the SFA, approved exchanges (AEs) and recognised market operators (RMOs) may be required by the MAS to establish, enforce and monitor compliance with position limits in respect of "relevant products" listed or permitted for trading on an organised market<sup>2</sup> operated by the AE or RMO. AEs and RMOs include, for example, ICE Futures Singapore Pte. Ltd. and Singapore Exchange Derivatives Trading Limited.

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<sup>2</sup> An 'organised market' is defined, broadly, as a place or facility allowing the centralised exchange of bids and offers to trade derivatives contracts, securities or CIS units.

A 'relevant product' is defined, in summary, as any instrument, contract or transaction on the organised market operated by the AE or RMO, except securities, any CIS unit, any spot contract, deposits accepted by relevant Singapore-licensed financial institutions, certain insurance contracts, and contracts or arrangements that are prescribed not to be derivatives contracts. The position limits may therefore generally apply with regard to any type of derivatives contract listed or permitted for trading on the relevant organised market.

The position limits apply to participants of the relevant organised market, and any participant who wilfully exceeds any position limits applicable to that market commits an offence. The definition of 'participant' captures any person who may participate in one or more of the services provided by the AE or RMO, and may therefore, arguably, extend to both exchange members and clients of exchange members. Commodity groups should therefore be mindful of any applicable position limits when trading on a relevant organised market through an exchange member.

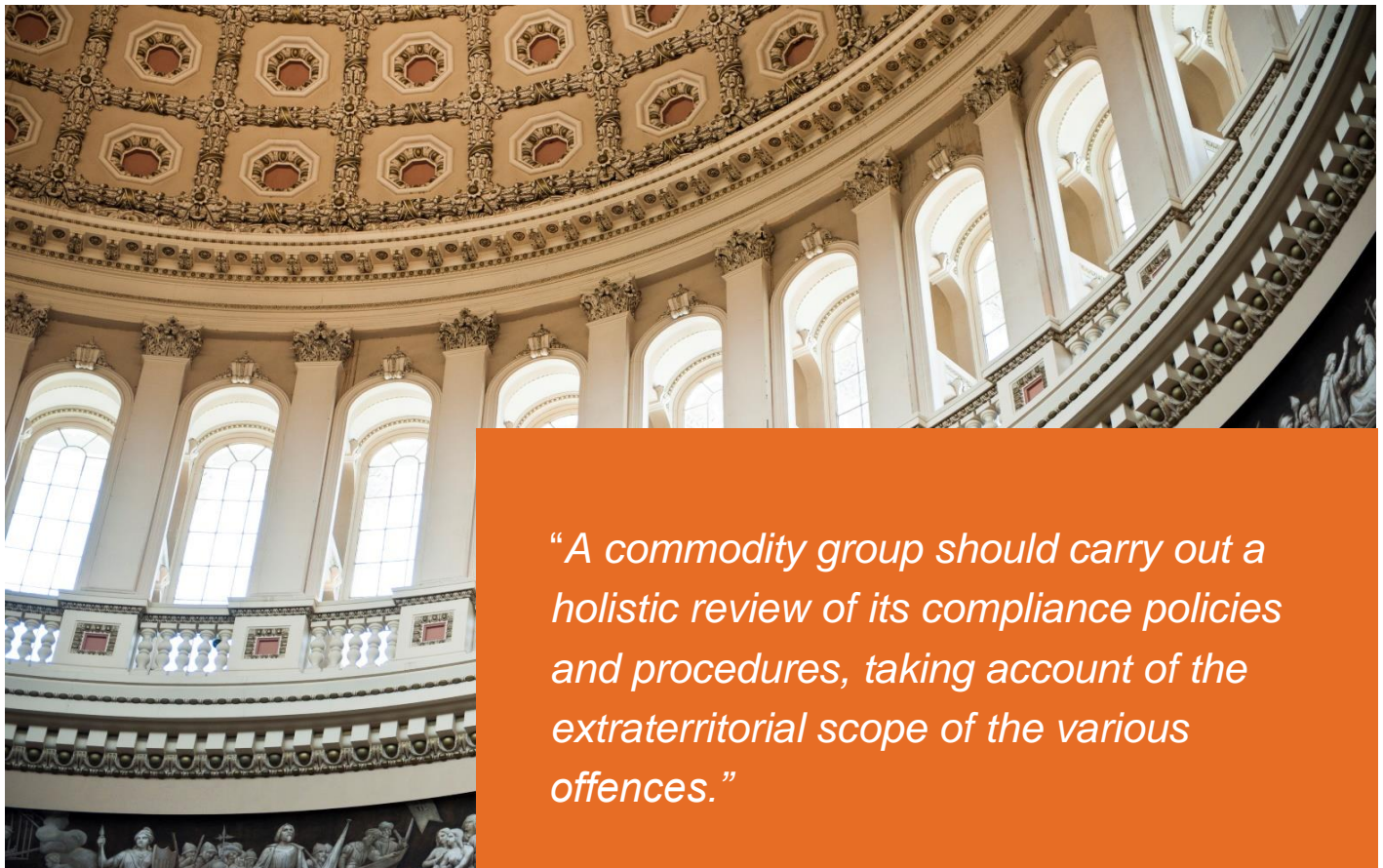
The SFA does not currently seek to impose position limits with respect to pure OTC commodity derivative transactions, i.e., those not listed or permitted for trading on an organised market operated by an AE or RMO.

### Overview of practical considerations

To the extent it has not done so, a commodity group should carry out a holistic review of its compliance policies and procedures for the prevention of market misconduct, insider trading and breach of position limits, taking account of the extraterritorial scope of the various offences under the Singapore regime as well as the instruments and benchmarks which these apply to. As there is substantive overlap between the Singapore regime and similar frameworks in other jurisdictions (e.g., the Market Abuse Regulation in the European Union, which also has extraterritorial effect and which may apply to certain acts carried out in Singapore), the review should assess the requirements of all the key jurisdictions in which the group operates on an overlapping basis.

Reed Smith has extensive experience of carrying out this type of review for clients in relation to all the major extraterritorial market misconduct regimes.

Should you wish to discuss any points addressed in this guide, please do not hesitate to contact us.



*“A commodity group should carry out a holistic review of its compliance policies and procedures, taking account of the extraterritorial scope of the various offences.”*

# ANNEX

## Market misconduct offences

### Market misconduct offences relating to CMPs

The market misconduct offences in Part XII of the SFA relating to CMPs have broad extraterritorial application and apply to (in summary):

- acts occurring within Singapore in relation to any type of CMP; and
- acts occurring outside Singapore in relation to:
  - securities or securities-based derivatives contracts of a corporation that is, or of a business trust whose trustee is, established or carrying on its business in Singapore;
  - securities or securities-based derivatives contracts, or units in a CIS, listed for quotation or quoted on an organised market in Singapore (e.g., Singapore Exchange Securities Trading Limited);
  - spot FX contracts for purposes of leveraged FX trading that are traded in or accessible from Singapore; and
  - any other CMPs (e.g., derivatives contracts) traded in Singapore.

Under Part XII of the SFA, the following types of activity constitute market misconduct offences relating to CMPs:

- **false trading and market rigging** – i.e.:
  - purposely, knowingly or recklessly creating a false or misleading appearance of active trading in, the market for or the price of any CMP on an organised market; or
  - maintaining, inflating, depressing or causing fluctuations in the market price of any CMP by means of a purchase or sale of a CMP not involving a change in the beneficial ownership of the CMP, or by any fictitious transaction or device;
- **market manipulation in relation to securities and securities-based derivatives contracts** – i.e.:
  - effecting or participating in two or more transactions in the securities or securities-based derivatives contracts of a corporation or business trust to raise, lower, maintain or stabilise their price, with a view to inducing other persons to subscribe for, purchase or sell such securities or securities-based derivatives contracts or those of a related corporation;
- **false or misleading statements** – i.e.:
  - making any statement or disseminating information that is materially false or misleading and is likely to induce a subscription, sale or purchase of securities, securities-based derivatives or CIS units, or have an effect on their market price, where the author of the statement or information does not care about its veracity or knows or ought reasonably to have known about its materially false or misleading nature;
- **fraudulently inducing persons to deal in capital markets products** – i.e.:
  - inducing or attempting to induce another person to deal in CMPs through any misleading, false or deceptive statement, promise or forecast, the dishonest concealment of material facts, or the recording or storage of materially false or misleading information;
- **employment of manipulative and deceptive devices** – i.e.:
  - employing any device, scheme or artifice to defraud, engaging in any fraudulent or deceptive act, practice or course of business, making any materially false statement, or omitting to correct a misleading statement, in connection with the subscription, purchase or sale of any CMPs;

- **bucketing** – i.e.:
  - knowingly executing, or holding oneself out as having executed, an order for the purchase or sale of a derivatives contract on an organised market or spot FX contract for the purposes of leveraged FX, without having effected such purchase or sale in good faith;
- **manipulation of price of derivatives contracts and cornering** – i.e.:
  - manipulating or attempting to manipulate the price of a derivatives contract traded on an organised market, or of its underlying thing, or cornering or attempting to corner any underlying thing of a derivatives contract;
- **dissemination of information about illegal transactions** – i.e.:
  - circulation or dissemination by a person of any statement or information relating to transactions or acts affecting the price of any securities or securities-based derivatives contracts of a corporation or business trust, class of derivatives contracts or class of spot FX contracts for the purposes of leveraged FX, which the person knows contravenes or would contravene any of the above market misconduct offences, where the person or his associate enters into such transaction or receives any benefit for such circulation or dissemination;
- **continuous disclosure** – i.e.:
  - intentionally, recklessly or negligently failing to comply with a requirement to notify an approved exchange of information which the approved exchange is required to disclose under the listing rules or any other requirement of the approved exchange. This offence applies to entities, trustee-managers of business trusts and responsible persons of CIS, listed on the relevant approved exchange.

### **Market misconduct offences relating to financial benchmarks**

The market misconduct offences in Part XII of the SFA relating to financial benchmarks have broad extraterritorial application and apply to acts occurring within Singapore in relation to any financial benchmark, and to acts occurring outside Singapore in relation to financial benchmarks that are administered in Singapore.

The following types of activity constitute market misconduct offences relating to financial benchmarks:

- **manipulation of financial benchmarks** – i.e.:
  - purposely, knowingly or recklessly doing anything, causing anything to be done, or engaging in any conduct, to create a false or misleading appearance as to the price, value, performance or rate of any financial benchmark;
- **false or misleading statements** – i.e.:
  - making, disseminating or expressing any materially false or misleading statement, information or opinion to a benchmark administrator.

### **Insider trading offences**

The insider trading offences in Part XII of the SFA have broad extraterritorial application and apply in relation to (in summary):

- acts occurring within Singapore in relation to securities or securities-based derivatives contracts of any corporation or business trust, and any CIS units; and
- acts occurring outside Singapore in relation to:
  - securities or securities-based derivatives contracts of a corporation which is, or of a business trust whose trustee is, established or carrying on its business in Singapore;
  - securities or securities-based derivatives contracts, and CIS units, listed for quotation or quoted on an organised market in Singapore; and
  - securities-based derivatives contracts and CIS units traded in Singapore.

The insider trading offences in Part XII of the SFA apply in relation to inside information, i.e., information that is not generally available but which, if it were generally available, would be expected by a reasonable person to have a material effect on the price or value of securities, securities-based derivatives contracts or CIS units.

An insider trading offence is committed under Part XII of the SFA where a person (an “insider”):

- possesses inside information and knows that (i) the information is not generally available, and (ii) if it were generally available, it might have a material effect on the price or value of the relevant securities, securities-based derivatives contracts or CIS units; and
- deals (i.e., agrees to, or does in fact, subscribe to, purchase or sell), procures that another person deals, or communicates the inside information to another person they know or ought reasonably to know would (or would be likely to) deal or procure a third party to deal, in the relevant securities, securities-based derivatives contracts or CIS units.

A separate offence applies where the insider is a “connected person”, i.e.:

- they are an officer (e.g., director or employer) or a substantial shareholder of a relevant corporation or of a related corporation; or
- they occupy a position that may reasonably be expected to give them access to inside information by virtue of a professional or business relationship with the corporation or a related corporation, or by virtue of being an officer of a substantial shareholder of the corporation or related corporation.

Connected persons may therefore include, for example, external advisers appointed by a corporation.

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