

Newsletter

Regulatory Updates for Fund Management Companies



Welcome to the quarterly newsletter of the BDO Regulatory Updates for Fund Management Companies for the year 2020. This newsletter serves as a summary of the key regulatory developments for fund management companies for the period 1 July 2020 to 30 September 2020.

REGULATORY DEVELOPMENTS

From 1 July 2020 to 30 September 2020, the MAS has issued a series of Notices, Guidelines, Circulars and Guidance.

Amendments to Notice SFA 04-N16 on Execution of Customer's Orders

Status	First Issue date: 3 September 2020
	Effective date: 3 March 2022

- ▶ A capital markets intermediary, must establish and implement written policies and procedures, in relation to the execution, either directly or through an agent, or both, on customers' orders for purchase or sale of any capital markets products. The written policies and procedures needs to take into account the following:
 - a. to place or execute or both, as the case may be, customers' orders on the best available terms; and
 - b. to place or execute, or both, as the case may be, comparable customers' orders in accordance with the time of receipt of such orders.

Guidelines on Individual Accountability and Conduct

Status	First Issue date: 10 September 2020
	Effective date: 10 September 2021

- ▶ The Guidelines focus on the measures Financial Institutions ("FIs") should put in place to promote the individual accountability of senior managers, strengthen oversight over material risk personnel, and reinforce standards of proper conduct among all employees. The Guidelines set out the five accountability and conduct outcomes that FIs should achieve:
 - **Outcome 1:** Senior managers responsible for managing and conducting the FI's core functions are clearly identified.
 - **Outcome 2:** Senior managers are fit and proper for their roles and held responsible for the actions of their employees and the conduct of the business under their purview.

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- **Outcome 3:** The FI's governance framework supports senior managers' performance of their roles and responsibilities, with a clear and transparent management structure and reporting relationships.
 - **Outcome 4:** Material risk personnel are fit and proper for their roles, and subject to effective risk governance, and appropriate incentive structures and standards of conduct.
 - **Outcome 5:** The FI has a framework that promotes and sustains among all employees the desired conduct.
- ▶ FIs are also expected to promote a culture of ethical behaviour by strengthening practices in other areas set out in the Information Paper on Culture and Conduct Practices of Financial Institutions. These additional areas include hiring, communication channels, monitoring and assessment, and performance management.
 - ▶ The Board and senior management are responsible for overseeing FIs' implementation of the Guidelines. MAS may engage FIs, the Boards, senior management and other employees on the implementation of the Guidelines as part of its ongoing supervision.
 - ▶ FIs with less than 50 full-time equivalents, are expected to achieve the five outcomes, but will not ordinarily be expected to adopt the specific guidance described in the Guidelines.

Guidance on Strengthening Capital Markets Intermediaries' Oversight Over AML/CFT Outsourcing Arrangements

Status	First Issue date: 15 July 2020 Effective date: 15 July 2020
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- ▶ The Guidance sets out MAS' supervisory expectations of sound practices where the AML/CFT control functions of Capital Markets Intermediaries (CMIs) are outsourced. The Guidance is based on inspections of capital markets intermediaries, however, it applies to other financial institutions, wherever appropriate. The Guidance is summarised as follows:
 - CMIs remain ultimately responsible for complying with AML/CFT requirements under the MAS Notice SFA04-N02, even when they outsource their AML/CFT control functions.
 - The Board and Senior Management need to set a strong tone from the top and should ensure that the firm's AML/CFT controls remain effective, including under any outsourcing arrangement.
 - CMIs should conduct a gap analysis against the best practices outlined in this guidance as well as MAS' Guidelines on Outsourcing, and take appropriate measures to enhance their practices.
- ▶ Analysis should include in relation to:
 - Robustness in the assessment of AML/CFT Service Provider ("ASPs"), prior to on-boarding
 - Clarity in the definition of outsourcing agreement between the CMIs and the ASPs
 - Effectiveness of controls in relation to monitoring and escalation process

Guidance on Effective AML/CFT Controls in Private Banking

Status	First Issue date: 4 September 2020 Effective date: 4 September 2020
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- ▶ The Guidance sets out MAS' supervisory expectations of effective AML/CFT controls in the private banking industry, following from a series of thematic inspections on private banks ("PBs"). This Guidance supplements the MAS' Guidance on Private Banking Controls issued in 2014. The takeaways from the inspections are applicable and relevant to other types of financial institutions ("FIs"), with the appropriate calibrations. MAS expects FIs to study and incorporate the learning points in a risk-based and proportionate manner, giving proper regard to the profile of their business activities and outcomes.
- ▶ The key areas of focus are as follows:
 - a. Robust Corroboration of Customers' Source of Wealth and Funds
 - b. Instituting an Effective Tax Risk Management Framework
 - c. Subjecting Commercial/Third Party Transaction Flows to Necessary Scrutiny
 - d. Right Tone from the Top and Strong Risk Culture
 - e. Strengthening Performance Management Framework to Foster Strong Risk Culture

▶ MAS expects that:

- a. FIs need to assess the effectiveness of their controls against MAS' inspection findings and the good practices highlighted in this guidance, and take appropriate steps to address any gaps identified.
- b. FIs need to remain alert to evolving risk and typologies and ensure that effective controls are in place to detect and mitigate these risk concerns. Particular attention should be placed on tax and corruption-related ML risks.
- c. Senior management needs to provide close oversight and maintain high risk management standards.

Circular on Preparation for LIBOR Discontinuation: Enhancing Contractual Robustness

Status	First Issue date: 1 September 2020
	Effective date: 1 September 2020

- ▶ The Monetary Authority of Singapore ("MAS") expects financial institutions ("FIs") in Singapore to be prepared well ahead of end 2021 for the discontinuation of the London Inter-bank Offered Rate ("LIBOR") and correspondingly, the Singapore Dollar Swap Office Rate ("SOR"), which uses USD LIBOR in its computation.
- ▶ FIs should closely monitor their usage of LIBOR and SOR, and proactively plan for an early transition of their legacy LIBOR and SOR contracts to alternative reference rates.
- ▶ FIs with exposures to LIBOR or SOR derivatives transactions are encouraged to adhere to the international Swaps and Derivatives Association's ("ISDA") inter-bank offered rates ("IBOR") Fallback Protocol.
- ▶ FIs with the relevant cash market exposures are expected to closely monitor the contractual fallbacks being developed for business and mortgage loans, floating rate notes, securitisations and other products, which various national working groups will be recommending.

Circular on Good Practices for Disclosure of Actively Managed Funds

Status	Issue date: 27 July 2020
	Effective date: 27 July 2020

- ▶ This Circular sets out recommended practices for fund management companies ("FMCs") to enhance disclosures of actively managed funds. This Circular intends to supplement the existing regulatory requirements for the offering of collective investment schemes.
- ▶ FMCs should consider the disclosure practices in relation to the following:
 - Disclosure of Investment Style
 - Disclosure of Reference Benchmark and its Purpose
 - Disclosure of Investment Constraints and Degrees of Active Management
 - Board and Senior Management Oversight

Information Paper on Enhancing Robustness of Enterprise-Wide Risk Assessment on Money Laundering and Terrorism Financing (EWRA)

Status	First Issue date: 3 August 2020
	Effective date: 3 August 2020

- ▶ MAS has published an information paper on "Enhancing Robustness of Enterprise-Wide Risk Assessment on Money Laundering and Terrorism Financing". This paper follows from a series of thematic inspections that assessed the robustness of banks' EWRA. It highlights good practices and illustrative examples observed from the inspections and sets out MAS' supervisory expectations of effective EWRA frameworks and processes.
- ▶ In this paper, the MAS has six desired outcomes and shared area of improvement and good practices observed for each outcome.

- **Outcome 1:** Banks' senior management maintain active oversight of EWRA frameworks and processes, including ensuring compliance with relevant MAS Notices and Guidelines.

Areas of improvement	Good practices observed
<ul style="list-style-type: none"> - Inadequate understanding of EWRA methodology - Undetected errors and omissions - Insufficient deliberation by senior management 	<ul style="list-style-type: none"> - Structured process for management to direct and monitor the implementation of control measures

- **Outcome 2:** Banks have sound and systematic frameworks and processes to assess inherent risks, control effectiveness, and residual risks for each business line.

Areas of improvement	Good practices observed
<ul style="list-style-type: none"> - Flaws in the design of EWRA rating methodology - Inclusion of inapplicable factors / omissions of relevant factors 	<ul style="list-style-type: none"> - Structured methodologies - Detailed rationale for weightages

- **Outcome 3:** Banks perform adequate and accurate qualitative and quantitative analyses in assessing risks.

Areas of improvement	Good practices observed
<ul style="list-style-type: none"> - Errors and omissions in EWRA - Limited quantitative analysis 	<ul style="list-style-type: none"> - Good use of quantitative analysis - Inclusion of factors beyond industry practice - Analysis of future outlook in EWRA

- **Outcome 4:** Banks assess effectiveness of controls, taking into account policies and procedures, control testing results, as well as insights from the banks' assessments of their cultures.

Areas of improvement	Good practices observed
<ul style="list-style-type: none"> - Control testing results not included in EWRA - Regular testing not conducted by second line of defence 	<ul style="list-style-type: none"> - Systematic inclusion of testing results in control assessment - Structured consideration of formalization controls

- **Outcome 5:** Banks have systematic processes to establish and implement control measures to address areas for improvement identified from the EWRA exercise.

Areas of improvement	Good practices observed
<ul style="list-style-type: none"> - Failure to follow up on areas for improvement 	<ul style="list-style-type: none"> - Structured processes to establish and implement remedial measures

- **Outcome 6:** Banks have structured processes to perform gap analysis against guidance papers, and incorporate lessons learnt and good industry practices in their own processes.

Areas of improvement	Good practices observed
- Lack of structured processes for gap analysis against guidance papers	- Systematic processes to perform gap analysis and incorporate learning points in EWRA

Information Paper on Culture and Conduct Practices of Financial Institutions (FIs)

Status	Publication date: 10 September 2020
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- ▶ Information Paper on Culture and Conduct Practices of Financial Institutions (FIs) sets out the 9 outcomes that FIs should work towards:
 - Have strong governance framework that have a holistic view of and proactively shape the FI's culture
 - Identify and empower staff who are responsible for driving the FI's culture and conduct
 - Incorporate culture and conduct considerations in its hiring process and training programmes
 - Cultivate psychological safety to foster a safe environment for staff to provide feedback and raise concerns
 - Board and senior management communicate tone-from-the-top and walk the talk
 - Consider culture drivers and conduct risk as part of its risk management framework
 - Incorporate the assessments of behaviour and culture as part of the internal audit
 - Have incentive structures that promote prudent risk-taking and ethical behaviour
 - Hold the senior managers accountable and ensures proper conduct among all employees.

FATF Report on Virtual Assets Red Flag Indicators of Money Laundering and Terrorist Financing

Status	First Issue Date: 21 September 2020
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- ▶ The FATF issued this report on red flag indicators to assist financial institutions in identifying and reporting potential money laundering and terrorist financing activities involving virtual assets. This report is a useful reference to aid financial institutions ("FIs") in identifying and reporting potential money laundering and terrorism financing ("ML/TF") activities involving virtual assets ("Vas"), in accordance with their suspicious transaction reporting obligations. It complements the FATF Guidance for a Risk-Based Approach to Virtual Assets and Virtual Asset Service Providers. MAS encourages FIs that intend to engage in VA activities, to take reference from this FATF Guidance when designing, implementing or reviewing the effectiveness of their AML/CFT framework.

MAS recent enforcement measures

1. Monetary Authority of Singapore ("MAS") has imposed a composition penalty of \$1,100,000 on Asiatic Trust Singapore Pte Ltd ("ATSP") for its failure to comply with MAS' Anti-Money Laundering and Countering the Financing of Terrorism ("AML/CFT") requirements between 2007 and 2018. Apparently, ATSP did not implement adequate AML/CFT policies and procedures, failed to establish by appropriate and reasonable means, the source of wealth of an effective controller, and did not subject its AML/CFT controls to independent audits. These failings hindered ATSP's ability to detect and mitigate ML/TF risks associated with its higher-risk customers.
2. MAS revoked the Capital Markets Services ("CMS") licence of Apical Asset Management Pte. Ltd. ("AAMPL") on 28 July 2020, for serious breaches of MAS' Anti-Money Laundering/Countering Financing of Terrorism ("AML/CFT") requirements from 2013 to 2018. AAMPL did not have in place basic AML/CFT policies and procedures, did not conduct any enterprise-wide ML/TF risk assessment, did not properly assess its customers to determine whether they presented higher ML/TF risks, deficient ongoing monitoring controls and did not subject its AML/CFT controls to independent audits. MAS has also reprimanded AAMPL's CEO and Director Yeh Yin Yee and Director Bernard Kan Cheok Yin for failing to discharge their duties and functions of ensuring that AAMPL complies with all laws and rules governing its operations.

HOW CAN BDO HELP?

BDO Financial Services Group comprises a multi-disciplinary professional team with the right industry and subject matter expertise to meet your needs. We serve clients in the financial services sector offer a wide range of services, including:

- ▶ Statutory Audit for Financial Institutions
- ▶ Regulatory and Compliance Advisory
 - Develop and implement a robust regulatory and compliance framework
 - Develop policies and procedures
 - Perform gap analysis of existing policies and procedures
 - Perform a regulatory health check on key business areas
 - Assist in license applications
 - Perform compliance outsourcing function
 - Provide training on new/revised regulations which will impact you
 - Assist in the implementation and on-going compliance with the Foreign Account Tax Compliance Act, Personal Data Protection Act and Anti-Money Laundering requirements
- ▶ Corporate Governance and Risk Management Services
- ▶ Internal Audit and Control Framework

www.bdo.com.sg

CONTACTS

TEI TONG HUAT

Partner	tonghuat@bdo.com.sg	+65 6828 9181
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GABRIEL SEOW

Partner	gabrieelseow@bdo.com.sg	+65 6828 9182
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ADELIN TOH

Director	adelinetoh@bdo.com.sg	+65 6829 9611
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GRACE FOO

Manager	gracefoo@bdo.com.sg	+65 6829 9623
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