

EXECUTIVE SUMMARY

LEGISLATION

- **Securities and Futures (Amendment) Act 2012 and the Financial Advisers (Amendment) Act 2012 Passed** **2**

The Securities and Futures (Amendment) Act 2012 and the Financial Advisers (Amendment) Act 2012 were passed by Parliament on 15 November 2012. Their in-force date has not been gazetted yet.
- **MAS's Recovery and Resolution Powers to Be Extended to Other Financial Institutions** **2**

The Monetary Authority of Singapore (Amendment) Bill and the Financial Institutions (Miscellaneous Amendments) Bill were tabled before Parliament on 4 February 2013. Under the two bills, the MAS's powers of resolution and control in the event of insolvency or likely insolvency, among other circumstances, will be extended to cover a wider range of financial institutions. The MAS may, in such prescribed circumstances, take control of a financial institution, sell or transfer its business assets, sell or transfer its shares, and carry out a restructuring of the financial institution.

CONSULTATION PAPERS

- **Consultation Papers Affecting the Insurance Industry** **4**

The MAS has recently issued the following four consultation papers on matters affecting the insurance industry: Consultation Paper on Draft Corporate Governance Regulations and Guidelines for Insurers (4 January 2013), Consultation Paper on Enterprise Risk Management for Insurers (23 January 2013), Consultation Paper on Review of Requirements on Investment Activities of Insurers (23 January 2013); and Consultation Paper on Proposed Public Disclosure Requirements for Insurers (1 February 2013). The proposed changes will essentially put in place a regulatory framework of greater oversight over the governance of insurance companies.
- **MAS Proposes More Stringent Requirements for Related Party Transactions** **9**

The MAS issued a Consultation Paper on Related Party Transaction Requirements for Banks on 26 December 2012. It proposed more stringent rules on related party transactions. The rules proposed would raise requirements for the approval of such transactions, as well as bring a wider range of transactions under the rubric of "related party transactions". The new framework will apply not only to credit transactions but to all exposures and dealings.

- **Changes to the Regulatory Framework for CIS Proposed** **10**
On 26 December 2012, the MAS issued a Consultation Paper on Amendments to the Securities and Futures (Offers of Investments) (Collective Investment Schemes) Regulations 2005 and Proposed Regulatory Treatment of Closed-End Funds. In it, it proposed that disclosure requirements for offers of units in collective investment schemes should be enhanced, offers of units in restricted schemes should be made in or accompanied by an information memorandum, and closed-end funds should be subject to the regulatory regime for collective investment schemes.

- **Consultation Paper on Draft Regulations Pursuant to the Securities and Futures Act and Financial Advisers Act** **13**
The MAS issued a Consultation Paper on Draft Regulations Pursuant to the Securities and Futures Act and Financial Advisers Act on 6 December 2012. In it, it proposed amendments to the Securities and Futures (Licensing and Conduct of Business) Regulations, the Financial Advisers Regulations, and the Securities and Futures (Offers of Investments) (Shares and Debentures) Regulations.

LEGISLATION

Securities and Futures (Amendment) Act 2012 and the Financial Advisers (Amendment) Act 2012 Passed

The Securities and Futures (Amendment) Act 2012 and the Financial Advisers (Amendment) Act 2012 were passed by Parliament on 15 November 2012. The two Acts are not yet in force.

We issued an update on the two Acts when they were first introduced as bills in Parliament. In brief, the key amendments are as follows:

- For the Securities and Futures (Amendment) Act, these are:
 - Imposing obligations on issuers to classify investment products;
 - Promoting more effective disclosure for retail investment products;
 - Safeguarding the interests of investors in unlisted debentures;
 - Enhancing and refining enforcement and market conduct provisions; and
 - Regulating OTC derivatives.
- For the Financial Advisers (Amendment) Act, these are:
 - Enhancing MAS's powers to investigate and take regulatory action;
 - Widening the scope of provisions on false and misleading statements;
 - Extending civil liability to the financial adviser's obligations to furnish product information to investors; and
 - Empowering the court to have regard to a claimant's reasonable efforts in resolving disputes before commencing a civil action in court.

For more information on the changes introduced, please see our earlier update, "[Amendments to the SFA on the Marketing of Specified Investment Products](#)".

MAS's Recovery and Resolution Powers to Be Extended to Other Financial Institutions

The Monetary Authority of Singapore (Amendment) Bill ("**MAS Bill**") and the Financial Institutions (Miscellaneous Amendments) Bill ("**FI Bill**") were tabled before Parliament on 4 February 2013. The changes set out follow from a consultation paper issued by the Monetary Authority of Singapore ("**MAS**") on 26 December 2012, "Consultation Paper on Proposed Amendments to the Monetary Authority of Singapore Act".

The MAS currently has powers of resolution and control over banks and insurers that it may exercise under certain circumstances, such as in the event of their insolvency or likely insolvency. Under the two bills, these

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powers will be extended over the following financial institutions (“**Financial Institutions**”):

- Finance companies;
- Operators or settlement institutions of designated payment systems under the Payment Systems (Oversight) Act;
- Financial institutions approved by the MAS under section 28 of the Monetary Authority of Singapore Act;
- Approved exchanges or recognised market operators;
- Approved and recognised clearing houses;
- Approved holding companies;
- Licensed trade repositories and licensed foreign trade repositories;
- Holders of a capital markets services licence;
- Approved trustees of collective investment schemes;
- Licensed trust companies; and
- Financial holding companies under the Financial Holding Companies Act.

Accordingly, as it may currently do with banks and insurers, the MAS will be empowered to carry out any of the following actions:

- Take control of a Financial Institution;
- Sell or transfer its business assets;
- Sell or transfer its shares; and
- Carry out a restructuring of the Financial Institution.

The MAS's power to take control of a Financial Institution may be exercised when, as noted, the Financial Institution is or is likely to become insolvent. It may also do so in other circumstances, such as, if the Financial Institution becomes unable to meet its obligations or suspends payments, or if the MAS is of the opinion that this is likely to occur. Upon taking control of the Financial Institution, the MAS may appoint a statutory manager to manage its business.

The MAS may exercise its resolution powers to sell or transfer the Financial Institution or its business if it determines that it should do so. The powers are essentially intended to be exercised if the MAS is of the view that this is needed to prevent any systemic risk of contagion arising from the failure of the Financial Institution. In addition, the MAS may also institute a moratorium over the affairs of the Financial Institution, including applying to the courts for an order against the bringing or continuation of any proceedings against the Financial Institution. In response to concerns raised during the public consultation exercise that the resolution powers might affect the enforceability of bilateral netting arrangements, the MAS has provided in the MAS Bill that it may make regulations to exempt set-off or netting arrangements from the exercise of resolution powers.

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The MAS may also, in these circumstances, apply to court for an order requiring a director or executive officer of the Financial Institution to return any salaries paid to him over the past two years, or that any entitlements to salaries and other remuneration will cease. Such an application may be made if the director or executive officer has, among other things, failed to discharge the duties of his office or has been guilty of any misfeasance, breach of trust, or breach of duty in relation to the Financial Institution.

Other powers accorded to the MAS include the following:

- It may issue directions to non-regulated operating entities of any Financial Institution in Singapore where such entities are significant to the business of the Financial Institution group. This power covers only entities which are incorporated or based in Singapore and which belong to the group of which the Financial Institution is part of, including parents or fellow subsidiaries.
- It may remove executive officers of Financial Institutions under certain circumstances.
- It may share information as to its recovery and resolution plans with a foreign regulatory authority, as well as supervisory authorities, central banks, finance ministries, and other authorities responsible for guarantee schemes.

CONSULTATION PAPERS

Consultation Papers Affecting the Insurance Industry

The Monetary Authority of Singapore (“**MAS**”) has recently issued the following four consultation papers on matters affecting the insurance industry:

- Consultation Paper on Draft Corporate Governance Regulations and Guidelines for Insurers (4 January 2013);
- Consultation Paper on Enterprise Risk Management for Insurers (23 January 2013);
- Consultation Paper on Review of Requirements on Investment Activities of Insurers (23 January 2013); and
- Consultation Paper on Proposed Public Disclosure Requirements for Insurers (1 February 2013).

The proposed changes will essentially put in place a regulatory framework of greater oversight over the governance of insurance companies.

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Corporate Governance for Insurers

The MAS had first proposed its policy positions on applying the Insurance (Corporate Governance) Regulations (“**CG Regulations**”) and the MAS Guidelines on Corporate Governance for Banks, Financial Holding Companies and Direct Insurers (“**Guidelines**”) to all locally-incorporated insurers in February 2012 (please see our update, [LawWatch: Financial Services Edition, 20 April 2012](#)).

The CG Regulations will be applicable to all the locally-incorporated direct insurers and reinsurers except for captive insurers and marine mutual insurers. An insurer may be categorised as either “Tier 1” or “Tier 2”. A “Tier 1 insurer” refers to any registered insurer which is incorporated in Singapore and has:

- in the case of a direct life insurer, total assets of at least \$5 billion; and
- in the case of a direct general insurer or a reinsurer, gross premiums of at least \$500 million in its insurance funds.

A “Tier 2 insurer” refers to any registered insurer which is incorporated in Singapore, and has:

- in the case of a direct life insurer, total assets of less than \$5 billion; and
- in the case of a direct general insurer or reinsurer, gross premiums of less than \$500 million in its insurance funds.

The CG Regulations will require all insurers to comply with the following requirements, with more stringent requirements applying to those categorised as “Tier 1”:

- The Board must comprise at least three directors.
- For a Tier 1 insurer, at least a majority of the Board must comprise independent directors. For Tier 2 insurers, the ratio is one-third.
- A director's term of appointment must not exceed three years.
- Every Board must have a Chairman. He must not be an executive director or an immediate family member of the Principal Officer.
- Tier 2 insurers will not be required to establish Board Committees. The Board will be expected to be responsible for the functions of the respective Board Committees.

The Guidelines will be revised and extended to locally-incorporated reinsurers, captive insurers, and marine mutual insurers. Key changes to the Guidelines include the following:

- The Nominating Committee should ensure that there are adequate policies and procedures relating to the engagement, dismissal, and succession of the senior management, and be actively involved in such processes.

- If the financial institution becomes aware of any material and bona fide information which may negatively affect the fitness and propriety of the financial institution's director, Chief Executive Officer, deputy Chief Executive Officer, Chief Financial Officer, Chief Risk Officer, head of the internal audit function, or any relevant senior management staff, the financial institution should inform the MAS immediately.
- The Remuneration Committee should seek input from the Board Risk Committee and ensure that remuneration practices do not create incentives for excessive or inappropriate risk-taking behaviour.
- The Board should regularly meet with senior management to discuss and review critically the decisions made, information provided, and any explanations given by senior management relating to the business and operations of the financial institution.
- Additional responsibilities have been set out for the Board or Board Risk Committee, Chief Risk Officer, and senior management in relation to risk management and internal controls.
- Transactions with related parties and the write-off of related-party exposures exceeding specified amounts or otherwise posing special risks should be subject to prior approval by the Board. Board members with conflicts of interest should be excluded from the approval process of granting and managing related party transactions.

The draft Regulations are targeted to be issued on 1 April 2013 and take effect on 1 May 2013, with the exception of those provisions relating to the appointment of new independent directors to meet Board and Board Committee composition requirements. These latter provisions are targeted to take effect no later than from the first Annual General Meeting of each insurer held on or after 1 January 2016. The draft Guidelines are targeted to take effect by 1 April 2013.

Review of Requirements on Investment Activities of Insurers

Currently, only life insurers are subject to the asset management process requirements set out in MAS Notice 317 on Asset Management of Life Insurance Funds. The MAS has, however, proposed extending these requirements to all direct general insurers and reinsurers. This is due to the growth of their assets and the corresponding increase in their investment activity. In brief, under MAS Notice 317, these insurers will be required to adopt an investment policy, and to establish an investment committee, which must include a Principal Officer and a Chief Investment Officer. However, they will not be required to appoint a Certifying Actuary.

The MAS will amend MAS Notice 317 to include more explicit and detailed guidance on asset-liability management. The requirements under MAS Notice 317, as well as MAS Notice 104 on Use of Derivatives for Investment of Insurance Fund Assets, will be extended to also cover shareholders' funds as it was felt that investment outcomes from the shareholders' funds might have an adverse impact on the solvency of the insurer.

The MAS proposes to apply the requirements which are applicable to solo insurers to insurance groups as well but with modifications. While the concept of asset-liability matching would not be applicable on a consolidated basis, the Group Investment Policy will have to give due regard to asset-liability management for the individual entities within the Group, including regulatory requirements on asset-liability management for the regulated entities.

The MAS proposes to implement the new requirements on 1 January 2014.

Enterprise Risk Management for Insurers

Under the Consultation Paper on Enterprise Risk Management for Insurers, the MAS has proposed requiring all registered insurers (except captive and marine mutual insurers) to comply with stipulated processes for identifying, assessing, measuring, monitoring, controlling, and mitigating risks in respect of the insurance enterprise as a whole.

Enterprise risk management involves regular self-assessments of all reasonably foreseeable and material risks that an insurer faces, including their inter-relationships, and the maintenance of a link between ongoing risk management and longer-term business goals, strategies, and capital needs. Insurers will be required to establish and maintain a risk tolerance statement and to have in place a risk management policy. A review of its enterprise risk management framework must be carried out annually. Insurers will also need to identify likely causes that may result in business failure through the use of reverse stress testing, and take the necessary actions to manage this risk.

For an insurer which is part of a group that maintains a group-wide enterprise risk management framework, the MAS proposes to allow the insurer to rely on its group's enterprise risk management framework to meet the requirements, subject to the insurer's own assessment of the relevance of the risks identified and the appropriateness and adequacy of techniques employed to measure the risks.

It is proposed that each insurer will carry out its own risk and solvency assessment ("ORSA") to assess the adequacy of its risk management and its current, and likely future, solvency position given the existing and potential

risks identified. The directors and senior management of the insurer are responsible for the ORSA process.

It is proposed that:

- A Tier 1 insurer should lodge, with the MAS, its latest ORSA report, with the first report being due by 30 April 2014, and annually thereafter; and
- A Tier 2 insurer should lodge, with the MAS, its latest ORSA report, with the first report being due by 30 April 2015, and by 30 April of every third year thereafter.

The MAS proposes to implement the requirements on 1 January 2014.

Proposed Public Disclosure Requirements for Insurers

The MAS is proposing to enhance the public disclosure requirements for insurers. The requirements are proposed to apply to all registered insurers, except for captive insurers and marine mutual insurers. The following matters for disclosure are proposed:

- Information about its company profile, including the nature of its business, a general description of its key products, the external environment in which it operates, and its objectives and its strategies in place to achieve these objectives;
- Key features of its corporate governance framework and management controls, including information on the implementation of the framework and controls;
- Quantitative and qualitative information about its enterprise risk management framework, including its asset-liability management in total and, where appropriate, at a segmented level as appropriate to the business of the insurer;
- Quantitative and qualitative information on all its reasonably foreseeable and relevant material insurance risk exposures, and the management of such risk exposures;
- Quantitative and qualitative information about the determination of technical provisions, including future cash flow assumptions, the rationale for the choice of discount rates, and a description of methodology used to determine technical provisions;
- Quantitative and qualitative information about capital adequacy to enable the reader to evaluate the registered insurer's objectives, policies and processes for managing capital, and to assess its capital adequacy;
- Quantitative and qualitative information about its financial instruments and other investments by class; and
- Quantitative and qualitative information on financial performance in total and at a segmented level, including quantitative source of earnings

analysis, claims statistics (including claims development), pricing adequacy, information on returns on investment assets, and components of such returns.

In determining the level of detail as to disclosures, the insurer should take into account its nature, scale, and complexity. For proprietary information, the MAS proposes to allow the insurer to disclose more general information about the subject-matter. Where required disclosures are already made at the group level or at the overseas head office, the MAS proposes to allow the insurer to cross-refer to such disclosures.

For ease of administration and access, the MAS proposes that such disclosures be made on the insurers' website.

The MAS proposes to require insurers to implement their first set of public disclosures for the accounting period ended 31 December 2013.

MAS Proposes More Stringent Requirements for Related Party Transactions

The Monetary Authority of Singapore ("MAS") issued a Consultation Paper on Related Party Transaction Requirements for Banks on 26 December 2012. It proposed more stringent rules on related party transactions. The rules proposed would raise requirements for the approval of such transactions, as well as bring a wider range of transactions under the rubric of "related party transactions". In view of this, the current requirement under section 29(4) of the Banking Act imposing joint and several liability on directors to indemnify a bank against any losses arising from the bank's exposures to its director groups will be repealed.

The new framework will apply not only to credit transactions but to all exposures and dealings. It will hence also include dealings for which no exposure is incurred, such as contracts for services, asset purchases and sales, as well as write-offs. It will also include increases in an existing exposure or a change to the terms and conditions governing a transaction.

A transaction will be a related party transaction if it involves an entity in a director group, senior management group, financial group, or substantial shareholder group, and any related corporation, of a bank in Singapore. Hence, in addition to directors, a Chief Executive Officer, Chief Financial Officer, Chief Operating Officer, Chief Risk Officer, and employees with significant credit approval responsibilities, and their family members, will also come under the ambit of the rules. The definition of "family members" will also

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be expanded from spouse, parent, or child to also include siblings, step-children, and adopted children.

Under the new requirements, all banks in Singapore must ensure that all transactions with related parties are conducted free of conflicts of interest from the related party, and based on terms and conditions that are not more favourable than similar transactions with non-related parties. They must put in place adequate procedures to implement this requirement. Among other things, the procedures must do the following:

- Identify all transactions with related parties, including situations in which a non-related party becomes a related party;
- Ensure that all such transactions are reported to an independent credit review or audit process; and
- Be monitored by the senior management of the bank to ensure compliance.

Where a related party transaction falls above a specified threshold (to be determined by the bank), or where it involves the write-off of any exposures, it must be approved by a special majority of three-fourths of its Board (or in the case of a branch of a bank incorporated outside Singapore, a person authorised by three-fourths of its Board). Directors with an interest in the transaction may not vote. The materiality threshold must be reported to the MAS, and for transactions where the bank incurs exposure, the threshold cannot be higher than S\$2 million.

The new requirements on related party transactions will be set out in a new MAS Notice. The MAS also plans to transfer the existing requirements under MAS Notice 639 on limits on unsecured lending by a bank to its director groups and the reporting of a bank's exposures to its substantial shareholder groups, as well as reporting requirements under MAS Notice 639A, to the new Notice. The MAS has stated that it will allow banks two months to establish and implement the policies and procedures on related party transactions required under the proposals.

Changes to the Regulatory Framework for CIS Proposed

On 26 December 2012, the Monetary Authority of Singapore ("**MAS**") issued a Consultation Paper on Amendments to the Securities and Futures (Offers of Investments) (Collective Investment Schemes) Regulations 2005 and Proposed Regulatory Treatment of Closed-End Funds ("**Consultation Paper**"). It proposed the following three changes to the regulatory framework for collective investment schemes ("**CIS**"):

- Disclosure requirements for offers of units in CIS should be enhanced;

- Offers of units in restricted schemes should be made in or accompanied by an information memorandum; and
- Closed-end funds should be subject to the regulatory regime for CIS.

Enhanced Disclosure Requirements

The MAS proposed that, for an offer of units in a CIS, additional information about the manager of the CIS and its principals should be provided in its prospectus. The additional information to be provided is as follows:

- With respect to each of the directors and key executives of the manager, the name, working experience, educational and professional qualifications, and areas of expertise or responsibility in the manager;
- Whether any function has been delegated by the manager to a third party and, if so, the function delegated and the identity of the delegate; and
- The name of the financial supervisory authority which licenses or regulates the manager and, where applicable, the manager of the underlying fund and each sub-manager.

In addition, the prospectus should also disclose:

- The method of valuation of a scheme's assets; and
- Where custodial arrangements are used, the identity of the entity which is responsible for safekeeping the scheme's assets as well as the custodial arrangement that is in place.

Reintroduction of Requirement to Provide Information Memorandum for Offers of Units in Restricted Schemes

The MAS has proposed reintroducing the requirement for an offer of units in a restricted scheme to be made in or accompanied by an information memorandum. This reintroduction is due to the increasing complexity of such schemes. The information memorandum should contain information on the following:

- The scheme's investment objectives, focus, and investment approach;
- The risks of subscribing for or purchasing units in the scheme;
- Whether the offer of units in the restricted scheme is regulated by any financial supervisory authority and, if so, the name of the authority;
- The name and address of the manager and other key parties involved with the scheme;
- Any redemption conditions or limits and gating structures;
- The existence and conditions of any side letters;
- The past performance of the scheme;
- Where the accounts of the scheme may be obtained; and
- Fees and charges payable by the investors and by the scheme.

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A copy of the information memorandum must be submitted to the MAS for record.

Regulatory Treatment of Closed-End Funds

Currently, closed-end funds are not subject to the regulatory regime for CIS. The MAS has noted, however, that other jurisdictions such as Hong Kong, Europe, and Australia regulate such funds. Accordingly, the MAS has proposed to bring closed-end funds under the regulatory umbrella for CIS.

The CIS regulatory framework should hence also apply to an arrangement where the units are not exclusively or primarily non-redeemable at the election of the holders of the units so long as it otherwise has the characteristics of a CIS, and is also an arrangement in respect of any property under which investments are or will be made in accordance with a defined investment policy.

In determining whether an entity is a closed-end fund that has a “defined investment policy”, the MAS will consider whether the fund has to conduct its business in accordance with an investment policy that has some or all of the following elements:

- The final form of the investment policy is fixed by the time investors’ commitments to the entity become binding on them;
- The investment policy is set with the intent to give participants the benefit of the results of the investments as opposed to the operating of a business;
- The investment policy is set out in a document which becomes part of, or which is incorporated in, or is referenced in, the constitutional documents of the entity;
- A contractual relationship between the entity and the investor binds the entity to follow the investment policy (as it may be further amended);
- The investment policy contains a series of investment guidelines;
- The investment policy is clearly set out and disclosed to investors; and
- Any change to the investment policy is disclosed to the investors and may require the prior consent of investors.

The MAS has also proposed to require closed-end funds that are offered to retail investors to be listed on an approved securities exchange.

Consultation Paper on Draft Regulations Pursuant to the Securities and Futures Act and Financial Advisers Act

The Monetary Authority of Singapore (“MAS”) issued a Consultation Paper on Draft Regulations Pursuant to the Securities and Futures Act and Financial Advisers Act on 6 December 2012. It proposed the following amendments to the Securities and Futures (Licensing and Conduct of Business) Regulations (“SF(LCB) Regulations”):

- Obligations currently imposed on the Chief Executive Officer and directors of a holder of a capital markets services licence (“CMS Licence Holder”) in relation to risk management and compliance functions are to be extended to the CMS Licence Holder itself. This is to ensure that it takes collective responsibility (together with the Board and senior management) to ensure the proper institution and implementation of risk management and compliance systems. Where applicable, the MAS also proposes to extend the requirement of ensuring effective controls and segregation of duties to mitigate conflicts of interest to financial institutions that are exempted from holding a capital markets services licence, such as licensed banks and finance companies that conduct regulated activities under the Securities and Futures Act.
- To strengthen the level of record keeping where orders are placed over internet-based trading platforms, the MAS proposes to require that banks, merchant banks, finance companies, and CMS License Holders that provide internet-based trading platforms, record and maintain the Internet Protocol address from which orders are received. This will help to provide a proper audit trail of orders received by the financial institution.
- Under paragraph 5(1)(c) of the Second Schedule of the SF(LCB) Regulations, an individual can be exempted from the requirement to hold a capital markets services licence for providing fund management services to a “connected person”. The MAS proposes to refine the definition of “connected person” for the purposes of this exemption to cover only immediate family members, and firms or corporations which the individual and his immediate family members, whether individually or jointly, have sole control of. This is to ensure that the current exemption is not used to get around the requirement for licensing where non-family members are involved.

The MAS is also proposing amendments to the Financial Advisers Regulations 2012 similar to those for the SF(LCB) Regulations set out above.

In addition, enhanced disclosure requirements are proposed for offers of asset-backed securities. Specifically, the MAS is proposing to amend the Securities and Futures (Offers of Investments) (Shares and Debentures) Regulations to increase disclosure of matters relating to:

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- any form of due diligence, including any review, verification or assessment in respect of underlying assets undertaken by the issuer, sponsor, originator, underwriter, or any third party; and
- the use of derivatives contracts.

SOME OF OUR OTHER UPDATES ...

DATE	TITLE
4 January 2013	LawWatch: Intellectual Property, Media & Technology Edition
11 January 2013	LegisWatch: The PDPCs FAQs and Other Information Implementing Compliance PDPA
1 February 2013	LawWatch: Issue 1 of 2013

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