

No. S 426 –

SECURITIES AND FUTURES ACT
(CHAPTER 289)
SECURITIES AND FUTURES
(MARKET CONDUCT) (EXEMPTIONS)
(AMENDMENT) REGULATIONS 2010

In exercise of the powers conferred by section 337(1) of the Securities and Futures Act, the Monetary Authority of Singapore hereby makes the following Regulations:

Citation and commencement

1. These Regulations may be cited as the Securities and Futures (Market Conduct) (Exemptions) (Amendment) Regulations 2010 and shall come into operation on 2nd August 2010.

Amendment of regulation 2

2. Regulation 2 of the Securities and Futures (Market Conduct) (Exemptions) Regulations 2006 (G.N. No. S 148/2006) (referred to in these Regulations as the principal Regulations) is amended —

(a) by deleting the definition of “dealer” and substituting the following definition:

“ “dealer” —

(a) in regulation 5 and in respect of any stabilising action undertaken in Singapore, means a person who is the holder of a capital markets services licence to deal in securities; and

(b) in respect of any stabilising action undertaken outside Singapore, means a person who is licensed, approved, authorised or otherwise regulated under the laws, codes or other requirements of any foreign jurisdiction in respect of dealing in securities;”;

(b) by deleting the definition of “offer” and substituting the following definition:

“ “offer” means an offer for subscription or purchase of securities in conjunction with the listing of such securities on a securities exchange, or on both a securities exchange and an overseas securities exchange, as the case may be, and

includes an offer of additional securities to rank alongside securities that have been previously issued;”;

- (c) by deleting the words “section 239(1) of the Act or an offer information statement referred to in section 277(1)(b) of the Act” in the definition of “offer document” and substituting the words “section 239(1), 282A(1) or 283(1) of the Act or an offer information statement referred to in section 277(1)(b), 282ZB(1)(b) or 305B(1)(a) of the Act”;
- (d) by deleting the words “, after deducting any concession, commission, brokerage, transaction fee or levy” in the definition of “offer price”;
- (e) by deleting the definition of “over-allotment” and substituting the following definition:

“ “over-allotment”, in relation to an offer, means the allotment or sale of a nominal value or number of the relevant securities in excess of the nominal value or number, as the case may be, of the securities available for subscription or purchase under the offer;”;

- (f) by deleting the definitions of “stabilising action” and “stabilising manager” and substituting the following definitions:

“ “stabilising action”, in relation to an offer, means the action taken in Singapore or elsewhere by a stabilising manager, or by a dealer on behalf of the stabilising manager, to buy, or to offer or agree to buy, any relevant securities (whether on a securities market or otherwise) in order to stabilise or maintain the market price of such securities in Singapore or elsewhere;

“stabilising manager”, in relation to an offer, means a person —

- (a) who is appointed in writing by the issuer of an offer to take stabilising action in respect of the offer; and
- (b) whose appointment under paragraph (a) is notified to the securities exchange on which the relevant securities are or are intended to be listed —

- (i) in the case of stabilising action taken under regulation 3A, before the closing date of the offer; and
 - (ii) in the case of stabilising action taken under regulation 3B, before the stabilising action is taken.”; and
- (g) by renumbering the regulation as paragraph (1) of that regulation, and by inserting immediately thereafter the following paragraph:

“(2) In these Regulations, whether a person is an associate of another person shall be ascertained in accordance with section 4(6) of the Act.”.

Deletion and substitution of regulation 3 and new regulations 3A and 3B

3. Regulation 3 of the principal Regulations is deleted and the following regulations substituted therefor:

“Exemption for stabilising action during offer of securities not listed on securities exchange

3. Sections 197, 198, 218(2) and 219(2) of the Act shall not apply in relation to any stabilising action taken in respect of an offer of securities where the relevant securities are not listed, and are not intended to be listed, on any securities exchange.

Exemption for stabilising action taken on securities exchange or overseas securities exchange

3A.—(1) Sections 197, 198, 218(2) and 219(2) of the Act shall not apply in relation to any stabilising action referred to in paragraph (2) taken in respect of an offer, if and only if the stabilising manager undertaking the stabilising action, and every dealer acting on behalf of the stabilising manager, complies with paragraphs (3) to (15) in carrying out the stabilising action.

(2) For the purpose of paragraph (1), the stabilising action shall be in respect of an offer which fulfils all of the following conditions which are applicable to it:

- (a) in the case where the relevant securities are or are intended to be listed on a securities exchange, the stabilising action is taken on the securities exchange;
- (b) in the case where the relevant securities are or are intended to be listed on both a securities exchange and an overseas securities exchange, the stabilising action

is taken on either the securities exchange or the overseas securities exchange on which the relevant securities are or are intended to be listed, or on both;

- (c) the total value of the securities being offered, calculated based on the offer price, is not less than \$25 million (or its equivalent in a foreign currency);
- (d) in the case where the securities being offered are debentures, the total nominal value of the debentures that the stabilising manager buys to undertake stabilising action does not exceed 20% of the total nominal value of the debentures being offered prior to any over-allotment, if applicable;
- (e) in the case where the securities being offered are not debentures, the total number of the securities that the stabilising manager buys to undertake stabilising action does not exceed 20% of the total number of the securities being offered prior to any over-allotment, if applicable;
- (f) the offer document states —
 - (i) that stabilising action may be taken in respect of the relevant securities;
 - (ii) the maximum period during which stabilising action may be taken;
 - (iii) the total nominal value or number, as the case may be, of the relevant securities which are the subject of an over-allotment option, if applicable; and
 - (iv) the total nominal value or number, as the case may be, of the relevant securities that the stabilising manager may buy to undertake stabilising action, which shall not exceed the nominal value or number prescribed in subparagraph (d) or (e), as the case may be;
- (g) a public announcement has been made, through the securities exchange on which the relevant securities are or are intended to be listed, before the end of the trading day of that securities exchange immediately following the closing date of the offer, stating —
 - (i) that such securities may be subject to stabilising action;
 - (ii) the maximum period during which stabilising action may be taken;

- (iii) the total nominal value or number, as the case may be, of the relevant securities which are the subject of an over-allotment option, if applicable; and
 - (iv) the total nominal value or number, as the case may be, of the relevant securities that the stabilising manager may buy to undertake stabilising action, which shall not exceed the nominal value or number prescribed in subparagraph (d) or (e), as the case may be;
- (h) the offer is on cash terms and is to be, is or has been, made at a specified price payable in any currency.
- (3) No stabilising action in respect of an offer shall be taken before —
- (a) the date of commencement of trading in the securities being offered on the securities exchange; or
 - (b) in a case where the relevant securities are offered on both a securities exchange and an overseas securities exchange, the earlier of the dates of commencement of trading in the securities being offered on each of the exchanges.
- (4) No stabilising action in respect of an offer shall be taken after —
- (a) the expiry of a period of 30 calendar days after —
 - (i) the date of commencement of trading in the securities being offered on the securities exchange; or
 - (ii) in a case where the relevant securities are offered on both a securities exchange and an overseas securities exchange, the earlier of the dates of commencement of trading in the securities being offered on each of the exchanges; or
 - (b) the stabilising manager has bought, whether on the securities exchange, the overseas securities exchange or both, the total nominal value or number of the relevant securities that the stabilising manager may buy to undertake stabilising action as stated in the offer document under paragraph (2)(f),
- whichever occurs first.

(5) The stabilising manager shall —

- (a) take stabilising action only after he is reasonably satisfied that the price of the relevant securities is not false or misleading; and
- (b) continue with the stabilising action only after he is reasonably satisfied that the price of the relevant securities has not become false or misleading other than by reason of any stabilising action.

(6) No stabilising action may be taken in respect of an offer at a price higher than the price specified in the second column of the Schedule, or its equivalent in a foreign currency based on the relevant exchange rate immediately prior to each stabilising action, under the circumstances corresponding to that price in the first column thereof.

(7) Subject to paragraph (8), the stabilising manager, whether by itself or through one or more of its associates, shall not effect or cause to be effected, directly or indirectly, any sell order of the relevant securities during the period in which stabilising action is permitted under this regulation.

(8) Nothing in paragraph (7) shall prohibit —

- (a) the stabilising manager; or
- (b) an associate of the stabilising manager, in that associate's capacity as a dealer,

from —

- (i) executing any sell order of the relevant securities for a person who is not an associate of the issuer of the offer; or
- (ii) selling the relevant securities on behalf of the issuer as part of the offer (including pursuant to any underwriting commitment).

(9) The stabilising manager shall —

- (a) keep a register in such form as the securities exchange on which the relevant securities are listed may require; and
- (b) record in the register the particulars of each transaction to buy the relevant securities entered into in connection with the stabilising action, including the price and quantity and name of the dealer, before the end of the day on which the transaction is entered into.

(10) Where the register referred to in paragraph (9) is kept in Singapore, it shall be made available by the stabilising manager for inspection by the Authority, or the securities exchange on which the relevant securities are listed, within such time as may be stipulated by the Authority or that securities exchange, as the case may be.

(11) Where the register referred to in paragraph (9) is kept outside Singapore —

- (a) it shall be capable of being brought into Singapore and made available by the stabilising manager for inspection by the Authority, or the securities exchange on which the relevant securities are listed, within such time as may be stipulated by the Authority or that securities exchange, as the case may be; or
- (b) if it is not capable of being brought into Singapore, a copy of the register certified to be a true copy by the stabilising manager shall be brought into Singapore and made available by the stabilising manager for inspection by the Authority, or the securities exchange on which the relevant securities are listed, within such time as may be stipulated by the Authority or that securities exchange, as the case may be.

(12) The stabilising manager shall —

- (a) before the closing date of the offer of the relevant securities, inform the securities exchange on which the relevant securities are or are intended to be listed of the name of any dealer, whether in Singapore or elsewhere, appointed by the stabilising manager to take the stabilising action; and
- (b) inform that securities exchange of any subsequent change of dealer immediately upon such change.

(13) Where, pursuant to any stabilising action, a transaction to buy any relevant securities has been effected, the stabilising manager shall make a public announcement through the securities exchange on which the relevant securities are listed of the nominal value or number of the securities bought by the stabilising manager and the price range, no later than 12 noon on the first full trading day of that securities exchange immediately following the day on which the transaction was effected, whether in Singapore or elsewhere.

(14) The stabilising manager shall make a public announcement through the securities exchange on which the relevant securities are listed of the cessation of any stabilising action, whether in Singapore or elsewhere, no later than the start of the trading day of that securities exchange immediately following the day of cessation of the stabilising action.

(15) No stabilising action in respect of an offer shall be taken after the public announcement of the cessation referred to in paragraph (14).

Exemption for stabilising action not taken on securities exchange or overseas securities exchange

3B.—(1) Sections 197, 198, 218(2) and 219(2) of the Act shall not apply in relation to any stabilising action referred to in paragraph (2) taken in respect of an offer, if and only if the stabilising manager undertaking the stabilising action, and every dealer acting on behalf of the stabilising manager, complies with paragraphs (3) to (13) in carrying out the stabilising action.

(2) For the purpose of paragraph (1), the stabilising action shall be in respect of an offer which fulfils all of the following conditions which are applicable to it:

- (a) in the case where the relevant securities are or are intended to be listed on a securities exchange, the stabilising action is not taken on the securities exchange;
- (b) in the case where the relevant securities are or are intended to be listed on both a securities exchange and an overseas securities exchange, the stabilising action is neither taken on the securities exchange nor on the overseas securities exchange;
- (c) the total value of the securities being offered, calculated based on the offer price, is not less than \$25 million (or its equivalent in a foreign currency);
- (d) in the case where the securities being offered are debentures, the total nominal value of the debentures that the stabilising manager buys to undertake stabilising action does not exceed 20% of the total nominal value of the debentures being offered prior to any over-allotment, if applicable;
- (e) in the case where the securities being offered are not debentures, the total number of the securities that the stabilising manager buys to undertake stabilising

action does not exceed 20% of the total number of the securities being offered prior to any over-allotment, if applicable;

- (f) the offer document states —
 - (i) that stabilising action may be taken in respect of the relevant securities;
 - (ii) the maximum period during which stabilising action may be taken;
 - (iii) the total nominal value or number, as the case may be, of the relevant securities which are the subject of an over-allotment option, if applicable; and
 - (iv) the total nominal value or number, as the case may be, of the relevant securities that the stabilising manager may buy to undertake stabilising action, which shall not exceed the nominal value or number prescribed in subparagraph (d) or (e), as the case may be;
- (g) a public announcement has been made through the securities exchange on which the relevant securities are or are intended to be listed, stating —
 - (i) the offer price of the relevant securities;
 - (ii) that stabilising action may be taken in respect of the relevant securities;
 - (iii) the maximum period during which stabilising action may be taken;
 - (iv) the total nominal value or number, as the case may be, of the relevant securities which are the subject of an over-allotment option, if applicable; and
 - (v) the total nominal value or number, as the case may be, of the relevant securities that the stabilising manager may buy to undertake stabilising action, which shall not exceed the nominal value or number prescribed in subparagraph (d) or (e), as the case may be;
- (h) the offer is on cash terms and is to be, is or has been, made at a specified price payable in any currency.

(3) No stabilising action in respect of an offer shall be taken before the date on which the public announcement referred to in paragraph (2)(g) is made.

(4) No stabilising action in respect of an offer shall be taken after —

- (a) the expiry of a period of 30 calendar days after —
 - (i) the date of the listing of the securities being offered on the securities exchange; or
 - (ii) in a case where the relevant securities are offered on both a securities exchange and an overseas securities exchange, the earlier of the dates of the listing of the securities being offered on each of the exchanges;
- (b) the expiry of a period of 60 calendar days after the date on which the earliest public announcement of the offer which states the offer price was made through the securities exchange or the overseas securities exchange on which the relevant securities were or were intended to be listed; or
- (c) the stabilising manager has bought the total number or nominal value of the relevant securities that the stabilising manager may buy to undertake stabilising action as stated in the offer document under paragraph (2)(f),

whichever occurs first.

(5) The stabilising manager shall —

- (a) take stabilising action only after he is reasonably satisfied that the price of the relevant securities is not false or misleading; and
- (b) continue with the stabilising action only after he is reasonably satisfied that the price of the relevant securities has not become false or misleading other than by reason of any stabilising action.

(6) Subject to paragraph (7), the stabilising manager, whether by itself or through one or more of its associates, shall not effect or cause to be effected, directly or indirectly, any sell order of the relevant securities during the period in which stabilising action is permitted under this regulation.

(7) Nothing in paragraph (6) shall prohibit —

- (a) the stabilising manager; or
- (b) an associate of the stabilising manager, in that associate's capacity as a dealer,

from —

- (i) executing any sell order of the relevant securities for a person who is not an associate of the issuer of the offer; or
- (ii) selling the relevant securities on behalf of the issuer as part of the offer (including pursuant to any underwriting commitment).

(8) The stabilising manager shall —

- (a) keep a register in such form as the securities exchange on which the relevant securities are listed may require; and
- (b) record in the register the particulars of each transaction to buy the relevant securities entered into in connection with the stabilising action, including the price and quantity and name of the dealer, before the end of the day on which the transaction is entered into.

(9) Where the register referred to in paragraph (8) is kept in Singapore, it shall be made available by the stabilising manager for inspection by the Authority, or the securities exchange on which the relevant securities are listed, within such time as may be stipulated by the Authority or that securities exchange, as the case may be.

(10) Where the register referred to in paragraph (8) is kept outside Singapore —

- (a) it shall be capable of being brought into Singapore and made available by the stabilising manager for inspection by the Authority, or the securities exchange on which the relevant securities are listed, within such time as may be stipulated by the Authority or that securities exchange, as the case may be; or
- (b) if it is not capable of being brought into Singapore, a copy of the register certified to be a true copy by the stabilising manager shall be brought into Singapore and made available by the stabilising manager for inspection by the Authority, or the securities exchange on which the relevant securities are listed, within such time as may be stipulated by the Authority or that securities exchange, as the case may be.

(11) The stabilising manager shall —

- (a) before stabilising action is taken in respect of the relevant securities, inform the securities exchange on which the relevant securities are or are intended to be listed of the name of any dealer, whether in Singapore or elsewhere, appointed by the stabilising manager to take the stabilising action; and
- (b) inform that securities exchange of any subsequent change of dealer immediately upon such change.

(12) The stabilising manager shall make a public announcement through the securities exchange on which the relevant securities are listed of the cessation of any stabilising action, whether in Singapore or elsewhere, no later than the start of the trading day of that securities exchange immediately following the day of cessation of the stabilising action.

(13) No stabilising action in respect of an offer shall be taken after the public announcement of the cessation referred to in paragraph (12).”.

Amendment of Schedule

4. Item (2) in the Schedule to the principal Regulations is amended by deleting the words “or the price at which the independent transaction was carried out” in the second column and substituting the words “or the highest independently transacted price after the initial stabilising action”.

Saving

5. Regulation 3 of the principal Regulations in force immediately before 2nd August 2010 shall apply to any stabilising action taken before, on or after that date in respect of an offer issued on or after 6th March 2006 but before 2nd August 2010 as if these Regulations had not been made.

Made this 28th day of July 2010.

HENG SWEE KEAT
Managing Director,
Monetary Authority of Singapore.