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SECURITIES AND FUTURES ACT
(CHAPTER 289)

SECURITIES AND FUTURES
(OFFERS OF INVESTMENTS)
(COLLECTIVE INVESTMENT SCHEMES) (AMENDMENT)
REGULATIONS 2009

In exercise of the powers conferred by sections 305 and 341 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 (Offers of Investments) (Collective Investment Schemes) (Amendment) Regulations 2009 and shall come into operation on 1st October 2009.

Amendment of regulation 2

2. Regulation 2(1) of the Securities and Futures (Offers of Investments) (Collective Investment Schemes) Regulations 2005 (G.N. No. S 602/2005) (referred to in these Regulations as the principal Regulations) is amended —

(a) by deleting the definitions of “restricted authorised scheme” and “restricted recognised scheme” and substituting the following definition:

“ “restricted foreign scheme” means a restricted scheme constituted outside Singapore which is in the list of restricted schemes maintained by the Authority under the Sixth Schedule;” and

(b) by inserting, immediately after the definition of “restricted scheme”, the following definition:

“ “restricted Singapore scheme” means a restricted scheme constituted in Singapore which is in the list of restricted schemes maintained by the Authority under the Sixth Schedule;”.

Deletion and substitution of Part IV

3. Part IV of the principal Regulations is deleted and the following Part substituted therefor:

“PART IV

NOTIFICATION OF OFFERS OF UNITS
IN RESTRICTED SCHEMES

Extent to which Subdivision (2) in Division 2 of Part XIII of Act applies to restricted schemes

32. For the purposes of section 305(1) and (2) of the Act —
- (a) sections 285 to 288, 294 and 295 of the Act shall not apply to a restricted scheme except as modified and set out in paragraphs 1 to 8 of the Sixth Schedule;
 - (b) sections 289 to 292 of the Act shall not apply to a restricted scheme constituted in Singapore except with the modification that a reference to section 286 of the Act shall be read as a reference to paragraph 3 of the Sixth Schedule; and
 - (c) section 293 of the Act shall apply to a restricted scheme.”.

Deletion of regulation 41

4. Regulation 41 of the principal Regulations is deleted.

Amendment of First Schedule

5. Items 10 and 11 in the First Schedule to the principal Regulations are deleted and the following items substituted therefor:

- | | | |
|--|--|--------|
| “10. Paragraph 2(1) of the Sixth Schedule to these Regulations | For every notification of an offer of units in a restricted scheme submitted to the Authority. | \$250 |
| 11. Paragraph 6 of the Sixth Schedule to these Regulations | For every annual declaration in respect of a restricted Singapore scheme or restricted foreign scheme lodged with the Authority. | \$50”. |

Deletion and substitution of Sixth Schedule

6. The Sixth Schedule to the principal Regulations is deleted and the following Schedule substituted therefor:

“SIXTH SCHEDULE

Regulations 2(1) and 32

MODIFIED PROVISIONS FOR RESTRICTED SCHEMES

Offers of units in restricted schemes

1.—(1) No person shall make an offer of units in a restricted scheme unless it is a restricted Singapore scheme or a restricted foreign scheme.

(2) Any person who makes an offer of units in a restricted Singapore scheme or a restricted foreign scheme shall inform, in writing, the persons to whom the offer is made that —

- (a) the scheme is not authorised or recognised by the Authority and units in the scheme are not allowed to be offered to the retail public; and
- (b) any written material issued in connection with the offer is not a prospectus as defined in the Act and, accordingly, statutory liability under the Act in relation to the content of prospectuses would not apply.

(3) Any person who contravenes sub-paragraph (1) or (2) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 and, in the case of a continuing offence, to a further fine not exceeding \$5,000 for every day or part thereof during which the offence continues after conviction.

List of restricted schemes

2.—(1) A person who wishes to make an offer of units in a restricted scheme that has not been entered into the list of restricted schemes maintained by the Authority shall submit a notification of the offer to the Authority in such form and manner as may be specified in the Authority’s Internet website at <http://www.mas.gov.sg> or as the Authority may, by notice in writing, specify.

(2) Every notification referred to in sub-paragraph (1) shall be accompanied by such information or record as the Authority may require.

(3) The Authority may, upon receipt of the notification referred to in sub-paragraph (1) and in accordance with paragraph 3 or 4 (as the case may be), enter the restricted scheme into the list of restricted schemes maintained by the Authority.

(4) The Authority may publish for public information, in such manner as it considers appropriate —

- (a) the list of restricted schemes maintained by the Authority; and
- (b) the particulars of any restricted scheme that has been entered in the list of restricted schemes.

SIXTH SCHEDULE — *continued*

Restricted Singapore schemes

3.—(1) The Authority shall not enter a restricted scheme which is constituted in Singapore into the list of restricted schemes maintained by the Authority unless the Authority is of the opinion that the following requirements are satisfied:

- (a) there is a manager for the scheme which is —
 - (i) licensed or regulated to carry out fund management activities in the jurisdiction of its principal place of business; or
 - (ii) a public company that is exempted from the requirement to hold a capital markets services licence to carry on business in fund management under paragraph 5(1)(d) of the Second Schedule to the Securities and Futures (Licensing and Conduct of Business) Regulations (Rg 10);
- (b) the manager for the scheme is a fit and proper person, and in considering if a person satisfies this requirement, the Authority may take into account any matter relating to —
 - (i) any person who is or will be employed by or associated with the manager;
 - (ii) any person exercising influence over the manager; or
 - (iii) any person exercising influence over a related corporation of the manager; and
- (c) in the case of a scheme constituted as a unit trust, there is a trustee for the scheme approved under section 289 of the Act.

(2) The Authority may enter a restricted scheme which is constituted in Singapore, and which is not constituted as a unit trust, into the list of restricted schemes subject to such conditions or restrictions as it thinks fit.

(3) The Authority may, at any time, by notice in writing to the responsible person for a restricted Singapore scheme which is not constituted as a unit trust —

- (a) vary any condition or restriction imposed under sub-paragraph (2); or
- (b) impose such further condition or restriction as it may think fit.

(4) The Authority may refuse to enter a restricted scheme which is constituted in Singapore into the list of restricted schemes where it appears to the Authority that it is not in the public interest to do so.

(5) The Authority shall not refuse to enter a restricted scheme which is constituted in Singapore into the list of restricted schemes without giving the person who submitted the notification of the offer of units in the scheme an opportunity to be heard, except that an opportunity to be heard need not be given if the refusal is on the ground that it is not in the public interest to enter the scheme into the list of restricted schemes on the basis of any of the following circumstances:

- (a) any person who wishes to make the offer (being an entity), the responsible person or the scheme itself is in the course of being wound up or otherwise dissolved, whether in Singapore or elsewhere;

SIXTH SCHEDULE — *continued*

- (b) any person who wishes to make the offer (being an individual) is an undischarged bankrupt, whether in Singapore or elsewhere;
- (c) a receiver, a receiver and manager or an equivalent person has been appointed, whether in Singapore or elsewhere, in relation to or in respect of any property of any person who wishes to make the offer (being an entity), the responsible person or the scheme.

(6) The responsible person for a restricted scheme which is constituted in Singapore may, within 30 days after he is notified by the Authority that the Authority has refused to enter the scheme into the list of restricted schemes, appeal to the Minister whose decision shall be final.

(7) The responsible person for a restricted Singapore scheme and the trustee for the scheme, to the extent applicable, shall ensure that the requirements set out in sub-paragraph (1) as applicable to that scheme shall continue to be satisfied.

(8) The responsible person for a restricted Singapore scheme shall furnish such information or record regarding the scheme as the Authority may, at any time, require for the proper administration of the Act.

(9) Where the manager for a restricted Singapore scheme which is constituted as a unit trust fails to comply with the Act, the Authority may direct the trustee for the scheme to remove that person and appoint a new manager for the scheme.

(10) Any person who contravenes —

- (a) any condition or restriction imposed under sub-paragraph (2) or (3);
- (b) sub-paragraph (7) or (8); or
- (c) any direction of the Authority given under sub-paragraph (9),

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 and, in the case of a continuing offence, to a further fine not exceeding \$5,000 for every day or part thereof during which the offence continues after conviction.

Restricted foreign schemes

4.—(1) The Authority shall not enter a restricted scheme which is constituted outside Singapore into the list of restricted schemes maintained by the Authority unless the Authority is of the opinion that there is a manager for the scheme which satisfies the following requirements:

- (a) the manager is licensed or regulated to carry out fund management activities in the jurisdiction of its principal place of business; and
- (b) the manager is a fit and proper person, and in considering if a person satisfies this requirement, the Authority may take into account any matter relating to —
 - (i) any person who is or will be employed by or associated with the manager;
 - (ii) any person exercising influence over the manager; or

SIXTH SCHEDULE — *continued*

(iii) any person exercising influence over a related corporation of the manager.

(2) The Authority may refuse to enter a restricted scheme which is constituted outside Singapore into the list of restricted schemes where it appears to the Authority that it is not in the public interest to do so.

(3) The Authority shall not refuse to enter a restricted scheme which is constituted outside Singapore into the list of restricted schemes without giving the person who submitted the notification of the offer of units in the scheme an opportunity to be heard, except that an opportunity to be heard need not be given if the refusal is on the ground that it is not in the public interest to enter the scheme into the list of restricted schemes on the basis of any of the following circumstances:

- (a) any person who wishes to make the offer (being an entity), the responsible person or the scheme itself is in the course of being wound up or otherwise dissolved, whether in Singapore or elsewhere;
- (b) any person who wishes to make the offer (being an individual) is an undischarged bankrupt, whether in Singapore or elsewhere;
- (c) a receiver, a receiver and manager or an equivalent person has been appointed, whether in Singapore or elsewhere, in relation to or in respect of any property of any person who wishes to make the offer (being an entity), the responsible person or the scheme.

(4) The responsible person for a restricted scheme which is constituted outside Singapore may, within 30 days after he is notified by the Authority that the Authority has refused to enter the scheme into the list of restricted schemes, appeal to the Minister whose decision shall be final.

(5) The responsible person for a restricted foreign scheme shall ensure that the requirements set out in sub-paragraph (1) as applicable to that scheme shall continue to be satisfied.

(6) The responsible person for a restricted foreign scheme shall furnish such information or record regarding the scheme as the Authority may, at any time, require for the proper administration of the Act.

(7) Any person who contravenes sub-paragraph (5) or (6) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 and, in the case of a continuing offence, to a further fine not exceeding \$5,000 for every day or part thereof during which the offence continues after conviction.

Withdrawal or suspension

5.—(1) The Authority may withdraw a restricted Singapore scheme or a restricted foreign scheme from the list of restricted schemes maintained by the Authority if —

- (a) any information or record submitted to the Authority, whether at the same time as or subsequent to the submission of the notification of the offer of units in the scheme, was false or misleading in a material

SIXTH SCHEDULE — *continued*

particular or omitted a material particular which, had it been known to the Authority at the time of submission of the notification, would have resulted in the Authority not entering the scheme into the list of restricted schemes;

- (b) the Authority is of the opinion that the continued offer of units in the scheme is or will be against the public interest;
- (c) the Authority is of the opinion that the continued offer of units in the scheme is or will be prejudicial to its participants or potential participants;
- (d) in the case of —
 - (i) a restricted Singapore scheme, the responsible person for the scheme or the trustee for the scheme, where applicable, contravenes —
 - (A) any condition or restriction imposed under paragraph 3(2) or (3);
 - (B) paragraph 3(7) or (8); or
 - (C) any direction of the Authority given under paragraph 3(9); or
 - (ii) a restricted foreign scheme, the responsible person for the scheme contravenes paragraph 4(5) or (6); or
- (e) the responsible person for a restricted Singapore scheme or a restricted foreign scheme fails to submit an annual declaration in respect of the scheme in accordance with paragraph 6.

(2) Notwithstanding sub-paragraph (1), the Authority may, if it considers it desirable to do so —

- (a) instead of withdrawing a restricted Singapore scheme or a restricted foreign scheme from the list of restricted schemes, suspend the status of the scheme as a restricted Singapore scheme or a restricted foreign scheme (as the case may be) for such period as the Authority may determine; and
- (b) at any time —
 - (i) extend the period of suspension; or
 - (ii) revoke the suspension.

(3) Where the Authority decides to withdraw a restricted Singapore scheme or a restricted foreign scheme from the list of restricted schemes under sub-paragraph (1) or to suspend the status of a restricted scheme as a restricted Singapore scheme or a restricted foreign scheme under sub-paragraph (2), it shall notify the responsible person for the scheme.

(4) Subject to sub-paragraph (5), the Authority shall not —

- (a) withdraw a restricted Singapore scheme or a restricted foreign scheme from the list of restricted schemes under sub-paragraph (1); or

SIXTH SCHEDULE — *continued*

(b) suspend the status of a restricted scheme as a restricted Singapore scheme or a restricted foreign scheme under sub-paragraph (2),
without giving the responsible person for the scheme an opportunity to be heard.

(5) An opportunity to be heard need not be given to the responsible person for a restricted scheme if the withdrawal or suspension of the scheme is on the ground that —

(a) permitting the restricted scheme to remain as a restricted Singapore scheme or a restricted foreign scheme is against the public interest on the basis of any of the following circumstances:

- (i) any person making an offer of units in the scheme (being an entity), the responsible person or the scheme itself is in the course of being wound up or otherwise dissolved, whether in Singapore or elsewhere;
- (ii) any person making an offer of units in the scheme (being an individual) is an undischarged bankrupt, whether in Singapore or elsewhere;
- (iii) a receiver, a receiver and manager or an equivalent person has been appointed, whether in Singapore or elsewhere, in relation to or in respect of any property of any person making an offer of units in the scheme (being an entity), the responsible person or the scheme; or

(b) the responsible person for the restricted scheme has failed to submit an annual declaration in respect of the scheme in accordance with paragraph 6.

(6) The responsible person for a restricted scheme may, within 30 days after he is notified that the Authority —

- (a) has withdrawn a restricted Singapore scheme or a restricted foreign scheme from the list of restricted schemes under sub-paragraph (1); or
- (b) has suspended the status of a restricted scheme as a restricted Singapore scheme or a restricted foreign scheme under sub-paragraph (2),

appeal to the Minister whose decision shall be final.

(7) Where the Authority withdraws a restricted Singapore scheme or a restricted foreign scheme from the list of restricted schemes under sub-paragraph (1) or suspends the status of a restricted scheme as a restricted Singapore scheme or a restricted foreign scheme under sub-paragraph (2), the Authority may —

- (a) within a period of 28 days of the withdrawal or suspension, give directions to the responsible person of the scheme, as it deems appropriate, to protect investors; and
- (b) publish a notice of the withdrawal or suspension, any direction given under sub-paragraph (a), and the reason therefor, in such manner as it considers appropriate.

SIXTH SCHEDULE — *continued*

(8) Any responsible person who contravenes any direction of the Authority given under sub-paragraph (7)(a) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000.

Annual declaration by responsible person

6. The responsible person for a restricted Singapore scheme or a restricted foreign scheme shall lodge with the Authority an annual declaration in respect of the scheme in accordance with such requirements and in such manner as may be notified in writing by the Authority.

Winding up and termination

7.—(1) Where a restricted Singapore scheme or a restricted foreign scheme, or a restricted scheme with terminated Singapore offers, is wound up or otherwise dissolved, the responsible person for the scheme shall notify the Authority of this no later than 14 days after the winding up or dissolution.

(2) Where an offer of units in a restricted Singapore scheme or a restricted foreign scheme is terminated, the responsible person for the scheme shall notify the Authority of this no later than 14 days after the termination.

(3) The Authority may, upon being notified under sub-paragraph (1) or (2), remove the scheme from the list of restricted schemes maintained by the Authority.

(4) The Authority may, within a period of 28 days after being notified under sub-paragraph (1) or (2), give directions to the responsible person of the scheme, as it deems appropriate, to protect investors.

(5) The Authority may publish a notice of any direction given under sub-paragraph (4), and the reason therefor, in such manner as it considers appropriate.

(6) Any responsible person who contravenes —

(a) sub-paragraph (1) or (2); or

(b) any direction of the Authority given under sub-paragraph (4),

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000.

(7) In this paragraph, “restricted scheme with terminated Singapore offers”, means a restricted scheme —

(a) which is or was a restricted Singapore scheme or a restricted foreign scheme;

(b) where units acquired at the time it is or was such a scheme —

(i) were acquired by a relevant person or by a person in accordance with section 305(2) and (3) of the Act; and

(ii) continues to be held by such a person; and

(c) in respect of which all offers of units have been terminated.

SIXTH SCHEDULE — *continued*

Service

8.—(1) Unless otherwise provided in this Schedule, any document relating to a restricted scheme required or authorised to be served shall be sufficiently served if served on the responsible person for the scheme at his last known address.

(2) Any notice or direction to be given or served by the Authority on a restricted scheme constituted as a corporation, or the manager or the trustee for a restricted scheme, shall for all purposes be regarded as duly given or served if it has been delivered or sent by post or facsimile transmission to such person at his last known address.

(3) In the case of a corporation, the last known address referred to in sub-paragraphs (1) and (2) shall be —

- (a) if it is a company incorporated in Singapore, the address of its registered office in Singapore; or
- (b) if it is a foreign company, the address of its registered office in Singapore or the registered address of its agent or, if it does not maintain a place of business in Singapore, its registered office in the place of its incorporation.

(4) The Authority may serve any notice of its decision in respect of the entry of a restricted scheme into the list of restricted schemes maintained by the Authority on a person by electronic communication if the person consents to being served in such manner and gives, as part of his or its address for service, an email address.”.

Savings and transitional provisions

7.—(1) A restricted authorised scheme within the meaning of regulation 2(1) of the principal Regulations in force immediately before 1st October 2009 shall be deemed to be a restricted Singapore scheme within the meaning of the principal Regulations as amended by these Regulations for a period of one year commencing on 1st October 2009.

(2) A restricted recognised scheme within the meaning of regulation 2(1) of the principal Regulations in force immediately before 1st October 2009 shall be deemed to be a restricted foreign scheme within the meaning of the principal Regulations as amended by these Regulations for a period of one year commencing on 1st October 2009.

(3) Notwithstanding any provision of the principal Regulations, any person who wishes to make an offer of units in a scheme referred to in paragraph (1) or (2) on or after 1st October 2010 and submits a notification of the offer to the Authority in accordance with paragraph 2(1) and (2) of the Sixth Schedule to the principal Regulations before 1st October 2010 shall pay the Authority a fee of \$50 instead of \$250.

Made this 11th day of September 2009.

HENG SWEE KEAT
Managing Director,
Monetary Authority of Singapore.

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