



Monetary Authority of Singapore

**SECURITIES AND FUTURES
ACT (CAP. 289) (“SFA”)**

**CLASSIFICATION OF CAPITAL
MARKETS PRODUCTS**

FREQUENTLY ASKED QUESTIONS

Disclaimer: These FAQs are meant to provide guidance to the industry on MAS’ policy and administration of the Securities and Futures Act and regulations. They do not constitute legal advice. If in doubt, MAS expects industry participants to seek independent legal opinion on how they should comply with the requirements under the SFA.

SECURITIES AND FUTURES ACT (CAP. 289) (“SFA”)

CLASSIFICATION OF CAPITAL MARKETS PRODUCTS

FREQUENTLY ASKED QUESTIONS

Q1: What are the requirements on issuers and relevant persons with regard to the classification of capital markets products under Section 309B of the SFA?

A1:

Section 309 of the SFA applies to issuers who intend to make an offer of any capital markets products either personally or through an agent to any person in Singapore, or invite any person in Singapore to make an offer. Issuers need to:

- (a) determine the classification of the capital markets product as either prescribed capital markets products or capital markets products other than prescribed capital markets products;
- (b) notify the approved exchange in writing of the classification under (a) if the capital markets product are or will be listed on the market operated by the approved exchange; and
- (c) notify relevant persons in writing of the classification under (a) if the capital markets product are or will be offered through these relevant persons. Relevant person is defined under section 309A(1) of the SFA.

For the purposes of Section 309B(1)(c) of the SFA, an issuer’s obligation to notify the relevant persons of the classification extends only to such relevant persons which it has contracted with or is actually aware of. Under Section 309B(2) of the SFA, relevant persons must not make an offer on behalf of an issuer subject to Section 309B(1)(c) of the SFA if they have not received the notification from the issuer. Where relevant persons have not received the classification, we would expect the relevant persons to actively seek out the issuer for such notification.

[Updated on 23 April 2019]

Q2: Is a relevant person expected to seek out a notification from the issuer if the offer is not made by an issuer (e.g in a vendor sale)?

A2:

No, Section 309B(2) of the SFA only applies where the offer is being made by an issuer.

[Added on 23 April 2019]

Q3: Following from the question above, is there a prescribed form that the notifications should take?

A3:

While we have not prescribed the form that the notifications under Section 309B(1) must take, the rationale for the requirement is to enable relevant persons, with knowledge of the classification of the product, to comply with the requirements under MAS Notice SFA04-N12 and MAS Notice FAA-N16 in respect of any dealings in or transaction of the product accordingly. To this end, so long as the relevant persons are clearly notified of the product classification, the notification may be satisfied based on a statement in the offering circular, term sheet or other forms of electronic communication such as a Bloomberg announcement or via e-mail.

[Added on 23 April 2019]

Q4: In respect of bond issuances that are or will be listed, at what point must the issuer provide the notification to the approved exchange?

A4:

In respect of bond offerings, the timeline for the launch, issue and listing of the bond is such that the listing application to the exchange is made only after the launch of an offering. In this regard, considering the typical timeline of bond offerings, issuers may provide the notification to the approved exchange at the time of the listing application.

[Added on 23 April 2019]

Q5: Can issuers be exempted from the requirements under 309B of the SFA?

A5:

Yes, MAS may, by regulations or notice in writing, exempt any person or class of persons from any provision of this section, subject to such conditions or restrictions as the Authority may specify in those regulations or by notice in writing. These are specified under subsections (4) and (5) of section 309B of the SFA.

There are also exemptions provided under the Securities and Futures (Capital Markets Products) Regulations 2018 (Regulations) in respect of offers made to non-retail investors and non-individuals. For the avoidance of doubt, offers made to retail investors in reliance of prospectus exemptions under Sections 275(1A) and 305(2) of the SFA at a minimum consideration of \$200,000, are not exempted from the requirements under section 309B.

[Updated on 23 April 2019]

Q6: What does it mean for an issuer to be granted exemption from section 309B(1) of the SFA?

A6:

Where an issuer has been granted exemption from section 309B(1) of the SFA¹, the issuer will not be required to determine the classification of the capital markets product with respect to the offer, and to notify the approved exchange (where the capital markets product are or will be listed for quotation or quoted on a market operated by an approved exchange), or a relevant person as defined in section 309A (where the capital markets product are or will be offered through a relevant person). Accordingly, MAS Notice SFA 04-N12 and MAS Notice FAA-N16 relating to the enhanced regulatory requirements applicable to the distribution of Specified Investment Products (SIPs) will not apply in respect of any dealing in or transaction of the product (i.e. the distribution of such products will in substance be no different from an Excluded Investment Product (EIP)).

¹ Except where the according exemptions have been provided for under the Regulations, the relevant persons appointed or engaged by the issuer in respect of the offer should seek exemption from compliance with section 309B(2) to be notified of the classification of the product before making any offer. The issuer can seek exemption on behalf of these persons.

Q7: Under what circumstances would MAS consider granting such exemptions from section 309B of the SFA?

A7:

The requirement for issuers to classify capital market products offered to investors is to ensure that enhanced safeguards are put in place for the sale and distribution of products which are complex in nature (i.e. SIPs) to retail investors. Examples of such complex products include derivatives and exchange-traded fund that use derivatives to replicate the performance of the underlying index.

MAS will only consider exemptions from section 309B of the SFA in exceptional situations where there are alternative safeguards available to adequately address the need for the enhanced safeguards at the point of sale and distribution of the product to retail investors. For instance, a product may have structural features which may increase its complexity but are designed to solely benefit or protect investors from downside risks. It may be argued that such features do not prejudice investors' interests or obscure the potential negative return outcome to investors. MAS will assess each exemption application on a case-by-case basis.

MAS may consider granting an exemption based on the following criteria:

- a. The product must be listed and traded on an approved exchange;
- b. Payoff structure of the product is straightforward, including that the return of principal sum to investors is not dependent on contingent events;
- c. Cash flows to investors of the product are not subordinated to other classes of securities holders;
- d. The product must have a high investment grade credit rating, if applicable; and
- e. Any use of derivatives is only for efficient portfolio management such as hedging of interest rate or currency risks.

In addition to the criteria above, where the product is a securitisation transaction:

- f. The originator or sponsor of the securitisation must have a high investment grade credit rating, and retain a significant part of the risk of the underlying assets on an ongoing basis;
- g. Underlying assets must be homogeneous in asset type and cannot include securitisations (i.e. no re-securitisations). They should also not be subject to active portfolio management on a discretionary basis; and
- h. Underlying assets should generate periodic and well-defined payment/

income streams to cover any cashflow obligations to the investors².

Q8: Are such exemptions granted by MAS made public?

A8:

MAS will publish any such exemption granted on our website, together with the quarterly publication of the list of cases where exemptions were granted pursuant to Specific Exemption Powers under the SFA.

The list of exemptions granted by MAS can be found at:
<http://www.mas.gov.sg/Regulations-and-Financial-Stability/Regulations-Guidance-and-Licensing/Securities-Futures-and-Funds-Management/Exemptions.aspx>.

² For example, ABS with underlying equity exposures which only generate discretionary dividend income streams are unlikely to meet this criteria.