

Notice No.: MAS 113

Issue Date: 26 July 2011

NOTICE ON SECURITIES BORROWING AND LENDING ACTIVITIES

Introduction

1. This Notice is issued pursuant to section 64(2) of the Insurance Act (Cap. 142) (the “Act”) and applies to all registered insurers.
2. A registered insurer shall ensure that its securities borrowing and lending activities are conducted in a prudent manner. The insurer shall have in place sound controls for conducting, and keep complete records of, such activities.¹

Definition

3. In this Notice –

“accredited investor” has the same meaning as in section 4A of the Securities and Futures Act (Cap. 289);

“Collateral” has the same meaning as in regulation 45(9) of the Securities and Futures (Licensing and Conduct of Business) Regulations (Rg 10).
4. The expressions used in this Notice shall, except where expressly defined in this Notice or where the context otherwise requires, have the same meanings as in the Act.

Written agreement

5. Subject to paragraph 6, where a registered insurer –
 - (a) borrows securities from an owner of those securities (referred to in this Notice as the lender), the registered insurer shall provide Collateral to the lender for the borrowing of the securities; and

¹ Please note that regulation 2 of the Insurance (Exemption) Regulations 2002 provides that an insurer is exempted from complying with section 20 of the Act when it conducts securities lending activities in the manner set out in the regulation.

- (b) lends securities, including securities belonging to its customer, to any person (referred to in this Notice as the borrower), the registered insurer shall obtain Collateral from the borrower for the lending of the securities.

6. Paragraph 5(a) shall not apply to a registered insurer when the registered insurer borrows securities from an accredited investor.

7. For the purposes of paragraph 5(a) and (b), the registered insurer shall ensure that the Collateral provided to the lender or obtained from the borrower, as the case may be, shall, throughout the period that the securities are borrowed or lent, have a value not less than 100% of the market value of the securities borrowed or lent.

8. Where the registered insurer borrows or lends securities in accordance with paragraph 5, it shall ensure that the terms and conditions of the borrowing or lending, as the case may be, are recorded in a prior written agreement, which complies with paragraph 9 and is entered into between the registered insurer and the lender or borrower or their duly authorised agent, as the case may be.

9. For the purposes of paragraph 8, the written agreement shall —

- (a) state the capacities in which the parties are entering into the agreement (whether as principal or agent);
- (b) provide for the transfer of the title to and interest in the securities lent from the lender to the registered insurer, or the registered insurer to the borrower, as the case may be;
- (c) provide for the transfer of the title to and interest in the whole or part of the Collateral, provided or obtained by the registered insurer which is valued to be at least 100% of the market value of the securities (referred to in this regulation as minimum Collateral) which is borrowed by the registered insurer from the lender, or lent by the registered insurer to the borrower, as the case may be;
- (d) provide for the following rights throughout the period that the securities are borrowed or lent:
 - (i) in the case where the registered insurer borrows securities from a lender, the rights of the lender in relation to the minimum Collateral and the rights of the registered insurer in relation to the securities borrowed; and
 - (ii) in the case where the registered insurer lends securities to a borrower, the rights of the registered insurer in relation to the minimum Collateral and the rights of the borrower in relation to the securities borrowed,

including the treatment of dividend payments, voting and other rights and arrangements for dealing with any corporate action;

- (e) provide for the procedure for calculating the lending or borrowing fees, as the case may be;
- (f) include the requirement to mark to market on every business day the securities lent or borrowed, as the case may be, and all minimum Collateral comprising securities and the procedures for calculating the margins;
- (g) provide for the procedures for the request for the return of the securities lent, and the arrangements for dealing with the situation where such securities cannot be delivered by –
 - (i) the registered insurer, where the registered insurer borrows securities from a lender; and
 - (ii) the borrower, where the registered insurer lends securities to a borrower;
- (h) provide for the termination of the agreement by any party to the agreement, including any early termination fee which that party may be subject to;
- (i) state whether there is any right of set-off of claims;
- (j) set out the events of default and the rights and obligations of the parties to the agreement in such events of default; and
- (k) provide for the law governing the agreement and the jurisdiction to which it is subject.

10 Where the registered insurer borrows securities from an accredited investor, the registered insurer shall ensure that the terms and conditions of the borrowing are recorded in a prior written agreement, which complies with paragraph 11 and is entered into between the registered insurer and the accredited investor or their duly authorised agent, as the case may be, regardless of whether the registered insurer provides any assets to the accredited investor as collateral for the borrowing.

11. For the purposes of paragraph 10 —

- (a) the terms and conditions in the written agreement that apply to the borrowing of securities shall include the details set out in paragraph 9, with the exception of paragraph 9(f), and for this purpose —
 - (i) any reference to the minimum Collateral in paragraph 9 shall be construed as a reference to any asset which may be provided to the accredited investor as collateral for the borrowing; and
 - (ii) any reference to the lender shall be construed as a reference to the accredited investor; and
- (b) where assets are provided to the accredited investor as collateral for the borrowing, the written agreement shall specify —

- (i) whether the securities borrowed and the assets provided comprising securities, if any, are marked to market; and
- (ii) if so, the procedures for calculating the margins.

12. Without prejudice to paragraph 7, the registered insurer may —

- (a) where it borrows securities from a lender, provide assets other than Collateral (referred to in this regulation as additional assets) to the lender if the Collateral already provided to the lender is valued at not less than 100% of the market value of the securities borrowed as at the time the additional assets are provided to the lender; and
- (b) where it lends securities to a borrower, obtain additional assets from the borrower if the Collateral already obtained from the borrower is valued at not less than 100% of the market value of the securities lent as at the time the additional assets are obtained from the borrower.

Effective Date

13. Subject to paragraphs 14 and 15, this Notice shall take effect on 31 August 2011 and MAS Notice 113 on “Notice on Securities Lending Activities” dated 1 August 2005 is cancelled with effect from 31 August 2011.

Savings and transitional

14. Subject to paragraph 15, in respect of securities lending or borrowing agreements entered into by a registered insurer before 31 August 2011 (“effective date”), the registered insurer shall continue to comply with the requirements set out in MAS Notice 113 in force immediately before the effective date for a period of 6 months after that date in respect of such agreements, as if this Notice had not been issued (“transitional period”). The registered insurer may however elect to comply with this Notice before the end of the transitional period. Where the registered insurer has so elected, the registered insurer shall comply with this Notice from the date of election.

15. This Notice shall not apply to securities lending or borrowing agreements entered into by a registered insurer before 31 August 2011 if the agreements are completed before the expiration of the 6-month period referred to in paragraph 14.