

Circular No.: CMD 02/2009

22 May 2009

[To all holders of a capital markets services licence in respect of fund management & Trustees approved under section 289 of the Securities and Futures Act (Cap. 289)]

Dear Sir/Madam

TRUSTEE'S RESPONSIBILITY FOR SAFE CUSTODY OF ASSETS OF A COLLECTIVE INVESTMENT SCHEME ("CIS")

The trustee of an authorised collective investment scheme is responsible for the safe custody of the scheme's assets but it may delegate this function to a third-party custodian pursuant to section 41H of the Trustees Act (Cap. 337) ("TA"). The Monetary Authority of Singapore (the "Authority") would like to highlight that the trustee remains responsible in the event of misconduct by an entity to whom the trustee had outsourced the safekeeping of those assets, if the trustee fails to exercise due care and diligence.

2 Under the TA, a trustee shall exercise such care and skill as is reasonable in the circumstances, when appointing custodians¹, in keeping under review the arrangements under which the custodian acts, and the manner in which they are being put into effect, including exercising its power to intervene where appropriate². While section 41L(3) of the TA allows the foregoing to be overridden by the terms of the trust deed, the Securities and Futures Act (Cap. 289) ("SFA") provides that any provision in a trust deed or in any contract with the participants of a CIS shall be void if it has the effect of exempting a trustee from liability for breach of trust where the trustee fails to exercise the degree of care and diligence required of a trustee³. The trustee therefore has oversight functions over the custodian and does not absolve itself of responsibility by appointing a custodian.

¹ Pursuant to section 3A read with section 41N of the TA.

² Pursuant to section 3A read with section 41M of the TA.

³ Please see section 292 of the SFA.

3 The Authority would like to remind all trustees of the importance of exercising all due care and skill in appointing any third-party custodian and of keeping under active review all custodian arrangements, including monitoring that the arrangements address all potential risks to the safekeeping of customers assets and are being effectively implemented.

Yours faithfully

(Sent via MASNET/post)

SHANE TREGILLIS
DEPUTY MANAGING DIRECTOR
MARKET CONDUCT GROUP