

No. S000 -

**SECURITIES AND FUTURES ACT
(CHAPTER 289)**

**SECURITIES AND FUTURES (AFFAIRS OF BUSINESS
TRUST AND AFFAIRS OF ENTITY) REGULATIONS 2005**

ARRANGEMENT OF REGULATIONS

Regulation

1. Citation and commencement
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In exercise of the powers conferred by sections 251(18)(b) and (19)(b), 272A(11)(b), 275(2A)(b), 282L(18)(c) and (19)(c), 282V(11)(c), 282Z(4)(c) and 330(3)(b) of the Securities and Futures Act (as amended by the Securities and Futures (Amendment) Act 2005 (Act 1 of 2005)), the Monetary Authority of Singapore hereby makes the following Regulations:

Citation and commencement

1. These Regulations may be cited as the Securities and Futures (Affairs of Business Trust and Affairs of Entity) Regulations 2005 and shall come into operation on 15th October 2005.

Affairs of a business trust

2.—(1) For the purposes of sections 282L(2)(ii) and (9)(c)(i), 282V(10)(i)(A) and 330(1)(c) and the definition of “information memorandum” in section 282Z(3) of the Act, a reference to the affairs of a business trust shall, unless the contrary intention appears, be construed as including a reference to—

- (a) the promotion, formation, control, business, profits and losses of the business trust;
- (b) the trading, transactions and dealings, property and liabilities of the trustee of the business trust acting in its capacity as trustee;
- (c) matters concerned with the ascertainment of the identity of the persons who are holders of units or derivatives of units in, or debentures or units of debentures of, the business trust, their rights in relation to the business trust and any payments that they have received, or are entitled to

receive, under the terms of the trust deed of the business trust;

- (d) the internal management and proceeding of the trustee of the business trust acting in its capacity as trustee;
- (e) any act of thing done (including any contract made and any transaction entered into) by or on behalf of the trustee of the business trust acting in its capacity as trustee, or to or in relation to the business of the business trust, or to or in relation to the trust property of the business trust —
 - (i) at a time when a receiver, or a receiver and manager, or an equivalent person, is in possession of, or has control over the trust property;
 - (ii) at a time when the trustee of the business trust (being a corporation) is under judicial management;
 - (iii) at a time when a compromise or arrangement referred to in section 210 of the Companies Act (Cap. 50) made between the trustee of the business trust (being a corporation) acting in its capacity as trustee of the business trust and another person or persons is being administered;
 - (iv) under an agreement between the trustee of the business trust (not being a corporation) acting in its capacity as trustee of the business trust and a majority of or all the creditors in respect of the business of the business trust, such agreement being a repayment arrangement of the debts incurred by the trustee on behalf of the business trust and owed to these creditors;
 - (v) at a time when the trustee of the business trust (being an individual) is an undischarged bankrupt;
 - (vi) at a time when the trustee of the business trust (not being an individual) or the business trust itself is being wound up or dissolved;
- (f) without limiting the generality of paragraph (e)(i) to (vi), any conduct of the receiver, receiver and manager or equivalent person, or the judicial manager, or the person administering the compromise or arrangement, or the person administering the repayment arrangement, or the Official Assignee when administering the bankruptcy, or the Official Receiver when administering the winding up or dissolution, or any liquidator, provisional liquidator or other person administering the winding up or dissolution;

- (g) the ownership of units or derivatives of units in, or debentures or units of debentures of, the business trust issued by the trustee of the business trust acting in its capacity as trustee;
- (h) the power of persons to exercise, or to control the exercise of, the rights to vote attached to units in the business trust or to dispose of, or to exercise control over the disposal of, such units;
- (i) matters concerned with the ascertainment of the persons who are or have been financially interested in the success or failure, or apparent success or failure, of the business trust or are or have been able to control or materially to influence the policy of the trustee of the business trust acting in its capacity as trustee;
- (j) the circumstances under which a person acquired or disposed of, or became entitled to acquire or dispose of, units or derivatives of units in, or debentures or units of debentures of, the business trust issued by the trustee of the business trust acting in its capacity as trustee; or
- (k) matters relating to or arising out of the audit of, or working papers or reports of an auditor concerning, any matters referred to in paragraphs (a) to (j).

(2) In paragraph (1) —

“business”, in relation to a business trust, means the business relating to the trust property of the business trust and managed and operated by the trustee of the business trust in its capacity as trustee of the business trust;

“trust property”, in relation to a business trust, has the same meaning as in section 2 of the Business Trusts Act (Act 30 of 2004).

Affairs of an entity

3.—(1) For the purposes of sections 251(2)(ii) and (9)(c)(i), 272A(10)(i)(A), 282L(2)(ii) and (9)(c)(i) and 330(1)(c) and the definition of “information memorandum” in section 275(2) of the Act, a reference to the affairs of an entity, the person making the offer, an issuer or an underlying entity (referred to in this regulation as the relevant entity) shall, unless the contrary intention appears, be construed as including a reference to —

- (a) the promotion, formation, membership, control, business, trading, transactions and dealings (whether alone or jointly with another person or other persons and including transactions and dealings as agent, bailee or trustee),

property (whether held alone or jointly with another person or other persons and including property held as agent, bailee or trustee), liabilities (including liabilities owned jointly with another person or other persons and liabilities as trustee), profits and other income, receipts, losses, outgoings and expenditure of the relevant entity;

- (b) where the relevant entity is a trustee (but without limiting the generality of paragraph (a)), matters concerned with the ascertainment of the identity of the persons who are beneficiaries under the trust, their rights under the trust and any payments that they have received, or are entitled to receive, under the terms of the trust;
- (c) the internal management and proceeding of the relevant entity;
- (d) any act or thing done (including any contract made and any transaction entered into) by or on behalf of the relevant entity, or to or in relation to the relevant entity or its business or property —
 - (i) at a time when a receiver, or a receiver and manager, or an equivalent person, is in possession of, or has control over, property of the relevant entity;
 - (ii) under a repayment agreement between the relevant entity and a majority of or all its creditors in respect of the debts owed by the relevant entity to these creditors; or
 - (iii) at a time when the relevant entity is being wound up or otherwise dissolved;
- (e) without limiting the generality of paragraph (d)(i) to (iii), any conduct of the receiver, receiver and manager or equivalent person, or the person administering the repayment arrangement, or the person administering the winding up or dissolution;
- (f) the ownership of equity interests in, debentures of, units of debentures of, or other securities issued by, the relevant entity;
- (g) the power of persons to exercise, or to control the exercise of, the rights to vote attached to equity interests in the relevant entity or to dispose of, or to exercise control over the disposal of, such interests;

- (h) matters concerned with the ascertainment of the persons who are or have been financially interested in the success or failure, or apparent success or failure, of the relevant entity or are or have been able to control or materially to influence the policy of the relevant entity;
- (i) the circumstances under which a person acquired or disposed of, or became entitled to acquire or dispose of, equity interests in, debentures of, units of debentures of, or other securities issued by, the relevant entity;
- (j) where the relevant entity has issued units in a collective investment scheme, any matters concerning the financial or business undertaking, scheme, common enterprise or investment contract to which the units relate; or
- (k) matters relating to or arising out of the audit of, or working papers or reports of an auditor concerning, any matters referred to in paragraphs (a) to (j).

(2) In paragraph (1) —

“equity interest”, in relation to the relevant entity, means any right or interest, whether legal or equitable, in the relevant entity, by whatever name called, and includes any option to acquire any such right or interest in the relevant entity;

“securities” has the same meaning as in section 2(1) of the Act.

(3) This regulation applies where the relevant entity is not a corporation.

Made this 19th day of September 2005.

HENG SWEE KEAT
*Managing Director,
Monetary Authority of
Singapore.*

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