

CONSULTATION PAPER

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Mandatory AGM Requirement for REITs

MAS

Monetary Authority of Singapore

PREFACE

As part of continuing efforts to enhance the regulatory regime for real estate investment trusts (“REITs”), MAS is conducting a review of the need for REITs to hold Annual General Meetings (“AGMs”).

Request for Comments

MAS invites interested parties to give their views and comments on the proposal set out in this consultation paper. Comments may be submitted to:

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MAS would request that all comments and feedback be submitted by 26 June 2009.

Please note that all submissions received may be made public unless confidentiality is specifically requested for whole or part of the submission.

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1. INTRODUCTION

1.1. REITs are regulated as collective investment schemes (“CIS”) under the Securities and Futures Act (“SFA”) and are subject to the Property Fund Guidelines in the Code on Collective Investment Schemes (the “Property Fund Guidelines”). REITs have also to comply with the requirements set out in SGX’s Listing Manual.

1.2. Currently, all public companies¹ and business trusts are required to hold annual general meetings (“AGMs”) under the Companies Act and the Business Trusts Act, respectively. Separately, SGX requires listed companies and business trusts to hold their AGMs within 4 months of the end of their financial year.

1.3. On the other hand, REITs, like other CIS, are currently not required to hold AGMs, although some REITs have been holding AGMs voluntarily. However, there are provisions within the Property Fund Guidelines allowing unitholders of REITs to request for a meeting to be convened under certain circumstances.

2. OUTCOME OF PREVIOUS PUBLIC CONSULTATION

2.1. A previous public consultation by MAS in June 2005 sought views on whether to mandate AGMs for REITs or to allow for a general meeting to be convened at the request in writing of not less than 50 participants or participants representing not less than 10% of the issued units of the property fund.

2.2. MAS incorporated the latter option into the Property Fund Guidelines, taking into account the prevalent view that it would be adequate to allow EGMs to be convened at the request of an appropriate number of participants. Respondents felt AGMs were not cost effective at the time as REITs were already seeking approval for their acquisitions periodically through EGMs, thereby providing an avenue for unitholders to be heard and resolutions to be passed.

¹ Private companies may, by resolution at a general meeting passed by all members voting in person or where proxies are allowed, by proxy present at the meeting, dispense with the holding of AGMs under the Companies Act.

2.3. However, this assumption has not held true in current economic circumstances for two reasons. Firstly, as REITs are making fewer or no acquisitions, EGMs held for approvals of acquisitions are few and far between. Secondly, we have received feedback from some REIT managers that, in volatile market conditions, convening EGMs to approve certain matters, such as a general mandate for the issuance of new units, may cause speculation and result in negative impact on the unit price. This has led us to reconsider the merits of mandating AGMs, as announced by then-Senior Minister of State (Finance) Mrs Lim Hwee Hua's opening address to the APREA Singapore REIT Summit² in February this year.

3. PRACTICES IN OTHER JURISDICTIONS

3.1. In the United States, the jurisdiction with the longest history of REITs, REITs take on a corporate form, and are required by NYSE to hold AGMs for each fiscal year³.

3.2. Australia's exchange, ASX, requires that listed REITs provide unitholders with access to information about the company and corporate proposals, and enable their participation in decision-making. It recommends as a good practice that REITs consider the possibility of convening general meetings to this end⁴.

3.3. Similarly, in Hong Kong, the Securities and Futures Commission expects the management company of REITs to "uphold good corporate governance principles and best industry standards for all activities... arising out of its listing or trading on any stock exchange"⁵. The Hong Kong Exchange's listing rules recommend using AGMs to communicate with shareholders as a core principle of corporate governance⁶.

² Minister Lim had said, "...MAS will be consulting REIT managers on the possibility of introducing a requirement for Annual General Meetings (AGMs) to be held. This is in line with the practices for other listed vehicles and would ensure better corporate governance of REITs." The APREA Singapore REIT Summit was organised by the Asian Public Real Estate Association on 20 Feb 2009

³ New York Stock Exchange, *Listed Company Manual*, Rule 302.00

⁴ ASX Corporate Governance Council, *Revised Corporate Governance Principles and Recommendations – Second Edition*

⁵ Hong Kong Securities and Futures Commission, *Code on Real Estate Investment Trusts*, June 2005, General Practice 6

⁶ Hong Kong Exchange, *Listing Rules*, April 2009, Appendix 14

3.4. While mandating AGMs for REITs is not common in other jurisdictions, AGMs are frequently codified as a key recommendation to achieve good corporate governance.

4. REASONS FOR REIT AGMS

CONSISTENCY OF STANDARDS

4.1. Mandating that REITs hold AGMs would be in line with the requirements for public companies and business trusts, other listed vehicles which similarly raise funds from the public. It would also be consistent with international best practice, which suggests that AGMs are an important component of good corporate governance. MAS is of the view that mandating AGMs will enhance corporate governance for REITs by providing an important channel for communication between REIT managers and unitholders, and for REIT managers to be more accountable to unitholders. This will further strengthen the corporate governance regime for REITs in Singapore.

INCREASING FLEXIBILITY FOR REITS

4.2. AGMs will give the manager the opportunity to obtain or renew a general mandate from unitholders for the issue of new units in the coming year. If the general mandate is granted by unitholders, REITs will be able to issue new units in a timely manner, thus enabling REITs to react more flexibly to demands for equity raising within the limits of the general mandate. As AGMs will be held annually, REITs would not face the problem of market speculation arising from convening an EGM specifically for the purpose of obtaining such a mandate.

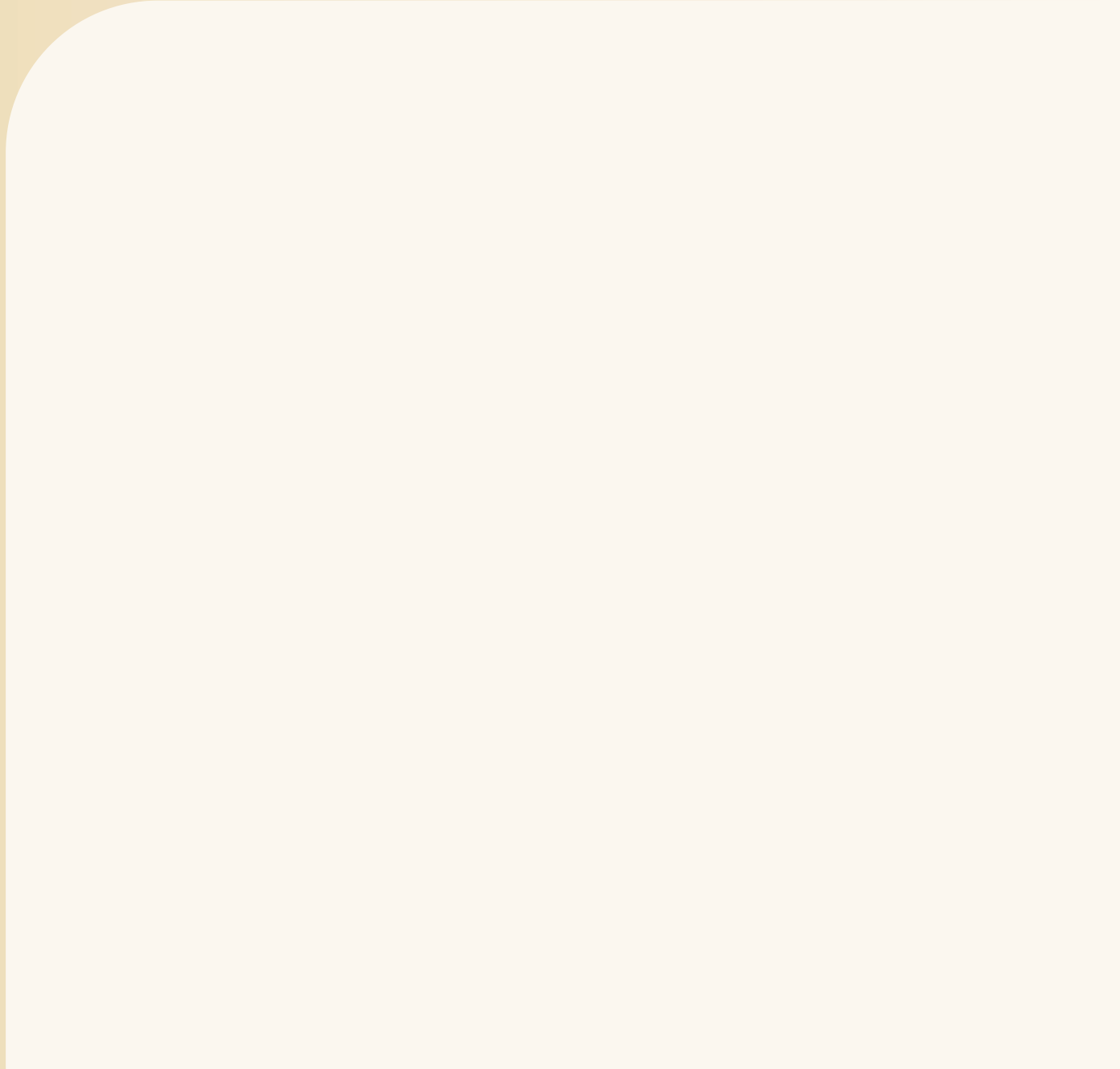
5. PROPOSAL

5.1. We propose to amend the Property Fund Guidelines to mandate that REITS hold AGMs. This will apply to all REITs which are regulated as CIS in Singapore.

5.2. MAS proposes to mandate that REITs hold AGMs once every calendar year and not more than 15 months from the last preceding AGM, with effect from 1 January 2010. This means that all REITs will have held an AGM each by 31 Dec 2010. In line with SGX's rule on the timing of AGMs for

other listed issuers, REITs will have to hold their AGMs within 4 months from their financial year end.

5.3 MAS seeks views on the proposal to mandate that REITs hold AGMs.



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