

CONSULTATION PAPER

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May 2009

Amendments to the Securities and Futures (Offers of Investments) (Collective Investment Schemes) Regulations 2005

MAS

Monetary Authority of Singapore

AMENDMENTS TO THE SECURITIES AND FUTURES (OFFERS OF INVESTMENTS) (COLLECTIVE INVESTMENT SCHEMES) REGULATIONS 2005

PREFACE

MAS is making amendments to the Securities and Futures (Offers of Investments) (Collective Investment Schemes) Regulations 2005 to effect changes in the regulatory regime for restricted schemes.

2 MAS consulted on proposed changes to the regulatory regime for restricted schemes in December 2006 and released its responses to the feedback received in October 2007. The draft Securities and Futures (Offers of Investments) (Collective Investment Schemes) (Amendment) Regulations 2009 (“Amendment Regulations”) in the current consultation serve to implement the new regime. The draft Amendment Regulations are set out in Appendix A of this paper.

3 The new regime will comprise a notification framework implemented through an online platform called CISNet. A significant change from the current regime is that offerors will be required to make an annual declaration that information on the scheme offered remains true and correct. Offerors who do not make the annual declaration would have to stop offering the scheme in Singapore. A small fee will be payable at each annual declaration. CISNet will allow for electronic payment of fees via credit cards.

4 CISNet will also enable offerors to amend the annual declaration dates to allow those managing more than one scheme to consolidate their annual declaration dates. Details on the annual declaration process can be found in the

draft Notice on Annual Declaration for Restricted Schemes (the “Notice”) set out in Appendix B of this paper.

5 There are no other substantive changes to the current regime. The new framework continues to allow offerors the option of appointing agents to make submissions on their behalf. As is the position currently, MAS must be informed if a scheme is wound up or ceases to be offered in Singapore and MAS will continue to have powers to prohibit certain schemes from being offered.

6 MAS invites interested parties to forward their views and comments on the draft Amendment Regulations and the draft Notice. Written comments should be submitted to:

Capital Markets Department
Monetary Authority of Singapore
10 Shenton Way
MAS Building
Singapore 079117
Email: cisnet@mas.gov.sg
Fax: (65) 6225 1350

MAS would like to request for all comments and feedback to be submitted by 29 June 2009.

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

APPENDIX A: DRAFT SECURITIES AND FUTURES (OFFERS OF INVESTMENTS) (COLLECTIVE INVESTMENT SCHEMES) REGULATIONS 2009

DISCLAIMER: This version of the Bill is in draft form and subject to change. It is also subject to review by the Attorney-General's Chambers.

No. S 000 -

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

**SECURITIES AND FUTURES
(OFFERS OF INVESTMENTS) (COLLECTIVE
INVESTMENT SCHEMES) (AMENDMENT)
REGULATIONS 2009**

In exercise of the powers conferred by sections 305 and 341 of the Securities and Futures Act, the Monetary Authority of Singapore hereby makes the following Regulations:

Citation and commencement

1. These Regulations may be cited as the Securities and Futures (Offers of Investments) (Collective Investment Schemes) (Amendment) Regulations 2009 and shall come into operation on 2009.

Amendment of regulation 2

2. Regulation 2(1) of the Securities and Futures (Offers of Investments) (Collective Investment Schemes) Regulations 2005 (G.N. No. S 602/2005) (referred to in these Regulations as the principal Regulations) is amended —

(a) by deleting the definition of “restricted authorised scheme” and substituting the following definition:

““restricted foreign scheme” means a restricted scheme which is constituted outside Singapore and of which the Authority has been notified by the responsible person in accordance with paragraph 3 of the Sixth Schedule;”;

(b) by deleting the definition of “restricted recognised scheme”; and

(c) by inserting, immediately after the definition of “restricted scheme”, the following definition:

““restricted Singapore scheme” means a restricted scheme which is constituted in Singapore and of which the Authority has been notified by the responsible person in accordance with paragraph 2 of the Sixth Schedule;”.

Amendment of Part IV

3. Part IV of the principal Regulations is amended by deleting the Part heading and substituting the following Part heading:

“NOTIFICATION OF OFFER OF RESTRICTED SCHEMES”

Amendment of regulation 32

4. Regulation 32(1) of the principal Regulations is amended by deleting the words “paragraphs 1 to 5” and substituting the words “paragraphs 1 to 6”.

Amendment of First Schedule

5. The First Schedule to the principal Regulations is amended—

(a) by deleting items 10 and 11 and substituting the following items:

“10.	Paragraph 2 of the Sixth Schedule to these Regulations	For every notification filed with the Authority for the offer of a restricted Singapore scheme.	\$250
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11.	Paragraph 3 of the Sixth Schedule to these Regulations	For every notification filed with the Authority for the offer of a restricted foreign scheme.	\$250”
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; and

(b) by inserting, immediately after item 11, the following items:

“11A.	Paragraph 5 of the Sixth Schedule to these Regulations	For every annual declaration received before the expiry date set out in the requirements referred to in paragraph 5(1) of the Sixth Schedule.	\$50
11B.	Paragraph 5 of the Sixth Schedule to these Regulations	For every annual declaration received after the expiry date set out in the requirements referred to in paragraph 5(1) of the Sixth Schedule.	\$150”.

Deletion and substitution of Sixth Schedule

6. The Sixth Schedule to the principal Regulations is deleted and the following Schedule substituted therefor:

SIXTH SCHEDULE

Regulation 32

MODIFIED PROVISIONS FOR RESTRICTED SCHEMES

Offers of units in a restricted scheme

1.—(1) No person shall make an offer of units in a restricted scheme if the scheme has not been entered into a list of restricted schemes by the Authority.

(2) A person who wishes to make an offer of units in a restricted scheme shall submit a notification of the offer to the Authority, which shall be accompanied by such information or record as the Authority may require.

(3) Any person who makes an offer of units in a restricted scheme shall inform, in writing, the investors to whom the offer is made that —

(a) the scheme is not authorised or recognised by the Authority and is not allowed to be offered to the retail public; and

(b) any written material issued in connection with the offer is not a prospectus as defined in the Act, and accordingly, statutory liability under the Act in relation to the content of prospectuses would not apply.

(4) The Authority may publish for public information, in such manner as it considers appropriate, particulars of any restricted scheme that has been entered into the list of restricted schemes.

(5) Any person who contravenes sub-paragraph (1) or (3) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 and, in the case of a continuing offence, to a further fine not exceeding \$5,000 for every day or part thereof during which the offence continues after conviction.

Restricted Singapore schemes

2. —(1) The Authority shall not enter a restricted Singapore scheme into the list of restricted schemes unless —

(a) the Authority is satisfied that there is a manager for the scheme which is —

(i) licensed or regulated to carry out fund management activities in the jurisdiction of its principal place of business; or

(ii) a public company that is exempted from the requirement to hold a capital markets services licence to carry on business in fund management under paragraph 5(1)(d) of the Second Schedule of the Securities and Futures (Licensing and Conduct of Business) Regulations (Rg 10);

(b) the manager for the scheme is a fit and proper person, in the opinion of the Authority, and in considering if a person satisfies this requirement, the Authority may take into account any matter relating to —

(i) any person who is or will be employed by or associated with the manager;

(ii) any person exercising influence over the manager; or

(iii) any person exercising influence over a related corporation of the manager; and

(c) in the case of a restricted Singapore scheme constituted as a unit trust, there is a trustee for the scheme approved under section 289 of the Act.

(2) The Authority may enter a restricted Singapore scheme that is not constituted as a unit trust into the list of restricted schemes subject to such conditions or restrictions as it thinks fit.

(3) The Authority may, at any time, by notice in writing to the responsible person for the restricted Singapore scheme that is not constituted as a unit trust, vary any condition or restriction or impose such further condition or restriction as it may think fit.

(4) The Authority may refuse to enter a restricted Singapore scheme into the list of restricted schemes where it appears to the Authority that it is not in the public interest to do so.

(5) The Authority shall not refuse to enter a restricted Singapore scheme into the list of restricted schemes without giving the person who made the notification of the offer an opportunity to be heard except that an opportunity to be heard need not be given if the refusal is on the ground that it is not in the public interest to enter the restricted Singapore scheme into the list on the basis of any of the following circumstances:

- (a) the person making the offer (being an entity), the responsible person or the restricted Singapore scheme itself is in the course of being wound up or otherwise dissolved, whether in Singapore or elsewhere;
- (b) the person making the offer (being an individual) is an undischarged bankrupt, whether in Singapore or elsewhere;
- (c) a receiver, a receiver and manager or an equivalent person has been appointed, whether in Singapore or elsewhere, in relation to or in respect of any property of the person making the offer (being an entity), the responsible person or the restricted Singapore scheme.

(6) The responsible person for a restricted Singapore scheme may, within 30 days after he is notified that the Authority has refused to enter the restricted Singapore scheme into the list, appeal to the Minister whose decision shall be final.

(7) The responsible person for a restricted Singapore scheme which has been entered into the list under paragraph 1 and the trustee for the scheme, to the extent applicable, shall ensure that the requirements set out in sub-paragraph (1) as applicable to that scheme shall continue to be satisfied.

(8) The responsible person for a restricted scheme which has been entered into the list under paragraph 1 shall furnish such information or record regarding the scheme as the Authority may, at any time, require for the proper administration of the Act.

(9) Where the manager for a restricted scheme which is constituted as a unit trust and which has been entered into the list under paragraph (1) fails to comply with the Act, the Authority may direct the trustee for the scheme to remove that person and appoint a new manager for the scheme.

(10) Any person who contravenes any condition or restriction imposed pursuant to sub-paragraph (2) or (3), or the requirements in sub-paragraph (7), (8) or (9) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 and, in the case of a continuing offence, to a further fine not exceeding \$5,000 for every day or part thereof during which the offence continues after conviction.

Restricted foreign schemes

3.—(1) The Authority shall not enter a restricted foreign scheme into the list of restricted schemes unless the Authority is satisfied that there is a manager for the scheme which is —

- (a) licensed or regulated to carry out fund management activities in the jurisdiction of its principal place of business; and
- (b) a fit and proper person, in the opinion of the Authority, and in considering if a person satisfies this requirement, the Authority may take into account any matter relating to —
 - (i) any person who is or will be employed by or associated with the manager;
 - (ii) any person exercising influence over the manager; or
 - (iii) any person exercising influence over a related corporation of the manager.

(2) The Authority may refuse to enter a restricted foreign scheme into the list of restricted schemes where it appears to the Authority that it is not in the public interest to do so.

(3) The Authority shall not refuse to enter a restricted foreign scheme into the list of restricted schemes without giving the person who made the notification of the offer an opportunity to be heard except that an opportunity to be heard need not be given if the refusal is on the ground that it is not in the public interest to enter the restricted foreign scheme into the list on the basis of any of the following circumstances:

- (a) the person making the offer (being an entity), the responsible person or the restricted foreign scheme itself is in the course of being wound up or otherwise dissolved, whether in Singapore or elsewhere;
- (b) the person making the offer (being an individual) is an undischarged bankrupt, whether in Singapore or elsewhere;
- (c) a receiver, a receiver and manager or an equivalent person has been appointed, whether in Singapore or elsewhere, in relation to or in respect of any property of the person making the offer (being an entity), the responsible person or the restricted foreign scheme.

(4) The responsible person for a restricted foreign scheme may, within 30 days after he is notified that the Authority has refused to enter the restricted foreign scheme into the list, appeal to the Minister whose decision shall be final.

(5) The responsible person for a restricted foreign scheme which has been entered into the list under paragraph 1 shall ensure that the requirements set out in sub-paragraph (1) as applicable to that scheme shall continue to be satisfied.

(6) The responsible person for a restricted foreign scheme which has been entered into the list under paragraph 1 shall furnish such information or record regarding the scheme as the Authority may, at any time, require for the proper administration of the Act.

(7) Any person who contravenes sub-paragraph (5) or (6) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 and, in the case of a continuing offence, to a further fine not exceeding \$5,000 for every day or part thereof during which the offence continues after conviction.

Withdrawal or suspension

4.—(1) The Authority may withdraw the status of an offer of units in a restricted scheme as a restricted Singapore scheme or a restricted foreign scheme by removing it from the list of restricted schemes if –

- (a) any related information or record submitted to the Authority, whether at the same time as or subsequent to the notification, was false or misleading in a material particular or omitted a material particular which, had it been known to the Authority at the time of submission, would have resulted in the Authority not entering the scheme into the list of restricted schemes;
 - (b) the Authority is of the opinion that the continued offer of the scheme is or will be against the public interest;
 - (c) the Authority is of the opinion that the continued offer of the scheme is or will be prejudicial to its participants or potential participants;
 - (d) in the case of –
 - (i) a restricted Singapore scheme which has been entered into the list of restricted schemes under paragraph 1, the responsible person for the scheme or the trustee for the scheme, where applicable, fails to comply with paragraph 2 (7) or (8); or
 - (ii) a restricted foreign scheme which has been entered into the list of restricted schemes under paragraph 1, the responsible person for the scheme fails to comply with paragraph 3(5) or (6); or
 - (e) the responsible person for a restricted Singapore scheme or a restricted foreign scheme fails to submit an annual declaration in accordance with paragraph 5(1).
- (2) Notwithstanding sub-paragraph (1), the Authority may, if it considers it desirable to do so –
- (a) instead of withdrawing the status of the offer of units in a restricted scheme as a restricted Singapore scheme or a restricted foreign scheme, suspend the status of the offer of units in a restricted scheme as a restricted Singapore scheme or a restricted foreign scheme for such period as the Authority may determine; and
 - (b) at any time –
 - (i) extend the period of suspension; or
 - (ii) revoke the suspension.
- (3) Where the Authority withdraws the status of an offer of units in a restricted scheme as a restricted Singapore scheme or a restricted foreign scheme under sub-paragraph (1) or suspends the status of the offer of units in a restricted scheme as a restricted Singapore scheme or a restricted foreign scheme under sub-paragraph (2), it shall notify the responsible person for the scheme.
- (4) The Authority shall not —
- (a) withdraw the status of an offer of units in a restricted scheme as a restricted Singapore scheme or a restricted foreign scheme under sub-paragraph (1); or
 - (b) suspend the status of an offer of units in a restricted scheme as a restricted Singapore scheme or a restricted foreign scheme under sub-paragraph (2),

without giving the responsible person of the scheme an opportunity to be heard, except that an opportunity to be heard need not be given if the withdrawal or suspension is on the ground that the continued status of the offer of units in a restricted scheme as a restricted Singapore scheme or a restricted foreign scheme is against the public interest on the basis of any of the following circumstances:

- (i) the person making the offer (being an entity), the responsible person or the restricted scheme itself is in the course of being wound up or otherwise dissolved, whether in Singapore or elsewhere;

- (ii) the person making the offer (being an individual) is an undischarged bankrupt, whether in Singapore or elsewhere;
- (iii) a receiver, a receiver and manager or an equivalent person has been appointed, whether in Singapore or elsewhere, in relation to or in respect of any property of the person making the offer (being an entity), the responsible person or the restricted scheme.

(5) The responsible person for a restricted scheme may, within 30 days after he is notified that the Authority —

- (a) has withdrawn the status of an offer of units in a restricted scheme as a restricted Singapore scheme or a restricted foreign scheme under sub-paragraph (1); or
- (b) has suspended the status of an offer of units in a restricted scheme as a restricted Singapore scheme or a restricted foreign scheme under sub-paragraph (2),

appeal to the Minister whose decision shall be final.

(6) Where the Authority withdraws the status of an offer of units under sub-paragraph (1) or suspends the status of an offer of units under sub-paragraph (2), it may —

- (a) within a period of 28 days of the withdrawal or suspension, give directions to the responsible person of the scheme, as it deems appropriate, to protect investors; and
- (b) publish notice of the withdrawal or suspension, and the directions given pursuant to sub-paragraph (8)(a), and the reason therefor, in such manner as it considers appropriate.

Annual declaration by responsible person

5.—(1) The responsible person for a restricted scheme which has been entered into the list of restricted schemes by the Authority shall lodge with the Authority an annual declaration in accordance with such requirements and in such manner as may be notified in writing by the Authority.

Winding up and termination

6.—(1) Where a restricted scheme is wound up, the responsible person for the scheme shall so notify the Authority no later than 14 days after the winding up.

(2) Where an offer of units in a restricted scheme is terminated, the responsible person for the scheme shall notify the Authority no later than 14 days after the termination.

(3) Upon receipt of the notice of termination under sub-paragraph (2), the Authority may remove the offer of units from the list of restricted schemes made under paragraph 1.

(4) Notwithstanding sub-paragraph (3), the Authority may, within a period of 28 days of the notification of termination, give directions to the responsible person of the scheme, as it deems appropriate, to protect investors. The Authority may publish notice of the directions given, and the reason therefor, in such manner as it considers appropriate.

(5) Any responsible person who contravenes sub-paragraph (1) or (2) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000.

Revocation, Savings and Transitional provision

7.—(1) A restricted authorised scheme within the meaning of regulation 2(1) of the principal Regulations in force immediately before [date of commencement of Amendment Regulations] shall be deemed to be a restricted

Singapore scheme for a period of one year from [date of commencement of Amendment Regulations].

(2) A restricted authorised scheme within the meaning of regulation 2(1) of the principal Regulations in force immediately before [date of commencement of Amendment Regulations] shall be deemed to be a restricted Singapore scheme with effect from [one year from date of commencement of Amendment Regulations] if

- (a) notification of the offer of units in the scheme is made to and accepted by the Authority; and
- (b) the responsible person for the scheme pays the Authority a fee of \$50 by [one year from commencement of Amendment Regulations].

(3) A restricted recognised scheme within the meaning of regulation 2(1) of the principal Regulations in force immediately before [date of commencement of Amendment Regulations] shall be deemed to be a restricted foreign scheme for a period of one year from [date of commencement of Amendment Regulations].

(4) A restricted recognised scheme within the meaning of regulation 2(1) of the principal Regulations in force immediately before [date of commencement of Amendment Regulations] shall be deemed to be a restricted foreign scheme with effect from [one year from date of commencement Amendment Regulations] if

- (a) notification of the offer of units in the scheme is made to and accepted by the Authority; and
- (b) the responsible person for the scheme pays the Authority a fee of \$50 by [one year from commencement of Amendment Regulations].

Made this day of 2009.

HENG SWEE KEAT
Managing Director,
Monetary Authority of Singapore.

[CMD-CFD06/2006;]

APPENDIX B: DRAFT NOTICE ON ANNUAL DECLARATION FOR NOTIFICATIONS OF RESTRICTED SCHEMES

DISCLAIMER: This version of the Notice is in draft form and subject to change.

NOTICE ON ANNUAL DECLARATION FOR NOTIFICATIONS OF RESTRICTED SCHEMES

1 Introduction

- 1.1 This notice is issued pursuant to paragraph [5(1)] of the Sixth Schedule to the Securities and Futures (Offers of Investments) (Collective Investment Schemes) 2009 to all responsible persons of a restricted scheme.
- 1.2 This notice shall take effect on [].

2 Definitions

In this Notice, “CISNet” means the Authority’s online platform for the submission of notifications for restricted schemes.

3 Requirement to lodge annual declaration

- 3.1 Subject to paragraph 3.2, the responsible person for a restricted scheme which has been entered into the list of restricted schemes by the Authority shall make the first annual declaration within the one-year anniversary of the entry of the scheme into the list of restricted schemes (the “anniversary date”) and thereafter, the responsible person shall make the annual declarations on or before the subsequent anniversary dates.
- 3.2 Every annual declaration shall be made during the one month period immediately prior to and including the anniversary date (the “one month declaration period”).
- 3.3 The responsible person for a restricted scheme may change the anniversary date of a scheme by submitting an amendment through CISNet, anytime before the one month declaration period.
- 3.4 Any amended anniversary date shall—
- (a) be earlier, but not later, than the previous anniversary date; and
 - (b) be at least 14 calendar days after the date of submission of the amendment through CISNet.
- 3.5 The responsible person may make more than one change to the anniversary date of a scheme so long as the requirements specified in paragraphs 3.3 and 3.4 are satisfied.



Monetary Authority of Singapore