

## REGULATION UPDATE

### MAS CONSULTS ON REVISED PROPOSALS COVERING LISTED AND UNLISTED INVESTMENT PRODUCTS

The Monetary Authority of Singapore (the “**MAS**”) has issued a consultation paper with revised proposals on the sale, marketing and rendering of advice in respect of both listed and unlisted investment products.

On 12 March 2009, the MAS issued a consultation paper proposing enhancements to the regulatory framework for unlisted investment products (the “**12<sup>th</sup> March Consultation**”). Following that, it released the first part of its response to the feedback on the 12<sup>th</sup> March Consultation on 8 September 2009 (the “**Part I Response**”). Our update on the **12<sup>th</sup> March Consultation** and the **Part I Response** may be accessed by clicking on the respective links.

The MAS has now issued a new consultation paper based on the feedback received and its further analysis of some of the issues. The new consultation paper (the “**New Consultation**”) deals with both listed and unlisted investment products.

At the same time, the MAS has also released the second part of its response to feedback from the 12<sup>th</sup> March Consultation (the “**Part II Response**”). The Part II Response will be dealt with in a separate update.

This update summarises the proposals found in the New Consultation. These proposals expand on some of the proposals in the 12<sup>th</sup> March Consultation and apply to a wider range of investment products. They are discussed under the following headings:

- Current regime to apply to excluded investment products;
- Proposals for unlisted non-excluded investment products;
- Proposals for listed non-excluded investment products;
- Enhanced competency for intermediaries; and
- Proposed requirements for Product Highlights Sheets.

The closing date for submission of feedback for the New Consultation is **12 March 2010**.

### Current regime to apply to excluded investment products

“Excluded investment products” refers to a MAS-prescribed list of investment products to which the current regulatory regime under the Securities and Futures Act and Financial Advisers Act will continue to apply. The proposed list of excluded investment products includes shares, warrants, rights, real estate investment trusts, money market instruments, life insurance policies (other than investment-linked policies) and structured deposits. Products not included in the list are referred to as “non-excluded investment products”.

### Proposals for unlisted non-excluded investment products

Intermediaries wishing to sell unlisted non-excluded investment products to retail customers will be required to perform an assessment on the customer (“**Customer Knowledge Assessment**”) to ascertain his relevant knowledge or experience in investing in products of that nature. If the customer is assessed not to possess the requisite knowledge and experience, the intermediary will be required to advise him on the suitability of the investment product.

The MAS also proposes that the Customer Knowledge Assessment be performed or approved by a person independent of the financial advisory function to prevent conflicts of interests.

Some of the information which would need to be collected during a Customer Knowledge Assessment includes whether the customer has a finance-related educational background and whether he has investment or work experience in relation to the product or similar products.

### Proposals for listed non-excluded investment products

Many listed investment products such as shares, warrants and money market instruments are established in the market and generally understood by retail investors. However, some listed products, especially those involving derivatives, may have terms and conditions which retail investors may not easily understand. The MAS has therefore decided to enhance customer safeguards in respect of such listed investment products.

The MAS proposes that when a retail customer wants to open an account to trade listed non-excluded investment products, his broker or intermediary should conduct a review (“**Customer Account Review**”) to ascertain if he has the relevant knowledge or experience, before opening an account for the customer. If the customer is assessed not to have the requisite knowledge and experience, the intermediary will be required to put the following safeguards in place if it decides to approve the opening of the account:

- (a) impose an appropriate cap on the amount the customer can trade; and
- (b) explain to the customer the features and risks associated with investing in derivative products and provide the customer the explanation in written form.

The approval of the customer’s trading account is to be determined by at least one senior management staff of the intermediary who is independent of sales or dealing, or one senior

management staff of a related corporation of the intermediary who has been designated with this approval function.

Existing customers will also be required to undergo the Customer Account Review before they can continue trading in listed non-excluded investment products.

The information collection requirements which will be imposed for Customer Account Reviews will be similar to those for Customer Knowledge Assessments.

#### Enhanced competency for intermediaries

The MAS proposes that all intermediaries undergo training on the features and risk-reward characteristics of a new non-excluded investment product before being allowed to sell that product.

Additionally, a new Capital Markets and Financial Advisory Services ("**CMFAS**") module will be developed to teach product knowledge in respect of non-excluded investment products, which is a wider range of products than the "complex investment products" previously mentioned in the 12<sup>th</sup> March Consultation.

#### Proposed requirements for Product Highlights Sheets

The proposal to require Product Highlights Sheets had been raised in the 12<sup>th</sup> March Consultation in respect of unlisted investment products. In the New Consultation, this requirement is extended to include certain listed investment products. The MAS proposes that Product Highlights Sheets be required for all debentures in the form of asset-backed securities and structured notes (including exchange-traded notes), collective investment schemes (including exchange-traded funds) and insurance-linked policy sub-funds, for which the offer requires a prospectus to be issued.

The Product Highlights Sheet must comply with the following:

- (a) the information must be clearly disclosed in the prescribed format;
- (b) it must not contain any information which is not included in the prospectus; and
- (c) it must not contain any information that is false or misleading.

Failure to comply with these requirements will be a breach of the law, for which the issuers and issuer managers may be liable.

The MAS has also indicated that it is working with the Singapore Exchange to develop term sheets, with requirements similar to that of Product Highlights Sheets, for listed products such as structured warrants and certificates.

## References

Please click on the links below to refer to the relevant documents:

1. [MAS Press Release dated 28 January 2010](#); and
2. [Full text of the New Consultation](#).

If you have any queries on this update, or wish to discuss how it may potentially affect you or your business, please feel free to contact the corporate and finance lawyers in Drew & Napier LLC (please refer to the Directors' Profiles on our [website](#)), or any of the following lawyers:

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