

LEGAL UPDATE

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REGULATION UPDATE

PROPOSED CHANGES TO REGULATORY REGIME FOR RESTRICTED SCHEMES

MAS proposes amendments to regulations on collective investment scheme offered to accredited investors

The Monetary Authority of Singapore (the “MAS”) has issued a consultation paper on proposed amendments to the regulatory regime for collective investment schemes that are offered to accredited investors or other similar persons.

The MAS proposes to amend the Securities and Futures (Offer of Investments) (Collective Investment Schemes) Regulations 2005 to:

- (a) replace the existing authorisation and recognition regimes with a notification regime;
- (b) set up an online platform called “CISNet” for the submission of notifications; and
- (c) require a declaration to be made annually to the effect that information on the scheme remains true and correct.

This is the second round of consultation on the subject. The MAS had first proposed changing the regulatory framework for restricted schemes in December 2006 as part of their extensive consultation paper on changes to the Securities and Futures Act and the Financial Advisers Act (the “**First Consultation**”). The present second round of consultation has released for public comment the specific draft provisions to implement the policy changes proposed in the First Consultation.

The consultation is open for feedback until **29 June 2009**.

Background

Collective investment schemes are generally required either to be authorised or recognised under the SFA before units can be offered in Singapore. Authorisation is the regulatory process for locally established schemes while recognition is the process for schemes established overseas. Once authorised or recognised (as the case may be), the offer of units in a scheme must also be accompanied by a prospectus which complies with certain prescribed requirements. Currently, where the scheme is such that the units are offered only to accredited investors or to persons who acquire the units for a consideration of at least \$200,000 (referred to in the SFA as a “**restricted scheme**”), the SFA dispenses with the need for a prospectus but instead requires the offer to be accompanied by a more simplified information memorandum. However, an application to the MAS for authorisation or recognition is still required for a restricted scheme.

New notification regime

The MAS proposes to introduce a notification regime in place of the authorisation/recognition regime for restricted schemes.

Under the notification regime, the distinction between authorisation and recognition is removed. An offer of units in a restricted scheme can only be made if the scheme is first entered into the list of restricted schemes. The person who intends to make such an offer must lodge a notification with the MAS. The MAS will then enter the scheme into the list of restricted schemes if it is satisfied that:

- (a) there is a manager for the scheme who is licensed or regulated to carry out fund management activities or exempted from having to be so licensed or regulated;
- (b) the manager for the scheme meets the MAS' "Fit and Proper Criteria"; and
- (c) in the case of a restricted scheme constituted in Singapore as a unit trust, there is a trustee for the scheme which is approved by the MAS under section 289 of the SFA.

The MAS will be given a residual discretion to refuse to enter a restricted scheme on public interest grounds.

Significantly, it will be made mandatory for the offeror to inform, in writing, the investors to whom the offer is made that:

- (a) the scheme is not authorised or recognised by the MAS 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 and, accordingly, statutory liability under the SFA would not apply.

Online platform for submission of notifications

The MAS will set up an online platform, CISNet, to handle the submission of notifications for restricted schemes. All notifications must be submitted electronically.

Requirement for annual declaration

A significant change from the current regime is the introduction of the requirement for an annual declaration. The responsible person for the scheme (which will be, where the scheme is constituted as a corporation, the corporation, or where the scheme is constituted as a trust, the fund manager) will be required to make an annual declaration that the information on the restricted scheme being offered remains true and correct. The annual declaration is to be made through CISNet. A fee of \$50 will be payable for each declaration.

Impact assessment

The proposed amendments do not significantly alter the substantive standards for the regulation of offers of restricted schemes. The key requirements which exist under the authorisation/recognition regime will continue under the new notification regime. The proposed amendments do, however, underscore the MAS' philosophy of developing a more disclosure-centred regulatory regime for non-retail capital markets products. By taking away the labels of "authorised" or "recognised", the MAS is re-emphasising to non-retail investors that they have to assess and decide for themselves whether the product is suitable for their needs, and that they cannot rely on any implied endorsement by the regulator.

References

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

1. The First Consultation: **Policy Consultation on Amendments to the SFA and the FAA dated 5 December 2006 (refer to Section G)**
2. **The MAS' response to feedback dated 11 October 2007 (refer to Chapter 5, Section G)**
3. The Second Consultation: **Consultation on Amendments to the 6th Schedule of the Securities and Futures (Offers of Investments) (Collective Investment Schemes) Regulations 2005 dated 29 May 2009**

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 either of the following lawyers:

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