

**LEGALUPDATE**

A DREW &amp; NAPIER PUBLICATION

**REGULATION UPDATE****MAS' RESPONSE TO FEEDBACK RECEIVED ON ITS CONSULTATION ON UNLISTED INVESTMENT PRODUCTS (PART I)**

On 12 March 2009, the Monetary Authority of Singapore (the "MAS") issued a consultation paper proposing enhancements to the regulatory framework for debentures (including structured notes), collective investment schemes and life policies, including investment-linked life insurance policies, which are not listed on any approved exchange and are often sold to retail investors. These are collectively referred to as "unlisted investment products". Please click [here](#) to read our firm's update on the consultation paper.

The MAS has now issued the first of a two-part response (the "Response") to the public feedback received from that consultation.

This update summarizes the key decisions taken by the MAS as a result of the consultation, as set out in Part I of the Response, concerning the following:

- (a) Proposals to promote more effective disclosure;
- (b) Proposals to strengthen fair dealing practices in the sale and advisory process;
- (c) Additional proposals for complex investment products; and
- (d) Additional proposals for unlisted debentures.

Part II of the Response is slated to be published by MAS in the 4<sup>th</sup> quarter of 2009.

**Proposals to promote more effective disclosure**

*Product Highlights Sheet* | The MAS will require the offer of unlisted investment products to be accompanied by a Product Highlights Sheet, which is a brief document, separate from the prospectus, that highlights the key features and risks of the investment product. The MAS will develop the content and form of the Product Highlights Sheet and subsequently consumer-test them to assess their effectiveness. Drafting and testing of the Product Highlights Sheet is projected to be completed by the end of 2009.

*Ongoing disclosure requirements* | The MAS will proceed with its proposal to impose ongoing disclosure requirements. The disclosure requirements include semi-annual and annual reports and reports on material changes.

The MAS will impose the requirement for semi-annual and annual reports only for unlisted investment products with tenures of 12 months or

longer. However, the requirement for disclosure of material changes will be applicable to issuers of all unlisted investment products regardless of tenure. The form in which the disclosure reports are to be presented will be announced in early 2010.

*Bid/ redemption prices to be made publicly and regularly available* | The MAS will require bid or redemption prices to be made publicly and regularly available. Issuers and distributors will have to highlight to investors that the prices are only indicative and may not reflect actual exit prices. If the issuers do not intend to provide an exit mechanism, they should clearly state so in their prospectus and Product Highlights Sheet.

*Fair and balanced view of products* | The MAS will implement its proposal to require marketing and advertising materials for unlisted investment products to give a fair and balanced view of the product. The following factors should be considered in deciding whether marketing and advertising materials are “*fair and balanced*”:

- (a) the materials should be clear and easily understood by the audience being addressed;
- (b) they should set out clearly both the potential upside and downside of the investment;
- (c) they should highlight prominently the risks of the product;
- (d) they should not give the impression that the investor can profit without risk;
- (e) they should not present information in footnotes if such a presentation would cause difficulty to an investor in understanding the product; and
- (f) they should not omit any material information if the omission would cause the marketing and advertising materials to be misleading.

*Restrictions on marketing and advertising materials* | Information in advertisements would be required to be in a font size of at least 10-point Times New Roman. Marketing and advertising materials should not suggest that the product is comparable to a bank deposit or that there is little risk of the investor losing his principal or not achieving the stated rate of return. The materials should not contain words or graphics which convey an impression that is inaccurate or inconsistent with the nature or risks of the investment product.

*Use of the term “Capital/Principal Protected”* | In view of the lack of a clear, easy-to-understand definition for the term “*capital/principal protected*”, the MAS has decided to prohibit the use of these terms (and their other forms and derivatives) in all disclosure documents, marketing and advertising materials.

### **Strengthening of fair dealing practices in the sale and advisory process**

*Enhanced due diligence for new products* | Distributors of unlisted investment products will be required to implement formal policies and procedures to assess the nature of any new investment product and its suitability for targeted customer segments.

*Documentation of the advisory process* | Financial Advisers (“FAs”) will be required to make reasonable efforts to document and explain the disadvantages of the investment based on the specific circumstances of the customer. The proposed enhanced documentation requirements will apply whenever a FA recommends an investment product to a customer, regardless of transaction frequency.

*Enhance quality of information collected by FAs* | FAs will have to collect additional key information on their customers, including information on the source and extent of the customer’s income and whether the amount to be invested is a substantial portion of the customer’s assets. They will have to make reasonable enquiries to obtain the information from their customers. FA companies will have to put into place effective systems and internal controls to ensure that their FA representatives would comply with these obligations.

*Restrictions on sale without advice* | FAs should warn their customers in writing if they are not providing advice and of the consequences of this. FAs should also obtain from their customers a clear acknowledgement (preferably in writing) that the customers had received a warning that they are waiving their right to seek advice.

*Restriction on bank tellers’ activities* | The MAS will proceed to prohibit bank tellers from referring customers to FA representatives for the purchase of investment products. There will also be a ban on incentives for tellers’ referral activities. Tellers will however be allowed to make referrals if a customer expressly requests for information.

### **Complex investment products**

*Definition* | The MAS will continue to fine-tune the definition of “*complex investment products*” before carrying out further consultation.

*Risk rating* | The MAS will undertake further analysis on the issue of whether a risk rating system should be set up, before taking a decision on the issue.

*Enhanced competency requirements for representatives* | The MAS will proceed with its proposal to require FA representatives to undergo specialised training on complex investment products before being allowed to sell such products. A new Capital Markets and Financial Advisory Services module for product knowledge on complex investment products will be introduced early next year.

### **Unlisted debentures**

*Cooling-off period* | The MAS will impose a cooling-off period of seven days for unlisted debentures. The cooling-off period will apply to debentures with tenure of longer than three months.

## References

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

1. **MAS Press Release dated 8 September 2009;** and
2. **Full text of Part I of the Response.**

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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