

MAS PUBLISHES REGULATIONS RELATING TO CLASSIFICATION OF CAPITAL MARKETS PRODUCTS

On 8 June 2018, the Monetary Authority of Singapore (the "MAS") gazetted the Securities and Futures (Capital Markets Products) Regulations 2018 ("Regulations"), which set out various provisions relating to the operation of section 309B of the Securities and Futures Act, Chapter 289 of Singapore (the "Act"). The Regulations came into force on 9 July 2018.

Section 309B of the Act sets out the obligations of issuers and distributors in relation to the determination of classification of capital markets products and the notification of such classification.

In particular, the Regulations introduce the definition of "prescribed capital markets products" under section 309B(10) of the Act, and set out the classes of prescribed capital markets products as follows:

- stocks or shares issued or proposed to be issued by a corporation or body unincorporated (other than a corporation or body unincorporated that is a collective investment scheme);
- subject to certain conditions, units of shares that represent a unitholder's ownership in underlying shares;
- rights, options or derivatives issued or proposed to be issued by a corporation or body unincorporated in respect of its own stocks or shares;
- units in a business trust;
- derivatives of units in a business trust;
- units in certain collective investment schemes;
- debentures other than asset-backed securities or structured notes;
- contracts or arrangements under which one party agrees to exchange currency at an agreed rate of exchange with another party, and such currency exchange is effected immediately after any such contract or arrangement (as the case may be) is entered into; and
- capital markets products consisting of two or more capital markets products each belonging to a class of prescribed capital markets products that are linked together in a stapled manner such that any one of them is not transferable and cannot be otherwise dealt with independent of the remaining linked capital markets products.

With the introduction of the definition of "prescribed capital markets products", read together with the provision of the existing section 309B of the Act, issuers

Key issues

- Issuers of capital markets products are now required to classify the capital markets products they issue before making an offer of such capital markets products.
- Issuers are also required to provide notification of the classification to (i) the approved exchange on which the capital markets products are listed and (ii) "relevant persons" (i.e. distributors) before making an offer of the capital markets products, and in each case any subsequent change to the classification.
- "Relevant persons" are prohibited from making an offer of any capital markets products unless the relevant person has received a notification of the classification of such capital markets products.
- Exemptions apply in circumstances where capital markets products are only offered to accredited investors, expert investors, institutional investors or non-individuals.

are under an obligation to take the following actions before making an offer of any capital markets products ("**Issuer Obligations**"):

- determine the classification of those capital markets products (whether or not such products are prescribed capital markets products);
- where those capital markets products are or will be listed for quotation or quoted on a market operated by an approved exchange, notify the approved exchange in writing of the classification of those capital markets products; and
- where those capital markets products are or will be offered through any "relevant person" (as defined in section 309A(1) of the Act; see discussion below), notify that relevant person in writing of the classification of those capital markets products. "Relevant persons" in this context would encompass distributors of such capital markets products, such as holders of capital markets services licences, MAS-licensed banks, MAS-regulated merchant banks, licensed financial advisers, licensed insurers, certain finance companies, such other persons as the MAS may prescribe, and their representatives.

Furthermore, where any notification of classification of capital markets products has been provided under section 309B(1) of the Act and there is a subsequent change in such classification, section 309B(3) requires the issuer to notify the approved exchange and the relevant person (where applicable) of the new classification (the "**Change Notification**").

Section 309B(2) of the Act also prohibits a relevant person from making an offer of any capital markets products unless the relevant person has received a notification of the classification of such capital markets products from the issuer (the "**Relevant Person Obligation**").

In addition to specifying the list of prescribed capital markets products, the Regulations also set out other provisions relating to section 309B, which include the following:

- **Exemption from Issuer Obligations.** This exemption applies if the offer is made to an accredited investor, an expert investor, an institutional investor, or any other person that is not an individual (individually, an "**Exempted Investor**"). Note that this exemption would not be applicable to "relevant persons" (as defined in sections 275(2), 282Z(3) and 305(5) of the Act) who are not Exempted Investors, nor would it be applicable to offers made in reliance on sections 275(1A), 282Z(2) or 305(2) of the Act to persons who are not Exempted Investors; and
- **Exemption from the Relevant Person Obligation.** This exemption applies if (i) the offer is made to an Exempted Investor(s); or if (ii) the offer is made by the relevant person in connection with the provision of a financial advisory service and if the relevant person satisfies certain conditions as set out in Regulation 3 of the Regulations.
- **Prescription of time for the purposes of the Change Notification.** The prescribed time for the Change Notification is 21 calendar days commencing on the date on which the change in the classification occurred.

- "Capital markets products" means any securities, futures contracts, contracts or arrangements for the purposes of foreign exchange trading, contracts or arrangements for the purposes of leveraged foreign exchange trading, and such other products as the MAS may prescribe as capital markets products.
- Please note that certain definitions in the Act, including "capital markets products" and "securities", will be amended when the Securities and Futures (Amendment) Act 2017 comes into operation.

Prescribed collective investment schemes

Units in the following types of collective investment schemes are prescribed capital markets products:

- (1) a collective investment scheme that satisfies all of the following conditions:
 - (a) the collective investment scheme is constituted as a trust;
 - (b) the collective investment scheme invests primarily in real estate and real estate-related assets specified by the MAS in the Code on Collective Investment Schemes; and
 - (c) all or any of the units in the collective investment scheme are listed for quotation on a securities exchange; or
- (2) a collective investment scheme to which all of the following matters apply:
 - (a) the constitutive documents and prospectus etc. (the "**CIS documents**") of the collective investment scheme require that the manager of the scheme must not engage in any securities lending transaction or securities repurchase transaction in relation to the scheme, except where:
 - (i) the securities lending transaction or securities repurchase transaction (as the case may be) is carried out for the sole purpose of efficient portfolio management; and
 - (ii) the total value of securities subject to all the securities lending transactions and securities repurchase transactions entered into by the manager does not exceed 50% of the net asset value of the scheme at any time,and the manager complies with the requirement;
 - (b) the CIS documents of the collective investment scheme require the manager of the scheme:
 - (i) to invest the property of the scheme only in one or more of the following:
 - (A) deposits as defined in section 4B(4) of the Banking Act (Cap. 19) of Singapore;
 - (B) gold certificates, gold savings accounts or physical gold;
 - (C) any prescribed capital markets products;
 - (D) any product, instrument, contract or arrangement (other than prescribed capital markets products) if the investment in such product, instrument, contract or arrangement (as the case may be) is

- solely for the purpose of hedging or efficient portfolio management; or
- (ii) to invest the property of the scheme as follows:
- (A) except where sub-paragraph (B) below applies, the manager must invest only in one or more of the products, instruments, contracts or arrangements mentioned in sub-paragraph (b)(i) above;
- (B) the manager may invest in some other product, instrument, contract or arrangement if:
- (BA) there is any change in any written law, regulation, direction, rule or non-statutory instrument of the jurisdiction where the scheme is constituted, operating or investing; and
- (BB) following such change, the manager is restricted or prohibited from investing in any of the products, instruments, contracts or arrangements mentioned in sub-paragraph (b)(i) above,
- and, in the case of either sub-paragraph (b)(i) or (b)(ii) above, the manager invests the property of the scheme only in one or more of the products, instruments, contracts or arrangements mentioned in sub-paragraph (b)(i) above.

Further, where the manager of the collective investment scheme invests the property of the scheme in any product, instrument, contract or arrangement not mentioned in paragraph (2)(b)(i), whether or not in accordance with a requirement mentioned in paragraph (2)(b)(ii)(B), then the units in the collective investment scheme cease to be prescribed capital markets products with effect from the date of the investment.

Other related changes

The Notice on Recommendations on Investment Products (Notice No. FAA-N16) and the Notice on the Sale of Investment Products (Notice No. SFA 04-N12) (collectively, the "**Notices**") were also amended on 6 July 2018 to:

- (a) amend the definition of "Excluded Investment Product" in both Notices to refer to prescribed capital markets products under the Regulations; and
- (b) make consequential amendments throughout the Notices following the change in (a) above.

In conclusion, issuers and distributors of capital markets products need to be cognisant of their obligations under Section 309B of the Act read with the Regulations to determine the classification of capital markets products and to provide (or, as the case may be, receive) written notification of such classification.

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