New licensing regime for fund management companies

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Following recent amendments to the Securities and Futures (Licensing and Conduct of Business) Regulations, Securities and Futures (Financial and Margin Requirements) Regulations and Financial Advisers Regulations which increased supervision of Fund Management Companies (“FMCs”), the Monetary Authority of Singapore (“MAS”) has announced a new licensing regime. This came into effect on the 7th of August 2012 after extensive consultation, review and discussion between MAS and key industry players.

We highlight some of the key changes effective the new regime, in contrast to previous framework.

Registered FMCs and licensed accredited or institutional FMCs

Under the new regime, fund managers of private funds offered exclusively to qualified or accredited investors, including fund managers operating under the old exempt fund manager (“EFM”) regime, will now be categorised as either Registered FMCs or Licensed Accredited / Institutional FMCs (“A/I FMCs”).

Registered FMCs

A Registered FMC will be exempt from holding a Capital Markets Services (“CMS”) license in relation to the conduct of fund management activities. Hence, entities which were previously operating as EFMs will now be known as Registered FMCs.

To qualify as a Registered FMC, assets under management (“AUM”) should not exceed S$250 million and the FMC must not serve more than 30 qualified investors. Of these 30 qualified investors, there cannot be more than 15 funds (including feeder funds) with accredited investors as underlying investors.

Under the previous framework, the EFM could commence business once they lodged the requisite notification with the MAS. However, a Registered FMC may only commence business when the MAS approves its notification and has entered the Registered FMC’s name into the online directory on MAS’s website.

Licensed A/I FMCs

Licensed A/I FMCs are those which require a CMS license to operate in Singapore. FMCs which only serve A/I investors and whose AUM is more than S$250 million; or FMCs who manage more than 15 funds with underlying investors who are accredited or institutional investors, will fall within this category.

Unlike the old EFM regime or the new Registered FMC regime, there are no restrictions on the number of accredited or institutional investors a Licensed A/I FMC can serve. This would certainly be welcomed by most fund managers targeting to service more than 30 investors.

Licensed retail FMCs

These are FMCs which carry on business in fund management with all types of investors. The FMC should put in place an independent and dedicated compliance function in Singapore with staff who are suitably qualified and independent from the front office. Representatives will need to pass a Capital Markets and Financial Advisory Services ("CMFAS") examination module. This is to ensure that the public interest is protected since these FMCs deal with the general public who are often not as well informed as accredited or institutional investors.

Competency requirements

Under the new regulatory regime, Registered FMCs, Licensed A/I FMCs and Licensed Retail FMCs must appoint at least two directors with experience in the financial services industry, including managerial experience or experience in a supervisory capacity. Nominee directors will not count towards meeting this requirement.

Registered FMCs and Licensed A/I FMCs will also need to employ at least two full-time representatives, residing in Singapore, who each have at least five years of relevant experience and reside in Singapore, one of whom must be appointed as the Chief Executive Officer ("CEO") and executive director of the FMC.

Licensed Retail FMCs, must employ at least three full-time representatives, residing in Singapore, who each have at least five years experience. A CEO of a Licensed Retail FMC must have at least 10 years of relevant experience.

These changes are in line with the MAS's push towards further corporate responsibility and accountability. The current rules regarding the "fit and proper" requirements as specified in the MAS Guidelines remain and will continue to apply to the CEO, directors and representatives of the FMC.

Risk management

All FMCs are now required to put in place a formalised risk management framework to identify, monitor and manage the risks associated with customers' assets being managed by the FMC. They should take into account the key principles set out in the MAS Guidelines on Risk Management Practices and other relevant industry practices.

Independent annual audit

Registered FMCs are now subject to a requirement to appoint an independent auditor to audit their financial statements and to provide the MAS with an audit report on the FMC's compliance with the following criteria and requirements applicable to their regulatory status:

(1) Restrictions in clientele and AUM;
(2) Minimum base capital requirement of S$250,000;
(3) Key business conduct rules such as independent custody, valuation of client's assets and client reporting; and

(4) Implementation of a risk management framework.

Transitional arrangements

Current EFMs may continue to be exempt for a transitional period of six months after which such EFMs would have to comply with the new regulations.

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