

# Regulatory updates relating to the registration of funds in Singapore

October 1, 2013

## Introduction

With effect from 1 July 2013, the Securities and Futures (Offers of Investments) (Collective Investment Schemes) Regulations 2005 (SF (CIS) Regulations) were amended by the Monetary Authority of Singapore (MAS) to, among other things:

- enhance the disclosure requirements for offers of units in collective investment schemes (CIS); and
- require an information memorandum (IM) to be furnished to investors in respect of an offer of units in a restricted scheme.

The updated SF (CIS) Regulations will have an impact on CIS in Singapore, namely authorised, recognised and restricted schemes.

Further, certain closed-end funds constituted on or after 1 July 2013 will be regulated as CIS. Retail closed-end funds falling within the definition of a CIS will be regulated under Division 2 of Part XIII of the Securities and Futures Act (SFA) and offers of units in such closed-end funds to accredited investors and other investors will be subject to the requirements of the SF (CIS) Regulations.

## Enhancing the disclosure requirements for offers of units in CIS

Among the additional disclosure requirements now required for offering documents, the following are of particular significance.

### Information on valuation method for the scheme's assets (new regulation 5A)

The MAS amended the SF (CIS) Regulations to explicitly require the disclosure of the key elements adopted in respect of a CIS' valuation method. Such a practice had already been observed by certain CIS managers, as evidenced by their inclusion of the valuation method in their respective offering documents: the MAS was of the opinion that such a practice would be beneficial to CIS investors, and consequently decided to codify the practice<sup>1</sup>.

### Information on directors and key executives of the manager (new regulation 9A)

With effect from 1 July 2013, managers of CIS (Managers) have to disclose in their offering documents the name, relevant working experience, educational and professional qualifications, and areas of expertise or responsibility in

the Manager in respect of directors and key executives of the Manager. Please note only key executives who have the capacity to make, or participate in making, decisions that affect the whole or a substantial part of a CIS' management are affected by this amendment. This includes key executives who are responsible for the portfolio management function in respect of a CIS.

## Information on delegated functions (new regulation 9B)

Given that where a function is delegated to another legal entity, such a relationship is governed by a separate service agreement, the MAS amended the SF (CIS) Regulations to require the disclosure of any function that has been delegated by the Managers to a third-party and the identity of the delegate. Please note that the amended requirements apply only when the Manager delegates functions relating to investment management, administration and valuation.

## Information on custodial arrangements (new regulation 12)

To allow CIS investors to obtain a general understanding of how assets of a CIS are held, the SF (CIS) Regulations now require the disclosure of the name of the trustee in the case of a CIS that is constituted as a unit trust (or the custodian, if the trustee has delegated the safekeeping of the assets to a custodian), or the name of the custodian, where the CIS is not constituted as a unit trust.

# Furnishing of an information memorandum in respect of an offer of units in a restricted CIS

With effect from 1 July 2013, all offers of units in a restricted CIS must be made in or accompanied by an IM, with a copy of the IM to be submitted to the MAS for record. Further, the MAS has stipulated that certain key information, such as a scheme's policy regarding side letter arrangements and where investors may obtain information on past performance of the scheme, must be disclosed in the IM.

This amendment in relation to a restricted CIS was introduced by the MAS on the basis that, among other things:

- internationally, the types of CIS being offered to non-retail investors are becoming increasingly complex. To protect investors and in the interest of financial stability, it is important to provide investors with access to a restricted CIS' relevant information and allow them to make an informed investment decision; and
- certain managers of restricted CIS have already begun the practice of making available to their investors offering documents relating to their respective schemes.

Please note that the requirement to furnish an IM in respect of offers of units in restricted CIS is in fact a *re-introduced* requirement. On the basis that the furnishing of the IM to the MAS is for record purposes only, the current processing time for notifications of restricted CIS is unlikely to be affected.

## Regulatory treatment of closed-end funds

Generally, a closed-end fund does not differ from a CIS that is open-ended, save for the fact that a closed-end fund's units are typically non-redeemable at the election of the unit holders. As such, the MAS has decided to provide investors in closed-end funds the same level of protection as that provided to investors in a CIS. To this end, a closed-end fund will be deemed (and regulated as) a CIS only if, among other things, (1) it falls within the definition of "collective investment scheme" under section 2(1) of the SFA; (2) all or most of its issued units cannot be redeemed at

the election of the unit holders; and (3) it operates in accordance with an investment policy under which investments are made for the purpose of giving participants the benefit of the results of the investments, and not for the purpose of operating a business.

As a result of the amendment to regulate closed-end funds as CIS, with effect from 1 July 2013, the offer of units in a closed-end fund will be subject to authorisation or recognition requirements under the SFA and must be accompanied by a prospectus that is registered with the MAS. Further, the offer of units in a closed-end fund to accredited investors and/or other investors under section 305 of the SFA will be subject to the other requirements stipulated in the SF (CIS) Regulations. This includes the requirements to submit notifications and make annual declarations to the MAS as well as to furnish an IM accordingly.

However, please note that closed-end funds that are constituted before 1 July 2013 will be grandfathered, and consequently, such funds are required to disclose in their respective annual reports and offering documents the fact that they are grandfathered and are therefore not subject to the regulatory regime applicable to CIS.

## Conclusion

As Singapore legal counsel to managers of CIS and closed-end funds, we have to be mindful of the additional requirements prescribed by the MAS which came into effect on 1 July 2013, be it in respect of making further disclosures in offering documents, furnishing IMs to the MAS or ensuring that closed-end funds comply with the CIS regulatory requirements. This should be done with the aim of affording investors who invest in funds in Singapore with more protection and allowing them to make well-informed investment decisions.

<sup>1</sup> Please refer to "Response to Feedback Received – Consultation on Proposed Amendments to the Securities and Futures (Offers of Investments) (Collective Investment Schemes) Regulations 2005 and Proposed Regulatory Treatment of Closed-End Funds", Monetary Authority of Singapore, 1 April 2013.

## Your Key Contacts



**I-An Lim**

Senior Partner, Singapore

D +65 6885 3627

[i-an.lim@dentons.com](mailto:i-an.lim@dentons.com)