Monetary Authority of Singapore

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

1 Introduction

1.1 On 26 December 2012, MAS issued a consultation paper inviting comments on proposed amendments to the Securities and Futures (Offers of Investments) (Collective Investment Schemes) Regulations 2005 ["SF(CIS) Regulations"] pursuant to the Securities and Futures Act (Cap. 289) ["SFA"] and the regulatory treatment of closed-end funds. The consultation was part of MAS' ongoing efforts to enhance and refine the regulatory framework for collective investment schemes ("CIS"). The consultation closed on 24 January 2013 and the list of respondents can be found at Annex 1.

1.2 MAS thanks all respondents for their feedback. MAS has carefully considered the feedback received and where appropriate, incorporated them into the SF(CIS) Regulations. Comments of wider interest and MAS' responses are set out below.

PART I: AMENDMENTS TO THE SF(CIS) REGULATIONS

(A) Enhancing the disclosure requirements for offers of units in collective investment schemes

(i) Information on the manager and its principals

Directors and key executives of the manager

2.1 MAS proposed to require a prospectus for an offer of units in a CIS to disclose, with respect to each of the directors and key executives of the manager, the name, working experience, educational and professional qualifications, and areas of expertise or responsibility in the manager. Respondents were generally supportive of the proposed requirement, but a few respondents were concerned that this requirement may result in prospectuses having to be updated whenever there are changes to the directors or key executives.

2.2 Some respondents asked whether the requirement extends to the directors and key executives of the sub-managers or sub-advisers and whether the term "key executive" extends beyond the key portfolio managers in respect of a CIS. Respondents also suggested that disclosure should only be required of the relevant working experience of the directors and key executives, as opposed to their entire past working experience.

MAS' response

2.3 MAS would like to clarify that the proposed requirement will only apply to the directors and key executives of the manager. MAS will also amend the proposed definition of "key executive" such that it refers to a person who makes, has the capacity to make, or participates in making decisions that affect the whole or a substantial part of the management of the CIS. In this regard, MAS regards persons who are responsible for the portfolio management function in respect of a CIS (i.e. the chief investment officer and key portfolio managers) as key executives. We will also clarify that disclosure is only required of the relevant working experience of the directors and key executives, and not their entire past working experience.

2.4 In the event of changes to the directors and key executives (e.g. due to staff movements), the responsibility rests with the manager to assess whether the change is sufficiently material to warrant an update to the prospectus either through the lodgement of a supplementary or replacement prospectus.

Delegated functions

2.5 MAS proposed to require the disclosure of any function that has been delegated by the manager to a third-party and the identity of the delegate. Several respondents were of the view that the proposed requirement should be limited to the delegation of investment management functions. One respondent sought guidance on the definition of "third-party".

MAS' Response

2.6 MAS would like to clarify that the proposed requirement applies where the manager delegates investment management, administration and valuation functions to a separate legal entity (regardless of whether that entity is within or outside the manager's group). MAS is of the view that where a function is delegated to another legal entity, investors should be aware of that fact since the relationship between the two parties (even though they may be within the same group) will be governed by a separate service agreement which sets out the legal rights and obligations of each party. In the event of non-performance

by a delegate, investors would expect the manager to seek recourse against the delegate.

Financial supervisory authority

2.7 MAS proposed to require the disclosure of the name of the financial supervisory authority which licenses or regulates the manager and, where applicable, the manager of the underlying fund and each sub-manager. In relation to the manager of the underlying fund and sub-manager, several respondents suggested that the requirement should only apply in a situation where the underlying fund constitutes 30% or more of the asset value of the scheme, or where 30% or more of the asset value of the scheme is sub-managed by another manager. One respondent suggested that where an entity is licensed or regulated in multiple jurisdictions, the disclosure should be limited to name of the financial supervisory authority which licenses or regulates the relevant entity in its principal place of business.

MAS' response

2.8 MAS agrees with the respondents' suggestions and will amend the proposed requirement (i.e. paragraph 10A of the Sixth Schedule to the SF(CIS) Regulations) such that it applies only to (i) the manager of the scheme, (ii) the manager of the underlying scheme which constitutes 30% or more of the asset value of the scheme, and (iii) a sub-manager that manages 30% or more of the asset value of the scheme. The requirement will also be amended to only require disclosure of the name of the financial supervisory authority which licenses or regulates the relevant entity in its principal place of business.

(ii) Information on custodial arrangements

2.9 MAS proposed to require the prospectus to disclose (i) in the case of a scheme that is constituted as a unit trust, the name of the trustee (or the custodian to whom the trustee had delegated the safekeeping function) or (ii) in the case of a scheme that is not constituted as a unit trust, the name of the custodian. MAS also proposed to require a description of the custodial arrangement that is in place for the scheme's assets. Several respondents asked whether the prospectus must identify all sub-custodians that have been appointed, and requested for additional guidance on the level of details that are required to be disclosed in respect of the custodial arrangements.

MAS' response

2.10 With regard to the level of details required to be disclosed for custodial arrangements, MAS' view is that there should be adequate

disclosure on the custodial arrangements to enable investors to obtain a general understanding of how the assets of the scheme are being held. To this end, where sub-custodians may be appointed, the prospectus should disclose the the circumstances under which sub-custodians may be appointed and the criteria for the appointment of the sub-custodians. It would generally not be necessary for the prospectus to identify each and every sub-custodian for the scheme.

(iii) Valuation method for the scheme's assets

2.11 MAS proposed to amend the Third Schedule to the SF(CIS) Regulations to explicitly require the disclosure of the valuation method adopted for the scheme in the prospectus. A few respondents sought clarification on the level of details that are required to be disclosed under this requirement.

MAS' response

2.12 The prospectus should contain a description of the key elements of the valuation method (for instance, the methods that will be used for valuing quoted and unquoted investments). MAS notes that some CIS prospectuses already contain disclosures on the valuation method of the schemes and regards this as a good practice which MAS will now codify.

(B) To require an information memorandum to be furnished to investors in respect of an offer of units in a restricted scheme

Information memorandum requirement

2.13 MAS proposed to re-introduce the requirement for an offer of units in a restricted scheme to be made in or accompanied by an information memorandum. A copy of the information memorandum must be submitted to MAS for record. Some respondents expressed concerns that the proposed requirement may be more onerous than the practices in other jurisdictions which do not require an offering document to be prepared and distributed in relation to offers of CIS to professional investors. Several respondents sought clarification on the frequency of submission of the information memorandum and whether such submissions would increase the processing time for notification of restricted schemes. A few respondents suggested that managers be allowed to use their existing offering documents to satisfy the requirement for an information memorandum to be furnished to investors and submitted to MAS.

MAS' response

2.14 While accredited investors are generally more sophisticated than retail investors, MAS notes that, internationally, the types of CIS being

offered to non-retail segment are becoming more complex. These CIS (particularly those that employ advanced strategies) may pose risks to investor protection and financial stability. Given the growing complexity of CIS, it is important for investors to have access to relevant information relating to the schemes to arrive at informed investment decisions. It is also important for MAS to have access to information about these CIS to assess the potential impact that they may have on financial stability. MAS notes that in practice managers of restricted schemes provide offering documents on the schemes to prospective investors. Taking into account the foregoing, MAS has decided to re-introduce the requirement for the offer of units in a restricted scheme to be accompanied by an information memorandum. A copy of the information memorandum must be submitted to MAS for record purposes. MAS will modify the relevant CISNet forms to allow managers to attach the information memorandum when they make notifications or annual declarations.

2.15 Managers may use existing offering documents to satisfy this requirement provided these documents contain the information required in the proposed Paragraph 1(2) of the Sixth Schedule to the SF(CIS) Regulations. As information memoranda are submitted to MAS for record purposes only, MAS does not expect the current processing time for notifications of restricted schemes to be affected.

2.16 As a transitional arrangement, MAS will only apply the new information memorandum requirement to a notification or annual declaration that is submitted on or after 1 July 2013. For any subsequent annual declaration relating to a scheme for which an information memorandum had already been submitted together with a previous notification or annual declaration, the manager will not need to re-submit the information memorandum unless there are changes to the earlier information memorandum.

Specific disclosure requirements

2.17 MAS proposed to require the information memorandum to contain key information about the restricted scheme to enable investors to make informed investment decisions. Several respondents expressed concerns over the requirement to disclose the existence and conditions of any side letters, and information on the past performance of the scheme. They commented it is not a market practice for the contents of any side letters to be disclosed. Moreover, side letters typically contain confidentiality clauses and the disclosure of the conditions of side letters may cause the manager to breach its contractual obligations. In any event, these side letters are often negotiated and finalised only after the information memorandum is prepared.

2.18 Several respondents also commented that information on past performance does not appear in restricted schemes' offering documents and is usually made available through other channels (such as the managers' website, fact sheets or upon request). One respondent pointed out that the requirement for the information memorandum to contain information on past performance would be burdensome as managers would then have to regularly update the information memorandum. It was suggested that MAS should instead require the information memorandum to state where information on the scheme's past performance may be obtained.

MAS' response

2.19 MAS notes the various feedback on the required disclosure for side letters. Instead of the requiring the disclosure of the existence and conditions of any side letters, MAS will require the information memorandum to disclose the restricted scheme's policy regarding side letters (if the scheme has such a policy) as well as the nature and scope of the side letters that may be issued under this policy. In this regard, MAS expects a manager who may enter into side letter arrangements to disclose (i) the circumstances under which the manager may enter into side letter arrangements which may result in differentiated or preferential treatment for certain classes of investors, (ii) the nature and scope of such differentiated treatments and the form which these may take, and (iii) whether such arrangements already exist.

2.20 MAS also notes the feedback that information about past performance is normally provided to investors through various channels rather than in the information memorandum. MAS will modify the requirement to require the information memorandum to state where investors can obtain information on past performance (in cases where the managers decide not to include such information in the information memorandum).

PART II: PROPOSED REGULATORY TREATMENT OF CLOSED-END FUNDS

Regulating closed-end funds as CIS

3.1 MAS proposed to subject closed-end funds to the regulatory regime for collective investment schemes. Respondents were generally supportive of the proposal. One respondent commented that the proposal to regulate closed-end funds as CIS would result in a restrictive regime in terms of the investment strategies that could be pursued by the closed-end funds.

3.2 Respondents also requested for more clarity as to how closed-end funds will be regulated (i.e. whether the offer of closed-end funds will be regulated under Division 1 or Division 2 of Part XIII of the SFA) and whether the proposal will be applied retrospectively to existing closed-end funds. Respondents also asked for more guidance on the circumstances under which a closed-end fund will be deemed to have a defined investment policy. One respondent asked whether a closed-end fund that is already closed for subscription would be required to lodge annual declaration and any updated information memorandum.

MAS' response

3.3 As mentioned in the consultation paper, a closed-end fund does not differ from a collective investment scheme that is open-end, save for the fact that a closed-end fund's units are exclusively or primarily non-redeemable at the election of the holders of the units. To accord investors in closed-end funds the same level of protection as that accorded to investors in a CIS, MAS will specify that a closed-end fund is deemed to be a collective investment scheme if:

(i) all or most of its units issued cannot be redeemed at the election of the holders of the units;

(ii) it falls within the definition of "collective investment scheme" under Section 2 of the SFA;

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

(iv) it has one or more of the following characteristics:

(a) the investment policy is clearly set out in a document that is provided to each participant in the closed-end fund before, or at the time, the participant invests in the closed-end fund;

(b) there is a contractual relationship between the closed-end fund and every participant in the arrangement, which requires the closed-end fund to comply with the investment policy (as amended from time to time); or

(c) the investment policy of the closed-end fund sets out the types of authorised investments, and the investment guidelines or restrictions.

3.4 Retail closed-end funds that have been specified as collective investment schemes will be regulated under Division 2 of Part XIII of the SFA (and are expected to observe the Code on Collective Investment Schemes). Accordingly, 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 MAS. Similarly, the offer of units in a closed-end fund to

accredited investors and other investors under section 305 of the SFA will be subject to the requirements in the Sixth Schedule to the SF(CIS) Regulations. This means that such offers must comply with the requirement to submit notification and annual declaration, as well as the requirement to furnish an information memorandum (when this requirement comes into operation)[1].

3.5 To minimise the impact on existing closed-end funds, MAS has decided to grandfather all closed-end funds that are constituted before 1 July 2013. Such funds will have to make clear disclosures in their annual reports and offer documents that they are grandfathered and not subject to the regulatory regime applicable to collective investment schemes (i.e. Division 2 of Part XIII of the SFA).

Requirement for retail closed-end funds to be listed on an approved securities exchange

3.6 MAS proposed to require closed-end funds offered to retail investors to be listed for quotation on an approved securities exchange. Several respondents commented that the proposed requirement would add unnecessary costs (which will be borne by the investors) and may impede the offering of retail closed-end funds.

MAS' response

3.7 MAS recognises that the requirement for retail closed-end funds to be listed will entail additional costs. However, MAS remains of the view that it is important for closed-end funds offered to retail investors to be listed to provide an avenue for retail investors to exit their investments in closed-end funds, which are otherwise not freely redeemable at the option of the investors. MAS will require, as a condition to authorisation or recognition, a retail closed-end fund to be listed on an approved securities exchange.

MONETARY AUTHORITY OF SINGAPORE

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[1] MAS will not require a closed-end fund that is already closed for subscription to submit an annual declaration or an updated information memorandum.

ANNEX 1

LIST OF RESPONDENTS TO CONSULTATION ON AMENDMENTS TO THE SECURITIES AND FUTURES (OFFERS OF INVESTMENTS) (COLLECTIVE INVESTMENT SCHEMES) REGULATIONS 2005 AND PROPOSED REGULATORY TREATMENT OF CLOSED-END FUNDS*

1 Duxton Asset Management Pte Ltd
2 Pictet Asset Management
3 Investment Management Association of Singapore
4 United Overseas Bank Limited and UOB Venture Management Limited
5 Bank of Singapore Limited
6 Standard Chartered Bank
7 Drew & Napier LLC
8 Manulife Asset Management International Holdings Limited
9 Herbert Smith Freehills LLP
10 DBS Bank Ltd
11 Lion Global Investors Limited
12 Tan Peng Chin LLC
13 Clifford Chance Pte Ltd
14 Phillip Capital Management (S) Ltd and Phillip Private Equity Pte Ltd
15 Baker & McKenzie.Wong & Leow
16 Singapore Exchange Limited

*This list includes only the names of respondents who did not request that their submissions be kept confidential.