

CONSULTATION PAPER

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Amendments to the Securities and Futures (Offers of Investments) (Collective Investment Schemes) Regulations 2005 and Proposed Regulatory Treatment of Closed-End Funds

MAS

Monetary Authority of Singapore

PREFACE

MAS is consulting on the 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. This consultation is part of our ongoing efforts to enhance and refine the regulatory framework for collective investment schemes.

2 MAS invites interested parties to provide their comments and feedback on the amendments to the SF(CIS) Regulations and the proposed regulatory treatment of closed-end funds to:

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MAS requests that all comments and feedback be submitted by 24 January 2013.

3 Please note that all submissions received may be made public unless confidentiality is specifically requested for the whole or part of the submission.

PART I: AMENDMENTS TO THE SF(CIS) REGULATIONS

Amendments to the SF(CIS) Regulations:

1 MAS is proposing amendments to the SF(CIS) Regulations, attached at **Annex 1**, to:

- (A) enhance the disclosure requirements for offers of units in collective investment schemes;
- (B) require an information memorandum to be furnished to investors in respect of offers of units in restricted schemes.

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

2 The Third Schedule to the SF(CIS) Regulations prescribes information that must be set out in a prospectus for an offer of units in a collective investment scheme. MAS intends to require the following additional disclosures:

(i) Information on the manager and its principals

The manager for a scheme is responsible for managing the assets of the scheme. The SF(CIS) Regulations require the name, address and track record of the manager to be stated in the prospectus of a scheme. To provide investors with more information to assess the manager and its principals, MAS proposes to require the prospectus to also disclose:

- (a) 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;
- (b) any function that has been delegated by the manager to a third-party and the identity of the delegate; and
- (c) 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.

(ii) Information on custodial arrangements

Where a collective investment scheme is structured as a unit trust, the trustee is responsible for safekeeping the scheme's assets. In practice, the trustee may delegate the safekeeping function to a custodian. For other

types of schemes (e.g. UCITS that are in corporate form), the safekeeping function is performed by a custodian. There is currently no explicit requirement for the prospectus to describe custodial arrangements.

To enable investors to have a better understanding of how the scheme's assets are held, MAS proposes to require the disclosure of the identity of the entity which is responsible for safekeeping the scheme's assets as well as the custodial arrangement that is in place.

(iii) Valuation method for the scheme's assets

The SF(CIS) Regulations require the method of valuation of a scheme's assets to be stated in the trust deed of an authorised scheme. While the prospectus must state where the trust deed of the scheme may be inspected, there is no requirement for the valuation method to be disclosed in the prospectus. In practice, the valuation method is normally disclosed in the prospectus and/or annual report. MAS proposes to amend the Third Schedule to the SF(CIS) Regulations to explicitly require the disclosure of the valuation method in the prospectus.

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

3 The SF(CIS) Regulations sets out the requirements for an offer of units in a restricted scheme to accredited investors¹. Prior to July 2009, an offer of units in a restricted scheme must be made in or accompanied by an information memorandum which contains the particulars in respect of the scheme and a statement to highlight that the offer is not allowed to be made to the retail public and that the information memorandum is not a prospectus. This requirement was removed in July 2009 as accredited investors were considered to be well-placed to request for the relevant information.

4 The International Organization of Securities Commissions has noted² that certain types of collective investment schemes (particularly those that employ advanced strategies) may pose risks to investor protection and financial stability even though they

¹ A restricted scheme is a collective investment scheme, whether constituted in Singapore or elsewhere, in respect of which (i) an offer of units in the scheme is made or intended to be made to a relevant person (as defined in section 305 of the SFA), or (ii) an offer referred to in section 305(2) is made or intended to be made.

² IOSCO Objectives and Principles of Securities Regulation.

have been traditionally offered to non-retail investors. This may be the result of a number of factors including the lack of transparency regarding the scheme, its strategy and asset allocation. Further, given the growing complexity of collective investment schemes, it is important for investors to have access to relevant information relating to the schemes to arrive at informed investment decisions. Given these considerations, MAS proposes to enhance the level of transparency in the offering of such schemes, by re-introducing the requirement for an offer of units in a restricted scheme to be made in or accompanied by an information memorandum.

5 The information memorandum should contain information to assist investors in making an informed investment decision in respect of the units being offered. MAS proposes to require the information memorandum to disclose (i) the scheme's investment objectives, focus and investment approach, (ii) the risks of subscribing for or purchasing units in the scheme, (iii) whether the offer of units in the restricted scheme is regulated by any financial supervisory authority and if so, the name of the authority, (iv) the name and address of the manager and other key parties involved with the scheme, (v) any redemption conditions or limits and gating structures, (vi) the existence and conditions of any side letters, (vii) the past performance of the scheme, (viii) where the accounts of the scheme may be obtained, and (ix) fees and charges payable by the investors and by the scheme. A copy of the information memorandum must be submitted to MAS for record.

PART II: PROPOSED REGULATORY TREATMENT OF CLOSED-END FUNDS

6 Collective investment schemes that are offered to retail investors are subject to authorization or recognition requirements, prospectus requirements as well as investment restrictions and business conduct rules on an ongoing basis.

7 Currently, closed-end funds³ (whether constituted as an entity or a trust) are not subject to the regulatory regime for collective investment schemes as they do not fall within the statutory definition of "collective investment scheme" as set out in section 2(1) of the SFA.

8 The key distinguishing characteristic of a closed-end fund is that its units are exclusively or primarily non-redeemable at the election of the holders of the units.

³ Section 2(1) of the SFA defines "closed-end fund" as an arrangement referred to in paragraph (a) or (b) of the definition of "collective investment scheme" under which units that are issued are exclusively or primarily non-redeemable at the election of the holders of units, but does not include a real estate investment trust that is listed for quotation on a securities exchange.

However, apart from this characteristic, a closed-end fund does not differ from other collective investment schemes that are open-end. Similar to other collective investment schemes, a closed-end fund pools together contributions of investors for the purpose generating profits, income or returns through the acquisition, holding, management or disposal of its investments. Investors in a closed-end fund similarly entrust the day-to-day control over the management of the fund's investments to a manager. For these reasons, regulations that are applicable to a collective investment scheme should likewise apply to a closed-end fund offered to retail investors.

9 MAS notes that Hong Kong and Australia require the registration of a retail closed-end fund in addition to licensing of the manager⁴. Funds offered to retail investors are subject to restrictions on their underlying assets while those not offered to the public are not subject to any restrictions. In the European Union, managers of alternative investment funds (which include closed-end funds) have to be regulated by July 2013. Requirements on areas such as valuation, depositary, disclosure and leverage have to be applied to the funds they manage.

10 Taking into account the above considerations, MAS proposes to subject closed-end funds to the regulatory regime for collective investment schemes. To effect this proposal, MAS will specify an arrangement that has the characteristics of a collective investment scheme (save that the units are not exclusively or primarily non-redeemable at the election of the holders of the units) as a collective investment scheme⁵.

11 It is not MAS' intention to regulate an entity that is actively operating businesses (for instance, a business trust with active business operations or a holding company (in a group of companies) that has influence over the management of one or more operating companies within the group). MAS' intention is to regulate an entity whose primary purpose is to generate profit or return for its investors through its investment based on a defined investment policy. In this regard, MAS will make clear that a closed-end fund will be considered a collective investment scheme only if the fund, in addition to satisfying the criteria to be a collective investment scheme (i.e. limb (a) of the definition of "collective investment scheme" in section 2(1) of the SFA), is also an "arrangement in respect of any property under which investments are or will be made in accordance with a defined investment policy".

12 In determining whether an entity is a closed-end fund that has a "defined investment policy", MAS will consider whether closed-end fund has to conduct its

⁴ In Australia's case, registration is required only if the fund is in the form of a trust.

⁵ The Securities and Futures (Amendment) Bill 2012 will provide MAS the power to make such specification.

business in accordance with an investment policy that has some or all of the following elements:

- (a) the final form of the investment policy is fixed by the time investors' commitments to the entity become binding on them;
- (b) the investment policy is set with the intent to give participants the benefit of the results of the investments as opposed to the operating of a business;
- (c) the investment policy is set out in a document which becomes part of, or which is incorporated in, or is referenced in, the constitutional documents of the entity;
- (d) a contractual relationship between the entity and the investor binds the entity to follow the investment policy (as it may be further amended);
- (e) the investment policy contains a series of investment guidelines. For example, only to:
 - (i) invest in certain categories of asset, or conform to restrictions on asset allocation;
 - (ii) pursue certain strategies;
 - (iii) invest in particular geographical regions;
 - (iv) conform to restrictions on leverage;
 - (v) conform to minimum holding periods; or
 - (vi) conform to other restrictions designed to provide risk diversification.
- (f) the investment policy is clearly set out and disclosed to investors;
- (g) any change to the investment policy is disclosed to the investors and may require the prior consent of investors.

13 As units in closed-end funds are non-redeemable, investors' ability to exit their investments may be limited. MAS proposes to require closed-end funds that are offered to retail investors to be listed on an approved securities exchange. This will enable retail investors to exit their investments more expediently on the secondary market.

INVITATION FOR COMMENTS

14 MAS would like to invite comments on the following:

- (i) The proposed amendments to SF(CIS) Regulations (attached at **Annex 1**).
- (ii) The proposed regulatory treatment of closed-end funds (set out in **Part II above**), in particular:
 - (a) the proposal to regulate closed-end funds as collective investment schemes;

- (b) whether the additional criteria for a closed-end fund to have a defined investment policy before it is deemed to be a collective investment scheme is sufficient to exclude entities actively operating businesses; and
- (c) the proposal to require closed-end funds offered to retail investors to be listed for quotation on an approved securities exchange.



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