CHANGES TO THE ACCREDITED INVESTOR CLASS AND THE INTRODUCTION OF AN OPT-IN REGIME

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Introduction

The Securities and Futures (Amendment) Act 2017 ("**the Amendment Act**") was passed on 9 January 2017. While it is not yet in force, it introduces, amongst other things, changes to the definition of who is an "accredited investor" ("**AI**") pursuant to section 4A of the Securities and Futures Act (cap. 289) ("**SFA**"), as well as an opt-in regime.

Through the upcoming changes, the Monetary Authority of Singapore ("MAS") hopes to achieve enhanced investor protection by ensuring those who qualify as AIs are truly able to utilize their 'wealth' to protect their own interests, and by giving investors who qualify as AIs the power to choose the level of regulatory protection best suited to their circumstance, risk profile and investment needs. Such changes will also ensure that Singapore's capital markets regulatory framework keeps pace with global market developments and international standards.

Changes to Classification

Individuals

Currently, an individual qualifies as an AI if his net personal assets exceed S$2 million. The Amendment Act will tighten up the way an individual's net personal assets are calculated. Under the Amendment Act, an individual's primary residence will only account for up to S$1 million of the individual's net personal assets, or the amount after deducting any credit facility secured by the primary residence, whichever is lower. MAS's rationale is that an individual whose wealth is tied up in his primary residence is not objectively more able than a retail investor of protecting his own interests by seeking professional advice/legal recourse, thus, such individuals require greater regulatory protection, and should not qualify as AIs.

However, the Amendment Act introduces another avenue for investors to qualify as AIs – an individual with financial assets (net of any related liabilities) exceeding S$1 million will now be eligible for AI status. This move provides greater flexibility for a Financial Institution ("**FI**") in determining whether an individual meets the AI requirement.

Joint Account Holders

The MAS will also implement changes to allow a joint account holder who is otherwise not eligible for AI status to be treated as an AI if the other joint account holder is an AI. The benefit of this extension is that FIs will no longer be required to deal with such joint account holders separately, in terms of services that can be offered to them. Through this extension, the non-AI joint account holder will be eligible to be treated as an AI in respect of transactions entered into with or through the FI, using that joint account. This extension thus provides FIs with greater flexibility when dealing with joint account holders, and replicates the flexibility currently given to private banks under section 100(2) FAA.

Corporations

Under the SFA, a corporation must have net assets exceeding S$10 million to be eligible for AI status. Corporations that do not have net assets exceeding S$10 million can, however, still qualify as AIs by relying on the "look-through" approach, if the sole business of the corporation is to hold investments.

The amendments will remove the requirement that the sole business of a corporation must be to hold investments and allow a corporation with any business to qualify for AI status by relying on the "look-through" approach. A "look-through" approach is when a corporation relies on its shareholders' established AI status for its own AI eligibility. On this point, MAS has specifically clarified that the requirement for this is that all shareholders must be AIs. The removal of the requirement that a corporation's sole business must be to hold investments will allow more corporations to avail themselves of this "look-through" approach.

Trustees

The "look-through" approach has also been extended to trusts so that if the beneficiaries of a trust are all AIs, the trust will enjoy AI status even if the trust does not have assets exceeding S$10 million. Applying the

"look-through" approach will eliminate the current inconsistency – if an individual is an AI but his assets are put under a trust that does not have assets exceeding S$10 million, his trust investments cannot enjoy AI status.

Further, MAS recognizes that where a settlor retains some equitable interest in the trust assets after the constitution of trust through settlor reserved powers and revocation powers, the trust should be eligible for AI status if the settlor is an AI.

Opt-in Regime

Currently, FIs and intermediaries are allowed to rely on exemptions from regulatory requirements when dealing with investors who qualify as AIs, although such investors may not be aware of their AI classification, or of the exemptions, FIs and intermediaries are allowed to rely on when dealing with AIs. Whether or not the investor is aware, they are not able to choose to receive greater customer protection. The introduction of an opt-in regime will give investors who qualify for AI status a choice to consider whether they are willing to forgo or waive the benefits of certain regulatory safeguards in favour of access to a broader range of investment products.

Under the opt-in regime, the default position will be that all new eligible AIs are to be treated as retail investors unless the investor consciously opts into AI status in accordance with the prescribed requirements. The requirements include requiring FIs to provide the investor with a written explanation of the risks and consequences of being treated as an AI, as well as obtaining a written and signed declaration from the investor that the consequences of his decision and his rights to withdraw from AI status have been explained to him.

As MAS recognises the operational difficulties for FIs if the opt-in regime were to apply to the FI's existing clients, there will instead be an opt-out approach for existing clients who continue to be eligible as AIs following the new AI classifications brought about by the Amendment Act. Under the opt-out approach, FIs will have an obligation to notify their existing clients that they are eligible to be considered as AIs and have the right to opt-out of their AI status under the new rules. While the FIs can continue treating these clients as AIs even if they do not opt-out immediately, FIs will have to obtain the client's acknowledgment of its AI status by the next account review.

The opt-in regime will bring Singapore's regime in line with other jurisdictions such as Hong Kong and the European Union.

It should be noted that the opt-in regime will not affect FIs that seek to rely on other exemptions in the SFA and Financial Advisors Act ("FAA") when serving AI eligible clients who choose not to opt into AI status.

Switch between Investor Classes

Further, the MAS recognizes the fact that an investor's decision to opt into AI status might be affected by

his own comfort level with the FI/intermediary as well as the intended nature of transactions between the investor and the FI/intermediary. Thus, an investor's AI status will be held on a per FI or intermediary basis, to ensure investors have the flexibility in choosing the regulatory protection most appropriate for their needs

Investors can also move between investor classes as and when the respective requirements have been met, but may not switch classes during a transaction. For a continuous transaction, an investor's status would be taken to be that at the point of entry into that transaction.

FIs have an obligation to upgrade their systems to be capable of monitoring and recording each investor's status at the time of entry into a transaction. FIs should inform the clients of the time needed to process such a change in classification, and the time frame should be reasonable in light of the FI's own processing capabilities.

Conclusion

The above changes will definitely allow for more robust protection of investors. The changes will also introduce much-needed flexibility, and reflect the fact that MAS has taken a step forward in improving the balance struck by the current regime in achieving these twin regulatory objectives.