MAS REGULATIONS FOR INVESTMENTS

Posted on August 1, 2014

Category: CNPupdates

General disclaimer

This article is provided to you for general information and should not be relied upon as legal advice. The editor and the contributing authors do not guarantee the accuracy of the contents and expressly disclaim any and all liability to any person in respect of the consequences of anything done or permitted to be done or omitted to be done wholly or partly in reliance upon the whole or any part of the contents.

Date Published: 1 August 2014

Author: Amit Dhume.

Introduction

On July 21, 2014, the Monetary Authority of Singapore ("**MAS**") published a consultation paper in which it outlined their proposed additional regulatory safeguards to protect investors in the capital markets.

The additional regulations proposed are comprehensive and largely cover three broad areas:

- Extending current capital markets regulatory framework safeguards to certain types of non-conventional investment products that up till now have not been regulated;
- requiring investment products to be rated for complexity and risks, and for these ratings to be disclosed to investors;
- Refining the regulations regarding investor classifications currently found under the Securities and Futures Act ("**SFA**") and the Financial Advisers Act ("**FAA**").

Given the large scope of the consultation paper, this update only will cover the main points of the proposed new regulations. MAS invites public comment on the proposed regulations to reach MAS by **September 1, 2014**.

Non-conventional Investments

As MAS's predominant role is still in the regulation of financial products and services, it has, for a long time, resisted extending its regulatory reach to cover investments into assets that have been classified into non-financial assets or assets that were not by nature financial products. However, MAS has finally decided to extend its existing regulatory regime to certain non-conventional investment products with the aim of safeguarding the investors in this area.

MAS is proposing regulations in two areas:

- Buy-back arrangements that involve gold, silver or platinum ("**precious metals**") which would be classified under the SFA regulatory regime for debentures. MAS' intention is to regulate buy-back arrangements which are in effect debt financing arrangements.
    - The buy-back arrangement must involve the receipt of a financial benefit that is agreed upon at the point of the investment being made, although the actual amount received may vary according to pre-determined factors. This is contrasted with commercial transactions, where either no financial benefit is guaranteed under the transaction, or any benefit a party derives relates to the use or consumption of the asset under the arrangements. For example, trading contracts, storage contracts, consignment arrangements, sale and lease-back arrangements.
    - Under the SFA regulatory regime, the following requirements would be imposed:

General disclaimer
This article is provided to you for general information and should not be relied upon as legal advice. The editor and the contributing authors do not guarantee the accuracy of the contents and expressly disclaim any and all liability to any person in respect of the consequences of anything done or permitted to be done or omitted to be done wholly or partly in reliance upon the whole or any part of the contents.

        - prospectus disclosure requirements;
        - requirement for an MAS-approved trustee for offer of unlisted debentures;
        - MAS licensing of intermediaries who deal in or advise others concerning such arrangements.
- Collective Investment Schemes ("**CIS**") would now include collectively-managed investment schemes, which are similar to CIS but do not feature the element of pooling of investors' contributions, and which therefore would fall under the SFA regulatory regime for CIS.
    - Schemes like land banking and forestry would now be subject to the CIS regulatory regime.
    - Under the SFA regulatory regime, the following requirements would be imposed on the scheme:
        - Compliance with the CIS code;
        - The CIS to be authorised in Singapore or recognised by MAS if originated from overseas;
        - The operator to be licensed as a fund manager.

MAS is inviting feedback on the new classification and regulations of these products, and have also noted that they may make changes to existing regulations in order to streamline the entire framework and to cater to the addition of these new products.

Ratings of Investment Risk

MAS proposes to establish a complexity-risk rating framework in which, essentially, investment products would be rated under two criteria:

- The complexity of the product (i.e. difficulty in understanding the risk/reward profile of a product); and
- The risk of loss of initial investment.

The complexity of the product can be derived from four main factors:

- The number of structural layers that comprise the investment product;
- The degree to which derivatives are used;
- The availability and usage of known valuation models; and
- The number of scenarios that determine the return outcomes.

In addition, the risk profile will also take into account the risk of loss bucketing, which is a simple assessment as to the likelihood of the investor losing some of the principal sum invested, all of it, or more than all of it.

MAS is also seeking feedback for a proposal in which a historical price volatility indicator would be provided along with the rating that has been derived from these new regulations.
MAS proposes to impose requirements on product issuers to rate products based on the proposed complexity-risk rating framework as they are most familiar with their products. MAS further proposes to require ratings to be disclosed in product offering documents for new and ongoing offers of investments to

General disclaimer
This article is provided to you for general information and should not be relied upon as legal advice. The editor and the contributing authors do not guarantee the accuracy of the contents and expressly disclaim any and all liability to any person in respect of the consequences of anything done or permitted to be done or omitted to be done wholly or partly in reliance upon the whole or any part of the contents.

retail investors. Issuers who seek to have their products listed on an Approved Exchange (AE) will be required to inform the relevant AE of the rating, and the AE should indicate this information on its trading platform accordingly. Intermediaries will similarly be required to ensure this information is made available to investors transacting in listed products through them.

Refining Investor Classifications

Under the new regulations, MAS is redefining their classes of Investors as outlined below:

Introduce an opt-in process for Accredited Investors ("AIs")

- The status of an AI is different from that of a regular retail customer as there is a level of regulatory protection that he is not entitled to. As such, a customer would be required to opt in to be defined as an AI so that he is able to decide on the level of regulatory protection that he is entitled to.
- The opt-in process would be the financial institution informing the AI in full that he has been identified as an AI and what it would entail so that he is able to make a full and informed decision on whether to opt to be an AI.

Change the definition of an AI

- The current definition of an AI is set out in Section 4A of the SFA and further expanded on in the Securities and Futures (Prescribed Classes of Investors) Regulations.

- For individuals, MAS proposes to add an additional requirement of determining that the net equity of the individual's private residence can only contribute up to SGD 1 million when calculating whether the SGD 2m net asset threshold has been crossed.
- In the case of joint accounts, MAS proposes that each joint account holder should be treated according to their own individual investor status.
- In the case of corporations, MAS is proposing to remove the restriction that a corporation owned entirely by AIs be a pure investment holding company so that any corporation that is owned entirely by AIs would be eligible to be an AI.
- In the case of trusts, MAS is now proposing to allow a trustee to qualify as an AI as long as all the beneficiaries under the trust are AIs.

Change the definition of an Institutional Investor ("II")

- MAS is proposing to widen the definition to encompass not just financial institutions operating in

General disclaimer
This article is provided to you for general information and should not be relied upon as legal advice. The editor and the contributing authors do not guarantee the accuracy of the contents and expressly disclaim any and all liability to any person in respect of the consequences of anything done or permitted to be done or omitted to be done wholly or partly in reliance upon the whole or any part of the contents.

Singapore but also allow foreign financial institutions, central governments and central government agencies to qualify as IIs. However, only a specific list of statutory bodies would qualify as an II.

Remove the definition of an Expert Investor ("EI")

- Although formerly used to define an investor whose personal experience is enough to arm them with sufficient knowledge in matters of investment and therefore would not require the same level of regulatory protection, the term EI has not been widely used in the SFA and FAA frameworks. In an effort to streamline the regulatory regime, MAS is proposing to remove such class of investors completely.

General disclaimer

This article is provided to you for general information and should not be relied upon as legal advice. The editor and the contributing authors do not guarantee the accuracy of the contents and expressly disclaim any and all liability to any person in respect of the consequences of anything done or permitted to be done or omitted to be done wholly or partly in reliance upon the whole or any part of the contents.