UPDATES TO MAS' GUIDELINES ON LICENSING, REGISTRATION AND CONDUCT OF BUSINESS FOR FUND MANAGEMENT COMPANIES

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FMCs may now carry on business in fund management with its employees who are not accredited investors subject to safeguards

Introduction

On 3 July 2018, the Monetary Authority of Singapore ("**MAS**") issued a revised version of the Guidelines on Licensing, Registration, and Conduct of Business for Fund Management Companies ("**Revised Guidelines**"). Subject certain conditions, the Revised Guidelines now allow for fund management companies ("**FMCs**"), under the accredited investor or institutional investor category (including those under the venture capital fund manager regime) ("**A/I FMC**") or registered fund management companies ("**RFMC**"), to carry on business in fund management with their employees who do not meet the definition of an accredited investor under the Securities and Futures Act (Cap. 289) ("**SFA**"). This is provided that such employees are investment professionals (as defined below) employed by the FMC or employed within the same corporate group as the FMC.

Brief Summary of the Amendment

In the past, MAS has emphasised that A/I FMCs and RFMCs may carry on business in fund management with their employees only if they are accredited investors so that employees who are not accredited investors are accorded the same protection as retail investors under the SFA. However, under the Revised

Guidelines, this approach has now been relaxed in the case of investment professionals employed by the FMC or within the same corporate group of the FMC. Investment professionals are defined under the Revised Guidelines as persons who perform the functions of portfolio management, research or dealing, and do not include individuals solely involved in activities such as client servicing, business development, marketing or risk management. MAS has also clarified that individuals whose roles are limited to middle-office or back-office functions would not be considered as "investment professionals".

Safeguards

Where an A/I FMC or RFMC carries on business with employees who do not meet the criteria for accredited investor status, MAS expects the FMC to have the following safeguards in place:

- The FMC must maintain records of investment professionals with whom the FMC carries on business in fund management. The FMC should be able to demonstrate to MAS when called upon, the basis was pursuant to which the employee qualifies as an investment professional.
- The investment professional's participation in the arrangement must be strictly voluntary. The FMC should be able to demonstrate to MAS when called upon, that the participation or investments made by the investment professionals have been voluntary.
- The investment professional must be apprised of the risks involved with his/her investment, and be required to acknowledge in writing that he/she would not be accorded the regulatory safeguards as a retail investor for his/her investment into the funds managed by the FMC.
- In the event that the investment professional ceases his/her employment with the FMC or corporate group, that investment professional must not be allowed to make further investments into the funds managed by the FMC. In respect of private equity or venture capital funds, the employee can continue to fulfill his/her existing commitment at the point of investment, but should not be allowed to make new commitments to funds managed by the FMC, after the cessation of employment. In this regard, the FMC must have a clear policy regarding the treatment or handling of such investment professionals' investments in the event of his/her cessation of employment, including whether the employee will be allowed to remain invested or redeem his/her existing contributions, be restricted from making further contributions or be required to fulfill his/her existing commitment, and this policy must be agreed on and acknowledged by the investment professional prior to his/her investment. For the avoidance of doubt, it is not MAS's intent to mandate that such investment professionals liquidate or dispose of their investments once they cease to be employed by the FMC or the corporate group.

Conclusion

Please click here for a copy of the Revised Guidelines. Feel free to contact us if you have any queries.