

MEMO# 31485

November 16, 2018

Commencement of the Singapore Securities and Futures (Amendment) Act 2017

[31485]

November 16, 2018 TO: ICI Global Members

ICI Global Pacific Chapter

ICI Global Regulated Funds Committee SUBJECTS: International/Global RE: Commencement of the Singapore Securities and Futures (Amendment) Act 2017

On 8 October 2018, the Singapore Securities and Futures (Amendment) Act 2017 and a series of related regulations came into effect, introducing wide-ranging amendments to the Securities and Futures Act, Chapter 289 of Singapore (SFA)[\[1\]](#) and the securities regime in Singapore in general. The changes are aimed at ensuring that the capital markets regulatory framework keeps pace with market development and is aligned with international standards and best practices.

This memo focuses on the key amendments that may be of relevance to members. Please refer to the Monetary Authority of Singapore (MAS) website for the detailed information regarding the revised regulations.

Amendment to the Securities and Futures (Offers of Investments) (Collective Investment Schemes) Regulation 2005 (“SF(O1)(CIS)R”)

In the 28 April 2017 Consultation Paper 1 on Draft Regulations Pursuant to the Securities and Futures Act (Consultation Paper P008 - 2017)[\[2\]](#), MAS consulted the public about the additional factors that it may take into account when recognizing a foreign fund for offer to retail investors. Previously, a foreign fund could be recognized for offer to retail investors if the laws and practices of the jurisdiction in which the fund is constituted and regulated provide retail investors with a level of protection equivalent to a locally constituted fund.

After considering the feedback received from the market, MAS, in its 28 September 2018 Response to Feedback Received on Draft Regulations Pursuant to Securities and Futures Act[\[3\]](#), said it will now consider the following additional factors when considering whether to recognize a foreign fund:

- the investment policy of the fund;
- the fund’s trust deed or constituent documents;

- the role, responsibilities and powers of the trustee or a person in an equivalent capacity.

MAS said it will consider all the above three factors in totality when assessing whether the characteristics of or clauses in a foreign fund's investment policy, constituent documents or trustee oversight afford to investors a comparable level of protection as that provided to authorized funds. Generally, when assessing a fund for recognition, MAS will consider, on a case-by-case basis, the investment restrictions and safeguards to which the fund, its operators and independent oversight body, are subject. In particular, MAS will consider whether the clauses are consistent with the local requirements relating to collective investment schemes, as well as the International Organization of Securities Commissions (IOSCO) Objectives and Principles of Securities Regulation relating to enforcement, cooperation, and collective investment schemes. MAS may consider issuing further guidelines in the future after they have assessed sufficient cases of such nature.

These amendments may allow foreign funds, such as those Hong Kong-domiciled funds authorized by the Hong Kong Securities and Futures Commission (SFC), to be sold to retail investors in Singapore.

Amendments to the definition of accredited investor (AI) and institutional investor (II)

Effective 8 October 2018, the definitions of accredited investor (AI) and institutional investor (II) have been refined based on their wealth or income and financial knowledge.

An individual with net financial assets (generally, bank deposits and capital markets products) exceeding S\$1 million will be an AI. The existing tests have largely been preserved (i.e. an individual with net personal assets exceeding S\$2 million or annual income of S\$300,000 (or its equivalent in a foreign currency) or more will be an AI). However, there is a new limitation that the net equity of the individual's primary residence can only contribute up to S\$1 million of the S\$2 million threshold in net personal assets.

A new "opt-in" regime under certain circumstances^[4] will allow an AI eligible prospective client^[5] (i.e. a prospective client that meets the AI criteria) the choice of opting in for AI status (and in the absence of opting in, its default status would be retail). The client has the right to withdraw at any time its previous consent to opt in.

Similarly, a new "opt-out" regime will allow an AI-eligible existing client^[6] the choice of opting out of its AI status (and in the absence of opting out, its default status would remain AI).

The new opt-in/opt-out regime will come into effect on 8 January 2019.

The institutional investor (II) definition will be widened to include persons professionally active in the capital markets such as financial institutions regulated by foreign regulators, foreign central governments and sovereign wealth funds. Only Singapore statutory bodies, as prescribed in the Second Schedule of the Classes of Investors Regulations (and not all statutory boards, as was previously the case), will be deemed as IIs.

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endnotes

[1] Singapore Securities and Futures Act (Chapter 289), available at:

<https://sso.agc.gov.sg/Act/SFA2001?ValidDate=20181029#legis>

[2] Consultation Paper P008 – 2017, section 6, available at:

<http://www.mas.gov.sg/~media/MAS/News%20and%20Publications/Consultation%20Papers/Consultation%20Paper%20I%20on%20Draft%20Regulations%20Pursuant%20to%20the%20Securities%20and%20Futures%20Act.pdf>

[3] Response to Feedback Received – Draft Regulations Pursuant to Securities and Futures Act, 28 September 2018, available at:

<http://www.mas.gov.sg/~media/MAS/News%20and%20Publications/Consultation%20Papers/Apr%202017%20CP%20on%20Proposed%20Amendments%20to%20Regs%20from%20SFA/Response%20to%20Consultation%20Paper%20I%20on%20Draft%20Regulations%20Pursuant%20to%20the%20Securities%20and%20Futures%20Act.pdf>

[4] These circumstances relate to provisions listed in Regulation 3 (1) of the Securities and Futures (Classes of Investors) Regulations 2018 (Classes of Investors Regulations), available at: <https://sso.agc.gov.sg/SL/SFA2001-S665-2018?DocDate=20181005>

[5] A prospective client could include a prospective investor in a fund or a prospective counterparty to a transaction, depending on the circumstances.

[6] “Existing client” in relation to any counter party, means any other person (a) with whom the counter party entered into transactions immediately before 8 January 2019, and (b) whom the counterparty treated as an AI in those transactions.