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SECURITIES AND FUTURES ACT (CHAPTER 289)

SECURITIES AND FUTURES (OFFERS OF INVESTMENTS) (BUSINESS TRUSTS) (NO. 2) (AMENDMENT) REGULATIONS 2018

In exercise of the powers conferred by sections 337, 339 and 341 of the Securities and Futures Act, the Monetary Authority of Singapore makes the following Regulations:

Citation and commencement

1. These Regulations are the Securities and Futures (Offers of Investments) (Business Trusts) (No. 2) (Amendment) Regulations 2018 and come into operation on 9 July 2018.

Amendment of heading of Part II

2. Part II of the Securities and Futures (Offers of Investments) (Business Trusts) (No. 2) Regulations 2005 (G.N. No. S 612/2005) (called in these Regulations the principal Regulations) is amended by inserting, immediately after the word “PROSPECTUS” in the Part heading, the words “AND ADVERTISEMENT”.

Deletion and substitution of regulations 14 and 15 and new regulation 15A

3. Regulations 14 and 15 of the principal Regulations are deleted and the following regulations substituted therefor:

“Requirements of advertisement or publication

14.—(1) For the purposes of sections 282L(8), 282X(8A) and 282ZB(8) of the Act, the requirements of an advertisement or a publication in respect of an offer or intended offer of units or derivatives of units in a business trust that is disseminated or published on or after 10 December 2018 are as follows:

- (a) the advertisement or publication (as the case may be) is not false or misleading;
- (b) the advertisement or publication (as the case may be) provides a fair and balanced view of the units or derivatives of units;
- (c) the advertisement or publication (as the case may be) presents information in a clear manner, regardless of whether such information is in text or otherwise;
- (d) where the advertisement or publication (as the case may be) appears in any medium of communication in visual form, the advertisement or publication (as the case may be) is clearly legible;
- (e) where the advertisement or publication (as the case may be) appears in any electronic mail or website —
 - (i) the advertisement or publication (as the case may be) is in a font size of at least 10-point Times New Roman or any other standard font type that is visually equivalent to that font size; and
 - (ii) any footnote in the advertisement or publication (as the case may be) is not smaller than —

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- (A) where the font size of the word or statement to which the footnote relates is or is smaller than 20-point Times New Roman or any other standard font type that is visually equivalent to that font size — 10-point Times New Roman or any other standard font type that is visually equivalent to that font size;
 - (B) where the font size of the word or statement to which the footnote relates is larger than 20-point Times New Roman or any other standard font type that is visually equivalent to that font size but smaller than 29-point Times New Roman or any other standard font type that is visually equivalent to that font size — half the font size of that word or statement; or
 - (C) where the font size of the word or statement to which the footnote relates is or is larger than 29-point Times New Roman or any other standard font type that is visually equivalent to that font size — 14-point Times New Roman or any other standard font type that is visually equivalent to that font size;
- (f) the advertisement or publication (as the case may be) contains the following statement:

“This advertisement or publication has not been reviewed by the Monetary Authority of Singapore.”;

(g) where the person disseminating or publishing, or causing the dissemination or publication of the advertisement or publication (as the case may be) is an entity, a manager of a trust or a trustee-manager of a business trust, the advertisement or publication (as the case may be) has been approved by the person specified in regulation 15 in the manner set out in that regulation prior to its dissemination or publication.

(2) In the case of an advertisement or a publication mentioned in section 282L(8) of the Act that is broadcast by means of any radio, television or audiovisual broadcasting service, or shown in any cinema, the statements mentioned in section 282L(8)(a) and (b) of the Act must be —

(a) read audibly if the advertisement or publication (as the case may be) is in audio or audiovisual form; or

(b) displayed for at least 5 seconds if the advertisement or publication (as the case may be) is only in visual form.

(3) Without limiting paragraph (1)(a), examples of an advertisement or a publication in respect of an offer or intended offer of units or derivatives of units in a business trust that is false or misleading are set out in paragraph 1 of the Sixth Schedule.

(4) Without limiting paragraph (1)(b), examples of an advertisement or a publication in respect of an offer or intended offer of units or derivatives of units in a business trust that does not provide a fair and balanced view of the units or derivatives of units are set out in paragraph 2 of the Sixth Schedule.

(5) Without limiting paragraph (1)(c), examples of an advertisement or a publication in respect of an offer or intended offer of units or derivatives of units in a business trust that does not present information in a clear manner are set out in paragraph 3 of the Sixth Schedule.

(6) Without limiting paragraph (1)(d), examples of an advertisement or a publication in respect of an offer or intended offer of units or derivatives of units in a business trust that is not clearly legible are set out in paragraph 4 of the Sixth Schedule.

Approval of advertisement or publication

15.—(1) For the purposes of regulation 14(1)(g), the advertisement or publication must be approved by —

- (a) the senior management of the person which disseminates or publishes, or causes the dissemination or publication, of the advertisement or publication, as the case may be;
- (b) an agent of the person mentioned in sub-paragraph (a); or
- (c) a committee of the person mentioned in sub-paragraph (a).

(2) For the purposes of paragraph (1)(a), the advertisement or publication is approved by the senior management of the person only if every member of the senior management —

- (a) is satisfied that the advertisement or publication (as the case may be) complies with the requirements mentioned in —
 - (i) regulation 14(1)(a) to (f); and
 - (ii) if the advertisement or a publication (as the case may be) is one that is mentioned in section 282L(8) of the Act, regulation 14(2);
- (b) records the member's reasons for being so satisfied in writing; and
- (c) gives written approval to the person for the dissemination or publication of the advertisement or publication (as the case may be), together with that member's reasons mentioned in sub-paragraph (b).

(3) For the purposes of paragraph (1)(*b*), the advertisement or publication is approved by an agent of the person only if the agent —

- (*a*) is satisfied that the advertisement or publication (as the case may be) complies with the requirements mentioned in —
 - (i) regulation 14(1)(*a*) to (*f*); and
 - (ii) if the advertisement or a publication (as the case may be) is one that is mentioned in section 282L(8) of the Act, regulation 14(2);
- (*b*) records the agent's reasons for being so satisfied in writing; and
- (*c*) gives written approval to the person for the dissemination or publication of the advertisement or publication (as the case may be), together with the agent's reasons mentioned in sub-paragraph (*b*).

(4) For the purposes of paragraph (1)(*c*), the advertisement or publication is approved by a committee of the person only if every member of the committee —

- (*a*) is satisfied that the advertisement or publication (as the case may be) complies with the requirements mentioned in —
 - (i) regulation 14(1)(*a*) to (*f*); and
 - (ii) if the advertisement or a publication (as the case may be) is one that is mentioned in section 282L(8) of the Act, regulation 14(2);
- (*b*) records the member's reasons for being so satisfied in writing; and
- (*c*) gives written approval to the person for the dissemination or publication of the advertisement or publication (as the case may be), together with that member's reasons mentioned in sub-paragraph (*b*).

(5) In this regulation —

“agent”, in relation to a person (*A*), means another person (*B*) who —

(*a*) may or may not be a member of the senior management of *A*; and

(*b*) is unanimously appointed (being an appointment that is recorded in writing) by all the members of the senior management of *A* to —

(i) determine whether an advertisement or a publication in respect of an offer or intended offer of units or derivatives of units in a business trust complies with the requirements mentioned in —

(A) regulation 14(1)(*a*) to (*f*); and

(B) if the advertisement or a publication (as the case may be) is one that is mentioned in section 282L(8) of the Act, regulation 14(2); and

(ii) approve the dissemination or publication of the advertisement or publication (as the case may be) by *A*;

“committee”, in relation to a person, means a group of persons that —

(*a*) comprises at least 2 persons, each of whom may or may not be a member of the senior management of the person; and

(*b*) is unanimously appointed (being an appointment that is recorded in writing) by all members of the senior management of the person to —

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- (i) determine whether an advertisement or a publication in respect of an offer or intended offer of units or derivatives of units in a business trust complies with the requirements mentioned in —
 - (A) regulation 14(1)(a) to (f); and
 - (B) if the advertisement or a publication (as the case may be) is one that is mentioned in section 282L(8) of the Act, regulation 14(2); and
 - (ii) approve the dissemination or publication of the advertisement or publication (as the case may be) by the person;

“member of the senior management” —

- (a) in relation to a person which is an entity, means a person for the time being holding the office of —
 - (i) chief executive officer or an equivalent person of the entity; or
 - (ii) executive director or an equivalent person of the entity,

and includes a person carrying out the duties of any such office if the office is vacant; and

- (b) in relation to a person which is a manager of a trust or a trustee-manager of a business trust, means a person for the time being holding the office of —
 - (i) chief executive officer of the manager of the trust or the trustee-manager of the business trust (as the case may be), or an equivalent person of the manager of the trust or the trustee-manager of the business trust, as the case may be; or

- (ii) executive director or an equivalent person of the manager of the trust or the trustee-manager of the business trust, as the case may be,

and includes a person carrying out the duties of any such office if the office is vacant.

Exemption from regulation 14(1)

15A.—(1) An advertisement or a publication in respect of an offer or intended offer of units or derivatives of units in a business trust need not comply with regulation 14(1) if —

- (a) the advertisement or publication (as the case may be) is prepared by any of the following persons (each called in this regulation the preparer) for the person who disseminates or publishes, or causes the dissemination or publication of, the advertisement or publication, as the case may be:

- (i) a specified financial adviser mentioned in paragraph (b) of the definition of “specified financial adviser” in regulation 2(1) of the Financial Advisers Regulations (Cap. 110, Rg 2);

- (ii) a holder of a capital markets services licence; and

- (b) prior to the person disseminating or publishing, or causing the dissemination or publication of, the advertisement or publication, as the case may be —

- (i) the preparer complies with the conditions in paragraph (2); and

- (ii) the preparer notifies the person in writing that the conditions in paragraph (2) are satisfied.

- (2) For the purpose of paragraph (1)(b), the conditions are —

- (a) where the preparer is a specified financial adviser mentioned in paragraph (1)(a) —

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- (i) the advertisement or publication (as the case may be) is a product advertisement within the meaning of regulation 2(1) of the Financial Advisers Regulations; and
 - (ii) the preparer has complied with regulation 22(1) of those Regulations as if the preparer were the specified financial adviser who will disseminate or publish, or cause the dissemination or publication of, the advertisement or publication, as the case may be; or
- (b) where the preparer is a holder of a capital markets services licence —
- (i) the advertisement or publication (as the case may be) is a product advertisement within the meaning of regulation 2 of the Securities and Futures (Licensing and Conduct of Business) Regulations (Rg 10); and
 - (ii) the preparer has complied with regulation 46(1) of those Regulations as if the preparer were the holder who will disseminate or publish, or cause the dissemination or publication of, the advertisement or publication, as the case may be.”.

New Sixth Schedule

4. The principal Regulations are amended by inserting, immediately after the Fifth Schedule, the following Schedule:

“SIXTH SCHEDULE

Regulation 14(3) to (6)

ADVERTISEMENT OR PUBLICATION

1. For the purposes of regulation 14(3), each of the following advertisements or publications in respect of an offer or intended offer of units or derivatives of units in a business trust is false or misleading:

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- (a) an advertisement or a publication that omits any material information and as a result of which, the advertisement or publication (as the case may be) or any part of the advertisement or publication (as the case may be) is false or misleading;
 - (b) an advertisement or a publication that contains a false or misleading statement;
 - (c) an advertisement or a publication that contains information that cannot be justified based on the facts known to the person who disseminated or published the advertisement or publication (as the case may be), or caused the advertisement or publication (as the case may be) to be disseminated or published;
 - (d) an advertisement or a publication that contains any information, in text or otherwise, that is inaccurate or inconsistent with the nature or risks of the units or derivatives of units;
 - (e) an advertisement or a publication that contains any exaggerated statement which is calculated to exploit an individual's lack of experience and knowledge;
 - (f) an advertisement or a publication that contains information which is inconsistent with any information provided by the issuer of the units or derivatives of units to the person who disseminated or published the advertisement or publication (as the case may be), or caused the advertisement or publication (as the case may be) to be disseminated or published;
 - (g) an advertisement or a publication that contains or refers to any graph, chart, formula or other device and represents directly or indirectly, that —
 - (i) the graph, chart, formula or device (as the case may be) can, in and of itself, be used to determine which units or derivatives of units in a business trust to buy or sell, or when to buy or sell such units or derivatives of units; or
 - (ii) the graph, chart, formula or device (as the case may be) will assist any person in deciding which units or derivatives of units in a business trust to buy or sell, or when to buy or sell such units or derivatives of units,

but does not prominently disclose the limitations, and difficulties in respect of the use, of the graph, chart, formula or device, as the case may be;

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- (h) an advertisement or a publication that contains any statement to the effect that any report, analysis or other service will be furnished free or without charge, and such report, analysis or service is not in fact or will not in fact be furnished in its entirety without any condition or obligation.

2. For the purposes of regulation 14(4), each of the following advertisements or publications in respect of an offer or intended offer of units or derivatives of units in a business trust does not provide a fair and balanced view of the units or derivatives of units:

- (a) an advertisement or a publication that contains a statement on any return of the principal sum invested in the units or derivatives of units, or benefit of holding those units or derivatives of units, but —
 - (i) does not provide an unbiased description of risks associated with the units or derivatives of units; or
 - (ii) does not give a proportionate level of prominence to any warning, disclaimer or qualification which is disclosed in relation to that statement;
- (b) an advertisement or a publication that is in respect of units or derivatives of units in a business trust that are structured with the objective of returning the full principal sum invested in the units or derivatives of units to a holder of the units or derivatives of units upon the maturity of the units or derivatives of units, but where the return of the full principal sum invested in the units or derivatives of units at maturity is not unconditionally guaranteed, and the advertisement or publication (as the case may be) does not contain a statement which clearly highlights the fact that the return of the full principal sum invested in the units or derivatives of units at maturity is not unconditionally guaranteed;
- (c) an advertisement or a publication that contains a representation that the return of all or a part of the principal sum invested in the units or derivatives of units, or the rate of return on the units or derivatives of units is guaranteed, but —
 - (i) does not state the name of the guarantor; or
 - (ii) does not contain a statement that clearly highlights that while there is a guarantor who guarantees the return of all or a part of the principal sum invested in the units or derivatives of units, or the rate of return on the units or derivatives of units, there is no assurance that the guarantor will be able to fulfil its obligations under such guarantee;

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- (d) an advertisement or a publication that contains historical information on the units or derivatives of units, but does not contain a statement that the information presented is historical information and that the past performance of the units or derivatives of units is not indicative of its future performance;
 - (e) an advertisement or a publication that gives the impression that an investor can profit from investing in the units or derivatives of units in a business trust without any risk;
 - (f) an advertisement or a publication that suggests that the nature of the units or derivatives of units is, or is comparable to, a deposit;
 - (g) an advertisement or a publication that is in respect of units or derivatives of units in a business trust of which the return of the principal sum invested in the units or derivatives of units or the rate of return on the units or derivatives of units is not guaranteed, but suggests that any of the following risks is low or nil:
 - (i) the risk of the holder of the units or derivatives of units losing the holder's principal sum invested;
 - (ii) the risk of the holder of the units or derivatives of units not achieving the stated, targeted or expected rate of return of the holder's principal sum invested.

3. For the purposes of regulation 14(5), each of the following advertisements or publications in respect of an offer or intended offer of units or derivatives of units in a business trust does not present information in a clear manner:

- (a) an advertisement or a publication in respect of an offer or intended offer of units or derivatives of units in a business trust that presents information (including information in footnotes) in a manner that is not easily understood by —
 - (i) in a case where the advertisement or publication (as the case may be) states the class of persons for whom the advertisement or publication (as the case may be) is intended, a reasonable person belonging to that class of persons; and
 - (ii) in any other case, a reasonable person who may rely on the advertisement or publication, as the case may be;
- (b) an advertisement or a publication that contains any jargon or technical term, but does not define or explain such jargon or term in a manner that is easily understood by —

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- (i) in a case where the advertisement or publication (as the case may be) states the class of persons for whom the advertisement or publication (as the case may be) is intended, a reasonable person belonging to that class of persons; and
 - (ii) in any other case, a reasonable person who may rely on the advertisement or publication, as the case may be.

4. For the purposes of regulation 14(6), each of the following advertisements or publications in respect of an offer or intended offer of units or derivatives of units in a business trust is not clearly legible:

- (a) an advertisement or a publication that appears in any document in written or printed form, including any newspaper, periodical, magazine or letter, which —
 - (i) presents information in a font size that is smaller than 10-point Times New Roman, or any other standard font type that is visually equivalent to that font size; or
 - (ii) presents information in any footnote in a font size that is smaller than —
 - (A) where the font size of the word or statement to which the footnote relates is or is smaller than 20-point Times New Roman or any other standard font type that is visually equivalent to that font size — 10-point Times New Roman or any other standard font type that is visually equivalent to that font size;
 - (B) where the font size of the word or statement to which the footnote relates is larger than 20-point Times New Roman or any other standard font type that is visually equivalent to that font size but smaller than 29-point Times New Roman or any other standard font type that is visually equivalent to that font size — half the font size of that word or statement; or
 - (C) where the font size of the word or statement to which the footnote relates is or is larger than 29-point Times New Roman or any other standard font type that is visually equivalent to that font size — 14-point Times New Roman or any other standard font type that is visually equivalent to that font size;

(b) an advertisement or a publication that appears in a form, other than a document mentioned in sub-paragraph (a), which presents information in any footnote in a font size that is smaller than half the font size of the word or statement to which the footnote relates.

5. In this Schedule, unless the context otherwise requires —

“bank” means a bank in Singapore or a merchant bank;

“bank in Singapore” has the same meaning as in section 2(1) of the Banking Act (Cap. 19);

“deposit” means —

(a) where the deposit is accepted by a bank, a deposit as defined in section 4B(4) of the Banking Act; or

(b) where the deposit is accepted by a finance company, a deposit as defined in section 2 of the Finance Companies Act (Cap. 108);

“finance company” has the same meaning as in section 2 of the Finance Companies Act;

“merchant bank” means a merchant bank that is approved as a financial institution under section 28 of the Monetary Authority of Singapore Act (Cap. 186).”

*[G.N. Nos. S 468/2012; S 12/2014; S 889/2014;
S 807/2017]*

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