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SECURITIES AND FUTURES ACT (CHAPTER 289)

SECURITIES AND FUTURES (OFFERS OF INVESTMENTS) (EXEMPTION FOR BUSINESS TRUSTS) (NO. 2) REGULATIONS 2005

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In exercise of the powers conferred by section 337(1) of the Securities and Futures Act, the Monetary Authority of Singapore hereby makes the following Regulations:

Citation and commencement

1. These Regulations may be cited as the Securities and Futures (Offers of Investments) (Exemption for Business Trusts) (No. 2) Regulations 2005 and shall come into operation on 7th December 2005.

Definitions

2. In these Regulations, unless the context otherwise requires —
- “Additional Trust” means a trust other than SP Australia Networks (Finance) Trust, the units of which form part of the group of securities initially stapled pursuant to the

Stapling Deed, which satisfies all of the following requirements:

- (a) the governing law of the trust is the law of a state of Australia;
- (b) the trustee of the trust is a company incorporated under the Australia Corporations Act;
- (c) the trustee of the trust holds a financial services licence issued by ASIC under the Australia Corporations Act;
- (d) the trust is a managed investment scheme within the meaning of and registered under the Australia Corporations Act;
- (e) the trust is not a collective investment scheme under the Act;
- (f) the trust is a business trust under the Act; and
- (g) the trust conducts one or both of the following activities or businesses:
 - (i) the carrying on of a business in one or more of the sectors of energy, utilities or infrastructure;
 - (ii) the provision of financing to any of the Stapled Companies, whether in the form of loans, by the issuance of notes or any other securities, or by any other means;

“ASIC” means the Australian Securities and Investments Commission;

“ATM” means automated teller machine;

“Australia Corporations Act” means the Corporations Act 2001 of the Commonwealth of Australia;

“relevant statement” means a statement purporting to be made by, or to be based on a statement made by, an expert, which is included in an offer information statement relating to the offer of units or derivatives of units referred to in regulation 4 or 5;

“responsible entity”, in relation to SP Australia Networks (Finance) Trust or an Additional Trust, means the company named in ASIC’s record of registration of SP Australia Networks (Finance) Trust or the Additional Trust, as the case may be, as a managed investment scheme, as the responsible entity or temporary responsible entity of SP Australia Networks (Finance) Trust or the Additional Trust, as the case may be;

“SP Australia Networks (Finance) Trust” means the business trust known as SP Australia Networks (Finance) Trust, the units of which form part of the group of securities initially stapled pursuant to the Stapling Deed;

“Stapled Companies” means SP Australia Networks (Transmission) Ltd, SP Australia Networks (Distribution) Ltd and any other corporation, the shares of which form part of the group of securities initially stapled pursuant to the Stapling Deed;

“Stapling Deed” means the Stapling Deed dated 19th October 2005 and executed by SP Australia Networks (RE) Ltd as trustee of the SP Australia Networks (Finance) Trust, SP Australia Networks (Transmission) Ltd and SP Australia Networks (Distribution) Ltd;

“WAP phone” means a mobile telephone with wireless application protocol.

Exemption in respect of offer made pursuant to bonus warrant

3.—(1) Where the units in SP Australia Networks (Finance) Trust or an Additional Trust are listed for quotation on an approved exchange, a person making an offer of units or derivatives of units in SP Australia Networks (Finance) Trust or the Additional Trust, as the case may be, pursuant to a specified bonus warrant, shall be exempt from the requirements under section 239C of the Act.

[S 671/2018 wef 08/10/2018]

(2) In paragraph (1), “specified bonus warrant” means a right given, for no consideration, by the responsible entity of SP Australia Networks (Finance) Trust or the Additional Trust (acting in its

capacity as responsible entity of SP Australia Networks (Finance) Trust or the Additional Trust), as the case may be, to an existing unitholder of SP Australia Networks (Finance) Trust or the Additional Trust, as the case may be, to buy a specified number of units or derivatives of units in SP Australia Networks (Finance) Trust or the Additional Trust, as the case may be, at a given price not earlier than 6 months after the date of listing of the right for quotation on an approved exchange.

[S 671/2018 wef 08/10/2018]

Exemption in respect of offer made using offer information statement

4.—(1) Subject to paragraphs (2) and (3), where the units in SP Australia Networks (Finance) Trust or an Additional Trust which have been previously issued by the responsible entity of SP Australia Networks (Finance) Trust or the Additional Trust (acting in its capacity as responsible entity of SP Australia Networks (Finance) Trust or the Additional Trust), as the case may be, are listed for quotation on an approved exchange, a person making an offer of units or derivatives of units in SP Australia Networks (Finance) Trust or the Additional Trust, as the case may be, whether by means of a rights issue or otherwise, shall be exempt from the requirements under Subdivision (2) of Division 1 of Part XIII of the Act (other than section 257 of the Act).

[S 671/2018 wef 08/10/2018]

(2) The exemption under paragraph (1) shall be subject to the conditions set out in the Schedule and the following conditions:

- (a) in the case of the offer of derivatives of units referred to in paragraph (1), the underlying units of the derivatives of units being offered are units in SP Australia Networks (Finance) Trust or the Additional Trust, as the case may be; and
- (b) the offer is made in or accompanied by an offer information statement relating to the offer, which —
 - (i) complies with —

(A) the requirements under regulation 38 of the Securities and Futures (Offers of Investments) (Securities and Securities-based Derivatives Contracts) Regulations 2018 (G.N. No. S 664/2018), as if regulation 38 is applicable to the offer information statement; or

[S 671/2018 wef 08/10/2018]

(B) the requirements referred to in sub-paragraph (A) as modified by the Authority on the application of any person interested; and

(ii) is lodged with the Authority.

(3) The exemption referred to in paragraph (1) shall apply only for a period of 6 months after the date of lodgment of the offer information statement relating to the offer.

Exemption in respect of offer made using offer information statement through ATM or WAP phone

5.—(1) Subject to paragraphs (2) and (3), where the units in SP Australia Networks (Finance) Trust or an Additional Trust which have been previously issued by the responsible entity of SP Australia Networks (Finance) Trust or the Additional Trust (acting in its capacity as responsible entity of SP Australia Networks (Finance) Trust or the Additional Trust), as the case may be, are listed for quotation on an approved exchange, a person making an offer of units or derivatives of units in SP Australia Networks (Finance) Trust or the Additional Trust, as the case may be, whether by means of a rights issue or otherwise, shall be exempt from the requirements under Subdivision (2) of Division 1 of Part XIII of the Act (other than section 257 of the Act).

[S 671/2018 wef 08/10/2018]

(2) The exemption under paragraph (1) shall be subject to the conditions set out in the Schedule and the following conditions:

(a) in the case of the offer of derivatives of units referred to in paragraph (1), the underlying units of the derivatives of

units being offered are units in SP Australia Networks (Finance) Trust or the Additional Trust, as the case may be;

(b) the offer is made in or accompanied by an offer information statement relating to the offer, which —

(i) complies with —

(A) the requirements under regulation 38 of the Securities and Futures (Offers of Investments) (Securities and Securities-based Derivatives Contracts) Regulations 2018, as if regulation 38 is applicable to the offer information statement; or

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(B) the requirements referred to in sub-paragraph (A) as modified by the Authority on the application of any person interested; and

(ii) is lodged with the Authority;

(c) the offer is made using an ATM or a WAP phone;

(d) *[Deleted by S 671/2018 wef 08/10/2018]*

(e) the ATM or WAP phone, as the case may be, indicates to a prospective subscriber or buyer —

(i) how he can obtain, or arrange to receive, a copy of the offer information statement; and

(ii) that he should read the offer information statement before submitting his application,

before enabling him to submit any application to subscribe for or purchase the units or derivatives of units in SP Australia Networks (Finance) Trust or the Additional Trust, as the case may be.

(3) The exemption referred to in paragraph (1) shall apply only for a period of 6 months after the date of lodgment of the offer information statement relating to the offer.

THE SCHEDULE

Regulations 4(2) and 5(2)

CONDITIONS FOR COMPLIANCE BY PERSON MAKING THE OFFER IN RELATION TO OFFER MADE USING OFFER INFORMATION STATEMENT

Expert's consent to issue of offer information statement containing relevant statement

1.—(1) Subject to sub-paragraph (4), where an offer of units or derivatives of units in SP Australia Networks (Finance) Trust or an Additional Trust is made in or accompanied by an offer information statement which includes a relevant statement, the offer information statement shall not be issued unless —

- (a) the expert has given and has not, before the lodgment of the offer information statement, withdrawn his written consent to the issue thereof with the relevant statement included in the form and context in which it is included;
- (b) there appears in the offer information statement a statement that the expert has given and has not withdrawn his consent.

(2) The person making the offer shall —

- (a) lodge the written consent referred to in sub-paragraph (1) with the Authority at the time of lodgment of the offer information statement; and
- (b) cause a true copy of the written consent to be deposited, within 7 days after the lodgment of the offer information statement, at the registered office of the issuer in Singapore or, if the issuer has no registered office in Singapore, at the address in Singapore specified in the offer information statement for that purpose.

(3) The issuer shall keep, and make available for inspection by its members and creditors, and persons who have subscribed for or purchased the units or derivatives of units in SP Australia Networks (Finance) Trust or the Additional Trust, as the case may be, to which the offer information statement relates, without payment of any fee, a true copy of every written consent deposited in accordance with sub-paragraph (2) for a period of at least 6 months after the lodgment of the offer information statement.

(4) Sub-paragraph (1) shall not apply in respect of a relevant statement which —

- (a) is not made by the expert in connection with the offer concerned;
- (b) is not made by the expert for the sole benefit of SP Australia Networks (Finance) Trust or the Additional Trust, as the case may be;

THE SCHEDULE — *continued*

- (c) does not relate specifically to the affairs of SP Australia Networks (Finance) Trust or the Additional Trust, as the case may be; and
- (d) is a correct and fair copy or a representation of, or an extract from, a statement made or information published by a source which the persons signing the offer information statement reasonably believe to be reliable, provided that —
 - (i) the expert is a person whom the persons signing the offer information statement reasonably believe to be an expert who —
 - (A) has no material interest in the success of the issue or sale of the units or derivatives of units in SP Australia Networks (Finance) Trust or the Additional Trust, as the case may be; and
 - (B) is not acting at the instigation of, or by arrangement with, the responsible entity of SP Australia Networks (Finance) Trust or the Additional Trust (acting in its capacity as responsible entity of SP Australia Networks (Finance) Trust or the Additional Trust), as the case may be, a director of the responsible entity of SP Australia Networks (Finance) Trust or the Additional Trust, as the case may be, a proposed director of the responsible entity of SP Australia Networks (Finance) Trust or the Additional Trust, as the case may be, or a person who has a material interest in the success of the issue or sale of the units or derivatives of units in SP Australia Networks (Finance) Trust or the Additional Trust, as the case may be; and
 - (ii) wherever the relevant statement appears in the offer information statement, there shall be included in the offer information statement —
 - (A) a statement that the expert has not consented to the inclusion of the relevant statement;
 - (B) any disclaimer made by the expert in relation to reliance on the contents of the relevant statement which the persons signing the offer information statement are reasonably aware;
 - (C) a statement as to whether the persons signing the offer information statement have verified the accuracy of the contents of the relevant statement;

THE SCHEDULE — *continued*

- (D) a statement as to whether the persons signing the offer information statement have included the relevant statement in its proper form and context in the offer information statement; and
- (E) a proper citation identifying the source of, and the location within the source of, the relevant statement, including, where available, the following details of the source:
 - (AA) each author or editor;
 - (BB) the title;
 - (CC) the publication date and every revision date; and
 - (DD) where the source is published on an Internet website, the uniform resource locator (URL) and version date.

Consent of issue manager and underwriter to being named in offer information statement

2.—(1) Where an offer of units or derivatives of units in SP Australia Networks (Finance) Trust or an Additional Trust is made in or accompanied by an offer information statement in which a person is named as the issue manager to the offer, the offer information statement shall not be issued unless —

- (a) the person has given and has not, before the lodgment of the offer information statement, withdrawn his written consent to being named in the offer information statement as issue manager to that offer; and
- (b) there appears in the offer information statement a statement that the person has given and has not withdrawn his consent.

(2) Where an offer of units or derivatives of units in SP Australia Networks (Finance) Trust or an Additional Trust is made in or accompanied by an offer information statement in which a person is named as the underwriter (but not a sub-underwriter) to the offer, the offer information statement shall not be issued unless —

- (a) the person has given and has not, before the lodgment of the offer information statement, withdrawn his written consent to being named in the offer information statement as underwriter to that offer; and
- (b) there appears in the offer information statement a statement that the person has given and has not withdrawn his consent.

THE SCHEDULE — *continued*

- (3) The person making the offer shall —
- (a) lodge the written consent referred to in sub-paragraphs (1) and (2) with the Authority at the time of lodgment of the offer information statement; and
 - (b) cause a true copy of the written consent to be deposited, within 7 days after the lodgment of the offer information statement, at the registered office of the issuer in Singapore or, if the issuer has no registered office in Singapore, at the address in Singapore specified in the offer information statement for that purpose.
- (4) The issuer shall keep, and make available for inspection by its members and creditors, and persons who have subscribed for or purchased the units or derivatives of units in SP Australia Networks (Finance) Trust or the Additional Trust, as the case may be, to which the offer information statement relates, without payment of any fee, a true copy of every written consent deposited in accordance with sub-paragraph (3) for a period of at least 6 months after the lodgment of the offer information statement.

Offer information statement not to contain false or misleading statements

3.—(1) Subject to paragraph 4, where an offer of units or derivatives of units in SP Australia Networks (Finance) Trust or an Additional Trust is made using an offer information statement —

- (a) the offer information statement or any application form for the units or derivatives of units in SP Australia Networks (Finance) Trust or the Additional Trust, as the case may be, shall not contain a false or misleading statement;
- (b) the offer information statement shall not omit to state any information required to be included in the offer information statement under regulation 20(1) of the Securities and Futures (Offers of Investments) (Business Trusts) (No. 2) Regulations 2005 (as applied to an offer information statement under regulation 4(2)(b)(i) or 5(2)(b)(i), as the case may be); and
- (c) the offer information statement shall not omit to state a new circumstance that —
 - (i) has arisen since the offer information statement was lodged with the Authority; and
 - (ii) would have been required to be included in the offer information statement under regulation 20(1) of the Securities and Futures (Offers of Investments) (Business

THE SCHEDULE — *continued*

Trusts) (No. 2) Regulations 2005 (as applied to an offer information statement under regulation 4(2)(b)(i) or 5(2)(b)(i), as the case may be), if it had arisen before the offer information statement was lodged with the Authority.

Non-compliance with paragraph 3

4.—(1) For the purposes of paragraph 3, a false or misleading statement about a future matter (including the doing of, or the refusal to do, an act) is taken to have been made if a person made the statement without having reasonable grounds for making the statement.

(2) A person shall not be taken not to have complied with paragraph 3 if the false or misleading statement, or the omission to state any information or new circumstance, is not materially adverse from the point of view of the investor.

(3) A person shall not be taken not to have complied with paragraph 3 only because of a false or misleading statement in an offer information statement if the person proves that he —

- (a) made all inquiries (if any) that were reasonable in the circumstances; and
- (b) after doing so, believed on reasonable grounds that the statement was not false or misleading.

(4) A person shall not be taken not to have complied with paragraph 3 only because of an omission from an offer information statement in relation to a particular matter if the person proves that he —

- (a) made all inquiries (if any) that were reasonable in the circumstances; and
- (b) after doing so, believed on reasonable grounds that there was no omission from the offer information statement in relation to that matter.

(5) A person shall not be taken not to have complied with paragraph 3 only because of a false or misleading statement in, or an omission from, an offer information statement if the person proves that he placed reasonable reliance on information given to him by —

- (a) if the person is an entity, someone other than —
 - (i) a director or equivalent person; or
 - (ii) an employee or agent, of the entity; or
- (b) if the person is an individual, someone other than an employee or agent of the individual.

THE SCHEDULE — *continued*

(6) For the purposes of sub-paragraph (5), a person is not the agent of an entity or individual merely because he performs a particular professional or advisory function for the entity or individual.

(7) A person shall not be taken not to have complied with paragraph 3 only because of a new circumstance that has arisen since the offer information statement was lodged with the Authority if the person proves that he was not aware of the matter.

Reference to statement

5. For the purposes of paragraphs 3 and 4, any reference to a statement shall include a reference to any information presented, regardless of whether such information is in text or otherwise.

Made this 7th day of December 2005.

HENG SWEE KEAT
Managing Director,
Monetary Authority of Singapore.

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