



Financial Services Update

Securities and Futures (Market Conduct) (Exemptions) Regulations 2006

Introduction

The Securities and Futures (Market Conduct) (Exemptions) Regulations 2006 (S148/2006) (the "**Regulations**") were gazetted on 6 March 2006, and came into effect that day. The Regulations set out an omnibus exemption from, *inter alia*, Sections 197 (relating to false trading and market rigging transactions) and 198 (relating to securities market manipulation) of the Securities and Futures Act, Chapter 289 of Singapore (the "**SFA**") for stabilising action taken in respect of offers of securities, including offers of bonds and convertible bonds which are listed or to be listed on Singapore Exchange Securities Trading Limited ("**SGX-ST**"). The Regulations revoked and replaced the previous Securities and Futures (Market Conduct) (Exemptions) Regulations (Rg 12) (the "**Repealed Regulations**").

Prior to the Regulations coming into effect, stabilising managers had to apply for exemption from Sections 197 and 198 of the SFA on a case-by-case basis for each bond issue in respect of which they sought to undertake price stabilisation activities.

With the coming into effect of the Regulations, the Monetary Authority of Singapore (the "**MAS**") has indicated that it will no longer issue such case-by-case exemptions. Stabilising managers therefore have to ensure that their stabilising activities fall within the Regulations.

Two stabilisation exemptions

There are two price stabilisation exemptions available under the Regulations, namely Regulation 3 and Regulation 4. The Regulations are intended to extend the existing price stabilisation exemptions for initial public offers of equity securities to other offers of securities, such as offers of bonds. However, in so doing, the Regulations introduce certain additional requirements for invoking a price stabilisation exemption in bond issues.

Exemption under Regulation 3

Regulation 3 provides an exemption from the false trading and securities market manipulation prohibitions of the SFA, as well as the prohibition against insider trading, for stabilisation activities. To invoke the exemption under Regulation 3, various conditions must be complied with (see sub-paragraphs (2) to (16) of Regulation 3). We set out some of the conditions relating to bond issues here:

- the stabilising manager, in undertaking stabilising action, must not buy more than 20 per cent. of the total nominal value of the bonds;
- the offer documents must state, *inter alia*, the total nominal value or number (as the case may be) of bonds (i) that are the subject of an over-allotment option and (ii) that the stabilising manager may buy to undertake stabilising action;
- a public announcement that the bonds may be subject to stabilising action must be made; and
- a register recording the particulars of each price stabilising transaction must be kept.

Exemption under Regulation 4

Regulation 4 provides an exemption for bond dealings from the false trading and the securities market manipulation provisions of the SFA. (The previous Regulation 4 under the Repealed Regulations only provided an exemption from the securities market manipulation provision of the SFA.) The Regulation 4 exemption can be invoked provided such bond dealings are entered into by a corporation with:

- an accredited investor; or
- a person whose business involves the acquisition and disposal of or holding of securities (whether as principal or as agent).

There are no conditions attached to invoking an exemption under Regulation 4.

An accredited investor is:

- an individual (i) whose net personal assets exceed S\$2 million, or its equivalent in value in any foreign currency or (ii) whose income in the preceding 12 months is not less than S\$300,000, or its equivalent in value in any foreign currency;
- a corporation with net assets exceeding S\$10 million in value or its equivalent in value in any foreign currency, as determined by its most recent audited balance sheet or, in the case of a corporation which is not required to prepare audited accounts regularly, a balance sheet of the corporation certified by it to give a true and fair view of the state of affairs of the corporation as of the date of the balance sheet, which date shall be within the preceding 12 months;
- a trustee of a trust of which all property and rights of any kind whatsoever held on trust for the beneficiaries of the trust exceed S\$10 million in value (or its equivalent in a foreign currency);
- an entity (other than a corporation) with net assets exceeding S\$10 million in value (or its equivalent in a foreign currency);
- a partnership (other than a limited liability partnership within the meaning of the Limited Liability Partnerships Act 2005 (Act 5 of 2005)) in which each partner is an accredited investor; or
- a corporation, the sole business of which is to hold investments and the entire share capital of which is owned by one or more persons, each of whom is an accredited investor.

There is currently no statutory definition of “a person whose business involves the acquisition and disposal of or holding of securities (whether as principal or as agent)”; however, taking a plain reading of the phrase, we expect that it should include banks, financial institutions and bond dealers.

Insider trading

It should be noted that the Regulation 4 exemption (as compared with the Regulation 3 exemption) only exempts stabilising action from Sections 197 and 198 of the SFA, and not Sections 218(2) (relating to insider trading by a connected person) and 219(2) (relating to insider trading by other persons) of the SFA, which are also exempted under Regulation 3. This is similar to the position under the case-by-case exemptions previously sought by stabilising managers for bond issues. Accordingly, the stabilising manager would have to ensure that the insider trading prohibition (as set out in Sections 218(2) and 219(2) of the SFA) has not been contravened. In this regard, Section 226(2) of the SFA does recognise a “Chinese wall” defence against insider trading provided certain conditions are met.

The stabilising manager must therefore ensure that the relevant officers engaging in the price stabilisation are not privy to any non-public information acquired from the issuer of the bonds in connection with the offering of the bonds.

Conclusion – which exemption to invoke

Moving forward, the stabilising manager should consider:

- whether the stabilising manager and the debt issue can comply with the requirements in Regulation 3, keeping in mind that Regulation 3 provides an exemption from the false trading and securities market manipulation prohibitions, as well as the insider trading prohibition, of the SFA; and
- whether its stabilising activities are conducted only with accredited investors or persons whose business involves the acquisition and disposal of or holding of securities (whether as principal or as agent), in which case Regulation 4 may be relied upon, keeping in mind that Regulation 4 provides an exemption from the false trading and securities market manipulation prohibitions, but not the insider trading prohibition, of the SFA.

We envisage that Regulation 4 will be relied upon for most bond issues.

Further information

If you have any general queries regarding the impact of these developments on your business or require any further information, please do not hesitate to contact:

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