

**Securities and Futures (Offers of Investments) (Exemption for Business Trusts)
Regulations 2005**

Table of Contents

Enacting Formula

1 Citation and commencement

2 Definitions

3 Exemptions in respect of initial offer

**4 Exemption in respect of offer made in circumstances specified in
section 273(1)(*da*) or (*e*) of Act**

THE SCHEDULE Conditions for compliance by person making offer

No. S 719

**SECURITIES AND FUTURES ACT
(CHAPTER 289)**

**SECURITIES AND FUTURES (OFFERS OF INVESTMENTS) (EXEMPTION FOR
BUSINESS TRUSTS) REGULATIONS 2005**

In exercise of the powers conferred by sections 282I(5) and 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) Regulations 2005 and shall come into operation on 17th November 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;

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

“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.

Exemptions in respect of initial offer

3.—(1) Where a person makes the initial offer of units or derivatives of units in SP Australia Networks (Finance) Trust or an Additional Trust in any of the circumstances specified in section 273(1)(a), (b), (c), (cj) and (ck) of the Act, the person is, subject to the conditions set out in paragraph (3), exempt from the requirements under Subdivision (2) of Division 1 of Part XIII of the Act (other than section 257 of the Act).

[S 670/2018 wef 08/10/2018]

(2) Where a person makes the initial offer of units or derivatives of units in SP Australia Networks (Finance) Trust or an Additional Trust in circumstances other than the circumstances specified in section 273(1)(a), (b), (c), (cj) and (ck) of the Act —

(a) he shall, subject to the conditions set out in paragraph (3) and the Schedule, be exempt from —

(i) the requirement under section 239C(1) of the Act for SP Australia Networks (Finance) Trust or the Additional Trust, as the case may be, to be a registered business trust; and

[S 670/2018 wef 08/10/2018]

(ii) the requirements under sections 243, 246, 251 and 260 of the Act; and

[S 670/2018 wef 08/10/2018]

(b) he shall, subject to the conditions set out in paragraph (4), be exempt from the requirements under section 249(1) of the Act in respect of a relevant statement which —

(i) is not made by the expert in connection with the offer concerned;

- (ii) 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;
- (iii) does not relate specifically to the affairs of SP Australia Networks (Finance) Trust or the Additional Trust, as the case may be; and
- (iv) 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 prospectus or profile statement reasonably believe to be reliable.

[S 670/2018 wef 08/10/2018]
[S 670/2018 wef 08/10/2018]

(3) For the purposes of paragraphs (1) and (2)(a), the conditions are that —

- (a) SP Australia Networks (Finance) Trust or the Additional Trust, as the case may be, shall not make any distribution to the holders of the units in SP Australia Networks (Finance) Trust or the Additional Trust, as the case may be, unless the board of directors of the Stapled Companies and the responsible entity of SP Australia Networks (Finance) Trust or the Additional Trust, as the case may be, issue a written statement that they are satisfied on reasonable grounds that, immediately after making the distribution, the Stapled Companies and SP Australia Networks (Finance) Trust or the Additional Trust, as the case may be, are able to fulfill the liabilities of SP Australia Networks (Finance) Trust or the Additional Trust, as the case may be, as these liabilities fall due;
- (b) SP Australia Networks (Finance) Trust or the Additional Trust, as the case may be, is constituted as a managed investment scheme within the meaning of and regulated as such under the Australia Corporations Act;
- (c) the responsible entity of SP Australia Networks (Finance) Trust or the Additional Trust, as the case may be, shall not carry on any business other than the business of management and operation of SP Australia Networks (Finance) Trust or the Additional Trust, as the case may be; and
- (d) the responsible entity of SP Australia Networks (Finance) Trust or the Additional Trust, as the case may be, shall not, without the prior approval of a majority of the number of votes of the holders of units in SP Australia Networks (Finance) Trust or the Additional Trust, as the case may be, who, being entitled to do so, vote in person or, where proxies are allowed, by proxy present at a general meeting, exercise any power —

- (i) to issue units in SP Australia Networks (Finance) Trust or the Additional Trust, as the case may be; or
- (ii) to make or grant an offer, agreement or option which would or might require units in SP Australia Networks (Finance) Trust or the Additional Trust, as the case may be, to be issued.

(4) For the purposes of paragraph (2)(b), the conditions are that —

- (a) the expert is a person whom the persons signing the prospectus or profile statement reasonably believe to be an expert who —
 - (i) 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
 - (ii) 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
- (b) wherever the relevant statement appears in the prospectus or profile statement, there shall be included in the prospectus or profile statement, as the case may be —
 - (i) a statement that the expert has not consented to the inclusion of the relevant statement for the purposes of section 249 of the Act and is thereby not liable for the relevant statement under sections 253 and 254 of the Act;
[S 670/2018 wef 08/10/2018]
 - (ii) any disclaimer made by the expert in relation to reliance on the contents of the relevant statement which the persons signing the prospectus or profile statement, as the case may be, are reasonably aware;