

Appendix A13a

Selling restrictions (Hong Kong and Singapore)

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Part I – Hong Kong

Introduction

1.1 On 13 May 2011, a new form of Hong Kong standard form selling restriction was agreed amongst a number of law firms active in the debt capital markets space, namely Allen & Overy, Clifford Chance, Freshfields Bruckhaus Deringer, Linklaters, Mallesons Stephen Jaques (now King & Wood Mallesons), Simmons & Simmons and Slaughter and May. In line with general market practice, the restriction focussed on the use of the exemption contained in paragraph 1 of Part 1 of the Seventeenth Schedule to what is now the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32) of Hong Kong (the “**C(WUMP)O**”), namely an offer to “professional investors” within the meaning of section 1 of Part 1 of Schedule 1 to the Securities and Futures Ordinance (Cap. 571) of Hong Kong (the “**SFO**”) (including professional investors falling within paragraph (j) of the definition of “professional investor” in that section).

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1.2 As market practice has now converged on the use of the above C(WUMP)O exemption from the requirement for registration of a “prospectus” in Hong Kong in relation to a securities offering, the below selling restriction (which is in line with the 13 May 2011 form, updated for one legislative change and some minor drafting changes) does not purport to place reliance on the other circumstances specified in paragraphs 2 to 13 (inclusive) of the Seventeenth Schedule to the C(WUMP)O.

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Standard form of selling restriction

1.3 Standard form of Hong Kong selling restriction.

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Each [Manager] [Dealer] has represented and agreed that:

- (1) it has not offered or sold and will not offer or sell in Hong Kong, by means of any document, any [Securities] [except for [Securities] which are a “structured product” as defined in the Securities and Futures Ordinance (Cap. 571) of Hong Kong (the “SFO”)] other than (a) to “professional investors” as defined in the [SFO] [Securities and Futures Ordinance (Cap. 571) of Hong Kong (the “SFO”)] and any rules made under the SFO; or (b) in other circumstances which do not result in the document being a “prospectus” as defined in the Companies (Winding Up and Miscellaneous Provisions Ordinance (Cap. 32) of Hong Kong (the “C(WUMP)O”) or which do not constitute an offer to the public within the meaning of the C(WUMP)O; and

(2) it has not issued or had in its possession for the purposes of issue, and will not issue or have in its possession for the purposes of issue, whether in Hong Kong or elsewhere, any advertisement, invitation or document relating to the [Securities], which is directed at, or the contents of which are likely to be accessed or read by, the public of Hong Kong (except if permitted to do so under the securities laws of Hong Kong) other than with respect to [Securities] which are or are intended to be disposed of only to persons outside Hong Kong or only to “professional investors” as defined in the [SFO] [Securities and Futures Ordinance (Cap. 571)] of Hong Kong (the “**SFO**”) and any rules made under the SFO.

Using the standard form

- 1.4 For a standalone offering or a drawdown under a programme: *February 2017*
- (a) If the Securities are either shares or debentures and are not structured products, include both Limb 1 and Limb 2. Omit the single underlined words; include the double underlined words; omit the dotted underlined words.
 - (b) If the Securities are structured products, delete Limb 1 (the C(WUM)PO restriction); only Limb 2 (the SFO restriction) applies. Include the dotted underlined words.
- 1.5 Where the selling restriction is included in a programme: *February 2017*
- (a) If the programme provides for the issue only of vanilla debentures, and does not provide for the issue of any structured products, include both Limb 1 and Limb 2. Omit the single underlined words; include the double underlined words; omit the dotted underlined words.
 - (b) If the programme permits the issue of structured products, include both Limb 1 and Limb 2. Include the single underlined words; omit the double and dotted underlined words.

Variations to the standard form

- 1.6 It is intended that this form will normally be used for standard offerings of debentures by companies in the international institutional market. Other types of transactions may require adjustments to the language to suit the particular circumstances. *February 2017*
- 1.7 In offerings by a non-Hong Kong incorporated company only, it is not wrong to include, as an additional carve-out in paragraph 1, a reference to “persons whose ordinary business is to buy or sell shares or debentures, whether as principal or agent”. If a manager or issuer client prefers to see this language, it may be included. *February 2017*
- 1.8 Other stylistic variations may also be necessary – and are unobjectionable – to conform to the style or conventions used in a document or to the house-style of a law firm (for example the way Ordinances are referred to). Generally in these cases, “draftsman’s privilege” applies and the style preferred by the law firm with drafting responsibility for the document will be accepted. *February 2017*

Part II – Singapore

Introduction

- 2.1** Under the legal and regulatory framework governing securities issues in Singapore, an offer or invitation to persons in Singapore for the subscription or purchase of securities is regulated by the Securities and Futures Act (Chapter 289 of Singapore) (the “**SFA**”). The Monetary Authority of Singapore (the “**MAS**”) is the regulatory authority charged with the responsibility of administering the SFA. Broadly, the MAS adopts a “disclosure-based approach” for regulated products such as debentures (which includes international bond offerings). *February 2017*
- 2.2** Under the SFA, the concept of a “public offer” ceased to exist following the enactment of the Securities and Futures (Amendment) Act 2005 (No. 1 of 2005). Accordingly, all offers of securities are prima facie subject to the prospectus requirement (i.e. that which requires the registration of the prospectus with the MAS) unless such an offer is specifically exempted under the SFA. The focus of the restriction, in line with general market practice focuses on two statutory exemptions, namely an offer of securities to (i) institutional investors and/or (ii) accredited investors and certain other persons (the “**Section 275 Persons**”) pursuant to Sections 274 and/or 275 of the SFA respectively. There are no restrictions on the number of institutional investors and/or Section 275 Persons that an offer of securities can be made to pursuant to an exemption under Sections 274 and/or 275 of the SFA. *February 2017*

Standard form of selling restriction

- 2.3** Standard form of Singapore selling restriction. *February 2017*

Each [Manager]/[Dealer] has acknowledged[, and each further Dealer appointed under the Programme will be required to acknowledge,]* that this [Offering Circular]/[Information Memorandum] has not been registered as a prospectus with the Monetary Authority of Singapore (the “**MAS**”). Accordingly, each [Manager]/[Dealer] has represented, warranted and agreed[, and each further Dealer appointed under the Programme will be required to represent, warrant and agree,]* that it has not offered or sold any [Securities]** or caused the [Securities] to be made the subject of an invitation for subscription or purchase and will not offer or sell any [Securities] or cause the [Securities] to be made the subject of an invitation for subscription or purchase, and has not circulated or distributed, nor will it circulate or distribute, this [Offering Circular]/[Information Memorandum] or any other document or material in connection with the offer or sale, or invitation for subscription or purchase, of the [Securities], whether directly or indirectly, to any person in Singapore other than (i) to an institutional investor (as defined in Section 4A of the Securities and Futures Act (Chapter 289 of Singapore) (the “**SFA**”)) pursuant to Section 274 of

the SFA, (ii) to a relevant person (as defined in Section 275(2) of the SFA) pursuant to Section 275(1) of the SFA, or any person pursuant to Section 275(1A) of the SFA, and in accordance with the conditions specified in Section 275 of the SFA, or (iii) otherwise pursuant to, and in accordance with the conditions of, any other applicable provision of the SFA.

Where the [Securities] are subscribed or purchased under Section 275 of the SFA by a relevant person which is:

- (a) a corporation (which is not an accredited investor (as defined in Section 4A of the SFA)) the sole business of which is to hold investments and the entire share capital of which is owned by one or more individuals, each of whom is an accredited investor; or
- (b) a trust (where the trustee is not an accredited investor) whose sole purpose is to hold investments and each beneficiary of the trust is an individual who is an accredited investor,

securities (as defined in Section 239(1) of the SFA) of that corporation or the beneficiaries' rights and interest (howsoever described) in that trust shall not be transferred within six months after that corporation or that trust has acquired the [Securities] pursuant to an offer made under Section 275 of the SFA except:

- (1) to an institutional investor or to a relevant person defined in Section 275(2) of the SFA, or to any person arising from an offer referred to in Section 275(1A) or Section 276(4)(i)(B) of the SFA;
- (2) where no consideration is or will be given for the transfer;
- (3) where the transfer is by operation of law;
- (4) as specified in Section 276(7) of the SFA; or
- (5) as specified in Regulation 32 of the Securities and Futures (Offers of Investments) (Shares and Debentures) Regulations 2005 of Singapore.

Notes:

* *Include for MTN Programmes.*

** *Insert the nature of the Securities (eg: Notes, Bonds, Capital Securities etc).*

Variations to the standard form

2.4

It is intended that this form will typically be used for standard offerings of securities pursuant to Sections 274 and/or 275 of the SFA in the international institutional market. There are other exemptions and safe harbours available under the SFA which are not discussed here (for example, via a small offering exemption or a private placement exemption pursuant to Sections 272A or 272B respectively). Accordingly, other types of transactions may require adjustments to the selling restriction language to suit circumstances.

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2.5 Other stylistic variations may also be necessary – and are unobjectionable – to conform to the style or conventions used in a document or to the house style of a law firm. Generally in such cases, “draftsman’s privilege” applies and the style preferred by the law firm with drafting responsibility for the document will be accepted.

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