



Monetary Authority of Singapore

**SECURITIES AND FUTURES ACT
(CAP.289)
FINANCIAL ADVISERS ACT
(CAP. 110)**

**FREQUENTLY ASKED QUESTIONS (FAQs) ON LENDING-
BASED CROWDFUNDING**

Disclaimer: These FAQs are meant to provide guidance on lending-based crowdfunding. They do not constitute legal advice. MAS expects persons making an offer of securities and crowdfunding platforms facilitating such offers to be familiar with their obligations under all applicable laws, rules and regulations in Singapore. Where in doubt, these persons should seek independent legal advice on how they should comply with these requirements.

What is lending-based crowdfunding?

1. Lending-based crowdfunding by businesses, also commonly referred to as peer-to-peer lending to businesses (“P2P lending”), generally refers to a fundraising model where many persons lend sums of money to a company and in return receive the company’s legally-binding commitment to repay the loan at pre-determined time intervals and interest rates. The lending is typically conducted through an online platform. Lending-based crowdfunding, or P2P lending, is one of two financial return crowdfunding models (the other being equity-based crowdfunding).

Is lending-based crowdfunding regulated by MAS? How is lending-based crowdfunding regulated?

2. Fundraising from the public through lending-based crowdfunding, or P2P lending, is regulated by MAS under the Securities and Futures Act (Cap. 289) (the “SFA”) and the Financial Advisers Act (Cap. 110) (the “FAA”).

Prospectus Requirement

3. Under section 239(3) of the SFA, any invitation to lend money to an entity (e.g. a company) is deemed to be an offer of debentures, which is a type of security. The entity offering debentures is required to prepare and register a prospectus with MAS in accordance with Division 1 Subdivision 2 of Part XIII of the SFA (“Prospectus Requirements”) unless it can fall within one of the several prospectus exemptions. The prospectus exemptions available to companies include the following:

- Small offers. Under section 272A of the SFA, offerors may make personal offers of securities, up to \$5 million within any 12-month period, without a prospectus subject to certain conditions. A personal offer is one that is directed at a pre-identified individual or entity, which would include offers made to persons who have previous professional or other connection with the offeror. As the word “personal” suggests, each offer must be made personally by the offeror or by a person acting on its behalf to the pre-identified individual or entity and can only be accepted by the pre-identified individual or entity to whom the offer was made. Further details on the criteria for a “personal” offer can be found in the Guidelines on Personal Offers made pursuant to the Exemption for Small Offers.
- Private placements. Under section 272B of the SFA, offers of securities to no more than 50 persons within a 12-month period may be exempted from the Prospectus Requirement subject to certain conditions.

- Institutional investors. Under section 274 of the SFA, offers of securities to institutional investors are exempted from the Prospectus Requirements.
- Accredited investors. Under section 275 of the SFA, offers of securities to accredited investors may be exempted from the Prospectus Requirements subject to certain conditions.

Licensing Requirements

4. In addition to the Prospectus Requirements, the operator of the platform that facilitates the offers of debentures (even if the platform operator does not itself offer the debentures) or provides advice relating to the securities offering may be considered as carrying on the business of the regulated activity of “dealing in securities” or “advising on corporate finance” respectively. The operator would be required to hold a capital markets services (“CMS”) licence under the SFA. The requirement under the FAA may also apply where financial advice is provided to investors who wish to purchase the securities.

5. When in doubt, any person who wishes to raise funds through crowdfunding or to establish and operate a crowdfunding platform is encouraged to seek legal advice to ensure that the proposed activities are in compliance with all applicable laws, rules and regulations in Singapore.

There is an exclusion of promissory notes from the definition of securities. Is crowdfunding with promissory notes exempted from the Prospectus Requirements?

6. Promissory notes are excluded from the definition of securities under section 2 of the SFA for the purposes of CMS licensing requirements only.

7. Promissory notes are not excluded from the definition of securities in section 239 of Part XIII of the SFA. However, promissory notes with a face value of *not less than* \$100,000 and a maturity *period not more than* 12 months are currently excluded from the “debentures” definition under section 239(1) of the SFA in respect of the Prospectus Requirements (“Promissory Note Exclusion”).

8. Crowdfunding through promissory notes is not exempted from the Prospectus Requirements unless the promissory note in question falls within the Promissory Note Exclusion. A promissory note will only qualify for the Promissory Note Exclusion if it is issued by one borrower to one single lender *and* has a face value of not less than \$100,000, as well as a maturity period of not more than 12 months. A

promissory note which is an aggregation of multiple loans from multiple lenders, consolidated into one promissory note which has a face value of not less than \$100,000 and a maturity period of not more than 12 months (“consolidated promissory note”), does not qualify for the Promissory Note Exclusion.

9. The Promissory Note Exclusion is meant to exclude short-term notes like commercial papers and promissory notes issued for short-term financing needs of companies, typically issued by entities with solid credit profiles and bought by accredited or institutional investors. The Promissory Note Exclusion is not meant to exclude consolidated promissory notes.

10. MAS is aware that some lending-based crowdfunding and P2P lending platform operators facilitate the raising of funds by having the borrowers issue a single promissory note of face value \$100,000 or more to multiple lenders, with each lender lending less than \$100,000. Such consolidated promissory notes issued by a borrower under such business models are considered by MAS to be “debentures” and hence are subject to the Prospectus Requirements. **Platform operators should now ensure that the participants on their platforms are aware that each lender has to lend at least \$100,000 if the borrower is to fall within the Promissory Note Exclusion. Offers of consolidated promissory notes commenced after the date of these FAQs must comply with the Prospectus Requirements.**

11. The following scenarios further illustrate the application of the Prospectus Requirements.

Scenario 1:

A lending-based crowdfunding platform operator facilitates the raising of funds by having a company issue a promissory note with face value of \$100,000 to 20 lenders, each lending \$5,000. The offer of such a promissory note will be subject to the Prospectus Requirements.

Scenario 2:

A lending-based crowdfunding platform operator facilitates the raising of funds by having a company issue a promissory note with face value of \$200,000 to three lenders, one lending \$100,000 and two lending \$50,000. The offer of such a promissory note will be subject to the Prospectus Requirements.

Scenario 3:

A lending-based crowdfunding platform operator facilitates the raising of funds by having companies issue a promissory note with face value of \$200,000 to two

lenders, each lending \$100,000. The offer of such a promissory note falls within the Promissory Note Exclusion, and is therefore not subject to the Prospectus Requirements.

The examples above are not exhaustive and each case has to be considered based on its own set of facts. Any person who wishes to raise funds through crowdfunding or to establish and operate a crowdfunding platform is encouraged to seek legal advice to ensure that the proposed activities are in compliance with all applicable laws, rules and regulations in Singapore.

MAS issued its consultation response to the consultation paper on securities-based crowdfunding on 8 June 2016. In the response, MAS mentioned that it proposes to remove the Promissory Note Exclusion from the SFA. When will this take effect?

12. The removal of the Promissory Note Exclusion will be effected by legislative amendments to the SFA. MAS anticipates that the relevant amendments will be tabled in Parliament in the second half of 2016. In the meantime, platform operators and entities raising funds through such platforms should take note of the clarification in paragraph 10 above.