

CONSULTATION PAPER

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Policy Consultation on Proposals to Facilitate Better Understanding of Prospectuses

MAS

Monetary Authority of Singapore

PREFACE

MAS is proposing enhancements to the current rules relating to prospectus disclosures for offers of securities. The proposals aim to improve the readability of prospectuses and facilitate better understanding by retail investors of key information presented in the prospectuses. This will empower them to make better informed investment decisions.

2 MAS invites interested parties to forward their views and comments on the issues outlined in the policy consultation paper. Written comments should be submitted to:

Primary Markets Conduct Division
Market Conduct Department
Monetary Authority of Singapore
10 Shenton Way
MAS Building
Singapore 079117

Email: PartXIISFA_SFR_amendments@mas.gov.sg

Fax: (65) 6225 1350

3 MAS would like to request for all comments and feedback to be submitted by **14 November 2013**. Please note that all submissions received may be made public unless confidentiality is specifically requested for the whole or part of the submissions.

TABLE OF CONTENTS

PREFACE	i
TABLE OF CONTENTS	ii
1 INTRODUCTION	1
2 PRODUCT HIGHLIGHTS SHEET	2
2.1 Current requirements	2
2.2 Extension of the requirements	3
2.3 Form and content requirements	4
2.4 Statutory liabilities for PHS	6
2.5 Profile statements	6
3 INCORPORATION BY REFERENCE	8
3.1 Current practice	8
3.2 Practices in other jurisdictions	8
3.3 Proposal to allow incorporation by reference	9

1 INTRODUCTION

1.1 Under the Securities and Futures Act (“SFA”), any offer of securities must be made in or accompanied by a prospectus registered by MAS, unless an exemption applies. The prospectus is required to contain all the information that investors and their advisers would reasonably require to make an informed investment decision. The issuer, its directors and its advisers are subject to statutory liabilities for the disclosures made in the prospectus.

1.2 The current disclosure-based regulatory framework seeks to raise the standard of corporate disclosures and enhance market accountability. However, in recent years, MAS observed that prospectuses have grown in length and are often drafted in a technical, convoluted or legalistic manner. As a result, investors often find prospectuses difficult to read and understand.

1.3 To improve the quality of information disclosed and facilitate better understanding by investors of key information presented in prospectuses, we propose to take the following steps:

- (a) extend the requirements for a product highlights sheet to offers of securities beyond asset-backed securities, structured notes, unlisted collective investment schemes and exchange traded funds;
- (b) allow certain information contained in a separate document outside the prospectus to be incorporated in the prospectus by reference to the separate document; and
- (c) develop a regulatory guide to highlight common drafting problems and encourage good drafting practices for prospectuses.

1.4 The details of the proposals in paragraphs 1.3(a) and 1.3(b) are set out in this paper. We will be issuing a separate consultation paper on the proposed regulatory guide at a later date.

2 PRODUCT HIGHLIGHTS SHEET

2.1 CURRENT REQUIREMENTS

2.1.1 The product highlights sheet (“PHS”) is a simplified disclosure document that highlights the key features and risks of an investment product described in a prospectus in a clear and concise manner. The PHS must be given together with the prospectus to investors before they make their investment decisions. The requirements relating to PHS were introduced following MAS’ review of the regulatory regime governing the sale and marketing of investment products in 2009¹. Currently, a PHS is required for offers of investment products which are more complex in nature (namely, asset-backed securities, structured notes, unlisted collective investment schemes, and exchange-traded funds).

2.1.2 The PHS is subject to a page limit of 4 pages (or 8 pages including diagrams and glossary), and is required to contain key information on the following areas:

- (a) Product Suitability;
- (b) Key Product Features;
- (c) Key Risks;
- (d) Fees and Charges; and
- (e) Contact Information.

2.1.3 For the purposes of statutory liability, the PHS is regarded as a standalone document and not subject to prospectus liabilities under the SFA. The PHS is subject to the following requirements:

- (a) the PHS shall not contain any statement or matter that is false or misleading in the form and context in which it is included;
- (b) the PHS shall not contain any material information that is not contained in the prospectus;

¹ The proposals were introduced in MAS’ consultation papers issued on 12 March 2009 and 28 January 2010.

- (c) the PHS shall not contain any material information that differs in any material particular from that set out in the prospectus;
- (d) the PHS shall not omit any information from any part of the PHS which would result in that part of the PHS being construed as false or misleading; and
- (e) the PHS shall give a fair and balanced view of the nature, material benefits and material risks of the securities offered.

2.2 EXTENSION OF THE REQUIREMENTS

2.2.1 To improve investors' ability to understand the nature and risks of the securities that they are considering investing in and enable investors to make comparisons across different types of securities, MAS proposes to extend the PHS requirements to offers of other securities, namely:

- (a) plain vanilla corporate debentures ("Debt Securities"), for which a prospectus or offer information statement ("OIS") is required to be issued;
- (b) preference shares, perpetual securities and convertible bonds ("Hybrid Instruments"), for which a prospectus or OIS is required to be issued; and
- (c) ordinary shares, units in real estate investment trusts ("REITs") and business trusts ("BTs") (collectively "Equity Securities") for which a prospectus is required to be issued.

2.2.2 An issuer whose shares are listed on the securities exchange and subject to continuous disclosure obligations is exempted from the requirement to issue a prospectus under section 277 of the SFA for secondary offers of securities², if the offer is made in or accompanied by an OIS³.

2.2.3 For secondary offers of Equity Securities, the securities offered (for example, in a rights issue) would be similar to the securities of the issuer which are already listed. As the issuer is subject to continuous disclosure obligations in respect of the listed securities, there is already information in the market on the nature and risks of the securities. Hence, the terms and

² A secondary offer means a subsequent offer of securities made by the issuer after the listing of its shares on the securities exchange.

³ The information required to be disclosed in an OIS is less detailed than in a prospectus.

features of the Equity Securities in the secondary offer would likely be understood by retail investors, particularly the holders of existing listed shares. Hence, we do not propose to require a PHS to be issued for secondary offers of Equity Securities where an OIS is required to be issued. Nonetheless, issuers are encouraged to provide an Equity Securities PHS for secondary offers if they consider it to be useful for investors.

2.2.4 In contrast, for secondary offers of Debt Securities and Hybrid Instruments, investors may not be familiar with the type of securities being offered even if the shares of the issuer are already listed on the securities exchange. Hence, we consider that it would be helpful for the PHS to be provided together with the OIS to investors so that the key features of the securities would be highlighted for investors. Further, the PHS can enable the investors to compare the offer of these securities with other financial products.

2.3 FORM AND CONTENT REQUIREMENTS

2.3.1 Debt Securities – To aid investors’ decision making and comparison with other financial products, we propose to adopt the current form and content requirements of the PHS for the Debt Securities PHS with relevant modifications to the headings to reflect the features of the Debt Securities. A similar page limit will be imposed for the Debt Securities PHS. The proposed headings of the Debt Securities PHS will comprise the following:

- (a) Investment Suitability;
- (b) Key Features;
- (c) Key Risks;
- (d) Definitions; and
- (e) Contact Information.

2.3.2 Hybrid Instruments and Equity Securities – We recognise that unlike Debt Securities, the returns to investors in Equity Securities and Hybrid Instruments could depend on the performance of the issuer’s business. Hence, investors in Equity Securities and Hybrid Instruments could require a wider array of information (such as more detailed information on the issuer’s business, financial performance, business prospects, future plans,

background of directors and controlling shareholders). Furthermore, Hybrid Instruments may be subject to unique features which issuers would need to elaborate more extensively to investors.

2.3.3 Taking into consideration the above factors, we propose to modify the PHS form and content requirements for Equity Securities and Hybrid Instruments, as follows:

- (a) a longer page limit of 8 pages (or 12 pages including diagrams and glossary) shall apply;
- (b) for Hybrid Instruments, in addition to information contained in the Debt Securities PHS, the Hybrid Instruments PHS shall contain the following additional information:
 - (i) Key Features of the Securities; and
 - (ii) Business Strategies and Future Plans of issuer;
- (c) for Equity Securities, instead of the headings used in the current PHS format, the Equity Securities PHS shall adopt a “Question and Answer” format under the following standardised headings:
 - (i) Who are we and what do we do?
 - (ii) Who are our key management personnel?
 - (iii) Who are our controlling shareholder(s)?
 - (iv) How was our historical financial performance and what is our current financial position?
 - (v) What are our business strategies and future plans?
 - (vi) What are the key trends affecting our business and prospects?
 - (vii) What are the key risks which may materially affect us and your investment in our securities?

- (viii) What are the rights attached to the securities offered?
- (ix) How will the proceeds of the offer be used?
- (x) Will we be paying distributions after the offer?
- (xi) Who can you contact if you have enquiries relating to our offer?

2.3.4 A summary of the form and content requirements proposed for the Debt Securities PHS, Hybrid Instruments PHS and Equity Securities PHS is set out in [Annex A](#). The three different templates are also set out in [Annex B](#), [Annex C](#) and [Annex D](#), respectively.

2.4 STATUTORY LIABILITIES FOR PHS

2.4.1 Similar to the current PHS, the PHS for Debt Securities, Hybrid Instruments and Equity Securities are intended to help retail investors understand the key features of the securities offered to them and where to look for further details of important information in the prospectus. To ensure that investors are able to make informed investment decisions, the PHS must be given to investors together with the prospectus. The PHS is not intended to replace the prospectus. As such, we propose to apply the same obligations and statutory liabilities set out in paragraph 2.1.3 above for the current PHS to a PHS for Debt Securities, Hybrid Instruments and Equity Securities.

2.5 PROFILE STATEMENTS

2.5.1 Section 240(4) of the SFA allows issuers to distribute an abridged version of a prospectus (“profile statement”) instead of the full prospectus subject to certain conditions. While the PHS is in some ways similar to the profile statement, we are not proposing to remove the requirements relating to the profile statement in the SFA. This is because unlike the PHS, the profile statement can be distributed separately without the prospectus. We consider that retaining the provisions relating to the profile statement would provide issuers with more flexibility to provide investors with an abridged offer document. As a profile statement is already an extract from, or abridged version of the prospectus, we do not propose to require a PHS to be given to investors where a profile statement is distributed.

MAS seeks views on the following:

1. the proposal to require issuers to prepare a PHS to accompany all offers of Debt Securities, Hybrid Instruments and Equity Securities where the offer requires a prospectus to be issued.
2. the proposal to require issuers to prepare a PHS to accompany all offers of Debt Securities and Hybrid Securities where the offer requires an OIS to be issued.
3. the proposal not to require issuers to prepare a PHS for offers of Equity Securities where the offer requires an OIS to be issued.
4. the proposed form and content of the Debt Securities PHS, the Hybrid Instruments PHS and the Equity Securities PHS set out in section 2.3.
5. the proposal to apply the same statutory liabilities and requirements set out in paragraph 2.1.3 for the current PHS to the Debt Securities PHS, Hybrid Instruments PHS and Equity Securities PHS.
6. any other suggestions on how the Debt Securities PHS, Hybrid Instruments PHS and Equity Securities PHS can be made more readable and useful for investors.
7. the proposed information (including additional information) that should be disclosed in the Debt Securities PHS, the Hybrid Instruments PHS and the Equity Securities PHS.

3 INCORPORATION BY REFERENCE

3.1 CURRENT PRACTICE

3.1.1 Section 239(2) of the SFA deems information stated in a report or memorandum that is referenced to the prospectus to be part of the prospectus and such information would be subject to prospectus liabilities. The SFA does not expressly permit information not contained in the prospectus to be incorporated in the prospectus by reference.

3.1.2 With the growing thickness of prospectuses, investors may be discouraged from reading the prospectus. MAS observed that in recent prospectuses, the appendices (which normally include the audit reports, valuation reports and industry overview reports) could form a significant part of the prospectuses. Investors may not require such detailed information in their decision making where there are already sufficient disclosures or summary of the information in the main part of the prospectus. Hence, we consider that allowing certain information to be incorporated by reference may help issuers to shorten the length of the prospectus that is provided to investors, while enabling investors to receive fair notice of the information that is important to them.

3.2 PRACTICES IN OTHER JURISDICTIONS

3.2.1 Incorporation by reference is allowed in some other jurisdictions. In Australia, information may be incorporated by reference for an offer so long as the information is lodged with the Australian Securities & Investments Commission (“ASIC”), and the information is identified and described in the prospectus⁴. Where information is primarily of interest to professional analysts or advisers or investors with similar specialist information needs, a statement must be included to that effect. Otherwise, sufficient information must be provided to allow an investor to decide whether to obtain a copy of the incorporated document. While there is no specific requirement on the type of information which may be incorporated by reference, ASIC recommends incorporation of information which is considered to be relevant but not key to an investor’s assessment of an offer of securities⁵.

⁴ Section 712 of the Corporations Act.

⁵ RG 228.35 of Regulatory Guide 228 Prospectuses: Effective disclosure for retail investors.

3.2.2 In the United Kingdom, in line with the European Union Prospectus Directive, issuers may only incorporate information in a prospectus by reference to one or more previously or simultaneously published documents if such documents have been approved by, filed with, or notified to the Financial Conduct Authority⁶. Information that may be incorporated by reference includes, for example, annual accounts or financial reports, and interim management statements. In Hong Kong, incorporation by reference is currently not permitted.

3.3 PROPOSAL TO ALLOW INCORPORATION BY REFERENCE

3.3.1 While incorporation by reference can help shorten prospectuses, we are of the view that the type of information that is incorporated by reference should be limited to information which is less relevant to investors' decision making, or where there is sufficient disclosure in the main part of the prospectus. Secondly, information that is incorporated should not be complex or difficult to understand. Thirdly, information which is incorporated by reference should be easily accessible to investors.

3.3.2 To address these concerns, we propose to allow incorporation by reference only if the following conditions are complied with:

- (a) information that may be incorporated by reference is limited to the following:
 - (i) the audit report in respect of historical financial information which is presented in the prospectus;
 - (ii) list of directorships held by directors of the issuer in other corporations in the last 5 years; and
 - (iii) valuation reports and industry overview reports which are prepared by experts who have given their consent pursuant to section 249 of the SFA;
- (b) any information that is required to be disclosed in a PHS shall not be incorporated by reference;

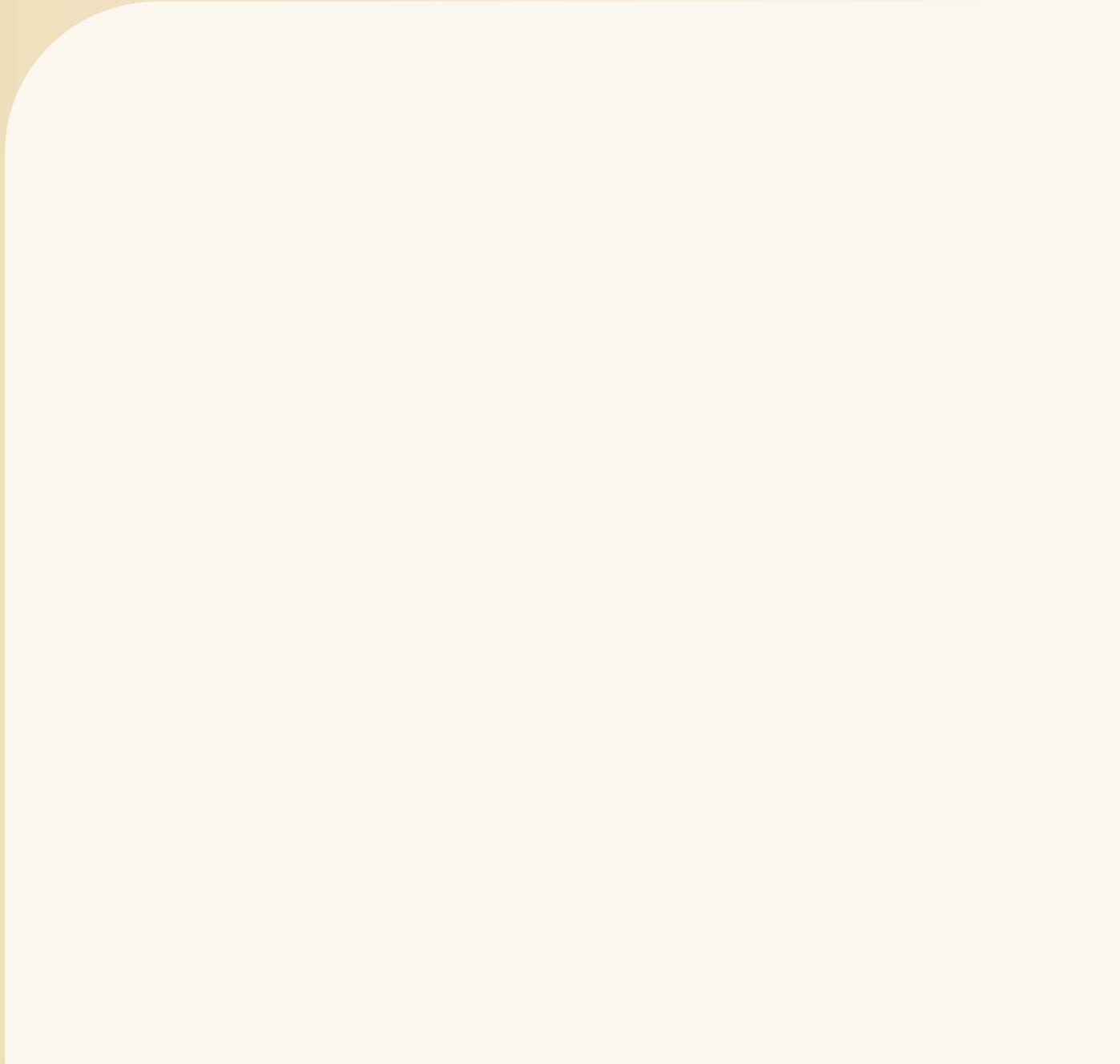
⁶ Rule 2.4 of the Prospectus Rules made by the Financial Conduct Authority.

- (c) the prospectus contains sufficient information about the incorporated information (including a statement as to whether it is information which is primarily of interest to professional analysts, advisers or investors) to allow an investor to decide whether to obtain a copy of the incorporated information;
- (d) the prospectus contains a statement that the issuer will provide a copy of the incorporated information free of charge upon request; and
- (d) the information which is incorporated by reference is contained in a document lodged on OPERA (i.e. the full prospectus is lodged).

3.3.3 The information which is incorporated by reference would be regarded as part of the prospectus and would be subject to prospectus liabilities.

MAS seeks views on the following:

- 8. the proposal to allow incorporation by reference.
- 9. the proposed safeguards set out in paragraph 3.3.2.
- 10. whether it is appropriate for the information set out in paragraph 3.3.2(a) to be incorporated by reference.
- 11. any additional information that may be appropriate for incorporation by reference.



Monetary Authority of Singapore