

CONSULTATION PAPER

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Public Consultation on Guidelines on Good Drafting Practices for Prospectuses

MAS

Monetary Authority of Singapore

PREFACE

On 14 October 2013, the Monetary Authority of Singapore (“MAS”) issued a consultation paper on proposals to improve the readability of prospectuses and facilitate retail investors’ understanding of key information disclosed in prospectuses (the “October 2013 Consultation Paper”). MAS also announced plans to develop a regulatory guide to highlight common drafting problems and encourage good drafting practices for prospectuses.

2 MAS invites comments on the proposed guidelines on good drafting practices for prospectuses. Written comments should be submitted to:

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3 MAS requests for all comments and feedback to be submitted by 13 March 2015. Please note that all submissions received may be made public unless confidentiality is specifically requested for the whole or part of the submissions.

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1 INTRODUCTION

1.1 In recent years, MAS has observed that prospectuses have grown in length and are often drafted in a technical, convoluted or legalistic manner. As a result, even though prospectuses may contain comprehensive disclosures, investors often find them difficult to read and understand. In order to improve the quality of the information disclosed in and facilitate investors' understanding of key information disclosed in prospectuses, we had proposed in the October 2013 Consultation Paper to:

- (a) extend the requirements for a product highlights sheet ("PHS") 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, subject to certain safeguards; and
- (c) develop a regulatory guide to highlight common drafting problems and set out general principles on drafting of prospectuses.

1.2 The October 2013 Consultation Paper invited public comments on the proposals set out in paragraphs 1.1(a) and 1.1(b). This consultation paper sets out the details of the proposed regulatory guide in paragraph 1.1(c) (referred to as the "Guidelines").

2 GUIDELINES ON GOOD DRAFTING PRACTICES FOR PROSPECTUSES

- 2.1 The Guidelines aim to provide guidance:
- (a) to issuers and their professional advisers by highlighting common drafting problems and good drafting practices for preparing prospectuses;
 - (b) to improve the readability of prospectuses; and
 - (c) to facilitate investors' understanding of key information disclosed in prospectuses.
- 2.2 MAS seeks views and comments on the proposed Guidelines set out in Annex A below.

ANNEX A – GUIDELINES ON GOOD DRAFTING PRACTICES FOR PROSPECTUSES

1 PURPOSE OF THESE GUIDELINES

- 1.1 These Guidelines are issued pursuant to section 321 of the Securities and Futures Act (Cap. 289) (“SFA”). These Guidelines aim to provide guidance to issuers and their professional advisers on good drafting practices for prospectuses.
- 1.2 Under the SFA, a prospectus is required to contain all the information that investors and their advisers would reasonably require to make an informed investment decision. To improve the readability of prospectuses and facilitate investors’ understanding of the key information disclosed in prospectuses, issuers and their professional advisers are encouraged to adopt the general principles and drafting practices set out in these Guidelines.
- 1.3 These Guidelines should be read in conjunction with Part XIII of the SFA, the Securities and Futures (Offers of Investments) (Shares and Debentures) Regulations 2005, the Securities and Futures (Offers of Investments) (Business Trusts) (No. 2) Regulations 2005, the Securities and Futures (Offers of Investments) (Collective Investment Schemes) Regulations 2005, as well as other regulations, written directions, notices, codes and other guidelines that MAS may issue from time to time. These Guidelines would also be relevant in the preparation of other disclosure documents, such as offer information statements.
- 1.4 The general principles and drafting practices set out in these Guidelines (including examples for illustrative purposes) are not exhaustive. Issuers and their professional advisers will need to consider how these Guidelines can be appropriately applied to their respective individual circumstances.

2 COMMON DRAFTING ISSUES IN PROSPECTUSES

- 2.1 In recent years, MAS has observed that prospectuses have grown in length and complexity, and investors often have difficulty understanding these prospectuses. Common drafting issues which we have observed from the prospectuses we reviewed are as follows:
- (a) long, wordy and repetitive disclosures;
 - (b) unnecessary, irrelevant or immaterial details;
 - (c) material information concealed by the use of legal, financial or technical business jargons;
 - (d) vague boilerplate disclosures which may not be meaningful to investors;
 - (e) convoluted descriptions or explanations; and
 - (f) terms and conditions of contracts or agreements which are lengthy and difficult to understand, or reproduced in their entirety.
- 2.2 In order to aid investors' understanding of disclosures in prospectuses so that they may make informed investment decisions, key information disclosed in prospectuses should be presented in plain English and in a clear, comprehensive and well-organised manner. Legal, financial or technical business jargon which may not be easily understood by lay persons should be avoided.
- 2.3 When drafting a prospectus, you should:
- (a) use plain English;
 - (b) present information in a clear, concise and logical manner; and
 - (c) avoid unnecessarily lengthy sentence structures.

These general principles are elaborated in paragraph 3 below.

3 DRAFTING PRINCIPLES AND PRACTICES

3.1 You should adopt the following general principles in the drafting of prospectuses:

(A) USE PLAIN ENGLISH

3.2 The use of plain English is the setting out of information in a clear, concise and effective manner so that investors would be able to understand the information at their first reading. Using plain, everyday English makes prospectuses easier to understand and encourages investors to read prospectuses. You should always draft prospectuses with retail investors in mind as they are the audience with the greatest need for the information required to be disclosed in a prospectus. Prospectuses drafted in plain English are likely to help all investors to make informed investment decisions.

3.3 We have set out some general practices on the use of plain English below:

(i) Use the active voice

3.4 It is generally easier to understand the active voice as it is engaging and easier to read. The active voice generally uses fewer words and permits the use of strong verbs that highlight who the action-taker is. While the passive voice may be preferred on occasion, it should be used sparingly as it may add length to sentences and obscure the identity of the action-taker.

Examples:

Passive Voice	Active Voice
Fees are paid on an annual basis.	We pay fees on an annual basis.
No inferences should be made from any of the foregoing statements to determine future profitability.	You should not make any inference from any of our foregoing statements in determining our future profitability.

(ii) Avoid using hidden verbs

3.5 Hidden verbs are verbs that have been nominalised into nouns. A noun derived from a verb often ends with a –sion, –ing, –tion, –ment or –isation. Identifying hidden verbs and changing them to strong verbs make sentence structures more direct and simpler to read.

Examples:

Hidden Verb	Active Verb
We <u>made a decision</u> to invest for the long term.	We <u>decided</u> to invest for the long term.
An <u>offering of</u> securities will be made to the public.	We will <u>offer</u> securities to the public.

(iii) Use personal pronouns (direct language)

3.6 Personal pronouns clearly set out what would apply to investors. Personal pronouns create an engaging tone that allows you to speak directly to investors and may shorten the length of your sentences.

3.7 Using personal pronouns also allows you to avoid gender-specific language that is used in third-person pronouns. When using personal pronouns, the issuer is referred to in first-person plural as “we”, “us”, and “our”, while the investor is referred to in second-person singular as “you” and “your”. When using personal pronouns, you should explain clearly who the personal pronouns refer to and use the personal pronouns consistently in the prospectus to avoid creating confusion for investors.

Examples:

Third-person Pronouns	Personal Pronouns
Investors should note that the price of the Company’s securities may fall and that they may lose all or part of their original investment.	You should note that the price of our securities may fall and that you may lose all or part of your original investment.

Before deciding to invest in the securities, investors should seek professional advice from the relevant advisers about their particular circumstances.	You should seek professional advice from relevant advisers about your particular circumstances before deciding to invest in our securities.
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(iv) Use plain, everyday words

3.8 It is always easier to read plain, everyday words that are commonly understood. You should avoid using complex, abstract or formal words whenever there are simpler and clearer alternatives.

Examples:

Before	After
Despatch	Send
Terminate	End
Thereafter	Then
Utilise	Use
Whilst	While
Due to the fact that	Because / Since
In the event that	If

(v) Avoid the use of legal, financial or technical business jargons

3.9 Whenever possible, you should always use plain, everyday words to get your point across to investors. However, if you must use legal, financial or technical business jargons in your disclosure, you should explain the meaning of these terms clearly when you first use them and

consider putting these terms in a glossary for ease of reference. Your explanation for such terms should be clear and simple so that retail investors would be able to understand your explanation.

Examples:

Before	After
Any new shares allotted and issued by our Company pursuant to the Performance Share Plan shall in all respects rank <i>pari passu</i> with other existing shares then in issue.	Any new shares which we allot and issue under the Performance Share Plan shall carry equal rights to payment as other existing shares which have been issued.
The company has entered into a revolving credit facility of S\$10 million with XYZ bank that is secured by a first priority lien on all assets under the company.	We have obtained a credit line from XYZ bank that allows us to borrow up to S\$10 million. Our liabilities for the extended credit line are backed by all of our assets and XYZ bank will have priority over other creditors to our assets.

(vi) Use short sentences

3.10 You should always use short, straightforward sentences which investors are able to read and understand easily. You should avoid using superfluous words that add unnecessary length and complexity to a sentence. If you are conveying complex information to investors and find it difficult to present such information in short, straightforward sentences, you may consider presenting the information in tabulated form. You should always ensure that long sentences are well structured so as to reduce the likelihood of confusion to investors.

Examples:

Before	After
<p>The issuance of the Employee Option Plan Shares and/or the Performance Rights Plan Shares pursuant to the vesting of awards which may be granted and/or the exercise of options which have been granted under the Performance Rights Plan and Employee Option Plans respectively, the Call Option Shares, as well as the issuance of the Shares pursuant to the conversion of the Convertible Notes would have a further dilutive effect on new investors in the Offering.</p>	<p>Your shareholding in the Company may be diluted if any of following events occurs:</p> <ul style="list-style-type: none"> (a) the issuance of Employee Option Plan Shares or Performance Rights Plan Shares, or both, due to – <ul style="list-style-type: none"> (i) the vesting of awards which may be granted; (ii) the exercise of options granted under the Performance Rights Plan or Employee Option Plans, as the case may be; or (iii) the exercise of the Call Option Shares; or (b) the issuance of Shares due to the conversion of the Convertible Notes.
<p>The Sponsor has provided the Managers with an undertaking that it shall waive its entitlement to the Sponsor Distribution, being S\$5 million of distributions for the Forecast Year.</p>	<p>The Sponsor has agreed to waive its entitlement to the Sponsor Distribution, which is S\$5 million of distributions for the Forecast Year.</p>

(vii) Write in the positive and avoid the use of multiple negatives

3.11 Positive sentences are generally shorter and easier to understand than negative sentences. You should avoid using negative sentences where possible as they are less intuitive and create an additional mental step for investors before they can understand the sentence. In particular, avoid using multiple negatives in sentences as they can be confusing to investors.

Examples:

Negative Statement	Positive Statement
We may not be able to meet all of our debt obligations through our cash flow.	We may be unable to meet all of our debt obligations through our cash flow.
We will not accept applications from any person who has not attained the age of 21 years.	We will reject applications from any persons under the age of 21 years.

(viii) Avoid using defined terms excessively

3.12 You should use defined terms in moderation to avoid overwhelming investors with new vocabulary. Defined terms should be short, specific, and intuitive to make reading easier. Avoid defining commonly understood terms, as well as using terms in a manner inconsistent with terms generally used by the industry. In addition, you should limit using definitions that refer to other definitions.

Examples:

Before	After
The Directors of the Company made the Announcement on 1 January 2014 that the Sale and Purchase Agreement had been entered into between the Company and the Vendor, to	On 1 January 2014, the Company entered into an agreement with the Vendor to purchase ABC property for S\$10 million. Under the terms of the agreement, the payment

<p>purchase the Property for the amount of S\$10 million (the “Consideration Amount”). Under the terms of the Sale and Purchase Agreement, the Consideration Amount will be satisfied with the issuance of 10 million new ordinary shares in the share capital of the Company (the “Consideration Shares”) at a price of S\$1.00 per Consideration Share.</p>	<p>for ABC property will be satisfied with the issuance of 10 million new ordinary shares of the Company at a price of S\$1.00 per share.</p>
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(ix) Avoid the use of vague boilerplate disclosures

3.13 You should avoid using boilerplate disclosures which are vague as such boilerplate disclosures may be subject to different interpretations by issuers and investors, and may not be meaningful to investors. You should always assess the relevance of such boilerplate disclosures in the context of the offer and customise the boilerplate disclosures to each particular offer.

(x) Avoid “cutting and pasting” contractual terms in its entirety from legal documents

3.14 Lengthy contractual terms and legalese are difficult to read and understand. Instead, you should summarise the key points of the legal documents clearly and concisely in plain English to facilitate easier understanding of the prospectus by investors.

(B) PRESENT INFORMATION IN A CLEAR, CONCISE AND LOGICAL MANNER

3.15 Clear, concise and logical presentation enhances the effectiveness of plain English, allowing investors to navigate and grasp information disclosed in the prospectus more quickly and easily. Where there are novel or unusual issues, you should highlight the issue prominently in the prospectus and discuss the implications it has or may have on the business of the issuer or investors. Some good practices are as set out below.

Examples:

Practices	Rationale
Use tables, graphs, charts, diagrams, and other visuals	Information presented in visuals, such as tables and charts, are generally easier to read and understand. Visuals also reduce the text necessary to convey the same information. Visuals used should be simple, clearly labelled, accurate and drawn to scale to facilitate fair comparisons.
Use bullet points	Bullet points convey a long list of information more efficiently and clearly than information set out in blocks of extended narrative paragraphs.
Use examples	Examples can illustrate complicated information or concepts, making information easier to understand.
Use an effective layout	An effective layout improves the flow and readability of information. You should format the layout of the prospectus (including the spacing and margin widths between paragraphs and sentences) so that

	<p>the content in the prospectus appear less cluttered. The following formatting tools may also be used to help distinguish and emphasise important information:</p> <ul style="list-style-type: none"> • Font and font size • Underline, bold and italics • Borders and shading • Colour
<p>Use descriptive headings and sub-headings</p>	<p>Use meaningful headings and sub-headings to clearly organise information into sections, manage the flow of information and highlight key information.</p>
<p>Present information in a logical order</p>	<p>Organise information so that related information is presented together in a logical sequence, with the most important information presented first. Investors will then be able to easily navigate through the information. For example, the most significant risk factors should be disclosed at the start of the risk factors section.</p>
<p>Present information in a balanced manner</p>	<p>Give equal consideration to both positive and negative information so as to convey a realistic, fair and balanced view to investors. For example, the overview or summary section should not only highlight the positive aspects of an issuer or its business, but also the potential risks and unfavourable facts.</p>

(C) KEEP THE LENGTH OF THE PROSPECTUS AS SHORT AS NECESSARILY POSSIBLE

3.16 Prospectuses which are shorter in length are generally easier to read all the way through. Set out below are some recommended practices to reduce the length of a prospectus.

Practices	Rationale
Remove redundant information	Avoid including information that adds length without enhancing the quality of information disclosed. Only include information that helps investors to make an informed investment decision and limit repeating the same information in different sections of the prospectus. You should use cross-references where appropriate to avoid repeating statements.
Use cross-references	Cross-referencing to information contained elsewhere in the prospectus may reduce repetition and link related information which is not presented together. Page numbers should also be included to help investors find relevant information. However, you should not use cross-references to avoid summarising main points and you should limit excessive cross-references which would disrupt the readability of the information.



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