Monetary Authority of Singapore

RESPONSE TO FEEDBACK RECEIVED – DRAFT LEGISLATION TO EFFECT THE POLICY PROPOSALS TO FACILITATE BOND OFFERINGS TO RETAIL INVESTORS

1 INTRODUCTION

1.1 On 1 September 2014, MAS issued a consultation paper proposing changes to the regulatory regime for bond offerings to facilitate greater access by retail investors to bonds. The consultation closed on 30 September 2014.

1.2 MAS published its response to the feedback on 23 December 2014 (the "**Response Paper**"). On the same day, MAS released a consultation paper seeking feedback on the draft legislation to provide:

(a) prospectus exemption for eligible issuers that conduct a re-tap under SGX's proposed bond seasoning framework (the "**Seasoning Framework**"); and

(b) prospectus exemption for issuers that satisfy stricter eligibility criteria than those under the Seasoning Framework to offer bonds directly to retail investors at the start of an offer without a prospectus (the "**Exempt Bond Issuer Framework**").

1.3 The consultation period for the draft legislation closed on 23 January 2015. MAS would like to thank all respondents for their feedback and contributions. The list of respondents is in Appendix A. MAS has carefully considered the feedback received and where it agreed with the comments, incorporated them into the regulations. MAS has on 19 May 2016 issued the regulations, which can be accessed at the following links:

- Securities and Futures (Offers of Investments) (Exemption for Offers of Straight Debentures) Regulations 2016
- Securities and Futures (Offers of Investments) (Exemption for Offers of Post-seasoning Debentures) Regulations 2016

1.4 Comments that are of wider interest, together with MAS' responses, are set out below.

2 SCOPE OF BONDS

2.1 As mentioned in the Response Paper, we do not intend to restrict issuers who make offers under the Seasoning Framework and the Exempt Bond Issuer Framework from including an early redemption feature for taxation reasons[1], if they become obliged to pay additional taxes due to changes in law or the application or interpretation of law.

2.2 We received suggestions to also allow early redemption where:

(a) bondholders may redeem the bonds early if there is a change of control event[2] in the issuer or the guarantor entity;

(b) bondholders may redeem the bonds early if there is a change in listing or trading status[3] of the issuer or the guarantor entity; and

(c) the issuer may redeem the bonds early by paying bondholders the higher of:

(i) the present value of all remaining payments (i.e. coupons and principal amount) which bondholders would otherwise have received had the bond been held to maturity; or

(ii) the principal at par (the "**Make Whole redemption**").

MAS' Response

2.3 We accept the 3 proposed early redemption features. An early redemption due to a change of control and change in listing or trading status of the issuer provides bondholders with the opportunity to redeem the bonds in situations which may not be favourable to them. Hence, we will allow issuers to provide such early redemption features which are exercisable at the option of bondholders.

2.4 Under the Make Whole redemption, issuers have the discretion to exercise the option to redeem the bonds early without a triggering event. We are prepared to allow this provision as bondholders will be entitled to the higher of the present value of all the remaining payments or the principal at par if the option is exercised by the issuer.

3 ELIGIBILITY CRITERIA UNDER THE SEASONING FRAMEWORK AND THE EXEMPT BOND ISSUER FRAMEWORK

3.1 The eligibility criteria for entities that issue bonds under the Seasoning Framework and the Exempt Bond Issuer Framework comprise a Size Test, Listing Test and Credit Test. Where the bonds are a guaranteed issue, either the issuer or the guarantor entity must on its own satisfy each of the Size

[1] This feature enables issuers to redeem the bonds at par before the maturity of the bonds.

[2] This can occur where there is a change in the controlling shareholder of the issuer or guarantor entity.

[3] This occurs where the issuer or guarantor entity is delisted or the trading of its shares is suspended.

Test, Listing Test and Credit Test[4]. Please refer to Appendix B for the eligibility criteria.

Listing Test

3.2 Under the Listing Test, the issuer or guarantor entity must have either (i) equity securities listed on SGX or a recognised securities exchange for at least 5 years; or (ii) have listed, or guaranteed the issuance of, bonds listed on SGX for at least 5 years.

3.3 One respondent sought clarification on whether (i) the listing of bonds by the issuer or the guarantor entity has to be continuous over the 5 year period; and (ii) the same series of bonds have to be continuously listed over the 5-year period.

3.4 Some respondents also suggested that the draft legislation be amended to allow listed bonds which are either issued or guaranteed by (i) the issuer or (ii) the guarantor entity to fulfil the Listing Test.

MAS' Response

3.5 The Listing Test can be satisfied if the issuer or the guarantor entity, as the case may be, has multiple bonds that have in combination been listed for a minimum of 5 years, without any gaps over the period. For instance, an issuer who issued multiple bonds over a 5-year period will satisfy the Listing Test even if the individual bonds may not have been listed for 5 years. The bonds need not be of the same series.

3.6 As mentioned in paragraph 3.1 above, in the case of a guaranteed bond issue, the eligibility criteria must be satisfied by the same entity, whether it is the issuer or the guarantor entity. We accept the suggestion to allow the use of listed bonds issued or guaranteed[5] by either (i) the issuer or (ii) the guarantor entity, but not in combination, to fulfil the Listing Test.

3.7 The table below sets out how the Listing Test may be satisfied in a non-guaranteed and guaranteed issuance.

	Bonds being offered are:	The Listing Test may be satisfied by:
(a)	Issued without a guarantor	Bonds previously issued or guaranteed *by the issuer.* Condition: the previous guaranteed issuances

[4] An issuer which is relying on a guarantor to satisfy the eligibility criteria must be a wholly-owned entity of the guarantor.

[5] Bonds guaranteed must be issued by wholly-owned entities of either (i) the issuer or (ii) the guarantor entity.

		are in respect of wholly-owned entities of the issuer.
(b)	A guaranteed issuance	Bonds previously issued or guaranteed by either (i) *the issuer* or (ii) the *guarantor entity*, but not in combination. Condition: the previous guaranteed issuances are in respect of wholly-owned entities of the issuer or guarantor entity, as the case may be.

Credit Test

(A) Credit ratings criteria

3.8 Credit rating is one of the three avenues through which an issuer can satisfy the Credit Test. Under the Seasoning Framework, the issuer or the bonds to be offered must have a credit rating of BBB or higher to satisfy the Credit Test. Under the Exempt Bond Issuer Framework, such credit rating has to be AA- or higher.

3.9 One respondent sought clarification on whether an issuer that has two or more credit ratings can rely on any of the credit ratings to meet the Credit Test.

MAS' Response

3.10 The issuer can rely on any of the credit ratings that is current at the time of the offer of bonds to satisfy the Credit Test. However, the issuer should disclose all its credit ratings.

(B) Bonds issuance history criteria

3.11 The bonds issuance track record of the issuer is another alternative to satisfy the Credit Test. Under the Seasoning Framework, the issuer must have issued, or guaranteed the issuance of, bonds listed on SGX of at least S$500 million (or its equivalent foreign currency) over the previous 5 years. For the Exempt Bond Issuer Framework, the minimum amount is S$1 billion (or its equivalent foreign currency) over the previous 5 years.

3.12 Some respondents enquired whether in the case of a guaranteed bond issue, the bond issuance history criteria may be satisfied by aggregating:

(i) bonds issued or guaranteed by the issuer;

(ii) bonds issued by the guarantor entity; and

(iii) bonds issued by wholly-owned entities of the guarantor entity, which are guaranteed by the guarantor entity.

3.13 A respondent suggested an additional requirement for there to be no default in the bonds (which are issued or guaranteed by the entity or guarantor entity) used to satisfy the bonds issuance history criteria.

MAS' Response

3.14 In the case of a guaranteed bond issue, the considerations in paragraphs 3.1 and 3.6 and 3.7 that apply to the Listing Test would similarly apply in determining if the issuance history test is satisfied. Bonds issued or guaranteed by either (i) the issuer or (ii) the guarantor entity, but not both, may be aggregated to fulfil the issuance history test. This is illustrated below.

	Bonds being offered are:	The bonds issuance history criteria may be satisfied by:
(a)	Issued without a guarantor	Bonds previously issued or guaranteed *by the issuer.* Condition: the previous guaranteed issuances are in respect of wholly-owned entities of the issuer.
(b)	A guaranteed issuance	Bonds previously issued or guaranteed by either (i) *the issuer* or (ii) the *guarantor entity*, but not in combination. Condition: the previous guaranteed issuances are in respect of wholly-owned entities of the issuer or guarantor entity, as the case may be.

3.15 We agree that there should be no default in the bonds used to satisfy the bonds issuance history criteria and have included this additional requirement in the legislation.

4 CONDITIONS UNDER THE SEASONING FRAMEWORK AND THE EXEMPT BOND ISSUER FRAMEWORK

Minimum 20% subscription by accredited investors[6] and institutional investors ("AIs/IIs") under the Exempt Bond Issuer Framework

Re-tap based on 50% of the size of the initial offer of bonds under the Seasoning Framework

4.1 As a safeguard for retail investors, MAS proposed various conditions to be imposed on eligible issuers relying on prospectus exemptions to offer bonds under the Frameworks. These conditions are set out in Appendix C.

4.2 One of the conditions under the Exempt Bond Issuer Framework is for the amount of bonds issued to AIs/IIs to be at least 20% of the aggregate issuance size. Under the Seasoning Framework, the aggregate amount of

[6] Accredited investors refer to all relevant persons as defined in section 275 of the SFA.

bonds offered to retail investors under the re-tap cannot exceed 50% of the amount of bonds initially acquired by AIs, IIs or by investors in large denominations of at least S$200,000 (collectively "**Specified Investors**") under the initial offer of bonds.

4.3 A respondent sought clarification on whether the bonds subscribed by the managers of the bond issue are included in the 20% minimum threshold under the Exempt Bond Issuer Framework and the calculation of the 50% re-tap under the Seasoning Framework.

<u>MAS' Response</u>

4.4 As stated in the Response Paper, the minimum 20% subscription by AIs/IIs under the Exempt Bond Issuer Framework is intended to demonstrate confidence in the issuer and the bonds offered, and to ensure pricing discipline by issuers. The 50% limit on the re-tap offer under the Seasoning Framework addresses the risk of issuers offering a small amount of bonds to Specified Investors followed by a larger amount to retail investors. Accordingly, the calculation of the 20% threshold and 50% re-tap should not include holdings of the issue managers, underwriters and arrangers involved in the offering.

5 CONTENT AND FORM OF OFFER DOCUMENTS

Disclosure of credit ratings in the Simplified Disclosure Document ("SDD") and Product Highlights Sheet ("PHS")

5.1 One of the conditions to the prospectus exemption under the Seasoning Framework is the provision of a PHS when the issuer conducts a re-tap. In the case of the Exempt Bond Issuer Framework, a SDD and PHS are required to be provided at the time the offer is made.

5.2 We have received feedback that it may be difficult for the issuer to comply with the proposed requirement for the issuer to disclose details of the current licensing status of the credit rating agency in the SDD as the issuer may not have access to such information.

5.3 Some respondents also pointed out that at the time of the offer, issuers may only have provisional or expected credit ratings as the final credit ratings can be issued only after the issuance of the bonds. As such, it was suggested that the requirement for disclosure of credit ratings in the SDD and PHS should take this into account.

5.4 A respondent sought clarification on whether the disclosures relating to credit ratings in the SDD are applicable to an issuer who did not satisfy the Credit Test through the credit rating criteria, but had a credit rating.

<u>MAS' Response</u>

5.5 The objective of requiring the provision of information on the licensing status of the credit rating agencies is to enable investors to be better informed about the credit rating agency. Nevertheless, we recognise that where the credit rating agency is located in a foreign jurisdiction, issuers may have difficulty verifying the licensing status of a credit rating agency. Having considered the feedback, we have decided to remove the requirement for issuers to disclose the licensing status of the credit agency as a condition under the Exempt Bond Issuer Framework.

5.6 We have amended the disclosure requirements to provide for disclosure of provisional or expected ratings in the SDD and PHS, if a final rating has not been issued. However, the issuer must announce the final rating on SGXNET when it is available.

5.7 The disclosure requirements relating to credit ratings apply to all issuers with a credit rating. This is the case even if the issuer does not seek to satisfy the Credit Test through the credit rating criteria.

Disclosure on the percentage and denomination of bonds offered to different classes of investors

5.8 A respondent suggested that the percentage and denomination of bonds offered to different classes of investors (retail and non-retail) be required to be disclosed in the PHS.

MAS' Response

5.9 We agree that the percentage of bonds offered to different classes of investors (retail and non-retail) is relevant information when an issuer makes an offer under the Exempt Bond Issuers Framework or conducts a re-tap under the Seasoning Framework. We have required this to be disclosed in the PHS. There should be no difference in the denomination of bonds made available to investors, whether retail or otherwise, under the Exempt Bond Issuer Framework and Seasoning Framework. This should similarly be disclosed in the PHS[7].

Pricing terms for purposes of book building

5.10 Respondents suggested that for the purposes of book building, allowance be made for indicative pricing terms to be included in the SDD and PHS and subject to finalisation in a final offer document or be announced via SGXNET.

MAS' Response

5.11 The PHS and SDD (in the case of the Exempt Bond Issuer Framework) disseminated at the time of the public offer to retail investors should incorporate the final pricing terms. However, we will allow issuers to

[7] It should also be disclosed in the SDD in the case of the Exempt Bond Issuer Framework.

disseminate preliminary documents[8] (which may have indicative pricing or with pricing terms left blank) to AIs/IIs for book-building purposes before the public offer is made.

SDDs issued for debenture issuance programmes

5.12 In the case of a debenture issuance programme, a SDD consists of the base SDD and the pricing supplement. The base SDD can be valid for 24 months. When the issuer intends to update or include any new information in the base SDD, the issuer may announce or otherwise disseminate a supplementary or replacement base SDD. A supplementary base SDD is to be read together with the base SDD, while a replacement base SDD takes the place of the original base SDD.

5.13 A respondent enquired if updates such as quarterly results of the issuer can be incorporated in the base SDD by way of incorporation by reference (e.g. to include a statement in the base SDD referring investors to public announcements of the issuer) without the need to prepare a supplementary base SDD.

5.14 In addition, a respondent enquired whether there is a validity period for a supplementary base SDD, such that upon the expiry of such period, the supplementary base SDD has to be combined with the first base SDD and be issued as a replacement base SDD.

MAS' Response

5.15 The SDD is meant to provide all information necessary for an investor to make an investment decision. Such information would include the financial statements of the issuer and other material information relating to the issuer. The issuer should update the information in the base SDD by way of a replacement base SDD or a supplementary base SDD, rather than by way of incorporation by reference.

5.16 As to the validity period of a supplementary or replacement base SDD, the supplementary or replacement base SDD will expire 24 months after the date on which the base SDD is first issued.

6 OTHER COMMENTS

Extension of page limit of PHS

6.1 We have received requests to raise the proposed 8-page limit for the PHS on the basis that it may be difficult to summarise certain information.

[8] May be in the form of (a) a preliminary standalone simplified disclosure document; (b) a preliminary base document; (c) a preliminary pricing supplement; (d) a preliminary base document together with a preliminary pricing supplement or (e) the offer documents for the initial offer of bonds to Specified Investors together with a preliminary pricing supplement.

MAS’ Response

6.2 We note that there may be issuers who have not issued any prospectuses in the past, unlike issuers with shares listed on SGX. Given that such issuers may wish to provide more information to investors, we have refined the page limit requirements. For issuers whose shares are not listed on SGX, we will extend the PHS page limit from 8 to 12 pages. For issuers whose shares are already listed on SGX, we will retain the PHS page limit of 8 pages.

SDD and PHS given to investors

6.3 Respondents sought clarification on whether the issuer is required to physically give out copies of SDD and/or PHS to retail investors if the offer is not made through electronic means. They noted that retail investors would be able to access the electronic copies of the SDD and PHS announced by the issuer on the SGXNET.

MAS’ Response

6.4 If the offer is not made through electronic means, the issuer should provide either printed copies or electronic copies of the SDD and/or PHS to investors, whether retail or otherwise. Electronic copies of the SDD and/or PHS may be provided to the investors via an e-mail or an electronic storage medium (e.g. CD-ROM or thumb drive). However, if the investor requests for printed copies instead of electronic copies of the SDD or PHS, the issuer is expected to provide printed copies of the SDD and/or PHS to the investors.

MONETARY AUTHORITY OF SINGAPORE

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Appendix A

List of Respondents to the Consultation Paper on Facilitating Bond Offerings to Retail Investors

1. Allen & Gledhill LLP
2. Bank of New York Melon Corporation
3. CFA Society Singapore Advocacy Committee
4. Catalytic Investment Group Pte Ltd
5. DBS Bank
6. Moody’s Investors Service
7. Oversea-Chinese Banking Corporation Limited
8. Temasek Holdings Private Limited

*This list includes only the names of respondents who did not request that their submissions be kept confidential.

Eligibility Criteria under the Seasoning Framework and the Exempt Bond Issuer Framework

<table>
<tr><th rowspan="2"></th><th colspan="2">Eligibility Criteria for:</th></tr>
<tr><th>Seasoning Framework</th><th>Exempt Bond Issuers</th></tr>
<tr><td>Size Test</td><td colspan="2">(i) Market capitalisation of at least S$1 billion over the past 180 market days; or
(ii) Net asset of at least S$500 million in the most recent audited annual financial statements as well as an annual average net asset of at least S$500 million over the 3 most recent audited annual financial statements.</td></tr>
<tr><td>Listing Test</td><td colspan="2">(i) Has equity securities listed on SGX or a recognised securities exchange for at least 5 years; or
(ii) Has listed, or guaranteed the issuance of, bonds listed on SGX for at least 5 years.</td></tr>
<tr><td>Credit Test</td><td>(i) Has not recorded on average a net loss and has on average a positive net operating cash flow for the 3 most recent audited annual financial statements; or
(ii) Has a credit rating of BBB or higher, or the bonds to be offered are rated BBB or higher, where the rating is done by an international credit rating agency; or
(iii) Has listed, or guaranteed the issuance of, bonds listed on SGX of at least S$500 million (or its equivalent in foreign currency) over the previous 5 years.</td><td>(i) Has recorded a net profit of at least S$100 million and has positive net operating cash flows in each of the 3 most recent audited annual financial statements; or
(ii) Has a credit rating of AA- or higher, or the bonds to be offered is rated AA- or higher, where the rating is done by an international credit rating agency; or
(iii) Has listed, or guaranteed the issuance of, bonds listed on SGX of at least S$1 billion (or its equivalent in foreign currency) over the previous 5 years.</td></tr>
</table>

Conditions under the Seasoning Framework and the Exempt Bond Issuer Framework

Conditions to prospectus exemption for:	
Seasoning Framework	**Exempt Bond Issuers**
(i) The Seasoned Bonds and bonds offered to retail investors via a re-tap are to be listed and to be traded on SGX; (ii) Minimum initial offer size of S$150 million to Specified Investors; (iii) The aggregate amount of bonds offered to retail investors through re-taps cannot exceed 50% of the size of the initial offer of bonds to Specified Investors; (iv) Provide retail investors with a PHS when the bonds are re-denominated and made available for secondary trading on the Mainboard and, when the issuer conducts a re-tap, at the time of the re-tap; and (v) The offer documents given to Specified Investors when the bonds were first offered, as well as the PHS, must be announced or otherwise disseminated and made available to investors on SGX's website.	(i) The bonds offered pursuant to the exemption are to be listed and to be traded on SGX; (ii) The exempted offer must comprise tranches to both institutional/accredited investors and retail investors; (iii) The amount of bonds issued under the institutional / accredited investor tranche must be at least 20% of the aggregate issuance size; (iv) Provide to investors an SDD in lieu of a prospectus. The SDD should be given to both IIs/AIs and retail investors; (v) Provide a PHS to retail investors; and (vi) Both the SDD and PHS must be announced or otherwise disseminated and made available to investors on SGX's website[9].

[9] Where the issuance is part of a debenture issuance programme and the base document has been previously announced or otherwise disseminated on SGXNET, the offeror entity may comply with this requirement by announcing or uploading that base document (provided it is current and within its validity period), with the pricing supplement and PHS applicable to that particular offer. There is no requirement to update the date or announcement date of the base document.