

RESPONSE TO FEEDBACK RECEIVED – PUBLIC CONSULTATION ON GUIDELINES ON GOOD DRAFTING PRACTICES FOR PROSPECTUSES

1 INTRODUCTION

1.1 On 5 February 2015, MAS issued a consultation paper proposing guidelines on good drafting practices for prospectuses (the “Guidelines”). The Guidelines serve to:

- (a) provide guidance to issuers and their professional advisers by highlighting common drafting problems and good drafting practices for preparing prospectuses;
- (b) improve the readability of prospectuses; and
- (c) facilitate better understanding by investors of key information disclosed in prospectuses.

1.2 The consultation closed on 13 March 2015. MAS received feedback from 14 respondents listed in Annex 1. MAS would like to thank respondents for their comments. Comments of wider interest, together with MAS’ responses, are set out below.

2 FEEDBACK ON THE GUIDELINES

2.1 Feedback on the implementation of the Guidelines

2.1.1 There was strong support for the proposal with nearly all of the respondents agreeing with the adoption of the Guidelines.

2.1.2 Several respondents sought clarifications as to the types of documents that the guidelines will apply to and whether the guidelines will apply retrospectively to documents already lodged with MAS.

2.1.3 Some respondents sought clarification on the timeline for the adoption of the Guidelines and suggested that there should be a sufficient time gap between the issue and implementation dates of the Guidelines for

issuers and their advisers to prepare their documents in accordance with the Guidelines.

- 2.1.4 Respondents also voiced concerns about the consequences of not adhering to the guidelines and whether MAS will review prospectuses against the Guidelines.
- 2.1.5 Two respondents cautioned that the Guidelines should not be mandatory but should only serve as best practices for drafting prospectuses.

MAS' Response

- 2.1.6 Considering the positive feedback received, MAS has issued the Guidelines together with the publication of this consultation response.
- 2.1.7 The Guidelines only applies to all prospectuses and profile statements required under Part XIII of the Securities and Futures Act (Cap. 289) ("SFA"). Nonetheless, issuers and their advisers are encouraged to adopt the principles in the Guidelines for other types of offer disclosure documents such as offer information statements, product highlights sheets and information memoranda wherever possible.
- 2.1.8 The Guidelines will not apply retrospectively to existing disclosure documents lodged with the MAS. Taking into consideration the feedback, the Guidelines will provide an appropriate time gap between the issue date and the date on which documents lodged with MAS will have to be prepared in accordance with the Guidelines. In addition, the Guidelines will not apply to any replacement or supplementary prospectus to an existing registered prospectus that did not have to follow the Guidelines.
- 2.1.9 The Guidelines are not statutory requirements. They set out principles or 'best practice standards' on how issuers and their advisers should draft prospectuses and profile statements. While a failure to follow is not a criminal offence and does not attract civil penalties, issuers and their advisers are encouraged to observe the spirit of the Guidelines.
- 2.1.10 In reviewing prospectuses which have been submitted to MAS for registration, we may ask issuers to consider amending parts of a prospectus that a lay person is likely to find difficult to read or understand. A poorly drafted prospectus may therefore lead to a delay in the registration of the prospectus.

2.2 Feedback on potential practical concerns in adopting the Guidelines

2.2.1 Some respondents voiced concerns that there may be practical difficulties in adopting the Guidelines. One respondent noted that the contents in the prospectus are mostly driven by regulations. If too much emphasis is placed on simplifying the language of the prospectus, key details could be left out resulting in the prospectus not meeting a regulatory requirement or not covering all applicable risks. Two respondents also highlighted that for recognised collective investment schemes, it will be difficult to adopt the Guidelines for the underlying prospectus as it is prepared in an overseas jurisdiction. As investors are to read the underlying prospectus in conjunction with the Singapore prospectus when making their investment decisions, adopting the Guidelines for the Singapore prospectus and making changes to the language may potentially create confusion to readers.

MAS' Response

2.2.2 The Guidelines are intended to facilitate clearer communication of information and help investors better understand the information before making their investment decisions. The goal of using plain English is to set out information in a clear, concise and effective manner. Being concise should not result in the information being presented to be unclear, or the presentation of information being less effective. Issuers should therefore exercise care not to omit key information from the prospectus. Where there is a regulatory requirement for specific information to be set out in the prospectus, the issuer and its advisers should still ensure that they comply with such requirement. We believe that this can be done in language that is clear, concise and effective.

2.2.3 We note the potential problems with recognised collective investment schemes. Considering that the underlying prospectus is prepared in an overseas jurisdiction, we do not expect it to be prepared in accordance with the Guidelines. However, we will still encourage issuers to adopt the Guidelines when preparing the Singapore prospectus to improve the readability of information presented in the Singapore prospectus. We believe this can be achieved without causing confusion to readers when they read the Singapore prospectus in conjunction with the underlying prospectus.

2.3 Comments on the Guidelines' contents

- 2.3.1 The majority of the respondents agreed with the Guidelines' contents.
- 2.3.2 Several respondents voiced concerns on the guideline to '*avoid the use of legal, financial or technical business jargon*'. They suggested that this guideline should not be strictly applied as oversimplifying or translating such jargon to layman terms may change the nature of the information and prevent more sophisticated investors from fully appreciating the information being disclosed.
- 2.3.3 Two respondents also highlighted that the guideline to use personal pronouns may be confusing in the case of a real estate investment trust, a business trust and collective investment schemes. This is due to the presence of the issuer itself, the manager and the trustee, and the division of responsibilities among those entities.
- 2.3.4 Several respondents asked for examples to be provided as to what would be considered as 'redundant information' under the Guidelines' principle to '*keep the length of the prospectus as short as possible*'.
- 2.3.5 One respondent highlighted that the use of boilerplate disclosures may be required for compliance with certain regulations, statutes or protocols for investors if certain events were to occur. Two respondents asked for examples to be provided.

MAS' Response

- 2.3.6 The Guidelines state that issuers should avoid using legal, financial or technical business jargon in their prospectuses whenever possible. We note that there may be situations where it would be very difficult to avoid the use of jargon (for example, in financial statements).
- 2.3.7 When using personal pronouns in the case of a real estate investment trusts, business trusts or collective investment schemes, it is important for the issuer to explain clearly who the personal pronouns refer to and use them consistently throughout the prospectus to avoid confusing the reader. We have amended the Guidelines to include this point.
- 2.3.8 Taking into consideration the feedback received, we have added several examples for what would be considered as 'redundant information' and 'vague boilerplate disclosures'.

- 2.3.9 The Guidelines will take effect and apply to all prospectuses and profile statements lodged with the MAS on or after 1 February 2016.

MONETARY AUTHORITY OF SINGAPORE

7 July 2015

ANNEX 1**LIST OF RESPONDENTS TO POLICY CONSULTATION ON PROPOSALS TO FACILITATE BETTER UNDERSTANDING OF PROSPECTUSES**

- Allen & Gledhill LLP
- Baker & McKenzie.Wong & Leow
- Chan Yu Meng
- Citibank Singapore Limited
- Eastspring Investments (Singapore) Limited
- Investment Management Association of Singapore
- Jerry Chin Kan Wa
- Michael Hwang Chambers LLC
- Provenance Capital Pte. Ltd.
- Rajah & Tann Singapore LLP
- Singapore Exchange Limited
- Vanguard Investments Singapore Pte Ltd

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