

**RESPONSE TO
FEEDBACK RECEIVED**

June 2016

**Response to Feedback
Received – Facilitating
Securities-Based
Crowdfunding**

MAS

Monetary Authority of Singapore

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1 Preface

1.1 On 16 February 2015, MAS issued a consultation paper proposing measures to facilitate the access by start-ups and small and medium enterprises (SMEs) to more sources of funding. MAS proposed to facilitate securities-based crowdfunding (“SCF”) from accredited and institutional investors (“AIs” and “IIs”) by relaxing certain financial requirements for capital markets intermediaries that deal in securities and clarifying the application of certain exemptions from prospectus requirements.

1.2 The consultation closed on 18 March 2015. The list of respondents is in Annex A. MAS would like to thank all respondents for their contributions.

1.3 Following the close of the consultation, MAS consulted further with the industry, including several interested SCF platform operators on the practicality of offering securities through SCF to investors under the existing securities framework and the proposals consulted.

1.4 MAS has carefully considered the feedback received from the public and industry consultations. Comments that are of wider interest, together with MAS’ responses, are set out below.

2 SCF from Accredited and Institutional Investors

Facilitating SCF from AIs and IIs

2.1 Under the Securities and Futures Act (Cap. 289) (“SFA”), offerors can rely on various prospectus exemptions to make offers of securities, including offers to AIs and IIs¹. MAS sought views on the proposed regulatory approach to facilitate SCF from AIs and IIs in the first instance.

2.2 Respondents’ views on the proposed approach were mixed. Respondents who supported the proposed approach opined that retail investors may not appreciate the

¹ Other prospectus exemptions include the following:

(a) 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 (the small offers exemption). 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 contact/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.

(b) Under section 272B of the SFA, offers of securities to no more than 50 persons within a 12-month period may also be exempted from the prospectus requirement (the private placement exemption).

high risks associated with SCF². Other respondents thought that SCF may not be viable without a larger crowd, beyond AIs and IIs – they felt that the AI/II investor pool is relatively small, and AIs and IIs may have little interest in SCF as they are already well served through other investment channels.

MAS' Response

2.3 SCF from non-AI/II investors can already be carried out, albeit in a limited way, without the need to register a prospectus if it is done in reliance on existing prospectus exemptions, such as the Small Offers exemption under the SFA³.

2.4 Given the high risks inherent in SCF investments and that SCF is still very much a nascent industry globally, retail investors may not have the investment experience or expertise to fully appreciate the risks involved in SCF investments. Therefore, we do not intend to remove the current regulatory safeguards that apply where securities are offered to retail investors, whether with prospectus or in reliance on existing prospectus exemptions. Nonetheless, we will refine our Guidelines to facilitate the intermediation of offers to investors (including retail investors) under the existing framework, as outlined in Section 3 below. MAS will continue to monitor developments and may make adjustments to the approach in the future if warranted.

Easing of financial requirements for dealing licensees

2.5 MAS had proposed to ease the current financial requirements for intermediaries that deal in securities ("**Dealing Licensees**"), including SCF intermediaries, by lowering the base capital requirement from S\$250,000 to \$50,000, and removing the requirement to maintain a security deposit of \$100,000 with MAS. These lower requirements apply if the Dealing Licensees only serve AIs and IIs, do not handle or hold customer moneys, assets or positions, and do not act as principal against customers.

2.6 There were mixed views on the proposals. Respondents who agreed with the proposals were generally of the view that the reduction in financial requirements is a positive step towards facilitating the growth of the SCF industry.

2.7 Respondents who disagreed with our proposal presented diverse views. Some indicated that the base capital requirement should be eased further as the proposed

² Some of the risks associated with SCF were highlighted in paragraph 1.4 of the consultation paper.

³ See paragraph 3 of this Response for more details on the exemption.

lowered requirement may still be burdensome to platform operators, while others were of the view that Dealing Licensees should be subject to more stringent financial requirements than proposed, so as to weed out intermediaries that do not possess the financial ability or long-term mind-set to maintain and operate the platform properly.

MAS' Response

2.8 Having considered the responses, MAS will proceed with the proposed easing of financial requirements for Dealing Licensees. MAS had recognised that the systemic and business conduct risks posed by Dealing Licensees are limited since they do not handle or hold customer monies assets or positions, or act as counterparty to investors. Should such entities run into financial difficulties, MAS expects the impact on investors to be limited. In tandem with the lowering of the base capital requirement, MAS will also lower the minimum operational risk requirement for Dealing Licensees to \$50,000.

2.9 Given that the systemic and business conduct risks posed by CMS licensees trading in futures contracts under the conditions set out in paragraph 2.5⁴ above are similarly limited, MAS will likewise lower the minimum base capital and operational risk requirements for such entities to \$50,000.

Clarification on the Advertising Restriction

2.10 MAS clarified in the consultation paper⁵ the scope of the advertising restriction for offers made pursuant to section 275 (AI exemption) after receiving queries on its application in the context of SCF. The clarification applies to other exempted offers, namely section 272A (Small Offers exemption) and 272B (Private Placement exemption) (collectively, the “**exempted offers**”).

2.11 Respondents welcomed the clarification in the consultation paper. Some respondents thought that the advertising restriction could be further relaxed for SCF. Two of these respondents suggested permitting information on specific offers to be advertised.

⁴ That is, where the CMS licensees trading in futures contracts only serve AIs and IIs, do not handle or hold customer moneys, assets or positions, and do not act as principal against customers.

⁵ Please see Section 3 (EXEMPTION FROM PROSPECTUS REQUIREMENTS), Facilitating Securities-Based Crowdfunding, Consultation Paper February 2015.

MAS' Response

2.12 MAS continues to see merit in having advertising restriction for exempted offers given that these offers are meant to be limited in reach. In addition, the advertising restriction prohibits issuers and intermediaries from publishing 'puff statements'⁶ that could mislead investors.

Further clarification on the advertising restriction

2.13 Some respondents sought further clarification on the scope of the advertising restriction for SCF platforms.

MAS' response

2.14 MAS has issued, together with this response, a set of guidelines on the advertising restriction to address the concerns and uncertainty on the manner in which SCF platforms can publicise their services as well as other technicalities, with examples. (Annex B).

3 SCF from Any Investor (Including Retail)

3.1 While MAS proposes to facilitate SCF from AIs and IIs, companies may still crowdfund by offering securities to investors, including retail investors, by registering and providing a prospectus for their offers or by complying with the conditions that apply to the existing prospectus exemptions, such as the Small Offers or Private Placement exemptions⁷. In this regard, several respondents sought clarification on the operation of the Small Offers exemption.

3.2 MAS consulted further with the respondents, including interested platform operators, on the practicalities of companies relying on the Small Offers exemption to crowdfund from investors (including retail) without a prospectus through a SCF platform that is licensed to deal in securities⁸.

⁶ Under sections 272A(10) and 275(2) of the SFA, a document that describes the securities being offered, or the business and affairs of the person making the offer, the issuer or, where applicable, the underlying entity does not amount to an advertisement. As such, the communication of any information, including those that seek to entice investors, other than the aforesaid information would be in a breach of the advertising restriction.

⁷ The Small Offers and Private Placement exemptions are provided for under sections 272A and 272B of the SFA respectively.

⁸ Under Part IV of the SFA.

3.3 Most respondents were of the view that the Small Offers exemption can be utilized for SCF from investors (including retail) but suggested refinements to make this more practicable. All respondents agreed that it would be useful to provide risk disclosure statements to investors and obtain an acknowledgement from investors on their understanding of the risks involved before making SCF investments.

MAS' Response

3.4 The Small Offers exemption was provided in 2005 to reduce the cost and burden for companies (particularly SMEs) of complying with the requirement to register a prospectus for a relatively small fundraising exercise. As the Small Offers exemption was not designed with SCF in mind, MAS acknowledges that the current investor pre-qualification⁹ expected of licensed SCF platform operators appointed by an offeror to intermediate his offering can be refined to make fundraising from investors (including retail) through SCF more practicable, subject to appropriate safeguards. The offeror is expected to ensure that its appointed SCF platform operators have in place the necessary policies and procedures to perform investor pre-qualification.

3.5 In this regard, MAS will amend the investor pre-qualification process such that any licensed SCF platform operator appointed by an offeror and such an offeror would be expected to ensure that (i) potential investors either have sufficient knowledge or experience to invest in SCF, or (ii) SCF investments are suitable for them in light of their investment objectives and risk tolerance. This is an easing of the current guidelines where the expectation is to assess both the knowledge and experience of potential investors, as well as the suitability of SCF investments for the investors by considering their investment objectives, risk tolerance and financial means. Where there is any material change to the information or responses provided by the investor during the previous knowledge or experience test, or suitability assessment, the SCF platform operator must conduct a pre-qualification on the investor again before facilitating another SCF investment by the investor. The refined pre-qualification process can be found in Annex C.

3.6 To ensure investors (including retail) are fully aware of the risks and deterred from investing if they are unable to accept the potential losses, MAS will strengthen the existing risk disclosures to require any licensed SCF platform operator appointed by an

⁹ The pre-qualification expectation is found in paragraph 6.10 of the Guidelines on Personal Offers Made Pursuant to the Exemption for Small Offers issued on 15 October 2005. Under the current guidelines, offerors and licensed intermediaries (including SCF platforms) are expected to ensure that each investment is suitable for an investor in light of the investor's investment objectives, financial means and risk profiles.

offeror to intermediate the offeror's Small Offers online and such an offeror to provide, at the minimum, a prescribed risk disclosure statement to each potential investor and obtain the investor's acknowledgement that he is fully aware of and accepts the risks. The risk disclosure statement should be provided to and risk acknowledgement obtained from the investor before the investor makes his first SCF investment on the platform. The risk disclosure statement and risk acknowledgement will also be required immediately prior to the investor making another investment on the platform if there is a material change to the information that the investor had provided during the previous knowledge or experience test, or suitability assessment, and on an annual basis. The prescribed statement and acknowledgement can be found in Annex D.

3.7 In appointing a licensed SCF platform operator to intermediate the offeror's Small Offers, the offeror should satisfy itself that the SCF platform operator has the necessary procedures to ensure that the revised pre-qualification process, as well as the revised risk disclosure and acknowledgement requirements, are complied with.

4 Other Feedback

Create a new investor class for SCF

4.1 Some respondents suggested creating a new investor class based on some degree of financial sophistication for SCF.

MAS' Response

4.2 MAS' approach is to regulate SCF within our existing regulatory framework, and accord lower regulatory requirements (such as financial requirements) in accordance with the risks and characteristics of the business model (e.g. serving only AIs and IIs, and not handling clients' monies). We do not see a need to create a new investor class specifically for SCF, given that our current regulatory framework is already calibrated to accord differential treatment between retail and non-retail investors (i.e. AIs and IIs).

Lower the AI qualification thresholds

4.3 Some respondents suggested lowering the AI qualification thresholds for individuals¹⁰.

¹⁰ "AI" as defined under section 4A of the SFA read with the Securities and Futures (Prescribed Specific Classes of Investors) Regulations 2005.

MAS' Response

4.4 AIs are afforded a lower level of regulatory safeguards as they are presumed to have the relevant means to seek professional advice to protect their own interests. This includes being financially capable of seeking their own legal recourse and bearing the associated costs. As such, to qualify as an AI, an individual must either have net personal assets exceeding S\$2 million ("net personal assets test"), or income not less than \$300,000 in the preceding 12 months ("income test").

4.5 MAS undertook a review of the AI investor class in July 2014 and decided to retain the current monetary thresholds of the net personal assets test and income test¹¹. Given that the AI qualification threshold in Singapore is comparable to equivalent classes of investors in other major jurisdictions, MAS does not agree to lower the AI qualification threshold.

Differentiating debt-SCF

4.6 Some respondents suggested creating a distinct regulatory framework for debt-SCF arguing that debt-securities are generally less risky than equity-securities.

MAS' Response

4.7 MAS is not inclined to make a merit judgment on the suitability or riskiness of debt vis-a-vis equity securities for SCF investors. Investors should consider the viability and underlying business of an issuer rather than merely consider the general characteristics of the class of securities that they are investing in.

Corporate Track Record

4.8 Some respondents expressed concern that SCF intermediaries would not be able to meet the admission criterion of having a minimum of five years of track record, as set out in the Guidelines on Criteria for the Grant of a CMS licence Other Than for Fund Management.

MAS' Response

4.9 In assessing corporate licence applications, where an applicant does not possess the requisite corporate track record, MAS will consider other factors in lieu of the

¹¹ Please see Consultation Paper on Proposals to Enhance Regulatory Safeguards for Investors in the Capital Markets, Consultation Paper, Jul 2014.

corporate track record, such as the experience and track record of the shareholders and key officers of the applicant.

Handling, Holding or Acceptance of Customer Monies, Assets or Positions

4.10 Two respondents provided feedback that SCF intermediaries should be allowed to handle, hold or accept customer monies, assets or positions as they view this to be an integral part of the crowdfunding business.

MAS' Response

4.11 MAS would like to clarify that MAS is not prohibiting SCF intermediaries from handling, holding or accepting customer monies, assets or positions. SCF intermediaries that do so will have to comply with the existing financial requirements under the Securities and Futures (Financial and Margin Requirements for Holders of Capital Markets Services Licences) Regulations and relevant requirements on customer's monies and assets under the Securities and Futures (Licensing and Conduct of Business) Regulations.

Promissory Notes

4.12 A respondent sought clarification on the use of the promissory note exclusions¹² for SCF.

MAS' Response

4.13 MAS will be removing the promissory note exclusions. This takes into account the fact that a promissory note has characteristics akin to that of any other debenture, and should hence be subject to securities regulation so investors can enjoy the corollary investor protections.

4.14 Pending the removal of the promissory note exclusions, companies raising funds in reliance on the promissory note exclusions as well as the intermediaries of such fundraising should note that a single promissory note having a face value of not less than \$100,000 that comprises loans of less than \$100,000 each from separate investors

¹² Promissory notes are excluded from the definition of "securities" under section 2 of the SFA. Therefore, platforms facilitating the issue of promissory notes are exempted from the licensing requirements under the SFA. Where the promissory note has a face value of not less than \$100,000 and maturity period of not more than 12 months, it is also excluded from the definition of "debentures" under section 239 of the SFA. Therefore, an offer of such promissory notes is exempted from the prospectus requirement.

would not fall within the promissory note exclusion for the purposes of the prospectus requirement. Platforms facilitating offers of promissory notes under the promissory note exclusion must similarly ensure that offers to each individual investor should be at least \$100,000.

4.15 For more information on the promissory note exclusions and how the SFA applies to lending-based crowdfunding, please refer to the FAQs for Lending-Based Crowdfunding or Peer-to-Peer Lending to Businesses issued together with this response.

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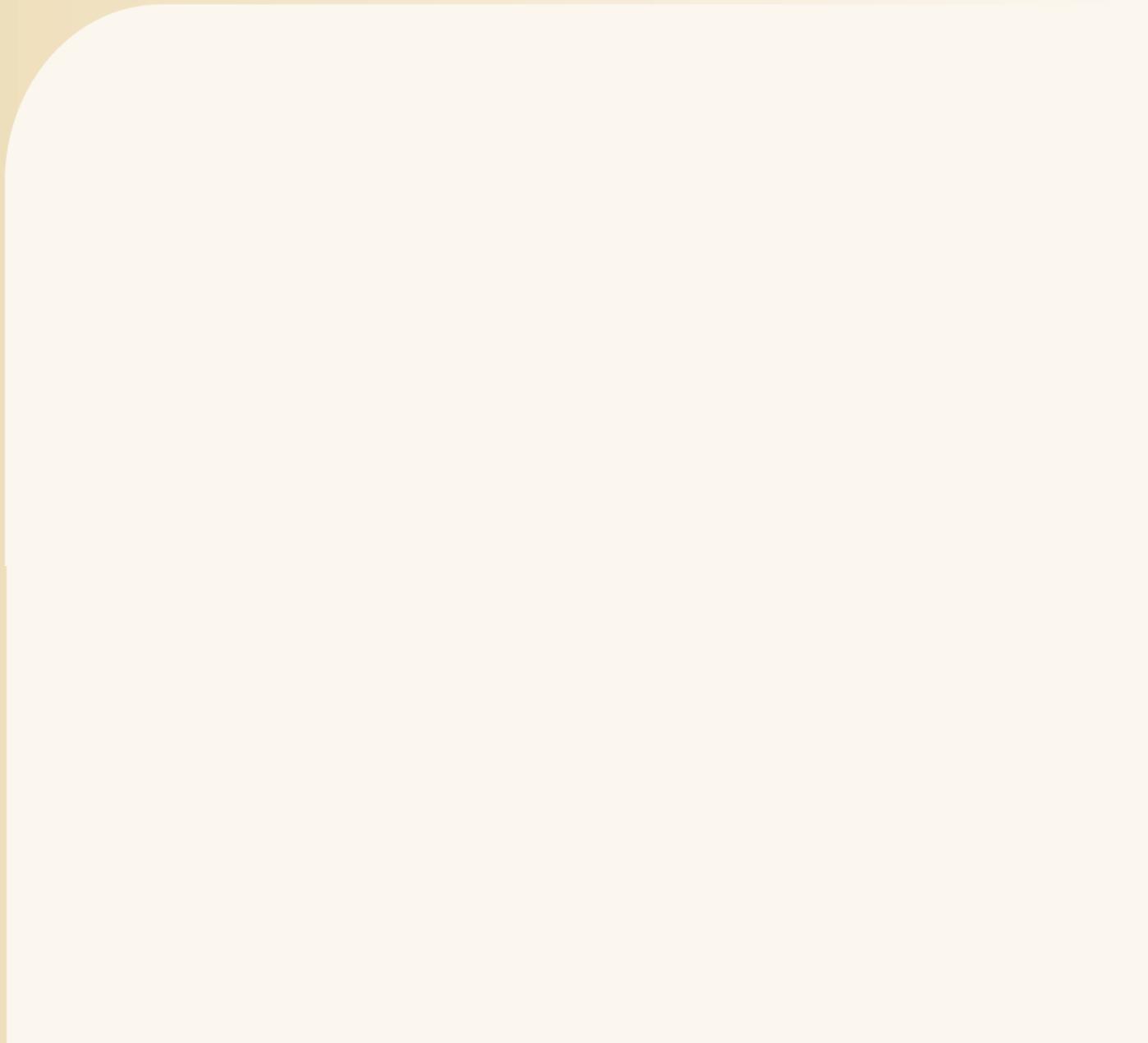
8 June 2016

Annex A

**LIST OF RESPONDENTS TO THE CONSULTATION PAPER ON
FACILITATING SECURITIES-BASED CROWDFUNDING**

1. Alwyn Tan
2. Ang Boon Heng
3. Anurag Pandey
4. Asian Crowdfunder Sdn Bhd
5. CFA Society Singapore and CFA Institute
6. Crowdonomic Media Private Limited
7. David Goh
8. Funded Here Pte Ltd
9. Jinwei Sim
10. Kashminder Singh
11. Kevin Lim
12. Kyle Sim
13. Leong Kit Fei
14. MoolahSense Private Limited
15. Paul Niederer
16. Singapore Capital Markets Committee – SME Financing Sub-committee
17. Singapore International Chamber of Commerce

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



Monetary Authority of Singapore