

## **MAS 628**

14 December 2007

NOTICE TO BANKS  
BANKING ACT, CAP. 19

(MAS Notice 628 dated 30 September 2005 is cancelled.)

### **SECURITISATION**

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#### **1 Scope of obligations**

1.1 This Notice is issued pursuant to section 55 of the Banking Act (Cap. 19) and applies to all banks in Singapore.

1.2 This Notice comprises two parts -

- (a) sections 3 and 4 and the Annexes set out mandatory requirements; and
- (b) section 5 sets out non-mandatory guidelines on the responsibilities of banks in respect of a securitisation.

#### **2 Definitions**

2.1 For the purposes of this Notice -

- (a) "banking group entity", "credit enhancement", "implicit support" and "servicer" has the same respective meanings as in MAS Notice 637, save that references to "a Reporting Bank" should read as "a bank in Singapore";
- (b) "independent director" has the same meaning as in Regulation 2 of the Banking (Corporate Governance) Regulations 2005, save that references to "a Reporting Bank" should read as "a bank in Singapore";
- (c) "manager" means any entity that arranges, promotes or underwrites a securitisation; and
- (d) "preference share" means a share, by whatever name called, which bears a fixed annual rate of dividend with a prior right over all ordinary shares in the distribution of dividends from annual profits and a prior claim to repayment of capital on a winding-up of the company, but does not entitle the holder thereof to the right to vote at a general meeting or the right to participate beyond a specified amount in any

distribution whether by way of dividend, or on redemption, in a winding up, or otherwise.

2.2 The expressions used in this Notice shall, except where expressly defined in this Notice or where the context otherwise requires, have the same meanings as in MAS Notice 637.

### **3 Requirements for banks in Singapore**

#### ABCP Programme Sponsors, Managers and Originators

3.1 Any bank acting as an ABCP programme sponsor, a manager or an originator shall -

- (a) comply with the separation requirements set out in Annex A and the disclosure requirements set out in Annex B; and
- (b) within 14 days from the date of issue of securities effecting the transfer of the credit risk of the underlying exposures to the investors in the securitisation, notify the Authority and attest to its compliance with the requirements in this Notice using the format set out in Annex C<sup>1</sup>.

3.2 Any Reporting Bank whose subsidiary acts in the role of an ABCP programme sponsor, a manager or an originator shall ensure that the subsidiary complies with the requirements in paragraph 3.1 as though it were a bank.

3.3 In the case of an existing ABCP programme, a bank need not comply with the requirement in paragraph 3.1(b) if there has been no material change to the structure of the securitisation since the previous issue of securities for which the bank had complied with paragraph 3.1(b).

#### Servicers

3.4 Any bank acting as a servicer shall comply with the requirements set out in Annex D.

#### Providers of Liquidity Facilities and Credit Enhancement

3.5 Any bank providing liquidity facilities or credit enhancement shall comply with the requirements set out in Annex E.

### **4 Capital requirements for Reporting Banks acting in securitisations**

#### Servicer

4.1 A Reporting Bank acting as a servicer which has not complied with the requirements in Annex D is deemed to be providing implicit support to the securitisation, and shall calculate its credit RWA pursuant to MAS Notice 637 as though the underlying exposures of the securitisation were on its balance sheet.

#### Provider of Liquidity Facilities or Credit Enhancement

4.2 A Reporting Bank providing liquidity facilities or credit enhancement to a securitisation which has not complied with the requirements in Annex E is deemed to be providing implicit support to the securitisation, and shall calculate its credit RWA

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<sup>1</sup> A bank would be deemed to have complied with the requirement if it submits one notification covering all securities issued by the same SPE on the same date.

pursuant to MAS Notice 637 as though the underlying exposures of the securitisation were on its balance sheet.

## **5 Guidelines on responsibilities of banks**

5.1 The guidelines in paragraphs 5.2 to 5.6 are relevant to all banks in Singapore.

5.2 A bank should assign clearly responsibility for the management and monitoring of securitisations. The Board and senior management of a bank should be aware of and understand the effect of securitisation on its risk profile as well as the legal, accounting and potential reputational impact of this activity. Senior management is responsible for the participation of the bank in securitisations and should provide direction on the strategy of the bank for securitisation as well as its development of policies and procedures for managing, monitoring and controlling risks arising from securitisation activities.

5.3 A bank should have in place appropriate internal systems and controls to identify, monitor and manage the risks that arise from its involvement in securitisations.

5.4 A bank undertaking a role in a securitisation should satisfy itself that it is not subject to reputational risk, and where appropriate, disclose its obligations in order to mitigate that risk.

5.5 A bank with securitisation exposures should take into account the credit risk arising from the underlying exposures in determining its overall exposures to any particular obligor, industry or geographic area for the purpose of managing concentration risks.

5.6 A bank providing credit enhancement should assess the risk thereof on an arm's length basis in accordance with its normal credit assessment and approval processes. Such a review may refer to one or more of the following factors:

- (a) the quality of the underlying exposures held by the SPE;
- (b) the history of default and loss rates on the underlying exposures;
- (c) the output of any statistical or other models used to assess expected losses on the underlying exposures;
- (d) the types of activity that the SPE is permitted to undertake;
- (e) the quality of the parties providing credit enhancement ranking junior to the position the bank is contemplating assuming; and
- (f) the opinions provided by reputable third parties such as rating agencies regarding the adequacy of any credit enhancement ranking junior to that position.

## **6 Policy review**

6.1 The Authority will monitor market developments and review its policy as and when necessary to guide the prudent conduct of securitisations by banks. As such, the Authority may issue such directions to a bank as the Authority deems fit, e.g. supervisory limits on the volume or types of assets which may be securitised or to

obtain appropriate separation between the bank and an SPE and to make appropriate disclosures.

6.2 The Authority may, from time to time, require transaction-specific capital requirements, in respect of particular securitisations a Reporting Bank conducts or particular securitisation exposures that a Reporting Bank assumes.

6.3 In assessing the appropriateness of bank-specific capital adequacy requirements, the Authority will consider whether the totality of a Reporting Bank's activities suggests that its overall level or concentration of risk has become excessive relative to its capital position, or if there is reason to believe that the Reporting Bank has classified securitisation exposures in either the banking or trading book in order to minimise capital requirements.

## **7 Effective Date**

This Notice shall take effect on 1 January 2008. MAS Notice 637 dated 30 September 2005 (last revised on 28 July 2006) is hereby cancelled with effect from 1 January 2008.

## **8 Transitional Provision**

Any approval granted by the Authority for a Reporting Bank to comply with the requirements specified in MAS Notice 628 dated 6 September 2000 (last revised on 20 August 2002) in respect of securitisations which have been subject to the same requirements immediately before 1 October 2005 in force immediately before 1 January 2008 shall continue to be applicable to that Reporting Bank.

## **Annex A: Separation Requirements**

A.1 Any bank acting as an ABCP programme sponsor, a manager or an originator shall not, in relation to the SPE used in the securitisation -

- (a) in the case where the SPE is a corporation, own any share capital in the SPE, including ordinary or preference shares, or in the case where the SPE is a trust, own any share capital in the trustee or be a beneficiary of the SPE;
- (b) name the SPE in such manner as to imply any connection with the bank;
- (c) have any director, officer or employee on the board of the SPE unless -
  - (i) the board is made up of at least three members the majority of whom are independent directors; and
  - (ii) the officer representing the bank does not have veto powers;
- (d) directly or indirectly control the SPE; or
- (e) provide implicit support or bear any of the recurring expenses of the securitisation.

A.2 Notwithstanding paragraph A.1(a), such a bank may hold preference shares issued pursuant to a securitisation provided -

- (a) the bank does not directly or indirectly control the SPE or the underlying exposures; and
- (b) the Authority is satisfied that the preference shares have debt-like characteristics<sup>2</sup>.

A.3 All transactions, e.g. interest rate swaps and currency swaps, between the bank and the SPE shall be conducted at arm's length and on market terms and conditions.

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<sup>2</sup> In determining whether the preference shares exhibit debt-like characteristics, the Authority may, without prejudice to any other matter it may consider relevant, have regard to their redemption features, convertibility into ordinary share capital, voting rights and subscription exclusivity.

**Annex B: Disclosure Requirements**

B.1 Any bank acting as an ABCP programme sponsor, a manager or an originator shall disclose to investors in writing -

- (a) that the securities they purchase do not represent deposits with, or other liabilities of, the bank or any banking group entity;
- (b) that their holdings of securities are subject to investment risk, including prepayment risk, interest rate risk and credit risk;
- (c) that neither the bank nor any of its banking group entities in any way stand behind the capital value or performance of the securities issued in connection with the securitisation, or of the underlying exposures, except to the extent that the bank or any banking group entity provides credit enhancement; and
- (d) if the bank also acts in any other capacity in the securitisation, the extent of its contractual obligations in that other capacity.

B.2 The bank shall clearly communicate the written disclosures referred to in this Annex to prospective investors.

B.3 The requirements in this Annex apply in addition to any other disclosure requirement under any applicable law.

## **Annex C: Reporting Forms**

C.1 The notification to the Authority required under paragraph 3.1(b) of this Notice shall contain the following:

- (a) a diagram that illustrates the structure of the securitisation, including the payment flows between the relevant parties to the securitisation;
- (b) a description of the securitisation structure that details the key elements of the securitisation, including the origination of the exposures and the redemption of the notes at maturity;
- (c) a description of the role(s) played by each of the relevant parties to the securitisation and the amounts, if any, of the securities that each party will be acquiring;
- (d) a description of the different tranches in the securitisation and the loss distribution according to the priority of payment of the relevant parties to the securitisation;
- (e) a description of the securities issued, which shall include, but not be limited to, the class, credit rating (if applicable), currency, issue size, issue date and maturity date;
- (f) a description of the underlying exposures, including the type of asset, the credit rating (if applicable), currency and market value;
- (g) a description of the target market(s) to which the securities will be marketed;
- (h) a memorandum of compliance (see example at Appendix 1) that sets out the applicable requirements in this Notice and references to relevant documents which indicate compliance with those requirements; and
- (i) the following documents in soft-copy format:
  - (i) the term sheet;
  - (ii) the offering memorandum or an equivalent document;
  - (iii) the seller of exposures agreement, servicing agreement, management agreement, trust deed, liquidity facility agreement, credit default swap agreement and foreign currency swap agreement, where applicable; and
  - (iv) any other document referred to in paragraph (h) above.

**Appendix 1: Sample Excerpt of Memorandum of Compliance**

<b>Annex B: Disclosure Requirements</b>			
<b>Requirements</b>		<b>Where complied with or disclosed in the contractual documents</b>	
<b>Reference</b>	<b>Text</b>	<b>Section(s)</b>	<b>Reference</b>
B.1	Any bank acting as an ABCP programme sponsor, a manager or an originator shall disclose to investors in writing	-	-
(a)	that the securities they purchase do not represent deposits with or other liabilities of, the bank or any banking group entity;	Set out in the Offering Memorandum	Pg 10, Para 1(a)
(b)	...	...	...



**Annex D: Requirements for a Servicer**

D.1 A bank in Singapore acting as a servicer shall ensure that -

- (a) there is a written agreement with its customer which specifies -
  - (i) the services to be provided by the bank in its capacity as a servicer and all required standards of performance ("the servicing agreement"); and
  - (ii) that there is no recourse to the bank beyond the contractual obligations specified therein<sup>3</sup>;
- (b) the duration of the servicing agreement is limited to the earlier of the date on which -
  - (i) all claims connected with the securities issued by the SPE are paid out; or
  - (ii) the bank is replaced as servicer,

unless the servicer is able, at its absolute discretion, to withdraw from its commitments at any time after giving a reasonable period of notice;
- (c) the obligations of the bank under the servicing agreement are standalone from its obligations under any other facility, commitment or undertaking provided by the bank;
- (d) it has written opinions from its legal advisors that the terms of the servicing agreement protect the bank from any liability to the investors in the securitisation or to the SPE, except in relation to its contractual obligations pursuant to the servicing agreement;
- (e) it is not under any obligation<sup>4</sup> to remit funds to the SPE or investors unless such funds are received from the underlying exposures, except where it is also the provider of an eligible liquidity facility, i.e. a bank acting as a servicer and a provider of an eligible liquidity facility which remits funds to the SPE in the latter capacity prior to the receipt of such funds will not contravene this requirement; and
- (f) if it is entitled to receive a performance-related payment or benefit from any surplus income generated, i.e. any surplus income generated by the underlying exposures of the SPE after meeting all payment obligations of the securities issued, operating costs of the SPE or losses or bad debts on the underlying exposures in addition to a base fee, the base fee shall be on market terms and conditions and any performance-related payment shall not commit it to any additional obligation. In the case of a Reporting Bank, a performance-related payment shall be included as Deductions from Tier 1 Capital if it has not been irrevocably received.

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<sup>3</sup> For avoidance of doubt, this requirement does not limit other forms of recourse to the bank arising from a breach of its fiduciary duties.

<sup>4</sup> For avoidance of doubt, this requirement does not limit other forms of recourse to the bank arising from a breach of its fiduciary duties.

**Annex E: Requirements for a Provider of Liquidity Facilities or Credit Enhancement**

E.1 A bank in Singapore providing a liquidity facility or a credit enhancement ("the facility") shall ensure that -

- (a) the nature and extent of any undertaking provided to the investors or SPE are clearly specified in a written agreement such that there is no recourse to the bank beyond the contractual obligations specified therein<sup>5</sup>;
- (b) the facility is limited to a specified amount;
- (c) the duration of the facility is limited to the earlier of the date on which -
  - (i) all claims connected with the securities issued by the SPE are paid out; or
  - (ii) the bank's obligations are otherwise terminated,unless the bank is able, at its absolute discretion, to withdraw from its commitments at any time within a reasonable period of notice;
- (d) the obligations of the bank under the facility are standalone from its obligations under any other facility, commitment or undertaking provided by the bank; and
- (e) the facility is given at the inception of the securitisation.

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<sup>5</sup> For avoidance of doubt, this requirement does not limit other forms of recourse to the bank arising from a breach of its fiduciary duties.