

CONSULTATION PAPER

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MAS

Monetary Authority of Singapore

PREFACE

To facilitate the access by start-ups and small and medium enterprises (“**SMEs**”) to more sources of funding, the Monetary Authority of Singapore (“**MAS**”) is proposing measures to facilitate crowdfunding which involves the offer of securities (“**securities-based crowdfunding**” or “**SCF**”) to accredited and institutional investors. In particular, MAS proposes to relax certain financial requirements for capital markets intermediaries that deal in securities, which will benefit certain intermediaries that operate crowdfunding platforms. MAS will also clarify the application of certain exemptions from prospectus requirements under the Securities and Futures Act (Cap. 289) (“**SFA**”) for fundraising through SCF.

2 MAS invites interested parties to forward their views and comments on the issues outlined in the consultation paper. Written comments should be submitted to:

Capital Markets Intermediaries Department III /
Market Conduct Department
Monetary Authority of Singapore
10 Shenton Way
MAS Building
Singapore 079117

Email: crowdfunding_consultation_2015@mas.gov.sg

Fax: (65) 6225 1350

3 MAS requests that all comments and feedback be submitted by 18 March 2015. Please note that all submissions received may be made public unless confidentiality is specifically requested for.

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1 INTRODUCTION

1.1 Crowdfunding generally refers to a capital-raising approach that seeks to raise funds from a large number of individuals. Typically, funds are raised through an online platform using the following forms of crowdfunding:

- (a) Donation-based crowdfunding: Where individuals pool their resources to support a charitable cause;
- (b) Reward-based crowdfunding: Where individuals give money to a company in return for a “reward”, usually a product produced by the company;
- (c) Lending-based crowdfunding: Where individuals lend money to a company and receive the company’s legally-binding commitment to repay the loan at pre-determined time intervals and interest rate; and
- (d) Equity-based crowdfunding: Where individuals invest in shares sold by a company and receive a share of the profits in the form of a dividend or distribution, subject to the company’s discretion.

Reward-based and donation-based crowdfunding are two prevalent forms of community crowdfunding which are not subject to securities regulation as they do not involve offers of securities or the prospect of financial returns. On the other hand, the financial return model includes lending-based and equity-based crowdfunding. Where such a model of crowdfunding involves the offer of securities in the form of debentures or shares (i.e. securities-based crowdfunding or SCF), they are subject to securities regulation in most jurisdictions, including Singapore.

Crowdfunding in Singapore

1.2 Start-ups and SMEs contribute towards Singapore’s economic growth, employing about 70% of the workforce in Singapore¹. Currently, commercial lending represents the majority of SME lending. The Government also plays

¹ SPRING Singapore’s website – www.spring.gov.sg

an active role in providing equity capital as well as administering financing schemes to start-ups and SMEs².

1.3 SCF can offer an alternative source of private financing for start-ups and SMEs. Market validation through successful crowdfunding campaigns may also create more funding opportunities for businesses.

1.4 Notwithstanding the potential benefits of SCF to the financing landscape for start-ups and SMEs, there are high risks associated with such investments. Some of these key risks are highlighted below:

- (a) Loss of Capital: SCF will attract mainly start-ups and SMEs which may not have an established track record. Globally, the failure rate for start-ups is high³. This poses high risks of capital loss to investors, particularly for those who may not be familiar with early stage investing.
- (b) Lack of liquidity: In the absence of a secondary market for trading in the securities, investors face the risk of not being able to sell their securities or selling them at a significant discount.
- (c) Fraud: As fundraising is carried out through online platforms, investors may not have personal contact with persons making the offers of securities. There may also be limited information on the projects or business proposals being funded. Hence, there is a risk that the projects or proposals may not be genuine and that the promised rewards or returns to investors will not materialize.
- (d) Platform closure or failure: In the event an SCF platform operator that handles customer monies fails, investors may face losses if there is no proper segregation of customer monies.

² Financing schemes administered by SPRING Singapore include Technology Enterprise Commercialisation Scheme (TECS), SPRING Start-Up Enterprise Development Scheme (SEEDS), Business Angel Scheme (BAS), Micro Loan Programme (MLP), and Local Enterprise Finance Scheme (LEFS), amongst others.

³ Based on data compiled by the Department of Statistics Singapore, only about 50% of start-ups survive to their 5th year. The UK Office of National Statistics, Business Demography 2011, 13 December 2012, indicated that around 50% to 70% of business start-ups fail completely over five years. According to the US Bureau of Labor Statistics, 65% of new business establishments fail completely over ten years.

Proposed regulatory approach for SCF in Singapore

1.5 Currently, any offer of securities⁴ is required to be made in or accompanied by a prospectus unless it qualifies for an exemption under Part XIII of the SFA. Further, intermediaries which deal in securities, including an intermediary operating an SCF platform which facilitates offers of securities, are required to hold a Capital Markets Services (“**CMS**”) licence under the SFA, unless exempted. Such an intermediary may also be deemed to be carrying on other regulated activities, such as advising on corporate finance if it provides advice to the person making an offer of securities, or providing financial advisory services under the Financial Advisers Act (“**FAA**”) if the intermediary provides financial advice to investors on the securities.

1.6 MAS has received feedback that the current regulatory regime is not suited for SCF. For example, certain intermediaries seeking to facilitate such fundraising may face difficulties in meeting some of the existing licensing requirements (discussed in section 2 below). Further, MAS has received queries on whether persons making offers through SCF would be able to satisfy certain conditions in order to rely on the prospectus exemptions under the SFA (discussed in section 3 below).

1.7 In considering the regulatory approach for SCF, MAS seeks to strike a balance between facilitating the development of SCF in Singapore and ensuring that there are sufficient safeguards for investors. MAS is mindful that retail investors may not fully appreciate the high risks inherent in SCF investments, even if risk warnings are disclosed. On the other hand, accredited investors⁵ (“**AIs**”) and institutional investors⁶ (“**IIs**”) are likely to have more resources and experience investing in start-ups or SMEs, and would have greater capacity to make investment decisions in light of the inherent risks. It is also likely that AIs and IIs are better placed to assist start-ups and SMEs by contributing their expertise, experience and contact networks.

1.8 MAS also notes that SCF is still a relatively new form of financing for corporates, and is at a nascent stage of development globally. Very few jurisdictions have implemented a regulatory framework for SCF. As such, it would be prudent to start by facilitating SCF offerings to AIs and IIs in the first instance. Start-ups and SMEs can continue to raise funds from retail investors through other forms of crowdfunding (such as donation-based and reward-

⁴ “securities” is defined under the SFA to include shares and debentures.

⁵ “accredited investor” as defined under section 4A of the SFA.

⁶ “institutional investor” as defined under section 4A of the SFA.

based crowdfunding). MAS will continue to monitor the developments in other jurisdictions in considering the appropriateness of extending SCF to retail investors.

Q1. MAS seeks views on the proposed regulatory approach to facilitate SCF for accredited and institutional investors in the first instance.

2 LICENSING REQUIREMENTS

2.1 An intermediary that deals in securities, including one that operates an SCF platform facilitating offers of securities to investors, is subject to licensing requirements under the SFA. Depending on the intermediary's business model, it may also require a licence for other regulated activities such as advising on corporate finance⁷ under the SFA, and/or be subject to relevant business conduct requirements as an exempt financial adviser⁸ under the FAA.

2.2 MAS has received feedback from intermediaries interested in operating an SCF platform that they face difficulties in meeting some of the existing requirements under the SFA, such as the financial requirements on minimum base capital and the lodgement of a security deposit with MAS.

2.3 To address these concerns, MAS proposes to lower the base capital requirement and remove the security deposit requirement for intermediaries that require a CMS licence for dealing in securities ("**Dealing Licensees**"), including SCF intermediaries, if they do not handle, hold or accept customer monies, assets, or positions and do not act as principal in transactions with investors.

2.4 We recognise that the systemic and business conduct risks posed by such Dealing Licensees are limited since they do not handle, hold or accept customer monies, assets or positions. Should such licensees run into financial or liquidity difficulties, we expect impact on investors to be limited.

Base Capital

2.5 Dealing Licensees are subject to base capital requirements stipulated in the First Schedule to the Securities and Futures (Financial and Margin Requirements for Holders of Capital Markets Services Licences) Regulations.

2.6 Currently, Dealing Licensees that do not carry any customer's positions in securities, margins or accounts in their own books, do not accept monies or assets from any customer and deal in securities only with AIs are required to maintain a base capital of \$250,000. Dealing Licensees that deal with retail investors are required to maintain a base capital of \$500,000.

⁷ If the intermediary provides corporate finance advisory services to persons making the offers of securities.

⁸ If the intermediary provides financial advisory services to persons who invest in the securities.

2.7 Taking into consideration the lower risks posed by Dealing Licensees that do not handle, hold or accept customer monies, assets, or positions, and do not act as principal in transactions with investors, MAS proposes to lower the minimum base capital requirement for such entities to \$50,000. If such a Dealing Licensee also conducts other regulated activities or changes its business (e.g. such that it acts as principal in transactions with investors), the higher base capital requirement will apply.

Lodgement of Security Deposit

2.8 Currently, Dealing Licensees are required to lodge with MAS a deposit of \$100,000, as stipulated in Regulation 7 of the Securities and Futures (Licensing and Conduct of Business) Regulations.

2.9 MAS holds the security deposit for the purpose of compensating retail investors who suffer a pecuniary loss as a result of defalcation by the Dealing Licensee or its agents. As such a scenario would not be relevant in the case of a Dealing Licensee that does not handle, hold or accept customer monies, assets or positions, MAS proposes to remove the requirement for such Dealing Licensees to lodge a security deposit with MAS.

Q2. MAS seeks views on the following proposals for Dealing Licensees that do not handle, hold or accept customer monies, assets, or positions, and do not act as principal in transactions with investors:

(a) To lower the base capital requirement to \$50,000; and

(b) To remove the requirement to maintain a security deposit of \$100,000 with MAS.

3 EXEMPTION FROM PROSPECTUS REQUIREMENTS

3.1 For start-ups and SMEs, complying with the prospectus requirements for a small fundraising exercise may not be viable given the costs and resources involved in preparing a prospectus. Under Part XIII of the SFA, offerors can rely on the prospectus exemptions under sections 274 and 275 of the SFA to make offers of securities to AIs or IIs through SCF without a prospectus⁹.

3.2 To ensure that offers made in reliance of the abovementioned prospectus exemptions are limited in scope and reach, and are not subject to mass solicitation, offers to AIs are subject to specified conditions, including a restriction on any advertisement on the offer (“**the Advertising Restriction**”)¹⁰. MAS has received queries on whether the publication of the information on the start-up or SME raising funds, and the details of the offer of securities, on the SCF platform would be regarded as an “advertisement” and accordingly, a breach of the Advertising Restriction.

3.3 Generally, we note that the websites of SCF platforms can fall within one of the following two types:

- (a) the SCF platform grants the general public unrestricted access to the details of offers of securities published on its platform (“**Unrestricted Access Platforms**”); and
- (b) the SCF platform restricts access to the details of offers of securities published on its platform to only registered users (“**Restricted Access Platforms**”). Users are only given access to the platform if they meet the conditions set out by the SCF platform operator, and they can only view the offers after they

⁹ Other prospectus exemptions in Part XIII 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 offer 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).

¹⁰ Section 275(1A)(b) of the SFA.

login to the platform with their registered identification and password.

3.4 As exempted offers are intended to be offers that are restricted in scope, these offers should not be subject to any mass solicitation, advertising or canvassing. Thus, publication of information on an offeror and the terms of the offer (the “**Relevant Statements**”) on an Unrestricted Access Platform would be regarded as a breach of the Advertising Restriction.

3.5 On the other hand, if the platform operator of a Restricted Access Platform has conducted due diligence to confirm that investors who have access to the Platform are within the scope of the prospectus exemption (e.g. Als), the publication of the Relevant Statements on the Platform would not be regarded as a breach of the Advertising Restriction.

3.6 In addition, MAS would like to clarify that the Advertising Restriction does not prohibit a SCF platform operator from advertising the existence of its platform to the general public. Such advertisement may include general information about the platform and its business model, so long as the advertisement does not include any information on specific offers that may be available on the SCF platform¹¹.

¹¹ The same position applies in respect of the Advertising Restriction for offers made pursuant to sections 272A (small offer exemption) and 272B (private placement exemption).



Monetary Authority of Singapore