Monetary Authority of Singapore

RESPONSE TO FEEDBACK RECEIVED – CONSULTATION ON ENHANCEMENTS TO THE REGULATORY REGIME GOVERNING REITS AND REIT MANAGERS

INTRODUCTION

On 9 October 2014, MAS issued a consultation paper proposing enhancements to the regulatory regime governing Real Estate Investment Trusts ("REITs") and REIT managers. The consultation closed on 10 November 2014, and the list of respondents can be found in Appendix 1.

2 MAS would like to thank all respondents for their feedback. MAS has carefully considered the feedback received, and our responses to comments that are of wider interest are set out below. Additional matters arising from the feedback are covered in Section 9 of this paper. MAS aims to enhance safeguards for investors and unitholders while facilitating the growth of a vibrant REIT market, and the finalised positions reflect this balanced approach.

SECTION 1:
STRENGTHENING CORPORATE GOVERNANCE

A. PRIORITISING THE INTERESTS OF REIT UNITHOLDERS

1.1. MAS proposed to impose a statutory duty on a REIT manager and its individual directors to prioritise the interests of unitholders over those of the REIT manager and its shareholders, in the event of a conflict of interest. While most respondents agreed with the proposal, some were of the view that a statutory obligation would be too harsh as it will impose criminal liability on the REIT manager and its directors.

MAS' Response

1.2. In order to enhance the protection of unitholders' interests, MAS will proceed with the proposal to prioritise unitholders' interests over those of the REIT manager and its shareholders, in the event of a conflict of interest. MAS notes the feedback that imposing a statutory obligation could be harsh, but is of the view that this is necessary to protect unitholders' interests. The interests of a REIT manager and its shareholders may potentially conflict with those of the unitholders, especially since the REIT manager would enter, on behalf of the REIT, into related party transactions that involve the shareholders of the REIT manager or their subsidiaries. This statutory obligation is also in line with the requirements on a trustee-manager and its directors, under the Business Trusts Act (Chapter 31A).

B. BOARD INDEPENDENCE REQUIREMENTS

1.3. The board of directors of a REIT manager (the "Board") is responsible for overseeing the management's performance, and providing objective judgment on whether transactions proposed for the REIT are in the interests of unitholders. Thus, the Board needs to be strong and independent to carry out these responsibilities effectively.

1.4. To recap, MAS sought views on two options to enhance the independence of the Board. Option 1 will require at least half the Board to comprise independent directors, but allows this requirement to be reduced to one-third if the unitholders of the REIT are given the right to appoint the directors of the REIT manager. Option 2 will require all Boards to be majority independent. Under both approaches, an independent director has to satisfy all of the following: (a) independent from any management and business relationship with the REIT manager and the REIT; (b) independent from any substantial shareholder of the REIT manager and from any substantial unitholder of the REIT; and (c) has not served on the Board of the REIT manager for a continuous period of nine years or longer. In addition, the Chairman of the Board cannot be an executive director or a person who is a member of the immediate family of the Chief Executive Officer ("CEO").

1.5. Majority of the respondents supported Option 1, which will be aligned with the board composition guidelines in the Code of Corporate Governance ("CG Code"). On the other hand, some respondents preferred Option 2 as it is a uniform requirement for all REIT managers. A few respondents enquired whether a Sponsor[1] will be allowed to vote on the appointment of directors of the REIT manager, if it is also a unitholder of the REIT.

1.6. Some of the respondents commented that the proposed definition of "independence" should be aligned with the CG Code. A respondent also suggested that in the context of a stapled REIT, a director of the trustee-manager of the stapled business trust should be allowed to be appointed as an independent director of the REIT manager.

MAS' Response

1.7. MAS will proceed to implement Option 1, given the strong support from most respondents for an approach that is aligned to the board composition guidelines in the CG Code. While Option 2 will apply a common standard across all REIT managers, it will not recognise the additional empowerment given to unitholders, if they have the right to appoint the directors of the REIT manager. Under Option 1, a controlling shareholder will have the right to appoint the directors of a REIT manager, if it is also a unitholder of the REIT. In the context of a business trust that is stapled to a REIT, a director of a trustee-manager can be appointed as an independent director of the REIT manager.

1.8. After carefully considering the feedback on the definition of "independence", MAS has decided to proceed with the proposed definition. MAS is of the view that it is important to establish strong corporate governance standards for REIT managers, given the inherent conflict of interests faced by a REIT manager. As suggested by some respondents, REIT managers will be given an additional year to reconfigure their Boards. The requirement will take effect no later than the first Annual General Meeting relating to the financial years ending on or after 31 December 2016, instead of 31 December 2015 as proposed initially.

C. REMUNERATION OF DIRECTORS AND EXECUTIVE OFFICERS

1.9. MAS proposed that REIT managers disclose, in the REIT's annual report: (a) the REIT manager's remuneration policies and procedure for setting remuneration of directors and executive officers; (b) the remuneration of each individual director and CEO of the REIT manager, on a named basis; and (c) the remuneration of at least the top five executive officers of the REIT manager, on a named basis, in bands of S$250,000.

1.10. Respondents who agreed with MAS' proposals felt that they provided greater transparency to REIT managers' remuneration practices. However, a majority of the respondents disagreed with the proposal to require a REIT manager to disclose the

[1] This term is further discussed in paragraphs 7.1 to 7.4.

remuneration of each individual director, the CEO and at least the top five key executive officers of the REIT manager. These respondents were of the view that the disclosures may result in difficulties with talent retention, and upward-ratcheting of remuneration arising from comparison amongst these individuals. In addition, the respondents argued that the remuneration of these individuals is borne by the REIT manager, and not the listed REIT.

MAS' Response

1.11. MAS is of the view that greater transparency of REIT managers' remuneration practices improve market discipline and REIT managers' accountability to the unitholders of the REIT, when setting the remuneration for their directors and executive officers. To balance the benefits of increased transparency with the potential negative consequences highlighted, MAS will only require a REIT manager to disclose, in the REIT's annual report, its remuneration policies and procedure for setting remuneration of directors and executive officers, and disclose whether the remuneration comprises other components (as elaborated in paragraph 2.15). Proposals (b) and (c) will be applied to REIT managers on a comply-or-explain basis, similar to the requirement for companies listed on the Singapore Exchange Limited.

D. AUDIT COMMITTEE REQUIREMENTS

1.12. MAS proposed to require a minimum of three directors for the Audit Committee of a REIT manager ("AC"). In addition, MAS proposed (a) to allow directors whose responsibilities in the Sponsor's group relate only to control or back-office functions to be a member of the AC; and (b) to require, in the case of an AC that has a Sponsor's nominee as a member, a minimum of three other directors who are independent.

1.13. Respondents were in support of MAS' proposal to require a minimum of three directors for the AC. Some respondents also suggested that the AC should be fully-independent, as nominee directors from the Sponsor can be invited to the AC meeting, even if they are not members. On the other hand, other respondents raised objections against both proposals (a) and (b), highlighting that these requirements are more onerous than those for companies listed on the Singapore Exchange Limited.

MAS' Response

1.14. MAS will proceed with its proposal to require a minimum of three directors for the AC. MAS notes the arguments for and against the case that a director from the Sponsor be allowed as an AC member. The AC plays a key role in reviewing related party transactions, including reviews of material functions that a REIT manager may have outsourced to the Sponsor. Hence, a fully independent AC will be better placed to review these related party transactions. However, MAS is also cognisant that directors from the Sponsor may provide useful insights from their experience and add value to the AC. Thus, MAS will allow directors, whose responsibilities in the Sponsor's group relate only to control or back-office

functions, to be a member of the REIT manager's AC. In such cases, the AC shall comprise a minimum of three other independent directors. The director from the Sponsor will be required to abstain from voting on any matter in which the Sponsor has a direct or indirect interest.

E. ACCOUNTABILITY OF REIT MANAGERS

1.15. MAS invited comments on whether the current approach of relying on unitholders to initiate a review of the REIT manager's appointment is effective, and if not, the additional possible measures that could be considered.

1.16. Respondents were of the view that it is currently not difficult for unitholders to convene an extraordinary general meeting to obtain a simple majority approval that is needed to remove a REIT manager. Some respondents commented that while regulatory intervention could be advantageous, there could be transition issues when managers are changed. Several respondents remarked that requiring routine re-appointment of REIT managers could strongly deter sponsors from setting up or injecting quality assets into REITs. The main reason for this was the possible loss of control over the management of the REIT. Respondents also observed that REIT managers could be motivated to take a short term view so as to secure re-appointments.

MAS' Response

1.17. This consultation question was kept open-ended with the aim to solicit feedback on the adequacy of existing practices and ways to encourage a regular dialogue between unitholders and REIT managers on the latter's performance of duties to the former. MAS notes that respondents generally agreed that the current approach is broadly effective at this juncture. Therefore, MAS does not see the need for regulatory intervention at this time.

SECTION 2:
ALIGNMENT OF INCENTIVES

A. FEE STRUCTURE

2.1. MAS proposed to require the performance fee payable to a REIT manager to be computed based on a methodology that meets certain principles that foster stronger alignment between a REIT manager and unitholders. MAS also invited suggestions on the possible methodologies that could be adopted to comply with the principles.

2.2. Respondents generally agreed that in principle, a REIT manager's fee structure should be aligned with the long-term interest of the REIT and its unitholders. Most respondents were of the view that current disclosure in trust deeds and prospectuses is appropriate and sufficiently effective to ensure alignment of interests. They commented that it would not be appropriate for MAS to prescribe a standard metric for fee computation, such as net asset value per unit or distributions per unit ("DPU"), as every REIT is different in terms of its business model, focus, mandate and composition.

MAS' Response

2.3. MAS notes respondents' agreement that the performance fee structure adopted by a REIT manager should be aligned with the long-term interests of the REIT's unitholders. MAS will not prescribe a list of permissible fee computation methodologies as REITs vary in business models and each methodology has its merits and shortcomings. Net asset value per unit and DPU are two possible metrics that could meet the principles on performance fees. Other metrics could be used if they meet these principles.

B. ACQUISITION AND DIVESTMENT

Acquisition and divestment fees

2.4. Currently, acquisition and divestment fees are charged as a percentage of the transacted price, and only after transactions are completed. MAS proposed to allow REIT managers to charge an acquisition or divestment fee only if the fee is determined based on a 'cost-recovery' basis.

2.5. Some respondents were supportive of the proposal on the grounds that charging acquisition and divestment fees on a 'cost-recovery' basis could reduce churning of assets and cut costs for unitholders.

2.6. However, majority of the respondents disagreed with the proposal. Some respondents were of the view that MAS should not be prescriptive in operational issues such as the payment of fees but should encourage increased disclosure, as it is the markets' job to decide

on these matters. Others commented that acquisition and divestment fees are necessary to incentivise a REIT manager to source for inorganic growth opportunities, as the work involved in acquisition and divestment is over and above a REIT manager's normal job scope. Some respondents sought guidance on the scope of 'cost-recovery' as there is currently no industry norm for this. They pointed out that without such a prescription, there would be practical difficulties in verifying costs, such as time costs, attributed to acquisition and divestment related activities. A few respondents suggested a graduated scale based on the purchase consideration for the property, but acknowledged that it could be a challenge to create a scale that caters to the diversity of our REIT market, while ensuring that the fees reflect the amount of efforts expended or the costs incurred in a transaction.

MAS' Response

2.7. MAS agrees that investors should have more clarity on the reason for charging various types of fees. Given the practical difficulties in implementing 'cost recovery', MAS will not require acquisition and divestment fees to be chargeable only on a 'cost-recovery' basis.

2.8. To improve fee transparency and to prevent potential abuse of the fee structure[2], MAS will instead require REIT managers to disclose the justification for each type of fees charged. This will be disclosed in the REIT's prospectus (or in the case of existing REITs, the first annual report after the requirement takes effect), as well as any circular seeking unitholders' approval for subsequent revision of fees. MAS will also require disclosures on performance fee to be accompanied by the methodology for computing performance fees and the justification of how such methodology takes into account unitholders' long-term interest.

2.9. The disclosures should be clear, reasonable, informative and meaningful so that unitholders are provided with details of how the various types of fees co-exist and serve their respective purposes, and how performance fees align the REIT manager's interest with the long-term interest of the REIT. MAS will work with the industry to develop a form of disclosure that is clear, acceptable and practicable.

Divestment to interested party

2.10. Where a REIT's property is divested to an interested party, MAS proposed to require the AC to certify that it (a) is not aware of any other offer with; and (b) has no reason to believe that the divestment can be made on, terms that are more favourable than those offered by the interested party.

2.11. Several respondents pointed out that this requirement is over and above the requirements for listed companies, and could make it harder for REIT managers to attract independent directors to sit on their ACs. Some respondents were of the view that the

[2] This entails any fee charged by REIT managers, including performance, acquisition or divestment fees.

requirement is very onerous and in practice could only be met through a public tender. This may not necessarily be in the best interest of unitholders as the benefits of price discovery through a public tender may be outweighed by the potential costs. As an alternative, a few respondents suggested that the AC be required to confirm that it has undertaken due process to ensure that the terms are generally in line with that which would have been obtained had the assets been sold to a non-interested party.

MAS' response

2.12. MAS' intent is to have the AC check on divestments to interested parties, but not to the extent of calling for a public tender on each such divestment. Therefore, MAS will instead require the AC to confirm that it has undertaken due process to ensure that the terms in an interested party divestment by the REIT are generally in line with that which would have been obtained had the asset been sold to a non-interested party.

C. REMUNERATION OF DIRECTORS AND EXECUTIVE OFFICERS

2.13. MAS proposed to prohibit the remuneration of directors and executive officers of the REIT manager to be: (a) paid in the form of shares or interests in the Sponsor or its related entities; or (b) linked in any way to the performance of any entities other than the REIT. In addition, MAS proposed to restrict the remuneration of executive directors of a REIT manager from being linked to the revenue of the REIT. MAS also proposed to require the remuneration of non-executive directors ("NEDs") of a REIT manager to be a fixed sum.

2.14. Some of the respondents raised concerns that proposals (a) and (b) may impede the movement of talent from a Sponsor to Sponsor-backed REIT managers within the same property development group, as the employees of the Sponsor do not have the same restrictions. It would also be difficult to persuade the employees of a REIT manager who were previously from the sponsor to give up their existing share option plans.

2.15. Majority of the respondents agreed that the other two proposals are aligned with the requirements for companies listed on the Singapore Exchange Limited. However, a few respondents were of the view that a strong and independent Board would be sufficient to prevent a misalignment of interests.

MAS' Response

2.16. MAS is of the view that remuneration paid to directors and executive officers, in the form of shares or interests in the controlling shareholder or its related entities may result in a misalignment of interests as it creates an incentive for these individuals to prioritise the interests of the controlling shareholder over those of REIT unitholders. On the other hand, MAS notes the issues expressed by respondents who opposed the proposal. On balance, MAS will not prohibit the remuneration of directors and executive officers of the REIT manager to be (a) paid in the form of shares or interests in the controlling shareholder or its

related companies, or (b) linked (directly or indirectly) to the performance of any entity other than the REIT. However, a REIT manager will have to disclose such remuneration in the REIT's annual report, and explain why such an arrangement would not result in a misalignment of interest between the REIT manager and the unitholders, or the mitigating measures instituted to address any potential misalignment.

2.17. MAS will require the remuneration of NEDs of a REIT manager to be a fixed sum, similar to the requirements of companies listed on the Singapore Exchange Limited. MAS will also proceed with its proposal to restrict the remuneration of the executive directors of a REIT manager from being linked to the gross revenue of the REIT. This is in line with MAS' proposal to restrict a REIT manager's performance fees from being linked to the gross revenue of the REIT. The remuneration of the executive directors should instead be linked to appropriate metrics which take into account the long-term interest of the REIT and its unitholders.

SECTION 3:
OPERATIONAL FLEXIBILITY

A. LEVERAGE LIMIT

3.1. MAS proposed to adopt a single-tier leverage limit of 45% without the option to leverage up to 60% by obtaining a credit rating. Respondents were generally supportive of the proposal as it would provide greater operational flexibility, but some respondents believed the limit could be relaxed further. The relaxation could take the form of raising the single-tier limit, retaining the current tiered approach with a higher limit accorded to investment grade REITs or removing the limits altogether. On the other hand, a few respondents suggested status quo or lowering the proposed leverage limits as they were concerned that the increase in leverage limit could change the risk profile of REITs.

MAS' Response

3.2. Credit ratings may not provide a complete picture of a REIT's capacity to take on and service additional debt. Although REITs currently have the option to leverage up to 60% by obtaining a credit rating, they have kept their leverage ratio at below 45%. Taking into account the foregoing, MAS believes that a single 45% leverage limit strikes a good balance between preventing REITs from over-gearing themselves, and reducing mechanistic reliance on credit ratings.

B. DEVELOPMENT LIMIT

3.3. MAS proposed to allow a REIT to undertake development activities up to 25% of its deposited property, but only if: (a) the REIT obtains specific unitholders' approval for the higher development limit of 25%; and (b) the additional 15% allowance (over and above the current 10% limit) is used solely for the redevelopment of an existing property that has been held by the REIT for at least 3 years and which the REIT will continue to hold for at least 3 years after the redevelopment. MAS also proposed to clarify that "property development activities" has the same meaning as "building works" as defined under section 2(1) of the Building Control Act (Cap.29).

3.4. Most respondents agreed with the proposal to increase the development limit to 25%. A few respondents were concerned that the increase could change the risk profile of REITs. Some respondents asked whether a one-time approval from unitholders would be sufficient for the REIT to use the higher development limit of 25%. A few respondents also suggested removing the conditions for using the additional 15% allowance. On the definition of "property development activities", some respondents suggested excluding air-conditioning replacement works, as including these activities could cause REITs to inadvertently breach the development limit.

MAS' Response

3.5. MAS is of the view that the conditions for using the additional 15% allowance would serve to mitigate the risk that the increase in development limits would change the risk profile of REITs. MAS would like to highlight that specific approval from unitholders should be sought each time the additional 15% allowance is used. When seeking such approval from unitholders, REIT managers should also cite the relevant properties that would be using the additional 15% allowance.

3.6. With regard to the definition of "property development activities", MAS agrees that this should not include activities such as air-conditioning replacement works that will not affect a REIT's ability to receive or be entitled to rental income. MAS will amend the definition to include the execution of any material change to a building or property (including erection and demolition activities), where such change results or will result in the REIT being unable to receive or be entitled to any rental income from the building or property during the period of the change, but do not include refurbishment, retrofitting and renovations.

SECTION 4:
OPERATIONAL REQUIREMENTS ON REIT MANAGERS

A. COMPLIANCE FUNCTION

4.1. MAS sought views on its proposal to require the AC to state in the REIT's annual reports: (a) whether the compliance arrangements of the REIT manager are adequate and effective, taking into account the nature, scale and complexity of the REIT manager's operations; and (b) the mitigating measures being taken, if the AC is of the view that the arrangements are inadequate or ineffective. The proposal aimed to ensure that annual reviews will be conducted on the compliance function, with oversight from the Board and AC.

4.2. Respondents agreed that it is essential to have effective oversight of the compliance function in REIT managers. However, a number of respondents felt that the AC need not be tasked with this specific duty, as the SGX Listing Rule 1207(10)[3] already requires the Board to opine, with the concurrence of the AC, on the adequacy of the internal controls. This would include compliance controls.

MAS' Response

4.3. MAS agrees that the AC's responsibility over the REIT manager's internal controls would include its compliance function. Thus, instead of proceeding with the proposal, MAS will provide guidance on compliance-related factors that the Board should consider in its assessment of the adequacy and effectiveness of the REIT manager's internal controls. The Board's opinion should be disclosed in the REIT's annual report.

B. PROFESSIONAL INDEMNITY INSURANCE

4.4. Respondents generally agreed with MAS' proposal to require the REIT manager to procure a Professional Indemnity Insurance ("PII") or, in lieu of a PII, a Letter of Undertaking ("LU") from the REIT manager's parent company, where the latter has a satisfactory financial standing.

MAS' Response

4.5. MAS will proceed with the proposal.

C. PROPERTY MANAGEMENT FUNCTION

4.6. Where a REIT manager enters into a property management agreement ("PMA") with a property manager that is connected to the sponsor, MAS proposed to require (a) the REIT

[3] SGX Listing Rule 1207(10) requires the board of directors to provide an opinion, with the concurrence of the audit committee ("AC"), on the adequacy of internal controls, addressing financial, operational, and compliance risks.

manager to ensure that the PMA does not contain any term that materially restricts the ability of the REIT to remove the property manager; and (b) the AC to review the compliance of the property manager with the terms of the PMA, at least once every two years and to take remedial actions where necessary.

4.7. Respondents were generally supportive of the proposals as they believed that the proposals would foster greater accountability of the property manager, in the interest of REIT unitholders. A few respondents disagreed with the proposal to require the AC to review the compliance of the property manager with the terms of the PMA, as they believed that this review is already undertaken by the REIT manager. These respondents also commented that where a REIT manager does not have an in-house internal audit function, the AC will likely need to engage an external consultant (such as independent auditors) to undertake the review, and the costs of such engagements would outweigh the benefits.

4.8. Some respondents asked whether the requirement for the PMA to not contain any term that materially restricts the ability of the REIT to remove the property manager could be fulfilled by giving the REIT manager the right to remove the property manager for cause under the PMA. Some respondents suggested that the review interval should be increased so as to cater for the different tenures of PMAs across various sectors.

MAS' Response

4.9. MAS would like to clarify that a clause that gives the REIT manager the right to remove the property manager for cause would not in itself be sufficient to fulfil the requirement for the PMA to not contain any term that materially restricts the ability of the REIT to remove the property manager. The terms of a PMA should be taken in totality. For example, if the PMA imposes significant penalties for removal of a property manager (even if for cause), the PMA would still serve to entrench the property manager.

4.10. With regard to the requirement for the AC to review the compliance of the property manager with the terms of the PMA, MAS' view is that a PMA that a REIT manager enters into with a property manager that is connected to the sponsor falls within the ambit of interested party transactions, the review of which is within the AC's scope of duties. Nonetheless, MAS recognises that REIT managers already review the compliance of the property managers with the terms of the PMA. MAS also agrees that the review interval should be flexible so as to cater for the different sectors. Taking into account the foregoing, MAS will modify the requirement such that where a REIT manager enters into a PMA with an interested party, the AC should satisfy itself at least once every two to five years (and more frequently if the property manager's compliance record is assessed to be poor) that the REIT manager has periodically reviewed the property manager's compliance with the terms of the PMA, and that the REIT manager has taken remedial actions where necessary. The AC should also document its reasons for its conclusion. In this regard, MAS expects the interval of the review by the AC to be commensurate with the tenure of the PMA.

SECTION 5:
STRUCTURING OF REITS

A. INCOME SUPPORT ARRANGEMENTS

5.1. MAS invited comments on whether the current approach of relying on disclosure to impose market discipline on the use of income support arrangements is effective, and if not, the additional possible measures that could be considered to address the concerns with the use of such arrangements.

5.2. Respondents were generally of the view that the current disclosure approach is sufficient, but a few respondents suggested that the use of income support arrangements should be prohibited.

MAS' Response

5.3. This was another open-ended consultation question to solicit feedback on the effectiveness of the current disclosure-based approach in preventing the abuse of income support arrangements. Given the feedback and our plans to impose additional ongoing disclosure requirements on income support arrangements (see Section 6), MAS is of the view that further regulatory intervention is not necessary at this stage.

B. STAPLED SECURITIES STRUCTURE

5.4. Where a stapled securities structure contains a REIT ("Stapled REIT-group"), MAS proposed to require sufficient nexus between the REIT and the non-REIT entity that has active operations. MAS also proposed operational restrictions at the stapled group level (over and above the restrictions for the REIT component) to limit their overall exposure to the risks of running active operations. MAS proposed to apply these operational restrictions on existing Stapled REIT-groups.

5.5. Some respondents suggested modifying the nexus requirement to accommodate non-sponsored REITs and internally managed REITs (where the REIT is stapled to its REIT manager). With regard to the proposed operational restrictions, some of these respondents commented that there should not be any operational restrictions as it could be beneficial for the development of the REIT market to allow REITs to evolve beyond stable income producing vehicles. Other respondents observed that existing Stapled REIT-groups would need to restructure their portfolios in order to meet the nexus and operational requirements, and any pressure to restructure by a fixed timeline might be prejudicial to the interest of unitholders. On the other hand, some respondents suggested that Stapled REIT-groups should be subject to the same operational limits as that imposed on standalone REITs, so that all REITs (stapled or standalone) would continue to provide investors with stable distributions

through passive ownership of income-producing properties. One respondent suggested banning stapled securities structures altogether as Stapled REIT-groups could compete with standalone REITs and change the risk profile of the REIT market as a whole.

MAS' response

5.6. On the nexus requirement, MAS agrees with the respondents' suggestion, and will amend the criteria to allow nexus to be established between a REIT and an entity with active operations so long as both are in the same industry or if the entity with active business operations is operating a business or providing a service that is ancillary to the assets held by the REIT. MAS will not require the entity that is stapled to a REIT to be the sponsor or a related entity of the sponsor.

5.7. On the operational restrictions, it would not be feasible to replicate existing limits for standalone REITs in Stapled REIT-groups as it would be difficult for REITs to be part of a stapled group unless the other entity is similarly holding income-producing assets. At the same time, MAS could proceed with the group level operation restrictions and grandfather existing Stapled REIT-groups to avoid the negative impact on them. However, this may lead to an uneven playing field among Stapled REIT-groups and market confusion, which may be exacerbated if the operational limits are subsequently revised. As the revised nexus requirement will already go some way to limit the overall exposure of Stapled REIT-groups to the risks of running active operations, MAS will not introduce operational restrictions.

SECTION 6:
ENHANCING DISCLOSURES

A. INCOME SUPPORT PAYMENTS

6.1. MAS proposed to require a REIT to disclose in its annual report (a) the amount of income support payments received by the REIT during the year; and (b) where the income support arrangement is embedded in a master lease, the difference between the amount of rents derived under the master lease and the actual amount of rents from the underlying leases during the year.

6.2. Some respondents asked whether master leases with minimum base rents can be excluded from being treated as income support if at the time of entry into the master lease, the underlying operations could support the minimum base rent. One respondent suggested disclosing the effect of income support payments on DPU for investors' easy reference.

MAS' response

6.3. MAS agrees with the suggestion to disclose the effect of income support payments on DPU. This will extend the current practice for REIT prospectuses at the time of initial public offering to the annual reporting cycle. As the structuring of leases is primarily a commercial decision, MAS does not intend to prescribe a negative list of lease structures that may be excluded from being treated as income support.

B. DEVIATIONS OF ACTUAL DISTRIBUTIONS PER UNIT FROM FORECAST DISTRIBUTIONS PER UNIT

6.4. MAS proposed to require REITs to disclose, in their annual reports, any material deviation of the actual DPU from the forecast DPU, together with a detailed explanation of the deviation. One respondent suggested that all deviations (and not just material deviations) should be disclosed while another suggested setting a threshold for materiality.

MAS' response

6.5. MAS does not intend to require all deviations to be disclosed as the benefits of such disclosures would not justify the costs. MAS also does not intend to prescribe specific thresholds for materiality as it is to be assessed based on the circumstances of each case, including the quantum of the forecast DPU.

C. DISCLOSURE OF FEES AND EXPENSES

6.6. MAS proposed to require a REIT's annual report to contain disclosures of (a) the total operating expenses, including all fees and charges to be paid to the manager, in both absolute

terms and as a percentage of the REIT's net asset value (both as at the end of the financial year); and (b) the distributions declared by the REIT for the financial year.

6.7. Some respondents suggested disclosing total operating expenses as a percentage of total assets instead of net assets. With regard to the scope of total operating expenses, some respondents suggested excluding property operating expenses as these vary depending on the type and size of the property and will not provide a meaningful basis for comparison. Some respondents observed that operating expenses should include the REIT's corporate operating expenses. A few respondents sought clarification on the rationale for requiring disclosure on total operating expenses.

MAS' response

6.8. MAS would like to clarify that the intent of the requirement for disclosure on total operating expenses is to enhance the comparability of expenses across REITs. In this regard, MAS is of the view that disclosing total operating expenses as a percentage of net asset value is a more appropriate metric as it takes into account the capital structure of the REIT. MAS would also like to clarify that the scope of "total operating expense" should be in line with the disclosure under the existing paragraph 11.1 (i) of Appendix 6 of the Code on Collective Investment Schemes ("CIS Code").

D. LENGTH OF NEW LEASES AND DEBT MATURITY PROFILE

6.9. To allow investors to assess the lease expiry profile and the refinancing needs of a REIT, MAS proposed to require the REIT's annual report to contain disclosures of (a) the weighted average lease expiry ("WALE") of new leases entered into in the past financial year, and the proportion of revenue attributed to these leases; and (b) the REIT's debt maturity profile.

6.10. Some respondents suggested calculating WALE on a portfolio basis as this should be sufficient for unitholders to understand the REIT's overall exposure to lease expiry.

MAS' Response

6.11. MAS agrees that it would also be useful for unitholders to understand the REIT's overall exposure to lease expiry and will amend the requirement such that the annual report should contain disclosures of the WALE of the REIT on a portfolio basis (in addition to the WALE of new leases entered into in the past year).

SECTION 7:
MISCELLANEOUS AMENDMENTS

A. DEFINITION OF "SPONSOR"

7.1. MAS sought views to define a "Sponsor" as (a) the entity that determines the properties to be injected into the initial portfolio of the REIT at the time of listing; (b) the entity that provides the REIT with a right of first refusal in relation to any asset; or (c) the entity that represents itself as a Sponsor of the REIT in any prospectus, circular, announcement, marketing material or other relevant report or document, or its successor.

7.2. Generally, respondents did not think that it was important to define a "Sponsor", and had diverse views on the definition. There were suggestions that substantial control of the REIT manager be expressly included as a criterion. There were also views that entities which provide a right of first refusal to a REIT, but do not have any relationship with the REIT manager, should not be considered a "Sponsor". Some respondents objected to (c) as they felt that an entity should not be a "Sponsor" based on this criterion alone.

MAS' Response

7.3. MAS has considered the views of the respondents, and accepts that there is no compelling need to define a "Sponsor".

7.4. MAS notes the general consensus that a "Sponsor", inter alia, typically has substantial ownership of the REIT manager. Following MAS' decision not to define a "Sponsor", paragraph 3.5 of the Draft Guidelines to All Holders of a Capital Markets Services Licence for Real Estate Investment Trust Management will be amended to: *Individuals with control or back-office responsibilities in the controlling shareholder or its related companies may be appointed as members of the Audit Committee. In such cases, the Audit Committee should comprise at least three directors who are independent.*

B. NOMINATING AND REMUNERATION COMMITTEES

7.5. MAS sought views on the expectations that in the event that a REIT manager does not set up a Nominating Committee ("NC") or Remuneration Committee ("RC"), the REIT manager's explanation must adequately address whether it has a process for (a) sourcing new directors; and (b) developing policies on executive remuneration and determining the remuneration packages of individual directors.

7.6. Respondents agreed with the proposal for the REIT manager to provide an adequate explanation if it does not have a NC or RC. Some respondents sought clarification on whether the NC and RC could be combined into a single committee.

MAS' Response

7.7. MAS will proceed with the proposal. MAS does not object to the NC and RC being combined into a single committee.

C. OTHER BUSINESS INTERESTS OF CEO AND EXECUTIVE DIRECTORS OF REIT MANAGER AND THEIR COMMITMENT TO THE REIT MANAGER'S OPERATIONS

7.8. MAS proposed to set out its expectations on REIT managers to ensure that (a) the CEO and executive directors of a REIT manager should not sit on the board of another entity with competing interests; (b) the CEO and executive directors of a REIT manager are employed full-time in the day-to-day operations of the REIT manager; and (c) the CEO of a REIT manager should be resident in Singapore, even if the REIT manager manages a REIT invested primarily in foreign properties.

7.9. Most respondents were supportive of proposals (a) and (b). A respondent sought clarification as to whether parts (a) and (b) of the proposal would apply to stapled groups with a REIT component, as CEOs and executive directors of the stapled group could be directors of both the REIT manager and the trustee-manager. Other respondents were of the view that the current practice of requiring executive directors to abstain from voting, in cases where there may be potential conflict of interests, is sufficient. There were some respondents who objected to (c), and suggested that the residency of the CEO should depend on the nature of his role and location of the REIT's properties.

MAS' Response

7.10. MAS would like to clarify that proposals (a) and (b) will not apply to stapled groups with a REIT component. MAS notes that while individuals currently abstain from voting in cases of potential conflict of interests, a clear restriction from holding concurrent appointments in entities with competing interest is necessary to strengthen the safeguards for unitholders. The CEO and executive directors of a REIT manager are expected to be fully committed to its operations, in order to provide effective managerial oversight. Thus MAS will proceed with (a) and (b).

7.11. The CEO of a REIT manager should generally be resident in Singapore. However, as some existing and new REITs shift focus from domestic to foreign assets, MAS will consider allowing the CEO of a REIT manager, which manages a REIT that is invested primarily in foreign properties, to be resident in the foreign country where the REIT's properties are primarily invested in. In these cases, the REIT manager needs to satisfy MAS that this arrangement does not compromise the effective governance and oversight of the REIT portfolio and REIT management activities.

D. NUMBER OF EXPERIENCED REPRESENTATIVES

7.12. Respondents were supportive of MAS' proposal for REIT managers to have a minimum of three full-time representatives who are resident in Singapore, each with at least five years of relevant experience.

MAS' Response

7.13. MAS will proceed with the proposal.

E. TREATMENT OF HYBRID SECURITIES

7.14. MAS proposed to clarify the factors that it will consider in determining whether hybrid securities are regarded as equity or debt for the purpose of paragraph 9.2 of Appendix 6 of the CIS Code.

7.15. Some respondents suggested aligning the factors with accounting standards to reduce confusion to industry practitioners.

MAS' Response

7.16. MAS would like to clarify that the intent of this proposal was to codify our current assessment criteria for hybrid securities so as to increase transparency to industry practitioners. MAS does not intend to align our assessment criteria with that of accounting standards as the concerns behind accounting standards in the treatment of hybrids may not necessarily reflect our regulatory concerns behind the leverage limits for REITs.

F. UNIT BUY-BACK MANDATES BY REIT MANAGERS

7.17. MAS proposed to clarify that chapter 6.4(a) of the CIS Code does not apply to listed closed-ended funds, provided that the issuance, redemption or repurchase of units complies with the applicable SGX-ST listing rules.

7.18. A few respondents observed that the draft provision should be modified if the intention is to disapply this chapter during the initial offer period of a listed closed-ended fund.

MAS' Response

7.19. MAS would like to clarify that chapter 6.4(a) of the CIS Code does not apply during the initial offer period of a listed closed-end fund. The relevant provisions will be amended to reflect this intent.

G. CHANGE OF CONTROL COVENANTS

7.20. MAS proposed to codify its current position of allowing loan agreements to contain a change of control covenant if the covenant (a) is required solely by lenders; (b) can be waived with the lenders' consent; and (c) is disclosed in accordance with SGX-ST's listing rules.

7.21. Some respondents were concerned that such codification could inadvertently cause lenders to require change of control covenants by default, making it more expensive to acquire loans without such covenants.

MAS' Response

7.22. MAS would like to clarify that the intent of this proposal was to codify our current assessment criteria on loan agreements that contain change of control covenants so as to increase transparency to market practitioners. MAS does not intend to apply the criteria retrospectively to all loans or to require that loan agreements must henceforth contain change of control covenants. It is primarily the responsibility of the REIT manager and the REIT's trustee to ensure that any loan agreements are undertaken on terms that are in the best interest of unitholders.

SECTION 8:
SAVINGS AND TRANSITIONAL PROVISIONS

8.1. MAS proposed for (a) the amendments to the Regulations to take effect no later than the first Annual General Meeting ("AGM") relating to financial years ending on or after 31 December 2015; and (b) the amendments to the Securities and Futures Act (the "Act") and CIS Code, as well as the proposed Notice and Guidelines to take effect on 1 January 2016. Most respondents were supportive of the proposal. Some respondents suggested for additional time be provided to effect changes which required unitholders' approval.

MAS' Response

8.2. The amendments to the CIS Code, proposed Notice and Guidelines will take effect on 1 January 2016, while the proposed amendments to the Act would take effect on 1 January 2017.

8.3. To allow REIT managers more time to reconfigure their Boards to meet the requirements on independence and composition, the proposed amendments to the Regulations will take effect no later than the first AGM relating to the financial years ending on or after 31 December 2016.

8.4. To give existing REITs sufficient time to comply with the new requirements on performance fees payable to a REIT manager, MAS has decided to extend the effective date of the requirements on performance fees to no later than the first AGM relating to the financial year ending on or after 31 December 2015.

SECTION 9:
OTHER MATTERS ARISING FROM THE FEEDBACK

A. INTERNALLY MANAGED REITS

9.1. Some respondents sought clarity on whether internally managed REITs are allowed in Singapore.

MAS' Response

9.2. MAS would like to clarify that both internally and externally managed REIT structures are allowed in Singapore.

B. MERGERS AND ACQUISITIONS

9.3. Some respondents sought clarity on the rules governing mergers and acquisitions of REITs, and observed that REIT managers appeared to be prohibited from managing more than one REIT. To facilitate the consolidation of certain REIT sectors, some respondents suggested allowing REIT managers to manage more than one REIT.

MAS' Response

9.4. MAS is prepared to consider applications from REIT managers to manage more than one REIT, if the REIT managers have the necessary expertise, and properly mitigated the potential conflicts of interests arising from managing multiple REITs.

Appendix 1

LIST OF RESPONDENTS TO POLICY CONSULTATION ON ENHANCEMENTS TO THE REGULATORY REGIME GOVERNING REITS AND REIT MANAGERS*

Corporates/Associations

1 Aberdeen Asset Management Asia Limited
2 AIMS AMP Capital Industrial REIT Management Limited
3 Allen & Gledhill LLP
4 APG Asset Management Asia
5 ARA Management Pte Ltd
6 Ascendas Pte Ltd
7 *Joint submission by*: Asia Pacific Real Estate Association Limited and Singapore Institute of Directors
8 AsiaProperty
9 B&I Capital AG
10 British and Malayan Trustees Limited
11 CFA Society Singapore
12 Croesus Retail Asset Management Pte Ltd
13 Daiwa Capital Markets Singapore
14 Far East Hospitality Asset Management Pte Ltd
15 Frasers Centrepoint Asset Management (Commercial) Ltd
16 Frunze Investments
17 HSBC Institutional Trust Services Pte Ltd
18 KPMG LLP
19 Mapletree Investments Pte Ltd
20 National Association of Real Estate Investment Trusts
21 OUE Hospitality REIT Management Pte Ltd
22 Parkway Trust Management Limited
23 REIT Association of Singapore
24 RHTLaw Taylor Wessing LLP
25 Sabana Real Estate Investment Management Pte Ltd
26 Singapore Exchange Ltd
27 Shook Lin & Bok LLP
28 Singapore REITs Working Group
29 Standard Chartered Bank
30 WongPartnership LLP
31 YTL Starhill Global REIT Management Ltd

Individuals

1 Eugene Ng
2 Ho Cheng Kwee
3 Jennifer Loh
4 Justin
5 MK Khoo
6 R G Langdale

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