



**PUBLIC RESPONSE PAPER**

**NO. 2/2014**

**PROPOSED REGULATORY FRAMEWORK  
FOR EQUITY CROWDFUNDING**

The Securities Commission Malaysia (SC) issues this Public Response Paper in response to feedback received pursuant to the Public Consultation Paper on the proposed regulatory framework for equity crowdfunding dated 21 August 2014.

This Public Response Paper is dated 22 September 2014

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## **1. INTRODUCTION**

- 1.1 On 21 August 2014, the Securities Commission Malaysia (SC) published a Public Consultation paper to invite feedback on the SC's proposed regulatory framework for equity crowdfunding (ECF).
- 1.2 The Public Consultation paper was open for public feedback from 21 August 2014 to 5 September 2014.
- 1.3 The SC received feedback on the Public Consultation paper from 20 respondents which include individuals, entrepreneurs, venture capital firms, banks and crowdfunding operators.
- 1.4 Overall, the feedback provided was generally supportive of the proposed regulatory framework. Respondents have also raised certain issues, which we have considered in this Response Paper. The following were the issues raised:
  - (a) Permissible and non-permissible activities applicable to an ECF operator;
  - (b) How due diligence should be conducted on the issuer;
  - (c) How disclosure should be made by the issuer;
  - (d) Proposed prohibition on ECF operators holding shares of issuers hosted on their platform;
  - (e) Whether microfunds should be allowed to raise funds on an ECF platform; and
  - (f) Investment limit for angel investors.
- 1.5 Feedback from the respondents on the proposed regulatory framework (the proposals), together with the SC's comments, is presented in the following sections.

## 2. FEEDBACK ON PROPOSALS RELATING TO THE ECF OPERATOR

### 2.1 General obligations applicable to an ECF operator

2.1.1 In the Consultation Paper, the SC had proposed a list of permissible and non-permissible activities that an ECF operator may undertake.<sup>1</sup> The SC also proposed some general obligations that would be applicable to ECF operators.<sup>2</sup>

2.1.2 Respondents were asked to give their comments on the following questions:

**Question 1:**

- (a) **Given the fact that the ECF operator will be playing a key role in ensuring that investors have confidence in participating in ECF activities, would the proposed ECF operator's obligations as listed out in 3.8 be sufficient? If not, what other obligations should be imposed on the ECF operator?**
- (b) **To what extent should ECF operators be responsible to carry out background checks ("due diligence") on prospective issuers?**
- (c) **Should the regulator specify parameters for background checks? If you are of the view that the regulator should specify the parameters, what should those parameters include?**
- (d) **To what extent should ECF operators be responsible for investor education and developing educational material that will ensure investors understand the risk in participating in ECF activities?**
- (e) **Do you agree with the list of permitted and non-permitted activities of the operator as proposed in paragraphs 3.6 and 3.7? If not, what are your suggestions?**

#### Feedback from respondents

2.1.3 Most of the respondents were of the view that the proposed ECF operator's obligations were sufficient. Majority felt that ECF operators should be responsible for conducting background checks on the prospective issuers, and that parameters for such background checks should be specified. However, some respondents were of the view that in the interest of keeping fundraising costs low, it should be sufficient for issuers to self-declare their particulars without the need for verification by the ECF operators.

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<sup>1</sup> See paragraphs 3.6 and 3.7 of the Consultation Paper.

<sup>2</sup> See paragraph 3.8 of the Consultation Paper.

- 2.1.4 Most respondents support the proposal that ECF operators should be chiefly responsible for investor education and developing educational material that will ensure investors understand the risk in participating in ECF activities while there were suggestions that it could also be a joint initiative between the ECF operators and the SC.
- 2.1.5 Respondents generally agreed with the list of permitted and non-permitted activities referred to in Question 1(e), except for the proposal to prohibit operators from featuring trending pitches and negotiating terms for and on behalf of third parties. Majority felt that this should be allowed because the crowd is generally interested in pitches that are popular, and featuring such pitches is integral in facilitating a successful ECF. Respondents were also of the view that ECF operators should be permitted to provide prospective issuers with general advice on valuation and the fundraising process as start-ups typically cannot afford the cost of corporate financial advisory services.

### **The SC's position**

- 2.1.6 The SC is of the view that the obligations proposed to be imposed on the ECF operator referred to in Question 1(a) are sufficient and not excessively onerous, given that the obligations are in accordance with industry practice.

#### *Due diligence*

- 2.1.7 The SC recognises the need to keep the costs of fundraising low, and is thus supportive of the suggestion to adopt the self-declaratory approach for issuers.
- 2.1.8 To ensure that the information declared by the issuers is true and accurate, the SC will require ECF operators to conduct some due diligence to verify the truth and accuracy of such information. The SC will specify minimum parameters, but the ECF operator will be given the discretion to determine any additional areas required for the said due diligence. ECF operators should disclose to the public the parameters of such due diligence to keep investors informed on the scope of due diligence carried out by the ECF operator.

#### *Investor education*

- 2.1.9 While the SC is of the view that the ECF operator should be chiefly responsible for educating investors, the SC will work together with the ECF operator to further this objective.

### *Permissible and non-permissible activities*

- 2.1.10 The SC had, in its consultation paper proposed to prohibit ECF operators from:<sup>3</sup>
- (a) featuring trending pitches;
  - (b) offering investment advice;
  - (c) negotiating terms for and on behalf of third parties; and
  - (d) compensating its employees, agents or other persons for the solicitation/sale of securities on its ECF platform.
- 2.1.11 Having considered the feedback from the respondents the SC has decided to allow ECF operators to feature trending or popular pitches on their platform. However, to safeguard against potential conflict of interest issues, ECF operators are prohibited from highlighting selected pitches in exchange for consideration and such pitches must be featured based on transparent and objective criteria.
- 2.1.12 Similarly, recognising that ECF operators play a role that is akin to one played by venture capital firms, the SC has decided to allow ECF operators to negotiate terms for and on behalf of third parties. A situation where negotiating terms might be necessary would be where an issuer approaches the ECF operator with a business idea, but is inexperienced in the said industry or area of business. The ECF operator then engages experienced business owners and introduces them to the issuer as potential business partners or advisers for their business.
- 2.1.13 In relation to the proposed prohibition of providing investment advice, the SC would also like to clarify that the provision of general advice on the valuation of shares is allowed, as the provision of such advice is merely incidental to the ECF operator's main business and thus does not fall within the SC's definition of 'providing investment advice' for the purposes of the CMSA.

## 2.2 **Holding of investor funds**

- 2.2.1 The SC had proposed that ECF operators should use the all-or-nothing (AON) funding model, which means that the funds raised would only be released to the issuer if the target amount of funds to be raised is met.

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<sup>3</sup> See paragraph 3.7 of the Consultation Paper.

2.2.2 Respondents were asked to give their comments to the following question.

**Question 2:**

**Do you agree that the AON model should be preferred over the keep-it-all (KIA) model for the reasons discussed in paragraph 3.13? If not, please state**

Feedback from respondents

Most of the respondents were in favour of the all-or-nothing (AON) model while some were of the view that the issuer should be allowed to choose the model that best fits its business plan.

**The SC's position**

2.2.3 Given the overwhelming support for the AON model, the AON model will be adopted.

2.3 **Material adverse change**

2.3.1 The SC had proposed that the following circumstances be considered a material adverse change:

- (a) The discovery of a false or misleading statement in the standardised disclosure document in relation to the offer;
- (b) The discovery of a material omission of information required to be included in the standardised disclosure document; and
- (c) There is a material change or development in the circumstances relating to the offering and the issuer.

2.3.2 Respondents were asked to give their comments on the following questions:

**Question 3:**

- (a) **Do you agree that material adverse change should include the circumstances discussed in paragraph 3.16?**
- (b) **What other circumstances, if any, should be considered as a material adverse change?**

### Feedback from respondents

- 2.3.3 All respondents were in agreement with the SC's proposals on circumstances which may be deemed to be material adverse changes.
- 2.3.4 Respondents made some suggestions for additional circumstances that should be included :
- (a) Change of key appointment holders;
  - (b) Detrimental significant changes in intended management team of issuer;
  - (c) Price increase in input or output;
  - (d) Development in laws, regulations and government policies;
  - (e) Credit standing of issuer and shareholders who form part of management;
  - (f) New competitors;
  - (g) Government fiscal policies that have adverse effect to the issuer's business;
  - (h) Acts of God;
  - (i) Dependency on critical resources/supplier;
  - (j) Audit findings;
  - (k) Bankruptcy; and
  - (l) Material contracts;

### **The SC's position**

- 2.3.5 Given the positive feedback provided by the respondents, the SC is of the view that the proposals in relation to material adverse changes should be maintained. The SC is also of the view that the suggestions raised by the respondents would already be covered under the proposed definition of a material adverse change.

### 2.4 **Proposed condition precedent for release of funds to the issuer**

- 2.4.1 The SC had proposed that the funds raised through ECF can only be released by the ECF operator to the issuer after the following conditions are met:
- (a) The targeted amount sought to be raised has been met;
  - (b) There is no material adverse change relating to the offer during the offer period; and
  - (c) The cooling-off period of six business days has expired.



2.4.2 Respondents were asked to give their comments on the following questions:

**Question 4:**

- (a) **Do you agree with the proposed conditions precedent for release of funds to the issuer provided in paragraph 3.19?**
- (b) **Do you think that there should be other conditions precedent before the funds are released? If yes, what are the other conditions precedent?**

Feedback from respondents

2.4.3 Most of the respondents agreed with the proposed conditions precedent for the release of funds to the issuer.

2.4.4 The SC also received several suggestions that additional conditions precedent for the release of funds to issuers be included:

- (a) the issuance of shares by the issuer (to prevent the issuer from delaying the issuance of shares after receiving payment);
- (b) the signing of a written agreement for issuers to provide ECF operators and investors with regular updates;
- (c) the completion of verification by the ECF operator and one final check of due diligence; and
- (d) the resolution of all complaints or disputes.

**The SC's Position**

2.4.5 The objective of imposing the proposed conditions precedent before funds are released to issuers is to ensure that investors are adequately protected and that all outstanding issues are settled.

2.4.6 The SC is of the view that the proposals in relation to conditions precedent for the release of funds to issuers as set out in the Consultation Paper should be maintained as the minimum requirement which must be met before the funds are released.

2.4.7 In addition to the conditions precedent as proposed in the Consultation Paper, ECF operators are given the discretion to impose any other additional conditions precedent, provided that they serve the investors' interest.

## 2.5 **Complaints and dispute resolution mechanism**

2.5.1 The SC in the Consultation Paper proposed that ECF operators should have in place an internal mechanism to handle complaints and facilitate dispute resolution.

2.5.2 Respondents were asked to give their comments on the following question:

**Question 5:**

**Do you agree that ECF operators should be required to have in place an internal dispute resolution mechanism? If yes, what type of disputes should be included in this mechanism?**

Feedback from respondents

2.5.3 All but one respondent were in favour of the proposal that ECF operators should be required to have in place an internal dispute resolution mechanism.

2.5.4 The respondent who opposed the proposal was of the view that dispute resolution should purely be an internal issue between the issuer and the investor.

**The SC's Position**

2.5.5 Given that the ECF operator acts as the conduit between issuers and investors, they would be in the best position to deal with any conflicts that may arise. The SC is of the view that the proposals in relation to complaints and dispute resolution mechanisms should be maintained, as supported by the feedback received. The SC was made to understand that the mechanism to facilitate such dispute resolution could be technology-based and some operators leverage on the chat space where peer review and investors' expectations often lend weight to the resolution of a dispute.

2.5.6 ECF operators will be given the discretion to decide the type of disputes which will fall within its dispute resolution framework.

## 2.6 **Managing conflict of interest**

2.6.1 The SC had proposed that ECF operators, its directors and its officers should be prohibited from investing in the shares of the issuer hosted on its platform, though the ECF operator is allowed to receive shares from an issuer as a form of payment for fees, subject to disclosure of this arrangement to investors.

2.6.2 The SC also proposed that ECF operators should be prohibited from:

- (a) giving advice, soliciting or advertising about securities available for investment on their website;
- (b) providing any financial assistance to investors to invest in the shares of an issuer hosted on its platform;
- (c) having directors or officers that have an interest in an issuer; and
- (d) compensating any finder or introducer for providing the operator with information about potential investors.

2.6.3 Respondents were asked to give their comments on the following questions:

**Question 6:**

- (a) Do you agree that ECF operators should be prohibited from investing in the shares of the issuer hosted on its platform?**
- (b) Do you agree that ECF operators should be permitted to receive shares of the issuer as a form of payment for fees?**
- (c) Do you agree with the prohibitions proposed in paragraph 3.24 with regard to managing conflict of interest? Are there any other prohibitions which should be imposed on ECF operators?**

Feedback from respondents

2.6.4 We received mixed views on whether an ECF operator should be prohibited from investing in the shares of an issuer hosted on its platform. Some respondents were of the view that ECF operators should be allowed to invest in the shares of the issuer, so long as they make disclosure of the fact, citing the following reasons:

- (a) the nature of the ECF industry is such that the ECF operator has to play a proactive role akin to a venture capital firm, rather than be impartial and neutral. Thus, industry practice is for ECF operators to hold a small stake in some issuers as part of the ECF process; and
- (b) the ECF operator holding a stake in an issuer would bolster investor confidence in the issuer.

- 2.6.5 Respondents who supported the prohibition however were of the view that the prohibition should not apply to the directors and executives of the ECF operators.
- 2.6.6 Most respondents agreed with the proposed prohibitions referred to in Question 6(c).

### **The SC's Position**

- 2.6.7 The SC takes cognisance of industry practice where the ECF operator does not play a completely impartial role. Thus, the SC will allow ECF operators to invest in the shares of an issuer hosted on its platform. To mitigate the issue of a conflict of interest, ECF operators are only permitted to hold a maximum of 30% stake and full disclosure of the stake held must be made. Individual directors and shareholders of ECF operators are also permitted to invest in the issuers hosted on the platform, but ECF operators are required to have an internal code of ethics and risk management processes that will manage any potential conflict of interest situation.
- 2.6.8 While the ECF operator is allowed to take a stake in the issuer, it must ensure that it does not renege on its duties and responsibilities in supervising the issuer. The ECF operator is answerable to the SC if the SC is of the view that this obligation is not properly discharged.
- 2.6.9 The proposals to prohibit ECF operators from providing any financial assistance to investors to invest in the shares of an issuer hosted on its platform and compensating any finder or introducer for providing the operator with information about potential investors will be maintained.

### **2.7 Disposal of shares by existing shareholders and secondary market**

- 2.7.1 The SC had proposed that for the time being, ECF platforms should only facilitate primary offerings of the issuer's shares. The SC also sought views on how a secondary market on ECF, if any, should be facilitated.
- 2.7.2 Respondents were asked to give their comments on the following questions:

**Question 7:**

- (a) **Do you agree that ECF platforms should only be used to facilitate primary offering of the issuer's shares?**
- (b) **If you are of the view that there should be a secondary market for the shares acquired through an ECF platform, how should it be facilitated?**

### Feedback from respondents

- 2.7.3 Most of the respondents were of the view that an ECF platform should also facilitate a secondary market. Some respondents were of the view that while an ECF platform may only facilitate primary offerings at this initial stage, a secondary market should eventually be allowed.
- 2.7.4 One respondent was of the view that a secondary market may expose the platform to market manipulation and other financial crime such as money laundering.
- 2.7.5 Numerous suggestions as to how a secondary market can be facilitated were provided by respondents:
- (a) Having a window period of two weeks for every six months in a year for investors to trade their shares;
  - (b) Allowing venture capital or private equity firms to make bulk purchases from existing shareholders (to allow investors early recovery and venture capital and private equity firms to acquire stakes in investments that have gained market confidence); and
  - (c) Having a webpage within the platform where existing investors can post offers with sufficient information, and where prospective investors can bid.

### **The SC's Position**

- 2.7.6 Taking into account the feedback provided, the SC is of the view that the existence of a secondary market for shares bought on the ECF platform may address liquidity risks associated with the purchase of unlisted shares. As such, the SC proposes to allow ECF operators to provide an avenue for investors to dispose of their shares during a window period of two weeks for every six months in a year to facilitate an orderly disposal of shares held by investors. The ECF operator will be responsible for ensuring that proper systems and procedures are in place to facilitate this.
- 2.7.7 However, issuers and ECF operators should be mindful that the Memorandum and Articles of Association of a private company may contain restrictions on disposal of shares by its shareholders. They should ensure that this issue is addressed before secondary trading of the shares are carried out.

### **3. PROPOSED REQUIREMENTS IN RELATION TO ISSUERS OF ECF**

#### **3.1 Permitted and non-permitted issuers**

3.1.1 The SC had proposed that certain entities should not be permitted to pitch on an ECF platform.

3.1.2 Respondents were asked to give their comments on the following questions:

**Question 8:**

- (a) Do you agree that for the first stage of ECF, only locally incorporated private companies (excluding exempt private company) be allowed to be hosted on the ECF platform?**
- (b) What are your views in respect of allowing a local private company that is controlled by a non-Malaysian person to raise funds on the ECF platform?**
- (c) How would you, as an issuer, monitor compliance with the 50 shareholders requirement for private companies under Companies Act?**
- (d) Do you agree that the entities listed in the above paragraph 4.10 should be prohibited from using ECF platform to raise funds? Should the prohibition be extended to any other entities other than those that have been listed in the above paragraph 4.10?**
- (e) Do you agree with the proposed RM5 million capital limit in paragraph 4.10(e)? If not, what is your suggestion?**
- (f) Do you agree that the issuer's own capital contribution and funding obtained through private placement should not be taken into account for the purposes of the RM5 million paid up share capital limit, as proposed in the above paragraph 4.10(e)?**
- (g) Do you agree that the entities specified in the above paragraph 4.10(c) whilst prohibited from using the ECF platform to raise funds should nevertheless be allowed to use the platform for advertising purposes?**
- (h) Do you agree that microfunds should be allowed to utilise the ECF platform in the next phase of ECF development?**

## Feedback from respondents

- 3.1.3 Most of the respondents were of the view that only locally incorporated private companies (excluding exempt private companies) be allowed to be hosted on the ECF platform including a local private company which is wholly owned or controlled by a non-Malaysian. The general consensus is that such a move would encourage the entry of foreign investment and talent into Malaysia. This was also said to be consistent with Malaysia's Multimedia Super Corridor's initiative which allows unrestricted foreign shareholding for ICT companies (up to 100% foreign ownership). One respondent suggested allowing public companies to be hosted on the ECF platform at a later stage of MyECF's development.
- 3.1.4 Respondents had mixed views as to how the issuer should monitor compliance under the *Companies Act 1965* which restricts the number of shareholders to 50. Some suggestions proposed were:
- (a) issuers' company secretary to have independent access to the issuer's account on the ECF platform;
  - (b) issuer shares to be held by a holding entity, such as a limited liability partnership, rather than by individual investors;
  - (c) issuers to convert into a public company; and
  - (d) maintaining an online database on members which is linked with the ECF operator.
- 3.1.5 Respondents mostly agreed with the SC's list of non-permitted issuers,<sup>4</sup> but several respondents were of the view that venture capital funds (firms which propose to use the funds raised to make investment in other entities) should also be allowed to raise funds on ECF platform.<sup>5</sup> A few respondents also suggested that companies with no specific business plan be allowed to be hosted on the platform since most start-ups do not have a concrete business plan.
- 3.1.6 Most of the respondents agreed with the proposed RM5 million capital limit referred to in Question 8(e).
- 3.1.7 All but one respondent were of the view that the issuer's own capital contribution and funding obtained through private placement should not be taken into account for the purposes of the RM5 million capital limit.

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<sup>4</sup> See paragraph 4.10 of the Consultation Paper

<sup>5</sup> See paragraphs 3.1.10 to 3.1.11 for further discussion on allowing venture capital funds to raise funds via ECF.

- 3.1.8 Most of the respondents agreed that entities prohibited from raising funds on the platform including public-listed companies and their subsidiaries, should nevertheless be allowed to use the platform for advertising purposes. One respondent disagreed, stating that the MyECF initiative is to boost small companies, not big and established ones. Advertisement of a public company may boost the valuation of the public company's shares.
- 3.1.9 All but one respondent were of the view that microfunds should be allowed to utilise the ECF platform, with several respondents further suggesting that such microfunds should preferably be allowed to raise funds via ECF at the initial stage of MyECF as opposed to a later stage. It is envisaged that microfunds that raise funds via ECF will then use those funds to invest in other start-ups.
- 3.1.10 The reasons cited to support microfunds being hosted on ECF platforms at this stage were as follows:
- (a) the risks of investing in a single issuer would be mitigated by having a diversified portfolio when a microfund invests in other issuers;
  - (b) investors would benefit from having a managed sectorial selection of companies;
  - (c) the disbursement of funds collected will be based on milestones achieved, rather than a lump sum to a start-up or issuer; and
  - (d) more participants backed with strong entities would be created.

### **The SC's Position**

- 3.1.11 Having received positive feedback on the proposal, the SC is of the view that only locally incorporated private companies be allowed to be hosted on the ECF platform at this initial stage of MyECF. At this juncture, the MyECF initiative is not intended to cater for public companies, which, in the SC's view, are capable of seeking funding through private placement or engaging in an initial public offering of their shares.
- 3.1.12 The SC also takes note of the strong interest and support in allowing local private companies which are controlled by non-Malaysians to be hosted on the platform. In the interest of encouraging foreign investment and talent, the SC will allow such companies onto the ECF platform.
- 3.1.13 The SC takes note of the suggestions raised on how the shareholder limit should be monitored. Taking into account the feedback provided, the SC is of the view



that the issuer should ultimately be responsible for monitoring the number of its shareholders.

- 3.1.14 The proposal that companies with no business plans should be prohibited from utilising ECF platforms to raise funds will be maintained, as the SC is of the view that start-ups that wish to raise funds from the public should at least possess a proposed business plan and direction.
- 3.1.15 Having considered the positive feedback received, the SC is of the view that the proposed RM5 million capital limit referred to in Question 8(e) is currently sufficient and that the proposed capital limit should be maintained for the time being. This capital limit may be reviewed in future, if the need arise.
- 3.1.16 Similarly, the SC will also maintain the proposal that an issuer's own capital contribution and funding obtained through private placement should not be taken into account for the purpose of computing the RM5 million paid up share capital limit. This would allow issuers to avail themselves to more avenues of fundraising.
- 3.1.17 Given the positive feedback received, the proposal to allow companies prohibited from raising funds on the platform to use the ECF platform for advertising purposes will be maintained as these companies may be able to provide ancillary services to issuers embarking on projects funded by the ECF platform. The ability of the platform to connect these "enablers" to the issuers enhances the chances of success for the issuers' projects.
- 3.1.18 Given the overwhelming support for microfunds to be allowed onto the ECF platform, the SC proposes to allow these entities on the platform subject to the following:
- These entities must–
- (a) be registered with the SC as a venture capital company;
  - (b) have a specified investment objective; and
  - (c) only raise funds from sophisticated investors.
- 3.1.19 Since these microfunds are only seeking funding from sophisticated investors, the RM5 million capital limit will not apply to them. The ECF operator will be given the discretion to determine if it intends to set any capital limit for such entities.

### 3.2 **Type of securities permitted for offering**

- 3.2.1 The SC had proposed that issuers can only offer common shares (ordinary and preference shares) on the ECF platform, and that only a single class of shares should be offered in any one offering.

**Question 9:**

- (a) **Do you agree that only common shares (ordinary and preference shares) should be made available on the ECF platform?**
- (b) **Do you agree that only a single class of shares be allowed to be offered in any one offering on the ECF platform?**

#### Feedback from respondents

- 3.2.2 Most of the respondents agreed that only common shares (ordinary and preference) should be made available on the ECF platform.
- 3.2.3 A few respondents suggested that convertible debt instruments should be allowed, as it is a viable fundraising option for start-ups where valuation of shares is difficult to assign and in situations where investors cannot yet enjoy any dividend income as their investment has not yielded returns.
- 3.2.4 Most respondents were of the view that only a single class of shares should be allowed to be offered in any one offering on the ECF platform. However, several respondents argued that issuers should be given the flexibility in structuring their offer.

#### **The SC's Position**

- 3.2.5 The SC is of the view that at this stage, only common shares should be allowed to be offered via ECF, as initially proposed. Convertible debt instruments may be complex and may not be fully understood by retail investors. In addition, the compliance costs of seeking the necessary approval to issue such instruments may prove to be unattractive for issuers.
- 3.2.6 The SC recognises the need for flexibility where start-ups are concerned and would like to clarify that both ordinary and preference shares are allowed to be offered in any one offering. The proposed prohibition on offering more than one

class of shares is only intended to apply to circumstances where more than one class of ordinary shares (i.e. with different voting rights) are offered in the same offering.

### 3.3 **Limit to amount of funds to be raised and pitching on multiple ECF platforms**

3.3.1 In the Consultation Paper, the SC had proposed that the amount of capital to be raised on the ECF platform should be limited to RM3 million within 12 months, irrespective of the number of projects. Any capital to be raised by an issuer on the ECF platform should be limited to a maximum amount of RM5 million. The SC had also proposed that issuers should not be allowed to pitch on multiple platforms concurrently.

3.3.2 Respondents were asked to give their comments on the following questions:

**Question 10:**

- (a) Do you agree with the proposal to limit the funds raised by an issuer on an ECF platform within a 12 month period to RM3 million only? If not, what are your suggestions?**
- (b) There may be a situation where an issuer and his related company or person may seek to raise funding separately on the ECF platform (collectively known as issuer's group). Should the proposed caps of RM3 million and RM5 million proposed above be applied to the issuer's group?**
- (c) Should an issuer be allowed to pitch concurrently on multiple ECF platforms for different projects?**

#### Feedback from respondents

3.3.3 Most respondents generally agreed with the maximum amount proposed by the SC. However, respondents also suggested that such limits should not be applicable to microfunds that are hosted on the ECF platform.

3.3.4 The SC received mixed responses on whether the limit should be applicable on a group basis (where an issuer and its related company seek to raise funding separately on the ECF platform). Whilst the majority of the responses were

agreeable to imposing the limit to the issuer's group, some respondents felt that the limitation should not apply.

- 3.3.5 Most respondents agreed that issuers should not be allowed to pitch concurrently on multiple platforms for different projects.

### **The SC's position**

- 3.3.6 Given that the majority of the respondents supported the proposed fundraising limit, the proposed limits will be maintained, at least for this initial stage. The proposed fundraising limitations may be revised in the future, should the need arise.

- 3.3.7 In addition, taking into consideration the responses received, and recognising that microfunds may require a larger amount of funds by virtue of their business model, the SC will not impose a fundraising limit on the microfunds that are hosted on the ECF platform.

- 3.3.8 On the issue of whether the limitation should apply on a group basis, the SC is of the view that the limitation should be extended to the issuer's group to ensure that investors are not exposed to risks that are effectively concentrated on a single issuer.

- 3.3.9 The SC will maintain the proposal to prohibit issuers from pitching on multiple platforms concurrently. To facilitate the monitoring of the amount of funds raised by an issuer, issuers will be required to self-declare that they are not concurrently pitching on any other platform at the time of the offering.

### **3.4 Oversubscription**

- 3.4.1 In the Consultation Paper, the SC had proposed to allow issuers to accept the oversubscription amount provided that the entire amount does not exceed the issuer's limit of RM3 million within 12 months or the total amount allowed to be raised of RM5 million, and that the issuer discloses to investors how it proposes to utilise the oversubscribed amount. The issuer will notify investors of any oversubscription, and the investors should not expect to be given the option to withdraw in the event of an oversubscription.

3.4.2 Respondents were asked to give their comments on the following questions:

**Question 11:**

- (a) **Do you agree with the proposal to allow an issuer to retain oversubscribed funds? If yes, do you agree that it should be subject to the requirement that the issuer discloses to the investors its plans for utilising the oversubscribed amount?**
- (b) **Should the ECF operator be responsible to notify the investors in the event of an oversubscription? If not, should this responsibility be imposed on the issuer?**

Feedback from respondents

3.4.3 Most respondents agreed to the proposal to allow the oversubscription amount to be kept by the issuer as well as the proposed requirement to disclose to investors how the oversubscribed funds are to be utilised.

3.4.4 Most respondents also agreed that the operator should be responsible to notify investors in the event of an oversubscription.

**The SC's position**

3.4.5 Given the positive feedback received, the SC will maintain the proposal that issuers will be allowed to keep the oversubscription amount subject to the issuer disclosing to investors the proposed utilisation of the said amount. The ECF operator will be responsible for notifying investors where the shares of the issuer have been oversubscribed.

3.5 **Disclosure**

3.5.1 The SC had proposed in the Consultation Paper that the issuer be required to lodge a standardised disclosure document with the ECF operator.

3.5.2 Respondents were asked to give their comments on the following questions:

**Question 12:**

- (a) Do you agree that ECF operators should require issuers to lodge with them a standardised disclosure document which would then be made available to investors through the platform’s website?**
- (b) Do you agree with the information proposed to be included in the standardised disclosure document, as set out in paragraph 4.28? Do you think there is any other information that should be included?**
- (c) Should ECF operators be required to carry out some verification of the information contained in the standardised disclosure document or does it suffice for the issuer to self-declare that all the information contained in the standardised disclosure document is true and accurate?**
- (d) If ECF operators are expected to carry out some verification of the information contained in the standardised disclosure document, should the verification be done before the offering is hosted or post-offering?**
- (e) Should there be a prescribed timeframe for which an offer remains open (“offer period”)?**
- (f) If there is a prescribed offer period, who should determine it – the ECF operator or the issuer?**

Feedback from respondents

- 3.5.3 All respondents agreed that a standardised disclosure document should be lodged with the ECF operator and be made available to investors on the platform’s website.
- 3.5.4 All respondents were agreeable to the proposed minimum information which should be included in the standardised disclosure document and have suggested other information that should be included.
- 3.5.5 There were mixed responses to the question of whether the ECF operator should verify the information contained in the standardised disclosure document or whether the issuer’s self-declaration would suffice.
- 3.5.6 Most respondents preferred verification to be done prior to the issuer’s hosting on the ECF platform. A number of respondents were of the view that verification

should be done at both stages (before and after hosting), as there is some information that cannot be verified prior to the hosting.

- 3.5.7 All respondents agreed that there should be a limit to the offer period, with the average time of three months being suggested. Most respondents preferred for the limit to be set by the ECF operator, but some felt that it is best left to the issuer.

### **The SC's position**

- 3.5.8 Given the consensus for a lodgement of a standardised disclosure document with the ECF operator and the minimum information required, the SC will maintain its initial proposal.
- 3.5.9 The SC also notes the suggestion from respondents for prescription of minimum information to be included in the standardised disclosure document. In this regard, while the SC will prescribe the minimum standards, the ECF operator will be given the discretion to determine whether additional information would be required from the issuer.
- 3.5.10 In relation to the verification of the standardised disclosure document, the SC is of the view that the ECF operator should verify the information given to them prior to the issuer's hosting on their platform.<sup>6</sup> This would provide assurance to investors that the information in the disclosure document is relevant and will assist them in making an informed investment decision.
- 3.5.11 As for the proposal in relation to the length of the offer period, the SC has taken into consideration the feedback provided and is of the view that the maximum timeframe for an offering should be set by the ECF operator. However, issuers will be given the flexibility to determine the length of the offer period that is most suitable for their business within that maximum timeframe.

## **3.6 Advertisement**

- 3.6.1 In the Consultation Paper, the SC had proposed that the advertisement for any offering of shares by an issuer on an ECF platform should be directed to the

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<sup>6</sup> See paragraphs 2.1.7 to 2.1.8 for further discussion on the ECF operator's obligation to verify information provided by the issuer.

standardised disclosure document that has been lodged with the ECF operator and is made available on the platform. Issuers must only advertise its offering through the ECF platform to ensure that investors have one credible source of information to facilitate them in making their investment decision.

3.6.2 Respondents were asked to give their comments on the following questions:

**Question 13:**

- (a) Do you agree that an issuer should be prohibited from promoting its offering to the public except through the ECF platform?**
- (b) Do you agree that the standardised disclosure document should be the only advertising material used by the issuer for its offering?**
- (c) Do you agree that any notice provided by the issuer (other than the standardised disclosure document) should only be used for the purposes of directing the attention of prospective investors to the standardised disclosure document on the ECF platform?**

Feedback from respondents

3.6.3 All but one respondent agreed that an issuer should be prohibited from promoting its offering to the public except through the ECF platform.

3.6.4 Most respondents also agreed that the standardised disclosure document should be the only advertising material used by the issuer for its offering. Any notice provided by the issuer should only be used to direct the investors to the standardised disclosure document. Some respondents were of the view that whilst the standardised disclosure document should be the minimum document, issuers should be given the flexibility to decide on the form, material and contents of advertising.

**The SC's position**

3.6.5 Consistent with the feedback received, an issuer will be prohibited from promoting its offering to the public except through the ECF platform. Any notice used by the issuer as a form of advertising its offerings should always be redirected to the standardised disclosure document that has been lodged with



the ECF operator and is made available on the platform.

3.6.7 The SC also wishes to clarify that while advertising is allowed, the issuer must ensure that such advertisement or notice does not contain any element of advice as this may trigger the relevant licensing requirement under s.58 of the CMSA.

### 3.7 **Financial disclosures**

3.7.1 In the Consultation Paper, the SC had proposed that financial disclosures required to be made to the ECF operator will depend on the amount sought to be raised by the issuer on the ECF platform.

3.7.2 Respondents were asked to give their comments on the following questions:

**Question 14:**

- (a) Do you agree that the financial disclosures be filed with the ECF operator only?**
- (b) Do you agree with the proposed financial disclosure requirements as set out in paragraph 4.34?**

#### Feedback from respondents

3.7.3 All respondents agreed that financial disclosures are to be filed with the ECF operator only. However, some also suggested that investors should be able to view such information.

3.7.4 All but two respondents were agreeable to the proposed financial disclosure requirements set out in paragraph 4.34 of the Consultation Paper. One respondent suggested that issuers offering below RM500,000 should not be required to file any financial disclosure with the ECF operator, although the latter should retain the discretion to request any related documentation for verification purposes. Another respondent suggested that certified financial statements should suffice for offerings between RM300,000 – RM500,000.

### **The SC's position**

3.7.5 Having considered the feedback received, the SC will maintain the current proposals in relation to financial disclosure.

3.7.6 The SC would like to state that while financial disclosures are to be filed with the ECF operator only, the ECF operator must make available the financial disclosures to the investors.

### **3.8 Opt-out option where there is a material adverse change relating to the offer**

3.8.1 In the Consultation Paper, the SC had proposed that investors should be given two weeks to opt out of an investment from the date the investor was informed of a material adverse change relating to the offer or the issuer. Investors should also be informed of their right to opt-out in the standardised disclosure document.

3.8.2 Respondents were asked to give their comments on the following questions:

**Question 15:**

- (a) Do you agree with the proposed two weeks opt-out period for investors upon being notified of the material adverse change by the ECF operator?**
- (b) Do you agree that the ECF operator should be responsible for notifying the investors of the material adverse change or should the responsibility rest with the issuer?**

### **Feedback from respondents**

3.8.3 Most respondents agreed to the proposed two-week period to withdraw their investment in the event of a material adverse change.

3.8.4 There were mixed responses with regard to who should be responsible for informing the investor of the occurrence of the material adverse change.

### **The SC's position**

- 3.8.5 The SC is of the view that the proposed two-week period should be maintained.
- 3.8.6 Given the feedback received, the SC will impose the obligation on issuers to inform the ECF operator of the occurrence of any material adverse change. The ECF operator, on the other hand, is responsible for informing the investors of the material change.

### **3.9 Cooling-off period**

- 3.9.1 In the Consultation Paper, the SC proposed that investors be given a cooling-off period of six business days after making their investment, during which time they may withdraw their investment.
- 3.9.2 Respondents were asked to give their comments on the following question:

**Question 16:**

**Do you agree with the proposed cooling-off period of six business days to be given to all ECF investors?**

### **Feedback from respondents**

- 3.9.3 All but one respondent agreed that there should be a 6-day cooling off period for investors.

### **The SC's position**

- 3.9.4 The SC will maintain its proposal for a 6-day cooling off period. The SC is of the view that six business days should be a sufficient amount of time for investors to reconsider their investment decisions.

## 4. FEEDBACK ON PROPOSALS RELATING TO THE INVESTOR

### 4.1 Offering to sophisticated and retail investors

4.1.1 In the Consultation Paper, the SC had proposed that all types of investors should be allowed to have access to and participate in ECF. However, investors' participation is subject to the following restrictions, which are dependent on the category the investor falls in:

- Sophisticated investors: No restrictions on investment amount; and
- Retail investors: A maximum of RM3,000 per issuer with a total amount of not more than RM30,000 within a 12 month period.

4.1.2 Respondents were asked to give their comments on the following questions:

**Question 17:**

- (a) **Do you agree that sophisticated investors should be allowed to participate in ECF without any cap imposed on the amount they may invest?**
- (b) **Do you agree with the proposed cap on investment that is to be imposed on retail investors? If not, what should the proposed cap be?**

#### Feedback from respondents

4.1.3 All respondents agreed that sophisticated investors should be allowed to participate on the ECF platform without any limit on their investments.

4.1.4 Most respondents were generally agreeable to the proposal in relation to retail investors but some felt that the proposed limit of RM3,000 for retail investors is too low. A few respondents suggested that the proposal should take into consideration angel investors who may not necessarily be considered a sophisticated investor under Schedules 6 and 7 of the CMSA.

### **The SC's position**

- 4.1.5 Having considered the feedback given by the respondents, the SC has revised its initial proposal and increased the investment limit for retail investors to RM5,000 per issuer. Retail investors are also allowed to invest up to RM50,000 within a 12-month period.
- 4.1.6 The SC takes cognisance that angel investors are able to tolerate higher risk compared to retail investors but may not necessarily be considered a sophisticated investor under securities laws. Thus, the SC will allow angel investors recognised by the Malaysian Business Angels Network to invest on the ECF platform up to a limit of RM5,000 per issuer, and up to RM500,000 in a 12-month period.
- 4.1.7 The SC will maintain the proposal to impose no investment limit for sophisticated investors.

### **4.2 Risk acknowledgement**

- 4.2.1 The SC had, in its Consultation Paper proposed that both retail and high-net worth investors be required to self-declare that they are aware of the associated risks before investing on an ECF platform.
- 4.2.2 Respondents were asked to give their comments on the following questions:

**Question 18:**

- (a) Do you agree that retail investors and high net worth investors should provide risk acknowledgement described in paragraph 5.6?**
- (b) Do you agree that high net worth investors should also provide risk acknowledgement?**

### **Feedback from respondents**

- 4.2.3 All respondents agreed to both questions in relation to the proposal.

### **The SC's position**

- 4.2.4 The proposal will be maintained. The SC is of the view that it is important for investors, be they retail or high net worth, to fully understand the risks of their investment decisions. This requirement will also apply to angel investors.