

**MINUTES OF MEETING  
INDUSTRY CONSULTATIVE PAPER: PROPOSED REVISION TO THE PDS/ABS  
GUIDELINES**

**Date** : *7<sup>th</sup> January, 2003*  
**Venue** : *Level 5, Securities Commission*  
**Time** : *3 p.m.*  
**Attendees** :

<b>Name of Association</b>	<b>Representative(s)</b>
<b>Rating Agency Malaysia Berhad</b>	Mr. Wong Fook Wah Mr. Chong Kwee Siong
<b>Malaysian Rating Corporation Berhad</b>	En. Mohd Izzuddin Yusof En. Mohd Safri Shahul Hamid Cik. Juniza Zahari
<b>Institut Peniaga Bon Malaysia</b>	Mr. Loh Shai Weng
<b>Association of Stockbroking Companies Malaysia (ASCM)</b>	YB Datin Mariam Yusof En. Yusli Yusoff Mr. Lim Teck Him Mr. Hugh Low
<b>The Association of Merchant Banks in Malaysia (AMBM)</b>	Ms. Paulene Wong Mr. Thomas Meow Mr. Eugene Khoo
<b>The Association of Banks in Malaysia</b>	Mr. Richard Lai
<b>The Association of Discount Houses in Malaysia</b>	En. Megat Mohd Yatim En. Megat Farid Yusof
<b>Financial Markets Association Malaysia</b>	En. Megat Kamaruddin
<b>Securities Commission</b>	Ms. Lam May Yin Ms. Yuan Leng Mr. Loong Yeow Boon Mr. Suresh Pathmanathan Ms. Irnyza Ngah Ms. Liew Yoke Moy Mr. Rizvi Abdul Halim Ms. Marina Yeop Adlan

## **Issues discussed:**

### **To clarify circumstances in which Issue/ Offer Guidelines will apply**

1. The existing PDS Guidelines are silent as to what the requirements would be if proceeds from a PDS issue were used for significant acquisition resulting in a significant change in the business direction or policy of a listed public company. Currently, if an issue of shares results in similar consequences, it would be subject to the Back-door Listings (BDL) and Reverse take-overs (RTO) requirements under the Guidelines on Issue/Offer of Securities (Issue/Offer Guidelines).
2. The SC gave examples of some circumstances that could give rise to significant changes to the business direction of a PLC, which would trigger the application of section 32(2)(g) of the SCA and hence be subject to the Issue/Offer Guidelines. As it was already an existing practice, the SC clarified that the proposal to reflect the application of the Issue/Offer Guidelines in the PDS Guidelines for such instances would merely be an attempt to enhance operational transparency.
3. It was suggested that the SC should consider giving conditional approvals to PDS applications subject to the relevant approval under the Issue/Offer Guidelines under such circumstances. However, the SC explained that it would be more consistent to have both the application under the Issue/Offer Guidelines and PDS Guidelines approved simultaneously. This would ensure consistency in assessing corporate proposals and to avoid confusion to the market.
4. In response to a query, the SC highlighted that a concurrent submission may be made under the PDS Guidelines and the Issue/Offer Guidelines whereby the SC's charter for approvals are 14 days and 2 months under the respective Guidelines.

### **Requirement to disclose "Mode of Issue" and disclosure of "Indicative information"**

5. Presently, the SC requires the issuer to state upfront the specific mode for issuance. However, industry practitioners have highlighted to the SC that it is difficult to realistically determine upfront, at the point of submission to the SC, the actual mode of issuance for that PDS offer and that such decisions should be determined commercially by the arranger/issuer prior to the actual issuance date.
6. It was initially proposed by the SC that except for instances of 'bought deal' transactions, issuers/arrangers be allowed the flexibility of determining a suitable mode of issuance at any time prior to the actual issuance of the PDS. It was also proposed that issuers/advisers be required to furnish the SC, prior to the actual date of issuance, details of the chosen mode of issuance and other relevant 'indicative' or market/price sensitive information dependent thereon.
7. The industry associations have since requested that this flexibility be extended to 'bought deal' transactions as well. It was argued that even for 'bought deal' transactions, terms of transactions are dependent on the prevailing market condition

and hence, costly for the issuers if they were required to revert to SC every time there was a change in the terms.

8. On this matter, the SC reemphasized to the meeting that it was imperative for the level of disclosure to correspond with the mode of issue selected. Since all terms are fixed upfront in bought deals, the terms should be disclosed upfront. Should there be any changes to the terms initially disclosed, for example, due to changing market conditions, the approval of the SC would be required for that change in terms.

### **Review of requirements for Commercial Paper (CP) and Medium Term Notes (MTN) Programs**

9. It was felt that there was a lack of discipline amongst issuers in matching their funding needs whereby many issuers were using short-term financing for long-term needs. This activity is seen to pose systemic risk to the market at large.
10. Following the above, a new framework was proposed for CP/MTN programmes to encourage more efficient use of the programme for fund raising. Among others, the industry consultative paper proposes the following:
  - Decoupling CPs from MTNs to encourage more efficient matching between the tenors of sources and uses of funds
  - Liberalisation of 7-year tenure restriction for MTN programmes without rollovers and tightening the existing tenor restriction for CP programmes from 7 years to 2 years
  - Extension of 6 month implementation period for both CP and MTN programme
  - Removal of 'Minimum Subscription Levels' if proceeds are used for working capital purposes
  - Requirement for MTN programmes to be scripless and cleared/settled on RENTAS
11. The industry associations were of the view that if the proposal to decouple CPs from MTNs were implemented and the tenor requirement for CPs is restricted to 2 years, issuers would rather seek more flexible funding from banks. Hence, it was felt that the proposal would not assist in resolving the mismatch issues.
12. Alternatively, it was suggested that the existing CP/MTN programme be retained and a new MTN programme with no tenor restrictions, without rollover flexibilities and to be traded on a scripless basis be introduced, to provide issuers with better funding options. This proposal was said to be in line with international market practices as it would provide greater avenue for issuers to take on bond programs with longer tenors. This proposal was also said to lend flexibility to issuers to better manage interest rate risks.
13. Notwithstanding the above, the SC also emphasised to the meeting that the disclosure requirements (on material changes and utilisation of proceeds) for both schemes would be enhanced. The associations were asked to revert on a limited list' of information to facilitate periodical disclosure. The list is proposed to limit the

increase in cost anticipated as a result of the imposition of additional disclosure requirements.

### **Partial underwriting and minimum level of subscription (MLS)**

14. The SC feels that regardless of the level of underwriting, the disclosure of the minimum subscription level is generally important as it states the minimum amount that the issuer would require to fund the intended purpose. This view was in fact shared by investors.
15. Notwithstanding the above, while such upfront disclosures are possible for straight debt issues, the SC acknowledges the associations views that the requirement is rather impractical for CP/MTN programmes issued to fund working capital needs of the issuer. It was therefore proposed that for CP/MTN programmes that are used for working capital requirements of the issuer, the disclosure of minimum level of subscription would not be required. Nevertheless, if the proceeds from such issues are used for non-working capital purposes, the minimum level of subscription must be disclosed to investors (and the SC notified) prior to each draw down.

### **Segregation of funds in the hands of the originator in relation to ABS transactions**

16. The consultative paper proposes that the existing requirement in the ABS Guidelines which highlights that cash flow streams should to be 'separated and ring-fenced as soon as they are received by the originator as far as possible' be embellished by further requiring such funds to be 'ring-fenced in a separate trust account, distinct from the cash flows and assets of the Originator as soon as they are received by the Originator'.
17. The associations highlighted that the proposal to ring-fence funds in a separate account maybe impractical for transactions involving high-frequency fund transfers. The rating agencies added that in assessing the credit rating of securitisation transactions, co-mingling risks would also be taken into consideration. In this regard, over and above necessary 'trigger events' within an ABS structure, it was highlighted that co-mingling reserves are usually established as well to reduce the potential risk to the same.
18. In response to SC's suggestion for a periodical report by the internal auditors of the originator to declare that there are sufficient systems in place to segregate the funds of the SPV from that of the originator, the meeting highlighted that the independence of such parties were in question, hence would add limited value in efforts to enhance the existing requirement. The SC explained that it would revisit the proposal.

Meeting thereupon adjourned at 6.30 pm.