



Monetary Authority of Singapore

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**Shares and Debentures Guidelines 3**

**GUIDELINES ON THE AGGREGATION OF OFFERS  
MADE PURSUANT TO THE EXEMPTIONS FOR SMALL  
OFFERS OR PRIVATE PLACEMENT**

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Issued on 15 October 2005

## **OFFERS OF INVESTMENTS (SHARES AND DEBENTURES)**

### **Guidelines on the Aggregation of Offers made pursuant to the Exemptions for Small Offers or Private Placement**

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#### **1 PURPOSE**

1.1 These Guidelines are issued by the Monetary Authority of Singapore [the “Authority”] pursuant to section 321 of the Securities and Futures Act (Cap. 289) [“SFA”]. The objective of these Guidelines is to clarify the Authority’s policy intent and regulatory objectives in respect of section 272A(5) and section 272B(3) of the SFA which requires a person making an offer of securities of an entity in reliance on an exemption under section 272A(1) or 272B(1) to aggregate closely related offers made during the last 12 months when determining whether the applicable limit under the relevant exemption has been exceeded (hereinafter the “aggregation rule”).

1.2 These Guidelines also seek to provide guidance on how the exemption under section 272A(8)(c) of the SFA, when read together with the exemption under regulation 29 of the Securities and Futures (Offers of Investments) (Shares and Debentures) Regulations 2005 [the “SF(OI)(SD) Regs”], is intended to facilitate market-making for securities acquired under section 272A(1).

#### **2 DEFINITION**

2.1 For the purposes of these Guidelines:

“specified person” means—

- (i) a holder of a capital markets services licence to deal in securities;
- (ii) an exempt person in respect of dealing in securities;
- (iii) a person licensed under the Financial Advisers Act (Cap. 110) [“FAA”] in respect of the provision of financial advisory services concerning investment products;
- (iv) an exempt financial adviser as defined in section 2(1) of the FAA;  
or
- (v) a person who is licensed, approved, authorized or otherwise regulated under the laws, codes or other requirements of any foreign jurisdiction in respect of dealing in securities or the provision

of financial advisory services concerning investment products, or who is exempted therefrom in respect of such dealing or the provision of such services.

### **3 STATUTORY REQUIREMENTS**

#### Exemption for Small Offers under section 272A(1) of the SFA

3.1 Section 272A(1) of the SFA provides an exemption from Subdivisions (2) and (3) (other than section 257) of Division 1 of Part XIII for personal offers of securities of up to S\$5 million (or such other amount as may be prescribed by the Authority) in any 12-month period made to persons who are likely to be interested in the offer, having regard to —

- (a) any previous contact between those persons and the person making the offer<sup>1</sup>;
- (b) any previous professional or other connection established between those persons and the person making the offer<sup>1</sup>; or
- (c) any previous indication made by those persons to the person making the offer or a specified person that they are interested in offers of that kind<sup>2</sup>

(hereinafter referred to as the “small offers exemption”).

3.2 The applicable limit for the small offers exemption is in respect of the amount of funds raised (calculated in accordance with section 272A(4) of the SFA) in any 12 months and not on the amount of funds offered.

#### Small offers resale exemption under section 272A(8)(c) of the SFA

3.3 Section 272A(8)(c) of the SFA provides an additional exemption for subsequent offers of securities which were initially acquired under the small offers exemption. To qualify for the exemption under section 272A(8)(c), the person making the subsequent

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<sup>1</sup> It is not the intent for specified persons to rely on the “previous contact” and “previous connection” limbs under section 272A(1) and section 272A(8)(c)(ii) of the SFA to offer securities to their network of retail clients without a prospectus. Any specified person who wishes to make an offer in reliance on the small offers exemption should instead rely on the “previous indication” limb under section 272A(1).

<sup>2</sup> Any specified person who wishes to make an offer in reliance on the small offers exemption on the basis of the “previous indication” limb under section 272A(1) or section 272A(8)(c) should establish proper “know your client” procedures to ensure that the securities are offered only to those investors who have previously indicated interest in the exempted securities and who are fully aware of the risks involved. Further, after assessing the investor’s financial means and risk

offer must comply with certain conditions such as restricting the offer to only persons who are either connected to the initial offeror, or who have previously indicated interest to the initial offeror or a specific person that they are interested in offers of that kind (hereinafter referred to as the “small offers resale exemption”)<sup>3</sup>. The amount of funds that may be raised from offers made in reliance of the exemption under section 272A(8)(c) is not subject to any limit.

3.4 An illustration of how a holder of a capital markets licence for dealing in securities or a person exempted from such licensing may rely on this exemption to conduct market-making activities for securities which it had acquired from the issuer under the small offers exemption is provided in paragraph 9.

3.5 The small offers exemption and the small offers resale exemption are illustrated in a diagram in Appendix 1.

Resale of securities acquired under the small offers exemption

3.6 Subsequent purchasers who have acquired securities under the small offers exemption or the small offers resale exemption can rely on the small offers resale exemption or any other exemption under Subdivision 4 of Division 1 of Part XIII of the SFA to resell the securities without issuing a prospectus. However, the small offers exemption under section 272A(1) of the SFA may be invoked by the subsequent purchaser only after 6 months have elapsed from the date the securities were acquired from the initial offeror under the small offers exemption. This restriction is imposed so as to confine the group of offerees to persons who are connected to the initial offeror within the first 6 months.

Aggregation rule for offers made in reliance on the exemption under section 272A(1) of the SFA

3.7 In ascertaining whether the amount of funds raised from offers made in reliance on the exemption under section 272A(1) of the SFA exceeds the S\$5 million limit, the person making the offer is required, under section 272A(5), to aggregate –

- (a) all amounts raised by him from offers of securities issued by the same entity; and

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profile, the specified person ought to be satisfied that the investment in exempted securities is appropriate for the investor.

<sup>3</sup> For the avoidance of doubt, subsequent purchasers of securities offered in reliance on the exemption under section 272A(8)(c) can continue to rely on the exemption under section 272A(8)(c) to resell those securities.

- (b) all amounts raised, whether by him or by another person, from offers of securities, units or derivatives of units in a business trust, or units in a collective investment scheme which are closely related offers,

made within the last 12 months in reliance on the small offers exemption.

3.8 This means that an offer of securities will qualify for the small offers exemption only if the amount to be raised from the current offer, taken together with the amount raised from all other offers of the same type of securities made by the same person and from all closely related offers of securities, units or derivatives of units in a business trust, or units in a collective investment scheme made by the person or another person under the same exemption within a 12-month period, does not exceed \$5 million.

#### Exemption for Private placement under section 272B(1) of the SFA

3.9 Section 272B(1) of the SFA provides a safe harbour for private placements of securities of an entity offered to not more than 50 investors (or such other number as may be prescribed by the Authority) during a 12-month period (hereinafter referred to as the “private placement exemption”).

3.10 In the case of the private placement exemption, it should be noted that the applicable limit is placed on the number of offerees (calculated in accordance with section 272B(5) of the SFA) and not on the persons accepting the offer.

#### Resale of securities acquired under the private placement exemption

3.11 Subsequent purchasers who have acquired securities under the private placement exemption can rely on any exemption under subdivision 4 of Division 1 of Part XIII of the SFA to resell the securities without issuing a prospectus.

3.12 However, where securities are offered to a person pursuant to the private placement exemption with a view to those securities being subsequently offered for sale by that person to another person using the private placement exemption, both persons would need to be attributed towards the 50-offerees limit.

#### Aggregation rule for offers made in reliance on the exemption under section 272B(1) of the SFA

3.13 As in the case of the small offers exemption, a person making an offer in reliance on the private placement exemption will be required under section 272B(3) of the SFA,

to aggregate the following persons when determining whether the number of offerees has exceeded the 50-offerees limit:

- (a) every person to whom an offer of securities issued by the same entity is made by the person making the offer; and
- (b) every person to whom an offer of securities of an entity, units or derivatives of units in a business trust or units in a collective investment scheme, is made by the person making the offer or another person, where such offer is a closely related offer,

within the last 12 months in reliance on the private placement exemption.

3.14 This means that an offer of securities will qualify for the private placement exemption only if the number of offerees for the current offer, taken together with the number of offerees for all other offers of the same type of securities made by the same person and for all closely related offers made by the person or another person under the same exemption within a 12-month period, does not exceed 50.

#### **4 RATIONALE FOR AGGREGATION RULE**

4.1 The aim of the aggregation rule is to prevent offerors from circumventing the \$5-million limit under the small offers exemption or the 50-offerees limit under the private placement exemption, as the case may be, by breaking up what is essentially a single offer into smaller parts such that each part would qualify for an exemption when the single offer would not.

4.2 Given that the small offers exemption and private placement exemption have been introduced primarily to facilitate fund-raising by small and medium sized enterprises, the aggregation rule also seeks to ensure that an offeror will not be exempted from issuing a prospectus in a case where the offer is clearly not made for the purposes of private fund-raising e.g. in the case of investment products offered by financial institutions<sup>4</sup>.

#### **5 APPLICATION OF THE AGGREGATION RULE**

5.1 The aggregation provision under section 272A(5) or 272B(3) of the SFA, as the case may be, applies only in respect of offers that are made in reliance on the

exemption under section 272A(1) or 272B(1) respectively. That is, an offer made in reliance of the small offers exemption is required to be aggregated only with other offers also made in reliance on the small offers exemption. Similarly, an offer made in reliance on the private placement exemption is required to be aggregated only with other offers also made in reliance on the private placement exemption.

5.2 For the avoidance of doubt, subsequent offers made in reliance on section 272A(8)(c) of the SFA are not subject to any aggregation rule. Hence, an offer made in reliance on a small offers exemption under section 272A(1) would not need to be aggregated with a subsequent sale of securities made in reliance on the exemption under section 272A(8)(c).

## **6 DETERMINATION OF A CLOSELY RELATED OFFER**

6.1 In determining whether an offer is a closely related offer for the purposes of section 272A(5) or 272B(3) of the SFA, as the case may be, the person making the offer shall have regard to the factors prescribed in regulation 28 of the SF(OI)(SD) Regs.

6.2 In line with our policy objective for incorporating the aggregation rule, the aggregation factors set out in regulation 28 of the SF(OI)(SD) Regs are constructed based on the intent of the offer, i.e. whether the securities are offered for the purposes of raising funds for itself or its own business operations, or are investment products offered in the ordinary course of the offeror's business. In relation to the former, the aggregation factors seek to prevent circumvention of the applicable limit so as to ensure that the reach of the securities will remain limited in size and/or scope. The aggregation factors applicable for offers of investment products (such as asset-backed securities and structured notes), on the other hand, seek to ensure that financial institutions offering investment products in their ordinary course of business in excess of \$5 million or to more than 50 offerees will continue to make proper risk and product disclosures when selling investment products to their retail clients.

### Aggregation of Offers of Securities (other than Asset-Backed Securities and Structured Notes), units or derivatives of units in Business Trusts and units in Real Estate Investment Trusts ("REITs")

6.3 Specifically, paragraph (1) of regulation 28 of the SF(OI)(SD) Regs provides that an offer of securities (other than asset-backed securities and structured notes) is a closely related offer to –

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<sup>4</sup> Except where the aggregate amount of investment products offered by the financial institution does not exceed \$5 million or the aggregate number of offerees does not exceed 50 persons.

- (a) another offer of securities (other than asset-backed securities and structured notes);
- (b) an offer of units or derivatives of units in a business trust; or
- (c) an offer of units in a REIT,

under section 272A(5) or 272B(3) of the SFA, as the case may be, if —

- (i) both offers form part of a single plan of financing;
- (ii) both offers are made for the primary benefit of the same person(s); or
- (iii) both offers are made in connection with the same business or in relation to a common business venture

(“fundraising aggregation criteria”).

6.4 Paragraph (3) of regulation 28 of the SF(OI)(SD) Regs further clarifies that in assessing whether two offers satisfy any of the prescribed circumstances in paragraph (1) of regulation 28 of the SF(OI)(SD) Regs, the person making the offer shall have regard to the intended usage of the net proceeds raised from each offer and the person(s) who have the right to determine how the net proceeds are to be used.

6.5 To provide some illustration as to what may constitute “a single plan of financing”, “for the primary benefit of the same person(s)” or “in connection with the same business or in relation to a common business venture”, sample scenarios illustrating the application of these criteria are set out in Appendix 2.

6.6 It should be noted that the factors prescribed in paragraph (1) of regulation 28 form the broad criteria. The actual determination of whether two offers are closely related (i.e. whether the offers satisfy one or more of the factors prescribed) will depend largely on the facts and circumstances of the case (including whether the offers are made with the intention of circumventing the prescribed limit).

6.7 The Authority acknowledges that the setting out of broad criteria instead of prescribing detailed scenarios under which offers are to be aggregated could raise certain implementation difficulties for offerors. However, this is balanced with the concern of incorporating overly prescriptive rules. Moreover, it is not possible to comprehensively deal with all factual scenarios under which the aggregation rule is

applicable. Hence, on balance, the Authority is of the view that the setting out of broad criteria, supplemented by guidelines, is the most appropriate approach.

Aggregation of Offers of Asset-Backed Securities and Structured Notes and units in Collective Investment Schemes (other than REITs)

6.8 As asset-backed securities and structured notes are more akin to investment products and are unlikely to be offered for the purposes of fund-raising, a separate set of aggregation criteria has been incorporated for offers of asset-backed securities and structured notes. Unlike the criteria applicable to offers of shares and debentures of a corporation, the aggregation criteria for such offers seeks to ensure that financial institutions offering investment products in the ordinary course of business in excess of \$5 million or to more than 50 offerees will continue to provide proper risk and product disclosures when offering complex securities to retail investors.

6.9 It is noted that collective investment schemes (other than REITs) are, similarly, investment products offered by financial institutions. Accordingly, paragraph (2) of regulation 28 of the SF(OI)(SD) Regs will require an offer of asset-backed securities or structured notes to be aggregated with another offer of asset-backed securities or structured notes or with a previous offer of units in such collective investment schemes if any of the aggregation criteria specified in that paragraph is satisfied.

6.10 Specifically, paragraph (2) of regulation 28 of the SF(OI)(SD) Regs provides that an offer of asset-backed securities or structured notes is a closely related offer to –

- (a) another offer of asset-backed securities or structured notes; or
- (b) an offer of units in a collective investment scheme (other than a REIT),

under section 272A(5) or 272B(3) of the SFA, as the case may be, if the person who makes or is a sponsor of the first-mentioned offer —

- (i) also makes or is a sponsor of the second-mentioned offer; or
- (iii) is a related corporation or related entity of the person who makes or is a sponsor of the second-mentioned offer

(“investment products aggregation criteria”).

6.11 Sample scenarios illustrating the application of the aforesaid criteria are set out in Appendix 3.

### Aggregation Matrix

6.12 A matrix showing the circumstances under which 2 or more offers should be aggregated and the applicable aggregation criteria is set out in Appendix 4.

## **7 PROPER RECORDS AND DOCUMENTATION**

7.1 As the onus is on the offeror to show that the offer was not made in contravention of section 240 of the SFA, it is important for a person intending to make an offer in reliance on the small offers exemption or private placement exemption to keep proper records and documentation of the offer to show that the offer qualified for the exemption. In addition, detailed records and documentation should be maintained in order to show that the offer was made in compliance with the aggregation rule.

## **8 SPECIFIC EXEMPTION FOR SPECIFIED FINANCIAL INSTITUTIONS**

8.1 It is noted that a financial institution may issue securities for the purposes of raising funds or offering investment products to its clients in its ordinary course of its business. Given that securities could be offered for entirely different purposes, it is not the Authority's intent to require the financial institution to aggregate, for example, offers of its shares together with offers of its structured notes.

8.2 Regulation 27 of the SF(OI)(SD) Regs, accordingly, provides relief to a specified financial institution from compliance with the requirement under section 272A(5)(a) or 272B(3)(a) of the SFA to aggregate all offers of securities it made within the last 12 months, subject to the condition that the offers concerned are not closely-related offers (as determined in accordance with regulation 28 of the SF(OI)(SD) Regs).

8.3 As the aggregation criteria applicable to an offer of shares in a specified financial institution under regulation 28 of the SF(OI)(SD) Regs does not apply to an offer of structured notes, a previous offer of structured notes by a specified financial institution to its customers would not be regarded as a closely related offer to an offer of shares by the specified financial institution to raise funds for its operations. An offer of shares and an offer of debentures (other than structured notes) issued by the specified financial institution, on the other hand, are clearly made for the purposes of fund-raising and hence, would have to be aggregated if the offers satisfy any of the aggregation criteria set out in regulation 28 of the SF(OI)(SD) Regs.

## 9 MARKET-MAKING FOR SECURITIES ACQUIRED PURSUANT TO THE SMALL OFFERS EXEMPTION

9.1 Issuers may conduct their exempted securities offerings through financial institutions which can subsequently “make a market”<sup>5</sup> for the securities (“market-makers”).

9.2 Where a market-maker purchases securities from the issuer and on-sells them to interested investors, the market-maker is not acting as an agent for the issuer in respect of the subsequent offer. Unless the subsequent offers are made in reliance on an exemption under Subdivision 4 of Division 1 of Part XIII of the SFA, such a subsequent offer would have to comply with prospectus requirements under Part XIII of the SFA.

9.3 Market-makers can rely on an exemption under section 272A(8)(c) of the SFA to on-sell securities which it had acquired from the issuer to interested persons without having to issue a prospectus. In relation to over-the-counter trading, persons who have purchased securities from the market-maker in reliance on section 272A(8)(c) and who wish to sell those securities back to a market-maker can rely on an exemption under regulation 29 of the SF(OI)(SD) Regs from compliance with the requirement to give a warning statement and resale notification to the market-maker if the market-maker had previously indicated to such persons that those statements were not necessary. In reliance on these exemptions, a market-maker will be able to on-sell securities to interested persons without the offers being made in or accompanied by a prospectus. Investors who purchased securities from the market-maker will also be able to rely on the same exemption to sell back those same securities to the market-maker or to another market-maker who, in turn, can rely on the same small offers resale exemption to re-sell the securities to other interested persons.

9.4 An illustration on how an exemption under section 272A(8)(c) of the SFA, when read together with the exemption under regulation 29 of the SF(OI)(SD) Regs, is intended to facilitate market-making for securities acquired under section 272A(1) is set out below:

- *Initial Sale by Market-Maker:* In order to conduct market-making, the market-maker must necessarily be the holder of a capital markets licence for dealing in securities or a person exempted from such licensing. A market-maker can rely on the exemption under section 272A(8)(c) of the

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<sup>5</sup> To maintain a firm bid and ask price in a given security by standing ready, willing, and able to buy or sell at the quoted prices.

SFA to on-sell securities which it acquires from the issuer pursuant to the small offers exemption, provided that such sale of securities is limited to persons who are connected to the issuer, or who have previously indicated to the issuer or a specified person that they were interested in offers of this kind (“interested person”).

- *Subsequent Sale by Purchaser to Market-Maker:* After an interested person acquires the issuer’s securities from the market-maker pursuant to section 272A(8)(c) of the SFA, he can similarly rely on section 272A(8)(c) to sell those same securities back to that market-maker or another market-maker. To facilitate the sale of such securities back to the market-maker, an exemption has been provided under regulation 29 of the SF(OI)(SD) Regs to relieve the interested person from the requirement under section 272A(8)(c)(iii) to give a warning statement and resale notification to the market-maker.
- *Subsequent Resale by Market-Maker to Other Interested Persons:* Following the re-acquisition of the issuer’s securities from an interested person in its capacity as market-maker for the securities, the market-maker can continue to rely on section 272A(8)(c) of the SFA to re-sell those securities to other interested persons. Offers made in reliance on section 272A(8)(c) are not subject to any aggregation rule.

Please refer to Appendix 5 for a diagrammatic illustration of the above.

## **10 RATIONALE FOR NOT EXTENDING SIMILAR EXEMPTION IN SECTION 272A(8)(C) OF THE SFA TO SECURITIES ACQUIRED UNDER THE PRIVATE PLACEMENT EXEMPTION**

10.1 In line with our intent to develop a vibrant over-the-counter market in Singapore, the Authority has received suggestions to consider exempting all offers made by market-makers from prospectus requirements.

10.2 In considering whether to provide market-makers with added flexibility and scope, the Authority has had to balance its developmental objectives with the need to ensure that the securities offered under the exemptions under Subdivision (4) of Part XIII of the SFA remain limited in reach (either in terms of size of the offering or the number of persons to whom the offering can be made to).

10.3 From a policy perspective, any exemption given to market-makers should not result in the offer of securities, when considered alongside subsequent offers of those same securities, amounting to one for which a prospectus would have been required.

10.4 On a balance, the Authority is prepared to provide an exemption for subsequent offers made by market-makers which were acquired from the issuer under the small offers exemption. This is on the basis that offers made in reliance on the small offers exemption are subject to a cap on the amount of funds raised, i.e. \$5 million in 12 months, and can be made only to qualified investors (i.e. persons who are connected to the offeror or who have previously indicated interest in offers of that kind). Hence, so long as subsequent sales are confined to the same group of qualified investors, we are of the view that the securities offered will remain sufficiently limited in reach.

10.5 On the other hand, if an issuer relies on the private placement exemption to offer its securities to the market-maker, there is no limit on the amount of securities that can be placed to the market-maker. Exempting the market-maker from the requirement to issue a prospectus for its subsequent sale of the issuer's securities and/or from the requirement to aggregate sales which are made in reliance on the same exemption would have the effect of allowing an unlimited amount of securities to be offered by the market-maker to an unlimited number of persons (through several rounds of sale and resale). This would not accord with the Authority's policy intent that exempted offers should be limited in reach.

10.6 In any case, as section 272B(5)(g) of the SFA<sup>6</sup> requires the issuer to aggregate the persons to whom the market-maker has offered the securities to, it is highly unlikely that a market-maker will rely on the private placement exemption for its subsequent offers of the issuer's securities. Therefore, even if an exemption is given to facilitate subsequent offers of securities which were initially acquired under a private placement exemption, it is likely to be of limited use in practice.

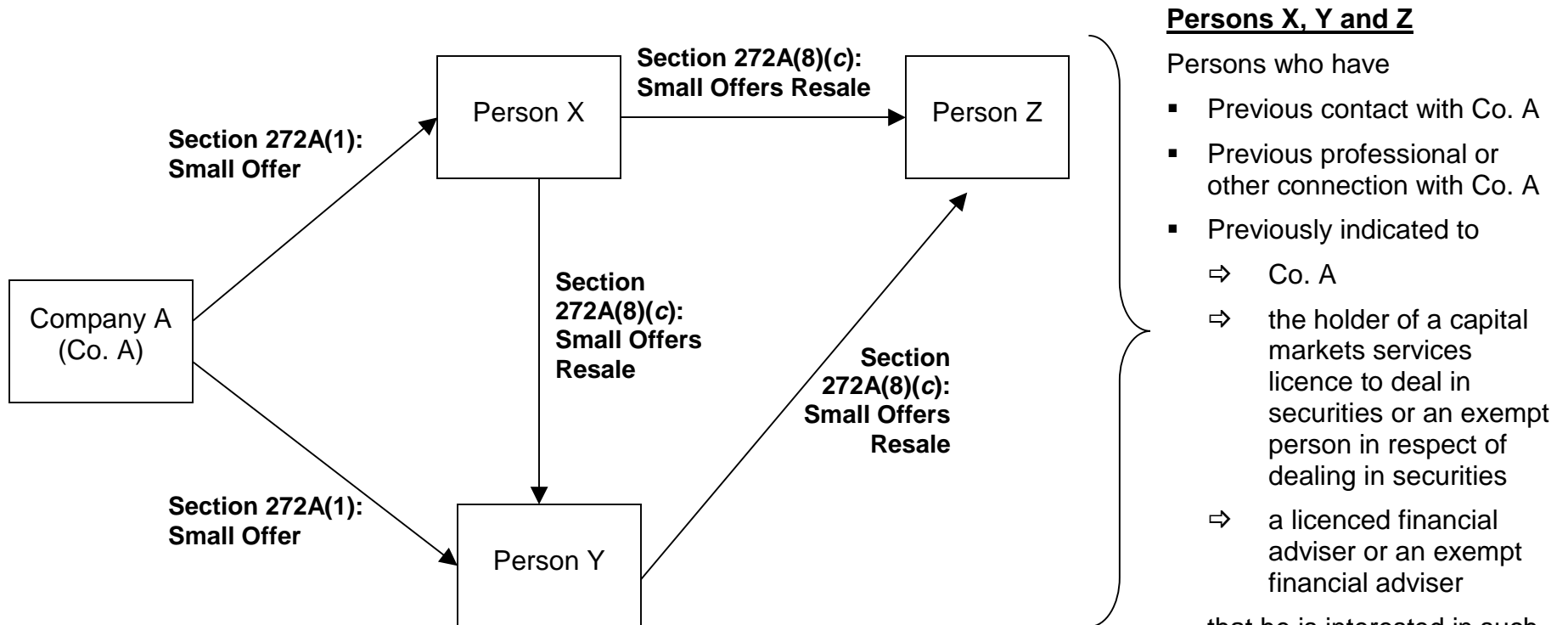
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<sup>6</sup> Section 272B(5)(g) provides that if an offer is made with a view to the securities being subsequently offered for sale to another person, and that subsequent offer (a) is not an exempted offer; or (b) is made in reliance on private placement exemption, then both persons shall be counted in determining the number of offerees.

10.7 The Authority believes that the exemption in section 272A(8)(c) of the SFA, coupled with the exemption in regulation 29 of the SF(OI)(SD) Regs, is sufficient to facilitate the provision of a mechanism for effective secondary trading in over-the-counter markets for securities under offers made in reliance on an exemption.

**APPENDIX 1**

**Illustration of the workings of the Small Offers Exemption [section 272A(1)] and Small Offers Resale Exemption [section 272A(8)(c)]**



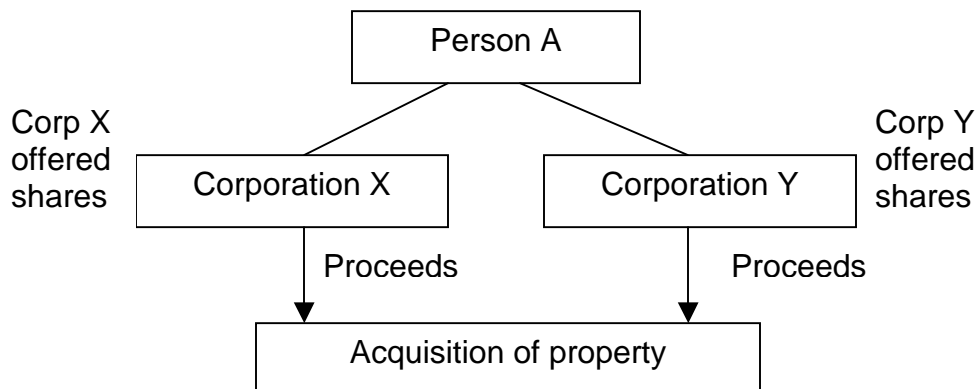
**Note:**

Exemptions under section 272A(1) and section 272A(8)(c) of the SFA are subject to:

- (a) Advertising restrictions;
- (b) Provision of “warning statement”; and
- (c) Notification of resale restrictions  
 (i.e. securities acquired shall not be subsequently sold unless it is made in compliance with Subdivisions (2) and (3) of Division 1 of Part XIII of the SFA, in reliance on an exemption on section 272A(8)(c) or any other exemption in Subdivision (4), or in reliance on the small offers exemption under section 272A(1) provided that 6 months have elapsed from the initial acquisition of securities from Co. A.)

**APPENDIX 2**

**Sample Case (1)**



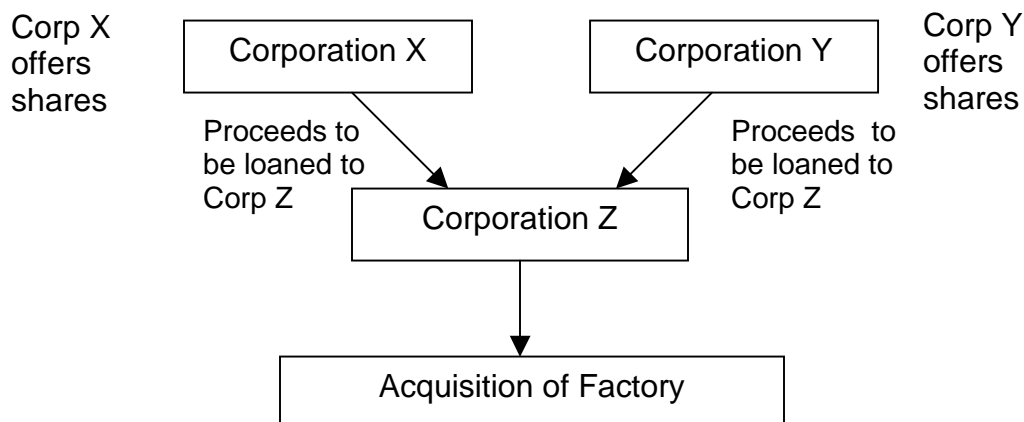
Corporation X was set up by Person A to undertake property development projects. In August 2005, Corporation X offered 45m new shares at \$1 each to 50 investors to raise funds for the purchase of a property at a cost of \$45m. The offers were made in reliance on the private placement exemption. Corporation X, however, managed to raise only \$22.5m from the 50 investors (being the maximum number of offerees allowed under the private placement exemption).

To raise the remaining \$22.5m, Person A proposes to set up another company, Corporation Y, and rely on the private placement exemption to offer shares in Corporation Y to another 50 investors.

**Determination**

The offers of shares in Corporation X and Corporation Y would be considered as being part of a single plan of financing given that the funds raised from both offers will be used for the purpose of acquiring the same property. The offers are therefore closely related and should be aggregated for the purposes of complying with the 50-offerees limit under the private placement exemption.

**Sample Case (2)**



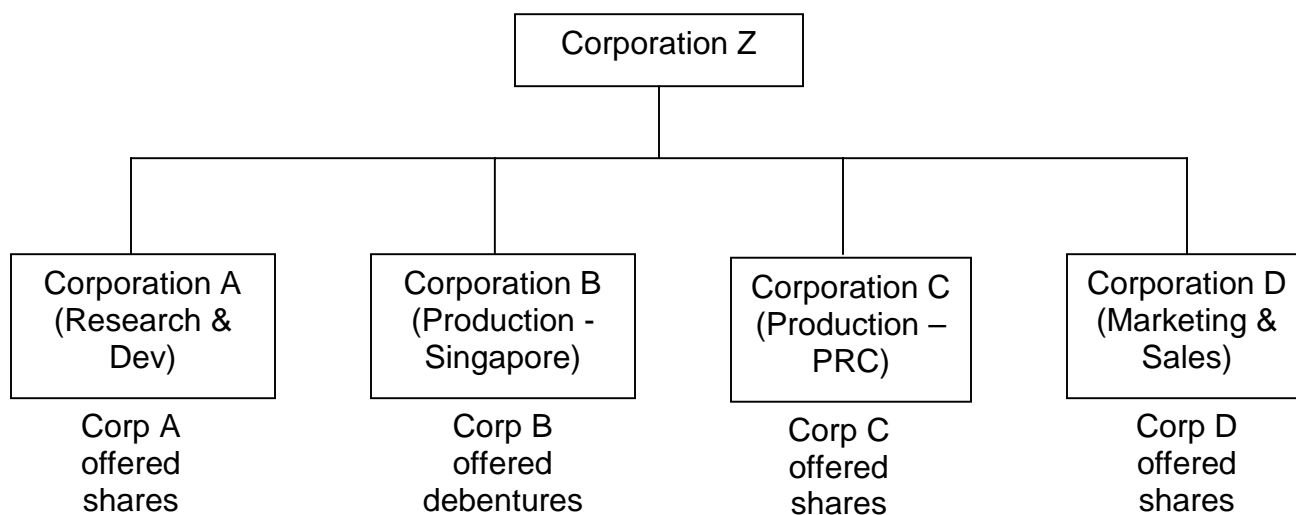
Corporation Z is engaged in the manufacture and sale of flexible and rigid packaging products. In August 2005, Corporation Z decided to purchase a new factory to expand its production capacity. The estimated cost of the new factory was \$10m.

As Corporation Z has many business associates who are keen to invest in its operations, it intends to raise the required funds for the acquisition of the factory by offering shares to its suppliers and customers. Corporation Z, however, notes that the maximum amount it can raise in reliance on the small offers exemption is \$5m. As it has two controlling shareholders, Corporation X and Corporation Y, it proposes instead for each of them to offer shares in reliance on the small offers exemption. The aggregate amount of \$10m raised by Corporation X and Corporation Y would then be loaned to Corporation Z to purchase the factory.

### **Determination**

Corporation X and Corporation Y are serving as conduits for Corporation Z to raise funds for the purchase of its new factory. As the offers of shares in Corporation X and Corporation Y are part of a single plan of financing made for the same purpose (i.e. to finance the acquisition of the new factory), the offers are closely related and should be aggregated for the purposes of complying with the \$5m limit under the small offers exemption.

### **Sample Case (3)**



Corporation Z is the holding company of Corporation A which is engaged in the manufacture and sale of men's apparel. On 1 October 2005, Corporation A offered 20m new shares to 40 new investors in reliance on the private placement exemption. Proceeds from the offers amounting to \$20m were to be used by Corporation A for general working capital purposes.

Three months later, Corporation A decided to raise more funds to finance the acquisition of additional machinery as part of its plans to expand the production capacity of its facility in Singapore. Instead of offering shares (in which case it could only offer to another 10 persons if it wishes to rely on the private placement exemption), Corporation A decided to transfer its Singapore production facility to a newly incorporated company, Corporation B. On 31 January 2006, Corporation B offered \$10m worth of bonds to 25 new investors in reliance on the private placement exemption. Funds raised were then used to acquire the new machinery.

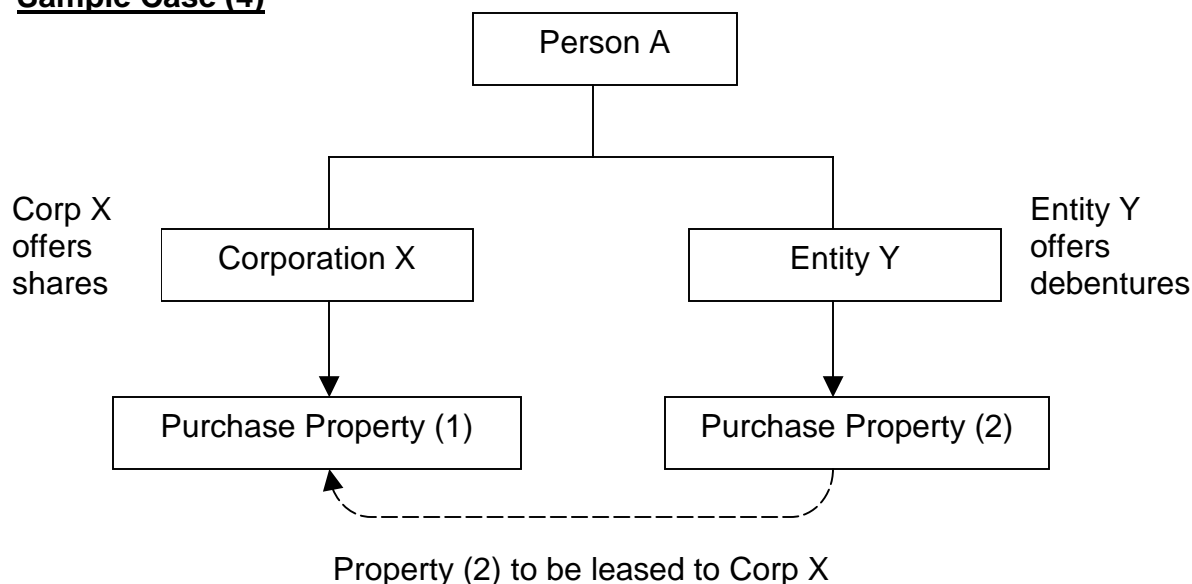
In June 2006, Corporation A decided to set up a production facility in PRC so as to take advantage of the lower costs of production. The new PRC factory was estimated to cost \$8m. Corporation C was accordingly set up to raise the \$8m from 20 new investors in reliance on the private placement exemption.

With the expanded production, Corporation A subsequently decided to embark on an aggressive marketing programme so as to generate sales. In order to be able to rely on the private placement exemption again to raise funds for its advertising and promotion initiatives, Corporation A decided to transfer its sales and marketing function to a newly incorporated company, Corporation D, which subsequently raised \$5m from another 10 investors in August 2006.

### Determination

Even though the offers made by Corporation B, Corporation C and Corporation D were not anticipated at the time Corporation A made its offer and hence were, strictly speaking, not part of the same plan of financing, the offers made by Corporation B, Corporation C and Corporation D were in relation to the operations of the same business. The offers made by the four corporations were therefore closely related and should be aggregated for the purposes of complying with the 50-offerees limit under the private placement exemption.

### Sample Case (4)



Person A owns Corporation X and Entity Y. Corporation X intends to acquire Property (1) and Property (2) at a cost of \$30m and \$20m respectively.

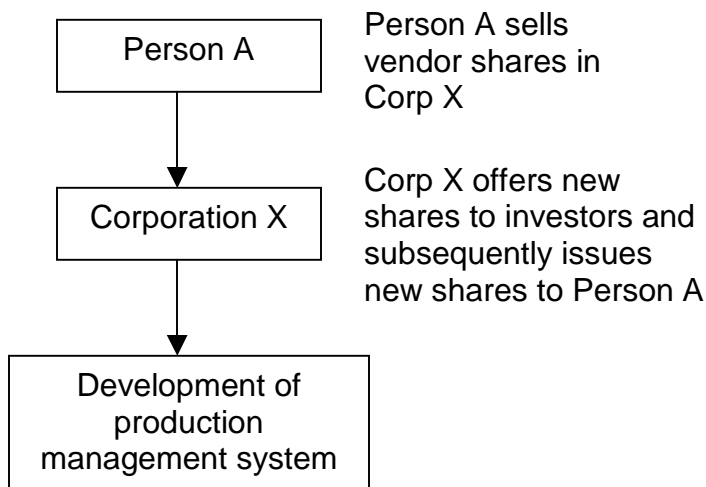
Person A noted that the funds that could be raised by Corporation A from the offer of its shares to 50 investors are probably insufficient to finance the acquisition of both properties.

In order for Corporation A not to incur the costs of issuing a prospectus, Person A decided to get Entity Y to issue debentures to another 50 other investors so as to raise the additional funds required. Proceeds raised by Entity Y would then be used to purchase Property (2) which, in turn, could be leased to Corporation X for its use.

### **Determination**

The offer of shares by Corporation X and offer of debentures by Entity Y are part of a single plan of financing made for the purpose of acquiring the two properties. Without Corporation X's intention to purchase Property (2), Entity Y would not have issued the debentures. The offers are therefore closely related and should be aggregated for the purposes of complying with the 50-offerees limit under the private placement exemption.

### **Sample Case (5)**



Person A owns Corporation X which is engaged in the printing business.

In order to finance the development of its automated production management system (estimated to cost \$7.8m), Corporation X intends to raise funds by offering shares to its suppliers, customers and other business associates using the small offers exemption.

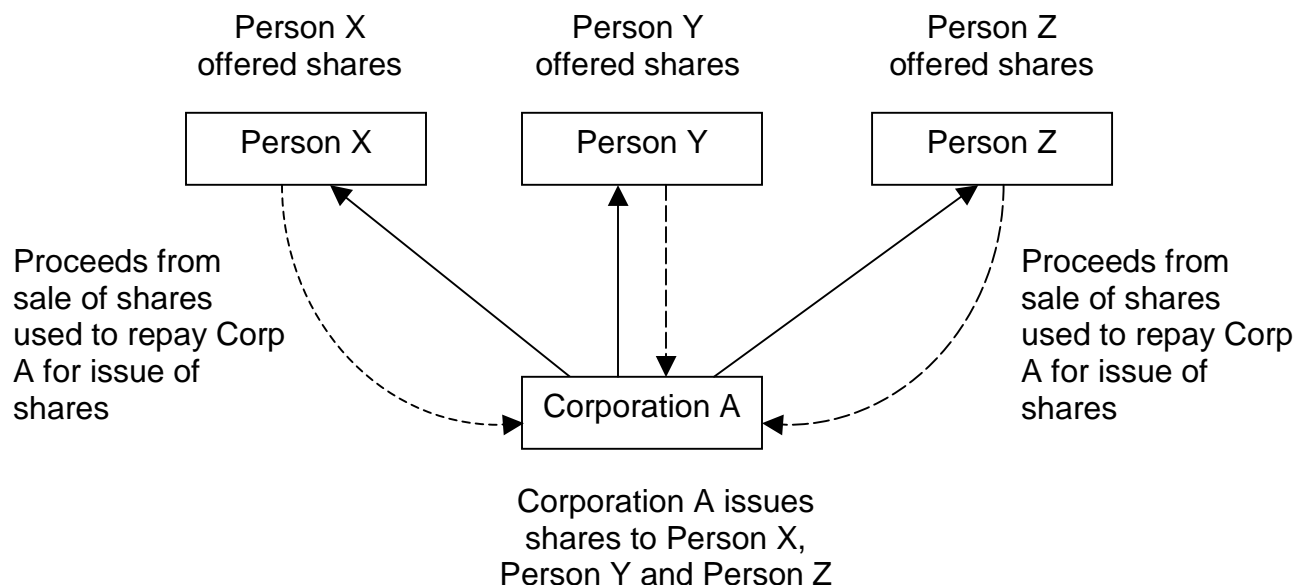
Given that Corporation X could only raise up to \$5m under the small offers exemption, Person A proposes to raise the balance \$2.8m by selling his shares in reliance on the small offers exemption. Proceeds received from the sale of shares owned by Person A

would then be used to subscribe for new shares in Corporation X such that Person A's ownership in Corporation X would remain unchanged. Person A thinks that since the offer of his shares and Corporation X's subsequent placement of new shares to him are made using separate exemptions, they would not be subject to the aggregation requirement.

### Determination

Although the offer by Person A and the subsequent offer by Corporation X to him are not subject to the aggregation requirement, the offer of shares by both Corporation X and Person A are made using the same type of exemption, i.e the small offers exemption. In this case, both offers are clearly part of a single plan of financing made for the purpose of financing the development of the production management system. The offers by Corporation X and Person A to investors are therefore closely related and should be aggregated for the purposes of complying with the \$5m limit under the small offers exemption.

### Sample Case (6)

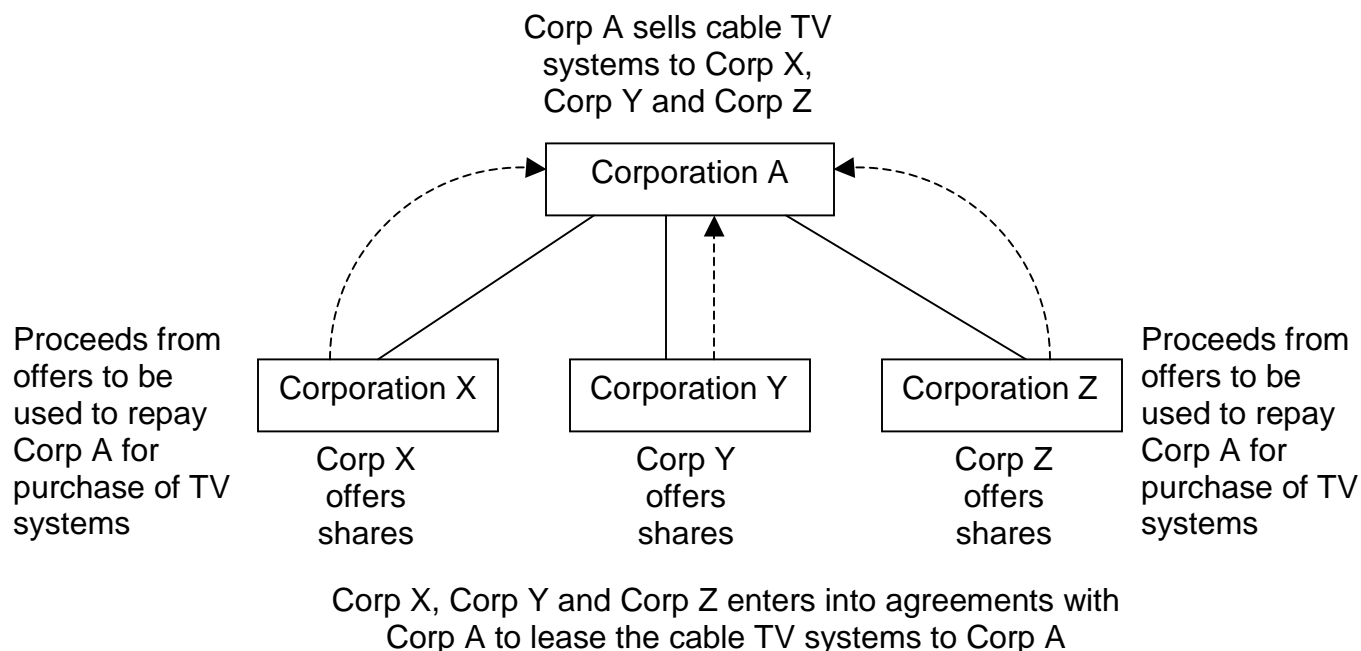


Corporation A is engaged in the provision of PCB testing and finishing services. In order to finance its expansion into other PCB-related businesses, Corporation A issued shares amounting to \$5m to each of Person X, Person Y and Person Z in reliance on the private placement exemption. To raise funds for the purchase of the shares, Person X, Person Y and Person Z, in turn, offered shares to their business associates in reliance on the small offers exemption. Proceeds totalling \$15m were then used to repay Corporation A for its share issue to each of them.

### Determination

Person X, Person Y and Person Z were clearly acting as conduits to raise funds for Corporation A. As the offers were part of a single plan of financing made for the primary benefit of Corporation A, the offers made by Person X, Person Y and Person Z were closely related and should be aggregated for the purposes of complying with the \$5m limit under the small offers exemption.

### Sample Case (7)

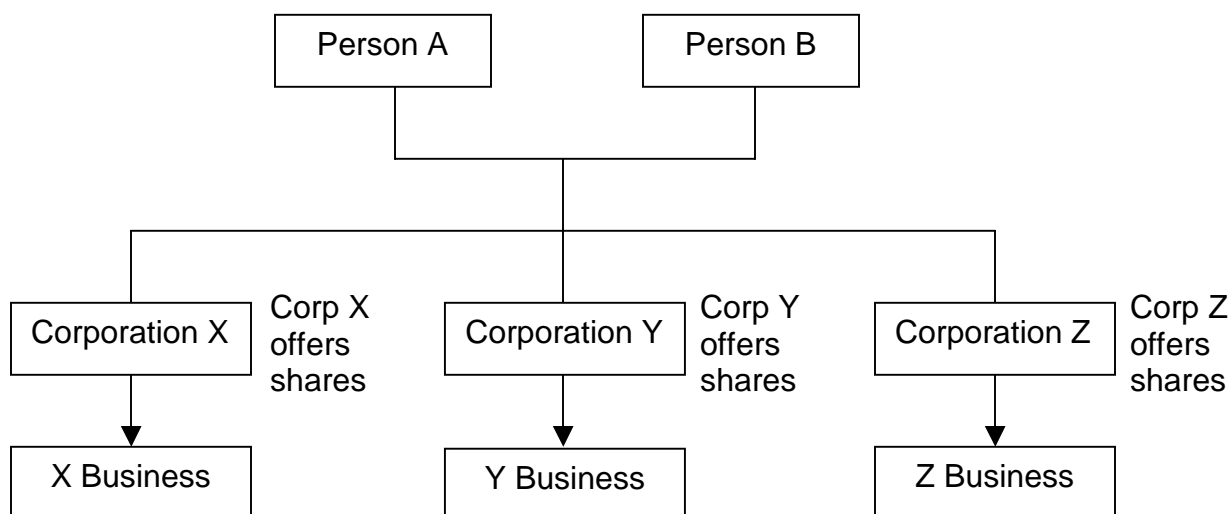


Corporation A is engaged in the business of leasing cable TV systems. To expand its business, it intends to purchase 3 additional sets of systems costing \$5m each. In order to be able to rely on the small offers exemption and avoid having to issue a prospectus, Corporation A decides to set up three new corporations, namely, Corporation X, Corporation Y and Corporation Z. The plan is for Corporation A to first acquire the TV systems and each of Corporation X, Corporation Y and Corporation Z to then raise the required funds by offering shares using the small offers exemption. Funds raised by each of Corporation X, Corporation Y and Corporation Z would then be used to acquire the TV systems from Corporation A. The systems, in turn, would be leased to Corporation A.

### Determination

Corporation X, Corporation Y and Corporation Z would be serving as conduits for Corporation A to raise funds for the purchase of the cable TV systems. As the offers are part of a single plan of financing made for the same general purpose, the offers will be regarded as closely related and should be aggregated for the purposes of complying with the \$5m limit under the small offers exemption.

### **Sample Case (8)**



Person A and Person B have joint ownership and management control of Corporation X, Corporation Y and Corporation Z.

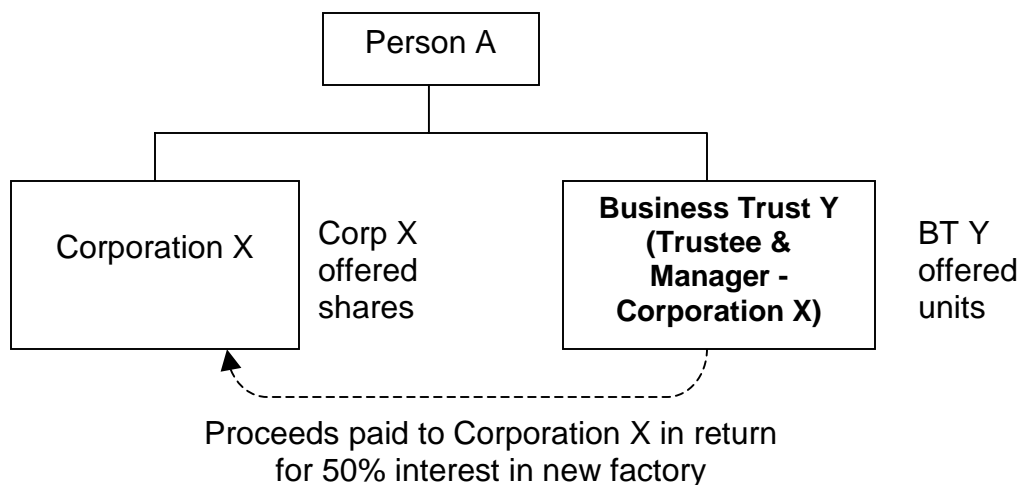
Corporation X, Corporation Y and Corporation Z are engaged in distinct businesses, each having its own funding needs.

Person A and Person B plans to expand the businesses of Corporation X, Corporation Y and Corporation Z. To raise the required funds, it is their intention for each of Corporation X, Corporation Y and Corporation Z to offer shares to new shares to new investors in reliance on the private placement exemption.

#### **Determination**

In this case, notwithstanding that the proceeds raised by each of Corporation X, Corporation Y and Corporation Z would be used by each of them in their own businesses, the offers are made at the direction of Person A and Person B who have full discretion over usage of the proceeds raised. The offers are therefore made for the primary benefit of Person A and Person B. Accordingly, the offers by Corporation X, Corporation Y and Corporation Z are closely related and should be aggregated for the purposes of complying with the 50-offerees limit under the private placement exemption.

**Sample Case (9)**



Person A owns Corporation X which is engaged in the business of manufacturing steel coils. It is Person A's intention to expand the business of Corporation X. To do so, he plans to build a plant in Batam, Indonesia which is estimated to cost \$10m. Person A notes that Corporation X could only raise up to \$5m using the small offers exemption. To raise the balance amount required, he therefore decides to set up a business trust, Business Trust Y.

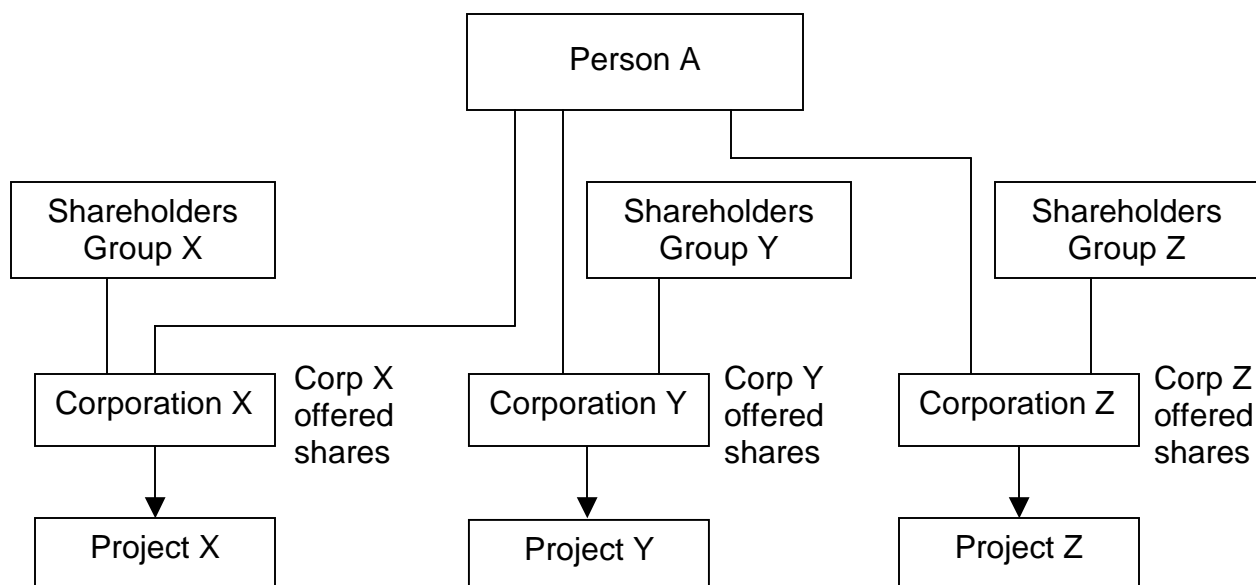
Person A intends to appoint Corporation X as both the trustee and the manager of the business trust (i.e. Corporation X will act as the trustee for the unitholders of Business Trust Y as well as manage the business held by Business Trust Y on behalf of the unitholders).

Both Corporation X and Business Trust Y could then raise funds by issuing new shares and new units of up to \$5m each respectively. Proceeds raised from the issue of units in Business Trust Y would be given to Corporation X as payment for the purchase of a 50% interest in the new Batam factory. Corporation X, in turn, would use the proceeds from the two offers to purchase and construct the new Batam factory.

**Determination**

The offers of shares in Corporation X and units in Business Trust Y are part of a single plan of financing made for the purpose of constructing the new Batam factory. The offers are therefore closely related and should be aggregated for the purposes of complying with the \$5m limit under the small offers exemption.

### **Sample Case (10)**



Person A has shareholdings of 10%, 20% and 25% in Corporation X, Corporation Y and Corporation Z respectively. Other than Person A, Corporation X, Corporation Y and Corporation Z have no other common shareholders.

Corporation X, Corporation Y and Corporation Z are engaged in infrastructure building, IT systems integration and electronics waste management respectively.

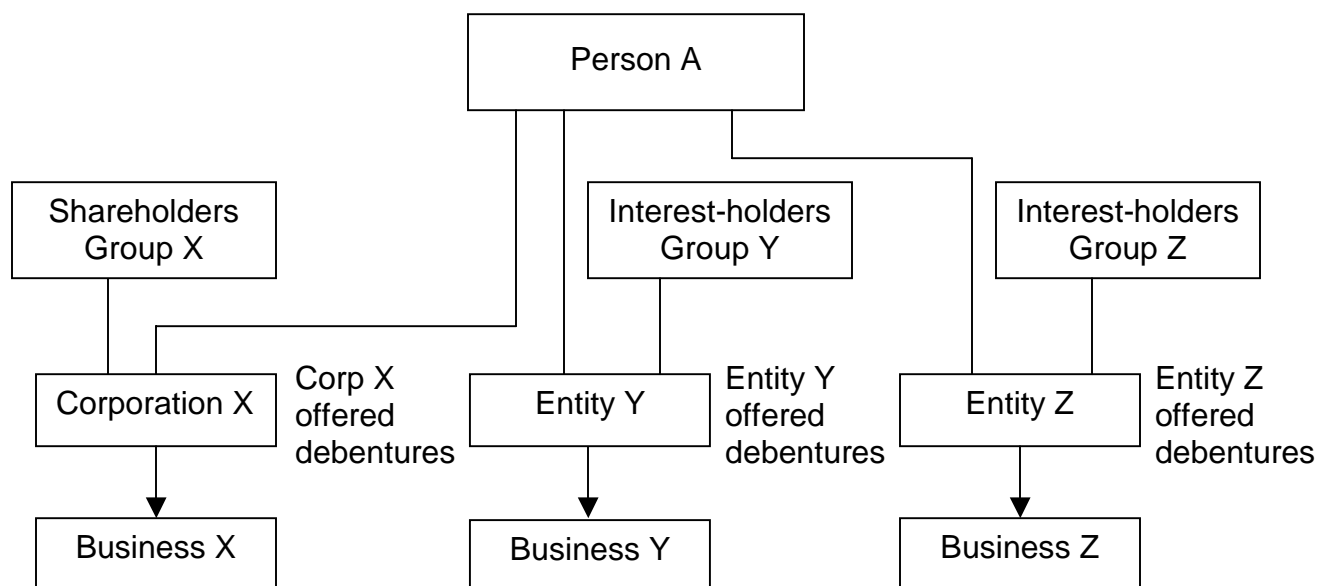
Person A is merely an investor and is not actively involved in the management of the business operations of Corporation X, Corporation Y and Corporation Z. The assessment of funding needs and the usage of funds raised are left entirely to the controlling shareholders and management of Corporation X, Corporation Y and Corporation Z.

On 1 January 2006, 30 January 2006 and 3 February 2006, Corporation X, Corporation Y and Corporation Z offered new shares to 40-50 new investors respectively to raise funds for their individual projects.

#### **Determination**

In this case, notwithstanding Person A would benefit as a shareholder of the three corporations, he would not derive primary benefit from the offers. Further, the assessment of funding needs and the usage of funds are left entirely to the controlling shareholders and management of Corporation X, Corporation Y and Corporation Z and Person A is only a passive investor. The offers by Corporation X, Corporation Y and Corporation Z, therefore, would not be regarded as closely related offers and hence, would not need to be aggregated for the purposes of complying with the 50-offerees limit under the private placement exemption.

**Sample Case (11)**



Person A is a controlling shareholder of Corporation X and a controlling interest-holder of Entity Y and Entity Z. Other than Person A, Corporation X has no other shareholders who are also interest-holders of Entity Y and Entity Z.

Corporation X, Entity Y and Entity Z are engaged in different businesses and have separate funding needs.

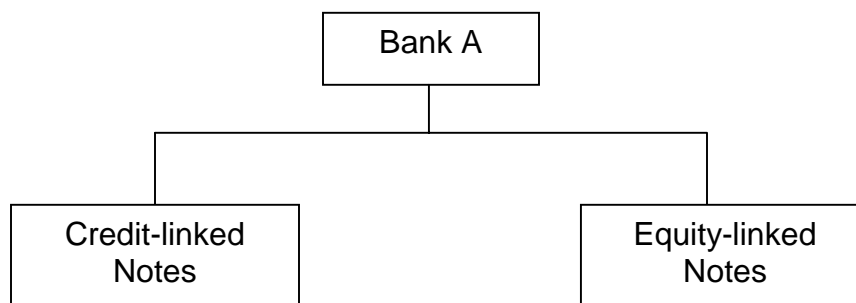
Notwithstanding his controlling interests, Person A is not actively involved in the management of the business operations of Corporation X, Entity Y and Entity Z. The assessment of funding needs and the usage of funds raised are left entirely to the management of Corporation X, Entity Y and Entity Z.

On 1 January 2006, 30 January 2006 and 3 February 2006, Corporation X, Entity Y and Entity Z issued debentures to 40-50 new investors respectively to raise funds for their individual businesses. Person A agreed to be the guarantor for each of these issues.

**Determination**

In this case, notwithstanding Person A is the guarantor for all the offers by Corporation X, Entity Y and Entity Z and would also benefit as a controlling shareholder and interest-holder of the three entities, it is noted that Person A is only a passive investor and is not involved in the decision to raise additional funds and the deployment of funds raised. The offers, therefore, would not be regarded as closely related offers and hence, would not need to be aggregated for the purposes of complying with the 50-offerees limit under the private placement exemption.

**Sample Case (1)**

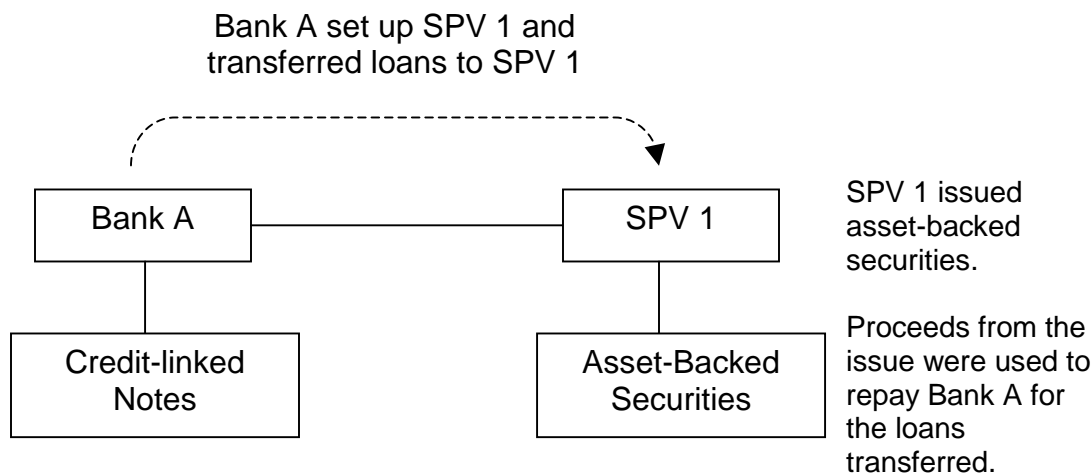


Bank A issued a series of credit-linked notes totalling \$5m and another series of equity-linked notes totalling \$2m under a separate programme.

**Determination**

Given that both series of notes were offered by the same person, the offers would be regarded as closely related offers and should be aggregated.

**Sample Case (2)**

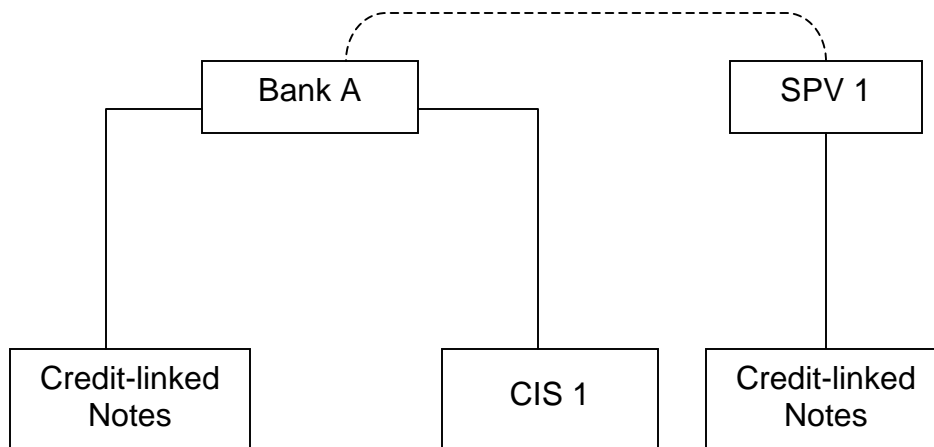


Bank A issued a series of credit-linked notes. It was also the sponsor of an asset-backed securities programme offered by SPV 1.

**Determination**

Bank A was the offeror of the credit-linked notes and the sponsor for the asset-backed securities. The two offers, accordingly, were closely related and should be aggregated.

**Sample Case (3)**

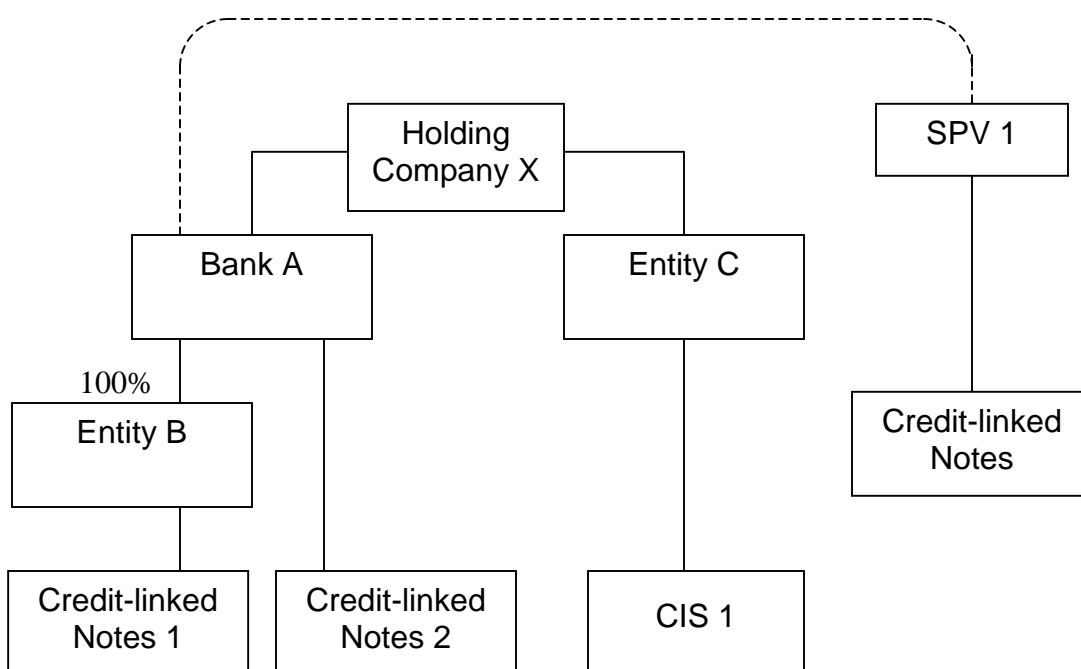


Bank A was a full-fledged bank. Its business activities include the arranging and issuing of structured notes (e.g. credit-linked notes), the offering of units in collective investment schemes (e.g. a scheme which invests in technology stocks) and various forms of securitization (e.g. the setting up of a single purpose vehicle to issue credit-linked notes).

**Determination**

All offers of structured notes, asset-backed securities and units in collective investment schemes (other than REITs) in respect of which Bank A was the offeror or the sponsor would be regarded as closely related offers and must be aggregated.

**Sample Case (4)**



Holding Company X owns Bank A and Entity C which are engaged in banking and fund management services respectively. Bank A's banking activities include the arranging and issuing of structured notes (e.g. credit-linked notes) and various forms of securitization (e.g. the setting up of a single purpose vehicle to issue credit-linked notes). Sometimes, Bank A also issues structured products through its wholly owned subsidiary, Entity B.

**Determination**

Given the relationship between Bank A, Entity B and Entity C (each of them being a related corporation or related entity to the other), all offers of structured notes, asset-backed securities and units in collective investment schemes (other than REITs) by them would be regarded as closely related offers and must be aggregated. Any offer of credit-linked notes by SPV 1 (where Bank A is the sponsor) is also regarded as a closely related offer to an offer made by Bank A and must be aggregated.

**APPENDIX 4**

**Matrix showing circumstances in which 2 or more offers should be aggregated**

<b>1<sup>st</sup> offer 2<sup>nd</sup> offer</b>	<b>Securities<sup>#</sup> (other than ABS &amp; Structured Notes)</b>	<b>ABS &amp; Structured Notes</b>	<b>BTs</b>	<b>CIS REITs</b>	<b>CIS (other than REITs)</b>
<b>Securities (other than ABS &amp; Structured Notes)</b>	Fundraising aggregation criteria	X	Fundraising aggregation criteria	Fundraising aggregation criteria	X
<b>ABS &amp; Structured Notes</b>	X	Investment products aggregation criteria	X	X	Investment products aggregation criteria
<b>BTs</b>	Fundraising aggregation criteria	X	Fundraising aggregation criteria	Fundraising aggregation criteria	X
<b>CIS REITs</b>	Fundraising aggregation criteria	X	Fundraising aggregation criteria	Fundraising aggregation criteria	X
<b>CIS (other than REITs)</b>	X	Investment products aggregation criteria	X	X	Investment products aggregation criteria

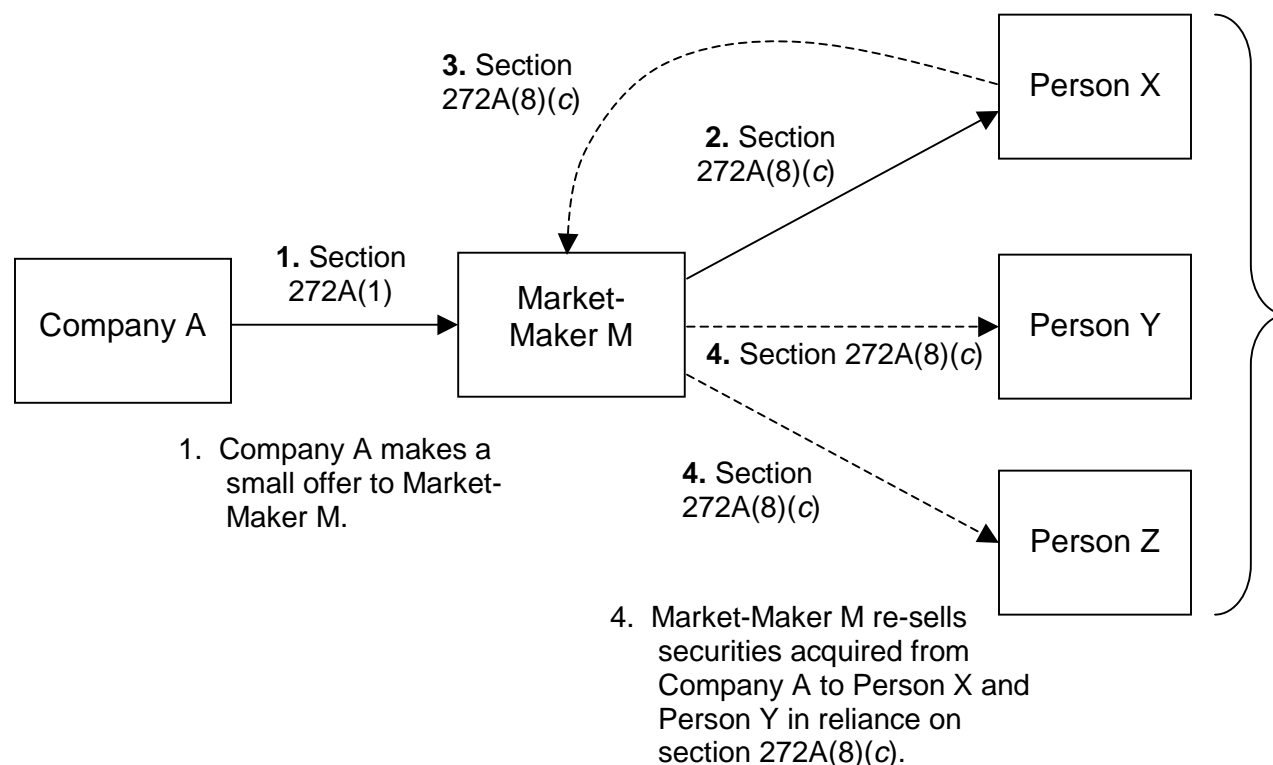
# “Securities” is as defined in s239 of the SFA i.e. debentures or units of debentures of an entity, or shares or units of shares of a corporation.

“Fundraising aggregation criteria” – see paragraph 6.3 of these Guidelines

“Investment products aggregation criteria” – see paragraph 6.10 of these Guidelines

**Market making for securities acquired pursuant to the small offers exemption**

2. Market-Maker M sells securities acquired from Company A to Person X in reliance on section 272A(8)(c).
3. Person X sells back securities to Market-Maker M in reliance on section 272A(8)(c). Person X is exempted from requirement to provide warning statement and resale notification to Market-Maker M if Market-Maker M had previously indicated to him that such statements are not necessary.



**Note:**

In order to rely on section 272A(8)(c), Persons X, Y and Z must be persons who have

- Previous contact with Co. A
- Previous professional or other connection with Co. A
- Previously indicated to
  - ⇒ Co. A
  - ⇒ the holder of a capital markets services licence to deal in securities or an exempt person in respect of dealing in securities
  - ⇒ a licenced financial adviser or an exempt financial adviser
 that he is interested in such offers