



Monetary Authority of Singapore

Shares and Debentures Guidelines 4

**GUIDELINES ON PERSONAL OFFERS MADE
PURSUANT TO THE EXEMPTION FOR SMALL
OFFERS**

Issued on 15 October 2005

OFFERS OF INVESTMENTS (SHARES AND DEBENTURES)

Guidelines on Personal Offers made pursuant to the Exemption for Small Offers

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”]. They aim to provide guidance on the nature of a personal offer as well as the kinds of relationships that would and would not be considered to be a “personal offer” referred to in section 272A(1) of the SFA.

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

3.1 Section 272A(1) of the SFA provides that the prospectus and debentures requirements in Subdivisions (2) and (3) (other than section 257) of Division 1 of Part XIII of the SFA will not apply to personal offers of securities of an entity made by a person, subject to certain conditions being met (“small offers exemption”).

3.2 Section 272A(3) of the SFA further elaborates on the concept of a personal offer of securities as being one that -

- a) may be accepted only by the person to whom it is made; and
- b) is made to a person who is likely to be interested in that offer, having regard to -
 - (i) any previous contact before the date of the offer between the person making the offer and that person;
 - (ii) any previous professional or other connection established before that date between the person making the offer and that person; or
 - (iii) any previous indication (whether through statements made or actions carried out) before that date by that person that indicate to -
 - (A) the person making the offer; or
 - (B) a specified person,

that he is interested in offers of that kind.

4 POLICY OBJECTIVE OF THE SMALL OFFERS EXEMPTION

4.1 For small and medium-sized enterprises (SMEs), complying with the prospectus requirements for a relatively small fundraising exercise can be costly and unnecessarily burdensome when compared against the resulting protection to investors. Also, it has been argued that SMEs are most likely to raise funds from venture capital firms, business angels and associates as well as family and friends, who would have access to alternative sources of information and would not need to rely on a prospectus as a basis for assessing the business and its viability and commerciality. Moreover, these persons may subscribe for the offers for reasons other than pure investment considerations. The introduction of the small offers exemption, therefore, is intended to make fundraising easier and less costly for SMEs.

4.2 To ensure that the overall impact of offers made in reliance on the small offers exemption remains limited in scope and would not amount to one for which a prospectus would have been required, offers made under the small offers exemption are subject to a \$5 million limit (based on the amount of funds raised) within any 12-month period and are restricted to persons who have prior relationships and

connections with the offeror, or who have previously indicated to the offeror or a specified person that they are interested in offers of that kind. The subsequent resale of securities acquired under the small offers exemption will also be subject to certain resale restrictions¹.

5 NATURE OF A PERSONAL OFFER

5.1 A personal offer is one that is directed at a pre-identified individual or entity. As the word “personal” suggests, each offer must be made personally by the offeror or by a person acting on its behalf to the pre-identified individual or entity. The offer and distribution of the securities should be conducted in a discrete manner and not be the subject of any mass solicitation, advertising or canvassing.

6 RELATIONSHIPS THAT WOULD AND WOULD NOT SATISFY THE “PERSONAL OFFER” TEST

Previous contact or previous professional or other connection established before the date of the offer between the person making the offer and that person

6.1 Section 272A(3)(b)(i) and (ii) of the SFA provides that a personal offer for the purposes of offers made in reliance on the small offers exemption includes offers made to persons who have previous contact or who have previous professional or other connection with the offeror. This is in view of the fact that such persons, through their personal contacts and relationships with the offeror, would already have access to the type of information that would have been required to be disclosed in a prospectus. Hence, these persons would not need a prospectus in order to make an informed investment decision on the securities being offered.

6.2 Accordingly, in deciding whether a person satisfies the “previous contact or previous professional or other connection” condition, it is important for the offeror to consider the nature of contact or connection between him and that person, and whether as a result, that person is likely to possess or have access to the kind of information that would have been disclosed in a prospectus.

6.3 In the Authority’s view, persons who satisfy the “previous contact or previous professional or other connection” condition include family members and relatives of

¹ Subsequent purchasers who have acquired securities under the small offers exemption must rely on the small offers resale exemption under section 272A(8)(c) or any other exemption under subdivision 4 of Division 1 of Part XIII of the SFA to resell the securities (except that the small offers exemption under section 272A(1) can 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). If not, a prospectus would be required to be issued for the offer of securities for sale.

the offeror (where the offeror is an individual), the offeror's controlling shareholders, management and directors (where the offeror is an entity) as well as business associates and other persons whom the offeror reasonably believes to have sufficient knowledge of the business operations, financial performance and position of the entity the securities of which are the subject of the offer.

6.4 On the other hand, persons with whom the offeror or where the offeror is an entity, its controlling shareholders, the management and directors have only social or casual relationships, would not be considered by the Authority as having satisfied the condition of having "previous contact or previous professional or other connection". Given that these persons would not have prior knowledge of the business and performance of the entity or have access to such information, the Authority is of the view that they should be treated no differently from persons who have no direct contact or relationship with the offeror.

6.5 For the same reason, a specified person intending to invoke the small offers exemption should not rely on the "previous contact or previous professional or other connection" limb to offer exempted securities to its retail clients. If it wishes to rely on the small offers exemption or the small offers resale exemption, it should offer the securities only to persons who have previously indicated interest in offers of that kind and who are fully aware of the risks involved in investing in such securities. Further, the specified person should put in place proper "know your client" and pre-qualification procedures as described in paragraphs 6.9 to 6.11.

Previous indication before that date by that person that indicate to a specified person that he is interested in offers of that kind

6.6 Other than persons who have prior contact or connection with the offeror, section 272A(3)(b)(iii) of the SFA provides that a personal offer for the purposes of offers made in reliance on the small offers exemption may also be made to persons who have previously indicated interest (whether through statements made or actions carried out) to the offeror, or a specified person, that they are interested in offers of that kind ("qualified investor").

6.7 Such offers facilitate the offer of securities by SMEs to venture capital firms and business angels who may not have had prior contact or connection with the offeror. As these persons are likely to have the relevant professional experience and expertise or, would be involved with other similar entities, they would have sufficient knowledge of the risks to evaluate the securities being offered without requiring a prospectus. Allowing offers under the small offers exemption to be made to persons who have previously indicated their interest in investing in such securities would also facilitate the establishment of an efficient private equity market.

6.8 As the number of persons with whom an offeror has prior contact or connection may be limited, it is possible that the offeror may enlist the help of a specified person in its offer so as to tap on the distribution network of the specified person and extend the reach of its offer to persons whom it has no prior contact or connection with² but who have previously indicated interest in offers of such securities made under an exemption.

6.9 Any offeror who intends to solicit the help of a specified person in its offer should make sure that the specified person, acting as its agent, has in place proper “know your client”³ and pre-qualification procedures to ensure that offers of securities are made only to those investors who fully understand the risks involved and still view such investments as suitable in light of their investment objectives, financial means and risk profiles. The offeror should, for example, ensure that the specified person and its representatives are equipped with the necessary knowledge to advise the investor on whether such investments are suitable for him and that the specified person has in place formal processes to ensure that the risks of investing in exempted offers are properly highlighted and explained to potential investors both verbally and in writing. In this regard, the offeror could enter into a written agreement with the specified person setting out such “know your client” and pre-qualification procedures.

6.10 The Authority would generally consider an offeror as having appointed a specified person with proper procedures to pre-qualify investors for small offers if the following procedures are carried out by the specified person -

- (a) information on a customer’s interest in exempted offerings is first gathered by means of a generic and neutral questionnaire that does not refer to a specific transaction; and
- (b) following a customer’s indication of interest, its representative conducts a comprehensive analysis of the investment needs and risk profile for that customer and having done so, reasonably believes that --
 - (i) the customer has sufficient knowledge and experience in financial and business matters to evaluate the risks and the merits of investments in exempted securities;

² Any issuer wishing to engage the help of intermediaries should take note of the aggregation rule under section 272A(5) of the SFA which requires it to aggregate the amount of funds raised by offers of securities of the same entity made by it as well as funds raised from closely related offers to be aggregated for the purposes of determining whether the \$5m limit has been exceeded.

- (ii) the customer is fully aware of the risks involved in such investments;
- (iii) the customer views exempted securities as appropriate investments having regard to his investment objectives, financial means and risk profile; and
- (iv) its representative is satisfied that the investment is suitable for the customer in light of his investment objectives, financial means and risk profile.

6.11 Other than putting in place proper pre-qualification procedures, the offeror should also ensure that the specified person has established checks and identification/authentication procedures to ensure that the securities to be offered are only made available to qualified investors. This could be done, for example, by publishing the list of securities made under an exempted offer on a password-protected webpage such that only qualified investors will be allowed to view and subscribe for the securities being offered⁴.

“Cold Calls”

6.12 Where the offeror or a person acting on its behalf makes a “cold call” to establish “prior contact” or obtain indication of interest in the securities, such a person will not be regarded by the Authority as a person with whom the offeror has previous contact or connection, or who has previously indicated interest in securities such as those being offered. Accordingly, any offer made to such person would not qualify as a “personal offer” under section 272A(3) of the SFA⁵.

6.13 Further examples of cases that would or would not qualify as a personal offer are illustrated in Appendix 1.

³ A specified person who is a financial adviser shall have regard to the requirements outlined in paragraph 7 (“Know Your Client”) of the Guidelines on Standards of Conduct for Financial Advisers [Guideline No. FAA-G04].

⁴ The specified person concerned should also include prominent warning statements on the webpage to highlight that (a) the securities are offered pursuant to the small offers exemption and thus, are not subject to prospectus requirements; (b) statutory liability relating to contents of prospectuses do not apply; and (c) investors should consider carefully if investments in such securities are suitable in light of their investment objectives, financial means and risk profiles.

⁵ Any person who makes an offer of securities to any other person in the course of, or arising from, an unsolicited meeting with that other person may also breach the securities hawking provisions under section 309 of the SFA.

7 PROPER RECORDS AND DOCUMENTATION

7.1 As the onus will be 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 to keep proper and detailed records and documentation of that offer (including identity of the offerees as well as any “know your client” procedures followed and assessment of the customer’s suitability to invest in the such securities) to show that the offer qualified for the exemption.

8 SMALL OFFERS RESALE EXEMPTION UNDER SECTION 272A(8)(c)

8.1 These Guidelines would also apply to any resale of securities made in reliance on the small offers resale exemption under section 272A(8)(c) of the SFA.

APPENDIX 1

Sample Case (1)

The founder of Corporation X, Person A, wanted to raise funds by offering new shares in Corporation X using the small offers exemption. He therefore proceeded to offer shares in Corporation X to his friends and business acquaintances who are familiar with the business of Corporation X and whom, he thought, would be interested in investing in the shares of Corporation X.

Other than persons whom he knew well, Person A also solicited subscriptions from persons with whom he can conjure up a prior relationship e.g. primary school classmates whom he had not met for a long time, neighbours whom he had occasional chats with as well as his daughter's piano teacher. He also asked his corporate lawyer, accountant, and banker to make available information on Corporation X to persons with whom they were acquainted and to ask if they were interested in investing in shares of Corporation X.

Determination

Person A's friends and business acquaintances who were familiar with the business of Corporation X would be regarded as persons with whom he had "previous contact, previous professional or other connection". Offers made to such persons therefore would qualify as personal offers for the purposes of section 272A(3) of the SFA.

On the other hand, it is noted that Person A only had a casual relationship with his primary school classmates and neighbours as well as the piano teacher of his daughter. These persons did not possess any prior knowledge of the business of Corporation X to make an informed decision on the securities of Corporation A without a prospectus. Accordingly, they would not be regarded as persons with whom Person A had "previous contact, previous professional or other connection" and any offers made to them would not qualify as personal offers (unless they had previously indicated to Person A that they were interested in exempted securities such as those of Corporation X).

Similarly, offers made to persons who were acquainted with Person A's corporate lawyer, accountant, and banker would not qualify as personal offers under section 272A(1) of the SFA since these persons did not have any prior contact or relationship with Person A or Corporation X.

Sample Case (2)

Person A wanted to raise funds by offering shares in Corporation X using the small offers exemption. Given that he had few friends and business associates who were

familiar with the business of Corporation X, he decided to get his employees to make “cold calls”. As a reward, any employee who managed to bring in a successful subscription would receive a commission for his efforts.

The employees of Corporation X, accordingly, started making cold calls by knocking on the doors of companies and apartments to invite investments in Corporation X.

Determination

A person who makes an offer⁶ of securities to any person in the course of, or arising from, an unsolicited meeting with that other person will contravene the securities hawking provision under section 309 of the SFA.

Even if the “cold call” is made mainly for the purposes of gathering indications of interest in exempted securities in general and no securities are offered during the meeting, persons may still be in breach of section 309 of the SFA if any offers were made arising from the unsolicited meeting. In addition, persons who have indicated interest by responding to such a “cold call” would not be regarded as persons who have “previous contact, previous professional or other connection” with the offeror. Accordingly, offers made to them would not qualify as personal offers under section 272A(1) of the SFA.

Sample Case (3)

Corporation X is engaged in the rental and sale of healthcare equipment and accessories. To raise funds for business expansion, the controlling shareholder of Corporation X, Person A, decided to offer new shares in Corporation X to new investors.

Person A noted that in order to qualify for the small offers exemption, the offer must be made only to those persons whom he has prior contact or connection. To reach out to more people, he decided to organise a free health-screening for the public such that all those who turned up for the health screening could be considered as persons whom he had “prior contact”.

Determination

Any use of salespeople, cold calls, open seminars (including any fair or exhibition of any kind) as a pretext to inviting subscriptions in exempted securities may result in a breach of the securities hawking provision under section 309 of the SFA. Further, persons responding to such sales tactics, extended mailings, cold calls, open seminars would not be regarded as persons whom the offeror have “prior contact” or “prior connection”.

⁶ Or any person who incites, causes or procures a person to act.

In this case, there was no substantive contact or relationship between Person A and the persons who turned up for the free health-screening. Offers made to such persons therefore could be a breach of section 309 of the SFA. Further, these persons would not be regarded as persons with whom the offeror had prior contact or connection.

Sample Case (4)

Person A decided to offer new shares in Corporation X to new investors. Through some contacts, he managed to get hold of a list of e-mail addresses of persons whom he had never met. He then sent out a mass e-mail to all these persons to ask if they were interested in investing in securities such as those of Corporation X.

Determination

The e-mail sent by Person A constitutes a cold call. Any person who responded to the e-mail therefore would not be considered as a person who has previously indicated interest in exempted securities such as those being offered. Such mass e-mailing would also have breached the advertising restrictions in section 272A(1) of the SFA and accordingly, any offer made would no longer qualify as a small offer.

Sample Case (5)

Person A wanted to raise funds for the expansion of Corporation X's business. As his contacts were limited, he decided to engage the help of a securities dealer.

To obtain the list of persons who may be interested, the securities dealer decided to send an e-mail message to its base of retail clients to find out if they were interested in the exempted offering.

Determination

Even though, in this case, the e-mail was sent to the clients of the securities dealer, it is noted that they were not persons who had previously indicated to the securities dealer that they were interested in securities such as those of Corporation X. Any offer of securities made to a recipient of the e-mail therefore would not qualify as a personal offer.