Monetary Authority of Singapore

SECURITIES AND FUTURES ACT (CAP. 289)

NOTICE ON CANCELLATION PERIOD FOR UNLISTED DEBENTURES

Notice No : SFA 04/13-N02
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NOTICE ON THE CANCELLATION PERIOD FOR UNLISTED DEBENTURES

Introduction

1 This Notice is issued by the Monetary Authority of Singapore (the "Authority") pursuant to section 101 of the Securities and Futures Act (Cap. 289) ["SFA"]. It sets out the obligations of a licensed person, exempt person or representative of a licensed person or an exempt person in relation to the cancellation period of an unlisted debenture.

2 This Notice shall come into effect on 1 May 2011.

Definitions

3 For the purposes of this Notice:

"debenture" has the same meaning as in section 2(1) of the Act;
"exempt person" has the same meaning as in section 2(1) of the Act;
"licensed person" has the same meaning as in section 2(1) of the Act.

Application

4 This Notice applies to a licensed person, exempt person or representative of a licensed person or an exempt person selling (whether direct or indirect) an unlisted debenture to an investor, or purchasing or arranging for the purchase of unlisted debenture on the behalf of an investor to be held in a nominee arrangement.

5 This Notice does not apply to the following:

(a) unlisted debentures with tenures of three months or shorter;
(b) unlisted debentures which are exempt from prospectus requirements under the SFA; and
(c) purchases of unlisted debentures where the investor is not an individual.

Sale of unlisted debenture

6 Any licensed person, exempt person or representative of a licensed person or an exempt person shall not sell (whether directly or indirectly) to an investor any unlisted debenture which does not contain a right, given by the issuer, to cancel the agreement to purchase such debenture.

7 In the sale (whether direct or indirect) of any unlisted debenture to an investor, a licensed person, exempt person or representative of a licensed person or an exempt person shall conduct due diligence on issuers of such unlisted debenture to ensure that the issuers have put in place steps and processes that would satisfy the Guidelines on Cancellation Period for Unlisted Debentures [SFA13-G12] issued by the Authority.

Purchase or arrange to purchase unlisted debenture on behalf of investor to be held in a nominee arrangement

8 In this Notice, a "relevant person" shall mean a licensed person, exempt person or representative of a licensed person or an exempt person who –

(a) purchases or arranges for the purchase of, on behalf of an investor, an unlisted debenture and through whom the investor would redeem the unlisted debenture so purchased; and

(b) arranges for the unlisted debenture purchased by the investor, to be held in a nominee account or to be held by a nominee corporation or on trust.

Right to Cancel

9 A relevant person shall give an investor a right to cancel an agreement to purchase an unlisted debenture (referred to in this Notice as the "purchase agreement").

10 Subject to paragraph 11, where an investor has been given a right to cancel, that right shall be exercisable within 7 calendar days from the date the investor signs the purchase agreement (referred to in this Notice as the "cancellation period"). Where the last day of the cancellation period falls on a Sunday or a public holiday, the cancellation period shall be extended to the next calendar day, not being a Sunday or a public holiday.

Example
If an investor enters into a purchase agreement on Tuesday, he should exercise his right to cancel no later than Monday of the following week. In the event the 7th day falls on a Sunday or a public holiday, the cancellation period is extended to the next calendar day (assuming it is not a public holiday).

11 The relevant person may give the investor a longer cancellation period (i.e. more than 7 days) and if so, it shall disclose in the purchase agreement the investor's rights for the extended period (i.e. for the period after the 7th day).

Giving the Investor Notice of the Right to Cancel

12 Before the purchase agreement is concluded, the relevant person shall give the investor, in writing, clear and prominent notice of his right to cancel.

13 The notice shall state –

(a) that the investor has a right to cancel the purchase agreement;

(b) the duration of the cancellation period, including the point in time where the cancellation period begins;

(c) the steps the investor has to take to cancel the purchase agreement, including details of how and where he can exercise his cancellation right;

(d) that the amount to be refunded may be adjusted to reflect the change in market value, if any, following the receipt of the cancellation request by the relevant person, as determined by the relevant person's time-stamp or any other reasonable means;

(e) the effect of cancelling the purchase agreement, including any adjustment to the amount to be repaid; and

(f) the possibility that the investor may not be able to receive a full refund of the principal amount invested,

and be accompanied by a form to enable the investor to effect the cancellation request.

Guidance
Clear and prominent notice of the investor's right to cancel (referred to in paragraph 12 of this Notice) can be given in or together with the relevant application form for the purchase of an unlisted debenture. However, the application form should prominently feature words like: "**IMPORTANT:** information about your right to cancel this agreement is enclosed."

Exercising the Right to Cancel

14 The relevant person shall specify reasonable means by which the investor may exercise his right to cancel. In the case where the cancellation request is to be sent by post, the relevant day for determining whether the right to cancel has been exercised within the cancellation period is the date on which such request is posted by the investor (i.e. as determined by the postmark). The investor shall be entitled to send the cancellation request by ordinary post.

15 A cancellation request is valid only when it is served on the relevant person or any agent of the relevant person with authority to accept notice on the relevant person's behalf.

Calculation of the Amount to be Repaid

16 In determining the amount repayable to the investor, the relevant person is entitled to an adjustment to the principal amount to reflect the change in market value, if any, of the unlisted debenture held by the investor.

17 Where the market value of the unlisted debenture held by the investor is greater than the **original amount** paid by the investor, the relevant person is not obliged to pay the excess amount to the investor.

Recovery of Expenses Incurred by the Relevant Person

18 The relevant person is entitled to recover any expense it incurred by reducing the amount to be repaid to the customer, provided that such expense is –

(a) reasonably related to the original purchase and subsequent cancellation of the purchase by the investor. The adjustment shall not contain any profit margin for the relevant person; and

(b) disclosed, in writing, to the investor before the purchase agreement is concluded.

19 For the avoidance of doubt, where an investor exercises his right to cancel, any sales charge or equivalent charges imposed by the relevant person in respect of any purchase agreement shall not be chargeable to the investor. In addition, the relevant person shall not impose any penalty on the investor for the termination of the purchase agreement.