



Monetary Authority of Singapore

Shares and Debentures Guidelines 4

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

**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

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.

relatives of 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 prequalification procedures as described in paragraphs 6.9 to 6.10.

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 of securities in reliance on the small offers exemption and the specified person who is relied upon should make sure that there are proper pre-qualification procedures in place to ensure that–

- a) investors who are offered the securities possess sufficient knowledge or experience to understand the risks of investing in the securities offered in reliance on the small offers exemption (the “Knowledge or Experience Test”); or
- b) the specified person is satisfied that that the investment is suitable for the investor in light of the investor’s investment objectives and risk tolerance (the “Suitability Assessment Test”).

6.10 The Authority would generally consider a specified person to have in place the proper pre-qualification procedures to pre-qualify investors for small offers if the specified person carries out the following steps before any offer of securities is made to a potential investor –

Step 1:

The specified person obtains, by means of a generic and neutral questionnaire that does not refer to any specific offer of securities, an indication from the potential investor that he is interested in offers of securities made under the small offers exemption.

Step 2:

The specified person administers the “Knowledge or Experience Test” or “Suitability Assessment Test” to pre-qualify the investor.

Step 3:

(a) Where the “Knowledge or Experience Test” is chosen

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.

The specified person should assess and be satisfied that the investor has sufficient knowledge or experience to invest in the offers of securities made under the small offers exemption. Please refer to Appendix 1 for a list of acceptable criteria.

(b) Where the “Suitability Assessment Test” is chosen

The specified person should assess and is satisfied that the investment in the offers of securities made under the small offers exemption is suitable for the investor in light of his investment objectives and risk tolerance. Please refer to Appendix 1 for examples of the questions that the specified person should, at a minimum, ask the investor to facilitate the assessment.

Step 4:

For every offer of securities made through an online crowdfunding platform, the specified person should, at the minimum, provide the general risk disclosure statement set out in Appendix 2, and require the potential investor to provide an acknowledgement, either electronically or in writing, that he has read and understood the risks disclosure statement and is fully aware of and accepts the risks as set out in the general risk disclosure statement, as part of its pre-qualification procedure. The information (including footnotes and references) to be contained in the general risk disclosure statement and acknowledgement should be prepared in accordance with the format, including font size of at least 13–point Calibri or equivalent with 1.2 multiple line spacing and colour, as set out in Appendix 2.

With the completion of steps 1 to 4, the potential investor is considered to be qualified (“qualified investor”). Only qualified investors are allowed to acquire securities on the online crowdfunding platform.

Step 5:

For every offer of securities, before a qualified investor is allowed to acquire the securities being offered, the specified person should require the qualified investor to confirm in writing, or electronically, that there are no material changes to the information submitted by him for the purpose of the “Knowledge or Experience Test” or “Suitability Assessment Test” since it was last conducted. If there are material changes, the investor will cease to be a qualified investor until such time he is re-assessed in accordance with Steps 1 to 4 to be one.

6.11 If the investor does not provide the confirmation as set out in Step 5, or if there are material changes to the information previously submitted, the specified person should re-assess whether the investor is a qualified investor in accordance with Steps 1 to 4.

6.12 The specified person should in any case provide the general risk disclosure statement set out in Appendix 2, and obtain an acknowledgement, either in writing

or electronically, from the qualified investor of the risks as set out in the general risk disclosure statement at least once every 12 months since his most recent pre-qualification. If the qualified investor does not provide the acknowledgement, the specified person should not allow the qualified investor to acquire any securities via the platform until it has obtained the necessary acknowledgement. The offeror should also make sure that the specified person has in place proper procedures to ensure that such steps are taken. The delivery of the risk disclosure statement and the acknowledgement of risks may be done electronically (e.g. through an online system) if the specified person is able to ensure the effectiveness of such a mechanism.

6.13 For the avoidance of doubt, any offeror who intends to solicit the help of a specified person in its offer should ensure that the specified person, acting as its agent, has in place proper procedures to adhere to the pre-qualification procedures and disclosure requirements set out in paragraphs 6.10 to 6.12 above.

6.14 Other than putting in place proper pre-qualification procedures, the offeror and the specified person who is relied upon should also ensure that there are identification and authentication procedures to ensure that the offer of securities 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 offered³.

“Cold Calls”

6.15 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 SFA⁴.

6.16 Further examples of cases that would or would not qualify as a personal offer are illustrated in Appendix 3.

³ 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 and risk tolerance.

⁴ 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 pre-qualification procedures) 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

Knowledge or Experience Test

An investor is considered to have sufficient knowledge or experience to invest in the offers of securities made under the small offers exemption as long as he fulfils any one criteria listed below:

- (i) The investor has a minimum of 3 consecutive years of working experience in finance-related fields⁵ in the past 10 years;
- (ii) The investor has a diploma or higher qualification in a finance-related field⁶ or professional qualification⁷ in a finance-related field; or
- (iii) The investor has transacted in at least 6 similar⁸ investments to the offers of securities made under the small offers exemption in the preceding 3 years.

Suitability Assessment Test

Sample questions that the specified person should ask the investor, at a minimum, to facilitate the assessment that the investment is suitable for the investor in light of his or her investment objectives and risk tolerance include but are not limited to:

- (i) Are you prepared and able to lose all of your capital?
- (ii) Are you prepared and able to hold on to your investments for 10 years or more without being able to cash out?
- (iii) Which best describes your preference on investment returns? (e.g. capital preservation, stable returns, high variability in returns)

⁵ These are Accountancy, Actuarial Science, Treasury, Financial Risk Management, the development of, structuring of, management of, sale of, trading of, research on, training on and analysis of investment products or the provision of legal advice or possession of legal expertise relating to the foregoing. In the context of securities offered through a crowdfunding platform, work experience as a business owner would be considered as relevant work experience to satisfy the knowledge or work experience test.

⁶ Diploma or higher qualifications in Accountancy, Actuarial science, business/business administration/business management/business studies, capital markets, commerce, economics, finance, financial engineering, financial planning, computational finance and insurance.

⁷ Examples of acceptable professional qualifications in a finance-related field include the Chartered Financial Analyst Examination conducted by the CFA Institute, USA, and the Association of Chartered Certified Accountants ("ACCA") Qualifications.

⁸ In the context of securities offered through a crowdfunding platform, investments in private equity, venture capital or angel investing would be considered similar investments. Participating in crowdfunding investments offered by overseas platforms would also be considered similar investments.

(iv) What best describes your investment objective? (e.g. retirement planning, children's education, capital appreciation)

(v) What would you say is your risk tolerance? (e.g. conservative, balanced, aggressive)

Appendix 2

RISK DISCLOSURE STATEMENT TO MINIMALLY BE PROVIDED DURING PRE-QUALIFICATION OF POTENTIAL INVESTORS

RISK DISCLOSURE STATEMENT – SMALL OFFERS EXEMPTED SECURITIES

The securities made available through this platform/facility are offered to you in reliance on the exemption under section 272A(1) of the Securities and Futures Act (“SFA”). These offers are not made in or accompanied by a prospectus that is registered by the Monetary Authority of Singapore (the “Authority”).

You should NOT invest in the securities offered unless you fully understand the risks and are prepared to take the risks. You should carefully consider whether this investment is suitable for you in light of your knowledge and experience in financial and business matters, investment objectives, financial means and the risks that you are prepared to take.

The risks of investing in such securities include but are not limited to the following:

100% loss on such investments

There is a high risk that you may lose all your money on such investments. Investments available through this platform/facility may include the shares or debt securities of early-stage companies or companies without a proven track record. The risk of business failure is high. For every 10 new businesses formed in Singapore, 7 to 8 would cease operations in the same year*. There is therefore a high risk that you may lose 100% of your investment.

Difficult to cash in or exit such investments

It may be difficult or even impossible for you to cash in on or exit such investments. Such investments are subject to resale restrictions set out in section 272A(8) of the SFA, and there may not be a secondary market for them.

Risks of equities investments

If such investments are in shares, you may not receive a dividend, and your shareholdings could be significantly diluted if new shares are issued. In addition, if the shares are unpaid or partly paid, you will still be liable to pay the remaining amount to the company.

Online platform/facility failure

If the online platform/facility handles your money, you may also lose all your money in this investment if the online platform/facility fails and becomes insolvent.

Risks of investing in foreign issuers

If such investments are offered by an issuer in a foreign jurisdiction, your investment will be subject to the laws and regulations of that jurisdiction. You may also be subject to additional tax liabilities, transaction costs and capital controls.

No disclosure requirements

You may not have sufficient information to make fully informed investment decisions. There is no statutory obligation for issuers or intermediaries to provide you with information that you would reasonably require to make informed assessments of offers being made to you.

No assurance that financial statements from the companies that you invest in will be accurate or accessible

The financial statements of the companies which you invest in may not be subject to a statutory audit. As such, the financial information presented to you may not have been ascertained by a qualified professional auditor. An unaudited financial statement may not accurately reflect the financial health of a company. In addition, the financial statements of the companies may not be made accessible to you in the absence of requirements in their home country for them to do so.

You should seek independent professional advice if you do not fully understand the risks of investing in securities offered on this platform/facility or any of the statements above.

**Source: Singapore Department of Statistics, Formation & cessation of business entities in 2015, <http://www.singstat.gov.sg/>*

ACKNOWLEDGEMENT OF RISKS IN THE RISK DISCLOSURE STATEMENT

WARNING:

The investments are risky! There is a high risk that you may lose all your money.

Do not invest unless you understand what you are investing in and can afford to lose your entire investment.

I acknowledge that I have received a copy of the RISK DISCLOSURE STATEMENT and fully understand its contents.

In particular, I acknowledge that :

- the risk of investing in companies with little or no track record is high*;
- I may not be able to receive any return (e.g. dividends or interests) on my investments or exit my investments in such companies within a reasonable time and
- I am prepared to lose all my investments in such companies made through this platform

* For every 10 new businesses formed in Singapore, 7 to 8 would cease operations in the same year.

Source: Singapore Department of Statistics, Formation & cessation of business entities in 2015, <http://www.singstat.gov.sg/>

Signature: _____

Name: _____

Date: _____

Appendix 3

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 offer⁹ 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”.

⁹ 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 emailing 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.