



Monetary Authority of Singapore

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**Business Trusts Guidelines 2**

**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 (BUSINESS TRUSTS)**

### **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 282V(5) and section 282W(3) of the SFA which requires a person making an offer of units or derivatives of units in a business trust in reliance on an exemption under section 282V(1) or 282W(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 282V(8)(c) of the SFA, when read together with the exemption under regulation 19 of the Securities and Futures (Offers of Investments) (Business Trusts) (No.2) Regulations 2005 [the “SF(OI)(BT)(No.2) Regs”], is intended to facilitate market-making for units or derivatives of units in a business trust acquired under section 282V(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 282V(1) of the SFA

3.1 Section 282V(1) of the SFA provides an exemption from Subdivision (2) (other than section 282Q) of Division 1A 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 282V(4) of the SFA) in any 12 months and not on the amount of funds offered.

#### Small offers resale exemption under section 282V(8)(c) of the SFA

3.3 Section 282V(8)(c) of the SFA provides an additional exemption for subsequent offers of units or derivatives of units in a business trust which were initially acquired

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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 282V(1) and section 282V(8)(c)(ii) of the SFA to offer units or derivatives of units in a business trust 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 282V(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 282V(1) or section 282V(8)(c) should establish proper “know your client” procedures to ensure that the units or derivatives of units in a business trust are offered only to those investors who have previously indicated interest in the exempted units or derivatives of units and who are fully aware of the risks involved. Further, after assessing the investor’s financial means and risk profile, the specified person ought to be satisfied that the investment in exempted units or derivatives of units is appropriate for the investor.

under the small offers exemption. To qualify for the exemption under section 282V(8)(c), the person making the subsequent 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 282V(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 units or derivatives of units in a business trust which it had acquired from the issuer under the small offers exemption is provided in paragraph 8.

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

Resale of units or derivatives of units in a business trust acquired under the small offers exemption

3.6 Subsequent purchasers who have acquired units or derivatives of units in a business trust 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 3 of Division 1A of Part XIII of the SFA to resell the units or derivatives of units in a business trust without issuing a prospectus. However, the small offers exemption under section 282V(1) of the SFA may be invoked by the subsequent purchaser only after 6 months have elapsed from the date the units or derivatives of units in a business trust 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 282V(1) of the SFA

3.7 In ascertaining whether the amount of funds raised from offers made in reliance on the exemption under section 282V(1) of the SFA exceeds the S\$5 million limit, the person making the offer is required, under section 282V(5), to aggregate –

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<sup>3</sup> For the avoidance of doubt, subsequent purchasers of units or derivatives of units in a business trust offered in reliance on the exemption under section 282V(8)(c) can continue to rely on the exemption under section 282V(8)(c) to resell those units or derivatives of units.

- (a) all amounts raised by him from offers of units or derivatives of units in a business trust issued by the same entity; and
- (b) all amounts raised, whether by him or by another person, from offers of securities 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 units or derivatives of units in a business trust 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 units or derivatives of units made by the same person and from all closely related offers of securities 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 282W(1) of the SFA

3.9 Section 282W(1) of the SFA provides a safe harbour for private placements of units or derivatives of units in a business trust 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 282W(5) of the SFA) and not on the persons accepting the offer.

#### Resale of units or derivatives of units in a business trust acquired under the private placement exemption

3.11 Subsequent purchasers who have acquired units or derivatives of units in a business trust under the private placement exemption can rely on any exemption under Subdivision 3 of Division 1A of Part XIII of the SFA to resell the securities without issuing a prospectus.

3.12 However, where units or derivatives of units in a business trust are offered to a person pursuant to the private placement exemption with a view to those units or derivatives of units 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 282W(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 282W(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 units or derivatives of units in a business trust issued by the same entity is made by the person making the offer; and
- (b) every person to whom an offer of securities 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 units or derivatives of units 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 units or derivatives of units 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.

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

5.1 The aggregation provision under section 282V(5) or 282W(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 282V(1) or 282W(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 282V(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 282V(1) would not need to be aggregated with a subsequent sale of units or derivatives of units in a business trust made in reliance on the exemption under section 282V(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 282V(5) or 282W(3) of the SFA, as the case may be, the person making the offer shall have regard to the factors prescribed in regulation 18 of the SF(OI)(BT)(No. 2) Regs.

6.2 In line with our policy objective for incorporating the aggregation rule, the aggregation factors set out in regulation 18 of the SF(OI)(BT)(No.2) Regs seek to prevent circumvention of the applicable limit so as to ensure that the reach of the units or derivatives of units will remain limited in size and/or scope.

Aggregation of Offers of units or derivatives of units in business trusts and securities (other than asset-backed securities, structured notes or units in a collective investment scheme which is not a Real Estate Investment Trust (“REIT”))

6.3 Specifically, paragraph (1) of regulation 18 of the SF(OI)(BT)(No. 2) Regs provides that an offer of units or derivatives of units in a business trust is a closely related offer to an offer of securities (other than asset-backed securities, structured notes or units in a collective investment scheme which is not a REIT) under section 282V(5) or 282W(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 (2) of regulation 18 of the SF(OI)(BT)(No. 2) Regs further clarifies that in assessing whether two offers satisfy any of the prescribed circumstances in paragraph (1) of regulation 18 of the SF(OI)(BT)(No. 2) 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 raised from each offer 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 18 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 a balance, the Authority is of the view that the setting out of broad criteria, supplemented by guidelines, is the most appropriate approach.

#### Aggregation Matrix

6.8 A matrix showing the circumstances under which 2 or more offers should be aggregated and the applicable aggregation criteria is set out in Appendix 3.

## **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 282C 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 MARKET-MAKING FOR UNITS OR DERIVATIVES OF UNITS IN A BUSINESS TRUST ACQUIRED PURSUANT TO THE SMALL OFFERS EXEMPTION**



8.1 Issuers may conduct their exempted offerings of units or derivatives of units in a business trust through financial institutions which can subsequently “make a market”<sup>4</sup> for the units or derivatives of units (“market-makers”).

8.2 Where a market-maker purchases units or derivatives of units in a business trust 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 3 of Division 1A of Part XIII of the SFA, such a subsequent offer would have to comply with prospectus requirements under Part XIII of the SFA.

8.3 Market-makers can rely on an exemption under section 282V(8)(c) of the SFA to on-sell units or derivatives of units in a business trust 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 units or derivatives of units in a business trust from the market-maker in reliance on section 282V(8)(c) and who wish to sell those units or derivatives of units back to a market-maker can rely on an exemption under regulation 19 of the SF(OI)(BT)(No. 2) 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 units or derivatives of units to interested persons without the offers being made in or accompanied by a prospectus. Investors who purchased units or derivatives of units from the market-maker will also be able to rely on the same exemption to sell back those same units or derivatives of units 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 units or derivatives of units to other interested persons.

8.4 An illustration on how an exemption under section 282V(8)(c) of the SFA, when read together with the exemption under regulation 19 of the SF(OI)(BT)(No. 2) Regs, is intended to facilitate market-making for securities acquired under section 282V(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

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<sup>4</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.

market-maker can rely on the exemption under section 282V(8)(c) of the SFA to on-sell units or derivatives of units in a business trust, which it acquires from the issuer pursuant to the small offers exemption, provided that such sale of units or derivatives of units 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 units or derivatives of units from the market-maker pursuant to section 282V(8)(c) of the SFA, he can similarly rely on section 282V(8)(c) to sell those same units or derivatives of units back to that market-maker or another market-maker. To facilitate the sale of such units or derivatives of units back to the market-maker, an exemption has been provided under regulation 19 of the SF(OI)(BT)(No. 1) Regs to relieve the interested person from the requirement under section 282V(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 units or derivatives of units from an interested person in its capacity as market-maker for the securities, the market-maker can continue to rely on section 282V(8)(c) of the SFA to re-sell those units or derivatives of units to other interested persons. Offers made in reliance on section 282V(8)(c) are not subject to any aggregation rule.

Please refer to Appendix 4 for a diagrammatic illustration of the above.

## **9 RATIONALE FOR NOT EXTENDING SIMILAR EXEMPTION IN SECTION 282V(8)(C) OF THE SFA TO SECURITIES ACQUIRED UNDER THE PRIVATE PLACEMENT EXEMPTION**

9.1 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.

9.2 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 units or derivatives of units in a business trust offered under the

exemptions under Subdivision (3) of Division 1A 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).

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

9.4 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 units or derivatives of units offered will remain sufficiently limited in reach.

9.5 On the other hand, if an issuer relies on the private placement exemption to offer its units or derivatives of units in a business trust to the market-maker, there is no limit on the amount of units or derivatives of units 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 units or derivatives of units 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 units or derivatives of units 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.

9.6 In any case, as section 282W(5)(g) of the SFA<sup>5</sup> requires the issuer to aggregate the persons to whom the market-maker has offered the units or derivatives of units in a business trust to, it is highly unlikely that a market-maker will rely on the private placement exemption for its subsequent offers of the issuer's units or derivatives of units. Therefore, even if an exemption is given to facilitate subsequent offers of units or

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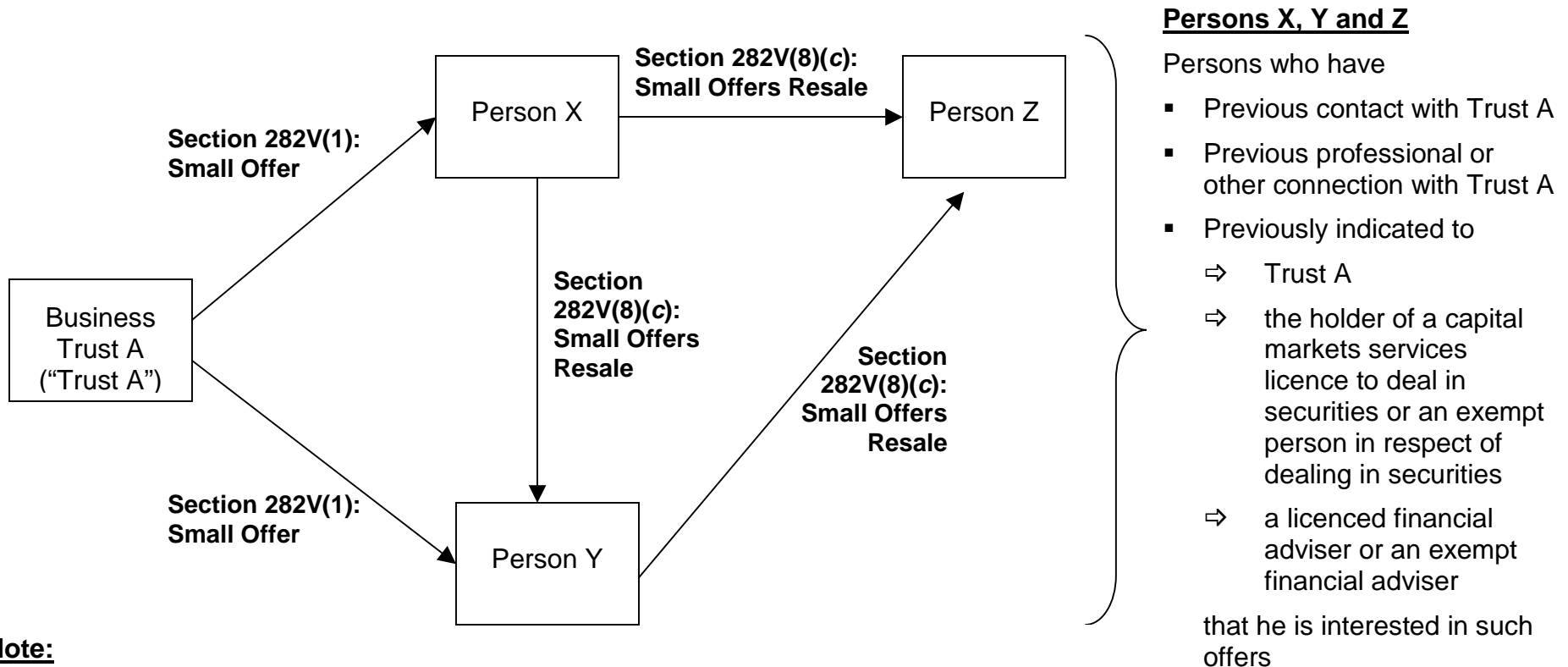
<sup>5</sup> Section 282W(5)(g) provides that if an offer is made with a view to the units or derivatives of units being subsequently offered for sale to another person, and that subsequent offer (a) is not an exempted offer; or (b) is made in reliance on private placement exemption, then both persons shall be counted in determining the number of offerees.

derivatives of units which were initially acquired under a private placement exemption, it is likely to be of limited use in practice.

9.7 The Authority believes that the exemption in section 282V(8)(c) of the SFA, coupled with the exemption in regulation 19 of the SF(OI)(BT)(No. 2) Regs, is sufficient to facilitate the provision of a mechanism for effective secondary trading in over-the-counter markets for units or derivatives of units in a business trust under offers made in reliance on an exemption.

**APPENDIX 1**

**Illustration of the workings of the Small Offers Exemption [section 282V(1)] and Small Offers Resale Exemption [section 282V(8)(c)]**



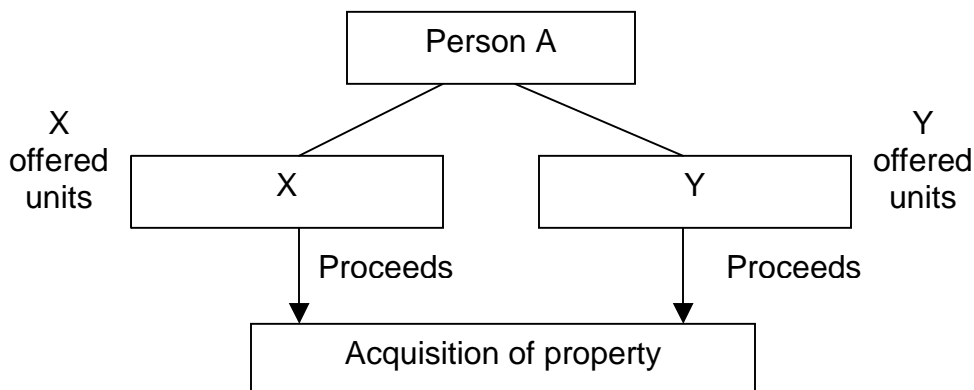
**Note:**

Exemptions under sections 282V(1) and 282V(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 Subdivision (2) of Division 1A of Part XIII of the SFA, in reliance on an exemption on section 282V(8)(c) or any other exemption in Subdivision (3), or in reliance on the small offers exemption under section 282V(1) provided that 6 months have elapsed from the initial acquisition of securities from Trust A.)

**APPENDIX 2**

**Sample Case (1)**



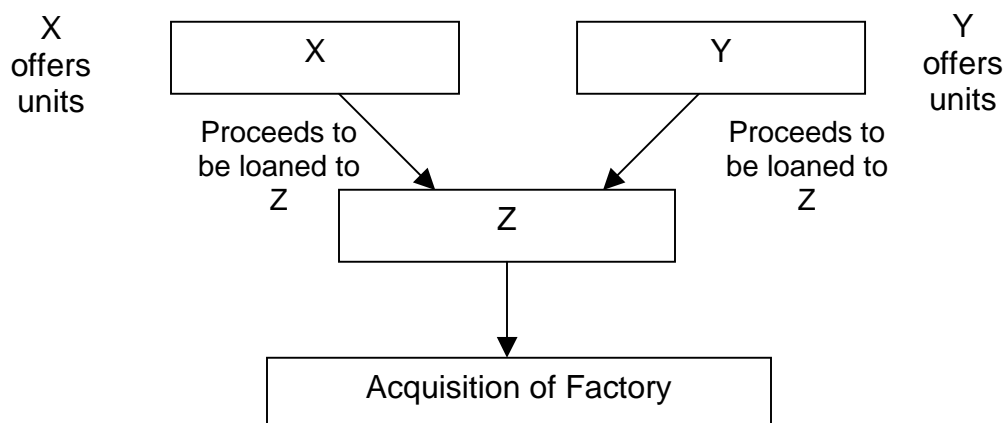
X, a business trust, was set up by Person A to undertake property development projects. In August 2005, X offered 45m new units at \$1 each to 50 investors to raise funds for the purchase of a property at a cost of \$45m. The offers were made in reliance on the private placement exemption. X, however, 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 business trust, Y, and rely on the private placement exemption to offer units in Y to another 50 investors.

**Determination**

The offers of units in X and 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)**



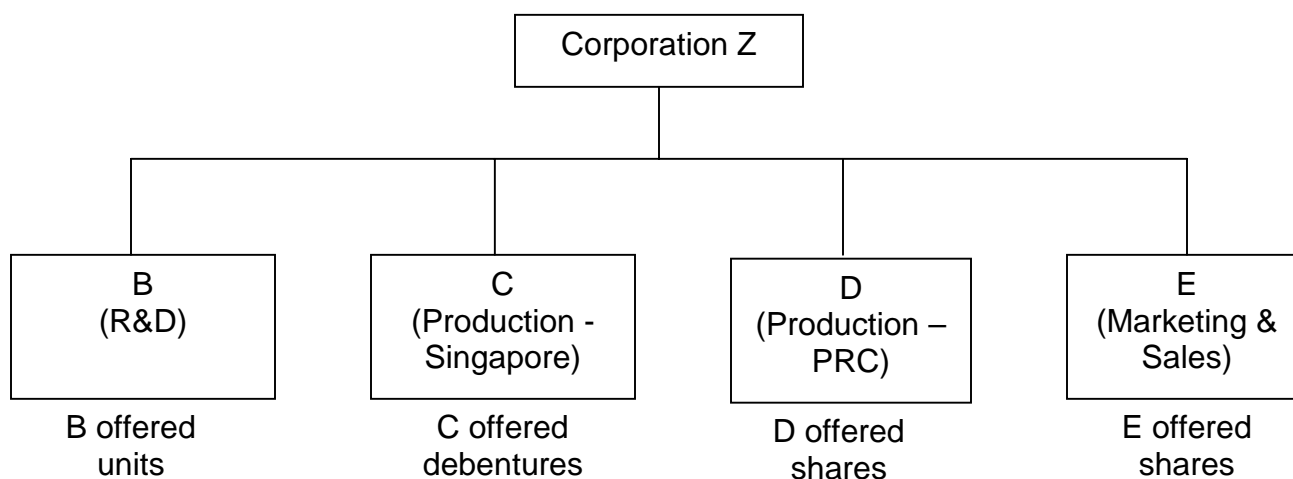
Z is a business trust engaged in the manufacture and sale of flexible and rigid packaging products. In August 2005, Z decided to purchase a new factory to expand its production capacity. The estimated cost of the new factory was \$10m.

As 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 units to its suppliers and customers. Z, however, notes that the maximum amount it can raise in reliance on the small offers exemption is \$5m. As Z has two controlling unitholders, X and Y, both business trusts, Z proposes instead for each of X and Y to offer units in reliance on the small offers exemption. The aggregate amount of \$10m raised by X and Y would then be loaned to Z to purchase the factory.

### **Determination**

X and Y are serving as conduits for Z to raise funds for the purchase of its new factory. As the offers of units in X and 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 a business trust, B, which is engaged in the manufacture and sale of men's apparel. On 1 October 2005, B offered 20m new units to 40 new investors in reliance on the private placement exemption. Proceeds from the offers amounting to \$20m were to be used by B for general working capital purposes.

Three months later, B 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 units (in which case it could only offer to another 10 persons if it wishes to rely on the private placement exemption), B decided to transfer its

Singapore production facility to a newly incorporated company, C. On 31 January 2006, C 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.

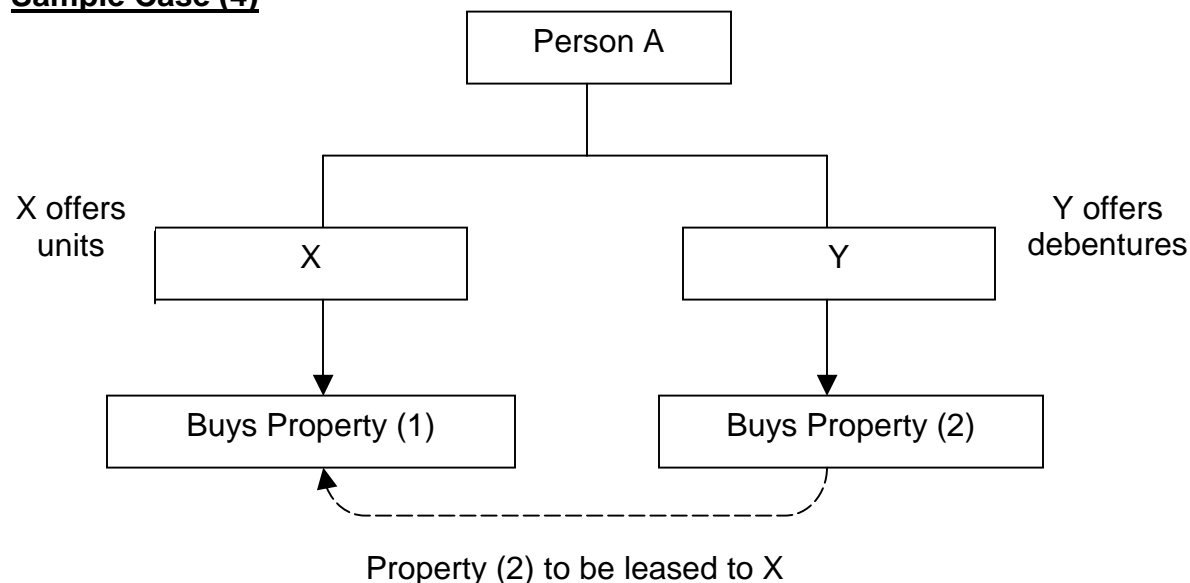
In June 2006, B decided to set up a production facility in PRC so as to take advantage of the lower costs of production. The new PRC factory was estimated to cost \$8m. A corporation, D, was accordingly set up to raise the \$8m from 20 new investors in reliance on the private placement exemption.

With the expanded production, B 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, B decided to transfer its sales and marketing function to a newly incorporated company, E, which subsequently raised \$5m from another 10 investors in August 2006.

**Determination**

Even though the offers made by C, D and E were not anticipated at the time B made its offer and hence were, strictly speaking, not part of the same plan of financing, the offers made by C, D and E were in relation to the operations of the same business. The offers made by B, C, D, and E 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 a business trust, X, and an entity, Y. X intends to acquire Properties (1) and (2) at a cost of \$30m and \$20m respectively.

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

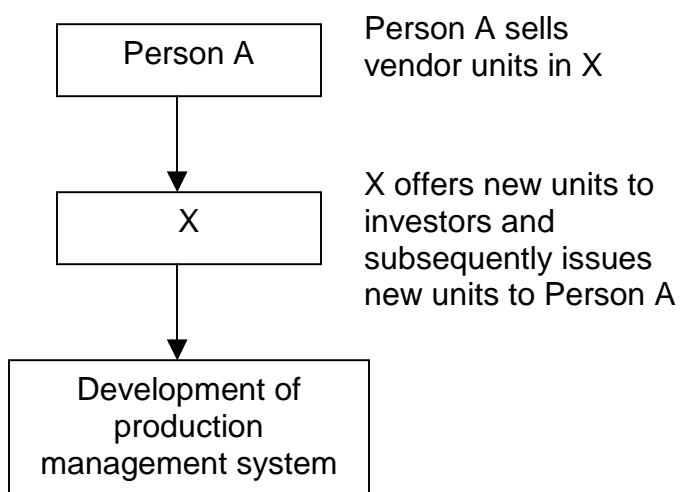


In order for X not to incur the costs of issuing a prospectus, Person A decided to get Y to issue debentures to another 50 other investors so as to raise the additional funds required. Proceeds raised by Y would then be used to purchase Property (2) which, in turn, could be leased to X for its use.

### **Determination**

The offer of units by X and offer of debentures by Y are part of a single plan of financing made for the purpose of acquiring the two properties. Without X's intention to purchase Property (2), 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 a business trust, X, which is engaged in the printing business.

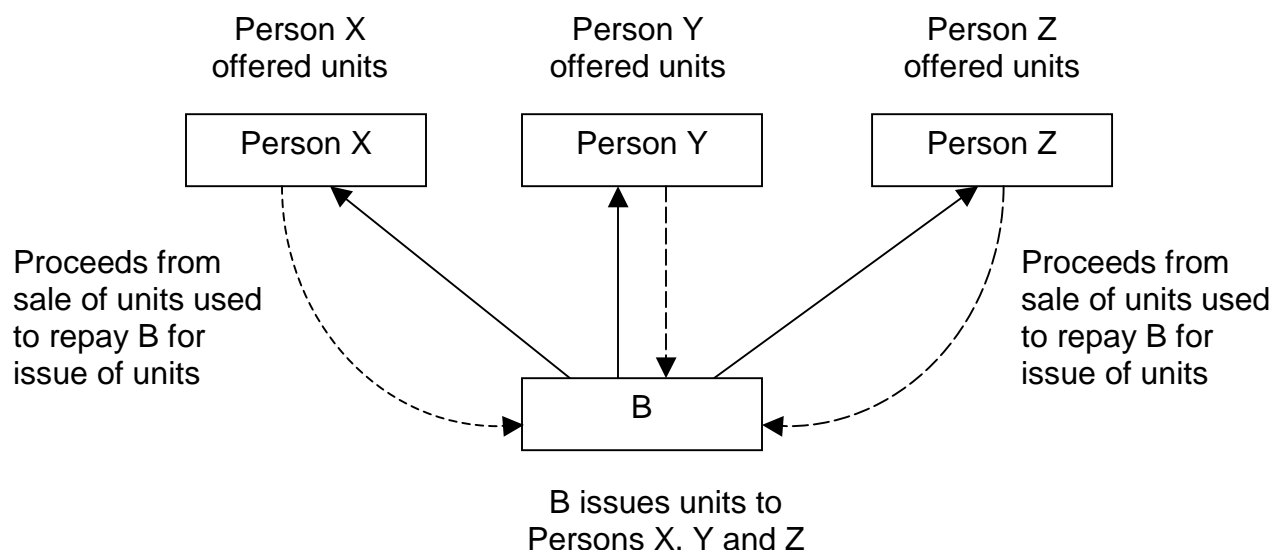
In order to finance the development of its automated production management system (estimated to cost \$7.8m), X intends to raise funds by offering units to its suppliers, customers and other business associates using the small offers exemption.

Given that X could only raise up to \$5m under the small offers exemption, Person A proposes to raise the balance \$2.8m by selling his units in reliance on the small offers exemption. Proceeds received from the sale of units owned by Person A would then be used to subscribe for new units in X such that Person A's ownership in X would remain unchanged. Person A thinks that since the offer of his units and X's subsequent placement of new units 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 X to him are not subject to the aggregation requirement, the offer of units by both X and Person A are made using the same type of exemption, 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 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)

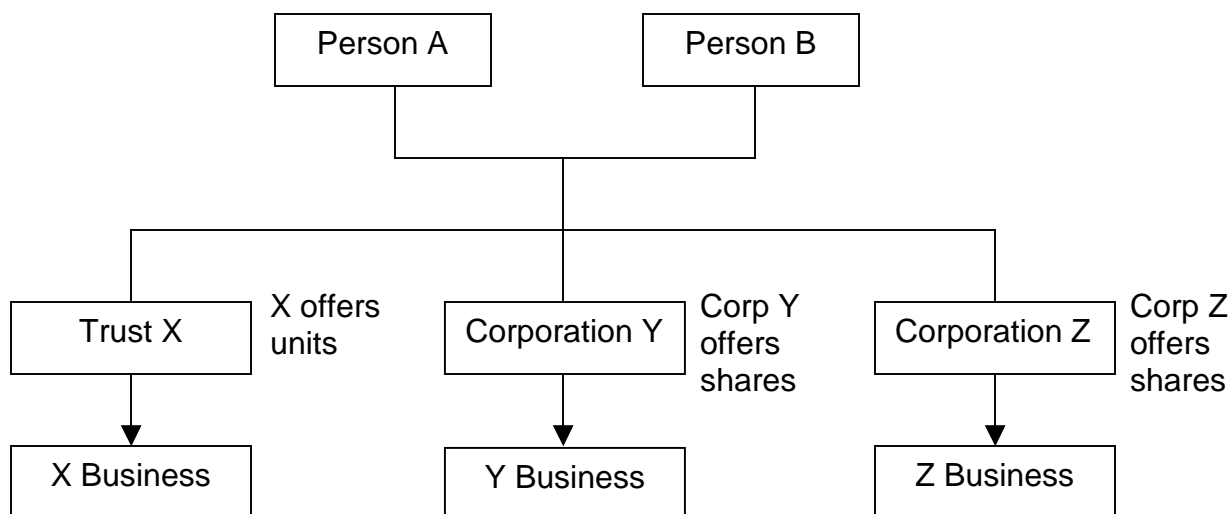


A business trust, B, is engaged in the provision of PCB testing and finishing services. In order to finance its expansion into other PCB-related businesses, B issued units amounting to \$5m to each of Persons X, Y and Z in reliance on the private placement exemption. To raise funds for the purchase of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

### Determination

Persons X, Y and Z were clearly acting as conduits to raise funds for B. As the offers were part of a single plan of financing made for the primary benefit of B, the offers made by Persons X, Y and 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)**



Persons A and B have joint ownership and management control of a business trust, X, and the corporations, Y and Z.

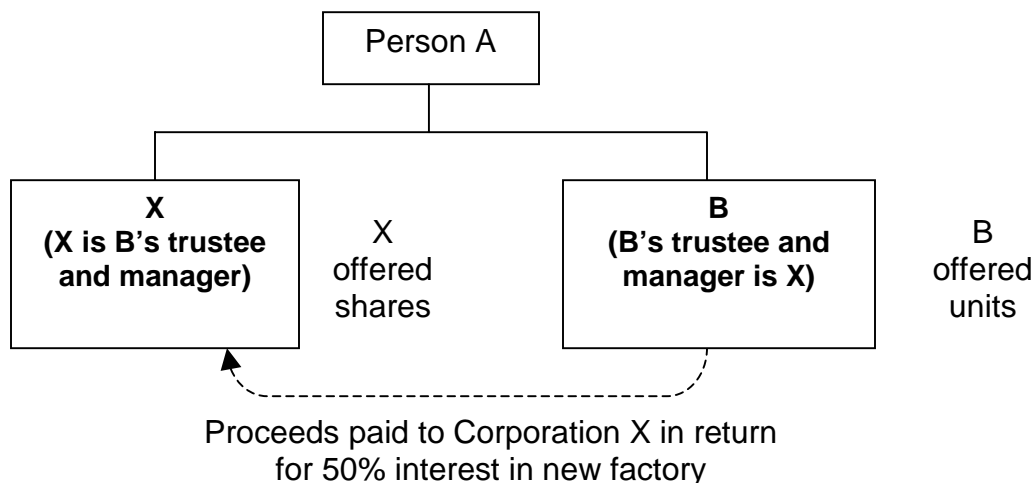
X, Y and Z are engaged in distinct businesses, each having its own funding needs.

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

### **Determination**

In this case, notwithstanding that the proceeds raised by each of X, Y and Z would be used by each of them in their own businesses, the offers are made at the direction of Persons A and B who have full discretion over usage of the proceeds raised. The offers are therefore made for the primary benefit of Persons A and B. Accordingly, the offers by X, Y and 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 (8)**



Person A owns a corporation, X, which is engaged in the business of manufacturing steel coils. It is Person A's intention to expand the business of X. To do so, he plans to build a plant in Batam, Indonesia which is estimated to cost \$10m. Person A notes that 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, B.

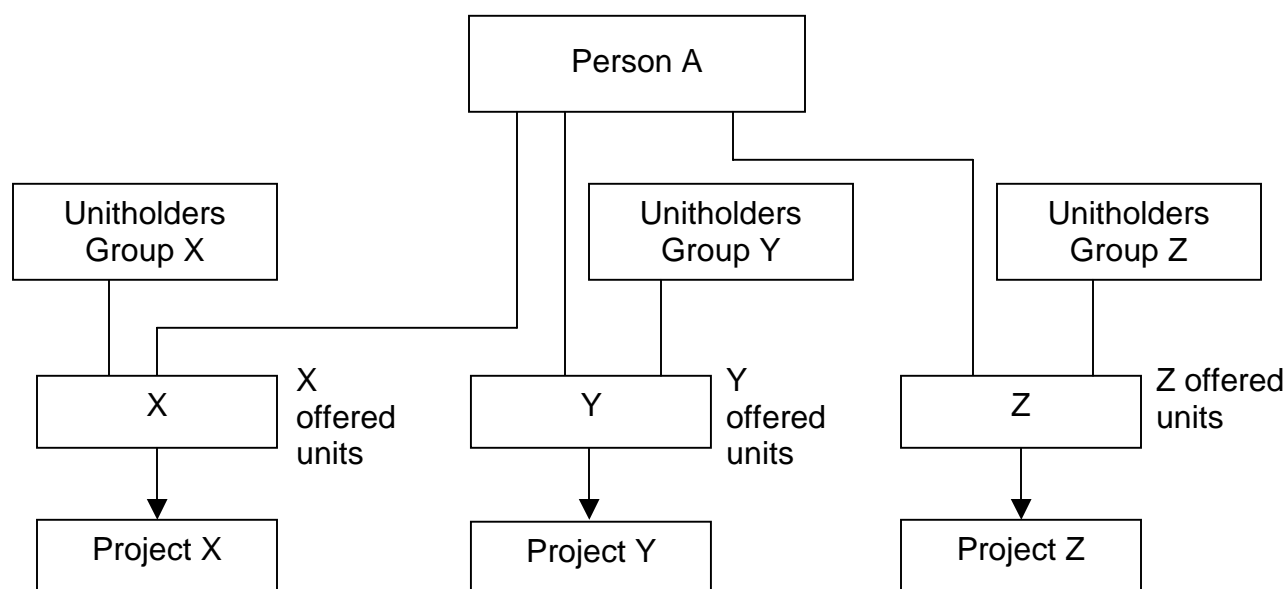
Person A intends to appoint X as both the trustee and the manager of B (i.e. X will act as the trustee for the unitholders of B as well as manage the business held by B on behalf of the unitholders).

Both X and B 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 B would be given to X as payment for the purchase of a 50% interest in the new Batam factory. 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 X and units in B 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 (9)**



Person A has shareholdings of 10%, 20% and 25% in the business trusts, X, Y and Z respectively. Other than Person A, X, Y and Z have no other common unitholders.

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

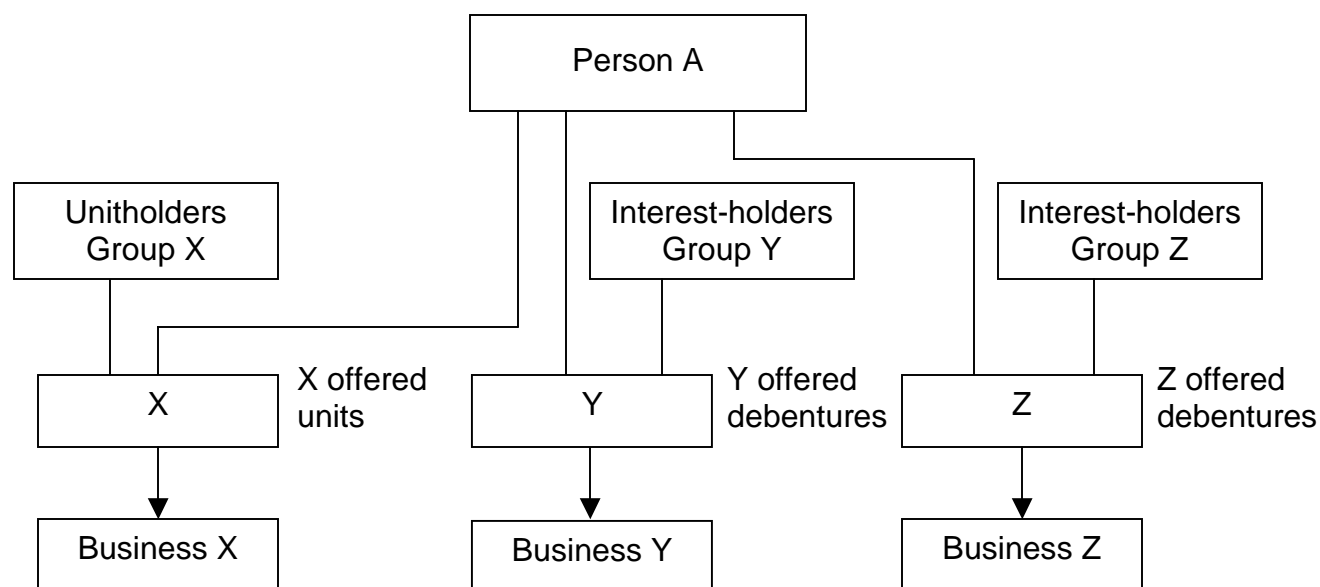
Person A is merely an investor and is not actively involved in the management of the business operations of X, Y and Z. The assessment of funding needs and the usage of funds raised are left entirely to the controlling unitholders and management of X, Y and Z.

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

**Determination**

Notwithstanding Person A would benefit as a unitholder of the three business trusts, 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 unitholders and management of X, Y and Z. Person A is only a passive investor. The offers by X, Y and 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 (10)**



Person A is a controlling unitholder of a business trust, X, and a controlling interest-holder of entities, Y and Z. Other than Person A, X has no other unitholders who are also interest-holders of Y and Z.

X, Y and 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 X, Y and Z. The assessment of funding needs and the usage of funds raised are left entirely to the management of X, Y and Z.

On 1 January 2006, 30 January 2006 and 3 February 2006, X, Y and Z issued units or debentures, as the case may be, 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**

Notwithstanding Person A is the guarantor for all the offers by X, Y and Z and would also benefit as a controlling unitholder and interest-holder of the three entities, he 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.

**APPENDIX 3**

**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

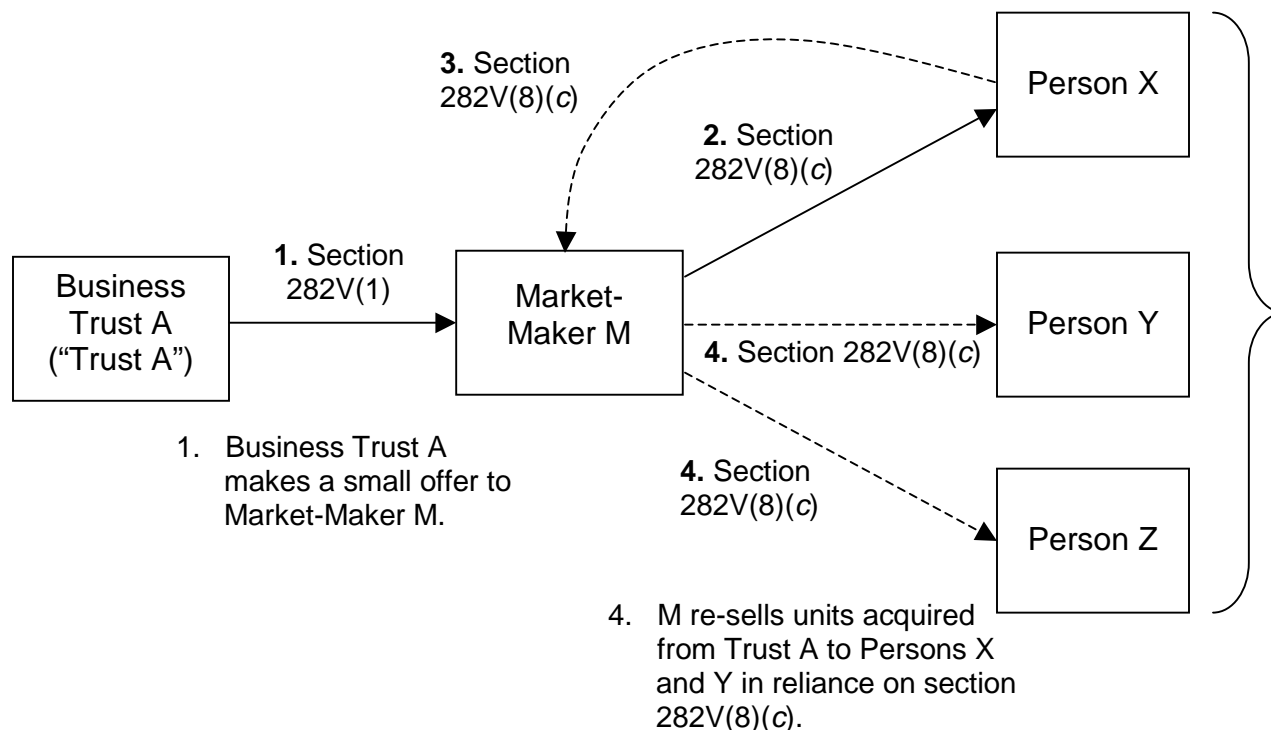
# "Securities" is as defined in s239 of the SFA i.e. debentures or units of debentures of an entity, or shares or units of shares of a corporation.

"Fundraising aggregation criteria" – see paragraph 6.3 of these Guidelines

"Investment products aggregation criteria" – see paragraph 6.10 of these Business Trusts Guidelines 1

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

2. Market-Maker, M, sells units acquired from Business Trust A to Person X in reliance on section 282V(8)(c).
3. Person X sells back units to M in reliance on section 282V(8)(c). Person X is exempted from requirement to provide warning statement and resale notification to M if M had previously indicated to him that such statements are not necessary.



**Note:**

In order to rely on section 282V(8)(c), Persons X, Y and Z must be persons who have

- Previous contact with Trust A
- Previous professional or other connection with Trust A
- Previously indicated to
  - ⇒ Trust 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