



Monetary Authority of Singapore

**SECURITIES AND FUTURES ACT
(CAP. 289)**

**GUIDELINES ON THE ADVERTISING RESTRICTIONS
IN SECTIONS 272A, 272B and 275**

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1 PURPOSE

1.1 These Guidelines are issued by the Monetary Authority of Singapore pursuant to section 321 of the Securities and Futures Act (Cap. 289) (“SFA”) to provide guidance on the scope of the advertising restrictions in sections 272A, 272B and 275 of the SFA.

2 DEFINITIONS

2.1 For the purposes of these Guidelines:

“advertisement” has the same meaning as in section 272A(10) or 275(2) of the SFA, as the case may be.

“exempted offer” means an offer of securities that falls within –

- (a) the small offers exemption under section 272A of the SFA;
- (b) the private placement exemption under section 272B of the SFA; or
- (c) the accredited investors and certain other persons exemption under section 275(1) of the SFA.

“factual information” in relation to an offer or intended offer means descriptions of the securities being offered or of the business and affairs of the person making the offer, the issuer of the securities offered, or where applicable, the underlying entity of the securities offered (where the reference to “affairs of the person making the offer, the issuer of the securities offered, or where applicable, the underlying entity” shall be construed in the manner set out in section 272A(11) or 275(2A) as the case may be).

“offer” means an offer of securities.

“prospectus” has the same meaning as in section 239(1) of the SFA.

“securities” has the same meaning as in section 239(1) of the SFA.

“specified person” has the same meaning as in the *Guidelines on Personal Offers Made Pursuant to the Exemption for Small Offers*.

“qualified person” means a person who is qualified to be offered securities pursuant to an exempted offer as follows:

- (a) in relation to an exempted offer pursuant to section 272A, a person would be qualified to be offered securities if a specified person has assessed, through pre-qualification procedures that it has established in accordance with the *Guidelines on Personal Offers Made Pursuant to the Exemption for Small Offers*, that the person is a person to whom a exempted offer pursuant to section 272A can be made;
- (b) in relation to an exempted offer pursuant to section 272B, a person would be qualified if he is one of no more than 50 persons to whom the exempted offer pursuant to section 272B is made; or
- (c) in relation to an exempted offer pursuant to section 275, a person would be qualified if a specified person has carried out appropriate due diligence and thereby ascertained that the person falls within the definition of a “relevant person” under section 275(2) of the SFA.

“restricted access platform” means a crowd-funding platform on which information relating to offers or intended offers is accessible only by qualified persons upon logging in with their unique identifiers and passwords.

“unrestricted access platform” means a crowd-funding platform on which information relating to offers or intended offers is also accessible by persons who are not qualified persons.

3 GUIDANCE ON ADVERTISING RESTRICTIONS

3.1 An exempted offer is subject to the condition under section 272A(1)(c), 272B(1)(b) or 275(1)(a) of the SFA, as the case may be, that the exempted offer is not “accompanied by an advertisement making an offer or calling attention to the offer or intended offer” (the “advertising restriction”). In other words, an offer that does not comply with the advertising restriction would not be an exempted offer.

Communication to qualified persons

3.2 To observe the advertising restriction, communication may only be made to qualified persons and the content of such communication must be confined to factual information.

3.3 Communication of factual information to qualified persons need not be made in hard copy or in any particular form or format¹ as long as it is made in

¹ In this regard, while the definition of “advertisement” in section 275(2) excludes an “information memorandum”, the factual information need not be communicated in the format of a document that is

writing. In particular, communicating only factual information in the form of a letter or an email addressed to qualified persons would not result in a breach of the advertising restriction.

Application of advertising restriction to offers of securities made through crowd-funding platform

3.4 This section clarifies how the advertising restriction would apply to offers that are made or intended to be made through a crowd-funding platform.

Platform design

3.5 Offers made through an unrestricted access platform would not comply with the advertising restriction.

3.6 Offers made through a restricted access platform would comply with the advertising restriction provided that only factual information about offers or intended offers is provided to the qualified persons.

3.7 Notwithstanding the paragraph above, a restricted access platform which publishes generic information on any unrestricted section of its website that is also accessible to persons who are not qualified persons would not be in compliance of the advertising restriction if such generic information draws attention to an offer or intended offer. For example, mentioning on the unrestricted section of the platform that there is a food and beverage company offering shares on the platform would result in a breach of the advertising restriction. This is notwithstanding that the factual information about the offer is confined to the restricted section of the platform.

Publicising a platform

3.8 A platform operator may publicise the existence of its crowd-funding platform. Such publicity may provide information about the platform and its services and may mention past offers that were made and completed through the platform so as to publicise its track record in intermediating such offers. Such publicity should not, however, call attention to any offer that is still open or to any intended offer.

commonly referred to as information memorandum in order for it to be excluded from the definition of “advertisement”. It suffices that the communication is made in writing (including email) and contains only the type of information mentioned in paragraph (a) of the definition of “information memorandum” in section 275(1A)(2).

3.9 For example, if the publicity mentions that there is a company on the platform offering bonds of a specific tenor or coupon, it would result in a breach of the advertising restriction. It would also be a breach of the advertising restriction if the publicity includes a link that leads to information about any offer that is still open or any intended offer, even if there is no express reference or mention of an offer or intended offer.

Further examples

3.10 Further examples of cases that would or would not be in compliance with the advertising restriction are set out in Appendix 1.

SAMPLE CASES

Sample case (1)

The operator of ABC-Platform, a restricted access platform, mentions on the unrestricted access section of its website that a company is raising \$5 million in equity and has raised \$3 million so far. No other information about the offer is mentioned in the unrestricted access section. Further details can only be found on the restricted access section of the platform.

The advertising restriction is breached in this case as the information about the company's offer is also accessible by persons who are not qualified persons.

Sample case (2)

The operator of ABC-Platform, a restricted access platform, publishes information on XYZ Ltd's new offer of shares on the restricted access section of its website. The published information describes XYZ Ltd's business and affairs, and the offer size and offer share price. The published information also includes a statement that reads *"This is an outstanding opportunity to gain exposure in a new high growth industry"*.

The advertising restriction is breached in this case as the published information is not confined to factual information, in particular, the part of the statement that reads "outstanding opportunity", which is a statement of opinion.

Sample case (3)

The operator of ABC-Platform, a restricted access platform, sends an email to all registered users of its platform all of whom are qualified persons. The email reads –

"We are pleased to inform you of an amazing opportunity that could make you 10x your investment. XYZ Ltd., a company in the JTX industry, is offering 1 million new shares at \$1 each for subscription. For more information, please log-on here [link to the platform]."

The advertising restriction is breached as the content of the email is not confined to factual information, in particular, the part that reads "amazing opportunity that could make you 10x your investment", which is a statement of opinion.

Sample case (4)

The operator of ABC-Platform, a restricted access platform, publishes information on a new offer of shares in XYZ Ltd on the restricted access section of its platform. The information describes XYZ Ltd's business and affairs, and states the offer size and offer share price only. The operator also sends emails to all registered users of its platform all of whom are qualified persons. The email reads as follows -

"We are pleased to inform you that XYZ Co., a company in the JTX industry, is offering 1 million new shares at \$1 each for subscription. For more information, please logon here [link to the platform]."

The advertising restriction is not breached in this case as the email is sent only to qualified persons and its content is confined to factual information.

Sample case (5)

A platform operator publishes on a social media network, which allows unrestricted access, that there are available offers on its platform including an equity offer by a tech start-up and a 3-year bond offer.

The advertising restriction is breached as the information about the offers is also accessible by persons who are not qualified persons.

Sample case (6)

A platform operator publicises on social media that its platform intermediates offers by tech start-ups but does not name specific tech start-ups.

The advertising restriction is not breached as the publicity does not call attention to any offers or intended offers.