

Division 3: Advertising Guidelines

1.0 PURPOSE

- 1.01 This division sets out the policy of the SC on the advertising of securities offerings regulated under section 241 of the CMSA. This division is to be read together with section 241 of the CMSA.
- 1.02 Section 241 of the CMSA and this division sets a clear distinction between pre-prospectus and post-prospectus advertising. The pre-prospectus period is before a prospectus is registered with the SC and covers two periods—
- (a) before submission of a prospectus to the SC; and
 - (b) after submission of the prospectus until registration by the SC;
- The post-prospectus period refers to a period after registration of a prospectus by the SC.
- 1.03 The restrictions in advertising contained in the CMSA are aimed for the prospectus, and not advertising, to be the primary basis of investment decisions. Pre-prospectus advertising campaigns should not encourage investors to make investment decisions before a prospectus is available. Once an investment decision is made, the influence of a subsequent prospectus is diminished.
- 1.04 Standard disclosures such as company profiles or corporate matters and information on directors of the company, are not subjected to the advertising provisions of the CMSA and this division. The guiding principle is that this division will apply to notices that issue, offer to subscribe for or purchase securities, or refer to a prospectus or an issue, intended issue, offer, intended offer, invitation or intended invitation in respect of securities, or another notice that refers to a prospectus.

2.0 PRE-PROSPECTUS ADVERTISING

- 2.01 Subsection 241(4) of the CMSA provides that, in pre-prospectus advertising, notices which seek to carry out any of the acts referred to in subsection 241(1) will—
- (a) require the consent of the SC; and
 - (b) be required to contain no more than the information listed in subsection 241(4)(b)(i) to (ix) of the CMSA.
- 2.02 These restrictions essentially require that the SC's consent be obtained before any information can be disseminated for any proposed offering of securities.
- 2.03 Pre-prospectus advertising may be divided into two main periods:
- (a) Before submission of a prospectus to the SC; and
 - (b) After submission of the prospectus until registration by the SC.

Before submission of a prospectus to the SC

2.04 During this period, an impending offer of securities can be referred to but the provisions of subsection 241(4)(b)(i) to (ix) of the CMSA must be adhered to very closely. No other information may be disseminated during this period, either verbally or in writing.

After submission of a prospectus until registration by the SC

2.05 The SC recognises the need for issuers to carry out preparatory work associated with a proposed offer of securities. During this period, issuers may disclose a wider range of information. In this regard, the consent of the SC is deemed to be given in the following circumstances:

(a) Presentations

- (i) The presentations, both oral and written, are to be made by the issuer;
- (ii) Any other person (such as the principal adviser or the lead manager) making the presentation must be authorised by the issuer to conduct the presentation;
- (iii) The relief is not available to licensed dealers, exempt dealers, licensed investment advisers, licensed fund managers, exempt fund managers and their representatives acting on their own behalf;
- (iv) The presentations may be attended only by the categories of persons set out in Schedules 6 and 7 of the CMSA, members of the press and financial analysts;
- (v) Any written material circulated at these presentations may contain the information set out in subsection 241(4)(b)(i) to (ix) of the CMSA and information on the profiles of the promoters, directors and issuer; and
- (vi) Information provided in oral form may include, in addition to the information set out in sub-paragraph (v) above, the proposed utilisation of funds, statistics about the offering including pro forma net tangible assets/net assets, earnings per share, price-earnings ratio, the historical performance of the issuer and forward looking statements backed by proper assumptions.

(b) Announcements made upon obtaining underwriting mandate

- (i) The persons who can make such announcements are the parties to the underwriting agreement;
- (ii) The announcements shall pertain to agreements which are to be or have been signed; and

- (iii) Any written information on the offer may contain the information set out in subsection 241(4)(b)(i) to (ix) of the CMSA and information on the profiles of the promoters, directors and issuer.

(c) *Announcements made upon the joint signing of underwriting agreements*

- (i) The persons who can make such announcements are the parties to the agreement;
- (ii) The announcements shall be confined to agreements which are to be or have been signed; and
- (iii) Any written information relating to the offer may contain the information set out in subsection 241(4)(b)(i) to (ix) of the CMSA and information on the profiles of the promoters, directors and issuer.

(d) *Concise statements*

Any notice which refers to a proposed issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, securities may contain the information set out in subsection 241(4)(b)(i) to (ix) of the CMSA and information on the profiles of the promoters, directors and issuer.

2.06 It is not intended for such pre-prospectus restrictions to inhibit the free flow of non-promotional information to raise public awareness of a securities offering.

2.07 In granting the SC's blanket consent on the abovementioned activities, it is crucial that these activities are not conducted in a way that encourage retail investors to make investment decisions without the benefit of a prospectus.

Therefore, issuers should not attempt to induce such investors into investing in proposed offers of securities without adequate disclosures being made. For this reason, the prospectus, rather than the advertising campaign of the issuer, should be treated as the source of all relevant information for the proposed issue or offer of securities.

3.0 POST-PROSPECTUS ADVERTISING

3.01 The post-prospectus period refers to the time after the prospectus has been registered with the SC and lodged with the Registrar of Companies.

3.02 Any information disseminated after the registration of the prospectus, either verbally or in writing, is allowed if the information is contained in the prospectus. However, the condition is that in the interest of investor protection, an issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, securities must be accompanied by a prospectus together with a set of application forms to be completed by the investor.

4.0 GENERAL PRINCIPLES

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5.0 RESTRICTIONS IN RELATION TO SOPHISTICATED INVESTORS

5.01 Section 241 of the CMSA which contains restrictions in advertising is not intended to apply to sophisticated investors (please refer to Schedule 6, Part B and Schedule 7, Part B of the CMSA). Therefore, issuers may be able to carry out certain activities in preparation for or in view of a placement exercise which may otherwise not be in compliance with the advertising restrictions under section 241 of the CMSA, provided that the notices are directed towards the persons who are set out in Schedules 6 or 7 of the CMSA. For example, in the case of a bond issue, where the bonds are issued on a when issued basis and the issuer or the adviser/lead manager wants to obtain a certain degree of feedback from potential investors to determine the level of pricing or potential investors' level of commitment. Such an exercise, if directed at Schedule 6 or Schedule 7 categories of investors, will not be regarded as falling within the advertising restrictions under section 241 of the CMSA.

6.0 POST-BALLOTING SPEECHES

- 6.01 Announcements by principal advisers or issuers as to whether the issue was undersubscribed or oversubscribed, and the extent of the undersubscription or oversubscription is allowed to be made without having to obtain the SC's prior approval.

7.0 REPORTS ON AFFAIRS OF LISTED CORPORATION

- 7.01 The restrictions in relation to advertising set out in subsection 241(1) of the CMSA do not apply to a number of situations which include those set out in paragraph 241(7)(a) of the CMSA which states the following:

—Subsection 241(1) shall not apply to the issuing or publishing of a report that relates to the affairs of a corporation, a unit trust scheme or a prescribed investment scheme, that is listed on a stock exchange which is or has been published only to that stock exchange by or on behalf of the corporation, unit trust scheme or prescribed investment scheme.

Therefore, it should be noted that announcements, reports and notices made to the relevant stock exchange in compliance with its listing requirements, for purposes of dissemination to the public, will be regarded as exempt from the advertising restrictions under section 241 of the CMSA.

