FREQUENTLY ASKED QUESTIONS

GUIDELINES ON OFFER OF SHARES BY UNLISTED PUBLIC COMPANIES TO SOPHISTICATED INVESTORS

Issued on: 5 July 2021

1. What is the rationale for the issuance of the *Guidelines on Offer of Shares by Unlisted Public Companies to Sophisticated Investors* (Guidelines)?

The SC has noted that there has been an increasing number of unlisted public companies (UPCs) raising funds through the unlisted market by offering shares to sophisticated as well as retail investors.

In addition, the SC has also received increasing queries and complaints on share offerings by UPCs, marketed through phone calls, seminars, video recording via social media or unlicensed agents, to both sophisticated and retail investors.

The new Guidelines set out the obligations for UPCs when offering shares to sophisticated investors, including requirement for UPCs to appoint holders of Capital Markets Services Licence for the regulated activity of dealing in securities, if an agent is appointed to market and promote their shares. Further, UPCs are also required to ensure that the prospective investor that they approach is a sophisticated investor.

In addition, UPCs will need to publish a caution statement on the cover page of any information memorandum (IM) issued, to clearly state that while the IM is deposited with the SC, the SC's approval is not required for the offering of the IM. This statement also serves to remind sophisticated investors that they need to perform their own assessment in respect of the share offerings, as the SC does not review the offering or the IM.

To facilitate the SC to monitor funds raised and utilisation of proceeds, UPCs are also required to submit a post-issuance notification and post-issuance update report.

2. When will a UPC have to comply with the Guidelines?

The Guidelines apply to UPCs that are offering or issuing shares to sophisticated investors falling within any of the categories of investors set out in Part I, Schedule 6 and Schedule 7 of the *Capital Markets and Services Act 2007* (CMSA), or those who acquire shares pursuant to a private placement where the consideration for the acquisition is not less than RM250,000 or its equivalent in foreign currencies for each transaction whether such amount is paid for in cash or otherwise.

Where however, the offering of shares by a UPC includes investors other than sophisticated investors as discussed above, the UPC is reminded that a prospectus is required to be issued by the UPC, and the said prospectus is required to be registered by the SC under Section 232 of the CMSA. In preparing the prospectus, the UPC must comply with the requirements as set out in the *Prospectus Guidelines*.

Contravention of Section 232 is an offence, which is punishable under the CMSA. A person found liable may be punished with a fine not exceeding RM10 million or imprisonment not exceeding ten years, or both.

3. When will the Guidelines be effective?

The Guidelines will take effect on 1 August 2021 (Effective Date). Prior to the Effective Date, pursuant to Sections 229 and 230 of the CMSA, the requirement to deposit IM will be applicable to UPCs offering shares to sophisticated investors, should an IM be issued.

From the Effective Date, both the Guidelines and Sections 229 and 230 of the CMSA are applicable to UPCs offering shares to sophisticated investors.

4. If an offering by UPC commenced prior to the Effective Date, is the UPC required to reissue an IM to include a caution statement, and are post-issuance notification and post-issuance update report required to be submitted to the SC?

For clarity, the requirement to include a caution statement on the cover page of the IM will be effective prospectively from 1 August 2021. Existing IM issued prior to 1 August 2021 need not be amended to include a caution statement.

However, should the offer continue after 1 August 2021, the UPC is required to submit a post-issuance update report seven days after end of each quarter of the financial year.

5. If the commencement date of the offering is in the same calendar month as the end of the UPC's most recent quarter of financial year, is the UPC required to submit both post-issuance notification and post-issuance update report to the SC at the same time?

In the event that the offering commenced in the same calendar month as the end of the UPC's most recent quarter of financial year, the UPC may submit the post-issuance update report in the following quarter of its financial year, to be in compliance with the requirement pursuant to Paragraph 7.02(b) of the Guidelines.

For example, if a UPC commences its offering on 29 September 2021 and its most recent financial quarter ends on 30 September 2021, the UPC will not be required to submit the post-issuance update report no later than seven days from the financial quarter ending on 30 September 2021. The UPC is only required to submit the post-issuance update report no later than seven days from its financial quarter ending on 31 December 2021.

6. How to make submission to the SC via electronic copy?

UPCs may either submit via email to equitiesfiling@seccom.com.my, or submit a CD-ROM or USB thumb-drive to the same address as stated in Paragraph 7.08 of the Guidelines.