



The Monetary Authority of Singapore

THE FINANCIAL ADVISERS ACT 2001

CONSULTATION DOCUMENT

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INTRODUCTION

The Monetary Authority of Singapore (MAS) will introduce new legislation, to be known as the Financial Advisers Act (FAA). The FAA will govern financial advisory activities in respect of investment products, and the distribution or marketing of specific functionally similar investment products, namely life insurance policies and collective investment schemes, including unit trusts.

2 The FAA will consolidate the current regulatory regime governing the provision of financial advisory services in respect of securities, futures and life insurance products, which are currently contained in different Acts, into a single legislation. This will provide a consistent set of requirements and regulations for market intermediaries engaging in similar activities across investment products.

DEVELOPMENTS IN THE MARKET

3 Product innovation has in recent years resulted in the convergence of financial products. Financial institutions do not simply offer "plain-vanilla" instruments these days. Insurance companies, for instance, offer investment-linked life insurance products (ILPs), which are similar to unit trusts, except that they have an insurance element attached to them. Despite the similarity in product features, the market intermediaries dealing with unit trusts and ILPs have so far been regulated differently.

4 Distribution channels for financial products are also no longer confined to traditional boundaries and institutional arrangements. Investors may now purchase unit trusts from various sources: directly from the fund managers, banks, stockbroking firms or Internet portals. Besides the traditional agency sales force, life insurance companies are relying on external parties, such as life insurance brokers and banks, to market their policies. Financial intermediaries are now expanding beyond traditional lines of business to provide "one-stop" service to meet investors' financial needs.

NEED FOR REGULATORY RESPONSE

5 In response to the changes in the industry, MAS is proposing an integrated regulatory framework under the FAA for persons engaging in advisory activities, irrespective of whether advice relates to dealing with life insurance, securities or futures.

6 There are significant benefits to both market participants and consumers in consolidating the legislation regarding the provision of financial advice. The FAA will provide a more flexible licensing framework under which only one licence need be held to give advice on a spectrum of products, and a licensed financial adviser will be able to add to the range of products on which it gives advice without the need for an additional licence. This reduces the administrative burden on and the compliance costs incurred by market intermediaries, who must currently comply with different regulatory regimes and require multiple licences under the securities, futures and insurance laws. The FAA will also facilitate the setting and maintenance of consistent professional standards across the industry and minimise any regulatory arbitrage.

CONSULTATION

7 In recognition of the value of feedback from industry participants and the public, MAS welcomes views and comments on the proposals in this consultation paper and the draft provisions of the FAA.

IMPORTANT DISCLAIMER: This version of the FAA is in draft form and subject to change. It is also subject to review by the Attorney-General's Chambers before being presented to Parliament.

POLICY INITIATIVES IN THE FINANCIAL ADVISERS ACT

WHO IS A FINANCIAL ADVISER?

8 The FAA defines a financial adviser as any person who carries on a business of providing any of the following services:

- (a) advising others, either directly or through publications or writings, whether in electronic, print or other form, concerning investment products, other than advising on corporate finance;
- (b) issuing or promulgating analyses or reports, whether in electronic, print or other form, concerning investment products; or
- (c) marketing of collective investment schemes or arranging of contracts in respect of life policies, or both,

Subject to the exclusions discussed below, any person who conducts one or more of the activities listed above must be licensed as a financial adviser by MAS.

DISTINCTION BETWEEN FINANCIAL ADVISER AND FINANCIAL PLANNER

9 The types of services provided by financial planners vary widely. Some planners assess every aspect of the clients' financial profile, including savings, investments, insurance, tax, retirement and estate planning, and help them develop detailed strategy for meeting their financial objectives. Others may call themselves financial planners, but may only provide advice on or recommend a limited range of products to their clients.

10 Currently, MAS regulates only certain aspects of financial planning, specifically, activities relating to securities, futures and insurance. Tax, retirement and estate planning activities do not come under MAS' regulatory ambit. The current regulatory regime will be continued under the FAA. MAS will not regulate all aspects of financial planning, but only those activities

which fall within the purview of the FAA. Hence, only a financial planner who conducts activities regulated under the FAA will be licensed as a financial adviser, and only in respect of those regulated activities.

RESTRICTIONS RELATING TO TERMINOLOGY

USE OF THE TERM "FINANCIAL ADVISER"

11 The use of the term "financial adviser" will be restricted to holders of a financial adviser's licence, and exempted entities referred to below. MAS is mindful that some market participants currently hold themselves out as "financial advisers". However, we believe that the restriction of usage of the term "financial adviser" will better enable investors to identify whether they are receiving financial advice from an entity which is licensed by MAS or an unregulated entity.

USE OF SIMILAR TITLES

12 MAS does not intend to restrict the use of titles and designations like "*financial planner*", "*financial analyst*" or "*financial consultant*", as such designations are currently adopted by a number of professional bodies, both internationally and within Singapore. However, the investing public should be aware that persons who use such titles may or may not be regulated by MAS, depending on the services they offer.

EXCLUSION FROM THE DEFINITION OF FINANCIAL ADVISER

13 The Securities Industry Act (SIA) and Futures Trading Act (FTA) currently exclude certain persons or entities from the definition of an Investment Adviser and Futures Trading Adviser, respectively. These persons or entities are not required to be licensed, and are not regulated under the SIA and FTA if their performance of advisory services is solely incidental to their professions or their main business. Such excluded persons are:

- (a) accountants and solicitors;
- (b) a person who is the proprietor of a newspaper and holder of a permit under the Newspaper and Printing Press Act;
- (c) a person who owns, operates or provides an information service through an electronic, broadcasting or telecommunications medium; and
- (d) a person who provides credit rating services.

These exclusions will be retained under the FAA.

EXEMPTION FROM LICENSING

INSTITUTIONS SUPERVISED BY MAS UNDER OTHER PRINCIPAL ACTS

14 At present, banks and merchant banks are exempted from licensing requirements under the SIA and FTA if they engage in investment advisory activities in respect of securities and futures¹. Insurance companies, on the other hand, are exempted from being licensed as investment advisers under the SIA.

15 The FAA will grant exemptions to banks, merchant banks, securities firms, fund management companies, finance companies, insurance companies and insurance brokers from the licensing regime under the FAA, as these institutions are already supervised by MAS. To apply consistent regulatory standards to and to encourage a level playing field for all market participants engaging in the same types of activities, the supervision of financial advisory activities undertaken by these exempted institutions should mirror that of licensees under the FAA. Exempted institutions and their employees will have to comply with certain provisions of the Act. In addition, MAS may by way of Regulations or written directions prescribe business conduct requirements and standards with respect to qualification and training, which must be met by such exempted entities and their employees in respect of their financial advisory activities. MAS will also have the power to inspect such exempted institutions in respect of their activities regulated under the FAA.

WHAT IS AN INVESTMENT PRODUCT?

16 The range of products under the ambit of the FAA includes only products that are of an investment nature. Specifically, investment products will include:

- (a) securities as defined currently under the SIA, including unit trusts;
- (b) futures contracts as defined currently under the FTA, as well as contracts or arrangements for the purposes of foreign exchange trading and leveraged foreign exchange trading; or
- (c) life insurance policies, including investment-linked insurance policies.

¹ Merchant banks are only partially exempted from the licensing requirements under the SIA in respect of their investment advisory activities.

17 The following items are excluded from the definition of investment products, namely general insurance policies, bank deposits, loans and mortgages. General insurance policies are not considered investment products as they are consumption-based. Deposit-taking products offered by banks are excluded as such products are at the low end of the risk spectrum and are well understood. Loans and mortgages do not have any investment element.

18 Notwithstanding the above, MAS will have the power to include additional products where necessary, so that the regulatory framework will have the flexibility to cater to new product developments.

A SINGLE LICENSING REGIME

19 A person who conducts one or more of the activities stated at paragraph 8 above need hold only **one** licence, i.e., the financial adviser's licence.

20 The financial adviser's licence will be granted only to a corporation. Applicants for the licence will have to satisfy licensing criteria, including but not limited to the following:

- (a) The applicant must have adequate financial resources to perform the proposed activities;
- (b) The applicant must have the relevant competence and expertise to carry out the proposed activities; and
- (c) The applicant must satisfy MAS that it would discharge its duties efficiently, honestly and fairly.

21 In assessing whether the applicant has adequate financial resources in respect of its proposed activities, MAS will require the applicant to comply with requirements pertaining to minimum paid-up capital and continuing financial resources, the amounts of which will be prescribed by MAS. This is to ensure that the applicant possesses a minimum level of financial assets to discharge its liabilities and obligations at all times. The applicant will also be required to procure professional indemnity insurance.

22 Intermediaries licensed under the FAA will have to comply with prudential and reporting requirements and be subject to business conduct rules which may be prescribed by MAS in the Act, Regulations or by way of written directions.

PERSONS ACTING FOR A FINANCIAL ADVISER

REPRESENTATIVES (EMPLOYEES AND AGENTS)

23 The relationship between a financial adviser and its representative is one of principal and agent or employee. MAS proposes that representatives who act on behalf of licensed financial advisers be required to hold a representative's licence, so as to bring them directly under the supervisory ambit of MAS.

24 A representative's licence will only be granted to a natural person. The applicant must satisfy MAS that he is fit and proper. In determining whether the applicant is a fit and proper person, MAS will take into account the applicant's:

- (a) financial status and solvency;
- (b) educational or other qualifications or experience, having regard to the nature of the functions the applicant will perform;
- (c) ability to carry his duties efficiently, honestly and fairly; and
- (d) reputation, character and integrity.

25 An applicant for a representative's licence will also be required to pass relevant proficiency examinations approved by MAS.

26 Representatives of exempted institutions who carry on any of the activities regulated under the FAA will be exempted from the need to hold a representative's licence. However, they will be subject to like requirements as their licensed counterparts, including the need to pass proficiency examinations, fulfil training and competence requirement and comply with relevant codes.

27 An individual shall not be allowed to act as a representative for more than one principal. For instance, an individual cannot be a representative of a licensed financial adviser and an insurance agent with an insurance company concurrently. The objectives of this prohibition are two-fold:

- (a) secure clarity for investors about the status of the licensed individuals, the principals they represent and where responsibility rests for complaints and redress; and
- (b) ensure that the principal monitors and supervises their representatives at all times. The principal will be responsible and liable for the conduct of the representatives to the extent as if it had engaged in the conduct.

However, MAS may, on a case-by-case basis, permit individuals to act for one or more related entities within a financial services group.

CHIEF EXECUTIVE OFFICER AND EXECUTIVE DIRECTORS

28 The chief executive officer (CEO) and executive directors are key officers of a corporation. Besides possessing relevant qualifications and experience, they must be of good character and high integrity. Licensed financial advisers will have to seek MAS' prior approval for the appointment of CEOs and executive directors and must satisfy MAS that these appointees are "fit and proper" persons. The Act will also provide for the removal of a licensed financial adviser's CEO or any of its directors on the grounds that the CEO or director is no longer fit to conduct his duties.

PROHIBITION ORDERS

29 MAS will have the power to issue prohibition orders, which forbid a person from providing any or all of the services regulated by the FAA either permanently or for a specified period. It is anticipated that such a prohibition order could be issued against unlicensed persons, or licensed persons who have not complied with obligations under the FAA or regulations. The prohibition order may be varied or revoked if MAS is satisfied that it is appropriate to do so because of a change in the circumstances on which the prohibition order was made.

CODE OF PROFESSIONAL CONDUCT

30 To coincide with the enactment of the FAA, MAS intends to introduce a code of professional conduct ("the Code") for financial advisers. The aim of this code is to ensure uniform standards of professionalism and promote best practice in the industry. The code will provide guidance on how financial advisers should conduct themselves in their dealings with clients, including the need to be objective and competent, disclosure of information to clients and the exercise of due care. Financial advisers are also required to have in place procedures to handle clients' complaints.

31 In some instances, a financial adviser or its representatives may already be bound by a set of code of ethics and standards owing to their membership in a professional association. It is not intended for the Code to replace any of the professional bodies' existing codes or guidelines. Instead, wherever possible, the rules, codes and guidelines of these professional associations should supplement the Code. Where a difference in standards exists, financial advisers and their representatives are expected to adhere to the more stringent requirement.

32 MAS may take into account any non-compliance with the Code when considering whether a licensed entity or representative is or has been guilty of misconduct or is "fit and proper" to continue to be licensed.

DURATION OF LICENCES

33 Currently, life insurance brokers registered under the Insurance Intermediaries Act (IIA) are conferred perpetual registration by MAS, subject to the payment of an annual fee. In contrast, investment advisers licensed under the SIA and futures trading advisers licensed under the FTA, as well as their representatives, have to renew their licences annually. The dichotomy in the existing licensing regimes will be harmonised under the FAA.

34 Under the FAA, applicants, both corporates and individuals, will be required to pay a non-refundable fee in applying for a licence. This is to defray the costs incurred by MAS in reviewing the applications. All licences issued will have to be renewed every 3 years. In addition, licensees are required to pay an annual licence fee to MAS.

TRANSITIONAL LICENSING ARRANGEMENTS

35 The introduction of the FAA will affect the licensing/registration status of some of the existing market participants, namely:-

- (a) holders of an investment adviser's licence under the SIA for conducting advisory business on securities. This excludes an entity that holds an investment adviser's licence to provide fund management services or corporate finance advice.
- (b) holders of a futures trading adviser's licence under FTA to conduct advisory business concerning futures contracts, foreign exchange trading or leveraged foreign exchange trading. This excludes an entity that holds a futures trading adviser's licence to manage clients' funds.
- (c) life insurance brokers registered under the IIA.

Transitional measures will be provided to facilitate the move to the new regulatory regime without causing disruptions to existing market participants' business and their clients.

EFFECT ON OTHER LEGISLATION

36 The enactment of the FAA will affect other relevant legislation in the following manner:

INSURANCE ACT AND IIA

- (a) The regulation of direct life insurance brokers will be transferred from the IIA to the FAA;
- (b) The regulation of insurance agents, direct general insurance brokers and all reinsurance brokers will be transferred from the IIA to the Insurance Act;
- (c) The IIA will be repealed;

SIA AND FTA

- (d) The regulation of investment advisers who give advice on securities will be transferred from the SIA to the FAA; and
- (e) The regulation of futures trading advisers who give advice on futures contracts, foreign exchange trading and leveraged foreign exchange trading will be transferred from the FTA to the FAA.

The other provisions in the SIA and FTA will be rationalised and consolidated under the proposed Securities and Futures Act (SFA). A separate public consultation exercise will be undertaken for the SFA.