



Monetary Authority of Singapore

FINANCIAL ADVISERS ACT 2001

**NOTICE ON REPORTING OF MISCONDUCT OF
REPRESENTATIVES BY FINANCIAL ADVISERS**

Notice No : FAA-NXX

Issue Date : xx xxx 20xx

NOTICE ON REPORTING OF MISCONDUCT OF REPRESENTATIVES BY FINANCIAL ADVISERS

Introduction

1 This Notice (excluding the Annexes) is issued pursuant to section 67(1) of the Financial Advisers Act 2001 ("the Act"). Notice No. FAA-N14 issued on 26 November 2010 is cancelled with effect from [effective date].

2 This Notice shall apply to all licensed financial advisers and persons who are exempt from holding a financial adviser's licence under section 20(1)(a) to (e) of the Act. It sets out the reporting requirements of financial advisers for the misconduct of their representatives and former representatives.

Definitions

3 For the purposes of this Notice —

“corrective action” means any disciplinary action taken by a financial adviser against its representative, former representative, supervisor or former supervisor, or any remedial measure taken by a financial adviser, in respect of a misconduct;

“designated investment product” has the same meaning as in section 34(7) of the Act;

“financial adviser” means a licensed financial adviser or a person exempt from holding a financial adviser's licence under section 20(1)(a) to (e) of the Act;

“Investigation Report” means a report in the form set out in Appendix 1;

“MASNET” means MASNET or any electronic system which may be established by the Authority in place of MASNET;

“misconduct” means—

- (a) any act or omission in the provision of any financial advisory service which amounts to gross negligence or which results in any inappropriate advice, inappropriate recommendation, misrepresentation, or inadequate disclosure of information to a client, including:
 - (i) the making of a recommendation to a client without due consideration as to his investment objectives, financial situation or particular needs;
 - (ii) the making of a deceptive, false or misleading statement to a client; or
 - (iii) the failure to disclose to a client all material information relating to any designated investment product recommended by him, as specified in MAS Notice FAA-N03, Notice on Information to Clients and Product Information Disclosure, where the act or omission has a materially adverse impact on the interests of the client or impinges on the fitness and propriety of the representative; or
- (b) any act involving fraud, dishonesty, illegal monetary gains, or any offence of a similar nature, such as cheating, forgery, dishonest misappropriation of monies, criminal breach of trust, bribery, money laundering and tax evasion;

“Misconduct Report” means a report in the form set out in Appendix 1;

“public authority” means any body established by or under any written law and exercising powers vested therein by written law for a public purpose;

“Update Report” means a report in the form set out in Appendix 1.

Report on Misconduct of Representative

Submission of the Misconduct Report

- 4 If a financial adviser has reasonable grounds to believe that—
- (a) its representative had committed any misconduct; or
 - (b) its former representative had committed any misconduct during the period when he was a representative of the financial adviser,

the financial adviser must submit a Misconduct Report to the Authority through MASNET, providing all the information and particulars required in the Misconduct Report in relation to the misconduct (called in this Notice “alleged misconduct”), no later than 21 calendar days, or such longer period as the Authority may allow in writing, after the date on which the financial adviser first has reasonable grounds to believe that which is mentioned in sub-paragraph (a) or (b).

Other Submissions Accompanying the Misconduct Report

- 5 If the alleged misconduct falls within paragraph (b) of the definition of “misconduct”, a financial adviser mentioned in paragraph 4 must —
- (a) assess whether it should lodge a police report in respect of the alleged misconduct; and
 - (b) where it has not lodged a police report by the time it submits the Misconduct Report, submit to the Authority through MASNET at the same time as its submission of the Misconduct Report, the reasons for its decision not to lodge a police report.

6 Where a financial adviser mentioned in paragraph 4 has lodged a police report in respect of the alleged misconduct by the time it submits the Misconduct Report, the financial adviser must submit to the Authority through MASNET a copy of the police report together with the following information, where available, at the same time as its submission of the Misconduct Report:

- (a) the name of the police officer investigating the case;

- (b) the status of the police investigation and criminal proceedings (if any), including any outcome or result.

7 Where a financial adviser has commenced an internal investigation¹ into the alleged misconduct by the time it submits the Misconduct Report, the financial adviser must submit an Investigation Report to the Authority through MASNET, at the same time as its submission of the Misconduct Report.

Update on Report on Misconduct of Representative

Submission of Update Report

8 As and when there is any significant development in relation to the alleged misconduct after the Misconduct Report is submitted to the Authority, the financial adviser must submit an Update Report to the Authority through MASNET, providing an update of the development, no later than 21 calendar days after the development or such longer period as the Authority may allow in writing.

- 9 In paragraph 8, “significant development” includes but is not limited to —
- (a) the lodging of a police report by the financial adviser on the alleged misconduct;
 - (b) the completion of the financial adviser’s internal investigations into the alleged misconduct;
 - (c) the taking of any corrective action by the financial adviser, in respect of the alleged misconduct;²
 - (d) the taking of any further action by the financial adviser following an appeal against any corrective action; and
 - (e) the financial adviser being notified or made aware, through any source, of the outcome of police investigations or criminal proceedings (if any) in respect of the alleged misconduct.

¹ A financial adviser may refer to the Non-Mandatory Guidelines in Annex A on the expectations relating to the conduct of internal investigations into any misconduct.

² A financial adviser may refer to the Non-Mandatory Guidelines in Annex B on the expectations relating to the taking of corrective action in respect of any misconduct.

Other Submissions Accompanying an Update Report

10 Where a financial adviser lodges a police report on the alleged misconduct after it submitted the Misconduct Report, the financial adviser must submit to the Authority through MASNET a copy of the police report together with the information mentioned in paragraph 6(a) and (b), where available, at the same time as its submission of the Update Report.

11 Where there is a significant development mentioned in paragraph 8 after a financial adviser submitted the Misconduct Report and the information relating to that significant development falls within any of the data fields in the Investigation Report, the financial adviser must submit an Investigation Report with that information to the Authority through MASNET, at the same time as its submission of the Update Report.

Provision of Misconduct Report and Update Report to Representative

12 Subject to paragraph 15, where a financial adviser has submitted a Misconduct Report to the Authority in accordance with paragraph 4, the financial adviser must provide a copy of the Misconduct Report to the representative or former representative concerned, no later than 21 calendar days, or such longer period as the Authority may allow in writing, after the date of submission of the Misconduct Report to the Authority.

13 Subject to paragraph 15, where a financial adviser has submitted an Update Report to the Authority in accordance with paragraph 8, the financial adviser must provide a copy of the Update Report to the representative or former representative concerned, no later than 21 calendar days, or such longer period as the Authority may allow in writing, after the date of submission of the Update Report to the Authority.

14 For the avoidance of doubt, a financial adviser is not required under paragraph 12 or 13 to provide to the representative or former representative, a copy of any Investigation Report or police report, or any information mentioned in paragraph 6(a) or (b), which the financial adviser had submitted to the Authority together with a Misconduct Report or Update Report.

15 Paragraphs 12 and 13 shall not apply if –

- (a) the financial adviser is acting, or is proposing to act, in connection with its internal investigation, and the provision of the copy of the Misconduct Report or Update Report (as the case may be) to the representative or former representative concerned is likely to prejudice that investigation;
- (b) the financial adviser knows or has reasonable grounds to suspect that any officer of a public authority is acting or is proposing to act, in connection with an investigation which is being, or is about to be, conducted, and either –
 - (i) any officer of the public authority has requested for the financial adviser not to disclose to the representative or former representative information in respect of the alleged misconduct which is contained in the Misconduct Report or Update Report; or
 - (ii) the provision of the copy of the Misconduct Report or Update Report (as the case may be) to the representative or former representative concerned is likely to prejudice that investigation or proposed investigation; or
- (c) the individual concerned is a former representative and the financial adviser has taken reasonable steps but is unable to contact the former representative using his last known contact details.

Keeping of Relevant Records

16 A financial adviser must keep proper records of –

- (a) documentary evidence that a copy of the Misconduct Report or Update Report has been provided to the representative or former representative concerned;
- (b) its assessment on the likelihood of prejudice to any investigation, if the financial adviser does not provide a copy of the Misconduct Report or Update Report to the representative or former representative concerned in reliance on paragraph 15(a) or (b)(ii);

- (c) the request from the officer of the public authority, if the financial adviser does not provide a copy of the Misconduct Report or Update Report to the representative or former representative concerned in reliance on paragraph 15(b)(i); or
- (d) the reasonable steps taken by the financial adviser to contact the former representative, if the financial adviser does not provide a copy of the Misconduct Report or Update Report to the former representative concerned in reliance on paragraph 15(c).

17 Where a financial adviser conducts an internal investigation into an alleged misconduct, the financial adviser must keep proper records of the following, where applicable:

- (a) a summary of the facts of the case, such as the source of the allegation or suspicion, the number of clients affected, details of relevant transactions and the financial impact on the clients;
- (b) accounts from relevant parties such as the representative or former representative, his supervisor or former supervisor and the client;
- (c) documentary evidence of the alleged misconduct;
- (d) the investigator's assessment and recommendation;
- (e) corrective action taken, and basis for the corrective action;
- (f) appeal against the corrective action, along with assessment and the outcome of the appeal.

18 This Notice shall take effect on [effective date].

Transitional Provisions

19 Despite paragraph 4, where a financial adviser –

- (a) first had reasonable grounds to believe, more than 21 days before [effective date], that any type of misconduct within the definition of “misconduct” in paragraph 3 of this Notice was committed by its

representative or its former representative when he was its representative;

- (b) has not submitted to the Authority a Misconduct Report, which is in the form set out at Appendix 1 of the Notice on Reporting of Misconduct of Representatives by Financial Advisers (MAS Notice No. FAA-N14) (“**Cancelled Notice**”), in relation to the misconduct before [effective date]; and
- (c) was not required under the Cancelled Notice to submit a Misconduct Report (which is in the form set out at Appendix 1 of the Cancelled Notice) by <date immediately before [effective date]>,

the financial adviser must submit to the Authority a Misconduct Report in relation to the misconduct under this Notice and any other document or information that may be required under paragraph 5 to 7 of this Notice, no later than 21 calendar days, or such longer period as the Authority may allow in writing, after [effective date].

20 This Notice does not apply to or in relation to any of the following, and despite paragraph 1, the Cancelled Notice as in force immediately before [effective date] continues to apply to or in relation to any of the following as if this Notice has not been issued:

- (a) any case for which a financial adviser submitted a Misconduct Report under the Cancelled Notice (which is in the form set out at Appendix 1 of that Notice) before [effective date];
- (b) any case for which a financial adviser was required under the Cancelled Notice to submit a Misconduct Report (which is in the form set out at Appendix 1 of that Notice) by <date immediately before [effective date]>,

save that a reference in the Cancelled Notice to “MASNET” is to MASNET or any electronic system which may be established by the Authority in place of MASNET.

Note:

Under section 67(5) of the Act, any person who fails to comply with any requirement specified in a written direction issued under section 67(1) of the Act shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$25,000 and, in the case of a continuing offence, to a further fine not exceeding \$2,500 for every day or part thereof during which the offence continues after conviction.

Appendix 1

Misconduct Report, Update Report and Investigation Report

Please refer to Annex 2 of MAS' response to feedback received from the Consultation on Revisions to Misconduct Reporting Requirements and Proposals to Mandate Reference Checks for Representatives published on 14 May 2021 at this link:

<https://www.mas.gov.sg/publications/consultations/2018/consultation-paper-on-revisions-to-misconduct-reporting-requirements-and-proposals-to-mandate-reference-checks-for-representatives>

Guidelines on the Conduct of Internal Investigations

1 Where a financial adviser has reasonable grounds to believe that any of its representatives, or any of its former representatives during his time as its representative, had committed any misconduct, a financial adviser is expected to conduct internal investigations to establish if any misconduct was committed by the representative or former representative. The investigation process should incorporate relevant sources of information including the following, where applicable:

- (a) interviews with relevant parties, such as affected clients, representatives or former representatives, and their supervisors or former supervisors;
- (b) review of transactions;
- (c) assessment of sales documents, and other relevant information, such as post-sale surveys or call-backs to clients.

2 The guidelines in this Annex are issued pursuant to section 74(1) of the Financial Advisers Act 2001 (“the Act”) and provide guidance to financial advisers on the conduct of internal investigations into misconduct mentioned in MAS Notice FAA-NXX (“Notice”). The expressions used in these Guidelines have the same meanings as in the Notice. These guidelines should be read in conjunction with the provisions of the Act, the subsidiary legislation made thereunder, and other relevant legislation, notices, codes, guidelines and FAQs issued by the Authority. Any failure to comply with the guidelines set out in this Annex does not of itself render a financial adviser liable to criminal proceedings.

Guidelines on Corrective Action

1 A financial adviser is responsible for the conduct of its representatives. It should take appropriate corrective action including such action against its representatives or former representatives for any misconduct committed by them in relation to the provision of any financial advisory service and ensure consistency in its application of corrective action.

2 If the financial adviser has reasonable grounds to believe that the misconduct committed was attributable to inadequate or improper supervision, it should take appropriate corrective action against the supervisors or former supervisors in the representative or former representative's supervisory chain of command.

3 The type of corrective action that a financial adviser may take against its representatives, former representatives, supervisors or former supervisors in respect of any misconduct committed depends on the severity of the case and includes, but is not limited to, any one or more of the following:

- (a) suspension from providing any financial advisory service;
- (b) restitution of misappropriated monies;
- (c) fine;
- (d) warning;
- (e) demotion;
- (f) termination of the representative's employment or arrangement with the financial adviser;
- (g) clawback;
- (h) impact on balanced scorecard grade;
- (i) re-training;

(j) enhanced supervision and monitoring.

4 A financial adviser should have an internal process for addressing the appeals against any corrective action.

5 The guidelines in this Annex are issued pursuant to section 74(1) of the Financial Advisers Act 2001 (“the Act”) and provide guidance to financial advisers on the taking of corrective action for misconduct mentioned in MAS Notice FAA-NXX (“Notice”). The expressions used in these Guidelines have the same meanings as in the Notice. These guidelines should be read in conjunction with the provisions of the Act, the subsidiary legislation made thereunder, and other relevant legislation, notices, codes, guidelines and FAQs issued by the Authority. Any failure to comply with the guidelines set out in this Annex does not of itself render a financial adviser liable to criminal proceedings.