



Monetary Authority of Singapore

SECURITIES AND FUTURES ACT 2001

**NOTICE ON REPORTING OF MISCONDUCT OF
REPRESENTATIVES BY HOLDERS OF CAPITAL MARKETS
SERVICES LICENCE, REGISTERED FUND MANAGEMENT
COMPANIES AND OTHER EXEMPT PERSONS**

Notice No : SFA XX-NXX

Issue Date : xx xxx 20xx

NOTICE ON REPORTING OF MISCONDUCT OF REPRESENTATIVES BY HOLDERS OF CAPITAL MARKETS SERVICES LICENCE, REGISTERED FUND MANAGEMENT COMPANIES AND OTHER EXEMPT PERSONS

Introduction

1 This Notice (excluding the Annexes) is issued pursuant to section 101(1) of the Securities and Futures Act 2001 ("the Act"). Notice No. SFA 04-N11 issued on 26 November 2010 is cancelled with effect from [effective date].

2 This Notice shall apply to all holders of a capital markets services licence, Registered Fund Management Companies and persons who are exempt from holding a CMS licence under section 99(1)(a), (b), (c) or (d) of the Act. It sets out the reporting requirements for the misconduct of their representatives and former representatives.

Definitions

3 For the purposes of this Notice —

“CMI” means a holder of a capital markets services licence, a Registered Fund Management Company, or a person who is exempt from holding a CMS licence under section 99(1)(a), (b), (c) or (d) of the Act;

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

“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 relating to any contravention of the market conduct provisions under Part 12 of the Act, such as involvement in prohibited conduct or insider trading as set out in Part 12 of the Act; 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;

“Registered Fund Management Company” has the same meaning as in regulation 2 of the Securities and Futures (Licensing and Conduct of Business) Regulations (Rg. 10);

“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 CMI 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 CMI,

the CMI 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 CMI 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 CMI 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 CMI mentioned in paragraph 4 has lodged a police report in respect of the alleged misconduct by the time it submits the Misconduct Report, the CMI 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 CMI has commenced an internal investigation¹ into the alleged misconduct by the time it submits the Misconduct Report, the CMI 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 CMI must submit an Update Report to the Authority through MASNET, providing an

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

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 CMI on the alleged misconduct;
 - (b) the completion of the CMI’s internal investigations into the alleged misconduct;
 - (c) the taking of any corrective action by the CMI, in respect of the alleged misconduct;²
 - (d) the taking of any further action by the CMI following an appeal against any corrective action; and
 - (e) the CMI 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.

Other Submissions Accompanying an Update Report

10 Where a CMI lodges a police report on the alleged misconduct after it submitted the Misconduct Report, the CMI 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 CMI submitted the Misconduct Report and the information relating to that significant development falls within any of the data fields in the Investigation Report, the CMI must submit an Investigation Report with that information to the Authority through MASNET, at the same time as its submission of the Update Report.

² A CMI 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.

Provision of Misconduct Report and Update Report to Representative

12 Subject to paragraph 15, where a CMI has submitted a Misconduct Report to the Authority in accordance with paragraph 4, the CMI 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 CMI has submitted an Update Report to the Authority in accordance with paragraph 8, the CMI 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 CMI 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 CMI had submitted to the Authority together with a Misconduct Report or Update Report.

15 Paragraphs 12 and 13 shall not apply if –

- (a) the CMI 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 CMI 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 CMI 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 CMI has taken reasonable steps but is unable to contact the former representative using his last known contact details.

Keeping of Relevant Records

16 A CMI 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 CMI 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 CMI 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 CMI to contact the former representative, if the CMI 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 CMI conducts an internal investigation into an alleged misconduct, the CMI 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 customers affected, details of relevant transactions and the financial impact on the customers;
- (b) accounts from relevant parties such as the representative or former representative and the customer;

- (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 CMI other than a Registered Fund Management Company –

- (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 Holders of Capital Markets Services Licence and Exempt Financial Institutions (MAS Notice No. SFA 04-N11) (“**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 CMI 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 CMI submitted an 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 CMI was required under the Cancelled Notice to submit an 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” means MASNET or any electronic system which may be established by the Authority in place of MASNET.

Note:

Under section 101(3) of the Act, any person who contravenes any requirement specified in a direction issued by the Authority (which would include this Notice), shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 and, in the case of a continuing offence, to a further fine not exceeding \$5,000 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 CMI 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 CMI 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 customers, and representatives or former representatives;
- (b) review of transactions (including phone records or other correspondences between the representative and the affected customer, and historic pricing records, if applicable).

2 The guidelines in this Annex are issued pursuant to section 321(1) of the Securities and Futures Act (the “Act”) and provide guidance to CMIs on the conduct of internal investigations into misconduct mentioned in MAS Notice SFA XX-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 CMI liable to criminal proceedings.

Guidelines on Corrective Action

1 A CMI 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 regulated activity and ensure consistency in its application of corrective action.

2 The type of corrective action that a CMI may take against its representatives or former representatives 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 conducting any regulated activity;
- (b) restitution of misappropriated monies;
- (c) fine;
- (d) warning;
- (e) demotion;
- (f) termination of the representative's employment or arrangement with the CMI;
- (g) clawback;
- (h) impact on balanced scorecard grade;
- (i) re-training;
- (j) enhanced supervision and monitoring.

3 A CMI should have an internal process for addressing the appeals against any corrective action.

4 The guidelines in this Annex are issued pursuant to section 321(1) of the Securities and Futures Act (the “Act”) and provide guidance to CMIs on the taking of corrective action for misconduct mentioned in MAS Notice SFA XX-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 CMI liable to criminal proceedings.