



Monetary Authority of Singapore

**SECURITIES AND FUTURES ACT
(CAP. 289)**

**NOTICE ON REPORTING OF MISCONDUCT OF
REPRESENTATIVES BY HOLDERS OF CAPITAL
MARKETS SERVICES LICENCE AND EXEMPT
FINANCIAL INSTITUTIONS**

Notice No : SFA04-N11

Issue Date : 26 November 2010

NOTICE ON REPORTING OF MISCONDUCT OF REPRESENTATIVES BY HOLDERS OF CAPITAL MARKETS SERVICES LICENCE AND EXEMPT FINANCIAL INSTITUTIONS

Introduction

1 This Notice is issued pursuant to section 101 of the Securities and Futures Act (Cap. 289) ["the Act"].

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

Definitions

3 For the purposes of this Notice —

“regulated activity” has the same meaning as in section 2(1) of the Act;

“principal” has the same meaning as in section 2(1) of the Act;

“representative” has the same meaning as in section 2(1) of the Act.

Report on Misconduct of Representative

4 A CMS licence holder or an exempt financial institution shall report to the Monetary Authority of Singapore [the “Authority”], in the manner specified in paragraph 6, upon discovery of any of the following types of misconduct committed by their representatives —

- (a) Acts Involving Fraud, Dishonesty or Other Offences of a Similar Nature: cases where the CMS licence holder or exempt

financial institution has reason to suspect that its representative has committed any offence involving cheating, dishonesty, fraud, forgery, misappropriation of monies or criminal breach of trust. For such cases, the CMS licence holder or exempt financial institution, as the case may be is expected to lodge a police report and submit to the Authority a copy of the police report, together with information (where available) relating to —

- (i) the name of the police officer investigating the case; and
- (ii) an update on the progress of the police investigation and result of the criminal proceeding (if any).

Where a CMS licence holder or an exempt financial institution has not lodged a police report, it should notify the Authority of the reasons for its decision;

- (b) Acts Relating to Market Conduct Provisions under Part XII of the Act: cases where its representative was involved in prohibited conduct or insider trading as set out in Part XII of the Act;
- (c) Failure to Satisfy the Guidelines on Fit and Proper Criteria [“Guideline No. FSG-G01”]: cases where its representative failed to satisfy the fit and proper criteria set out in Guideline No. FSG-G01; and
- (d) Other Misconduct: any type of misconduct other than those set out in sub-paragraphs (a) to (c), resulting in —
 - (i) a non-compliance with any regulatory requirement relating to the provision of any regulated activity under the Act; or
 - (ii) a serious breach of the CMS licence holder’s or exempt financial institution’s internal policy or code of conduct which would render the representative liable to demotion, suspension or termination of the representative’s

employment or arrangement with the CMS licence holder or exempt financial institution, as the case may be.

5 A CMS licence holder or an exempt financial institution shall also report to the Authority, in the manner specified in paragraph 6, any type of misconduct set out in paragraph 4 that is committed by any of their representatives who has ceased to be a representative of the CMS licence holder or exempt financial institution before the misconduct was discovered, or before disciplinary action has been decided upon or taken.

6 Where a misconduct has been committed for which the CMS licence holder or exempt financial institution is required to report to the Authority in accordance with paragraph 4 or 5, the CMS licence holder or exempt financial institution shall submit to the Authority the relevant information in the form set out at Appendix 1 [“Misconduct Report”] not later than 14 days after the discovery of the misconduct by the CMS licence holder or exempt financial institution, as the case may be. The Misconduct Report shall be lodged by the CMS licence holder or exempt financial institution through MASNET.

7 A CMS licence holder or an exempt financial institution shall ensure that its appointed representatives meet continuing education requirements as part of the fit and proper requirements. However, the CMS licence holder or exempt financial institution is not required to lodge a Misconduct Report against its representatives for failing to meet the continuing education requirements.

Update on Report of Misconduct of Representative

8 In addition to the Misconduct Report to be submitted in accordance with paragraph 6, where a CMS licence holder or an exempt financial institution, as the case may be, has not concluded its investigation or has not taken any disciplinary action against the representative concerned, the CMS licence holder or exempt financial institution shall submit to the Authority, a report in the form set out at Appendix 2 [“Update Report”], to provide an update of the case as and when there is any significant development. The Update Report shall be lodged by the CMS licence holder or exempt financial institution through MASNET.

Annual Declaration

9 If there is no Misconduct Report for which a CMS licence holder or an exempt financial institution is required to report under paragraph 6 for any calendar year, the CMS licence holder or exempt financial institution shall submit to the Authority a declaration in the form set out at Appendix 3 not later than 14 days after 31 December of that calendar year. Appendix 3 shall be lodged by the CMS licence holder or exempt financial institution through MASNET.

Investigations

10 For the purpose of complying with the requirements set out in paragraphs 4 to 6 and 8, a CMS licence holder or an exempt financial institution is expected to conduct internal investigations and keep proper records of the following —

- (a) a summary of the facts of the case;
- (b) interviews with relevant parties such as the representative, his supervisor and the client;
- (c) documentary evidence of the alleged misconduct;
- (d) the investigator's assessment and recommendation; and
- (e) disciplinary action taken against the representative, if any.

11 Where an investigation has been carried out by a CMS licence holder or an exempt financial institution in respect of any misconduct committed by any of its representatives, the CMS licence holder or exempt financial institution shall, at the request of the Authority, furnish the records set out in paragraph 10 to the Authority.

Disciplinary Action

12 A CMS licence holder or an exempt financial institution is responsible for the conduct of its representatives. It should take appropriate disciplinary action against its representatives for any misconduct committed by them in

relation to the provision of any regulated activity and ensure consistency in its application of disciplinary action.

13 The type of disciplinary action that a CMS licence holder or an exempt financial institution may take against its 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) formal warning;
- (e) demotion; and
- (f) termination of the representative's employment or arrangement with the CMS licence holder or exempt financial institution, as the case may be.

14 A CMS licence holder or an exempt financial institution should have an internal process for addressing the appeals made by its representatives for any disciplinary action taken against them.

Use of Information in Report

15 The Authority may take into account any information contained in any report that is submitted by a CMS licence holder or an exempt financial institution under this Notice in exercising its powers or performing its functions under the Act.

16 This Notice shall take effect on 1 January 2011.

<p><u>Note:</u></p>

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.

REPORT ON MISCONDUCT OF REPRESENTATIVE

This misconduct report is being submitted under:

Notice SFA04-N11 under the Securities and Futures Act (Cap. 289)

1 Identification Details

1.1 Name as reflected in NRIC or passport

1.2 Representative number

If the representative does not have a representative number, please complete item 1.3 below.

1.3 (a) Date of Birth (DD/MM/YYYY)

1.3 (b) Gender Male
 Female

1.3 (c) Nationality Singapore Citizen
 Singapore PR. Please specify country:
 Others. Please specify country:

1.3 (d)(i) NRIC No.
(For Singapore citizen and Singapore PR)
or

(ii) Foreign Identification Number
(For employment pass or work-permit holders)
or

(iii) Passport Number
(For non-Singapore citizen and non-Singapore PR)

2 Information on Misconduct

2.1 Please select the type(s) of misconduct that has been committed by the representative (you may select more than one option):

- Acts involving fraud, dishonesty or other offences of a similar nature
- Acts relating to market conduct provisions under Part XII of the Act
- Failure to satisfy the Guidelines on Fit and Proper Criteria [Guideline No. FSG-G01]
- Other misconduct

2.2 Period of Misconduct (Please be as precise as possible.)

2.3 Has the company concluded its investigation?

- Yes (Please attach investigation report(s).)

If the answer is “Yes”, has the company taken disciplinary action against the individual?

- Yes (Please provide details at 2.4.)
 - No (Please update the information when the disciplinary action has been taken.)
 - Not applicable because the company has decided not to take disciplinary action against the individual for this case.
- No (Please submit the Update Report when there is any significant development as well as at conclusion of the investigation.)

2.4 Summary of the Misconduct

Where possible, please include information on:

- a. circumstances under which the misconduct was discovered;
- b. the number of clients affected;
- c. the monetary amounts involved;
- d. whether the individual was cooperative during the investigation process, and
- e. the type of disciplinary action taken against the individual.

Where available, please attach supporting documents like written and signed statements, investigation reports and police reports.

3 Declaration

This report is submitted on behalf of (name of principal) by (name of director/principal officer/ chief executive officer) who certifies that the information contained in the above report is to the best of (name of principal)'s knowledge and belief true and correct.

4 Confirmation

(name of principal) is aware that, pursuant to:

- section 329 (1) of the Securities and Futures Act (Cap. 289) ["the SFA"], "Any person who furnishes the Authority with any information under this Act shall use due care to ensure that the information is not false or misleading in any material particular.";
- Section 329(3) of the SFA, "Any person who (a) signs any document lodged with the Authority; or (b) lodges with the Authority any document by electronic means using any identification or identifying code, password or other authentication method or procedure assigned to him by the Authority, shall use due care to ensure that the document is not false or misleading in any material particular."; and
- section 329(4) of the SFA, "Any person who contravenes subsection (1) or (3) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 2 years or to both."

Signature: _____

Date: _____

UPDATE ON REPORT OF MISCONDUCT OF REPRESENTATIVE

This misconduct report is being submitted under:

Notice SFA04-N11 under the Securities and Futures Act (Cap. 289)

1 Identification Details

1.1 Name as reflected in NRIC or passport

1.2 Representative number

If the representative does not have a representative number, please complete item 1.3 below.

1.3 (a) Date of Birth (DD/MM/YYYY)

1.3 (b) Gender Male
 Female

1.3 (c) Nationality Singapore Citizen
 Singapore PR. Please specify country:
 Others. Please specify country:

1.3 (d)(i) NRIC No.
(For Singapore citizen and Singapore PR)

or

(ii) Foreign Identification Number
(For employment pass or work-permit holders)

or

(iii) Passport Number
(For non-Singapore citizen and non-Singapore PR)

2 Information on Misconduct

2.1 Please select the type(s) of misconduct that has been committed by the representative (you may select more than one option):

- Acts involving fraud, dishonesty or other offences of a similar nature
- Acts relating to market conduct provisions under Part XII of the Act
- Failure to satisfy the Guidelines on Fit and Proper Criteria [Guideline No. FSG-G01]
- Other misconduct

2.3 Period of Misconduct (Please be as precise as possible.)

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2.3 Has the company concluded its investigation?

- Yes (Please attach investigation report(s).)

If the answer is “Yes”, has the company taken disciplinary action against the individual?

- Yes (Please provide details at 2.4.)
 - No (Please update the information when the disciplinary action has been taken.)
 - Not applicable because the company has decided not to take disciplinary action against the individual for this case.
- No (Please submit the Update Report when there is a significant development as well as at conclusion of the investigation.)

2.4 Summary of the Misconduct

Where possible, please include information on:

- a. circumstances under which the misconduct was discovered;
- b. the number of clients affected;
- c. the monetary amounts involved;
- d. whether the individual was cooperative during the investigation process, and
- e. the type of disciplinary action taken against the individual.

Where available, please attach supporting documents like written and signed statements, investigation reports and police reports.

3 Declaration

This report is submitted on behalf of (name of principal) by (name of director/principal officer/ chief executive officer) who certifies that the information contained in the above report is to the best of (name of principal)'s knowledge and belief true and correct.

4 Confirmation

(name of principal) is aware that, pursuant to:

- section 329 (1) of the Securities and Futures Act (Cap. 289) ["the SFA"], "Any person who furnishes the Authority with any information under this Act shall use due care to ensure that the information is not false or misleading in any material particular.";
- Section 329(3) of the SFA, "Any person who (a) signs any document lodged with the Authority; or (b) lodges with the Authority any document by electronic means using any identification or identifying code, password or other authentication method or procedure assigned to him by the Authority, shall use due care to ensure that the document is not false or misleading in any material particular."; and
- section 329(4) of the SFA, "Any person who contravenes subsection (1) or (3) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 2 years or to both."

Signature: _____

Date: _____

Appendix 3

DECLARATION OF NIL RETURN OF MISCONDUCT OF REPRESENTATIVES

This misconduct report is being submitted under:

Notice SFA04-N11 under the Securities and Futures Act (Cap. 289)

1 Declaration

I hereby declare that (name of principal) has no misconduct for which it is required to report under paragraph 6 of SFA04-N11 Notice on Reporting Of Misconduct of Representatives by Holders of Capital Markets Services Licence and Exempt Financial Institutions for the calendar year ended 31 December .

2 Confirmation

(name of principal) is aware that, pursuant to:

- section 329 (1) of the Securities and Futures Act (Cap. 289) ["the SFA"], "Any person who furnishes the Authority with any information under this Act shall use due care to ensure that the information is not false or misleading in any material particular.";
- Section 329(3) of the SFA, "Any person who (a) signs any document lodged with the Authority; or (b) lodges with the Authority any document by electronic means using any identification or identifying code, password or other authentication method or procedure assigned to him by the Authority, shall use due care to ensure that the document is not false or misleading in any material particular."; and
- section 329(4) of the SFA, "Any person who contravenes subsection (1) or (3) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 2 years or to both."

Details of Reporting Officer

Reporting Officer Name :

Designation :

Signature :

Date :