

**RESPONSE TO
FEEDBACK RECEIVED**

10 July 2019

**Guidelines on Provision
of Financial Advisory
Service and Design of
Advisory and Sales
Forms**

MAS

Monetary Authority of Singapore

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1 Preface

1.1 On 4 June 2018, MAS issued a consultation paper to seek comments on two proposed sets of guidelines, regarding the provision of financial advisory service and the design of advisory and sales forms. The consultation ended on 5 July 2018.

1.2 MAS received responses from 22 parties in relation to the two sets of guidelines. MAS would like to thank all respondents for their feedback. The list of respondents is set out in Annex A and their detailed submissions are in Annex B.

1.3 Respondents were generally supportive of the proposed Guidelines on Provision of Financial Advisory Service and the additional clarification provided by the two-stage test. On the proposed Guidelines on Design of Advisory and Sales Forms, all respondents were supportive of the three principles. MAS has carefully considered all the feedback received. Comments that are of wider interest, together with MAS' responses are set out in Sections 2 and 3 below.

2 Guidelines on Provision of Financial Advisory Service

Application of the two-stage test

2.1 We received a number of queries on how the two-stage test provided in the Guidelines on Provision of Financial Advisory Service (referred to as the "Guidelines" for the purposes of Section 2) could be applied to specific scenarios. Some respondents sought clarification on whether a communication that met some but not all of the factors set out under Stage 1 could still be considered financial advice. One respondent asked if specific weights would be applied to the various factors. Another respondent inquired if it would be possible for a person to be deemed to be providing financial advice if only Stage 1 was satisfied but Stage 2 was not.

2.2 Another area of interest highlighted in the feedback received was the scope of communications the Guidelines would apply to. Questions were raised on whether online communications could be considered financial advice and if so, whether a non-resident of Singapore could be deemed to be providing financial advisory service. One respondent asked if the Guidelines would only apply to non-licensed representatives or firms, while another asked if marketing materials or brochures could be considered financial advice.

MAS' Response

2.3 The two-stage test set out in the Guidelines provide details on the factors that MAS considers in determining whether an activity constitutes providing financial advisory service. This involves determining firstly under Stage 1, whether the activity amounts to providing financial advice, and secondly under Stage 2, whether the person in question is carrying on business in such activity. MAS will consider a person to be providing financial advisory service only if both Stage 1 and Stage 2 are satisfied. This is illustrated in Section 5 of the Guidelines.

2.4 It is not necessary for a communication to meet all of the factors set out under Stage 1 in order to be considered financial advice. The factors set out under each of the stages are to be assessed in their entirety. Each factor, on its own, will be assessed with consideration to the other factors in that stage. There will be no weights assigned to the factors. MAS' assessment would consider the particular context and circumstances of the activity in question. The examples included in the Guidelines illustrate how the factors can be applied to various situations, which are not intended to be exhaustive.

2.5 On the scope, the Guidelines apply to any activity that could potentially constitute provision of financial advisory service, which includes marketing materials and online communications. As set out in the FAQs on the FAA issued by MAS¹, any person outside Singapore who engages in an activity through the Internet which is intended to or likely to induce the public in Singapore to use any financial advisory service provided by him will be deemed to be acting as a financial adviser in Singapore. Such a person would contravene section 6(1) of the FAA unless he holds a financial adviser's licence. The Guidelines are meant to provide greater clarity on what constitutes provision of financial advisory service to any party, whether licensed or not.

Stage 1 – Does the activity amount to providing financial advice?

2.6 Several respondents asked for clarification on how the provision of factual information may be considered financial advice if the information is presented in a

¹ Please refer to question 11 of the FAQs on the FAA, which can be accessed at the following link: http://www.mas.gov.sg/~media/MAS/Regulations%20and%20Financial%20Stability/Regulations%20Guidance%20and%20Licensing/Financial%20Advisers/FAQ/FAA_FAQs%20on%20Financial%20Advisers%20Act%20Financial%20Advisers%20Regulations%20Notices%20and%20Guidelines_8%20Oct%202018.pdf

selective or biased manner. Some questions were also raised on the effect of including a disclaimer in assessing whether an activity amounts to providing financial advice.

MAS' Response

2.7 The provision of factual information may be considered financial advice if selected information is presented with the intention of influencing a person's decision whether to buy, sell or hold a particular investment product or class of investment products. For instance, if only positive historical returns are shown without any mention of the risks of the variability of such returns. Paragraph 3.3 of the Guidelines has been amended to provide an example of how factual information could be presented in such a manner.

2.8 The use of a disclaimer in itself does not determine whether an activity amounts to provision of financial advice. As shown in Example 10 of the Guidelines, the website of person Y which provides specific recommendations on allocating funds to clearly identifiable investment products and tailors such recommendations to the personal details of a user, may still be considered likely to be providing financial advice, even if the website carries a disclaimer. Nevertheless, persons who are not providing financial advisory service are encouraged to provide a disclaimer clarifying this.

Stage 2 – Is the person carrying on a business of providing financial advice?

2.9 One of the factors taken into consideration under Stage 2 is whether the advice is given systematically and with continuity. Two respondents asked whether this corresponded to any particular frequency of advice provision.

2.10 On the issue of remuneration, some respondents asked if indirect forms of remuneration or non-monetary benefits would also be taken into consideration. A few parties sought clarity on whether one could be considered to be carrying on a business of providing financial advice in the absence of any form of remuneration or potential remuneration for the advice given.

MAS' Response

2.11 In considering whether advice is provided systematically and with continuity, advice provided on a one-off basis is unlikely to be considered carrying on a business of

providing financial advice. This is also set out in the FAQs on the FAA². The frequency of provision will be taken into consideration alongside the other factors outlined in the Guidelines in determining whether financial advisory service is being provided.

2.12 In determining whether a person is remunerated for advice, indirect forms of remuneration or non-monetary benefits will also be taken into consideration. Paragraph 3.9(b) of the Guidelines has been amended to clarify that benefits received will be taken into account.

2.13 The absence of any form of remuneration or benefits is indicative but does not conclusively mean that a person is not carrying on a business of providing financial advice. Such lack of remuneration or benefits would make the person less likely to be considered to be carrying on a business. However, it does not conclusively mean that the person providing financial advice is not carrying on a business.

Distribution or reproduction of research reports

2.14 Queries on MAS' position on the distribution or reproduction of research reports centred on the scope of a passive distribution conduit. Some respondents asked whether this position applied to salespersons or traders that compile and disseminate research reports as well. A few respondents asked whether reports originating from foreign financial institutions which are licensed, registered, approved, authorised or otherwise supervised by a regulatory authority in the relevant foreign jurisdiction for the issuance of research reports could be distributed by a passive distribution conduit.

MAS' Response

2.15 The intention of Section 4 of the Guidelines is to set out specific activities which MAS does not consider as provision of financial advice. This Section is not targeted at the issuers and distributors of research reports who are licensed to provide financial advisory service under the FAA. The relevant regulations continue to apply to such persons.

² Please refer to question 9 of the FAQs on the FAA, which can be accessed at the following link: http://www.mas.gov.sg/~media/MAS/Regulations%20and%20Financial%20Stability/Regulations%20Guidance%20and%20Licensing/Financial%20Advisers/FAQ/FAA_FAQs%20on%20Financial%20Advisers%20Act%20Financial%20Advisers%20Regulations%20Notices%20and%20Guidelines_8%20Oct%202018.pdf

2.16 Passive distribution conduits that do not provide financial advisory services are not required to hold a financial adviser's licence in Singapore. A salesperson or trader who disseminates research reports, and satisfies the conditions³ set out under paragraph 4.2 of the Guidelines will be considered a passive distribution conduit. Foreign research houses that issue or promulgate research reports to investors in Singapore, may be exempted from the requirement to hold a financial adviser's licence under a tie-up arrangement with a licensed or exempt financial adviser in Singapore⁴, or pursuant to an MAS-approved arrangement under the ASEAN Capital Markets Forum professional mobility initiative⁵.

Portfolio allocation advice

2.17 The proposed Guidelines state that portfolio allocation advice, which does not involve recommendations on a specific investment product or class of investment products, is not considered financial advice. Several respondents sought further clarity on what would constitute a specific "investment product" and a "class of investment products", or requested examples of each of these. One asked whether "shares" and "bonds" would be considered different classes of investment products. Another asked whether "unit trusts", "endowment plans", "insurance plans that meet retirement needs" and "bonds" each constitute a class of investment products.

MAS' Response

2.18 Advice on the allocation of funds among asset types is considered portfolio allocation advice. "Shares" and "bonds" are each considered an asset type. Other examples of asset types include unit trusts, options, futures contracts, insurance policies, deposits and tangible assets (such as property). A class of investment products refers to a subset of an asset type. For example, bond funds, structured deposits, endowment plans

³ These conditions are:

- (a) only reproduce or distribute reports that originate from licensed or exempt financial institutions regulated by MAS;
- (b) attribute the reports accurately;
- (c) not exercise editorial control over, or modify the contents of the reports; and
- (d) not endorse or otherwise comment on the reports.

⁴ Regulation 32C of the Financial Advisers Regulations

⁵ Regulation 32CB of the Financial Advisers Regulations

and annuity plans are subsets of an overarching asset type, and would be each considered a class of investment products.

3 Guidelines on Design of Advisory and Sales Forms

Scope of the Guidelines

3.1 We received a number of comments on the proposed scope and applicability of the Guidelines on Design of Advisory and Sales Forms (referred to as the “Guidelines” for the purposes of Section 3). One respondent commented on the need to consider other languages beyond English in the application of the Guidelines. Several other respondents sought clarification on whether the Guidelines were applicable to client segments such as corporate clients who receive advice on group employee benefits and non-retail investors such as accredited investors, institutional investors, and expert investors.

MAS’ Response

3.2 The principles set out in the Guidelines are applicable to forms in other languages besides English (to the extent these are made available to non-English speaking clients). While the Guidelines are intended for financial advisers conducting advisory and sales activities with retail clients, financial advisers are encouraged to adopt the principles, practices, and examples in the Guidelines when dealing with non-retail clients.

Glossary of Technical Terms and Simplified Alternatives

3.3 Under Principle 1 on clear and concise language, MAS proposed that financial advisers avoid using jargon when simpler substitutes are available. If the use of jargon is necessary, the meaning of the terms should be explained clearly in plain English or explained in a glossary of technical and legal terms. MAS also provided several examples of jargons and their simplified alternatives.

3.4 Three respondents suggested that MAS provide a standardized glossary of technical and legal terms for use by the industry. Another respondent proposed that separate guidebooks be given to consumers, instead of glossaries being provided within the advisory and sales forms as this will lengthen the advisory and sales form.

3.5 We also received queries on whether financial advisers were required to amend their current advisory and sales forms to take on board the simplified alternatives of

technical terms set out in the Guidelines, and whether the simplified alternatives had to be communicated to clients verbally.

MAS' Response

3.6 Given the wide variety of investment products available in the market, MAS is of the view that a standard glossary of technical and legal terms across the industry is not feasible as such terms differ across investment products and financial advisers offer varying types of investment products to their clients. The simplified alternatives set out in the Guidelines are examples that financial advisers can consider.

3.7 Financial advisers should review their current advisory and sales forms and work towards simplifying technical terms within the forms, according to the product suite they offer, the profile of their clientele and the principles set out in the guidelines.

Use of Behavioural Sciences to Enhance the Design of Advisory and Sales Forms

3.8 Under Principle 2 on reader-friendly layout, MAS stated that a layout that takes into account behavioral science theories and has undergone consumer testing could facilitate customer understanding of the advisory and sales process

3.9 A few respondents sought guidance on the behavioral science theories cited in the consultation paper and MAS' expectations on the application of such theories.

MAS' Response

3.10 There are no prescribed ways to apply behavioural science theories in the design of the advisory and sales forms. Both the International Organization of Securities Commissions (IOSCO) and the Organisation for Economic Co-operation and Development (OECD)'s International Network on Financial Education have published recommendations to educate consumers to make more informed financial decisions through the use of behavioural insights.⁶ These recommendations are helpful guides in identifying barriers

⁶ Copies of publications are available from the IOSCO website (www.iosco.org) and the OECD website (www.oecd.org). Such publications include but are not limited to:

hindering effective dialogue between financial advisers, appointed representatives, and their clients, and in developing ways to overcome them.

3.11 Within MAS, we are in the process of developing conceptual models and carrying out exploratory studies on consumer behaviour as part of policy making and supervision of financial institutions. These Guidelines are based on the conceptual model that the decision-making process of individuals can be adversely affected when faced with complex or too much information. This is one of several means to improve client engagement in the advisory and sales process. Financial advisers are encouraged to build on the principles, practices, and examples set out in the Guidelines, and adopt a customer-centric approach when designing their advisory and sales forms.

Other Feedback Relating to the Proposed Guidelines

3.12 Several respondents suggested that MAS provide a template advisory and sales form for consistent industry-wide implementation of the three proposed principles. One respondent proposed that MAS work with the industry to develop an industry-wide version, similar to the insurance sector. However, MAS also received feedback from other respondents who were not supportive of a standardised, industry-wide advisory and sales form. They preferred having their firm-specific advisory and sales forms as these were customised to their own advisory and sales process and clientele.

3.13 In relation to the principles to present information in a reader-friendly layout and adopting an efficient design in the advisory and sales form, we received feedback from one respondent about the potential risks of visuals (such as graphs and charts) distorting information. The respondent also highlighted the potential value of control questions in verifying the validity of a client's response to an earlier question, although such additional questions may increase the length of the advisory and sales form.

MAS' Response

3.14 Following careful consideration of the views for and against a template advisory and sales form, MAS has decided, on balance, not to develop a template advisory and

The Application of Behavioural Insights to Retail Investor Protection
(<https://www.iosco.org/library/pubdocs/pdf/IOSCOPD626.pdf>)

The Application of Behavioural Insights to Financial Literacy and Investor Education Programmes and Initiatives (<https://www.iosco.org/library/pubdocs/pdf/IOSCOPD603.pdf>)

sales form for the entire industry as a standard advisory and sales form would not be able to take into account the varying internal processes of financial advisers.

3.15 MAS also acknowledges the potential risks of visuals and potential value of control questions. In adopting various practices to present information in a reader-friendly manner and to incorporate an efficient design, financial advisers should conduct consumer testing to test their clients' understanding of the advisory and sales forms and the questions contained within.

MONETARY AUTHORITY OF SINGAPORE

10 July 2019

Annex A

**LIST OF RESPONDENTS TO THE CONSULTATION PAPER ON
GUIDELINES ON PROVISION OF FINANCIAL ADVISORY SERVICE AND
DESIGN OF ADVISORY AND SALES FORMS**

1. Allianz Global Investors Singapore
2. Aon Singapore Pte Ltd
3. Baker & McKenzie.Wong & Leow
4. Capital Governance (S) Pte Ltd
5. Chan & Goh LLP
6. Citibank N.A.
7. Fidelity International
8. Great Eastern Life Assurance Company Limited
9. Insurance and Financial Practitioners Association of Singapore
10. Life Insurance Association Singapore (on behalf of AXA, Prudential and Tokio Marine Life)
11. Lymon Pte. Ltd.
12. Phillip Securities Pte Ltd
13. St. James's Place (Singapore) Private Limited
14. UOB Group
15. Respondent A
16. Respondent B
17. Respondent C
18. Respondent D

4 respondents requested confidentiality of their identity and submission.

Please refer to Annex B for the submissions.

