

CONSULTATION PAPER

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Consultation Paper on Draft Regulations for Complaints Handling and Resolution

MAS

Monetary Authority of Singapore

PREFACE

On 26 March 2012, MAS launched the Financial Advisory Industry Review (“**FAIR**”) whose objectives included raising the standards of practice in the financial advisory (“**FA**”) industry¹. One of the recommendations made by the FAIR Panel in its report of 16 January 2013 was for MAS to consider strengthening regulatory requirements on FA firms’ complaints handling and resolution (“**CHR**”) processes to ensure consistent standards across the industry.

2 MAS agreed with the recommendation. In the 5 March 2013 consultation on the recommendations of FAIR, MAS set out policy proposals to strengthen regulatory requirements on FA firms’ CHR processes. Subsequently, MAS issued a response to the consultation on the FAIR recommendations on 30 September 2013, which included addressing the feedback received on the proposed CHR requirements.

3 MAS is now consulting on draft Regulations pursuant to the Financial Advisers Act (Cap. 110) (“**FAA**”) to effect the policy proposals aimed at strengthening the CHR processes of FA firms.

4 MAS invites interested parties to provide their comments and feedback on the draft Regulations to:

Capital Markets Policy Division
Markets Policy and Infrastructure Department
Monetary Authority of Singapore
10 Shenton Way, MAS Building
Singapore 079117
Email: SFA_FAA_LegisConsult@mas.gov.sg
Fax: (65) 6225-1350

MAS requests that all comments and feedback be submitted by 31 October 2013.

5 Please note that all submissions received may be made public unless confidentiality is specifically requested for the whole or part of the submission.

¹ Financial institutions in the FA industry include licensed FA firms and exempt financial advisers (i.e. those exempt under Sections 23(1)(a), (b), (c), (d) or (e) of the Financial Advisers Act, such as banks, life insurance companies, capital markets services licence holders, and insurance broking firms).

A DRAFT COMPLAINTS HANDLING AND RESOLUTION REGULATIONS

1 MAS will issue Regulations under the FAA to facilitate a consistent and efficient CHR process across the FA industry. This set of draft Financial Advisers (Complaints Handling and Resolution) Regulations 2013 [**“FA(CHR) Regs”**] is attached in **Annex 1**, and seeks to effect the policy proposals discussed in FAIR which includes requirements for an FA firm to -

- (a) Establish a process for handling and resolving complaints from retail clients which is independent and prompt;
- (b) Designate a person or committee within the firm to be responsible for the oversight of its compliance with the regulatory requirements on CHR;
- (c) Ensure that information on its CHR process is publicly available;
- (d) Put in place a centralized management system for complaints; and
- (e) Report its complaints data to MAS on a biannual basis.

2 The above requirements will apply to complaints which allege facts that may constitute a contravention of any business conduct requirement or any unfair practice² in relation to a consumer transaction for MAS-regulated financial products or MAS-regulated financial services. The list of applicable business conduct requirements is set out in **Annex 2**.

3 The draft regulations further set out the types of complaints data which MAS proposes for an FA firm to report on a biannual basis via an attached Form in **Annex 3**. This includes statistics on the total number of complaints received, monetary amounts disputed, and number complaints resolved within certain time periods. MAS intends to monitor such complaints statistics as part of our assessment of a firm’s business conduct practices.

B POWERS TO DIRECT FINANCIAL ADVISERS TO CONDUCT A COMPLIANCE REVIEW

4 In addition to ongoing requirements in paragraph 1, MAS considers there to be merit in enhancing its powers to direct any FA firm to conduct a review of its compliance with the relevant regulatory requirements on its sales

² As set out in section 2(1) of the Consumer Protection (Fair Trading) Act (Cap. 52A).

and advisory process, where there may be widespread or regular failure by certain FA firm(s) to comply with any business conduct requirement.

5 In the resolution of complaints of the Lehman related credit-linked notes following Lehman Brothers entities' collapse in 2008 for example, such powers would enable MAS to take swift action to identify possible weaknesses in FA firms' internal processes, and to direct FA firms to take suitable corrective measures as appropriate.

6 The proposed power to direct a compliance review is set out in the draft FA(CHR) Regs. MAS intends to use such powers judiciously, in cases where there are signs of a system-wide failure on the part of an FA firm or a group of FA firms to comply with certain business conduct requirements. In such situations, MAS may further direct the relevant FA firm(s) to submit a report on the outcome of the compliance review, and to provide MAS with periodic updates on its progress in resolving clients' complaints.

INVITATION FOR COMMENTS

7 MAS seeks comments on the draft FA(CHR) Regs to implement the policy proposals on strengthening FA firms' CHR processes as discussed in FAIR (**Annex 1**), the list of applicable business conduct requirements (**Annex 2**), and the types of complaints data which FA firms will be required to report on a biannual basis (**Annex 3**).

**DRAFT FINANCIAL ADVISERS (COMPLAINTS HANDLING
AND RESOLUTION) REGULATIONS 2013**

DISCLAIMER: This version of the Regulations is in draft form and subject to change. It is also subject to review by the Attorney-General's Chambers.

**FINANCIAL ADVISERS ACT
(CHAPTER 110)**

**FINANCIAL ADVISERS (COMPLAINTS HANDLING AND RESOLUTION)
REGULATIONS 2013**

ARRANGEMENT OF REGULATIONS

Regulation

1. Citation and commencement
2. Definitions
3. Application
4. Obligation to establish complaints handling and resolution process
5. Oversight of compliance with these regulations
6. Information on complaints handling and resolution process to be publicly available
7. Centralised management system for complaints
8. Biannual reports
9. Power to direct financial adviser or class of financial advisers to conduct review of compliance with business conduct requirements
10. Penalties for contravention

In exercise of the powers conferred by section 104(2)(f) of the Financial Advisers Act, the Monetary Authority of Singapore hereby makes the following Regulations:

Citation and commencement

1. These Regulations may be cited as the Financial Advisers (Complaints Handling and Resolution) Regulations 2013 and shall come into operation on _____.

Definitions

2. In these Regulations, unless the context otherwise requires—

“accredited investor” has the same meaning as in section 4A of the Securities and Futures Act (Cap. 289);

“board” means the board of directors of a financial adviser;

“business conduct requirement” means any requirement in Part III of the Act, or any requirement in regulations, notices, or directions issued by the Authority and set out at the Authority’s Internet website at <http://www.mas.gov.sg>;¹

“complaint” means any complaint alleging facts which may constitute a contravention of any business conduct requirement or any unfair practice in relation to a consumer transaction for MAS-regulated financial products or MAS-regulated financial services;

“consumer transaction” has the same meaning as in section 2(1) of the Consumer Protection (Fair Trading) Act (Cap. 52A);

“expert investor” has the same meaning as in section 4A of the Securities and Futures Act (Cap. 289);

“final response” means a written response from the financial adviser which states that it is the financial adviser’s final response to the complaint and which –

- (a) accepts the client’s complaint and offers redress or remedial action;
- (b) offers redress or remedial action without accepting the client’s complaint ; or
- (c) rejects the client’s complaint, and

informs the client of his right to refer the complaint to a dispute resolution scheme approved under section 28A(1) of the Monetary Authority of Singapore Act (Cap. 186) should he remain dissatisfied with the financial adviser’s response;

“financial adviser” means:

- (a) a licensed financial adviser; or
- (b) an exempt financial adviser.

“institutional investor” has the same meaning as in section 4A of the Securities and Futures Act (Cap. 289) ;

“MAS-regulated financial products” has the same meaning as in regulation 2(1) of the Consumer Protection (Fair Trading) (Regulated Financial Products and Services) Regulations 2009;

“MAS-regulated financial services” has the same meaning as in regulation 2(1) of the Consumer Protection (Fair Trading) (Regulated Financial Products and Services) Regulations 2009;

¹ For the purposes of this consultation, the list of applicable regulations, notices or directions are set out in Annex 2.

“senior management” in relation to a financial adviser, means any person for the time being holding the office of chief executive officer or executive director of the financial adviser, including any person carrying out the duties of any such office if the office is vacant or if the officer occupying such office is absent or unable to act.

“unfair practice” has the same meaning as in section 2(1) of the Consumer Protection (Fair Trading) Act (Cap. 52A).

Application

3. These Regulations shall apply to a financial adviser providing any financial advisory service to a client who is not an accredited investor, an expert investor or an institutional investor.

Obligation to establish complaints handling and resolution process

4.—(1) A financial adviser shall establish a process for handling and resolving complaints independently and promptly.

(2) A financial adviser shall comply with the process for handling and resolving complaints referred to in paragraph (1).

(3) For the purposes of paragraph (1), such a process for handling and resolving complaints shall include the following requirements –

- (a) the unit within the financial adviser responsible for handling and resolving any complaint shall be independent of the unit against which the complaint is made;
- (b) the financial adviser shall establish a process for assessing the merits of each complaint, including a criteria for determining when a complaint should be referred to its senior management for assessment and decision-making in relation to the financial adviser’s response to the complaint;
- (c) the financial adviser shall set a reasonable timeframe for handling and resolving complaints, and put in place procedures for –
 - (i) sending a written acknowledgement to the client within 2 business days from the date of receipt of the client’s complaint;
 - (ii) interviewing the client and reviewing the client’s complaint;

- (iii) completing the review of the client's complaint and sending a final response to the client;
- (iv) sending an interim response to inform the client that the complaint is being reviewed, if a final response has not been sent within 15 business days after the date of receipt of the client's complaint;
- (v) sending to the client within 30 business days after the date of receipt of the client's complaint –
 - (A) a final response; or
 - (B) a written response informing the client of the reasons for the delay in the final response, an indicative reasonable timeframe, for a final response from the financial adviser, and the client's right to refer the complaint to a dispute resolution scheme approved under section 28A(1) of the Monetary Authority of Singapore Act (Cap. 186); and
- (vi) paying out any offer of redress or carrying out any remedial action which is accepted by the client.

(4) Where a financial adviser rejects a complaint in its final response, the financial adviser shall provide the client written reasons for the rejection.

(5) Sub-paragraphs (3)(c)(i), (iv), and (v) shall not apply to any complaint of which the client who made the complaint has accepted the financial adviser's response by the close of the next business day following the receipt of the complaint by the financial adviser.

Oversight of compliance with these regulations

5. The financial adviser shall appoint –

- (a) a member of its senior management; or
- (b) a committee comprising persons who are members of the senior management,

to be responsible for oversight of the financial adviser's compliance with these regulations.

Information on complaints handling and resolution process to be publicly available

6.—(1) A financial adviser shall ensure that information on its process for complaints handling and resolution is available to and easily accessible by the public at its place of business and on its website, if any.

(2) A financial adviser shall provide to every client who has lodged a complaint with the financial adviser, whether in written or electronic form, information on its process for complaints handling and resolution together with its acknowledgement of receipt of the client's complaint.

Centralised management system for complaints

7.—(1) A financial adviser shall have in place a system to track and manage complaints received from its clients.

(2) For the purposes of paragraph (1), a financial adviser shall keep documentation of every complaint received, including records of –

- (a) the details of the complaint;
- (b) all correspondence in relation to the complaint;
- (c) all materials and information reviewed by the financial adviser in relation to the complaint; and
- (d) the outcome of the complaint.

(3) A financial adviser shall retain the documentation referred to in paragraph (2) for a period of not less than 5 years after the date on which the final response is sent to the client who made the complaint.

Biannual reports

8.— (1) A financial adviser shall prepare a report biannually setting out –

- (a) a list of complaints which remain outstanding more than 30 business days after the date on which the complaint was received; and
- (b) the actions undertaken by the financial adviser to resolve these complaints.

(2) The report referred to in paragraph (1) shall be signed by every member of the board and senior management of the financial adviser and lodged with the Authority no later than 10 weeks after the end of the second and fourth quarter of each calendar year respectively.

(3) The report referred to in paragraph (1) shall be lodged with the Authority together with Form [1]² as set out at the Authority's Internet website at <http://www.mas.gov.sg> and any reference to Form [1] shall be construed as a reference to the current version of the form which is displayed at the website.

(4) Form [1] shall be completed in the English language and in accordance with such directions as may be specified in the form or by the Authority.

(5) The Authority may refuse to accept Form [1] if it is not completed or lodged in accordance with this regulation.

(6) Where strict compliance with Form [1] is not possible, the Authority may allow for the necessary modifications to be made to that Form, or for the requirements of that Form to be complied with in such manner as the Authority thinks fit.

Power to direct financial adviser or class of financial advisers to conduct review of compliance with business conduct requirements

9.—(1) The Authority may -

- (a) if it is satisfied that there may have been widespread or regular failure by a financial adviser or a class of financial advisers to comply with any business conduct requirement; or
- (b) if it considers it necessary or expedient in the public interest,

direct in writing a financial adviser or class of financial advisers to conduct a review of its or their compliance with the business conduct requirement in relation to its or their provision of advice on any investment product or investment products and the financial adviser or class of financial advisers shall comply with such direction.

Penalties for contravention

10.—(1) Any financial adviser, who, without reasonable excuse, contravenes any regulation set out herein shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 or imprisonment for a term not exceeding 12 months or

² For the purposes of this consultation, Form [1] is attached in Annex 3.

both for each offence and, in the case of a continuing offence, a further fine not exceeding \$5,000 for every day or part thereof during which the offence continues after conviction.

(2) Any director or member of the senior management of a financial adviser who fails to take all reasonable steps to secure compliance by the financial adviser with any regulation set out herein shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 or imprisonment for a term not exceeding 12 months or both for each offence and, in the case of a continuing offence, a further fine not exceeding \$5,000 for every day or part thereof during which the offence continues after conviction.

LIST OF APPLICABLE REGULATIONS AND NOTICES

1. Regulation 14A and Part IV of the Financial Advisers Regulations
2. Notice on Appointment and Use of Introducers by Financial Advisers [Notice No. FAA-N02]
3. Notice on Information to Clients and Product Information Disclosure [Notice No. FAA-N03]
4. Notice on Prohibited Representations Made by Persons Exempted under Regulations 27(1)(d) of the Financial Advisers Regulations (Rg 2) [Notice No. FAA-N10]
5. Notice on Dual Currency Investments [Notice No. FAA-N11]
6. Notice on Entry Requirements of a Provisional Representatives [Notice No. FAA-N12]
7. Notice on Minimum Entry and Examination Requirements for Representatives of Licensed Financial Advisers and Exempt Financial Advisers [Notice No. FAA-N13]
8. Notice on Reporting of Misconduct of Representatives by Financial Advisers [Notice No. FAA-N14]
9. Notice on the Cancellation Period of Unlisted Debentures [Notice No. FAA-N15]
10. Notice on Recommendations on Investment Products [Notice No. FAA-N16]
11. Notice on Technology Risk Management [Notice No. FAA-N18]

<p>FINANCIAL ADVISERS ACT (Cap. 110)</p> <p>FINANCIAL ADVISERS (COMPLAINTS HANDLING AND RESOLUTION) REGULATIONS 2013</p> <p>SUBMISSION OF BIENNIAL COMPLAINTS STATISTICS UNDER REGULATION 8</p>
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<p>FORM</p> <p>1</p>

Name of Financial Adviser:

Reporting period: _____ to _____
(dd/mm/yy1) (dd/mm/yy2)

S/No.	Description	Statistics
1	No. of complaints ¹ received during reporting period	
2	Total monetary amount disputed ² in complaints received (S\$)	
3	No. of complaints from [1] where a final response was: (a) sent within 15 business days (b) sent between 15 – 30 business days (c) sent after 30 business days	
4	No. of complaints from [1] where the complaint was: (a) resolved ³ within 15 business days (b) resolved between 15 – 30 business days (c) resolved after 30 business days	
5	No. of complaints from [1] upheld ⁴	
6	Total monetary amount disputed in complaints upheld in [5] (S\$) ⁵	
7	Total compensation amount paid out ⁶ for complaints in [5] (S\$)	
8	No. of retail customers as at (dd/mm/yy2)	

¹ The number of complaints is to be tabulated on a “per transaction basis”. For example, where a customer complains about three different products transacted in a single interaction with a FA, this shall be lodged as three complaints. This number shall exclude complaints that have been resolved by the close of the next business day following its receipt. For avoidance of doubt, this number shall include complaints in relation to an interaction with a FA which did not result in a transaction, or which do not involve monetary disputes.

² This refers to the total monetary value of the original principal amounts involved.

³ A complaint is resolved if the customer has indicated acceptance of the financial adviser’s response to his complaint.

⁴ This refers to complaints in which compensation was offered to customers and accepted by customers.

⁵ This refers to the total monetary value of the original principal amounts for complaints upheld.

⁶ This refers to amount paid, or cost borne by the financial adviser, and includes amounts paid for distress and inconveniences, goodwill payments and gestures, interest on delayed settlements, and waiver of an excess on an insurance policy.



Monetary Authority of Singapore