Monetary Authority of Singapore

FINANCIAL ADVISERS ACT (CAP. 110)

GUIDELINES ON PROVISION OF FINANCIAL ADVISORY SERVICE

10 JULY 2019

TABLE OF CONTENTS

Guideline No: FAA-G17
Issue Date: 10 JULY 2019

1 OBJECTIVE

1.1 These Guidelines are issued by the Monetary Authority of Singapore ("MAS") pursuant to section 64 of the Financial Advisers Act (Cap. 110) ("FAA"). The Second Schedule to the FAA sets out the types of financial advisory services regulated under the FAA. These Guidelines provide greater clarity on what constitutes the provision of financial advisory service under paragraphs 1 and 2 of the Second Schedule, namely:

(a) Advising others, either directly or through publications or writings, whether in electronic, print or other form, concerning any investment product, other than advising on corporate finance within the meaning of the Securities and Futures Act (Cap. 289); and

(b) Advising others by issuing or promulgating analyses or reports, whether in electronic, print or other form, concerning any investment product.

1.2 These Guidelines should be read in conjunction with the provisions of the FAA, the Financial Advisers Regulations ("FAR"), as well as written directions, notices, codes and other guidelines that MAS may issue from time to time.

1.3 All terms used in these Guidelines shall, except where the context otherwise requires, have the same meaning as defined in the FAA.

2 OVERVIEW

2.1 A person is required to hold a financial adviser's licence and comply with the relevant provisions under the FAA if he is carrying on a business of providing any financial advisory service, unless he is exempted[1]. This ensures that consumers only receive financial advice from individuals who are qualified to provide it, and enjoy the safeguards accorded under the FAA. It also upholds the credibility and reputation of the financial advisory profession.

[1] Section 23 of the FAA sets out the persons exempt from the requirement to hold a financial adviser's licence.

2.2 MAS applies a two-stage test in assessing if a person is carrying on a business of providing a financial advisory service. Section 3 provides details on the two-stage test, including examples to illustrate its application. Section 4 explains MAS' position on the distribution or reproduction of research reports and portfolio allocation advice. Section 5 provides a flowchart summarising the application of these Guidelines.

2.3 These Guidelines are not intended to be comprehensive or exhaustive. MAS will consider the specific circumstances surrounding any particular activity in assessing if the activity constitutes providing financial advisory service under the FAA.

3 ASSESSING IF AN ACTIVITY CONSTITUTES PROVIDING FINANCIAL ADVISORY SERVICE

3.1 These Guidelines set out a two-stage test to assess if a person is carrying on a business of providing financial advisory service, and hence subject to regulation under the FAA. This involves determining firstly, whether the activity amounts to providing financial advice, and secondly, whether a person is carrying on business in such activity. It is not the intent of MAS to regulate all communication in relation to investment products.

<u>Stage 1 – Does the activity amount to providing financial advice?</u>

3.2 The first stage involves determining if the activity under assessment amounts to providing financial advice. One consideration is whether it involves provision of factual information, or if it involves an expression of opinion. Generally, MAS considers a particular communication, whether oral, online or in print, to be financial advice if it expresses an opinion on the merits of buying, selling or holding a particular investment product or a class of investment products.

3.3 The provision of *factual information*, i.e. information which is objective, verifiable, and whose accuracy cannot be reasonably questioned, is generally not considered financial advice. This includes information that is general in nature and commonly known to most investors. However, the provision of factual information may be considered financial advice if the information is presented with the intention of inducing a person to buy, sell or hold a particular investment product or a class of investment products. An example of factual information presented in such a manner would be a comparison of the historical returns of two investment products without any mention of their relative risk profiles. This could induce a person to buy the product with the higher historical return.

3.4 Notwithstanding the preceding paragraph, persons providing factual information concerning investment products are encouraged to include disclaimers to the effect that the information is meant purely for informational purposes and should not be relied upon as financial advice. This provides clarity to those receiving factual information that the provision of such information is not regulated under the FAA. However, the use of a disclaimer does not, of itself, determine whether the activity amounts to providing financial advice.

3.5 Even if a person expresses an opinion on investment products, in determining whether such communication amounts to financial advice, the context and surrounding circumstances in which it is communicated should be considered. Generally, an opinion that is provided in a situation where the recipient is not reasonably expected to rely on it in making an investment decision, is less likely to be considered financial advice.

3.6 Examples where expectation of reliance is reduced are when:

(a) the opinion is generic and not tailored to take into account the unique circumstances of a particular individual. For example, generic opinion on the benefits and/or risks of an investment product expressed to an audience attending courses relating to financial literacy or investor education without considering the personal needs and circumstances of each particular individual, is not considered financial advice;

(b) the communication does not recommend that the recipient take or not take a course of action in relation to an investment product or a class of investment products; or

(c) the provider of the opinion does not purport to be in the business of providing financial advice, by claiming, for example, to be a “financial analyst”, “professional” or “research house”.

3.7 However, even if these mitigating factors are present, the communication could still amount to provision of financial advice as the entire context of the communication has to be taken into consideration. The following examples illustrate how the factors in paragraph 3.6 may be considered.

EXAMPLES: Stage 1 – Does the activity amount to providing financial advice?
Example 1 – Finance courses
X, a lecturer in a tertiary institution, provides information on the benefits of diversification and the relative risks of different asset types (e.g. bonds versus shares), as part of a finance module. As this is considered factual information, X is not deemed to be providing financial advice. X may use case studies to illustrate the use of tools and methods, such as analyses of financial statements, charting of trends, financial projections etc. X is less likely considered to be providing financial advice if he does not tailor his communication to the specific circumstances of a particular student or recommend that his students buy, sell or hold a particular investment product or a class of investment products.
Example 2 – Commercial financial seminars
X conducts a commercial financial seminar, which seeks to provide participants with information on investment products. Examples of such information include the risks of investment products, historical rate of return of investments, minimum investment sums, how the returns will be generated, and how to read financial charts and financial reports. X is less likely to be considered to be providing an opinion if he limits himself to providing objective information, his opinion is generic, and he does not tailor his advice for a particular participant. If X also suggests or recommends that the participants invest in a particular investment product, X is more likely to be considered to be providing an opinion which amounts to financial advice.
Example 3 – Trading software
X sells a trading software to A, who is keen to invest in companies with low price to earnings (P/E) ratios. The software is able to calculate the P/E ratios of companies based on the latest share prices and the historical or consensus earnings estimates. The software allows A to set a certain figure as the threshold P/E and then shortlists companies with P/E ratios above or below that threshold. The software also helps A keep track of his investment portfolio by calculating his investment returns to date so long as A enters the relevant parameters (e.g. entry prices). X is less likely to be providing financial advice as the thresholds and parameters are determined by the user A. The software provided by X simply performs mathematical

calculations based on inputs by A and does not provide an opinion on whether to buy, sell or hold an investment product or class of investment products.
Example 4 – Aggregator tools facilitating comparison of products
<u>Scenario 1</u> X has on his website an aggregator tool which is accessible by the public. It summarises certain details (such as premiums payable, extent of coverage, or projected rates of return included in the product distributor's product literature) of products offered by different product providers to facilitate comparison. The user is able to filter the list of products by specific parameters, such as ascending order of premiums payable. X's aggregator tool is less likely to be construed as providing financial advice because it is not tailored to the specific circumstances of the user and does not recommend that the user take any action in relation to the different investment products. It is merely collating and filtering information from other sources for users' convenience. <u>Scenario 2</u> Y also provides an aggregator tool on his website, but his aggregator requires users to key in their personal details (such as savings, income and expenses), which the aggregator uses to generate a shortlist of investment products that may suit the user. Y is more likely deemed to be providing financial advice through his aggregator tool. This is because the tool shortlists products based on personal financial details of the user, implicitly providing an opinion on the suitability or unsuitability of certain investment products for that particular user. The user may reasonably believe that the opinion (in the form of the shortlist) provided by the aggregator is tailored to his particular circumstances, and is thus likely to be perceived as financial advice.
Example 5 – Publications (e.g. books, websites, blogs and social media platforms)
<u>Scenario 1</u> W has a website on financial matters. The website provides definitions of financial-related terms such as equities, dividends, and price to earnings ratio. It also explains basic financial concepts such as the relative risk of equities versus bonds and the benefits of diversification in a portfolio. W is unlikely to be considered as providing financial advice because the content of his website consists of factual information that is objective and verifiable.

Scenario 2

X is a blogger who maintains a website on personal finance and investment-related topics. X compares products offered by different companies and provides reasons for investing in one particular product over another. For example, he explains that he only invests in funds with low expense ratios of not more than 0.5% because these funds allow investors to retain a larger portion of their return on investment. When his readers ask if they should discontinue their existing investments and invest in "funds with low expense ratios of not more than 0.5%", he responds that he cannot comment as he is not a licensed financial adviser. X is less likely to be considered to be providing financial advice because the opinion he provides on investing in funds with low expense ratios is generic, and not tailored to take into account the unique personal circumstances of a particular reader. Additionally, he uses a disclaimer to inform his readers that he is not a licensed financial adviser.

Scenario 3

Y operates a website similar to X's, but Y responds to his readers' questions with recommendations that they buy, sell or hold specific investment funds. These readers often provide him with their personal details (such as age, nationality, tax residency, income and expenses) and/or details of their existing investments (such as monthly contributions, term to maturity and projected returns). Y is more likely to be providing financial advice because he responds to readers' questions individually, making it more likely that his readers expect his replies to be tailored financial advice and rely on them in making their investment decisions. This is particularly so if readers provide Y with their personal details and receive investment recommendations based on these details.

Scenario 4

Z publishes a book on financial investments. He advises readers to set aside a fixed portion of their income every month for investment purposes early in their careers, in order to take advantage of compounded returns over the long term. Z is less likely to be providing financial advice as he offers general suggestions that are not tailored to individual readers' circumstances.

Example 6 – Informal conversation
X and his friend are having an informal conversation about a particular investment product. X shares his personal investment strategy and describes his purchase of an investment product from which he profited. His friend is interested in X's strategy and asks for details of the investment product, which X provides. X does not tailor his responses to his friend's specific circumstances, and does not recommend that his friend invest in the product. Furthermore, in the context of this informal conversation, X does not purport to be a professional in the business of providing financial advice. He is thus less likely to be deemed to be providing financial advice.

<u>Stage 2 – Is the person carrying on a business of providing financial advice?</u>

3.8 Where the communication by a person is considered to amount to provision of financial advice under stage 1, MAS further applies a stage 2 test to determine if the person is carrying on a *business* of providing financial advice, and hence required to be licensed under the FAA.

3.9 Factors that MAS takes into consideration include:

(a) whether the advice is given systematically and with continuity. A person is more likely to be considered by MAS to be carrying on a business if the person has an organised or structured method of conducting his activities, and does so with sufficient regularity. In contrast, one-off or random activities are less likely to be considered carrying on a business.

(b) whether the person is remunerated for the advice. The carrying on of a business may be more readily inferred when a person is remunerated or stands to receive remuneration or benefits for the provision of advice, or as a result of a decision made by the client to buy, sell or hold an investment product based on the provision of that advice. However, the absence of remuneration or benefits does not automatically mean that the person providing financial advice is not carrying on a business.

EXAMPLES: Stage 2 – Is the person carrying on a business of providing financial advice?
Example 7 – Commercial financial seminars
X, who conducts a financial seminar as described in Example 2, has an arrangement with distributors of a specific investment product, under which X receives a fixed commission when any of the participants in his seminars invest in that product. If X provides these recommendations systematically and regularly, and stands to be compensated as a result of making these investment recommendations to his audience, X is more likely to be considered to be carrying on a business of providing financial advice.
Example 8 – Aggregator tools facilitating comparison of products
X, Y and Z have aggregators similar to those mentioned under Scenario 2 in Example 4. X charges each user a fee for use of the aggregator. Y does not charge users any fee but receives a commission from the product distributor whenever a user makes a purchase through the aggregator. Z neither charges users of the aggregator any fee nor receives any commission for products sold through the aggregator. The aggregators are available to the public on a continuous basis and the advice is made in a systematic manner. X is remunerated for the provision of financial advice. Y is not directly remunerated for providing financial advice, but reaps a benefit on the basis of his users' decision to buy a specific investment product. Hence, both X and Y are likely to be considered to be carrying on a business of providing financial advice. Z does not derive any benefit from the provision of financial advice or from the investment decisions of his users. Z's lack of remuneration is indicative that the aggregator is not being provided as part of carrying on a business and Z is thus less likely than X or Y to be considered to be carrying on a business of providing financial advice.
Example 9 – Publications (e.g. books, websites, blogs and social media platforms)
X, Y and Z have websites with content similar to that under Scenario 3 in Example 5, in that they amount to providing financial advice. X blogs as a hobby, and posts on wide-ranging topics including food and travel. He posts on finance-related matters only intermittently, and there are prolonged periods when he does not post any finance-related content. He does not derive any income from his website. X is less likely to be considered to be carrying on a business of providing financial advice given

that he does not provide such advice on a systematic and continuous basis and receives no remuneration from it.

Y posts more regularly and exclusively on finance-related matters. He is paid a monthly fee by an advertising provider for allowing the provider to place an advertisement on his website. The fee is determined by the number of clicks on Y's website during the past month, but Y has no control over which specific advertisement will be seen by his readers. Y receives no other form of remuneration from his blog. Although Y posts regularly and receives remuneration from his website, this is not derived as a result of his provision of financial advice or the investment decisions of his readers. Y is therefore less likely to be considered to be carrying on a business of providing financial advice.

Z has an arrangement with an investment product distributor, under which he is remunerated for recommending its products. Z is more likely considered to be carrying on a business of providing financial advice, as not only does he provide financial advice on a continuous and systematic basis, he is also remunerated for doing so.

4 MAS' POSITION ON SPECIFIC ACTIVITIES

Distribution or reproduction of research reports

4.1 Passive distribution conduits such as publishers, information service providers or internet portal operators act as distribution channels. MAS understands that such persons may from time to time reproduce, publish, distribute or otherwise disseminate in full, analyses or reports concerning investment products that are not written by such persons, whether in electronic, print or other form. It is not MAS' intention to consider such persons to be providing financial advice.

4.2 A passive distribution conduit should:

(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.

Portfolio allocation advice

4.3 Portfolio allocation advice refers to advice on the allocation of an investor's funds among asset types[2] (for example, 10% in shares, 40% in bonds and 50% in tangible assets), or advice on allocation of funds among assets in different geographic markets (for example, 40% in assets from the US and 60% in assets from China).

4.4 MAS does not consider portfolio allocation advice, which does not involve recommendations on a specific investment product or class of investment products, to be financial advice. Notwithstanding this, persons providing portfolio allocation advice should:

(a) ensure that the advice does not extend to a clearly identifiable investment product or a class of investment products. A class of investment product refers to the subset of an asset type, for example, shares of pharmaceutical companies or bond funds; and

(b) inform the recipient of advice that the provision of such advice is not regulated under the FAA and that the recipient may wish to approach a financial adviser before relying on the advice provided to make any decision to buy, sell or hold any investment product.

[2] Examples of asset types are shares, debentures, collective investment schemes, options, futures contracts, insurance policies, deposits and tangible assets (such as property).

PORTFOLIO ALLOCATION EXAMPLES
Example 10 – Robo-advisory services
X has a robo-advisory website which provides an interactive infographic on the relative historical returns of shares and bonds. The infographic allows website users to specify a particular time period in the past and generates a comparative analysis of the performance of shares and bonds over that period. Based on the infographic results, X’s website states that investors should consider allocating a certain percentage of their portfolio to shares. X’s website carries a prominent disclaimer stating that users may wish to approach a financial adviser before relying on any advice provided by the website to make any decision to buy, sell or hold any investment product. In this case, X is less likely to be considered to be providing financial advice as his website provides advice on the allocation of an investor’s funds among broad asset types (shares versus bonds), but does not specify a clearly identifiable investment product or class of investment products. Y has a separate robo-advisory website which requires users to provide information on their investment objective, financial situation and particular needs, which the website takes into account in making its investment recommendations. Based on the user’s details and its financial market analysis, Y’s website generates investment recommendations for the user. For instance, Y’s website may suggest that the user allocates 90% of his principal sum to exchange-traded fund A and 10% of his principal sum to shares of Company B. Similar to X’s website, Y’s website carries a disclaimer asking users to approach a financial adviser before relying on the advice provided to make any decision to buy, sell or hold any investment product. Despite the presence of the disclaimer, Y is more likely to be considered to be providing financial advice as his website provides advice on the allocation of an investor’s funds to clearly identifiable investment products (exchange-traded fund A and shares of Company B). This extends beyond portfolio allocation advice. Furthermore, Y’s website tailors its investment recommendations to the personal details of the user. These recommendations are thus more likely to amount to financial advice.

4.5 In applying the two-stage test described in these Guidelines, the full context and circumstances of the activity should be reviewed, in assessing whether it amounts to a provision of financial advisory service. This allows an appropriate balance between facilitating a healthy and conducive environment for discussions on financial investments that will help enhance financial literacy and awareness, and ensuring sufficient safeguards for consumers, with only professionals qualified to provide financial advice doing so.

5 ILLUSTRATION OF THE APPLICATION OF THE GUIDELINES

ANY FORM OF COMMUNICATION (ORAL, ELECTRONIC OR PRINT)

Two-stage test

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

- Is factual information presented with intention to induce the recipient to buy, sell or hold an investment product or class of investment products?

OR

- Is there a statement of opinion on an investment product or class of investment products?

No

The person is not likely to be providing financial advisory service.

The person is encouraged to provide a disclaimer clarifying this.

Yes

- Can the recipient reasonably expect the communication to be financial advice that is to be relied upon in making an investment decision?

  Key considerations are:
  - Is it tailored to the particular circumstances of the recipient?
  - Does it recommend that the recipient take a specific action with respect to an investment product or class of investment products?
  - Does the communication provider purport to be in the business of providing financial advice?

No

Yes

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

- Is the communication provider carrying on a business of providing financial advice?

  Key considerations are:
  - Is the financial advice being provided systematically and with continuity?
  - Is the person remunerated for providing the financial advice?

No

Yes

The person is likely to be providing financial advisory service.

The person should ensure that he complies with the licensing and business conduct requirements under the FAA and any of its subsidiary instruments.