



Monetary Authority of Singapore

**FINANCIAL ADVISERS ACT
(CAP. 110)**

**GUIDELINES ON THE
USE OF THE TERM “INDEPENDENT” BY
FINANCIAL ADVISERS**

Guideline No : FAA-G05
Issue Date : 1 October 2002 (Last revised on 1 July 2005)

GUIDELINES ON THE USE OF THE TERM “INDEPENDENT” BY FINANCIAL ADVISERS

Persons to whom the Guidelines on the Use of the Term “Independent” by Financial Advisers [“these Guidelines”] Apply

1 These Guidelines are issued pursuant to section 64 of the Financial Advisers Act (Cap. 110) [“the Act”]. They set out the circumstances under which a financial adviser may use the term “independent”.

[Amended on 1 July 2005]

2 These Guidelines are meant to provide general guidance, and are not intended to replace or override any legislative provisions under the Act. They should be read in conjunction with the provisions of the Act, subsidiary legislation made under the Act, as well as written directions, notices, codes and other guidelines that the Monetary Authority of Singapore [“the Authority”] may issue from time to time.

[Amended on 1 July 2005]

Purpose of these Guidelines

3 The purpose of these Guidelines is to give guidance to financial advisers on the circumstances they may use the term “independent” in the name, description or title under which they carry on business in Singapore, promote or advertise their services, or use the term in respect of their provision of any financial advisory service. These Guidelines set out that:

- (a) only financial advisers which can clearly demonstrate that they do not have financial or commercial links with product providers that are capable of influencing their recommendations should use the term “independent”; and
- (b) before using the term “independent”, financial advisers should be satisfied in light of their own particular circumstances that they are in compliance with regulation 21 of the Financial Advisers Regulations [“FAR”].

[Amended on 1 July 2005]

4 Given the diversity of business and financial arrangements and the fact that the financial advisory market is still at an early stage of development, the Authority expects only a small number of financial advisers in Singapore will be able to use the term “independent”. These Guidelines adopt a principle-based approach rather than a detailed prescriptive approach in determining whether a financial adviser can use the term “independent”.

[Amended on 1 July 2005]

Definitions

5 For the purposes of these Guidelines:

“financial adviser” means a licensed financial adviser or a person exempt from holding a financial adviser’s licence under section 23(1)(a), (b), (c), (d) or (e) of the Act;

[Amended on 1 July 2005]

“financial advisory service” has the same meaning as in section 2(1) of the Act; and

[Amended on 1 July 2005]

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

Introduction

6 Background Information

6.1 Payment and ownership structures between financial advisers and product providers have become increasingly complex and diverse. Investors are often not fully aware of the existence, nature or implications of these payment or ownership structures. Commercial arrangements between financial advisers and product providers may also give rise to issues relating to the independence of financial advisers.

6.2 Some financial advisers may wish to use the word “independent” in their business names or in respect of their provision of any financial advisory service. They may also wish to promote or advertise their services as being “independent”. However, the use of the word

“independent” by a financial adviser has strong connotations for the investing public. It suggests to the investors that the financial adviser operates with objectivity and impartiality, and does not have any potential conflict of interest when recommending an investment product as a result of commercial or financial links with a product provider. In the light of such public expectations, the FAR limits the use of the word “independent” by financial advisers.

Conditions to be Met

7 Regulation 21 of the FAR – Use of the Term “Independent”

7.1 Regulation 21(1) of the FAR states that no licensed financial adviser or exempt financial adviser shall use the word “independent” or any of its derivatives in any language, or any other word or expression in any language that is of like import to “independent” –

- (a) in the name, description or title under which it carries on business in Singapore;
- (b) to promote or advertise its services; or
- (c) in respect of its provision of any financial advisory service, unless –
 - (i) it does not receive any commission or other benefit from a product provider which may create product bias and does not pay any commission to or confer other benefit upon its representatives which may create product bias;
 - (ii) it operates free from any direct or indirect restriction relating to any investment product which is recommended; and
 - (iii) it operates without any conflict of interest created by any connection to or association with any product provider.

[Amended on 1 July 2005]

7.2 Regulation 21(2) of the FAR states that where a licensed financial adviser or an exempt financial adviser is –

- (a) prohibited from using the word “independent” under regulation 21(1); or
- (b) not prohibited from using the word “independent” under regulation 21(1) but decides not to do so,

it shall ensure that its representatives do not use the word “independent” or any of its derivatives in any language, or any other word or expression in any language that is of like import to “independent” in the manner specified in regulation 21(1)(a), (b) or (c).

[Amended on 1 July 2005]

7.3 Regulation 21(3) of the FAR states that no representative of a licensed financial adviser or an exempt financial adviser shall use the word “independent” or any of its derivatives in any language, or any other word or expression in any language that is of like import to “independent”, in acting as a representative of the financial adviser if the financial adviser has informed him that it may not do so.

8 Basic Test for Independence

8.1 The basic test for independence is whether a reasonable investor, knowing all the relevant facts and circumstances, would perceive the financial adviser as having conflicting interests with the investor and for the advice or recommendation not to be objective and impartial. In considering whether a financial adviser is independent, the Authority will consider all relevant facts and circumstances.

8.2 The Authority is of the view that to assist investors to have confidence in the advice they receive, the term “independent” should only be used by financial advisers who can clearly demonstrate that they do not have financial or commercial links with product providers which are capable of influencing their recommendation or these are relatively insignificant.

8.3 The Authority considers that a financial adviser can use the word “independent” if –

- (a) it does not receive any of the following:
 - (i) any commission (apart from commission that is rebated in full to the financial adviser’s clients);

- (ii) any form of remuneration calculated at a rate or on a basis that varies having regard to all or any of the following:
 - (A) The number of transactions so arranged or effected; or
 - (B) The value of each transaction or of all transactions (For life policies, based on amount of premiums paid or payable or the amount of sum insured. For unit trusts, based on subscriptions paid or payable.); and
 - (iii) any gift or other benefit from product providers which may reasonably be expected to influence the financial adviser.
- (b) it operates free from any direct or indirect restriction relating to the investment products it provides financial advisory services on; and
- (c) it operates without any conflict of interest that may –
- (i) arise from its association or relationship with product providers; and
 - (ii) reasonably be expected to influence it in carrying on the business of providing financial advisory services.

8.4 The Authority considers that in the circumstances set out in paragraph 8.3, the requirements of regulation 21 of the FAR will normally be met. A financial adviser that does not meet the tests at paragraph 8.3 is not necessarily precluded from using the term “independent” in accordance with regulation 21. Paragraphs 9 to 22 of these Guidelines provide guidance on other circumstances where a financial adviser may not be restricted from using the term “independent”.

Commissions and Other Benefits

9 A financial adviser may be compensated by product providers in various ways. These include commissions, trailer fees or soft dollar arrangements.

10 If a financial adviser receives any commission or other benefit of the kind referred to in paragraph 8.3 (a) which may tend to influence its advice or recommendation in favour of a particular investment product or product provider, it should not use the word “independent”.

11 The mere fact that a financial adviser receives commissions or other benefits from a product provider does not preclude it from calling itself “independent”. The key issue is whether such commission or other benefit is likely to create a bias in favour of a particular investment product, class of investment product or product provider. This is a question of fact. The following are some general guidelines designed to assist financial advisers in making this assessment.

[Amended on 1 July 2005]

12 Insignificant Commissions or Other Benefits

12.1 In cases where the financial adviser’s remuneration consists of commissions or other benefits, the financial adviser may not be restricted from using the word “independent” if the commissions or other benefits that it receives are insignificant relative to its total revenue. This is because such commissions or benefits may not tend to create a product bias or be capable of influencing the recommendations of the financial adviser. Clearly, low value financial benefits such as a business lunch or a free seminar would not generally give rise to a concern.

13 Same Level of Commission

13.1 A financial adviser is likely to be biased in favour of a particular investment product unless it receives a broadly similar level of commission for similar products or classes of products it recommends. This could also be the case if the level of commission received is similar, but the financial adviser receives significant other additional benefits, such as free research or training for recommending a particular product. If there are any significant differences in the rate of commission payable for different classes of products, such differences may create a bias in favour of the class of products that pay the higher commission.

14 Commission Sharing Arrangement

14.1 A financial adviser may remunerate its representatives through a commission sharing arrangement, where the representatives are entitled to a certain percentage of the commission paid by the product providers. Significant differences in the commission sharing arrangement for

different investment products may tend to create a bias in favour of certain products when representatives give advice on, or recommend those products. This may be the case even if the overall commission paid by product providers to the financial adviser may be similar. In such a situation, the representatives may be induced to promote an investment product that entitles them to a higher commission.

15 Significant Commissions or Benefits

15.1 For the purposes of paragraphs 12, 13 and 14, the Authority will, as a general rule of thumb, consider commissions or benefits to be significant if they constitute more than 20% of the financial adviser’s total revenue. Differences in the rate of commission amounting to more than 20% will generally be regarded as significant.

Product Restriction

16 A financial adviser’s independence may be impaired by any form of product restriction, whether direct or indirect. A direct restriction could be in the form of a contractual agreement between a financial adviser and a product provider, whereby the financial adviser is confined to selling that product provider’s investment products or a range of investment products selected by the product provider. For instance, a financial adviser that enters into an agreement with a life insurance company to only give advice on or distribute that life insurer’s life policies or both will not be regarded as being independent.

[Amended on 1 July 2005]

17 It is possible for a financial adviser to enter into a contract with a product provider, where the financial adviser is required to meet specified sales targets. The Authority considers such an arrangement a form of indirect product restriction, which is likely to create a product bias in favour of the product provider with whom the financial adviser has entered into such agreement.

18 Notwithstanding the absence of a contractual agreement, the Authority will not normally regard a financial adviser as being independent if it represents less than 4 product providers for each class of investment product.

19 The Authority takes the view that a financial adviser which is subject to any type of direct or indirect product restriction in relation to

which advice or recommendation is provided should not use the word “independent”.

Relationship with a Product Provider

20 A financial adviser may be a product provider itself such as a bank, fund management company or life insurance company. Under such circumstances, the financial adviser should not promote its services as being “independent”.

21 A financial adviser may also be related to a product provider. For instance, it may be a subsidiary of a product provider, the advisory arm of a financial services conglomerate that owns a fund management, life insurance or banking outfit, or a sister company of a product provider. In considering whether these ownership links create a product bias, the Authority will take into account the ownership structure of the financial adviser, its relationship with the product provider, and the products on which advice or recommendation is given. For example, a financial adviser may be a wholly-owned subsidiary of a fund management company. If that financial adviser gives advice on the products of the fund management company, then there is likely to be a product bias in favour of the products of the parent company.

22 In instances where the ownership links result in a product provider having complete control or significant influence over the financial adviser, the financial adviser is likely to be biased in favour of the product provider’s investment products. For the purposes of these Guidelines, a product provider has significant influence if it has the power to participate in the financial and operating policy decisions of the financial adviser.

Penalty for Breach of Regulation 21 of the FAR

23 Any financial adviser which contravenes regulation 21(1) or (2) of the FAR shall be guilty of an offence.

24 Any representative who contravenes regulation 21(3) of the FAR shall be guilty of an offence.

Application of the Guidelines

25 Although the Authority has issued these Guidelines, the question of independence depends on the exact circumstances in each case. Therefore, mere compliance with these Guidelines does not necessarily ensure that a financial adviser can use the term “independent”. Financial advisers and their representatives should carefully consider their own particular circumstances prior to using the term “independent” in the name, description or title under which they carry on business in Singapore, to promote or advertise their services, or in respect of their provision of any financial advisory service. It is a matter for the financial adviser to be clearly satisfied and be able to demonstrate that it is in compliance with regulation 21 of the FAR before using the term “independent”.