

CONSULTATION PAPER

P004 - 2004
April 2004

Annex 5

Draft Financial Advisers (Amendment) Bill 2004

MAS

Monetary Authority of Singapore

Financial Advisers (Amendment) Bill

5 **Bill No. /2004.**

Read the first time on 2004.

Disclaimer: This version of the Bill is subject to change. It is also subject to vetting by the Attorney-General's Chambers.

Note: A comparative table, (highlighting the proposed amendments in the draft Bill with reference to the existing provisions in the Act), is attached at Annex 6.

A BILL

intituled

AN ACT TO AMEND THE FINANCIAL ADVISERS ACT (CAP. 110)

Be it enacted by the President with the advice and consent of the Parliament of Singapore, as follows:

Short title and commencement

1. This Act may be cited as the Financial Advisers (Amendment) Act 2004 and shall come into operation on such date as the Minister may, by notification in the *Gazette*, appoint.

Amendment of section 2

2. Section 2 of the principal Act is amended —

(a) by inserting, immediately after the definition of “advocate and solicitor” in subsection (1), the following definition:

““approved holding company” has the same meaning as in section 2(1) of the Securities and Futures Act (Cap. 289);”;

(b) by deleting the definition of “exempt financial adviser” in subsection (1) and substituting the following definition:

““exempt financial adviser” means a financial adviser which is exempt under section 23(1) from holding a financial adviser’s licence;”;

(c) by deleting the definition of “futures exchange” in subsection (1) and substituting the following definition:

““futures exchange” has the same meaning as in section 2(1) of the Securities and Futures Act (Cap. 289);”;

(d) by inserting, immediately after the definition of the “recognised system trading provider” in subsection (1), the following definition:

““recognised market operator” has the same meaning as in section 2(1) of the Securities and Futures Act (Cap. 289);”;

(e) by deleting the definition of “recognised system trading provider” in subsection (1); and

(f) by deleting the definition of “securities exchange” in subsection (1) and substituting the following definition:

““securities exchange” has the same meaning as in section 2(1) of the Securities and Futures Act (Cap. 289);”.

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Amendment of section 9

3. Section 9 of the principal Act is amended by inserting, immediately after subsection (1)(d), the following subsection:

10 “(da) any information or document that is furnished by the applicant is false or misleading;”.

Amendment of section 11

4. Section 11 of the principal Act is amended by inserting, immediately after subsection (1)(c), the following subsection:

15 “(ca) any information or document that is furnished by the applicant is false or misleading;”

Amendment of section 16

20 5. Section 16 of the principal Act is amended by inserting in subsection (3), immediately after the words “subject to such conditions”, the words “or restrictions”.

Amendment of section 17

6. Section 17 of the principal Act is amended —

25 (a) by deleting the word “wilfully” in paragraphs (a) and (b) and substituting in each case the words “without reasonable excuse;”, and

(b) by deleting the words “, knowing it to be false or misleading” in paragraph (a).

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Amendment of section 19

7. Section 19 of the principal Act is amended —

(a) by deleting paragraph (i) of subsection (2)(a) and substituting the following:

“(i) any event has occurred that would have entitled the Authority to refuse an application under section 9(1), if such an application is made after the occurrence of the event;”;

5 (b) by deleting paragraph (iv) of subsection (2)(a) and substituting the following:

“(iv) it appears to the Authority that the financial adviser is carrying on its business in a manner that is —

(A) likely to be detrimental to its clients; or

(B) contrary to the public interest;”;

10 (c) by inserting, immediately after paragraph (iv) of subsection (2)(a), the following:

“(v) any information or document that is furnished by the financial adviser to the Authority is false or misleading; or”

15 (d) by re-numbering the existing paragraph (v) of subsection (2)(a) as paragraph (vi);

(e) by deleting paragraph (i) of subsection (2)(b) and substituting the following:

20 “(i) any event has occurred that would have entitled the Authority to refuse an application under section 11(1), if such an application is made after the occurrence of the event;”;

(f) by deleting paragraph (iv) of subsection (2)(b) and substituting the following:

“(iv) it appears to the Authority that the representative is performing his functions in a manner that is —

25 (A) likely to be detrimental to the clients of the financial adviser of which he is a representative; or

(B) contrary to the public interest;”;

(g) by inserting, immediately after paragraph (iv) of subsection (2)(b), the following:

30 “(v) any information that is provided by the representative to the Authority is false or misleading;”;

(h) by re-numbering the existing paragraphs (v) and (vi) of subsection (2)(b) as paragraphs (vi) and (vii) respectively.

Amendment of section 20

8. Section 20 of the principal Act is amended —

- 5 (a) by deleting the words “grant, renew or vary a licence” in paragraph (a) and substituting the words “grant a licence to him, or to renew or vary his licence”; and
- (b) by deleting the words “a licence” in paragraph (b) and substituting the words “his licence”.

10 Amendment of section 23

9. Section 23 of the principal Act is amended —

- (a) by deleting the word “and” at the end of subsection (1)(e) and by inserting immediately thereafter the following subsection:
- 15 “(ea) a securities exchange, futures exchange, recognised market operator or approved holding company in respect of the provision of any financial advisory service that is solely incidental to its operation of a securities market, futures market, or to its performance as an approved holding company, as the case may be; and”
- 20 (b) by deleting subsections (2) and (3);
- (c) by deleting the words “, 36 and 70” in subsections (4) and (5) and substituting in each case the words “and 36”;
- (d) by deleting the words “subsection 1(f) or (2)” in subsections (4) and (5) and substituting in each case the words “subsection 1(ea) or 1(f)”;
- 25 (e) by inserting, immediately after subsection (5), the following subsections:
- “*(5A)* Subject to the provisions of this Act, sections 25, 26 and 36 shall apply, with the necessary modifications, to a person referred to in subsection (1)(ea) and to any of its representatives in relation to the provision of any financial advisory service as if it is a licensed financial adviser or he is a licensed representative, as the case may be.
- 30 “*(5B)* Subject to the provisions of this Act, section 70 shall apply, with the necessary modifications, to —
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- (a) an exempt financial adviser in respect of its business of providing any financial advisory service as if it is a licensed financial adviser; and
- (b) a representative of an exempt financial adviser in respect of his acting as such as if he is a licensed representative.”;
- (f) by renumbering the existing subsection (5A) as subsection (5C);
- (g) by deleting the words “subsections (4) and (5)” in subsection (5C) and substituting the words “subsections (4), (5), (5A) and (5B)”;
- (h) by deleting the words “subsection (1)(f) or (2)” in subsections (6) and (7) and substituting the words “subsection (1)(f)”;
- (i) by deleting the words “subsections (4) or (5)” in subsection (6) and substituting the words “subsections (4), (5), (5A) or (5B)”;
- and
- (j) by deleting the words “subsection (2) or (6)” in subsection (8) and substituting the words “subsection (6)”.

Amendment of section 24

- 10.** Section 24 of the principal Act is amended by deleting subsections (1) and (2).

Amendment of section 27

11. Section 27 of the principal Act is amended by inserting, immediately after subsection (4), the following subsection:

- “(5) This section shall not apply to any licensee or class of licensees in such circumstances or under such conditions as may be prescribed.”.

Amendment of section 37

- 12.** Section 37 of the principal Act is amended by deleting the words “recognised trading system provider” in subsection (2)(c) and substituting the words “recognised market operator”.

Amendment of section 57

13. Section 57 of the principal Act is amended by deleting the words “justification or” in subsection (1)(b).

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Amendment of section 58

14. Section 58 of the principal Act is amended —

(a) by deleting the words “or 100” in subsection (1)(c);

10 (b) by deleting paragraph (i) of subsection (2)(a) and substituting the following paragraph:

“(i) the standards to be maintained by —

(A) a licensee;

(B) any person exempt under section 23 or 100; or

15 (C) any representative of a person exempt under section 23,

in the conduct of his business, including the provision of any financial advisory service to any person outside Singapore and the duties to be undertaken when making recommendations to clients in respect of investment products;” and

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(c) by deleting the words “or to imprisonment for a term not exceeding 12 months or to both” in subsection (5).

Amendment of section 59

25 15. Section 59(1) of the principal Act is amended —

(a) by deleting the word “or” at the end of paragraph (c); and

(b) by deleting the full-stop at the end of paragraph (d) and substituting the word “; or”, and by inserting immediately thereafter the following paragraph:

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“(e) the person has been convicted of an offence involving the contravention of any law or requirement of a foreign country or territory in respect of any financial advisory service that has been provided by that person to any other person in that foreign country or territory, as the case may be.”.

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Amendment of First Schedule

16. The First Schedule to the principal Act is amended —

- 5 (a) by inserting, immediately after the words “commission or other consideration” in paragraph 3(c), the words “, apart from any fee received from subscription to the newspaper,”; and
- (b) by inserting, immediately after the words “commission or other consideration” in paragraph 4(c), the words “, apart from any fee received from subscription to the service,”.

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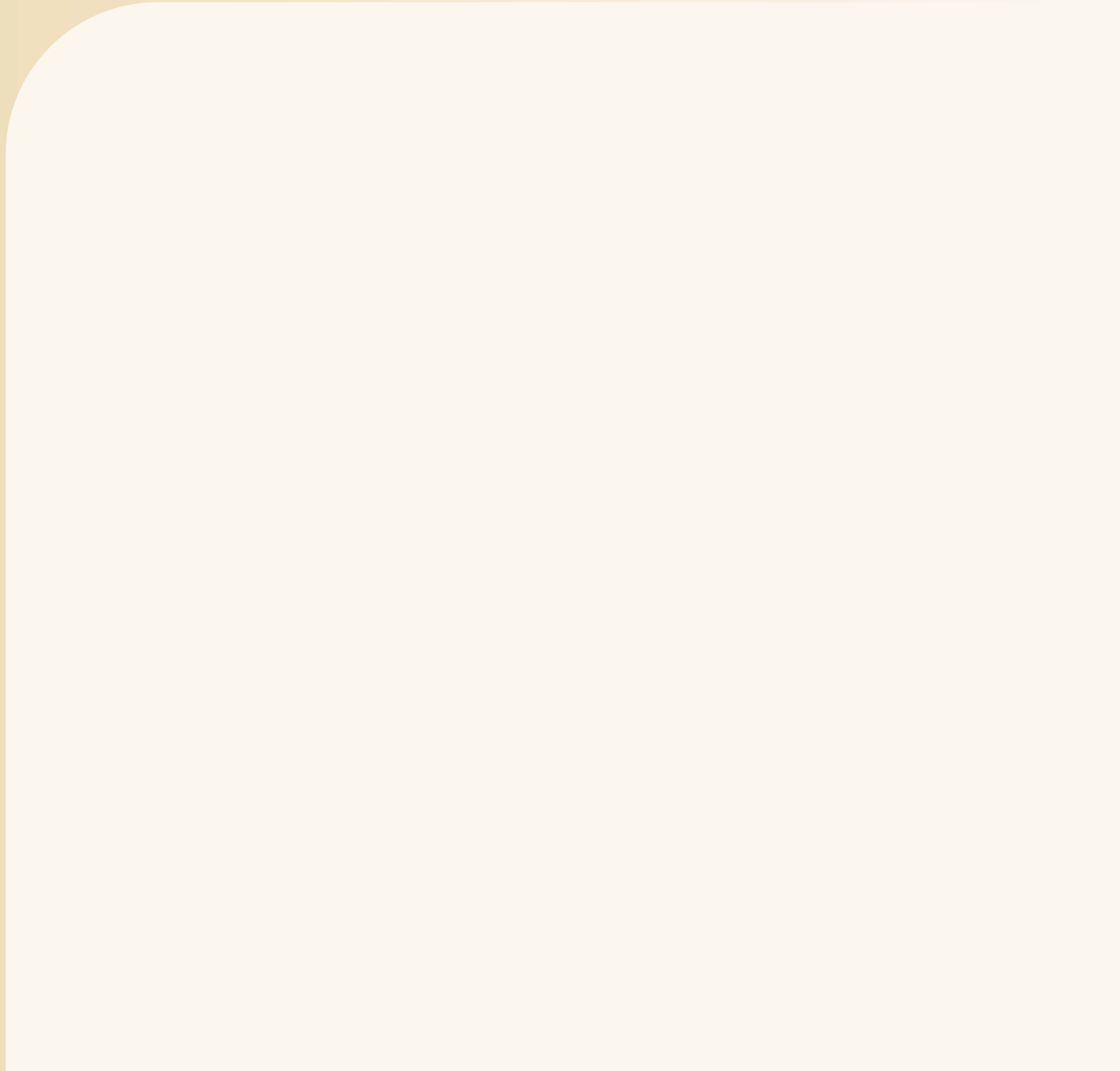
Amendment of Second Schedule

17. The Second Schedule to the principal Act is amended by deleting paragraphs 1 and 2 and substituting the following paragraphs:

15 “1. Advising others, either directly or through publications or writings, and whether in electronic, print or other form, concerning any investment product, other than —

- (a) in the manner set out in paragraph 2; or
- (b) advising on corporate finance within the meaning of the Securities and Futures Act.

20 2. Advising others by issuing or promulgating research analyses or research reports, whether in electronic, print or other form, concerning any investment product.”.



Monetary Authority of Singapore