

CONSULTATION PAPER

P004 - 2004  
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# Annex 6

## Draft Financial Advisers (Amendment) Bill 2004 Comparative Table

MAS

Monetary Authority of Singapore

## COMPARATIVE TABLE OF PROVISIONS

## AMENDMENTS TO THE FINANCIAL ADVISERS ACT

Existing ProvisionProposed Amendment**Interpretation**

2. —(1) In this Act, unless the context otherwise requires —

"advocate and solicitor" means an advocate and solicitor of the Supreme Court or a foreign lawyer as defined in section 130A of the Legal Profession Act (Cap. 161);



"Authority" means the Monetary Authority of Singapore established under the Monetary Authority of Singapore Act (Cap. 186);

"book" includes any record, register, document or other record of information and any account or accounting record, however compiled, recorded or stored, whether in written or printed form or on microfilm or by electronic process or otherwise;

"collective investment scheme" has the same meaning as in section 2 (1) of the Securities and Futures Act (Cap. 289);

"company" has the same meaning as in section 4 (1) of the Companies Act (Cap. 50);

"connected person" , in relation to —

(a) an individual, means —

(i) the individual's spouse, son, adopted son, step-son, daughter,

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

**Existing Provision**

adopted daughter, step-daughter, father, step-father, mother, step-mother, brother, step-brother, sister or step-sister; and

(ii) a firm or a corporation in which the individual or any of the persons mentioned in sub-paragraph (i) has control of not less than 20% of the voting power in the firm or corporation, whether such control is exercised individually or jointly; and

(b) a firm or a corporation, means another firm or corporation in which the first-mentioned firm or corporation has control of not less than 20% of the voting power in that other firm or corporation,

and a reference in this Act to a person connected to another person shall be construed accordingly;

"corporation" has the same meaning as in section 4 (1) of the Companies Act;

"dealing in securities" has the same meaning as in section 2 (1) of the Securities and Futures Act;

"director" has the same meaning as in section 4 (1) of the Companies Act;

~~["exempt financial adviser" means a financial adviser which is exempt under section 23 (1) or (2) from holding a financial adviser's licence;]~~

"financial year" has the same meaning as in section 4 (1) of the Companies Act (Cap. 50);

"financial adviser" means a person who carries on a business of providing any financial advisory service, but does not include any person specified in the First Schedule;

**Proposed Amendment**

"exempt financial adviser" means a financial adviser which is exempt under section 23(1) from holding a financial adviser's licence;

**Existing Provision**

"financial advisory service" means all or any of the services specified in the Second Schedule;

“financial adviser’s licence” means a licence granted or renewed under section 13 in respect of a financial adviser, and “licensed financial adviser” shall be construed accordingly;

"firm" has the same meaning as in section 2 (1) of the Business Registration Act (Cap. 32);

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

~~["futures exchange" means a corporation that is approved by the Authority under section 9 of the Securities and Futures Act as a futures exchange;]~~

"investment product" means —

(a) any capital markets product as defined in section 2 (1) of the Securities and Futures Act;

(b) any life policy; or

(c) any other product as may be prescribed;

"leveraged foreign exchange trading" has the same meaning as in section 2 (1) of the Securities and Futures Act;

“licence” means a financial adviser’s licence or representative’s licence, and “licensee” shall be construed accordingly;

"life policy" has the same meaning as in the Schedule to the Insurance Act (Cap. 142), but does not include any contract of reinsurance;

**Proposed Amendment**

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

### Existing Provision

"newspaper" has the same meaning as in section 2 of the Newspaper and Printing Presses Act (Cap. 206);

"officer" has the same meaning as in section 4 (1) of the Companies Act;

"prescribed written law" means this Act, or any of the following written laws and any subsidiary legislation made thereunder:

- (a) Banking Act (Cap. 19);
- (b) Finance Companies Act (Cap. 108);
- (c) Insurance Act (Cap. 142);
- (d) Monetary Authority of Singapore Act (Cap. 186);
- (e) Money-changing and Remittance Businesses Act (Cap. 187);
- (f) Securities and Futures Act (Cap. 289); or
- (g) such other written law as the Authority may prescribe;

~~["recognised trading system provider" means a person who is recognised by the Authority under section 36 of the Securities and Futures Act as a recognised trading system provider;]~~

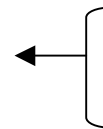
"registered insurer" means an insurer who is for the time being registered under section 8 of the Insurance Act;

"related corporation" has the same meaning as in section 4 (1) of the Companies Act (Cap. 50);

"representative" means a person, in the direct employment of or acting for or by arrangement with a financial adviser, who performs for the financial adviser any of the functions of a financial adviser

### Proposed Amendment

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



### Existing Provision

(other than work ordinarily performed by accountants, clerks or cashiers), whether his remuneration (if any) is by way of salary, wages, commission or otherwise, and includes an officer of the financial adviser who performs for the financial adviser any of those functions, whether or not his remuneration is as aforesaid;

“representative’s licence” means a licence granted or renewed under section 13 in respect of a representative, and “licensed representative” shall be construed accordingly;

"securities" has the same meaning as in section 2 (1) of the Securities and Futures Act;

~~["securities exchange" means a corporation that is approved by the Authority under section 9 of the Securities and Futures Act as a securities exchange;]~~

"share" has the same meaning as in section 4 (1) of the Companies Act (Cap 50);

"substantial shareholder" has the same meaning as in Division 4 of Part IV of the Companies Act;

"trading in futures contracts" has the same meaning as in section 2 (1) of the Securities and Futures Act (Cap. 289);

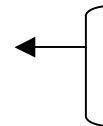
"voting share" has the same meaning as in section 4 (1) of the Companies Act;

"written direction" means a written direction issued under section 58.

(2) The definitions in the Schedule to the Insurance Act (Cap.142) shall have effect for the construction of references to life policies in this Act.

### Proposed Amendment

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



## Existing Provision

## Proposed Amendment

### **Requirements for grant or renewal of financial adviser's licence**

**9.** —(1) The Authority may refuse an application for the grant or renewal of a financial adviser's licence if —

- (a) the applicant is not a corporation;
- (b) the applicant is unable to meet or continue to meet such minimum financial requirements or such other requirements as the Authority may prescribe, either generally or specifically;
- (c) the applicant does not have in force a professional indemnity insurance policy, the cover of which is consistent with such limit and deductible requirements as may be prescribed, or any other measure as may be approved by the Authority in lieu of a professional indemnity insurance policy;
- (d) the applicant has not furnished the Authority with such information or documents as may be required under section 8 (2), or such other information or documents relating to it or any person employed by or associated with it for the purposes of its business or relating to any circumstance likely to affect its manner of conducting business as may be required by the Authority;

(e) the applicant or any of its substantial shareholders is in the course of being wound up or otherwise dissolved, whether in Singapore or elsewhere;

(f) a receiver, receiver and manager, judicial manager, or an equivalent person has been appointed, whether in Singapore or elsewhere, in relation to, or in respect of any property of, the

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

### **Existing Provision**

applicant or any of its substantial shareholders;

(g) the applicant or any of its substantial shareholders has, whether in Singapore or elsewhere, entered into a compromise or scheme of arrangement with its creditors, being a compromise or scheme of arrangement that is still in operation;

(h) execution against the applicant or any of its substantial shareholders in respect of a judgment debt has been returned unsatisfied in whole or in part;

(i) the Authority is not satisfied as to the educational qualification or experience of the officers or employees of the applicant who are to perform duties in connection with the holding of the financial adviser's licence;

(j) the Authority has reason to believe that the applicant, or any of its officers or employees, will not perform the functions of a financial adviser efficiently, honestly or fairly;

(k) a prohibition order under section 59 has been made by the Authority, and remains in force, against the applicant;

(l) the applicant or any of its substantial shareholders or officers —

(i) has been convicted, whether in Singapore or elsewhere, of an offence involving fraud or dishonesty or the conviction for which involved a finding that it or he acted fraudulently or dishonestly; or

(ii) has been convicted of an offence under this Act;

(m) the applicant fails to satisfy the Authority —

(i) that it is a fit and proper person to be licensed; or

(ii) that all of its officers, employees and substantial shareholders

### **Proposed Amendment**



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are fit and proper persons;

(n) the Authority has reason to believe that the applicant may not act in the best interests of its clients, having regard to the reputation, character, financial integrity and reliability of the applicant or any of its officers, employees or substantial shareholders;

(o) the Authority is not satisfied as to —

(i) the financial standing of the applicant or any of its substantial shareholders;

(ii) the manner in which the applicant’s business is to be conducted; or

(iii) the record of past performance or expertise of the applicant, having regard to the nature of the business which the applicant may carry on in connection with the holding of the licence;

(p) there are other circumstances which are likely —

(i) to lead to the improper conduct of business by the applicant, or any of its officers, employees or substantial shareholders; or

(ii) to reflect discredit on the manner of conduct of the business of the applicant or any of its substantial shareholders; or

(q) the Authority is of the opinion that it would be contrary to the public interest to grant or renew the licence.

(2) For the purposes of subsection (1) (c) —

(a) the Authority may prescribe different amounts of cover under a professional indemnity insurance policy according to the activities undertaken or to be undertaken by any applicant; and

**Proposed Amendment**

### **Existing Provision**

(b) “professional indemnity insurance policy” means a contract of insurance with an insurer under which a person is indemnified in respect of the liabilities arising out of or in the course of his business as a financial adviser.

(3) Subject to subsection (4), the Authority shall not refuse an application for the grant or renewal of a financial adviser’s licence without giving the applicant an opportunity to be heard.

(4) The Authority may refuse an application for the grant or renewal of a financial adviser’s licence on any of the following grounds without giving the applicant an opportunity to be heard:

(a) the applicant is in the course of being wound up or otherwise dissolved, whether in Singapore or elsewhere;

(b) a receiver, a receiver and manager or an equivalent person has been appointed, whether in Singapore or elsewhere, in relation to or in respect of any property of the applicant;

(c) a prohibition order under section 59 has been made by the Authority, and remains in force, against the applicant;

(d) the applicant has been convicted, whether in Singapore or elsewhere, of an offence involving fraud or dishonesty or the conviction for which involved a finding that it had acted fraudulently or dishonestly.

### **Requirements for grant or renewal of representative’s licence**

**11.** —(1) The Authority may refuse an application for the grant or renewal of a representative’s licence if —

(a) the applicant is not an individual;

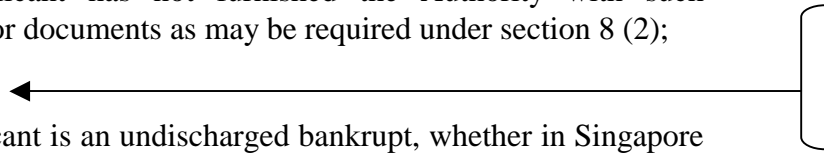
### **Proposed Amendment**

**Existing Provision**

**Proposed Amendment**

- (b) the applicant is not a fit and proper person to be licensed;
- (c) the applicant has not furnished the Authority with such information or documents as may be required under section 8 (2);
- (d) the applicant is an undischarged bankrupt, whether in Singapore or elsewhere;
- (e) the applicant has, whether in Singapore or elsewhere, entered into a compromise or scheme of arrangement with his creditors, being a compromise or scheme of arrangement that is still in operation;
- (f) execution against the applicant in respect of a judgment debt has been returned unsatisfied in whole or in part;
- (g) the Authority is not satisfied as to the educational qualification or experience of the applicant, having regard to the nature of the duties of a licensed representative;
- (h) the Authority has reason to believe that the applicant will not perform the functions of a representative efficiently, honestly or fairly;
- (i) a prohibition order under section 59 has been made by the Authority, and remains in force, against the applicant;
- (j) the applicant —
  - (i) has been convicted, whether in Singapore or elsewhere, of an offence involving fraud or dishonesty or the conviction for which involved a finding that he acted fraudulently or dishonestly; or

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



### **Existing Provision**

- (ii) has been convicted of an offence under this Act;
- (k) the Authority has reason to believe that the applicant may not act in the best interests of the clients of the financial adviser of which he is a representative, having regard to his reputation, character, financial integrity and reliability;
- (l) the Authority is not satisfied as to —
  - (i) the financial standing of the applicant; or
  - (ii) the record of past performance or expertise of the applicant;
- (m) there are other circumstances which are likely to lead to the improper conduct of business by, or which reflect discredit on the manner of conduct of the business of, the applicant or any person employed by or associated with him for the purpose of his business;
- (n) the applicant is in arrears in the payment of such contributions on his own behalf as a self-employed person to the Central Provident Fund as are required under the Central Provident Fund Act (Cap. 36); or
- (o) the Authority is of the opinion that it would be contrary to the public interest to grant or renew the licence.
- (2) The Authority may, for the purposes of subsection (1) (g), specify in written directions the qualifications to be obtained by any class or description of applicants for representative's licences.
- (3) Subject to subsection (4), the Authority shall not refuse an application for the grant or renewal of a representative's licence without giving the applicant an opportunity to be heard.
- (4) The Authority may refuse an application for the grant or

### **Proposed Amendment**

### **Existing Provision**

renewal of a representative's licence on any of the following grounds without giving the applicant an opportunity to be heard:

- (a) the applicant is an undischarged bankrupt, whether in Singapore or elsewhere;
- (b) a prohibition order under section 59 has been made by the Authority, and remains in force, against the applicant;
- (c) the applicant has been convicted, whether in Singapore or elsewhere, of an offence —
  - (i) involving fraud or dishonesty or the conviction for which involved a finding that he had acted fraudulently or dishonestly; and
  - (ii) punishable with imprisonment for a term of 3 months or more.

### **Variation of licence**

**16.** —(1) A licensee may apply to the Authority, in such form and manner as may be prescribed, to vary his licence —

- (a) by adding one or more types of financial advisory service authorised to be provided by his licence; or
- (b) by adding one or more types of investment product in respect of which he provides any financial advisory service.

(1A) The Authority may require an applicant to furnish it with such information or documents as it considers necessary in relation to the application.

(2) An application under subsection (1) —

- (a) shall be accompanied by a non-refundable application fee of

### **Proposed Amendment**

**Existing Provision**

such amount as may be prescribed, which shall be paid in the prescribed manner; and

(b) if made in respect of a representative's licence, shall be supported by a person who is —

(i) a licensed financial adviser in respect of the type or types of financial advisory service or investment product (as the case may be) to be added to the representative's licence; or

(ii) a licensed financial adviser which has applied under subsection (1) to add to its licence the type or types of financial advisory service or investment product (as the case may be) to be added to the representative's licence.

(2A) An application under subsection (1), if made in respect of a representative's licence, shall be deemed to be withdrawn with effect from the date on which the licensed financial adviser which supported the application —

(a) withdraws its support in writing;

(b) withdraws its application to add to its licence the type or types of financial advisory service or investment product (as the case may be) to be added to the representative's licence; or

(c) has its application to add to its licence the type or types of financial advisory service or investment product (as the case may be) to be added to the representative's licence refused by the Authority.

(3) The Authority may approve an application under subsection (1) subject to such conditions as the Authority thinks fit, or may refuse the application on any of the grounds set out in section 9 (1) or 11

**Proposed Amendment**

or restrictions

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(1), as the case may be.

(4) The Authority shall not refuse an application under subsection (1) without giving the applicant an opportunity to be heard.

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**False statements in relation to application for grant, renewal or variation of licence**

17. Any person who, in connection with an application for the grant, renewal or variation of a licence —

(a) [~~wilfully~~] makes any statement which is false or misleading in a material particular [~~, knowing it to be false or misleading~~]; or

(b) [~~wilfully~~] omits to state any matter or thing without which the application is misleading in a material respect,

without reasonable excuse,

without reasonable excuse,

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 12 months or to both.

**Lapsing, revocation, suspension and expiry of licence**

19. —(1) A licence shall lapse —

(a) in the case of a licensed financial adviser, if it is wound up or otherwise dissolved, whether in Singapore or elsewhere;

(b) in the case of a licensed representative, if he dies or becomes mentally incapacitated; or

(c) in the event of such other occurrence or in such other

**Existing Provision**

**Proposed Amendment**

circumstances as may be prescribed.

(2) The Authority may revoke a licence —

(a) in the case of a licensed financial adviser, if —

~~[(i) there exists a ground on which the Authority may refuse an application under section 9(1);]~~

(ii) the financial adviser has contravened any provision of this Act, or any condition or restriction imposed or any written direction given by the Authority under this Act;

(iii) it appears to the Authority that the financial adviser has failed to satisfy any of its obligations under or arising from this Act;

~~[(iv) it appears to the Authority that the financial adviser is carrying on its business in a manner likely to be detrimental to its clients; or]~~

(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;

(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;

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

(vi)

~~[(v)] the financial adviser fails or ceases to carry on the business for which it was licensed; or~~

(b) in the case of a licensed representative, if —

~~[(i) there exists a ground on which the Authority may refuse an application under section 11(1);]~~

(ii) the representative has contravened any provision of this Act, or

(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;



**Existing Provision**

any condition or restriction imposed or any written direction given by the Authority under this Act;

(iii) it appears to the Authority that the representative has failed to satisfy any of his obligations under or arising from this Act;

~~[(iv) it appears to the Authority that the representative is performing his functions in a manner likely to be detrimental to the clients of the financial adviser of which he is a representative;]~~



~~[(v)] the representative fails or ceases to perform the functions for which he was licensed; or~~



~~[(vi)] the licence of the financial adviser of which he is a representative is revoked.~~



- (3) The Authority may, if it considers it desirable to do so —
- (a) suspend a licence for a specific period instead of revoking it under subsection (2); and
  - (b) at any time extend or revoke the suspension.
- (4) Subject to subsection (5), the Authority shall not revoke or

**Proposed Amendment**

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

- (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;

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

(vi)

(vii)

### **Existing Provision**

suspend a licence under subsection (2) or (3), respectively, without giving the licensee an opportunity to be heard.

(5) The Authority may revoke or suspend a licence under subsection (2) or (3), respectively, without giving the licensee an opportunity to be heard —

(a) in the case of a licensed financial adviser, on any of the following grounds:

(i) the licensee is in the course of being wound up or otherwise dissolved, whether in Singapore or elsewhere;

(ii) a receiver, a receiver and manager or an equivalent person has been appointed, whether in Singapore or elsewhere, in relation to or in respect of any property of the licensee;

(iii) a prohibition order under section 59 has been made by the Authority, and remains in force, against the licensee;

(iv) the licensee has been convicted, whether in Singapore or elsewhere, of an offence involving fraud or dishonesty or the conviction for which involved a finding that it had acted fraudulently or dishonestly; or

(b) in the case of a licensed representative, on any of the following grounds:

(i) the licensee is an undischarged bankrupt, whether in Singapore or elsewhere;

(ii) a prohibition order under section 59 has been made by the Authority, and remains in force, against the licensee;

(iii) the licensee has been convicted, whether in Singapore or

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elsewhere, of an offence —

(A) involving fraud or dishonesty or the conviction for which involved a finding that he had acted fraudulently or dishonestly; and

(B) punishable with imprisonment for a term of 3 months or more.

(6) A person whose licence is revoked or suspended shall cease to act as a financial adviser or representative, as the case may be, from the date on which the revocation or suspension takes effect.

(7) A financial adviser whose licence is revoked or suspended shall immediately inform all of its representatives, in writing, of such revocation or suspension.

(8) Every representative who has been informed of the revocation or suspension of the licence of the financial adviser of which he is a representative shall —

(a) in the case of revocation, immediately cease to act as a representative of the financial adviser; or

(b) in the case of suspension, immediately cease to act as a representative of the financial adviser during the period of the suspension.

(9) Any lapsing, revocation, suspension or expiry of a licence shall not operate so as to —

(a) avoid or affect any agreement, transaction or arrangement, relating to any investment product, entered into by the licensee, whether the agreement, transaction or arrangement was entered into before or after the lapsing, revocation, suspension or expiry of the licence; or

### **Proposed Amendment**

### **Existing Provision**

(b) affect any right, obligation or liability arising under any agreement, transaction or arrangement referred to in paragraph (a).

(10) Any person who continues to act as a financial adviser in contravention of subsection (6) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$150,000 and, in the case of a continuing offence, to a further fine not exceeding \$15,000 for every day or part thereof during which the offence continues after conviction.

(11) Any person who continues to act as a representative in contravention of subsection (6) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$25,000 or to imprisonment for a term not exceeding 12 months or to both and, in the case of a continuing offence, to a further fine not exceeding \$2,500 for every day or part thereof during which the offence continues after conviction.

(12) Any financial adviser which contravenes subsection (7) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 and, in the case of a continuing offence, to a further fine not exceeding \$5,000 for every day or part thereof during which the offence continues after conviction.

(13) Any representative who contravenes subsection (8) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$25,000 or to imprisonment for a term not exceeding 12 months or to both and, in the case of a continuing offence, to a further fine not exceeding \$2,500 for every day or part thereof during which the offence continues after conviction.

### **Proposed Amendment**

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#### **Right of appeal**

**20.** Any person who is aggrieved —

(a) by the refusal of the Authority to [~~grant, renew or vary a licence~~]; or

(b) by the revocation or suspension of [~~a licence~~] by the Authority, may, within 30 days of the refusal, revocation or suspension, appeal in writing to the Minister.

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grant a licence to him, or to renew or vary his licence

his licence

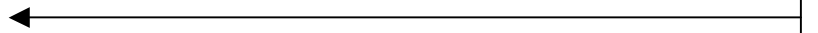
#### **Exempt financial advisers and their representatives**

**23.** —(1) Subject to subsection (10), the following persons shall be exempt from holding a financial adviser's licence to act as a financial adviser in Singapore in respect of any financial advisory service:

- (a) a bank licensed under the Banking Act (Cap. 19);
- (b) a merchant bank approved as a financial institution and approved to carry on a business of providing any financial advisory service under the Monetary Authority of Singapore Act (Cap. 186);
- (c) a company or society registered under the Insurance Act (Cap. 142);
- (d) a holder of a capital markets services licence under the Securities and Futures Act (Cap. 289);
- (e) a finance company which has been granted an exemption from section 25 (2) of the Finance Companies Act (Cap. 108)

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to carry on a business of providing any financial advisory service; ~~and~~



(f) such other persons or classes of persons as may be prescribed.

~~[(2) The Authority may, at any time and subject to such conditions or restrictions as it may think fit to impose, approve an application made in writing by a securities exchange, futures exchange or recognised trading system provider to be exempt from holding a financial adviser's licence if the Authority is of the opinion that the provision of any financial advisory service is not or will not be a significant business of the securities exchange, futures exchange or recognised trading system provider, as the case may be.]~~

~~[(3) Any securities exchange, futures exchange or recognised trading system provider which contravenes any condition or restriction imposed by the Authority under subsection (2) shall be guilty of an offence.]~~

(4) Subject to the provision of this Act, sections 25 to 29, 32, 33, 34, ~~36 and 70~~ shall apply, with the necessary modifications, to an exempt financial adviser (other than a person referred to in ~~subsection (1) (f) or (2)~~) in respect of its business of providing any financial advisory service as if it is a licensed financial adviser.

**Proposed Amendment**

(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 or futures market, or to its performance as an approved holding company, as the case may be; and

and 36

subsection (1)(ea) or (1)(f)

**Existing Provision**

(5) Subject to the provisions of this Act, sections 12, 25, 26, 27, 29, 33, 34[, ~~36 and 70~~] shall apply, with the necessary modifications, to a representative of an exempt financial adviser (other than a person referred to in [~~subsection (1) (f) or (2)~~]) in respect of his acting as such as if he is a licensed representative.

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and 36

subsection (1)(ea) or (1)(f)

(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.

(5B) Subject to the provisions of this Act, section 70 shall apply, with the necessary modifications, to –

- (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.

(5C)

subsections (4), (5), (5A) and (5B)

~~[(5A)]~~ For the avoidance of doubt, references in [~~subsections (4) and (5)~~] to specific sections in this Act that apply to exempt financial advisers or their representatives, respectively, do not include references to any regulations made under those sections unless the Authority prescribes that such regulations so apply.

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**Proposed Amendment**

(6) The Authority may, on the application of an exempt financial adviser (other than a person referred to in [~~subsection (1) (f) or (2)~~]), exempt it or any of its representatives from complying with any of the provisions referred to in [~~subsection (4) or (5)~~], as the case may be.

(7) The Authority may prescribe or specify in written directions the provisions of this Act that apply to the persons referred to in [~~subsection (1) (f) or (2)~~] or their representatives.

(8) An exemption granted under [~~subsection (2) or (6)~~] need not be published in the *Gazette*.

(9) The Authority may prescribe or specify in written directions such conditions or restrictions as may be imposed on an exempt financial adviser or any of its representatives in relation to the provision of any financial advisory service as the Authority thinks fit.

(10) The Authority may withdraw an exemption granted to any person under this section if the person contravenes any provision of this Act, or if the Authority considers it necessary in the public interest.

(11) Where the Authority withdraws an exemption granted to any person under this section, the Authority need not give the person an opportunity to be heard.

(12) An exempt financial adviser which is aggrieved by the decision of the Authority to withdraw an exemption granted to it under this section may, within 30 days of the decision, appeal in

subsection (1)(f)

subsections (4), (5), (5A) or (5B)

subsection (1)(f)

subsection (6)



### Existing Provision

writing to the Minister.

(13) A withdrawal under subsection (10) of an exemption granted to any person shall not operate so as to —

(a) avoid or affect any agreement, transaction or arrangement, relating to any investment product entered into by the person, whether the agreement, transaction or arrangement was entered into before or after the withdrawal of the exemption; or

(b) affect any right, obligation or liability arising under any agreement, transaction or arrangement referred to in paragraph (a).

### **Restriction on granting unsecured advances, loans, or credit facilities to director, etc., of licensed financial adviser**

**24.** —~~[(1) No licensed financial adviser shall grant any unsecured advance, unsecured loan or unsecured credit facility to any of its directors, employees or representatives, if —~~

~~(a) the unsecured advance, unsecured loan or unsecured credit facility is given for the purpose of enabling or assisting the person to whom the credit is given to purchase, subscribe for or trade in any investment product; or~~

~~(b) the licensed financial adviser knows or has reason to believe that the unsecured advance, unsecured loan or unsecured credit facility will be used for the purpose of purchasing, subscribing for or trading in any investment product.]~~

### Proposed Amendment

### Existing Provision

~~[(2) No licensed financial adviser shall, in relation to any unsecured advance, unsecured loan or unsecured credit facility granted to any of its directors, officers, employees or representatives before 1st October 2002, extend the period of, or increase the amount of, such unsecured advance, unsecured loan or unsecured credit facility on or after 1st October 2002.]~~

(3) No licensed financial adviser shall grant any unsecured advance, unsecured loan or unsecured credit facility —

(a) to a director of the licensed financial adviser, other than a director who is its employee; or

(b) to any other officer or an employee of the licensed financial adviser (including a director who is its employee) or any of its representatives which, in the aggregate and outstanding at any one time, exceeds \$3,000 or such other amount as may be prescribed.

(4) For the purposes of this section —

(a) “director” includes the spouse, father, step-father, mother, step-mother, son, step-son, daughter, step-daughter, brother or sister, of a director; and

(b) the Authority may prescribe the items which constitute “unsecured advance”, “unsecured loan” or “unsecured credit facility”.

(5) Any licensed financial adviser which contravenes this section shall be guilty of an offence.

(6) This section shall have effect without prejudice to section 162 of the Companies Act (Cap. 50).

### Proposed Amendment

## Existing Provision

## Proposed Amendment

### **Recommendations by licensees**

**27.** —(1) No licensee shall make a recommendation with respect to any investment product to a person who may reasonably be expected to rely on the recommendation if the licensee does not have a reasonable basis for making the recommendation to the person.

(2) For the purposes of subsection (1), a licensee does not have a reasonable basis for making a recommendation to a person unless

—

(a) he has, for the purposes of ascertaining that the recommendation is appropriate, having regard to the information possessed by him concerning the investment objectives, financial situation and particular needs of the person, given such consideration to, and conducted such investigation of, the subject-matter of the recommendation as is reasonable in all the circumstances; and

(b) the recommendation is based on the consideration and investigation referred to in paragraph (a).

(3) Where —

(a) a licensee, in making a recommendation to a person, contravenes subsection (1);

(b) the person, in reliance on the recommendation, does a particular act, or refrains from doing a particular act;

(c) it is reasonable, having regard to the recommendation and

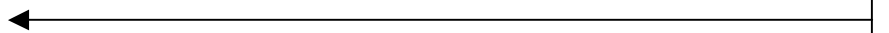
**Existing Provision**

all other relevant circumstances, for the person to do that act, or to refrain from doing that act, as the case may be, in reliance on the recommendation; and

(d) the person suffers loss or damage as a result of doing that act, or refraining from doing that act, as the case may be,

then, without prejudice to any other remedy available to that person, the licensee is liable to pay damages to that person in respect of that loss or damage.

(4) In this section, a reference to the making of a recommendation is a reference to the making of a recommendation expressly or by implication.



**Proposed Amendment**

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

**Application of this Division**

37. —(1) This Division shall apply to —

(a) relevant persons; and

(b) financial journalists.

(2) In this Division —

(a) “financial journalist” means a person who contributes advice concerning securities, or prepares analyses or reports concerning securities, for publication in a newspaper, but does not include such person or a person belonging to such class of persons as may be prescribed;

### Existing Provision

(b) “relevant person” means any licensee who provides any financial advisory service in respect of securities and, for the purposes of section 39 (1), (2) (a), any applicant for a licence to provide such a service; and; and

(c) a reference to securities is a reference to securities which are listed for quotation, or quoted, on a securities exchange or [recognised trading system provider].

recognised market operator

### **Removal of officer of licensed financial adviser**

**57.** —(1) Where the Authority is satisfied that an officer of a licensed financial adviser —

(a) has wilfully contravened or wilfully caused that licensed financial adviser to contravene any provision of this Act;

(b) has, without reasonable [justification or] excuse, failed to secure compliance with this Act;

(c) has failed to discharge the duties of his office;

(d) is an undischarged bankrupt, whether in Singapore or elsewhere;

(e) has, whether in Singapore or elsewhere, entered into a compromise or scheme of arrangement with his creditors, being a compromise or scheme of arrangement that is still in operation;

(f) has had execution against him in respect of a judgment debt returned unsatisfied in whole or in part;

(fa) has had a prohibition order under section 59 made by the Authority against him that remains in force; or

### **Existing Provision**

(g) has been convicted, whether in Singapore or elsewhere, of an offence involving fraud or dishonesty or the conviction for which involved a finding that he acted fraudulently or dishonestly,

then the Authority may, if it thinks it necessary in the public interest or for the protection of investors or policy owners, direct, by notice in writing, the licensed financial adviser to remove from its office or employment the officer, and the licensed financial adviser shall comply with such notice.

(2) Without prejudice to any other matter that the Authority may consider relevant, that Authority shall, in determining whether an officer of a licensed financial adviser has failed to discharge the duties of his office under subsection (1) (c), have regard to such criteria as may be prescribed or as may be specified in written directions.

(3) Subject to subsection (4), the Authority shall not direct a licensed financial adviser to remove from its office or employment an officer under subsection (1) without giving the licensed financial adviser an opportunity to be heard.

(4) The Authority may direct a licensed financial adviser to remove an officer from its office or employment under subsection (1) on any of the following grounds without giving the licensed financial adviser an opportunity to be heard:

(a) the officer is an undischarged bankrupt, whether in Singapore or elsewhere;

(b) a prohibition order under section 59 has been made by the Authority, and remains in force, against the officer;

### **Proposed Amendment**

### **Existing Provision**

(c) the officer has been convicted, whether in Singapore or elsewhere, of an offence —

(i) involving fraud or dishonesty or the conviction for which involved a finding that he had acted fraudulently or dishonestly; and

(ii) punishable with imprisonment for a term of 3 months or more.

(5) Where the Authority directs a licensed financial adviser to remove from its office or employment an officer under subsection (1), the Authority need not give that officer an opportunity to be heard.

(6) Any licensed financial adviser which is aggrieved by the direction of the Authority to remove from its office or employment an officer under subsection (1) may, within 30 days of the decision of the Authority, appeal in writing to the Minister.

(7) Any licensed financial adviser which contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000.

(8) No criminal or civil liability shall be incurred by a licensed financial adviser, or any person acting on behalf of the licensed financial adviser, in respect of anything done or omitted to be done with reasonable care and in good faith in the discharge or purported discharge of its obligations under this section.

(9) Nothing in section 152 of the Companies Act (Cap. 50) shall prevent the Authority from exercising any power under subsection (1).

### **Proposed Amendment**

### Existing Provision

#### **Power of Authority to issue written directions**

**58.**—(1) The Authority may, if it thinks necessary or expedient in the public interest, issue written directions, either of a general or specific nature, to —

- (a) any licensee;
- (b) any person exempt under section 23 or 100;
- (c) any representative of a person exempt under section 23~~[-or 100]~~; or
- (d) any class of the persons referred to in paragraphs (a), (b) or (c),

to comply with such requirements as the Authority may specify in the written directions, or for any other purpose.

(2) Without prejudice to the generality of subsection (1), written directions may be issued —

- (a) with respect to —

~~[(i) the standards to be maintained by a licensee, an exempt financial adviser or a representative of an exempt financial adviser in the conduct of his business, including the duties to be undertaken when making recommendations to clients in respect of investment products;]~~

### Proposed Amendment

(i) the standards to be maintained by -

- (A) a licensee;
- (B) any person exempt under section 23 or 100; or
- (C) any representative of a person exempt under section 23,

in the conduct of this 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;



### **Existing Provision**

- (ii) the type and frequency of financial returns and other information to be submitted to the Authority;
  - (iii) the qualifications, experience and training of representatives; or
  - (iv) the procedure for the conduct of disciplinary control of licensees, exempt financial advisers and their representatives;
- (b) where any person is contravening, is likely to contravene or has contravened, any provision of this Act, to require the person —
- (i) to comply with that provision or to cease contravention of that provision;
  - (ii) to take such action necessary to enable him to conduct his business in accordance with sound principles;
  - (iii) where the person is a corporation, to remove any of its directors;
  - (iv) to remove any person whom the Authority considers unfit to be associated with him;
  - (v) to take action as to the disposition or recovery of assets;
  - (vi) to take any available step for the recovery of sums which appear to the Authority to have been improperly paid; or
  - (vii) to make good any default committed by him; or

### **Proposed Amendment**

### **Existing Provision**

(c) for any other purpose specified in this Act.

(3) For the avoidance of doubt, any written direction issued under subsection (1) shall be deemed not to be subsidiary legislation.

(4) The Authority may at any time vary, rescind or revoke any written direction issued under subsection (1).

(5) Any person who fail to comply with any requirement specified in a written direction issued under subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$25,000 [~~or to imprisonment for a term not exceeding 12 months or to both~~] and, in the case of a continuing offence, to a further fine not exceeding \$2,500 for every day or part thereof during which the offence continues after conviction.

(6) In this section, “written direction” includes a circular or notice.

### **Power of Authority to make prohibition orders**

**59.** —(1) The Authority may make a prohibition order against a person, by notice in writing, if —

(a) the Authority suspends or revokes the licence held by the person;

(b) where the person is an exempt financial adviser or a representative of an exempt financial adviser, the Authority has reason to believe that circumstances exist under which, if the person were a licensee, there would exist a ground on which the Authority may revoke his licence under section 19 (2);

### **Proposed Amendment**

**Existing Provision**

(c) the Authority has reason to believe that the person is contravening, is likely to contravene or has contravened, any provision of this Act; [øf]

(d) the person has been convicted of an offence under this Act or has been convicted, whether in Singapore or elsewhere, of an offence involving fraud or dishonesty or the conviction for which involved a finding that he acted fraudulently or dishonestly[-] ←

**Proposed Amendment**

; or

(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.

(2) A prohibition order made under subsection (1) may —

(a) prohibit the person from providing any financial advisory service, or from providing such financial advisory service in specified circumstances or capacities, whether permanently or for a specified period; and

(b) include a provision allowing the person, subject to any condition specified in the order —

(i) to do specified acts; or

(ii) to do specified acts in specified circumstances,

that the order would otherwise prohibit him from doing.

(3) The Authority shall not make a prohibition order against a person without giving the person an opportunity to be heard.

(4) Any person who is aggrieved by the decision of the Authority

**Existing Provision**

to make a prohibition order against him may, within 30 days of the decision, appeal in writing to the Minister.

**Proposed Amendment**

**FIRST SCHEDULE**

Sections 2 (1) and 22 (1)

**EXCLUDED FINANCIAL ADVISERS**

**1. Any —**

(a) advocate and solicitor, law corporation, Formal Law Alliance or Joint Law Venture, which is approved or registered under the Legal Profession Act (Cap. 161); or

(b) public accountant who is registered under the Accountants Act (Cap. 2), or accounting corporation which is approved under that Act,

whose carrying on of the business of providing any financial advisory service is solely incidental to his legal or accounting practice, as the case may be.

**2. Any company registered under the Trust Companies Act (Cap. 336) whose carrying on of the business of providing any financial advisory service is solely incidental to its carrying on of the business for which it is registered under that Act.**

**3. Any person who is the proprietor of a newspaper and holder of a permit issued under the Newspaper and Printing Presses Act (Cap. 206), where —**

(a) the newspaper is distributed generally to the public in Singapore;

**Existing Provision**

(b) any advice given, or analysis or report issued or promulgated, is given, issued or promulgated only through that newspaper;

(c) that person receives no commission or other consideration for giving the advice, or for issuing or promulgating the analysis or report; and

(d) the advice is given, or the analysis or report is issued or promulgated, solely as incidental to the conduct of that person's business as a newspaper proprietor.

4. Any person who owns, operates or provides an information service through an electronic, or a broadcasting or telecommunications medium, where —

(a) the service is generally available to the public in Singapore;

(b) any advice given, or analysis or report issued or promulgated, is given, issued or promulgated only through that service;

(c) that person receives no commission or other consideration for giving the advice or for issuing or promulgating the analysis or report; and

(d) the advice is given, or the analysis or report is issued or promulgated, solely as incidental to that person's ownership, operation or provision of that service.

5. Any person who provides credit rating services, where any analysis or report issued or promulgated by that person —

**Proposed Amendment**

, apart from any fee received from subscription to the newspaper,

, apart from any fee received from subscription to the service,

### **Existing Provision**

(a) is issued or promulgated solely as incidental to the conduct of that person's business of providing credit rating services; and

(b) does not contain any specific recommendation with respect to the acquiring of, disposing of, subscribing for, or underwriting of, any securities.

- 6.** Any public statutory corporation established under any Act in Singapore.
- 7.** Any approved trustee under Division 2 of Part XIII of the Securities and Futures Act (Cap. 289).
- 8.** The Official Assignee in exercising his powers under the Bankruptcy Act (Cap. 20).
- 9.** The Public Trustee in exercising his powers under the Public Trustee Act (Cap. 260).
- 10.** Any person acting in relation to a company as its liquidator, provisional liquidator, receiver, receiver and manager, or judicial manager.
- 11.** A foreign company (within the meaning of section 4 (1) of the Companies Act (Cap. 50)) whose provision of any financial advisory service is effected under an arrangement between the foreign company (on the one hand) and its related corporation which is licensed under this Act or exempt under section 23 (other than subsections (1) (f) and (2)) (on the other hand), where such arrangement is approved by the Authority.

### **Proposed Amendment**

**Existing Provision**  
**SECOND SCHEDULE**

**Proposed Amendment**

Section 2 (1)

**TYPES OF FINANCIAL ADVISORY SERVICE**

~~[1. 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.]~~

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.

~~[2. Issuing or promulgating analyses or reports, whether in electronic, print or other form, concerning any investment product.]~~

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

3. Marketing of any collective investment scheme.

4. Arranging of any contract of insurance in respect of life policies, other than a contract of reinsurance.



Monetary Authority of Singapore