

**ANNEX 2: DRAFT FINANCIAL ADVISERS
(AMENDMENT) BILL 2012**

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

Short title and commencement

1. This Act may be cited as the Financial Advisers (Amendment) Act 2012 and shall come into operation on such date as the Minister may, by notification in the *Gazette*, appoint.

5 **Amendment of section 2**

2. Section 2 of the Financial Advisers Act (referred to in this Act as the principal Act) is amended by deleting the definition of “principal” and substituting the following definition:

10 “ “principal”, in relation to a representative, means a person whom the representative is in the direct employment of, acting for or by arrangement with, and on behalf of whom the representative is or will be providing, any financial advisory service.”.

Amendment of section 19

15 3. Section 19(2) of the principal Act is amended –

(a) by deleting the word “given” in paragraph (b) and substituting the word “issued”;

20 (b) by inserting, immediately after the words “from this Act” at the end of paragraph (c), the words “(including any written direction issued by the Authority under this Act)”; and

(c) by inserting, immediately after paragraph (g), the following paragraph:

25 “(ga) the Authority has reason to believe that the licensed financial adviser has not acted in the best interests of its clients;”.

Amendment of section 23F

4. Section 23F of the principal Act is amended –

30 (a) by inserting, immediately after subsection (1), the following subsection:

“(1A) Subsection (1) shall not apply to a principal of an individual who is a provisional

representative in respect of a type of financial advisory service if:

- 5 (a) that individual has satisfied the examination requirements specified for that type of financial advisory service; and
- (b) the principal has informed the Authority of that fact in the prescribed form and manner under section 23D(5).”.

(b) by deleting the words “or (5)” in subsection (6).

10 **Amendment of section 23J**

5. Section 23J(1) of the principal Act is amended –

- (a) by deleting the words “of licence,” in sub-paragraph (h)(i);
- 15 (b) by inserting, immediately after the words “will not perform” in sub-paragraph (h)(iii), the words “or has not performed”;
- (c) by inserting the word “or” at the end of sub-paragraph (h)(iii) and inserting, immediately thereafter, the following sub-paragraph:
- 20 “*(iv)* the Authority has reason to believe that he has not acted in the best interests of the clients of his principal;” and
- (d) by inserting, immediately after paragraph (o), the following paragraph:
- 25 “*(oa)* it appears to the Authority that he has failed to satisfy any of its obligations under or arising from this Act (including any written direction issued by the Authority under this Act);”.

30 **Amendment of section 25**

6. Section 25 of the principal Act is amended by inserting, immediately after subsection (5), the following subsection:

“(5A) Where —

- (a) a licensed financial adviser, in making a recommendation to a person, contravenes subsection (1);
- 5 (b) the person, as a result of the contravention of subsection (1), does a particular act, or refrains from doing a particular act;
- 10 (c) it is reasonable, having regard to the contravention of subsection (1) and all other relevant circumstances, for the person to do that act, or to refrain from doing that act, as the case may be, as a result of the contravention of subsection (1); and
- 15 (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 licensed financial adviser is liable to pay damages to that person in respect of that loss or damage.”.

20 **Amendment of section 26**

7. Section 26 of the principal Act is amended –

- (a) by inserting, immediately after the word “Statements” in the section heading, the words “and employment of manipulative and deceptive devices”;
- 25 (b) by deleting subsection (1) and substituting the following subsection:
- “(1) No licensed financial adviser shall make a false or misleading statement —
- 30 (a) as to any amount that would be payable in respect of a proposed contract in respect of any investment product;
- (b) as to the effect of any provision of a contract or a proposed contract in respect of any investment product; or
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(c) otherwise in connection with the provision of any financial advisory service,

if, when he makes the statement —

- 5 (i) he does not care whether the statement is true or false; or
- (ii) he knows or ought reasonably to have known that the statement is false or misleading.”;

10 (c) by inserting, immediately after subsection (1), the following subsections:

“(1A) No licensed financial adviser shall, in connection with the provision of any financial advisory service, employ any device, scheme
15 or artifice to defraud, or engage in any act, practice or course of business which operates as a fraud or deception, or is likely to operate as a fraud or deception, upon any person.

(1B) Where —

- 20 (a) a licensed financial adviser contravenes subsection (1) or subsection (1A);
- (b) the person, in reliance on the statement in subsection (1) or as a
25 result of the contravention of subsection (1A), does a particular act, or refrains from doing a particular act;
- (c) it is reasonable, having regard to the
30 statement in subsection (1) or the contravention of subsection (1A) and all other relevant circumstances, for the person to do that act, or to refrain from doing that act, as the case may
35 be, in reliance on the statement in

subsection (1) or as a result of the
contravention of subsection (1A); 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,

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then, without prejudice to any other remedy
available to that person, the licensed financial
adviser is liable to pay damages to that person
in respect of that loss or damage.”;

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- (d) by inserting, immediately after the words “making of
a” in subsection (2), the words “false or”; and

- (e) by inserting, immediately after the words “subsection
(1)” in subsection (3), the words “or subsection
(1A)”.

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Amendment of section 58

8. Section 58(1) of the principal Act is amended by deleting,
immediately after the words “necessary or expedient in the”, the
words “public interest” and substituting the words “interests of the
public or a section of the public or for the protection of investors”.

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Amendment of section 59

9. Section 59(1) of the principal Act is amended –

- (a) by inserting, immediately after paragraph (ba), the
following paragraphs:

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“(bb) in the case of a person (other than a
person referred to in subsection (bd)) who is or
was a representative of an exempt financial
adviser, the Authority has reason to believe
that circumstances exist under which, if the
person was an appointed or provisional
representative, there would exist a ground on
which the Authority may revoke his status as
an appointed or provisional representative (as
the case may be) under section 23J;

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5 *(bc)* in the case of a person (other than a person referred to in subsection *(bd)*) who is or was a representative of a licensed financial adviser, the Authority has reason to believe that circumstances exist under which, there would exist a ground on which the Authority may revoke his status as an appointed or provisional representative (as the case may be) under section 23J; and

10 *(bd)* in the case of a person who is or was a representative of a financial adviser, and exempt from the requirement in section 23B(1) pursuant to section 23B(2), the Authority has reason to believe that circumstances exist
15 under which, if the person was an appointed representative, there would exist a ground on which the Authority may revoke his status as an appointed representative under section 23J;”; and

20 (b) by deleting paragraph *(c)* and substituting the following paragraph:

 “*(c)* the Authority has reason to believe that the person is contravening, is likely to contravene or has contravened –

- 25 (i) any provision of this Act;
- (ii) any condition or restriction imposed by the Authority under this Act; or
- (iii) any written direction issued by the Authority under this Act;”.

30 **Amendment of section 71**

10. Section 71 of the principal Act is amended –

- (a) by inserting, immediately before the section heading, the following subdivision heading:

 “*Subdivision (1) – General*”; and

(b) by inserting, immediately after subsection (5), the following subsection:

5 “(6) In this section, “requirement imposed by the Authority” includes a requirement imposed by an investigator under Subdivision (2) or Subdivision (3).”.

New Subdivision 2 of Division 3 of Part VI

11. The principal Act is amended by inserting, immediately after section 71A, the following Subdivision:

10 *“Subdivision (2) – Examination of Persons*

Requirement to appear for examination

71B. – (1) For the purpose of an investigation under this Division, the Authority may, in writing, require a person –

15 (a) to give the Authority all reasonable assistance in connection with the investigation; and

(b) to appear before an officer of the Authority duly authorised by the Authority for examination on oath and to answer questions.

20 (2) A requirement in writing imposed under subsection (1) shall state the general nature of the matter referred to in subsection (1).

Proceedings at examination

25 **71C.** The provisions of this Division shall apply where, pursuant to a requirement made under section 71B for the purposes of an investigation under this Division, a person (referred to in this Division as the examinee) appears before another person (referred to in this Subdivision as the investigator) for examination.

Requirements made of examinee

30 **71D.** – (1) The investigator may examine the examinee on oath or affirmation and may, for that purpose, administer an oath or affirmation to the examinee.

(2) The oath or affirmation to be taken or made by the examinee for the purposes of the examination is an oath or affirmation that the statements that the examinee will make are true.

5 (3) The investigator may require the examinee to answer a question that is put to the examinee at the examination and is relevant to a matter that the Authority is investigating, or is to investigate, under this Division.

Examination to take place in private

10 **71E.** – (1) The examination shall take place in private and the investigator may give directions as to who may be present during the examination or part thereof.

(2) A person shall not be present at the examination unless he is –

- 15 (a) the investigator or the examinee;
- (b) a person approved by the Authority; or
- (c) entitled to be present by virtue of a director under subsection (1).

Record of examination

20 **71F.** – (1) The investigator may, and shall if the examinee so requests, cause a record to be made of statements made at the examination.

(2) If a record made under subsection (1) is in writing or is reduced to writing –

- 25 (a) the investigator may require the examinee to read the record, or have it read to him, and may require him to sign it; and
- (b) the investigator shall, if requested in writing by the examinee to give to the examinee a copy of the written record, comply with the request
- 30 without charge but subject to such conditions as the investigator may impose.

Giving copies of record to other persons

5 **71G.** – (1) The Authority may give a copy of a written record of the examination, or such a copy together with a copy of any related book, to an advocate and solicitor acting on behalf of a person who is carrying on, or is contemplating in good faith, a proceeding in respect of a matter to which the examination relates.

10 (2) If the Authority gives a copy to a person under subsection (1), the person, or any person who has possession, custody or control of the copy or a copy of it, shall not, except in connection with preparing, beginning or carrying on, or in the course of, any proceedings –

- 15 (a) use the copy or a copy of it; or
 (b) publish, or communicate to a person, the copy, a copy of it, or any part of the copy's contents.

(3) The Authority may, subject to such conditions or restrictions as it may impose, give to a person a copy of a written record of the examination, or a copy together with a copy of any related book.

20 **Copies given subject to conditions**

25 **71H.** If a copy of a written record or a book is given to a person under section 71F(2) or 71G(3) subject to conditions or restrictions imposed by the Authority, the person, and any other person who has possession, custody or control of the copy or a copy of it, shall comply with the conditions.

Offences under this Subdivision

30 **71I.** – (1) A person who, without reasonable excuse, refuses or fails to comply with section 71B or 71D(3) 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 2 years or to both.

(2) A person who, without reasonable excuse –

- (a) refuses or fails to take an oath or make an affirmation when required to do so by an investigator examining him under this Subdivision;
- 5 (b) refuses or fails to comply with a requirement of an investigator under section 71F(2)(a); or
- (c) refuses or fails to comply with section 71G(2) or 71H,
- 10 shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$5,000 or to imprisonment for a term not exceeding 12 months or to both.
- (3) A person who, in purported compliance with the provisions of this Subdivision, or in the course of examination of the person, furnishes information or makes a statement that is false or misleading in a material particular 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 2 years or to both.
- 15 (4) It shall be a defence to a prosecution for an offence under subsection (3) if the defendant proves that he believed on reasonable grounds that the information or statement was true and was not misleading.
- 20 (5) A person who, without reasonable excuse, obstructs or hinders the Authority or another person in the exercise of any power under this Subdivision 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 2 years or to both.”.
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New Subdivision 3 of Division 3 of Part VI

12. The principal Act is amended by inserting, immediately before section 72, the following subdivision heading:

35 “*Subdivision 3 - Powers to obtain information*”.

New section 72A

13. The principal Act is amended by inserting, immediately after section 72, the following section:

“Power to enter premises without warrant

5 **72A.** – (1) In connection with an investigation under this Division, any officer of the Authority who is authorised by the Authority to do so (referred to in this section as an investigator) and such other officers or persons as the Authority has authorised in writing to accompany the
10 investigator (referred to in this section as authorised person) may enter any premises.

(2) No investigator or authorised person shall enter any premises in the exercise of the powers under this section unless the investigator has given the occupier of the
15 premises a written notice which —

- (a) gives at least 2 working days’ notice of the intended entry;
- (b) indicates the subject matter and purpose of the investigation; and
- 20 (c) indicates the nature of the offences created by section 76.

(3) Subsection (2) shall not apply —

- (a) if the investigation relates to a contravention referred to in section 71(1)(c) and the investigator has reasonable grounds for suspecting that the premises are, or have been, occupied by a person which is being investigated in relation to the contravention;
25 or
- (b) if the investigator has taken all such steps as are reasonably practicable to give notice but has not been able to do so.
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(4) Where subsection (3) applies, the power of entry conferred by subsection (1) shall be exercised upon
35 production of —

- (a) evidence of the investigator's authorisation and the authorisation of every authorised person accompanying him; and
- (b) a document containing the information referred to in subsection (2)(b) and (c).
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- (5) An investigator or authorised person entering any premises under this section may —
- (a) take with him such equipment as appears to him to be necessary;
- 10 (b) require any person on the premises to produce any book which he considers relates to any matter relevant to the investigation;
- (c) require any person to state, to the best of his knowledge and belief, where any such book is to be found; and
- 15
- (d) take any step or issue any requirement to any person which appears to be necessary for the purpose of preserving or preventing interference with any book which he considers relates to any matter relevant to the investigation.”.
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Repeal and re-enactment of section 73

14. Section 73 of the principal Act is repealed and the following section substituted therefore:

- 25 **“Application for warrant to seize books not produced**
- 73.** – (1) The Authority may apply to a Magistrate for a warrant and the Magistrate may issue such a warrant if he is satisfied that there are reasonable grounds to suspect that there is, on any particular premises, any
- 30 book –
- (a) the production of which has been required under section 72 or 72A, and which has not been produced in compliance with that requirement; or

5 (b) which the Authority has power under section 72 to require to be produced and if the books were required to be produced, they would not be produced but would be concealed, removed, tampered with or destroyed.

(2) A warrant under this section shall authorise the Authority or any person named therein, with or without assistance –

10 (a) to enter the premises specified in the warrant, using such force as is reasonably necessary for the purpose;

(b) to search the premises and to break open and search anything, whether a fixture or not, in the premises;

15 (c) to take possession of, or secure against interference, any book that appears to be a book of a kind in respect of which the application under subsection (1) was granted;

20 (d) to require any person to provide an explanation of any book that appears to be a book of a kind in respect of which the application under subsection (1) was granted, or to state, to the best of his knowledge and belief, where it may be found;

25 (e) to search any person on those premises if there are reasonable grounds for believing that that person has in his possession any book, equipment or article which has a bearing on the investigation concerned; and

30 (f) to remove from those premises for examination any equipment or article which relates to any matter relevant to the investigation concerned.

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(3) If, in the case of a warrant issued under subsection (2), the Magistrate is satisfied that it is reasonable to

suspect that there are also on the premises other books relating to the investigation concerned, the warrant shall also authorise the actions mentioned in subsections 2(a) to (f) to be taken in relation to any such book.

5 (4) The Authority or any person named in the warrant may allow any equipment or article which has a bearing on an investigation and which may be removed from any premises for examination under subsection (2)(f) to be retained on those premises subject to such conditions as
10 the Authority or person named in the warrant may require.

(5) Any person entering premises by virtue of a warrant under this section may take with him such equipment as appears to him to be necessary.

15 (6) Where a warrant is issued under subsection (2) and there is no one at the premises when the Authority or any person named in the warrant proposes to execute such a warrant, the Authority or any person named in the warrant shall, before executing it –

20 (a) take such steps as are reasonable in all the circumstances to inform the occupier of the intended entry; and

 (b) if the occupier is informed, afford him or his legal or other representative a reasonable
25 opportunity to be present when the warrant is executed.

(7) If the Authority or any person named in the warrant is unable to inform the occupier of the intended entry, the Authority or any person named in the warrant shall,
30 when executing the warrant, leave a copy of it in a prominent place on the premises.

(8) On leaving any premises which the Authority or any person named in the warrant has entered by virtue of a warrant under this section, the Authority or any person
35 named in the warrant shall, if the premises are unoccupied or the occupier is temporarily absent, leave

them as effectively secured as the Authority or any person named in the warrant found them.

5 (9) The powers conferred under subsections (1) to (5) are in addition to, and not in derogation of, any other powers conferred by any other written law or rule of law.

(10) In this section,

“premises” includes any structure, building, aircraft, vehicle or vessel.

10 “occupier”, in relation to any premises, means a person whom the Authority or any person named in the warrant reasonably believes is the occupier of those premises.

Amendment of section 74

15. Section 74 of the principal Act is amended –

15 (a) by inserting, immediately after paragraph (a) of subsection (1), the following paragraph:

“(ai) books are produced to the Authority during an entry into premises under section 72A;”;

20 (b) by inserting, immediately after the words “subsection (1)(a)” in subsection (2), the words “or (ai)”;

(c) by deleting the word “and” at the end of paragraph (b) of subsection (3);

25 (d) by deleting the fullstop at the end of paragraph (c) of subsection (3) and substituting the word “; and”;

(e) by inserting, immediately after paragraph (c) of subsection (3), the following paragraph:

30 “(d) require any book which is stored in any electronic form and which the Authority or, where applicable, a person referred to in subsection (1)(b) considers relates to any matter relevant to the investigation concerned, to be produced in a form –

(i) in which it can be taken away; and

(ii) in which it is visible and legible.”;

- (f) by inserting, immediately after the words “subsection (1)(a)” in paragraph (a) of subsection (7), the words “or (ai)”.

5 **Amendment of section 76**

16. Section 76 of the principal Act is amended –

- (a) by deleting the section heading and substituting the following section heading:

“Offences under this Subdivision”;

- 10 (b) by inserting, immediately after the words “comply with a requirement” in subsection (1), the words “or condition”;
- (c) by deleting the words “section 72, 74(7) or 75” in subsection (1) and substituting the words “section 72,
15 72A(5), 73(2)(d), 74(3)(d) or (7), or 75”;
- (d) by deleting the words “section 72, 74(7) or 75” in subsection (2) and substituting the words “this Subdivision”;
- (e) by inserting, immediately after the word “book”
20 throughout subsection (4), the words “, equipment or article”;
- (f) by inserting, immediately after the words “obstructs or hinders a person who is” in subsection (5), the words “exercising the power of entry under section
25 72A or”;
- (g) by inserting, immediately after the words “a person enters” in subsection (6), the words “under section 72A or”;
- (h) by inserting, immediately after the words “exercise of his powers” in subsection (6), the words “under
30 section 72A or”; and
- (i) by inserting, immediately after the words “under the warrant” in subsection (6), the words “issued under section 73”.

New Division 4 of Part VI

17. The principal Act is amended by inserting, immediately after section 76, the following Division:

“Division 4 – Transfer of Evidence

5 **Interpretation of this Division**

76A. In this Division –

“Commercial Affairs Officer” means a Commercial Affairs Officer appointed under section 64 of the Police Force Act (Cap. 235);

10 “police officer” means a member of the Singapore Police Force who is deployed in the Commercial Affairs Department of that Force.

Evidence obtained by the Authority may be used in criminal investigations and proceedings

15 **76B.** – (1) Notwithstanding the provisions of any written law or any rule of law, the Authority may furnish any book, document, written record of any examination or other information obtained by the Authority in the exercise of its powers under this Part to –

- 20 (a) a police officer;
 (b) a Commercial Affairs Officer; or
 (c) the Public Prosecutor,

or the purposes of any investigation into or criminal proceedings against a person for an alleged
 25 contravention of any provision under this Act.

(2) For the avoidance of doubt, any book, document, written record of examination or other information furnished by the Authority under subsection (1) shall not be inadmissible in any criminal proceedings by reason
 30 only that it was first obtained by the Authority in the exercise of its powers under this Act, and the admissibility thereof shall be determined in accordance with the rules of evidence under written law and any relevant rules of law.”.

Amendment of section 89

18. Section 89 of the principal Act is amended –

(a) by inserting word “(1)” before words “The Authority”; and

5 (b) by inserting, immediately after subsection (1), the following subsection:

“(2) The Authority may, in its discretion, compound any offence under a provision of this Act (including an offence under a provision that has been repealed) –

10 (a) which was compoundable under this section at the time the offence was committed; but

15 (b) which has ceased to be so compoundable,

by collecting from a person reasonably suspected of having committed the offence a sum of money not exceeding the maximum fine prescribed for that offence at the time it was committed.”.

20 **New sections 98A, 98B and 98C**

19. The principal Act is amended by inserting, immediately after section 98, the following sections:

“Power of court to prohibit payment or transfer of moneys, investment products etc.

25 **98A.** — (1) Where —

30 (a) an investigation is being carried out under this Act in relation to any act or omission by a person, being an act or omission that constitutes or may constitute a contravention under this Act;

(b) a criminal proceeding has been instituted against a person for an offence under this Act; or

5 (c) a civil proceeding has been instituted against
a person under this Act, and the court
considers it necessary or desirable to do so
for the purpose of protecting the interests of
any person to whom the person referred to in
paragraph (a), (b) or (c) of this paragraph, as
the case may be (referred to in this section
as the relevant person), is liable or may
become liable to pay any moneys,
10 whether in respect of a debt, or by way of
damages or otherwise, or to account for
investment products or other property,

the court may, on application by the Authority, make any
one or more of the following orders:

- 15 (i) an order prohibiting, either absolutely or
subject to conditions, a person who is indebted
to the relevant person or any person associated
with the relevant person from making a
payment in total or partial discharge of such
20 debt that is due or accruing due to that relevant
person, or to another person at the direction or
request of, the relevant person;
- (ii) an order prohibiting, either absolutely or
subject to conditions, a person holding
25 moneys, investment products or other property,
on behalf of the relevant person or on behalf of
any person associated with the relevant person
from paying, transferring or otherwise parting
with possession of all or any of the moneys,
30 investment products or other property, to such
relevant person, or to another person at the
direction or request of, the relevant person;
- (iii) an order prohibiting, either absolutely or
subject to conditions, the taking or sending out
35 of Singapore of moneys of the relevant person
or of any person associated with the relevant
person;

- 5 (iv) an order prohibiting, either absolutely or subject to conditions, the taking, sending or transfer of investment products or documents of title to investment products or other property of the relevant person or of any person who is associated with the relevant person, from a place or person in Singapore to a place or person outside Singapore (including the transfer of securities from a register in Singapore to a register outside Singapore);
- 10 (v) an order appointing —
- 15 (A) where the relevant person is an individual, a receiver, having such powers as the court orders, of the property or part of the property of that person; or
- 20 (B) where the relevant person is a corporation, a receiver or receiver and manager, having such powers as the court orders, of the property or part of the property of that person;
- 25 (vi) where the relevant person is a natural person, an order requiring that person to deliver up to the court his passport and such other documents as the court thinks fit;
- (vii) where the relevant person is a natural person, an order prohibiting that person from leaving Singapore without the consent of the court.

30 (2) Where an application is made to the court for an order under subsection (1), the court may, if the court is of the opinion that it is desirable to do so, before considering the application, make any interim order as it thinks fit pending the determination of the application.

35 (3) Where the Authority makes an application to the court for the making of an order or interim order under this section, the court shall not require the Authority or

any other person, as a condition of granting the order or interim order, to give any undertaking as to damages.

5 (4) Where the court has made an order or interim order under this section, the court may, on application by the Authority or by any person affected by the order or interim order, rescind or vary the order or interim order.

10 (5) An order or interim order made under this section may be expressed to operate for a period specified in the order or interim order or until the order or interim order is rescinded.

15 (6) Any person who contravenes an order or interim order made by the court under this section that is applicable to him 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 2 years or to both.

(7) Subsection (6) shall not affect the powers of the court in relation to the punishment for contempt of court.

Injunctions

20 **98B.**—(1) Where a person has engaged, is engaging or is likely to engage in any conduct that constitutes or would constitute a contravention of this Act, the court may, on the application of —

- (a) the Authority; or
- 25 (b) any person whose interests have been, are or would be affected by the conduct,

grant an injunction restraining the first-mentioned person from engaging in the conduct and, if the court is of the opinion that it is desirable to do so, requiring that person to do any act or thing.

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(2) Where a person has refused or failed, is refusing or failing, or is likely to refuse or fail, to do an act or thing that he is required by this Act to do, the court may, on the application of —

- 35 (a) the Authority; or

(b) any person whose interests have been, are or would be affected by the refusal or failure to do that act or thing,

5 make an order requiring the first-mentioned person to do that act or thing.

10 (3) Where an application is made to the court for an injunction under subsection (1) or an order under subsection (2), the court may, if the court is of the opinion that it is desirable to do so, before considering the application, grant an interim injunction restraining a person from engaging in conduct of the kind referred to in subsection (1) or make an interim order requiring a person to do any act or thing, pending the determination of the application.

15 (4) Where the court has power under this section to grant an injunction or interim injunction or make an order or interim order restraining a person from engaging in conduct of a particular kind, or requiring a person to do a particular act or thing, the court may, either in addition to or in substitution for the injunction, order, 20 interim injunction or interim order, order that person to pay damages to any other person.

25 (5) Where the court has granted an injunction or interim injunction or made an order or interim order under this section, the court may, on application by any party referred to in subsection (1) or (2) or by any person affected by the injunction, order, interim injunction or interim order, rescind or vary the injunction, order, interim injunction or interim order.

30 (6) An injunction, order, interim injunction or interim order granted or made under this section may be expressed to operate for a period specified in the injunction, order, interim injunction or interim order or until the injunction, order, interim injunction or interim order is rescinded. 35

(7) Any person who contravenes an injunction, order, interim injunction or interim order by the court under

this section that is applicable to him 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 2 years or to both.

5 (8) Where an application is made to the court for the grant of an injunction under subsection (1), the power of the court to grant the injunction may be exercised —

10 (a) if the court is satisfied that the person has engaged in conduct of that kind, whether or not it appears to the court that the person intends to engage again, or to continue to engage, in conduct of that kind; or

15 (b) if it appears to the court that, in the event that an injunction is not granted, it is likely that the person will engage in conduct of that kind, whether or not the person has previously engaged in conduct of that kind and whether or not there is an imminent danger of substantial damage to any person
20 if the first-mentioned person engages in conduct of that kind.

(9) Where an application is made to the court for the making of an order under subsection (2), the power of the court to make the order may be exercised —

25 (a) if the court is satisfied that the person has refused or failed to do that act or thing, whether or not it appears to the court that the person intends to refuse or fail again, or to continue to refuse or fail, to do that act or
30 thing; or

35 (b) if it appears to the court that, in the event that an order is not made, it is likely the person will refuse or fail to do that act or thing, whether or not the person has previously refused or failed to do that act or thing and whether or not there is an imminent danger of substantial damage to

any person if the first-mentioned person refuses or fails to do that act or thing.

5 (10) Where any person referred to in subsection (1) or (2) makes an application to the court for the grant of an injunction or interim injunction or for the making of an order or interim order under this section, the court shall not require that person or any other person, as a condition of granting the injunction, order, interim injunction or interim order, to give any undertaking as to damages.

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(11) Subsection (7) shall not affect the powers of the court in relation to the punishment for contempt of court.

Power of court to have regard to claimant's reasonable effort

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98C.— (1) Where the court finds that a licensed or an exempt financial adviser is liable to pay damages to any person under Part III of this Act (referred to in this section as the claimant), the court shall, in making any order, have regard to whether or not the claimant made a reasonable effort to —

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- (a) minimise any loss or damage resulting to the claimant; and
- (b) resolve the dispute with the financial adviser before commencement of court proceedings.

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(2) For the purposes of subsection (1)(b), if any specified dispute resolution scheme was available to the claimant in respect of the dispute, the court shall consider whether the claimant had sought to resolve the dispute through such a scheme.”.

30 Amendment of section 104

20. Section 104(2) of the principal Act is amended by deleting paragraph (ab) and substituting the following paragraph:

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“(ab) the items which constitutes an unsecured advance, unsecured loan or unsecured credit facility, and the requirements and restrictions relating to the granting of

5 such, unsecured advance, unsecured loan or unsecured credit facility by a licensed financial adviser to his officer, employee or representative, including any person related to such office, employee or representative in the manner prescribed by regulations;”.

Amendment of Third Schedule

21. The Third Schedule to the principal Act is amended by inserting, immediately after item 1, the following items:

- 10 “1A. Section 23B(2)
1B. Section 23(6A)
1C. Section 37(2)”.

Transitional and savings provisions

15 22. The Authority may, by regulations, prescribe such transitional and savings provisions as it may consider necessary or expedient within 2 years of the date of commencement of this Act.