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FINANCIAL ADVISERS ACT (CHAPTER 110)

FINANCIAL ADVISERS (COMPLAINTS HANDLING AND RESOLUTION) REGULATIONS 2021

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In exercise of the powers conferred by section 104 of the Financial Advisers Act, the Monetary Authority of Singapore makes the following Regulations:

Citation and commencement

1. These Regulations are the Financial Advisers (Complaints Handling and Resolution) Regulations 2021 and come into operation on 3 January 2022.

Definitions

2.—(1) In these Regulations, unless the context otherwise requires —

“accredited investor”, in relation to a financial adviser, means any of the following persons who has opted to be treated by the financial adviser as an accredited investor under regulation 3(2) of the Securities and Futures (Classes of Investors) Regulations 2018 (G.N. No. S 665/2018) for all consent provisions as defined in regulation 3(9) of those Regulations:

(a) an individual mentioned in section 4A(1)(a)(i) of the Securities and Futures Act 2001;

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(b) a trustee mentioned in section 4A(1)(a)(iii) of the Securities and Futures Act 2001 who is an individual;

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(c) a person mentioned in section 4A(1)(a)(iv) of the Securities and Futures Act 2001 who is an individual;

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“Authority’s Internet website” means the website at <http://www.mas.gov.sg>;

“business conduct requirement” means a requirement, in any of the following laws or instruments, concerning the conduct of the business of providing any financial advisory service:

(a) Part 3 of the Act;

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(b) any regulations made for the purposes of Part 3 of the Act;

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(c) any written direction, or written notice, issued by the Authority for the purposes of Part 3 of the Act and set out at the Authority’s Internet website;

[S 225/2023 wef 03/01/2022]

“business day” means any day other than a Saturday, Sunday or public holiday;

“chief executive officer”, in relation to a financial adviser, means any individual, by whatever name described, who —

- (a) is in the direct employment of, or acting for or by arrangement with, the financial adviser; and
- (b) is principally responsible for the management and conduct of any type of business of the financial adviser in Singapore;

“complaint” means a complaint made by a named client or named prospective client of a financial adviser, containing an allegation of any conduct which, if true, may constitute —

- (a) a contravention of a business conduct requirement; or
- (b) an unfair practice in relation to the provision of a financial advisory service;

“expert investor” has the meaning given by section 4A(1)(b) of the Securities and Futures Act 2001;

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“final response”, in relation to a complaint to a financial adviser, means a written response, from the financial adviser to the complainant, which —

- (a) states that the response is the financial adviser’s final response to the complaint;
- (b) states that the financial adviser —
 - (i) accepts that the complaint is valid, and offers the redress or remedial action specified in the response;
 - (ii) offers the redress or remedial action specified in the response without accepting that the complaint is valid; or
 - (iii) rejects the complaint; and
- (c) where the complainant has a right to refer the complaint to a dispute resolution scheme approved by the Authority under section 31(1) of the Financial Services and Markets Act 2022 if the complainant is

dissatisfied with the response — informs the complainant of such right;

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[S 225/2023 wef 28/04/2023]

“institutional investor” has the meaning given by section 4A(1)(c) of the Securities and Futures Act 2001;

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“senior management”, in relation to a financial adviser, includes —

- (a) the chief executive officer of the financial adviser;
- (b) the chief operating officer of the financial adviser;
- (c) any officer of the financial adviser who is employed in an executive capacity and is responsible for the financial adviser’s compliance functions;
- (d) any director of the financial adviser who is employed in an executive capacity; and
- (e) any other person, by whatever name called, who is in charge of carrying out the duties of any office mentioned in paragraph (a), (b), (c) or (d);

“unfair practice” has the meaning given by section 2(1) of the Consumer Protection (Fair Trading) Act 2003.

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(2) A reference in these Regulations to the provision by a financial adviser of anything in writing (however expressed) excludes the provision by the financial adviser of an audio recording of the same.

(3) For the purpose of these Regulations, a complaint received by a financial adviser is deemed to be resolved on the occurrence of either of the following events:

- (a) the complainant accepts any explanation given or offer made by the financial adviser;
- (b) the financial adviser sends its final response to the complainant in respect of the complaint.

Application

3.—(1) Subject to paragraph (2), these Regulations apply to every licensed financial adviser and every exempt financial adviser.

(2) These Regulations apply to any complaint that —

(a) is made on or after 3 January 2022 by any client or prospective client of a financial adviser who, at the time when the complaint is made —

(i) is an individual or an individual proprietor of a sole proprietorship; and

(ii) is not an accredited investor, expert investor or institutional investor; and

(b) relates to the provision of any financial advisory service by the financial adviser to the client or prospective client.

Obligation to establish unit to handle and resolve complaints

4.—(1) A financial adviser must establish a unit, comprising officers and employees who are not directly involved in providing any financial advisory service, to —

(a) handle and resolve any complaint received by the financial adviser; or

(b) supervise the handling and resolution by a person who is not a member of the unit of any complaint received by the financial adviser.

(2) The financial adviser mentioned in paragraph (1) must ensure that every complaint received by the financial adviser is handled and resolved by —

(a) the unit mentioned in that paragraph; or

(b) a person under the supervision of the unit.

Obligation to establish complaints handling and resolution process

5.—(1) A financial adviser must —

(a) establish a process for handling and resolving complaints;
and

(b) comply with that process.

(2) A financial adviser must ensure that the process mentioned in paragraph (1) provides for all of the following matters:

(a) the assessment of the merits of each complaint;

(b) the criteria for determining whether the unit established under regulation 4 should refer a complaint to the senior management of the financial adviser, for the senior management to decide on the financial adviser's response to the complaint;

(c) a reasonable timeframe for handling and resolving complaints.

(3) A financial adviser must ensure that the process mentioned in paragraph (1) includes procedures for all of the following matters:

(a) the provision to the complainant, within 2 business days after the date on which the complaint is received by the financial adviser, of a written acknowledgment that the financial adviser has received the complaint, and the written notice mentioned in regulation 7(2);

(b) the interviewing of the complainant;

(c) the reviewing, and the completion of the review, of the complaint;

(d) ensuring that the complainant is kept informed of the status of the handling of the complaint;

(e) the sending to the complainant, within 20 business days after the date on which the complaint is received by the financial adviser, of —

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- (i) the financial adviser's final response to the complaint; or
 - (ii) a written response informing the complainant of all the following matters:
 - (A) the reason for any delay in providing the financial adviser's final response to the complaint;
 - (B) an indicative reasonable timeframe within which the complainant may expect to receive the financial adviser's final response to the complaint;
 - (C) where the complainant has a right to refer the complaint to a dispute resolution scheme approved by the Authority under section 31(1) of the Financial Services and Markets Act 2022 — that fact;

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- (f) where an offer of redress or remedial action is accepted by the complainant, the payment of the money offered as redress, or the carrying out of the remedial action.

(4) Where the financial adviser's final response states that the financial adviser rejects the complaint, the financial adviser must provide the complainant with written reasons for the rejection of the complaint.

(5) For the purposes of this regulation, where a financial adviser receives a complaint on any day other than a business day, or after the close of business on a business day, the complaint is treated as received by the financial adviser on the next business day.

Oversight of compliance with Regulations

6. A financial adviser must appoint either of the following to be responsible for the oversight of compliance with these Regulations by the financial adviser:

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- (a) a member of the financial adviser's senior management who is not directly involved in the provision of any financial advisory service;
 - (b) a committee comprising 2 or more members of the financial adviser's senior management who are not directly involved in the provision of any financial advisory service.

Information on complaints handling and resolution process to be publicly available

7.—(1) A financial adviser must ensure that information on the financial adviser's process for handling and resolving complaints (including information on how to make a complaint and the contact details of the financial adviser's unit mentioned in regulation 4(1)) is available to, and can be easily accessed by, any member of the public —

- (a) at the financial adviser's place of business; and
- (b) on the financial adviser's Internet website (if any).

(2) For the purposes of regulation 5(3)(a), a financial adviser must provide a written notice that sets out a summary of the financial adviser's process for handling and resolving complaints (including information on the procedures mentioned in regulation 5(3)(b) to (f)) to every complainant who has lodged a complaint with the financial adviser.

Establishment of system for managing complaints, etc.

8.—(1) A financial adviser must establish a system to record, track and manage complaints received from complainants.

(2) For the purposes of the system mentioned in paragraph (1), the financial adviser must keep a record of each complaint received, including —

- (a) the details of the complaint;
- (b) all correspondence relating to the complaint;

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- (c) all materials and information reviewed by the financial adviser in relation to the complaint; and
 - (d) the outcome of the complaint.

(3) The financial adviser must keep the record mentioned in paragraph (2) for at least 5 years after the date on which the complaint is deemed to be resolved under regulation 2(3).

Biannual reports

9.—(1) A financial adviser must prepare, for each half year ending on 30 June or 31 December, or part of any such half year, during which the financial adviser provides any financial advisory service, a report in Form CHR setting out —

- (a) every complaint received by the financial adviser; and
- (b) the actions undertaken by the financial adviser to resolve each complaint mentioned in sub-paragraph (a).

(2) The financial adviser must ensure that the report mentioned in paragraph (1) is approved by a member of the senior management of the financial adviser, and is lodged with the Authority no later than 3 months (or such longer period as the Authority may allow) after the end of the half year (or part of a half year) for which the report is prepared.

(3) The financial adviser must ensure that the report is in the English language and is prepared in accordance with any direction that is specified in Form CHR or by the Authority.

(4) The Authority may refuse to accept the report if it is not completed or lodged in accordance with this regulation.

(5) Where strict compliance with Form CHR is not possible, the Authority may allow for the necessary modifications to be made to that form, or for the requirements of that form to be complied with in any manner that the Authority thinks fit.

(6) In this regulation, any reference to Form CHR is a reference to the current version of that form displayed at the Authority's Internet website.

Written directions to financial adviser or class of financial advisers to conduct review of compliance with business conduct requirements

10.—(1) Without limiting section 67 of the Act, the Authority may issue written directions to a financial adviser, requiring the financial adviser —

- (a) to conduct a review of the financial adviser’s compliance with the business conduct requirements if —
 - (i) the Authority is satisfied that there may be regular failure by the financial adviser to comply with any business conduct requirement; or
 - (ii) the Authority considers it necessary or expedient in the public interest;
- (b) to submit a report on the outcome of the review mentioned in sub-paragraph (a); and
- (c) to provide periodic updates on the financial adviser’s progress in resolving complaints.

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(2) Without limiting section 67 of the Act, the Authority may issue written directions to a class of financial advisers, requiring every financial adviser in that class —

- (a) to conduct a review of the financial adviser’s compliance with the business conduct requirements if —
 - (i) the Authority is satisfied that there may be widespread or regular failure by financial advisers in that class to comply with any business conduct requirement; or
 - (ii) the Authority considers it necessary or expedient in the public interest;
- (b) to submit a report on the outcome of the review mentioned in sub-paragraph (a); and
- (c) to provide periodic updates on the financial adviser’s progress in resolving complaints.

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Offences

11. A financial adviser who, without reasonable excuse, contravenes regulation 4(1) or (2), 5(1), (2), (3) or (4), 6, 7(1) or (2), 8(1), (2) or (3) or 9(1), (2) or (3) 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 of a day during which the offence continues after conviction.

Made on 26 November 2021.

RAVI MENON
Managing Director,
Monetary Authority of Singapore.

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