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**THE MONETARY AUTHORITY OF SINGAPORE**

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

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*These Guidelines, issued pursuant to section 64 of the Financial Advisers Act, are intended to provide general guidance and do not create any legally enforceable obligations or duties. They do not have the force of law and should not be interpreted in a way that would override the relevant legislative provisions. However, while a failure to comply with a guideline does not of itself amount to an offence, it may be relied upon as tending to establish any liability in question in any proceedings<sup>1</sup>.*

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<sup>1</sup> Section 64(3) of the Financial Advisers Act.

## 1 INTRODUCTION

### Background Information

1.1 Payment and ownership structures between financial advisers<sup>2</sup> and product providers have become increasingly complex and diverse. Investors are often not fully aware of the existence, nature or implications of these payment or ownership structures. Commercial arrangements between financial advisers and product providers may also give rise to issues relating to the independence of financial advisers.

1.2 Some financial advisers may wish to use the word “independent” in their business names or in respect of their advice or recommendation. They may also wish to promote or advertise their services as being “independent”. However, the use of the word “independent” by a financial adviser has strong connotations for the investing public. It suggests to the investor that the financial adviser operates with objectivity and impartiality, and does not have any potential conflicts of interest when recommending an investment product as a result of commercial or financial links with a product provider. In the light of such public expectations, the Financial Advisers Regulations (“FAR”) limit the use of the word “independent” by financial advisers.

### Objective of the Guidelines

1.3 The purpose of these guidelines is to give guidance to financial advisers on the circumstances they may use the term “independent” in the name, description or title under which they carry on business in Singapore, promote or advertise their services, or use the term in respect of their advice or recommendation.

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<sup>2</sup> For the purposes of these Guidelines, “financial advisers” means licensed financial advisers and exempt financial advisers.

## 2 CONDITIONS TO BE MET

### Regulation 34 – Use of the Term “Independent”<sup>3</sup>

2.1 Regulation 34(1) of the FAR states that no licensed financial adviser or exempt financial adviser shall use the word “independent” or any of its derivatives in any language or any other word or expression in any language that is of like import to “independent” in the name, description or title under which it carries on business in Singapore; to promote or advertise its services; or in respect of any of its advice or recommendation unless it:

- (a) Does not receive any commission or other benefit from a product provider which may tend to create a product bias or pay any commission to or confer other benefits upon its representatives which may tend to create a product bias;
- (b) Operates free from any direct or indirect restrictions relating to any investment product which is recommended; and
- (c) Operates without any conflicts of interest created by any connection to or association with product providers.

2.2 Regulation 34(2) of the FAR states that a financial adviser which is prohibited from using the word “independent” in the manner specified in Regulation 34(1) shall inform all of its representatives, in writing, of the prohibition.

2.3 Regulation 34(3) of the FAR states that no representative of a financial adviser referred to in Regulation 34(1) shall use “independent” or any

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<sup>3</sup> The draft regulation on the use of the term “independent” is at the Annex.

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of its derivatives in any language or any other word or expression in any language that is of like import to “independent” in acting as a representative of the financial adviser.

### **Basic Test for Independence**

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

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

2.6 MAS considers that a financial adviser can use the word “independent” if:

- (a) it does not receive any of the following:
  - (i) any commission (apart from commission that is rebated in full to the financial adviser’s clients);
  - (ii) any form of remuneration calculated at a rate or on a basis that varies having regard to all or any of the following:

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

2.7 We consider that in the circumstances set out in paragraph 2.6 above, the requirements of Regulation 34 will normally be met. A financial adviser that does not meet the 3 tests at paragraph 2.6 is not necessarily precluded from using the term “independent” in accordance with Regulation 34. Paragraphs 3 to 5 of these guidelines provide guidance on other

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circumstances where a financial adviser may not be restricted from using the term “independent”.

### **3 COMMISSIONS AND OTHER BENEFITS**

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

3.2 If a financial adviser receives any commission or other benefit of the kind referred to in paragraph 2.6 (a) which may tend to influence the advice or recommendation in favour of a particular product or product provider, it should not use the word “independent”.

3.3 The mere fact that a financial adviser receives commissions or other benefits from a product provider does not preclude it from calling itself “independent”. The key issue is whether such commission or other benefits are likely to create a bias in favour of a particular product, class of products or product provider. This is a question of fact. Financial advisers must carefully consider their own circumstances, and be able to clearly demonstrate if called upon to do so, that they meet the requirements in Regulation 34 of the FAR when deciding whether to use the word “independent”. The following are some general guidelines designed to assist financial advisers make this assessment.

#### **Insignificant Commissions or Other Benefits**

3.4 If the commissions or other benefits received by a financial adviser are insignificant in terms of the overall value and size of that line of business conducted by the financial adviser, they will not prevent the financial adviser using the word “independent”. This is because such commissions and

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benefits may not tend to create a product bias or be capable of influencing the recommendations of the financial adviser. Clearly, low value financial benefits such as a business lunch or a free seminar would not generally give rise to a concern. What is an insignificant benefit is a question of fact in each case.

*Question: Would it be useful to set quantitative or other limits as to what would be insignificant enough not to result in a potential product bias? If so, please suggest an appropriate limit or a basis on which we could determine and set these limits. If you suggest that more detailed limits would be useful, please explain how these could be set in a way that accommodates the diversity of business and remuneration arrangements that may exist.*

### **Same Level of Commission**

3.5 A financial adviser is likely to be biased in favour of a particular product unless it receives a broadly similar level of commission for similar products or classes of products it recommends. This could also be the case if the level of commission received is similar, but the financial adviser receives significant other additional benefits, such as free research or training for recommending a particular product.

3.6 If there are any significant differences in the rate of commissions payable for different classes of products, such differences may create a bias in favour of the class of products that pay the higher commission. What is a significant difference is a question of fact in each case.



*Question: Would it be useful to set quantitative or other limits as to what would be insignificant enough not to result in a potential product bias? If so, please suggest an appropriate limit or a basis on which we could determine and set these limits. If you suggest that more detailed limits would be useful, please explain how these could be set in a way that accommodates the diversity of business and remuneration arrangements that may exist.*

### **Commission Sharing Arrangement**

3.7 A financial adviser may remunerate its representatives through a commission sharing arrangement, where the representatives are entitled to a certain percentage of the commission paid by the product providers. Significant differences in the commission sharing arrangement for different products may tend to create a bias in favour of certain products when representatives advise on, or recommend those products. This may be the case even if the overall commission paid by product providers to the financial adviser may be similar. In such a situation, a representative may be induced to promote an investment product that entitles him to a higher commission.

## **4 PRODUCT RESTRICTION**

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

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

4.3 Notwithstanding the absence of a contractual agreement, if a financial adviser only recommends the range of products of a single product provider, MAS will not regard the financial adviser as being independent. For example, a financial adviser who only distributes the unit trusts of a single fund manager, or arranges contracts of life policies of a single insurer, as the case may be, should not call itself “independent”.

4.4 MAS takes the view that a financial adviser who is subject to any type of direct or indirect product restriction in relation to which advice or recommendation is provided should not use the word “independent”.

*Question: Should we specify a minimum number of product providers financial advisers are required to represent for each class of investment product before they are allowed to use the word “independent”? If so, please suggest how we might determine what is an appropriate number given the diversity of possible business arrangements that may exist.*

## 5 RELATIONSHIP WITH A PRODUCT PROVIDER

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

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5.2 A financial adviser may also be related to a product provider. For instance, it may be a subsidiary of a product provider or the advisory arm of a financial services conglomerate that owns a fund management, life insurance or banking outfit. A financial adviser may also be a sister company of a product provider. Such ownership links, regardless of their remoteness, may tend to create bias in favour of the group's proprietary products.

5.3 In considering whether these ownership links create a product bias, MAS will take into account the ownership structure of the financial adviser, its relationship with the product provider, and the products on which advice or recommendation is provided. For example, a financial adviser may be a wholly-owned subsidiary of a fund management company. If that financial adviser advises on the products of the fund management company, then there is likely to be a product bias in favour of the products of the parent company.

## **6 PENALTY FOR BREACH OF REGULATION 34**

6.1 Any financial adviser which contravenes Regulation 34(1) or (2) of the FAR shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$12,500.

6.2 Any representative which contravenes Regulation 34(3) of the FAR shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$12,500.

## **7 APPLICATION OF THE GUIDELINES**

7.1 Although MAS has issued these guidelines, the question of independence depends on the exact circumstances in each case. Therefore, mere compliance with these guidelines does not necessarily ensure that a financial adviser can use the term "independent". Financial advisers and their

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representatives should carefully consider their own particular circumstances prior to using the term “independent” in the name, description or title under which they carry on business in Singapore, to promote or advertise their services, or in respect of any of their advice or recommendations. It is a matter for the financial adviser to be clearly satisfied and be able to demonstrate that it is in compliance with Regulation 34 of the FAR before using the term “independent”.

**Use of the term “independent”**

**34.—(1)** No licensed financial adviser or exempt financial adviser shall use the word “independent” or any of its derivatives in any language or any other word or expression in any language that is of like import to “independent”

- (a) in the name, description or title under which it carries on business in Singapore;
- (b) to promote or advertise its services; or
- (c) in respect of any of its advice or recommendation,

unless it —

- (i) does not receive any commission or other benefit from a product provider which may tend to create a product bias or pay any commission to or confer other benefits upon its representatives which may tend to create a product bias;
- (ii) operates free from any direct or indirect restrictions relating to any investment product which is recommended; and
- (iii) operates without any conflicts of interest created by any connection to or association with product providers.

(2) A financial adviser which is prohibited from using the word “independent” in the manner specified in paragraph (1) shall inform all of its representatives, in writing, of the prohibition.

(3) No representative of a financial adviser referred to in paragraph (1) shall use “independent” or any of its derivatives in any language or any other word or expression in any language that is of like import to “independent” in acting as a representative of the financial adviser.

(4) Any financial adviser which contravenes paragraph (1) or (2) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$12,500.

(5) Any representative who contravenes paragraph (3) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$12,500.