

Financial Advisers (Amendment) Bill

Bill No. 22/2008.

Read the first time on 15th September 2008.

A BILL

intituled

An Act to amend the Financial Advisers Act (Chapter 110 of the 2007 Revised Edition).

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

Short title and commencement

1. This Act may be cited as the Financial Advisers (Amendment) Act 2008 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(1) of the Financial Advisers Act (referred to in this Act as the principal Act) is amended —

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

10 “ “appointed representative”, in respect of a type of financial advisory service, has the meaning given to that expression in section 23C, and “appointed representative” means an appointed representative in respect of any type of financial advisory service;”;

15 (b) by deleting the words “or renewed” in the definition of “financial adviser’s licence”;

(c) by inserting, immediately after the definition of “financial advisory service”, the following definition:

20 “ “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;”;

25 (d) by deleting paragraph (b) of the definition of “futures contract” and substituting the following paragraph and words:

“(b) such other contract or class of contracts as the Authority may prescribe,

30 but does not include such contract or class of contracts as the Authority may prescribe;”;

(e) by deleting the definition of “licence”;

(f) by inserting, immediately after the definition of “prescribed written law”, the following definitions:

“principal”, in relation to a representative, means a financial adviser whom the representative is in the direct employment of, acting for or by arrangement with, and on behalf of whom the representative provides any financial advisory service;

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“provisional representative”, in respect of a type of financial advisory service, has the meaning given to that expression in section 23D, and “provisional representative” means a provisional representative in respect of any type of financial advisory service;

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“public register of representatives” means the register of that name under section 63A(3);”;

(g) by inserting, immediately after the definition of “recognised market operator”, the following definition:

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“record” means information that is inscribed, stored or otherwise fixed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form;”;

(h) by deleting the definition of “representative” and substituting the following definition:

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“representative” means a person, by whatever name called, in the direct employment of, or acting for, or by arrangement with, a financial adviser, who performs on behalf of the financial adviser any financial advisory service, whether or not he is remunerated, and whether his remuneration, if any, is by way of salary, wages, commission or otherwise, and includes any officer of the financial adviser who performs for the financial adviser any financial advisory service whether or not he is remunerated, and whether his remuneration, if any, is by way of salary, wages, commission or otherwise;”;

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(i) by deleting the definition of “representative’s licence”; and

(j) by deleting the words “Division 4 of Part IV of the Companies Act” in the definition of “substantial shareholder” and substituting the words “section 2(6) of the Securities and Futures Act”.

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Amendment of Part II

3. Part II of the principal Act is amended —

(a) by deleting the Part heading and substituting the following Part heading:

5 “FINANCIAL ADVISERS AND REPRESENTATIVES”; and

(b) by inserting, immediately after the Part heading, the following Division heading:

“Division 1 — Financial Advisers”.

Repeal of section 7

10 **4.** Section 7 of the principal Act is repealed.

Amendment of section 8

5. Section 8 of the principal Act is amended —

(a) by deleting subsection (1) and substituting the following subsection:

15 “(1) An application for the grant of a financial adviser’s licence shall be —

(a) made to the Authority in such form and manner as may be prescribed; and

20 (b) accompanied by a non-refundable application fee of a prescribed amount, which shall be paid in the manner specified by the Authority.”;

(b) by deleting subsections (3) to (7); and

25 (c) by deleting the words “or renewal of licence” in the section heading and substituting the words “of financial adviser’s licence”.

Amendment of section 9

6. Section 9 of the principal Act is amended —

(a) by deleting the words “or renewal” in subsections (1) (1st and 2nd lines), (3) and (4) (1st and 2nd lines); and

- (b) by deleting the words “or renew” in subsection (1)(q) and in the section heading.

Repeal of sections 11 and 12

7. Sections 11 and 12 of the principal Act are repealed.

5 **Amendment of section 13**

8. Section 13 of the principal Act is amended —

- (a) by deleting the words “or renew any licence” in subsection (1) and substituting the words “any financial adviser’s licence”;

- 10 (b) by deleting subsection (2) and substituting the following subsection:

“(2) Without prejudice to the generality of subsection (1), the Authority may, in granting any financial adviser’s licence, impose conditions or restrictions with respect to the type of financial advisory service which may or may not be provided by the licensed financial adviser, described in such manner as the Authority may consider appropriate.”;

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- (c) by deleting the word “licence” in subsection (3) and substituting the words “financial adviser’s licence”;

- (d) by deleting subsection (5); and

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

“Grant of financial adviser’s licence”.

Amendment of section 14

9. Section 14 of the principal Act is amended —

- 25 (a) by deleting subsection (1) and substituting the following subsection:

“(1) A licensed financial adviser shall, on a yearly basis on such date as the Authority may specify, pay such licence fee as the Authority may prescribe.”;

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- (b) by deleting paragraph (b) of subsection (2);

(c) by deleting the word “licensee” in subsection (2)(c) and (d) and substituting in each case the words “licensed financial adviser”; and

(d) by inserting, immediately after subsection (3), the following subsection:

“*(4)* Where a licensed financial adviser fails to pay the licence fee by the date on which such fee is due, the Authority may impose a late payment fee of a prescribed amount for every day or part thereof that the payment is late and both fees shall be recoverable by the Authority as a judgment debt.”.

Repeal of section 15

10. Section 15 of the principal Act is repealed.

Amendment of section 16

11. Section 16 of the principal Act is amended —

(a) by deleting subsection (1) and substituting the following subsection:

“(1) A licensed financial adviser may apply to the Authority, in such form and manner as may be prescribed, to vary its licence —

(a) by adding one or more types of financial advisory service authorised to be provided by its licence; or

(b) by adding one or more types of investment product in respect of which it may provide any financial advisory service.”;

(b) by deleting subsection (2) and substituting the following subsection:

“(2) An application under subsection (1) shall be accompanied by a non-refundable application fee of such amount as may be prescribed, which shall be paid in the manner specified by the Authority.”;

(c) by deleting subsection (2A);

(d) by deleting the words “or 11(1), as the case may be” in subsection (3); and

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

“Variation of financial adviser’s licence”.

Amendment of section 17

- 5 **12.** Section 17 of the principal Act is amended —
- (a) by deleting the words “, renewal or variation of a licence” and substituting the words “or variation of a financial adviser’s licence”; and
- (b) by deleting the words “, renewal or variation of licence” in the
10 section heading and substituting the words “or variation of financial adviser’s licence”.

Amendment of section 18

- 13.** Section 18 of the principal Act is amended —
- (a) by deleting paragraph (b) of subsection (1) and substituting the
15 following paragraph:
- “(b) a change occurs in any matter records of which are required by section 63 to be kept in relation to a licensed financial adviser,”;
- (b) by deleting subsection (2);
- (c) by deleting the words “or a licensed representative, as the case
20 may be,” in subsection (3); and
- (d) by deleting the word “, etc.” in the section heading.

Repeal and re-enactment of section 19

- 14.** Section 19 of the principal Act is repealed and the following section
25 substituted therefor:

“Lapsing, revocation and suspension of financial adviser’s licence

- 19.—**(1) A financial adviser’s licence shall lapse —
- (a) if the licensed financial adviser is wound up or otherwise dissolved, whether in Singapore or elsewhere; or

(b) in the event of such other occurrence or in such other circumstances as may be prescribed.

(2) The Authority may revoke a financial adviser's licence if —

5 (a) there exists a ground on which the Authority may refuse an application under section 9(1);

(b) the licensed 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;

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

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

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

15 (ii) contrary to the interests of the public;

(e) the licensed financial adviser has furnished any information or document to the Authority that is false or misleading;

20 (f) the Authority has reason to believe that the licensed financial adviser, or any of its officers or employees, has not performed its or his duties efficiently, honestly or fairly;

(g) a prohibition order under section 59 has been made by the Authority, and remains in force, against the licensed financial adviser;

25 (h) the licensed financial adviser fails to pay the licence fee referred to in section 14; or

(i) the licensed financial adviser fails or ceases to carry on business in all types of financial advisory service for which it was licensed.

(3) The Authority may, if it considers it desirable to do so —

30 (a) suspend a financial adviser's 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 suspend a financial adviser's licence under subsection (2) or (3) without giving the licensed financial adviser an opportunity to be heard.

5 (5) The Authority may revoke or suspend a financial adviser's licence without giving the licensed financial adviser an opportunity to be heard on any of the following grounds:

10 (a) the licensed financial adviser 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, for or in respect of any property of the licensed financial adviser;

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

20 (d) the licensed financial adviser 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.

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

25 (7) Where the Authority has revoked or suspended a financial adviser's licence, the licensed financial adviser shall —

30 (a) in the case of a revocation of its licence, immediately inform all its representatives by notice in writing of such revocation, and the representatives who are so informed shall cease to act as representatives of that licensed financial adviser; or

35 (b) in the case of a suspension of its licence, immediately inform all its representatives by notice in writing of such suspension, and the representatives who are so informed shall cease to act as representatives of that licensed financial adviser during the period of the suspension.

(8) A lapsing, revocation or suspension of a financial adviser's 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 licensed financial adviser, whether the agreement, transaction or arrangement was entered into before, on or after the lapsing, revocation or suspension of the licence; or

(b) affect any right, obligation or liability arising under any such agreement, transaction or arrangement.

(9) 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.

(10) 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.”.

Amendment of section 20

15. Section 20 of the principal Act is amended —

(a) by deleting paragraph (a) and substituting the following paragraph:

“(a) by the refusal of the Authority to grant a financial adviser's licence to it, or to vary its licence; or”; and

(b) by deleting the word “his” in paragraph (b) and substituting the word “its”.

Amendment of section 21

16. Section 21 of the principal Act is amended —

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

“(a) an appointed or provisional representative of a licensed financial adviser or exempt financial adviser; or”;

(b) by inserting, immediately after the words “exempt financial adviser” in subsection (2)(b), the words “referred to in section 23(1)(ea) or (f)”;

(c) by deleting paragraph (a) of subsection (4) and substituting the following paragraph:

“(a) an appointed or provisional representative of a licensed financial adviser or exempt financial adviser which provides any financial advisory service in respect of life policies; or”;

(d) by inserting, immediately after the words “exempt financial adviser” in subsection (4)(b), the words “referred to in section 23(1)(ea) or (f)”.

Amendment of section 23

17. Section 23 of the principal Act is amended —

(a) by deleting subsection (5);

(b) by deleting the words “a licensed representative” in subsection (5A)(b) and substituting the words “a licensed financial adviser”;

(c) by deleting subsection (5B);

(d) by deleting subsections (5C) and (6) and substituting the following subsections:

“(5C) The reference in subsections (4) and (5A) to specific sections of this Act do not include references to any regulations made under those sections unless the Authority prescribes that such regulations so apply.

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

(6A) The Authority may, on the application of a person referred to in subsection (1)(*ea*), exempt any of its representatives from complying with any of the provisions referred to in subsection (5A).”;

5 (e) by deleting the words “any of its representatives” in subsection (9) and substituting the words “a representative of a person referred to in subsection (1)(*ea*) or (*f*)”;

(f) by deleting subsection (10) and substituting the following subsection:

10 “(10) The Authority may withdraw an exemption granted to any person under this section if —

(a) he fails to pay the annual fee under section 23A;

(b) he contravenes any other provision of this Act; or

15 (c) the Authority considers it necessary in the public interest.”; and

(g) by inserting, immediately after subsection (13), the following subsections:

20 “(14) Any exempt financial adviser which contravenes any condition or restriction imposed under subsection (9) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$100,000 and, in the case of a continuing offence, to a further fine not exceeding \$10,000 for every day or part thereof during which the offence continues after conviction.

25 (15) Any representative who contravenes any condition or restriction imposed under subsection (9) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$25,000 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.”.

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Repeal and re-enactment of section 23A

18. Section 23A of the principal Act is repealed and the following section substituted therefor:

“Annual fees payable by exempt financial advisers and certain representatives

5 **23A.**—(1) Every exempt financial adviser and representative of a person exempted under section 23(1)(*ea*) or (*f*) shall, on a yearly basis on such date as the Authority may specify, pay such fee as the Authority may prescribe and in such manner and on such date as the Authority may specify.

(2) Any fee paid under subsection (1) shall not be refunded or remitted if —

10 (a) in the case of an exempt financial adviser —

(i) its exemption is withdrawn;

(ii) it fails or ceases to provide any financial advisory service; or

15 (iii) a prohibition order has been made against it under section 59,

during the period to which the fee relates; and

(b) in the case of a representative of a person exempted under section 23(1)(*ea*) or (*f*) —

20 (i) the exemption of the person who is so exempted is withdrawn;

(ii) he fails or ceases to act as a representative; or

(iii) a prohibition order has been made against him under section 59,

during the period to which the fee relates.

25 (3) Subject to subsection (2), the Authority may, where it considers appropriate, refund or remit the whole or part of any fee paid or payable to the Authority.

30 (4) Where an exempt financial adviser or representative of a person exempted under section 23(1)(*ea*) or (*f*) fails to pay the fee by the date on which such fee is due, the Authority may impose a late payment fee of a prescribed amount for every day or part thereof that the payment is late and both fees shall be recoverable by the Authority as a judgment debt.”.

New Division 2 of Part II

19. The principal Act is amended by inserting, immediately after section 23A, the following Division:

“Division 2 — Representatives

5 **Acting as representative**

23B.—(1) No person shall act as a representative in respect of any type of financial advisory service or hold himself out as doing so, unless he is —

- 10 (a) an appointed or provisional representative in respect of that type of financial advisory service; or
- (b) a representative of an exempt financial adviser referred to in section 23(1)(ea) or (f), in so far as —
- 15 (i) the type and scope of the financial advisory service provided by the first-mentioned person are within the type and scope of, or are the same as, that provided by the exempt financial adviser (in his capacity as such exempt financial adviser); and
- 20 (ii) the manner in which the first-mentioned person provides that type of financial advisory service is the same as the manner in which the exempt financial adviser (in his capacity as such exempt financial adviser) provides that type of financial advisory service.

25 (2) The Authority may exempt any person or class of persons from subsection (1), subject to such conditions or restrictions as may be imposed by the Authority.

(3) A principal shall not permit any individual to provide any type of financial advisory service on its behalf unless —

- 30 (a) the individual is an appointed or provisional representative in respect of that type of financial advisory service; or
- (b) the principal is an exempt financial adviser under section 23(1)(ea) or (f) and —
- (i) the type and scope of the financial advisory service provided by the individual are within the type and

scope of, or are the same as, that provided by the exempt financial adviser (in his capacity as an exempt financial adviser); and

(ii) the manner in which the individual provides that type of financial advisory service is the same as the manner in which the exempt financial adviser (in his capacity as an exempt financial adviser) provides that type of financial advisory service.

(4) Any person who contravenes 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.

(5) Any person who contravenes subsection (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 thereof during which the offence continues after conviction.

Appointed representative

23C.—(1) For the purposes of this Act, an appointed representative in respect of a type of financial advisory service is an individual —

- (a) who satisfies such entry and examination requirements as may be specified by the Authority for that type of financial advisory service, the fact of which has been notified to the Authority either in the document lodged under section 23F(1), or (if applicable) under section 23D(5) within the time prescribed under that provision;
- (b) whose name is entered in the public register of representatives as an appointed representative;
- (c) whose status as an appointed representative has not currently been revoked or suspended and who has not currently been prohibited by the Authority from providing that type of financial advisory service;
- (d) whose entry in the public register of representatives indicates that he is appointed to provide that type of

financial advisory service and does not indicate that he has ceased to be so; and

(e) whose principal —

(i) is licensed to provide that type of financial advisory service; or

(ii) provides that type of financial advisory service in its capacity as a person exempted from the requirement to hold a financial adviser's licence under section 23(1)(a), (b), (c), (d) or (e).

(2) For the purpose of subsection (1)(a), the Authority shall, by direction published in such manner as may be prescribed, specify the examination requirements for each type of financial advisory service.

(3) The Authority may require the principal or individual to furnish it with such information or documents as the Authority considers necessary in relation to the proposed appointment of the individual as an appointed representative, and the principal or individual, as the case may be, shall comply with such a request.

(4) An individual shall cease to be an appointed representative in respect of any type of financial advisory service on the date —

(a) he ceases to be the principal's representative or to provide that type of financial advisory service on behalf of the principal, the fact of which has been notified to the Authority under subsection (8);

(b) his principal ceases to provide that type of financial advisory service;

(c) the licence of his principal is revoked or lapses or a prohibition order under section 59 is made against his principal prohibiting it from providing that type of financial advisory service;

(d) the individual dies; or

(e) of the occurrence of such other circumstances as the Authority may prescribe.

(5) An individual shall not be treated as an appointed representative during the period in which the licence of his principal is suspended.

(6) Nothing in subsection (4) or (5) prevents the individual from being treated as an appointed representative in respect of that type of financial advisory service if he becomes a representative of a new principal in respect of that type of financial advisory service and subsection (1) is complied with.

(7) Subsections (4) and (5) shall not operate so as to —

- (a) avoid or affect any agreement, transaction or arrangement relating to any investment product entered into by that individual, whether the agreement, transaction or arrangement was entered into before, on or after the cessation or date of suspension; or
- (b) affect any right, obligation or liability arising under any such agreement, transaction or arrangement.

(8) A principal shall, no later than the next business day after the day —

- (a) an individual ceases to be his representative; or
- (b) an individual who is his representative ceases to provide any type of financial advisory service, which he is appointed to provide,

furnish particulars of such cessation to the Authority, in the prescribed form and manner.

Provisional representative

23D.—(1) For the purposes of this Act, a provisional representative in respect of a type of financial advisory service is an individual —

- (a) who satisfies such entry requirements as may be specified by the Authority for that type of financial advisory service;
- (b) who intends to undergo an examination in order to satisfy the examination requirements specified by the Authority under section 23C(2) for that type of financial advisory service, the fact of which has been notified to the Authority in the document lodged under section 23F(1);
- (c) whose name is entered in the public register of representatives as a provisional representative;

- (d) whose status as a provisional representative has not currently been revoked or suspended and who has not currently been prohibited by the Authority from providing that type of financial advisory service;
- 5 (e) whose entry in the public register of representatives indicates that he is appointed to provide that type of financial advisory service and does not indicate that he has ceased to be so;
- (f) whose principal —
- 10 (i) is licensed to provide that type of financial advisory service; or
- (ii) provides that type of financial advisory service in its capacity as a person exempted from the requirement to hold a financial adviser's licence under section
- 15 23(1)(a), (b), (c), (d) or (e);
- (g) who has not previously been appointed as a provisional representative by the Authority; and
- (h) who is not, by virtue of any circumstances prescribed by the
- 20 Authority, disqualified from acting as a provisional representative.
- (2) An individual shall only be a provisional representative in respect of any type of financial advisory service for such period of time as the Authority may specify against his name in the public register of representatives.
- 25 (3) A provisional representative in respect of any type of financial advisory service shall immediately cease to be one —
- (a) upon the expiry of the period of time specified by the Authority under subsection (2);
- (b) if he fails to comply with any condition or restriction
- 30 imposed on him under section 23K;
- (c) upon his principal informing the Authority of the satisfaction of the examination requirements specified for that or any other type of financial advisory service under subsection (5); or

(d) on the occurrence of such other circumstances as the Authority may prescribe.

(4) Section 23C(3) to (8) (other than subsection (4)(e) thereof) shall apply to a provisional representative —

5 (a) as if the reference in section 23C(6) to section 23C(1) were a reference to subsection (1); and

(b) with such other modifications and adaptations as the differences between provisional representatives and appointed representatives require.

10 (5) Where a provisional representative in respect of a type of financial advisory service has satisfied the examination requirements specified for that type of financial advisory service, his principal shall inform the Authority of that fact in the prescribed form and manner and within the prescribed time.

15 **Offences**

23E.—(1) Any person who contravenes section 23C(3) or 23D(4) (in relation to the application of section 23C(3) to a provisional representative) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$25,000.

20 (2) Any person who contravenes section 23C(8), 23D(4) (in relation to the application of section 23C(8) to a provisional representative) or 23F(5) 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
25 conviction.

Lodgment of documents

30 **23F.**—(1) A principal who desires to appoint an individual as an appointed or provisional representative in respect of any type of financial advisory service shall lodge the following documents with the Authority in such form and manner as the Authority may prescribe:

35 (a) a notice of intent by the principal to appoint the individual as an appointed or provisional representative in respect of that type of financial advisory service;

(b) a certificate by the principal that the individual is a fit and proper person to be an appointed or provisional representative in respect of that type of financial advisory service; and

5 (c) in the case of a provisional representative, an undertaking by the principal to undertake such responsibilities in relation to the representative as may be prescribed.

(2) Subject to section 23J, the Authority shall, upon receipt of the documents lodged in accordance with subsection (1), enter in the public register of representatives the name of the representative, whether he is an appointed or provisional representative, the type of financial advisory service which he may provide, and such other particulars as the Authority considers appropriate.

15 (3) The Authority may refuse to enter in the public register of representatives the particulars referred to in subsection (2) of the representative if the fee referred to in section 23H(1) or (3) (if applicable) is not paid.

20 (4) A principal who submits a certificate under subsection (1)(b) shall keep, in such form and manner and for such period as the Authority may prescribe, copies of all information and documents which the principal relied on in giving the certificate.

25 (5) Where a change occurs in any particulars of the appointed or provisional representative in any document required to be furnished to the Authority under subsection (1), the principal shall, no later than 14 days after the occurrence of such change, furnish particulars of such change to the Authority, in the prescribed form and manner.

(6) A principal who contravenes subsection (4) or (5) shall be guilty of an offence.

Representative to act for only one principal

30 **23G.**—(1) Unless otherwise approved by the Authority in writing, no appointed representative or provisional representative shall at any one time be a representative of more than one principal.

35 (2) Notwithstanding subsection (1), an appointed representative may be a representative of more than one principal if the principals are related corporations.

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

5 (4) Any person who contravenes 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.

10 **Lodgment and annual fees**

23H.—(1) An individual shall, by the prescribed time, pay to the Authority such fee as may be prescribed by the Authority for the lodgment of documents under section 23F by his principal in relation to his appointment as an appointed or provisional representative.

15 (2) An individual who is an appointed or provisional representative shall, by the prescribed time each year, pay such annual fee as may be prescribed by the Authority in relation to the retention of his name in the public register of representatives as an appointed or provisional representative.

20 (3) A representative shall pay such fee as may be prescribed by the Authority for any resubmission of a form or change in the particulars of a form lodged with the Authority in relation to his appointment as an appointed or provisional representative.

25 (4) Unless otherwise prescribed by the Authority, any fee paid to the Authority under this section shall not be refunded.

30 (5) Where the representative fails to pay the fee referred to in subsection (1) or (2) by the date on which such fee is due, the Authority may impose a late payment fee of a prescribed amount for every day or part thereof that the payment is late and both fees shall be recoverable by the Authority as a judgment debt.

(6) The fees referred to in this section shall be paid in the manner specified by the Authority.

Additional financial advisory service

35 **23I.**—(1) The principal of an appointed representative may at any time lodge a notice with the Authority of its intention to appoint the

representative as an appointed representative in respect of a type of financial advisory service in addition to that indicated against the representative's name in the public register of representatives.

(2) The notification shall be lodged in such form and manner as may be prescribed and shall be accompanied by a certificate by the principal that the representative is a fit and proper person to be a representative in respect of the additional type of financial advisory service.

(3) Subject to section 23J, the Authority shall, upon receipt of the notification, enter in the public register of representatives the additional type of financial advisory service as one which the representative may provide as a representative.

(4) The Authority may, before entering in the public register of representatives the matter set out in subsection (3), require the principal or representative to furnish it with such information or documents as the Authority considers necessary.

(5) A notification under subsection (1) shall be accompanied by a non-refundable prescribed fee which shall be paid in the manner specified by the Authority.

Power of Authority to refuse entry or revoke or suspend status of appointed or provisional representative

23J.—(1) Subject to regulations made under this Act, the Authority may refuse to enter the name and other particulars of an individual in the public register of representatives, refuse to enter an additional type of financial advisory service for an appointed representative in that register, or revoke the status of an individual as an appointed or provisional representative if —

- (a) being an appointed or provisional representative, he fails or ceases to act as a representative in respect of all of the types of financial advisory services that were notified to the Authority as services which he is appointed to provide as a representative;
- (b) he or his principal has not provided the Authority with such information or documents as the Authority may require;
- (c) he is an undischarged bankrupt, whether in Singapore or elsewhere;

- (d) execution against him in respect of a judgment debt has been returned unsatisfied in whole or in part;
- (e) he 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) he —
- (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 had acted fraudulently or dishonestly; or
- (ii) has been convicted of an offence under this Act;
- (g) in the case of the proposed appointment of an appointed or provisional representative in respect of a type of financial advisory service, or of an application to enter an additional type of financial advisory service for an appointed representative in the register —
- (i) the Authority is not satisfied as to his educational or other qualification or experience having regard to the nature of the duties he is to perform in relation to that type of financial advisory service;
- (ii) he or his principal fails to satisfy the Authority that he is a fit and proper person to be an appointed or provisional representative or to perform that type of financial advisory service;
- (iii) the Authority is not satisfied as to his record of past performance or expertise having regard to the nature of the duties which he is to perform in relation to that type of financial advisory service;
- (iv) the Authority has reason to believe that he will not perform that type of financial advisory service efficiently, honestly or fairly;
- (h) in the case of the revocation of the status of an individual as an appointed or provisional representative —

- 5 (i) he or his principal fails to satisfy the Authority, pursuant to a requirement imposed by the Authority as a condition of licence, under section 23K or by regulations (as the case may be), that he remains a fit and proper person to be an appointed or provisional representative or to perform the type of financial advisory service for which he is appointed;
- (ii) the Authority is not satisfied with —
- 10 (A) his educational or other qualification or experience (being qualification or experience not known to the Authority at the time his name and particulars are entered in the public register of representatives); or
- (B) his record of past performance or expertise,
- 15 having regard to the nature of his duties as an appointed or provisional representative; or
- (iii) the Authority has reason to believe that he will not perform the type of financial advisory service for which he is appointed efficiently, honestly or fairly;
- 20 (i) the Authority has reason to believe that he may not be able to act in the best interests of the clients of his principal, having regard to his reputation, character, financial integrity and reliability;
- (j) the Authority is not satisfied as to his financial standing;
- 25 (k) there are other circumstances which are likely to lead to the improper conduct of business by, or reflect discredit on the manner of conducting the business of, the individual or any person employed by or associated with him for the purpose of his business;
- 30 (l) the individual is in arrears of the payment of such contributions on his own behalf to the Central Provident Fund as are required under the Central Provident Fund Act (Cap. 36);
- 35 (m) the Authority is of the opinion that it would be contrary to the interests of the public to enter the individual's name in the public register of representatives or allow him to

continue as an appointed or provisional representative or to provide that additional type of financial advisory service, as the case may be;

- 5
- (n) the Authority has reason to believe that any information or document that is furnished by him or his principal to the Authority is false or misleading;
- 10
- (o) he has contravened any provision of this Act applicable to him, any condition or restriction imposed on him under this Act or any direction issued to him by the Authority under this Act;
- (p) a prohibition order under section 59 has been made by the Authority, and remains in force, against him;
- (q) the licence of his principal is revoked;
- 15
- (r) the individual fails to pay any fee referred to in section 23H; or
- (s) in the case of the proposed appointment of a provisional representative in respect of a type of financial advisory service —
- 20
- (i) he is not or was not previously licensed, authorised or otherwise regulated as a representative in relation to a comparable type of financial advisory service in a foreign jurisdiction for such minimum period as may be prescribed for this sub-paragraph;
- 25
- (ii) he was previously so licensed, authorised or regulated in a foreign jurisdiction but the period between the date of his ceasing to be so licensed, authorised or regulated and the date of his proposed appointment as a provisional representative exceeds such period as may be prescribed for this sub-paragraph; or
- 30
- (iii) the Authority is not satisfied that the laws and practices of the jurisdiction under which the individual is or was so licensed, authorised or regulated provide protection to investors comparable to that applicable to an appointed representative under this Act.

(2) The Authority may, if it considers it desirable to do so —

(a) instead of revoking the status of an individual as an appointed or provisional representative, suspend that status for such period as the Authority may determine; and

5 (b) at any time —

(i) extend the period of suspension; or

(ii) revoke the suspension.

10 (3) An individual whose status as an appointed or provisional representative has been revoked shall be deemed not to be an appointed or provisional representative, as the case may be.

(4) Where the status of an individual as an appointed or provisional representative has been suspended, he shall be deemed not to be an appointed or provisional representative (as the case may be) during the period of suspension.

15 (5) Where the Authority has revoked the status of an individual as an appointed or provisional representative, the Authority shall —

20 (a) indicate against his name in the public register of representatives that fact, which indication shall remain in the register for such period as the Authority considers appropriate; or

(b) remove his name from the register.

25 (6) Where the Authority has suspended the status of an individual as an appointed or provisional representative, the Authority shall indicate against his name in the public register of representatives that fact and the period of the suspension.

30 (7) Where the Authority has extended or revoked a suspension of the status of an individual as an appointed or provisional representative, the Authority shall indicate against his name in the public register of representatives the new expiry date of the suspension, or indicate that he is no longer suspended, as the case may be.

(8) The Authority shall not take any action under subsection (1) or (2)(a) on the ground referred to in subsection (1)(n), if —

(a) in a case where the information or document was furnished by the individual to the Authority, the individual proves that he had —

5 (i) made all inquiries (if any) that were reasonable in the circumstances; and

(ii) after doing so, believed on reasonable grounds that the information or document was not false or misleading; or

10 (b) in a case where the information or document was furnished by the principal to the Authority and —

(i) such information or document was furnished to the principal by the individual, the individual proves that he had —

15 (A) made all inquiries (if any) that were reasonable in the circumstances; and

(B) after doing so, believed on reasonable grounds that the information or document was not false or misleading; or

20 (ii) such information or document was not furnished to the principal by the individual, the principal proves that he had —

(A) made all inquiries (if any) that were reasonable in the circumstances; and

25 (B) after doing so, believed on reasonable grounds that the information or document was not false or misleading.

(9) Subject to subsection (10), the Authority shall not take any action under subsection (1) or (2)(a) or (b)(i) without giving the individual an opportunity to be heard.

30 (10) The Authority may take action under subsection (1) or (2)(a) or (b)(i) on any of the following grounds without giving the individual an opportunity to be heard:

(a) he 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 him;

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

5 (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;

10 (d) the ground referred to in subsection (1)(s)(i) or (ii).

(11) Any revocation or suspension by the Authority shall not operate so as to —

15 (a) avoid or affect any agreement, transaction or arrangement relating to any investment product entered into by such individual, whether the agreement, transaction or arrangement was entered into before, on or after the revocation or suspension, as the case may be; or

(b) affect any right, obligation or liability arising under any such agreement, transaction or arrangement.

20 **Power of Authority to impose conditions or restrictions**

23K.—(1) The Authority may, by notice in writing to an appointed or provisional representative, impose such conditions or restrictions as it thinks fit on him.

25 (2) Without prejudice to the generality of subsection (1), the Authority may, in entering the appointed or provisional representative's name in the public register of representatives, impose conditions or restrictions with respect to the type of financial advisory service which the appointed or provisional representative may or may not provide.

30 (3) The Authority may, at any time by notice in writing to the appointed or provisional representative, vary any condition or restriction or impose such further condition or restriction as it may think fit.

(4) Any person who contravenes any condition or restriction imposed by the Authority under this section shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$25,000 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.

False statements in relation to notification of appointed or provisional representative

23L.—(1) Any principal who, in connection with the lodgment of any document under section 23F —

- (a) makes a statement which is false or misleading in a material particular; or
- (b) omits to state any matter or thing without which the document is misleading in a material respect,

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000.

(2) Any individual who, in connection with the lodgment by his principal of any document under section 23F —

- (a) makes a statement to his principal which is false or misleading in a material particular, being a statement subsequently lodged with the Authority; or
- (b) omits to state any matter or thing to his principal as a result of which the document is misleading in a material respect,

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000.

(3) Any person who, when required to furnish any document or information to the Authority under section 23C(3) or 23D(4) (in relation to the application of section 23C(3) to a provisional representative) —

- (a) makes a statement to the Authority which is false or misleading in a material particular; or
- (b) omits to state any matter or thing to the Authority without which the document or information is misleading in a material respect,

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000.

(4) A person referred to in subsection (1), (2) or (3) shall not be guilty of an offence if he proves that he —

- 5 (a) made all inquiries (if any) that were reasonable in the circumstances; and
- (b) after doing so, believed on reasonable grounds that the statement made or the omission to state the matter or thing, as the case may be, was not false or misleading.

10 **Appeals**

23M. Any person who is aggrieved by —

- (a) the refusal of the Authority under section 23J(1) to enter his name and other particulars in the public register of representatives, or to enter an additional type of financial advisory service for him in that register; or
- 15 (b) the revocation or suspension of his status as an appointed or provisional representative under section 23J(1) or (2)(a),
- may, within 30 days after he is notified of the decision of the Authority, appeal to the Minister whose decision shall be final.”.

20 **Repeal of section 24**

20. Section 24 of the principal Act is repealed.

Amendment of section 29

21. Section 29 of the principal Act is amended —

- 25 (a) by deleting subsection (1) and substituting the following subsection:
- “ (1) The Authority may, in writing, require any licensed financial adviser to furnish it with information about any matter related to its business whether carried on in Singapore or elsewhere if, in the opinion of the Authority, it requires the information for the discharge of its functions under this Act.”;
- 30 and

(b) by deleting the words “, or a licensed representative who,” in subsection (2).

Repeal and re-enactment of Division 4 of Part III

22. Division 4 of Part III of the principal Act is repealed and the
5 following Division substituted therefor:

“Division 4 — Appointed and Provisional Representatives

Business conduct requirements for appointed and provisional representatives

10 **37.**—(1) Subject to the provisions of this Act, sections 25, 26, 27, 29, 33, 34 and 36 shall apply, with the necessary modifications, to an appointed or provisional representative in respect of his acting as such as if he were a licensed financial adviser.

15 (2) The Authority may, on the application of a licensed financial adviser or an exempt financial adviser, exempt any of its representatives from complying with any of the provisions referred to in subsection (1).

(3) An exemption granted under subsection (2) need not be published in the *Gazette*.

20 (4) The Authority may withdraw an exemption granted to any person under subsection (2) if the person contravenes any provision of this Act, or if the Authority considers it necessary in the public interest.

25 (5) Where the Authority withdraws an exemption granted to any person under subsection (2), the Authority need not give the person an opportunity to be heard.

30 (6) A licensed financial adviser or an exempt financial adviser which is aggrieved by the decision of the Authority to withdraw an exemption granted to any of its appointed or provisional representatives under subsection (2) may, within 30 days of the decision, appeal in writing to the Minister.

(7) A withdrawal under subsection (4) 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, on 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).”.

Amendment of section 56

23. Section 56 of the principal Act is amended —

- (a) by deleting subsection (1) and substituting the following subsection:

“(1) Subject to subsection (1B), no licensed financial adviser shall —

- (a) appoint a person as its chief executive officer or director; or
- (b) change the nature of the appointment of a person as a director from one that is non-executive to one that is executive,

unless it has obtained the approval of the Authority.”;

- (b) by deleting the words “subsection (1)” in subsection (1A) and substituting the words “subsection (1)(a)”;

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

“(1B) Subsection (1) shall not apply to the appointment of a person as a director of a foreign company, or the change in the nature of the appointment of a person as a director of a foreign company if, at the time of the appointment or change, the person —

- (a) does not reside in Singapore; and
- (b) is not directly responsible for its business in Singapore or any part thereof.

(1C) In subsection (1B), “foreign company” has the same meaning as in section 4(1) of the Companies Act (Cap. 50).”;

- (d) by deleting the word “shall” in subsection (2) and substituting the word “may”; and
- (e) by inserting, immediately after subsection (7), the following subsections:

5 “(7A) Without prejudice to the Authority’s power to impose conditions or restrictions under section 13, the Authority may at any time, by notice in writing to a licensed financial adviser, impose on it a condition requiring it to notify the Authority of a change to any specified attribute (such as residence and nature of appointment) of its chief executive officer or director, and vary any such condition.

10

 (7B) Any person who contravenes any condition or restriction imposed under subsection (7A) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000.”.

15

Amendment of section 57

24. Section 57(1) of the principal Act is amended —

- (a) by inserting, immediately after the word “duties” in paragraph (c), the words “or functions”;
- 20 (b) by deleting the word “or” at the end of paragraph (fa); and
- (c) by deleting the comma at the end of paragraph (g) and substituting the word “; or”, and by inserting immediately thereafter the following paragraph:

 “(h) is not a fit and proper person for such office,”.

New sections 57A and 57B

25

25. The principal Act is amended by inserting, immediately after section 57, the following sections:

“Control of take-over of licensed financial adviser

30 **57A.**—(1) This section applies to all individuals whether resident in Singapore or not and whether citizens of Singapore or not, and to all bodies corporate or unincorporate, whether incorporated or carrying on business in Singapore or not.

(2) No person shall enter into any arrangement in relation to shares in a licensed financial adviser that is a company by virtue of which he would, if the arrangement is carried out, obtain effective control of the licensed financial adviser, unless he has obtained the prior approval of the Authority to his entering into the arrangement.

(3) An application for the Authority's approval under subsection (2) shall be made in writing, and the Authority may approve the application if the Authority is satisfied that —

(a) the applicant is a fit and proper person to have effective control of the licensed financial adviser;

(b) having regard to the applicant's likely influence, the licensed financial adviser is likely to continue to conduct its business prudently and comply with the provisions of this Act and directions made thereunder; and

(c) the applicant satisfies such other criteria as may be prescribed or as may be specified in written directions by the Authority.

(4) Any approval under subsection (3) may be granted to the applicant subject to such conditions as the Authority may determine, including any condition —

(a) restricting his disposal or further acquisition of shares or voting power in the licensed financial adviser; or

(b) restricting his exercise of voting power in the licensed financial adviser,

and the applicant shall comply with such conditions.

(5) Any condition imposed under subsection (4) shall have effect notwithstanding any provision of the Companies Act (Cap. 50) or anything contained in the memorandum or articles of association of the licensed financial adviser.

(6) For the purposes of this section and section 57B —

(a) a reference to a person entering into an arrangement in relation to shares includes —

(i) entering into an agreement or any formal or informal scheme, arrangement or understanding, to acquire those shares;

- (ii) making or publishing a statement, however expressed, that expressly or impliedly invites the holder of those shares to offer to dispose of his shares to the first person;
- 5 (iii) the first person obtaining a right to acquire shares under an option, or to have shares transferred to himself or to his order, whether the right is exercisable presently or in the future and whether on fulfilment of a condition or not; and
- 10 (iv) becoming a trustee of a trust in respect of those shares;
- (b) a person shall be regarded as obtaining effective control of a licensed financial adviser by virtue of an arrangement if the person alone or acting together with any connected person would, if the arrangement is carried out —
- 15 (i) acquire or hold, directly or indirectly, 20% or more of the issued share capital of the licensed financial adviser; or
- (ii) control, directly or indirectly, 20% or more of the voting power in the licensed financial adviser; and
- 20 (c) a reference to the voting power in the licensed financial adviser is a reference to the total number of votes that may be cast in a general meeting of the licensed financial adviser.

(7) Any person who contravenes subsection (2) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$75,000 or to imprisonment for a term not exceeding 3 years or to both.

(8) Any person who contravenes subsection (4) shall be guilty of an offence.

Objection to control of licensed financial adviser

30 **57B.**—(1) The Authority may serve a written notice of objection on —

- (a) any person required to obtain the Authority's approval or who has obtained the approval under section 57A; or

(b) any person who, whether before, on or after the date of commencement of this section, either alone or together with any connected person, holds, directly or indirectly, 20% or more of the issued share capital of the licensed financial adviser or controls, directly or indirectly, 20% or more of the voting power in the licensed financial adviser,

if the Authority is satisfied that —

- (i) any condition of approval imposed on the person under section 57A(4) has not been complied with;
- (ii) the person is not or ceases to be a fit and proper person to have effective control of the licensed financial adviser;
- (iii) having regard to the likely influence of the person, the licensed financial adviser is not able to or is no longer likely to conduct its business prudently or to comply with the provisions of this Act or any direction made thereunder;
- (iv) the person does not or ceases to satisfy such criteria as may be prescribed;
- (v) the person has furnished false or misleading information or documents in connection with an application under section 57A; or
- (vi) the Authority would not have granted its approval under section 57A had it been aware, at that time, of circumstances relevant to the person's application for such approval.

(2) The Authority shall not serve a notice of objection on any person without giving the person an opportunity to be heard, except in the following circumstances:

- (a) the person is in the course of being wound up or otherwise dissolved or, in the case of an individual, is an undischarged bankrupt whether in Singapore or elsewhere;
- (b) a receiver, a receiver and manager, a 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 person;
- (c) a prohibition order under section 59 has been made by the Authority, and remains in force, against the person;

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

5 (3) The Authority shall, in any written notice of objection, specify a reasonable period within which the person to be served the written notice of objection shall —

10 (a) take such steps as are necessary to ensure that he ceases to be a party to the arrangement described in section 57A(2) or ceases to have control of a licensed financial adviser in the manner described in subsection (1)(b); or

(b) comply with such other requirements as the Authority may specify in written directions.

15 (4) Any person served with a notice of objection under this section shall comply with the notice.

(5) Any person who contravenes subsection (4) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$75,000 or to imprisonment for a term not exceeding 3 years or to both.”.

20 **Amendment of section 58**

26. Section 58 of the principal Act is amended —

(a) by deleting the words “of a person exempt under section 23” in subsection (1)(c); and

25 (b) by deleting the words “of a person exempt under section 23” in subsection (2)(a)(i)(C).

Amendment of section 59

27. Section 59 of the principal Act is amended —

(a) by deleting the word “licence” in subsection (1)(a) and substituting the words “financial adviser’s licence”;

30 (b) by deleting paragraph (b) of subsection (1) and substituting the following paragraphs:

“(b) where the person is an exempt financial adviser, the Authority has reason to believe that circumstances

exist under which, if the person were a licensed financial adviser, there would exist a ground on which the Authority may revoke his licence under section 19(2);

5 (ba) the Authority revokes or suspends the status of the person as an appointed or provisional representative under section 23J;”;

(c) by deleting the word “or” at the end of subsection (1)(d);

10 (d) by deleting the full-stop at the end of paragraph (e) of subsection (1) and substituting the word “; or”, and by inserting immediately thereafter the following paragraph:

 “(f) the person has been removed at the direction of the Authority from office or employment as an officer of a licensed financial adviser under section 57(1)(h).”;

15 (e) by deleting the word “may —” in the 1st line of subsection (2) and substituting the words “do one or both of the following:”;

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

20 “(a) prohibit the person, whether permanently or for a specified period, from —

(i) providing any financial advisory service, or providing such financial advisory service in specified circumstances or capacities; or

25 (ii) taking part, directly or indirectly, in the management of, acting as a director of, or becoming a substantial shareholder of a licensed financial adviser or exempt financial adviser; and”;

30 (g) by inserting, immediately after subsection (4), the following subsection:

35 “(5) Where the Authority makes a prohibition order against any person who is an appointed or provisional representative, it shall indicate against his name in the public register of representatives that fact, and the indication shall remain in the register for the duration of the order.”.

Amendment of section 60

28. Section 60 of the principal Act is amended —

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

5 “(2) Where a prohibition order is made against a person and notified to a licensed financial adviser or exempt financial adviser, the licensed financial adviser or exempt financial adviser shall not employ the first-mentioned person to provide any financial advisory service or use his service, to the extent
10 that this is prohibited by the order.”; and

(b) by inserting, immediately after subsection (4), the following subsections:

15 “(5) A licensed financial adviser or exempt financial adviser against whom a prohibition order has been issued prohibiting it from providing any financial advisory service shall immediately inform all its representatives who perform the financial advisory service, by notice in writing of such prohibition order, and the representatives who are so informed shall cease to perform such financial advisory service during
20 the period specified in the prohibition order.

25 (6) Any person who contravenes subsection (5) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$75,000 and, in the case of a continuing offence, to a further fine not exceeding \$7,500 for every day or part thereof during which the offence continues after conviction.”.

Repeal and re-enactment of section 62

29. Section 62 of the principal Act is repealed and the following section substituted therefor:

“Date and effect of prohibition orders

30 **62.**—(1) A prohibition order, or any variation or revocation of a prohibition order, shall take effect on the date specified in the order by the Authority.

- (2) A prohibition order shall not operate so as to —
- (a) avoid or affect any agreement, transaction or arrangement entered into by the person against whom the order is made, whether the agreement, transaction or arrangement was entered into before, on or after the issue of the prohibition order; or
 - (b) affect any right, obligation or liability arising under any such agreement, transaction or arrangement.”.

Repeal and re-enactment of section 63 and new section 63A

10 **30.** Section 63 of the principal Act is repealed and the following sections substituted therefor:

“Records to be kept by Authority

15 **63.**—(1) The Authority shall keep in such form as it thinks fit records of licensed financial advisers setting out the following information of each of them:

- (a) its name;
- (b) the address of the principal place of business at which it carries on the business in respect of which the licence is held;
- 20 (c) the type or types of financial advisory service and investment product to which its licence relates;
- (d) where the business is carried on under a name or style other than the name of the holder of the licence, the name or style under which the business is carried on;
- 25 (e) officers removed by it from office or employment on the direction of the Authority under section 57; and
- (f) such other information as may be prescribed.

30 (2) The Authority shall also keep in such form as it thinks fit records on persons against whom prohibition orders are made under section 59.

(3) The Authority may publish the records referred to in subsections (1) and (2), or any part of them in such manner as it considers appropriate.

(4) Any person may, upon payment of such fee as may be prescribed, inspect and take an extract from the records established under subsection (1) or (2), and any such extract, certified by the Authority to be a true copy, shall be admissible as prima facie evidence of the matter stated therein in any legal proceedings.

Records and public register of representatives

63A.—(1) The Authority shall keep in such form as it thinks fit records of the following information of each appointed representative and provisional representative:

- (a) his name;
- (b) the name of his current principal and every past principal (if any);
- (c) the current and past types of financial advisory service provided by him, and the date of commencement and cessation (if any) of such service;
- (d) where the business of the principal for which he acts is carried on under a name or style other than the name of the principal, the name or style under which the business is carried on;
- (e) disciplinary proceedings or other action taken by the Authority against him and published under section 67; and
- (f) such other information as may be prescribed.

(2) The information referred to in subsection (1) need only be kept for such period of time as the Authority considers appropriate.

(3) The Authority may reproduce the records referred to in subsection (1) or any part of them in a public register of representatives which shall be published in such manner as it considers appropriate.”.

Amendment of section 68

31. Section 68(2) of the principal Act is amended by deleting the words “under this section” and substituting the words “for an offence under section 76(2)”.

Amendment of section 70

32. Section 70 of the principal Act is amended —

(a) by deleting subsection (1) and substituting the following subsection:

5 “(1) The Authority may from time to time inspect, under conditions of secrecy, the books of —

(a) a licensed financial adviser;

(b) an exempt financial adviser in respect of its business of providing any financial advisory service; or

10 (c) a representative.”;

(b) by deleting the words “the licensee” in subsection (2)(a) (1st line) and (b) (1st line) and substituting in each case the words “a person referred to in subsection (1)”;

(c) by deleting the words “of the licensee” in the 2nd line of subsection (2)(a); and

15 (d) by deleting the words “of a licensee” in subsection (4).

New section 70A

33. The principal Act is amended by inserting, immediately after section 70, the following section:

20 **“Confidentiality of inspection reports**

70A.—(1) Where a written report or any part thereof (referred to in this section as the report) has been produced by the Authority upon an inspection under section 70 in respect of any licensed financial adviser, exempt financial adviser or representative (referred to in this section as the inspected person) and is provided by the Authority to the inspected person, the report shall not be disclosed by the inspected person or, if the inspected person is a corporation, by any of its officers or auditors, to any other person except in the circumstances provided under subsection (2).

25 (2) Disclosure of the report referred to in subsection (1) may be made —

30 (a) by the inspected person to any officer or auditor of that inspected person solely in connection with the performance

of the duties of the officer or auditor, as the case may be, in that inspected person;

(b) by any officer or auditor of the inspected person to any other officer or auditor of that inspected person, solely in connection with the performance of their duties in that inspected person; or

(c) to such other person as the Authority may approve in writing.

(3) In granting written approval for any disclosure under subsection (2)(c), the Authority may impose such conditions or restrictions as it thinks fit on the inspected person, any of its officers or auditors or the person to whom disclosure is approved, and that person shall comply with such conditions or restrictions.

(4) The obligation on an officer or auditor referred to in subsection (1) shall continue after the termination or cessation of his employment or appointment by the inspected person.

(5) Any person who contravenes subsection (1) or (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.

(6) Any person to whom the report is disclosed and who knows or has reasonable grounds for believing, at the time of the disclosure, that the report was disclosed to him in contravention of subsection (1) 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, unless he proves that —

(a) the disclosure was made contrary to his desire;

(b) where the disclosure was made in any written form, he had as soon as practicable after receiving the report surrendered or taken all reasonable steps to surrender the report and all copies thereof to the Authority; and

(c) where the disclosure was made in an electronic form, he had as soon as practicable after receiving the report taken all reasonable steps to ensure that all electronic copies of the report had been deleted and that the report and all copies

thereof in other forms had been surrendered to the Authority.”.

New section 71A

5 **34.** The principal Act is amended by inserting, immediately after section 71, the following section:

“Confidentiality of investigation reports

10 **71A.**—(1) Where a written report or any part thereof (referred to in this section as the report) has been produced by the Authority in respect of any investigation under section 71 and is provided by the Authority to the person under investigation (referred to in this section as the investigated person), the report shall not be disclosed by the investigated person or, if the investigated person is a corporation, by any of its officers or auditors to any other person except in the circumstances provided under subsection (2).

15 (2) Disclosure of the report referred to in subsection (1) may be made —

20 (a) by the investigated person to any officer or auditor of that investigated person solely in connection with the performance of the duties of the officer or auditor, as the case may be, in that investigated person;

(b) by any officer or auditor of the investigated person to any other officer or auditor of that investigated person, solely in connection with the performance of their duties in that investigated person; or

25 (c) to such other person as the Authority may approve in writing.

30 (3) In granting written approval for any disclosure under subsection (2)(c), the Authority may impose such conditions or restrictions as it thinks fit on the investigated person, any of its officers or auditors or the person to whom disclosure is approved, and that person shall comply with such conditions or restrictions.

(4) The obligation on an officer or auditor referred to in subsection (1) shall continue after the termination or cessation of his employment or appointment by the investigated person.

(5) Any person who contravenes subsection (1) or (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.

5 (6) Any person to whom the report is disclosed and who knows or has reasonable grounds for believing, at the time of the disclosure, that the report was disclosed to him in contravention of subsection (1) 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
10 2 years or to both, unless he proves that —

(a) the disclosure was made contrary to his desire;

(b) where the disclosure was made in any written form, he had as soon as practicable after receiving the report surrendered or taken all reasonable steps to surrender the report and all
15 copies thereof to the Authority; and

(c) where the disclosure was made in an electronic form, he had as soon as practicable after receiving the report taken all reasonable steps to ensure that all electronic copies of the report had been deleted and that the report and all copies
20 thereof in other forms had been surrendered to the Authority.”.

Amendment of section 86

35. Section 86 of the principal Act is amended by deleting subsection (3) and substituting the following subsection:

25 “(3) Any person who —

(a) signs any document lodged with the Authority; or

(b) lodges with the Authority any document by electronic means using any identification or identifying code, password or other authentication method or procedure assigned to him by
30 the Authority,

shall use due care to ensure that the document is not false or misleading in any material particular.”.

Amendment of section 88

36. Section 88(2) of the principal Act is amended by deleting paragraph (a) and substituting the following paragraph:

5 “(a) offences under sections 10(3), 13(4), 19(9) and (10), 32(6),
45(5) and (6), 46(2), 47(2), 48(5), (6) and (7), 49(5), 55(2),
56(7) and (7B) and 57(7); or”.

Amendment of section 97

37. Section 97(2) of the principal Act is amended —

10 (a) by deleting the word “licence” in paragraph (a)(ii) of the
definition of “misconduct” and substituting the words “financial
adviser’s licence”;

(b) by deleting the word “or” at the end of sub-paragraph (iia) of
paragraph (a) of the definition of “misconduct”, and by inserting
immediately thereafter the following sub-paragraph:

15 “(iib) any condition or restriction imposed on an appointed
or provisional representative under section 23K; or”;
and

(c) by deleting the definition of “relevant person” and substituting
the following definition:

20 ““relevant person” means any licensed financial adviser,
exempt financial adviser, representative, or officer or
partner of a licensed financial adviser or an exempt
financial adviser.”.

Amendment of section 100

25 **38.** Section 100 of the principal Act is amended —

(a) by inserting, immediately after subsection (3), the following
subsection:

 “(3A) The Authority may at any time add to, vary or revoke
any term or condition imposed under this section.”; and

30 (b) by inserting, immediately after the words “subsection (3)(a)” in
subsection (4), the words “, including any term or condition
added or varied under subsection (3A),”.

Amendment of section 104

39. Section 104 of the principal Act is amended —

- (a) by deleting the words “or renewal of licences” in subsection (2)(a) and substituting the words “of financial adviser’s licences”;
- (b) by inserting, immediately after paragraph (a) of subsection (2), the following paragraphs:
- “(aa) the appointment of an individual as an appointed or provisional representative, the entering of his name or an additional type of financial advisory service for him in the public register of representatives, and the revocation or suspension of his status as an appointed or provisional representative;
- (ab) the granting of any 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 officer, employee or representative in the manner prescribed by regulations;”;
- (c) by deleting paragraph (b) of subsection (2) and substituting the following paragraph:
- “(b) the activities of, and standards to be maintained by, a licensed financial adviser, exempt financial adviser or representative, including the manner, method and place of soliciting business and the conduct of such solicitation;”;
- (d) by deleting paragraph (f) of subsection (2) and substituting the following paragraph:
- “(f) the manner in which a licensed financial adviser, exempt financial adviser or representative conducts his dealings with the clients of the licensed financial adviser or exempt financial adviser, as the case may be;”;
- (e) by deleting the word “licensees” in subsection (2)(g) and substituting the words “licensed financial advisers and their appointed or provisional representatives”;

- (f) by deleting paragraph (h) of subsection (2) and substituting the following paragraph:

5 “(h) the disclosure by a licensed financial adviser, exempt financial adviser or representative of any material interest that he may have in a proposed transaction relating to purchasing, subscribing for or trading in capital markets products;”;

- (g) by deleting paragraph (l) of subsection (2) and substituting the following paragraph:

10 “(l) the maintenance by a proprietor or publisher of a newspaper of the particulars of any financial journalist who has contributed any advice, analysis or report concerning any securities, that has been published in the newspaper, and the provision of such
15 particulars to the Authority;”;

- (h) by inserting, immediately after paragraph (l) of subsection (2), the following paragraph:

20 “(m) the maintenance by a licensed financial adviser, representative of a licensed financial adviser and applicant for a financial adviser’s licence of registers of their interests in securities and their duties relating to the registers, and matters relating thereto; and”;

- (i) by inserting, immediately after subsection (4), the following subsections:

25 “(5) Where a person is charged with an offence for contravening a regulation made under subsection (2)(m), it shall be a defence for the person to prove —

30 (a) that his contravention was due to his not being aware of a fact or occurrence, the existence of which was necessary to constitute the offence; and

(b) that —

(i) he was not so aware on the date of the summons issued for the charge; or

(ii) he became so aware before the date of the summons and complied with the regulation within 14 days after becoming so aware.

5 (6) For the purposes of subsection (5), a person shall, in the absence of proof to the contrary, be conclusively presumed to have been aware of a fact or occurrence at a particular time which an employee or agent of the person, being an employee or agent having duties or acting in relation to his employer's or principal's interest or interests in the securities concerned, was
10 aware of at that time."

Amendment of First Schedule

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

- (a) by deleting the word "registered" in paragraph 2 and substituting the word "licensed"; and
15 (b) by deleting the words "subsection (1)(f)" in paragraph 11 and substituting the words "subsection (1)(ea) and (f)".

Miscellaneous amendments

41. The principal Act is amended —

- (a) by deleting the word "licensee" wherever it appears in the
20 following sections and substituting in each case the words "licensed financial adviser":
Sections 25(1) to (5), 26(1) and (3), 27(1), (2), (3) and (5), 28(1)(a), (2), (3) and (4), 33(1) and (4), 34(1), (2) and (3), 36(1), (2), (5) and (8), 58(1)(a) and (2)(a)(i)(A) and 67(h);
25 (b) by deleting the word "licensees" in the following sections and substituting in each case the words "licensed financial advisers":
Sections 26 (section heading), 27(5) and section heading, 28(1)(b), 31, 34 (section heading), 35 and 58(2)(a)(iv); and
(c) by deleting the word "Licensee" in the section heading of section
30 36 and substituting the words "Licensed financial adviser".

Transitional and savings provisions

42. 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.

EXPLANATORY STATEMENT

This Bill seeks to amend the Financial Advisers Act (Cap. 110) primarily —

- (a) to enable financial advisory services for new investment products to be provided in response to market needs;
- (b) to modify the regulatory framework for financial advisers and their representatives;
- (c) to provide for control of take-overs of licensed financial advisers;
- (d) to enable the Monetary Authority of Singapore (MAS) to adapt business conduct requirements to market developments and industry needs; and
- (e) to make other amendments to the Act for greater clarity and consistency.

Clause 1 relates to the short title and commencement.

Clause 2 amends section 2 (Interpretation) —

- (a) to insert definitions for “appointed representative”, “principal”, “provisional representative”, “public register of representatives” and “record” which are terms introduced in new Division 2 of Part II, re-enacted section 63 and new section 63A;
- (b) to amend the definition of “financial adviser’s licence” in light of the removal of the need for such licence to be renewed;
- (c) to insert a definition of “financial journalist” for the purpose of new section 104(2)(l);
- (d) to amend the definition of “futures contract” to enable MAS to exclude by regulations particular contracts from the scope of the Act;
- (e) to delete the definitions of “licence” and “representative’s licence” as these terms will no longer be used;
- (f) to align the definition of “representative” with that in section 2(1) of the Securities and Futures Act (Cap. 289); and
- (g) to make a consequential amendment to the definition of “substantial shareholder” arising from the transfer of the requirements relating to disclosure of interests in a listed corporation from Division 4 of Part IV of the Companies Act (Cap. 50) to Division 1 of Part VII of the Securities and Futures Act.

Clause 3 makes a consequential amendment to the heading of Part II due to the replacement of the licensing regime for representatives with a notification regime, and inserts a new divisional heading for sections 6 to 23A which apply to financial advisers.

Clause 4 repeals section 7 (Need for representative's licence) due to the replacement of the licensing regime for representatives with a notification regime.

Clause 5 makes consequential amendments to section 8 (Application for grant or renewal of licence) to remove references to renewal of a licence as a financial adviser's licence need no longer be renewed, and to delete various subsections relating to the licensing of representatives.

Clause 6 amends section 9 (Grounds for refusal to grant or renew financial adviser's licence) to remove references to renewal of a licence as a financial adviser's licence need no longer be renewed.

Clause 7 repeals section 11 (Grounds for refusal to grant or renew representative's licence) due to the replacement of the licensing regime for representatives with a notification regime. The clause also repeals section 12 (Representative to act for only one financial adviser) the subject-matter of which is now set out in the new section 23G.

Clause 8 makes various consequential amendments to section 13 (Grant or renewal of licence) due to the replacement of the licensing regime for representatives with a notification regime and the removal of the need for a financial adviser's licence to be renewed.

Clause 9 makes various consequential amendments to section 14 (Licence fees) arising from the replacement of the licensing regime for representatives with a notification regime and the removal of the need for a financial adviser's licence to be renewed. It also clarifies that the licence fee in subsection (1) is an annual fee to be paid on a specified date, and subjects a person who fails to pay the fee to a late payment fee.

Clause 10 repeals section 15 (Period of licence) in light of the removal of the need for a financial adviser's licence to be renewed.

Clause 11 makes various consequential amendments to section 16 (Variation of licence) arising from the replacement of the licensing regime for representatives with a notification regime.

Clause 12 makes consequential amendments to section 17 (False statements in relation to application for grant, renewal or variation of licence) arising from the replacement of the licensing regime for representatives with a notification regime and the removal of the need for a financial adviser's licence to be renewed.

Clause 13 makes various consequential amendments to section 18 (Notification of change in particulars, etc.) arising from the replacement of the licensing regime for representatives with a notification regime and the re-enacted section 63.

Clause 14 repeals and re-enacts section 19 (Lapsing, revocation, suspension and expiry of licence) —

- (a) to remove provisions relating to the lapsing, revocation and suspension of licences of representatives;
- (b) to add the following grounds for revoking or suspending a licence:
 - (i) MAS believes that the licensed financial adviser or its officer or employee has not performed its or his duties efficiently, honestly or fairly; and
 - (ii) failure to pay the licence fee; and
- (c) to require a licensed financial adviser whose licence has been revoked or suspended to inform its representatives who must cease to act as its representatives either permanently or during the suspension period.

Clauses 15 and 16 make consequential amendments to sections 20 (Right of appeal) and 21 (Use of words “financial adviser” or “life insurance broker”), respectively, arising from the replacement of the licensing regime for representatives with a notification regime.

Clause 17 amends section 23 (Exempt financial advisers and their representatives) —

- (a) to delete subsection (5) in relation to business conduct requirements for representatives of certain exempt financial advisers as similar requirements are found in the new section 37(1);
- (b) to replace the reference to “licensed representative” in subsection (5A) with “licensed financial adviser”, as a consequence of the removal of the licensing regime for representatives;
- (c) to delete subsection (5B) in relation to MAS’ power of inspection of exempt financial advisers and their representatives, as this is addressed in the amendments to section 70;
- (d) to rephrase subsection (5C) for greater clarity;
- (e) to replace subsection (6) with new subsections (6) and (6A) as a consequence of the deletion of subsection (5) and to state more accurately the provisions from which the different kinds of exempt financial advisers and their representatives may be exempted;
- (f) to provide that the power of MAS to impose conditions and restrictions applies only to an exempt financial adviser or a representative of a financial adviser exempted under subsection (1)(*ea*) or (*f*), and not to an appointed or provisional representative as a similar power is found in new section 23K;
- (g) to provide that a contravention of any such condition or restriction is an offence; and
- (h) to provide that a failure to pay the annual fee under section 23A is a ground for the withdrawal of an exemption.

Clause 18 repeals and re-enacts section 23A (Annual fees) to provide that annual fees under the section are payable only by exempt financial advisers and representatives

of persons exempt under section 23(1)(ea) or (f) and to provide for a late payment fee for failure to pay the annual fees.

Clause 19 inserts a new Division 2 in Part II entitled “Representatives” to provide for a representative notification regime. A principal who appoints a representative in respect of any financial advisory service has to notify MAS of the appointment and certify the representative’s fitness to be such representative. The fact of the notification and other pertinent information relating to his appointment will be reflected in a public register of representatives to be maintained by MAS for the benefit of members of the public dealing with representatives.

There will be 2 classes of representatives: an appointed representative (who must have fulfilled examination requirements imposed by MAS) and a provisional representative (who is currently or was previously regulated overseas as a representative and is given a fixed period of time to fulfil the examination requirements).

The Division consists of 12 sections.

The new section 23B prohibits a person from acting as a representative or holding himself out as doing so, unless he is an appointed or provisional representative or a representative of certain exempt persons. A principal is also prohibited from permitting a person so prohibited from providing any financial advisory service on the principal’s behalf.

The new section 23C defines an appointed representative in respect of a type of financial advisory service. He must, inter alia, satisfy MAS’ examination requirements and have his name entered in the public register of representatives as an appointed representative. The section also sets out circumstances in which an individual ceases to be an appointed representative. When an individual ceases to be a representative, or ceases to provide any type of financial advisory service which he is appointed to provide, his principal must inform MAS.

The new section 23D defines a provisional representative in respect of a type of financial advisory service. A provisional representative is one who, inter alia, intends to take an examination to satisfy the examination requirements the fact of which has been notified to MAS, and whose name is entered in the public register of representatives as a provisional representative. The section also sets out circumstances in which an individual ceases to be a provisional representative. His principal must further inform MAS if he satisfies the examination requirements.

The new section 23E makes it an offence to contravene certain provisions of new sections 23C, 23D and 23F relating to the furnishing of information to MAS.

The new section 23F sets out the documents to be lodged by the principal with MAS relating to his appointment of a representative.

The new section 23G provides that an appointed or provisional representative may only act for one principal unless otherwise approved by MAS. An appointed representative may act for more than one principal if the principals are related corporations.

The new section 23H requires an individual to pay a fee for the lodgment of documents by his principal under new section 23F concerning his appointment as a representative, and requires the individual to pay an annual fee for the retention of his name in the public register of representatives.

The new section 23I provides that a principal who wishes to appoint an appointed representative to provide any additional type of financial advisory service may lodge a notice with MAS.

The new section 23J sets out the grounds for MAS to refuse to enter the name of an individual or any additional type of financial advisory service in the public register of representatives, or to revoke or suspend the status of appointed or provisional representatives. With some exceptions, MAS cannot take such action without giving the affected person an opportunity to be heard. The section also sets out certain duties of MAS in relation to its maintenance of the public register in the event that it takes any revocation or suspension action.

The new section 23K allows MAS to impose by written notice conditions and restrictions on an appointed or provisional representative. Contravention of any condition or restriction is a criminal offence.

The new section 23L makes it an offence to lodge a false statement with MAS or to omit from any document lodged with MAS any information thereby rendering the document misleading. An individual who provides a false statement to his principal which is subsequently lodged under new section 23F, or omits to give any information to his principal which renders any document so lodged misleading, also commits an offence.

The new section 23M allows a person to appeal to the Minister against any MAS' decision in refusing to enter his name or any additional type of financial advisory service against his name in the public register of representatives, or to revoke or suspend his status as an appointed or provisional representative.

Clause 20 repeals section 24 (Restriction on granting unsecured advances, loans or credit facilities to director, etc., of licensed financial adviser) as similar requirements are intended to be imposed by regulations: see new section 104(2)(ab) inserted by clause 39.

Clause 21 makes consequential amendments to section 29 (Obligation to furnish information to Authority) arising from the replacement of the licensing regime for representatives with a notification regime.

Clause 22 repeals and re-enacts Division 4 of Part III which consists of one section. The new section 37 applies to an appointed or provisional representative certain business conduct requirements under the Act that are applicable to a licensed financial adviser, and enables MAS to exempt a representative on an application by his principal from any such requirement. Matters dealt with by the repealed sections 37 to 44 are intended to be dealt with by regulations: see new section 104(2)(l) and (m) inserted by clause 39.

Clause 23 amends section 56 (Approval of chief executive officer and director of licensed financial adviser) —

- (a) to provide that a licensed financial adviser must seek MAS' prior approval when appointing a chief executive officer or director, or when changing the appointment of a non-executive director to that of an executive director;
- (b) to provide that the requirement under paragraph (a) does not apply to a licensed financial adviser that is a foreign company in the case of a director or intended director who does not reside in Singapore and is not directly responsible for its Singapore business; and
- (c) to enable MAS to require a licensed financial adviser to notify it of a change to any specified attribute of the adviser's chief executive officer or director.

Clause 24 amends section 57 (Removal of officer of licensed financial adviser) to include, as a ground on which MAS may direct a licensed financial adviser to remove an officer, the ground that the officer is not a fit and proper person for such office.

Clause 25 inserts new sections 57A and 57B to provide for control of take-overs of licensed financial advisers.

The new section 57A requires a person to seek MAS' prior approval before entering into an arrangement relating to shares of a licensed financial adviser, which would result in the person obtaining effective control of the adviser. In granting approval, MAS may impose conditions such as restricting his disposal or further acquisition of shares or voting power in the adviser and restricting his exercise of voting power in the adviser.

The new section 57B enables MAS to serve a notice of objection on a person required to obtain approval under new section 57A or a person holding 20% or more of the issued share capital or voting power of a licensed financial adviser (including persons who have such holding before the operative date of this section) on certain grounds. A person served a notice of objection may be required to take steps to cease having control of the adviser or to cease being a party to an arrangement which will result in him having such control.

Clause 26 makes consequential amendments to section 58 (Power of Authority to issue written directions) arising from the replacement of the licensing regime for representatives with a notification regime.

Clause 27 amends section 59 (Power of Authority to make prohibition orders) —

- (a) to provide that MAS may issue a prohibition order against a person on the ground that he had been removed at MAS' direction from office or employment as an officer of a licensed financial adviser because he is not a fit and proper person for such office;
- (b) to provide that a prohibition order may also prohibit a person from taking on a management or director's role in a financial adviser or from becoming its substantial shareholder;
- (c) to provide that the fact that a prohibition order is made against an appointed or provisional representative must be indicated in the public register of representatives; and

- (d) to make certain consequential amendments arising from the replacement of the licensing regime for representatives with a notification regime.

Clause 28 amends section 60 (Effect of prohibition orders) —

- (a) to require a financial adviser who has been notified of a prohibition order against a person not to employ or use the service of that person if this is prohibited by the order; and
- (b) to require a financial adviser against whom a prohibition order is made prohibiting it from providing any financial advisory service to inform all its representatives of this who must then cease to provide that service.

Clause 29 repeals and re-enacts section 62 (Date and effect of prohibition orders) to provide that a prohibition order will not affect or avoid any agreement, transaction or arrangement entered into whether before, on or after its issue.

Clause 30 repeals and re-enacts section 63 (Registers) to replace provisions requiring MAS to keep a register containing specified information of licensed financial advisers, with provisions requiring MAS to keep records on certain of their information and to publish any part of them as it considers appropriate.

The clause also inserts a new section 63A to provide for MAS to maintain records of appointed and provisional representatives, and to publish such part of the records in a public register of representatives as MAS considers appropriate.

Clause 31 amends section 68 (Self-incrimination) to clarify that a statement made under Part VI (Supervision and investigation) which the maker claimed might tend to incriminate him may only be admissible in proceedings under section 76(2) (furnishing of false or misleading information or statement in purported compliance with certain requirements).

Clause 32 amends section 70 (Inspection by Authority) to empower MAS to inspect the books of exempt financial advisers and representatives.

Clause 33 inserts a new section 70A —

- (a) to provide that a report on an inspection under section 70 must not be disclosed by the inspected person or (if it is a corporation) its officer or auditor;
- (b) to provide that the report may be disclosed to an officer or auditor of the inspected person solely in connection with the performance of the duties of the officer or auditor, or to any other person with MAS' approval;
- (c) to provide that the duty of confidentiality of the officer or auditor continues after the termination or cessation of his employment or appointment; and
- (d) to provide that any person to whom the report is disclosed and who knows or has reasonable grounds for believing, at the time of the disclosure, that the report was disclosed to him in contravention of the prohibition under subsection (1), will be guilty of an offence, unless he proves that the disclosure was made contrary to his desire and that he had as soon as practicable after receipt of the report surrendered the report and all copies of

it to MAS and (in the case of an electronic disclosure) deleted all electronic copies of it.

Clause 34 inserts a new section 71A to make provisions for the confidentiality of a report on an investigation under section 71 similar to the new section 70A.

Clause 35 amends section 86 (Duty not to furnish false information to Authority) to provide that a person who signs any document lodged with MAS under the Act, or who lodges with MAS any document by electronic means, must use due care to ensure that it is not false or misleading in a material particular.

Clause 36 makes consequential amendments to section 88 (Penalty for corporations) arising from the repeal and re-enactment of section 19 and the repeal of section 24.

Clause 37 makes consequential amendments to section 97 (Power to reprimand for misconduct) arising from the new notification regime for representatives.

Clause 38 amends section 100 (General exemption) to enable MAS to add to, vary or revoke any term or condition of an exemption.

Clause 39 amends section 104 (Regulations) —

- (a) to enable regulations to be made in relation to the new notification regime for representatives, and to make other consequential amendments arising from this; and
- (b) to enable regulations to be made for various business conduct requirements set out in sections 24 and 37 to 44 which are repealed by the Bill.

Clause 40 makes editorial amendments to the First Schedule (Excluded financial advisers).

Clause 41 replaces the terms “licensee” and “licensees” with “licensed financial adviser” and “licensed financial advisers”, respectively, in various provisions of the Act in light of the replacement of the licensing regime with a notification regime for representatives.

Clause 42 enables MAS to make regulations to prescribe transitional and savings provisions.

EXPENDITURE OF PUBLIC MONEY

This Bill will not involve the Government in any extra financial expenditure.
