

Financial Advisers (Amendment) Bill

Bill No. 15/2015.

Read the first time on 11 May 2015.

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 2015 and comes into operation on such date as the Minister may, by notification in the *Gazette*, appoint.

5 Amendment of long title

2. The long title to the Financial Advisers Act (referred to in this Act as the principal Act) is amended by inserting, immediately after the word “representatives”, the words “and supervisors”.

Amendment of section 2

10 3. Section 2(1) of the principal Act is amended —

(a) by inserting, immediately after the definition of “futures exchange”, the following definition:

““independent sales audit unit”, in relation to a licensed financial adviser, means a unit of the licensed financial adviser which —

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(a) audits the quality of the provision of financial advisory services by representatives of the licensed financial adviser; and

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(b) is independent from all units of the licensed financial adviser which provide financial advisory services;”;

(b) by inserting, immediately after the definition of “substantial shareholder”, the following definition:

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““supervisor”, in relation to a financial adviser, means any person (by whatever name described) who —

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(a) is in the direct employment of, is acting for, or has an arrangement with the financial adviser; and

(b) is responsible, whether directly or indirectly, for the supervision or

management of the conduct and performance of any representative of the financial adviser or another supervisor;”; and

- (c) by inserting, immediately after the definition of “trading in futures contracts”, the following definition: 5

““unit” means a group of individuals carrying out a common activity of a licensed financial adviser, each of whom is directly employed by, is acting for, or has an arrangement with the licensed financial adviser;”. 10

Amendment of section 9

4. Section 9 of the principal Act is amended —

- (a) by deleting paragraph (b) of subsection (1) and substituting the following paragraph: 15

“(b) the applicant is unable to meet the financial requirements prescribed under section 104 or specified by the Authority by written notice to the applicant;”;

- (b) by inserting, immediately after the word “prescribed” in subsection (1)(c), the words “under section 104 or specified by the Authority by written notice to the applicant”; and 20

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

“(5) A written notice issued under this section need not be published in the *Gazette*.”. 25

Amendment of section 10

5. Section 10 of the principal Act is amended —

- (a) by deleting paragraph (a) of subsection (1) and substituting the following paragraph: 30

“(a) comply, at all times during the currency of its licence, with such financial requirements as may

be prescribed or specified under section 9(1);
and”;

(b) by inserting, immediately after the words “as may be prescribed” in subsection (1)(b), the words “or specified”;

5 (c) by deleting the words “minimum financial requirements or such other requirements as may be prescribed” in subsection (2)(b)(i) and (iii) and substituting in each case the words “financial requirements prescribed or specified”;

10 (d) by inserting, immediately after the words “in force a professional indemnity insurance policy,” in subsection (2)(b)(ii), the words “the cover of which is consistent with the limit and deductible requirements prescribed or specified under section 9(1)(c),”; and

15 (e) by deleting the words “maintain minimum” in the section heading and substituting the words “comply with”.

New section 22A

6. The principal Act is amended by inserting, immediately after section 22, the following section:

“Regulation of payment, etc., of remuneration

20 **22A.**—(1) A licensed financial adviser or an exempt financial adviser, or a representative or supervisor of a licensed financial adviser or an exempt financial adviser must not request or demand payment of, or accept any remuneration, in relation to —

25 (a) the provision of any financial advisory service in connection with any type of investment product; or

(b) the sale of any type of investment product following the provision of any financial advisory service,

except in accordance with regulations made under section 104 or a written notice issued by the Authority.

30 (2) A licensed financial adviser or an exempt financial adviser must not pay another licensed financial adviser or exempt financial adviser, or a representative or supervisor of the firstmentioned licensed financial adviser or exempt financial

adviser, or of another licensed financial adviser or exempt financial adviser, any remuneration in relation to —

- (a) the provision of any financial advisory service in connection with any type of investment product; or
- (b) the sale of any type of investment product following the provision of any financial advisory service,

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except in accordance with regulations made under section 104 or a written notice issued by the Authority.

(3) The regulations or written notice referred to in subsection (1) or (2) may prescribe or specify the following:

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- (a) the type and amount of the remuneration which may be payable in any particular period;
- (b) how the payment is to be made.

(4) Subsections (1) and (2) apply only to payment of remuneration which accrues —

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- (a) on or after the date of commencement of section 6 of the Financial Advisers (Amendment) Act 2015 (called in this section the commencement date); and
- (b) under any agreement or arrangement whether made before, on or after the commencement date.

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(5) Any person required to comply with subsection (1) or (2) must do so despite —

- (a) any written law in force on the commencement date or rule of law to the contrary; or
- (b) any agreement or arrangement entered into before, on or after the commencement date.

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(6) Any person who complies with subsection (1) or (2) is not to be treated as having breached —

- (a) any rule of law or written law referred to in subsection (5)(a); or

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(b) any agreement or arrangement referred to in subsection (5)(b) which was entered into before the commencement date,

and no such agreement or arrangement is taken to be brought to an end by frustration solely by reason of any act done in compliance with subsection (1) or (2), or any regulation or written notice referred to in that subsection.

(7) Any person who contravenes subsection (1) or (2) 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 of a day during which the offence continues after conviction.

(8) A written notice issued under this section need not be published in the *Gazette*.

(9) In this section, “remuneration” includes —

- (a) any monetary commission, incentive, benefit or reward;
- (b) any non-monetary incentive, benefit or reward; and
- (c) such other consideration as may be prescribed under section 104 or specified by the Authority by written notice.”.

Amendment of section 23

7. Section 23 of the principal Act is amended —

- (a) by inserting, immediately after the words “Insurance Act (Cap. 142)” in subsection (1)(c), the words “or a company registered as an insurance broker under that Act”; and
- (b) by deleting the words “and 36” in subsection (4) and substituting the words “, 36, 38 and 39”.

New section 23AA

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

“Financial requirements or professional indemnity insurance policy for certain exempt financial advisers

23AA.—(1) An exempt financial adviser which is also a company registered as an insurance broker under the Insurance Act (Cap. 142) referred to in section 23(1)(c), must, at all times when it carries on the business of providing any financial advisory service —

(a) comply with such financial requirements prescribed under section 104 or specified by the Authority by written notice to the exempt financial adviser; and

(b) have in force a professional indemnity insurance policy the cover of which is consistent with such limit and deductible requirements as may be prescribed under section 104 or specified by the Authority by written notice to the exempt financial adviser, or such other measure as may be approved by the Authority in lieu of a professional indemnity insurance policy.

(2) Where an exempt financial adviser contravenes subsection (1), the Authority may, without prejudice to any other remedy available to the Authority under this Act —

(a) permit the exempt financial adviser to continue providing any financial advisory service in accordance with such conditions as the Authority may impose; or

(b) impose on the exempt financial adviser requirements specified in written directions, including requiring the exempt financial adviser —

(i) to stop providing any financial advisory service other than for the purpose of giving effect to any agreement, transaction or arrangement entered into before the time of contravention of subsection (1); or

(ii) to submit such statements or reports on a weekly basis or at such other interval as the Authority may require, until the exempt financial adviser

meets the financial requirements prescribed or specified under subsection (1)(a).

(3) Any exempt financial adviser which, without reasonable excuse, contravenes subsection (1) or any condition imposed by the Authority under subsection (2)(a) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000.

(4) A written notice issued under this section need not be published in the *Gazette*.”.

Amendment of section 23B

9. Section 23B of the principal Act is amended —

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

“(1A) Without prejudice to subsection (1), a person must not act as a representative or hold himself out as doing so, if the person is concurrently engaged in, whether or not for remuneration —

(a) any employment with another person; or

(b) any business, trade, profession or vocation, whether for himself or another person,

which does not involve the person performing any financial advisory service.

(1B) Subsection (1A) does not apply if the person complies with the conditions and requirements prescribed under section 104 or specified by the Authority by written notice, when engaging in such employment, business, trade, profession or vocation.”;

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

“(3A) Without prejudice to subsection (3), a licensed financial adviser in Singapore or an exempt financial adviser in Singapore must not appoint as its appointed representative or provisional representative an

individual whom the financial adviser knows or has reasonable grounds to believe, is concurrently engaged in, whether or not for any remuneration —

(a) any employment with any person; or

(b) any business, trade, profession or vocation, whether for himself or another person,

which does not involve the individual performing any financial advisory service.

(3B) Subsection (3A) does not apply if the licensed financial adviser or exempt financial adviser is satisfied that the criteria prescribed under section 104 or specified by the Authority by written notice for the purposes of this subsection have been satisfied.”; and

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

“(6) A person who contravenes subsection (1A) or (3A) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$12,500.

(7) A written notice issued under this section need not be published in the *Gazette*.

(8) In this section, “financial adviser in Singapore” means —

(a) a financial adviser which is incorporated in Singapore; or

(b) in the case of a financial adviser incorporated outside Singapore, the branches or offices of the financial adviser located within Singapore.”.

New Division 5 of Part III

10. The principal Act is amended by inserting, immediately after section 37, the following Division:

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*“Division 5 — Remuneration***Remuneration framework for representatives and supervisors**

5 **38.**—(1) A licensed financial adviser must establish and maintain a remuneration framework in conformity with subsection (2) for the purpose of —

 (a) reviewing and assessing the performance of its representatives and its supervisors; and

10 (b) determining the remuneration of its representatives and supervisors.

(2) Every remuneration framework in respect of representatives and supervisors of a licensed financial adviser must contain terms consistent with the requirements prescribed under section 104 or specified by the Authority by written notice, from time to time.

15 (3) A licensed financial adviser must ensure that every agreement or arrangement entered into between the licensed financial adviser and each of its representatives or supervisors on or after the date of commencement of section 10 of the Financial Advisers (Amendment) Act 2015 (called in this section the commencement date) does not contain terms which are inconsistent with the remuneration framework referred to in subsection (1).

20 (4) A licensed financial adviser must —

25 (a) review and assess the performance, and determine the remuneration of its representatives and supervisors; and

 (b) pay remuneration accruing on or after the commencement date to its representatives and supervisors,

30 in accordance with the remuneration framework referred to in subsection (1).

(5) This section applies despite —

- (a) any written law in force on the commencement date or rule of law to the contrary; or
- (b) any agreement or arrangement entered into before, on or after the commencement date.

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(6) In carrying out any act in accordance with the remuneration framework referred to in subsection (1), the licensed financial adviser is not to be treated as having —

- (a) breached any rule of law or written law referred to in subsection (5)(a); or
- (b) breached any agreement or arrangement referred to in subsection (5)(b) entered into before the commencement date,

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and no such agreement or arrangement is taken to be brought to an end by frustration solely by reason of any act done in compliance with the remuneration framework or any requirements prescribed or specified under subsection (2).

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(7) Any licensed financial adviser which contravenes subsection (1), (3) or (4) 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 of a day during which the offence continues after conviction.

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(8) The Authority may by regulations under section 104 prescribe —

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- (a) the persons to whom this section does not apply; and
- (b) the circumstances in which this section does not apply.

(9) A written notice issued under this section need not be published in the *Gazette*.

(10) In this section, “remuneration” includes —

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- (a) any monetary commission, incentive, benefit or reward;
- (b) any non-monetary incentive, benefit or reward; and

- (c) such other consideration as may be prescribed under section 104 or specified by the Authority by written notice.

Independent sales audit unit

5 **39.**—(1) A licensed financial adviser must have an independent sales audit unit comprising only individuals who have the qualification or experience and perform the duties prescribed under section 104 or specified by the Authority by written notice.

10 (2) The licensed financial adviser must ensure that the independent sales audit unit reports only to —

(a) the board of directors and chief executive officer of the licensed financial adviser; or

15 (b) such other unit of the licensed financial adviser determined by the board of directors or the chief executive officer, which is independent from all units of the licensed financial adviser which provide financial advisory services.

20 (3) The licensed financial adviser must ensure that the independent sales audit unit —

(a) audits the quality of the financial advisory services provided by the representatives of the licensed financial adviser at such times and in such manner as may be prescribed under section 104 or specified by the Authority by written notice;

(b) carries out such other functions and duties as may be prescribed under section 104 or specified by the Authority by written notice; and

30 (c) applies the processes, criteria and methods prescribed (if any) under section 104 or specified by the Authority by written notice, in connection with the functions and duties in paragraphs (a) and (b).

(4) Any licensed financial adviser which contravenes subsection (1), (2) or (3) 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 of a day during which the offence continues after conviction.

(5) The Authority may by regulations under section 104 prescribe — 5

(a) the licensed financial adviser or class of licensed financial advisers to whom this section does not apply; and

(b) the circumstances in which this section does not apply. 10

(6) A written notice issued under this section need not be published in the *Gazette*.”.

New Part IVA

11. The principal Act is amended by inserting, immediately after section 55, the following Part: 15

“PART IVA

PROHIBITED BUSINESSES

Prohibited businesses of licensed financial advisers in Singapore

55A.—(1) A licensed financial adviser in Singapore must not — 20

(a) carry on any business, whether in Singapore or elsewhere; or

(b) enter into any partnership, joint venture or any other arrangement with any person to carry on any business, whether in Singapore or elsewhere, 25

except the following:

(i) the business of providing any financial advisory service authorised by its financial adviser’s licence;

(ii) any business, the carrying on of which is regulated or authorised by the Authority under any other written law 30

or would be so regulated or authorised by the Authority if carried on in Singapore;

- (iii) such other business as may be prescribed under section 104 or approved by the Authority specially for the licensed financial adviser.

(2) In prescribing or approving any business under subsection (1)(iii), the Authority may prescribe under section 104 or specify by written notice conditions which the licensed financial adviser in Singapore must comply with in relation to the business.

(3) Nothing in this section is to be read as exempting a licensed financial adviser in Singapore from any requirement which the licensed financial adviser is required to comply with under any other written law for the conduct of any activity.

(4) Any licensed financial adviser in Singapore which contravenes this section or fails to comply with any condition imposed or prescribed under this section shall be guilty of an offence.

(5) A written notice issued under this section need not be published in the *Gazette*.

(6) In this section, “financial adviser in Singapore” means —

(a) a financial adviser which is incorporated in Singapore; or

(b) in the case of a financial adviser incorporated outside Singapore, the branches or offices of the financial adviser located within Singapore.

Prohibition against acting for financial adviser for prohibited businesses

55B.—(1) An appointed representative or a provisional representative of a licensed financial adviser may only act (whether in Singapore or elsewhere) for the licensed financial adviser in respect of —

(a) the business of providing any financial advisory service which the representative is appointed to provide and which is not prescribed under section 104, or specified by the Authority by written notice, to be a prohibited business; or 5

(b) any business which its principal may conduct under section 55A(1)(ii) or (iii) and which is not prescribed under section 104, or specified by the Authority by written notice, to be a prohibited business.

(2) An appointed representative or a provisional representative of an exempt financial adviser may only act (whether in Singapore or elsewhere) for the exempt financial adviser in respect of — 10

(a) the business of providing any financial advisory service which the representative is appointed to provide and which is not prescribed under section 104, or specified by the Authority by written notice, to be a prohibited business; or 15

(b) any other business if —

(i) the principal is satisfied that the conditions prescribed under section 104 for the purposes of this section are fulfilled; and 20

(ii) the business is not prescribed under section 104, or specified by the Authority by written notice, to be a prohibited business. 25

(3) Nothing in this section is to be read as exempting an appointed representative or a provisional representative from any requirement which the appointed representative or provisional representative is required to comply with under any other written law for the conduct of any activity. 30

(4) Any person who contravenes this section shall be guilty of an offence.

(5) For the purposes of this section, a person acts for another in respect of any business whether or not the person does so under a contract of employment with the other.

5 (6) A written notice issued under this section need not be published in the *Gazette*.

Prohibition against representative engaging in employment, etc., outside scope of appointment

10 **55C.**—(1) Except with the consent of the financial adviser, an appointed representative or a provisional representative of a financial adviser must not engage in, whether or not for remuneration —

(a) any employment with another person; or

(b) any business, trade, profession or vocation, whether for himself or another person.

15 (2) The financial adviser must not give its consent to the appointed representative or provisional representative unless it is satisfied that the criteria prescribed under section 104 or specified by the Authority by written notice, for the purposes of this section have been satisfied.

20 (3) Any person who contravenes this section shall be guilty of an offence.

(4) A written notice issued under this section need not be published in the *Gazette*.”.

Amendment of section 58

25 **12.** Section 58 of the principal Act is amended —

(a) by deleting the word “or” at the end of paragraph (c) of subsection (1), and by inserting immediately thereafter the following paragraph:

“(ca) any supervisor of a financial adviser; or”;

30 (b) by deleting the words “or (c)” in subsection (1)(d) and substituting the words “, (c) or (ca)”;

(c) by inserting, immediately after sub-paragraph (i) of subsection (2)(a), the following sub-paragraph:

“(ia) the standards to be maintained by any supervisor of a financial adviser in the conduct of the supervisor’s functions and duties;”; and

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(d) by deleting sub-paragraph (iii) of subsection (2)(a) and substituting the following sub-paragraph:

“(iii) the qualifications (including educational qualifications), experience, expertise or training of representatives, supervisors or officers (including the chief executive officer and any director) of a licensed financial adviser or an exempt financial adviser referred to in section 23;”.

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New Division 2A of Part VI

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

“Division 2A — Inspection Powers of Foreign Regulatory Authority

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Application of this Division

70B. This Division does not apply to an inspection by a foreign regulatory authority of the books of a specified financial adviser in Singapore if —

(a) the foreign regulatory authority is an AML/CFT authority as defined in section 30X of the Monetary Authority of Singapore Act (Cap. 186) and exercises consolidated supervision authority as defined in that section over that specified financial adviser; and

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(b) the inspection is solely for the purposes of such consolidated supervision.

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Inspection by foreign regulatory authority

5 **70C.**—(1) Subject to the provisions of this section, a foreign regulatory authority may, with the prior written approval of the Authority and under conditions of secrecy, conduct an inspection in Singapore of the books of a specified financial adviser in respect of its business of providing any financial advisory service.

(2) Where —

- 10 (a) the specified financial adviser is an exempt financial adviser referred to in section 23(1)(a) or (d); and
- (b) the foreign regulatory authority has already obtained the approval of the Authority under section 45 of the Banking Act (Cap. 19) or section 150B of the Securities and Futures Act (Cap. 289) to conduct an inspection
- 15 under that provision,

then the foreign regulatory authority is treated as having obtained the Authority's written approval under subsection (1).

(3) In deciding whether to grant approval to a foreign regulatory authority under subsection (1), the Authority may

20 have regard to the following considerations:

- (a) whether the inspection, and the information to be obtained from the inspection, is required by the foreign regulatory authority to enable the foreign regulatory authority to carry out its regulatory functions;
- 25 (b) whether the foreign regulatory authority has regulatory oversight in its jurisdiction of the specified financial adviser;
- (c) whether the foreign regulatory authority is prohibited by the laws applicable to it from disclosing information
- 30 obtained by it from the inspection to any other person;
- (d) whether the foreign regulatory authority has provided or is willing to provide similar assistance to the Authority;
- (e) such other matters as the Authority may consider relevant.

(4) A foreign regulatory authority which obtained an approval for an inspection under subsection (1) may, with the prior written approval of the Authority, request or appoint any of the following persons to conduct the inspection:

- (a) either — 5
 - (i) where the specified financial adviser is incorporated outside Singapore, the auditors of the head office of the specified financial adviser; or
 - (ii) where the specified financial adviser is incorporated in Singapore — 10
 - (A) in a case where the specified financial adviser has a parent company, the auditors of the parent company; or
 - (B) in any other case, the auditors of the specified financial adviser; 15
- (b) such other person as the foreign regulatory authority thinks fit.

(5) Despite subsection (1), the Authority may at any time, whether before, on or after giving written approval for an inspection under subsection (1), impose conditions or restrictions on the foreign regulatory authority relating to any of the following: 20

- (a) the class or classes of information to which the foreign regulatory authority may or may not have access in the course of the inspection; 25
- (b) the conduct of the inspection;
- (c) the use or disclosure of any information obtained in the course of the inspection;
- (d) such other matters as the Authority thinks fit. 30

(6) The Authority may, in relation to an inspection by a foreign regulatory authority, at any time, by written notice to the specified financial adviser concerned, impose such conditions or

restrictions on the specified financial adviser as it thinks fit, and the specified financial adviser must comply with such conditions or restrictions.

5 (7) Subsections (5) and (6) apply as if a reference to the foreign regulatory authority includes a reference to the person requested or appointed under subsection (4).

(8) In this section and sections 70B, 70D and 70E —

10 “foreign regulatory authority” means an authority of a country or territory other than Singapore, which exercises any function that corresponds to a regulatory function of the Authority under the Monetary Authority of Singapore Act (Cap. 186) or any of the written laws set out in the Schedule to that Act;

15 “parent company”, in relation to a specified financial adviser, means a financial institution of which the specified financial adviser is a subsidiary;

“specified financial adviser” means a licensed financial adviser or an exempt financial adviser referred to in section 23(1)(a), (b), (c), (d), (e) or (f);

20 “subsidiary” has the same meaning as in section 5 of the Companies Act (Cap. 50).

Duty of specified financial adviser under inspection

25 **70D.**—(1) For the purposes of an inspection under section 70C, and subject to subsection (2), the specified financial adviser must —

(a) give the foreign regulatory authority access to such of the books of the specified financial adviser; and

30 (b) provide such information (including information relating to the internal control systems of the specified financial adviser) and facilities,

as the foreign regulatory authority may require for the inspection.

(2) The specified financial adviser need not give the foreign regulatory authority access to the books of the specified financial

adviser, or provide information or facilities, at such times or at such places as would unduly interfere with the proper conduct of the normal daily business of the specified financial adviser.

(3) Subsection (1) has effect despite any obligation of confidentiality or other restrictions on the disclosure of information imposed on the specified financial adviser or any of its officers by any prescribed written law or any requirement imposed under such written law, any rule of law, any contract or any rule of professional conduct.

(4) A specified financial adviser which, without reasonable excuse, refuses or neglects to comply with subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 and, in the case of a continuing offence, to a further fine not exceeding \$5,000 for every day or part of a day during which the offence continues after conviction.

(5) No civil or criminal liability is incurred by a specified financial adviser or any of its officers in respect of any obligation or restriction referred to in subsection (3) for doing or omitting to do any act, if the act is done or omitted to be done with reasonable care and in good faith and for the purpose of complying with subsection (1).

(6) A specified financial adviser which or any of its officers who, with reasonable care and in good faith, does or omits to do any act for the purpose of complying with subsection (1) is not to be treated as being in breach of any obligation or restriction referred to in subsection (3).

Confidentiality of inspection report by foreign regulatory authority

70E.—(1) Except as provided in subsection (2), where a written report has been produced by a foreign regulatory authority in respect of a specified financial adviser following an inspection under section 70C and such report, or any part of it, is provided by the foreign regulatory authority to the specified financial adviser, the specified financial adviser or any of its

officers or auditors, must not disclose any part of the report to any person.

(2) Disclosure of the report may be made —

5 (a) by the specified financial adviser to any officer or auditor of the specified financial adviser solely in connection with the performance of the duties of the officer or auditor in the specified financial adviser;

10 (b) by any officer or auditor of the specified financial adviser to any other officer or auditor of that specified financial adviser, solely in connection with the performance of their respective duties in that specified financial adviser;

(c) to the Authority, upon the Authority's request; or

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

(3) In granting any approval under subsection (2)(d), the Authority may impose such conditions or restrictions as the Authority thinks fit on any of the following persons:

(a) the specified financial adviser;

20 (b) any officer or auditor of the specified financial adviser;

(c) the person to whom disclosure is approved,

and that specified financial adviser, officer, auditor or person (as the case may be) must comply with those conditions or restrictions.

25 (4) The obligations on an officer or auditor of a specified financial adviser referred to in subsections (1) and (3) continue after the termination or cessation of the employment of such person with, or the appointment of such person by, the specified financial adviser.

30 (5) Any person who contravenes subsection (1) or fails to comply with any condition or restriction imposed by the Authority under subsection (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 whole or any part of the report is disclosed and who knows or has reasonable grounds for believing that, at the time of the disclosure, the report was disclosed to the person 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.

(7) Where a person is charged with an offence under subsection (6), it is a defence for the person to prove that —

- (a) the disclosure was made contrary to the person's desire;
- (b) where the disclosure was made in any written or printed form, the person had, as soon as practicable after receiving the report, surrendered, or taken all reasonable steps to surrender, the report and all copies of the report to the Authority; and
- (c) where the disclosure was made in an electronic form, the person had, as soon as practicable after receiving the report, taken all reasonable steps to ensure the deletion of all electronic copies of the report and the surrender of the report and all copies of the report in other forms to the Authority.”.

Amendment of section 97

14. Section 97(2) of the principal Act is amended by inserting, immediately after the word “representative,” in the definition of “relevant person”, the words “supervisor of a financial adviser,”.

Savings and transitional provision

15. For a period of 2 years after the date of commencement of any provision of this Act, the Minister may, by regulations, prescribe such additional provisions of a savings or transitional nature consequent on

the enactment of that provision as the Minister may consider necessary or expedient.

EXPLANATORY STATEMENT

This Bill seeks to amend the Financial Advisers Act (Cap. 110) for all of the following purposes:

- (a) to expand the scope of the Act to regulate supervisors of financial advisers;
- (b) to enable the Monetary Authority of Singapore (the Authority) to substitute various prescribed requirements which an applicant for a financial adviser's licence must satisfy with requirements in a written notice;
- (c) to prohibit the payment and receipt of remuneration in relation to the provision of financial advisory services except in circumstances set out in regulations or by written notice;
- (d) to exempt an insurance broker from having to be licensed as a financial adviser, and to require the insurance broker to comply with prescribed requirements when it provides any financial advisory service;
- (e) to require every licensed financial adviser and certain exempt financial advisers to put in place a framework for reviewing and assessing the performance and determining the remuneration of its representatives and supervisors;
- (f) to require every licensed financial adviser and certain exempt financial advisers to have an independent sales audit unit;
- (g) to prohibit a licensed financial adviser from carrying out any business other than providing financial advisory services;
- (h) to prohibit a representative of a financial adviser from engaging in any employment, business, trade, profession or vocation, other than acting as a representative of the financial adviser;
- (i) to confer certain inspection powers on a foreign regulatory authority of the books of a financial adviser.

Clause 1 relates to the short title and commencement.

Clause 2 amends the long title to expand the scope of the Act to include regulating supervisors of financial advisers.

Clause 3 amends section 2(1) —

- (a) to insert new definitions of “independent sales audit unit” and “unit” arising from the insertion of the new section 39 (by clause 10); and
- (b) to insert a new definition of “supervisor” arising from the insertion of the new section 22A (by clause 6), the new section 38 (by clause 10) and the amendments to section 58 (by clause 12).

Clause 4 amends section 9 —

- (a) to enable the Authority to substitute prescribed financial requirements applicable to an applicant for a financial adviser’s licence with other requirements in a written notice if the Authority considers it appropriate to do so in the circumstances of any particular case; and
- (b) to enable the Authority to substitute prescribed limit and deductible requirements applicable to an applicant referred to in paragraph (a) with other requirements in a written notice if the Authority considers it appropriate to do so in the circumstances of any particular case.

Clause 5 makes technical amendments to section 10 arising from the amendments made to section 9 (by clause 4).

Clause 6 inserts a new section 22A to prohibit —

- (a) a licensed financial adviser or an exempt financial adviser from paying; and
- (b) a licensed financial adviser, an exempt financial adviser, or a representative or supervisor of a financial adviser from requesting or demanding for, or accepting,

any remuneration in relation to the provision of financial advisory services and sale of investment products.

The Authority may prescribe exceptions to this prohibition, and in doing so, may amongst other things, specify how the payment of remuneration is to be made. For instance, the Authority may require the payment to be spread over a period of time to prevent “frontloading” of remuneration.

A person must comply with the new section 22A despite any duty imposed on it by any rule of law, written law or agreement or arrangement. In complying with the new section, the person is treated as not being in breach of any such rule of law or written law, or such agreement or arrangement if entered into before the commencement of the new section. Such agreement or arrangement is also not to be taken to be brought to an end by frustration by any act done in compliance with section 22A.

Any person who contravenes the new section 22A(1) or (2) is guilty of an offence.

Clause 7 amends section 23 —

- (a) to exempt a company registered as an insurance broker under the Insurance Act (Cap. 142) and is acting as a financial adviser in Singapore in respect of any financial advisory service, from having to be licensed as a financial adviser; and
- (b) to apply the new sections 38 and 39 to certain exempt financial advisers.

Clause 8 inserts a new section 23AA to require an exempt financial adviser registered as an insurance broker under the Insurance Act (specified exempt financial adviser), to comply with prescribed financial requirements and limit and deductible requirements relating to a professional indemnity insurance policy.

The Authority is able to, by a written notice, substitute those prescribed requirements if the Authority considers it appropriate to do so in the circumstances of any particular case.

If a specified exempt financial adviser fails to comply with any of those requirements, the Authority may take certain actions and impose certain conditions on the financial adviser.

A specified exempt financial adviser which contravenes any of those requirements or any condition imposed by the Authority is guilty of an offence.

Clause 9 amends section 23B —

- (a) to prohibit a person from acting as a representative for any financial adviser if the person is concurrently engaged in any employment, business, trade, profession or vocation, which does not involve the person performing any financial advisory service, unless the person doing so complies with the conditions and requirements prescribed by the Authority; and
- (b) to prohibit a licensed financial adviser or an exempt financial adviser, in Singapore (*viz.*, one which is incorporated in Singapore or one that is incorporated outside Singapore and has the branches or offices located within Singapore) from appointing a person who is concurrently engaged in any employment, business, trade, profession or vocation, which does not involve the person performing any financial advisory service, unless the financial adviser is satisfied that the criteria prescribed by the Authority are satisfied.

Clause 10 inserts a new Division 5, comprising the new sections 38 and 39, in Part III.

The new section 38 requires every licensed financial adviser to establish a framework for reviewing and assessing the performance of, and determining the remuneration of, its representatives and supervisors.

A licensed financial adviser must ensure that the framework complies with the conditions prescribed by the Authority, and pay remuneration to its representatives and supervisors in accordance with the framework despite any rule of law, written law or terms of an agreement or arrangement. The licensed financial adviser, in carrying out any activity in accordance with the framework, is not to be treated as having breached such rule of law or written law, or such agreement or arrangement if entered into before the commencement of the new section 38. Any agreement or arrangement between the licensed financial adviser and any of its representatives and supervisors is also not to be treated as frustrated by reason of any act carried out in compliance with the framework.

A licensed financial adviser must ensure that any agreement or arrangement entered into between the financial adviser and its representatives and supervisors is not inconsistent with the framework.

A licensed financial adviser which fails to establish a framework in compliance with the conditions or requirements prescribed by the Authority, or ensure that any agreement or arrangement entered into between the financial adviser and its representatives and supervisors is consistent with the framework, or comply with the framework when carrying out certain acts, is guilty of an offence.

The new section 39 requires every licensed financial adviser to have an independent sales audit unit which will be in charge of auditing the quality of the financial advisory services provided by the representatives of the licensed financial adviser.

A licensed financial adviser is required to ensure that the independent sales audit unit applies the processes, criteria and methods prescribed by the Authority.

A licensed financial adviser which contravenes the new section 39 is guilty of an offence.

Clause 11 inserts a new Part IVA, comprising sections 55A, 55B and 55C.

The new section 55A prohibits every licensed financial adviser in Singapore from carrying out any business other than —

- (a) the business of providing any financial advisory service;
- (b) a business which is regulated or authorised by the Authority; or
- (c) any other business prescribed or approved by the Authority.

A licensed financial adviser in Singapore which contravenes the new section 55A or any condition imposed or prescribed under that section is guilty of an offence.

The new section 55B prohibits any appointed or provisional representative of a financial adviser from acting for the financial adviser in respect of any business

other than providing financial advisory services or other businesses specified under the new section 55A.

Any representative who contravenes the new section 55B is guilty of an offence.

The new section 55C prohibits any appointed or provisional representative of any financial adviser from engaging in any employment, business, trade, profession or vocation for himself or herself or another person besides the financial adviser, without first obtaining consent from the financial adviser.

The financial adviser must not give consent to the appointed or provisional representative unless the financial adviser is satisfied that the criteria prescribed by the Authority have been satisfied.

Any person who contravenes the new section 55C is guilty of an offence.

Clause 12 amends section 58 to enable the Authority to issue written directions —

- (a) to any supervisor of a financial adviser or any class of such supervisors, if this is necessary or expedient in the interests of the public or for the protection of investors;
- (b) to require supervisors of financial advisers to maintain certain standards in the conduct of the supervisor's functions and duties; and
- (c) with respect to the qualifications, experience, expertise or training of representatives, supervisors or officers of a licensed financial adviser or an exempt financial adviser.

Clause 13 inserts a new Division 2A, comprising sections 70B to 70E, in Part VI.

The new section 70B excludes the application of the new Division 2A to an inspection by an authority that exercises consolidated supervision over the specified financial adviser for compliance with anti-money laundering and countering the financing of terrorism requirements. Such inspection is governed by the new Part VC of the Monetary Authority of Singapore Act (Cap. 186).

The new section 70C enables a foreign regulatory authority to conduct an inspection in Singapore of the books of a specified financial adviser in respect of its business of providing any financial advisory service, if it obtains the approval of the Authority.

The Authority may, at any time, impose conditions or restrictions on the foreign regulatory authority or the specified financial adviser for such inspection.

The new section 70D sets out the duty of a specified financial adviser, subject to an inspection conducted by a foreign regulatory authority. The specified financial adviser is required to comply with the new section despite any obligation or requirement imposed under any written law, any rule of law, any contract or any

rule of professional conduct; and the financial adviser and its officers, in complying with the new section, are not to be treated as being in breach of any such written law, rule of law, contract or rule of professional conduct. The specified financial adviser is not required to give the foreign regulatory authority access to its books, information or facilities if this would unduly interfere with the proper conduct of its normal business.

A specified financial adviser which fails to comply with section 70D(1) is guilty of an offence.

The new section 70E prohibits the disclosure of any inspection report by the specified financial adviser or any of its officers or auditors except as permitted under the section, or approved by the Authority.

In giving its approval to any particular disclosure of the inspection report, the Authority may impose conditions and restrictions on the specified financial adviser or any of its officers or auditors, or the person to whom the inspection report is to be disclosed.

An officer or auditor of the specified financial adviser must continue to comply with his or her duty of confidentiality and any condition imposed by the Authority in relation to the inspection even after he or she ceases to be employed with or appointed by the specified financial adviser. Any officer or auditor who fails to do so is guilty of an offence.

Clause 14 amends section 97 to expand the definition of “relevant person” to include “supervisor”, for the purpose of extending the Authority’s power to reprimand a relevant person who is guilty of misconduct to a supervisor.

Clause 15 gives the Minister power to make regulations of a savings and transitional nature.

EXPENDITURE OF PUBLIC MONEY

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