

Client Alert

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Monetary Authority of Singapore proposes new guidelines on the provision of financial advisory services, providing clarity to the public and FinTech players

Overview

On 4 June 2018, the Monetary Authority of Singapore ("**MAS**") issued a consultation paper ("**Consultation Paper**"), proposing to introduce two new sets of guidelines as follows: (1) [Guidelines on Provision of Financial Advisory Service](#) ("**Financial Advisory Service Guidelines**"); and (2) [Guidelines on the Design of Advisory and Sales Form](#) ("**Advisory and Sales Form Guidelines**").

This client alert focuses on the proposed Financial Advisory Service Guidelines.

The Financial Advisory Guidelines seek to provide clarity to the industry and public on how MAS assesses if a person is deemed to be carrying on the business of financial advisory services, and is particularly relevant to online activities, digital business models and software and aggregator tools.

MAS also provides clarity on specific business activities such as distribution of research reports and portfolio allocation services provided by robo-advisory websites.

The proposed Financial Advisory Guidelines is set out in Annex A to the Consultation Paper.

Scope of financial advisory services

Under the Financial Advisers Act, Cap 110 ("**FAA**"), any person who carries on the business of providing any financial advisory service is required to hold a financial adviser's licence, unless the person is exempted. Financial advisory services include :

- (a) Advising others either directly or through publications or writings, whether in electronic, print or other form, concerning any investment product; and
- (b) Advising others by issuing or promulgating research analyses or research reports, whether in electronic, print or other form, concerning any investment product.

In assessing if a person is deemed to be carrying on the business of financial advisory services as described above, MAS applies a two stage test:

- (1) Whether the activity amounts to providing financial advice; and
- (2) If the answer is yes, whether the person is carrying on business in such activity.





Stage 1: Does the activity amount to providing financial advice?

A communication (oral, electronic or print) is unlikely to constitute financial advice if the communication:

- (a) Contains only factual information (i.e information which is objective, verifiable and whose accuracy cannot be reasonably questioned), and such information is not presented in a biased manner intended to persuade the recipient to buy, sell or hold an investment product or class of investment product; and
- (b) Does not contain any statement of opinion on investment product or class of investment products.

Where a communication contains a statement of opinion on investment product or a class of investment products, or contains purely factual information but is presented in a biased manner as described above, or both, MAS will still consider the overall impression created by the communication, and the context and surrounding circumstances in which it is communicated, before concluding if a communication constitutes financial advice. Such communication will likely constitute financial advice only if the recipient can reasonably expect the communication to be financial advice that is to be relied upon in making an investment decision. In determining this, MAS will consider if the communication is tailored to the particular circumstances of the recipient, whether it recommends the recipient to take specific action with respect to an investment product or class of investment products and whether the communication provider purports to be in the business of providing financial advice.

MAS also encourages communication providers to include appropriate disclaimers in the communication, to the effect that the information is meant purely for information purposes only and should not be relied upon as financial advice. However, the use of a disclaimer does not, of itself, determine whether the communication amounts to providing financial advice. Ultimately, one needs to look into the substance of the communication to determine if any elements of financial advice are present.

The proposed Financial Advisory Guidelines set out examples of services and activities that fall within and outside financial advice, to illustrate the application of the general principles described above. The table below sets out a high level summary of the examples used by MAS and conclusion on whether each example amounts to financial advisory service:

Example	Conclusion
Example 1 : Finance courses conducted by lecturer in tertiary institution.	Lecturer provides benefits of diversification and risks of different classes of investment products (e.g. bonds vs shares) during the courses. These are considered factual information and not financial advice.



	<p>Lecturer illustrates on analyses of financial statements, charting of trends, financial projections etc. These are less likely to be financial advice where it is not tailored to specific circumstances of the student or where no recommendation is given.</p>
<p>Example 2: Commercial financial seminars</p>	<p>X conducts commercial financial seminar and provides information on risk of investment products, historical rate of return, minimum investments, how returns are generated and how to read financial charges / reports. These are less likely be financial advice where information provided is objective, any opinion provided is generic and advice is not tailored to a particular participant.</p> <p>Conversely, X may be deemed to be providing financial advice where he/she recommends that a participant invest in a particular investment product.</p>
<p>Example 3: Trading software</p>	<p>A trading software allows user to set certain figure as the threshold price to earnings ("P/E") ratio and then shortlist companies with P/E ratios above / below that threshold, and to keep track of the user's investment portfolio by calculating investment returns to date based on parameters selected by user.</p> <p>Less likely to be financial advice, where the thresholds/parameters are determined by the user.</p>
<p>Example 4: Aggregator tools facilitating comparison of products</p>	<p><u>Scenario 1:</u></p> <p>Aggregator tool that summarises details of investment products (e.g. premiums payable, extent of coverage) offered by different product providers to facilitate comparison are less likely to be financial advice because it is not tailored to the specific circumstances of the user and it does not recommend that the user takes any action. It is merely collating and filtering information.</p> <p><u>Scenario 2:</u></p> <p>Aggregator tool requires users to key in their personal details which the aggregator uses to generate shortlist of investment products that may suit the user. More likely to be considered financial advice because the tool shortlists investment products based on information obtained from the</p>



	<p>user, implicitly providing an opinion on the suitability / unsuitability of investment products.</p>
<p>Example 5: Publications (e.g. books, websites, blogs, social media platforms)</p>	<p><u>Scenario 1:</u></p> <p>Website that provides definitions of financial related terms and explains basic financial concepts (e.g. relative risk of equities vs bonds and benefits of diversification in a portfolio) is unlikely to be financial advice because the website content consists of factual information that is objective and verifiable.</p> <p><u>Scenario 2:</u></p> <p>X blogs about the comparison among products offered by different companies and reasons for investing in one product over another (e.g X only invest in funds with low expense ratios of less than 0.5% as it allows investors to retain a larger portion of their return on investments. X does not comment when readers ask if they should take certain course of action, and informs readers that he is not a licensed financial adviser.</p> <p>X is less likely to be providing financial advice as his opinion is generic, and not tailored to the unique personal circumstances of a particular reader.</p> <p><u>Scenario 3:</u></p> <p>Y blogs about matters similar to X but responds to readers' questions with recommendations that they buy/sell/hold specific investment funds. Readers often provide Y with their personal details and details of their existing investments.</p> <p>Y is more likely to be providing financial advice because he responds to readers' questions individually, making it more likely that his readers expect his replies to be tailored financial advice and rely on them in making investment decisions.</p> <p><u>Scenario 4:</u></p> <p>Z publishes a book on financial investments, advising readers to set aside a fixed portion of their income for investment purposes early in their careers in order to take advantage of compounded returns.</p>



	Z is less likely to be providing financial advice as he offers general suggestions that are not tailored to individual readers' circumstances.
Example 6: Informal conversation	<p>X has an informal conversation about a particular investment product with his friend, sharing his personal investment strategy and details of the investment product. X does not tailor his responses to his friend's specific circumstances and does not recommend that his friend investment in the product. Further, X does not purport to be in the business of providing financial advice.</p> <p>X is less likely to be deemed to be providing financial advice.</p>

Stage 2: Does the activity amount to providing financial advice?

Where a person provides communication that amount to financial advice, MAS will further consider if the provider is carrying on a business of providing financial advice, and hence required to be licensed under the FAA.

In determining the second stage test, MAS will consider:

- (a) whether the advice is given systematically and with continuity or is one-off or random. A person is more likely to be considered to be carrying on a business if the person has an organised or structured method of conducting his activities and does so with sufficient regularity. Conversely, one-off or random activities are less likely to be considered carrying on a business; and
- (b) whether the provider is remunerated for the advice. The carrying on of business may be more readily inferred if the provider is remunerated, but the absence of remuneration does not automatically mean that the provider is not carrying on business of providing financial advice.

MAS provides illustrations on how the stage 2 test is applied to specific case examples. The table below summaries the illustrations provided by MAS in the consultation paper:

Example	Conclusion
Example 7 : Commercial financial seminars	X conducts commercial financial seminar as set out in Example 2 above. X has arrangement with distributors of specific investment product, under which X receives a fixed commission when any seminar participants invest in that product.



	<p>X is more likely to be carrying on the business of financial advice where X provides recommendations systematically and regularly, and stands to be compensated as a result of making these investment recommendations.</p>
<p>Example 8 : Aggregator tools facilitating comparison of products</p>	<p>X, Y and X have aggregators similar to those mentioned in Scenario 2, Example 4 above. The aggregators are available to the public on a continuous basis, and advice is provided in systematic manner.</p> <p>X charges each user a fee for use of the aggregator.</p> <p>Y does not charge for use but receives a commission from the product distributor whenever user makes a purchase through the aggregator.</p> <p>Z neither charges users or receive any commission from product providers.</p> <p>Both X and Y are likely to be carrying on the business of providing financial advice.</p> <p>Z's lack of remuneration is indicative that the aggregator is not being provided as part of carrying on business and Z is less likely to be considered to be carrying on business of providing financial advice.</p>
<p>Example 9 - Publications (e.g. books, websites, blogs and social media platforms)</p>	<p>X, Y and Z have websites with content similar to those under Scenario 3 in Example 5 above.</p> <p>X blogs as a hobby and post on wide ranging topics including food and travel. His blogs on finance related matters are intermittent. He does not derive any income from his website. X is less likely to be carrying on the business of providing financial advice as any advice is not provided on as systematic and continuous basis and he receives no remuneration.</p> <p>Y posts more regularly and exclusively on finance related matters. He is paid a monthly fee by an advertising provider for allowing advertisements to be placed on his website. Y has no control over what advertisements appear on his website. Y does not receive any other remuneration. Although Y posts more regularly and receives a remuneration, the remuneration is not derived as a</p>



	<p>result of his provision of financial advice / investment decisions of the readers. He is less likely to be carrying on the business of providing financial advice.</p> <p>Z is remunerated by an investment product distributor for recommending the products of the distributor. Z is more likely to be carrying on business of providing financial advice as he provides advice on a continuous and systematic basis and is also remunerated for doing so.</p>
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MAS' position on specific activities

(A) Distribution and production of research reports

MAS clarifies that a person who reproduces, publishes, distributes or otherwise disseminates analyses or reports concerning investment products not written by such persons, will not be regarded as providing financial advice. These are considered passive distribution conduits and may include publishers, information service providers or Internet portal operators.

MAS also clarified that passive distribution conduit should:

- (a) Only reproduce / distribute reports that originate from licensed / exempt financial institution regulated by the MAS;
- (b) Attribute the reports accurately;
- (c) Not exercise editorial control over, or modify the contents of the reports; and
- (d) Not endorse or otherwise comment on the reports.

(B) Portfolio allocation

MAS clarifies that portfolio allocation advice which does not involve recommendations on specific investment product or class of investment products does not constitute financial advice. Such service providers should ensure that any advice given does not extend to clearly identifiable investment product or class of investment products. The service provider should also inform recipients that the provision of such advice is not regulated under the FAA and that the recipient may wish to approach a financial adviser before relying on the advice provided to make any decision to buy, sell or hold any investment product.

MAS gives the example of robo-advisory services that generate recommendations on allocation of a client's funds to broad asset types (e.g. shares vs bonds), but does not specify any identifiable investment product or class of investment product. Advice of this nature will not constitute financial advice.



Example	Conclusion
<p>Example 10 : Robo-advisory website</p>	<p><u>Scenario 1:</u></p> <p>X's robo-advisory website provides an interactive infographic on the relative historical returns of shares and bonds. It allows website users to specify a particular time period in the past and generates a comparative analysis of the performance of shares and bonds over that period. Based on the results, X states that investors should consider allocating a certain percentage of their portfolio to shares. X provides a prominent disclaimer that users may wish to approach a financial adviser before relying on any advice provided by the website.</p> <p>X is less likely to be providing financial advice as the advice is on allocation of funds among broad asset types (shares vs bonds), but does not specify a clearly identifiable investment product / class of investment product.</p> <p><u>Scenario 2:</u></p> <p>Y's robo-advisory website requires users to provide information on their investment objective, financial situation and particular needs. Y generates investment recommendations based on information provide by the users (e.g. user should allocate 90% of his principal sum to exchange traded fund A and 10% to shares of Company B). Y also providers a prominent disclaimer that users may wish to approach a financial adviser before relying on any advice provided by the website.</p> <p>Y is more likely to be considered to be providing financial advice as it provides advice on the allocation of investor's funds to clearly identifiable investment products. The advice is also tailored to the personal details of the user.</p>

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When will the Guidelines be implemented?

MAS has not proposed an effective date for the proposed Guidelines. Currently, MAS is seeking public feedback to the Consultation Paper, which will close on 5 July 2018.

If you have any queries or would like to submit any feedback to the Consultation Paper through us, please feel free to contact us.

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