

Client Alert

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MAS proposes to standardise misconduct reporting and reference check details

In ensuring that the representatives hired by financial institutions (FIs) are fit and proper, and continue to remain so when carrying out any activity regulated under the Securities and Futures Act (SFA), Financial Advisers Act (FAA), and Insurance Act (IA), the Monetary Authority of Singapore (MAS) requires these FIs to:

- conduct due diligence checks on prospective representatives, such as reference checks with their former employers or principal companies; and
- lodge a report with MAS when the FI becomes aware of any misconduct committed by their representatives or broking staff, such as acts involving fraud, dishonesty, inappropriate advice, misrepresentation, or inadequate disclosure of information to customers.

To address both the varying standards in misconduct reporting by FIs and the movement of individuals with a history of misconduct across FIs, MAS has:

- issued a two-part [public consultation](#) proposing revisions to misconduct reporting requirements and proposals to mandate reference checks; and
- proposed two new forms for [misconduct reports](#) and [investigation reports](#).

The public consultation paper was published on 6 July 2018 and the consultation period will close on 6 August 2018.

To assist you in preparing for changes in misconduct reporting and employee record keeping, we summarise below MAS' proposed revisions to:

- the categories of misconduct in the Notice SFA 04-N11 under the SFA, Notice FAA-N14 under the FAA, and Notice 504 under the IA on reporting of misconduct by representatives (collectively referred to as "**Misconduct Notices**");
- FIs' investigation processes, submission formats and follow-up notification deadlines; and
- keeping of mandatory information on representatives for reference check requests from prospective principal companies.

Expanding the reach of the Misconduct Notices & categories of misconduct

Expanding misconduct reporting obligations to registered fund management companies: MAS proposes to extend the same Misconduct Notice reporting requirements to Registered Fund Management Companies (RFMCs).



Expanding reportable misconduct categories: MAS proposes to expand the list of reportable misconduct to include the following categories:

- i. Manipulation of any financial benchmark, to align with the new section 198 to be introduced in the SFA by the Securities Futures (Amendment) Bill 2016 which will expand market conduct provisions under Part XII of the SFA to specifically prohibit financial benchmarks manipulation.
- ii. Category 1 infractions under the Balanced Scorecard framework (which includes acts involving inappropriate recommendation and gross negligence which have material adverse impact on the interests of the client or impinges on the fitness and propriety of the representative), which will be added to the current category of acts involving inappropriate advice, misrepresentation, or inadequate disclosure of information.
- iii. A general category will be introduced to capture acts that may render a representative unfit to conduct regulated activities, but which do not fall under other categories. Examples of such acts include failing to exercise sufficient care and judgment, or being complicit in the customers' money laundering or tax evasion offences.

Removing overlapping categories: Current misconduct categories in the SFA, the FAA and the IA which overlap with the above expanded reportable misconduct categories as well as misconduct as defined in the FI's internal policies and codes of conduct of FIs which take reference from the Guidelines on Fit and Proper Criteria will be removed.

Changes to investigations of representative misconduct

Ensuring FIs update MAS on the outcome of investigations: The Misconduct Notices, which currently require FIs to lodge a police report on suspicion of representative misconduct and submit a copy of the police report to MAS, will also require FIs to update MAS on the outcome of police investigations no later than 14 days after the FI becomes aware of the outcome of police investigations. This would enable MAS to conduct timely assessment on whether to take regulatory or supervisory action on the representative upon conclusion of police investigations.

Requiring FIs to notify their representatives under investigation: MAS will require FIs to notify representatives when they are under investigation and provide them with a copy of the misconduct report filed with MAS. This will discourage the practices by some FIs of not conducting interviews with representatives under investigation for misconduct or not informing the representatives that they are under investigation or the outcome of their investigations, particularly when the representatives concerned have left the FIs. This new practice will allow:

- representatives to make full and accurate disclosures on their compliance history and past misconduct record when applying to join a new FI; and
- prospective recruiting FIs to properly assess the suitability and fitness and propriety of these representatives.



Prescribing a new investigation report format: MAS expects more rigorous and better quality investigations by FIs, above the current varying standards observed by MAS. MAS expects FIs to put in place a holistic and fair assessment on whether the misconduct is substantiated, and the investigation to include steps such as:

- performing customer call-backs;
- transaction reviews;
- interviews with the representatives and customers involved; and
- ensuring proper documentation of the evidence collected and interviews conducted.

To ensure that FIs provide consistent and sufficient information to MAS, MAS proposes to require FIs to submit their investigation reports in a prescribed format which will require the FI to complete with information such as:

- details of the customer;
- product in dispute;
- nature of misconduct;
- the investigator's assessment and recommendation; and
- the FI's course of action.

Reference checks and preventing perpetuation of misconduct by individuals at different FIs

MAS supports the measures by the cross-jurisdictional Financial Stability Board Working Group on Governance to strengthen governance frameworks through the conduct of reference checks within the industry. MAS also recognises that, during the recruitment process, the companies that the candidates used to work for serve as useful sources of independent information to verify the information disclosed by the candidates as well as to assess their fitness and propriety.

To remedy late, ambiguous, or partial reference check responses, which could be attributed to: the absence of internal policies and procedures; inadequate understanding of the importance of reference checks; or concerns about potential legal risks or challenge from representatives, MAS proposes to make it mandatory for:

- recruiting employers to conduct reference checks on their prospective representatives. Such reference checks should be conducted with all previous employers of the representative, i.e. principal companies which are FIs regulated by MAS as well as companies not regulated by MAS. Such reference checks may be conducted after the prospective representative's employment or appointment has ceased with his or her current principal company and should minimally cover the representative's employment history in the past 10 years; and
- former employers to provide a set of mandatory information on their representatives in response to reference check requests from the representatives' prospective principal companies which are FIs regulated by MAS.



MAS proposes to apply the requirements relating to reference checks to:

- FIs regulated by MAS;
- RFMCs; and
- insurance brokers.

MAS will update the Circular on Due Diligence Checks and Documentation in Respect of the Appointment of Appointed, Provisional and Temporary Representatives to apply to the recruitment of representatives for RFMCs and fund management companies which are licensed under the Venture Capital Fund Manager Regime, as well as broking staff for insurance brokers.

Proposed changes in employment record keeping and information disclosure in recruitment process

As employers, FIs, RFMCs, and insurance brokers should note the proposed 10-year obligation to keep their representatives' employment history.

Within 14 days of receiving a reference check request from a recruiting employer, the former employer will have to provide the following mandatory information of its former representative:

- information pertaining to the former representative's appointment history with the former employer such as:
 - the duration of appointment;
 - the roles and job functions of the individual (including last position held); and
 - the reason for the cessation of the appointment (such as resignation, termination, or cessation of contractual tenure);
- compliance records on the former representative's fitness and propriety, including, but not limited to, the following:
 - past or ongoing internal or external investigations that the individual is or has been subjected to, and the outcome of the investigations;
 - incidents which relate to the individual's honesty or integrity, and the extent of consumer detriment;
 - incidents where the individual had been found to be in breach of legal or regulatory requirements, and the extent of consumer detriment;
 - whether misconduct reports were filed with MAS against the individual and if so, details on the nature of the offences committed and the extent of consumer detriment; and
 - disciplinary actions taken against the individual;
- last four balanced scorecard grades assigned to the individual within the past 10 years; and
- persistency of insurance policies sold by the individual and the methodology used in computing the persistency.



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Regardless of whether a representative is still appointed with an employer, the employer owes the representative a duty of care in preparing and communicating references. Employers should exercise reasonable care to ensure that information provided in the references is accurate, objective, clear, balanced, and based on verifiable facts. This will also mitigate potential legal risks to employers providing references. (On this note, please see our earlier Client Alert: [Singapore Court of Appeal Clarifies Standard of Care Owed by Employers to Former Employees When Providing References](#)).

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Annex - Revised categorisation of reportable misconduct

	Relevant Acts	Current categories of Misconduct	Proposed Revisions to Categories of Misconduct (revisions made in bold)	Comments
(i)	SFA, FAA, IA	Acts involving fraud, dishonesty or other offences of a similar nature (e.g. cheating, fraud, forgery, misappropriation of monies or criminal breach of trust)	No change	-
(ii)	SFA	Acts relating to market conduct provisions under Part XII of the SFA (e.g. prohibited conduct or insider trading as set out in Part XII of the SFA)	Acts relating to market conduct provisions under Part XII of the SFA (e.g. insider trading or other prohibited conduct as set out in Part XII of the SFA, such as securities market manipulation and financial benchmarks manipulation).	The proposed revisions provide greater clarity on the intended acts that should be reported to MAS under this category. They are aligned with the expansion of market conduct provisions under Part XII of the SFA to specifically prohibit the manipulation of any financial benchmark. This expansion is set out in the Securities and Futures (Amendment) Bill 2017.
(iii)	FAA	Acts involving inappropriate advice, misrepresentation, or inadequate disclosure of information	Acts involving inappropriate advice or recommendation , misrepresentation, gross negligence , or inadequate disclosure of information which have material adverse impact on the interests of the client or impinges on the fitness and propriety of the representative	The proposed revisions provide greater clarity on the intended acts that should be reported to MAS under this category. They are consistent with the classification of Category 1 infractions under the Balanced Scorecard framework.
(iv)	IA	Acts involving failure to exercise due care and diligence, misrepresentation, or inadequate disclosure of information	No change	-
(v)	SFA, FAA, IA	Failure to satisfy the Guidelines on Fit and Proper Criteria	Removed	Given that the misconduct in the current Categories (i) to (iv) would impinge on the fitness and propriety of representatives, there is overlap in Category (v) and the other categories. For instance, an offence involving criminal breach of trust would fall within Category (i) on acts involving fraud, dishonesty or other offences of a similar nature and Category (v) on failure to satisfy the Guidelines on Fit and Proper Criteria.
(vi)	SFA, FAA, IA	Any type of misconduct other than those set out in (i) to (v), resulting in– <ul style="list-style-type: none"> ▪ a non-compliance with any regulatory requirement relating to the provision of any regulated activity; or ▪ a serious breach of the FI's internal policy or code of conduct 	Removed	In addition, the internal policies and codes of



		which would render the representatives liable to demotion, suspension or termination of the representative's employment or arrangement with the FI.		conduct of FIs usually take reference from the Guidelines on Fit and Proper Criteria. They also typically prohibit acts that are set out as misconduct in the current Categories (i) to (iv). As such, MAS proposes to remove Categories (v) and (vi) to reduce overlap with the other categories.
(vii)	SFA, FAA and IA	-	Acts involving illegal/improper monetary gains, or which may lead to erosion of trust in the financial system, such as money laundering	This is a new category to capture acts that may render a representative unfit to conduct regulated activities, but do not fall under other categories. Examples of such acts include failing to exercise sufficient care and judgment, or being complicit, in relation to customers' money laundering or tax evasion offences.