

Circular No.: CMI 01/2011

7 February 2011

[To All Holders of Capital Markets Services Licence]

[To All Holders of Financial Advisers Licence]

[To All Financial Institutions Exempt from Holding Capital Markets Services Licence]

[To All Exempt Financial Advisers]

Dear Sirs

DUE DILIGENCE CHECKS AND DOCUMENTATION IN RESPECT OF THE APPOINTMENT OF APPOINTED, PROVISIONAL AND TEMPORARY REPRESENTATIVES

MAS expects all financial institutions [“FIs”] to ensure that the persons they employ or appoint to conduct regulated activities on their behalf under the Securities and Futures Act [“SFA”] and the Financial Advisers Act [“FAA”] are fit and proper. MAS has provided guidance on the fit and proper criteria applicable to the appointment of appointed, provisional or temporary representatives under the Representative Notification Framework [“RNF”] in MAS’ Guidelines on Fit and Proper Criteria (Guideline No. FSG-G01) [“the Guidelines”]. FIs may have their own internal recruitment criteria, which may impose specific or more stringent criteria than those stated in the Guidelines.

2 This circular provides guidance to assist FIs in their conduct of due diligence checks and documentation relevant to the fit and proper certification of representatives under the RNF. The guidance, which is based on a consolidation of the industry’s good practices observed by MAS, sets out MAS’ expectations of the

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due diligence checks that should be conducted to the extent practicable, and is not intended to be exhaustive.

Fit and Proper Declaration

3 The Board and Senior Management of a FI are responsible for putting in place clearly defined and documented policies and procedures to ensure that it recruits and retains only a fit and proper person as an appointed, provisional or temporary representative. MAS' expectations in respect of this are set out in Annex 1.

Due Diligence Checks

4 MAS expects FIs to conduct rigorous and independent checks on the fitness and propriety of their representatives. The due diligence checks which a FI should conduct are set out in Annex 2.

Continuing Education

5 As set out in the Guidelines, competence and capability is one of several important criteria for considering whether a person is fit and proper. MAS expects an appointed, provisional or temporary representative to keep abreast of developments in the industry and update skills and knowledge relevant to the activities they conduct.

6 FIs must ensure that its representatives receive adequate training to have the knowledge and skills to conduct the regulated activities under the SFA and/or provide the financial advisory services under the FAA. For instance, FIs should ensure that their representatives are trained on the features and risk-reward characteristics of any investment product distributed by it, and that their representatives understand the profile of the target customer segments of the product, before they are allowed to advise on or sell the product to customers.

7 FIs should also provide quality, on-going training to its representatives. Training programmes should be well structured and go beyond satisfying requirements on training hours. Where the training is conducted by a product provider or any third party trainer, the FI must be satisfied that the training is adequate.

Conflicts Assessment

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8 FIs should be cognisant of and ensure that there are no conflict(s) of interests in their representative's personal circumstances, relationship with connected persons, other business interests (partnerships, sole proprietorships, directorships, shareholdings, etc.)¹ or work arrangements within the corporation, that will impair the representative's ability to discharge the fair dealing responsibilities of an appointed, provisional or temporary representative, as the case may be.

9 Some regulated activities and financial advisory services may give rise to conflicts, e.g. dealing in capital markets products that are securities (execution) and corporate finance advisory. Potential conflicts with the representative's proposed regulated activities or financial advisory services could also arise as a result of his (i) shareholdings or business interests; (ii) other roles within the company, e.g. back-office operations; or (iii) connected person's occupation.

10 FIs should assess such conflict(s) and put in place mitigating measures to address them. Where such measures are not plausible without compromising the representative's ability to discharge his duties and responsibilities and comply with regulatory requirements, the FI should not proceed to appoint the individual as an appointed, provisional or temporary representative.

11 Please acknowledge receipt of this circular.

Yours sincerely

(Sent via MASNET)

LEO MUN WAI
ASSISTANT MANAGING DIRECTOR
CAPITAL MARKETS GROUP

¹ The individual should truthfully disclose his business interests in other entities in Singapore or overseas to his principal, as this information is required to be provided to MAS for his appointment as an appointed, provisional or temporary representative. Subsequent changes to such business interests would also have to be notified to MAS.

Annex 1

Fit and Proper Declaration

1 As set out in MAS' Guidelines on Fit and Proper Criteria ["the Guidelines"], the criteria for considering whether a person is fit and proper include but are not limited to the following:

- (a) honesty, integrity and reputation;
- (b) competency and capability; and
- (c) financial soundness.

2 A financial institution ["FI"] should obtain and maintain written self-declarations from its proposed appointed, provisional or temporary representative that he has read and understood the Guidelines and that he satisfies all the criteria. To draw attention to the fit and proper criteria in the Guidelines, the FI is encouraged to include in the declaration form, such relevant questions as are set out under the section of "Details of Self-Declarations" at the end of this Annex.

3 In addition, the FI may wish to consider including in the written self-declaration, a confirmation from the proposed representative that he is aware that under section 99O of the SFA and section 23L of the FAA, an individual who has provided a statement that is false or misleading in a material particular to his principal and which statement is subsequently lodged with MAS, or has omitted to give information to his principal which causes the lodged document to be 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 Where the proposed representative has indicated any adverse information in the self-declaration, the FI should obtain details of the adverse information from him, and assess if he would nevertheless be considered fit and proper to be an appointed, provisional or temporary representative, as the case may be. The FI should maintain written records of the reasons why it nonetheless assesses the individual to be fit and proper. Where appropriate, the FI should put such individuals under close monitoring or supervision for an appropriate period.

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5 Self-declaration by a proposed representative constitutes a necessary but insufficient measure in a FI's due diligence on the individual's fitness and propriety. In addition to obtaining the written fit and proper declarations, the FI should endeavour to do the following:

- (a) verify relevant documents from the proposed representative in support of his fit and proper declaration, e.g. educational and professional certificates (including printed results of the applicable Capital Markets and Financial Advisory Services Examinations), or relevant statement(s) from the Central Provident Fund ["CPF"] Board evidencing that he is not in arrears of payment of contributions on his own CPF accounts;
- (b) conduct independent due diligence checks to ensure that the proposed representative satisfies the fit and proper requirements²; and
- (c) maintain adequate documentation evidencing that it had conducted the relevant checks and assessment in relation to the provision of the fit and proper certification.

6 Where -

- (i) the proposed representative has indicated any adverse information in the self-declaration; or
- (ii) the FI has any adverse information on the individual (including any misconduct committed by the individual which has been reported to MAS), the FI should accordingly declare under the "Fit and Proper Certification" section of the representative notification submitted to MAS that it is aware and has assessed the individual's adverse information.

Details of Self-Declarations

7 Below are some questions relevant to fit and proper criteria in the Guidelines which FIs are encouraged to include in the self-declaration form.

Honesty, Integrity and Reputation

- (i) Within the past 10 years, has the individual —
 - (a) been refused the right or restricted in his right to carry on any trade, business or profession for which a specific licence, registration or other authorisation is required by law in any jurisdiction?

² This should include checks to ascertain that the individual is neither suspected of nor involved in money laundering or terrorist financing activities.

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- (b) been issued a prohibition order under any Act administered by the MAS or been prohibited from operating in any jurisdiction by any financial services regulatory authority?
- (c) been censured, disciplined, suspended or refused membership or registration by MAS, any other regulatory authority, an operator of a market or clearing facility, any professional body or government agency, whether in Singapore or elsewhere?
- (d) been the subject of any complaint made reasonably and in good faith, relating to activities that are regulated by MAS or under any law in any jurisdiction?
- (e) been the subject of any proceedings of a disciplinary or criminal nature or been notified of any potential proceedings or of any investigation which might lead to those proceedings, under any law in any jurisdiction?
- (f) been convicted of any offence, served any term of imprisonment or is being subject to any pending proceedings which may lead to a conviction of any offence, under any law in any jurisdiction?
- (g) had any civil penalty enforcement action taken against him by MAS or any other regulatory authority under any law in any jurisdiction?
- (h) contravened or abetted another person in breach of any laws or regulations, business rules or codes of conduct, whether in Singapore or elsewhere?
- (i) been the subject of any investigations or disciplinary proceedings or been issued a warning or reprimand by MAS, any other regulatory authority, an operator of a market or clearing facility, any professional body or government agency, whether in Singapore or elsewhere?
- (j) been refused a fidelity or surety bond, whether in Singapore or elsewhere?
- (k) been or is a director, partner, substantial shareholder or concerned in the management of a business that has been censured, disciplined, prosecuted or convicted of a criminal offence, or been the subject of any disciplinary or criminal investigation or proceeding, in Singapore or elsewhere, in relation to any matter that took place while he was a director, partner, substantial shareholder or concerned in the management of the business?

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- (l) been or is a director, partner, substantial shareholder or concerned in the management of a business that has been suspended or refused membership or registration by MAS, any other regulatory authority, an operator of a market or clearing facility, any professional body or government agency, whether in Singapore or elsewhere?
 - (m) been a director, partner, substantial shareholder or concerned in the management of a business that has gone into insolvency, liquidation or administration during the period when, or within a period of one year after, he was a director, partner, substantial shareholder or concerned in the management of the business, whether in Singapore or elsewhere?
 - (n) been dismissed or asked to resign from office, employment, a position of trust, or a fiduciary appointment or similar position, whether in Singapore or elsewhere?
 - (o) been or is subject to disciplinary proceedings by his current or former employer(s), whether in Singapore or elsewhere?
 - (p) been disqualified from acting as a director or disqualified from acting in any managerial capacity, whether in Singapore or elsewhere?
 - (q) been an officer found liable for an offence committed by a body corporate as a result of the offence having proved to have been committed with the consent or connivance of, or neglect attributable to, the officer, whether in Singapore or elsewhere?
- (ii) Has the individual —
- (a) had any judgment (in particular, that associated with a finding of fraud, misrepresentation or dishonesty) entered against him in any civil proceedings or is a party to any pending proceedings which may lead to such a judgment, under any law in any jurisdiction?
 - (b) accepted civil liability for fraud, misrepresentation or dishonesty under any law in any jurisdiction?

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Financial Soundness

- (iii) Within the past 10 years, has the individual —
- (a) been or is unable to fulfill any of his financial obligations, whether in Singapore or elsewhere?
 - (b) entered into a compromise or scheme of arrangement with its or his creditors (including debt repayment scheme), or made an assignment for the benefit of its or his creditors, being a compromise or scheme of arrangement or assignment that is still in operation, whether in Singapore or elsewhere?
 - (c) been or is subject to a judgment debt which is unsatisfied, either in whole or in part, whether in Singapore or elsewhere?
 - (d) been or is the subject of a bankruptcy petition, whether in Singapore or elsewhere?
 - (e) been adjudicated a bankrupt and the bankruptcy is undischarged, whether in Singapore or elsewhere?
 - (f) been or is subject to any other process outside Singapore that is similar to those referred to in (d) and (e)?

Annex 2

Due Diligence Checks To Be Conducted by Financial Institutions

1 It is stated in MAS' Guidelines on Fit and Proper Criteria (Guideline No. FSG-G01) ["the Guidelines"] that the onus is on each relevant person to establish that it or he is a fit and proper person rather than for MAS to show otherwise. The Guidelines also stated that where a relevant person is required under the relevant legislation to ensure that another relevant person is fit and proper, the onus is on the former to establish to the satisfaction of MAS that the latter is fit and proper.

Probity Checks on Representative's Identity

2 When the financial institution ["FI"] submits a notification to appoint an individual as its representative under RNF, it is required to provide the proposed representative's:

- (a) National Registration Identity Card ["NRIC"] number;
- (b) Foreign Identification Number ["FIN"] if he is a foreigner with no NRIC; or
- (c) passport number if he is a provisional representative or temporary representative who has neither a NRIC nor FIN.

3 Prior to submitting the notification, the FI is expected to obtain a copy of the proposed representative's current identity documentation (e.g. NRIC, FIN or passport) and verify his identity.³ If the proposed representative is a foreigner, the FI is expected to verify that he has the relevant employment pass or has sought approval from the relevant authorities to work in Singapore.

³ The FI is required to notify MAS of any change in a representative's particulars within 14 days of the change, using Form 16 of the Securities and Futures (Licensing and Conduct of Business) Regulations (Rg 10) and Form 18 of the Financial Advisers Regulations (Rg 2). This include changes to the representative's identification particulars (such as identification numbers and passport numbers), and other particulars such as changes in residential address, particulars of the representative's spouse, etc.

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Probity Checks on Representative's Past Records

- 4 The FI is expected to:
- (a) conduct reference checks with the proposed representative's previous employer(s)⁴ to confirm that he has not been dismissed or asked to resign, and to ask if he has any material adverse record (e.g. warning, reprimand, or other disciplinary action for misconduct) taken by the previous employer(s);
 - (b) check the Public Register of Representatives on the MAS website to verify the proposed representative's past employment records as an appointed, provisional or temporary representative in Singapore, including any past regulatory action(s) taken against and/or prohibition order(s) ["PO"] issued on him which have been published on the register; and
 - (c) conduct probity searches, including but not limited to publicly available registers provided by enforcement and regulatory agencies, self-regulatory organisations, and professional body or association, to verify the proposed representative's criminal or disciplinary records under any law or rule in any jurisdictions⁵, past records of regulatory status, and employment records .

5 The FI should note that under section 101B of the SFA and section 60 of the FAA, it is an offence to employ any person who has been issued a PO by MAS when the PO is still in effect.

6 The FI should ask the proposed representative to provide the reason(s) for any period of time when he is unemployed, and document the reasons accordingly.

7 If, despite uncovering any adverse information on the proposed representative from due diligence checks, the FI continues to assess the individual to be fit and proper, the FI should justify and document the basis for that assessment.

Probity Checks on Representative's Financial Status

⁴ The FI should conduct reference checks with relevant departments of the individual's past employers, e.g. the human resource / personnel departments. When conducting such checks, the FI should provide the individual's previous employer(s) with his NRIC number or FIN. This is to ensure that the individual's records can be properly traced by the previous employer(s) even if the individual uses a different name in his employment with the current principal.

⁵ The FI should obtain the necessary declarations from the proposed representative, including whether he has been convicted in a court of law regardless of whether his criminal record(s) has been spent. If the proposed representative has criminal record(s), it may impact on his fitness and propriety.

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8 The FI should ensure that the proposed representative is not the subject of a bankruptcy petition or debt repayment scheme, or has been declared and remains a bankrupt, whether in Singapore or elsewhere.

9 At a minimum, the FI should obtain the proposed representative's records from the Ministry of Law's Insolvency and Public Trustee's Office Online Portal at <http://www.iptoonline.gov.sg>, to ensure that he is not an undischarged bankrupt. Where the proposed representative was previously self-employed, the principal should obtain the individual's records from the CPF Board to verify that he is not in arrears of his contributions to the CPF Board as required under the CPF Act (Cap 36). The FI should also conduct checks with credit agencies, including bankruptcy status in overseas jurisdictions, where possible. The FI should consider requesting the proposed representative to conduct a search of his credit status with the Credit Bureau (Singapore) Pte Ltd and forward the result of the search to it.

False or Misleading Document or Information

10 The proposed representative should provide truthful information and declarations to its principal and disclose to its principal any information material and relevant to his fitness and propriety. The FI should ensure that the information obtained from its independent checks does not contradict the proposed representative's self-declarations. The FI should highlight to the proposed representative the consequences of false declaration, and disclose to MAS any information material to the assessment of his fitness and propriety.

11 Under section 99M(1)(n) of the SFA and section 23J(1)(n) of the FAA, if MAS has reason to believe that any information or document that is furnished by the proposed representative or the FI to MAS is false or misleading, MAS may:

- (a) refuse to enter the name of an individual in the public register of representatives,
- (b) refuse to enter an additional type of regulated activity or type of financial advisory service for an appointed representative in that register, or
- (c) revoke the status of an individual as an appointed, provisional or temporary representative.

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12 MAS will not hesitate to take regulatory action against any individual for omissions or misrepresentations in relation to the fit and proper declarations, and any FI for not conducting reasonable due diligence checks before providing the fit and proper certificate for any individual to MAS. FIs are reminded that under section 99O of the SFA and section 23L of the FAA, the following constitutes an offence:

- (a) a principal who, in connection with the lodgment of any document respectively under section 99H of the SFA and section 23F of the FAA, makes a false or misleading statement in a material particular, or omits from any document lodged with MAS any information thereby rendering the document misleading in a material respect; and
- (b) an individual who has provided a false or misleading statement in a material particular to his principal which is subsequently lodged with MAS, or to omit giving information to his principal which causes the lodged document to be misleading in a material respect.

Periodic Declarations and Checks

13 The principal should obtain on a periodic basis (for example, annually), written self-declarations from its representatives as that mentioned in Annex 1. The principal should determine, on the facts of each case, whether the frequency of self-declaration should be increased. MAS expects the FI to conduct the same due diligence checks as set out in paragraphs 4 (where relevant), 8, 9 and 10 on a periodic basis on existing representatives. The frequency of such periodic checks should be determined by the FI, taking into account factors such as the representative's background and compliance track record. The FI should similarly document the periodic self-declarations, checks and its assessment in respect of the representatives' fitness and propriety.