Baker McKenzie.

Client Alert

March 2023

Singapore: Additional Business Conduct Requirements for Corporate Finance Advisers

MAS Notice SFA 04-N21

In brief

The Monetary Authority of Singapore (MAS) issued the Notice on Business Conduct Requirements for Corporate Finance Advisers ("**SFA 04-N21**") on 23 February 2023. This comes around 14 months after the MAS issued the Consultation Paper P020-2021 which proposed to introduce regulatory requirements on the conduct of due diligence by corporate finance advisers (CFAs), strengthen public confidence and promote informed decision making by investors through quality disclosures. The new business conduct requirements will apply to advice given by:

(a) Holders of a capital markets services (CMS) licence to advise on corporate finance.

(b) Licensed banks, merchant banks and finance companies exempt from holding a CMS licence.

(c) Representatives of (a) and (b) in respect of advising on corporate finance.

Under any engagement to advise on corporate finance that is entered into on or after 1 October 2023.

In this issue

Key requirements introduced

SFA 04-N21 introduces the following requirements in addition to existing business conduct requirements for CFAs:

- General business conduct requirements when a CFA gives advice on corporate finance ("**General Business Conduct Requirements**").
- General due diligence requirements when a CFA gives advice on corporate finance ("**General Due Diligence Requirements**").
- Due diligence requirements ("**Listing Application Due Diligence Requirements**") when a CFA advises on corporate finance in the capacity of an issue manager, sponsor or financial adviser in respect of a business trust, a collective investment scheme constituted as a trust or any entity ("**Listing Applicant**") whose units or shares are the subject of an application for listing application or are listed on the Singapore Exchange Securities Trading Ltd ("**Specified Exchange**").

We summarise these requirements below.

General Business Conduct Requirements

Managing Conflicts of Interest	**Identifying and dealing with conflicts of interest** • A conflict of interest may arise between the interests of a customer and a CFA's interest: (a) Arising from an existing relationship between the customer and itself, its related corporation, its controlling shareholder, its relevant director, representative or employee who carries out activities connected with advising on corporate finance for a transaction ("**Specified Personnel**"), or a

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(a) ... connected person of its relevant director, representative or Specified Personnel (the "Relevant Personnel");
(b) Arising from its involvement in other activities in relation to the offering process or the capital markets products offered (e.g., allocation of the product offered or issuance of research report on the product offered).
• A CFA must:
(a) Identify and mitigate any potential or actual material conflict between its interests and the interests of the customer
(b) Disclose, to the extent appropriate, any such conflict to the customer.
• Where the CFA is not reasonably satisfied that it is able to mitigate any material conflict of interest, it must:
(a) In the case of a new engagement, decline to accept the new engagement
(b) In the case of a transaction for which it is already engaged, cease to give advice on corporate finance.
Safeguarding confidentiality
• A CFA must have in place policies, procedures, and controls to safeguard the confidentiality of confidential or price sensitive information received by:
(a) The Relevant Personnel
(b) Experts and third party service provider engaged by the corporate finance adviser for any transaction which the corporate finance adviser is advising on.
• In particular, there must at least be:
(a) Segregation of work premises between the Relevant Personnel and Non-Relevant Personnel
(b) Separation of roles involving the giving of advice on corporate finance and roles in other activities
(c) Restriction of access to confidential or price sensitive information on a need-to-know basis
Monitoring and restricting insider trading
• A CFA must have in place policies, procedures, and controls to restrict and monitor dealing in capital markets products by the Relevant Personnel for their own account:
(a) Where such Relevant Personnel possess price sensitive or other confidential information relating to such capital markets products arising from their giving of advice on corporate finance to a customer or carrying out activities connected with advising on corporate finance for a transaction.
(b) Where such dealing is in conflict with the giving of advice on corporate finance by the CFA to a customer.
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<tr><td>Governance and Supervision</td><td>
• The CFA must:
(a) Ensure adequate oversight by its senior management of its business in advising on corporate finance, including but not limited to the acceptance of an engagement to act as a CFA and the appointment of the transaction team, and any subsequent changes to such appointment
(b) Ensure adequate supervision and management of its representatives
(c) Set out clear and effective reporting lines for escalation of material issues to senior management by its representatives
(d) Ensure that its representatives in the transaction team, advising on a transaction, collectively possess the appropriate knowledge, skills and experience to advise on corporate finance for that transaction.
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General Due Diligence Requirements

The General Due Diligence Requirements apply, in general, when a CFA advises on corporate finance other than

(a) In relation to an arrangement, reconstruction or take-over of a corporation or any of the corporation's assets or liabilities.

(b) In relation to an offer of specified products made only to accredited investors, expert investors or institutional investors.

A CFA must conduct due diligence with reasonable care, skill and diligence in the following non-exhaustive areas:

(a) Determining the nature and extent of due diligence work to be performed for a transaction.

(b) Making an assessment of the accuracy and completeness of material statements, confirmations, and representations made or other information given, by its customers or other persons in connection with a transaction (collectively, the "Information") and conducting appropriate verification of such Information.

(c) Monitoring, during the transaction, other information obtained and developments in relation to the customer or transaction, that contradict or bring into question the reliability of the Information.

Listing Application Due Diligence Requirements

The following requirements apply when a CFA advises on corporate finance in the capacity of an issue manager, sponsor or financial adviser on:

(a) An initial public offer of shares, units in a business trust or units in a collective investment scheme constituted as a trust to be listed for quotation on the Specified Exchange.

(b) A reverse takeover entered or to be entered into by an entity listed on the Specified Exchange, or a trustee manager on behalf of a business trust listed on the Specified Approved Exchange, or a trustee on behalf of a collective investment scheme constituted as a trust listed on the Specified Exchange.

(c) A business combination entered into or to be entered into by an SPAC listed on the Specified Exchange.

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<tr><td rowspan="3">Advising the Listing Applicant on Regulatory Requirements</td><td>Listing Applicant is a business trust or collective investment scheme constituted as a trust</td><td>A CFA must ensure that the Listing Applicant's trustee-manager and directors of the trustee-manager or the manager and directors of the manager, as the case may be, are informed of their relevant duties and responsibilities under the SFA and the listing rules.</td></tr>
<tr><td>Listing Applicant is an entity</td><td>A CFA must ensure that the Listing Applicant and its directors are informed of their relevant duties and responsibilities under the SFA and the listing rules.</td></tr>
<tr><td colspan="2">The above personnel are hereinafter referred to as the Relevant Listing Personnel.</td></tr>
<tr><td>Due Diligence and Senior Management Oversight for Listing Applications</td><td colspan="2">• A CFA must ensure that there is adequate supervision by senior management on the formulation and the implementation of any due diligence plan proposed by the transaction team (including any material departures from such due diligence plan).
• A CFA must perform the following due diligence procedures in addition to those set out in the General Due Diligence Requirements:
(a) Verify material representations made by the Relevant Listing Personnel
(b) Conduct background checks on the Listing Applicant, its listing group entities, its controlling shareholders or unitholders, its key executives, and its Relevant Listing Personnel
(c) Monitor, during the course of the transaction, any material developments related to the transaction of the Listing Applicant, and assess the impact of such information on the suitability of the Listing Applicant for listing
(d) Inspect key physical assets, and interview major business customers and other stakeholders; and
(e) Where material issues are involved:
(f) Review relevant underlying records and supporting documents
(g) Obtain additional information from third-party sources or appoint third parties to perform relevant checks, where appropriate.</td></tr>
<tr><td>Relying on Experts</td><td colspan="2">• A CFA must have reasonable grounds to be satisfied with the knowledge, skills and experience, the qualifications and the independence of any expert appointed by the Listing Applicant.
• The CFA must further satisfy itself that its reliance on the conclusions or opinions of any report prepared by the expert is reasonable.</td></tr>
<tr><td>Admission of the Listing Applicant</td><td colspan="2">• A CFA must assess and have reasonable grounds to be satisfied that a Listing Applicant is suitable for listing, taking into account any material issues identified as relevant for the assessment.
• Prior to the submission of the listing application and before the Listing Applicant's admission to the Specified Exchange, the CFA must have reasonable grounds to be satisfied:</td></tr>
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	(a) That all material issues identified by the due diligence performed have been, or will prior to the Listing Applicant's admission to the Specified Exchange be, satisfactorily resolved or clearly disclosed in the listing application or the prospectus. (b) With the completeness of information in the listing application. (c) That the Listing Applicant is compliant with the listing rules relevant to its listing application. (d) That the Listing Applicant has established procedures, systems and controls which, at the point of listing application and on an ongoing basis thereafter: (i) Enable the Listing Applicant, and the directors of the Listing Applicant to comply with the listing rules and other relevant legal and regulatory requirements applicable to the activities of the Listing Applicant (ii) Provide a reasonable basis for the directors of the Listing Applicant to make a proper assessment of the financial position and prospects of the Listing Applicant (e) That the directors of the Listing Applicant collectively have the experience and qualifications to: (i) Manage the Listing Applicant's business (ii) Ensure the Listing Applicant complies with its obligations under the listing rules and other relevant and regulatory requirements applicable to the activities of the Listing Applicant (f) That each director of the Listing Applicant understands and is competent to discharge the director's obligations under the listing rules.

Implementation

The business conduct requirements apply to advice given under any engagement to advise on corporate finance entered into by a CFA on or after 1 October 2023. The CFA must develop, implement, monitor and periodically evaluate relevant policies, procedures and controls to meet the business conduct requirements. Additionally, the CFA must prepare and maintain records of all data, documents and information that are necessary to meet the requirements and retain such records for a period of at least five years.

The above is not intended to be exhaustive or to constitute legal advice. As these newly-introduced business conduct requirements are fairly comprehensive, please contact us for further details should you have any questions on how they may apply to your company.

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