CB(1)1392/11-12(01)

Comparison of the Broad Regulatory Arrangements proposed in the Bill with those adopted for the Regulation of the Sale of Investment Products by Banks

At the meeting on 23 February 2012, a Member requested to have a comparison of the broad regulatory arrangements proposed in the Mandatory Provident Fund Schemes (Amendment) (No.2) Bill 2011 with those adopted for the regulation of the sales and marketing of securities by banks, particularly regarding the avenues available for investors / MPF scheme members to seek redress or compensation. The table at **Annex** sets out the required information.

Financial Services and the Treasury Bureau
Mandatory Provident Fund Schemes Authority
22 March 2012

Annex

Comparison of the broad regulatory arrangements proposed in the Mandatory Provident Fund Schemes (Amendment) (No.2) Bill ("the Bill") and those currently adopted for the regulation of the sale of investment products by intermediaries in banks

	Sales and Marketing of MPF Products	**Sales and Marketing of Investment Products by Banks**
Licensing / Registration Arrangement	The Mandatory Provident Fund Schemes Authority ("MPFA") is the authority empowered under the Bill to – (i) register a principal intermediary (e.g. a bank) for carrying out regulated activities under the Bill; (ii) approve the attachment of a responsible officer ("RO") to a principal intermediary ("PI") who is responsible for directly supervising the conduct of the regulated activities for which the PI is registered; and (iii) register a subsidiary intermediary ("SI") (e.g. frontline staff of a bank) and approve the attachment of a SI to a PI for carrying out regulated activities under the Bill.	The Securities and Futures Commission ("SFC") is the authority empowered under the Securities and Futures Ordinance ("SFO") to register a bank as a registered institution ("RI") for carrying out regulated activities under SFO. SFC is required to have regard to the advice of the Hong Kong Monetary Authority ("HKMA") as to whether the applicant is fit and proper to be registered. HKMA is the authority empowered under the Banking Ordinance ("BO") to enter into the register (the "HKMA Register") maintained by HKMA the names of the individuals engaged by RIs for the purpose of conducting regulated activities under SFO, i.e. relevant individuals ("ReIs"). HKMA is also empowered under BO to consent to the proposed appointment of executive officers ("EOs") of a RI who are responsible for directly supervising the conduct of the regulated activities for which the RI is registered.
Conduct Requirements	MPFA is the authority to set standards as regards compliance with the statutory conduct requirements under the Bill.	SFC is the authority to set standards regarding the conduct of regulated activities under SFO.

	Sales and Marketing of MPF Products	Sales and Marketing of Investment Products by Banks
Powers to supervise, including conducting inspection and investigation[1]	Frontline regulators ("FRs"), viz. HKMA, SFC and the Insurance Authority, are the frontline supervisor of registered intermediaries and ROs of PIs assigned to them for their conduct of regulated activities under the Bill. FRs have powers under the Bill to conduct inspections and investigations on the relevant registered PIs and their ROs and SIs.	HKMA is the frontline supervisor of RIs and their EOs and ReIs and responsible for the supervision of their conduct of regulated activities under SFO. HKMA has power under SFO to inspect and make inquiries of RIs. HKMA will refer cases of alleged misconduct to SFC to follow up where appropriate. SFC is empowered under SFO to conduct investigations on RIs, their EOs and ReIs regarding their conduct of regulated activities under SFO.
Powers to impose disciplinary sanctions	The Bill provides for a full range of disciplinary sanctions, including public and private reprimand, fines, revocation and suspension of registration / approval, and disqualification from being registered / approved for a specified period of time. MPFA is empowered under the Bill to impose disciplinary sanctions mentioned above on registered intermediaries and ROs.	SFO provides for a full range of disciplinary sanctions, including public and private reprimand, fines, revocation and suspension of licence and registration, and prohibition orders. SFC is empowered under SFO to revoke or suspend the registration of a RI to conduct the regulated activities for which it is registered and to impose fines or reprimand on RIs, their EOs, and ReIs and to prohibit such persons from applying to be registered or given consent. HKMA is empowered under BO to remove or suspend a ReI's particulars from the HKMA Register and to withdraw or suspend an EO's consent. HKMA and SFC will consult each other in administering disciplinary sanctions.
Appeal mechanism	Appeals against any registration / disciplinary decisions made by MPFA with regard to registered intermediaries and ROs under the Bill will all be handled by the Mandatory Provident Fund Schemes Appeal Board.	Appeals against any registration / disciplinary decisions made by SFC under SFO, and any decisions made by HKMA under BO to remove or suspend a ReI's particulars from the HKMA Register, to refuse to consent to the

[1] HKMA is also empowered under BO to conduct examination and investigation of banks.

	Sales and Marketing of MPF Products	Sales and Marketing of Investment Products by Banks
		appointment of an EO or to withdraw, suspend or attach conditions to that consent, are all handled by the Securities and Futures Appeals Tribunal.
Avenue available for MPF Scheme Members / investors to seek redress or compensation	In addition to any relevant common law actions open to an MPF scheme member, by virtue of section 108 of SFO, where a registered MPF intermediary makes any fraudulent representation, reckless misrepresentation or negligent misrepresentation by which a person is induced to acquire an interest in MPF schemes, the registered MPF intermediary shall be liable to pay compensation by way of damages to the other person for any pecuniary loss that other person has sustained as a result of reliance of the said misrepresentation. This provision will continue to apply under the proposed statutory regime. Under the Bill, if MPFA is satisfied that a registered MPF intermediary has failed to comply with a conduct requirement and intends to make a disciplinary order against him, it may, by agreement with the registered MPF intermediary, take any further action, whether in place of or in addition to any disciplinary order in respect of him, that it considers appropriate in the circumstances.	In addition to any relevant common law actions open to the investor, section 108 of SFO may also be applicable. SFC has a similar power under SFO.