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來函檔號 YOUR REF.:

20 April 2012

Clerk to Bills Committee
(Attn: Ms Anita Sit)
Legislative Council Complex,
1 Legislative Council Road,
Hong Kong

Dear Ms Sit,

**Bills Committee on Mandatory Provident Fund Schemes
(Amendment) (No.2) 2011**

Follow-up to meeting on 15 March 2012

I refer to your letter of 20 March 2012. The response of the Administration and the Mandatory Provident Fund Schemes Authority to items 1 - 8 on the list of follow-up actions arising from the discussion at the meeting on 15 March 2012 is set out at the Annex. We will revert separately on item 9 of the list.

Yours sincerely,

A handwritten signature in black ink that reads 'Frederick Yu'.

(Frederick Yu)
for Secretary for Financial Services and the Treasury

**Bills Committee on
Mandatory Provident Fund Schemes (Amendment) (No. 2) Bill 2011**

**List of follow-up actions arising from the discussion
at the meeting on 15 March 2012**

**Item 3: Supervisory and investigation arrangements between
Mandatory Provident Fund Schemes Authority (“MPFA”) and
frontline regulators (“FRs”)**

Upon registration of a principal intermediary (“PI”), MPFA is required to assign an industry regulator as the FR for the PI, its responsible officer (“RO”) and subsidiary intermediaries (“SIs”). FRs will formulate their supervision strategies and plans taking into account the actual Mandatory Provident Fund (“MPF”) market operations and activities under the new regime, drawing expertise and experience from intermediary regulation in their own respective sectors, as well as through liaison with MPFA and the other FRs.

2. For Members’ reference, both Hong Kong Monetary Authority (“HKMA”) and Securities and Futures Commission (“SFC”) have been conducting on-site inspections of their own regulatees to ascertain their compliance with applicable legal and regulatory requirements of their respective sectors, including reviewing and assessing the effectiveness of the internal controls and procedures put in place by them to ensure their own compliance and compliance by their agents (in case of regulatees who are corporations). HKMA and SFC also conducted off-site reviews, including analysis of information submitted by their regulatees and data collected on an ad hoc basis as part of their supervisory efforts. Moreover, in addition to following up on investor complaints, both regulators have employed “mystery shopper” as a supplementary supervisory tool on occasions. For the regulation of MPF intermediaries in future, MPFA has established a regular liaison forum with the FRs to enhance inter-regulator communication. They will make use of this liaison forum to consider and analyse relevant industry data and identify emerging trends and developments in the MPF market which may impact on the activities of MPF intermediaries, and to share information and practices in relation to supervisory and enforcement activities.

3. MPFA will assume the following roles that cover all registered MPF intermediaries:

- (a) MPFA will receive annual returns by SIs on their attendance of Continuing Professional Training (“CPD”), and will verify their accuracy on a random basis with an initial target sample size of around 1%. MPFA also aims to conduct class visits to some 10%-20% of the courses of core CPD training to ensure course quality and monitor attendance by intermediaries; and
- (b) as part of its education for existing and prospective MPF scheme members, MPFA has reached out to them through different channels and publicizing information on Employee Choice Arrangement and the factors to consider in making informed decisions. MPFA will also widely publicize the channels for scheme members to lodge a complaint in case they suspect a registered MPF intermediary has committed misconduct.

Item 4: Overseas example as regards the power of regulators to order compensation, if any

4. A Member requested details of a case involving the relevant financial regulator in the UK (Financial Services Authority (“FSA”)) ordering a bank to make compensation for mis-selling. The case was about mis-selling of investment products to elderly customers. FSA imposed financial penalty of £10.5 million on the bank concerned. The payment was a financial penalty instead of compensation to investors and the penalty level has taken into account the agreement of the bank to settle with the relevant customers as per the announcement of FSA.

5. On the other hand, MPFA has reviewed the statutory powers of the key regulators in Singapore (Singaporean Monetary Authority), Australia (Australian Securities and Investments Commission) and the United States (Securities and Exchange Commission) and is not aware of any of them having the statutory power to order a financial institution to make compensation in favour of an investor who claims to have suffered loss due to the action of the former.

Item 7: Maximum penalty level for non-compliance with proposed section 34

6. Having considered Members’ views expressed at the meeting regarding the maximum level of penalties to individuals for carrying on or holding out as carrying on regulated activities without registration, we

will propose a Committee Stage Amendment (“CSA”) to adjust the maximum level of penalties applicable to individuals acting as employees, agents or representatives of PIs as follows, which is consistent with the arrangement under section 114 of the Securities and Futures Ordinance –

	Proposal under the Bill	Proposed CSA
Maximum level of sanctions to applicable individuals acting as employees, representatives or agents of PIs	On conviction on indictment - a fine of \$5,000,000 and imprisonment for 7 years and, in the case of a continuing offence, a further fine of \$100,000 for each day on which the offence is continued.	On conviction on indictment - a fine of \$1,000,000 and imprisonment for 2 years and, in the case of a continuing offence, a further fine of \$20,000 for each day on which the offence is continued.
	On summary conviction - a fine at level 6 (i.e. \$100,000) and imprisonment for 2 years and, in the case of a continuing offence, a further fine of \$10,000 for each day on which the offence is continued.	On summary conviction - a fine at level 6 (i.e. \$100,000) and imprisonment for 6 months and, in the case of a continuing offence, a further fine of \$2,000 for each day on which the offence is continued.

Items 5, 6 and 8: Drafting of proposed sections 34E, 34F(5) and 34R

7. Taking into account Members’ views expressed at the meeting, we will propose CSA to amend –

- (a) proposed section 34E (definitions of “industry regulator” and “prescribed person”) to the effect that references to the three FRs / industry regulators will consistently be in the order of Insurance Authority, HKMA and SFC. Similar amendments will also be made to proposed sections 42AA(4) and 42B(3);
- (b) proposed section 34F(5)(d), (f), (h) and (i) by directly including therein the context for the amounts of benefits to be transferred or for the amount of claim, such that the respective sub-paragraphs would become self-contained; and
- (c) proposed section 34R by replacing “on-line record” in the English version and “聯機紀錄” in the Chinese version with “Internet” and “互聯網” respectively.

**Financial Services and the Treasury Bureau
Mandatory Provident Fund Schemes Authority
20 April 2012**