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9 May 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 27 April 2012

The response of the Administration and the Mandatory Provident Fund Schemes Authority (MPFA) to the list of follow-up actions arising from the discussion at the meeting on 27 April 2012 is set out at the Annex.

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 27 April 2012**

Item 1 – definition of the term “authorized financial institution” in conjunction with the term under Mandatory Provident Fund Schemes (General) Regulation (“General Regulation”) (Cap. 485A)

In the light of the views of the Assistant Legal Advisor, we will propose a Committee Stage Amendment (“CSA”) to repeal the definition of “authorized financial institution” in the General Regulation, such that the definition of that term which appears in section 2 of the Mandatory Provident Fund Schemes Ordinance (“MPFSO”) (Cap. 485) would be applicable throughout the Ordinance and its subsidiary legislation.

Item 2 – adding footnotes at Divisions 4 and 5 to remind readers to refer transitional arrangements provided under proposed Schedule 5

2. In the light of the views of Members, we will add editorial notes to new sections 34ZC, 34ZE, 34ZF and 34ZI of the Bill to draw readers' attention to sections 8(4), 8(5), 9(3) and 9(4) of new Schedule 5B respectively regarding the transitional arrangements. In addition, as the transitional provisions are mainly applicable to the regulatees of the Mandatory Provident Fund Schemes Authority (“MPFA”), the Authority will draw their attention thereto through administrative means as well.

Items 3 – appropriateness of waiving the fees at the initial stage of the implementation of the new regulatory regime

3. Under the existing administrative arrangement for the regulation of Mandatory Provident Fund (“MPF”) intermediaries, MPFA is not empowered to, and consequently has not, charged regulated persons any relevant fees or charges. During the consultation process as we developed the Bill, different industry participants raised concerns about the impact of fees under the statutory regime in conjunction with the other costs of implementing the new regime. Whilst the statutory regime is built on the existing administrative

arrangements, in part to minimise transitional impacts and costs, it is accepted that there will be some other initial, transitional, costs for the industry in moving to the new regime. In light of this, and also in order to allow some time for an assessment of the actual costs involved in handling applications, MPFA considered it appropriate not to charge application or annual fees for an initial period. This position was made public in mid-2011, including when the Administration and MPFA issued the response to the comments of consultation to the Legislative Council Panel on Financial Affairs.

4. On the other hand, MPFA shares concerns expressed by Members that the waiver of fees for the time being should not be seen as intention to waive them permanently. In fact, when discussing this issue with the industry, MPFA has made clear to the industry the expectation that fees would be imposed after the initial period. Taking into account Members' views, the Secretary for Financial Services and the Treasury ("the Secretary") will reiterate in his speech for resumption of second reading debate on the Bill that the waiving of these fees is only a temporary relief measure and MPFA would review and propose appropriate fees for operation of the MPF intermediary regime on a cost recovery basis after the initial stage of implementation of the statutory regime.

Item 4 – suggestion of replacing the word “nil” with “\$0” under clause 27(2) and the existing fees items in Schedule 1 of the Mandatory Provident Fund Schemes (Fees) Regulation (“Fees Regulation”) (Cap. 485C)

5. Clause 27(2) of the Bill amends Schedule 1 of the Fees Regulation by adding five items in respect of which a "nil" fee is payable. Clause 28 of the Bill amends Schedule 2 of the Fees Regulation by adding one item in respect of which a "nil" fee is payable. The use of the word "nil" in this context tallies with the existing items 5 and 6 to Schedule 1 to the Fees Regulation, and existing items 3 and 4(a) of Schedule 3 to the Fees Regulation, where a “nil” fee is also payable. The scope of the long title of the Bill is however not wide enough to cover amendments to the said existing items as they deal with fees relating to MPF schemes and to trustees. On this basis, for consistency reasons, the word “nil” (instead of “\$0”) should be used in clauses 27(2) and 28 as well.

6. As mentioned in paragraph 4 above, the Secretary will make clear in his speech for resuming second reading debate on the Bill that the waiving of these fees is only a temporary measure by MPFA on account of their special considerations.

Item 5 – whether the policy of charging fees based on the cost recovery principle is reflected in the existing MPFSO and the Bill

7. Section 46 of MPFSO provides that the Chief Executive in Council may make regulations to prescribe fees, including fees for the granting of approvals for the purpose of MPFSO. It does not stipulate explicitly that such fees should be determined based on the cost recovery principle. This notwithstanding, such is a well-established principle of the Administration and will be adopted as and when fees are to be charged under the statutory regime.

**Financial Services and the Treasury Bureau
Mandatory Provident Fund Schemes Authority
9 May 2012**