

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

**First Exposure Draft of
Guidelines on Conduct Requirements for Registered Intermediaries**

Introduction

At the Bills Committee meeting on 23 February 2012, individual Members requested information on the main contents of the Guidelines on Conduct Requirements for Registered Intermediaries (“Guidelines”) in due course. A set of the draft Guidelines is appended at Annex for the reference of Members.

The Guidelines

2. The Guidelines, which will be issued by the Mandatory Provident Fund Schemes Authority (“MPFA”) under section 6H of the Mandatory Provident Fund Schemes Ordinance (“MPFSO”), aim at providing guidance in respect of the minimum standards of conduct expected of regulated persons who engage in conducting sales and marketing activities and giving advice in relation to registered schemes. In particular, the Guidelines provide guidance on the circumstances in which MPFA will be satisfied that a regulated person has, or has not, complied with a performance requirement under proposed sections 34ZL and 34ZM for the purposes of proposed section 34ZW of MPFSO.
3. The three frontline regulators (viz. the Insurance Authority, the Monetary Authority and the Securities and Futures Commission) will also be guided by the Guidelines in performing their supervisory and investigatory functions relating to regulated persons under MPFSO.
4. The contents of the draft Guidelines are largely drawn from the existing Code of Conduct for MPF Intermediaries, supplemented by reference to requirements in other financial sectors and practical experience.
5. MPFA has consulted with the three frontline regulators in developing the draft Guidelines. The first exposure draft of the Guidelines was issued to major industry bodies on 29 March 2012 for comment and it is intended to consult more widely (covering unions and the Consumer Council etc.) upon receiving feedback from the industry. Subject to the comments received and the final shape of the legislation, MPFA will further refine the draft. The target is to issue the Guidelines as early as possible after enactment of the Bill to allow

sufficient time for training and development of relevant systems and documentation before commencement of the new statutory regime.

Mandatory Provident Fund Schemes Authority
9 May 2012



強制性公積金計劃管理局
MANDATORY PROVIDENT FUND
SCHEMES AUTHORITY

**FIRST EXPOSURE DRAFT OF
GUIDELINES ON CONDUCT REQUIREMENTS
FOR REGISTERED INTERMEDIARIES**

First Edition

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I. INTRODUCTION, INTERPRETATION AND APPLICATION

Introduction

- I.1 The Guidelines on Conduct Requirements for Registered Intermediaries (“Guidelines”), issued under section 6H of the Mandatory Provident Fund Schemes Ordinance (Cap. 485) (“MPFSO”), provide guidance for persons concerned with the MPFSO. They provide guidance in respect of the minimum standards of conduct expected of regulated persons who engage in conducting sales and marketing activities and giving advice in relation to registered schemes. In particular, they provide guidance about the circumstances in which the Mandatory Provident Fund Schemes Authority (“MPFA”) will be satisfied that a regulated person has, or has not, complied with a performance requirement under sections 34ZL and 34ZM for the purposes of section 34ZW of the MPFSO. Whilst the Guidelines are intended to assist regulated persons in understanding how to comply with the performance requirements, they are not intended to be an exhaustive description of how they should comply. Acts or omissions not mentioned in the Guidelines may also constitute a breach of the performance requirements.
- I.2 The three industry regulators (the Insurance Authority, Monetary Authority and Securities and Futures Commission), one or more of which will be the frontline regulator of a regulated person, will also be guided by the Guidelines in performing their supervisory and investigatory functions relating to regulated persons under the MPFSO.
- I.3 Where a frontline regulator has information which suggests a regulated person has not been in compliance with a performance requirement under sections 34ZL or 34ZM of the MPFSO, it may conduct an investigation and provide the relevant information it obtained from such investigation to the MPFA for the latter’s consideration of making a disciplinary order.
- I.4 For the purposes of the Guidelines, unless otherwise specified, a registered intermediary includes a responsible officer.
- I.5 The Guidelines do not have the force of law. They should not be interpreted in a way that would override the provision of any law.
- I.6 The Guidelines are complementary to, and do not replace, any legislative provisions applicable to, or codes or guidelines issued by industry/frontline regulators in respect of, regulated persons.

Interpretation

- I.7 Where a term in the Guidelines is used or defined in the MPFSO or the Mandatory Provident Fund Schemes (General) Regulation (“MPFSGR”), except where specified in the Guidelines, that term carries the same meaning as used or defined in the MPFSO or MPFSGR. Relevant references are given for those terms that are used or defined in the MPFSO or MPFSGR.

- (a) “accrued benefits” - section 2 of the MPFSO;
- (b) “approved trustee” - section 2 of the MPFSO;
- (c) “client” - section 34ZL of the MPFSO;
- (d) “constituent fund” - section 2 of the MPFSGR;
- (e) “employee choice arrangement” means the arrangement whereby employees are allowed to transfer, on a lump sum basis, accrued benefits derived from their own mandatory contributions, from a contribution account under a registered scheme chosen by their employers to a registered scheme of their own choice at least once per calendar year;
- (f) “fund” means constituent fund as defined in section 2 of the MPFSGR;
- (g) “frontline regulator” - section 34E of the MPFSO;
- (h) “industry regulator” - section 34E of the MPFSO;
- (i) “material decision” - section 34F of the MPFSO;
- (j) “Part” means Part IVA of the MPFSO;
- (k) “performance requirement” - section 34E of the MPFSO;
- (l) “principal intermediary” - section 34G of the MPFSO;
- (m) “registered intermediary” - section 2 of the MPFSO;
- (n) “registered scheme” - section 2 of the MPFSO;
- (o) “regulated activity” - section 34F of the MPFSO;
- (p) “regulated advice” - section 34F of the MPFSO;
- (q) “regulated person” - section 2 of the MPFSO;
- (r) “responsible officer” - section 34I of the MPFSO;
- (s) “rules” means rules made under section 47 of the MPFSO;
- (t) “scheme” means registered scheme as defined in section 2 of the MPFSO;
- (u) “service provider” - section 2 of the MPFSO;
- (v) “special voluntary contribution” means voluntary contribution paid by an employee to an approved trustee of a registered scheme without going through the employer. The contributions and withdrawals of accrued benefits are not tied to the employee’s employment but are subject to the terms and conditions agreed between the employee and the approved trustee;
- (w) “subsidiary intermediary” - section 34H of the MPFSO.

I.8 A reference in the Guidelines to “it” or “its” in relation to a registered intermediary shall, except where the context otherwise specifies, be construed as including a reference to “he” or “his”, “she” or “her”, as the case may be.

I.9 A reference in the Guidelines to a “section” shall mean a reference to a section in the MPFSO or MPFSGR.

- I.10 References to legislation, regulations, rules, codes or guidelines shall include such legislation, regulations, rules, codes or guidelines as they are replaced, amended or supplemented from time to time.

II. STATUTORY REQUIREMENTS

II.1 The conduct requirements are set out in sections 34ZL and 34ZM of Part IVA of the MPFSO. Those sections read as follows:

“34ZL. Conduct requirements for registered intermediary

- (1) When carrying on a regulated activity, a principal intermediary or a subsidiary intermediary attached to a principal intermediary—
 - (a) must act honestly, fairly, in the best interests of the client, and with integrity;
 - (b) must exercise a level of care, skill and diligence that may reasonably be expected of a prudent person who is carrying on the regulated activity;
 - (c) may advise only on matters for which the principal or subsidiary intermediary is competent to advise;
 - (d) must have such regard to the client’s particular circumstances as is necessary for ensuring that the regulated activity is appropriate to the client;
 - (e) must make such disclosure of information to the client as is necessary for the client to be sufficiently informed for the purpose of making any material decision;
 - (f) must use best endeavours to avoid a conflict between the interests of the principal or subsidiary intermediary and the interests of the client and, in the case of such a conflict, must disclose the conflict to the client;
 - (g) must ensure that client assets are promptly and properly accounted for; and
 - (h) must comply with other requirements that are prescribed by the rules.

- (2) A principal intermediary—
 - (a) must establish and maintain proper controls and procedures for securing compliance by the principal intermediary, and by each subsidiary intermediary attached to the principal intermediary, with this Part;
 - (b) must use the principal intermediary’s best endeavours to secure observance by subsidiary intermediaries attached to the principal intermediary of the controls and procedures established under paragraph (a);
 - (c) must ensure that the responsible officer has sufficient authority within the principal intermediary for carrying out specified responsibilities in relation to the principal intermediary; and

- (d) must provide the responsible officer with sufficient resources and support for carrying out specified responsibilities in relation to the principal intermediary.
- (3) In this section, a reference to a client of a principal intermediary, or a subsidiary intermediary attached to a principal intermediary, when carrying on a regulated activity, is a reference to—
 - (a) a person whom the principal or subsidiary intermediary invites or induces, or attempts to invite or induce, to make a material decision; or
 - (b) a person to whom the principal or subsidiary intermediary gives regulated advice.

34ZM. Conduct requirements for responsible officer

A responsible officer of a principal intermediary must use his or her best endeavours to carry out specified responsibilities in relation to the principal intermediary.”

Note: Under section 34I(3) of the MPFSO, a reference to specified responsibilities, in relation to a principal intermediary, is a reference to—

- (a) *the responsibility to ensure that the principal intermediary has established and maintains proper controls and procedures for securing compliance by the principal intermediary, and by each subsidiary intermediary attached to the principal intermediary, with this Part; and*
- (b) *the responsibility to ensure that the principal intermediary uses the intermediary’s best endeavours to secure observance by subsidiary intermediaries attached to the principal intermediary of the controls and procedures mentioned in paragraph (a).*

III. GUIDANCE ABOUT STATUTORY REQUIREMENTS

- III.1 In determining whether it is satisfied that a regulated person has, or has not, complied with a performance requirement under sections 34ZL or 34ZM for the purposes of section 34ZW, subject to I.1, the MPFA will have regard to the matters set out below.

ACTING HONESTLY, FAIRLY, IN THE BEST INTERESTS OF THE CLIENT AND WITH INTEGRITY

Section 34ZL(1)(a)

When carrying on a regulated activity, a principal intermediary or a subsidiary intermediary attached to a principal intermediary must act honestly, fairly, in the best interests of the client, and with integrity.

Accurate Representations

- III.2 A registered intermediary should not make inaccurate or misleading statements about itself, other registered intermediaries, any other party connected with the operation or distribution of a registered scheme, any registered schemes or constituent funds, whether knowingly, recklessly or negligently.
- III.3 A registered intermediary should ensure that any form to be signed by a client is duly completed in all material respects before asking the client to sign on it and any alterations to the completed form must be initialed by the client. A copy of the form should be provided to the client and another copy to be kept by the principal intermediary for a minimum period of seven years.

Advertising and Marketing Material

- III.4 A principal intermediary should ensure that any advertisement or marketing material issued by it does not contain information that is false, biased, misleading or deceptive. It should ensure that the information is clear, fair and timely, presents a balanced picture of the registered scheme and the constituent funds with adequate risk disclosure, and is consistent with the offering document authorized by the Securities and Futures Commission (“SFC”) and approved by the MPFA.
- III.5 A subsidiary intermediary should only distribute or give out marketing material approved by his principal intermediary.

Rebates, Gifts and Incentives

III.6 A registered intermediary should not, directly or indirectly, offer any rebates, gifts or incentives (including, without limitation, commissions or other monetary/non-monetary benefits) to any person, for the purpose of encouraging a client to:

- (a) become a member of; or
- (b) make a contribution to; or
- (c) transfer any benefits to; or
- (d) retain membership until a certain date or expiry of a certain period in

one or more registered schemes/constituent funds. However, the above restriction does not apply to:

- (a) discount of fees and charges by way of offer of bonus units, bonus credit or rebates credited to the MPF account of the recipient of the offer; or
- (b) membership privileges offered to all or a certain group of scheme members for relationship building purpose, provided that those privileges which are of a monetary nature are not promoted to the client before the client becomes a member of the relevant scheme.

III.7 Any discount of fees and charges or offer of bonus units/credit referred to in III.6 above must only be for the benefit of scheme members and not for the benefit of any other person.

Best Interests of the Client

III.8 A registered intermediary should act in the best interests of the client in conducting sales and marketing activities and in giving regulated advice in relation to registered schemes/constituent funds.

Confidentiality of Client Information

III.9 A registered intermediary should treat all information supplied by a client as confidential, must not disclose or use such information except as permitted at law, and avoid any misuse of the personal information obtained in the course of its business activities.

Assistance to Regulators

III.10 A registered intermediary should co-operate with the MPFA and the relevant frontline regulator at all times, including, but not limited to, establishing the facts in the event of a complaint concerning itself, its subsidiary intermediaries or other intermediaries.

Handling of Client Complaints

- III.11 A registered intermediary should ensure that any complaint arising from regulated activities is promptly and fairly handled.

CARE, SKILL AND DILIGENCE

Section 34ZL(1)(b)

When carrying on a regulated activity, a principal intermediary or a subsidiary intermediary attached to a principal intermediary must exercise a level of care, skill and diligence that may reasonably be expected of a prudent person who is carrying on the regulated activity.

Understanding of MPF System, MPF Products and Relevant Concepts

- III.12 A registered intermediary should have a general understanding of:
- (a) the mandatory provident fund (“MPF”) system and keep abreast of developments relevant to the MPF system;
 - (b) the various types of registered schemes and constituent funds available in the market; and
 - (c) basic investment and related concepts such as the relationship between risk and return, the importance of diversification of assets, the impact of fees on return, and the effect of compounding and dollar cost averaging.
- III.13 In order to achieve the understanding referred to in III.12, a registered intermediary should, as a minimum, familiarise itself with the educational materials for intermediaries issued by the MPFA and the various tools (such as the Fee Comparative Platform, the Calculator on Retirement Needs, the Calculator on MPF Accrued Benefits and the Service Level Comparative Platform) that would assist a client in making material decisions.

Note: Educational materials and the tools are available on the MPFA website.

Understanding of Promoted Registered Schemes and Constituent Funds

- III.14 A registered intermediary should have a good understanding, through conducting product due diligence, such that may reasonably be expected of a prudent person carrying on the regulated activity, of any registered scheme and constituent fund which it promotes and/or on which it gives regulated advice, including:
- (a) the identity of key parties concerned in the operation or distribution of the scheme (including the approved trustee, investment manager, promoter, sponsor, administrator, custodian and guarantor);

- (b) the level of fees and charges relating to the scheme and the various constituent funds in the scheme;
- (c) the investment policies, types and levels of risks and terms and conditions of the various constituent funds in the scheme;
- (d) the range of services offered by the approved trustee of the scheme and its service providers; and
- (e) scheme operational issues such as those relating to special voluntary contributions, transfers and withdrawals.

III.15 A registered intermediary should keep up-to-date on the issues mentioned in III.14 on an on-going basis) so as to keep track of changes made to the relevant registered scheme/constituent fund.

Keeping Record of Orders

III.16 A registered intermediary should record the particulars of any order instructions which relate to material decisions received from a client (including the time of receipt and details of the order). The records of orders should be kept by the principal intermediary for a minimum period of seven years.

Prompt Execution

III.17 A registered intermediary should take all reasonable steps to carry out client instructions promptly and accurately, and notify the client after the instructions have been carried out.

Clients with Special Needs

III.18 In the initial contact with a client, a registered intermediary should take steps to ascertain whether the client is able to fully understand the type of information to be provided and discussed and whether the client is able to make material decisions independently. Clients who are not able to fully understand the type of information to be provided and discussed or not able to make material decisions independently may be regarded as vulnerable clients. Such clients may include, for example, those who are illiterate, with low level (primary level or below) of education, or visually or otherwise impaired.

III.19 In dealing with such clients, a registered intermediary should exercise extra care, and where necessary, provide additional support. What would constitute “extra care” will depend on the particular vulnerability of the client and the nature of the regulated activity being undertaken. It should, however, include:

- (a) offering the client the opportunity to choose:
 - (i) to be accompanied by a companion to witness the registered scheme sales process and the constituent fund selection process; and/or

- (ii) to have an additional member of staff to witness the registered scheme sales process and the constituent fund selection process;

the principal intermediary should maintain proper records of the choices made by the client as mentioned above for audit trail purpose;

or

- (b) conducting post-sale call to verify, where appropriate, the registered scheme sales process and the constituent fund selection process, the client's fund choice and confirm the client's understanding of the fund choice within seven working days. The telephone conversation through which such verification is conducted should be audio recorded and conducted by an authorized person of the principal intermediary (not the subsidiary intermediary who conducted the regulated activity). If the client cannot be contacted, the caller should document the attempts made to contact the client. A copy of the record should be kept by the principal intermediary for a minimum period of seven years.

Compliance with Requirements of Principal Intermediary

- III.20 A subsidiary intermediary should comply with the controls, procedures and standards of conduct as required by his principal intermediary.

ADVICE ON MATTERS WITHIN COMPETENCE

Section 34ZL(1)(c)

When carrying on a regulated activity, a principal intermediary or a subsidiary intermediary attached to a principal intermediary may advise only on matters for which the principal or subsidiary intermediary is competent to advise.

Adequate Training, Skills and Knowledge

- III.21 A subsidiary intermediary should not give advice on matters in relation to which he is not adequately trained or otherwise lacks the specific skills or knowledge necessary to assist a client.
- III.22 A principal intermediary should have in place arrangements to assess whether its subsidiary intermediaries possess the relevant qualification, skills and/or knowledge.
- III.23 A principal intermediary should provide sufficient training to ensure that its subsidiary intermediaries engaging in regulated activities, among other things:
- (a) have adequate knowledge and skills to provide explanations, recommendations or advice to a client about registered schemes/constituent funds;
 - (b) are conversant with the selling procedures and relevant controls; and

- (c) are aware of the relevant statutory and regulatory requirements that they need to comply with.

HAVING REGARD TO CLIENT'S PARTICULARS AS IS NECESSARY

Section 34ZL(1)(d)

When carrying on a regulated activity, a principal intermediary or a subsidiary intermediary attached to a principal intermediary must have such regard to the client's particular circumstances as is necessary for ensuring that the regulated activity is appropriate to the client.

Know Your Client

- III.24 In assisting an employer/self-employed person/employee to participate/enroll in a registered scheme, a registered intermediary should take all reasonable steps to establish the identity of its client by checking the client's identity document (e.g. business registration certificate, identity card or passport) to verify the client's identity, and to acquire a basic understanding of its client (such as the employer's nature of business and the employee's occupation).

Suitability Assessment

- III.25 The appropriate level of enquiry as to the client's circumstances would depend on the nature of the regulated activity being undertaken and the individual circumstances of the client. In assessing the need for, and the depth of, any suitability assessment, subject to paragraphs III.26 and III.27 below, the registered intermediary should have regard to the extent to which a decision by a client might have materially adverse consequences for that client and the extent to which the client may be placing reliance on the registered intermediary, particularly, for example, where detailed advice is being given.
- III.26 At a minimum, a registered intermediary should conduct "suitability assessment" (set out in III.27 below) under the following circumstances:
- (a) extending an invitation or inducement to a specific client¹ (being a self-employed person, an employee or a personal account holder) that involves the choice of a particular constituent fund; or
 - (b) giving regulated advice to a specific client (being a self-employed person, an employee or a personal account holder) that involves the choice of a particular constituent fund.

¹ The term "specific client" is used to denote that the invitation/inducement/advice is extended/given specifically to that particular client. This is to distinguish the situation where the invitation/inducement/advice is extended/given in a group setting (e.g. in a seminar) where the invitation/inducement/advice is not directed to a specific person.

Examples of an invitation, inducement or advice that involves the choice of a particular constituent fund includes an invitation/inducement/advice to:

- *join a particular registered scheme and invest in a particular constituent fund within that registered scheme;*
- *transfer accrued benefits from one registered scheme to another registered scheme and invest in a particular constituent fund within that registered scheme;*
- *invest future contributions (mandatory or voluntary contributions) in a particular constituent fund; or*
- *switch accrued benefits from one constituent fund to another within a registered scheme.*

- III.27 When conducting suitability assessment connected with the choice of a particular constituent fund, a registered intermediary should:
- (a) seek information about and make an assessment of the client's **personal profile**, such as the client's existing MPF portfolio (if any), age, intended retirement age, financial situation, investment objective, investment knowledge, investment experience, risk tolerance, the level of risk the client is prepared to accept, and how various investment risks may impact on the client's personal circumstances;
 - (b) **match** the client's personal profile with the risk profiles of the constituent funds to select a constituent fund/constituent funds suitable for the client; and
 - (c) explain to the client why a particular constituent fund/constituent funds are suitable for the client.
- III.28 The registered intermediary should provide the client with a copy of a document containing the personal profile and the explanations given and obtain the client's signature on the document to confirm the client's agreement on the accuracy of the information thereon. A copy of the so signed document should be provided to the client and another to be kept by the principal intermediary for a minimum period of seven years.

Lack of Necessary Information

- III.29 In exceptional cases, a registered intermediary might not be able to obtain necessary information from the client to assess the client's personal profile in order to complete a necessary suitability assessment. In such circumstances, it should explain to the client that it is not able to make a proper assessment of the client's personal profile. The registered intermediary should not invite or induce the client to consider a particular constituent fund and should not provide any regulated advice to the client except where the registered intermediary has been engaged by the client to provide regulated advice.
- III.30 If a registered intermediary is approached by a client to provide regulated advice but the client does not fully disclose his personal circumstances, the registered intermediary may still make an assessment of the client's personal profile. However, the registered intermediary should explain to the client that the advice

given is limited by the lack of information and the implication of the limitation on the client's material decision. The registered intermediary should also explain to the client the assumptions made in relation to the advice given.

- III.31 The registered intermediary should document the explanations provided as mentioned in III.30 and obtain the client's signature on the document to indicate the client's acknowledgement of all of the matters mentioned in III.30 (i.e. the fact that the client approaches the registered intermediary to provide regulated advice but the client does not fully disclose his personal circumstances and the explanations provided to the client). A copy of this so signed document should be provided to the client and another to be kept by the principal intermediary for a minimum period of seven years.
- III.32 The conversation between the registered intermediary and the client should be audio recorded (if audio recording system is available) to provide an audit trail. If the conversation is not audio recorded, then post-advice control should be implemented within seven working days, i.e. by having an authorized person of the principal intermediary (not the subsidiary intermediary who conducted the regulated activity) to call the client to reiterate that the advice was given on the basis of lack of information and the implication of the limitation on the client's material decision. The conversation of the post-advice call should be audio recorded. If the client cannot be contacted, the caller should document the attempts made to contact the client. The audio/written record should be kept by the principal intermediary for a minimum period of seven years.

Risk Mismatch

- III.33 In exceptional cases where a client insists on choosing to invest his contribution in, or transfer his accrued benefits to, a constituent fund which does not match his personal profile as assessed by the registered intermediary, the intermediary should:
- (a) advise the client that there is a mismatch between the constituent fund choice and the client's personal profile;
 - (b) explain to the client the risk of the fund selection and that the constituent fund may not be suitable for the client (illustrating this by way of fund features);
 - (c) document the following:
 - (i) the mismatch between the constituent fund choice and the client's personal profile;
 - (ii) the explanations given to the client;
 - (iii) that the constituent fund is the client's own choice; and
 - (iv) the reasons given by the client in respect of that choice;
 - (d) ask the client to acknowledge the content of the document by signing the document; and
 - (e) give a copy of the signed document as mentioned in (c) and (d) to the client and another copy to the principal intermediary to be kept for a minimum period of seven years.

III.34 The conversation regarding the registered scheme sales process and the constituent fund selection process (including but not limited to the arrangements mentioned in III.33) between the registered intermediary and the client should be audio recorded (if audio recording system is available) to provide an audit trail. If the processes are not audio-recorded, then post-sale control should be implemented within seven working days, i.e. by having an authorized person of the principal intermediary (not the subsidiary intermediary who conducted the regulated activity) to call the client to verify, where appropriate, the registered scheme sales process, the constituent fund selection process, the client's fund choice and confirm the client's understanding of the fund choice. The conversation of the post-sale call should be audio recorded. If the client cannot be contacted, the caller should document the attempts made to contact the client. A copy of the record should be kept by the principal intermediary for a minimum period of seven years.

DISCLOSURE OF NECESSARY INFORMATION TO THE CLIENT

Section 34ZL(1)(e)

When carrying on a regulated activity, a principal intermediary or a subsidiary intermediary attached to a principal intermediary must make such disclosure of information to the client as is necessary for the client to be sufficiently informed for the purpose of making any material decision.

Clear, Accurate and Relevant Information

III.35 A registered intermediary should provide its client with information that is clear, accurate and relevant to the material decision being made.

Information about the Principal Intermediary

III.36 A registered intermediary should provide its client with adequate information about the principal intermediary including:

- (a) the name, principal place of business and nature of business of the principal intermediary and any relevant registration conditions which apply to its MPF business activities;
- (b) the capacity in which the principal intermediary is acting and in case it is distributing a registered scheme for a sponsor, promoter or trustee, a statement to this effect; and
- (c) the affiliation of the principal intermediary, if any, with the sponsor, promoter, approved trustee and any other party connected with the operation or distribution of the registered scheme concerned.

III.37 A subsidiary intermediary, who acts for more than one principal intermediary, should make clear to his client which one of the principal intermediaries he is acting on behalf of on that occasion.

Information about the Subsidiary Intermediary

- III.38 A subsidiary intermediary, in the initial contact with a client, should:
- (a) identify himself with his business card bearing the name used in his registration as a registered intermediary and his MPF registration number;
 - (b) disclose:
 - (i) the capacity in which he is acting and in case he is distributing a registered scheme for a sponsor, promoter or trustee, a statement to this effect;
 - (ii) his affiliation, if any, with the sponsor, promoter, approved trustee and any other party connected with the operation or distribution of the registered scheme concerned; and
 - (iii) what types of regulated activities (whether making invitation, inducement or giving regulated advice) he is conducting/will conduct and whether such regulated activities are subject to any registration conditions and if so, what are these conditions.

Information about Monetary and Non-monetary Benefits

- III.39 A subsidiary intermediary should also provide the client with a statement (at the time of the invitation, inducement or advice) on whether he will (either directly or indirectly) charge the client any direct fees for the services to be provided or whether he will be compensated in some other manner (such as commission or salary bonus) in respect of the invitation, inducement or advice either directly or indirectly. The statement should also set out whether the benefits receivable would be different depending on the choice of the registered scheme(s) or constituent fund(s) made by the client. The statement can be a generic disclosure of the nature of monetary and non-monetary benefits receivable by the subsidiary intermediary.
- III.40 The disclosure in III.36 to III.39 should be made in a document in hard copy or electronic form, in Chinese or English (according to the preference of the client) or both languages. Should circumstances render it not reasonably practicable to provide the disclosure in writing at the time of the invitation, inducement or advice, the subsidiary intermediary should make the disclosure verbally at the time of the invitation, inducement or advice, to be followed by the document as soon as reasonably practicable thereafter.

Information about Scheme/Fund

- III.41 A registered intermediary should provide to its client information materials that would assist the client in understanding the promoted registered scheme or constituent funds relevant to a material decision being made. At a minimum, the registered intermediary should provide a copy of the latest version of the offering document of the registered scheme to the client to assist him in making material decisions.

- III.42 In providing the information materials, a registered intermediary should explain to the client:
- (a) the key features of the registered scheme such as the level of fees and charges, the fund choices available in the scheme and the range of services offered by the approved trustee and its service providers;
 - (b) the key features of the constituent funds within the relevant registered scheme such as investment policies, types and levels of risk, fees and charges and relevant terms and conditions; and
 - (c) in the case of a registered scheme with a guaranteed fund, the guarantee features, the guarantor, the risks associated with the failure of a guarantor, the period of the guarantee (if it is only for a limited period), the cost of the guarantee, the dilution of performance due to the guarantee structure in place as well as the material conditions that may affect the scope or validity of the guarantee,
- to enable the client to be sufficiently informed for the purpose of making material decisions.
- III.43 A registered intermediary, when inviting/inducing/advising a client to join or transfer to a registered scheme, should inform the client that if no constituent fund is selected, the contribution will be invested in the default fund of the registered scheme. The key features of the default fund, such as its investment policy, the type and level of risk, fees and charges and relevant terms and conditions, should be explained to the client.

Information about Investment Performance

- III.44 A registered intermediary should not invite/induce/advise a client to make a registered scheme/constituent fund selection based primarily on past investment performance. If discussing past performance with the client, it should explain to the client that the mere fact that a constituent fund performed better than another constituent fund, whether of the same type or not, over any given period in the past, is not necessarily a reliable indicator that it will do so over any period into the future.
- III.45 Where a comparison is made, the registered intermediary should limit the comparison to the following:
- (a) comparing a constituent fund's performance with the performance of constituent funds of the same type and over a long term period (at least five years);
 - (b) making "like with like" comparisons in terms of risk levels, investment strategies and objectives; and
 - (c) comparing the net performance of one constituent fund with the net performance (and not the gross performance) of another constituent fund.

Note: Information about a constituent fund's past performance is set out in the Fund Fact Sheet of a registered scheme, which is available on the website of the approved trustees and can be downloaded from the Fee Comparative Platform on the MPFA website.

- III.46 Whilst it may be appropriate to make reference to general market outlook, a registered intermediary should avoid predicting, projecting or forecasting a constituent fund's future or likely performance.

Information about Transfer of Schemes/Funds

- III.47 A registered intermediary, in inviting, inducing or advising a client on transfers under employee choice arrangement, should provide a copy of the "Guide to Transfer Benefits under Employee Choice Arrangement" to the client. The content of the Guide should be duly explained to the client.

Note: The "Guide to Transfer Benefits under Employee Choice Arrangement" is available on the MPFA website. A registered intermediary may refer to the "Flow Chart of Benefits Transfer Process" in that Guide in explaining to the client the processes involved in transfers and the timeframe for processing transfers.

- III.48 A registered intermediary, if in the process of inviting, inducing or advising a client to consider transferring to another registered scheme or investing in another constituent fund, claims that the promoted registered scheme/constituent fund is to be preferred over the scheme/fund participated in/invested by the client or that the promoted scheme/fund is more suitable to the client's personal profile, should explain:

- (a) the differences between the promoted scheme/fund and the scheme/fund participated in/invested by its client; and
- (b) the benefits, or potential benefits, of conducting the transfer.

- III.49 Before advising a client to make a transfer, a registered intermediary should conduct product due diligence by looking up the relevant product brochures, fund fact sheets, approved trustees' websites, and the MPFA website, etc. to obtain information about the registered schemes participated in or constituent funds invested by the client.

- III.50 A registered intermediary should explain the timeframe involved in the transfer process and that as the accrued benefits are first cashed out by the original trustee and then transferred to the new trustee for re-investment, there will be a time lag during which the accrued benefits will not be invested.

Information about Transfers/Switches into or out of Guaranteed Funds

- III.51 A registered intermediary, when inviting, inducing or advising a client in relation to a transfer into a guaranteed fund, should:
- (a) explain the terms and conditions of the guaranteed fund with a particular focus on the qualifying conditions;
 - (b) discuss with the client as to the likelihood of him meeting the qualifying conditions of the guaranteed fund; and

- (c) explain the greater counterparty or credit risks associated with guarantees based on an insurance policy as compared to those based on a unit trust.
- III.52 A registered intermediary, when inviting, inducing or advising a client in relation to a transfer that would result in a transfer out of a guaranteed fund, should make sure the client fully understands whether qualifying conditions have been met and the consequences and implications if those conditions have not been met before transferring out.
- III.53 If it is the client's wish to transfer out of the guaranteed fund, the registered intermediary should:
- (a) ensure that the client has been informed and is aware of the terms and conditions of the guaranteed fund, in particular, any possible loss of guarantee arising from the premature termination of the guaranteed fund; and
 - (b) document the explanation on the consequences and implications and the client's understanding thereof and that he has been informed and is aware of the consequences and implications of the premature termination of the guaranteed fund. The registered intermediary should obtain the client's signature on the relevant document to acknowledge the above. A copy of the document should be given to the client and a copy be kept by the principal intermediary for a minimum period of seven years.

Information about Fees and Charges

- III.54 A registered intermediary should provide information on fees and charges of registered schemes and constituent funds to the client. Specifically, in comparing fees and charges of constituent funds between schemes, a registered intermediary should:
- (a) highlight the impact of fees and charges on potential returns, illustrating with examples; and
 - (b) compare the fees and charges of similar fund types only.

Note: Illustrations on the impact of fees and charges on potential returns can be found in "How to Make MPF Investment Decisions" which is available on the MPFA website. Information relating to fees and charges is available on the Fee Comparative Platform on the MPFA website. A registered intermediary can make use of the Fee Comparative Platform to search, sort and compare the fund expense ratio of any number of funds.

- III.55 When highlighting information about fees and charges, a registered intermediary should refer the client to other key disclosure information like the fee table, the fund expense ratio and the ongoing cost illustration of the constituent funds being compared.

Note: Explanations of the fee table, fund expense ratio and ongoing cost illustration can be found in the Code on Disclosure for MPF Investment Funds which is available on the MPFA website.

Documentation of Advice

- III.56 Where regulated advice has been given to a client, the registered intermediary should document the advice given, including the rationale underlying the advice and obtain the client's signature on the document to acknowledge the above. A copy of the document should be provided to the client and another copy to be kept by the principal intermediary for a minimum period of seven years.

DISCLOSURE OF CONFLICT OF INTEREST

Section 34ZL(1)(f)

When carrying on a regulated activity, a principal intermediary or a subsidiary intermediary attached to a principal intermediary must use best endeavours to avoid a conflict between the interests of the principal or subsidiary intermediary and the interests of the client and, in the case of such a conflict, must disclose the conflict to the client.

Conflict of Interest

- III.57 A registered intermediary should avoid any conflict of interest and if it has a material interest which gives rise to an actual or potential conflict of interest, should disclose that material interest or conflict to the client and take all reasonable steps to ensure fair treatment of the client. An example of such a conflict of interests is where the registered intermediary receives a benefit (monetary or non-monetary) upon completing a sale or upon giving regulated advice (see III.39).

PROMPT AND PROPER ACCOUNTING FOR CLIENT ASSETS

Section 34ZL(1)(g)

When carrying on a regulated activity, a principal intermediary or a subsidiary intermediary attached to a principal intermediary must ensure that client assets are promptly and properly accounted for.

Segregation of Client Assets

- III.58 A registered intermediary is generally not expected to handle client assets. In the event that a registered intermediary is asked by its client to forward a cheque payment to the trustee of a registered scheme, it should do so promptly.
- III.59 A registered intermediary should at all times keep client assets separate from its own assets and should not use client assets for any purpose other than for the purposes of the client.

Cash/Cheque Payment

III.60 A registered intermediary must not receive cash payments and must ensure that all client payments are made in the form of crossed cheques made payable to the trustee of the registered scheme only.

PRINCIPAL INTERMEDIARY CONTROLS AND PROCEDURES FOR COMPLIANCE

Section 34ZL(2)

A principal intermediary:

- (a) must establish and maintain proper controls and procedures for securing compliance by the principal intermediary, and by each subsidiary intermediary attached to the principal intermediary, with this Part;**
- (b) must use the principal intermediary's best endeavours to secure observance by subsidiary intermediaries attached to the principal intermediary of the controls and procedures established under paragraph (a);**
- (c) must ensure that the responsible officer has sufficient authority within the principal intermediary for carrying out specified responsibilities in relation to the principal intermediary; and**
- (d) must provide the responsible officer with sufficient resources and support for carrying out specified responsibilities in relation to the principal intermediary.**

In this section, a reference to a client of a principal intermediary, or a subsidiary intermediary attached to a principal intermediary, when carrying on a regulated activity, is a reference to:

- (a) a person whom the principal or subsidiary intermediary invites or induces, or attempts to invite or induce, to make a material decision; or**
- (b) a person to whom the principal or subsidiary intermediary gives regulated advice.**

Minimum Procedures and Controls to Ensure Compliance

III.61 At a minimum, a principal intermediary should have in place a rigorous framework that can:

- (a) identify those matters that require compliance by itself and its subsidiary intermediaries; and**
- (b) put in place controls, procedures and other arrangements that are designed/likely to ensure that compliance.**

III.62 The controls and procedures that are appropriate for any given principal intermediary would depend on a range of factors including the scale of its operations, the number of attached subsidiary intermediaries and the range and type of regulated activities undertaken. At a minimum, however, a principal intermediary should:

- (a) have adequate resources and satisfactory internal control procedures at all times for compliance with relevant legal and regulatory requirements by itself and by its subsidiary intermediaries;
- (b) supervise adequately and monitor subsidiary intermediaries' compliance with any manuals, guidelines and checklists for the conduct of the regulated activities;
- (c) have in place arrangements, procedures and controls to ensure that only registered intermediaries are used in undertaking regulated activities on its behalf;
- (d) have in place arrangements, procedures and controls to ensure that it maintains an up-to-date list of subsidiary intermediaries acting on its behalf and notify the MPFA as soon as practicable if a subsidiary intermediary ceases to act on its behalf;
- (e) have in place arrangements, procedures and controls to ensure that the MPFA is notified of changes relating to the registered intermediaries in accordance with sections 34ZE and 34ZI of the MPFSO;
- (f) have in place arrangements, procedures and controls to ensure that it notifies the MPFA if it becomes aware of any circumstances where the responsible officer no longer satisfies the requirements of section 34W(3)(b);
- (g) have in place arrangements, procedures and controls to ensure that the offering documents and marketing materials used by itself or its subsidiary intermediaries to promote any registered schemes/constituent funds have been authorized by the SFC or are otherwise exempted from authorization;
- (h) have in place procedures and controls for handling client complaints;
- (i) have in place arrangements, procedures and controls that require a subsidiary intermediary to report to the principal intermediary all complaints against himself;
- (j) have in place arrangements to assess whether its subsidiary intermediaries possess the relevant qualification for giving regulated advice;
- (k) provide sufficient training to its subsidiary intermediaries to ensure that they keep abreast of developments in the MPF system and upgrade their professional knowledge on a continuing basis, and maintain a record of training undertaken by its subsidiary intermediaries. Such records and the documentary evidence sufficient to support their attendance or completion of the continuing training activities mentioned in (l) such as certificates of attendance issued by the course providers and examination results should be kept for a minimum period of three years;
- (l) have in place procedures and controls to ensure their subsidiary intermediaries comply with the continuing training requirement specified by the MPFA;

- (m) where telephone marketing campaigns are to be undertaken, provide compliance guidelines before embarking on such campaigns and maintain a call log for monitoring purposes;
- (n) have in place risk matching procedures and controls for determining whether a constituent fund matches a client's personal profile;
- (o) have in place procedures and controls to ensure that all audio and written records required under the Guidelines (except those required under (k)) are kept for a minimum period of seven years;
- (p) have in place procedures and controls to ensure that its subsidiary intermediaries are aware of the requirements relating to disclosure of conflict of interest and that if any of its subsidiary intermediaries acts for more than one principal intermediary, the subsidiary intermediary should make clear to the client for which one of the principal intermediaries he is acting;
- (q) have in place procedures and controls to ensure that client assets are promptly and properly accounted for. To minimize the scope for any fraud or defalcation, a principal intermediary should have in place arrangements to prevent a subsidiary intermediary from receiving cash payments;
- (r) have in place arrangements, procedures and controls to identify any failure of the principal intermediary or its subsidiary intermediaries in compliance with the Guidelines, the MPFSO or any subsidiary legislation under the MPFSO and other guidelines relating to regulated activities and to report the failure to the frontline regulator and also the industry regulator (where the industry regulator is not the frontline regulator) and the MPFA within 14 working days of the principal intermediary identifying the failure/non-compliance;
- (s) have in place procedures and controls to ensure annual returns are lodged by itself and its subsidiary intermediaries with the MPFA within the stipulated timeframe;
- (t) have in place arrangements, procedures and controls to ensure that sufficient information is recorded and retained about its business relating to the conduct of regulated activities concerning registered schemes and their constituent funds. Such records should be kept for a minimum period of seven years;
- (u) provide senior management (including the responsible officer) with management information system reports and access to all relevant information about its business on a timely basis. The reports and relevant information must also be available to the MPFA and/or the frontline regulators upon request; and
- (v) have in place compliance review and internal audit procedures as an integral part of the control procedures to regularly review and assess the effectiveness and efficiency of the principal intermediary's control and procedures.

Complaint Handling

III.63 One of the key aspects of proper controls and procedures relates to having in place adequate procedures for dealing with complaints from a client. The procedures that should be put in place by a principal intermediary depend on the scale and nature of

the regulated activities undertaken. At a minimum, a principal intermediary should maintain procedures and controls to ensure:

- (a) complaint from a client is handled in a timely and appropriate manner and that remedial action is taken as soon as possible;
- (b) steps are taken to investigate and respond promptly to the complaint;
- (c) if the complaint is not satisfactorily resolved, that steps are taken to investigate and handle the complaint by the senior officer of the subsidiary intermediary, or by the principal intermediary's designated compliance officer in a timely and reasonable manner;
- (d) if a complaint is not resolved promptly to the client's satisfaction, the client is advised of any further steps which may be available to the client under the regulatory system;
- (e) the MPFA and the frontline regulator as well as its respective industry regulator (if the industry regulator is not the frontline regulator) are informed immediately of any complaints of a criminal nature (such as misappropriation of client funds, forgery of client documents) or other serious nature (such as unauthorized transfer of client's accrued benefits);
- (f) all complaints are fully documented (including resolution if any) and that a summary of the complaint cases be provided to the MPFA on a monthly basis; and
- (g) a register of complaints containing information including but not limited to the name of complainant, the target of the complaint, the date of the lodgment of the complaint, the nature of the complaint and the date the complaint is remedied/addressed is maintained.

ROLE OF RESPONSIBLE OFFICER

Section 34ZM

A responsible officer of a principal intermediary must use his or her best endeavours to carry out specified responsibilities in relation to the principal intermediary.

Note: Under section 34I(3) of the MPFSO, a reference to specified responsibilities, in relation to a principal intermediary, is a reference to:

- (a) *the responsibility to ensure that the principal intermediary has established and maintains proper controls and procedures for securing compliance by the principal intermediary, and by each subsidiary intermediary attached to the principal intermediary, with this Part; and*
- (b) *the responsibility to ensure that the principal intermediary uses the intermediary's best endeavours to secure observance by subsidiary intermediaries attached to the principal intermediary of the controls and procedures mentioned in paragraph (a).*

Responsible Officer

III.64 One of the specified responsibilities of a responsible officer is to ensure that the principal intermediary has established and maintains proper controls and procedures for securing compliance by the principal intermediary and its subsidiary intermediaries with the requirements of Part IVA of the MPFSO. Items III.62 and III.63 are relevant to the question of what those proper controls and procedures are.

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29 March 2012