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財經事務及庫務局
財經事務科
香港金鐘添美道二號
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CB(1)1803/11-12(02)

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本函檔號 OUR REF.: 2529 1663

來函檔號 YOUR REF.:

8 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 23 April 2012

The response of the Administration and the Mandatory Provident Fund Schemes Authority (MPFA) to items 1-3 and 5 of the list of follow-up actions arising from the discussion at the meeting on 23 April 2012 is set out at the Annex. MPFA has responded to item 4 earlier on (please refer to LC Paper No. CB(1)1697/11-12(03)).

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 23 April 2012**

Item 1 – Target time to provide written information on the outcome of a complaint case

The target time to inform the complainant in writing of the outcome is within 10 working days of the conclusion of the investigation or, where applicable, the final disciplinary action is available.

Items 2 and 3 – Information on the relevant legislative provisions on the powers to require restitution by the Financial Services Authority (“FSA”) of the United Kingdom (“UK”) and the case which FSA imposed financial penalty on a bank for mis-selling products to elderly customers

2. In response to a Member’s request, we provide at **Appendix**¹ the relevant section of the UK Financial Services and Markets Act 2000 (“FSMA”) on FSA’s power to require restitution.

3. Regarding the case involving the imposition of financial penalty by FSA, MPFA is checking with FSA the specific provision in FSMA invoked in the said case. The information will be provided to Bills Committee once available.

Item 5 – Chinese drafting of the proposed section 34ZZF(1)(b)

4. We will propose a Committee Stage Amendment to improve the readability of the Chinese text of the proposed section 34ZZF(1)(b) as follows (in italic) –

“(1) 裁判官如根據第(2)款指明的人經宣誓而作的告發，信納有合理理由懷疑在該項告發所指明的處所內，有或相當可能有任何紀錄或文件是可根據第34P、34ZR 或34ZU 條被要

¹ The whole Act can be accessed at <http://www.legislation.gov.uk/ukpga/2000/8/contents>.

求交出的，則該裁判官可發出手令，授權該手令所列明的人及為協助執行該手令而需要的其他人—

- (a) ...
- (b) 搜尋、檢取和移走 下述紀錄或文件:該手令所列明的人有合理因由相信是根據第34P、34ZR或34ZU條(視屬何情況而定)可被要求交出的 ~~任何~~紀錄或文件。”

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



Financial Services and Markets Act 2000

2000 CHAPTER 8

PART XXV

INJUNCTIONS AND RESTITUTION

Restitution required by Authority

384 Power of Authority to require restitution.

- (1) The Authority may exercise the power in subsection (5) if it is satisfied that an authorised person (“the person concerned”) has contravened a relevant requirement, or been knowingly concerned in the contravention of such a requirement, and—
 - (a) that profits have accrued to him as a result of the contravention; or
 - (b) that one or more persons have suffered loss or been otherwise adversely affected as a result of the contravention.
- (2) The Authority may exercise the power in subsection (5) if it is satisfied that a person (“the person concerned”)—
 - (a) has engaged in market abuse, or
 - (b) by taking or refraining from taking any action has required or encouraged another person or persons to engage in behaviour which, if engaged in by the person concerned, would amount to market abuse,and the condition mentioned in subsection (3) is fulfilled,
- (3) The condition is—
 - (a) that profits have accrued to the person concerned as a result of the market abuse; or
 - (b) that one or more persons have suffered loss or been otherwise adversely affected as a result of the market abuse.
- (4) But the Authority may not exercise that power as a result of subsection (2) if, having considered any representations made to it in response to a warning notice, there are reasonable grounds for it to be satisfied that—

Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Financial Services and Markets Act 2000. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)

- (a) the person concerned believed, on reasonable grounds, that his behaviour did not fall within paragraph (a) or (b) of that subsection; or
 - (b) he took all reasonable precautions and exercised all due diligence to avoid behaving in a way which fell within paragraph (a) or (b) of that subsection.
- (5) The power referred to in subsections (1) and (2) is a power to require the person concerned, in accordance with such arrangements as the Authority considers appropriate, to pay to the appropriate person or distribute among the appropriate persons such amount as appears to the Authority to be just having regard—
- (a) in a case within paragraph (a) of subsection (1) or (3), to the profits appearing to the Authority to have accrued;
 - (b) in a case within paragraph (b) of subsection (1) or (3), to the extent of the loss or other adverse effect;
 - (c) in a case within paragraphs (a) and (b) of subsection (1) or (3), to the profits appearing to the Authority to have accrued and to the extent of the loss or other adverse effect.
- (6) “Appropriate person” means a person appearing to the Authority to be someone—
- (a) to whom the profits mentioned in paragraph (a) of subsection (1) or (3) are attributable; or
 - (b) who has suffered the loss or adverse effect mentioned in paragraph (b) of subsection (1) or (3).
- (7) “Relevant requirement” means—
- (a) a requirement imposed by or under this Act [^{F1}or by any directly applicable Community regulation [^{F2}or decision] made under the markets in financial instruments directive [^{F3}or the UCITS directive]]; and
 - (b) a requirement which is imposed by or under any other Act and whose contravention constitutes an offence in relation to which this Act confers power to prosecute on the Authority.
- (8) In the application of subsection (7) to Scotland, in paragraph (b) for “in relation to which this Act confers power to prosecute on the Authority” substitute “mentioned in paragraph (a) or (b) of section 402(1)”.

Annotations:

Amendments (Textual)

- F1** Words in s. 384(7)(a) inserted (1.4.2007 for certain purposes and 1.11.2007 otherwise) by The Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2007 (S.I. 2007/126), regs. 1(2), 3(5), **Sch. 5 para. 15**
- F2** Words in s. 384(7)(a) definition of “relevant requirement” inserted (1.7.2011) by The Undertakings for Collective Investment in Transferable Securities Regulations 2011 (S.I. 2011/1613), **reg. 2(29)(a)**
- F3** Words in s. 384(7)(a) definition of “relevant requirement” inserted (1.7.2011) by The Undertakings for Collective Investment in Transferable Securities Regulations 2011 (S.I. 2011/1613), **reg. 2(29)(b)**

Modifications etc. (not altering text)

- C1** S. 384 modified (18.7.2002 for certain purposes and 21.8.2002 otherwise) by The Electronic Commerce Directive (Financial Services and Markets) Regulations 2002 (S.I. 2002/1775), regs. 1, 12(1)
- C2** S. 384(5) extended (with modifications) (1.12.2001) by S.I. 2001/2657, arts. 1(1), 3 (which was revoked (8.10.2001) by S.I. 2001/3083, arts. 1(2), 23; S.I. 2001/3538, art. 2(1)

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S. 384(5) extended (with modifications) (1.12.2001) by S.I. 2001/3083, arts. 1(2), 3; S.I. 2001/3538, art. 2(1)

Changes to legislation:

There are outstanding changes not yet made by the legislation.gov.uk editorial team to Financial Services and Markets Act 2000. Any changes that have already been made by the team appear in the content and are referenced with annotations.

Changes and effects yet to be applied to the whole Act, associated Parts and Chapters:

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 427A(3) by 2002 c. 40 s. 248 Sch. 17 para. 59 (Amendment not carried through. The Financial Services and Markets Act 2000 does not contain a section 427A.)