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

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Circular Letter: SU/CCI/2018/002

To: All Principal Intermediaries

Dear Responsible Officers,

Conduct of Registered Intermediaries (RIs)

Under the statutory regulatory regime, RIs are required to meet the standards of conduct as set out in the conduct requirements under section 34ZL of the Mandatory Provident Fund Schemes Ordinance (MPFSO) and the Guidelines on Conduct Requirements for Registered Intermediaries (Conduct Guidelines). RIs should be mindful of the conduct requirements when servicing MPF employers (ERs)/scheme members in relation to MPF schemes or funds.

1. Recurring instances of improper acts and undesirable practices

It has come to the attention of the Mandatory Provident Fund Schemes Authority (MPFA) that some RIs might not be conversant with the procedural steps and conduct requirements when advising or offering services to scheme members making MPF scheme/fund transfers or selecting MPF schemes/funds. The MPFA would like to draw the attention of RIs to the following types of improper acts and undesirable practices observed on the part of subsidiary intermediaries (SIs) (case scenarios illustrating the issues are further set out at Annex):

(a) failing to use the correct authorization form (Form PA-AP (PI)) for personal account enquiries by SIs that should be submitted via principal intermediaries (PIs);

(b) handling of MPF forms without client's knowledge and authorization, such as:

    (i) imitating or reproducing a client's signature on the forms (purporting to be the client's signature);
    (ii) using client information (previously obtained in the course of the SI's business activities with the client) to complete forms for the purpose of executing a new transaction;
    (iii) altering the information in forms which have already been signed by a client; and
    (iv) impersonating a client and contacting approved trustees for the purpose of obtaining the client's MPF account information;

(c) failing to have adequate product knowledge including knowledge of the relevant MPF scheme/fund, the choice of appropriate forms and procedures (such as the Employee Choice Arrangement (ECA)) and failing to provide clear and accurate information to aid a client's decision making;

(d) requesting or allowing a client to sign forms that are incomplete or blank;

(e) requesting or allowing a client to sign forms without clearly explaining the contents and purposes;

(f) failing to provide copies of the signed forms to the client as soon as practicable;

(g) failing to execute a client's instructions promptly and accurately or to alert the client of any delay in execution as soon as possible; and

(h) using or providing to a client marketing materials that have not been approved by PI.

RIs are reminded that the above-mentioned acts and practices may, depending on specific facts and circumstances, constitute misconduct which can give rise to disciplinary proceedings and/or criminal liability under the MPFSO or other laws such as the Crimes Ordinance (Cap. 200). If the MPFA becomes aware of any criminal offence that might be committed by an RI, the MPFA may report the matter to the relevant enforcement agency such as the Police.

The MPFA may also refer cases of improper acts and undesirable practices to RIs' respective frontline regulators (the Insurance Authority, Hong Kong Monetary Authority and Securities and Futures Commission) to follow up and consider appropriate disciplinary actions against the RIs under their respective regimes including examining their continued status as fit and proper persons.

PIs should ensure that proper controls and procedures are in place for securing SIs' compliance of the conduct requirements and should use its best endeavours to secure observance by SIs of such controls and procedures[1]. Internal control failures may cause serious impact on the operation of PIs and conduct of its SIs, and may give rise to disciplinary actions against the PIs and their responsible officers.

2. Avoidance of handling client assets

RIs should avoid handling client assets, such as handling cheques for mandatory contribution payments from ER/self-employed person (SEP) clients to approved trustees. Such practice often arises from the mistaken belief of ERs and SEPs that RIs are acting as agents for approved trustees in receiving contributions. PIs should have robust controls in place to ensure that their SIs will not undermine or otherwise jeopardize an approved trustee's reporting of late/default contributions or subject ERs/SEPs to unnecessary risks of late/default contributions.

3. Recent issues relating to Occupational Retirement Schemes

The MPFA has recently received enquiries from the public regarding some persons/firms, claiming to be investment companies and/or financial advisors marketing Occupational Retirement Schemes (ORSO schemes). ORSO schemes are set up by ERs solely for providing retirement benefits to their own employees and should not be marketed to the public for investment or enrolment. In this regard, an alert message has been posted on the MPFA's website. PIs must ensure that their SIs do not participate in any marketing of ORSO schemes to the public.

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[1] According to section 34ZL(3) of the MPFSO, a PI (a) must establish and maintain proper controls and procedures for securing compliance by the PI, and by each SI attached to the PI, with Part 4A of the MPFSO, and (b) must use the PI's best endeavours to secure observance by SIs attached to the PI of the controls and procedures established under paragraph (a).

4. Enforcement Policy

In view that the conduct requirements have been promulgated since 2012, RIs should have sufficient experience and knowledge about the operation of MPF schemes/funds and the related conduct requirements. To ensure that scheme members' interests are safeguarded, the MPFA considers it necessary to step up sanctions against failures to comply with the conduct requirements under the MPFSO and the Conduct Guidelines, including but not limited to the internal control failures of the PIs and misconduct of the SIs. The MPFA will not hesitate to invoke revocation or suspension of registration or disqualification from registration as RIs, and to impose pecuniary penalties for any breaches of the MPFSO and the Conduct Guidelines where appropriate.

PIs are required to ensure that SIs are aware of the consequences of failing to conduct MPF business and activities in a compliant manner. PIs are also required to establish and maintain proper controls and procedures for securing compliance by PIs themselves and also their SIs.

Should you have any questions about the contents of this letter, please contact Ms Clio Wong on 2292 1369.

Yours sincerely,

Doris Tin

Doris Tin
Senior Manager
Enforcement Division

<u>Encl</u>

c.c. Mr Kevin Sham, Senior Manager, Banking Conduct Department, Hong Kong Monetary Authority
Ms Stephentica Lee, Associate Director, Licensing, Intermediaries, Securities and Futures Commission
Ms Shirley To, Senior Manager, Market Conduct Division, Insurance Authority

Case scenarios of common improper acts and undesirable practices of SIs during the course of sales and marketing of MPF products and services

Case Scenario 1 - Performing personal account checking with the MPFA

When SIs approach MPF scheme members, the SIs normally will first ascertain the numbers of the MPF accounts held by the members and with which approved trustees. The SIs might offer assistance to the clients to make personal account enquiries with the MPFA. However, if the SIs fail to use the correct Personal Account Information Enquiry Authorization Form (Principal Intermediary) (Form PA-AP (PI)) for personal account enquiries which should be submitted via PIs, such failure not only bypasses the internal controls of the respective PIs on the personal account enquiries process[1] but in using the incorrect authorization form (Form PA-AP), the SIs might be making a false or misleading statement to the MPFA as this form contains a declaration that the authorized person is not an MPF subsidiary intermediary.

Case Scenario 2 - After obtaining the personal account checking results

The MPFA's Register on Personal Accounts only contains the number of personal accounts of members and the names of the relevant approved trustees. After obtaining such information from the MPFA, SIs might assist the clients to conduct personal account consolidations or transfers of MPF benefits under the ECA. SIs might offer to handle all steps for the clients and call the relevant approved trustees, pretending to be the clients for the purpose of obtaining the clients' MPF account information such as the account numbers and account balances. Such conduct amounts to impersonation and is a dishonest act which will not be tolerated and the MPFA will take appropriate actions against the relevant SIs.

Case Scenario 3 - Selling MPF products or services to clients

When SIs conduct marketing activities on MPF products or services, the SIs might use or show to their clients marketing materials that have not been approved by their PIs. This bypasses the internal controls of the PIs to ensure that information provided to potential and existing scheme members is clear and accurate.

[1] The use of Form PA-AP (PI) by RIs has been required since 1 November 2015. The details of procedures to be followed by RIs in personal account enquiries are set out in Circulars dated 23 September 2015 (SU/CCI/2015/003) and 9 September 2016 (SU/CCI/2016/005) respectively.

In some other cases, the SIs might fail to provide clients with clear, accurate and sufficient information to assist their clients in understanding the relevant MPF schemes/funds such as the fees and charges, fund choices, levels of risk and investment policies.

Case Scenario 4 - Handling the MPF forms for the clients

(a) Signing incomplete or blank forms

When handling MPF forms, such as for account consolidation or transfer of MPF benefits for clients, the clients may not be able to provide MPF account information when filling in the forms. If SIs ask or allow clients to sign forms that are incomplete or blank, so that the SIs can fill in the missing information on the signed forms on behalf of the clients afterwards, this is not in the best interests of the clients and may give rise to disputes.

(b) Explanations not clear

Some SIs might not clearly explain the contents and purposes of the forms before asking or allowing their clients to sign them, resulting in later complaints due to the clients' misunderstanding of the relevant MPF transactions. Clear, accurate and relevant information should be provided to the clients to assist in their decision making.

(c) Delay in executing client's instructions

Some SIs might fail to execute clients' instructions promptly and accurately or alert the clients of any delay in execution in a timely manner. For example, SIs might have received signed MPF forms from clients but forgotten to submit them to their PIs or failed to inform their clients about the delay as soon as the SIs became aware of the omission.

(d) Confidentiality of client information

In some cases, SIs might fail to treat all information of the clients as confidential by mistakenly copying one client's information onto an MPF form of another client, or having lost a device such as USB which contains clients' information and transfer records.

(e) Serious and dishonest acts

In some cases, more serious and dishonest acts might be involved, such as:

(i) submitting MPF forms and executing transactions without the clients' consent and authorization;
(ii) imitating or reproducing the clients' signatures on the forms purporting to be the clients' signatures; and
(iii) using the clients' information (previously obtained in the course of the SIs' business activities with the clients) without their consent to fill in the MPF forms.

Falsifying MPF forms or processing unauthorized transactions for clients may amount to forgery or making false statements which are criminal offences.

Case Scenario 5 - After signing of MPF forms by the clients

After meeting with clients where the relevant MPF forms were signed, SIs might not provide the clients with copies of the signed forms. It is not in the best interests of the clients and may give rise to disputes.