

MANDATORY PROVIDENT FUND SCHEMES AUTHORITY

III.13 Guidelines on Requirements for Securities to be Considered as “to be Listed”

INTRODUCTION

Section 13 of Schedule 1 to the Mandatory Provident Fund Schemes (General) Regulation (“the Regulation”) specifies that the funds of a constituent fund may be applied for acquiring securities that –

- (a) are of a kind to which section 7(2)(d), 8(1), 9(1)(a) or 10 of Schedule 1 would apply if they were listed on an approved stock exchange or an approved futures exchange; and
- (b) are to be listed on an approved stock exchange or an approved futures exchange.

2. Section 1(4) of Schedule 1 to the Regulation specifies that for the purposes of that Schedule, a security is considered as to be listed on an approved stock exchange or an approved futures exchange if the requirements specified by the Authority for this purpose are complied with in relation to the security.

3. Section 6H of the Mandatory Provident Fund Schemes Ordinance (“the Ordinance”) provides that the Authority may issue guidelines for the guidance of approved trustees, service providers and other persons concerned with the Ordinance.

4. The Authority hereby issues guidelines to specify the requirements for securities to be considered as “to be listed” for the purpose of section 1(4) of Schedule 1 to the Regulation.

REQUIREMENTS FOR SECURITIES TO BE CONSIDERED AS “TO BE LISTED”

5. For the purpose of section 1(4) of Schedule 1 to the Regulation, a security is considered as “to be listed” if –

- (a) it meets the definition of “listed” under Schedule 1 to the Securities and Futures Ordinance (Cap 571) (i.e. when a recognized exchange company¹ has, on the application of the corporation which issued the security, or on the application of a holder of them, agreed to allow, subject to the requirements of that Ordinance, dealings in the security to take place on a recognized stock market², and shall continue to be so regarded during a period of suspension of dealings in the security on the recognized stock market); or
- (b) the circumstances under which the acquisition of the security takes place are part of the dual processes of issuing and listing the said security. This does not include an acquisition where the listing of the security is merely the future or speculative intention of the issuer (such as in the case of venture or private capital investments).

6. Generally, the most important factor supporting an inference that an acquisition is part of the dual processes of issuing and listing the said security would be that the documentation, upon which the decision to acquire is made, clearly indicates an intention to list the security within a timeframe consistent

¹ “Recognized exchange company” means a company recognized as an exchange company under section 19(2) of the Securities and Futures Ordinance.

² “Recognized stock market” means a stock market operated by a recognized exchange company.

with the local market practice and that an application has already been made to a stock exchange or listing authority for the listing of the security. A factor that would strongly support an inference that the acquisition is part of the dual processes of issuing and listing the security would be where the acquisition is made in circumstances where the subscription monies will in normal circumstances be fully refunded to the acquirer if the security is not listed within the period of time set out in the offering documentation.

DEFINITIONS OF TERMS

7. Except where otherwise specified in the Guidelines, the terms common to the Ordinance and the subsidiary legislation of the Ordinance carry the same meanings as defined in the Ordinance and the subsidiary legislation. References should be made to the Ordinance and the subsidiary legislation, where necessary.