

## STATEMENT OF DISCIPLINARY ACTION

### The disciplinary action

1. The Mandatory Provident Fund Schemes Authority (**MPFA**) reprimands and fines MPF principal intermediary<sup>1</sup> The Hongkong and Shanghai Banking Corporation Limited (**HSBC**) \$24 million. The MPFA also reprimands and disqualifies YIP Sze Ki (**YIP**), the former Responsible Officer (**RO**) of HSBC from being approved as an officer with specified responsibilities<sup>2</sup> in relation to a principal intermediary for 18 months.
2. The MPFA found that:
  - (a) HSBC offered referral fees to third parties (**Introducers**) for the purpose of encouraging clients to participate in, make MPF contributions to and/or transfer MPF to the HSBC Mandatory Provident Fund — SuperTrust Plus (**HSBC Scheme**); and
  - (b) HSBC did not have adequate controls and procedures for securing compliance by HSBC and by each of its subsidiary intermediary<sup>3</sup> with Part 4A of the MPFSO, including to ensure that only registered intermediaries are used in undertaking regulated activities on behalf of HSBC.
3. HSBC failed to comply with the conduct requirements under sections 34ZL(1)(a) and (3)(a) of the MPFSO and paragraphs III.6, III.59, III.60(a) and III.60(c) of the Guidelines on Conduct Requirements for Registered Intermediaries (version 1 - September 2012 as in force at the time of the failure) (**Conduct Guidelines**)<sup>4</sup>.
4. These failures and misconduct were attributable to the neglect of YIP as an RO.

### Summary of facts

#### A. Background

5. On 1 April 2020, HSBC launched a referral programme (**Programme**) which offered referral fees to Introducers for encouraging clients to participate in, make MPF contributions and/or transfer MPF from the MPF scheme(s) that they participated in to the HSBC Scheme. The Programme was in operation for more than 10 months from 1 April 2020 until suspension from receiving new referrals on 5 February 2021 and all the agreements in relation to the Programme were terminated by 1 June 2022.
6. Under the Programme, HSBC recruited human resources agencies or recruiters as referral agencies (i.e. Introducers) to refer potential MPF corporate clients to HSBC. The Introducers

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<sup>1</sup> A principal intermediary is a business entity registered by the MPFA to engage in conducting MPF sales and marketing activities and giving regulated advice.

<sup>2</sup> Under section 34I(3) of the MPFSO, examples of specified responsibilities are ensuring that the principal intermediary has established and maintains proper controls and procedures for securing compliance by the principal intermediary and its subsidiary intermediaries with Part 4A of the MPFSO.

<sup>3</sup> A subsidiary intermediary is a person registered by the MPFA to carry out MPF sales and marketing activities and to give regulated advice on behalf of a principal intermediary to which the person is attached.

<sup>4</sup> The Conduct Guidelines have been revised subsequently and the relevant provisions are paragraphs III.6, III.60, III.61(a) and III.61(c) respectively in the current version 3 (June 2024).

were not registered intermediaries but were offered referral fees from HSBC if a referred client, the Introducers themselves and/or their associated companies participate in and make MPF contributions and/or transfer MPF to the HSBC Scheme. Referral fees payable to the Introducers was based on a commission rate applied to the amount of MPF contributions made and MPF transferred by the referred client, the Introducers and/or their associated companies.

7. HSBC signed agreements with five Introducers and received six successful referrals (i.e. with MPF contributions made and/or transfers of MPF completed) from three of the Introducers. According to HSBC, as at 30 June 2021, the approximate MPF assets under management (**AUM**) in the sum of \$247,685,816.45 in respect of 2,413 scheme members were contributed and/or transferred to the HSBC Scheme under the Programme. A total of \$5,591,537.20 referral fees was paid by HSBC to the three Introducers up to May 2022.

#### *B. Offer incentives to Introducers*

8. Under the Programme, the Introducers would only receive referral fees from HSBC upon successful payment of MPF contributions or transfer of MPF from the referred party to the HSBC Scheme. The MPFA found that HSBC had offered incentives to the Introducers for the purpose of encouraging the referred client, the Introducers and/or their associated companies, to participate in, make MPF contribution to and/or transfer MPF to the HSBC Scheme, in breach of section 34ZL(1)(a) of the MPFSO and paragraph III.6 of the Conduct Guidelines.

#### *C. Failure in internal controls and procedures*

9. HSBC is found to have failed to properly consider and apprehend the prohibition under paragraph III.6 of the Conduct Guidelines. Given that the offer of referral fees/commissions by HSBC to the Introducers is a central feature of the Programme, paragraph III.6 of the Conduct Guidelines is an obviously relevant provision that HSBC should have considered in ensuring compliance with the relevant legal and regulatory requirements.
10. HSBC also failed to have in place controls, procedures and other arrangements to ensure that only registered intermediaries were used in undertaking sales activities on its behalf.
11. HSBC prepared three email templates (**Email Templates**) which contained promotional messages about HSBC's MPF services and the HSBC Scheme for different types of customers and provided the Email Templates to one Introducer for further distribution to potential clients. The Introducer subsequently sent emails adopted from the Email Templates to 13 clients in October and November 2020. The emails contained promotional messages of the HSBC Scheme, and regulated activities were conducted by the Introducer on HSBC's behalf.
12. HSBC also allowed the Introducers to distribute HSBC's marketing materials in relation to the HSBC Scheme to the Introducers' clients. Under the agreements signed between HSBC and the Introducers, the Introducers were allowed by HSBC to use HSBC's marketing materials with its authorization. In the training materials provided by HSBC to the Introducers, HSBC enticed the Introducers to distribute MPF marketing materials by putting such act under the "Do" column in the "Dos and Don'ts" table for the Introducers.

13. In light of the above, HSBC is considered to be in breach of section 34ZL(3)(a) of the MPFSO and paragraphs III.59, III.60(a) and III.60(c)<sup>4</sup> of the Conduct Guidelines.

*D. Failure by YIP as an RO*

14. YIP was an RO of HSBC from July 2017 until November 2020. He was also the Head of Pensions responsible for overseeing the overall business of HSBC's Pensions Department until November 2020. He approved the Programme including its commercial terms. Despite comments from a compliance officer of HSBC that distribution of marketing materials might constitute regulated activities, he approved the revision to the training materials of the Programme to the effect that the Introducers were allowed by HSBC to distribute HSBC's marketing materials.
15. When overseeing the approval and implementation of the Programme until November 2020, YIP failed to identify the risk of not complying with the relevant conduct requirements, in particular paragraph III.6 of the Conduct Guidelines which prohibits the offering of incentives to any person (unless an exception in paragraph III.7<sup>5</sup> applies), and also the risk of having unregistered persons conducting regulated activities. YIP also failed to follow up with the comments from the compliance officer on the Programme.
16. The MPFA considers that HSBC's failures were attributable to YIP's lack of compliance awareness and his failure in discharging his duty as the company's RO and using his best endeavours to ensure compliance with the conduct requirements by HSBC, including his failure to ensure that HSBC has established and maintains proper controls and procedures for securing compliance by HSBC as a principal intermediary and its subsidiary intermediaries with the requirements of Part 4A of the MPFSO, in breach of sections 34ZM of the MPFSO and paragraphs III.62<sup>4</sup> of the Conduct Guidelines.

**Breaches and reasons for action**

17. Section 34ZL(1)(a) of the MPFSO states that, 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.
18. Section 34ZL(3)(a) of the MPFSO states that a principal intermediary 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 Part 4A of the MPFSO.
19. Section 34ZM of the MPFSO provides that an RO of a principal intermediary must use his or her best endeavours to carry out specified responsibilities in relation to the principal intermediary.
20. Paragraph III.6 of the Conduct Guidelines states that, when carrying on a regulated activity, 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

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<sup>5</sup> Examples of the exceptions include a discount of fees and charges by way of bonus units, bonus credit or rebates credited to the MPF account of the recipient of the offer, and a commission or other monetary / non-monetary benefits paid to a registered intermediary for performing services as a registered intermediary.

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. Paragraph III.7 of the Conduct Guidelines provides some exceptions to the application of paragraph III.6 none of which applies in the present case.

21. Paragraph III.59<sup>4</sup> of the Conduct Guidelines states that a principal intermediary should, at a minimum, 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 to ensure that compliance.
22. Paragraph III.60(a)<sup>4</sup> of the Conduct Guidelines states that a principal intermediary should 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.
23. Paragraph III.60(c)<sup>4</sup> of the Conduct Guidelines states that a principal intermediary should have in place arrangements, procedures and controls to ensure that only registered intermediaries are used in undertaking regulated activities on its behalf.
24. Paragraph III.62<sup>4</sup> of the Conduct Guidelines states that one of the specified responsibilities of an RO 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.
25. Having considered all the circumstances of the case, the MPFA is of the view that:
  - (a) by offering commissions or incentives to the Introducers for the purpose of encouraging clients to become a member of, make MPF contributions to and/or transfer MPF to the HSBC Scheme, HSBC had failed to comply with the conduct requirement which requires that when carrying on a regulated activity, an intermediary must act honestly, fairly, in the best interests of the clients and with integrity; and
  - (b) HSBC had also failed to establish and maintain controls and procedures for securing compliance with Part 4A of the MPFSO by itself as a principal intermediary, and by each subsidiary intermediary attached to it, in the following aspects:
    - (i) failure to ensure compliance with paragraph III.6 of the Conduct Guidelines; and
    - (ii) failure to ensure that only registered intermediaries are used in undertaking sales activities on HSBC's behalf.
26. The MPFA considers that HSBC's failures and misconduct were attributable to the neglect of YIP as an RO.

## **Conclusion**

27. In light of (i) HSBC's breaches of the conduct requirements under sections 34ZL(1)(a) and (3)(a) of the MPFSO and paragraphs III.6, III.59, III.60(a) and III.60(c)<sup>4</sup> of the Conduct Guidelines; and (ii) YIP's breaches of the conduct requirements under section 34ZM of the

MPFSO and paragraph III.62<sup>4</sup> of the Conduct Guidelines, the MPFA has decided to take the disciplinary actions set out in paragraph 1 hereinabove against HSBC and YIP.

28. In determining the disciplinary sanctions, the MPFA took into account all relevant circumstances, including
- (a) the nature, seriousness and impact of HSBC's non-compliance;
  - (b) the approximate MPF AUM involved in the sum of over \$240 million in respect of more than 2,400 MPF scheme members;
  - (c) there is no client complaint of financial loss received as a result of HSBC's non-compliance;
  - (d) HSBC has engaged an independent external reviewer upon the MPFA's request to assess the effectiveness of its internal control and to prevent any similar case from occurrence in the future;
  - (e) the Programme was in operation for more than 10 months until its suspension in February 2021. The agreements with the five Introducers in relation to the Programme were eventually terminated by June 2022;
  - (f) HSBC's cooperativeness with the MPFA in resolving the MPFA's concerns;
  - (g) the role YIP played and his degree of responsibility in relation to the launch of the Programme;
  - (h) the need to send a strong deterrent message to the industry that such non-compliance is not acceptable; and
  - (i) HSBC and YIP's otherwise clean disciplinary records with the MPFA.