

## **Frequently Asked Questions**

### **Treatment of Client's Assets Subdivision 2 and 3, Division 4, Part III of CMSA 2017**

(Issued: 18 January 2018)

The following questions and answers are meant to provide guidance to intermediaries on the SC's expectations in relation to treatment of 'Client's Assets' by intermediaries.

#### **1. What are "Client's Assets"?**

The term "Client's Assets" is defined under sections 110 and 117 of the *Capital Markets & Services Act 2007* (CMSA) to include any monies that an intermediary has received or holds for its clients in the course of its business, and includes any monies or other property accruing therefrom.

#### **2. Does interest income form part of Client's assets?**

Interest income accrued on monies or property which the intermediary has received or retained in the course of its business, are considered Client's Assets. This is provided for under section 110 and 117 of the CMSA which specifically defines Client's Assets to include any accruals thereto.

#### **3. Under what circumstances can Client's Assets be withdrawn from the clients' trust account or the clients' segregated account?**

Sections 113(1) and 118(3) of the CMSA explicitly provide for the circumstances where Client's Assets may be withdrawn. This includes, permissible withdrawal of Client's Assets for purposes of making a payment, –

- a. to, or in accordance with the written instruction or direction of the client;
- b. to defray brokerage and other proper charges; and
- c. as otherwise authorised by law.

#### **4. Can the interest income accrued from client monies be shared between the client and the intermediary?**

An intermediary and its client may provide an arrangement between them for the treatment of Client's Assets relating to the recognition of all or any portion of interest income. Such an arrangement must comply with sections 113(1)(a) and 118(3)(a) of the CMSA which requires the client provide written instruction or direction to that effect.

**5. What constitutes a written instruction or direction from a client for purposes of compliance with section 113(1)(a) and 118(3)(a) of the CMSA?**

Sections 113(1)(a) and 118(3)(a) of the CMSA provide that any instruction and direction from the client must be in writing. Such instruction or direction may take the form of a written agreement executed between the intermediary and its client. The arrangement however must be clearly provided for in the agreement with the terms and conditions clearly and sufficiently disclosed to the client.

**6. Can the written instruction or direction also be applied to the interest earned from monies placed with the intermediary?**

Yes. The agreement may also be applied to cater for the treatment of Client's Assets comprising interest income. However, the terms and conditions relating to this treatment must be disclosed clearly and sufficiently in such an agreement.