

CONSULTATION PAPER

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Proposals to refine the tier structure requirements and to introduce new requirements relating to remuneration

MAS

Monetary Authority of Singapore

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1 Preface

1.1 MAS regulates remuneration practices in the financial advisory (“FA”) industry to align the interests of FA representatives and supervisors with those of their clients. In view of this, MAS intends to:

- (a) clarify our policy intent with respect to the tier structure requirements, and refine the requirements on tier structures, which includes defining overriding benefits and stipulating the circumstances under which payment of overriding benefits is allowed;
- (b) consolidate and effect the tier structure requirements under the Financial Advisers Act (Cap. 110) (“FAA”) and extend the application of the requirements to all financial advisers, including exempt financial advisers¹ which operate tier structures, for consistency across the FA industry; and
- (c) introduce restrictions on the direct payment of remuneration to, and acceptance of remuneration by, representatives and/or supervisors of other FA firms². These restrictions will apply to:
 - i. volume-based incentives; and
 - ii. commissions, which are subject to spreading and capping as prescribed in section 22A of the FAA, the Financial Advisers (Remuneration) Regulations 2015 and the Insurance (Remuneration) Regulations 2015 (collectively referred to as “Remuneration Regulations”).

1.2 MAS invites comments from the financial industry, consumers and other interested parties on our proposals. Please note that all submissions received will be published and attributed to the respective respondents unless they expressly request MAS not to do so. As such, if respondents would like:

- (i) their whole submission or part of it (but not their identity), or**

¹ “Exempt financial adviser” is defined under the FAA to mean a financial adviser who is exempt under section 23(1) from holding a financial adviser’s licence.

² For the purpose of this paper, “FA firms” refers to all financial advisers, i.e. licensed financial advisers, and exempt financial advisers such as insurers, banks, merchant banks, finance companies, insurance brokers and capital markets services licence holders.

(ii) their identity along with their whole submission,

to be kept confidential, please expressly state so in the submission to MAS. MAS will only publish non-anonymous submissions. In addition, MAS reserves the right not to publish any submission received where MAS considers it not in the public interest to do so, such as where the submission appears to be libellous or offensive.

1.3 Please submit your comments by 13 August 2021 using the following link –

<https://form.gov.sg/60e515e322fd0300121efe0d>

1.4 Should you encounter any technical difficulties in your submission, you may submit your comments to –

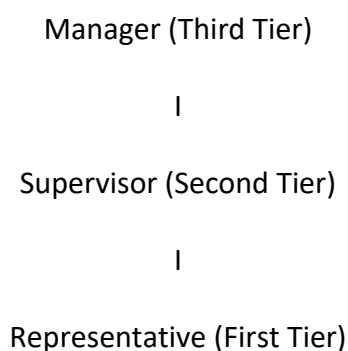
Capital Markets Intermediaries I Department
Monetary Authority of Singapore
10 Shenton Way, MAS Building
Singapore 079117
Fax: (65) 62203973
Email: remuneration_consult@mas.gov.sg

2 Tier Structure Requirements

Maximum Tier Structure

2.1 Currently, direct life insurers³ and licensed financial advisers (“LFAs”)⁴ that operate tier structures are required to ensure that the structure has a maximum of three tiers (“tier structure requirements”). For direct life insurers, the tier structure requirements are set out in MAS Notice 306 on Market Conduct Standards for Life Insurers Providing Financial Advisory Services as defined under the FAA, issued under the Insurance Act (Cap. 142) (“IA”) (“MAS Notice 306”). LFAs are subject to similar requirements as part of their licensing conditions under the FAA⁵.

2.2 Paragraph 7 of MAS Notice 306 requires a direct life insurer that operates a tier structure for the provision of any financial advisory service to ensure such a structure is capped to a maximum of three tiers. The illustration of the tier structure as provided in MAS Notice 306 is reproduced below:



2.3 Paragraph 8 of MAS Notice 306 specifies that a tier exists when overriding benefits are payable by the direct life insurer to a representative for the provision of financial advisory services by another representative. Taken together, paragraphs 7 and 8 of MAS Notice 306 therefore restrict the maximum number of tiers to enable the Second Tier and Third Tier to perform effective supervision, and limit the payment of overriding

³ For the purpose of this paper, “direct life insurer” refers to a direct life insurer licensed under the Insurance Act (Cap 142) to carry on life business.

⁴ Licensed financial adviser refers to an entity that has been granted a licence under section 13 of the FAA to carry on the business of providing any financial advisory service but does not include any person specified in the First Schedule of the FAA.

⁵ For simplicity, subsequent reference to MAS Notice 306 in this paper includes the licensing conditions for LFAs.

benefits to only the Second Tier and Third Tier who are responsible for supervising the lower tiers in their financial advisory and sales activities.

2.4 MAS has observed tier structures and remuneration practices among some FA firms that are not in line with the policy intent. For example, some FA firms have interpreted “overriding benefits” narrowly to mean only “overriding commissions”⁶, when these FA firms actually pay other forms of benefits, such as recruitment incentives and breakaway payments⁷, that are similarly derived based on the provision of any financial advisory service or the sale of any investment product⁸ following the provision of any financial advisory service by representatives. Consequently, these FA firms considered that a tier exists only when a person receives “overriding commissions”. FA firms have also paid other types of benefits (other than “overriding commissions”) that are computed based on the provision of any financial advisory service or the sale of any investment product following the provision of any financial advisory service by representatives, to persons in addition to the Second Tier and Third Tier (e.g. a Fourth Tier) as well as to persons who do not exercise supervisory duties of a Second Tier or Third Tier.

Proposed Refinements

2.5 To better reflect our policy intent, MAS proposes that FA firms that operate a tier structure for the provision of any financial advisory service and/or the sale of any investment product are required to ensure such a tier structure only consists of the First Tier, Second Tier and Third Tier as illustrated below:

⁶ “Overriding commissions” refer to remuneration payable to supervisors that are based on a percentage of the personal sales commissions of their direct or indirect representatives in the lower tiers.

⁷ “Breakaway payments” typically refers to remuneration paid to previous supervisors of representatives when these representatives are being promoted to the next tier.

⁸ “Investment product” is defined under paragraph 2(1) of the FAA to mean –

- (a) any capital markets products;
- (aa) spot foreign exchange contracts other than for the purposes of leveraged foreign exchange trading;
- (b) any life policy; or
- (c) any other product as may be prescribed.

Third Tier

I

Second Tier

I

First Tier

2.6 The Second Tier and Third Tier are responsible for supervising the lower tiers in their financial advisory and sales activities. Accordingly, FA firms can only pay overriding benefits, which are computed based on the provision of any financial advisory service or the sale of any investment product following the provision of any financial advisory service by representatives, to individuals in the Second Tier and Third Tier. For the avoidance of doubt, the Second Tier and Third Tier need not be representatives to be considered as part of the tier structure. As per the current rules, a person need not be a representative if he does not conduct the regulated activity of providing financial advisory services under the FAA.

2.7 To provide greater clarity to the industry, MAS also proposes the term “overriding benefits” to include any remuneration⁹ payable to any person other than the representative who provided the financial advisory services, whether on a periodic basis or otherwise, where the person’s entitlement to that remuneration, or the amount of that remuneration, is determined by reference to one or more of the following factors, whether or not together with other factors:

- (a) the total number or total value of all investment products in relation to which financial advisory services are provided by one or more representatives to clients;
- (b) the total number or total value of all agreements, transactions or arrangements relating to investment products entered into by clients in connection with financial advisory services provided by one or more representatives;

⁹ This may include remuneration such as, but not limited to, commissions, production bonuses, business allowances and all forms of incentives such as recruitment, cash and non-cash incentives, whatever these remuneration may be called, so long as they are computed based on the sale of investment products closed by representatives.

-
- (c) the total amount of remuneration payable to one or more representatives by the FA firm in connection with any financial advisory services provided; and
 - (d) the total amount of premiums payable in respect of all life policies purchased by the FA firm's clients in connection with financial advisory services provided by one or more representatives.

2.8 "Overriding benefits" will therefore include (but not be limited to) any remuneration that is computed based on the provision of any financial advisory service, or the sale of any investment product following the provision of any financial advisory service by representatives, and payable to the Second Tier and Third Tier in connection with financial advisory services provided by one or more representatives of the FA firm under the supervision of the Second Tier and/or Third Tier.

2.9 The tier structure requirements will limit the payment of overriding benefits to a maximum of two supervisors¹⁰ (i.e. Second Tier and Third Tier) of each representative, for the provision of any financial advisory service or the sale of any investment product following the provision of any financial advisory service by the representative. In this regard, FA firms should not design remuneration packages that in effect, pay overriding benefits to persons other than their own Second Tiers and Third Tiers. Supervisors will also be prohibited from accepting overriding benefits from any person other than the FA firm of which he is a supervisor. Annex B sets out some illustrative examples of remuneration practices that would not be in line with MAS' policy intent. The list set out in Annex B is not exhaustive.

2.10 To harmonise the tier structure requirements for direct life insurers and LFAs, MAS proposes to impose these requirements under the FAA. The relevant provisions in MAS Notice 306 and the corresponding licensing conditions for LFAs will therefore be repealed. Other exempt financial advisers such as banks, merchant banks, finance companies, insurance brokers and capital markets services licence holders, will likewise be subject to the tier structure requirements for consistency across the FA industry.

¹⁰ "Supervisor" is defined under the FAA, to mean any person (by whatever name described) who –

- (a) is in the direct employment of, is acting for, or has an arrangement with the financial adviser; and
- (b) is responsible, whether directly or indirectly, for the supervision or management of the conduct and performance of any representative of the financial adviser or another supervisor.

Nevertheless, there should be no impact on these exempt financial advisers, to the extent that they do not pay overriding benefits.

Question 1 MAS seeks comments on the proposals set out in paragraphs 2.5 to 2.9.

Question 2 Should the tier structure requirements be extended to all FA firms, such as banks, merchant banks, finance companies, insurance brokers and capital markets services licence holders, which operate a tier structure? If not, what are the reasons?

3 Prohibitions on Direct Payment of Remuneration to, and Acceptance of Remuneration by, Representatives and Supervisors of Other FA firms

(a) Volume-based Incentives (“VBI”)

3.1 It is common practice in the FA industry for FA firms and direct life insurers to offer both monetary (e.g. commissions) and non-monetary incentives (e.g. incentive trips, shopping vouchers) to the representatives and supervisors for the sale of life business¹¹ products, where the amount of incentives is determined by the volume of sales achieved by the representatives and supervisors. For the purpose of this consultation paper, such monetary and non-monetary incentives are collectively referred to as volume-based incentives (“VBI”).

3.2 Apart from paying VBI to FA firms for the sale of their life business products, direct life insurers also offer VBI directly to the representatives and supervisors of these FA firms, in some cases, without the knowledge of the FA firms. This impedes the ability of FA firms to exercise effective oversight of their own representatives and supervisors. Without having a complete view of the remuneration received by their representatives and supervisors, FA firms may not be able to identify undesirable patterns in the sales behaviour of their representatives or supervisors, implement appropriate measures to mitigate the risks of misconduct, or claw back remuneration paid to their representatives and supervisors in the event of misconduct. In this regard, the principal FA firms of the representatives should be the only party that pays remuneration to their representatives.

¹¹ Life business means all insurance business concerned with life policies, long-term accident and health policies, or both, as defined under section 2(1)(a) of the IA.

3.3 MAS intends to prohibit persons other than the principal FA firms from determining, communicating and paying VBI (offered by the direct life insurers) directly to the representatives of these FA firms. Instead, the principal FA firm of these representatives should be the party that determines, communicates and pays VBI to its representatives. In this regard, an FA firm will first need to determine whether to participate in any VBI campaigns offered by direct life insurers. Apart from the qualifying criteria set by direct life insurers, the FA firm may establish additional criteria that take into account factors such as the conduct and compliance track record of its representatives in determining the amount of VBI that should be paid to its representatives. The FA firm must be the party which communicates these criteria to its representatives and the party that pays VBI directly to its representatives. This will allow FA firms to have better oversight and control over their representatives. For the avoidance of doubt, direct life insurers may still pay VBI to FA firms under a business-to-business arrangement.

3.4 Likewise, MAS intends to prohibit representatives of FA firms from receiving VBI for the sale of life business products directly from any person who is not their principal, such as direct life insurers and other product manufacturers.

3.5 With effect from 30 June 2020, the Life Insurance Association Singapore has, as an industry initiative, adopted MAS' proposals to prohibit direct life insurers from determining, communicating and making VBI payments directly to representatives of FA firms.

(b) Spreading and Capping of Commissions ("SCC")

3.6 Currently, the SCC rules set out in the Remuneration Regulations¹² allow an FA firm to make commission payments to its own representatives and supervisors, and to representatives and supervisors of another FA firm, for the sale of regular premium life policies.

3.7 In line with the proposals set out in paragraphs 3.3 and 3.4, MAS intends to amend the Remuneration Regulations to prohibit FA firms from making such payments to representatives and supervisors of other FA firms. This seeks to allow FA firms to have

¹² In particular, regulations 3(1A) and 4(1A) of the Financial Advisers (Remuneration) Regulations 2015 and regulations 3(1A) and 4(1A) of the Insurance (Remuneration) Regulations 2015.

direct oversight and control over the remuneration that their representatives and supervisors receive from selling regular premium life policies of other insurers.

Question 3 Should the prohibition against making direct payment of VBI to representatives and supervisors of other FA firms be extended to other product manufacturers such as banks and fund managers, besides direct life insurers? If not, what are the reasons?

Question 4 Are there practical challenges in implementing the proposals set out in paragraphs 3.3, 3.4 and 3.7? If so, please provide details and suggestions on how they can be addressed.

4 Implementation

4.1 MAS recognises that there is a multitude of remuneration practices in the FA industry, and these may evolve over time. FA firms should bear in mind the policy intent behind MAS' rules when designing their remuneration arrangements and comply with both the letter and the spirit of the rules. MAS will not hesitate to take action against FA firms that circumvent MAS' regulations. We will conduct a subsequent consultation on the legislative amendments to effect the proposals set out in this consultation paper.

Annex A

LIST OF QUESTIONS

- Question 1** MAS seeks comments on the proposals set out in paragraphs 2.5 to 2.9.9
- Question 2** Should the tier structure requirements be extended to all FA firms, such as banks, merchant banks, finance companies, insurance brokers and capital markets services licence holders, which operate a tier structure? If not, what are the reasons?9
- Question 3** Should the prohibition against making direct payment of VBI to representatives and supervisors of other FA firms be extended to other product manufacturers such as banks and fund managers, besides direct life insurers? If not, what are the reasons?11
- Question 4** Are there practical challenges in implementing the proposals set out in paragraphs 3.3, 3.4 and 3.7? If so, please provide details and suggestions on how they can be addressed.11

Annex B

Non-exhaustive illustrative examples of remuneration practices that would not be in line with MAS' policy intent

| Remuneration practices | Why such practices would not be in line with MAS' policy intent |
|--|---|
| <p>Firm A pays overriding benefits to a person in addition to the Second Tier and Third Tier, even though that person does not exercise supervisory duties of a Second Tier or Third Tier.</p> | <p>Overriding benefits must not be paid to persons who do not exercise supervisory responsibilities of a Second Tier or Third Tier. The payment of overriding benefits to persons in addition to the Second Tier and Third Tier also creates a Fourth Tier, which exceeds the maximum of three tiers.</p> |
| <p>Firm B pays overriding benefits to a person who is a supervisor but does not consider that the person as part of the tier structure as he is not a representative.</p> | <p>A person who receives overriding benefits will be considered as part of the tier structure regardless of whether he is a representative. This could result in a breach if the overriding benefits are paid to more than two supervisors.</p> <p>To clarify, an individual is only required to be appointed as a representative if he were to conduct regulated activities.</p> |
| <p>Firm C pays incentives to representatives and supervisors that are computed based on the provision of any financial advisory service or the sale of any investment product following the provision of any financial advisory service by other representatives. However, Firm C does not consider such incentives as overriding benefits as these are wider than overriding commissions.</p> <p>These incentives may include recruitment incentives and production bonuses for recruiting and sales made by representative C2, which are paid to representative C1 for his referral of representative C2, and to the Second Tier and Third Tier who are above representative C1.</p> | <p>Overriding benefits include all incentives that are computed based on the provision of any financial advisory service or the sale of any investment product following the provision of any financial advisory by representatives which are paid to persons other than the representative who provided the financial advisory services. Recruitment incentives and production bonuses that are computed on such basis are considered overriding benefits.</p> <p>Such incentives should not be paid to persons who do not exercise supervisory responsibilities over the representative who made the sale, such as representative C1.</p> |

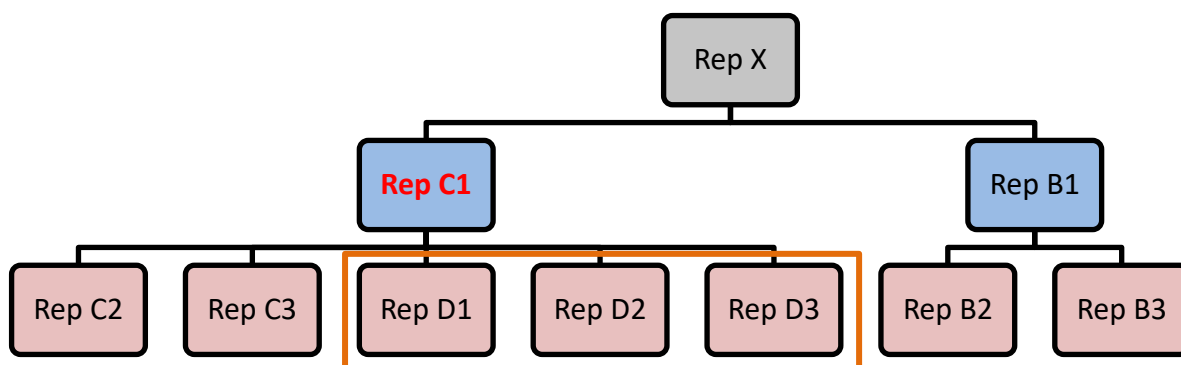
| Remuneration practices | Why such practices would not be in line with MAS' policy intent |
|---|---|
| <p>Firm D promotes representative D1 to be a Second Tier and continues to pay overriding benefits to his former Second Tier supervisor (i.e. Rep C1), for the provision of any financial advisory service and the sale of any investment product by representative D1 and First Tier representatives who are now under the supervision of representative D1, for the next few years. This is even though the former Second Tier supervisor is no longer representative D1's supervisor. The payment of such overriding benefits is meant to compensate representative D1's former Second Tier supervisor for his loss of income after representative D1's promotion.</p> <p>Please refer to Diagram 1 for illustration.</p> | <p>Such incentives should not be paid to the former Second Tier supervisor of representative D1, since he no longer has supervisory oversight over representative D1 and does not have supervisory oversight over the First Tier representatives (who are under representative D1's supervision).</p> |
| <p>Firm E promotes representative E1 from a Second Tier to a Third Tier. Representative E1 then spins off from agency A1, to form a new agency A2. Firm E continues to pay overriding benefits to the Third Tier of agency A1 for the provision of any financial advisory service and sale of any investment product by representatives from the newly formed agency A2, for the next few years, in addition to the new Second and Third Tier supervisors of new Agency A2. This is even though the Third Tier of agency A1 is no longer representative E1's supervisor. The payment of such overriding benefits is meant to compensate the Third Tier of agency A1 for loss of income after the "breakaway" of representative E1.</p> <p>Please refer to Diagram 2 for illustration.</p> | <p>The payment of overriding benefits from sales closed by the First Tier representatives in new Agency A2 to the Third Tier of Agency A1, in addition to the Second Tier and Third Tier of new Agency A2 exceeds the maximum limit of two supervisors to whom overriding benefits may be paid.</p> <p>In addition, such incentives should not be paid to the Third Tier of Agency A1, since he no longer has supervisory oversight over representative E1 and does not have supervisory oversight over the representatives in agency A2.</p> |

| Remuneration practices | Why such practices would not be in line with MAS' policy intent |
|---|---|
| <p>Firm F pays remuneration to representative F1 (who is concurrently a Third Tier for his own agency group) which is computed based on the provision of any financial advisory service or the sale of any investment product following the provision of any financial advisory service by representatives of other agency groups headed by other Third Tiers who are "affiliated" with representative F1.</p> <p>Please refer to Diagram 3 for illustration.</p> | <p>The payment of overriding benefits computed based on the provision of any financial advisory service or the sale of any investment product following the provision of any financial advisory service by the First Tier representatives of the affiliated agency groups, in addition to the Second Tier and Third Tier of those affiliated agency groups exceeds the maximum limit of two supervisors to whom overriding benefits may be paid.</p> <p>In addition, such incentives should not be paid to representative F1 for the provision of any financial advisory service and/or the sale of any investment product by representatives of other agency groups headed by other Third Tiers as he does not have supervisory oversight over the representatives in the other agency groups.</p> |
| <p>Firm G pays a fixed monthly salary and variable bonus to supervisor G2, who is representative G1's supervisor.</p> <p>Supervisor G2's variable bonus is computed based on 10% of the financial advisory service provided and the sale of every investment product by representative G1. Firm G does not consider the variable bonus paid to supervisor G2 as overriding benefits and hence does not consider supervisor G2 to be part of the tier structure.</p> | <p>Overriding benefits include all incentives that are tied to the provision of any financial advisory service or the sale of any investment product following the provision of any financial advisory service by representatives which are paid to persons other than the representative who provided the financial advisory services.</p> <p>A supervisor who receives any overriding benefits that are computed based on the provision of any financial advisory service or the sale of any investment product following the provision of any financial advisory service by representatives under his supervision is considered as part of the tier structure.</p> |

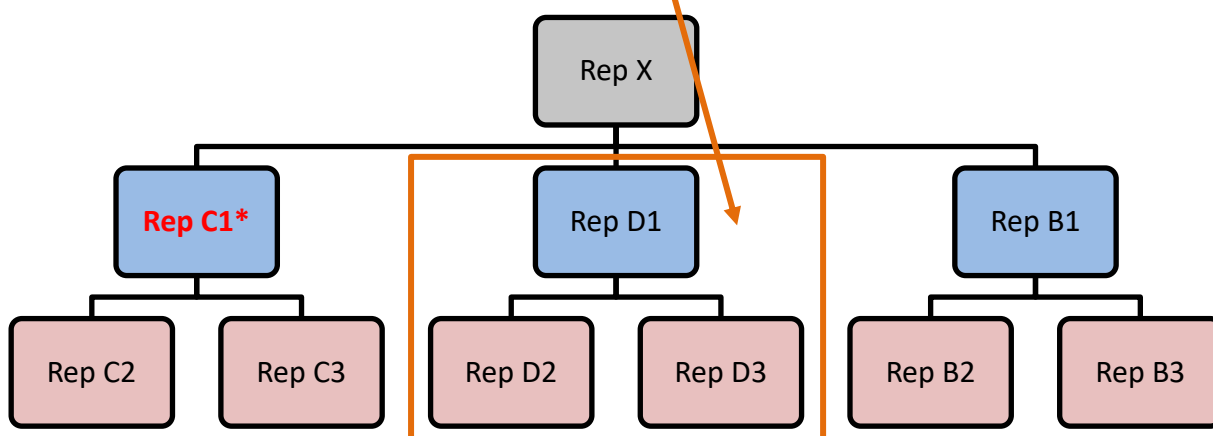
| Remuneration practices | Why such practices would not be in line with MAS' policy intent |
|---|--|
| | This could result in a breach if the overriding benefits are paid to more than two supervisors. |
| <p>Firm H appoints representatives H2, H3, H4 and H5 to supervise representatives in the lower tiers for the provision of any financial advisory service and the sale of any investment product. Please refer to Diagram 4 for illustration.</p> <p>Firm H only pays overriding benefits to representatives H3 and H5 as the Second Tier and Third Tier respectively for the provision of any financial advisory service or the sale of any investment product following the provision of any financial advisory service by their lower tiers. While representatives H2 and H4 are also responsible for the supervisions of their lower tiers, Firm H does not consider representatives H2 and H4 as part of the tier structure as they do not receive overriding benefits.</p> | <p>FA firms that operate tier structures for the provision of any financial advisory service and the sale of any investment product must ensure such structures only consist of the First Tier, Second Tier and Third Tier.</p> <p>FA firms cannot appoint intermediate or provisional tiers as part of their tier structures.</p> |

Diagram 1: Illustration on breakaway upon promoting First Tier to Second Tier

Before promoting First Tier (“Rep D1”)



After promoting Rep D1 to Second Tier

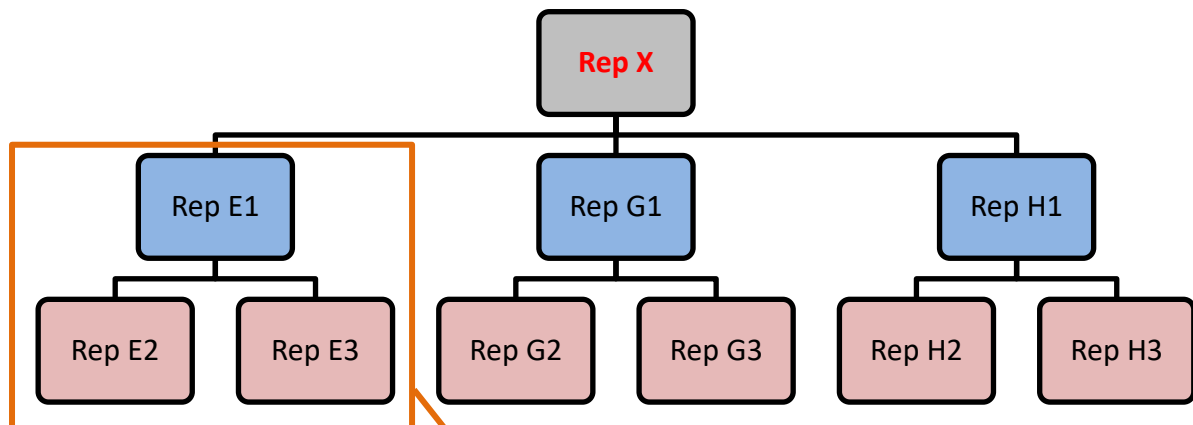


** Apart from the Second Tier and Third Tier, Rep C1 becomes a part of the tier structure as he continues to receive overriding benefits for the provision of any financial advisory service or the sale of any investment product following the provision of any financial advisory service by Rep D1 and Tier 1 representatives under Rep D1 (i.e. Rep D2 and Rep D3) for the next few years.*

Diagram 2: Illustration on breakaway upon promoting Second Tier to Third Tier

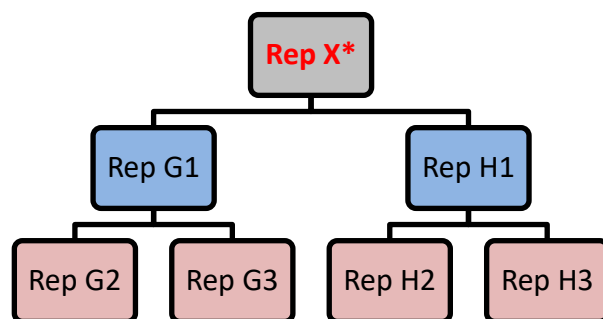
Before promoting Second Tier (“Rep E1”) to Third Tier

Agency A1

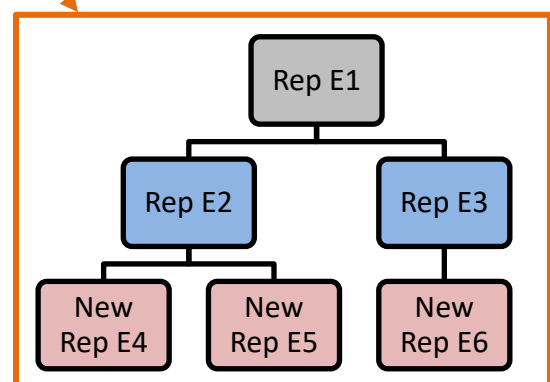


After promoting Rep E1 to Third Tier

Agency A1

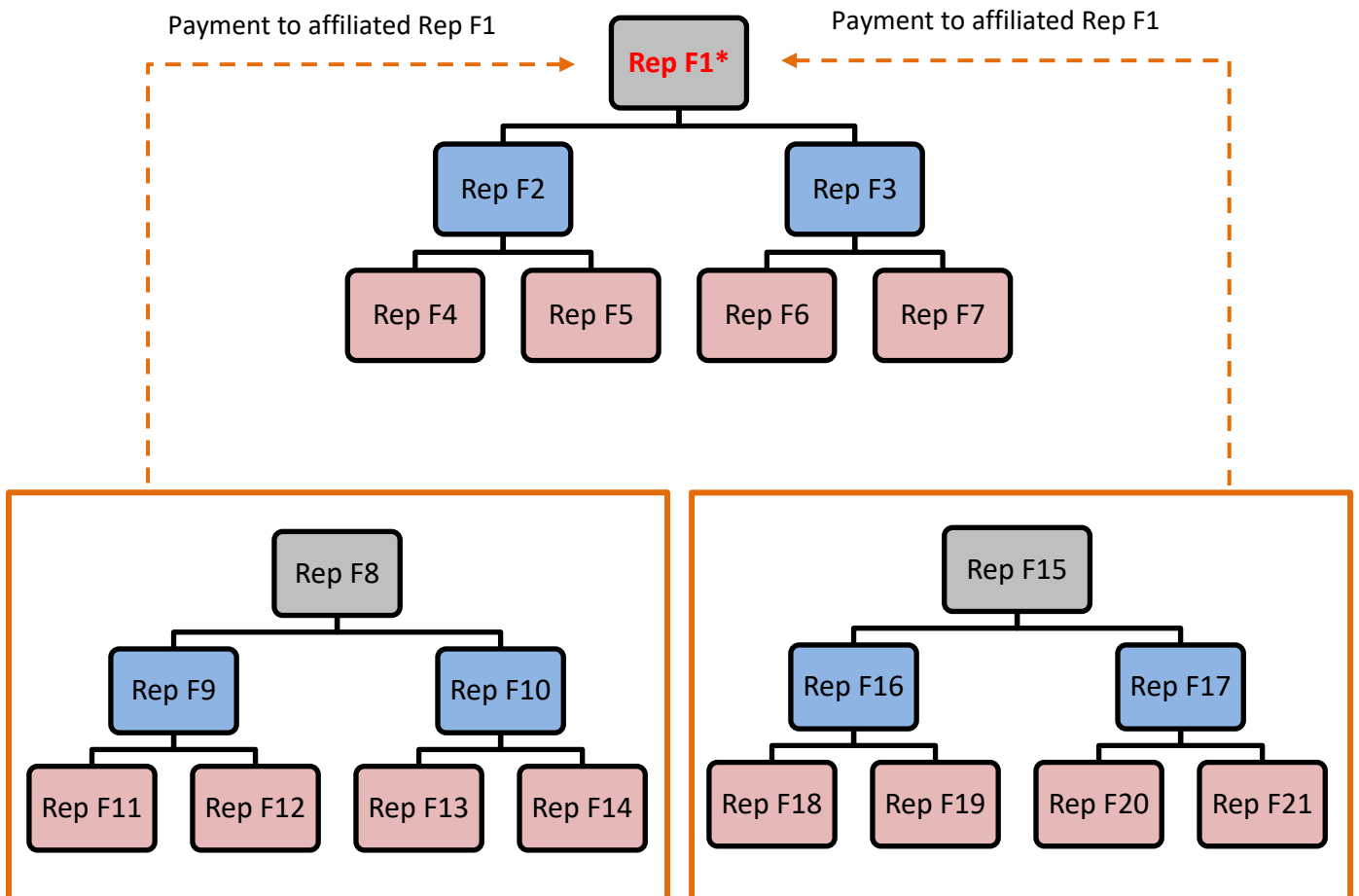


New Agency A2



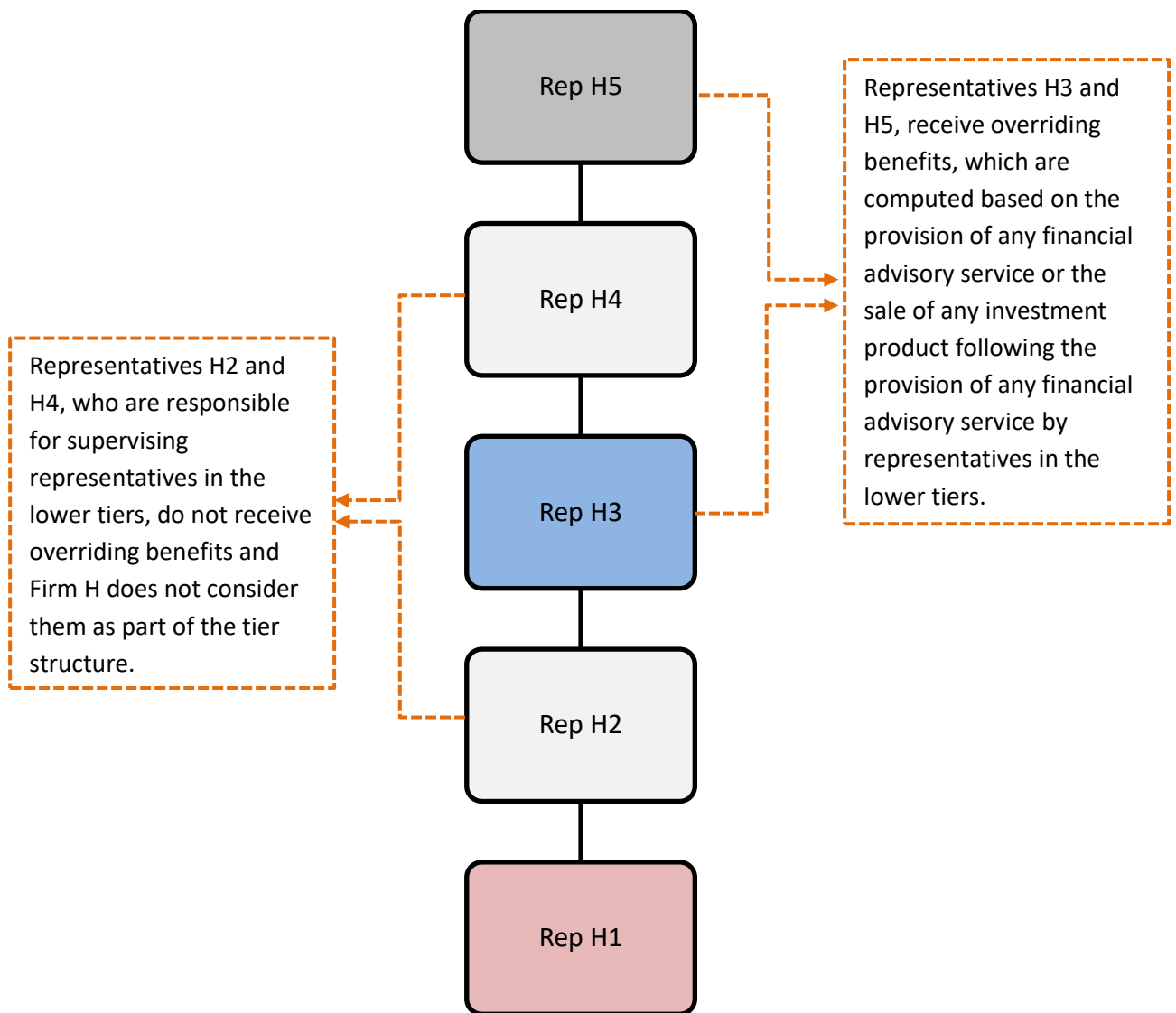
**Rep X becomes a Fourth Tier as he continues to receive overriding benefits for the sale of investment products closed by representatives from the new agency A2 for the next few years.*

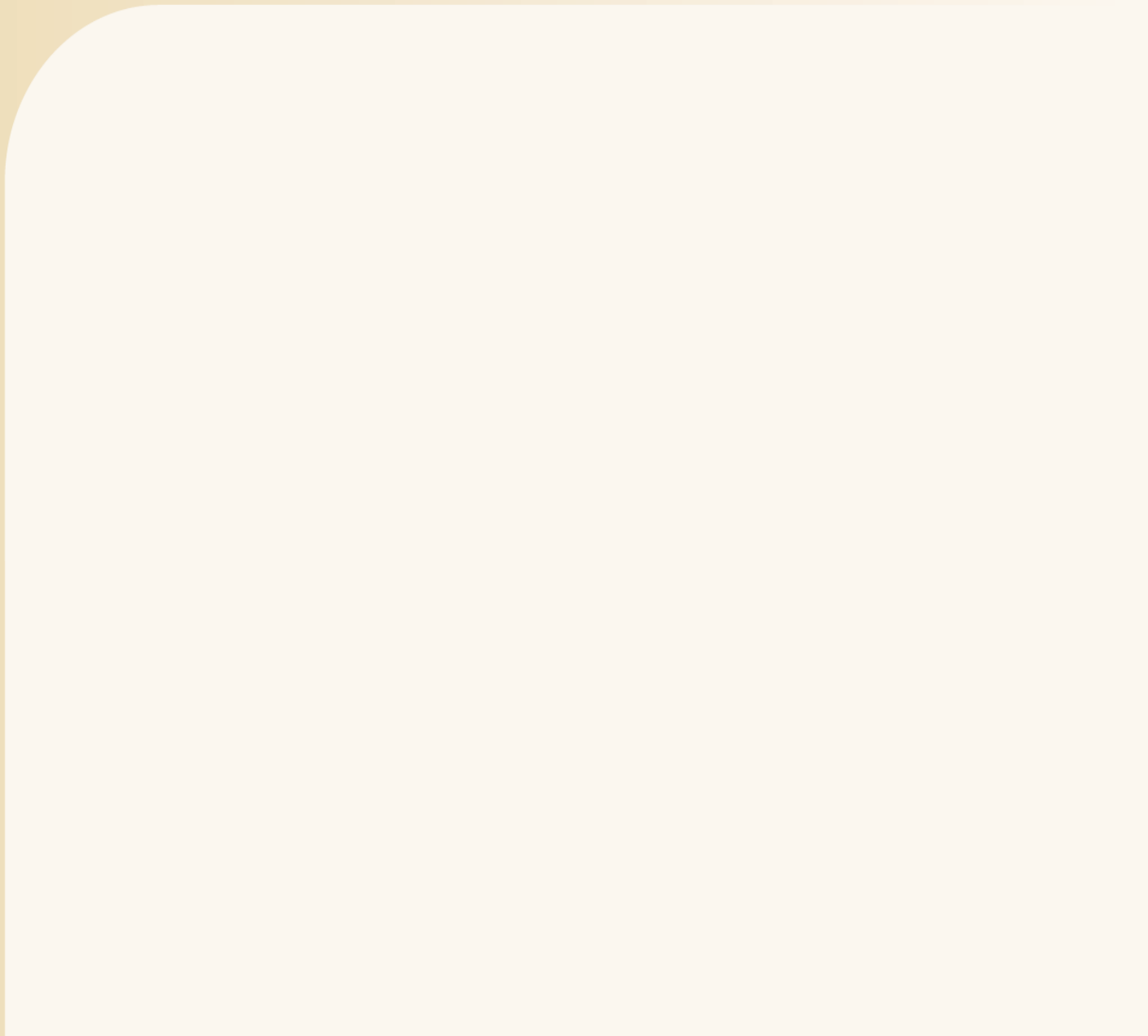
Diagram 3: Illustration on payment of remuneration to a person based on the sale of investment products closed by representatives under other Third Tiers



**Rep F1 becomes a Fourth Tier as he receives remuneration computed based on the sale of investment products closed by representatives of other agency groups (e.g. Representatives F11, F13, F19, F21) headed by other Third Tiers (e.g. Rep F8 and Rep F15) who are “affiliated” with Rep F1.*

Diagram 4: Illustration on a tier structure that consists of supervisors other than the Second Tier and Third Tier.





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