

Annex 2 - Finalised Code of Practice for Trust Business

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A.1 Introduction

A.1.1 Purpose

- A.1.1.1 This Code of Practice for Trust Business (“the Code”) sets out the general principles and practical standards to govern the conduct of trustees in their trust business in Hong Kong.
- A.1.1.2 The Code does not have the force of law and should not be interpreted in a way that would override the provision of the law. It supplements all legal requirements and obligations under the trust governing documents or otherwise applicable to trustees in the exercise of their trustee functions and is not to be interpreted or used to permit or require a trustee to derogate from such requirements and obligations.
- A.1.1.3 Trustees should, in addition to observing all applicable legal requirements and the requirements in this Code, also observe other regulatory requirements as relevant to their trust business, including but not limited to other conduct requirements, prudential requirements, and anti-money laundering and counter-terrorist financing requirements.

A.1.2 Terminology

For the purpose of the Code –

- A.1.2.1 “Trust” refers to an obligation imposed on a person to hold or control and administer assets for the benefit of others (i.e. the beneficiaries) or for a specified purpose (e.g. charitable purpose, wills or estate planning).
- A.1.2.2 “Trust business” refers to provision of one or more of the following services, by way of business:
- (i) setting up a trust;
 - (ii) acting as a trustee (or a party by whatever name called performing the functions of a trustee) for a trust;
 - (iii) managing the assets held on trust;
 - (iv) administration services for a trust;
 - (v) eventual transfer of assets to beneficiaries.

For the avoidance of doubt, service (iii) above does not cover investment management of the trust assets by a licensed or registered person for Type 9 regulated activity under Schedule 5 to the Securities and Futures Ordinance (Cap. 571) (“SFO”). For service (iv), non-exhaustive examples of one or more activities that will be taken into account in considering whether administration service for a trust is involved include keeping of accounting records relating to a trust and preparation of accounting records for a trust; custody of trust assets; and payment of expenses or remuneration out of a trust. However, as far as a collective investment scheme (“CIS”) as defined in Schedule 1 to the SFO is concerned, service (iv) does not cover an activity the exercise of which is the responsibility of the management company of the CIS.

- A.1.2.3 “Customer” means:
- (a) A person who has entered into or may enter into an agreement for services to be provided by a trustee.
 - (b) A person who has received or may receive trust services to be provided by a trustee.

The definition of “customer” is to be applied to the individual provisions of the Code according to whether it applies to settlor or beneficiaries only, or settlor and beneficiaries together, or any other applicable trust party, in the given circumstances.

- A.1.2.4 “Trust governing documents” means, in respect of a trust, the trust deed and any other documents setting out the

general and specific terms governing the trust services provided or to be provided by a trustee to the trust.

- A.1.2.5 “Relevant staff” refers to staff engaged by a trustee to provide direct assistance in the provision of trust business (including customer-facing staff, operations staff, and supervisors of such staff). Staff acting as an accountant for the overall book-keeping at the corporate level, providing human resources, general secretarial or administrative support or information technology support at the corporate level, or performing legal, compliance or risk control function are not regarded as relevant staff.

A.1.3 Applicability

- A.1.3.1 The trust business services subject to the Code are those provided by a trustee or prospective trustee (or a party by whatever name called performing the functions of a trustee) of the trust concerned.
- A.1.3.2 The Code applies to authorized institutions¹ (“AIs”) that conduct trust business in Hong Kong.
- A.1.3.3 The Code also applies to subsidiaries of locally incorporated AIs that conduct trust business in Hong Kong. The locally incorporated AIs should ensure the business conduct, practices and controls of such subsidiaries are in line with the Code.
- A.1.3.4 Any other trustees that conduct trust business in Hong Kong are encouraged to adopt the Code.
- A.1.3.5 Where the operations and functions of a trustee are performed by delegates or other parties, while the delegates and other parties do not by themselves fall within the scope of the Code, the trustee should have a proper oversight of them and ensure that the operations and functions concerned are performed in accordance with the relevant legal and regulatory requirements (including the Code) and the trust governing documents.

A.1.4 Exemptions

- A.1.4.1 The persons mentioned in paragraphs A.1.4.2 to A.1.4.5 below are exempted from the scope of this Code.

¹ As defined by the Banking Ordinance (Cap. 155).

- A.1.4.2 Depositories licensed or registered for Type 13 regulated activity (“RA13”) under Schedule 5 to the SFO insofar as the trust services provided relate to a CIS authorized by the Securities and Futures Commission under section 104 of the SFO and form part of the regulated functions for RA13 under the SFO².
- A.1.4.3 Trustees insofar as the trust services provided relate to the products mentioned below:
- (a) a registered scheme or its constituent fund, as defined in section 2(1) of the Mandatory Provident Fund Schemes Ordinance (Cap. 485) (“MPF schemes”); and
 - (b) an approved pooled investment fund as defined in section 2 of the Mandatory Provident Fund Schemes (General) Regulation (Cap. 485A) (“APIF”) which is or is intended to be offered only to:
 - (i) MPF schemes;
 - (ii) occupational retirement schemes as defined in section 2(1) of the Occupational Retirement Schemes Ordinance (Cap. 426) (“ORSO”) (“ORSO schemes”);
 - (iii) pooling agreements as defined in section 2(4) of the ORSO; or
 - (iv) other APIFs which are or are intended to be offered only to a product specified in (i), (ii) or (iii) above.
- A.1.4.4 Trustees insofar as the trust services provided relate to ORSO schemes.
- A.1.4.5 A person when acting in the capacity of a trustee where that part of its trust business is specifically in relation to a trust that is created or proposed to be created in connection with loans and/or the issuance of debentures (which include debt securities, such as notes and bonds) and aims to ensure the fulfilment of applicable rights and/or obligations between creditors and debtor(s) including between debenture holders and debenture issuer(s) and between borrowers and lenders under loan facilities. Such rights and/or obligations include for example the benefit of a covenant to repay debt, and/or the benefit of security for

² This exemption applies when the RA13 regime is implemented. For the existing depositories of CIS authorized by the Securities and Futures Commission, an exemption is provided during the interim period between the implementation of this module and that of the proposed RA13 regime, to the extent that the trust services are related to the proposed RA13.

such a covenant (or assets held as a result of the performance or enforcement of the covenant to repay or security).

A.1.5 Non-compliance

A.1.5.1 Where a trustee identifies that there is material non-compliance with the Code or it comes to its attention that there is material non-compliance, the case should be promptly reviewed and timely reported to the senior management and relevant regulator(s) in accordance with the guidance under Principle 6 Co-operation with regulators in the Code.

A.2 General principles

A.2.1 Principle 1: Fairness, honesty and integrity

A.2.1.1 A trustee should act honestly, fairly, and with integrity in conducting its trust business.

A.2.2 Principle 2: Due skill, care and diligence

A.2.2.1 A trustee, in conducting its trust business, should act with due skill, care and diligence, and in the interests of its customers. A trustee should ensure that the entity through which trust business is conducted and all relevant staff are fit and proper to perform their roles and functions.

A.2.3 Principle 3: Management and control of trust assets

A.2.3.1 A trustee should exercise due care in understanding, managing and controlling all assets held within the trust in full conformity with its fiduciary obligations.

A.2.4 Principle 4: Corporate governance and internal controls

A.2.4.1 A trustee should establish a proper corporate governance structure and implement adequate internal controls and risk management systems to ensure that its trust business is effectively managed.

A.2.5 Principle 5: Compliance with legal and regulatory requirements and standards

A.2.5.1 A trustee should comply with relevant legal and regulatory requirements and standards applicable to the conduct of its trust business activities.

A.2.6 Principle 6: Co-operation with regulators

A.2.6.1 A trustee should deal with relevant regulators in an open and co-operative manner.

A.3 Principle 1: Fairness, honesty and integrity

A.3.1 A trustee should ensure that its actions comply with relevant requirements and standards applicable to the trustee and/or its staff, where appropriate. The higher standards should prevail.

A.3.2 A trustee should observe the following:

A.3.2.1 A trustee should conduct its trust business with integrity. A trustee should not engage in any conduct involving fraud or dishonesty or commit any act that reflects adversely on its honesty, trustworthiness or that compromises its integrity.

A.3.2.2 A trustee should, subject to the duties and obligations conferred by the trust governing documents, not attempt to avoid its responsibilities under the Code and any other applicable requirements and standards.

A.3.2.3 Subject to the terms of the trust governing documents and its legal and fiduciary obligations applicable from time to time, a trustee should act fairly and objectively when dealing with customers. In particular, a trustee should:

- (a) act in accordance with the objects of a trust and work within the parameters and terms set out in the trust governing documents and/or any directions from a relevant party where permitted, in accordance with applicable requirements and standards;
- (b) treat its customers fairly at all stages of the relationship, while having regard to its legal and fiduciary obligations; and
- (c) provide advice where required and appropriate to its customers and exercise independent professional judgement in performing its duties, including the appointment and oversight of delegates and other service providers performing services for the trust e.g. investment managers.

A.3.3 Disclosure of information

A.3.3.1 Where appropriate and permitted under applicable laws and regulations and subject to the terms of the trust governing documents, a trustee should:

- (a) ensure that a customer has access to relevant and updated information concerning that trust; and
- (b) make adequate and accurate disclosure of relevant information to help customers make an informed decision prior to entering into any contract or agreement (for example, key risks, terms and conditions, fees and charges).

A.3.4 Fees and charges

- A.3.4.1 A trustee should ensure that fees and charges in relation to a trust are fair and reasonable.
- A.3.4.2 Unless restricted by the terms of the trust governing documents, a trustee should be open and transparent with customers about fees and charges, for example:
 - (a) prior disclosure of and agreement on fees and charges, and documentation of the basis for such fees and charges;
 - (b) prior disclosure, where practicable, of benefits received or receivable associated with the trust service provided from parties other than the customers;
 - (c) disclosure of the manner by which fees and charges will be collected;
 - (d) giving adequate notice before introducing any change in fees and charges; and
 - (e) disclosure of the arrangement of fees and charges in relation to the termination of services, such as whether fees paid in advance are refundable in the event of termination.

A.3.5 Representations

- A.3.5.1 A trustee should take reasonable steps to ensure that representations made, including invitations and advertisements, are accurate, and do not contain information that is false, misleading or deceptive.

A.4 Principle 2: Due skill, care and diligence

A.4.1 Prompt execution

- A.4.1.1 A trustee should take all reasonable steps, having obtained sufficient information in order to exercise properly its discretion or other powers, to consider and deal effectively and in a timely manner with requests from its customers,

including the establishment, transfer or closing of business relationships.

A.4.2 Acting in the interests of customers

- A.4.2.1 A trustee should act in good faith with proper purpose, and act with due skill, care and diligence in performing its duties. A trustee should not take up outside duties or responsibilities which may pose undue influence on the trustee's decisions or compromise the trustee's ability to act in the interests of the trust. Where such outside duties and responsibilities arise as a function of the trustee conducting its business within a wider organisation e.g. a bank with multiple service lines, the trustee should ensure there is proper segregation of decision making and other activities in place to avoid any undue influence on trustee decision making or compromise the trustee's ability to act in the interests of the trust.
- A.4.2.2 A trustee should have a complete and updated understanding of the trust governing documents in each case, and seek legal or other professional advice where necessary.
- A.4.2.3 A trustee should treat the interests of customers as paramount, subject to any legal obligations to other parties. Where there is more than one trustee, a trustee should act in accordance with the trust governing documents in making collective decisions, and only act on an individual basis if empowered to do so by the trust governing documents.
- A.4.2.4 When a trustee exercises power or discretion in relation to a trust (such as the power to invest, manage or arrange for investment), it should act with due care and attention to ensure that it suitably exercises such power or discretion. For example, a trustee should:
- (a) act responsibly on any available information considered by the trustee to be relevant and appropriate; and
 - (b) exercise power or discretion properly in accordance with the objects and terms set out in the trust governing documents and applicable legal and regulatory requirements.

A.4.3 Handling conflicts of interest

- A.4.3.1 A trustee should establish and implement effective policies and procedures to identify and manage actual or potential conflicts of interest.

A.4.3.2 A trustee should consider the circumstances in determining the appropriate actions to handle actual or potential conflicts of interest so that they can be avoided or prevented, and if not possible, at least appropriately managed. For example, subject to the terms of the trust governing documents, a trustee should:

- (a) segregate duties adequately;
- (b) establish internal rules of confidentiality as appropriate, including necessary information boundaries, such as physical separation of certain departments or data segregation;
- (c) identify the relationships, services, activities or transactions of the trustee in respect of which conflicts of interest may arise, and set out possible measures for preventing or managing these conflicts, such as:
 - ensuring that deliberations, voting and decision making on issues exclude those persons whose participation may give rise to a real or perceived conflict;
 - disclosing interests or conflicts to the customers and any other impacted trust parties, and if appropriate, seeking written consent from customers and those parties;
 - advising customers to seek independent professional advice if needed; and
- (d) take reasonable steps to ensure that customers are fairly treated.

A.4.3.3 If a trustee has involvement with any connected party, including those within its wider organisation or to whom it has properly delegated or outsourced a function or operation, it should implement proper internal controls, including dealing with connected parties on an arm's length basis and in the interests of the trust, disclosure of connections, and maintaining proper documentation of the justifications for approving a transaction with a connected party.

A.4.4 Fitness and propriety of a trustee and its staff

A.4.4.1 A trustee should possess and maintain sufficient skills, knowledge and expertise to conduct its trust business. It should only conduct those areas of trust services for which it has relevant professional knowledge and expertise.

- A.4.4.2 A trustee should ensure that its key personnel and relevant staff are and remain fit and proper for their roles and responsibilities. Key attributes in assessing fitness and propriety include financial soundness, competence, honesty, integrity, reputation and reliability. Commensurate with the scale, complexity and risks of the trust business, a trustee should also ensure that staff engaged in compliance, internal controls, risk management and internal audit functions possess the necessary technical knowledge and skills, ethics and compliance knowledge, qualifications and experience.
- A.4.4.3 A trustee should establish and implement appropriate policies, procedures and plans that take into account the following:
- (a) assessing the adequacy of relevant academic and professional qualifications, knowledge, skills, work experience and soundness of judgement of staff;
 - (b) providing adequate level of supervision to staff; and
 - (c) establishing a training plan and providing relevant and timely guidance and training to staff initially and on an on-going basis, including relevant induction and continuous training and development on technical knowledge and skills, industry developments, applicable legal and regulatory requirements (including ethics and compliance knowledge), and relevant internal control policies and procedures.
- A.4.4.4 In order to maintain on-going professionalism and keep abreast of the latest development, individuals principally responsible for the conduct of trust business and relevant staff are expected to fulfil not less than 10 hours of trust-related continuous professional training (“CPT”) in each calendar year, of which at least 2 hours are on ethics and compliance. For the avoidance of doubt, trust-related professional training or development activities fulfilled by an individual under relevant professional qualifications can count towards the CPT hours in the same calendar year under the Code, provided that such training or development activities are achieved through the acceptable means:
- (i) classroom training courses, workshops, lectures, seminars;
 - (ii) distance learning or self-study, which requires submission of assignments or assessments;
 - (iii) online learning courses with assessments or proof of attendance;

- (iv) industry research, publication of paper, delivery of speeches or providing comments to industry consultation papers; and/or
- (v) time spent in giving lectures or teaching (although repeatedly giving the same lecture or teaching will not satisfy the requirement).

Trust-related training may be organised by relevant professional bodies, training providers or employing institutions. Individuals principally responsible for the conduct of trust business and relevant staff can choose relevant training that is suitable to their needs and circumstances.

- A.4.4.5 A trustee should keep records to evidence the competence and on-going professional development of key personnel, relevant staff, and staff engaged in compliance, internal controls, risk management and internal audit functions. Such records should be retained for a minimum period of 3 years.

A.5 Principle 3: Management and control of trust assets

A.5.1 Ownership and entitlement of trust assets

- A.5.1.1 A trustee, where managing the assets of a trust, should act in accordance with the terms of the trust governing documents, the directions of the trust parties subject to the trust governing documents and applicable legal and regulatory requirements.
- A.5.1.2 A trustee should exercise care in safeguarding those assets held on trust within its control. Where physical assets in this respect are held, physical storage should be secure.
- A.5.1.3 Adequate procedures should be effectively implemented to minimise the risk of loss, theft, fraud, and other acts of misappropriation. Proper records should be maintained in respect of assets within the trustee's control to evidence their registration and good title where available and security as appropriate and to ensure their availability for distribution in accordance with the trust governing documents and/or trustees' exercise of its discretion. Proper audit trails should be created to evidence the receipt, delivery and other movements of assets.

A.5.2 Segregation of trust assets

- A.5.2.1 A trustee should ensure assets held on trust are clearly identified and segregated from one another and from the

assets of the trustee and any delegates or other parties involved in the operations of the trust.

A.5.3 Reconciliation of trust assets

- A.5.3.1 Regular reconciliation of client monies and where practicable other assets held on trust against the trustee or third-party records, and where practicable verification of asset ownership, should be conducted by staff of the trustee operationally independent of the regular management and administration of the trust and be subject to periodic review and approval by appropriate management staff. For physical assets, commensurate with the prudent and effective exercise of trustee's duty, periodic audits should be conducted at the premises where the physical assets are kept.
- A.5.3.2 Proper procedures should be implemented to follow up any issues or discrepancies identified, take any rectification and remedial measures, and report or escalate matters as appropriate.

A.6 Principle 4: Corporate governance and internal controls

- A.6.1 A trustee should establish and maintain robust corporate governance policies and practices as well as effective internal controls and risk management processes that are commensurate with the nature, scale and complexity of the trust business.
- A.6.2 A trustee should implement processes to ensure that its senior management can timely obtain updates and appraise the affairs of the trust business.
- A.6.3 A trustee should ensure that reporting lines are clearly identified with supervisory and reporting responsibilities assigned to appropriate staff with separation of duties as appropriate.
- A.6.4 A trustee should regularly review the effectiveness and appropriateness of its governance policies and practices, and its internal controls, taking into account the business activities, risk profile and market development.
- A.6.5 A trustee should have proper oversight of all delegates and other parties, e.g. agents, nominees, custodians, and other service providers, appointed or engaged for providing services related to its trust business. Among others, a trustee should have adequate internal control policies and procedures for ongoing monitoring of such delegates and other parties to be satisfied that the operations

and functions concerned are performed in compliance with relevant legal and regulatory requirements (including those in this Code) and the trust governing documents.

A.6.6 Management accountability

A.6.6.1 The ultimate responsibility for the operation and conduct of a trust business of a trustee lies with the board of directors, or other relevant governing body (if the trustee is not a corporate entity) of that trustee.

A.6.6.2 Senior management of a trustee are accountable to the board, or other relevant governing body (if the trustee is not a corporate entity) and are responsible and accountable for running the trust business on a day-to-day basis, and should ensure that the business activities comply with applicable legal and regulatory requirements and internal procedures.

A.6.7 Confidentiality

A.6.7.1 In accordance with confidentiality obligations conferred by the provisions of the trust governing documents and relevant personal data privacy legislation in force, a trustee should implement appropriate policies, procedures and controls on collection, use and transmission of trust related information and collection, use, storage, protection, transmission and destruction of personal data.

A.6.7.2 Staff are required to hold in strict confidence all trust related information and personal data the trustee has collected or obtained from persons related to trusts (e.g. settlors, protectors, enforcers and beneficiaries). A trustee should not disclose such information to third parties unless required or permitted by applicable legal and regulatory requirements and the trust governing documents; where the trustee needs to seek advice under legal privilege or other necessary professional advice; where the trustee must disclose to discharge the trustee's duties or where consent is given by the person concerned. An institution should take all necessary steps to safeguard the confidentiality of trust related and personal information, including formulating internal policies for the collection, use, storage, protection, transmission and destruction of confidential data.

A.6.7.3 A trustee should implement adequate controls to prevent staff from benefiting in financial or non-financial terms from the improper use of confidential information which may lead to unfair, improper or illegal behaviour.

A.6.8 Delegation and outsourcing

- A.6.8.1 A trustee should assess and continually manage the risks associated with a delegated or outsourced function or operation.
- A.6.8.2 Commensurate with the scale, complexity and risk profile of the trust business, a trustee should establish adequate policies, procedures and control measures in relation to the selection, appointment, monitoring, assessment and supervision of delegates and other service providers, including:
- (a) setting selection criteria (taking into account the costs, quality of services, financial soundness, reputation, managerial skills, technical capabilities, operational capability, compatibility and other relevant factors) and performing appropriate due diligence of a delegate or other service provider prior to appointment or engagement;
 - (b) executing an agreement which clearly sets out the type and level of services to be provided and the liabilities and obligations of the delegate or other service provider; and
 - (c) implementing controls to monitor the performance, manage the relationship with the delegate or other service provider on a continuous basis, and implementing safeguards to protect the integrity and confidentiality of customer information.

A.6.9 Internal controls on managing and administering the trust

- A.6.9.1 A trustee should implement adequate procedures and controls in managing, administering, and overseeing, as applicable, the operation of the trust. Examples of these controls include cashflow monitoring, investment monitoring, safekeeping and valuation of assets, trust accounting, receipt and distribution of payments and assets, where applicable and in accordance with the trust governing documents together with all applicable legal and regulatory requirements.
- A.6.9.2 A trustee should ensure it has in place an adequate business continuity plan and procedures to handle potential disruptions, failures, and other contingencies for its trust business activities. A trustee should also establish an appropriate contingency plan for the appointment or engagement of delegates and other parties.

A.6.10 Complaint handling

A.6.10.1 A trustee should implement adequate policies and procedures for handling complaints lodged by customers or a third party on behalf of customers related to its trust business.

- (a) Policies and procedures should cover receiving complaints, investigation of complaints, responding to complaints, and availability of any redress or compensation in appropriate circumstances.
- (b) Complaints should be handled, investigated and addressed in a fair, prompt and appropriate manner. Staff assigned to handle the complaint should be independent and should not be involved in the subject of the complaint.
- (c) Details on where and how to lodge a complaint should be communicated and made available to customers.
- (d) Records of complaints should be maintained which show the complainant's name, details of the complaint, assessment result, correspondence between a trustee and the complainant, and any actions taken.

A.6.10.2 A trustee should set up effective procedures to monitor complaints and prepare regular reports with complaint related data to the senior management for review.

A.6.11 Risk management

A.6.11.1 A trustee should establish an effective risk management framework and implement adequate procedures and internal controls to identify, monitor and manage risks in acting as a trustee.

A.6.12 Accounting and other record keeping

A.6.12.1 A trustee should maintain adequate records and adequate internal controls of its records to demonstrate compliance with the Code, other applicable legal and regulatory requirements, and trust governing documents.

A.6.13 Professional indemnity insurance

A.6.13.1 A trustee should maintain professional indemnity insurance with adequate coverage that is commensurate with its trust business to cover claims for liability related to its duties and obligations in the course of conducting trust business. Coverage may be taken at the entity or group level, so long as it is adequate.

A.7 Principle 5: Compliance with legal and regulatory requirements and standards

A.7.1 A trustee should comply with applicable legal and regulatory requirements, regulatory standards, and internal policies and procedures relevant to its trust business.

A.7.2 Compliance policies and procedures

A.7.2.1 A compliance policy should be established with proper approval from senior management of a trustee, and be commensurate with the scale, complexity and risk profile of the trust business. The policy should be subject to regular review to ensure adequacy and relevancy.

A.7.2.2 Adequate procedures and internal controls should be implemented to ensure compliance with relevant legal and regulatory requirements, regulatory standards, and internal policies and procedures.

A.7.3 Compliance function and review

A.7.3.1 Senior management of a trustee should establish a compliance function comprising staff with relevant knowledge, skills, qualification and experience to execute their duties effectively.

A.7.3.2 Commensurate with the scale, complexity and risk profile of the trust business, the compliance function should be appropriately independent of business functions, and report to senior management directly. It should have unfettered access to all business and supporting units, as well as documentation, records and information necessary to properly discharge its roles and responsibilities.

A.7.3.3 The trustee should establish a compliance program for planning and conducting regular independent review of its trust business activities and operations. Effective systems and controls should be implemented to identify, monitor and manage any conduct issues, control deficiencies and non-compliance with relevant requirements (including the Code) and standards governing the trust business.

A.7.3.4 Appropriate remedial measures should be taken to rectify the issues and weaknesses identified and prevent similar occurrences in future. Such action plans and measures should be reviewed and monitored by relevant control and risk management functions and management, including the compliance function.

A.7.3.5 The trustee should establish and ensure observance of relevant guidelines to escalate to senior management and report to regulators any material non-compliance and other relevant matters as appropriate.

A.8 Principle 6: Co-operation with regulators

A.8.1 A trustee should deal with relevant regulators in an open and cooperative manner.

A.8.2 Communications made by a trustee with relevant regulators should be timely and accurate.