
REGULATORY NEWSLETTER

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REGULATORY UPDATES

Circular to licensed corporations - Revised financial return form

26 Jun 2020

The SFC has published the draft of the revised form of the return required to be submitted by licensed corporations (LCs) under section 56 of the Securities and Futures (Financial Resources) Rules.

The financial soundness of LCs is a major focus of the SFC, which supervises LCs' prudential risks primarily through a review of their financial returns. In light of the rapidly changing operating environment and greater business complexity, the financial return form has been revised to collect additional data from LCs to enable the SFC to identify risks in a timely manner, take prompt supervisory action and protect investors.

To allow time for LCs to prepare, the revised form shall only be used for accounting periods starting on or after 1 July 2021. While the revised form may be subject to non-substantive amendments, LCs are strongly advised to familiarise themselves with the revised form, start gathering the newly required data and enhance their systems where necessary.

The final version of the revised form will be published in the Government Gazette in due course.

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ENFORCEMENT NEWS

SFC bans former responsible officer of Guosen Securities (HK) Brokerage Company, Limited for 12 months

The SFC has prohibited Ms Joanna Chu Lai Wa, former responsible officer (RO), director and head of dealing of Guosen Securities (HK) Brokerage Company, Limited (Guosen) from re-entering the industry for 12 months from 23 June 2020 to 22 June 2021.

The disciplinary action follows the SFC's sanctions against Guosen over its failures to comply with anti-money laundering (AML) and counter financing of terrorism (CFT) regulatory requirements when handling third party fund deposits between November 2014 and December 2015.

The SFC found that Guosen's breaches were attributable to Chu's failure to discharge her duties as an RO and a member of Guosen's senior management.

Guosen's internal control deficiencies in relation to third party deposits were brought to the attention of its senior management - including Chu - by its staff in 2013. However, Chu deemed that the matter was irrelevant to her and did not take any steps to ensure that the deficiencies were rectified. Her inaction contributed to Guosen's failure to put in place adequate AML/CFT internal controls during the material time.

Chu also received records of third party deposits from Guosen's then head of settlement from time to time. Those records showed that, contrary to Guosen's purported policy to discourage third party deposits, it processed a significant number of third party deposits for its clients. However, Chu did not take any action and did not escalate the matter to her supervisor or other members of Guosen's senior management, despite the substantial amount of third party deposits received.

Apart from turning a blind eye to the money laundering and terrorist financing (ML/TF) risks associated with third party deposits, Chu also failed to ensure that Guosen's staff adhered to the procedures for assessing clients'

SFC reprimands and fines Potomac Capital Limited \$800,000 for breaching Financial Resources Rules

The SFC has reprimanded and fined Potomac Capital Limited (Potomac) \$800,000 for failures to comply with the Securities and Futures (Financial Resources) Rules (FRR).

The SFC found that Potomac overstated its liquid capital in its financial returns from November 2016 to May 2017 by incorrectly including certain fees receivables from two clients accumulated since around April 2013 as liquid assets when the aged fee receivables should not qualify as liquid assets under the FRR.

Excluding the aged fee receivables from liquid capital calculation under the FRR would have resulted in monthly liquid capital deficits varying from \$335,000 to \$449,000 for Potomac from February to May 2017.

The SFC is of the view that Potomac's conduct was in breach of the Code of Conduct.

In deciding the sanction, the SFC took into account all relevant circumstances, including:

- Potomac had incorrectly included the fees receivables in its liquid capital for more than three years;
- Potomac has rectified the FRR breach; and
- Potomac's otherwise clean disciplinary record.

ML/TF risks by documenting the process as required by Guosen's compliance manual in her capacity as one of the approvers of account opening applications. The SFC considers that Chu's conduct fell short of the standard required of her as an RO for a licensed corporation.

In deciding the disciplinary sanction, the SFC took into account all relevant circumstances, including that Guosen's regulatory breaches were serious and Chu's otherwise clean disciplinary record.

Chu, who had applied to the Securities and Futures Appeals Tribunal (SFAT) for a review of the SFC's decision, was granted leave to withdraw her application on 23 June 2020 by the SFAT and ordered to pay the SFC's legal costs.

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