
REGULATORY NEWSLETTER

2020 Vol.11



REGULATORY UPDATES

Circular to intermediaries: Provision of trade documents to clients by access through intermediaries' websites

29 September 2020

The SFC provided updated guidance on the provision of specified documents to clients by access through intermediaries' websites (Access Service).

The SFC reiterates its policy position, previously explained in a circular dated 28 July 2010², that it regards Access Service to be acceptable for the purpose of section 17 of the CNR provided that **(a)** the intermediaries have obtained positive, revocable consent from the clients to such means of service of documents, and **(b)** there are adequate operational safeguards to ensure adequate notice and access is given to the clients.

The updated guidance serves, among other things, to:

- Introduce new ways in which consent to the Access Service could be obtained from new and existing clients;
- Provide further guidance on the disclosure of access arrangements, which assists clients in giving informed consent;
- Clarify that other forms of effective electronic communications, in addition to email, may be used for notifying clients of the posting of trade documents on the website; and
- Extend the minimum online retrieval period to two years for monthly statements of account and three months for other trade documents.

Intermediaries which currently provide Access Service for the purpose of complying with the CNR should align the minimum online retrieval period of their posted trade documents with those specified in paragraph 15 of the SFC Annex within one year from the date of this circular.

For more details on the operational safeguards for Acceptable Use of the Access Service, please refer to the circular and annex published by the SFC below.

[View Circular](#)

Circular on the electronic dissemination of investment product documents

29 September 2020

1. The following guidance on the post-sale dissemination of documents in electronic form is provided to:
 - (a) issuers of investment products authorised by the SFC under Part IV of the Securities and Futures Ordinance (SFC-authorised Products); and
 - (b) intermediaries who hold investment products on behalf of their clients.
2. Issuers of SFC-authorised Products are required under their constitutive documents and the applicable legal and regulatory requirements to issue and disseminate to investors product documents such as offering documents, notices, announcements and financial reports (Product Documents).
3. In view of the increasing use of electronic media, issuers and intermediaries which disseminate paper Product Documents may wish to disseminate these documents electronically. Examples of electronic dissemination (e-dissemination) arrangements include:
 - (a) providing electronic copies of documents to investors; or
 - (b) notifying investors electronically **(i)** that the documents are accessible online and **(ii)** where the electronic documents can be accessed.
4. Prior to adopting e-dissemination arrangements, issuers and intermediaries must ensure that they have in place proper transitional arrangements which comply with applicable laws and requirements.
5. Documents for listed SFC-authorised Products (other than unlisted unit and share classes of listed SFC-authorised Products) should continue to be disseminated electronically pursuant to their constitutive documents and applicable requirements

For more details on the Guidelines for transitional arrangements and general principles to all e-dissemination arrangements, please refer to the circular published by the SFC below.

[View Circular](#)

ENFORCEMENT NEWS

Market Misconduct Tribunal sanctions CMBC Capital Holdings Limited and its former directors for late disclosure of inside information

The Market Misconduct Tribunal (MMT) found that CMBC Capital Holdings Limited (CMBC Capital) and six of its former directors failed to disclose inside information as soon as reasonably practicable under the SFO and imposed a 15-month disqualification order against the

SFAT affirms SFC decision to ban Lai Voon Wai for five years for IPO sponsor failures

The Securities and Futures Appeals Tribunal (SFAT) has affirmed the decision of the SFC to ban Mr Lai Voon Wai, a former responsible officer (RO) of CCB International Capital Limited (CCBIC) and BOCOM International (Asia) Limited (BIAL), from

company's former Chief Executive Officer and Company Secretary Mr Philip Suen Yick Lun.

CMBC Capital and the six former directors admitted that the information about significant improvement in the company's financial performance for the five months ended 31 August 2014 came to their knowledge on or around 13 October 2014. However, such information was not made public until 7 November 2014 when a positive profit alert was published in relation to the company's financial performance for the six months ended 30 September 2014.

Philip Suen and CMBC Capital's former chairman Mr. Paul Suen also admitted that their negligent conduct had resulted in CMBC Capital's breach of the requirements of the corporate disclosure regime.

The MMT further ordered that:

- CMBC Capital and the six former directors to pay the SFC's investigation and legal costs, as well as the costs of the MMT proceedings; and
- the six former directors to attend an SFC-approved training programme on the corporate disclosure regime, directors' duties and corporate governance.

re-entering the industry for five years for failing to discharge his supervisory duties as a sponsor principal in charge of supervising the execution of two listing applications.

Lai, who was a Managing Director of Corporate Finance and an RO of CCBIC at the material time, failed in his role as the sponsor principal to **(i)** properly supervise the due diligence process on the third party payment arrangement between Fujian Dongya, its overseas customers and their third party payers; **(ii)** apply his mind as to the reasonableness of explanations by Fujian Dongya on third party payments despite various red flags raised in the due diligence process; and **(iii)** supervise the due diligence interviews with Fujian Dongya's customers.

In the listing application of China Huinong, Lai, who was then a Managing Director and Head of Investment Banking Division and an RO of BIAL, failed in his role as a sponsor principal to **(i)** take proper steps to ensure that the due diligence work was compliant with the relevant regulatory requirements before signing and submitting the listing application to the Stock Exchange of Hong Kong (SEHK) (A-1 filing) and **(ii)** give BIAL's transaction team adequate instructions and supervision to ensure the information provided to the SEHK and the SFC was properly verified when repeated questions were raised between A-1 filing and SEHK's return of the listing application.

[View News](#)

[View News](#)



ComplianceDirect Consulting Limited

Address: Unit 2, 10/F, Cheong K. Building, 84-86 Des Voeux Rd Central, Central, Hong Kong

Phone: 2606 1800

Website: www.compliancedirecthk.com
