
REGULATORY NEWSLETTER

2024 Vol.6



As the Dragon Boat Festival is celebrated across the land with young and old, may you all enjoy a safe and auspicious occasion, and may you live long and prosperous lives.

In this issue, we reflect on the financial industry's significant developments over the past month, with a focus on the evolving landscape facing risk management and compliance professionals. We hope you enjoy our regulatory newsletter for June.

REGULATORY UPDATES

Circular on streamlined requirements for eligible exchange-traded funds adopting a master-feeder structure

16 May 2024

Background

Currently, an exchange-traded fund (ETF) adopting a master-feeder structure is permitted under the Code on Unit Trusts and Mutual Funds (UT Code) provided that both the feeder ETF and the master ETF are authorized by the Securities and Futures Commission (SFC).

Recently, the SFC has received several requests to allow more flexibility in the master-feeder ETF structure so that an SFC-authorized feeder ETF may invest its assets in an overseas-listed master ETF without SFC authorization. Some product issuers have expressed strong interest in bringing overseas actively managed ETFs to Hong Kong through the streamlined route, as demand for these ETFs has been growing significantly globally. This arrangement would facilitate the development of ETF product line-up more cost-effectively, offering more investment choices to investors.

In response to the requests received, the SFC has prepared the following requirements under which it would consider authorizing such feeder ETF.

General Principles

Balancing the needs for investor protection and the potential benefits of making available a broader range of ETFs from different markets to Hong Kong investors, the SFC is prepared to consider authorizing a feeder ETF that invests in an overseas-listed passively or actively managed master ETF

without SFC authorization on a case-by-case basis, having regard to the following principles:

- a) satisfactory safeguards and measures are in place to address investor protection concerns; and
- b) there are demonstrable benefits to the Hong Kong market, considering factors such as the size and significance of the master ETF, its track record, and whether its underlying assets, investment strategy and underlying index (if applicable) are acceptable to the SFC.

Requirements

Master ETF

The master ETF should, at a minimum, meet the following key requirements:

- a) the master ETF must be a scheme with satisfactory safeguards and measures in place to provide substantially comparable investor protection as an ETF authorized under the UT Code, considering its underlying assets, investment strategy, applicable rules and regulations in home jurisdiction;
- b) the master ETF, together with its management company and trustee/custodian, must have a good compliance record with the rules and regulations of its home jurisdiction and (in the case of master ETF) the listing venue; and
- c) the master ETF must have sizeable assets under management with a good track record.

Feeder ETF

Feeder ETF seeking SFC authorization for public offering in Hong Kong should comply with the applicable requirements in the Overarching Principles Section and the UT Code in the SFC Handbook for Unit Trusts and Mutual Funds, Investment-Linked Assurance Schemes and Unlisted Structured Investment Products and all other applicable regulatory requirements and guidelines as may be issued by the SFC from time to time.

In addition, the feeder ETF should meet the following requirements:

- a) the feeder ETF must be a Hong Kong-domiciled ETF authorized by the SFC;
- b) the feeder ETF must be managed by a management company which is licensed or registered for Type 9 regulated activity and has a good compliance record;
- c) the management company of the feeder ETF should report to the SFC as soon as practicable if the master ETF ceases to comply with the requirements set out in this circular and take appropriate remedial action to promptly rectify the situation; and
- d) the management company of the feeder ETF should put in place appropriate arrangements to inform Hong Kong investors of any material changes to, or events that have significant adverse impact on, the master ETF in a timely manner.

The SFC may consider introducing additional requirements or conditions as deemed necessary or appropriate in the discharge of its functions.

[View Circular](#)

Circular to Management Companies of SFC-authorized Real Estate Investment Trusts (REIT) - Treasury units of SFC-authorized REITs

24 May 2024

Background

In accordance with the SFC's circular dated 31 January 2008 (Circular), SFC-authorized REITs may repurchase their own units on The Stock Exchange of Hong Kong Limited (Exchange) subject to similar requirements applicable to listed companies under the Rules Governing the Listing of Securities on the Exchange (Listing Rules).

The SFC noted that the Exchange has recently announced various amendments to the Listing Rules relating to treasury shares (Listing Rules Amendments) following a public consultation. Details of the

Listing Rules Amendments are set out in the consultation conclusions paper issued by the Exchange in April 2024.

Listing Rules Amendments and application to REITs

The Listing Rules Amendments are introduced mainly to remove the requirement to cancel repurchased shares and adopt a framework to govern the resale of treasury shares. The Listing Rules Amendments will come into effect on 11 June 2024.

It has been the SFC's long-established policy to regulate REITs in the same manner as listed issuers in view of their similarities in terms of economic nature and investors' interests.

Accordingly, in line with the Circular and the Listing Rules Amendments, SFC-authorized REITs may hold repurchased units in treasury and resell them, subject to similar requirements as applicable to treasury shares of listed companies under the Listing Rules Amendments. These include requirements on conducting resale on a pre-emptive basis or with a shareholders' mandate, disclosure and reporting requirements, imposition of a moratorium period after resale or repurchase, voting and dealing restrictions as well as lock-up requirements.

REIT managers should note the following in relation to an SFC-authorized REIT:

- (a) Under 12.2 of the Code on REITs (REIT Code), a REIT may issue new units during the financial year which does not increase its total number of units outstanding at the end of the previous financial year by more than 20% (issue mandate). In line with the Listing Rules Amendments, the number of units repurchased by a REIT in the year under a repurchase mandate and held in treasury (Relevant Treasury Units) may be added to such issue mandate limit. As the issue mandate is not subject to unitholders' approval, no separate unitholders' approval would be required for the resale of the Relevant Treasury Units in the year. Both the issue mandate limit and the repurchase mandate limit should be calculated based on the number of issued units of a REIT excluding any treasury units held by the REIT at any given time.
- (b) Treasury units shall not be regarded as outstanding and shall be excluded from a REIT's issued or voting units for the purposes of 9.9(c) and (h) of the REIT Code, as well as for various other purposes in line with the Listing Rules Amendments (e.g. public float, market capitalisation, mandate limits and size tests for transactions). Also, treasury units shall not be entitled to unitholders' rights including distribution and voting rights.
- (c) Any changes in the number of treasury units of REITs should be reported in the next-day disclosure returns and monthly returns in accordance with the requirements under Appendix E3 to the Listing Rules.

REIT managers intending to hold and/or resell treasury units under the new framework should review and update the constitutive documents, compliance manuals and/or other relevant documents of their REITs where appropriate. Where amendments to the constitutive documents are required, REIT managers should ascertain whether unitholders' approval would be required in compliance with 9.6 of the REIT Code.

REIT managers should satisfy themselves that a proposed purchase of units, holding, sale or transfer of treasury units complies with all applicable requirements set out or referred to in this circular.

To provide more practical guidance on the application of the new requirements, the Frequently Asked Questions relating to Real Estate Investment Trusts⁵ have been updated. A revised Compliance Checklist for Unit Buy-back Circular is also available on the SFC's website.

[View Circular](#)

ENFORCEMENT NEWS

SFC commences insider dealing prosecution against Segantii Capital Management and its chief investment officer

2 May 2024

The SFC has commenced criminal proceedings against Segantii Capital Management Limited (Segantii), its director and chief investment officer Mr. Simon Sadler, and former trader Mr. Daniel La Rocca for the offence of insider dealing in the shares of a company listed on the Stock Exchange of Hong Kong Limited prior to a block trade in June 2017.

No plea was taken when the defendants appeared at the Eastern Magistrates' Court this morning and the case was adjourned to 12 June 2024.

Sadler and La Rocca were released pending the next hearing on the following conditions: (i) cash bail of \$1,000,000 and \$500,000 respectively; (ii) they shall inform the SFC 24 hours before leaving Hong Kong, and to provide the SFC with full itinerary with contact details; (iii) they shall reside at the home address provided to the SFC and inform the SFC 48 hours in advance of any change of address and/or contact details whilst abroad; and (iv) they shall not contact either directly or indirectly any prosecution witnesses.

No further comment will be made now that legal proceedings have commenced.

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SFC obtains interlocutory asset freezing order against Leung Anita Fung Yee Maria

7 May 2024

The SFC has obtained an interim injunction order at the Court of First Instance against Ms. Leung Anita Fung Yee Maria, former chief executive officer and executive director of SMI Culture & Travel Group Holdings Limited (SMI Culture & Travel Group), following the hearing of a Mareva injunction application on 6 February 2024.

This is the first time where the SFC has obtained injunction orders of this kind in relation to an ongoing legal action under section 214 of the Securities and Futures Ordinance (SFO).

The aim of the SFC's action is to preserve assets to satisfy any compensation order that the Court may impose at the conclusion of the SFC's legal proceedings against Leung and two others.

Under the order granted by the Court on 6 May 2024, Leung must not (i) remove from Hong Kong any of her assets; (ii) dispose of or deal with or diminish the value of any of her assets, whether within or outside Hong Kong, up to the value of \$235,363,373. Leung is also prohibited to take any steps to implement the terms and/or proceed to completion of the two sale and purchase agreements she allegedly entered in August 2023 in relation to her two properties in Shanghai and Canada. The order against Leung would remain in place until the final determination of proceedings.

In granting this order, the Court is satisfied that the evidence put forward by the SFC has demonstrated that "Leung is adept at using an extensive network of corporate and offshore entities as nominees for channeling funds and for concealing her illicit activities" and in its view, Leung "would have little hesitation in dissipating assets to avoid the consequence of a judgment against her".

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Two former brokers jailed for three months each for false trading

17 May 2024

The Eastern Magistrates' Court has sentenced two former licensees, Mr. Yip Chi Wing and Mr. Tsoi Chiu Kwan, to three months of imprisonment each following their convictions for false trading in the shares of Forebase International Holdings Limited (Forebase).

In sentencing, Magistrate Mr. Jeffrey Sze Cho Yiu said that Yip and Tsoi played important roles in the false trading of Forebase shares in their capacity as licensed brokers. The offence, which took place over a period of 10 months during 2015 and 2016, created false or misleading appearance of active trading in Forebase shares. Having taken into account the serious nature of their offence and the need to protect the investing public, Mr. Sze concluded that immediate custodial sentence was appropriate in the circumstances of the case.

"The court's decision sends a clear message to perpetrators of false trading on the legal consequence for harming market integrity and undermining the trust and confidence of the investing public," said Mr. Christopher Wilson, the SFC's Executive Director of Enforcement.

"The SFC will not tolerate licensed persons who abuse their positions to engage in market misconduct, and we will not hesitate to take actions against them because their wrongdoings are serious. Licensed persons should always bear in mind that they are expected to uphold high standards of conduct and to act in the best interests of clients and the integrity of the market," Mr. Wilson added.

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Pre-trial review fixed for false trading in shares of China All Access (Holdings) Limited

23 May 2024

The Eastern Magistrates' Court today set down 5 September 2024 for a pre-trial review of the prosecution brought by the SFC against Ms. Wong Yuk Lan, an administration controller of China All Access (Holdings) Limited (China All Access) at the material time, for alleged false trading.

At today's hearing, Wong pleaded not guilty to a charge of creating false or misleading appearance with respect to the market for, or the share price of, China All Access between 29 and 31 December 2014.

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SFC bans Cheung Wing Hung for 18 months

27 May 2024

The SFC has banned Mr Cheung Wing Hung from re-entering the industry for 18 months from 24 May 2024 to 23 November 2025 following his criminal conviction for carrying out unlicensed activities under the Securities and Futures Ordinance (SFO).

On 25 July 2023, the Eastern Magistrates' Court convicted Cheung for holding himself out as performing a regulated function in relation to dealing in securities as an agent of entities not licensed by the SFC.

In the circumstances, the SFC considers that Cheung is not a fit and proper person to be licensed to carry on regulated activities due to his criminal conviction.

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SFC suspends Wong Ka Ching for four years

28 May 2024

The SFC has suspended Mr Wong Ka Ching, former responsible officer (RO) of China On Securities Limited (China On), for four years from 28 May 2024 to 27 May 2028.

The disciplinary action follows the SFC's sanctions against China On over its failures as the placing agent in a share placement between 25 November and 6 December 2019.

The SFC considers China On's failures occurred with Wong's consent or connivance, or were attributable to neglect on Wong's part, as an RO and a member of the senior management of China On. The SFC also finds that Wong acted in gross negligence or recklessly in handling the share placement and failed to ensure the maintenance of appropriate standards of conduct and adherence to proper procedures by China On.

The SFC's investigation found that China On, as placing agent of the then majority shareholder (vendor) of Hon Corporation Limited (Hon Corp) to procure placees to subscribe for 45% of Hon Corp's total issued share capital, failed to ensure that it acted within the scope of the vendor's authority and adequately safeguard the vendor's assets.

In particular, upon identifying six placees for the placement, China On:

- entered into bought and sold notes relating to the shares on the vendor's behalf with the placees, but the transaction prices therein were inconsistent with the placing price agreed with the vendor;
- transferred the shares to the placees without first requiring payment of the purchase price or the certainty that they would be able to make payment of the placing price to the vendor; and
- executed a purported instruction by a third party for part of the shares to be transferred to one of the placees for free without verifying the instruction with the vendor.

In addition, the SFC found that Wong:

- allowed an individual, a purported consultant of China On, to be heavily involved in the operations of China On without ensuring that he was fit and proper or otherwise qualified to act in such capacity;
- disclosed confidential contents of the SFC's investigation to this individual; and
- knowingly provided false or misleading information to the SFC about the same individual.

In deciding the sanction, the SFC has taken into account all relevant circumstances, including that:

- there is insufficient evidence to support any finding of dishonesty against Wong or the misconduct in question is recurrent;
- Wong's disclosure of the details about the SFC's investigation to the above-mentioned individual created a risk of jeopardising the SFC's investigation;
- the importance of sending a deterrent message to the industry that the SFC will not tolerate any grossly negligent or reckless conduct;
- the gravity of breaches to the secrecy obligation and of providing materially false or misleading information to the SFC, in particular by a licensed person; and
- Wong's otherwise clean disciplinary record.

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Market manipulators convicted in landmark High Court jury trial

29 May 2024

The Court of First Instance today convicted three individuals, Ms Sit Yi Ki, Ms Lam Wing Ki and Mr Tam Cheuk Hang of conspiracy to carry out false trading in the shares of Ching Lee Holdings Limited (Ching Lee) following an historic 22-day market manipulation trial by jury.

This is a highly sophisticated and complex market manipulation case and the criminal prosecution was

brought by the Department of Justice following extensive investigations by the SFC. This also marks the first time that an offence under the Securities and Futures Ordinance (SFO) has been tried at the Court of First Instance.

The nine-member jury at the Court of First Instance unanimously found Sit and Tam guilty of the charge of conspiracy to commit false trading. The jury also returned a guilty verdict against Lam by majority.

The prosecution stemmed from the SFC's investigations which revealed that, between March 2016 and September 2016, Sit, Lam and Tam conspired together with Ho Ming Hin, Simon Suen Man and other unknown persons to carry out a complex scheme of market manipulation.

They conspired to maintain an artificial turnover of the shares in Ching Lee by conducting manipulative transactions among 156 securities accounts under their control. This resulted in a false or misleading appearance of active trading and an artificial increase in trading volume for Ching Lee shares. The manipulative trading activities took place over a period lasting for more than five months in 2016 and netted illicit profits of over \$124 million.

The SFC's Executive Director of Enforcement, Mr. Christopher Wilson, said: "We welcome the verdicts by the jury. The outcome of this case sends a strong deterrent message on the legal consequence of undermining the integrity of Hong Kong's securities markets and the confidence of the investing public. It also underscores the SFC's commitment to holding accountable wrongdoers who seek to abuse our markets for personal gains."

"The successful prosecution of these manipulators is the latest in the SFC's all-out efforts to combat market misconduct and other forms of financial crime in Hong Kong. The SFC has bolstered its investigative capabilities and it will continue to make full use of its statutory powers to mount complex and impactful enforcement actions," Mr. Wilson added.

The Court adjourned the case to 17 June 2024 for sentencing. The three defendants applied for bail but their applications were refused by the learned Judge. They are remanded in custody by the Correctional Services Department pending sentencing.

In parallel with the criminal proceedings, the SFC has commenced proceedings under section 213 of the SFO against various local and overseas corporations and individuals, including Sit, Lam and Tam. In this connection, the SFC has obtained an interim injunction order to freeze their assets.

The SFC further obtained arrest warrants on 28 August 2020 against Ho and Suen, both of whom had left Hong Kong after the SFC commenced investigations against them. They have been placed under the "Have you seen these people?" on the SFC's website, and the SFC urges the public to report their whereabouts. Both of them are alleged members of the conspiracy to manipulate shares of Ching Lee.

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