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# REGULATORY NEWSLETTER

2019 Vol. 10



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## REGULATORY UPDATES

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### **Intermediaries FAQs on the Guidelines for Securities Margin Financing Activities**

**30 September 2019**

The SFC issued Frequently Asked Questions (FAQs) to provide guidance on compliance with the new Guidelines for Securities Margin Financing Activities which will come into effect on 4 October 2019.

The FAQs address concerns of the industry about compliance with the benchmarks set out in the guidelines and clarify the application and interpretation of some specific requirements.

A copy of the FAQs:

<https://www.sfc.hk/edistributionWeb/gateway/EN/circular/intermediaries/supervision/openAppendix?refNo=19EC61&appendix=0>

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### **Terms and Conditions for Licensed Corporations which Manage Portfolios that Invest in Virtual Assets**

**4 October 2019**

On 1 November 2018, the SFC issued a Statement on regulatory framework for virtual asset portfolio managers, fund distributors and trading platform operators. Among other things, the SFC announced that terms and conditions will be imposed on licensed corporations which manage or plan to manage portfolios with (i) a stated investment objective to invest in virtual assets; or (ii) an intention to invest

10% or more of the gross asset value of the portfolio in virtual assets (collectively referred to as “Virtual Asset Fund Managers”).

The proforma set of terms and conditions is now available on the SFC’s website. Going forward, these terms and conditions will be imposed on all Virtual Asset Fund Managers, subject to minor variations and elaborations depending on individual Virtual Asset Fund Manager’s business model and circumstances.

Should you have any queries regarding the contents of this circular, please contact your case officer.

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## ENFORCEMENT NEWS

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### **SFC obtains disqualification order against former executive director of Life Healthcare Group Limited**

A subsidiary of Tack Fat entered into an acquisition agreement to acquire 40% of a Cambodian timber company, which transpired to be a sham transaction involving an undisclosed connected party. Although Kwok knew nothing about the transaction, she signed attendance sheets for two board meetings approving the transaction and the Tack Fat’s public announcements and Tack Fat failed to maintain a financial management system.

Kwok also accepted that:

despite being an executive director of Tack Fat, she did not fully understand the nature, responsibilities or requirements of being a director or an executive director; she was not a competent executive director of the company; she had little or no experience or expertise in managing financial matters of the company and had relied on the other executive directors at the time to do so; and she breached her duties as a director in failing to exercise reasonable care and diligence in the management of the company, to act in good faith and in the best interests of Tack Fat, and to implement a sound and prudent system of financial control so as to minimise the risk of misappropriation of company assets.

In granting the order, The Honourable Madam Justice Au-Yeung found that whilst Kwok did not personally

### **SFC issues restriction notice to a broker to freeze client accounts related to a corporate officer’s suspected breach of duties**

The SFC has issued a restriction notice to KGI Asia Limited (KGI), prohibiting the broker from dealing with or processing certain assets held in several client accounts which are beneficially owned by an individual who is suspected of breaching his duties towards a listed corporation.

The SFC is not investigating KGI, which has cooperated with the SFC’s investigation. The restriction notice does not affect KGI’s operations or its other clients.

The restriction notice prohibits KGI, without the SFC’s prior written consent, from disposing of or dealing with, assisting, counselling or procuring another person to dispose of or deal with certain assets in those accounts in any way. KGI is also required to notify the SFC if it receives any of these instructions.

The SFC will soon commence civil proceedings under section 214 of the Securities and Futures Ordinance (SFO) in the Court of First Instance against the listed corporation’s management team which includes the individual who holds those accounts. The SFC will also seek court orders against that individual to pay compensation to the listed corporation concerned.

In such circumstances, the SFC considers that the issue of the restriction notice, which preserves the assets in those accounts, is desirable in the interest of the

benefit from the misfeasance or misconduct, her investing public and in the public interest. conduct reflected a high degree of incompetence and an irresponsible attitude.

The SFC has previously obtained similar orders against two other former executive directors of Tack Fat.

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