
REGULATORY NEWSLETTER

2023 Vol.11



We extend a warm welcome to the eleventh edition of our Regulatory Newsletter! As the cooler winds grace the streets of Hong Kong, we invite you to embark on a journey through the key regulatory developments of the past month that have made an impact on the financial industry. Within our Newsletter, we provide an overview of these significant events, ensuring you stay informed and up-to-date. Join us as we explore these essential insights and navigate the ever-changing landscape of the financial realm.

REGULATORY UPDATES

Joint Circular on Intermediaries' Virtual Asset-related Activities

20 October 2023

The Securities and Futures Commission (SFC) and the Hong Kong Monetary Authority (HKMA) have received an increasing number of enquiries from intermediaries about distributing virtual asset-related products (VA-related products) to investors. Intermediaries are also interested in providing virtual asset dealing services to their clients.

When the SFC formulated its regulatory approach for virtual assets in 2018, it imposed an overarching "professional investors only" restriction on various types of activity, including the distribution of virtual asset funds (VA funds). Since then, the virtual asset landscape has evolved rapidly and begun to expand into mainstream finance. A broader range and larger number of investment products are now available which provide investors, whether retail or professional, with exposure to virtual assets. In particular, the SFC has allowed SFC-licensed virtual asset trading platforms (VA trading platforms) to serve retail investors and has authorized virtual asset futures exchange traded funds for public offering in Hong Kong.

The SFC and the HKMA have reviewed their existing policy provided for intermediaries which wish to engage in virtual asset-related activities (VA-related activities). The policy is updated in light of the latest market developments and enquiries from the industry seeking to further expand retail access through intermediaries and to allow investors to directly deposit and withdraw virtual assets to/from intermediaries with appropriate safeguards. For the avoidance of doubt, this updated circular will supersede the 28 January 2022 joint circular on intermediaries' virtual asset-related activities.

For the full circular on the VA-related activities can be found at:
<https://apps.sfc.hk/edistributionWeb/gateway/EN/circular/suitability/doc?refNo=23EC44>

[View Circular](#)

Circular on Distributors Providing Additional Returns and Other Services or Arrangements when Marketing SFC-authorized Funds

24 October 2023

This circular summarizes the SFC's recent observations of licensed corporations' practices in offering and promoting SFC-authorized funds. Intermediaries who distribute these funds (distributors) have been offering additional returns or other incentives that may divert the client's focus from properly considering the risks and features of the underlying funds. This circular also highlights the legal and regulatory requirements to be met by distributors covering the guaranteed returns, lock-up period, dealing frequency, and other marketing issues.

Further information on the circular can be found by "View Circular".

[View Circular](#)

Circular on Disclosure/ Use of Annualized Returns for Money Market Funds

25 October 2023

This circular sets out the requirements for the presentation of annualized returns based on periods of less than one year for money market funds authorized by the SFC under Chapter 8.2 of the Code on Unit Trusts and Mutual Funds (UT Code) (MMFs).

[View Circular](#)

Circular on Clearing Amendment Rules

27 October 2023

The Securities and Futures (OTC Derivative Transactions—Clearing and Record Keeping Obligations and Designation of Central Counterparties) (Amendment) Rules 2023 (Clearing Amendment Rules) is gazette today. Subject to negative vetting by the Legislative Council, the Clearing Amendment Rules will be effective on 1 July 2024.

The Clearing Amendment Rules provide for certain interest rate swap transactions referencing alternative reference rates to be subject to the clearing obligation under specified conditions. At the same time, certain interest rate swap transactions referencing interbank offered rates which are or will no longer be published or considered representative would no longer be subject to clearing obligation.

Licensed Persons are reminded that if their average total position in OTC derivatives during a Calculation Period reaches the corresponding Clearing Threshold, relevant OTC derivative transactions they enter into on and after the corresponding Prescribed Day must be centrally cleared in accordance with the Clearing Rules. It is the responsibility of Licensed Persons to ensure their compliance with the Clearing Rules.

[View Circular](#)

ENFORCEMENT NEWS

SFC Commences Legal Proceedings against FingerTango Inc. and Its Current and Former Directors

6 October 2023

The SFC has commenced legal proceedings in the Court of First Instance (CFI) to seek disqualification orders against eight current or former directors of FingerTango Inc. (FingerTango) and a compensation order against six of them for allegedly committing corporate misconduct and breaching their duties towards FingerTango.

The SFC is also seeking a court order for FingerTango to appoint an independent external auditor to review and prepare a report on its internal control procedures to ensure that FingerTango complies with all relevant rules and regulations in Hong Kong.

The nine respondents named in the SFC's legal proceedings are: (i) FingerTango; (ii) Mr Liu Jie, chairman, chief executive officer and executive director (ED); (iii) Mr Wang Zaicheng, former ED and joint company secretary; (iv) Mr Liu Zhanxi, former ED and chief financial officer; (v) Mr Zhu Yanbin, former ED and chief operating officer; (vi) Mr Wu Junjie, former ED and vice president; (vii)-(ix) Mr Guo Jingdou, Ms Yao Minru and Mr Du Geyang, former independent non-executive directors.

The SFC's legal action follows an investigation which found that the eight current or former directors had breached their fiduciary duties to act in good faith and in the best interests of the company and failed to exercise reasonable care, skill and diligence to protect FingerTango's interests. Shortly after listing, the directors caused FingerTango to use proceeds from its initial public offering to invest \$450 million in a fund without conducting proper due diligence about the fund such as its track record and portfolio. FingerTango partially redeemed the fund in December 2019, and immediately invested

another \$250 million in loan notes issued by a small-scale private company, which subsequently defaulted and led FingerTango to suffer a loss and damage of \$258.75 million, including the accrued interest.

The SFC alleges that the loss and damage suffered by FingerTango was caused by the breaches of the duties towards FingerTango on the part of Liu Jie, Wang, Liu Zhangxi, Zhu, Guo and Yao. Specifically, they failed to carry out proper due inquiries into the loan notes issuer and assessed the risks involved in the investment. They are liable to compensate the losses suffered by FingerTango.

The SFC has issued restriction notices to three brokers prohibiting them from dealing with or processing certain assets held in accounts which are beneficially owned by Liu Jie, Wang and Zhu, so that there will be funds available for them to pay compensation to FingerTango if so ordered by the court.

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SFC bans Ivan Chan Chuk Cheung for Seven Years for IPO Sponsor Failures

11 October 2023

The SFC has prohibited Mr Ivan Chan Chuk Cheung, a former responsible officer (RO) of Changjiang Corporate Finance (HK) Limited (CJCF), from re-entering the industry for seven years from 10 October 2023 to 9 October 2030 for failing to discharge his supervisory duties as a sponsor principal in charge of five listing applications (Five Listing Applications).

The disciplinary action follows the earlier sanctions against CJCF for serious and extensive failures in discharging its duties as the sponsor in six listing applications, including the Five Listing Applications. The Five Listing Applications concerned Pacific Infinity Resources Holdings Limited (Pacific Infinity), Perpetual Power Holdings Limited (Perpetual Power), Van Chuam International (Cayman) Limited (Van Chuam), Rising Sun Construction Holdings Limited (Rising Sun) and Byleasing Holdings Limited (Byleasing).

The SFC found that the failures committed by CJCF, being the sole sponsor in the Five Listing Applications, were attributable to neglect on the part of Chan.

Specifically, Chan failed in his role as the sponsor principal to: exercise due skill, care and diligence in handling the Five Listing Applications; diligently supervise the transaction teams in carrying out the sponsor work; and ensure the maintenance of appropriate standards of conduct by CJCF.

In deciding the disciplinary sanction, the SFC has taken into account all relevant circumstances, including: the gravity of Chan's failures as a sponsor principal; the need to send a strong deterrent message to the industry and market that the SFC does not tolerate failures of sponsor and sponsor principal; Chan's cooperation in resolving the SFC's concerns; and his otherwise clean disciplinary record with the SFC.

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SFC, ICAC and AFRC Conduct First Tripartite Operation Against Suspected Corporate Fraud and Misconduct

19 October 2023

The SFC, the ICAC and the Accounting and Financial Reporting Council (AFRC) have conducted the first tripartite operation involving two Hong Kong-listed companies on suspicion that they falsified corporate transactions totaling HK\$193 million (approximately RMB177.56 million).

A total of 16 premises were jointly searched by the three agencies. In the joint operation, three persons, including an executive director of a listed company, were arrested by the ICAC for suspected offences of agent using documents with intent to deceive his principal under the Prevention of Bribery Ordinance.

The suspected fictitious transactions were uncovered during the course of a joint SFC-ICAC operation against the suspected ramp-and-dump syndicate.

The investigation revealed that the management of the two companies listed on the Stock Exchange of Hong Kong Limited had allegedly conspired with members of the syndicate to falsify corporate transactions purporting that the two listed companies had conducted various transactions with a number of companies in Hong Kong and Mainland China between May 2018 and December 2021, resulting in overstatements of HK\$83.9 million (approximately RMB77.2 million) in their revenue and misstatement of assets in the sum of HK\$109.2 million (approximately RMB100.5 million). Such overstatements and misstatement of assets might lead to disclosure of false or misleading information in the interim results and/or annual reports of the two listed companies.

The SFC, the ICAC and the AFRC conducted the joint operation respectively in relation to suspected corporate fraud and misconduct, corruption offences of agent using documents with intent to deceive his principal and auditors' misconduct concerning the said suspected fictitious transactions.

No further comment will be made as investigations are ongoing.

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SFC Restrains Former Director of SMI Culture & Travel Group Holdings Limited from Disposing Personal Properties

24 October 2023

The SFC has taken action to restrain Ms. Leung Anita Fung Yee Maria, former chief executive officer and executive director of SMI Culture & Travel Group Holdings Limited (SMI Culture & Travel Group), from proceeding to complete the sale of her two properties in Shanghai and Canada.

The aim of the SFC's action is to preserve assets for satisfying a compensation order that the court may impose at the conclusion of the legal proceedings brought by the SFC under section 214 of the Securities and Futures Ordinance in October 2019 against Leung and two other senior executives of SMI Culture & Travel Group, namely Mr Philip Wong Yu Hong (deceased), former chairman and non-executive director, and Mr Tsiang Hoi Fong, former executive director.

To this end, the SFC obtained an interim injunction order at the Court of First Instance against Leung on 22 September 2023. Under the interim injunction order, Leung is required, amongst other things, to notify the SFC of the execution of a sale and purchase agreement of the specified properties of hers in Hong Kong, Shanghai and Canada, pending the determination of the SFC's injunction application made on 19 September 2023 to prohibit her from disposing assets in Hong Kong and elsewhere (Injunction Application).

Subsequently and pursuant to the interim injunction order, Leung notified the SFC that she had entered into sale and purchase agreements for her two properties in Shanghai and Canada (SPAs). The SFC considered the SPAs and was concerned that the completion of the SPAs may result in the dissipation of Leung's assets.

As a result, the SFC made another application to the court on 17 October 2023 seeking to restrain the completion of the SPAs until the determination of the Injunction Application. Following the SFC's application, Leung gave an undertaking to the court not to implement the terms and/or proceed to completion of the SPAs until the determination of the Injunction Application except with the prior consent of the SFC or leave of the court. If Leung breaches the undertaking, she may be guilty of contempt of court. The undertaking of Leung has the effect of preserving the status quo pending the determination of the SFC's Injunction Application.

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Personal Assistant to Listed Company's Chairman Convicted of Insider Dealing

26 October 2023

The Eastern Magistrates' Court today sentenced Mr Wong Pak Wai to 240 hours of community service after he pleaded guilty to insider dealing in the shares of Elec & Eltek International Company Limited (E&E) following a prosecution brought by the Securities and Futures Commission (SFC).

Wong, who was the personal assistant to the chairman and executive director of Kingboard Holdings Limited (KBH) at the material time, was also ordered to pay a fine of \$25,000 and the SFC's investigation costs of \$38,277.

The Court heard that Wong became aware of the possible privatization of E&E proposed by KBH's chairman and executive director in a meeting on 21 March 2020. Knowing the possible privatization was inside information, he went on to purchase 3,000 E&E shares through his securities account on 24 March 2020 at an average price of \$10.98, before trading in the shares was suspended on the next day.

Upon resumption of trading in the shares of E&E on 3 April 2020 after an announcement of the possible privatization, the company's shares closed at \$17.26, representing a 62.83% increase from its previous closing price of \$10.6 prior to the suspension. On 6 April 2020, Wong sold the 3,000 shares he bought on 24 March 2020 at an average price of \$17.34 and made a profit of \$19,080.

In sentencing Wong, the Magistrate emphasized that insider dealing is a serious offence and under usual circumstances, the appropriate sentence for such an offence should be one of immediate custodial sentence. However, the Magistrate considered that a community service order is

appropriate in this case, having taken into account the relatively small profit involved and Wong's early admission of liability. The Magistrate reminded Wong that he could reconsider imposing an immediate custodial sentence if Wong is not cooperative when complying with the community service order.

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Court Extends Cut-off Date for Maxim Fund Investors to Make Claims by 30 November 2023

30 October 2023

The Court of First Instance has granted the SFC's application to extend the cut-off date for investors to make claims in connection with investment schemes operated by Maxim Capital Limited and Maxim Trader (Maxim Fund) in Hong Kong by 30 November 2023 (Extended Cut-off Date).

In June 2022, the Court mandated 23 July 2022 the cut-off date (Original Cut-off Date) for investors to make claims when it ordered Maxim Capital Limited and Maxim Trader to pay qualifying investors of the Maxim Fund following legal proceedings brought by the SFC under section 213 of the Securities and Futures Ordinance.

After the Original Cut-off Date, the SFC continued to receive enquiries from investors who made claims for the very first time. In the light of these enquiries, the SFC made an application to the Court to extend the cut-off date for investors to make claims after considering and balancing the interests of all stakeholders concerned.

On 25 September 2023, the Court granted the SFC's application to extend the Original Cut-off Date. Under the latest Court order, investors – who became aware of the Maxim Fund in Hong Kong and had invested in it but have not made a claim to the SFC on or before 23 July 2022 – should make claims and submit details of the relevant investment to the SFC no later than 5:30pm on 30 November 2023 Extended Cut-off Date. Moreover, pursuant to the recent order of the Court, no claim shall be accepted after the Extended Cut-off Date. Please check Reminder of extended deadline for claims: Maxim Fund for details of making claims for payment.

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Court of Final Appeal unanimously dismisses appeal by suspected overseas manipulators

31 October 2023

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