REGULATORY NEWSLETTER

2019 Vol. 8

COMPLIANCEDIRECT

REGULATORY UPDATES

Standardized Client Asset Acknowledgement Letter

8 July 2019

The SFC reminded intermediaries their obligations to comply with the requirements under the Code of Conduct when they are in possession or control of client assets. As it came to the SFC's attention that there are some right of set-off or lien clauses within the standard Terms and Conditions entered into between intermediaries and authorized institutions ("AIs") with respect to current, deposit or securities accounts that are client or trust accounts (collectively, "Client Asset Accounts") and such clauses are fundamentally incompatible with the requisite standard of protection afforded to client assets under the Code of Conduct.

The SFC has provided a standardized acknowledgement letter to strengthen the safeguard of client assets. The key elements on an acknowledgment letter includes notification of purpose clause, the no-recourse clause and the conflict clauses; these clauses could better protect investors and are similar to a requirement imposed by regulators in other major jurisdictions. The client asset acknowledgment letter is required for Client Asset Account which holds client money, securities and non-repledged clients' securities collateral.

The no-recourse clause in the letter template prohibits recourse against client assets in Client Asset Accounts, but does not apply to any recourse against assets required by legislation or court order. The letter template also notes that the client asset acknowledgment letter shall prevail if there are any conflicts between the client asset acknowledgment letter and any other agreement between the two parties.

To comply with this requirement, intermediaries shall prepare and sign client asset acknowledgement letters in accordance with the letter template, and then obtain countersignatures from the appropriate AI. The SFC expects the implementation to be all in place by 31 July 2020.

Letter in pdf version:
https://www.sfc.hk/edistributionWeb/gateway/EN/circular/intermediaries/supervision/openAppendix?refNo=19EC48&appendix=0

View Circular

Data Standards for Order Life Cycles
31 July 2019

The SFC sets out the Data Standards for Order Life Cycle, which sets the minimum content and presentation format of trading- related data to be submitted by licensed securities brokers to the SFC upon request. For now, only equities listed on the Stock Exchange of Hong Kong Limited ("SEHK") will be considered "In Scope Products" and **only brokers whose trading turnover in SEHK- listed equities in a calendar year reaches or exceeds 2% of that years' total market reading volume will be consider "In-Scope Broker".** The In-Scope brokers are expected to comply with the Data Standards by the end of October 2020.

Receiving data efficiently is very important for the SFC in order for them to carry out its functions and especially when using data analytics tool to detect irregular activates. With the use of data analytics during inspection, the SFC will be able to detect deficiencies and instances of non-compliance with the regulations which would otherwise be undetected. Moreover, brokers tends to take a long time to gather information required by the SFC. Most importantly, the current system is very time consuming, since the data received by the SFC had to be manually validated.

The Data Standards requires specific material terms to be recorded in an order, which includes price, quantity, side, type, capacity, client identification, algorithmic order instructions and aggregation information. Since the Data Standards are very technical, and the structures and systems can be very different by different brokers, the SFC referred to Financial Information Exchange Protocol ("FIX") to leverage on commonly- used definition.

If you need any further guidance, please contact sfcdatastandards_isd@sfc.hk or any of our consultants.

View Circular

ENFORCEMENT NEWS

Glory Sun Securities Limited got fined $1.2 million and suspends current and former Ros for 6 months

The SFC fined Glory Sun Securities Limited (“Glory Sun”) and suspended Glory Sun’s RO, Ms. Eva Wong and former RO, Mr. Alfred Lam Wai Kwong for failing to diligently supervise its account effectives, implement effective controls to ensure short selling requirement.

This disciplinary action is based where a Glory Sun account executive was convicted by the court for illegal short selling in Coslight Technology International Group (“Coslight”). At that time, Glory Sun had two trading systems, one which checked a client’s stock balance before a sell order was placed to Stock Exchange of Hong Kong Limited. The second one known as Speed Station, through which the sell orders in Coslight shares were placed by the account executive for his personal trading account – did not have such function.

Glory Sun claimed the reviews of the trading activities of its account executives by Wong and Lam, but no record of such reviews was found. The review was ineffective in preventing short selling because they are mostly done on a day-end base.

The SFC concluded that Glory Sun, Wong and Lam are in breach of the Code of Conduct base on, the account executive’s illegal activities were undetected until the SFC informed Glory Sun, Glory Sun was ceases to permit to use the Speed Station for executives to execute orders since July 2018, and a deterrent message needs to be sent to the market that failures to adequately supervise and implement effective controls will not be tolerated.

View News

Lee’s Securities Company Limited was fined $ 520,000 for failing internal control

The SFC reprimands and fines Lee’s Securities Company Limited for failed in segregation of duties and handling client securities. During the investigation, it was found that Lee’s Securities failed to segregate key duties from front and back office. The company also failed to implement adequate procedures for the transfer and withdrawal of client securities.

During the 2010 inspection, it was already found that there was inadequate segregation of front and back office duties, where account executives handled client orders and performed back office duties which include verification of trade details in clients’ daily statements before their onward dispatch to clients.

The SFC told into account that Lee’s Securities failed to have client’s written instruction for handling their account for 9 years, to find remedial measures to segregation obligations which had first been identified in 2010.

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