
REGULATORY NEWSLETTER

2019 Vol.12



Season's Greetings!

The end of the year is drawing near, and from ComplianceDirect to all of our valued clients, happy holidays! Just a quick reminder before I let you go enjoy fun festive activities (i.e. reading this awesome volume of Regulatory Newsletter paired with a cup of mulled wine), please ensure that you have sent your CPT records to your designated compliance consultant.

It has been a pleasure working with you this past year, and we look forward to working with you again in the year 2020!

REGULATORY UPDATES

The clearing and record keeping rules for the OTC derivatives regime – changes to the list of persons designated as financial services providers

22 Nov 2019

The revised list of persons designated as financial services providers (FSPs) for the purposes of the Securities and Futures (OTC Derivative Transactions—Clearing and Record Keeping Obligations and Designation of Central Counterparties) Rules (Clearing Rules) will become effective on 1 January 2020.

The SFC reminded licensed persons 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, including those with FSPs must be centrally cleared in accordance with the Clearing Rules.

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Dubious private fund and discretionary account arrangements or transactions

21 Nov 2019

The circular provides guidance to assist asset managers when considering if a proposed private fund and discretionary account arrangement or transaction is suspicious and if they should proceed with a proposed arrangement or transaction that has been considered dubious.

The SFC noticed numerous suspicious arrangements and transactions, where asset managers did not exercise their discretions to make investment decisions for the funds or discretionary accounts under their arrangement, but rather largely followed investors' instructions when structuring private funds or discretionary accounts and effecting transactions.

The SFC advised asset managers should not disregard signs of dubious private fund and discretionary account arrangements or transactions as it may facilitate different misconducts by their clients or other entities. These misconducts include conducting unlicensed regulated activities, involvement in fraud etc.

Aside from the facilitation of misconduct, asset manager may also be in breach of AML Guideline by falling to conduct customer due diligence (CDD), obtain information about the purpose and intended nature of the business relationship it has established etc.

Consequently, the SFC listed the expected standards of conduct on the issue and the senior management of a licensed firm bears the primary responsibility for ensuring the firm has upheld these standards. The senior management of an asset manager is expected to ensure there are effective procedures and controls for the asset manager to consider if a proposed private fund and discretionary account arrangement of transaction is suspicious decide if the asset manager should proceed with the relevant arrangement or transaction by the following process:

- (1) Initial screening
- (2) Detailed due diligence
- (3) Senior management assessment and decision and;
- (4) Documentation

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ENFORCEMENT NEWS

SFC reprimands and fines UBS HK\$400 million for overcharging clients and related internal control failures

The SFC has reprimanded and fined UBS AG (UBS) HK\$400 million of overcharging its clients over a ten-year period and for related serious systemic internal control failures.

The SFC's investigations initially revealed that:

- Between 2008 and 2015, the client advisors and client advisors assistants in UBS's Wealth Management division had overcharged clients when conducting bond and structured note trades by increasing the spread charged after the execution of trades without clients' knowledge. On some occasion, UBS also falsified account statements issued to financial intermediaries by misreporting the spread amount to conceal the overcharges and;
- Between 2008 and 2017, UBS had also charged its clients fees in excess of its standard disclosures or rates.

The SFC further discovered that UBS failed to:

- Understand and properly disclose the capacity in which it acted for its client when conducting secondary market bond and structured note trades; and
- Report its spread overcharge practices to the SFC two years after the identification of the misconduct and other relevant misconduct to the SFC in a timely manner; and
- Put in place effective remediation to address the spread overcharge practices and proper internal controls to avoid the recurrence of historical deficiencies.

The SFC considers that the malpractice identified involved a combination of serious systemic failures for a prolonged period of time, including inadequate policies, procedures and system controls, lack of staff training and supervision, and failure of the first and second lines of defence functions in UBS. Furthermore, The SFC considers that UBS not only failed to observe the fundamental and overarching duty to act in its clients'

The SFC has banned Mr Ma Sin Chi, a former responsible officer of Deutsche Securities Asia Limited (DSAL), from re-entering the industry for life.

In February 2018, the Court of First Instance convicted Ma of accepting bribes of around \$6.4 million from his client as rewards for providing information and assistance to the client and the client's family in their trading of Deutsche Bank AKTIENGESELLSCHAFT-issued derivative warrants with DSAL being the liquidity provider.

The SFC considers that Ma was guilty of misconduct and is not a fit and proper person to be licensed to carry on regulated activities.

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best interest but also abused the trust of unsuspecting clients by failing to disclose conflicts of interest and overcharging them in opaque trades.

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