REGULATORY NEWSLETTER

2024 Vol.4

Happy Easter!

Easter symbolizes the triumph of life over death, reminding us of the unyielding power of love and faith. Let us embrace the beauty of this season, filled with colorful eggs, blooming flowers, and the warmth of shared moments. May Easter bring you an abundance of happiness, peace, and blessings.

ComplianceDirect wishes you all a glorious holiday of Easter!

REGULATORY UPDATES

SFC consults on proposals to enhance REIT regime and SFO market conduct regime for listed CIS

28 March 2024

The Securities and Futures Commission (SFC) launched a two-month consultation on a statutory scheme of arrangement and compulsory acquisition mechanism for real estate investment trusts (REITs) and an enhanced market conduct regime for listed collective investment schemes (CIS) under the Securities and Futures Ordinance (SFO).

The proposals would enable Hong Kong REITs to conduct privatisation and corporate restructuring in a way similar to other listed companies through a statutory scheme of arrangement and compulsory acquisition mechanism to be introduced in the SFO. REIT unitholders would also be provided with various safeguards and protection under the statutory regimes. In addition, under the proposals, various SFO market conduct regimes would be explicitly extended to listed CIS to enhance market integrity and investor protection.

"It has been the SFC's long established policy to regulate REITs in the same manner as listed companies," said Ms Christina Choi, the SFC's Executive Director of Investment Products. "These enhancements could help build a more vibrant Hong Kong REIT market by facilitating mergers and acquisitions of REITs on the one hand and strengthening investor protection on the other."

The public is invited to submit their comments to the SFC on or before 27 May 2024.

View Circular

Circular to Licensed Corporations, SFC-licensed Virtual Asset Service Providers and Associated Entities - Anti-Money Laundering / Counter-Financing of Terrorism

(1) United Nations Sanctions (Yemen) Regulation 2019 (Amendment) Regulation 2024
(2) United Nations Sanctions (Libya) Regulation 2019 (Amendment) Regulation 2024

28 March 2024

(1) United Nations Sanctions (Yemen) Regulation 2019 (Amendment) Regulation 2024

The United Nations Sanctions (Yemen) Regulation 2019 (Amendment) Regulation 2024 (the Yemen Amendment Regulation), made under the United Nations Sanctions Ordinance (Cap. 537) (UNSO), was published in the Gazette (L.N. 36 of 2024) on 28 March 2024 with immediate effect.

The Yemen Amendment Regulation amends the United Nations Sanctions (Yemen) Regulation 2019 to give effect to certain decisions relating to sanctions in the United Nations Security Council Resolution 2707 in respect of Yemen which include the renewal of the financial sanctions and travel ban.

The Yemen Amendment Regulation can be found on the Government's website (https://www.gld.gov.hk/egazette/pdf/20242813/es22024281336.pdf).

(2) United Nations Sanctions (Libya) Regulation 2019 (Amendment) Regulation 2024

The United Nations Sanctions (Libya) Regulation 2019 (Amendment) Regulation 2024 (the Libya Amendment Regulation), made under the UNSO, was published in the Gazette (L.N. 37 of 2024) on 28 March 2024 with immediate effect.

The Libya Amendment Regulation amends the United Nations Sanctions (Libya) Regulation 2019 to give effect to certain decisions relating to sanctions in the United Nations Security Council Resolutions 2664 and 2701 in respect of Libya which include the renewal of sanctions measures in respect of preventing illicit petroleum exports from Libya, and reflect the latest exemption arrangements in respect of arms embargo and asset freeze.

The Libya Amendment Regulation can be found on the Government's website (https://www.gld.gov.hk/egazette/pdf/20242813/es22024281337.pdf).

Licensed corporations, SFC-licensed virtual asset service providers and associated entities are reminded to refer to Chapter 6 of the Guideline on Anti-Money Laundering and Counter-Financing of

Terrorism (For Licensed Corporations and SFC-licensed Virtual Asset Service Providers) (AML/CFT Guideline) which contains guidance on the appropriate measures that licensed corporations, SFC-licensed virtual asset service providers and associated entities should take to ensure compliance with the regulations made under the UNSO.

View Circular

Circular to licensed corporations and management companies of SFC-authorised funds - Shortening of the US securities transaction settlement cycle to T+1

27 March 2024

Effective 28 May 2024, the standard settlement cycle for transactions in US securities will be shortened from two business days after the trade date (T+2) to one business day after trading (T+1) (the Transition). As such, the timeline for completing post-trade settlement processes will be compressed. The Securities and Futures Commission (SFC) is of the view that the impact of the Transition may be particularly significant for market participants in Hong Kong due to time zone differences.

In this connection, the SFC wishes to remind licensed corporations (LCs) to assess the impact of the Transition on their businesses and take appropriate measures to maintain their smooth and effective operations after the Transition. These include enhancing their operational processes, technological infrastructure and systems as well as staffing arrangements where appropriate.

LCs should assess their readiness and ensure they are able to cope with the shortened settlement cycle, including:

- Reviewing their liquidity risk management practices and ensuring the necessary funding is available for settling US securities transactions on time. For cross-currency transactions, given that the standard settlement cycle for foreign-exchange transactions remains at T+2, LCs should be mindful of potential liquidity mismatches and settlement failures arising from the different settlement cycles for US securities and foreign-exchange transactions;
- Ensuring the availability of staff to complete the post-trade settlement processes within the shortened timeframe. LCs may consider adjusting their staff’s work shifts, extending working hours or arranging evening or morning duties in conjunction with automating their operational processes to enable timely trade settlements. Adequate training should be provided to enable relevant staff to effectively perform their duties under the shortened settlement cycle; and
- Proactively engaging and communicating with their clients who are potentially affected by the Transition in order to raise their awareness and facilitate their preparations for a smooth transition.

In addition, management companies of SFC-authorised funds (Funds), particularly those with considerable exposures to US securities, are reminded to:

- Carefully assess the impact of the Transition on their Funds, including any potential mismatches in settlement cycles relating to the deployment of subscription money or sale proceeds from non-US markets to purchase US securities;

- Make appropriate arrangements where necessary, such as expanding pre-funding facilities and allocating additional staff to handle the compressed settlement timeline, to ensure that the Funds' operations remain fair and orderly, and in the best interest of investors; and
- Give early alerts to the SFC and investors about any intended changes, issues or untoward circumstances arising from the Transition that may materially affect the Funds and investors, and take remedial actions accordingly.

The SFC will continue to monitor market developments in relation to the Transition.

View Circular

Circular to intermediaries, responsible officers and licensed representatives
Waiver of annual licensing fees

22 March 2024

To support the industry, the Securities and Futures Commission (SFC) will continue to waive the annual licensing fees of all intermediaries and licensed individuals for the coming year (i.e. between 1 April 2024 and 31 March 2025). The SFC will consider the market situation and its financial positions next year in reviewing the annual licensing fees for 2025-26.

The SFC will not issue the usual demand for annual licensing fee payment, which would ordinarily become payable during this one-year period. Payments of all other fees, including for licence applications and transfers, will not be affected.

Should there be any queries regarding this circular, please contact your case officer.

View Circular

SFC and HKMA further consult on enhancements to Hong Kong's OTC derivatives reporting regime

22 March 2024

The Securities and Futures Commission (SFC) and the Hong Kong Monetary Authority (HKMA) launched a joint further consultation on enhancements to the over-the-counter (OTC) derivatives reporting regime in Hong Kong.

To align with global standards, the SFC and the HKMA conducted a consultation in April 2019, and one of the proposed requirements was identifying transactions submitted to the Hong Kong Trade Repository (HKTR) for the reporting obligation by a Unique Transaction Identifier.

The current joint further consultation consults on the implementation of the Unique Transaction Identifier, together with the mandatory use of Unique Product Identifier and Critical Data Elements for submission of transactions to the HKTR. These proposals ensure that Hong Kong's reporting regime keeps up with international developments.

The SFC and the HKMA also concluded that the list of designated jurisdictions for the masking relief of the reporting obligation remains unchanged.

The joint consultation paper can be downloaded from the websites of the SFC or the HKMA. Interested parties are invited to submit comments to the SFC or the HKMA on the proposals by 17 May 2024.

[View News]

Circular to Licensed Corporations, SFC-licensed Virtual Asset Service Providers and Associated Entities - Anti-Money Laundering / Counter-Financing of Terrorism United Nations Sanctions (Democratic People's Republic of Korea) Regulation

11 March 2024

Further to the SFC's circular issued on 8 January 2024, an updated list of "individuals and entities" under section 31 of the United Nations Sanctions (Democratic People's Republic of Korea) Regulation (Cap. 537AE) was published on the website of the Commerce and Economic Development Bureau on 9 March 2024. A relevant press release issued by the UNSC, reflecting the update since the previous list was published on the website of the Commerce and Economic Development Bureau, is attached in Attachment 1.

The aforesaid updated list obtained from the website of the Commerce and Economic Development Bureau is attached in Attachment 2.

Licensed corporations, SFC-licensed virtual asset service providers and associated entities are reminded to refer to Chapter 6 of the Guideline on Anti-Money Laundering and Counter-Financing of Terrorism (For Licensed Corporations and SFC-licensed Virtual Asset Service Providers) (AML/CFT Guideline) which contains guidance on the appropriate measures that licensed corporations, SFC-licensed virtual asset service providers and associated entities should take to ensure compliance with the regulations made under the United Nations Sanctions Ordinance (Cap. 537). The Securities and Futures Commission expects all new designations to be screened by licensed corporations, SFC-licensed virtual asset service providers and associated entities against their client lists as soon as practicable whenever there are updates. Licensed corporations, SFC-licensed virtual asset service providers and associated entities are also reminded to report any transactions or relationships they have or have had with any designated person or entity to the Joint Financial Intelligence Unit.

[View Circular]

Circular to Licensed Corporations, SFC-licensed Virtual Asset Service Providers and Associated Entities - Anti-Money Laundering / Counter-Financing of Terrorism

(1) FATF Statement on High-Risk Jurisdictions subject to a Call for Action

(2) FATF Statement on Jurisdictions under Increased Monitoring

(3) Outcomes from the FATF Plenary, 21-23 February 2024

8 March 2024

(1) FATF Statement on High-Risk Jurisdictions subject to a Call for Action

Further to the SFC's circular issued on 10 November 2023, the Financial Action Task Force (FATF) issued a statement on High-Risk Jurisdictions subject to a Call for Action on 23 February 2024, which can be found at https://www.fatf-gafi.org/en/publications/High-risk-and-other-monitored-jurisdictions/Call-for-action-february-2024.html. For all countries identified as high-risk, the FATF calls on all members and urges all jurisdictions to apply enhanced due diligence, and, in the most serious cases, apply countermeasures to protect the international financial system from the money laundering, terrorist financing, and proliferation financing risks emanating from those countries.

(i) Jurisdictions subject to a FATF call for applying countermeasures

The statement continues to refer its members to the list of high-risk jurisdictions subject to the FATF's call for countermeasures adopted in February 2020.

Since February 2020, in light of the COVID-19 pandemic, the FATF has paused the review process for Iran and the Democratic People's Republic of Korea. The FATF's call to apply countermeasures on these high-risk jurisdictions remains in effect.

(ii) Jurisdiction subject to a FATF call for applying enhanced due diligence measures proportionate to the risks arising from the jurisdiction

Given the continued lack of progress and the majority of the action items in relation to Myanmar's strategic deficiencies still not addressed after a year beyond the action plan's deadline, the FATF has called on its members and other jurisdictions to apply enhanced due diligence measures proportionate to the risk arising from Myanmar since October 2022. Despite Myanmar took steps to address certain deficiencies since October 2023, the overall progress continues to be slow. Myanmar will remain on the list of countries subject to a call for action until its full action plan is completed.

(2) FATF Statement on Jurisdictions under Increased Monitoring

The FATF has issued an updated statement on Jurisdictions under Increased Monitoring with the addition of Kenya and Namibia, and removal of Barbados, Gibraltar, Uganda and the United Arab Emirates from the list. The statement can be found at https://www.fatf-gafi.org/en/publications/High-risk-and-other-monitored-jurisdictions/Increased-monitoring-february-2024.html.

The FATF will closely monitor and continue to assess the progress made by these jurisdictions in addressing the identified strategic deficiencies in their AML/CFT regimes and encourages its members and all jurisdictions to take into account the information presented in the statement in their risk analysis. Licensed corporations, SFC-licensed virtual asset service providers and associated entities are reminded to browse the website of the FATF for the relevant information, including any updated statements issued by the FATF from time to time.

(3) Outcomes from the FATF Plenary, 21-23 February 2024

The FATF also published various outcomes of its recent Plenary which may be of interest to licensed corporations, SFC-licensed virtual asset service providers and associated entities. They include:

(a) the finalisation of the updates to the *FATF Risk-Based Guidance for Recommendation 25 on Beneficial Ownership and Transparency of Legal Arrangements*. The guidance complements the existing guidance for Recommendation 24 on legal persons which aims at enhancing the transparency of beneficial ownership globally, and helping stakeholders from the public and private sectors that are involved in trusts or similar legal arrangements to assess and mitigate money laundering and terrorist financing risks. The updated guidance will be published in due course;

(b) the agreement on the publication of an overview of the steps that FATF and FATF-Style Regional Bodies member jurisdictions with the most materially important virtual asset activities, based on trading volume and user base, have taken to regulate and supervise virtual asset service providers. The publication aims to support these jurisdictions in regulating and supervising virtual asset service providers and encourage jurisdictions to fully implement Recommendation 15; and

(c) the agreement on the release of proposed amendments to Recommendation 16, its Interpretive Note and the related Glossary of specific terms for public consultation6. The amendments are proposed to adapt them to the changes in payment business models and messaging standards and to ensure that the FATF standards remain technology-neutral and follow the principle of "same activity, same risk, same rule". The proposed amendments also aim to help make cross-border payments faster, cheaper, more transparent and more inclusive whilst ensuring AML/CFT compliance. The public consultation will be closed for comments by 3 May 2024.

Further information on the FATF Plenary's outcomes can be found at https://www.fatf-gafi.org/content/fatf-gafi/en/publications/Fatfgeneral/outcomes-fatf-plenary-february-2024.html.

View Circular

ENFORCEMENT NEWS

SFC commences MMT proceedings against Ding Yi Feng former chairman over suspected market manipulation

27 March 2024

The Securities and Futures Commission (SFC) has commenced proceedings in the Market Misconduct Tribunal (MMT) against Mr Sui Guangyi, former chairman and non-executive director of Ding Yi Feng Holdings Group International Limited (Ding Yi Feng), and 20 other individuals.

The SFC alleges that between 1 March 2018 and 14 September 2018, Sui and the other individuals conducted manipulative trading and a significant number of matched trades in Ding Yi Feng shares to, among other things, create a false or misleading appearance of active trading in the shares and the price of the shares. By doing so, the overall trading volume was significantly increased, thereby creating a false impression of larger market liquidity of Ding Yi Feng shares and misleading other market participants in their decision making.

Trading in Ding Yi Feng shares were suspended on 8 March 2019 at the direction of the SFC and resumed on 23 January 2020 when the SFC announced that it was commencing proceedings.

The SFC also had issued restriction notices to freeze client accounts linked to the suspected market manipulation of Ding Yi Feng shares. The restriction notices remain in force.

The SFC appreciates the support and assistance provided by the China Securities Regulatory Commission during the investigation

View News

Retail trader jailed for securities fraud via illegal short selling

20 March 2024

The Eastern Magistrates' Court today sentenced Ms Christine Yeung Tak Sum, a retail trader, to 18 months of imprisonment following her conviction for securities fraud involving illegal short selling in a prosecution brought by the Securities and Futures Commission (SFC).

This is the first case where an individual was convicted for the offence of employing a fraudulent or deceptive scheme with intent to defraud in transactions involving securities under section 300 of the Securities and Futures Ordinance in the context of illegal short selling.

In sentencing, Magistrate Mr Jeffrey Sze Cho Yiu remarked on the serious nature of the offence, the premeditation in the commission of the offence and a significant amount of illicit profits involved. The Magistrate concluded that taking into account these factors and the importance of upholding Hong Kong's status as an international financial centre, a strong deterrent message must be sent to the public by imposing an immediate custodial sentence on the wrongdoer.

The SFC's Executive Director of Enforcement, Mr Christopher Wilson, said: "We welcome the court's decision. This case stemmed from a complex ramp-and-dump investigation in which we discovered suspected securities fraud by way of illegal short selling immediately before the collapse of the share price. The outcome of this case sends a clear and strong warning to market participants that the SFC has zero tolerance for market misconduct. We will redouble our efforts to root out market misconduct in order to safeguard market integrity and maintain a level playing field for Hong Kong."

[View News]

Pre-trial review fixed for unlicensed dealing prosecution

14 March 2024

The Eastern Magistrates' Court today set down 23 May 2024 for a pre-trial review of the prosecution brought by the Securities and Futures Commission (SFC) against Ms Lai Ka Yi.

At today's hearing, Lai pleaded not guilty to a charge of having held herself out as carrying on a business in regulated activity without an SFC licence under the Securities and Futures Ordinance (SFO).

The SFC alleged that between April and May 2018, Lai held herself out to an individual as carrying on a business in dealing in securities in Hong Kong without an SFC licence and reasonable excuse.

[View News]

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