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# REGULATORY NEWSLETTER

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## REGULATORY UPDATES

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### **SFC provides additional guidance on external electronic data storage**

**10 Dec 2020**

The SFC has released additional guidance to market participants on external electronic data storage in response to questions from licensed corporations and other stakeholders. The FAQ, follows the 31 Oct 2019 circular setting out the requirements for using external electronic data storage providers (EDSPs) to exclusively keep records or documents required under the SFO or the AMLCTFO.

As an alternative means of satisfying the requirements in the circular, the SFC will accept an undertaking from each of the licensed corporation's two MICs of core function or, with the SFC's consent, one MIC or one RO.

The SFC also made consequential changes to its FAQs on premises for business and record keeping.

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## **SFC proposes to upgrade the industry's competency standards**

11 Dec 2020

The SFC launched a consultation on proposals to update its entry requirements for licence applicants as well as its ongoing competency standards for individual practitioners.

Under the proposals, the minimum academic qualification requirements would be raised and a broader range of qualifications would be recognized. In addition, applicants would have more flexibility for meeting the industry qualification and regulatory examination requirements. CPT requirements for individual practitioners would also be enhanced.

Market participants and other interested parties are invited to submit their comments to the SFC on or before 10 February 2021 via the SFC website ([www.sfc.hk](http://www.sfc.hk)), by email ([2020\\_Compency\\_Consultation@sfc.hk](mailto:2020_Compency_Consultation@sfc.hk)), by post or by fax to 2293 4012.

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## **SFC concludes consultation on customer due diligence requirements for open-ended fund companies**

23 Dec 2020

The SFC released consultation conclusions on proposed customer due diligence requirements for open-ended fund companies.

The SFC will implement the proposal to require OFCs to appoint a responsible person to carry out anti-money laundering and counter financing of terrorism (AML/CFT) functions, in line with the Financial Action Task Force's principles and requirements as well as to better align the AML/CFT requirements for different investment vehicles for funds in Hong Kong.

Upon the completion of the legislative process, the new requirements will come into effect after a six-month transition period.

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# ENFORCEMENT NEWS

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## Market Misconduct Tribunal finds insider dealing in China Gas Share

The Market Misconduct Tribunal (MMT) has found that Mr Cheng Chak Ngok, former executive director, chief financial officer and company secretary of ENN Energy Holdings Limited (ENN Energy), had engaged in insider dealing in the shares of China Gas Holding Limited (China Gas) in 2011 following a retrial.

On 30 Sept 2020, the MMT concluded after the retrial that it is more probable than not that Cheng had dealt in the shares of China Gas after considering that:

- Cheng was not a creditable witness and no weight was attached to his evidence;
- Cheng had made arrangements to open a nominee account at Bank of China Hong Kong to gain access to the bank statements;
- There was a clear correlation between the trading of China Gas shares and the acquisition of inside information by Cheng; and
- The sources of the orders placed via the internet (through the IP address at ENN Energy's office) and smartphones correlated with Cheng's whereabouts.

The MMT concluded that neither the nominee nor some unidentified individual would have been in a position to place the orders, and they will determine the sanctions against Cheng at a later date.

## SFC reprimands and fines Fulbright Securities Limited \$3.6 million

The SFC has reprimanded Fulbright Securities Limited and fined it \$3.6 million for internal control failures relating to short selling and for failing to report related short selling incidents to the SFC in a timely manner.

The SFC found that between October 2015 and March 2016, there were at least 93 instances of short sales executed by Fulbright which resulted from its failure to put in place effective internal control procedures to detect and prevent illegal short selling. Also, Fulbright failed to report these incidents to the SFC immediately upon discovering them.

Factors the SFC took into account while deciding disciplinary action:

- Adequate and effective internal control systems are fundamental to the fitness and properness of a licensed corporation;
- Fulbright's short selling failures lasted for at least 6 months;
- Fulbright's cooperation in resolving the SFC's concerns and acceptance of the findings and disciplinary action of the SFC;
- Fulbright had taken measures to rectify its internal control deficiencies in relation to the detection and prevention of short selling after the incidents; and
- Fulbright had an otherwise clean disciplinary record.

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