

REGULATORY NEWSLETTER



2021 Vol.10



“A great many people think they are thinking when they are merely rearranging their prejudices.”

William James

Actual thinking is based on an examination of the facts, and coming to a logical or informed decision based on those facts. Absent the facts, one cannot actually have an intelligent discussion, much less perform logical thinking.

Welcome back to our monthly newsletter highlighting the best coverage of SFC’s latest regulatory updates and enforcement news. ComplianceDirect, as being your Compliance Consultant, will always be at your service, devotedly, diligently and duly providing our professional consultation and be your strongest support to help you think based on facts and leave preconceived notions behind.

REGULATORY UPDATES

Operational resilience and remote working

04 Oct 2021

The SFC has provided guidance on cybersecurity, business continuity plans, internal controls and risk management to help licensed corporations maintain resilience amid the COVID-19 outbreak.

In this circular, the SFC has pointed out that many intermediaries transitioned to hybrid working arrangements during the pandemic, with employees working partly from the office and partly from home or other remote locations (i.e., remote working). Moreover, many intermediaries are considering whether to maintain some form of hybrid working arrangement as a new normal after the pandemic. The SFC reminded every intermediary to maintain good operational resilience standards and implementation measures which supplement the SFC’s existing guidance.

[View Circular](#)

Distribution of insurance-linked securities and related products

11 Oct 2021

The HKMA and the SFC remind intermediaries to observe the requirements governing selling practices, including the suitability obligations and requirements for complex products, under the Code of Conduct when they distribute insurance-linked securities (“ILS”) and related products.

Intermediaries are reminded to appropriately identify the target investors of ILS and related products by taking into account any selling restrictions on ILS issued in Hong Kong and outside Hong Kong as well as the structure and risks of these products. In addition to their high-risk factors, ILS and related products are considered as complex products. Intermediaries are reminded to comply with the suitability obligations and requirements for complex products where applicable when distributing ILS and related products.

In brief, intermediaries should:

- a) Conduct product due diligence;
- b) To ensure the risk return profile of the product matches with the financial circumstances and risk profiling of the clients;
- c) Provide clients with sufficient and accurate information about the product;
- d) Provide client with warning statements;
- e) Provide staff training on the products they distribute.

[View Circular](#)

Proposed updates to the Technical Specifications for OTC Derivatives Trade Reporting

11 Oct 2021

The SFC and the HKMA has issued a Circular in June on the proposed updates to the Administration and Interface Development Guide (“AIDG”) under the OTC derivatives reporting regime.

The key proposed updates to the technical specifications are as followed:

- i) mandating the supporting field value of “Proprietary rates” under the data fields “Floating Rate Index” and “Floating Rate Option”;
- ii) making available the data field “Global Unique Transaction Identifier” (Global UTI) and related data fields in anticipation of the global implementation of UTI;
- iii) mandating the reporting of product types under the data field “Special Terms” for products specified in the Supplementary Reporting Instructions (SRI);
- iv) enhancing the Equity templates to address market feedback and to cater to regulatory needs.

The SFC has set out in more details on the proposed updates.

For iii) data field “Special Terms”, the full list of the product scope is now updated and attached in this circular. Moreover, the implementation of the data field “Special Terms” has been postponed to December 2022.

For iv) enhancement of data fields in the Equity templates, The SFC and HKMA noted that harmonization and alignment in data fields and in implementation with other major jurisdictions and

with the CDE Technical Guidance are important. As such, for all of the proposed data fields for the Equity templates which are currently not required by the reporting regimes in other major jurisdictions, the regulators will not mandate them at this stage.

The SFC and HKMA will continue to actively engage market participants to clarify issues and answer questions that they may have during the implementation period.

[View Circular](#)

Reminder of business continuity planning in view of Covid-19 Vaccination Programme

28 Oct 2021

In that circular, the SFC urged licensed corporations to review their business continuity plan (BCP) and encourage staff performing critical functions to get vaccinated. The SFC also urged licensed corporations to consider suitable arrangements for unvaccinated critical staff to undergo periodic COVID-19 testing.

In view of the HKSAR Government's vaccination-in-lieu of regular testing arrangement to require all civil servants to get vaccinated, licensed corporations are urged to adopt a similar arrangement and strongly encourage all of their staff who are medically fit to do so to get vaccinated by 30 November 2021 or to undergo effective testing for COVID-19 every two weeks.

[View Circular](#)

Findings of concurrent SFC-HKMA thematic review of spread charges and other practices

29 Oct 2021

This circular shares some key observations noted from a concurrent thematic review conducted in 2020/21 by the SFC and the HKMA. Please see the findings in brief below:

Disclosure of transaction-related information

a) Trading Capacity

It was noted that an LC failed to disclose the capacity in which it acted for its clients prior to or at the point of entering into transactions in fixed income securities and structured products.

b) Affiliations with product issuers and independence.

It was noted that some LCs which transacted in non-exchange-traded products (e.g. bonds and funds) issued by its group affiliates to disclose their affiliation with product issuers.

c) Monetary benefits

It was noted in a case that an LC disclosed the trailer fees receivable from fund houses to its clients in an email prior to or at the point of entering into a transaction. However, the LC only provided a uniform disclosure of the maximum percentage of the trailer fees receivable based on all the funds on its distribution list. It failed to make specific disclosures of the maximum percentage of the trailer fees receivable for particular fund on a transaction basis.

Internal control and management supervision over order handling and spread charges

a) It was noted that an LC represented that it would not retain any benefits from price

improvements. However, it did not have written policies to clearly communicate this practice to its staff or any pre-trade controls or post trade surveillance reviews for checking whether benefits were passed on to the clients.

b) Some LC did not inform its clients that it might retain the benefits from price improvements.

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ENFORCEMENT NEWS

SFC issues Restriction Notice to HF Asset Management Limited

7 Oct 2021

The SFC has issued a restriction notice to HF Asset Management Limited (“HFAM”) and prohibits HFAM, without prior written consent from the SFC, from carrying on any business, whether directly or through agents, which constitutes regulated activities.

The restriction notice is issued based on doubts over HFAM’s reliability, integrity and ability to carry on regulated activities competently, honestly, and fairly, and hence, its fitness and properness to remain licensed.

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SFC reprimands and fines Ample Capital Limited \$5.5 million and suspends its responsible officer for IPO sponsor failures

18 Oct 2021

The SFC has reprimanded and fined Ample Capital Limited (ACL) \$5.5 million for failing to discharge its duties as the sponsor in the listing application of COCCI International Limited (COCCI) between 2016 and 2017.

Two former senior executives of Convoy Global jailed for conspiracy to defraud

16 Oct 2021

Two former executive directors of Convoy Global Holdings Limited and two co-defendants were today jailed between four and seven months at the District Court after conviction of conspiracy to defraud the company.

The case arose from a corporate fraud and misconduct complaint which led to a search operation conducted by the Securities and Futures Commission (SFC) in June 2017 and a subsequent large-scale joint operation of the SFC and the Independent Commission Against Corruption (ICAC) conducted in December 2017. Crucial evidence was secured in the operations which resulted in the charges of the four by the ICAC.

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SFAT affirms SFC decision to reprimand and fine Yi Shun Da Capital Limited for sponsor failures

19 Oct 2021

The SFC has reprimanded and fined Yi Shun Da Capital Limited (“YSD Capital”) \$3 million for failing to discharge its duties as the sponsor in the listing application of Imperial Sierra Group Holdings Limited (“Imperial Sierra”) in 2017.

The disciplinary action followed the SFC's investigation which found that ACL failed to:

- a) conduct adequate due diligence on suspicious cash settlement received by COCCI and keep proper records of its due diligence work;
- b) ascertain the background and independence of a major wholesale distributor of COCCI and its associates;
- c) critically assess the reliability of the shipping documents provided to it by COCCI.

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SFC bans Lau Tin Yau for life

26 Oct 2021

The SFC has banned Lau Tin Yau, a former relationship manager of Standard Chartered Bank (Hong Kong) Limited (SCBHK) and former execution dealer of UOB Kay Hian (Hong Kong) Limited (UOB) and UOB Kay Hian Futures (Hong Kong) Limited (UOB Futures), from re-entering the industry for life.

The Court found Lau, who was responsible for soliciting new customers and promoting investment products for SCBHK at the material time, guilty of offering a total of \$1,000 to a colleague as reward for opening two customer accounts.

The Court also found Lau guilty of providing false and misleading information to the SFC and failing to make report to the SFC of reportable events.

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The SFC found that YSD Capital had failed to perform all reasonable due diligence on Imperial Sierra before submitting the listing application and to ensure that all material information obtained was included in the Application Proof and that the information was accurate and substantially complete.

YSD Capital's failings related to:

- a) Failure to perform all reasonable due diligence on Third party payments, loan and investment arrangements and suspicious transactions.
- b) Incomplete disclosure in the Application Proof

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Court upholds conviction of Law Sai Hung over unlicensed activities

25 Oct 2021

The Court of First Instance has dismissed the appeal of Law Sai Hung, a director of Brilliance Capital Management Limited (BCML), against his conviction over unlicensed activities.

The Eastern Magistrates' Court has convicted Law, in his capacity as an officer of BCML, for having aided, abetted, counselled, procured, induced BCML, an unlicensed entity, in holding itself out to a company as carrying on a business in advising on corporate finance or that the offence by BCML was committed with the consent, connivance of or was attributable to the recklessness of Law. Law was sentenced to a fine and was ordered to pay the SFC's investigation costs.

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ComplianceDirect Consulting Limited

Address: Unit 2, 10/F, Cheong K. Building, 84 & 86 Des Voeux Road Central, Central, Hong Kong

Phone: 2606 1800

Website: www.compliancedirecthk.com