REGULATORY NEWSLETTER

2022 Vol.8

Luscious fruits are the synonymous of the month of August. Pleasure of enjoying mouth-watering cantaloupe, watermelon and strawberry in hot weather could be given only with the hard work and honest sweat of farmers. Just like those diligent farmers, all of us work hard to contribute to the business success in return for the "juicy fruits". ComplianceDirect, understands that it is never easy to work single-handed and will continue to assist its honorable clients to strike for the best and success with its professional consultation and compliance services.

REGULATORY UPDATES

Circular to Licensed Corporations 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, 14-17 June 2022

5 July 2022

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

The Financial Action Task Force ("FATF") issued a statement on High-Risk Jurisdictions subject to a Call for Action on 17 June 2022, which can be found at https://www.fatf-gafi.org/publications/high-risk-and-other-monitored-jurisdictions/documents/call-for-action-june-2022.html. The statement continues to refer its members to the list of High-Risk Jurisdictions subject to a Call for Action adopted in February 2020

Since February 2020, in light of the COVID-19 pandemic, the FATF has paused the review process for jurisdictions in the list of High-Risk Jurisdictions subject to a Call for Action. While the February 2020 statement may not necessarily reflect the most recent status of Iran and the Democratic People's Republic of Korea's anti-money laundering and counter-financing of terrorism ("AML/CFT") regimes, the FATF's call for action on these high-risk jurisdictions remains in effect.

(2) FATF Statement on Jurisdictions under Increased Monitoring

The FATF has issued an updated statement on Jurisdictions under Increased Monitoring with the addition of Gibraltar and removal of Malta from the list. The statement can be found at https://www.fatf-gafi.org/publications/high-risk-and-other-monitored-jurisdictions/documents/increased-monitoring-june-2022.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 to take into account the information presented in the statement in their risk analysis. Licensed corporations ("LCs") and associated entities ("AEs") 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, 14-17 June 2022

The FATF also published various outcomes of its recent Plenary which may be of interest to LCs and AEs. They include:

(a) the finalisation of a targeted update on implementation of the FATF standards on virtual assets and virtual asset service providers. A report, that focuses on the implementation of the FATF's Travel Rule and provides a brief update on emerging risks and market developments, was published on 30 June 2022;

(b) the approval of a report that shares good practices and recommendations for combating money laundering and terrorist financing by sharing information while adhering to domestic data protection and privacy objectives and obligations; and

(c) the release of a white paper for public consultation on potential revisions to Recommendation 25 on transparency and beneficial ownership of legal arrangements, which closed for comments by 1 August 2022.

Further information on the FATF Plenary's outcomes can be found at https://www.fatf-gafi.org/publications/fatfgeneral/documents/outcomes-fatf-plenary-june-2022.html.

View Circular

Circular to Licensed Corporations and Associated Entities - Anti-Money Laundering / Counter-Financing of Terrorism

Publication of the Latest Hong Kong's Money Laundering and Terrorist Financing Risk Assessment Report

8 July 2022

The Government published the latest Hong Kong's Money Laundering and Terrorist Financing Risk

Assessment Report ("the Report"). To ensure that the anti-money laundering and counter-financing of terrorism ("AML/CFT") regime of Hong Kong can address challenges brought by the ever-changing market developments, the Government updates the jurisdiction-wide money laundering and terrorist financing ("ML/TF") risk assessment from time to time so that the Government can implement mitigating measures in response to relevant risks based on the updated assessment results. The Report examines the ML/TF threats and vulnerabilities facing various sectors in Hong Kong and the city as a whole in recent years, as well as assesses the risk of proliferation financing faced by Hong Kong.

The Report can be found on the Government's website (https://www.fstb.gov.hk/fsb/aml/en/risk-assessment.htm).

The assessment concludes the ML risk of the securities sector remains at medium level, taking into account the ML threat and vulnerability levels for the securities sector which are both assessed to remain at medium level.

The Report notes that the securities sector continues to be exposed to transnational, cross-border as well as domestic ML threats. In particular, it is also exposed to ML threats from social media investment scams in recent years. "Nominee" and dubious investment arrangements which have been exploited for use in schemes to facilitate market misconduct or in concealing the actual beneficial ownership for other illegal purposes are newly identified as key ML vulnerabilities. Furthermore, the increased use of online and mobile trading as well as remote office arrangements during the COVID-19 pandemic also provide opportunities for criminals to abuse the sector for online fraud and theft and related ML activities.

The Securities and Futures Commission ("SFC") has strengthened its risk-based AML/CFT supervision which enables the monitoring of firms' AML/CFT compliance in a more risk-sensitive and effective manner. These include implementing the Manager-In-Charge regime for eight-core functions including AML/CFT, and launching a revamped Business and Risk Management Questionnaire which gathers more information about firms' business operations and AML/CFT controls. The SFC will reinforce its capacity building and outreach programmes to enhance the AML/CFT compliance capability of the securities sector to help mitigate the ML/TF risks.

Licensed corporations ("LCs") and associated entities ("AEs") are reminded to identify and assess ML/TF risks to which the firms are exposed and to keep the assessment up-to-date, having regard to the key ML/TF threats and vulnerabilities identified in the Report that are relevant to their own circumstances. LCs and AEs should design and implement adequate and appropriate AML/CFT policies, procedures and controls that are commensurate with the ML/TF risks identified in order to properly manage and mitigate them.

View Circular

Extension of End-To-End (E2E) Test for the Hong Kong Investor Identification Regime ("HKIDR")

13 July 2022

Extension of E2E Test

In response to requests by some Relevant Regulated Intermediaries1 (RRIs) to extend the E2E Test period, the E2E Test for the HKIDR will be extended to include the period from 19 July 2022 to 5 August 2022 (both dates inclusive). For RRIs who have not completed the mandatory E2E Test yet, they are hereby reminded to complete the test as soon as possible in order to proceed to the market rehearsals.

Following the successful completion of the E2E Test, Market Rehearsals (MRs) for systems relating to the HKIDR will be arranged in due course for RRIs to verify their readiness before the launch of the HKIDR. Details of the MRs will be announced later.

Use of ECP Secure File Transfer Protocol (SFTP) Interface

Please also note that RRIs can submit the BCAN-CID Mapping File and Reporting Forms to SEHK's data repository via ECP web interface and/or ECP (SFTP) interface. Non-EP RRIs who intend to leverage on the ECP (SFTP) interface during the market rehearsals and after the launch of the HKIDR should install HKEX's Securities and Derivatives Network (SDNet/2) production line for this purpose. Please refer to HKEX's Circular dated 13 July 2022 for further details.

View Circular

Circular to Intermediaries

1) Update of Technical Information Paper for the Over-the-counter Securities Transactions Reporting Regime ("OTCR"); and

2) OTCR Reporting File Template and Submission Process Flow

22 July 2022

Reference is made to the Circular on 26 November 2021 regarding the OTCR Technical Information Paper.

Please note that an updated version of the OTCR Technical Information Paper, with some updates on the specifications, has been published.

The SFC has also prepared an OTCR Reporting File Template and Submission Process Flow, to facilitate preparation of submission files under the OTCR and illustrate the process flow of file submission.

The OTCR Technical Information Paper, and the OTCR Reporting File Template and Submission Process Flow can be downloaded from the SFC dedicated webpage.

View Circular

ENFORCEMENT NEWS

SFC and Police joint operation on suspected corporate fraud

5 July 2022

The SFC and the Commercial Crime Bureau of the Police today conducted a joint operation against suspected bogus transactions involving a company formerly listed on the Stock Exchange of Hong Kong Limited (SEHK)

The SFC is investigating into whether the company's management had caused it to enter into various bogus transactions amounting to over $130 million and published false or misleading announcements and financial statements to cover up the fraud.

The suspected bogus transactions involved a loan the company granted to a related party and some payments and prepayments it made to suppliers for goods or services. But the company did not appear to have received the goods or services it had paid for and a substantial part of the money it had paid went to its related parties instead of the suppliers.

No further comment will be made at this stage as investigations are still ongoing.

View News

SFC reprimands and fines RBC Investment Services (Asia) Limited $7.7 million for mishandling client assets

20 July 2022

The SFC has reprimanded RBC Investment Services (Asia) Limited (RBC) and fined it $7.7 million for regulatory breaches relating to mishandling of client assets.

The SFC's investigation found that between January 2018 and August 2020, RBC had failed to segregate client money as required under the Securities and Futures (Client Money) Rules (Client Money Rules) on 86 occasions, involving individual transaction amounts ranging from $146 to $52 million.

The SFC also found that between 3 December 2012 and 26 March 2020, RBC had breached the Securities and Futures (Client Securities) Rules (Client Securities Rules), by transferring securities from 65 client accounts held by non-professional investor clients to SEHK Options Clearing House Limited as collateral without valid standing authority.

In deciding the disciplinary sanction, the SFC took into account all relevant circumstances, including:

- RBC's remedial actions and self-report to the SFC regarding its breaches of the Client Money Rules and Client Securities Rules;
- RBC's co-operation in resolving the SFC's concerns and accepting the SFC's findings and disciplinary action; and
- there is no evidence of client loss from RBC's non-compliance.

View News

SFC reprimands and fines Rifa Futures Limited $9 million for regulatory breaches

25 July 2022

The SFC has reprimanded and fined Rifa Futures Limited (Rifa) $9 million for failures in complying with know-your-client, anti-money laundering and counter-terrorist financing (AML/CFT) and other regulatory requirements between May 2016 and October 2018.

The SFC's investigation found that Rifa, which permitted 310 clients to use client supplied systems (CSSs) for placing orders during the material time, had failed to conduct adequate due diligence on the CSSs. As a result, Rifa was not in a position to properly assess and manage the money laundering and terrorist financing and other risks associated with the use of such CSSs by its clients. In addition, Rifa had failed to implement two-factor authentication (2FA) for clients to login to their internet trading accounts via CSSs since the regulatory requirement took effect in April 2018.

The SFC further found that Rifa failed to conduct adequate ongoing monitoring of clients' fund movements to ensure they were consistent with the clients' nature of business, risk profile and source of fund. In particular, the SFC identified that the amounts of deposits made into five client accounts were incommensurate with their declared financial profiles.

In deciding the disciplinary sanctions against Rifa, the SFC took into account that:

- Rifa's failures to diligently monitor its clients' activities and put in place adequate and effective AML/CFT systems and controls are serious as they could undermine public confidence in, and damage the integrity of, the market;
- a strong deterrent message needs to be sent to the market that such failures are not acceptable; and
- Rifa has previously been disciplined by the SFC for similar AML-related failures.

View News

SFC reprimands and fines KTF Capital Management Limited $400,000 for breaching Financial Resources Rules

28 July 2022

The SFC has reprimanded and fined KTF Capital Management Limited ("KTFCM") (formerly known as Forchn International Asset Management Co. Limited and Rega Technologies Limited) $400,000 for failures to comply with the Securities and Futures (Financial Resources) Rules (FRR).

The SFC found that KTFCM failed to maintain its required liquid capital of approximately $2.8 million between 13 and 18 December 2018 and notify the SFC when it became aware of its inability to comply with the financial resources requirements. It transpired that the almost $20 million deficit in KTFCM's liquid capital was the result of an oversight in that it failed to anticipate its proprietary trading in shares would trigger adverse implications to its liquid capital calculation under the FRR.

The SFC is of the view that KTFCM's conduct was in breach of the Code of Conduct.

In deciding the sanction, the SFC took into account all relevant circumstances, including:

- The FRR regime represents significant statutory safeguards for the interests of the investors in the market;
- KTFCM's liquid capital deficit was significant in light of its operations but lasted for only a short period of time;
- KTFCM misrepresented to the SFC that it maintained sufficient liquid capital during the relevant period by backdating a relevant agreement;
- KTFCM's cooperation with the SFC in resolving the disciplinary proceedings;
- KTFCM's financial situation; and
- KTFCM's otherwise clean disciplinary record.

View News

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