
REGULATORY NEWSLETTER

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Despite the sweeping wind and rain, or even when typhoon signal No. 8 was hoisted in the city, the Global Financial Leaders' Investment Summit still went ahead as scheduled showing the strong message that Hong Kong is back at the center of the world stage after the pandemic. Following the successful launch of the Summit and much-awaited Rugby Sevens, our city leader pledged and promised that "the worst is behind us". In fact, more and more high-profile events catering foreign investors and travelers will be held. We believe opportunity and timing are right here in Hong Kong.

No matter if Hong Kong economy is in a boom or a tough, be it a sunny or rainy day and be it in good times or bad, ComplianceDirect, as always, joins hands together to take your company forward along the correct path and shape the better tomorrow by providing our professional compliance services.

REGULATORY UPDATES

Circular on Virtual Asset Futures Exchange Traded Funds

31 October 2022

This circular sets out the requirements under which the Securities and Futures Commission (SFC) would consider authorising exchange traded funds (ETFs) that obtain exposure to virtual assets (VAs) primarily through futures contracts (VA Futures ETFs) for public offering in Hong Kong under sections 104 and 105 of the Securities and Futures Ordinance (SFO).

In November 2018, when the SFC formulated its regulatory approach for VAs, the SFC noted with concern the significant risks associated with investing in VAs, which were inherent in the nature and characteristics of VAs or stemmed from the operations of less regulated platforms or managers of VA products. As such, the SFC decided that only professional investors should be allowed to invest in VA funds that are offered in Hong Kong.

Since then, the VA landscape has evolved rapidly. A broad range and larger number of investment

products providing exposure to VAs, including VA-related ETFs offered in various markets globally, are now available to both retail and professional investors and have become increasingly popular. Similarly, demand for such products has increased in Hong Kong. This led to the issue of the “Joint circular on intermediaries’ virtual asset-related activities” (Joint Circular) by the SFC and the Hong Kong Monetary Authority in January 2022 which allows SFC-licensed and registered intermediaries to offer trading of eligible VA Futures ETFs to retail investors in Hong Kong.

In light of these developments, the SFC has been actively looking into a regime that would enable the authorisation of investment products providing exposure to VAs and would meet investor demands with appropriate safeguards from an investor protection perspective.

It has been observed that there are meaningful developments in the VA ecosystem recently and some of the initial concerns over VA Futures ETFs have become increasingly manageable and could be adequately addressed with proper safeguards, disclosure and investor education. However, as a good part of the VA ecosystem (e.g., VA trading platforms) is still not subject to the same robust regulation as service providers or products in traditional financial markets, investment products that invest directly in spot VAs may continue to present investor protection issues.

In view of the above, the SFC is prepared to accept applications for authorization of VA Futures ETFs.

The SFC will keep in view and closely monitor the development of the VA market and its regulatory landscape regarding the appropriateness of authorization of ETFs that invest directly in spot VAs.

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ENFORCEMENT NEWS

Court orders Sound Global chairman to purchase shares from investors

6 October 2022

The SFC has obtained an order in the Court of First Instance against the chairman and executive director of Sound Global Ltd. (Sound Global), Mr Wen Yibo, to purchase shares held by the other shareholders of the company at a price to be determined by the Court – after he was found to have orchestrated a scheme to falsify the company’s bank balances and fabricated relevant bank statements and balance confirmations.

SFC reprimands and fines Asia Research & Capital Management Limited \$1.75 million and bans former senior executive Billy Wong Yim Chi for two months

12 October 2022

The SFC has reprimanded and fined Asia Research & Capital Management Limited (ARCM) \$1.75 million for failures relating to its non-compliance with the European Union’s short selling reporting requirements (EU Regulation) and to promptly notify the SFC of its material regulatory breaches.

The SFC has also banned Mr Billy Wong Yim Chi, ARCM’s former Head of Compliance and Operations and Manager-In-Charge (MIC) for

The order was the first of its kind made under section 214 of the SFO.

The Court also issued a disqualification order for 12 years against Wen, who was ordered to pay the SFC's costs on an indemnity basis.

The Court was satisfied that as a result of Wen's scheme, which involved five bank accounts maintained by Sound Global's subsidiaries at two Mainland banks for the financial years of 2011, 2012 and 2013, the bank balances of the company's subsidiaries were inflated by RMB 2.18 billion and RMB 2.72 billion as at 31 December 2012 and 2013 respectively, representing 82% and 89% of the net assets of Sound Global as reported in its 2012 and 2013 annual reports.

Mr Ashley Alder, the SFC's Chief Executive Officer said: "The share purchase order represents an important milestone in the SFC's efforts to protect the investing public from wrongful conduct by management of listed companies and our determination to deploy our full range of regulatory tools to tackle market misconduct and uphold market integrity."

Compliance for two months from 10 October 2022 to 9 December 2022. This is because ARCM's failures to comply with the EU Regulation were directly attributable to Wong's failure to discharge his duties as ARCM's MIC for Compliance and a member of its senior management during the material time.

On 14 October 2020, the UK's Financial Conduct Authority (FCA) published a final notice of its enforcement action against ARCM for ARCM's failures to disclose its net short position in London Stock Exchange-listed Premier Oil plc (Premier Oil) to the FCA and the public between 22 February 2017 to 3 December 2019.

The SFC's investigation, conducted after the conclusion of the FCA's enforcement action, found that ARCM failed to:

- implement adequate systems and controls in its compliance framework to monitor and ensure its short position in Premier Oil was properly reported to the FCA and disclosed to the public as required under the EU Regulation;
- seek legal advice on its reporting obligations under the EU Regulation before it established a short position in Premier Oil even though ARCM was investing in a new jurisdiction and unfamiliar with the EU market; and
- notify the SFC immediately upon becoming aware that it had materially breached the EU Regulation, and only did so after a delay of around two months.

The SFC also considers Wong's conduct fell short of the standard required of him as the MIC for Compliance and a member of ARCM's senior management at the material time.

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

- the remedial actions taken by ARCM to enhance its systems and controls on regulatory disclosure;
- the cooperation of ARCM and Wong in resolving the SFC's concerns; and
- ARCM and Wong have otherwise clean disciplinary records.

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Former account executive of Fulbright Securities Limited convicted of securities fraud

14 October 2022

The Eastern Magistrates' Court has convicted Mr Danny Fung Kwong Shing, a former account executive of Fulbright Securities Limited, of the offences of engaging in fraud or deception in transactions involving securities under the Securities and Futures Ordinance (SFO) in a criminal prosecution brought by the SFC.

Fung was remanded in custody yesterday pending sentence on 27 October 2022 after pleading guilty to all 25 charges.

During the hearing, Fung admitted that between 2 August 2013 and 16 December 2013, he had employed a fraudulent scheme to effect securities transactions in eight stocks between two securities trading accounts under his control. The securities trading accounts belonged to his friend and one of his clients, and he effected the transactions by dishonestly using his client's funds and securities without authorisation.

In essence, the scheme involved different trading patterns – namely, using his client's funds to buy shares at high prices from the market and selling those shares at low prices to his friend's account; or using his client's funds to buy shares at high prices from his friend's account. These series of transactions resulted in a trading profit of \$172,890 to his friend and a loss of \$48,321 to his client.

Court convicted Wong King Hoi for obstruction of SFC's search operation

27 October 2022

The Eastern Magistrates' Court today convicted Mr Wong King Hoi after he pleaded guilty to a charge of obstructing employees of the SFC in the execution of a search warrant.

The Court was told that, in October 2021, the SFC obtained a search warrant to search for, seize and remove from Wong's residence records and documents relating to the SFC's investigation into suspected market manipulation of the shares of a Hong Kong-listed company. When the SFC executed the search warrant at Wong's residence, Wong allegedly delayed in giving the SFC search team access to his residence and attempted to dispose of four objects including two mobile phones and two notebooks.

Wong was remanded in custody pending sentence on 10 November 2022.

The SFC's investigation is ongoing.

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Retail investor convicted and fined for illegal short selling

27 October 2022

The Eastern Magistrates' Court today convicted Mr Lau Chi Ho after he pleaded guilty to illegal short selling in prosecutions brought by the Securities and Futures Commission (SFC).

Lau was fined \$20,000 and ordered to pay the SFC's investigation costs.

The Court heard that on two occasions on 12 June 2019 and 26 June 2019, Lau placed orders to sell shares of two listed securities on the Stock Exchange of Hong Kong Limited when he did not have any of those shares. He later bought back the shares to cover his short sold positions.

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Former account executive of Fulbright Securities Limited jailed for securities fraud

27 October 2022

The Eastern Magistrates' Court today sentenced Mr Danny Fung Kwong Shing to two-and-a-half months' imprisonment following his conviction of the offences of engaging in fraud or deception in transactions involving securities under section 300 of the Securities and Futures Ordinance (SFO) in a prosecution brought by the Securities and Futures Commission.

The Court granted bail to Fung pending his appeal against sentence.

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SFC bans Tang Shiyi for 10 months

31 October 2022

The SFC has banned Ms Tang Shiyi, a former licensed representative of China Galaxy International Securities (Hong Kong) Co., Limited and China Galaxy International Futures (Hong Kong) Co., Limited (collectively, CGI), from re-entering the industry for 10 months from 29 October 2022 to 28 August 2023.

The disciplinary action follows an SFC investigation, which found that between July 2019 and February 2021, Tang failed to obtain CGI's approval to open and maintain two securities trading accounts with an external brokerage firm and conducted 148 personal trades in these accounts unbeknownst to CGI. She also dealt in a stock on CGI's restricted list and engaged in day-trading on two occasions, in violation of CGI's staff dealing policy.

Tang concealed the above securities trading accounts by providing a false and misleading declaration to CGI that she did not have any accounts with other licensed corporations. In doing so, Tang circumvented CGI's internal control policies and her conduct prevented CGI from monitoring and reviewing its employees' trading activities to ensure compliance with laws and regulations.

The SFC considers that Tang's conduct, which was willful and dishonest, calls into question her fitness and properness to be a licensed person.

In determining the sanction against Tang, the SFC has taken into account all relevant circumstances,

including her violations lasted for over one and a half years, and her otherwise clean disciplinary record.

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