

REGULATORY NEWSLETTER

2023 Vol.8



On the 8th of August 2023, as the sun reaches the celestial longitude of 135°, heralding the arrival of the "Start of Autumn". "Start of Autumn" is the 13th solar term in the 24 traditional Chinese solar terms. This auspicious occasion marks the departure of the scorching summer and welcomes the advent of gentle breezes, beckoning forth a time when plants bear fruit and abundant harvests.

Just as "Start of Autumn" brings about change, ComplianceDirect remains steadfast in keeping up with the ever-evolving compliance landscape and ensuring your business remains compliant and well-prepared.

REGULATORY UPDATES

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 June 2023**

5 July 2023

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

Further to [the Securities and Futures Commission's \("SFC"\) circular](#) issued on 10 March 2023¹, the Financial Action Task Force ("FATF") issued a statement on High-Risk Jurisdictions subject to a Call for Action on 23 June 2023, which can be found at <https://www.fatf-gafi.org/en/publications/Fatfgeneral/Call-for-action-June-2023.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, i.e., Iran and the Democratic People's Republic of Korea, subject to the FATF's call for countermeasures adopted in February 2020.

(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. 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 Cameroon, Croatia and Vietnam. The statement can be found at <https://www.fatf-gafi.org/en/publications/Fatfgeneral/Increased-monitoring-june-2023.html>.

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 June 2023

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 fourth targeted update on the implementation of the FATF standards on virtual assets and virtual asset service providers. The FATF published [a report](#) on 27 June 2023, urging jurisdictions to swiftly implement the FATF Recommendation on virtual assets and virtual asset service providers, including the Travel Rule. The report also highlights emerging risks such as Democratic People's Republic of Korea's illicit virtual asset-related activities as well as decentralised finance and peer-to-peer transactions; and
- (b) the agreement on the release of the updated FATF Best Practices Paper on Combating the Abuse of Non-Profit Organisations and the potential revisions to the FATF Recommendation 8 for public consultation. The updates and revisions aim to protect non-profit organisations from potential terrorist financing abuse.

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-june-2023.html>.

[View Circular](#)

Circular on Licensing and Registration of Depositaries of SFC-authorized Collective Investment Schemes and Related Transitional Arrangements

27 July 2023

Starting from 2 October 2024, trustees and custodians (i.e., depositaries) of SFC-authorized collective investment schemes (CISs), unless exempted, will be required to be licensed by or registered with the SFC for Type 13 regulated activity (RA 13) under the Securities and Futures Ordinance (SFO).

Further information on the licensing guidance in relation to RA 13, including transitional arrangements for depositaries currently operating in Hong Kong and their representatives can be found by “View Circular”.

[View Circular](#)

Joint Circular to Intermediaries

Streamlined Approach for Compliance with Suitability Obligations when Dealing with Sophisticated Professional Investors

28 July 2023

The Hong Kong Monetary Authority (“HKMA”) and the SFC noted questions and feedback from intermediaries concerning compliance with suitability obligations when they deal with sophisticated professional investors (“SPIs”) who possess higher levels of net worth and knowledge or experience, particularly in relation to the suitability assessment and product disclosure processes applied.

Suitability assessment is a risk-based process that involves intermediaries matching of investment products with the personal circumstances and risk tolerance of clients. [The HKMA](#) and [the SFC](#) updated the relevant frequently asked questions in December 2020 to clarify the expected standards on how the suitability assessment could be conducted and how product information could be explained and disclosed to clients of different degrees of financial sophistication.

Following this premise, intermediaries could tailor point-of-sale procedures to the personal circumstances of SPIs. The HKMA and the SFC consider it useful to provide intermediaries with further guidance on applying a proportionate and risk-based streamlining approach (the “Streamlined Approach”) when dealing with SPIs. Intermediaries may refer to the detailed guidance set out in [Annex 1](#) and the frequently asked questions in [Annex 2](#) to facilitate their application of this Streamlined Approach.

An intermediary may rely on information about a client as obtained during onboarding or know-your-client reviews and ascertain if the client qualifies as an SPI. Where an intermediary is reasonably satisfied that the client exhibits the degree of sophistication and loss absorption ability of an SPI, it may apply the Streamlined Approach to allow the SPI to set aside an appropriate amount for investment in a portfolio of investment products with various risk return profiles (including but not limited to high-risk investment products).

As a wider range of investment products and/or a proportion of high-risk investment products in the portfolio are more likely to be suitable for SPIs (except for conservative clients), the intermediary may simplify its point-of-sale procedures accordingly. In essence, under the Streamlined Approach, the intermediary is not required at a transaction level to match the SPI's risk tolerance level, investment objectives and investment horizon, or to assess the SPI's knowledge, experience and concentration risk. Explanation of product characteristics, nature and extent of risks could also be provided to the SPI upfront.

Intermediaries should bear primary responsibilities for ensuring the maintenance of appropriate standards of conduct and properly managing the risks associated with their business operations. These include having effective systems and controls in place to guard against misuse and detect red-flags (e.g., outsize or material transactions) arising from applying the Streamlined Approach.

[View Circular](#)

Circular to Intermediaries

HKEX's Annual Rehearsal for Trading System Recovery

28 July 2023

Hong Kong Exchanges and Clearing Limited ("HKEX") will conduct its annual rehearsal for emergency trading system recovery **from 11:00 am to 3:10 pm on 19 August 2023 (Saturday)**. The rehearsal covers the following processes under the Hong Kong investor identification regime (HKIDR):

1. Submission of the BCAN-CID Mapping File and Reporting Forms to HKEX's data repository (applicable to all Relevant Regulated Intermediaries (RRIs)); and/or
2. BCAN tagging for order submission to HKEX's trading system (applicable to RRIs who are Exchange Participants (EPs) only).

All RRIs are encouraged to participate in the rehearsal to become familiar with the contingency procedures and related operational matters upon the simulated service outage on HKEX's systems.

For the avoidance of doubt, only RRIs who are EPs should submit the Notification Form for Participation in 2023 Market Rehearsal before the rehearsal, and the Rehearsal Evaluation Reply Form after completing the rehearsal. No enrolment will be required for non-EP RRIs. Please refer to [HKEX's Circular](#) dated 28 July 2023 for details.

[View Circular](#)

ENFORCEMENT NEWS

Court Convicted and Fined Ben Ngai Ping Kuen for Unlicensed Activity

5 July 2023

The Eastern Magistrates' Court has convicted Mr Ben Ngai Ping Kuen for holding himself out as performing a regulated function in relation to dealing in securities without a licence from the SFC.

Ngai pleaded guilty to the offence and was fined \$6,000 and ordered to pay the SFC's investigation costs.

The Court found that between April 2016 and June 2017, Ngai enticed three retail investors to invest in so-called "US-listed" shares issued by First Asia Holdings Limited (FAH), to finance FAH and/or First Asia Capital Limited (FAC) in their preparation for the purported secondary listing of FAH shares in Hong Kong.

Ngai represented to the investors, among other things, that if the secondary listing in Hong Kong was successful, the value of their investment in FAH shares would increase by 100% and that if they intended to realize their investment return, they would have to swap their FAH shares for the shares in a Hong Kong-listed corporation, namely PF Group Holdings Limited (PF). By the time the investors received their PF shares, the price of the PF shares had fallen substantially.

The SFC reminds investors to check the SFC's Public Register of Licensed Persons and Registered Institutions on the SFC website (www.sfc.hk) before investing to ensure that firms and people who provide dealing services in securities are properly licensed.

[View News](#)

SFC bans RaffAello Capital Limited's Former Responsible Officer for Two Years Over IPO Sponsor Failures

11 July 2023

The SFC has prohibited Mr Tsang Kwong Fai, a former responsible officer (RO) and sponsor principal of RaffAello Capital Limited (RaffAello), from re-entering the industry for two years from 11 July 2023 to 10 July 2025 for breaching the SFC's Code of Conduct.

Tsang was the sponsor principal in charge of supervision of the execution of a listing application from 2017 to 2018, for which RaffAello was the sole sponsor.

The SFC found that Tsang failed to discharge his duties as a sponsor principal, RO and member of the senior management of RaffAello, in that he had failed to:

- exercise due skill, care and diligence in handling the listing application;
- diligently supervise his subordinates in carrying out the sponsor work; and
- ensure the maintenance of appropriate standards of conduct and adherence to proper systems, controls and procedures by RaffAello to govern sponsor work.

In deciding on the sanction, the SFC took into account all relevant circumstances, including the gravity of Tsang's failures as a sponsor principal and his otherwise clean disciplinary record.

[View News](#)

SFC reprimands and fines Changjiang Asset Management (HK) Limited \$3.4 million for regulatory breaches and internal control failures

13 July 2023

The SFC has reprimanded and fined Changjiang Asset Management (HK) Limited (CJAM) \$3.4 million for regulatory breaches and internal control failings in relation to segregation of client money and provision of statements of accounts to clients.

The SFC found that between May 2015 and August 2017, CJAM had:

- under-segregated client money to the extent of \$300 to \$1.05 million on multiple occasions;
- failed to segregate client money it had received in amounts ranging from \$651,518 to \$8.5 million within the prescribed time limit on three occasions; and
- failed to immediately notify the SFC after it became aware of its under-segregation of client money.

In doing so, CJAM breached the Securities and Futures (Client Money) Rules and the Code of Conduct. CJAM also breached the Securities and Futures (Contract Notes, Statements of Account and Receipts) Rules and the Code of Conduct because the SFC's investigation revealed that CJAM had issued inaccurate statements of accounts to three clients between December 2016 and February 2017 and failed to provide statements of accounts to four clients within the prescribed time limit on 19 occasions between January and June 2017.

In deciding the disciplinary sanction, the SFC took into account all relevant circumstances, including CJAM's acceptance of liability and otherwise clean disciplinary record.

[View News](#)

Court Convicted and Fined Cheung Wing Hung for Unlicensed Activity

27 July 2023

The Eastern Magistrates' Court has convicted Mr. Cheung Wing Hung for holding himself out as performing a regulated function in relation to dealing in securities as an agent of entities not licensed by the Securities and Futures Commission (SFC).

Cheung pleaded guilty to the offence and was fined \$6,000 and ordered to pay the SFC's investigation costs.

The Court found that between April 2016 and June 2017, Cheung, while holding himself out as an agent of First Asia Holdings Limited (FAH) and/or First Asia Capital Limited (FAC), enticed three retail investors to invest in so-called "US-listed" shares issued by FAH, to finance FAH and/or FAC in their

preparation for the purported secondary listing of FAH shares in Hong Kong.

Cheung represented to the investors, among other things, that if the secondary listing in Hong Kong was successful, the value of their investment in FAH shares would increase by 100% and that if they intended to realize their investment return, they would have to swap their FAH shares for the shares in a Hong Kong-listed corporation, namely PF Group Holdings Limited (PF). By the time the investors received their PF shares, the price of the PF shares had fallen substantially.

The Court also fixed the pre-trial review of the SFC's prosecution against Mr. Tse Tsun Wai for 19 September 2023 after he pleaded not guilty to charges for holding himself out as performing a regulated function in relation to dealing in securities in respect of PF shares without a license from the SFC.

The SFC reminds investors to check the SFC's Public Register of Licensed Persons and Registered Institutions on the SFC website (www.sfc.hk) before investing to ensure that firms and people who provide dealing services in securities are properly licensed.

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