REGULATORY NEWSLETTER

2021 Vol.6

Recently, cryptocurrencies and virtual assets have become popular among institutional and retail investors as new crypto providers arise in the market. With the risk of money laundering and terrorist financing, there has been an increase in awareness and regulatory developments to prevent ML/TF from occurring when using these virtual assets. However, with the young age of cryptocurrencies and the various client bases of virtual asset service providers, understanding when and which standards and regulations to apply can be difficult. Therefore, continuous development will be required to carry out onboarding and due diligence processes in an effective, manageable way.

With the rising concerns and questions, you can reach out to us to discuss the regulatory development of cryptocurrencies and virtual assets. We will always be at your service, devotedly, diligently and duly providing our professional consultation and be your strongest support among any updates and change of SFC regulations.

REGULATORY UPDATES

Business continuity planning in view of COVID-19 Vaccination Programme

1 Jun 2021

The outbreak of COVID-19 has interrupted people's daily life and business across the world, in which Hong Kong is largely affected as well. However, as vaccines were launched by the Hong Kong Government, people are encouraged to get vaccinated to decrease infection rates and speed up the process of returning to a normal life. As a result, Licensed corporations are encouraged to consider vaccination as a critical part of operational risk management for better business operations and to meet clients' interests, especially for frontline operational staff. Specifically, SFC is encouraging Licensed Corporations to (1) review their business plan, and engage employees to perform functions

in alignment with client interest and business operations; and to (2) consider alternatives that are suitable for employees who have not been vaccinated or unable to be vaccinated due to medical conditions.

View Circular

Updates to the Exemption Scheme

21 Jun 2021

SFC has several updates on the Exemption Scheme concerning the antibody tests, specifically for returning executives and visiting executives. SFC also updated the details on the application process, which specifies that executives must submit an application form at least 10 working days before departure date for returning executives/ arrival date for visiting executives, along with carrying an authorisation letter copy, a pre-departure positive antibody test result, a pre-departure negative COVID-19 test result, and a COVID-19 vaccination record for the travel.

For returning executives who have been to any of the areas in Group B or C under Cap.599H or Taiwan, China within 14 days before arrival in Hong Kong must: (1) obtain a positive antibody test result from a HOKLAS-accredited medical laboratory that is done through the platforms of Abbott or Roche with the specimen collected within 3 months before arrival; (2) self-isolate at a designated quarantine hotel (DQH) or home for 7 days upon the arrival.

For visiting executives who have been to any of the areas in Group B or C under Cap.599H or Taiwan, China within 14 days before arrival in Hong Kong must: (1) have made an appointment for an antibody test from a HOKLAS-accredited medical laboratory that is done through the platforms of Abbott or Roche with the specimen collected on the day or the following day of arrival and (2) wait for test results and self-isolate at a DQH for 14 days upon arrival if the antibody test result is negative, or for 7 days if the antibody test result is positive.

View Circular

Operation of Bank Accounts

28 June 2021

During the course of supervising licensed corporations (“LCs”), the Commission has noted some unsatisfactory practices in the operation of their bank accounts. These practices undermined LC’s ability to properly safeguard client money, promptly discharge their liabilities and fully comply with the FRR Rules at all times. The requirements set out in this circular cover the LC’s bank accounts and the segregated client bank accounts.

The Commission pointed out that some LCs did not develop and implement effect policies and internal procedures to ensure that the LC's responsible officers ("ROs") or MIC of core functions, who were involved in the daily management of its regulated activities, to have sufficient oversight of the deployment of the LC's cash resources. The Commission has provided the following examples in relation to the unsatisfactory practices in the operation of bank accounts.

1) LC's house or client bank accounts were operated solely by a shareholder, a director or a nominee of a shareholder or director, which the above authorised signers of the bank accounts were not subject to the daily operation of the LCs and were not accountable to any ROs or MICs.
2) An LC's authorised signer (who did not have any official role at the LC) was an RO of another LC, and the two LCs were not in the same group.
3) There is a lack of timely and effective access to bank account information for ROs and MICs. In some cases, the MIC of Finance and Accounting had to rely on the LC's two directors to access the LC's bank accounts. The MIC or ROs could only verify transactions or identify unknown transactions after receiving the monthly statements, which has undermined their ability and authority to monitor the LC's liquid capital position in a timely manner.

Accordingly, the Commission expects there should be appropriate management on a daily basis of the following area:

a) adequately safeguard client assets;
b) promptly discharge settlement or margin obligations to clearing houses and trading counterparties;
c) ensure the availability of the financial resources needed for the proper performance of LC's business activities; and
d) fully comply with the financial resources requirements under the FRR at all times and should designate at least one RO or MIC to be responsible for each mentioned area. To account for the time it may take for LCs to make necessary changes, the Commission expects LCs to implement the expected standards by 3 January 2022.

View Circular

Circular to management companies of SFC-authorized unit trusts and mutual funds - ESG funds

29 June 2021

As environmental, social and governance ("ESG") related investment products continue to gain traction globally, the Commission issued this Circular to set out the following disclosure standard of ESG funds and with an aim to improve their comparability, transparency and visibility.

Name of Fund

1) An ESG's fund's primary investments and strategy should reflect the particular ESG focus

which the fund name represents

2) The Commission would generally not expect a fund other than an ESG fund to name or market itself as an ESG fund.

Disclosure in offering documents

3) A ESG fund should disclose in its offering documents:
    a) The ESG focus of the fund such as a description and a list of ESG criteria used to measure the attainment of the fund's ESG focus.
    b) The ESG investment strategy
    c) Asset allocation such as the expected or minimum proportion of securities or other investments that are commensurate with the fund's ESG focus.
    d) Reference benchmark, where an index is designated as a reference benchmark for the purpose of attaining the ESG focus of an ESG fund
    e) an indication of where investors can find additional information about an ESG as required (e.g website)
    f) A description of risks or limitations associated with the fund's focus and the associated investment strategies

Disclosure of additional information

4) An ESG should also disclose the following additional information of the ESG fund to the investors in the offering documents:
    a) A description of how the ESG focus is measured and monitored throughout the life cycle of the ESG fund and the related control mechanisms
    b) The Methodologies adopted to measure the ESG focus
    c) A description of due diligence carried out in respect of the underlying assets of the ESG funds
    d) The engagement policies
    e) A description of the sources and processing of ESG data or a description of any assumptions made where relevant data is not available.

The Commission expects an ESG fund to conduct periodic assessment to assess how the fund has attained its ESG focus at least annually and disclose its assessment to investors in appropriate means (e.g. annual reports). Where an ESG no longer wishes to pursue its stated ESG focus, the fund manager is expected to inform investors and the SFC as soon as reasonably practicable. The Commission may take appropriate regulatory action for compliance breaches such as failure to meet the stated investment objective and/or strategy in the offering documents.

The requirements set out in this circular will take effect on 1 January 2022.

View Circular

ENFORCEMENT NEWS

Market Misconduct Tribunal sanctions Cheng Chak Ngok for insider dealing in China Gas shares

Mr. Cheng Chak Ngok, the former executive director, chief financial officer, and company secretary of ENN Energy Holdings Limited was engaged in insider dealing for shares of China Gas Holdings Limited in 2011. After a retrial, the Market Misconduct Tribunal (MMT) has banned Cheng from dealing in securities, being a director, or taking part in management in a listed corporation for the next 54 months. Along with the ban are several orders, in which Cheng is prohibited from engaging in insider dealing, need to disgorge the profits made from the insider dealing, and pay for the retrial expenses for SFC. MMT will also refer the report to the Hong Kong Institute of Certified Public Accountants so that disciplinary actions can be taken against Cheng.

View News

SFC reprimands and fines Deutsche Securities Asia Limited $2.45 million over incorrect prime brokerage client statements

Deutsche Securities Asia Limited (DSAL) issued inaccurate periodic statements to its PB clients between 2006 and 2018 due to its design flaws in its front office system, in which the statements demonstrated the bonus shares of listed companies as settled and tradable for its clients, despite that the shares were not subjected for the condition for long sales until settlement dates. Due to this incorrectness, one of their PB clients oversold their bonus shares from 3 Hong Kong-listed companies in July 2018. DSAL discovered the issue within July and became aware that the system defect caused the error within August. However, since DSAL delayed the reporting of this issue to SFC until February 2019, and the issue was ongoing for 12 years, SFC is considering DSAL's action as a breach of the Code on Conduct, and fined them $2.45 million, after taking all relevant circumstances of DSAL into account.

View News

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