

Regulatory Updates

January - June 2020

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Hong Kong

SFC Releases Guidance on Family Office Licensing in Hong Kong - January 2020

On 7th January 2020, the SFC released a circular setting out its position on licensing for family offices in Hong Kong.

General Licensing Requirements

As the SFC notes there is no specific licensing regime for family offices in Hong Kong. However, depending on the nature of the activities it undertakes, a family office may need one of several types of licence.

A company or family office set up as a business to manage assets which include securities or futures contracts may be required to hold a Type 9 asset management licence. Whether this licence is required does not depend on whether clients are families. The relationships amongst the beneficiaries of a family trust or between family members are not relevant in determining whether a licence is required (for example, a family office can manage assets for persons who are not strictly “family members” such as ex-spouses and in-laws).

If a family office intends to provide other services such as acquiring financial assets following instructions made by the family, it may require a Type 1 dealing in securities licence.

Single Family Offices

In the following scenarios the SFC has confirmed that a single family office does not require a licence:-

- where a family appoints a trustee to hold its assets of a family trust, and the trustee operates a family office as an internal unit to manage the trust assets, the family office will not need a licence because it will not be providing asset management services to a third party.
- if the family office is established as a separate legal entity which is wholly-owned by a trustee or a company that holds the assets of the family, it will not need a licence as it will qualify for what is known as the intra-group carve out. The family office is not required to be licensed for Type 9 regulated activity if it provides asset management services solely to related entities, which are defined as its wholly-owned subsidiaries, its holding company which holds all its issued shares or that holding company's other wholly-owned subsidiaries.

Multi-Family Offices

As a multi-family office serves more than one high net worth family, it will almost always require an SFC licence. If a multi-family office provides services to clients who are not related entities as defined in Part B above, it will not be able to make use of the intra-group carve-out.

Where a multi-family office is granted full discretionary investment authority, it will require a Type 9 asset management licence.

Where a multi-family office does not have full discretionary investment authority and only provides securities investment advice and executes securities transactions, it may need to be licensed for other types of regulated activities which may include Type 1 dealing in securities, and Type 2 dealing in futures contracts licences or Type 4 advising on securities and Type 5 advising on futures contracts licences.

SFC Releases Guidance on Private Equity Licensing in Hong Kong - January 2020

Introduction

On 7th January 2020, the SFC released a circular setting out its position on licensing for private equity managers and advisers in Hong Kong. As this has been a topic of considerable discussion in Hong Kong over the last 12 months since changes to the private funds tax regime introduced in April 2019 in the Inland Revenue (Profits Tax Exemption for Funds) (Amendment) Ordinance.

General Licensing Requirements

The SFC had previously updated the SFC's Licensing Handbook in February 2019 to clarify that a firm dealing in, advising on or managing shares or debentures of private offshore companies that fall outside of the definition of "private company" under the Companies Ordinance, will likely require licensing. The type of SFC license required depends on the firm's business model. At that time the SFC envisaged the following scenarios:-

1. A firm that has discretionary power to make investment decisions on securities for a fund is required to obtain a license for Type 9 regulated activity (asset management).
2. A firm without discretionary investment authority from a fund or investment manager may still require SFC licensing.
3. A firm requires a Type 1 (dealing in securities) license if it conducts securities dealing activities such as deal negotiation and / or trade execution for a fund.
4. A firm requires a Type 1 (dealing in securities) license if it markets, capital raises or distributes a fund.
5. A Type 4 (advising on securities) license is required if the firm provides advice in respect of the investments or prospective investments of the fund either to the fund, an Investment Committee or an investment manager.
6. Firms which deal in, advise on or manage a portfolio of "private equity" or "venture capital" investments which does not involve securities may not trigger the SFC licensing requirements.

Since then in industry meetings the SFC has realised that there is still some confusion about these requirements and as such has issued more guidance in respect of the following areas:-

1. Licensing requirements for general partners (GPs)
2. Discretionary investment authority

3. Investment committee members
4. Investments in securities of private companies
5. Offering co-investment opportunities
6. Fund marketing activities
7. Industry experience requirement for responsible officers (ROs)

Licensing for GPs

The SFC has clarified that where a GP conducts asset management activities in Hong Kong it must hold a T9 licence and the individuals within the GP conducting investment management would require licensing as Responsible Officers or licensed representatives.

However, where a GP delegates all of its asset management activities to an investment manager or investment adviser in Hong Kong that latter entity will require a T9 licence.

The SFC specifically warns that an unlicensed GP should not represent to any prospective investor that it manages a PE fund in Hong Kong.

It is worth noting that the SFC as a matter of practice very rarely will grant a licence to an offshore entity and as such if the GP is outside Hong Kong and does not wish to create a physical presence here, it will have no option but to delegate the management to a locally incorporated investment manager or if it wishes to raise capital in Hong Kong to incorporate a local firm to hold a Type 1 dealing in securities licence for marketing purposes.

Discretionary Investment Authority

It is a T9 licensing requirement that a proposed licensed corporation is able to exercise discretionary investment authority to make investment decisions for its clients. Such discretionary investment authority must be properly delegated to the corporation.

In the case of PE funds, the SFC has stated it will look at the facts of each case, including the proposed investment decision-making process, the roles of the proposed licensed individuals (including the ROs) and their involvement in the process, and whether the delegation of investment authority to the firm is properly documented.

The SFC further states that it may regard a PE firm as having discretionary investment authority if it proposes to have an RO with sufficient authority and seniority to make investment decisions throughout the life cycle of each fund. It is not particularly clear what the SFC means by this and whether the implication is that the RO must be involved with the ongoing management of the assets or whether decisions regarding initial acquisition and exit is considered sufficient authority.

Investment Committee Members

It is the view of the SFC that members of an investment committee who, either individually or jointly, play a dominant role in making investment decisions for the funds are required to be licensed as representatives and, where appropriate, be approved as ROs. We note that this is a new concept and it is not clear how a dominant role will be defined.

Investment committee members who do not have any voting right or veto power for investment decisions and whose primary role is to provide input from a legal, compliance or internal control perspective would generally not need to be licensed.

Investment in Securities of Private Companies and Look Throughs

The definition of securities in Hong Kong is contained within the Securities and Futures Ordinance but with reference to the Companies Ordinance which excludes from this definition private companies incorporated in Hong Kong with fewer than 50 shareholders. Because of this definition, one of the ongoing questions in Hong Kong is whether the use of an offshore SPV to hold a PE investment automatically triggers a licensing requirement as Type 9 asset management activity is defined as being the management of a portfolio of securities or futures contracts or real estate investment schemes.

The SFC has attempted to clarify this by stating that in determining whether an investment portfolio of a PE fund comprises securities or futures contracts for the purposes of Type 9, it will consider the composition of the entire investment portfolio. If underlying investments held through SPVs fall within the definition of “securities” even if the SPVs are exempted (as they are Hong Kong private companies) or the SPVs are securities (as they are overseas companies) the SFC consider that the PE firm is engaged in asset management and will require a T9 licence.

This is useful in that it means that where a PE firm is using SPVs to hold real assets, land, buildings or other direct investments which are not securities, it will not require licensing as the underlying investments are not securities or futures.

Offering Co-Investment Opportunities

The SFC has stated that where a PE firm offers investment opportunities to other persons who then enter into securities transactions alongside the PE fund (i.e. co-investing), the firm is generally required to be licensed for Type 1 dealing in securities. This arises because of the extremely broad definition of dealing in securities in Hong Kong which covers inducing other persons to enter into securities transactions or attempting to induce other people to deal in securities. The SFC has taken the position that the act of offering the co-investment opportunities will likely be regarded as inducing a person to deal.

The SFC then goes on to state that a PE firm may not need to be licensed for dealing in securities if it holds a Type 9 asset management licence and its act of offering the co-investment opportunities is conducted solely for the purposes of carrying on asset management.

The regulatory rationale for this is the incidental exemption from dealing in securities for fund managers but the example given by the SFC is not particularly clear. It states that if offering co-investment opportunities forms an integral part of fundraising by the PE fund to secure capital to invest in its underlying projects, the PE firm would not be required to be licensed for Type 1. It may be the case that a PE firm will not know until an investment opportunity arises that it may require co-investment and it would then be required to obtain a T1 licence prior to commitment which may be impractical from a timing point of view. As such, prudent firms will likely end up obtaining both a Type 1 and Type 9 licence.

Fund Marketing Activities

There is no change from the current SFC position that a Type 9 fund manager can market the funds that it manages or advises under the dealing in securities incidental exemption but if it

were to market the funds managed by its global affiliates or segregated account capabilities, it requires a Type 1 dealing in securities licence.

Industry Experience Requirements for ROs of PE Firms

In order for a person to be approved as a Responsible Officer they must have sufficient industry experience. This has been causing problems in getting licences for PE firms as the SFC has been asking for evidence that ROs have been engaged in regulated activities in the past and in many cases PE firms and their teams have not been previously licensed.

The SFC has now stated that in assessing whether an RO applicant of a PE firm has the required relevant industry experience to satisfy competence requirements, the SFC will adopt a pragmatic approach as long as the applicant can demonstrate that it is relevant to his or her proposed duties.

The SFC will consider experience in:

- conducting research, valuation and due diligence of companies in related industries;
- providing management consulting and business strategy advice to companies in related industries;
- managing and monitoring a PE fund's underlying investments for the best interests of fund investors; and
- structuring corporate transactions, such as management buyouts and privatisations.

Specifically, it has confirmed that it will accept PE experience gained in a non-regulated situation. It will take into account experience in an overseas jurisdiction where the related PE activities are not regulated, as well as relevant experience in a PE firm which operates in Hong Kong and has been exempted from the licensing requirement.

What will be interesting is if the SFC requires evidence of under which licensing exemption the PE firm was operating as there is a considerable risk that by going into the past experience of an RO, the SFC identifies cases where a PE firm did not fit into a licensing exemption and should have been licensed.

Risk of Non Compliance

We remind PE firms that in Hong Kong it is a criminal offence to engage in a regulated activity without a licence and the process of getting licensed (if there is no solid evidence of a previously applicable exemption from the need to be licensed) may open the gates to SFC prosecution.

During industry engagement sessions the SFC has indicated it will be reasonable in dealing with previously unlicensed PE firms filing licensing applications, but it will not give a blanket assurance or guarantee that it will not take enforcement action against firms. As such we highly recommend that unlicensed firms review as an immediate priority whether they need licensing in Hong Kong and file applications as soon as possible.

SFC's Recent Enforcement for AML Regulatory Breaches - February 2020

Introduction

On 11 February 2020, SFC fined BMI Securities Limited ("BMISL") HK\$3.7 million for failures in complying with AML/CFT regulatory requirements and suspended BMISL's RO, Maggie Tang Wing Chi for 5.5 months.

In 2016, BMISL's clients subscribed for the placing shares of two Hong Kong-listed companies; Bank of Jinzhou and Yadea Group Holdings which subsequently transferred most or all of these shares to third parties using Bought and Sold Notes ("BS Notes") in a series of off-exchange transactions.

The SFC stated that "The off-exchange transactions, whose consideration ranged from \$4.4 million to \$855.9 million apiece, displayed various suspicious features including (Note 3):

- the subscription amount for the placing shares was incommensurate with the clients' financial profile; and
- the clients did not conduct any other transactions in their BMISL accounts apart from acquiring and disposing of the placing shares."

The Importance of Identifying and Conducting Proper Enquiries and Scrutiny on Suspicious Transactions

It is apparent that the Commission was concerned that BMISL did not make appropriate enquiries to understand the reasons for the clients' sale of shares to third parties by way of BS Notes. BMISL also did not take any steps to ascertain the relationships between the clients and the third parties and apparently did not put in place any policies or procedures governing the handling of suspicious transactions conducted through BS Notes.

Case Sharing

1st case:

Bank of Jinzhou (BOJ) shares were transferred to a third party for a total consideration of HK\$856 million. Both the client and third party were BVI incorporated, opened Macau bank accounts and BMI securities accounts on the same date. The account opening forms were certified on the same day by the same Certified Public Accountant in Mainland China. Apart from the transaction, there are no other transactions in their BMISL accounts.

BMISL failed to identify the suspicious transactions and conduct enquiries on the transactions. BMISL did not ascertain their clients' source of funds, the background and underlying reasons for conducting the transaction by BS Notes, and the relationship between the two clients.

2nd case:

A housewife in Beijing opened an account in BMISL, subscribed for and transferred Yadea Group Holdings Ltd shares by way of BS Notes to 19 third-parties for a total consideration of HK\$190 million. She has no previous investment experience and her risk tolerance level was indicated as low. The relationships between the housewife and the 19 third parties were

unknown, and no explanations regarding the background and purpose of the transactions were provided. Apart from the transaction, there are no other transaction in her BMISL accounts.

BMISL failed to examine the background and purpose of the relevant transactions or take any steps to ascertain the relationships between the housewife and the 19 third parties. Furthermore, the subscription amount for the placing shares incommensurate with her financial profile.

3rd case:

BMI client opened an account to buy Yadea Group Holdings Ltd shares from another BMI client, and selling the same shares to another BMI client for a total consideration of HK\$14.8 million and both transactions uses BS Notes. The relationships between the two clients and with the third party were unknown.

BMISL failed to examine the background and purpose of the relevant transactions or take any steps to ascertain all the relationships.

Conclusion

The SFC found that BMISL failed to:

- implement adequate internal controls to mitigate the risk of money laundering and terrorist financing associated with suspicious transactions conducted through bought and sold notes;
- identify, and conduct proper enquiries and sufficient scrutiny on, suspicious transactions and consider reporting them to the Joint Financial Intelligence Unit where appropriate;
- perform appropriate customer due diligence and keep customer information up-to-date and relevant; and
- put in place adequate and effective procedures for the identification of politically exposed persons and the screening of terrorist and sanction designations

The SFC found that BMISL RO and senior management, Maggie Tang Wing Chi had failed to:

- identify and conduct appropriate enquiries on the suspicious transactions and to ensure that BMISL had established and implemented adequate and effective AML/CFT systems to mitigate the risks of money laundering and terrorist financing lead to the breaches.

Analysis

The SFC has a wide range of tools at its disposal when dealing with securities transactions it considers may not have been appropriate or indeed legal. One of those tools is the AML requirements in legislation and guidelines.

A variety of offences within the SFO give rise to a predicate crime related reporting required under the Organised and Serious Crimes Ordinance in Hong Kong. Suspicious transactions in relation to suspected breaches of the SFO may give rise to an obligation to file a report with the JFIU.

The AML guidelines set out a variety of proscriptive steps all licensed corporations must take to ensure the integrity of financial markets and transactions.

What the SFC is essentially saying with this enforcement action is that the licensed corporation should have formed a suspicion or should have done a lot more to understand the nature of these transactions before allowing them. They have also held to account a person within the organisation.

These types of placing concerns have been in the Hong Kong market for a long time. Until such time as the market evolves we should expect more of this type of action from the Commission.

SFC reprimands and fines Capital Global Management Limited \$1.5 million - February 2020

Introduction

On 14 February 2020 the Securities and Futures Commission (“SFC”) announced that it had fined Capital Global Management Limited (“CGML”) HK\$1.5 million in relation to the fine delivered by the Prosecution Office of the Taipei District Court to the former owners of CGML. The Taiwanese case in question found CGML guilty of the distribution of offshore investment funds and offer of investment advice from 2005 to 2014 without seeking prior approval from the regulator.

As a result of this ruling CGML failed to comply with General Principle 7 and paragraph 12.1 of the Code of Conduct for Persons Licensed by or Registered with the SFC which requires firms to implement sufficient and effective compliance policies and procedures to ensure compliance with local regulations in overseas jurisdictions when conducting regulated activities. Additionally, this brought the SFC to question the fitness and properness of CGML, a crucial component for it maintaining its Type 9 Regulated Activity license in Hong Kong.

In January 2014 the SFC released a circular titled ‘Regulatory Compliance regarding Cross-border Business Activities’ this reiterated the SFC’s position on cross-border business activities. In summary, it states that firms must comply with local regulations when conducting regulated activities or onboarding clients. It further states that adequate KYC and AML procedures must be followed regardless of the location of the client.

Should you have any queries on the matter or require assistance in regards to this cross-border transaction compliance issues ComplianceAsia can provide advice on the regulations and requirements of jurisdictions across Asia.

SFC Releases Guidance on Ensuring Suitability and Timely Dissemination of Information to Clients

- March 2020

On 27 March 2020, the SFC released a circular to remind licensed and registered persons of their obligation to ensure suitability and timely dissemination of information to clients when distributing investment products, such as funds or bonds, to their clients.

With the potential impact of the COVID-19 outbreak on market volatility and liquidity as well as credit quality, licensed or registered persons must remember to act in the best interest of their clients and exercise extra care when making a solicitation or recommendation or managing investment portfolios.

Suitability Obligations When Making Solicitations or Recommendations

Licensed or registered persons must continue to fulfil their suitability obligations under the Code of Conduct, and are reminded to, amongst other things:

- ensure due diligence is conducted on investment products on the current approved product lists on a continuous basis at appropriate intervals with regards to the nature, features and risks of the investment products, including paying particular attention to any deterioration in credit quality or liquidity, market and industry risks related to the COVID-19 outbreak and other factors which may have an impact on the risk return profiles and growth prospects of the investments;
- give due consideration to all relevant circumstances specific to a client when assessing the suitability of an investment product for the client, including the client's current financial situation, investment objectives, risk tolerance, investment horizon and liquidity needs, as well as the risk profile and concentration risk of the existing investment portfolio;
- explain the risks and features of the investment product to a client, including credit quality, liquidity, termination conditions and transaction costs; and
- when recommending an investment product to a client, balanced views must be presented at all times, the focus should not lie solely on advantageous terms such as high coupon rates or yields, explanations of the disadvantages and downside risks, such as credit deterioration and illiquidity should be provided.

The SFC made it clear that they will continue to ensure that these responsibilities are carried out and will do this through its ongoing monitoring of Licensed Corporations.

Dissemination of Information on Held Investment Products in a Timely Manner

Licensed corporations that hold investment products directly or indirectly on behalf of their clients, are reminded to disseminate notices to clients and other communications prepared or issued by the investment products' issuers, product arrangers or management companies on a timely basis upon receipt. These notices or communications may include material information or updates crucial for investment decisions, such as untoward circumstances relating to a fund which may include use of liquidity risk management tools by a fund manager.

SFC Releases Clarifications and Relaxations During Pandemic - March 2020

On 31 March, The SFC released in the form of FAQs its expectations in relation to how licensed corporations (“LCs”) should structure work from home arrangements and what notifications are required. The SFC clarified that the examples provided in the FAQ’s are not exhaustive and that should clarification be required on a situation; LC’s are encouraged to contact them. We would advise that you run any scenarios you would like clarified by SFC past us so we can help with analysing the likely required response.

Situations That Require a Notification to be Submitted to the SFC

Under section 4, paragraph 9 of part 1 of Schedule 3 of the Securities and Futures (Licensing and Registration) (Information) Rules, an LC must notify the SFC of significant changes in its business plan covering internal controls, organisational structure, contingency plans and related matters. In view of the substantial disruptions caused by the COVID-19 pandemic, an LC is expected to notify the SFC immediately of the following situations (these examples are non-exhaustive):

- confirmation of any staff infection which may have an impact on the LC’s operations;
- closing of office premises as a result of staff infection or government lockdown, including overseas office premises if the closure has implications for the LC’s operations or the carrying on of its regulated activities (e.g., temporary closing of overseas office premises which handles back and middle office functions);
- changes to its organisational resources (e.g., split team arrangements, staff relocation to overseas offices); and
- the triggering of the LC’s business continuity plan.

Changes to LC’s Record Keeping Premises

An LC is required to keep records and documents under the Securities and Futures Ordinance (Cap 571) (“SFO”) and the Anti-Money Laundering and Counter-Terrorist Financing Ordinance (Cap 615). LC’s are also required to seek the SFC’s prior written approval under section 130 of the SFO to use any premises for the keeping of records or documents relating to the carrying on of the regulated activities for which it is licensed.

In light of the COVID-19 pandemic, the SFC understands that an LC may arrange for its staff to work from home or from its overseas offices which are not premises approved under section 130 of the SFO. In such circumstances, the LC should ensure that the staff will be able to remotely access the LC’s trading or other systems, and that the activities conducted by staff will be captured in the records and documents generated by these systems. If certain records and documents need to be kept in unapproved premises on a temporary basis, the LC should send them back to the approved premises of the LC as soon as practicable.

Temporary Licences for Overseas Staff

If any staff member of an overseas affiliate had intended to come to Hong Kong to carry on regulated activities and the LC planned to obtain a temporary representative licence but now that person will hold teleconferences or video conferences with Hong Kong clients from

overseas instead, the LC should review if a temporary representative licence is required even though they will not come to Hong Kong to perform such activities. The SFC has confirmed that it will take a pragmatic approach in regards to granting such licenses given the current exceptional circumstances.

Trading Desk Closure

An LC is normally expected to maintain a back-up office and have remote access to trading facilities so that it can continue to provide trading services if the main dealing office is shut down.

However if the trading desk of an LC has to be temporarily shut down due to the COVID-19 pandemic and the back-up facilities in Hong Kong fail requiring orders to be routed to an overseas affiliate for execution, the LC must notify the SFC immediately. As with any exceptional contingency arrangement, approval should be sought from the SFC and overseas authorities for trading offshore where necessary.

HKSI Examinations and CPT

Licensed individuals currently subject to a licensing condition requiring them to pass a post-licensing regulatory examination with the HKSI within a prescribed timeframe which is due on or before 30 September 2020, are allowed an extension period of three calendar months after the original due date to meet the requirement. In addition, licensed individuals who have agreed to complete additional CPT hours as part of their licensing requirement on or before 30 September 2020 will also be granted a three calendar month extension. These do not require submissions of applications to the SFC.

The SFC will allow all licensed individuals who are unable to fulfil their annual CPT hours by 31 December 2020 to carry forward any unfulfilled CPT hours for the calendar year of 2020 to 2021. It is worth noting that any online courses that have a certification component are considered self-study, and are applicable for the CPT hours.

Licence Applicants Who are Overseas

An individual licence applicant can electronically send a copy of the signature pages of his or her temporary licence application to the SFC, stating the reasons why printed copies cannot be delivered. He or she is then expected to post the signature pages to the SFC once the situation returns to normal.

Audit

The SFC has not granted a blanket extension to audit deadlines but reminds LCs that if they anticipate delays in preparing audited accounts or other documents, they can apply for an extension of the submission period by using Form B on the SFC Online Portal. The SFC has said it will consider these applications pragmatically.

Compliance with Order Recording Requirements

Although LCs may have provided their staff with remote access to order management systems, which are capable of centralised order recording for orders placed from a remote location, some may encounter challenges in ensuring compliance with the order recording requirements set out in 3.9 of the Code of Conduct. Nevertheless, the SFC reminds LCs that when considering order placing and recording alternatives, they must ensure there are appropriate

control measures and that the alternatives are properly implemented in compliance with the order recording requirements.

Extended Deadlines for Implementation of Rules Changes

Upcoming regulatory expectations for implementation	Original implementation deadline	Extended implementation deadline
<p>Use of external electronic data storage (“EDSP”)</p> <p>Where a data centre of an EDSP used by a licensed corporation was been approved under by the SFC before 31 October 2019, LCS must provide undertaking from the EDSP to the SFC as set out in paragraph 25 of the Circular.</p> <p>Note that this is not an extension of the requirement to obtain record keeping approval from the SFC as soon as possible for firms exclusively using an EDSP.</p>	30 June 2020	31 December 2020
<p>New measure to protect client assets</p> <p>Where intermediaries are required to have the countersigned acknowledgement letters from relevant banks in place before depositing any client money or securities into any new client asset accounts.</p>	31 July 2020	31 January 2021
<p>Data standards for order life cycles – Where in-scope brokers are expected to implement system changes and make other arrangements needed for compliance with the data standards.</p>	31 October 2020	30 April 2021

SFC reprimands and fines BOCOM International Securities HK\$19.6 million for internal control failures - April 2020

On 20 April, the SFC announced that following its investigation it has reprimanded and fined BOCOM International Securities Limited (“BISL”) HK\$19.6 million for regulatory breaches over several years including failures concerning the handling of third-party fund deposits, and the maintenance and implementation of a margin lending and margin call policy.

The SFC has set a clear message that it will not hesitate in taking action against licensed corporations that have failed to put in place appropriate internal controls that protect their operations and clients. In this alert we outline the breaches identified during the SFC investigation.

Third Party Deposits

BISL failed to put in place adequate and effective internal controls to identify third-party deposits made into client accounts. On numerous occasions BISL were either slow or failed to identify such deposits dating back to 2009. As a result, BISL were in breach of the Guidelines on Anti-Money Laundering and Counter-Terrorist Financing, various provisions in the Internal Controls Guidelines, and the Code of Conduct relating to having in place adequate and effective controls on the matter.

If your firm receives third party deposits it is important that you remain vigilant when monitoring customer activities and make adequate enquiries about funds from third party sources.

Margin Lending and Margin Control Policy

A wide range of deficiencies were identified by the SFC during its review of BISL’s margin lending and margin control policies from December 2012 until November 2016. BISL failed to clearly document and enforce a clear margin lending and margin call policy, maintain sufficient records regarding deviations from such policies, communicate margin calls to clients, collect margins due from clients, maintain records of margin calls, objectively set / enforce credit limits for margin clients and enforce segregation of the key duties and functions when applying and approving liquidation suspensions and making margin calls.

If you are conducting margin lending activities, you should ensure that your policy includes the following objectives as outlined in the Code of Conduct for Persons Licensed by and Registered with the SFC (“Code of Conduct”):

- a. Provide a basis for protecting the capital of the licensed person;
- b. Ensure adequate procedures are in place for identification of risks, effective monitoring and corrective action; and
- c. Ensure there is a consistent risk management policy.

Client Account Failures

The SFC identified numerous failures in BISL client accounts. BISL failed to ensure:

- Proper authorisation of transactions carried out in client accounts;
- It could reasonably identify the person ultimately responsible for originating the instruction regarding a transaction and the order instructions were not recorded correctly;
- The identities and transaction details of clients were confirmed in trade confirmations;
- Adequate and prompt handling of a client complaint.

The code of conduct makes it clear that a licensed corporation should not affect a transaction for a client unless prior to conducting the transaction the client, or a person designated in writing by the client, has authorised the transaction or the client has authorised in writing a standing authority allowing the licensed corporation or its representatives to affect a transaction.

Mega Securities Enforcement Action - May 2020

On 8 May 2020, the SFC released a circular detailing the disciplinary action taken following its investigation into Mega International Bank Co., Ltd. (“MICBC”) after the matter was referred to the SFC by the HKMA for failing to implement adequate and effective controls and systems in relation to the sale of collective investment schemes.

Policy Failures

MICBC failed to implement effective customer due diligence procedures in relation to the sale of CIS's between August 2014 and July 2015. As it is an offence under section 107 of the SFO to fraudulently or recklessly induce others to invest money, the SFC's investigation found MICBC failed to:

- properly assess its clients' investment objective, risk tolerance level and knowledge of derivatives;
- ensure investment recommendations and/or solicitations made to its clients were reasonably suitable in all the circumstances;
- conduct adequate product due diligence on certain funds;
- ensure all relevant factors were properly taken into account before assigning the funds risk ratings; and
- identify funds which constituted derivative products.

Client Risk Profiling

MICBC had implemented a customer risk profiling questionnaire (“CRPQ”) which its salespersons used to assess clients' risk tolerance level. The CRPQ consisted of two sections:-

A general information section about investment objectives, investment experience, annual income, and net worth. No scores were assigned to this section.

A second section with 8 scoring questions for determining the clients' risk tolerance level. Clients were classified into 1 out of 4 risk tolerance levels (i.e. "Conservative", "Balanced", "Balanced Growth", and "Aggressive Growth") based on the total score attained by them in this section.

The SFC concluded that for the following reasons the design of the CRPQ was deficient:

- Client information such as investment experience under the first section of the CRPQ did not carry any scores.
- There was no audit trail to show that such information was taken into account by the salespersons during the client risk profiling exercise or the sales process of each CIS transaction.
- Corporate clients were not required to answer the scoring questions under the second section of the CRPQ but could select their own risk tolerance level in the CRPQ.
- MICBC did not have any systems and controls to identify conflicting answers in the CRPQ. Clients were allowed to select multiple investment objectives under the first section which might be conflicting with each other.
- In some cases clients had selected an investment objective that conflicted with their answers provided under the second section of the CRPQ.

Further in other cases, the risk tolerance level assigned to the clients was inconsistent with the clients' investment objective.

Failure to Assess Clients' Knowledge of Derivatives

Clients were required to complete a Derivatives Experience Profiling Form during the KYC process.

The Derivatives Form contained questions from the SFC's Code of Conduct asking the clients to confirm whether they had: (a) executed 5 or more transactions in any derivative products in the past 3 years; (b) undergone training or attended courses on derivative products; (c) work experience related to derivative products; and/or (d) carried out activities related to derivatives as a licensed person.

Clients were deemed to have sufficient knowledge in derivatives simply if their answer to any of the above questions was yes and MICBC did not require its staff to make enquiry or gather relevant information about the clients' knowledge of derivatives. This is in breach of the requirement set out in the FAQs issued by the SFC on 3 June 2011.

Suitability Assessment Procedures

MICBC had implemented the following procedures for suitability assessment:

1. Salespersons were required to match a client's risk tolerance level with the product's risk rating to determine whether there was a risk mismatch. In the event of a risk mismatch, salespersons were required to inform the client of the mismatch and warn the client of the relevant investment risk. The client was required to sign an Investment Risk Acknowledgement Form to acknowledge the risk mismatch and provide reasons for

entering into the risk mismatch trade. The trading documents would be passed to the Head of Wealth Management for approval after the back office had confirmed the transaction with the client over a tape-recorded call.

2. From 1 October 2014, salespersons were further required to perform the following assessments and document the results in a product checklist:-
 - whether the client was a vulnerable customer;
 - any tenor mismatch, i.e. a mismatch between the product tenor and the client's investment horizon;
 - whether the transaction would give rise to an investment objective mismatch, i.e. a client with an investment objective of "capital preservation" placing an instruction to invest in investment funds, or a client with an investment objective of "income" placing an instruction to invest in equity funds; and
 - whether the client's total investment in the same type of product equalled to or exceeded 50% of the client's net worth or asset under MICBC's management, whichever is higher which would then be considered an over-concentrated transactions.
3. Salespersons were required to document their rationale for recommending the product to the client.

The SFC found the following deficiencies in the procedures:-

- The post October 2014 assessments were not applied to fund switching transactions and subscriptions for regular savings funds.
- MICBC did not require salespersons to document the rationale underlying their investment recommendations made to the clients in respect of fund switching transactions.
- The concentration assessment was performed only when the client indicated in the CRPQ that his/her investment amount accounted for 35% or more of his/her total assets.
- Among a total of 523 fund transactions conducted between October 2014 and July 2015, there were 233 over-concentrated transactions.
- The product checklist was not completed for 156 over-concentrated transactions involving fund switching or regular savings plans.
- For the remaining 77 over-concentrated transactions where a checklist had been completed, 55% were not identified as an over-concentrated transaction in the checklist.
- Funds which could be redeemed freely at any time by the clients' requests were considered by MICBC to be suitable for any investment horizon.
- Although the investment objective of certain funds was stated in the product fact sheets to be "long term capital growth", they were sold to clients who had selected the shortest period (i.e. less than 3 years) as their investment horizon in the CRPQ.
- There is no record to show that the salespersons had considered the funds' investment objective in performing the suitability assessment and documented the reasons as to why

such funds were considered to be suitable for the clients having regard to the clients' investment horizon.

- There was no guideline on the handling and approval of transactions with multiple mismatches/exceptions in different aspects, including the clients' risk tolerance level, investment objective, investment horizon and/or asset concentration level.
- The executive officer of MICBC was not required to document any justification for approving the mismatch transactions or multiple mismatches transactions).
- Whilst salespersons were required to document the reasons as to why a particular mismatch transaction should proceed, a sample review of the multiple mismatches transactions showed that most of the explanations provided were general and did not sufficiently justify why the intended transactions were considered to be suitable for the clients despite the risk mismatch and high asset concentration risk.
- In some cases, the salesperson input "the client specifically requested for the relevant product" as one of the reasons for recommending the mismatch product to the client when the transaction was in fact not initiated by the client.

Product Due Diligence Failures

MICBC relied on the PDD performed by its head office on the Head Office Funds. Apart from checking whether the head office funds were authorized by the SFC, MICBC did not conduct any independent assessment on the adequacy and quality of the product due diligence performed by its head office having regard to the regulatory requirements in Hong Kong.

MICBC adopted a product risk rating methodology whereby a risk rating would be assigned to each of the funds distributed by it. However, MICBC only considered a limited number of factors during the risk rating exercise. Relevant factors such as price volatility, market segment and certain product features which might directly or indirectly impact on the risk return profiles of the funds were not taken into account in the risk rating exercise.

MICBC did not establish any policies or procedures for assessing and identifying funds which might constitute derivative products in breach of the SFC Circular of 23 April 2012.

MICBC were fined HK\$7 million over these failures. As well as the Circulars and FAQs mentioned above, the SFC considered that MICBC has breached:-

- General Principle 2 (diligence), 3 (capabilities) and 7 (compliance) of the the Code of Conduct for Persons Licensed by or Registered with the Securities and Futures Commission (Code of Conduct); and
 - Paragraphs 3.4 (advice to clients), 4.3 (internal controls), 5.1(a) (KYC), 5.1A (investor categorization), 5.2 (reasonable advice) and 12.1 (compliance) of the Code of Conduct.
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SFC reprimands and fines Convoy Asset Management Limited HK\$6.4 million for internal control failures - June 2020

On 19 May 2020, the SFC announced that Convoy Asset Management Limited (Convoy) were reprimanded and fined HK\$6.4 million over internal control failures when soliciting and recommending bonds to clients.

The SFC found that when recommending bonds listed under Chapter 37 of the Main Listing Rules to clients or referring clients to a third-party platform to execute the transactions Convoy failed to:

- Conduct proper and adequate product due diligence on the bonds before making recommendations or solicitations to clients;
- Have an effective system in place to ensure recommendations / solicitations made to clients in relation to bonds were suitable and reasonable in all circumstances for each client;
- Maintain proper documentary records of the investment advice / recommendations given to clients and provide clients with a copy of the written advice; and
- Have adequate and effective internal controls and system to diligently supervise and monitor the sale of bonds through the third-party platform and to ensure its compliance with applicable regulatory requirements.

Product Due Diligence

The SFC found that during the period in question, Convoy failed to have in place product approval and due diligence procedures for chapter 37 Bonds sold to clients through the third-party platform.

Convoy engaged a third-party bond dealing service platform and that did provide limited guidance to Convoy's consultants on how they should conduct product due diligence on the bonds before recommending such products to their clients. The platform offered Convoy the services of its designated bond expert, provided briefings, presentations and articles to Convoy's consultants on bond products, as well as responded to questions from Convoy's consultants. However, the third-party platform failed to assign a risk rating to the bonds and did not identify which bonds on its platform were Chapter 37 Bonds and as a result individual consultants were relied upon to conduct product due diligence and assess the risks of the bonds.

Convoy only provided its consultants with limited guidance on how to conduct product due diligence on the bonds. Convoy's consultants should have been provided guidance including:

- Policies and procedures outlining what features they should review and the criteria to be adopted;
- What other factors they should take into account; and
- The weight they should attribute to these factors when conducting product due diligence.

The fact that Convoy relied too heavily on its consultants to conduct the product due diligence raised serious concerns with the SFC. This showed that Convoy clearly lacked a proper understanding of its obligations to conduct product due diligence. Without proper guidance Convoy's consultants may have individual interpretations of the different aspects of the bonds offered and evaluate the risks of the bonds differently.

Product Suitability

Convoy had in place written policies and procedures requiring its consultants to ensure products recommended to clients were suitable when taking into account the clients' personal circumstances. However, the SFC identified deficiencies in Convoy's suitability framework adopted in respect of bonds sold via the third-party platform which raised serious doubts as to Convoy's ability to effectively discharge its suitability obligations. The SFC found that:

- Convoy did not conduct adequate product due diligence on and did not assign a risk rating to the bonds sold through the third-party platform.
- Without an assigned risk rating to each bond following a proper due diligence process, consultants were left to their own devices in determining the risks of individual bond and whether a recommendation to a client about the bond was reasonably suitable.
- There was no framework to demonstrate how the different information available on the third-party platform, the offering circular and other sources should be taken into account to allow the consultants to accurately assess if the investment return and risk features of a bond matched with a client's circumstances.
- Convoy lacked an effective system for ensuring product suitability for clients, and its suitability framework for bonds sold via third-party platforms was far below the standards expected of it as per the Code of Conduct.

Maintaining Documentary Records

Convoy had in place internal policies requiring it to document and record information provided to clients and the rationale for recommendations given to clients, including any material queries raised by clients and responses provided. In relation to the Chapter 37 Bonds sold to clients, Convoy stated that the majority of product recommendation or advice was done via face-to-face meetings with clients with no formal written records kept.

Without proper records of the investment advice or recommendations given and the overall rationale, it was difficult for Convoy to effectively supervise and monitor its consultants to ensure recommendations or solicitations made were suitable and reasonable in all circumstances. If a client complaint had been received, Convoy would find it difficult to assess its position about possible mis-selling without such records.

Effective Supervision

Apart from having senior consultants or responsible officers attend some client meetings with the consultants, Convoy did not have policies and procedures to ensure that:

- Senior management were kept apprised of solicitations, recommendations and or advice given to clients in relation to bonds sold through the third-party platform;
- Consultants conducted proper and adequate product due diligence on bonds recommended to clients;

- Consultants disclosed all material information relating to the bonds recommended to clients; and
- The suitability of advice or recommendations had regard to the clients' personal circumstances.

Due to a lack of diligent and effective supervision and monitoring of the sales process the SFC were concerned that Convoy did not appear to be aware that recommendations or solicitations of Chapter 37 Bonds might have been made to clients as its consultants often shortlisted a number of bonds for clients to consider. In addition, the SFC raised concerns that Convoy were unable to monitor whether its consultants provided clients with product relevant offering documentation or other information as required in Convoy's internal guidelines.

Conclusion

Convoy's failures constituted various breaches of the General Principles and the Internal Control Guidelines. Despite numerous reminders by the SFC to licensed corporations on the importance of compliance with their suitability obligations, and specific guidance given by the SFC in its circulars dated 19 November 2012 and 25 March 2014 regarding selling of fixed income products, complex and high-yield bonds, Convoy failed to tighten up its controls and procedures in order to have an effective system in place to ensure the suitability of bonds it recommended to clients during the relevant period.

SFC reprimands and fines Potomac Capital Limited for breaching Financial Resource Rules - June 2020

On 8 June 2020, the SFC announced that Potomac Capital Limited (Potomac) were reprimanded and fined HK\$800,000 for failures to comply with the Securities and Futures (Financial Resource) Rules (the "Rules").

Potomac was found to have overstated its liquid capital in its Financial Resource Returns (FRR) from November 2016 to May 2017 by including in its liquid capital aged receivables. Such aged receivables should not have been included in the liquid capital computation as they do not qualify as liquid capital under the Rules.

As a reminder, the relevant definitions under the Rules are:

1. Liquid capital is the amount by which the liquid assets of a licensed corporation ("LC") exceeds its ranking liabilities.
2. Liquid assets are the aggregate of the amounts required to be included in a licensed corporation's liquid assets under the provisions of Division 3 of Part 4 of the FRR. Those rules in turn state that an LC must include in its liquid assets the amount of any fees, commissions, commission rebates and interest charges to which it is beneficially entitled which arise from the carrying on by it of any regulated activity for which it is licensed and (i) which have accrued and will first be due for billing or payment within the next 3

months; or (ii) which have been billed or fallen due for payment and remain outstanding for one month or less after the date on which they were billed or fell due

3. Required liquid capital deficit is the amount by which its required liquid capital exceeds its liquid capital.

FRR Breach

During the period in question, Potomac stated in its submitted FRRs that it had an excess liquid capital of over HK\$5 million and the major component of this was in the category of “other assets arising from asset management” and was solely made up of account receivables from 2 clients.

Potomac included fees outstanding from about April 2013 which is clearly outside the permitted period of 1 or 3 months.

Potomac would have had a liquid capital deficit if it excluded the aged receivables from its FRRs. The deficit would have varied from HK\$335,000 to HK\$449,000 from February to May 2017. Potomac clearly misinterpreted section 35(a) of the Financial Resource Rules by including the aged receivables in its liquid capital calculations and did not correct this until it was pointed out by the SFC in 2017.

This was a clear breach of section 35(a) of the Financial Resource Rules as Potomac should have only included such aged receivables that were accrued and first due for billing or payment within the next three months following April 2013.

Conclusion

In deciding its disciplinary sanctions, the SFC took into account Potomac’s clean disciplinary record and the fact that Potomac immediately rectified the FRR breach. The SFC took the view that by overstating its liquid capital Potomac breached General Principles 2 (Diligence) and 7 (Compliance) of the Code of Conduct as well as paragraph 12.1 (compliance).

This case demonstrates again how important it is that LCs in Hong Kong fully understand how the SFC interprets the FRR and that they calculate their SFC returns in accordance with the FRR which may differ in various areas from general accounting principles. If you have any questions about the FRR or your SFC financial resources returns our team of FRR experts can assist you to review or prepare the returns.

Singapore

MAS Enforcement Actions Against Rolling Bad Apples - March 2020

The Monetary Authority of Singapore (“MAS”) is continuing its upward trend of strong public enforcement actions against financial industry participants. As ComplianceAsia has been highlighting for some time, this is a significant change in the regulatory landscape for Singapore. Firms who may have been modelling their compliance programmes in Singapore on the assumption of the MAS’s past more private enforcement arrangements must now be re-considering the regulatory and reputational risk arising from their Singapore operations.

On 19 March 2020 the MAS issued lengthy prohibition orders (“PO’s”) against 6 unrelated cases where individuals had been convicted in the State Courts of Singapore for offences involving fraud and dishonesty. All the PO’s reflect the MAS’s stated intention of removing “rolling bad apples” from the financial industry.

12-year PO issued against Mr Poh Kim Chuan

Mr Poh is prohibited for a period of 12 years from (i) providing any financial advisory services, or acting as a director for, becoming a substantial shareholder of, or taking part in the management of any financial advisory firm under the Financial Advisers Act (Cap. 110) (FAA); and (ii) carrying on business as, or taking part in the management of, any insurance intermediary under the Insurance Act (Cap. 142) (IA) in addition to his 34 months’ imprisonment.

Between 2007 to 2012, Mr Poh misappropriated a total of \$190,822.59 from 32 policyholders. The money was meant for the payment of premiums for existing insurance policies, topping up of policies, buying of new policies as well as payment for renewal of car insurance and road tax.

10-year PO against Mr Chew Kheng Swee

Mr Chew is prohibited for a period of 10 years from (i) providing any financial advisory services; or acting as a director for, becoming a substantial shareholder of, or taking part in the management of any financial advisory firm under the FAA; and (ii) carrying on business as, or taking part in the management of, any insurance intermediary under the IA in addition to 45 months’ imprisonment.

Mr Chew cheated five victims of a total of \$325,310. He deceived the victims into making lump sum premium payments for insurance policies, instead using the money for his own purposes. Additionally, he forged signatures on insurance policy documents to deceive Prudential Assurance Company Singapore (Pte) Ltd into accepting applications for the policies in two victims’ names without their knowledge.

10-year PO against Mr Yap Bin Chun

Mr Yap is prohibited for a period of 10 years from (i) providing any financial advisory services, or acting as a director for, becoming a substantial shareholder of, or taking part in the management of any financial advisory firm under the FAA; and (ii) performing any regulated activities, or acting as a director for, becoming a substantial shareholder of, or taking part in

the management of any capital market licensee under the Securities and Futures Act (Cap. 289) (SFA) in addition to 42 months' imprisonment.

Mr Yap had devised a plan to cheat his client of \$218,100 from his unit trust investments. Knowing that the victim would not be in Singapore for a considerable period of time, Mr Yap obtained signatures from the victim on blank forms. These blank forms were used by Mr Yap to redeem the client's unit trust, open a new bank account and apply for a debit card so that he could withdraw the redemption proceeds from the unit trust investment without being detected by the victim.

While being investigated by the Police for the above offence, Mr Yap cheated a second victim of a sum of \$20,000 by falsely stating to the second victim that he required the money for bail.

8-year PO against Mr Lin Weiwen William

Mr Lin is prohibited for a period of 8 years from providing any financial advisory services, or acting as a director for, becoming a substantial shareholder of, or taking part in the management of any financial advisory services firm under the FAA in addition to 16 months' imprisonment.

Mr Lin deceived a client into believing that she would be partially surrendering a policy, but subsequently executed a full surrender instead in order to keep the balance of the funds for himself. He obtained the victim's signatures on various documents to open a new bank account in the victim's name so that he could receive the funds without her knowledge. He then transferred part of the funds to the victim and forged a letter, purportedly issued by the insurer, to give the victim the false impression that a partial surrender of her policy had been completed. Additionally, Mr Lin forged the victim's signature on a cheque linked to the bank account to pay for his personal purchase. In total Mr Lin fraudulently gained \$30,535.

6-year PO against Mr Kelvin Goh Shang Fei

Mr Goh is prohibited for a period of 6 years from (i) providing any financial advisory services, or acting as a director for, becoming a substantial shareholder of, or taking part in the management of any financial advisory firm under the FAA; and (ii) carrying on business as, or taking part in the management of, any insurance intermediary under the IA in addition to 15 months imprisonment.

Mr Goh lied to his client that they would receive vouchers worth \$1,000 if they made a lump sum payment on his policy. The client handed over a cash cheque of \$27,399.90, which Mr Goh used to repay his debts to moneylenders.

6-year PO against Mr Lam Allan

Mr Lam is prohibited for a period of 6 years from (i) providing any financial advisory services, or acting as a director for, becoming a substantial shareholder of, or taking part in the management of any financial advisory firm under the FAA; and (ii) carrying on business as, taking part in the management of any insurance intermediary under the IA in addition to 4 months imprisonment and a fine of \$151,044.60.

Mr Lam willfully made a false entry in a return made under the Income Tax Act (ITA) by declaring that his income for Year of Assessment 2014 was \$123,796 instead of \$401,356. This resulted in an undercharged tax amounting to \$50,348.20. When the Inland Revenue Authority of Singapore (IRAS) asked Mr Lam for documentary evidence of his declared expenses, he

used his clients' names, without their knowledge, to forge 36 payment vouchers showing that he paid referral fees to these individuals and forwarded the forged documents to IRAS.

MAS Comments

Ms Loo Siew Yee, Assistant Managing Director (Policy, Payments & Financial Crime), MAS, said, "MAS expects representatives of our financial institutions to act with honesty and integrity at all times. The first five individuals abused the trust that their clients placed in them for their personal gain, while the last individual forged documents in order to evade taxes. Such dishonest behaviour has no place in Singapore's financial industry and MAS will take action to exclude individuals who commit such acts from the industry."

MAS Adjusts Regulatory Expectations for Financial Institutions - April 2020

On 7 April 2020, the Monetary Authority of Singapore ("MAS") announced a series of relaxations to support the financial industry in Singapore during the Covid-19 pandemic. A number of the relaxations are specific to banks in Singapore but others are applicable to all financial institutions. An explanation of the changes that impact all financial institutions are set out below. ComplianceAsia has produced a separate client alert on the temporary measures for banks.

It is very important to note that these are limited relaxations and the MAS still requires that firms maintain proper procedures, internal controls, monitoring and testing to ensure that their operations continue to be in compliance with its regulatory requirements. There is not a relaxation of compliance with the Securities and Futures Act or Financial Advisers Act and their subsidiary regulations or MAS Notices, Guidelines and Circulars.

The MAS has specifically reminded firms that they are expected to maintain key financial services to customers and ensure their operational resilience and sound risk management during the Covid-19 pandemic. In particular, firms must remain vigilant to heightened risks such as cybersecurity threats, fraudulent transactions and scams, money laundering, and terrorism financing.

Regulatory Filings

The MAS has not created a blanket extension of filing deadlines but has indicated it will work with firms to review submission timelines while taking into account the need for timely information by MAS to facilitate supervisory reviews.

We strongly encourage those firms that are in a position to do so complete and file their regular returns on time and remind firms that, as far as possible, when making ad hoc notifications and approvals they should adhere to the existing MAS notice periods.

On Site Inspections and Supervisory Visits

All regular onsite inspections and supervisory visits are suspended. Those currently in progress will be continued via tele-conferencing.

However, the MAS will continue with supervisory reviews to determine how firms are managing the impact of Covid-19 on their business operations and has already begun to conduct onsite visits to firms with customer facing operations to ensure the implementation of MOH's safe-distancing guidelines.

OTC Derivatives Regime

The MAS is deferring the implementation of the licensing and conduct requirements related to dealing in and advising on Over-the-Counter Derivatives ("OTCD") which were introduced under the Securities and Futures (Amendment) Act 2017 by one year to 8 October 2021. In particular the following rules have been delayed:-

- The requirements for individuals engaged in dealing in or advising on OTCD to be appointed as a representative.
- The conduct requirements for firms dealing in or advising on OTCD such as meeting risk mitigation standards, providing customers with contract notes to confirm the OTCD transactions, and having a reasonable basis when recommending OTCD products to customers.
- These enhanced customers' moneys and assets rules for OTCD requirements include periodic computation of moneys and assets in customers' trust and custody accounts.

Consultations

The MAS is deferring the new policies arising from the following closed consultation papers:-

- Requirements on Controls Against Market Abuse
- Guidelines on Individual Accountability and Conduct/Information Paper on Culture and Conduct Practices of Financial Institutions
- Complaints Handling and Resolution Regulations
- Requirements on Execution of Customers' Orders

For new policies introduced during this period the MAS will provide a longer response time.

The public consultations on outsourcing requirements for banks and environmental risk management guidelines are deferred until further notice.

ComplianceAsia continues to monitor the regulatory impact of Covid-19 across the Asian region but with particular focus on the clients we support in Hong Kong, Singapore and Mainland China.

All of our teams continue to work within Government guidelines and we are able to communicate with regulators, prepare filings and guide your firm on proper procedure, regulatory expectations and various internal control issues.

If you have a question please contact the Case Manager in charge of your account, Philippa Allen, Alex Duperouzel, Lachlan Chubb, Linda Soong, Cherry Chan or Rachel Wu as required.

MAS details relief from OTC Derivatives and Market Conduct, Exam and CPD Requirements - April 2020

On 8 April 2020, the MAS provided clarification on its 7 April 2020 media release regarding deferring the implementation of certain new requirements and adjustments of other selected regulatory requirements to allow financial institutions (“FIs”) time to focus on dealing with issues relating to the Covid-19 pandemic.

Deferring OTC Derivatives Margin and Reporting Requirements

MAS will defer the implementation of the final two phases of the margin requirements for non-centrally cleared OTC derivatives and the final phase of the OTC derivatives reporting requirements by one calendar year.

The commencement date of Phase 5 of the margin requirements for all licensed banks and approved merchant banks belonging to a consolidated group whose aggregate notional amount of uncleared derivatives contracts exceeding S\$80 billion is deferred an additional 12 months and will commence on 1 September 2021, while Phase 6 is deferred an additional 24 months to 1 September 2022.

Reporting of OTC commodity, equity and foreign exchange derivatives transactions for subsidiaries of banks incorporated in Singapore, licensed finance companies, licensed insurers, holders of capital market services licence, and significant derivatives holders is deferred an additional 12 months and will commence on 1 October 2021.

Deferring New Licensing and Conduct of Business Requirements

MAS will defer the new licensing and conduct of business requirements introduced under the SFA to 8 October 2021. Those requirements include the following:

Specified OTC Derivatives Contracts

- Need for CMS licence
- Appointment of representatives
- Handling of customer assets and non-availability of customer monies and other assets for payment of debt
- Customers’ monies and assets
- Conduct of business
- Product advertisements

Capital Market Products

- Money received on account of customer
- Maintenance of trust accounts

- Disclosure to customers in relation to monies and assets received on account of customers
- Duties of holder on receipt of customers' assets
- Suitability of custodian
- Books of CMS licence holder
- Provision of statement of account to customers
- General risk disclosure requirements

Adjustment of Examination and CPD Requirements

MAS will allow individuals who have yet to complete their CMFAS examination to commence regulated activities as appointed representatives under the SFA and FAA.

MAS will also amend notices SFA 04-N09 and FAA-N13 and provide additional guidance in a set of FAQs. A grace period of 6 months will be given to these individuals to pass the CMFAS examination. The grace period is only applicable to representatives who are appointed between the date of amendment of the Notices and 30 September 2020.

Appointed representatives unable to fulfil their CPD requirements for 2020 due to the Covid-19 pandemic will also be granted a grace period to fulfill the necessary requirements. Further details will be included in the the amended notices.

MAS Provides Clarification on Adjustments to Regulatory Expectations for Financial Institutions - April 2020

On 8 April 2020, the MAS provided clarification on its media release from 7 April 2020 titled “MAS takes regulatory and supervisory measures to help financial institutions focus on supporting customers”. The initial release by the MAS stated that it would be relaxing submission timelines and reporting requirements to support Singapore’s financial industry during the Covid-19 pandemic.

As referenced in our previous client alert on this subject, it is important to note that these are limited relaxations and the MAS still require firms to maintain proper procedures, internal controls, monitoring and testing to ensure their operations continue to comply with its regulatory requirements. There is not a relaxation of compliance with the Securities and Futures Act or Financial Advisers Act and their subsidiary regulations or MAS Notices, Guidelines and Circulars.

This most recent circular MAS clarifies that financial institutions (“FI”) do not need to apply to the MAS for extensions on reporting requirements under the SFA, FAA, TCA and IA between 7 April 2020 and 31 December 2020. Tables detailing the exact requirements relaxed by the MAS can be found at the end of this alert in the following order:

- Annex A: Regulatory Submission Relaxations for CMS Licensee’s; Exempt futures brokers and Exempt over-the-counter (OTC) derivatives brokers; and Approved Exchanges, Approved Clearing Houses, Approved Holding Companies, Licensed Trade Repositories, Recognised Market Operators and Recognised Clearing Houses.
- Annex B: Regulatory Submission Relaxations for Licensed trust companies; and Exempt persons providing trust services.
- Annex C: Regulatory Submission Relaxations for Licensed Financial Advisers (LFA); Exempt financial advisers⁴ (EFA); Registered insurance brokers (IB); and Exempt insurance brokers (EIB).

MAS has noted that should any submission deadlines need extending that are not featured on the list provided below that it will be prepared to consider requests for extensions on a case-by-case basis. To request an extension a written submission must be made to your institutions designated MAS supervisory contact person.

Regulatory Filings

The MAS has not created a blanket extension of filing deadlines but has indicated it will work with firms to review submission timelines while taking into account the need for timely information by MAS to facilitate supervisory reviews.

We strongly encourage those firms that are in a position to do so complete and file their regular returns on time and remind firms that, as far as possible, when making ad hoc notifications and approvals they should adhere to the existing notice periods.

Annex A: Regulatory Submission Relaxations for CMS Licensee's; Exempt futures brokers and Exempt over-the-counter (OTC) derivatives brokers; and Approved Exchanges, Approved Clearing Houses, Approved Holding Companies, Licensed Trade Repositories, Recognised Market Operators and Recognised Clearing Houses

S/N	Requirement	Applies to	Regulatory Deadline	Extension
1	<p>A statement of assets and liabilities of a CMS Licensees on a quarterly and annual basis.</p> <p>Form 1 - Statement of Assets and Liabilities</p>	CMS Licensees	<ul style="list-style-type: none"> For quarterly returns, within 14 days from the end of each quarter; For annual returns, within 5 months from the end of the financial year 	<ul style="list-style-type: none"> A 2-week extension for submitting quarterly returns (i.e. within 28 days from the end of each quarter). A 2-month extension for submitting annual returns (i.e. within 7 months from the end of the financial year).
2	<p>A statement of financial resources, total risk requirement and aggregate indebtedness of a CMS Licensee on a quarterly and annual basis.</p> <p>Form 2 - Statement of Financial Resources, Total Risk Requirement and Aggregate Indebtedness</p>			
3	<p>An audited annual profit and loss accounts of a CMS Licensee</p> <p>Form 3 - Statement related to the Accounts of a CMS Licence</p>	CMS Licensees	Within 5 months from the end of financial year	A 2-month extension for submitting annual returns (i.e. within 7 months from the end of the financial year).
4	<p>A supplementary financial information on a CMS Licensee.</p> <p>Form 4 - Statement relating to the Accounts of a Holder of a Capital Markets Services Licence - Supplementary Information</p>			
5	<p>An auditor's report on the internal controls and regulatory compliance of a CMS Licensee</p> <p>Form 5 - Auditor's Report - For a Holder of a Capital Markets Services Licence</p>			

6	<p>An auditor's certifications on the audited financial statement of a CMS Licensee</p> <p>Form 6 - Auditor's Certification - For a Holder of a Capital Markets Services Licence</p>	CMS Licensees	Within 5 months from the end of financial year	A 2-month extension for submitting annual returns (i.e. within 7 months from the end of the financial year).
7	<p>Information on a CMS Licensee's margin exposures to approved exchanges.</p> <p>Form 7 - Statement of Aggregate Margin Exposure to Single Approved Exchange</p>	CMS Licensees carrying on business in product financing	Within 14 days from the end of each quarter	A 2-week extension for submitting quarterly returns (i.e. within 28 days from the end of each quarter).
8	<p>Information on a CMS Licensee's exposures to margin customers.</p> <p>Form 8 - Statement of Exposure to Margin Customers</p>	CMS Licensees carrying on business in product financing		
9	<p>Information on a CMS Licensee's exposures to specified products.</p> <p>Form 9 - Statement of Exposure to Margined Single Specified Product</p>	CMS Licensees providing product financing	Within 14 days from the end of each quarter	A 2-week extension for submitting quarterly returns (i.e. within 28 days from the end of each quarter).
10	<p>Base Capital Reporting</p> <p>No prescribed form; Credit Rating Agencies provide the info to MAS OIC via email</p>	CMS Licensees providing credit rating services		

11	<p>An auditor's certification on the financial standing and regulatory compliance of the Exempt Futures Broker or Exempt OTC Derivative Broker.</p> <p>Form 34 - Auditor's Report for Persons Exempted from Holding a Capital Markets Services Licence to Carry on Business in Capital Markets Products that are Futures Contracts and/or Over-The-Counter Derivatives Contracts under Paragraph 3(1)(d) and/or 3A(1)(d) of the Second Schedule to the Regulations</p>	Exempt Futures Brokers, Exempt OTC Derivatives Brokers	Within 5 months from the end of the financial	A 2-month extension for submitting annual returns (i.e. within 7 months from the end of the financial year).
12	<p>A statement of profit and loss and balance-sheet made up to the last date of the financial year of the Exempt Futures Broker or Exempt OTC Derivatives Broker.</p> <p>Profit and Loss Account, Balance-Sheet and Auditor's Certification</p>			
13	<p>The financial statements, auditor's report and the statement of directors of the approved exchange pursuant to SF(OM)R reg 9(1)(a)(i)</p>	Approved Exchanges	Within 3 months after financial year end	A 2-month extension for submitting annual returns (i.e. within 5 months from the end of the financial year).
14	<p>The auditor's report on the internal controls and regulatory compliance of the approved exchange pursuant to SF(OM)R reg 9(1)(a)(ii)</p>		Within 3 months after financial year end	A 2-month extension for submitting annual returns (i.e. within 5 months from the end of the financial year).
15	<p>A report on how the approved exchange has discharged its responsibilities under the SFA pursuant to SF(OM)R reg 9(1)(a)(iii)</p>	Approved Exchanges Approved Exchanges		
16	<p>The profit and loss accounts, and balance-sheet of the approved exchange for the preceding quarter pursuant to SF(OM)R reg 9(1)(b)</p>		Within 45 days of the end of each of the first three financial year quarters	A 2-week extension for submitting quarterly returns (i.e. within 59 days from the end of each quarter).

17	The balance-sheet of the fidelity fund of the approved exchange pursuant to SF(OM)R reg 9(1)(c)		Within 5 months after financial year end	A 2-month extension for submitting annual returns (i.e. within 7 months from the end of the financial year).
18	A report in Form 6 of the SF(OM)R Monthly statistics to be submitted by an approved exchange operating an organised market in respect of specified products	Approved Exchanges	Within 10 business days from the end of each month	A 2-week extension for submitting quarterly returns (i.e. within 20 business days from the end of month or end of quarter, where applicable).
19	A report in Form 7 of the SF(OM)R Quarterly statistics to be submitted by an approved exchange operating an organised market in respect of specified products			
20	A report in Form 8 of the SF(OM)R Monthly statistics to be submitted by an approved exchange operating an organised market in respect of derivatives contracts			
21	The annual report and directors' report of the approved clearing house pursuant to SF(CF)R reg 14(1)(a)(i)	Approved Clearing Houses	Within 3 months after financial year end	A 2-month extension for submitting annual returns (i.e. within 5 months from the end of the financial year).
22	The auditor's long form report on the internal controls and regulatory compliance of the approved clearing house pursuant to SF(CF)R reg 14(1)(a)(ii)	Approved Clearing Houses	A 2-month extension for submitting annual returns (i.e. within 5 months from the end of the financial year).	A 2-month extension for submitting annual returns (i.e. within 5 months from the end of the financial year).
23	A report on how the approved clearing house has discharged its responsibilities under the SFA pursuant to SF(CF)R reg 14(1)(c)			

24	An auditor's verification of money and assets placed with approved clearing house pursuant to SF(CF)R reg 27(1)	Approved Clearing Houses	Within 1 month of each half of the financial year	A 2-month extension (i.e. within 3 months of each half of the financial year)
25	The profit and loss accounts and balance-sheet of the approved clearing house for the preceding quarter pursuant to SF(CF)R reg 14(1)(b)		Within 45 days of the end of each of the first three financial year quarters	A 2-week extension for submitting quarterly returns (i.e. within 59 days from the end of each quarter).
26	The annual report and directors' report of the approved holding company pursuant to SF(AHC)R reg 9(1)(a)(i)	Approved Holding Companies	Within 3 months after financial year end	A 2-month extension for submitting annual returns (i.e. within 5 months from the end of the financial year).
27	The auditor's long form report on the internal controls and regulatory compliance of the approved holding company pursuant to SF(AHC)R reg 9(1)(a)(ii)	Approved Holding Companies	Within 3 months after financial year end	A 2-month extension for submitting annual returns (i.e. within 5 months from the end of the financial year).
28	A report on how the approved holding company has discharged its responsibilities under the SFA pursuant to SF(AHC)R reg 9(1)(c)			
29	The profit and loss accounts and balance-sheet of the approved holding company for the preceding quarter pursuant to SF(AHC)R reg 9(1)(b)	Licensed Trade Repository	Within 45 days of the end of each of the first three financial year quarters	A 2-week extension for submitting quarterly returns (i.e. within 59 days from the end of each quarter).
30	The annual report and directors' report of the licensed trade repository pursuant to SF(TR)R reg 11(1)(a)(i)		Within 3 months after financial year end	A 2-month extension for submitting annual returns (i.e. within 5 months from the end of the financial year).
31	The auditor's long form report on the internal controls and regulatory compliance of the licensed trade repository pursuant to SF(TR)R reg 11(1)(a)(ii)			

32	A report on how the licensed trade repository has discharged its responsibilities under the SFA pursuant to SF(TR)R reg 11(1)(c)		Within 3 months after financial year end	A 2-month extension for submitting annual returns (i.e. within 5 months from the end of the financial year).
33	The profit and loss accounts and licensed trade repository for the preceding quarter pursuant to SF(TR)R reg 11(1)(b)	Licensed Trade Repository	Within 45 days of the end of each of the first three financial year quarters	A 2-week extension for submitting quarterly returns (i.e. within 59 days from the end of month or end of quarter, where applicable).
34	The audited financial statements of the recognised market operator pursuant to SF(OM)R reg 22	Recognised Market Operators	Within 3 months after financial year end	A 2-month extension for submitting annual returns (i.e. within 5 months from the end of the financial year).
35	The annual report of the recognised clearing house pursuant to SF(CF)R reg 36(a)	Recognised Clearing Houses		

Annex B: Regulatory Submission Relaxations for Licensed trust companies; and Exempt persons providing trust services.

S/N	Requirement	Applies to	Regulatory Deadline	Extension
1	<p>To provide a breakdown of its net asset value or qualifying assets</p> <p>Form 5 - Maintenance of Net Asset Value and Qualifying Assets under Regulation 12</p>	Licensed trust companies	Within 14 days from the grant of the trust business licence and thereafter, within 5 months from the end of the licensed trust company's financial year	A 2-month extension for submitting Form 5 (i.e. within 7 months from the end of the financial year).
2	<p>To provide information on assets under trusteeship and/or trust administration</p> <p>Form 6 - Omnibus Statement of Trust Accounts under Regulation 19(1)</p>	Licensed trust companies, Exempt persons providing trust services	Within 60 days from the end of the calendar year	A 2-month extension for submitting Form 6 (i.e. within 4 months from the end of the financial year).
3	<p>To submit an auditor's report on the licensed trust company's business</p> <p>Form 7 - Auditor's Report under Regulation 19</p>	Licensed trust companies	Within 5 months from the end of the licensed trust company's financial year	A 2-month extension for submitting Form 7. Annual profit and loss accounts and balance sheet (i.e. within 7 months from the end of the financial year).
4	<p>To lodge the annual profit and loss account, and balance-sheet as at the end of the financial year</p> <p>Profit and Loss Account and Balance-Sheet</p>			

Annex C: Regulatory Submission Relaxations for Licensed Financial Advisers (LFA); Exempt financial advisers⁴ (EFA); Registered insurance brokers (IB); and Exempt insurance brokers (EIB).

S/N	Requirement	Applies to	Regulatory Deadline	Extension
1	Balanced Scorecard Report MAS Notice FAA-N20 Annex 2	LFA, EFA	By the end of 2 calendar quarters subsequent to the measurement quarter	A 3-month extension for submitting Balanced Scorecard Report (i.e. by the end of 3 calendar quarters subsequent to the measurement quarter).
2	Statement of Profit and Loss Form 14	LFA	5 months after the end of financial year	A 2-month extension for submitting annual returns (i.e. within 7 months from the end of the financial year).
3	Statement of Assets and Liabilities, Net Asset Value, and Insurance Broking Premium Account Form 15			
4	Statement of Placement of Direct Life Insurance Business Handled Form 16	LFA, EFA		
5	Auditor's report Form 17	LFA		
6	Audited Statement of Insurance Broking Premium Account Form 24	EFA		
7	Balance Sheet Form A	IB		
8	Insurance Broking Premium Account Form B			
9	Profit and Loss Account Form C			
10	Statement on Placement of Business Handled Form D			

11	Insurance Broking Premium Account Form H	EIB	5 months after the end of financial year	A 2-month extension for submitting annual returns (i.e. within 7 months from the end of the financial year).
12	Statement on Placement of Business Handled Form I			
13	Certificate on the Accounts Form J	IB		
14	Auditor's report			

Further Relaxations from the MAS - April 2020

On 27 April, the Monetary Authority of Singapore (“MAS”) issued FAQs on its relief measures arising from Covid-19.

The FAQs cover the following areas:

1. The extension of the implementation of the OTC licensing regime by another year to 8 October 2021.
2. Appointed representatives of MAS licenced firms who cannot get back to Singapore.
3. Overseas employees unable to leave Singapore.
4. Telephone taping during work from home (“WFH”) situations.

OTC Licensing and Business Conduct Regime

- Firms which were already dealing in the new OTC derivatives contracts prior to 8 October 2018 will now have an additional year (i.e. until 8 October 2021) to submit a licensing application or notification and meet the business conduct requirements.
- Firms will have until 8 October 2021 to have employees who were already dealing in or advising on OTC derivative contracts, before the expansion of the product scope in the SFA on 8 October 2018, licensed as appointed representatives.
- If the individual commences dealing in, or advising on, the new OTC derivatives contracts on or after 8 October 2018, the firm is required to appoint the individual as a representative before the individual commences the activity.

Border Control Issues

Singaporean Employees Overseas

MAS will allow appointed representatives who are currently overseas and unable to return to Singapore to conduct regulated activities for Singapore customers from their overseas location, provided that the firm:

1. Implements measures to continue to properly supervise the activities and conduct of the representatives, including ensuring compliance with all regulatory requirements in Singapore as well as the overseas jurisdiction in which the representative is located;
2. Maintain a register of such representatives and makes available this register upon MAS' request. The register should include details such as the period during which these representatives are working from the overseas location, the overseas jurisdiction where the representatives are located, and the regulated activities conducted by the representatives; and
3. Notifies its MAS officer-in-charge in writing upon the commencement of such arrangements and confirms that it will comply with these two conditions.

Firms do NOT have to file a Form 16/18 in the Corporations and Representatives System ("CoRe") to notify these changes.

We note that careful attention should be paid to whether those representatives from Singapore who are unable to return and are working from foreign offices, need to obtain temporary or some other form of license in that host country (for example, that would likely be the case if the Singapore based representatives were in Hong Kong).

Overseas Employees in Singapore

Representatives of foreign licensed entities which are related to the firm and who are unable to return to their home jurisdiction are allowed to conduct regulated activities in Singapore, provided that the firm:

1. Implements measures to properly supervise the activities and conduct of the foreign representatives, including ensuring that:
 - The conduct of the regulated activities by the foreign representatives is within the scope allowed by the foreign regulator;
 - The foreign representatives continue to be licensed as representatives of the foreign-related licensed entities of the firm and comply with all regulatory requirements of the foreign jurisdiction; and
 - The foreign representatives do not solicit Singapore customers.
1. Implements measures to prevent access to information or data related to the FI's customers by the foreign representatives, and to address any potential conflict of interest;
2. Maintain a register of such foreign representatives and makes available this register upon MAS' request. The register should include the period during which the foreign

representatives are conducting activities from Singapore, and the regulated activities conducted by the representatives; and

3. Notifies its MAS officer-in-charge in writing upon the commencement of such arrangements and confirms that it will comply with these conditions.

We recommend that the Singapore based compliance officers of firms in this situation should obtain a clear outline from their overseas compliance colleagues of the roles and responsibilities of each such individual and what supervision, reporting and filing these representatives are normally subject to. Likewise, they must advise their overseas compliance colleagues what supervision and reporting any Singapore appointed representatives must adhere to during the period in question. Personal share dealing, continuous professional training and individual conflicts of interest requirements can differ significantly across jurisdictions and should be an area of focus. Further attention should be paid to any restrictions on the type of client or product that individuals are permitted to engage with to ensure those rules are not breached. There could be a risk with sales and marketing staff onshoring the Singapore firm into their home jurisdictions in these situations.

Telephone Taping

The MAS is aware that some firms may face challenges in maintaining telephone recordings for orders taken by their representatives who are working remotely from home. For such situations, firms may consider alternative means of record keeping which could consist of requiring its representatives to send an email with the order details to the customer after taking an order via an unrecorded phone.

Firms must also ensure there is proper verification of the identity of the person placing the order over the phone.

Whilst the MAS did not specify this, it is important to re-iterate to staff that any such confirmation emails or other client correspondence while working from home must be from work email addresses, not personal email addresses, so they can be maintained as part of the books and records of the firm. For this reason, messages via text and WhatsApp may not be sufficient as they cannot always be backed up into the firm's own systems. In the event of a problem regulators are unlikely to be sympathetic to claims of lost trading records or unclear timelines.

How we can help

ComplianceAsia has been consulting on financial industry compliance issues in Singapore since 2003. We have a team of compliance professionals who can assist with a variety of consulting and work process support during this difficult time and as the recovery begins.

MAS Preparing for Gradual Resumption of Onsite Operations - May 2020

On 12th of May, the Monetary Authority of Singapore ("MAS") released a circular in response to the announcement made by the Ministry of Health ("MOH") on 2nd of May regarding the progressive easing of circuit breaker measures. Subsequently, the Ministry of Manpower ("MOM") and the Smart Nation and Digital Government Office ("SNDGO") published "safe management requirements" and the "implementation of SafeEntry". MAS stated that it will be

supervising the implementation of these measures and firms are required to provide information on their implementation through a special link (see below).

Planning for the resumption of business

Financial Institutions (FIs) are expected to develop a plan for the resumption of onsite operations in a phased manner. FIs should inform the MAS of these plans by the close of business on the 14th of May 2020 using the link:

<https://form.gov.sg/#!/5eba0b169f6e12001148077b>

Appointing Safe Management Officer(s) (SMO)

FIs are expected to appoint a Safe Management Officer(s). Those appointed are required to ensure compliance with the aforementioned measures, addressing deficiencies and keep records of checks conducted alongside any corrective actions. An FI may appoint their internal auditor to validate the implementation of these requirements.

Maintaining safe distancing onsite through split operations and reducing physical interactions

FIs must ensure workstations are at least 1 metre apart. In addition, FIs should restrict employee movement to their assigned work premises using measures to prevent cross-departmental commingling of staff from different teams. Examples include remote hand-overs between teams on shift, staggered working and lunch hours, and video conferencing. FIs are reminded to ensure that all items listed in Annex C of MOM's advisory, dated the 9th of May 2020, are fulfilled.

Implementing the SafeEntry visitor management system

FIs must record all personnel entering and exiting their building and encourage staff to download the TraceTogether app. Any logs that track a staff members movements within a premises should be maintained.

Implementing follow-up measures to manage suspected cases

FIs should have in place plans to cordon off an area in a calm manner to not cause alarm in the event of a suspected case. A pre-identified room or area should be used to keep the suspected case until an ambulance arrives. Any individual that has been in close contact to the suspected case should be informed and advised to seek medical assessment if they develop symptoms. If an event like this occurs the workplace must be thoroughly cleaned before operations can resume again.

Safe Re-opening of More Customer Services in the Financial Sector - May 2020

On 26 May 2020, Monetary Authority of Singapore (MAS) announced its plans for more financial institution (FI) employees to recommence operations onsite from the 2 June 2020 in order to meet increased demand for services as businesses re-open. MAS has emphasised that FIs must ensure they implement the Safe Management (SM) Measures in line with the Ministry of Health's (MOH) three-phase approach when resuming onsite business operations.

Safe Management (SM) Measures

FIs are required to implement SM Measures such as staggered start times or flexible work hours to allow FI staff to minimise travel on public transport during peak hours. MAS reiterated that should it be possible for a job to be performed from home then that should remain the default arrangement.

Recommencing Operations Onsite

FIs are expected to continue to keep their onsite workforce well within 25% Threshold. From 2 June 2020, if an FI requires more than 25% of their staff onsite the FI needs to submit their justification to MAS using template Annex A.

In-Person Meetings

From 2 June 2020, FIs that provide financial advice on banking, insurance and investment products, including private banks offering wealth management advice, will be allowed to have limited in-person meetings with customers at their business premises. This condition will be subject to prior approval by the MAS.

In order for approval to be granted the following conditions must be met:

- a. Such meetings must be on an appointment basis only;
- b. FI staff and customers must download and utilise TraceTogether for the duration of time spent at the FI's business premises for contact tracing purposes;
- c. FI staff must have other protective barriers in addition to face mask when meeting customers;
- d. FIs must put in place checks and control measures to monitor compliance with the conditions set out above;
- e. The FI's CEO must furnish a confirmation to MAS that conditions (a) to (d) and all relevant SM measures are in place at the premises where the in-person meetings are to be conducted prior to commencing such activities.

FIs wishing to conduct face-to-face client meetings must complete Annex B attached at the end of this circular and submit it to the MAS for approval. This circular seeks to clarify that these adjustments are to allow for servicing of current customers where technology does not adequately replace face-to-face meetings. MAS emphasises this relaxation is not to be used for the solicitation of new business.

MAS will continue to inspect FI's business premises to ensure all safeguards and SM measures are fully implemented. MAS has accentuated that it will not hesitate to take disciplinary action against any firm that breaches these requirements.

Annex A: Template for Recommencing Operations Onsite

Name of FI			
UEN			
(A) Number of onsite staff¹ at any one point			
(B) Total number of FI staff (both onsite and working from home)			
(A/B) Onsite staff at any one point as % of total FI staff			
Date (on which FI intends to scale up onsite staff)			

S/N	Function / Activities	Activities	Justifications on need to be onsite	Number of staff required onsite²
E.g. 1	Payments & settlements (SGD)	1. Ensure prompt clearing and settling of SGD payments. 2. Generate inter-bank GIRO payment files and handle exceptions.	1. MEPS+ connected systems can only be accessed in office. 2. GIRO systems can only be accessed in office.	7 (7%)
E.g. 2	Security Operations Centre (SOC)	24/7 surveillance of network activity.	SOC systems are not allowed to be remotely accessed from home based on company policy.	5 (5%)

¹ Throughout the Annex, staff refers to employees and representatives.

² Please indicate both absolute number and percentage of staff of that particular function required onsite.

Annex B: Template of CEO Confirmation

I confirm that [Name of Financial Institution (UEN number)] intends to provide financial advisory and wealth management services to our customers via in-person meetings from [Date].

I confirm that [Name of Financial Institution] will implement the following safeguards for the conduct of in-person meetings at the business premise(s)¹ listed below.

- All relevant Safe Management measures as set out by the Ministry of Manpower;
- Additional measures to ensure that:
 - Such meetings are only conducted at out **business premises**;
 - Such meetings are only conducted on an **appointment basis**;
 - My staff² and customers at in-person meetings will **download and utilise TraceTogether** for the duration of time spent at our business premises to facilitate contact tracing;
 - My staff at such meetings will **have other protective barriers** in addition to face mask³;
 - Checks and control measures will be put in place to monitor compliance with the measures set out above.

Address of Business Premises where in-person meetings will take place:

Address (1):

Address (2):

Address (3):

...

Signature⁴:

Name:

Designation:

Date:

¹ FIs are to list down all the addresses where such in-person meetings would be conducted. Banks which have multiple places of business (POBs) do not have to list all applicable addresses, but should confirm whether all POBs will conduct such in-person meetings.

² Throughout the Annex, staff refers to employees and representatives.

³ FIs could install protective barriers such as table shields or sneeze guards between the FI staff and customers, or have FI staff wear face shields.

⁴ If this confirmation is sent by email directly from the FI CEO to MAS, a signature is not required. Otherwise, e-signatures are acceptable.

MAS Proposes Consultation Paper on Hybrid Securities - June 2020

On 5 June 2020, a question was raised in the National Parliament of Singapore as to whether the MAS will review if convertible bonds should be issued, marketed, sold or traded to retail investors in light of the complexity and risks associated with these hybrid securities.

Mr Tharman Shanmugaratnam, Senior Minister and Minister in charge of the MAS, provided a written response as followed and highlighted that the MAS is likely to issue a consultation paper on this topic by the end of 2020:

1. In regulating the sale of investment products, the MAS' objective is to empower investors to make informed investment decisions which are compatible with their investment objectives, risk appetite, and financial situation. Our approach has worked well so far, and is a common approach adopted by many advanced jurisdictions.
2. Hence, for complex investment products which the average retail investor may not understand, the MAS requires financial institutions (FIs) to implement various safeguards, including:
 - a. First, assessing a customer's investment knowledge and experience before selling the product to the customer;
 - b. Second, explaining to the customer the general features and risks associated with investing in such products; or
 - c. Third, advising the customer on the suitability of the product.
3. Convertible bonds are currently classified as non-complex as the product is well-established in the market, and the terms and features can be understood by most retail investors. It is sold as a bond, and stays as a bond, unless the investor or the issuer decides to convert it to equity.
4. However, in recent years, issuers have introduced non-conventional convertible bonds with features that retail investors may not be familiar with. For example, certain bonds may not have a fixed maturity date or may be converted to equity upon the occurrence of certain trigger events which are beyond the investor's control. The MAS is therefore reviewing the classification of these products and other hybrid securities. The MAS expects to issue a public consultation paper by the end of the year.

How we can help

ComplianceAsia tracks all consultation papers across Asia Pacific and will highlight this to all our clients once the consultation is issued. We also offer a highly cost-effective subscription based regulatory change tracking service across the region which provides our clients with information that keeps you up to date and informed about:

- Consultation papers including release dates, response deadlines, closing and finalisation;
- Changes to securities legislation when proposed and gazetted, deadlines and final implementation;
- Changes to regulatory codes and guidelines when proposed and released;

- A summary of the terms of the consultation and how it will potentially impact your business; and
- A summary of the new legislation and / or changes in rules and what steps you need to take to be in compliance with the rules.

If you would like to know about this or subscribe to receive such information, please contact Lachlan Chubb at lachlan.chubb@complianceasia.com.

MAS Announces Phase Two Requirements for the Re-Opening of the Financial Sector - June 2020

On 17 June 2020, the Monetary Authority of Singapore (MAS) announced that from Friday 19 June 2020, Financial Institutions (FIs) may re-open more branches and customer service locations, and resume more frequent in-person financial services, subject to Safe Management measures being in place. This update outlines the key changes that will come into force during the phase 2 re-opening.

Return to Office Premises

FIs are allowed to increase staffing levels at the office premises to cover operational, business and client needs. The MAS has emphasised that any employee that can work effectively from home should continue to do so during this period.

In-Person Meetings

FIs may resume in-person meetings with clients as long as they are arranged on an appointment basis. All safe management measures must remain in place including wearing masks and adopting safe distancing of at least one meter at all times. FIs should where possible continue to use SafeEntry, or alternatively to ensure contact tracing remains in place FIs should maintain records of persons and meetings conducted at any location without SafeEntry.

Additional Measures

In addition to the Safe Management measures already implemented in phase one, FIs must establish a clear plan outlining the criteria for the resumption of onsite operations. The plan should include identifying the functions or jobs that can continue to be performed effectively through telecommunication alternatives as opposed to in-person. Before recommencement all staff members must be briefed as to why their work requires them to return onsite.

MAS expects FIs to review the adequacy of their office arrangements. This includes considering short term measures like split teams, seating plans and clearing regimes. Long term measures such as re-designing the workplace and the re-engineering of business processes should also be assessed.

MAS Inspections

The MAS has and will continue to monitor and inspect the premises of FIs' to ensure compliance with safe management measures. The MAS further reminded FIs that it will take action for non-compliance with these requirements.

Conclusion

Even with the gradual easing of certain requirements FIs must remain vigilant and enhance business continuity and pandemic management plans (BCP).

To ensure that your BCP continues to comply with the frequent changes taking place during these uncertain times our team of professionals can undertake a review and update your BCP to establish that it complies with all regulatory and industry best practice requirements expected of FIs in Singapore.

PRC

Notice on Further Improving the Management of Foreign Exchange Risks of Foreign Institutional Investors in the Interbank Bond Market - January 2020

On 13th January 2020, the State Administration of Foreign Exchange (“SAFE”) released a notice regarding its plans to further improve the management of foreign exchange risks of foreign institutional investors in the interbank bond market.

SAFE’s notice will come into effect on 1 February 2020.

Investment Channels

In order to continue the opening up China’s foreign exchange market and to further facilitate the management of foreign exchange risks by foreign institutional investors (“foreign investors”) in China’s interbank bond market, foreign investors participating in China’s domestic FX market may now trade via the following three channels.

- a. Trading directly with a local bank as its client;
- b. By applying to become a member of the China Foreign Exchange Trade System (“CFETS”) and trading in the interbank FX market directly; and
- c. By applying to become a member of CFETS and trading in the interbank FX market through engaging the prime brokerage services.

Non-banking investors wishing to participate in China’s domestic FX market can do so by trading through channels (a) and (c) only.

Risk Exposure

When managing foreign exchange risk exposure arising from investing in the interbank bond market all foreign investors (banking and non-banking) should look to manage this risk with RMB-foreign exchange derivative products.

Shenzhen Proposed Policies to Encourage Local Incorporation of WFOE PFMs - January 2020

A foreign-invested private securities investment fund manager (“WFOE PFM”) refers to a wholly foreign-owned enterprise or joint venture, established in China by qualified foreign investors as a fund manager to launch and manage securities-type private funds to make investments in the secondary markets in China, including investments in stocks, bonds, ETFs, futures and options.

A foreign fund manager which wishes to launch a WFOE PFM, it must:

- Establish a legal entity to apply for the WFOE PFM qualification;
- Register the legal entity with the Asset Management Association of China (“AMAC”) as a WFOE PFM; and
- Complete the filing of the first fund product with the AMAC within six months after the aforesaid manager registration.

WFOE PFMs were first permitted in 2016, when AMAC issued the FAQs on the Registration and Filing of Private Investment Funds No.10 (“FAQs No.10”), which also provided the ground rules for the private fund manager registration of a WFOE PFM. Currently 23 WFOE PFMS are based in Shanghai with 1 based in Shenzhen.

It has been announced that Shenzhen plans to propose implementing an investment promotion scheme ("Investment Promotion Scheme") to incentivize foreign asset managers to set up WFOE PFMs in Shenzhen.

The Investment Promotion Scheme gives a broad outline of the likely requirements which are:-

1. The foreign asset manager will only be required to submit to the Shenzhen Municipal Financial Service Office (SZMFSO) an application form containing basic information and a letter of undertake stating that it will complete the registration and filing with the AMAC, and the SZMFSO, after reviewing the aforesaid materials, will transfer those materials to the Shenzhen Administration for Market Regulation (SZAMR) to complete the relevant business registration;
2. After completing the business registration, the company shall apply to register as a WFOE PFM with the AMAC in accordance with relevant rules issued by the AMAC; and
3. Shenzhen will actively facilitate foreign managers to enjoy the existing preferential policies, as well as consider to make available new preferential measures for WFOE PFMs.

At this stage it appears Investment Promotion Scheme will not impose any additional requirements beyond those imposed by AMAC for the WFOE PFM registration, and the SZMFSO and relevant local governmental authorities do not plan to conduct any substantive review of whether a foreign asset manager and the WFOE PFM to be established have satisfied the requirements for registration as stipulated by AMAC.

The Investment Promotion Scheme of Shenzhen is of interest to foreign fund managers who wish to access the large and relatively affluent southern markets for capital raising and for those firms that invest into the technology, biotech and fintech sectors which are often listed on the Shenzhen Stock Exchange rather than the Shanghai Stock Exchange.

Circular on Facilitating the Registration Arrangements for Private Fund Managers - February 2020

On 28 February 2020, the Asset Management Association of China (“AMAC”) published a circular entitled ‘Notice regarding the Registration for Private Funds Managers’ (“the Circular”). The Circular includes two checklists summarising the requirements for the application materials needed for private fund manager (“PFM”) registration (i.e. securities type PFMs and non-securities type PFMs).

The Checklist is prepared based on the existing requirements for PFM registration in current laws, regulations, self-regulatory rules and the Guidelines for Private Fund Manager Registration as well as past practices. It is intended to assist institutions applying for PFM registration (“Applicants”) in the preparation of the required materials for such registrations and is not to be construed as a revision to the standards and requirements for PFM registration.

AMAC specifies that for any major change concerning the controlling shareholder/actual controller of a registered PFM, applicants must comply with the Checklist when preparing materials for a change in registration.

With respect to the submission of required documents for PFM registration, AMAC has implemented a cut-off date of March 1, 2020. Applicants who submit application materials on or after March 1, 2020 shall comply with the Checklist. Submissions prior to March 1, 2020 must follow the relevant rules for the transitional period.

AMAC further specifies in the Circular that if an Applicant has submitted all the materials required for PFM registration in accordance with the Checklist, AMAC will only review or inquire further about the items listed in the Checklist, and will not inquire about matters not included on the Checklist, which will improve the efficiency of PFM registration.

If an Applicant fails to submit all required materials in accordance with the Checklist, AMAC will return the application materials within 5 working days. If in the second submission the Applicant still fails to submit all the required materials or information in compliance with the Checklist, AMAC will suspend handling the application in accordance of the Guidelines for Private Fund Manager Registration.

AMAC has also enhanced the transparency of PFM registration. As stated in the Circular, starting from March 1, 2020, AMAC will publish “PFM Registration Status” on its website to facilitate public access to the basic information of Applicants, the updated status of their applications and information concerning the law firms and lawyers in-charge serving the relevant applicants. An Applicant can also get real-time updates of its application status via the AMBERS system.

The Circular further provides that, commencing on March 1, 2020, AMAC will provide the public with access to the following information in the PFM Registration Status section of its website:

1. the name of the actual controller of a registered PFM;
2. names, titles and resumes of senior management personnel that have been reported to and filed with the AMAC; and

3. affiliated PFM controlled by the same actual controller.

In addition, AMAC will gradually develop advanced search functions on its website to provide the public with access to the information about the shareholders of PFMs and the law firms serving PFMs.

AMAC Publishes Detailed Implementing Rules for the Practice Integrity of Fund Institutions and Their Staff Members - March 2020

On 12 March 2020, the Asset Management Association of China (“AMAC”) promulgated the ‘Detailed Implementing Rules for the Practice Integrity of Fund Institutions and Their Staff Members (“Rules”)’ which became effective on the same day. The Rules are the self-disciplinary rules related to the CSRC’s ‘Provisions on Practice Integrity of Securities and Futures Institutions and Their Staff Members’ issued in June 2018.

The Rules have incorporated public opinions and comprise of 5 chapters with 28 articles. Fund management companies in the People’s Republic of China and their onshore subsidiaries engaged in fund management, mutual fund managers, private fund managers and their employees (“fund managers”) must comply with the Rules.

Responsibility for Internal Control

The Rules specify that the Board of Directors of fund managers are responsible for the effectiveness of the integrity of the company and employees while supervisory boards or supervisors shall supervise the performance of directors and senior managers in managing integrity.

Senior management of the fund manager is responsible for the operational integrity and must provide sufficient resources for the purpose of establishing, implementing, maintaining and continuously improving the fund manager’s internal control system and to ensure proper segregation of duties by having independence amongst personnel.

Fund managers must also conduct annual training and education on integrity, ethics and internal controls for all employees to ensure that they are familiar with the relevant requirements.

Internal Controls to Prevent Misbehaviour

Fund managers and their employees must not obtain improper benefits nor provide improper benefits interests to public officials, customers, potential customers under negotiation or other stakeholders.

Fund managers and their employees must not obtain nor provide improper benefits when they are undertaking fundraising activities, investment trading, fund custody or other fund services.

Improper Fundraising Activities:

- Assisting clients to sell products to or provide services for clients who fail to meet the suitability requirements or requirements for qualified investors by the means of providing false personal information, falsifying information or holding shares for others;
- Arranging for the sale to specific clients of structured, high-yield, capital-guaranteed financial products that deviate significantly from fair price;
- Selling unauthorised financial products in the name of the fund manager or its employees. institution staff;
- Stealing or leaking internal information about the fund manager, its counterparties or clients or other undisclosed information.

Investment trading:

- Using insider information, undisclosed information, trade secrets and client information to conduct trading activities or explicitly or inexplicitly instruct others to conduct trading activities;
- Appropriating or embezzling entrusted assets;
- Treating investment portfolios unfairly and transferring investments between accounts;
- Trading at a price that deviates significantly from the market price;
- Abusing the process for allocating trading commission and transferring investments or benefits to securities or futures companies or other parties that provide execution and clearing services;
- Transferring investments directly or indirectly through third-party institutions or individuals.

Fund custody:

- Appropriating or embezzling assets under custody;
- Issuing false supporting documents;
- Directly or indirectly facilitating the irregularities of fund managers or permitting fund managers to violate laws, regulations or contractual terms such as irregular transfer of funds, irregular payment or assisting clients in investment beyond assigned limits.

Other fund services:

- Assisting fund managers to make fake or misleading ratings, evaluations and awards;
- Providing information technology system services in which behave in a way that is contrary to the principle of fairness among different investors and products;
- Issuing false records, misleading statements or allowing material omissions in legal opinions, auditing reports or internal control evaluation reports.

Enhancing or Reducing Punishments

AMAC may take disciplinary action including verbal reminders and written warnings, requests for rectification within specified time limits, notification of the failure to other AMAC members, blacklisting, public reprimand, prohibiting the firm from taking on new business, a suspension from AMAC membership or membership disqualification.

Fund managers and their employees who fail to provide relevant documents or materials or falsify, conceal, tamper with or destroy evidence, or evade refuse to or obstruct the performance of AMAC staff will receive heavier penalties. Fund managers and their employees who discover any acts that violate the Rules and self-report to AMAC will receive lighter or mitigated penalties.

Removal of PRC Investment Quotas for QFII / RQFII - May 2020

On 7 May 2020 the People's Bank of China ("PBOC") and State Administration of Foreign Exchange ("SAFE") issued new Administrative Provisions on Funds for Domestic Securities and Futures Investment by Foreign Institutional Investors (境外机构投资者境内证券期货投资资金管理规定) which remove investment quotas on QFII / RQFIIs and standardise the arrangements for custody, bank accounts, remittances and payments in mainland China by foreign investors. The new rules become effective on 6 June 2020.

A new definition has been created of Qualified Investors ("QI") which include both Qualified Foreign Institutional Investors ("QFII") and Renminbi Qualified Foreign Institutional Investors ("RQFII") who invest in the domestic securities and futures market with the approval from the China Securities Regulatory Commission ("CSRC").

General Provisions

QIs must appoint a domestic custodian to act on its behalf. If a QI has more than one custodian, it must nominate one of them as the main custodian to deal with all registration related matters.

The PBOC and SAFE are responsible for supervising, managing and inspecting the account(s) capital receipts, payments and currency exchanges of QIs.

Registration

Registration is a two-step process.

QIs must first obtain permission from CSRC to conduct securities and futures business.

The QI must then appoint the main custodian to submit the following materials to SAFE by way of a business registration:-

1. Registration Form for Foreign Institutional Investors (which can be found in Appendix 1 of the Chinese language Provisions); and
2. A photocopy of the Securities and Futures Business License.

The main custodian is responsible for determining the authenticity of materials provided by QIs and SAFE will direct questions and comments on the application to the main custodian.

Opening Bank Accounts

Once the business registration certificate has been granted, the QI must open accounts with the custodian for investment and inward fund remittance.

- QIs who inwardly remit foreign funds must open a foreign currency account and an RMB deposit account connected to that foreign currency account.
- QIs who inwardly remit RMB funds must open an RMB deposit account.
- QIs who inwardly remit RMB funds and foreign funds at the same time must open an RMB deposit account, a foreign currency account and an RMB deposit account connected to the foreign currency account.

The names of the RMB deposit account should match.

Full details of the account opening process and requirements are set out in Appendix 2 of the Procedures - Operational Guidelines for the Management of Domestic RMB Accounts of Foreign Institutional Investors.

Operation of Bank Accounts

For the purposes of a QI's foreign currency account, income is defined as each of:-

- principal remitted inward by the QI;
- foreign funds required to pay relevant taxes and fees (including taxes, custodian fees, audit fees, management fees);
- foreign currency interest income;
- proceeds transferred from dealing in foreign exchange derivatives;
- proceeds transferred from purchasing foreign exchange in the RMB deposit account connected to the foreign currency account; and
- other income stipulated in the Regulation on Foreign Exchange Administration.

For the purposes of a QI's foreign currency account, expenditure is defined as each of:-

- proceeds that are settled into the RMB deposit account connected to the foreign currency account;
- proceeds transferred out for foreign exchange derivatives transactions;
- outward remittance of principal and proceeds; and
- other expenditure stipulated in the Regulation on Foreign Exchange Administration.

A QI should not transfer funds between these accounts and other domestic accounts except as permitted at law.

Where a QI inwardly remits RMB funds and foreign funds at the same time, they may not transfer funds between two such types of RMB deposit accounts.

The funds in these accounts must not be used for purposes other than domestic securities and futures investment and hedging for risk management.

Currencies of funds for inward and outward remittance by a QI must be the same. QIs may not carry out cross currency arbitrage between RMB and foreign currencies.

No cash can be withdrawn from these accounts for general business or other use.

The operation of these accounts and the interest rate is governed by the relevant regulations of PBOC on management of domestic RMB settlement accounts of foreign institutions.

Remittance Arrangements

A QI can actively select the currency for the remittance of funds to undertake domestic securities and futures investment.

A QI who remit funds for investment should promptly notify its custodian to settle the foreign exchange necessary for the investment and transfer the foreign exchange into its RMB deposit account connected to the foreign currency account in accordance with its investment instructions.

The custodian appointed by the QI is responsible for handling:-

- the outward remittance of relevant investment principal and proceeds;
- the outward remittance of the accumulated income that has been realized by the QI subject to a written undertaking by the QI to pay taxes and fees in full in accordance with relevant laws and regulations on tax in China; and
- the outward remittance of relevant funds in the event of liquidation of the QI or a product liquidation and the closure of the account for the QI subject to the completion of a special audit report on returns on investment issued by a mainland CPA, and any tax filing forms.

Investment Activities

QIs are permitted to conduct domestic derivatives transactions for the purposes of hedging foreign exchange risk. QIs may now engage in trading not only foreign exchange risk hedging products but also other financial derivatives allowed by relevant rules and regulations for hedging purposes.

Foreign exchange derivatives positions held by a QI must be maintained at a level below the RMB assets relevant to the domestic securities investment of the QI (except for RMB deposits in special RMB deposit accounts) to demonstrate that they are purely for hedging purposes.

QIs should engage in foreign exchange derivatives business through custodians or domestic financial institutions ('foreign exchange derivatives business agencies') who have the appropriate licence for and experience of handling foreign exchange derivatives business. Foreign exchange derivatives business agency may handle foreign exchange derivatives business for QIs only for hedging purposes.

Dealing in foreign exchange derivatives by a foreign exchange derivatives business agency for a QI must be in accordance with the existing regulations on foreign exchange derivatives.

Ongoing Obligations and Reporting

In the event of a name change, the QI must instruct its custodian to apply to SAFE for change in registration within 10 working days after obtaining the updated Securities and Futures Business License from the CSRC.

In the event of a change in custodian or other material change, the QI must instruct its main custodian to apply to SAFE for change in registration within 10 working days from the date of the change.

In the event of a change in the main custodian, the QI must instruct a new main custodian to apply to SAFE for a change in registration within 10 working days from the date of the change.

Where the QI closes, undergoes insolvency proceedings, is under receivership or has other reasons that lead to the cancellation of the QI's business license by the CSRC, the QI must promptly report this to the PBOC and the SAFE through its main custodian, and liquidate assets and close all the QI's bank accounts within 30 working days.

The custodian is responsible for AML / CTF and monitoring both incoming and outgoing transactions for suspicious activity. The QI must cooperate with the custodian in performing these obligations and provide the custodian with true and complete data and information.

Custodians are required to report information about QIs transactions in accordance with the following rules:-

- Administrative Measures for the RMB Bank Settlement Accounts (Order of the People's Bank of China No. 5 [2003])
- Administrative Measures for the RMB Cross-border Receipt and Payment Management Information System (Yinfa No. 126 [2017])
- Notice of the General Office of the People's Bank of China on Improving the Interbank Business Data Submission Procedures of the RMB Cross-border Receipt and Payment Management Information System (Yinbanfa No. 118 [2017])
- Detailed Rules for the Implementation of the Declaration of Balance of Payments Statistics through Banks (HuiFa No. 27 [2015])
- Guidelines for the Balance of Payments Statistical Declarations through Banks (Huifa No. 25 [2019])
- Statistical System of External Financial Assets and Liabilities and Transactions (Huifa No. 24 [2018])
- Standards for Collecting Data on Foreign Exchange Transactions by Financial Institutions (Version 1.2) (Huifa No.1 [2019])

Foreign exchange derivatives business agencies must comply with the provisions on the management of synthetic positions in foreign exchange settlement and file statistical reports on foreign exchange settlement and sales in accordance with relevant provisions of the management regulations on foreign exchange.

Enforcement

A QI which breaches the following requirements will face enforcement action by SAFE in accordance with the 'Regulations of the People's Republic of China on Foreign Exchange Administration:-

- Failure to obtain a business registration as required;
- Failure to provide SAFE or the custodian with information and materials relating to domestic securities and futures investment as required, or provide false information or application materials;
- A breach of provisions in the course of conducting domestic securities and futures investment;
- A breach of regulations on foreign exchange administration in the course of conducting foreign exchange derivatives; or
- Other acts in breach of the Regulations on Foreign Exchange Administration.

Any custodian of a QI which breaches the following requirements will face enforcement action either by the PBOC under the Law of the People's Republic of China on the People's Bank of China (for RMB business) or SAFE in accordance with the 'Regulations of the People's Republic of China on Foreign Exchange Administration (for foreign exchange business):-

- Failure to handle the outward remittance of principal and proceeds for the QI in accordance with relevant regulations;
- Failure to open or close relevant accounts for the QI in accordance with regulations, or fail to handle fund transfers and remittances for the QI within the receipt time and payment scope of the account as stipulated by the regulations;
- Failure to handle foreign exchange derivatives for the QI as required;
- Failure to present relevant information, materials and reports to SAFE as required;
- Failure to declare the international BOP statistics or report statistics on foreign exchange settlements and sales as required; or
- Other acts in breach of PBOC rules and the Regulations on Foreign Exchange Administration.

Any foreign exchange derivatives business agency that fails to handle relevant business for QI as required will face enforcement action from SAFE in accordance with the Regulations on Foreign Exchange Administration.

About ComplianceAsia

ComplianceAsia is the longest established compliance consulting firm in Asia Pacific established in 2003 with key offices in Hong Kong, Shanghai, Singapore and Tokyo. We have an unmatched track record of completing complex compliance consulting projects for financial firms in the APAC region.

With over 70 staff, including compliance experts with experience in dealing with the SFC, HKMA, MAS, CSRC, JFSA and Asian exchanges, we provide independent, unbiased advice on Asian financial industry legislation and regulations. Our international client base consists of asset managers, hedge funds, private equity funds, family offices, broker-dealers, insurers, wealth managers and investment banks.

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