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Hong Kong Licensed Corporations Alert

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Hong Kong SFC's Circular to Licensed Corporations on Best Execution

The Hong Kong Securities and Futures Commission (SFC) has issued further guidance on best execution as set out below.

1. Governance and management supervision

Sufficient management oversight should be in place to ensure that trade exceptions and other matters related to best execution are brought to management's attention for timely review.

Policies and procedures regarding best execution should be established to cover different types of financial instruments, including both listed and over-the-counter products, and should be reviewed and updated on a regular basis.

All relevant staff should be provided with periodic training on best execution as well as updates on internal policies and regulatory and technological developments.

2. Best execution factors

Sufficient steps should be taken to obtain the best available terms when executing client orders, considering price, cost, speed of execution, likelihood of execution, speed of settlement, likelihood of settlement, size and nature of the order and any other relevant considerations.

The relative importance of each best execution factor may vary from case to case and best execution of certain types of instructions should be assessed against multiple factors. Where a client has given specific instructions, which cover one part or aspect of an order, this should not be treated as releasing LCs from their best execution obligations for other parts or aspects of the order.

3. Applicability of best execution

When LCs enter agency or back-to-back principal transactions with clients, the obligation to deliver best execution remains with LCs where clients rely on LCs to protect their interests in order execution.

When LCs enter into principal transactions with clients, other than those which are back-to-back in nature, LCs should carry out their own assessments to determine whether clients are relying on LCs to protect their interests, and whether the best execution obligation is owed, before applying any carve outs.

4. Responsibilities of execution staff

Execution staff and their supervisors form an important first line of defense in the trade execution process. Reasonable diligence should be demonstrated in handling client instructions, monitoring execution outcomes and, where applicable, taking steps to obtain multiple quotes. In the absence of multiple quotes, execution staff should obtain sufficient pricing information on a best-effort basis to validate quotes provided to clients.

5. Controls and monitoring

Controls and monitoring carried out by second and third lines of defense, such as compliance and internal audit functions, should be in place to review the quality of execution and to detect and address anomalies. Based on the characteristics of different financial instruments and the complexity and scale of the LCs operations, it should determine appropriate metrics and reference benchmarks to assess execution quality.

6. Arrangements with affiliates, connected parties and third parties

Due diligence should be carried out on affiliates, connected parties or third parties engaged for execution, and a systematic process should be in place to continuously monitor execution outcomes. LCs should act

to ensure that execution arrangements with affiliates, connected parties and third parties do not undermine the delivery of best execution. Regardless of whether orders are executed through affiliates, connected parties or third parties, the obligation to deliver best execution remains with LCs.

Source:

<http://www.sfc.hk/edistributionWeb/gateway/TC/circular/openFile?refNo=18EC7>

Hong Kong SFC Releases Circular to Licensed Corporations and Associated Entities on Recommendations from JFIU regarding the Quality of Suspicious Transaction Reports (STR)

The circular has been issued by the Securities and Futures Commission (SFC) of Hong Kong drawing the attention of Licensed Corporations (LC) and Associated Entities (AE) to a feedback report recently issued by the Joint Financial Intelligence Unit (JFIU) which stated criteria to guide reporting entities in filing better quality suspicious transaction reports to facilitate the JFIU's assessment and follow-up actions.

LCs and AEs are also encouraged to make reference to the reporting methods and advice available on the JFIU website on fulfilling their statutory obligations to file STRs, as well as to browse from time to time for relevant materials in the STR Quarterly Analysis published in the secure area of the JFIU website.

LCs and AEs who have not already registered for access to the secure area of the JFIU website are strongly advised to apply for a login name and password.

Source:

<http://www.sfc.hk/edistributionWeb/gateway/EN/circular/doc?refNo=18EC1>

SFC Concludes Consultation on Asset Management Regulation and Point-of-Sale Transparency and Further Consults on Disclosure Requirements for Discretionary Accounts

The Hong Kong Securities and Futures Commission (SFC) on November 16, 2017 released consultation conclusions on proposals to enhance asset management regulation and point-of-sale transparency. The SFC also launched a further consultation on disclosure requirements applicable to discretionary accounts.

The SFC will implement the enhancements to the Fund Manager Code of Conduct (FMCC) with certain modifications and clarifications, where securities lending and repurchase agreements, custody of fund assets, liquidity risk management, and disclosure of leverage by fund managers are concerned. To address conflicts of interest in the sale of investment products, the SFC will also implement the proposed approach to govern the use of the term "independent" by intermediaries and to enhance disclosure of trailer fees, commissions and other monetary benefits. The revised FMCC will become effective 12 months after it is gazette and the amendments to the Code of Conduct will become effective nine months following gazettal.

It is said that these enhancements ensure regulations are properly benchmarked to evolving international standards and strengthen Hong Kong's position as a major asset management center. Additionally, the approach adopted to address conflicts of interests and incentives is calibrated to Hong Kong's current market conditions. Nonetheless, the merits of pay-for-advice models will be actively taken into account in light of local and international market and regulatory developments.

Source:

<http://www.sfc.hk/edistributionWeb/gateway/EN/news-and-announcements/news/doc?refNo=17PR136>

SFC and HKMA Issued Guidelines Against Cyber Hacking and Related Cyber Risks

In view of changing cyber risks faced by the industry, the Hong Kong Securities and Futures Commission (SFC) and the Hong Kong Monetary Authority (HKMA) recently issued guidelines to reduce and mitigate hacking and other cyber risks, especially associated with internet trading.

Source:

<http://edistributionweb.sfc.hk/t/ViewEmail/j/572B41F2166FCF412540EF23F30FEDED/6EBFA431CD9A0951EBAD456BEB5F1DD6>

<http://edistributionweb.sfc.hk/t/ViewEmail/j/F1204D2A86C971592540EF23F30FEDED/6EBFA431CD9A0951EBAD456BEB5F1DD6>

<http://edistributionweb.sfc.hk/t/ViewEmail/j/339C351AFDDB88FD2540EF23F30FEDED/6EBFA431CD9A0951EBAD456BEB5F1DD6>

SFC Fully Implements Manager-In-Charge Regime

The Securities and Futures Commission (SFC) announced the full implementation of the Manager-In-Charge (MIC) regime following a six-month transition period which ended on October 16, 2017.

Under the regime, MICs of overall management oversight and key business line functions are expected to be responsible officers (ROs). The vast majority of these MICs are already ROs. At present, the SFC is handling RO applications from about 500 MICs of these two core functions.

On October 16, 2017, the Hong Kong Monetary Authority (HKMA) issued a circular requiring registered institutions to submit their up-to-date management structure information and organizational charts via email to both the HKMA and the SFC. To allow sufficient time for preparatory work, RIs are expected to report the required information starting from 16 March 2018 and not later than 16 April 2018.

Source:
<http://www.sfc.hk/edistributionWeb/gateway/EN/news-and-announcements/news/doc?refNo=17PR131>

FINE-TUNING OF HONG KONG REQUIREMENTS REGARDING SCHEME OF ARRANGEMENTS AND TAKEOVERS

Disclosure of CCASS Participants' Votings For and Against Schemes of Arrangement in Results Announcements

As stated in the September 2017 issue of the SFC's Takeovers Bulletin, in order to facilitate greater transparency and in light of the number of shares typically held within the Central Clearing and Settlement System (CCASS) established and operated by Hong Kong Securities Clearing Company Limited, the announcement of the results of any court or shareholder meeting to approve a scheme of arrangement should, in addition to the details required under Rule 2.9, disclose the number of CCASS participants (as defined under the General Rules of CCASS) instructing HKSCC Nominees Limited to vote for and against the resolution and the number of shares held by such CCASS participants.

Revision to Practice Note 12 issued by the Takeovers Executive

The Executive's consent is not required where an offeror wishes to approach a very restricted number of

sophisticated investors who have a controlling shareholding to obtain an irrevocable commitment. In such cases, it is not necessary for the parties to seek the Executive's consent. This is consistent with the principle under Rule 1.4 of the Takeovers Code which provides that the maintenance of confidentiality before the announcement of an offer is crucial. Practice Note 12 has been amended to clarify this.

Source:
http://www.sfc.hk/web/EN/files/CF/pdf/Takeovers%20Bulletin/Takeovers%20Bulletin%2020170928_E.pdf

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