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# REGULATORY NEWSLETTER

2024 Vol.7



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Happy July! We hope this summer month is treating you well so far. The warm, sunny days and vibrant greenery of the season are truly a delight. We trust you've been able to take some time to enjoy the pleasures of summertime - whether that's relaxing by the pool, going for scenic hikes, or simply savoring the longer daylight hours. In this joyful month, ComplianceDirect is thrilled to share our regulatory updates from the SFC with you!

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## REGULATORY UPDATES

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### **Circular to Management Companies of SFC-authorized Investment Products Listed on The Stock Exchange of Hong Kong Limited concerning Severe Weather Trading of Hong Kong Securities and Derivatives Markets**

**16 Jun 2024**

This circular aims to remind management companies of SFC-authorized investment products listed on The Stock Exchange of Hong Kong Limited (SEHK) (management companies) to consider the potential implications of the implementation of trading of Hong Kong securities and derivatives under severe weather conditions (SWT) on their listed SFC-authorized investment products and make appropriate arrangements.

Hong Kong Exchanges and Clearing Limited (HKEX) published the consultation conclusions on its proposed operational model and related arrangements for SWT on 18 June 2024. The SWT arrangements will be implemented on 23 September 2024.

On a severe weather trading day (SWT Day), trading, clearing and settlement services and operations will continue in both the securities and derivatives markets in Hong Kong and HKEX will maintain

normal operations to the furthest extent possible.

In view of the SWT arrangements, management companies are reminded to:

(a) carefully assess the potential implications of SWT on listed SFC-authorized investment products managed by them (including whether and to what extent any primary market dealing may be affected). Taking into account the operations of, and services provided by, relevant service providers and counterparties on an SWT Day, management companies should take appropriate measures to ensure normal operations as far as possible;

(b) closely monitor the operations and activities (including secondary market trading and liquidity) of these products during an SWT Day;

(c) assess whether any amendments to the offering documents and/or constitutive documents of these products are required to reflect the operational changes arising from SWT or otherwise; and

(d) keep investors informed of any material information concerning these products as a result of SWT and make appropriate arrangements to ensure proper investor communication on an SWT Day, including publication of relevant announcements on HKEX's website.

## **General**

Management companies are reminded to promptly notify the SFC of incidents which materially affect investors' interests on an SWT Day.

If in doubt concerning the operations under SWT, management companies should seek professional advice as soon as possible.

To seek clarification of any aspects of this circular, please contact the case team member of the Investment Products Division.

[View Circular](#)

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## **Circular to intermediaries Severe weather trading**

**18 Jun 2024**

In view of the implementation of arrangements for maintaining normal operations of the Hong Kong securities and derivatives markets during severe weather conditions (severe weather trading or SWT) starting on 23 September 2024, this circular sets out the standards of conduct and internal controls the Securities and Futures Commission (SFC) expects of intermediaries who provide dealing, clearing and settlement services covering the Hong Kong securities and derivatives markets on an SWT Day<sup>3</sup>.

Intermediaries should refer to the standards expected of them for implementing SWT as set out in the Annex, and make appropriate arrangements to ensure normal operations during SWT. In

particular, intermediaries are expected to:

- (a) make adequate preparations and implement appropriate measures for conducting business activities on an SWT Day, including adopting remote operations and electronic fund transfers;
- (b) communicate with clients clearly and in advance about their SWT policies and arrangements as well as any changes to client agreements as a result of SWT, and encourage clients to transfer funds electronically;
- (c) develop robust arrangements allowing timely and reliable access to funding on an SWT Day, exercise prudent risk management to ensure financial resilience, and maintain effective controls to protect client assets; and
- (d) promptly notify the SFC of incidents which may materially affect clients' interests or their ability to maintain business operations on an SWT Day.

The SFC acknowledges that intermediaries of varying business size and complexity may face operational challenges during the initial implementation of SWT. To ensure compliance with the aforementioned expected standards, intermediaries should establish their own procedures that are commensurate with their business size and complexity. Senior management of intermediaries should put in place proper governance and oversight mechanisms to ensure these procedures are properly designed and implemented.

Should you have any enquiries regarding the content of this circular, please contact Ms Kiki Wong of the SFC at 2231 1569 or your case officers.

[View Circular](#)

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## **Circular to issuers of SFC-authorized investment-linked assurance schemes - Streamlined approach for vetting and approving revised marketing materials**

**28 Jun 2024**

The Securities and Futures Commission (SFC) informs issuers of SFC-authorized investment-linked assurance schemes (ILAS) of enhancements to its streamlined approach for vetting and approving revised marketing materials of SFC-authorized ILAS under the Code on Investment-Linked Assurance Schemes (ILAS Code) with immediate effect.

The SFC regularly reviews and seeks to improve its processes wherever practicable without compromising investor protection. To promote better efficiency and adopt a more risk-based approach, the SFC has enhanced the existing streamlined measures to cover all immaterial changes to those ILAS marketing materials already authorized by the SFC (Authorized Marketing Materials).

### **Enhanced streamlined approach**

With immediate effect, further authorisation from the SFC is no longer required for immaterial changes to the Authorised Marketing Materials, provided that all of the following overriding principles and requirements (Overriding Requirements) are satisfied:

- (a) the changes do not amount to any material changes to the Authorised Marketing Materials;
- (b) the contents and format of the revised marketing materials remain fundamentally the same as the version previously authorised by the SFC;
- (c) the revised marketing materials present a balanced picture of the ILAS with adequate risk disclosures; and
- (d) the updated contents are consistent with the disclosure in the ILAS offering documents or contents of notices to policyholders previously authorised by or filed with the SFC.

Material changes, ie, changes to the Authorised Marketing Materials which do not satisfy the Overriding Requirements, will still be subject to the SFC's prior authorisation before their publication.

The Frequently Asked Questions relating to Investment-Linked Assurance Schemes (FAQs) have been updated<sup>[1]</sup> to provide more practical guidance to the industry, including examples of immaterial changes to the Authorised Marketing Materials as well as notable matters for ILAS issuers when revising the Authorised Marketing Materials.

### **Obligations of ILAS issuers**

The aforementioned streamlined measures are expected to enhance the flexibility and efficiency of ILAS issuers when revising the Authorised Marketing Materials. Issuers are reminded of their duty to exercise due care and professional judgement to decide whether the revised marketing materials would meet the requirements set out herein and in the updated FAQs.

ILAS issuers must ensure their marketing materials comply with the ILAS Code, Advertising Guidelines Applicable to Collective Investment Schemes Authorised under the Product Codes and other applicable principles and requirements in the SFC Handbook for Unit Trusts and Mutual Funds, Investment-Linked Assurance Schemes and Unlisted Structured Investment Products, as well as other applicable guidelines published by the SFC from time to time.

### **Effective Date**

This circular is effective as of 28 June 2024. It is also applicable to outstanding applications of immaterial changes to Authorised Marketing Material made before the effective date but authorisation has not been granted. For the avoidance of doubt, the enhanced streamlined approach will not apply to new marketing materials which have not been authorised by the SFC.

Should you wish to clarify any aspects of this circular, please contact the relevant case officers in charge.

[View Circular](#)

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## ENFORCEMENT NEWS

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### **SFC bans Wu Chao for three years and seven months**

26 Jun 2024

The Securities and Futures Commission (SFC) has prohibited Mr Wu Chao, a former responsible officer, manager-in-charge (MIC) and chief operations officer of DA International Financial Service Limited (DA), from re-entering the industry for three years and seven months from 26 June 2024 to 25 January 2028.

The disciplinary action follows an SFC investigation, which found that between February and April in 2022, Wu concealed from DA his beneficial interest in and that he had direct control or influence over a securities margin account held by a third party at DA. He also failed to obtain DA's approval for the securities transactions conducted by him in the account.

By doing so, Wu's conduct circumvented DA's employee dealing policy and prevented it from monitoring his personal trading activities. In all, the unauthorised transactions conducted in the account at the material time totalled \$7.3 million.

Wu also abused the right granted to him as a member of DA's senior management. He made 33 unauthorised adjustments to the margin loan limit of the account and the margin financing ratios of certain callable bull/bear contracts (CBBCs) traded in the account. As a result, he was able to trade more CBBCs in the account and conceal the unauthorised adjustments from DA's detection.

The SFC considers that Wu's conduct is dishonest and it calls into question his fitness and properness to be a licensed person.

In deciding the sanction against Wu, the SFC has taken into account all relevant circumstances, including:

- his misconduct lasted for over a month involving 190 transactions;
- his admission in relation to his concealment of the trading activities and the unauthorised adjustments that he made in the account;
- a deterrent message needs to be sent to the market that the SFC does not tolerate deliberate circumvention of internal control policies by licensed individuals; and
- his otherwise clean disciplinary record.

[View News](#)

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**SFC secures conviction for provision of paid investment advice on Telegram chat group without licence**

20 Jun 2024

The Eastern Magistrates' Court today convicted Mr Wong Ming Chung for providing investment advice on a subscription-based chat group on Telegram he hosted without a licence in a prosecution brought by the Securities and Futures Commission (SFC).

Wong pleaded guilty to a charge of carrying on a business of advising on securities when he was not licensed to do so and was fined \$10,000. He was also ordered to pay the SFC's investigation costs.

Although Wong is an SFC-licensed representative, he can only act for the firm to which he is accredited. In this instance, Wong operated the Telegram chat group in his personal capacity.

The Court found that between 2 January 2018 and 21 May 2019, Wong hosted a chat group on Telegram named "FRANKY - 即市直播谷" which was opened to members of the public on a subscription by payment basis. On every trading day, Wong circulated commentaries and responded to subscribers' questions in the Telegram group regarding the performance of the Hang Seng Index and various Hong Kong-listed securities.

The SFC reminds investors to check the SFC's Public Register of Licensed Persons and Registered Institutions on the SFC website ([www.sfc.hk](http://www.sfc.hk)) before investing to ensure that firms and people who provide investment advice on securities are properly licensed.

[View News](#)

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## **SFC suspends Shum Wai Nap for seven months for failures in managing a private fund**

20 Jun 2024

The Securities and Futures Commission (SFC) has suspended Mr Shum Wai Nap, former licensed representative of PICC Asset Management (Hong Kong) Company Limited (PICC), for seven months from 20 June 2024 to 19 January 2025 for fund management failures.

The SFC's investigation found that while Shum was the investment manager on behalf of PICC for a Cayman-incorporated fund between May 2018 and April 2020, he failed to properly manage the fund to ensure that its investments were in line with its stated investment strategy, objectives and investment restrictions. He also failed to properly manage the risks of the fund in accordance with PICC's policies.

In particular, the SFC found that:

- Contrary to the fund's investment objective and strategy, there were only one to three stocks at any given point in time in the fund's portfolio during a 21-month period from its inception in May 2018 to January 2020 (Note 3). In addition, the fund held highly concentrated positions in two Hong Kong-listed stocks, one of which was not on the permitted securities list approved by PICC's senior management. But Shum did not take proactive steps to mitigate the risks

associated with the fund's holding of an unsuitable stock;

- Shum failed to properly manage the liquidity and concentration risks of the fund in accordance with PICC's policies, and he did not comply with PICC's stop loss procedure.

In deciding the disciplinary sanction against Shum, the SFC has taken into account all relevant circumstances, including:

- the gravity of his failures to ensure the fund's adherence to its investment mandate and to properly manage the risks of the fund could undermine the confidence of the investing public and market integrity;
- a strong deterrent message to the market that such failures are not acceptable; and
- his otherwise clean disciplinary record.

[View News](#)

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### **Three sophisticated ramp-and-dump cases transferred to District Court**

**19 Jun 2024**

The Eastern Magistrates' Court today granted the applications made on behalf of the Secretary for Justice to transfer three large scale and sophisticated ramp-and-dump cases to the District Court for trial following joint investigations by the Securities and Futures Commission (SFC) and the Police.

The first hearing in the District Court will be held on 9 July 2024.

A total of 18 defendants were charged in the three cases with offences under the Securities and Futures Ordinance and the offences of conspiracy to defraud and money laundering involving the shares of Eggriculture Foods Limited, Fullwealth Construction Holdings Company Limited, and KNT Holdings Limited.

The defendants had allegedly organised and executed ramp-and-dump schemes in the shares of the three Hong Kong-listed companies by manipulating the trading of a large volume of those shares through numerous nominee accounts and inducing investors to buy the shares via different social media platforms.

The Court granted bail to each defendant on the following conditions: (i) cash and sureties ranging from \$50,000 to \$1 million; (ii) not to leave Hong Kong; (iii) surrender all travel documents; (iv) report to police station on a regular basis; and (v) reside at the reported residential address and inform the Police in advance of any change of residential address.

[View News](#)

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## Market manipulation case adjourned for sentencing

17 Jun 2024

The Court of First Instance today adjourned the sentencing of three individuals convicted of conspiracy to carry out false trading in the shares of Ching Lee Holdings Limited to 22 July 2024 after hearing submissions by all parties (Note 1).

The three defendants, Ms Sit Yi Ki, Ms Lam Wing Ki and Mr Tam Cheuk Hang, continued to be remanded in custody by the Correctional Services Department pending sentencing.

[View News](#)

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## SFC bans Ha Po Kwan for 12 months

17 Jun 2024

The Securities and Futures Commission (SFC) has banned Mr Ha Po Kwan, a former licensed representative of Primas Asset Management Limited (PAML), from re-entering the industry for 12 months from 14 June 2024 to 13 June 2025 (Note 1).

The disciplinary action follows an SFC investigation which found that in June 2021, Ha, a director of PAML at the material time, created two false documents by altering information on the strike price or maturity date in the original product flashes of two accumulator contracts. He then sent the two false product flashes to a client of PAML to mislead the client about the maturity date or strike price of the accumulator contracts he had bought for the client's account that he managed with full discretionary authority and served as the relationship manager (Notes 2 and 3).

Ha also used his personal email account for business communication with the same client. By doing so, Ha's conduct circumvented PAML's internal policies and prevented it from properly monitoring his operation of the client's account.

The SFC considers that Ha is guilty of misconduct and is not fit and proper to be a licensed person.

In deciding the disciplinary sanction against Ha, the SFC has taken into account all relevant circumstances, including:

- his conduct in creating and sending the false product flashes to the client was deliberate and dishonest;
- he did not obtain any personal monetary gain from his misconduct;
- his misconduct did not cause any financial loss for the client;
- his admission of his misconduct and co-operation in the SFC's investigation; and
- his otherwise clean disciplinary record.



[View News](#)

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## **Insider dealing case against Segantii Capital Management and its chief investment officer transferred to District Court**

**12 Jun 2024**

The Eastern Magistrates' Court today granted an application by the Department of Justice to transfer an insider dealing case brought by the Securities and Futures Commission (SFC) to the District Court for criminal prosecution.

This came after the SFC commenced criminal proceedings against Segantii Capital Management Limited (Segantii), its director and chief investment officer Mr Simon Sadler, and former trader Mr Daniel La Rocca, on 2 May 2024 for the offence of insider dealing in the shares of a company listed on the Stock Exchange of Hong Kong Limited prior to a block trade in June 2017.

The first hearing in the District Court will be held on 2 July 2024.

Sadler and La Rocca were released on bail pending the next hearing on the following conditions: (i) cash bail of \$1,000,000 and \$500,000 respectively; (ii) they shall inform the SFC 24 hours before leaving Hong Kong, and to provide the SFC with full itinerary with contact details; (iii) they shall reside at the home address provided to the SFC and inform the SFC 48 hours in advance of any change of address and/or contact details whilst abroad; and (iv) they shall not contact either directly or indirectly any prosecution witnesses.

No further comment will be made as legal proceedings are ongoing.

[View News](#)

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## **SFC cooperates with BCSC in obtaining preservation orders against Leung Anita Fung Yee Maria in British Columbia, Canada**

**5 Jun 2024**

The Securities and Futures Commission (SFC) has obtained preservation orders against Ms Leung Anita Fung Yee Maria, former chief executive officer and executive director of SMI Culture & Travel Group Holdings Limited (SMI Culture & Travel Group), with the assistance of the British Columbia Securities Commission (BCSC) of Canada. The preservation orders restrain Leung and certain banks where she holds accounts from disposing of and transmitting assets and properties she holds in British Columbia, Canada.

On 17 May 2024, the BCSC issued the preservation orders at the request of the SFC made pursuant to the International Organization of Securities Commissions Enhanced Multilateral Memorandum of

Understanding Concerning Consultation and Cooperation and the Exchange of Information (IOSCO EMMoU). Both the SFC and the BCSC are signatories to the IOSCO EMMoU. The preservation orders against Leung will remain in effect until the BCSC issues a further order to vary or revoke them.

This came after the SFC obtained an interim injunction order at the Court of First Instance of Hong Kong on 6 May 2024 against Leung. The injunction order prohibits her from, among other things, disposing of or diminishing the value of any of her assets, whether within or outside Hong Kong, up to the value of \$235,363,373. The injunction order will remain in place until the final determination of the proceedings against Leung in Hong Kong.

The SFC's Executive Director of Enforcement, Mr Christopher Wilson, said: "The IOSCO multilateral enforcement cooperation framework provides a potent mechanism for regulators to cooperate to prevent evasion of legal liability. In this case, the preservation orders amply demonstrate the importance of close cooperation among regulators to safeguarding the integrity of markets, protecting investors and combating misconduct and fraud in today's interconnected global financial markets."

The SFC would like to thank the BCSC for its assistance in the investigation of this case.

[View News](#)



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