REGULATORY NEWSLETTER

2020 Vol. 5

REGULATORY UPDATES

Circular to licensed corporations: Management of cybersecurity risks associated with remote office arrangements

29 Apr 2020

The SFC reminds Licensed Corporations ("LCs") to assess their operational capabilities and implement appropriate measures to manage the cybersecurity risks associated with these arrangements.

LCs should implement and maintain measures which are deemed appropriate to the situation and commensurate with the size and complexity of their operations.

As vulnerabilities of Virtual Private Network software in the market could be exploited by a cyber-criminal to infiltrate the LC's network, access client data and instruct unauthorized fund transfers.

LCs are reminded to make appropriate control techniques and procedures to mitigate the cybersecurity risks associated with remote access.

When LCs use videoconferencing platform, they should mitigate the risk of unauthorized access and leakage of critical or sensitive data, appropriate control techniques. The SFC provides several suggestions such as use a random meeting ID, rather than a personal meeting ID and enable the password protection feature on the videoconferencing platform.

View Circular

Circular to commodity futures brokers: Managing financial and operational risks under extreme market conditions

24 Apr 2020

The SFC reminds all commodity futures brokers to vigilantly control their risk exposures and maintain sufficient resources to deal with the challenges posed by extreme market conditions.

The SFC recently found that two commodity futures brokers committed significant, though short-term, breaches of the liquid capital requirements under the Securities and Futures (Financial Resources) Rules due to failures to collect large amounts in margin calls amidst the volatility in overseas crude oil futures markets. Although the breaches were resolved, they illustrate the importance of taking more prudent risk management measures to protect the firm's operations and ensure compliance with regulatory requirements in extreme circumstances.

View Circular

Circular to licensed corporations Margin requirements for non-centrally cleared OTC derivative transactions

7 May 2020

This circular informs Licensed Corporations ("LCs") that the Securities and Futures Commission will defer the introduction of initial margin ("IM") requirements for non-centrally cleared over-the-counter ("OTC") derivative transactions by one year to provide operational relief amidst the COVID-19 situation.

Subject to specified thresholds, the IM requirements for LCs which are contracting parties to non-centrally cleared OTC derivative transactions entered into with a covered entity were originally to be phased in starting from 1 September 2020.

In light of the significant challenges posed by the COVID-19 outbreak, the Basel Committee on Banking Supervision and the International Organization of Securities Commissions on 3 April 2020 announced a one-year extension of the deadlines for completing the final implementation phases of the IM requirements for non-centrally cleared OTC derivatives. Covered entities with an Average Aggregate Notional Amount ("AANA") of non-centrally cleared OTC derivatives greater than €50 billion will now be subject to the IM requirements from 1 September 2021. Covered entities with an AANA of non-centrally cleared OTC derivatives greater than €8 billion will be subject to the IM requirements from 1 September 2022.

View Circular

ENFORCEMENT NEWS

The SFC reprimands and fines BOCOM International Securities $19.6 million for internal control failures

20 Apr 2020

The Securities and Futures Commission ("the SFC") has reprimanded and fined BOCOM International Securities Limited ("the BISL") a total of $19.6 million for a range of regulatory breaches, including failures concerning the handling of third-party fund deposits and the maintenance and implementation of a margin lending and margin call policy.

The BISL also failed to put in place adequate and effective controls to identify deposits made into client accounts by third parties, hence failed to ensure compliance with the Guideline on Anti-Money Laundering and Counter-Terrorist Financing and various provisions in the Internal Control Guidelines and the Code of Conduct.

View News

The SFC reprimands and fines Mega International Commercial Bank Co., Ltd. $7 million for regulatory breaches over CIS sale

7 May 2020

The Securities and Futures Commission ("the SFC") has reprimanded and fined the Mega International Commercial Bank Co., Ltd. ("the MICBC") HK$7 million over MICBC's internal system and control failures in relation to the sale of Collective Investment Schemes ("CISs").

Following a referral from the Hong Kong Monetary Authority, the SFC conducted an investigation which found that, in the course of selling CISs to clients between August 2014 and July 2015, the MICBC had failed to implement adequate and effective systems and controls to:

- Properly assess its clients' investment objective, risk tolerance level and knowledge of derivatives;
- Ensure the 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

View News

Unlicensed fund manager sentenced to community service

29 Apr 2020

The Eastern Magistrates' Court today sentenced Mr Yau Ka Fai to 240 hours of community service following his conviction for holding himself out as carrying on a business in asset management without a licence from the Securities and Futures Commission ("the SFC").

Between September 2011 and November 2015, Yau, whilst unlicensed by the SFC, represented to investors that he was the manager of a fund known as Tai Chi Hedge Fund and received commission for his service.

View News

The SFC reprimands and fines HSBC Investment Funds (Hong Kong) Limited and HSBC Global Asset Management (Hong Kong) Limited HK$3.5 million for regulatory breaches over funds' cash management

7 Apr 2020

The Securities and Futures Commission ("SFC") has reprimanded and fined HSBC Investment Funds (Hong Kong) Limited ("the HIFL") and HSBC Global Asset Management (Hong Kong) Limited ("the HGAML") HK$3.5 million for breaches of regulatory requirements in relation to cash management for SFC-authorized funds.

The SFC's investigation found that some of the 53 funds managed and/or advised by the HIFL and the HGAML between 2010 and 2016 maintained cash deposits with connected entities, namely, The Hongkong and Shanghai Banking Corporation Limited and/or its affiliates. The funds' cash deposits were placed in interest-bearing accounts of the connected entities but mostly did not receive any interest.

An independent review revealed that prior to January 2015, the HIFL and the HGAML had no procedures in place to ensure that the funds' cash deposited with their connected entities received interest at a rate not lower than the prevailing commercial rate. The review also found that whilst HIFL and HGAML had an established process to monitor the funds' cash balances on a daily basis, such process was not documented in any policies and procedures and was performed for only 10 of the 53 funds.

View News

ComplianceDirect Consulting Limited

Address: Unit A, 21/F, Wing Hang Insurance Building, 11 Wing Kut Street, Central, Hong Kong

Phone: 2606 1800

Website: www.compliancedirecthk.com