
REGULATORY NEWSLETTER

2024 Vol.8



Welcome back to our monthly newsletter highlighting the best coverage of SFC's latest regulatory updates and enforcement news. ComplianceDirect, as being your Compliance Consultant, will always be at your service, devotedly, diligently and duly providing our professional consultation and be your strongest support among any updates and changes of SFC regulations.

REGULATORY UPDATES

Circular to licensed corporations -

Financial resources management and compliance with the Securities and Futures (Financial Resources) Rules

3 July 2024

This circular elaborates on the SFC expectations regarding the governance and internal control standards of LCs for monitoring the adequacy of financial resources and compliance with the Securities and Futures (Financial Resources) Rules (FRR).

During its monitoring of LCs' financial resources adequacy, the SFC has observed various undesirable practices and internal control deficiencies that led to abrupt declines in excess liquid capital (ELC), or breaches of the liquid capital requirement under the FRR. In some cases, deficits in the required liquid capital (RLC deficits) remained outstanding for months. Typical deficiencies include:

- (a) inadequate or ineffective controls over liquid capital monitoring;
- (b) failure to make proper accruals or accounting provisions; and
- (c) incorrect treatments of certain assets or liabilities for liquid capital computation.

These deficiencies are mainly attributable to:

(a) ineffective management oversight; and

(b) failure to employ competent and qualified persons for calculating and monitoring liquid capital, as well as preparing and reviewing financial returns (FRR returns).

Some LCs were also late in reporting their RLC deficits to the SFC, thus contravening the relevant notification requirements under the Securities and Futures Ordinance (SFO), the FRR and the Code of Conduct. While these problems were predominantly found in LCs with smaller operations and those with weaker governance, all LCs should comply with the FRR and employ adequate resources to properly carry out their business activities.

Expected standards

Pursuant to section 6(1) of the FRR, an LC must at all times maintain liquid capital which is not less than its required liquid capital. Under sections 146(1) and (2) of the SFO, an LC shall notify the SFC in writing and immediately cease carrying on any regulated activity for which it is licensed if it becomes aware that it is unable to maintain, or to ascertain whether it maintains, the financial resources required of it, unless otherwise permitted by the SFC.

Under General Principle 3 of the Code of Conduct, an LC is required to have and effectively employ the resources and procedures which are needed for the proper performance of its business activities. This includes the need for sufficient liquid capital that enables the LC to operate in the normal course of business as a going concern.

Inadequate internal controls over FRR compliance may lead to an abrupt cessation or interruption of an LC's regulated activities and impact its clients' interests. In addition, poor controls may expose an LC to the risk of theft, fraud, and other dishonest acts, professional misconduct or omissions.

Contravention of the FRR has a direct bearing on an LC's ongoing fitness and properness to remain licensed with the SFC. If an FRR breach is attributable to inadequate governance or internal control standards, the fitness and properness of the LC's senior management will also be called into question. The SFC expects an LC and its senior management to establish and enforce effective policies, procedures and internal controls to ensure that the LC is able to ascertain the sufficiency of its liquid capital, fully comply with all relevant FRR requirements, and maintain sufficient resources to operate its business as a going concern. For this purpose, LCs are expected to meet the standards set out in this circular, which represent the minimum standards. Each LC should implement internal controls commensurate with its size, structure, business operations and needs.

Incident report and remedial measures

Under section 54(1) of the FRR, where an LC notifies the SFC pursuant to section 146(1) of the SFO that it has failed to maintain the minimum required liquid capital, it must include in its notice full details of the matter, the reason therefor and any steps to redress the inability. Pursuant to section 54(2) of the FRR, the SFC may request additional information and document. For this purpose, an LC that incurs an RLC deficit is expected to complete and submit an incident report as set out in [Appendix B](#). The incident report should be submitted to the SFC within three weeks from the date of first identifying the RLC deficit. An LC that ceases to carry on regulated activities should notify its clients of the same as

soon as practicable.

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Circular on launch of e-IP application/submission system on WINGS

8 July 2024

The SFC will launch a new online application/submission system, e-IP, on its WINGS portal on 29 July 2024 to streamline and enhance the efficiency of processing new product applications and post-authorisation/registration submissions to the Investment Products Division (IPD).

Developed on the existing WINGS portal, e-IP will serve as a one-stop online portal that digitalises all processes related to investment products administered by the IPD. e-IP utilises certain existing functions on WINGS such as WINGS Mail, submission tracking and fee payment. In addition, it introduces new workflows and capabilities that allow applicants or advisory firms to submit new product applications, make post-authorisation/registration submissions, maintain information profiles of investment products, file product documents and exchange information directly with the SFC.

Upon the launch of e-IP, its users are advised to activate their e-IP administrator accounts and review their account administration arrangements, such as account delegation and permissions.

To allow time for market participants to become familiar with e-IP and make transition, there will be a three-month period of parallel run from the launch of e-IP up to 29 October 2024 at the initial stage, during which the SFC continues to accept applications and submissions via existing channels.

The SFC will hold a briefing session for the industry before the launch of e-IP. [User guides](#) and [online demo clips](#) are also available on the SFC website to help the industry better understand the submission procedures, functions and features of e-IP.

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Circular to Licensed Corporations, SFC-licensed Virtual Asset Service Providers and Associated Entities - Anti-Money Laundering / Counter-Financing of Terrorism

(1) FATF Statement on High-Risk Jurisdictions subject to a Call for Action

(2) FATF Statement on Jurisdictions under Increased Monitoring

(3) Outcomes from the FATF Plenary, 26-28 June 2024

11 July 2024

Further to the circular issued on 8 March 2024, the FATF issued a statement on High-Risk Jurisdictions subject to a Call for Action on 28 June 2024, which can be found at <https://www.fatf-gafi.org/en/publications/High-risk-and-other-monitored-jurisdictions/Call-for-action-june-2024.html>. For all countries identified as high-risk, the FATF calls on all members and urges all jurisdictions to apply enhanced due diligence, and, in the most serious cases, apply countermeasures

to protect the international financial system from the money laundering, terrorist financing, and proliferation financing (ML/TF/PF) risks emanating from those countries.

(i) Jurisdictions subject to a FATF call for applying countermeasures

Democratic People's Republic of Korea (DPRK)

The FATF reiterates its concerns over the DPRK's continued failure to address the significant deficiencies in its anti-money laundering and counter-financing of terrorism (AML/CFT) regime and the serious threats posed by the DPRK's illicit activities related to the proliferation of weapons of mass destruction and its financing.

While the FATF has continually reiterated since 2011 the need for all countries to robustly implement the targeted financial sanctions in accordance with United Nations Security Council Resolutions (UNSCR) and apply countermeasures to protect their financial systems from the ML/TF/PF threat emanating from DPRK, DPRK has increased connectivity with the international financial system which raises proliferation financing risks. The FATF therefore calls for greater vigilance and renewed implementation and enforcement of countermeasures against the DPRK.

Iran

Given Iran's failure to enact the Palermo and Terrorist Financing Conventions in line with the FATF Standards, the FATF fully lifts the suspension of countermeasures and call on its members and urges all jurisdictions to apply effective countermeasures.

The FATF will remain concerned with the terrorist financing risk emanating from Iran and the threat this poses to the international financial system until Iran implements the measures required to address the deficiencies identified with respect to countering terrorism-financing in the Action Plan.

(ii) Jurisdiction subject to a FATF call for applying enhanced due diligence measures proportionate to the risks arising from the jurisdiction

Myanmar

Given the continued lack of progress and the majority of the action items in relation to Myanmar's strategic deficiencies still not addressed after a year beyond the action plan deadline, the FATF has called on its members and other jurisdictions to apply enhanced due diligence measures⁵ proportionate to the risk arising from Myanmar since October 2022. If no further progress is made by October 2024, the FATF will consider countermeasures.

(2) FATF Statement on Jurisdictions under Increased Monitoring

The FATF has issued an updated statement on Jurisdictions under Increased Monitoring with the addition of Monaco and Venezuela, and removal of Jamaica and Türkiye from the list. The statement can be found at <https://www.fatf-gafi.org/en/publications/High-risk-and-other-monitored-jurisdictions/increased-monitoring-june-2024.html>.

The FATF will closely monitor and continue to assess the progress made by these jurisdictions in addressing the identified strategic deficiencies in their AML/CFT regimes and encourages its members and all jurisdictions to take into account the information presented in the statement in their risk

analysis. Licensed corporations, SFC-licensed virtual asset service providers and associated entities are reminded to browse the website of the FATF for the relevant information, including any updated statements issued by the FATF from time to time.

(3) Outcomes from the FATF Plenary, 26-28 June 2024

The FATF also published various outcomes of its recent Plenary which may be of interest to licensed corporations, SFC-licensed virtual asset service providers and associated entities. They include:

(a) the agreement on the publication of the report on the fifth annual update on jurisdictions' progress on implementing the FATF Standards on virtual assets and virtual asset service providers.

The FATF noted that while some jurisdictions have made progress in introducing regulations and registering or licensing virtual asset service providers since the last update in June 2023, global implementation is still lagging. The FATF calls on all jurisdictions to act rapidly and fully implement the FATF's requirements on virtual assets and virtual asset service providers. The report⁷ was published on 9 July 2024; and

(b) the agreement on having further dialogue with relevant bodies and experts in both the public and private sectors before finalising the proposed amendments to Recommendation 16 given the complexity of the requirements and potential impact.

Further information on the FATF Plenary's outcomes can be found at <https://www.fatf-gafi.org/content/fatf-gafi/en/publications/Fatfgeneral/outcomes-fatf-plenary-june-2024.html>.

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ENFORCEMENT NEWS

First District Court hearing on insider dealing case against Segantii Capital Management and its chief investment officer

2 July 2024

The District Court today held the first hearing on the insider dealing prosecution against Segantii Capital Management Limited, its director and chief investment officer Mr Simon Sadler, and former trader Mr Daniel La Rocca after the case was being transferred from the Magistrates' Court.

The proceedings were commenced by the SFC. The three defendants in the case are charged with the criminal offence of insider dealing in respect of the shares of a listed company prior to entering into a block trade in June 2017 in the shares of that listed company.

No plea was taken from the defendants and the case was adjourned to 15 October 2024 for mention.

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.

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Hedge fund manager ordered to disgorge \$5.6 million illicit profit from false trading and disqualified for four years

3 July 2024

The Market Misconduct Tribunal (MMT) has ordered Mr Jonathan Dominic Iu Wai Ching, a former responsible officer of Tarascon Capital Management (Hong Kong) Limited (Tarascon), to disgorge illicit profit of over \$5.6 million from false trading and disqualified him for four years following legal proceedings brought by the SFC.

On 22 trading days between August and September 2014, Iu placed contemporaneous orders in the shares of Sinopharm Tech Holdings Limited and Quantum Thinking Limited through the brokerage accounts of the hedge fund managed by Tarascon and of his mother, leading to opposing orders to be executed against each other. These matched trades, which had the effect of creating a false or misleading appearance of active trading, or with respect to the price for dealings, in the listed shares, resulted in gains of \$5.6 million in his mother's brokerage account at the expense of the hedge fund.

At the material time, Iu, who was responsible for managing and making investment decision for the hedge fund, was also a director, the chief investment officer, and a substantial shareholder of Tarascon.

The MMT made the following orders against Iu:

- a disqualification order prohibiting him from being a director or involved in the management of any listed or unlisted corporation in Hong Kong for four years, effective from 28 June 2024;
- he is banned from dealing in securities, futures contracts, leveraged foreign exchange contracts or collective investment schemes in Hong Kong for four years, effective from 28 June 2024;
- he is not to engage in any conduct which constitutes market misconduct;
- he is to pay to the Government the sum of \$5,617,540 being the amount of profit gained by Iu as a result of his market misconduct; and
- payment of the SFC's investigation and legal costs, as well as the costs of the MMT proceedings.

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Court convicts and fines Tse Tsun Wai for unlicensed activity

3 July 2024

The Eastern Magistrates' Court has convicted Mr Tse Tsun Wai of holding himself out as performing a regulated function in relation to dealing in securities without a licence from the SFC.

Tse pleaded guilty to the offence and was fined \$4,800 and ordered to pay a sum of \$50,000 as compensation to a retail investor who was a victim of the purported investment scheme. This is the first time the Court has made a compensation order in an SFO's section 114(3) case.

The Court found that between April 2016 and June 2017, Tse enticed the retail investor to invest in so-called "US-listed" shares issued by First Asia Holdings Limited (FAH), to finance FAH and/or First Asia Capital Limited (FAC) in their preparation for the purported secondary listing of FAH shares in Hong Kong.

Tse represented to the investor, among other things, that if the secondary listing in Hong Kong was successful, the value of his investment in FAH shares would increase by 100% and that if he intended to realise his investment return, he would have to swap his FAH shares for the shares in a Hong Kong-listed corporation, namely PF Group Holdings Limited (PF). By the time the investor received his PF shares, the price of the PF shares had fallen substantially.

The SFC reminds investors to check the SFC's Public Register of Licensed Persons and Registered Institutions on the SFC website (www.sfc.hk) to ensure that firms and people who provide dealing services in securities are properly licensed.

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First District Court hearings for 18 defendants in three social media ramp-and-dump cases

9 July 2024

The District Court today held the first hearings of three large-scale and highly sophisticated social media ramp-and-dump cases against 18 defendants including the suspected ringleaders after the cases had been transferred from the Magistrates' Court.

The criminal proceedings arose from the joint investigations by the SFC and the Police into the alleged ramp-and-dump syndicates for various criminal offences including offences under the Securities and Futures Ordinance.

The 18 defendants in the three cases will be tried separately for the charges laid against them relating to the ramp-and-dump schemes involving the shares of three Hong Kong-listed companies – Eggriculture Foods Limited (Eggriculture); Fullwealth Construction Holdings Company Limited (Fullwealth); and KNT Holdings Limited (KNT) upon the prosecution's application.

Among the 18 defendants, four of them face charges in two of the three cases.

The defendants had allegedly organised and executed ramp-and-dump schemes in the shares of Eggriculture, Fullwealth and KNT, 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.

No plea was taken and the cases were adjourned to 12 November 2024.

During today's hearings, one of the 18 defendants made an application for the return of his travel documents and to leave Hong Kong. Another defendant sought to withdraw the bail condition regarding reporting to police station. The applications by the two defendants were refused by the Court.

In the end, the Court granted each defendant bail on the conditions that (i) they are not allowed to leave Hong Kong; (ii) they surrender all travel documents; (iii) they pay cash in the same amount as ordered previously; (iv) they report to the police station on regular basis; and (v) they reside at the reported residential address and inform the Police of any change of residential address.

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Three jailed between 52 and 80 months in landmark market manipulation case

22 July 2024

The Court of First Instance today sentenced Ms Sit Yi Ki and Mr Tam Cheuk Hang to imprisonment of six years and eight months, and Ms Lam Wing Ki to imprisonment of four years and four months after they were found guilty in a jury trial of conspiracy to carry out false trading in the shares of Ching Lee Holdings Limited following extensive investigations by the SFC and the prosecution by the Department of Justice.

This is the heaviest jail sentence imposed on market manipulation cases since the Securities and Futures Ordinance (SFO) came into effect in 2003.

In sentencing, Deputy High Court Judge Douglas Yau remarked that the conspiracy in the present case was intricately and meticulously planned. Having considered various sentencing authorities, and taking into account the scale, sophistication and international element of the conspiracy and the false trading, as well as the importance of maintaining the integrity of Hong Kong as an international financial centre, the Court considered that deterrence and punishment are most important in this case.

The SFC's Executive Director of Enforcement, Mr Christopher Wilson, said: "The jail sentences reflect that the Court is taking a very dim view of misconduct pernicious to the reputation and integrity of Hong Kong's securities and futures markets. Putting the market manipulators behind bars sends a very strong and clear message to would-be wrongdoers that misconduct of any form has no place in Hong Kong's financial markets, and that they would be brought to justice and face the full force of the law."

"The outcome of this highly sophisticated and complex case also underscored the SFC's determination to bring its resources and powers to bear in tackling market abuses and maintain investor confidence in Hong Kong's capital markets," Mr Wilson added.

In parallel, the SFC is seeking orders under section 213 of the SFO against various local and overseas corporations and individuals, including the three jailed, to disgorge their profits in the manipulative scheme involving Ching Lee shares and/or restore the affected counterparties to their pre-transaction positions. In this connection, the SFC had obtained interim injunctions freezing assets

of up to \$124.9 million, representing the combined profits generated from trading activities of the manipulative scheme.

The SFC would like to thank the China Securities Regulatory Commission, the Hong Kong Independent Commission Against Corruption, the Monetary Authority of Singapore, the Ontario Securities Commission, the Singapore Police Force, the United Kingdom Financial Conduct Authority, and the U.S. Securities and Exchange Commission for their assistance on this case.

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SFC and IA joined forces to tackle cross-sector irregularities

26 July 2024

The (SFC) and the IA have joined forces to tackle suspected irregularities concerning the investment portfolio of Tahoe Life Insurance Company Limited (Tahoe Life).

The announcement made by the IA today (26 July 2024) to appoint Joint and Several Managers to take full control of the affairs and property of Tahoe Life represents the outcome of patient and assiduous work done over the past four years. Back in May 2020, the IA sought assistance from the SFC on information regarding certain investments made by Tahoe Life. Subsequent inspections carried out by the SFC on a few licensed fund managers revealed that the assets in question held by Tahoe Life were channelled into financial instruments linked with a related party on the Mainland.

The SFC launched its own investigation, and conducted a joint operation with the IA on an SFC-licensed fund manager in June 2021, the first of its kind since the two regulators signed a Memorandum of Understanding (MoU) in September 2020. The SFC subsequently took disciplinary action against the fund manager. The SFC and the IA will continue with the efforts to foster a compliance culture in the financial industry that enshrines the highest standard of professionalism and integrity.

“This united effort highlights our shared dedication to upholding the integrity of Hong Kong’s financial markets by ensuring no misconduct putting investors in harm’s way falls through the cracks between different regulators,” said Ms Julia Leung, the Chief Executive Officer of the SFC. “As close partners, the SFC and the IA will continue to work closely to ensure resilience, accountability and trust are firmly embedded in the financial sector,” Ms Leung added.

“The IA expresses deep appreciation to the SFC for providing valuable support during an investigation on related party transactions entered into by Tahoe Life. This bears testimony to the efficacy of the MoU in protecting the interest of policy holders and the image of Hong Kong as an international financial centre,” said Mr Clement Cheung, Chief Executive Officer of the IA.

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Former banker ordered to disgorge \$3 million illegal gains from insider dealing

30 July 2024

The MMT has ordered Mr Wu Kam Shing, a former executive deputy general manager of China CITIC Bank International Limited, to disgorge close to \$3 million in ill-gotten gains after the Tribunal found that he had engaged in insider dealing in the shares of Bloomage BioTechnology Corporation Limited (Bloomage) following proceedings brought by the SFC.

Between March 2017 and June 2017, Wu worked with a team of staff members of the bank in respect of a loan transaction to finance Grand Full Development Limited's offer to privatise Bloomage.

As soon as the loan was approved by the bank on 22 May 2017, Wu, in possession of the inside information, started acquiring Bloomage shares – using his wife's securities accounts he controlled and his personal trading accounts – accumulating a total of 1,275,000 shares before the privatisation scheme was announced to the public some three weeks later. Wu then disposed the majority of the shares, making a profit of \$2,971,604.43.

The MMT, apart from ordering Wu to disgorge the illicit profit from his insider dealing, also made the following orders against him:

- a disqualification order prohibiting him from being a director, liquidator, or receiver or manager of the property or business, or be concerned or take part in management of any listed or unlisted corporation in Hong Kong, without leave of the court, for three years, effective from 29 July 2024;
- he is banned from dealing in securities, futures contracts, leveraged foreign exchange contracts or collective investment schemes in Hong Kong for three years, effective from 29 July 2024;
- he is not to engage in any conduct which constitutes market misconduct;
- he is to pay the Government and the SFC costs and expenses; and
- the MMT report be referred to the Accounting and Financial Reporting Council with a recommendation to take disciplinary action against Wu.

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