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# REGULATORY NEWSLETTER

2023 Vol.1



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## Happy New Year and Kung Hei Fat Choy!

2023 comes with the good news of reopening of the city's border. While we are stepping into the year of rabbit – a year of recovery and resilience, ComplianceDirect wish you a year full of love, happiness and success. As always, we would endeavour to provide you our professional consultation and compliance services.

Let's begin 2023 with our Regulatory Updates from the SFC!

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## REGULATORY UPDATES

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### **OTC Derivatives Trade Reporting – Accommodative Arrangement for Reporting the Unique Transaction Identifier (UTI)**

**1 Dec 2022**

The Hong Kong Trade Repository (HKTR) issued an [announcement](#) (Announcement) about an accommodative arrangement for reporting the UTI for over-the-counter (OTC) derivatives trade reporting.

Licensed Corporations that may be subject to mandatory reporting obligation are advised to refer to the Announcement.

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## **Circular in relation to the clearing and record keeping rules for the OTC derivatives regime – changes to the list of persons designated as financial services providers**

**2 Dec 2022**

The revised list of persons designated as financial services providers (FSPs) for the purposes of the Securities and Futures (OTC Derivative Transactions—Clearing and Record Keeping Obligations and Designation of Central Counterparties) Rules (Clearing Rules) is gazetted on 2 December 2022, and becomes effective on 1 January 2023.

Licensed Persons are reminded that if their average total position in OTC derivatives during a Calculation Period reaches the corresponding Clearing Threshold, relevant OTC derivative transactions they enter into on and after the corresponding Prescribed Day, including those with FSPs must be centrally cleared in accordance with the Clearing Rules.

Please refer to the [Clearing Rules](#) and the Frequently Asked Questions on the Implementation and Operation of the Mandatory Clearing Regime for more information.

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## **SFC and HKMA joint product survey 2022**

**9 Dec 2022**

As an annual exercise to collect information about the selling activities of intermediaries in Hong Kong, the SFC and the HKMA will launch the 2022 joint survey of the sale of non-exchange traded investment products by licensed corporations (LCs) and registered institutions (RIs) that are licensed or registered for Type 1 or 4 Regulated Activity (collectively, Reporting Intermediaries). The survey will cover the period from 1 January to 31 December 2022.

### Scope

The survey covers the sale of non-exchange traded investment products, such as collective investment schemes, debt securities, structured products, swaps, swaptions and repos, to investors (In-scope Clients) who are not institutional professional investors or certain corporate professional investors for which intermediaries have been exempted from the suitability obligation.

### Survey questionnaire

The questionnaire includes three parts:

- Part A - General information

All Reporting Intermediaries should complete Part A to provide their contact information and indicate

whether they sold any reportable non-exchange traded investment products to In-scope Clients during the reporting period.

- Part B - Information on the sale of non-exchange traded investment products

Reporting Intermediaries which sold reportable non-exchange traded investment products to In-scope Clients during the reporting period should also complete Part B to provide an overview of their selling activities, such as the transaction amount by type of investment product, the top issuers of investment products sold and the type of client.

- Part C - Supplementary information

Reporting Intermediaries that are LCs with total transaction amounts of HK\$1 billion or above during the reporting period or RIs with total transaction amounts of HK\$30 billion or above should also complete Part C, which collects information such as the transaction amount of investment products by type of investor and details of the top five investment products sold.

### Reporting timeline

All Reporting Intermediaries should submit the completed questionnaires to the SFC through WINGS on or before the following dates:

Reporting Intermediaries completing Part A only	20 January 2023
Reporting Intermediaries completing Part A and Part B only	24 February 2023
Reporting Intermediaries completing Part A, Part B and Part C	10 March 2023

The questionnaire in Excel format, guidance notes and completion instructions are now available in WINGS. Please read the notes and instructions before completing the questionnaire.

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## **Launch of the Hong Kong Investor Identification Regime**

**12 Dec 2022**

Reference is made to the [Circular](#) dated 23 September 2022 regarding the Hong Kong Investor Identification Regime (HKIDR).

### Timeline of the Implementation

The SFC issued the Consultation Conclusions Paper in August 2021 on proposals to implement the HKIDR and asked market participants to start preparing for the implementation of the HKIDR. Immediately after, the SFC set up a HKIDR dedicated webpage and issued circulars to facilitate the preparation work of Relevant Regulated Intermediaries (RRIs). The SFC has been closely monitoring market readiness for the implementation of the HKIDR by conducting three rounds of survey. While significant progress has been made to prepare for the implementation, the survey results indicated that some RRIs may need more time to update client identification information and obtain express consent from individual clients for the use of their personal data under the HKIDR. Taking account of the above, the SFC has decided to provide more time for the industry's preparation and now announces to launch the HKIDR on 20 March 2023.

It should be noted that upon the launch of the HKIDR, RRIs are required to tag the relevant Broker-to-Client Assigned Number (BCAN) to every on-exchange order and off-exchange trade reportable to the Stock Exchange of Hong Kong Limited (SEHK). Orders or trades without BCANs or with BCANs in an incorrect format will be rejected.

#### Submission of BCAN-CID Mapping File

Following the successful completion of market rehearsals, RRIs will be allowed to submit the real BCAN and client identification data (CID) of their clients in the BCAN-CID Mapping File to SEHK via SEHK's Electronic Communication Platform (ECP) web interface and/or ECP (SFTP) interface commencing on 19 December 2022. RRIs should submit the latest BCAN-CID mapping data to SEHK, whenever available, from 19 December 2022 onwards prior to the launch of the HKIDR on 20 March 2023. Please refer to HKEX's [Circular](#) dated 12 December 2022 for details of requirements.

#### Compliance with applicable data privacy law including Personal Data (Privacy) Ordinance (PDPO)

RRIs are reminded that they should have obtained all written or other forms of express consent from each individual client regarding the collection, storage, processing and use of personal data in relation to such client's BCANs and CIDs under the HKIDR in accordance with the SFC's requirements and all applicable data privacy laws including the PDPO. Please refer to the SFC's [Circular](#) dated 13 September 2021 for details.

RRIs are also reminded that they should submit the BCAN-CID Mapping File containing BCAN and CID of their clients to SEHK's data repository before a cut-off time on or before the previous trading day prescribed by SEHK, otherwise their clients will not be allowed to place buy orders on the trading day, except for new clients who wish to trade on the day of account opening or dormant clients whose accounts become re-activated on the day of entering into a trade, in which case RRIs may submit the BCAN-CID Mapping File containing such client's BCAN and CID to SEHK's data repository by a deadline on the trading day prescribed by SEHK.

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## **Anti-Money Laundering and Counter-Terrorist Financing (Amendment) Ordinance 2022**

**16 Dec 2022**

The Anti-Money Laundering and Counter-Terrorist Financing (Amendment) Ordinance 2022 (the Amendment Ordinance) was published in the Gazette (Ord. No. 15 of 2022).

The Amendment Ordinance can be found on the Government's [website](#).

The Amendment Ordinance introduces a licensing regime for virtual asset service providers; and a two-tier registration regime for dealers in precious metals and stones.

A few miscellaneous amendments have also been made in the Anti-Money Laundering and Counter-Terrorist Financing Ordinance (Cap. 615) (AMLO) to ensure alignment with the latest Financial Action Task Force (FATF) standards. The amendments, which are more relevant to the securities sector, include:

(a) amending the definition of "politically exposed person" (PEP) in accordance with the FATF standards, and allowing financial institutions to take a risk-sensitive approach in determining the degree of customer due diligence measures on former PEPs who are no longer entrusted with a prominent public function;

(b) better aligning the definition of “beneficial owner” in relation to a trust under the AMLO with that of “controlling person” under the Inland Revenue Ordinance (Cap. 112), by clarifying that, where a trust is concerned, it includes trustees, beneficiaries and class(es) of beneficiaries of the trust entitled to a vested interest in; and

(c) allowing the use of a recognized digital identification system for the purposes of customer due diligence which also satisfies the special requirements in situations where a customer is not physically present for identification purposes (ie, non-face-to-face situations).

The above amendments will come into operation on 1 June 2023. Licensed corporations and associated entities are reminded to review the Amendment Ordinance and ensure compliance with the requirements.

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## **Updates on the Over-the-counter Securities Transactions Reporting Regime (OTCR)**

**20 Dec 2022**

Reference is made to the updates on the OTCR in the Circular on [23 September 2022](#), and to the Circular on [22 July 2022](#) regarding the OTCR Technical Information Paper and the OTCR Reporting File Template and Submission Process Flow.

### Launch date of the OTCR

Please be advised that the OTCR will be launched on 25 September 2023.

### Submission channels on WINGS for the OTCR

Please note that the OTCR WebApp and OTCR SFTP submission channels on WINGS will be released on 29 December 2022. Relevant Regulated Intermediaries subject to the OTCR are expected to test your submissions via this production-like platform so as to get ready to report under the OTCR when it is launched. This platform will remain open to receive test submissions until 18 September 2023, i.e., 1 week before the launch date of the OTCR.

A quick start guide for the submission channels is attached to this Circular.

### Updates of OTCR documents

Please be aware that an updated version of the OTCR Technical Information Paper, and the OTCR Reporting File Template and Submission Process Flow, with some updates on the technical specifications, have been published recently. The documents can be downloaded from the SFC [dedicated webpage](#).

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## **Thematic review of Data Standards for Order Life Cycles**

**22 Dec 2022**

The SFC issued the “Data Standards for Order Life Cycles” on 31 July 2019 (the terms “Data Standards” and “DS-OL” are used interchangeably in this circular). Since 30 April 2021, licensed securities brokers whose trading turnover in equities listed on the Stock Exchange of Hong Kong Limited (SEHK) in a calendar year (in 2018 or beyond) reaches or exceeds 2% of that year’s total market trading volume (referred to as “In-Scope Brokers”) are required to comply with the DS-OL when submitting trading-related data to the SFC upon request.

The SFC has developed a data analytics platform driven by big data and artificial intelligence as a major initiative of its supervisory technology (ie, Suptech) programme to help it analyse the trading-related data it receives. Rule-based algorithms can identify red flags of potential misconduct in equities trading as well as systematic control deficiencies, including:

- uncovered short selling;
- pricing anomalies in alternative liquidity pools, ie, execution prices are worse than the best available prices in the market;
- situations where client orders were not handled fairly and in the order in which they were received; and
- patterns of market abusive activities at the client and trading desk levels, such as wash trading.

As the accuracy and completeness of the data submitted by In-Scope Brokers is crucial to the SFC’s data analysis, it conducted a thematic review of selected In-Scope Brokers to assess, among other things, whether the trading-related data processed, maintained and submitted by these brokers is in compliance with the minimum content and presentation format prescribed in the DS-OL. The SFC has also followed up with the In-Scope Brokers on red flags identified during its analysis of the trading-related data.

This circular sets out the key findings and observations noted during the thematic review and provides further guidance on DS-OL implementation.

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## **Revised Business and Risk Management Questionnaire**

**23 Dec 2022**

The SFC published a revised Business and Risk Management Questionnaire (BRMQ) for licensed corporations (LCs) and associated entities (AEs).

The BRMQ is a supervisory tool the SFC uses to gather data and information to better understand the industry landscape, monitor market trends and identify emerging issues. In light of the rapidly changing operating and business environment, the SFC has revised the BRMQ to collect additional data and information on a variety of functions and business activities to enhance the effectiveness of its risk-based supervision of LCs and AEs. For example, new questions have been included to collect more granular client and transaction data to help identify and analyse the money laundering and terrorist financing risk exposures of LCs and AEs.

To allow sufficient preparation time for LCs and AEs, the revised BRMQ shall be used for financial years ending on or after 30 November 2023. LCs and AEs should submit the BRMQ to the SFC electronically via WINGS.

LCs and AEs are urged to review and familiarise themselves with the revised questionnaires, which are included in Annex 1 and Annex 2 to this circular, start gathering the newly required data and information and make system enhancements where necessary.

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## ENFORCEMENT NEWS

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### **SFC suspends Wang Pei Yi for 10 months**

15 Dec 2022

The SFC has suspended Ms Wang Pei Yi, a former licensed representative of SinoPac Securities (Asia) Limited (SinoPac), for 10 months from 14 December 2022 to 13 October 2023.

The disciplinary action follows an SFC investigation which found that between June 2015 and April 2017, Wang made false declarations in the account opening forms of three corporate clients.

Specifically, she falsely declared in the forms that she had met and identified the clients' representatives who executed the forms, witnessed their signing of them, and provided the clients with the relevant risk disclosure statements and invited them to read the statements when in fact she had done none of these things. As a result, SinoPac was misled into believing that she had met with the clients' representatives for account opening and witnessed their signing of the forms.

In doing so, she also failed to take all reasonable steps to establish the true and full identity of the clients for the purposes of account opening.

The SFC considers that Wang failed to act honestly, with due skill, care and diligence, and in the best interests of her clients. Wang's conduct exposed the clients to risks of their accounts being operated without their authorisation and was prejudicial to the interests of her clients as she was not able to verify if the forms which she signed were in fact signed by the clients themselves, and if the information stated in those forms for operating their accounts was correct.

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### **SFC fines and suspends Chung Tung Sau for seven months**

15 Dec 2022

The SFC has suspended Mr Chung Tung Sau, a former licensed representative of Quam Securities Company Limited (Quam), for seven months from 15 December 2022 to 14 July 2023 and fined him \$60,000.

The disciplinary action follows an SFC investigation which found that between 1 and 11 August 2017, Chung had traded in the shares of a listed company (Company A) for himself while executing a client's good-till-cancel buy order for the same shares (GTC Order).

Although Chung had disclosed to the client that he would potentially trade in Company A shares for himself during the execution of the GTC Order, on 10 occasions he purchased Company A shares for himself at prices below the upper price limit of the GTC Order and, shortly thereafter, he placed almost simultaneous sell orders for the same shares on market at or around the upper price limit of the GTC Order for himself and buy orders for the GTC Order, which resulted in matched transactions between Chung and the client. Chung made a profit of approximately \$60,000 from these transactions.

The SFC considers that Chung's conduct has called into question his fitness and properness to be a licensed person, in that he failed to:

- take reasonable steps to avoid conflicts of interest between himself and the client, or ensure the client was fairly treated;
- comply with Quam's staff dealing policy and act in the best interests of the client and in the integrity of the market; and
- execute the GTC Order at the best available price and prioritise the execution of the GTC Order over his own orders.

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## **SFC bans Sun Yiding for eight months**

**19 Dec 2022**

The SFC has prohibited Ms Sun Yiding from re-entering the industry for eight months from 15 December 2022 to 14 August 2023.

The disciplinary action follows an SFC investigation, which found that between July 2019 and July 2020, Sun failed to obtain her then employer's approval to open a securities trading account with an external brokerage firm and conducted 829 personal trades in the account unbeknownst to it. She also traded in three stocks on her then employer's restricted list and sold certain stocks within 30 days of purchase without its pre-approval.

In the circumstances, Sun's conduct circumvented her then employer's employee trading policy and prevented it from monitoring her personal trading activities.

The SFC considers that Sun's conduct, which is dishonest, calls into question her fitness and properness



to be a licensed person.

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

- her misconduct lasted for one year and involved 829 securities transactions;
- her remorse and cooperation in resolving the SFC's concerns; and
- her otherwise clean disciplinary record.

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## **SFC reprimands and fines Guosen Securities (HK) Brokerage Company, Limited \$2.8 million over regulatory breaches**

21 Dec 2022

The SFC has reprimanded and fined Guosen Securities (HK) Brokerage Company, Limited (Guosen) \$2.8 million for regulatory breaches in relation to the handling of client assets and the provision of client account statements.

The SFC's investigation found that between 1 January 2021 and 7 March 2021, Guosen relied on expired standing authority of 1,009 clients to obtain financial accommodation by repledging their securities collateral with a bank as collateral.

The SFC also found that from May 2020 to November 2020, Guosen had provided monthly statements with incomplete and incorrect information to 930 clients.

Guosen's failures constitute breaches of the Securities and Futures (Client Securities) Rules (CSR), the Securities and Futures (Contract Notes, Statement of Account and Receipts) Rules (CNR) and the Code of Conduct.

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

- Guosen's remedial actions and self-reports to the SFC regarding its breaches of the CSR and the CNR;
- the abovementioned incidents appear to be isolated;
- there is no evidence of client loss as a result of Guosen's regulatory breaches; and
- Guosen's cooperation in resolving the SFC's concerns and accepting the SFC's findings and disciplinary action.

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**ComplianceDirect Consulting Limited**

Address: Unit 2, 10/F, Cheong K. Building, 84 & 86 Des Voeux Road Central, Central, Hong Kong

Phone: 2606 1800