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Global Financial Services Industry
Issue 16, July/August/September 2013

Hong Kong Financial Regulatory Newsletter.

Hong Kong Financial Regulatory Newsletter is the latest initiative of Deloitte Global Financial Services Industry (GFSI) practice. This Issue highlights some significant regulatory developments of the SFC, HKMA, HKEx, OCI, HKFI and MPFA since our last edition.

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SFC

Circular to Licensed Corporations in relation to the reporting of OTC derivatives transactions to the HKMA trade repository – launch of the reporting service and fee schedule

The SFC Circular on 21 June 2013 mentioned that an Interim Reporting Arrangement (Interim Arrangement) will be implemented to require licensed banks to report over-the-counter (OTC) derivatives transactions to the trade repository (TR) of the Hong Kong Monetary Authority (HKMA) before the Securities and Futures Ordinance is amended to mandate TR reporting. Licensed Corporations with activities that may be subject to mandatory reporting obligations may also participate in the Interim Arrangement on a voluntary basis.

The HKMA announced that the reporting service of the HKMA TR under the Interim Arrangement was launched simultaneously. Although there will be no charge on the TR service during the Interim Arrangement until the new legislation for mandatory reporting of OTC derivatives transactions takes effect tentatively in the second quarter of 2014, Licensed Corporations are reminded to take the relevant fee into consideration in their budgetary preparations.

Read more:

http://www.sfc.hk/edistributionWeb/gateway/EN/circular/doc?refNo=13EC26

Premature selling of placing shares may constitute illegal short selling

Investors and intermediaries could face criminal prosecution for illegal short selling if they sell placing shares before completion of a placement, the Securities and Futures Commission (SFC) said. The warning came after recent SFC investigations which revealed some misconceptions in the market on the selling of placing shares prior to completion of a placement. Some places, who sold placing shares for which they had subscribed, appeared to have taken the mistaken view that the trade would not amount to illegal short selling even if they did not have the shares when they placed the sell order provided that they could settle the trade on the settlement day with the placing shares allotted to them. In other cases, some places took the erroneous view that they could sell the placing shares before completion of a placement by relying on oral or written confirmations from their placing agents about the quantity of shares they would be allotted as guarantees for receiving the same number of placing shares on the completion date to settle the trades.

Read more:

http://www.sfc.hk/edistributionWeb/gateway/EN/news-and-announcements/news/doc?refNo=13PR73

SFC issues guidelines on CPSS-IOSCO Principles for financial market infrastructures

The Securities and Futures Commission (SFC) issued a set of guidelines for recognized clearing houses concerning the application of the "Principles for financial market infrastructures" (PFMIs) published jointly by the Committee on Payment and Settlement Systems (CPSS) of the Bank for International Settlements and the International Organization of Securities Commissions (IOSCO).The PFMIs, issued in April 2012, are designed to ensure that financial market infrastructures supporting global financial markets are robust and well placed to withstand financial shocks. These principles apply to all systemically important financial market infrastructures (FMIs).

The SFC regards all recognized clearing houses as systemically important FMIs in Hong Kong. The guidelines articulate that the SFC expects recognized clearing houses to observe the PFMIs. Such observance will be taken into account in assessing whether recognized clearing houses have discharged their duties under the Securities and Futures Ordinance (SFO). The SFC will discuss with existing recognized clearing houses to determine an appropriate implementation timeline for the observance of the PFMIs.

Read more:

http://www.sfc.hk/edistributionWeb/gateway/EN/news-and-announcements/news/doc?refNo=13PR77

SFC outlines regulation of collective investment schemes

In view of recent enquiries concerning the regulation of collective investment schemes (CIS), the Securities and Futures Commission (SFC) outlines the relevant provisions in the Securities and Futures Ordinance (SFO) governing the offer and promotion of CIS, and reminds those intending to market a CIS that breaching the provisions may constitute a criminal offence. A CIS may cover any property, including real estate, whether located in Hong Kong or overseas. It is an offence under the SFO to issue any marketing material which contains an offer to the Hong Kong public to acquire an interest or participate in a CIS unless it has been authorized by the SFC or an exemption applies. Promoting a CIS may, in addition, constitute a business in a regulated activity which requires a licence from the SFC, failing which may lead to an offence under the SFO.

Read more:

http://www.sfc.hk/edistributionWeb/gateway/EN/news-and-announcements/news/doc?refNo=13PR84

Regulators release conclusions on further proposals for regulating OTC derivatives market

The Hong Kong Monetary Authority (HKMA) and the Securities and Futures Commission (SFC) jointly published their conclusions on a joint supplemental consultation regarding the proposed scope of activities to be regulated under the new over-the-counter (OTC) derivatives regime, and regulatory oversight of systemically important participants. The conclusions paper summarises the comments received and the responses of the HKMA and the SFC to these comments. It also notes that further work is necessary and is being conducted to implement the new OTC derivatives regime.

In general, respondents supported the proposals. They recognised the need to extend Hong Kong's licensing regime so that it also covers intermediaries that conduct OTC derivatives activities. They also agreed that the HKMA and the SFC should have effective regulatory powers in respect of systemically important participants given the potential risk they may pose to the financial stability of our markets. The revised proposals have been incorporated into the relevant Amendment Bill that sets out the legislative amendments for the proposed OTC derivatives regime. The Bill was introduced into the Legislative Council in July 2013.

Read more:

http://www.sfc.hk/edistributionWeb/gateway/EN/consultation/conclusion?refNo=12CP2

SFC and SEHK publish revised Joint Policy Statement regarding listing of overseas companies

The Securities and Futures Commission (SFC) and The Stock Exchange of Hong Kong Limited (SEHK), a wholly-owned subsidiary of Hong Kong Exchanges and Clearing Limited (HKEx), published a revised Joint Policy Statement regarding the listing of overseas companies (revised JPS) to replace the JPS issued in March 2007. "The revised JPS consolidates all relevant issues regarding listing of overseas companies into a single document. It is comprehensive, and should facilitate a clear understanding of the ways in which listing of overseas companies can be achieved in line with regulatory expectations," the SFC's Chief Executive Officer, Mr Ashley Alder said.

"Setting out our approach in the revised JPS enables us to adapt our requirements quickly. It also provides transparency on our approach to help those overseas companies planning to make a listing application," said Mr David Graham, HKEx's Chief Regulatory Officer and Head of Listing. SEHK has requested and been granted the SFC's consent for these waivers. The SFC and SEHK have agreed that SEHK will likely amend the Listing Rules in the longer term to incorporate the experience SEHK gains from using the revised JPS in practice. SEHK aims to publish a Country Guide for each acceptable jurisdiction by the end of 2013 setting out, among other things, comprehensive and user friendly guidance on how companies incorporated in the jurisdiction can meet the requirement for equivalent shareholder protection standards in the Listing Rules.

Read more:

http://www.sfc.hk/edistributionWeb/gateway/EN/news-and-announcements/news/doc?refNo=13PR98

HKMA

United Nations Sanctions Ordinance and List of Names for Suspicious Account Reporting

United Nations Sanctions (Côte d'Ivoire) Regulation 2013, further to the gazettal of the United Nations Sanctions (Côte d'Ivoire) Regulation 2013 (Cap. 537 sub. leg. BE) on 12 July 2013, the Chief Executive has specified under section 30 of the Regulation a list of relevant persons.

Authorized institutions (AIs) are reminded that in accordance with the provisions of Chapter 6 of the Guideline on Anti-Money Laundering and Counter-Terrorist Financing, they should maintain a database of individuals and entities designated under the United Nations (Anti-Terrorism Measures) Ordinance, United Nations Sanctions Ordinance and US Executive Order 13224 for client and transaction screening purposes.

The HKMA expects all new designations to be screened against an AI's client list as soon as practicable after the issuing of a circular by the HKMA. Any transactions or relations, past or present, with any designated individual or entity should be reported to the Joint Financial Intelligence Unit and the HKMA.

Read more:

http://www.hkma.gov.hk/media/eng/doc/key-information/guidelines-and-circular/2013/20130719e1.pdf

Skills and Knowledge Development for Directors of Locally Incorporated Authorized Institutions (AIs)

In August 2012 the HKMA issued a circular Training for Directors of Locally Incorporated Authorized Institutions, requesting locally-incorporated AIs to complete a survey on training being made available to directors. In the same month, the HKMA announced that it would begin meeting selected applicants for appointment as director, chief executive (CE) and alternate chief executive (ACE) of locally-incorporated AIs under section 71 of the Banking Ordinance.

This circular informs the Chief Executive of all AIs of the broad results of the survey and HKMA's observations from meetings with candidates for director, CE and ACE appointments; set out the approach the HKMA will take to enhancing the knowledge and skills of directors, CEs and ACEs; announce the formation of an advisory group, led by the HKMA, to advise the industry on skills and knowledge development for directors; and make the AIs aware of the launch by the Hong Kong Institute of Bankers (HKIB), of a programme to support skills and knowledge development for directors of AIs.

Read more:

http://www.hkma.gov.hk/media/eng/doc/key-information/guidelines-and-circular/2013/20130814e1.pdf

Foreign Account Tax Compliance Act in the U.S.

The issue of tax evasion has assumed increasing prominence within the international community and various countries have introduced or are contemplating introducing changes to their tax regimes. To ensure compliance with not only local regulations but also all applicable overseas regulatory requirements, AIs should critically assess the implications of such changes (including seeking legal advice) for their customers and operations, taking into account their scale and nature of business, geographical areas of operation, etc. A case in point is the Foreign Account Tax Compliance Act ("FATCA"), which was enacted by the U.S. in 2010 to combat tax evasion by U.S. persons holding investments in offshore accounts.

Where AIs conclude that any overseas tax regime changes may have implications for their customers and operations, they should put in place process and controls to ensure compliance and develop good practices through industry collaboration if appropriate. To support AIs' efforts in the above matters, the HKMA has suggested that the Hong Kong Association of Banks and the DTC Association offer appropriate assistance to facilitate the development of good practices for compliance with overseas tax regimes, including the FATCA of the US.

Read more:

http://www.hkma.gov.hk/media/eng/doc/key-information/guidelines-and-circular/2013/20130819e1.pdf

Basel III Implementation – Standard Templates for Disclosures in Relation to Regulatory Capital

HKMA informs the Chief Executive of all locally incorporated authorized institutions that, following consultation with the two industry associations, the HKMA is issuing the final version of the standard templates (including associated explanatory text) to be used by locally incorporated authorized institutions for the purpose of making disclosure in relation to their capital base under the Banking (Disclosure) (Amendment) Rules 2013 ("BDAR 2013"). All locally incorporated AIs should ensure that their institutions use these standard templates to meet the disclosure obligations required by subsections (1)(a), (b), (c), (e) and (f) of section 24 and section 45 respectively of BDAR 2013 for making interim and annual financial disclosures relating to a balance sheet date on or after 30 June 2013. The standard templates, in both English and Chinese (except for the illustrative example on reconciliation which is available only in English) can be accessed through the "Basel III" icon on the HKMA's public (http://www.hkma.gov.hk).

Read more:

http://www.hkma.gov.hk/media/eng/doc/key-information/guidelines-and-circular/2013/20130819e2.pdf

Supervisory Policy Manual (SPM) Annex B to CG-7: "Code of Conduct for Reference Banks for TMA's CNH Hong Kong Interbank Offered Rate"

HKMA informs the Chief Executive of all licensed banks that, following consultation with the Hong Kong Association of Banks (HKAB), HKMA will issue the "Code of Conduct for Reference Banks for Treasury Markets Association (TMA)'s CNY Hong Kong Interbank Offered Rate" (the Code) as Annex B to module CG-7 of the

Supervisory Policy Manual (SPM). The Code will be published by notice in the Gazette on 23 August 2013. The SPM module issued on 3 May 2013 sets out the supervisory requirements on systems of control to be maintained by authorized institutions (AIs) that are benchmark submitters. The module is intended to be of generic application to benchmark submitters, while its Annexes provide detailed requirements and rate submission guidance for specific benchmark fixings. As an Annex to the SPM module, the new Code provides sound practices on systems of control for the CNH Hong Kong Interbank Offered Rate (CNY HIBOR) fixing process as well as clear guidance for reference banks to observe in making rate submissions for this fixing. AIs that are submitting rates for CNY HIBOR should take active steps to comply with the guidance set out in the Code as quickly as possible and should achieve full compliance within six months from the date of the Gazette notice.

Read more:

http://www.hkma.gov.hk/media/eng/doc/key-information/guidelines-and-circular/2013/20130820e1.pdf

Interim Reporting Requirements for OTC derivative transactions – Enrolment status of HKTR membership

HKMA refers to the letter of 2 August 2013 concerning the extension of the deadline for banks to enrol as members of the trade repository operated by the HKMA (HKTR) to 5 September 2013. Based on the position as of 9 September 2013, 145 institutions have enrolled as HKTR members, of which 141 are banks (out of a total of 156 banks). Those banks that are still in the process of enrolment are expected to complete the process without further delay.

Given that not all banks have signed the reporting service agreement with the HKTR and thereby consented to the reporting of trade data to the HKTR by their bank counterparties, banks that intend to report OTC derivative transactions to the HKTR for the time being are reminded to undertake their own due diligence where necessary to ensure that any data confidentiality issues are duly addressed, and that any consents required for the reporting of the trade data to the HKTR are obtained.

Read more:

http://www.hkma.gov.hk/media/eng/doc/key-information/guidelines-and-circular/2013/20130911e1.pdf

HKEx

Exchange Publishes Rule Changes to Complement New Sponsor Regulation

The Stock Exchange of Hong Kong Limited (the Exchange), a wholly-owned subsidiary of Hong Kong Exchanges and Clearing Limited (HKEx), published on Tuesday rule changes to complement the Securities and Futures Commission's (SFC) new regulation on sponsors which will come into effect on 1 October 2013. The new requirements resulting from the rule changes will apply to listing applications submitted on or after 1 October 2013.

As stated in the SFC's "Consultation Conclusions on the regulation of IPO Sponsors" published on 12 December 2012 (the Conclusions), the Exchange will make appropriate changes to the Listing Rules to implement the proposal to publish the Application Proof1 and will also make appropriate amendments to relevant Listing Rules (together with the rule changes, the Rule Amendments) with a view to bringing the revised rules into force when the Provisions become effective. The Conclusions also stated that the SFC would work closely with the Exchange to formulate specific measures to streamline the regulatory commenting and other aspects of the initial public offering (IPO) process. Key features of these measures and the Rule Amendments are set out below.

Read more:

http://www.hkex.com.hk/eng/newsconsul/hkexnews/2013/130723news.htm

Stock Exchange Publishes New Statement on Enforcement of Listing Rules and Implements New Procedures for Disciplinary Action Involving Listing Rules

The Stock Exchange of Hong Kong Limited (Exchange), a wholly-owned subsidiary of Hong Kong Exchanges and Clearing Limited (HKEx), published a new statement on its approach to enforcement of its Listing Rules (Enforcement Statement), and implemented new procedures for disciplinary matters involving breaches of the Listing Rules (New Procedures).

As the frontline regulator of listed issuers in Hong Kong, the Exchange has a statutory duty to ensure, so far as reasonably practicable, an orderly, informed and fair securities market in Hong Kong. Enforcement is an important tool by which this regulatory objective may be achieved. Enforcement of the law takes priority over enforcement of the Listing Rules. The Exchange will report conduct which may amount to possible breaches of the law to the appropriate law enforcement authorities and will suspend its investigation if it overlaps with their investigation to avoid duplication of regulatory resources and possible prejudice to their enforcement action.

Read more:

http://www.hkex.com.hk/eng/newsconsul/hkexnews/2013/130913news.htm

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