

# 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 issuers of SFC-authorized Investment-Linked Assurance Schemes (“ILAS”) - Streamlined Measures to Enhance the Processing of Applications for Scheme Changes and Revision of Offering Documents in respect of ILAS**

The purpose of the circular was to introduce certain streamlined measures for enhancing the processing of applications for the approval of scheme changes and the authorization of revised offering documents in respect of ILAS (collectively, the “Applications”). The Commission regularly reviews and seeks to improve its processes wherever practicable without compromising investor interests or protection. In order to facilitate the efficient compliance management of SFC-authorized ILAS by ILAS issuers, the Commission introduced the streamlined measures pursuant to which prior approval would not be required from the Commission in respect of certain scheme changes to the relevant SFC-authorized ILAS and the consequential amendments to their offering documents.

#### **Read more:**

<http://www.sfc.hk/edistributionWeb/gateway/EN/circular/doc?refNo=13EC33>

### **Circular to all Licensed Corporations and Registered Institutions concerning the U.S. Foreign Account Tax Compliance Act**

The circular was issued for the purpose of drawing to the attention of licensed corporations and registered institutions the Foreign Account Tax Compliance Act (FATCA), which became law in the U.S. in March 2010 and would become effective in 2014. FATCA was enacted with the objective of preventing non-compliance with their U.S. tax obligations by U.S. taxpayers holding foreign accounts. FATCA was principally concerned with the imposition of reporting requirements for U.S. taxpayers in respect of their foreign financial accounts and offshore assets and Foreign financial institutions (FFIs) in respect of foreign financial accounts held by U.S. taxpayers or by foreign entities in which U.S. taxpayers hold a substantial ownership interest. The latter of these reporting requirements may have implications for licensed corporations and registered institutions carrying on business in Hong Kong. Licensed corporations and registered institutions were encouraged to consider whether they are affected by the obligations imposed on FFIs under FATCA and to note any announcement made by the Hong Kong Government advising the conclusion of an IGA with the U.S. Government. If in doubt concerning their obligations under FATCA, licensed corporations and registered institutions were also encouraged to seek appropriate legal or other advice.

#### **Read more:**

<http://www.sfc.hk/edistributionWeb/gateway/EN/circular/doc?refNo=13EC30>

### **SFC stepped up oversight of corporate conduct**

The SFC would take a broader and more proactive approach in overseeing corporate conduct of listed companies, the SFC’s Chairman, Mr Carlson Tong said. “This will mean more surveillance, analysis and enforcement work,” Mr Tong told the audience at the 11th Anniversary Gala Dinner of the Chamber of Hong Kong Listed Companies. Mr Tong said this approach stemmed from market concerns over cases of serious corporate misconduct in listed companies and how it could be detected at an early stage to reduce damage to the market and the investing public.

To this end, the SFC had set up a dedicated corporate regulation team to review company announcements, circulars and reports; conduct periodic in-depth reviews of each company and adopt risk-based criteria to focus on particular companies including those with history of losses or frequent restructuring. “By actively detecting misconduct and following up on suspicious activities, we seek to maintain quality markets and high corporate governance standards so as to protect investors and enhance confidence in listed companies and our market,” Mr Tong said. Mr Tong stressed that Hong Kong could not afford to fall behind global corporate governance standards and best practices. “Companies benefit from better corporate governance which will in turn help Hong Kong sustain its position as a leading international financial centre,” he added.

#### **Read more:**

<http://www.sfc.hk/edistributionWeb/gateway/EN/news-and-announcements/news/doc?refNo=13PR121>

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

## HKMA

### **Internal Ratings-based Approach : Revised Capital Floor Requirements**

HKMA informed all Locally Incorporated Authorized Institutions (“AIs”) of changes to the capital floor requirements applicable to AIs using the internal ratings-based approach (“IRB approach”) to calculate regulatory capital for credit risk, and the Monetary Authority’s approach to applying these revised requirements.

The main purpose of introducing these changes was to better align the existing capital floor requirements under the Banking (Capital) Rules (“BCR”) with the prevailing capital standards issued by the Basel Committee on Banking Supervision (“Basel Committee”). The changes would be relevant not only to AIs already using the IRB approach but also to AIs that planned to apply for the Monetary Authority’s approval to use the IRB approach in the future.

#### ***Read more:***

<http://www.hkma.gov.hk/media/eng/doc/key-information/guidelines-and-circular/2013/20131220e1.pdf>

### **Guidance Paper on Transaction Screening, Transaction Monitoring and Suspicious Transaction Reporting**

The Hong Kong Monetary Authority developed a guidance paper for authorized institutions (AIs), on sound industry practices for transaction screening, transaction monitoring and suspicious transaction reporting identified during recent examinations. In order to enhance the quality and consistency of suspicious transaction reports (STR) filed by the banking sector, guidance was jointly developed with the Joint Financial Intelligence Unit.

The practices outlined in these documents would assist AIs in not only meeting the legal and regulatory obligations under the Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) Ordinance and relevant STR reporting ordinances but also enhancing the effectiveness of measures to mitigate their money laundering and terrorist financing risks. As stated in the executive summary to the guidance paper, AIs were expected to give full consideration to the adoption of the recommended practices set out in the paper, where appropriate, or otherwise to adopt alternative control measures which would be equally effective.

#### ***Read more:***

<http://www.hkma.gov.hk/media/eng/doc/key-information/guidelines-and-circular/2013/20131216e1a1.pdf>

### **Supervisory Policy Manual (SPM) CA-S-10 “Financial Instrument Fair Value Practices”**

Following consultation with the two industry Associations, the Monetary Authority issued a revised version of the above SPM module as a guidance note. The revised module incorporates amendments relating to the full recognition, for regulatory purposes, of fair value gains arising from fair-valued financial instruments as a component of “Common Equity Tier 1 capital” under Basel III (as opposed to the position under Basel II where such gains were generally required to be excluded from Core Capital and included as Supplementary Capital with a 55% haircut).

Authorized institutions (AIs) were expected to ensure that all of their fair value estimates were reliable and determined in accordance with the applicable accounting standards and supervisory guidance set out in the module. Based on the supervisory approach described in the module, the HKMA would evaluate the extent to which an AI’s valuation process and practices were consistent with the standards in the course of its ongoing risk-based supervision and would take the result of its evaluation into account in its capital assessment of locally-incorporated AIs.

#### ***Read more:***

<http://www.hkma.gov.hk/media/eng/doc/key-information/guidelines-and-circular/2013/20131210e1.pdf>

### **Supervisory Policy Manual (SPM) Module IC-6 “The Sharing and Use of Consumer Credit Data through a Credit Reference Agency”**

HKMA issued a circular to provide further guidance in respect of some issues related to positive mortgage data sharing arrangements that were identified during our thematic on-site examinations on a number of Authorized Institutions (AIs) engaging in mortgage loan business. AIs should take note of the guidance and review whether they have similar issues in their institutions, and if so, strengthen their existing controls, policies and procedures according to the guidance set out at Annex of the circular.

In addition, HKMA would also like to remind all AIs of the need to comply with the Personal Data (Privacy) Ordinance and any relevant code of practice and guidance in relation to the sharing and use of consumer credit data through a credit reference agency.

#### ***Read more:***

<http://www.hkma.gov.hk/media/eng/doc/key-information/guidelines-and-circular/2013/20131129e1.pdf>

### **Treat Customers Fairly Charter**

Over the past few years the Hong Kong Monetary Authority has been engaging the banking industry on various initiatives to promote a stronger corporate culture among banks of treating their consumers fairly. With this objective in mind, and riding on the good practices promoted under the G20 High-Level Principles on Financial Consumer Protection promulgated in October 2011, HKMA worked with the industry to develop the Treat Customers Fairly (“TCF”) Charter as a catalyst for fostering a stronger risk culture towards fair treatment of customers at all levels of banks and at all stages of their relationship with customers.

The Charter incorporates five high-level principles (“TCF principles”) and is primarily aimed at retail consumers. The TCF principles are designed to complement, not change, current law or regulations or the existing terms and conditions between banks and their customers. The Charter received full support from retail banks as it is recognized that the TCF principles promote consumer protection and education which in turn enhance customer confidence and trust in banks, serving as the cornerstone for sustainable development of the banking industry.

#### ***Read more:***

<http://www.hkma.gov.hk/media/eng/doc/key-information/guidelines-and-circular/2013/20131028e1.pdf>

### **Notification requirements under Basel Core Principles 6 and 9**

The International Monetary Fund currently conducted an assessment on Hong Kong’s financial sector under the Financial Sector Assessment Program (FSAP). As the HKMA self-assesses HKMA’s compliance against the 29 revised Basel Core Principles for Effective Banking Supervision published by the Basel Committee in September 2012, it had come to HKMA’s attention that there were two types of notification requirements required from authorized institutions (AIs) in order to comply with Principle 6 on Transfer of significant ownership and Principle 9 on Supervisory techniques and tools. The HKMA considered these notification requirements good practice. Locally incorporated AIs were therefore required to comply with them to the extent permitted by law with immediate effect. For AIs incorporated outside Hong Kong, whilst these notifications should be made to the respective home supervisors, the HKMA would expect to be also kept informed as soon as practicable.

#### ***Read more:***

<http://www.hkma.gov.hk/media/eng/doc/key-information/guidelines-and-circular/2013/20131022e1.pdf>

### **HKAB issued Best Practice on NFC mobile payment in Hong Kong**

The Hong Kong Monetary Authority (HKMA) welcomed the issuance of the Best Practice for Near Field Communication (NFC) Mobile Payment in Hong Kong (Best Practice) by the Hong Kong Association of Banks (HKAB). The Best Practice aims to facilitate the establishment of an interoperable as well as safe and effective NFC mobile payment infrastructure in the market. The Best Practice contains a set of common standards and guidelines covering three aspects: (i) Security requirements: to ensure the security of e-wallets and the payment process, thereby ensuring the security of services; (ii) Technical standards: to facilitate interoperability among different NFC infrastructures, mobile devices and terminals and the continued development of NFC mobile payment services by establishing standards with reference to widely applied industry and international standards; and (iii) Operational process: to enhance user experience by introducing standardised operational process.

The HKMA would take into account the security requirements set out in the Best Practice in its on-going supervision of NFC mobile payment services offered by authorized institutions. The Best Practice introduced establishes common NFC mobile payment standards for the industry which is conducive to the overall development of NFC mobile payment services.

#### ***Read more:***

<http://www.hkma.gov.hk/eng/key-information/press-releases/2013/20131125-3.shtml>

## HKEx

### **China Securities Depository and Clearing Corporation became CCASS Clearing Agency Participant**

Hong Kong Exchanges and Clearing Limited (HKEx) announced that its wholly-owned subsidiary, Hong Kong Securities Clearing Company Limited (HKSCC), had admitted China Securities Depository and Clearing Corporation Limited (ChinaClear) as a Clearing Agency Participant to the Central Clearing and Settlement System (CCASS) of HKSCC.

Through its inclusion in CCASS, ChinaClear would be able to perform specific custody functions when acting as the nominee for H shares resulting from conversions of Shenzhen B shares to H shares approved by the China Securities Regulatory Commission. ChinaClear sought admission to CCASS to enhance its efficiency and strengthen the protection of Mainland investors. "The admission of ChinaClear as a Clearing Agency Participant is significant as it holds all Shenzhen B shares in its custody," said HKEx Chief Executive Charles Li. "ChinaClear's inclusion in CCASS will be increasingly important as more B-share companies in the Mainland convert their shares to H shares and become part of our market."

#### **Read more:**

<http://www.hkex.com.hk/eng/newsconsul/hkexnews/2013/131227news.htm>

### **HKEx to Introduce After-hours Trading of Mini HSI Futures and Mini HHI Futures**

Hong Kong Exchanges and Clearing Limited (HKEx) planned to introduce Mini Hang Seng Index (Mini HSI) and Mini H-shares Index (Mini HHI) Futures to its After-Hours Futures Trading (AHFT) session starting on Monday, 6 January 2014. Subject to approval from the Securities and Futures Commission (SFC), HKEx also planned to add the block trading facility to AHFT on 6 January 2014. This would also require rule amendments. HKEx's AHFT session is from 5 pm to 11 pm and currently includes Hang Seng Index (HSI) Futures and H-shares Index (HHI) Futures. Mini HSI Futures accounted for about 16 per cent of HKEx's futures trading volume in the first 10 months of the year and Mini HHI Futures accounted for about 4 per cent.

Meanwhile, HKEx planned to include Renminbi Futures to its AHFT session and was working on market making support. Further details will be announced in the future. Hong Kong Exchanges and Clearing Limited (HKEx) announced that its wholly-owned subsidiary, Hong Kong Securities Clearing Company Limited (HKSCC), was admitted China Securities Depository and Clearing Corporation Limited (ChinaClear) as a Clearing Agency Participant to the Central Clearing and Settlement System (CCASS) of HKSCC.

#### **Read more:**

<http://www.hkex.com.hk/eng/newsconsul/hkexnews/2013/1311182news.htm>

### **OTC Clear Became a Recognised Clearing House**

OTC Clearing Hong Kong Limited (OTC Clear), a subsidiary of Hong Kong Exchanges and Clearing Limited (HKEx), announced that the SFC had granted it recognition as a clearing house on 25 October 2013 under section 37 of the Securities and Futures Ordinance. OTC Clear was established for the purpose of providing clearing services for over-the-counter (OTC) derivatives. "The launch of OTC Clear was another major step in our strategic plan to build a strong fixed income, currencies and commodities business, and to transform ourselves into a fully horizontally and vertically integrated platform across multiple asset classes. OTC Clear will help us capitalise on the Renminbi's (RMB) continuing internationalisation, leveraging on Hong Kong's position as the premier offshore RMB centre," said HKEx Chief Executive Charles Li.

#### **Read more:**

<http://www.hkex.com.hk/eng/newsconsul/hkexnews/2013/131031news.htm>



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