



Key Enforcements News and Compliance Implications

SFC issues restriction notice to Agg. Asset Management Limited (3 Apr 2020)

The Securities and Futures Commission (SFC) has issued a restriction notice to Agg. Asset Management Limited (Agg) because of doubts over Agg’s reliability, integrity, and ability to carry on regulated activities competently, honestly and fairly, and hence, its fitness and properness to remain licensed.

The restriction notice prohibits Agg, without prior written consent from the SFC, from carrying on any business, whether directly or through agents, which constitutes regulated activities for which it is licensed under the Securities and Futures Ordinance (SFO) until further notice.

<https://www.sfc.hk/edistributionWeb/gateway/EN/news-and-announcements/news/doc?refNo=20PR31>

Implications

Licensed Corporations should aware of the restriction notice when dealing with or acting in agents for Agg.

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 (HIFL) and HSBC Global Asset Management (Hong Kong) Limited (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 HIFL and 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, HIFL and 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.



Fidelity Consulting Services Limited – Newsroom
Key Enforcement News under the SFC
April to June of 2020

Implications

Licensed Corporations that hold client monies should have relevant policies and procedures in managing the actual or potential conflicts of interests arising.

SFC reprimands and fines BOCOM International Securities \$19.6 million for internal control failures (20 Apr 2020)

The Securities and Futures Commission (SFC) has reprimanded and fined BOCOM International Securities Limited (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.

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.

Extensive deficiencies were also identified during the SFC’s review of BISL’s margin lending and margin call policy, including failures to, among others:

- document and strictly enforce a clear margin lending and margin call policy, in particular, in relation to the making of margin calls, forced liquidation and stopping further advances;
- keep records of written explanations for deviation from the margin lending policy;
- ensure margin calls are communicated to clients;
- promptly collect from clients amounts due as margin;
- maintain appropriate detailed records of margin call history; and
- objectively set and enforce the credit limits for margin clients.

<https://www.sfc.hk/edistributionWeb/gateway/EN/news-and-announcements/news/doc?refNo=20PR36>

Implications

Licensed Corporations should be vigilant in controls for third party deposits for anti-money laundering and should establish sound policies and procedures according to the SFC’s requirements when engaging in margin lending.



Fidelity Consulting Services Limited – Newsroom
Key Enforcement News under the SFC
April to June of 2020

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 (SFC) has reprimanded and fined Mega International Commercial Bank Co., Ltd. (MICBC) \$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 (HKMA), the SFC conducted an investigation which found that, in the course of selling CISs to clients between August 2014 and July 2015, MICBC had failed to implement adequate and effective systems and controls to, among others:

- 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.

<https://www.sfc.hk/edistributionWeb/gateway/EN/news-and-announcements/news/doc?refNo=20PR42>

Implications

Licensed Corporations should establish sound policies and procedures in suitability obligations, including customer due diligence, product due diligence and on-going monitoring.

SFC reprimands and fines Southwest Securities (HK) Brokerage Limited \$5 million for breaches of anti-money laundering regulatory requirements (18 May 2020)

The Securities and Futures Commission (SFC) has reprimanded and fined Southwest Securities (HK) Brokerage Limited (SSBL) \$5 million for failures in complying with anti-money laundering and counter-terrorist financing (AML/CFT) regulatory requirements in 2016. Specifically, the SFC found that SSBL failed to:

- implement adequate and effective policies and procedures to mitigate the risk of money laundering and terrorist financing associated with third party deposits; and

Fidelity Consulting Services Limited – Newsroom
Key Enforcement News under the SFC
April to June of 2020

- establish proper internal systems and controls to monitor its clients' activities, and detect and report suspicious transactions to the Joint Financial Intelligence Unit (JFIU) in a timely manner.

The SFC's investigation revealed that between January and December 2016, SSBL failed to identify 89 per cent (ie, 164 out of 184) of the third party deposits totalling \$110.1 million for its clients due to a lack of systems and procedures to review the source of funds deposited into sub-accounts that SSBL maintained with a bank. In some cases where third party deposits were identified by SSBL, the clients' relationship with the third party depositors and the reason for these deposits provided by the clients failed to explain the rationale for the transfers satisfactorily. However, SSBL did not critically evaluate these deposits and document the enquiries, as well as the reasons for approving them. SSBL's staff also did not have a clear and consistent understanding of their respective roles and responsibilities in the monitoring and identification of suspicious transactions. Nor did SSBL diligently supervise and provide sufficient guidance to its staff to enable them to form suspicion or to recognise signs of money laundering or terrorist financing.

<https://www.sfc.hk/edistributionWeb/gateway/EN/news-and-announcements/news/doc?refNo=20PR45>

Implications

Licensed Corporations should have stringent policies and procedures for third party deposits or payments, together with adequate training to staff for identifying and reporting suspicious transactions.

SFC reprimands and fines Convoy Asset Management Limited \$6.4 million for regulatory breaches over bond recommendation (19 May 2020)

The Securities and Futures Commission (SFC) has reprimanded and fined Convoy Asset Management Limited (CAML) \$6.4 million for control failures in solicitation and recommendation of bonds to clients. The SFC found that CAML referred clients to a third party platform between March 2015 and January 2017 to execute 30 transactions of bonds listed under Chapter 37 of the Main Board Listing Rules, some of which involved solicitation or recommendation made to clients. In recommending Chapter 37 Bonds to clients, CAML failed to:

- conduct proper and adequate product due diligence on these bonds before making recommendation or solicitation;

Fidelity Consulting Services Limited – Newsroom
Key Enforcement News under the SFC
April to June of 2020

- have an effective system in place to ensure that the recommendation or solicitation in relation to bonds was suitable for and reasonable in all the circumstances;
- maintain proper documentary records of the investment advice or recommendation given to its clients and provide each of them with a copy of the written advice; and
- have adequate and effective internal controls and system in place to diligently supervise and monitor the sale of bonds through the third party platform and to ensure its compliance with applicable regulatory requirements.

<https://www.sfc.hk/edistributionWeb/gateway/EN/news-and-announcements/news/doc?refNo=20PR47>

Implications

Licensed corporations should aware that bonds listed under Chapter 37 of the Main Board Listing Rules may be of high risk and to note the importance of compliance with the suitability obligations and the specific guidance regarding the selling of fixed income products, complex and high-yield bonds.

SFC reprimands and fines Potomac Capital Limited \$800,000 for breaching Financial Resources Rules (8 June 2020)

The Securities and Futures Commission (SFC) has reprimanded and fined Potomac Capital Limited (Potomac) \$800,000 for failures to comply with the Securities and Futures (Financial Resources) Rules (FRR). The SFC found that Potomac overstated its liquid capital in its financial returns from November 2016 to May 2017 by incorrectly including certain fees receivables from two clients accumulated since around April 2013 as liquid assets when the aged fee receivables should not qualify as liquid assets under the FRR.

<https://www.sfc.hk/edistributionWeb/gateway/EN/news-and-announcements/news/doc?refNo=20PR51>

Implications

Licensed Corporations should be cautious in classification of receivables for reporting in financial returns and to have dual control of preparing and checking as inaccurate reporting may lead to breaches of FRR.



Fidelity Consulting Services Limited – Newsroom
Key Enforcement News under the SFC
April to June of 2020

SFC publicly criticises CICC Financial Trading Limited and China International Capital Corporation Limited for breaches of Takeovers Code (18 June 2020)

The Securities and Futures Commission (SFC) has publicly criticised CICC Financial Trading Limited (CICCFT) and China International Capital Corporation Limited (CICCL) for breaches of the Code on Takeovers and Mergers (Takeovers Code). In transactions related to mandatory general offers for the H shares of Dalian Port (PDA) Company Limited and Maanshan Iron & Steel Company Limited in 2019, China International Capital Corporation Hong Kong Securities Limited (CICCHKSL), a member of the China International Capital Corporation group (CICC Group), was the financial adviser to the offerors. CICCFT and CICCL dealt in the relevant securities of Dalian Port and Maanshan Iron during the transactions but failed to make timely disclosure of their dealings in relevant securities under Rule 22 of the Takeovers Code. <https://www.sfc.hk/edistributionWeb/gateway/EN/news-and-announcements/news/doc?refNo=20PR56>

Implications

Corporate finance advisers should take note the disclosure obligations in the Takeovers Code for timely and accurate disclosure of information in relation to relevant dealings, including those of themselves, as this plays a fundamental role in ensuring that takeovers are conducted within an orderly framework and the integrity of the markets is maintained.

SFC reprimands and fines Guotai Junan Securities (Hong Kong) Limited \$25.2 million for breaches relating to anti-money laundering and other regulatory requirements (22 June 2020)

The Securities and Futures Commission (SFC) has reprimanded and fined Guotai Junan Securities (Hong Kong) Limited (Guotai Junan) \$25.2 million for multiple internal control failures and regulatory breaches in connection with anti-money laundering, handling of third party fund transfers and placing activities, as well as detection of wash trades and late reporting.

In relation to third party fund transfers, the SFC investigation found that, between March 2014 and March 2015, Guotai Junan failed to take reasonable measures to ensure that proper safeguards were put in place to mitigate the risks of money laundering and terrorist financing in processing 15,584 third party deposits or withdrawals for its



Fidelity Consulting Services Limited – Newsroom
Key Enforcement News under the SFC
April to June of 2020

clients, totalling approximately \$37.5 billion. Despite red flags suggesting some of the third party fund transfers were unusual or suspicious, Guotai Junan failed to adequately monitor the activities of its clients, conduct appropriate scrutiny of the fund transfers, identify transactions that were suspicious and report them to the Joint Financial Intelligence Unit in a timely manner. Guotai Junan also did not ensure that its policies and procedures regarding anti-money laundering and counter-financing of terrorism (AML/CFT) were properly and effectively implemented with respect to third party fund transfers. Specifically, the SFC found that there were:

- a number of occasions where the reasons for the third party fund transfers, the relationship between the client and the third party, and/or the identity of the third parties were not documented and identified;
- inadequate guidance to its staff on the extent of enquiries they had to make with clients in relation to the third party fund transfers;
- inadequate procedures requiring its money laundering reporting officer to play an active role in identifying suspicious transactions; and
- inadequate communication between its operations and compliance staff to ensure effective monitoring of client activities.

In relation to placing activities, while acting as the placing agent for the global offering of a Hong Kong-listed company's shares between December 2015 and January 2016, Guotai Junan failed to take reasonable steps to ascertain whether the clients' subscription applications were consistent with its knowledge of their background and source of funds, and make appropriate enquiries when there were grounds for suspicion. In particular, the funds used by five clients to subscribe for \$28.8 million worth of the listed company's shares were deposited by the same third party into the respective client accounts in amounts far exceeding their self-declared net worth. Despite such red flags, Guotai Junan did not take reasonable steps to verify the ultimate beneficial owners of the clients' accounts and their source of funds, nor make appropriate enquiries to ascertain whether the clients were independent of the listed company. In the end, three of the five placees, who were allotted 11% of the listed company's shares of the total placing under the international tranche, turned out to be the listed company's employees.

In relation to detection of wash trades and reporting obligation, the SFC further found that Guotai Junan failed to detect 590 potential wash trades in a timely manner between January 2014 and July 2016 due to a lack of adequate written trade monitoring procedures or guidelines and technical failures of its transaction pattern monitoring

Fidelity Consulting Services Limited – Newsroom
Key Enforcement News under the SFC
April to June of 2020

system. However, despite becoming aware in July 2016 of 210 potential wash trades which could not be detected in a timely manner as a result of the system failure, Guotai Junan did not report these 210 trades to the SFC until seven months later in February 2017.

<https://www.sfc.hk/edistributionWeb/gateway/EN/news-and-announcements/news/doc?refNo=20PR58>

Implications

The SFC gives a strong message to licensed corporations that that is necessary to have in place trade monitoring system to mitigate the real risk of becoming a conduit to facilitate illicit activities, such as money laundering and market misconduct (e.g. wash trades etc.), and the importance of having adequate procedures and management oversight when exposed to potentially suspicious transactions once identified.

SFC bans former responsible officer of Guosen Securities (HK) Brokerage Company, Limited for 12 months (23 June 2020)

The Securities and Futures Commission (SFC) has prohibited Ms Joanna Chu Lai Wa, former responsible officer (RO), director and head of dealing of Guosen Securities (HK) Brokerage Company, Limited (Guosen) from re-entering the industry for 12 months from 23 June 2020 to 22 June 2021. The disciplinary action follows the SFC's sanctions against Guosen over its failures to comply with anti-money laundering (AML) and counter financing of terrorism (CFT) regulatory requirements when handling third party fund deposits between November 2014 and December 2015. The SFC found that Guosen's breaches were attributable to Chu's failure to discharge her duties as an RO and a member of Guosen's senior management. Guosen's internal control deficiencies in relation to third party deposits were brought to the attention of its senior management - including Chu - by its staff in 2013. However, Chu deemed that the matter was irrelevant to her and did not take any steps to ensure that the deficiencies were rectified. Her inaction contributed to Guosen's failure to put in place adequate AML/CFT internal controls during the material time. Chu also received records of third party deposits from Guosen's then head of settlement from time to time. Those records showed that, contrary to Guosen's purported policy to discourage third party deposits, it processed a significant number of third party deposits for its clients. However, Chu did not take any action and did not escalate the matter to her supervisor or other members of Guosen's senior management, despite the substantial amount of third party



Fidelity Consulting Services Limited – Newsroom
Key Enforcement News under the SFC
April to June of 2020

deposits received. Apart from turning a blind eye to the money laundering and terrorist financing (ML/TF) risks associated with third party deposits, Chu also failed to ensure that Guosen’s staff adhered to the procedures for assessing clients’ ML/TF risks by documenting the process as required by Guosen’s compliance manual in her capacity as one of the approvers of account opening applications.

In view of above, the SFC considers that Chu’s conduct fell short of the standard required of her as an RO for a licensed corporation.

<https://www.sfc.hk/edistributionWeb/gateway/EN/news-and-announcements/news/doc?refNo=20PR57>

Implications

It is important for ROs and Manager-in-charge (“MICs”) to discharge the obligations and management oversight as senior management properly otherwise would be liable to reprimand and disciplinary actions of the SFC.

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