

SFC's consultation conclusions on new investor ID and OTC securities transactions reporting regimes



SFC issues consultation conclusions on proposals to implement investor identification regime at the trading level for the securities market and an OTC securities transactions reporting regime for SEHK-listed shares

Last year, we wrote an [article](#) on the Hong Kong Securities and Futures Commission's (the "SFC") [consultation](#) on the proposals to implement the 2 abovementioned regimes. The consultation was launched on 4 December 2020. On 10 August 2021, the SFC issued their [conclusions](#) to the consultation. The conclusions stated that respondents generally agreed with the matters proposed in the consultation paper.

Recap

We recap the 2 regimes put forward under the consultation.

- (A) In respect of (i) on-exchange orders for securities listed on the Stock Exchange of Hong Kong ("**SEHK**") and (ii) any off-exchange trade for listed securities that is reportable to the SEHK, there will need to be an assignment of broker-to-client assigned numbers ("**BCAN**"), and the submission of BCAN and up-to-date client identification data to the SFC. The ultimate goal is to extend this regime to the exchange-traded derivatives market in the future.
- (B) When a "Regulated Intermediary" (i) makes a transfer of SEHK-listed ordinary shares or real estate investment trusts ("**REITs**") that are neither recorded by SEHK as on-exchange orders nor required to be reported to the SEHK as off-exchange trades, in respect of which stamp duty is chargeable, or (ii) deposits or withdraws any physical share certificate (to the extent that they relate to SEHK-listed ordinary shares or REITs), certain information needs to be submitted to the SFC.

In this client alert, we summarize (a) the main ways in which the SFC is prepared to deviate from what they had originally proposed, and (b) some of the clarifications that the SFC has made.

A. The Investor Identification Regime

1. The definition of "Relevant Client", which are persons to whom "Regulated Intermediaries" need to assign BCANs, will no longer include investors who are clients of an Exchange Participant's *overseas* affiliate. In making this change, the SFC considered (i) the need to even the playing field, because otherwise, overseas affiliates of Exchange Participants would need to comply with the regime, whilst those who were not affiliated with Exchange Participants would not need to; and (ii) the operational and legal difficulties of transferring information from an Exchange Participant's overseas affiliates to the Exchange Participant in Hong Kong.
2. If the securities trading account used to place an order is opened in the name of a discretionary account manager, that manager's BCAN (instead of the BCAN of the legal entity that opens that trading account) should be tagged to the order.
3. Voluntary tagging of BCANs for odd lots of listed securities traded on the odd lot / special market of SEHK (which would not ordinarily need to be tagged with a BCAN) will be allowed. This should help Regulated Intermediaries from a practical perspective, dispensing for the need to have a setting in their system to carve out such orders and trades.

4. The expression "Regulated Intermediaries" will be replaced with "Relevant Regulated Intermediaries" to avoid any potential misunderstanding that all Licensed Corporations and Registered Institutions need to be comply with this regime.
5. SEHK has issued an [information paper](#) to provide more information about the operational logistics and technical details of the regime.

B. The OTC Securities Transactions Reporting Regime

6. The time for a Regulated Intermediary to report will be extended from 1 to within 3 HK trading days after the day of transfer, deposit or withdrawal (as the case may be).
7. A transfer of shares that would otherwise fall within the regime, will not be reportable if either (i) it is granted stamp duty relief or (ii) it is made in accordance with the terms of a structured product or derivative, or for the conversion of a deposit receipt into shares or vice versa.

General

8. *Operating expenses:* The SFC is mindful that Regulated Intermediaries might incur additional operating expenses in order to comply with the 2 regimes. The SFC has said that it is working with Hong Kong Exchanges and Clearing Limited to mitigate such costs, by building systems into the general trading system. Further, reporting under the OTC Securities Transaction Reporting Regime will be done directly via the SFC's portal.
9. *Personal data:* The SFC is also mindful that certain clients of Regulated Intermediaries might be unwilling to provide consent for the transfer of their personal data to the SFC and/or SEHK in order to comply with the new regimes. To this end, the SFC will prescribe a standard client consent form which should help Regulated Intermediaries. More importantly, the SFC will provide specific guidance on the circumstances under which new express consent would not need to be obtained from the client (i.e. because the existing Personal Information Collection Statement which an individual client has already agreed to is sufficiently broad to enable their personal data to be used to comply with the new regimes).
10. *Timeline:* To allow more time for the industry to prepare, the SFC has postponed the implementation of the Investor Identification Regime and the OTC Securities Transactions Reporting Regime from Q1 2022 and Q3 2022, to H2 2022 and H1 2023 respectively (at the earliest). The SFC will also issue an implementation circular by September 2021 to provide guidance to the industry on the preparations required and the timeline for the various matters that underpin the implementation of the regimes. To implement the regimes, the proposed amendments to the SFC's Code of Conduct for Persons Licensed by or Registered with the Securities and Futures Commission will be gazetted and come into effect on a future date, which would be determined by the SFC in line with the implementation of the regimes following the completion of required system tests and market rehearsals.

Conclusion

Our conclusion remains similar to that reached in our previous article, namely that Regulated Intermediaries will need to make changes to their trading systems. This will necessitate new staff training, changes to IT systems and updating of one's terms and conditions and privacy policy. Regulated Intermediaries might also want to allocate further resources to their compliance functions, despite the SFC's statement that they would try to mitigate increased operating expenses.

Please get in touch if you are interested in discussing any of the above.

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