



Our Ref: 250/LC/24/1/14

15 December 2006

Circular to intermediaries¹ licensed or registered for Type 6 regulated activity

Implementation of the new sponsor regime

Following our circular dated 5 September 2006 and the press releases dated 5 September and 5 October 2006 respectively, we would like to update the industry on the implementation progress of the new sponsor regulatory regime.

As at noon 14 December 2006, there are a total 267 intermediaries² licensed or registered for Type 6 regulated activity. Among these intermediaries:

- 90 have made submissions indicating that they would act as sponsors
- 160 indicated that they would not act as sponsors. Letters of Mindedness (“LOMs”) have been issued informing them that the licensing condition restricting them from acting as sponsors with effect from 1 January 2007 (“Licensing Condition”) has been imposed on these intermediaries
- 17 intermediaries have not yet responded

We are in the final stage of assessing the submissions made by intermediaries who intend to act as sponsors. For those that meet the eligibility criteria prescribed in the Guidelines for Sponsors and Compliance Advisers (“Sponsor Guidelines”), relevant notification informing them of the Commission’s decision not to impose a licensing condition restricting them from acting as sponsors will be issued.

Intermediaries that do not meet the eligibility criteria prescribed under the Sponsor Guidelines

We also note in our assessment that there are some intermediaries who do not meet the eligibility criteria, including the requirements in relation to competence and experience.

On 15 December 2006, we will issue LOMs to intermediaries who have failed to demonstrate that they are able to meet the criteria to act as sponsors informing them of our intention to impose the Licensing Condition. These intermediaries will be given an opportunity to make representations as a matter of due process.

If they do not make representations by 29 December 2006, the Licensing Condition will be imposed and will be effective on 1 January 2007. For those who have made representations by 29 December 2006, the Commission will consider these carefully. However,

¹ “Intermediaries” means licensed corporations or registered institutions under the SFO.

² The 267 intermediaries include 235 Licensed Corporations and 32 Registered Institutions.



intermediaries should not assume that by simply making representations to the Commission, they will have satisfied the Commission of their eligibility and hence the Commission will not proceed with imposing the Licensing Condition.

As a matter of due process, the Commission will need to assess the representations carefully and the possible outcome of our assessment can be broadly stated as follows:

1. If the Commission is satisfied that an intermediary has demonstrated that it meets the eligibility criteria, a letter will be issued to that intermediary informing them that Licensing Conditions will not be imposed.
2. If it is the Commission's final decision that an intermediary does not satisfy the eligibility criteria, the Commission will issue a Notice of Decision ("NOD"), and impose the Licensing Condition to take effect immediately.

Intermediaries should be aware that they may not receive the Commission's notification or NODs prior to 1 January 2007. Meanwhile, and until then, no Licensing Condition will be imposed.

For those who have been issued an LOM, they may continue to carry out sponsor/compliance adviser work which has been accepted prior to receipt of the LOM. While they may also accept new sponsor/compliance adviser work, they should carefully consider the circumstances before they accept such work. As a licensed intermediary, they should consider whether they would be able to provide proper service to their clients and act in the best interest of these clients given the existence of the LOM and the possibility that they ultimately may not be able to continue to act as sponsors. In view of this inherent uncertainty, undertaking new sponsor or compliance adviser work by intermediaries after the receipt of LOM may raise the issue of their ability to control business risk and in general, their overall fitness and properness as licensed intermediaries.

Where the Commission makes the final decision to impose the Licensing Condition and this condition becomes effective, intermediaries who are imposed with the Licensing Condition may not take up new sponsor or compliance adviser work, but may continue to carry out sponsor or compliance adviser work which has been taken up before the imposition of the Licensing Condition, subject always to the overriding obligation to provide their clients proper service.

For fairness to their clients, intermediaries that received LOMs but have submitted representations are expected to disclose this fact, and explain its implications, to their clients.

Intermediaries that have not responded

For the 17 intermediaries that have not indicated whether they will act as sponsors have already been issued with LOMs informing that the Licensing Condition will be imposed on their licenses. As a matter of due process, these intermediaries will be given the opportunity to make representations by 29 December 2006 before a NOD is issued.



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Public registry on the SFC website

We will issue another circular, to be accompanied by a press release, closer to the commencement date of 1 January 2007 with the names of those intermediaries that have been imposed with the Licensing Condition which will take effect on 1 January 2007. The Public Registry will be updated similarly.

For more information on the Sponsor Guidelines and the sponsor regime, please refer to the *Frequently Asked Questions*³ on the SFC website. Should you have any queries, please contact your responsible Intermediaries Relationship Manager.

Licensing Department
Intermediaries and Investment Products Division
Securities and Futures Commission

³ Frequently asked questions can be downloaded from the SFC website (<http://www.sfc.hk>) under “Licensing Related Matters” of the Intermediaries, Licensing and Investment Products section.