

11 May 2015

Circular to Intermediaries Regarding Compliance with Notification Requirements

This circular serves to remind intermediaries and their substantial shareholders of the notification requirements under the Securities and Futures Ordinance (“**SFO**”), the Securities and Futures (Licensing and Registration) (Information) Rules (“**Information Rules**”), and the Code of Conduct for Persons Licensed by or Registered with the Securities and Futures Commission (“**Code of Conduct**”).

The notification requirements are not limited to information concerning regulated activities in Hong Kong, nor to information concerning intermediaries. They also cover information relating to substantial shareholders or directors, as well as other corporations or businesses owned or managed by those substantial shareholders or directors (for the purposes of this circular, “**group entities**”).¹

The requirements include an obligation, where legally permissible, to notify the Commission and (where applicable) the Hong Kong Monetary Authority (“**HKMA**”) in writing within seven business days if a change occurs in relation to “relevant information”, whether in Hong Kong or elsewhere. Relevant information includes details as to whether the intermediary or its group entities are subject to any disciplinary action or investigation by a regulatory body or criminal investigatory body, whether in Hong Kong or elsewhere.

A key purpose of the notification requirements is to ensure that the Commission and the HKMA can remain informed and satisfied on an ongoing basis that intermediaries and their representatives remain fit and proper, notwithstanding any change to their circumstances. As business models have evolved, with many firms now operating on a group and/or cross border basis, it is now particularly important to recognize that an intermediary’s circumstances may be impacted as a consequence of events concerning their group entities.

Accordingly, an intermediary should notify the Commission and (where applicable) the HKMA of an event where:

- (a) it directly involves the intermediary or any of its representatives and may have an impact on the fitness and properness of the intermediary or any of its representatives;

¹ See for example Securities and Futures (Licensing and Registration) (Information) Rules, Schedule 1, Part 2, paragraph 2: “Relevant information, in relation to a corporation, means information on whether or not the person is or has been, in Hong Kong or elsewhere ... a substantial shareholder or director of a corporation or business that is or has been subject to any disciplinary action or investigation by a regulatory body or criminal investigatory body (as the case may be), or involved in the management of such corporation or business...”



- (b) it may have a significant impact on the operations or viability of the intermediary's corporate group as a whole; or
- (c) it arises from a material failure of systems and controls that are applicable to the intermediary, even if the failure occurred outside of Hong Kong to other group entities.

To facilitate compliance with the notification requirements, the Commission expects corporate groups to have effective internal systems and controls in place to ensure appropriate dissemination of information to the intermediary from other group entities, wherever located.

The requirements also include, amongst other matters, an obligation to notify the Commission and (where applicable) the HKMA in writing within seven business days of:

- (i) any significant changes in the nature of the business carried on and types of services provided by the intermediary;
- (ii) any significant changes in the business plan covering internal controls, organizational structure, contingency plans and related matters;
- (iii) changes in capital and shareholding structure of the intermediary and the basic information in respect of any person in accordance with whose directions or instructions the intermediary is, or its directors are, accustomed or obliged to act; and
- (iv) changes in the persons who are substantial shareholders, directors, responsible officers, or executive officers of the intermediary, and subsidiaries of the intermediary that carry on a business in any regulated activity.

A person who, without reasonable excuse, fails to report an event as required by the Information Rules commits an offence and is liable to a fine under section 135(7) of the SFO. In the case of entities belonging to the same group, an intermediary may make a notification required under the Information Rules on its behalf and on behalf of other group entities in respect of the same change in any specific information. The notification should state clearly on whose behalf it is made, and the represented entities should be aware of the notification.²

In addition to the notification requirements stipulated in the Information Rules, intermediaries are expected, pursuant to paragraph 12.5 of the Code of Conduct, immediately to notify the Commission and (in the case of a registered institution) the HKMA of various events, including any actual or suspected material breach, infringement of or non-compliance with

² The Information Rules specify changes that must be notified to the Commission and the HKMA (if the information provided relates to a registered institution) by licensed corporations, registered institutions, licensed representatives and substantial shareholders. For example, in the case of disciplinary action or investigation by a regulatory body or criminal investigatory body concerning a licensed corporation's substantial shareholder or another corporation that a licensed corporation's substantial shareholder is a substantial shareholder of, the notification obligation falls on both the licensed corporation and the substantial shareholder.



any law, rules and codes administered by the Commission, as well as rules or requirements of other regulatory authorities. Intermediaries and their substantial shareholders should review the SFO, the Information Rules and the Code of Conduct to ensure they understand the notification requirements in detail.

Intermediaries Division
Securities and Futures Commission