

29 September 2017

Circular to clarify the “relevant industry experience” requirement for Responsible Officers under the Guidelines on Competence

The purpose of this circular is to clarify the SFC’s approach in assessing, under the Guidelines on Competence (“**Guidelines**”), the “*relevant industry experience*” requirement for an individual applying to be a responsible officer (“**RO**”).

The Guidelines set out the matters that the SFC would normally consider in assessing whether a person is competent to carry on any regulated activity under the Securities and Futures Ordinance. In particular, to be an RO, an applicant has to fulfil four basic elements as set out in the Guidelines, namely whether he/she has the requisite (i) academic/industry qualification, (ii) “**relevant industry experience**”, (iii) management experience, and (iv) whether he/she has passed the relevant local regulatory framework papers.

In assessing whether an RO applicant has the “*relevant industry experience*”, the SFC does not take a restrictive or narrow view. An applicant’s previous experience may be considered relevant if the substance of such experience is directly relevant or crucial to the regulated activity carried on by his/her new principal and the role that the applicant will undertake. The SFC considers all relevant factors in assessing each RO application, including the new principal’s business model, governance structure, and the competence of all its key personnel.

As an example, where the regulated activity carried on by a licensed corporation is based on the utilisation of a highly innovative technology, an RO applicant’s direct previous experience in the relevant technology itself may be essential in integrating the technology into the regulated activity carried on by the licensed corporation. The SFC may recognise an RO applicant’s technology experience as “*relevant industry experience*” if:

- (i) the applicant has been a key person in developing, or ensuring the proper and continued functioning of, a technology, platform or system (ie, not merely providing system support); and
- (ii) the technology, platform or system in which the applicant has expertise is central to the regulated activity of his/her new principal.

For example, if an individual has previously led the research, development and maintenance of an algorithmic investment and portfolio management system, such experience may be regarded as “*relevant industry experience*” for the purpose of his/her application to be an RO of a licensed corporation which provides robo-advisory services.

On the other hand, a traditional brokerage firm which provides some dealing services through an online trading platform is unlikely to be considered as conducting regulated activities with the platform being a central element of those activities. In such case, the SFC is unlikely to approve an individual with just a technology background to be an RO.

Where an RO applicant mainly relies on a technology background for the purpose of satisfying the “*relevant industry experience*” requirement, and subject to meeting other



licensing requirements, the SFC may approve the RO application and impose a “non-sole” condition on the individual’s licence. This means that the individual must, when actively participating in or directly supervising the regulated activity for which the firm is licensed, do so under the advice of another RO who is not subject to the same condition.

As mentioned above, in addition to the “*relevant industry experience*” requirement, an RO applicant is required to fulfil the other elements set out in the Guidelines, including passing the relevant local regulatory framework papers, unless an exemption applies.

Licensing Department
Intermediaries Division
Securities and Futures Commission

End