

Securities and Futures (Client Money) Rules

Scope of Application [s.3(1)]

apply to client money received or held by or on behalf of –

- a) the licensed corporation, in the course of the conduct of any regulated activity for which the licensed corporation is licensed; or
- b) an associated entity of the licensed corporation, in relation to such conduct of the regulated activity.

Do Not Apply to client money [s.3(2) &4(3)]

- a) received or held outside Hong Kong;
- b) in a bank account in that client's name;
- c) required to meet securities or futures settlement or margin within the following 2 business days*;
- d) for reimbursement of payments by the licensed corporation;
- e) for commission and charges; or
- f) for repayment of margin loans.

* For cheques, regarded as having received the amount only upon clearance of the cheque (see s.9)

Treatment within 1 business day*^[s.4(4)]

- ◆ Pay to the relevant client;
- ◆ Deposit into a segregated account;
- ◆ Pay according to client's one-off written direction;
- ◆ Pay according to client's standing authority

* For cheques, regarded as having received the amount only upon clearance of the cheque (see s.9)

Segregated Account [s.4(1) & 4(2)]

- ◆ account must be in Hong Kong
- ◆ designation: “trust account” or “client account”
- ◆ with an authorized financial institution or any other person approved by SFC

Restrictions on one-off written direction or standing authority [s.4(6) & 5(3)]

Shall not pay to –

- ◆ any of its officers or employees; or
- ◆ any officer or employee of any related companies

Unless that person is the client of the licensed corporation and the client money is received from or for him/her.

Restrictions on acting under standing authority [s.4(5), 5(2) & 12(5)]

Shall not pay if

- ◆ payment would be unconscionable as if the authority were a contract, having regard to the factors specified in section 6 of the Unconscionable Contracts Ordinance (cap 458);
- ◆ it authorizes payment to non-segregated account in Hong Kong of the licensed corporation or associated entity or any of their related companies.

Formality requirements on standing authority [s.8(1)&(2)]

1. Must be in writing
2. Must specify a validity period (not exceeding 12 months except for Professional investors)
3. Must specify the manner of revocation.

Renewal of standing authority [s.8(3)(a)]

Option 1

Renew with the written consent of the client for one or more further periods –

- ◆ each not exceeding 12 months; or
- ◆ of any duration, in case of professional investor.

Renewal of standing authority

[s.8(3)(b) & 8(4)]

Option 2

- (1) Give at least 14 days written notice prior to expiry,
 - reminding the client of impending expiry;
 - informing the client that unless the client objects, it will be renewed upon expiry upon the same terms and conditions as the original standing authority;
- (2) the client does not object to the renewal of the standing authority before its expiry; and
- (3) give a written confirmation of the renewal to the client within one week after the date of expiry.

Renewal of standing authority

[s.8(3)(b) & 8(4)]

Option 2 (cont'd)

Renew for one or more further periods –

- (A) An equivalent period to that specified in the original standing authority; or
- (B) Any period not exceeding 12 months (any duration, in case of professional investor) specified by the licensed corporation or associated entity.

Payment from segregated account [s.5(1)]

- ◆ Pay to the relevant client;
- ◆ Pay according to client's one-off written direction;
- ◆ Pay according to client's standing authority;
- ◆ Apply to meet the client's securities or futures settlement or margin obligation; or

Payment from segregated account [s.5(1)]

- ◆ Pay for what the client owes –
 - the licensed corporation in respect of the carrying on by the licensed corporation of any regulated activity for which it is licensed; or
 - the associated entity in respect of the receipt or holding of client money for or on behalf of the client by the associated entity.

Interest on client money held in segregated account [s.6]

- ◆ Same treatment as for other client money in accordance with s.5(1).
- ◆ Interest retained by the firm by virtue of a written agreement with the client shall be paid out of the account within 1 business day after the later of the date on which –
 - a) the interest is credited to the account; or
 - b) the licensed corporation or associated entity becomes aware of the credit.

Withdrawal of non-client money held in segregated account [s.10]

- ◆ Non-client money held in the segregated account shall be withdrawn within 1 business day of becoming aware of the existence of such money in the segregated account.

Self-reporting of non-compliance [s.11]

- ◆ Relevant provisions: s.4(1), 4(4) and 5(1)
- ◆ Report within 1 business day of becoming aware of the contravention, give written notice of the breach to the SFC.

Penalties [s.12]

- ◆ without reasonable excuse, contravenes section 4 or 5—
 - on conviction on indictment, up to \$200,000 fine and 2 years imprisonment
 - on summary conviction, up to level 6 fine and 6 months imprisonment
- ◆ with intent to defraud, contravenes section 4 or 5—
 - on conviction on indictment, up to \$1,000,000 fine and 7 years imprisonment
 - on summary conviction, up to \$500,000 fine and 1 year imprisonment
- ◆ without reasonable excuse, contravenes section 6, 8(4), 10 or 11, up to level 3 fine
- ◆ with intent to defraud, contravenes section 6, 8(4), 10 or 11, up to level 6 fine