

Annex

Operational Safeguards for Acceptable Use of the Access Service for Complying with the CNR

Client consent

1. The intermediary should obtain positive, revocable consent from the client to the Access Service¹ in lieu of other means of service specified as satisfying the requirement for serving any document for the purposes of the Securities and Futures Ordinance (SFO) under section 400 of the SFO (eg, by hand, post, electronic mail transmission, etc).
2. The consent to the Access Service could be obtained from new clients by incorporating express clauses into the terms and conditions (T&C) for the client's access to and use of the intermediary's online trading platform in a client agreement executed at the time of account opening pursuant to paragraph 6.1 of the Code of Conduct of Persons Licensed by or Registered with the Securities and Futures Commission.
3. Where the intermediary wishes to obtain the consent to the Access Service from existing clients by adding such T&C clauses to their client agreements, the intermediary should send individual notifications to the clients that the additional clauses will take effect from a specified date only if the clients give their consent:
 - (a) in writing;
 - (b) electronically; or
 - (c) by the act of logging in to their account on the intermediary's online trading platform² once, regardless of whether a transaction is also executed in the online account.
4. The notification sent by the intermediary or the consent given by the existing clients should specify clearly that by giving consent to the added T&C clauses, the clients also acknowledge their understanding and acceptance of the access arrangements set out in paragraph 8 below.
5. Upon identifying that an existing client has given his consent, the intermediary should send a notice to the client confirming the commencement date of the Access Service as well as setting out the methods of revocation of consent. There should be a lead time (of at least one month) between the date of the notice and the commencement date unless the client requests an earlier commencement date.

¹ Access Service refers to the provision of trade documents required to be provided to clients under the CNR through access to these documents posted by intermediaries on their websites.

² Where the intermediary operates an online integrated service platform, clients logging in to their account on that platform should not be considered to be logging in to their account on the online trading platform unless the clients will automatically have access to the online trading platform without additional login steps.

6. The notification for the added T&C clauses and notice of commencement date of the Access Service should be sent to the clients using a means of communication that is effective to draw the clients' attention (whether by written notice, statement insert, prominent message in a statement of account, e-mail, short message service (SMS) or other electronic means which supports effective communication).
7. Proper records or an audit trail should be maintained by the intermediary relating to the consent obtained (eg, the form and date of the consent)³.

Disclosure of access arrangements

8. The consent to the Access Service of both new and existing clients should be accompanied by the client's acknowledgment that he understands and accepts the following arrangements:
 - (a) Appropriate hardware and software, internet access⁴ and a specific email address, mobile phone number or other electronic address provided and designated by the client for receiving email, SMS or other electronic notifications from the intermediary are required for using the Access Service.
 - (b) Internet, email, SMS and other electronic information services may be subject to certain IT risks and disruption.
 - (c) Revocation of consent to the Access Service will be subject to the giving of such advance notice by the client through such methods as specified by the intermediary.
 - (d) The client may be required to pay a reasonable charge for:
 - (i) obtaining a copy of any trade document that is no longer available for access and downloading through the intermediary's website; or
 - (ii) requesting the intermediary to provide trade documents to him, in addition to the request for the Access Service, by other means.
 - (e) In order to avoid missing notifications, the client needs to inform the intermediary as soon as practicable upon a change in the designated email address, mobile phone number or other electronic address.

³ The intermediary should establish and maintain effective retention policies for the records or audit trail which ensure that all relevant legal and regulatory requirements are complied with, and which enable the intermediary, its auditors and other interested parties to carry out routine and ad hoc comprehensive reviews or investigations.

⁴ If the website is on an intranet, the intermediary should specify the relevant access requirements.

Revocation of consent

9. The intermediary should offer more than one convenient method for the clients to revoke their consent to the Access Service at any time.
10. The required period of advance notice of revocation of consent should not be more than two months⁵.

Notification of the posting of trade documents on the website

11. The client should be alerted when trade documents are posted on the intermediary's website on any particular day by sending an individual notification to the client using a prompt and effective means of communication.
12. The notification should remind the client to promptly review the trade documents posted on the intermediary's website to ensure that any errors are detected and reported to the intermediary as soon as practicable. In addition, the client should be reminded by the notification or a prominent message in the trade documents to save an electronic copy in the client's own storage or print a hard copy of the trade documents for future reference.

Security and functionality of the information technology (IT) systems for posting trade documents

13. Access to the trade documents posted on websites should be protected by user IDs and passwords⁶, and the intermediary should adopt sufficient and comprehensive IT measures to ensure the integrity, security and confidentiality of the posted trade documents.
14. The trade documents posted on the intermediary's website should be downloadable in a printer-friendly format and should be capable of being saved by the client electronically.
15. The trade documents should continue to be available for access, review and downloading by the client for not less than the following respective specified retrieval periods from the date of the notification to the client of their posting.
 - (a) Daily statement of account, contract note and receipt: three months
 - (b) Monthly statement of account: two years

⁵ In the exceptional case where a client logs in to his account on the intermediary's online trading platform in circumstances set out in paragraph 3(c) above but wishes to revoke his consent soon thereafter or upon notification by the intermediary of the commencement date of the Access Service, the intermediary should give effect as soon as practicable to the revocation of the consent given.

⁶ Reference should also be made by the intermediary to paragraph 1.1 of the SFC's Guidelines for Reducing and Mitigating Hacking Risks Associated with Internet Trading where applicable.

Contingency plan

16. The intermediary shall monitor and maintain proper records or audit trails of posting trade documents on its website for access by the client and of sending notifications to the client. The intermediary should have handling procedures in place to contact clients whose notifications are not delivered and update the client's designated email address, mobile phone number or other electronic address as soon as practicable.
17. The intermediary should use any of the means of service specified as satisfying the requirement for serving any document for the purposes of the SFO (see paragraph 1 above) to provide the trade documents to clients as soon as practicable if it fails to post them on its website for access by the clients by the due date required under the CNR due to system failure or any other reason⁷.
18. The intermediary should also have a proper contingency plan for the provision of trade documents in the case of an outage of its website or any other IT incident preventing access to trade documents through the website.

⁷ Where applicable, the intermediary should observe the requirement of section 18 of the CNR to notify the SFC accordingly in writing.