

14 September 2018

Circular to intermediaries Compliance with notification requirement

This circular serves to remind intermediaries of the notification requirement under paragraph 12.5 of the Code of Conduct for Persons Licensed by or Registered with the Securities and Futures Commission (**Code of Conduct**) under which intermediaries are required to report to the Securities and Futures Commission (**SFC**) immediately upon the happening of, among other things, any material breach, infringement of or non-compliance with any law, rules, regulations and codes administered by the SFC or any such suspected breach, infringement or non-compliance¹.

It has recently come to the SFC's attention that some intermediaries have not promptly reported breaches of or non-compliance with various legal or regulatory requirements to the SFC, including:

- Suspected unlicensed dealing activities;
- Suspected unauthorised trading activities;
- Non-compliance with the suitability requirements under paragraph 5.2 of the Code of Conduct as supplemented by the corresponding frequently asked questions;
- Breaches of the Securities and Futures (Keeping of Records) Rules;
- Breaches of the Securities and Futures (Contract Notes, Statements of Account and Receipts) Rules; and
- Non-compliance with the order recording requirements under paragraph 3.9 of the Code of Conduct.

Prompt reporting from intermediaries is crucial to enable the SFC to swiftly assess the impact of the breach, take action to contain the damage (where necessary) and continuously appraise whether the intermediary (and its representatives) are fit and proper to remain licensed or registered.

In this regard, the SFC wishes to remind intermediaries that:

- This reporting obligation applies to both licensed corporations and registered institutions. While the Hong Kong Monetary Authority (**HKMA**) is the frontline regulator of registered institutions, registered institutions are required to fulfil this reporting obligation by making the report directly to the SFC in addition to reporting to the HKMA;

¹ Please also refer to the circular dated 1 June 2018 entitled "Circular to intermediaries on compliance with notification requirements" (<https://www.sfc.hk/edistributionWeb/gateway/EN/circular/openFile?refNo=18EC38>) and the circular dated 11 May 2015 entitled "Circular to Intermediaries Regarding Compliance with Notification Requirements" (<http://www.sfc.hk/edistributionWeb/gateway/EN/circular/intermediaries/licensing/openFile?refNo=15EC27>).



- All material breaches and non-compliance (actual or suspected, irrespective of whether these were identified by the intermediary itself, stemmed from customer complaints or were identified through other sources) should be reported to the SFC (as well as the HKMA in the case of registered institutions) as soon as practicable upon identification, i.e. not after the intermediary has already completed its investigation, obtained legal advice or taken remedial actions; and
- Failure to comply with the reporting obligation may result in disciplinary action being taken against the intermediaries and their management.

Intermediaries should review their incident escalation and reporting mechanisms and implement appropriate controls to ensure compliance with the notification requirement.

Should you have any queries regarding the contents of this circular, please contact Ms Seine Luk on 2231 1696.

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