

13 September 2021

Circular to intermediaries on obtaining client consent under the Hong Kong Investor Identification Regime (HKIDR) and Over-the-counter Securities Transactions Reporting Regime (OTCR)

This circular sets out the requirements to be observed for obtaining express consent from individual clients as required under paragraphs 5.6(p) and 5.7(h)¹ of the Code of Conduct for Persons Licensed by or Registered with the Securities and Futures Commission (Code of Conduct) for the transfer of their personal data² to the Stock Exchange of Hong Kong (SEHK) and/or the Securities and Futures Commission (SFC) under the HKIDR and OTCR. Such consent may be obtained by written and signed acknowledgement on paper, or by electronic means (which may include, for example, by instant messaging application) or by phone. The HKIDR and OTCR will be implemented tentatively in the second half of 2022 and the first half of 2023 respectively.

This circular should not be regarded as legal advice on the observance of the Personal Data (Privacy) Ordinance or any other applicable data privacy laws. Relevant licensed or registered persons³ subject to the HKIDR and OTCR should seek professional advice where necessary on the appropriate measures to be taken to ensure compliance with all applicable data privacy laws.

Requirements in respect of client consents

1) Express consent

A client consent should be obtained in an explicit form with the client clearly indicating his/her agreement to the purposes of use and transfer of his/her personal data to the SEHK and/or SFC as set out in the consent. No consent is to be implied by the client's conduct, silence or omission.

2) Explanation of consent

On or before obtaining a client consent, a relevant licensed or registered person should explain to the client the purpose of obtaining consent and the consequences of failure to provide consent. Relevant licensed or registered persons should implement procedures for

¹ Paragraphs 5.6 and 5.7 of the Code of Conduct are set out in the consultation conclusions on proposals to (1) implement an investor identification regime at trading level for the securities market in Hong Kong and (2) introduce an over-the-counter securities transactions reporting regime for shares listed on the Stock Exchange of Hong Kong released by the SFC in August 2021. These additions to the Code of Conduct will be published in the Government Gazette in due course and become effective on a future date to be determined in line with the implementation timeline as set out in the consultation conclusions.

² "Personal data" is defined under the Personal Data (Privacy) Ordinance (Cap. 486) as "any data - (a) relating directly or indirectly to an individual; (b) from which it is practicable for the identity of the individual to be directly or indirectly ascertained; and (c) in a form in which access to or processing of the data is practicable".

³ Please refer to the definition of "relevant licensed or registered person" in paragraphs 5.6(b) and 5.7(a) of the Code of Conduct.

obtaining client consents and for explaining to their clients the implications of providing such consent.

If the client consent cannot be obtained from any client, under the HKIDR, the relevant licensed or registered person should not submit any BCAN⁴ or CID⁵ of that client to SEHK and should only effect sell orders or trades in respect of existing holdings of a listed security (but not buy orders or trades) for that client. Similarly, under OTCR, if the client consent cannot be obtained from any client, the relevant licensed or registered person should not submit any CID of that client to the SFC. It should only effect transfers of shares out of and withdrawals of physical share certificates from that client's account, but not transfers of shares or deposits of physical share certificates into that client's account.

3) Authentication of client identity

The identities of clients from whom the consents are obtained should be properly authenticated and validated. In case of doubt, enquiries with clients should be made through a different communication channel from the means by which consent is to be obtained.

4) Purposes of use and minimum content of the consent

A client consent must expressly cover the following purposes of use of personal data:

- (a) disclosure and transfer of the client's personal data (including CID and BCANs) by the relevant licensed or registered person to SEHK and/ or the SFC in accordance with the rules and requirements of SEHK and SFC in effect from time to time;
- (b) allowing SEHK to: (i) collect, store, process and use their personal data (including CID and BCANs) for market surveillance and monitoring purposes and enforcement of the Rules of the Exchange of SEHK; (ii) disclose and transfer such information to the relevant regulators and law enforcement agencies in Hong Kong (including, but not limited to, the SFC) so as to facilitate the performance of their statutory functions with respect to the Hong Kong financial markets; and (iii) use such information for conducting analysis for the purposes of market oversight; and
- (c) allowing the SFC to: (i) collect, store, process and use their personal data (including CID and BCANs) for the performance of its statutory functions including monitoring, surveillance and enforcement functions with respect to the Hong Kong financial markets; and (ii) disclose and transfer such information to relevant regulators and law enforcement agencies in Hong Kong in accordance with applicable laws or regulatory requirements.

⁴ Please refer to the definition of "BCAN" in paragraph 5.6(b) of the Code of Conduct. Where client consent cannot be obtained from a client, his or her sell orders or trades should be tagged with a specific code representing the BCAN in such cases in accordance with the Information Paper on Investor Identification Regime at Trading Level for the Securities Market in Hong Kong (HKIDR) released by the Hong Kong Exchanges and Clearing Limited (HKEX).

⁵ Please refer to the definition of "CID" in paragraph 5.6(b) of the Code of Conduct.

A relevant licensed or registered person may (but is not required to) adopt the template set out in the Annex to obtain client consent.

5) Proper recording of consents and withdrawals of consents

A relevant licensed or registered person should keep and record all client consents and any withdrawals of such consents (irrespective of the means by which they are provided, including by phone or electronic means).

A relevant licensed or registered person should keep record of consents or withdrawals in written hardcopy (paper) format or via electronic mail. The date on which the consent or withdrawal was provided should be indicated on the record.

For consents or withdrawals provided by other means (e.g. by phone or other electronic means such as instant messaging), a relevant licensed or registered person should keep a phone or electronic record of the consent or withdrawal. The date on which the consent or withdrawal was provided should be indicated on the record.

A relevant licensed or registered person should also maintain a written log of all client consents and withdrawals of such consent with the following particulars:

- (a) the name of the client providing the consent or withdrawal;
- (b) the date on which the consent or withdrawal was provided; and
- (c) the means by which the consent or withdrawal was provided.

6) Maintenance of records

A client consent (and withdrawal) and the log of such consent (and withdrawal), should be kept as long as the client concerned remains a client of the relevant licensed or registered person and for no less than two years after the person ceases to be a client of a relevant licensed or registered person.

All consents, withdrawals and logs of consents and withdrawals should be maintained and centrally managed and stored in a form which is protected against unauthorized, accidental or inappropriate access, modification, erasure or loss and be readily accessible for compliance checking and audit purposes. In addition, where phone or electronic records are kept, a relevant licensed or registered person should have appropriate arrangements in place and maintain sufficient capability to store and back up such records.

A relevant licensed or registered person should provide the SFC with access to copies/records of client consents or withdrawals and logs of such consents or withdrawals upon request.



Reliance on existing client consent

A relevant licensed or registered person does not have to obtain new consent from an individual client for the purposes of the HKIDR and the OTCR if both of the following are met: (i) express consent has already been obtained from the client for the use of his or her personal data collected by the relevant licensed or registered person; and (ii) such consent expressly includes all the purposes of use set out in sub-paragraphs (a) to (c) of paragraph 4 above. The client consent need not set out verbatim the purposes of use in paragraph 4, as long as all of the purposes of use are covered. It should be noted that (ii) will not be satisfied where the specified purposes of use may only be implied or inferred from the client consent.

If the aforementioned requirements are not met in respect of any individual client, a relevant licensed or registered person is required to obtain express consent from the client either (i) in a form which expressly includes all the purposes of use set out in sub-paragraphs (a) to (c) of paragraph 4 or (ii) in the form of the template set out in the Annex to this circular.

**Supervision of Markets Division,
Enforcement Division,
Intermediaries Supervision Department, Intermediaries Division
Securities and Futures Commission**