

Client Alert

Financial Services

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SFC delays implementation of certain regulatory expectations and issues FAQ guidance on licensing issues resulting from COVID-19 pandemic

Rory Gallaher

On 31 March 2020 the Securities and Futures Commission (**SFC**) issued a [circular](#) to extend the deadlines for implementation of certain regulatory expectations and to remind intermediaries of order recording requirements in light of the COVID-19 pandemic, and also issued FAQ guidance on licensing-related issues.

Whilst regulated persons are expected to maintain internal controls and risk management systems to deal with unexpected crises, the SFC has engaged in a sympathetic dialogue with the industry to understand the impact of the pandemic on the performance of various functions resulting from the imposition of travel bans, regional lockdowns and mandatory quarantine periods.

The circular provides some assistance to intermediaries to cope with COVID-19 challenges while ensuring that market integrity and investor protection principles are maintained.

The circular extends the deadlines of three regulatory expectations that are due for implementation in 2020 by six months and reminds intermediaries of the alternative order recording options under the existing regulatory framework that may be adopted during the pandemic.

1. Extended deadlines for implementation of regulatory expectations

The SFC has decided to extend the deadlines for implementation of the following regulatory expectations by six months:

- The [circular on the use of external electronic data storage providers \(EDSP\)](#) dated 31 October 2019 regarding the use of external electronic data storage requires intermediaries who had obtained SFC approval for the use of an external data storage centre prior to 31 October 2019 to provide certain documents to the SFC by 30 June 2020. This deadline has been extended to 31 December 2020. Intermediaries should note that this extension does *not* postpone the obligation to notify the SFC without delay if they keep records exclusively with an EDSP. A number of industry associations have been working intensively with the SFC to agree an alternative framework for compliance with the EDSP circular.
- The [circular on new measure to protect client assets](#) dated 8 July 2019 requires intermediaries to obtain confirmation from banks with whom they hold client assets that the relevant bank's terms do not provide the bank with recourse to assets in the client's account. The deadline for compliance has been extended from 31 July 2020 to 31 January 2021.
- The deadline for compliance by brokers with the SFC's [circular on data standards for order life cycles](#) dated 31 July 2019, which prescribes the minimum content and presentation format of trading-related data to be submitted by licensed securities brokers to the SFC, has been extended from 31 October 2020 to 30 April 2021.

2. Compliance with order recording requirements

The circular notes that many intermediaries have provided their staff with remote access to order management systems, which are capable of centralised order recording for orders placed from a remote location, and reminds intermediaries of their obligation to comply with the order recording requirements set out in paragraph 3.9 of the Code of Conduct. The

circular draws intermediaries' attention to the various order receiving and recording options available to comply with the regulatory requirements.

FAQ guidance on licensing issues

In its [FAQs](#) also issued on 31 March 2020, the SFC has addressed a number of licensing-related matters arising from firms reconfiguring staffing arrangements due to the pandemic.

The FAQs cover the following:

- The SFC will allow a three-month extension for passing post-licensing regulatory exams and to comply with any undertaking to complete additional Continuous Professional Training (**CPT**) hours within a prescribed timeframe.
- The SFC has decided to allow licensed individuals who are unable to fulfil the annual CPT hours by 31 December 2020 to carry forward any unfulfilled CPT hours for the calendar year of 2020 to 2021.
- A licensed entity must notify the SFC of significant changes in its business plan covering internal controls, organisational structure, contingency plans and related matters. The FAQs provide guidance on some of the events it expects to be notified of, such as staff infection which may have an impact on operations; closure of office premises including overseas premises (e.g., temporary closure of an overseas office which handles back and middle office functions); and split team arrangements, or staff relocation to overseas offices.
- The FAQs remind licensees that when a licensed individual conducts activities in a jurisdiction outside Hong Kong, it is important that both the licensed entity and the licensed individual are able to comply with the relevant legal and regulatory requirements in that jurisdiction. The company remains responsible for the regulated activities performed by that individual for the company, which should exercise adequate oversight over the licensed individual's conduct.
- If a licensee's trading desk has to be temporarily shut down and the licensee transfers the trading function to an overseas affiliate, the SFC should be notified immediately, as with any exceptional contingency arrangement. Under these exceptional circumstances, the SFC will provide flexibility and assistance to ensure continued service to clients.
- If staff work from home or from an overseas office which are not premises approved by the SFC for record-keeping purposes under section 130 of the Securities and Futures Ordinance, the staff should be able to remotely access the company's trading or other systems so that the activities conducted by the staff will be captured in the records and documents generated by these systems. If certain records and documents need to be kept in unapproved premises on a temporary basis, they should be sent back to the approved premises as soon as practicable.
- As a temporary measure, the SFC will accept electronic copies of signature pages with hard copies to follow as soon as practicable.
- If delays in preparing audited accounts or other documents are anticipated due to the pandemic, the SFC will consider applications for an extension of the filing period pragmatically.

Want to know more?

Jeremy Lam
Partner
jeremy.lam@deacons.com
+852 2825 9732

Alwyn Li
Partner
alwyn.li@deacons.com
+852 2825 9627

Ming Chiu Li
Partner
mingchiu.li@deacons.com
+852 2825 9752

Rory Gallaher
Consultant
rory.gallaher@deacons.com
+852 2825 9697

Taylor Hui
Partner
taylor.hui@deacons.com
+852 2826 5368

Su Cheen Chuah
Partner
sucheen.chuah@deacons.com
+852 2825 9651

Pinky Siu
Partner
pinky.siu@deacons.com
+852 2825 9568

Jane McBride
Partner
jane.mcbride@deacons.com
+852 2825 9213

Fiona Fong
Partner
fiona.fong@deacons.com
+852 2826 5316

Scott Carnachan
Consultant
scott.carnachan@deacons.com
+852 2825 9265

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