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Sidley's Asia Funds and Financial Services Newsletter discusses important regulatory and enforcement developments that impact financial institutions, investment advisers, and investment funds operating in the Asia-Pacific region in a fast-changing regulatory landscape. In this issue, we cover (among other things) the latest regulatory agendas for the Hong Kong and Singapore regulatory agencies, including Hong Kong's regulatory sweep targeting private fund managers, as well as notable enforcement actions against fund managers and investment advisers.

EDITORIAL

WHAT'S NEXT FOR THE SFC AND MAS? A LOOK AT THE LATEST REG AGENDAS

The Hong Kong Securities and Futures Commission's (SFC), which recently celebrated its 35th anniversary with the appointment of a new chair, issued its so-called "Strategic Priorities" agendas. The SFC items most immediately relevant to private fund managers are the planned market sounding rules, the intensified scrutiny of asset managers, and heightened vigilance around cybersecurity risk management and reporting.

In Singapore, the Monetary Authority of Singapore's (MAS) latest Enforcement Report spotlights asset and wealth managers and promises to step up supervisory engagements focusing on serious regulatory breaches such as those involving dishonesty, conflicts of interest, and poor risk management.

This article discusses the agenda items of relevance to private fund managers in Hong Kong and Singapore.

SFC Agenda

The SFC's regulatory agenda included several proposed rule changes. Rules in the final stages that are most relevant to private fund managers are slated to be implemented within the next six months.

Rules to be Implemented: Market Sounding Guidelines

In November, following a thematic review of market sounding practices and controls in Hong Kong, the SFC finalized its proposals to implement new Guidelines for Market Soundings, which seek to regulate how market participants can use nonpublic information obtained during market soundings (see [here](#)). The Guidelines, which take effect on May 2, 2025, do not automatically mandate buy-side investors to restrict trading following receipt of confidential information obtained during the market sounding process. However, market participants will need to ensure there are effective functional and physical barriers in place to ensure that they do not exploit or unfairly benefit from any confidential information received

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during soundings (even if not inside information), in line with the broad principles under the code of conduct to conduct business honestly and in the best interests of the market. Nevertheless, industry associations have expressed concerns that the proposals are out of step with practices in other international financial markets, and they risk having a chilling effect on market soundings conducted in Hong Kong.

Rule Proposals: Insider Dealing

The SFC continues to consider introducing legislative amendments and other measures to bolster its powers to tackle cross-border insider dealing cases and to pursue criminal enforcement action in cases involving overseas-listed securities (where the trading is conducted from Hong Kong) and Hong Kong-listed securities (even if the acts are conducted outside Hong Kong). The SFC noted that, in the past five years, over 60% of insider dealing cases fell into this category.

Other Possible Rule Proposals/Developments

Other rule proposals or developments that may, directly or indirectly, affect private fund managers in the year ahead include:

- The SFC intensified scrutiny of private fund managers (see [here](#)). This heightened oversight aims to ensure transparency, fairness, and investor protection. Recent SFC enforcement actions have focused on issues such as liquidity risk management, conflicts of interest, and valuation practices. The SFC Intermediaries Supervision Department continues to prioritize inspections and has started a sweep of asset managers focusing on compliance with the SFC's Code of Conduct, the Fund Manager Code of Conduct, and the Internal Control Guidelines. Asset managers must navigate this evolving regulatory landscape, which includes strengthening their supervisory and compliance programs, policies, procedures, as well as systems and controls.
- Proposed enhancements to the SFC's baseline cybersecurity risk management and incident reporting standards, which would require managers to provide enhanced disclosure on cyber risks and incidences, including enhanced recordkeeping requirements.

MAS Agenda

In Singapore, the rule proposals or developments that are most relevant to private fund managers in the year ahead include:

- The Guidelines on Fair Dealing: in May 2024, MAS revised the guidelines to expand its application to all financial institutions and all products and services offered to customers, including licensed fund management companies (LFMCs) that manage funds for accredited and institutional investors only. All LFMCs will be expected to incorporate key principles of fair dealing at various stages of a fund's life cycle, or services rendered.
- Relaxation of change in control approvals: at present, MAS approval must be obtained before a person enters into any "arrangement" under which the proposed controller would obtain effective control of an LFMC. Such an "arrangement" would include entering into an agreement to acquire shares (regardless of whether completion is subject to MAS approval). In March 2024, the MAS proposed to relax these requirements under the Financial Institutions (Miscellaneous Amendments) Act 2024. Once implemented, a proposed controller is required to obtain MAS approval only before it obtains effective control of an LFMC. Potential acquirers will therefore be able to enter into conditional sale and purchase agreements, as long as completion is conditional on securing regulatory approval.



Way Ahead

The asset management landscape in Hong Kong and Singapore is dynamic and evolving, shaped by regulatory changes, market dynamics, and emerging trends. Asset managers must stay informed about the latest developments and proactively address legal challenges. By implementing robust compliance programs, engaging with regulators, prioritizing transparency, and communicating with legal counsel on regulatory changes, asset managers can instill a strong compliance culture that can mitigate risks and enhance operational efficiency amid the complex and constantly changing regulatory landscape. As regulatory scrutiny intensifies, staying ahead of legal trends and developments will be crucial for success.

SFC PENALIZES HEDGE FUND MANAGER FOR MISMANAGEMENT

A fundamental tenet of the Fund Manager Code of Conduct (FMCC) is that investments are made in accordance with a fund's stated investment strategy, objectives, investment restrictions, and guidelines, whether in terms of asset class, geographical spread, or risk profile. Amid continued market volatility, having adequate controls to manage liquidity and concentration risks in adherence with a fund's investment mandate remains a significant challenge for managers and a continuing focus of the SFC's attention. In a recent disciplinary action, the SFC accused both the manager and investment adviser of a Cayman-incorporated fund of running afoul of the "investment within mandate" rule, which led to an overconcentration of investments in illiquid stocks during a two-year life span of the fund.

Background

The manager had been registered with the SFC to carry on Type 9 (asset management)-regulated activities since April 2015. Pursuant to a management agreement, the manager was appointed to act as manager of the fund since its inception. The fund, which launched in May 2018, focused on capital preservation investing in a diversified portfolio of publicly traded equities, bonds, and other fixed income securities. The investments underperformed, and the fund was terminated in May 2020. The net asset value (NAV) as of the last valuation date of the fund dropped 65% (compared to the valuation at inception).

Personal Accountability of Investment Adviser

Following investor complaints and concerns about the manager and the investment adviser's failure to properly supervise the fund, the SFC found that the investment adviser, on behalf of the manager, had failed to:

- Ensure that the fund's investments were in line with its investment objective and investment restrictions, leading to an overconcentration of positions in two Hong Kong-listed stocks – specifically, the SFC noted that one stock was not in the stock pool approved by the Investment Committee for the investment manager to trade but had been only temporarily assigned a permitted trading status to purchase in a placement; however, the investment manager had subsequently made the purchase in the secondary market and had not participated in the placement; and
- Properly manage the liquidity and concentration risks of the fund associated with the holding of an unsuitable stock – specifically, the SFC noted that the risk management policies stated (among others) that the market value of the fund's holding in a single stock should not exceed more than 20% of NAV; illiquid assets (i.e., assets that require more than 30 days to sell) must not exceed 20% of the investment portfolio; and if a fund's holding in a particular listed stock suffers a loss of more than 50%, the investment manager must sell the stock within three days under the fund's stop-loss policy.

As matters subsequently transpired, despite the Investment Committee repeatedly rejecting the investment adviser's requests to add the stock to the approved stock pool (due to lack of



liquidity) and directing that the stock to be disposed at the earliest opportunity and in the best interests of the fund's investors, the fund's illiquid assets (including the investment in the unsuitable stock) exceeded 60% of NAV. This was compounded by the investment adviser's failure to take any action to reduce the fund's holding in unsuitable/illiquid stocks or comply with the stop-loss policy. When the investment adviser subsequently resigned some 20 months later, the fund still held over 80% of the unsuitable stock that it had acquired in breach of the investment restrictions.

Violations and Sanctions

By reason of the foregoing facts, the SFC reprimanded and fined the manager HK\$2.8 million and suspended the investment adviser — who was directly responsible for the fund's investment decisions — for seven months. In deciding the disciplinary sanction, the SFC took into account the steps taken by the manager to enhance its risk management and liquidity monitoring controls and the investment adviser's otherwise clean disciplinary record.

REGULATORY STANDARDS/UPDATES

SFC to Enhance REIT Regime and SFO Market Conduct Regime for Listed CIS

October 2024: Following public consultation, the SFC announced that legislative amendments to implement its proposals to introduce a statutory scheme of arrangement and compulsory acquisition mechanism for real estate investment trusts (REITs) and enhance the market conduct regime for listed collective investment schemes (CIS) is now being prepared. The REIT proposals will enable privatizations and restructurings of REITs with similar safeguards and protection for investors akin to the statutory framework under the Companies Ordinance. The CIS proposals will extend the existing criminal/civil market abuse regimes, such as insider dealing and market manipulation, to explicitly cover listed CIS, including REITs, with refinements.

Hong Kong Adopts Voluntary Code of Conduct for ESG Ratings and ESG Data Service Providers

October 2024: In line with the International Organization of Securities Commissions (IOSCO) recommendations, the SFC announced the adoption of a voluntary code of conduct (Code) by environmental, social, and governance (ESG) ratings and data products providers offering ESG products and ESG data services in Hong Kong. The increasing use of ESG ratings and data in the financial services industry has led to a growth in ESG service providers, which fall outside the SFC's regulatory perimeter. The principles outlined in the Code help strengthen transparency, quality, and reliability of ESG data used by asset managers in their investment decisions and mitigate the risk of greenwashing in investment products. ESG service providers who sign up with the Code are expected to make available publicly a self-attestation which explains the steps taken to adopt and adhere to the principles of the Code. These attestations will in turn facilitate the due diligence and ongoing assessments that end users, such as SFC-licensed asset managers, of ESG products and services are expected to conduct as part of their investment and risk management processes.



Singapore Introduces Virtual Asset Disclosures Obligations for Fund Management Companies (FMCs)

August 2024: The MAS issued revised Guidelines on Licensing and Conduct of Business for Fund Management Companies to introduce disclosure obligations for FMCs investing in digital assets. At a bare minimum, FMCs are expected to disclose the heightened price, liquidity, and volatility risks associated with digital assets; the risks associated with the use of intermediaries (such as trading platforms and custodians); and any other regulatory and legal risks associated with investments in digital assets. FMCs will also be expected to segregate customers' assets and store the bulk of the assets in cold wallet and keep assets in hot wallet only for the purpose of liquidity and operational needs. Disclosure of custody arrangements should include the jurisdiction in which the custodians are suitably licensed, registered, or authorized. FMCs must also outline any legal and regulatory risks that are associated with investments in digital assets.

INTERMEDIARIES/MARKET SUPERVISION

Hong Kong to Transition to Fully Paperless Listing Regime

August 2024: As part of its target to transition to a fully paperless listing regime, the SFC published a consultation paper with proposals to abolish mixed media offers to pave the way for fully electronic initial public offerings (IPOs). If implemented, the proposals would remove the option to publish printed application forms accompanied by electronic prospectuses, as done by listing applicants and listed issuers for public offerings of equity securities, collective investment schemes, and debt securities.

New Licensing Guidelines for Visiting and Returning Professionals

September 2024: The SFC published two new quick reference licensing guidelines for (i) new visiting or itinerant professionals who plan to enter the territory to conduct regulated activities for ad-hoc or short time periods without becoming fully licensed, as well as (ii) re-entrants who intend to return to Hong Kong to work on a full-time basis after an interval of less than eight years.

Singapore Applies Haircuts and Caps to Virtual Tokens for Accredited Investors

October 2024: The MAS recently clarified that, when calculating the net personal assets to assess the eligibility of accredited investors, financial institutions should apply a haircut of at least 50% to the market value of any digital payment tokens, and include the discounted value or S\$200,000 (whichever is lower).

SFC Announces Sweep Targeting Private Fund Managers

October 2024: The SFC announced it will commence a thematic inspection of asset managers managing private funds to detect material breaches or non-compliance with applicable regulatory requirements. This sweep is part of an ongoing enforcement initiative in recent years that focuses on, in particular, concerns relating to habitual deficiencies and substandard conduct which pose significant risks to assets under management. In announcing the sweep, the SFC once again reminded managers who become aware of any material breach, infringement, or non-compliance with any regulatory requirements to promptly comply with their self-reporting obligations to the SFC under paragraph 12.5 of the Code of Conduct.



KEY PRODUCT DEVELOPMENTS

Hong Kong Regulator Relaxes Listing Requirements for Tech Companies and De-SPAC Transactions

August 2024: Taking effect as of September 1, 2024, the SFC and SEHK announced the temporary relaxation of the Listing Rules for new economy companies with high growth potential and de-SPAC transactions in light of changing market conditions. For tech companies, the changes amend the initial market capitalization thresholds for listing to HK\$4 billion (for issuers with at least HK\$250 million revenue) and HK\$8 billion (for issuers unable to meet the revenue test), reduced from HK\$6 billion and HK\$10 billion, respectively. For de-SPAC transactions, the changes amend the minimum independent third-party investment threshold to the negotiated value of the de-SPAC target or HK\$500 million (whichever is lower) to mitigate the risk of artificial valuation. The changes will apply for three years.

SFC Aligns Rules for Distribution of Research Reports for Mainland ETFs under Stock Connect

September 2024: The SFC published a circular to intermediaries to align the requirements and conditions for distributing research reports in Hong Kong relating to eligible Mainland exchange-traded fund (ETFs) under Stock Connect with the existing practices and requirements for the distribution of research reports on eligible Mainland stocks. Reports relating to Mainland ETFs that have not been authorized by the SFC would not be considered an unlawful advertisement or invitation if distributed by Type 1 (dealing in securities) intermediaries wholly incidental to their securities dealing business or Type 4 (advising on securities) intermediaries. Further, distributing intermediaries must ensure the accuracy of the information and make full disclosure of any actual or potential conflicts, including whether the intermediary and related parties have any financial interests in relation to the ETFs.

SIGNIFICANT ENFORCEMENT ACTIONS

We highlight below several noteworthy disciplinary and enforcement actions in the second half of the year that may be of interest to fund managers, managers in charge/responsible officers, licensed representatives, intermediaries, and others operating in the Hong Kong financial markets.

Insider Dealing

July 2024: A former banker involved in a loan transaction to finance a proposed privatization offer was ordered to disgorge HK\$3 million in profits from insider dealing and banned from the industry for three years after admitting he used his wife's brokerage account to trade before news of the privatization was made public.

August 2024: A former chairman and CEO were held liable for insider dealing and disclosure of false or misleading information by the Market Misconduct Tribunal (MMT). The pair overstated the company's turnover in its IPO prospectus and annual reports and later disposed of personal shareholdings via private placement to avoid a loss of \$353 million when their rampant falsification efforts were discovered by auditors (even though the information was unlikely to induce the sale or purchase of shares by investors or potential investors and therefore would not have had an impact on the share price).



October 2024: The SFC commenced civil proceedings in the MMT against the chairman of a listed company (and his son) for suspected insider dealing and late disclosure of inside information involving a proposed major acquisition of an investment held by the listed company.

Other Market Misconduct

July 2024: Following a landmark criminal trial (before a jury) for market manipulation netting over HK\$124 million in illicit profits, the defendants were convicted and sentenced to nearly seven years imprisonment.

October 2024: A former licensed broker was sentenced to two weeks imprisonment and ordered to pay \$98,000 as compensation following conviction for conducting regulated activities without a license. This is the first criminal conviction and compensation order secured by the SFC for section 114 violations.

November 2024: A former hedge fund manager was ordered to disgorge over HK\$5.6 million in illicit profits from false trading and banned from the industry for four years after admitting he used his mother's brokerage account to match trades creating a false or misleading appearance of active trading. Although the manager did not seek to contest liability, the MMT was not persuaded that his cooperation evidenced genuine remorse. He provided no explanation for his conduct other than his admission that it was intentional and solely motivated by a desire to benefit his mother, and he failed to account for the whereabouts of the illicit profits and made no effort to repay them. Rather, he attempted to exploit a lacuna in the law to forestall the MMT making a disgorgement order. The SFC subsequently took disciplinary action to prohibit the manager from re-entering the industry for 15 years.

Senior Management Accountability/Life Bans

September 2024: A seasoned investment banker was banned for life following criminal conviction for theft (and imprisoned for seven years) after misappropriating nearly US\$ 2 million representing compensation proceeds due to be paid to bank customers who had been overcharged.

September 2024: A securities broker employed by a well-known U.S. investment bank was banned for six months over a four-day delay in self-reporting a trade error which he then attempted to rectify by arranging a facilitation trade to fill the under-executed client order.

FRR / AML Failures

September 2024: A securities broker-dealer was fined approx. HK\$4 million over failures to maintain \$3 million liquid capital (over a one-year period) in compliance with regulatory requirements under the Financial Resources Rules (FRR) and replying client securities collateral to execution brokers for financial accommodation without client authority.

October 2024: Two futures brokers were fined HK\$4.95 million and HK\$9 million, respectively, and a responsible officer was suspended for nine months over failures to conduct due diligence on the customer-supplied systems used by clients for placing orders and for failure to effectively monitor transactions to identify and detect suspicious trading patterns in the client accounts in compliance with anti-money laundering requirements. A separate futures broker was subsequently fined HK\$2.66 million in the same month over failures to detect self-matched trades that occurred in three client accounts, which reasonably raised suspicions of money laundering because it created the illusion of trading and could be indicative of market manipulation.



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