



Hong Kong

April 2020

SFC EXTENDS DEADLINES FOR IMPLEMENTING REGULATORY EXPECTATIONS AND REMINDS INTERMEDIARIES OF ORDER RECORDING REQUIREMENTS AMIDST COVID-19 PANDEMIC

1. COVID-19 Pandemic SFC Guidance

Hong Kong's Securities and Futures Commission (SFC) issued a circular¹ on 31 March 2020 to Hong Kong-licensed intermediaries extending by six months the deadlines for the implementation of three regulatory expectations coming into effect in 2020. The SFC Circular also reminds intermediaries of the need to observe order recording requirements during the COVID-19 pandemic.

In the circular, the SFC states that it is closely monitoring the development of the global COVID-19 pandemic and acknowledges industry concerns that recent government policies such as travel bans, regional lockdowns and mandatory quarantine periods make it difficult for staff performing different functions locally and overseas in working from their usual place of business. The SFC notes that some intermediaries have decided to reconfigure their staffing arrangements to limit COVID-19 infection risks.

As set out in the SFC's press release "Arrangements relating to SFC's public services"² of 5 February 2020, SFC-licensed intermediaries are generally expected to make all reasonable efforts to maintain "business as usual" in relation to their regulatory obligations and all regulatory filing, reporting and other deadlines. Those who encounter specific difficulties arising from the COVID-19 situation are encouraged to communicate with their usual SFC contact points at the SFC.

¹ <https://www.sfc.hk/edistributionWeb/gateway/EN/circular/intermediaries/supervision/doc?refNo=20EC26>

² <https://www.sfc.hk/edistributionWeb/gateway/EN/circular/intermediaries/supervision/doc?refNo=20EC26>

The SFC's latest circular adds that SFC-licensed intermediaries are expected to remain focused on internal controls and risk management to ensure financial and operational resilience given the unprecedented market activity and volatility. It recognises, however, that intermediaries face operational and "business as usual" challenges, which differ between intermediaries depending, among other factors, on their individual sizes and the types of regulated activity they carry out.

SFC-licensed intermediaries are also reminded of the alternative order recording options under the existing regulatory framework that may be adopted during the pandemic.

2. SFC Circular to Intermediaries: Extended Deadlines for Implementation of Regulatory Expectations and Reminder of Order Recording Requirements under COVID-19 Pandemic

a) Extended Deadlines for Implementation of Regulatory Expectations

The SFC has extended by six months the implementation deadlines for the following regulatory expectations due to take effect in 2020:

Upcoming regulatory expectations for implementation	Original implementation deadline	Extended implementation deadline
<p><u>Use of external electronic data storage (EDSP):</u></p> <p>Where a data centre of an EDSP used by a licensed corporation has been approved under section 130 of the Securities and Futures Ordinance before 31 October 2019, the licensed corporation's provision of the documents to the SFC's Licensing Department set out in paragraph 25 of the SFC's Circular to Licensed Corporation – Use of External Electronic Data Storage of 31 October 2019.</p>	30 June 2020	<p>31 December 2020</p> <p><i>Note: Licensed corporations that are already keeping records exclusively with electronic data storage providers, whether in Hong Kong or overseas, are reminded to notify the SFC without delay.</i></p>
<p>New measure to protect client assets</p> <p>Where SFC-licensed intermediaries are required to have countersigned client asset acknowledgment letters from relevant banks in place before depositing any client money or securities into new client asset accounts.</p>	31 July 2020	31 January 2021

Upcoming regulatory expectations for implementation	Original implementation deadline	Extended implementation deadline
<p>Data standards for order life cycles</p> <p>Where in-scope brokers are expected to implement system changes and make other arrangements needed for compliance with the data standards.</p>	31 October 2020	30 April 2021

b) Compliance with Order Recording Requirements

Due to the global COVID-19 pandemic, SFC-licensed intermediaries' staff may not be working from their usual place of business. The SFC notes that many licensed 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.

However, some intermediaries may encounter challenges in ensuring compliance with the order recording requirements of paragraph 3.9 of the Code of Conduct for Persons Licensed by or Registered with the Securities and Futures Commission³ (**SFC Code of Conduct**) which requires licensed and registered persons to:

- i) record and immediately time stamp records of the particulars of the instructions for agency orders and internally generated orders; and
- ii) use a telephone recording system, where order instructions are received from clients through the telephone, to record the instructions and maintain telephone recordings as part of its records for at least six months.

³ <https://www.sfc.hk/web/EN/assets/components/codes/files-current/web/codes/code-of-conduct-for-persons-licensed-by-or-registered-with-the-securities-and-futures-commission/code-of-conduct-for-persons-licensed-by-or-registered-with-the-securities-and-futures-commission.pdf>

The SFC reminds licensed intermediaries that alternative order receiving and recording options are available to comply with the regulatory requirements, which can be adopted by intermediaries as appropriate to meet the needs of their current circumstances:

- i) The notes to paragraph 3.9 of the SFC Code of Conduct explain how orders should be recorded when, exceptionally, they are not recorded by the intermediaries' telephone recording or order management systems. Specifically:
 - where orders are accepted by mobile phones outside the trading floor, trading room, usual place of business where orders are received or usual place where business is conducted, intermediaries' staff members should immediately call back to the intermediaries' telephone system and record the time of receipt and the order details.
 - the use of other formats (e.g. in writing by hand) to record details of clients' order instructions and time of receipt can be used if the intermediaries' telephone recording system cannot be accessed.
- ii) Intermediaries may receive client orders through instant messaging where the requirements set out in the SFC's Circular to Intermediaries – Receiving Client Orders through Instant Messaging dated 4 May 2018⁴ (**2018 Circular**) in relation to record keeping, security and reliability, compliance monitoring and establishing internal policies and procedures are observed.

When considering order placing and recording alternatives, the SFC reminded intermediaries that they should have in place appropriate control measures for ensuring that the alternatives are properly implemented in compliance with the order recording requirements.

As explained in the SFC's 2018 Circular to Intermediaries – Receiving Client Orders through Instant Messaging,⁵ complete and accurate records are an integral part of the audit trail. They

⁴ <https://www.sfc.hk/edistributionWeb/gateway/EN/circular/doc?refNo=18EC30>

⁵ The explanation can be found most recently in Circular to intermediaries – Receiving client orders through instant messaging, 4 May 2018: <https://www.sfc.hk/edistributionWeb/gateway/EN/circular/doc?refNo=18EC30>

ensure that reliable evidence is available to assess disputes with clients about the particulars of a trade order. This protects the interests of both the intermediary and the client. Proper records also serve as a useful supervisory tool to detect irregularities and potential malpractices for intermediaries and the SFC.

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