



Hong Kong

April 2021

SFC PUBLISHES QUARTERLY REPORT (Q4 2020)

On 23 February 2021, the Hong Kong Securities and Futures Commission (the **SFC**) published its quarterly report¹ for the period October to December 2020.

The main highlights include:

- *Listing and takeovers* - a total of 34 new listing applications (two from companies with WVR structures and four from pre-revenue biotech companies) were vetted by the SFC; and a total of 122 takeovers and share buy-back transactions took place in Q4 2020;
- *Regulatory Enhancements* – five consultation papers and two consultation conclusions were published;
- *Market Enhancements* – the SFC approved the Hang Seng TECH Index futures and options contracts; and the SFC approved the launch of futures and options contracts for four stocks;
- *Licensing* – the SFC received 1,333 licence applications and 4,653 applications to conduct new regulated activities; the SFC granted the first licence to a virtual asset trading platform in Hong Kong in December 2020; and, as at the end of Q4 2020, there were 52 automated trading services (**ATS**) providers authorised under Part III of the SFO and 24 corporations, including 13 dark pool operators, licensed under Part V of the SFO to provide ATS;
- *Enforcement* – the SFC disciplined three licensed corporations and three individuals, with fines totaling HK\$2.72 billion; and the SFC publicly censured and imposed cold shoulder orders on two individuals for breaches of the Takeovers Code;
- *Products* – the SFC authorised 51 unit trusts and mutual funds and 18 unlisted investment products for public offering in Hong Kong; 50 Mainland funds and 29 Hong Kong funds were authorised under the HK-Mainland Mutual Recognition of Funds (**MRF**); and the SFC entered into an MRF arrangement with the Securities and Exchange Commission of Thailand;
- *Green and Sustainable Finance* – the Cross-Agency Steering Group published its Strategic Plan and the SFC and HKMA became members of the European Commission’s International Platform on Sustainable Finance; and
- *Cross-boundary Investment* – the SFC entered into a MoU with the Mainland and Macao regulators on the Cross-boundary Wealth Management Connect Pilot Scheme; and more stocks became eligible for the Stock Connect scheme, including shares of Ch.18A listed biotech companies and eligible A-shares listed on the Shanghai Stock Exchange (the **SSE**) Sci-Tech Innovation Board.

1. Operational Review

a. HKEX Listing Applications

During the fourth quarter of 2020, the SFC vetted 34 new listing applications (including two from companies with WVR structures and four from pre-revenue biotech companies) bringing the total

¹ <https://www.sfc.hk/-/media/EN/files/ER/Reports/QR/202010-12/0-SFC-Quarterly-Report-OctoberDecember-2020E.pdf>

number of listing applications for the nine months ended 31 December 2020 to 177, a 27% decrease from the same period in 2019. The SFC issued one letter of concern and six requisition letters to listing applicants during the quarter, with concerns including those in relation to the accuracy and completeness of information submitted and the genuineness of financial information in the prospectus.

Notably, during the last quarter of 2020, the Hong Kong Stock Exchange (the **HKEX**) published a consultation paper on a proposal to increase the Main Board profit requirement.² On 11 January 2021, Charltons responded³ to the HKEX Consultation Paper on behalf of a group of 10 Hong Kong sponsor firms.

b. Corporate Conduct and Takeovers Matters

From October to December 2020, the SFC issued section 179 directions in 10 cases and wrote to detail their concerns in two transactions.

Further, the SFC report that there were 122 takeovers and share buy-back transactions in the quarter ended 31 December 2020, bringing the total for the nine months ended 31 December 2020 to 347, a year-on-year change of approximately 81%. Of the 122 transactions, 13 were general and partial offers under the Code on Takeovers and Mergers, eight were privatisations, four were whitewash waiver applications, two were off-market and general offer share buy-backs and the remainder (95) were other application under the Code on Takeovers and Mergers.

During the quarter, the SFC publicly censured and imposed cold shoulder orders on two individuals for breaches of the Takeovers Code.

c. Intermediaries and Licensing Applications

Licensing applications

During the fourth quarter of 2020, the SFC received 1,333 licence applications and 4,653 applications to conduct new regulated activities, bringing the total number of SFC licensees (individuals and corporations) and registrants to 47,217. In December 2020, the SFC also granted the first licence to a virtual asset trading platform in Hong Kong (OSL Digital Securities).

² <https://www.charltonslaw.com/hkex-consults-on-proposal-to-increase-the-main-board-profit-requirement/>

³ <https://www.charltonslaw.com/hong-kong-law/response-to-the-hkex-consultation-paper-on-the-main-board-profit-requirement/>

Consultation Papers

During the quarter, a number of consultations were launched, including:

- SFC consultation on proposed amendments to the Fund Manager Code of Conduct⁴ (*October 2020*), which would require SFC-licensed fund managers to take climate-related risks into consideration in their investment risk management process and make appropriate disclosures;
- Financial Services and Treasury Bureau (**FSTB**) consultation on the regulation of virtual asset exchanges⁵ (*November 2020*), which would require the licensing of virtual asset exchanges that are not currently required to be licensed under the Securities and Futures Ordinance (the **SFO**) (i.e. those that trade virtual assets which are not “securities” or “futures contracts”); and
- SFC consultation on proposed enhancements to the competency framework⁶ (*December 2020*), which would amend the entry requirements for licence applicants and the ongoing competence standards for individual practitioners.

SFC Circulars and FAQs

The SFC also issued a circular⁷ outlining the findings from its inspections of AML/CFT controls and compliance practices from inspections carried out in 2019 and 2020 and a circular on suitability obligations and requirements for complex products and updated two sets of FAQs to provide guidance.

d. Products

Authorisations

During the quarter ended 31 December 2021, the SFC authorised 51 unit trusts and mutual funds (which included 23 Hong Kong-domiciled funds) and 18 unlisted structured investment products for public offering in Hong Kong. This brings the total number of unit trusts and mutual funds (as at 31 December 2020) to 2,194 (810 Hong Kong-domiciled and 1,384 non-Hong Kong

⁴ <https://www.charltonslaw.com/sfc-consults-on-climate-risk-requirements-for-fund-managers/>

⁵ <https://www.charltonslaw.com/fstb-consults-on-proposed-licensing-regime-for-virtual-asset-exchanges/>

⁶ <https://www.charltonslaw.com/sfc-consults-on-changes-to-competency-requirements-for-licensed-intermediaries-and-individuals/>

⁷ <https://apps.sfc.hk/edistributionWeb/gateway/EN/circular/aml/doc?refNo=20EC73>

domiciled) and the total number of authorised unlisted structured investment products to 145.

Of the authorised funds not domiciled in Hong Kong, the majority were Luxembourg funds (75%), followed by Ireland (17%). Mainland funds comprised 4% of all non-Hong Kong-domiciled authorised funds. In total, there were 2,789 authorised collective investment schemes as at 31 December 2020.

Connectivity Programmes and MRFs

As at the end of December 2020, the SFC had authorised 50 Mainland funds under the Mainland-Hong Kong MRF scheme, while the China Securities Regulatory Commission (the **CSRC**) had approved 29 Hong Kong funds. The cumulative net subscription for Mainland funds and Hong Kong funds was around RMB310 million and RMB14 billion, respectively, with Mainland funds recording a net redemption of around RMB123 million and Hong Kong funds, around RMB168 million.

The SFC has since entered into an MRF with the Securities and Exchange Commission in Thailand,⁸ which will allow eligible Hong Kong and Thai public funds to be distributed in each market under a streamlined process and the approval process for local feeder funds investing in MRF-eligible master funds in the other market will also be expedited.

Further, in January 2021, the SFC entered into a MoU⁹ with the People's Bank of China (the **PBoC**), China Banking and Insurance Regulatory Commission, the CSRC, State Administration of Foreign Exchange, the HKMA and the Monetary Authority of Macao on the Cross-boundary Wealth Management Connect Pilot Scheme in the Greater Bay Area.

SFC Consultations

In the fourth quarter, the SFC published one consultation paper and two sets of consultation conclusions as follows:

- SFC consultation conclusions on the proposed amendments to the Code on Real Estate Investment Trusts¹⁰ (November 2020) with the amendments to the REIT Code aimed at providing more investment flexibility to REITs.

⁸ <https://apps.sfc.hk/edistributionWeb/gateway/EN/circular/doc?refNo=21EC1>

⁹ <https://www.hkma.gov.hk/media/eng/doc/key-information/press-release/2021/20210205e4a1.pdf>

¹⁰ <https://apps.sfc.hk/edistributionWeb/api/consultation/conclusion?lang=EN&refNo=20CP2>

- SFC consultation conclusions on proposed customer due diligence requirements for OFCs¹¹ (December 2020) (which will come into effect following a six-month transition period) in order to enhance AML/CFT measures and better align the requirements for different investment vehicles for funds in Hong Kong; and
- SFC consultation on proposed amendments to the Code on Pooled Retirement Funds¹² (December 2020) with the aim of strengthening investor protection.

ETFs

The SFC worked with the HKEX to impose price limits on ETFs during the pre-opening session of their first trading day, which came into effect on 19 October 2020. The SFC and HKEX then jointly issued guidance to the ETF industry¹³ in December 2020 on some common issues concerning listing applications, procedures for publishing announcements and factors to consider when deciding on a suspension or resumption of primary market dealing or secondary market trading.

SFC Circulars

In October 2020, subsequent to the September 2020 SFC circular¹⁴ on the electronic dissemination of investment product documents, the SFC published additional FAQs in order to provide further guidance to the industry. The new FAQs were added to the FAQs on Post Authorisation Compliance Issues of SFC-authorised Unit Trusts and Mutual Funds.¹⁵

e. Markets

HKEX and Stock Connect Enhancements

In the last quarter of 2020, the HKEX, following the approval of the SFC, rolled out enhancements to the Pre-Opening Session¹⁶ in its security market. In November 2020, it was then announced¹⁷ that more stocks would be eligible under Stock Connect, with the shares of Chapter 18A listed biotech companies included in

¹¹ <https://apps.sfc.hk/edistributionWeb/api/consultation/conclusion?lang=EN&refNo=20CP3>

¹² <https://apps.sfc.hk/edistributionWeb/gateway/EN/consultation/doc?refNo=20CP9>

¹³ https://www.sfc.hk/-/media/files/PCIP/FAQ-PDFS/Guidance-to-ETF-Industry_20201215.pdf

¹⁴ <https://apps.sfc.hk/edistributionWeb/gateway/EN/circular/doc?refNo=20EC59>

¹⁵ https://www.sfc.hk/-/media/files/PCIP/FAQ-PDFS/FAQ_on_Post-Authorization_Compliance_Issues_20200929.pdf

¹⁶ https://www.hkex.com.hk/News/Market-Communications/2020/201005news?sc_lang=en

¹⁷ https://www.hkex.com.hk/News/News-Release/2021/210122news?sc_lang=en

Southbound trading in December 2020 and eligible A-shares listed on the SSE's Sci-Tech Innovation Board included in northbound trading in February 2021.

SFC Consultations

In December 2020, the SFC launched a consultation¹⁸ on proposals to introduce an investor identification regime at trading level for the securities market in Hong Kong and an OTC securities transactions reporting regime.

Futures and Options Contracts

The SFC approved the Hang Seng TECH Index futures and options contracts¹⁹ proposed by the HKEX and the futures were launched in November 2020 and the options in January 2021. The Hang Seng TECH Index was launched in July 2020 and tracks the 30 largest tech companies listed in Hong Kong.²⁰

The SFC also approved the launch of futures and options contracts for four stocks²¹ (Semiconductor Manufacturing International (HK:0981); Alibaba Health (HK:0241); Kingdee International Software Group (HK:0268); and Ping An Healthcare (HK:1833)), which launched on 7 December 2020. According to data from the HKEX, there was strong growth in stock futures and options trading in 2020, with an average daily turnover of 523,011 contracts in the first 10 months of 2020, a 15% increase from the same period in 2019.²²

RTGS Account for the Cash Market Clearing House

The SFC worked with the HKEX, HKMA and the Hong Kong Interbank Clearing Limited to open a Hong Kong dollar (HKD) real time gross settlement (RTGS) account with the HKMA for the cash market clearing house.

Automated Trading Services

As at 21 December 2020, there were 52 automated trading services (ATS) providers authorised under Part III of the SFO (authorisation regime for persons providing mainly ATS services) and 24 corporations, including 13 dark pool operators, were

licensed under Part V of the SFO (authorisation regime for persons who additionally perform traditional broker/dealer functions).

f. Enforcement

During the fourth quarter of 2020, the following enforcement actions took place:

Market Misconduct Tribunal (MMT) Decisions	Two individuals were found to have engaged in insider dealing. CMBC Capital Holdings Ltd and six of its former directors were found to have failed to disclose inside information as soon as reasonably practicable.
Court Proceedings	Chow Chiu Chi (company secretary of China Automation Group Ltd) was convicted of insider dealing in the company's shares and sentenced to 45 days of imprisonment and a fine of HK\$45,000. Legal proceedings were commenced in the Court of First Instance to seek disqualification orders against two executives of New Ray Medicine International Holding Ltd for alleged corporate misconduct and breach of their duties to the company.
Disciplinary Actions	Three licensed corporations were reprimanded and fined for internal control deficiencies: i. Goldman Sachs (Asia) L.L.C. was fined HK\$2.71 million for regulatory failures in relation to bond offering transactions for 1Malaysia Development Berhad; ii. Fulbright Securities Ltd was fined HK\$3.6 million in relation to various internal control failures; and iii. Credit Suisse Securities (HK) Limited was fined HK\$2.1 million for regulatory breaches in relation to failures in its electronic trading systems. Three individuals were disciplined for various regulatory breaches: i. Pang Hon Pan was banned from re-entering the industry for 21 months in relation to breaches of the staff trading policy and willful misrepresentations to the Securities and Futures Appeal Tribunal; ii. Sandra Cheung Wing Yi was suspended for 21 months in relation to maintaining an external securities trading account and conducting personal trades without approval from the firm; and iii. Chan Shun King was banned from re-entering the industry for 24 months in relation to conducting unauthorised transactions in client accounts.
Restriction Notices	A restriction notice was issued to CNI Securities Group Ltd prohibiting it from dealing with or processing certain assets held in three client accounts which are related to suspected market manipulation (the SFC investigation is ongoing).
Market Surveillance	The SFC issued 2,157 requests for trading and account records from intermediaries and published three high shareholding concentration announcements.

Additionally, in December 2020, the SFC held the tenth high-level meeting on cross-boundary enforcement cooperation attended by the Enforcement Bureau of the CSRC, the Commercial Crime

¹⁸ <https://www.charltonslaw.com/sfc-consults-on-investor-identification-regime-and-otc-securities-transactions-reporting-regime/>

¹⁹ https://www.hkex.com.hk/News/News-Release/2020/201105news?sc_lang=en

²⁰ https://www.hkex.com.hk/Products/Listed-Derivatives/Equity-Index/Hang-Seng-TECH-Index-Futures-and-Options/Hang-Seng-TECH-Index-Futures?sc_lang=en#&product=HTI

²¹ https://www.hkex.com.hk/News/News-Release/2020/2011302news?sc_lang=en

²² https://www.hkex.com.hk/News/News-Release/2020/2011302news?sc_lang=en

Bureau of the Hong Kong Police Force and the Securities Crime Investigation Department of the Mainland Ministry of Public Security.

g. Regulatory Engagement

International Policy Making and Regulatory Engagement

The SFC's Chief Executive Officer, Mr. Ashley Alder chairs the Board of the International Organisation of Securities Commissions (**IOSCO**) and attended virtual Financial Stability Board (**FSB**) meetings in his role as IOSCO Board Chair. Mr. Alder also co-chairs the Committee on Payments and Market Infrastructure-IOSCO Steering Group, which coordinated policy work for the supervision of central counterparties and other financial market infrastructure. IOSCO's Annual Meeting was held virtually in November 2020, which focused on sustainable finance and issues arising from COVID-19 and emerging regulatory developments related to IOSCO's priorities for the year. The SFC also participates in the IOSCO Financial Stability Engagement Group and all eight IOSCO policy committees and the Asia Pacific Regional Committee (**APRC**). The SFC leads the APRC's working group on sustainable finance and two SFC executives participated in the APRC meeting in November 2020.

Further, throughout the fourth quarter of 2020, Mr. Alder engaged with various industry associations to discuss the regulatory response to COVID-19 and market stress and the SFC also communicated with regulators in other jurisdictions to discuss emerging regulatory developments, including holding the 12th bilateral regulatory meeting with the Taiwan Financial Supervisory Commission.

Mainland China and the Greater Bay Area

In December 2020, the SFC held the eighth high-level meeting with the CSRC to discuss cross-boundary regulatory cooperation and market development initiatives, including the expansion of the Stock Connect, ETF cross-listing and MRF schemes. The SFC also worked closely with Mainland authorities to implement a number of initiatives set out in the GBA development plan, such as the preparations for the launch of the Wealth Management Connect scheme.

Green and Sustainable Finance

As outlined above, the SFC published a consultation paper²³ in

²³ <https://www.charltonslaw.com/sfc-consults-on-climate-risk-requirements-for-fund-managers/>

October 2020 on the management and disclosure of climate-related risks by fund managers and various amendments to the Fund Manager Code of Conduct.

The SFC also hosted a meeting of the Green and Sustainable Finance Cross-Agency Steering Group in November 2020 and in December 2020, the steering group published its strategic plan²⁴ aimed at strengthening Hong Kong's financial ecosystem to support a greener and more sustainable future.

Also in December 2020, the SFC and the HKMA became members of the European Commission's International Platform on Sustainable Finance and the SFC actively participate in the Network of Central Banks and Supervisors for Greening the Financial System and the United Nations Sustainable Stock Exchanges Initiative Advisory Group.

2. Corporate Developments

They key takeaways from the SFC's corporate developments include:

- *Board* – Ms. Agnes Chan Sui-kuen and Mr. Edward Cheng Wai-sun were reappointed as Non-executive Directors for two years, effective 20 October 2020 and 1 January 2021 respectively;
- *Finance* – the SFC reported income of HK\$736 million for the fourth quarter of 2020 (a 64% increase from that of Q4 2019) and expenditure of HK\$467 million (a 4% decrease from that of Q4 2019). As at 31 December 2020, reserves stood at HK\$4.3 billion.
- *Staffing* – As at 31 December 2020, the SFC had 929 staff members, up from 925 at the end of December 2019.
- *IT* – During Q4 2020, the SFC introduced a new platform (**WINGS**) for electronic forms and submission services. The SFC also enhanced the SMARTS surveillance system, introducing additional risk detection features for the Hang Seng TECH Index. The system can also now detect suspicious trading activities during the Pre-opening Session.

²⁴ <https://www.charltonslaw.com/steering-group-announces-green-and-sustainable-finance-strategy-for-hong-kong/>

CHARLTONS

**Boutique Transactional Law Firm of the Year 2020
Asian Legal Business Awards**

This newsletter is for information purposes only.

Its contents do not constitute legal advice and it should not be regarded as a substitute for detailed advice in individual cases.

Transmission of this information is not intended to create and receipt does not constitute a lawyer-client relationship between Charltons and the user or browser.

Charltons is not responsible for any third party content which can be accessed through the website.

If you do not wish to receive this newsletter please let us know by emailing us at unsubscribe@charltonslaw.com

Hong Kong Office

Dominion Centre

12th Floor

43-59 Queen's Road East

Hong Kong

Tel: + (852) 2905 7888

Fax: + (852) 2854 9596

www.charltonslaw.com