



Hong Kong

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SFC PUBLISHES UPDATE ON INTERMEDIARIES' KYC AND ACCOUNT OPENING OBLIGATIONS

The Hong Kong Securities and Futures Commission (**SFC**) has published a circular¹ reminding intermediaries of the requirements in relation to Know-Your-Client (**KYC**) and account opening procedures under paragraph 5.1 of the Code of Conduct for Persons Licensed by or Registered with the Securities and Futures Commission² (the **Code of Conduct**). The circular was published in response to deficient procedures observed by the SFC in its recent supervisory reviews. These deficiencies include:

- using remotely transmitted images or videos to certify the signing of client agreements and sighting of identity documents (**Certification Process**) instead of effective authentication of the client's identity and execution of account opening documents;
- insufficient identification and follow-up in situations where multiple clients provide the same contact information but have no connection with each other that would explain the coincidence; and
- account opening documents being executed without the presence of an employee of the licensed corporation and allowing the licensed corporation's affiliate (which is not a regulated financial institution) to perform the Certification Process.

In its circular, the SFC reminds intermediaries of the procedures that are required to be followed. The SFC has also updated the answers to questions 27 and 57 of its FAQs on the Code of Conduct³ to reflect the requirements set out below.

Certification Process

The Code of Conduct requires SFC-licensed or –registered entities to take all reasonable steps to establish in respect of each of their clients:

- a) their true and full identity;
- b) their financial situation; and
- c) their investment experience and investment objectives.⁴

The Code of Conduct requires account opening documents to be executed in the presence of an employee of the licensed or registered person and related identity documents to be seen by such an employee. If they are not, the signing of the Client Agreement and sighting of related identity documents are required to be certified physically by a Certifying Person who may be:

- any other licensed or registered person;

¹ SFC Circular concerning Know Your Client and Account Opening Procedures of 12 May 2015 available at <http://www.sfc.hk/edistributionWeb/gateway/EN/circular/openFile?refNo=15EC28>

² http://en-rules.sfc.hk/net_file_store/new_rulebooks/hk/HKSFC3527_1868_VER50.pdf

³ SFC FAQs Code of Conduct – Code of Conduct Enquiry at <http://www.sfc.hk/web/EN/faqs/intermediaries/supervision/code-of-conduct/2001-07-16.html>

⁴ Paragraph 5.1(a) of the Code of Conduct.

- an affiliate of a licensed or registered person;
- a Justice of the Peace; or
- a professional person (e.g. branch manager of a bank, certified public accountant, lawyer or notary public).

The Circular contains the following reminders.

A) Responsibility

Intermediaries are responsible for proper KYC and accounting opening procedures. Irrespective of whether the Certification Process is conducted by an intermediary's employee or a Certifying Person, the intermediary must ensure that proper KYC and account opening policies and procedures are maintained and implemented.

B) Certification by Affiliates

If an intermediary appoints an affiliate to perform the Certification Process, the intermediary must ensure that the affiliate has maintained and implemented the policies and procedures that are applicable to intermediaries.

The Circular notes that affiliates that are not regulated financial institutions (such as banks or brokers) may not have the knowledge and experience required to properly conduct the Certification Process. Intermediaries are therefore **strongly discouraged** from appointing an affiliate which is not a regulated financial institution to conduct the Certification Process.

In the case of prospective clients outside Hong Kong, intermediaries should ensure that any employee or affiliate that conducts the account opening procedures will not breach any applicable local regulatory requirements.

If an account is opened, but not on a personal, face-to-face basis by an employee of an intermediary, it is suggested that the intermediary should contact the client directly to ensure that the necessary risk disclosures and reminders under Schedule 1 to the Code of Conduct are drawn to the client's attention. Proper records should be maintained to show that the intermediary has provided the risk disclosure statement in the client's choice of language and has invited the client to read the disclosure statement, ask questions and take independent advice if the client wishes.

Accuracy of Client Information

Intermediaries must ensure that they can contact their clients by ensuring that the identity and personal information about their clients is accurate and up-to-date. In addition, where two or more unrelated clients authorise the same third party to place orders for their accounts, intermediaries should actively investigate and critically evaluate the reasons why individual unrelated clients authorise the same third party, ascertain any relationship between those clients and monitor their accounts for irregularities.

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