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Amendments to the HKSFC Code of Conduct

Following the conclusion of a two-month public consultation period, the Hong Kong Securities and Futures Commission (SFC) announced on 21 May 2012 amendments to the Code of Conduct for Persons Licensed by, or Registered with, the SFC (the Code), to both facilitate the establishment of the new Financial Dispute Resolution Centre Ltd (FDRC) and to enhance the existing regulatory framework, specifically to strengthen effective enforcement against market misconduct. These amendments will have an impact on all licensed and registered persons in Hong Kong and, indirectly, their in-house or group compliance function.

Financial institutions regulated by the SFC and the Hong Kong Monetary Authority (HKMA) will now be required to participate in the Financial Dispute Resolution Scheme and to inform their clients about their rights to refer disputes to the FDRC. Through mediation and/or arbitration, the FDRC is expected to provide investors with an expeditious and affordable solution to their financial disputes. The FDRC-related amendments to the Code will come into effect on 19 June 2012. Licensed corporations and registered institutions should make the appropriate amendments to the dispute resolution provisions in their client agreements.

Separately, and controversially, all licensed corporations and registered institutions will be obliged (pursuant to new paragraph 12.5(f) of the Code — which will come into effect on 1 December 2012) to report and provide information to the SFC if they reasonably suspect any material breach, infringement or non-compliance by any of their clients of or with the market misconduct provisions set out in the Securities and Futures Ordinance (Cap 571, Laws of Hong Kong).

The following amendments related to enhancing the existing framework will also come into effect on 1 December 2012, and are likely to have an impact on the existing operations of the relevant licensed / registered entity:

- mobile phones may not be used to accept client orders when on the trading floor, in the trading room or other usual place of business where an order is received or business conducted, and the appropriate written policy reflecting this practice must be in place;
- telephone recordings of client orders must be retained for at least six months (instead of the current three months); and
- written authorization to allow third parties to place orders in client accounts will be required.

Compliance manuals and internal control procedures of licensed and registered persons in Hong Kong will need to be amended, and appropriate training provided to staff, in response to these new measures and obligations.

For More Information

If you have questions regarding the information in this update, please contact the lawyer listed or any Dechert lawyer with whom you regularly work. Visit us at www.dechert.com/financial_services.

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