



Update on Hong Kong Investor Identification Regime and the OTC Reporting Regime

ASIFMA and Simmons & Simmons
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Agenda

- Overview
- “Significant Wins” and “Pain Points”
- Updates/“Mapping”
- Outstanding Areas
- Q&A

Overview

- ASIFMA submitted a letter on 16 November 2021 and attended the industry meeting with the SFC, the HKIFA and the PWMA, with Simmons & Simmons (“S&S”) on 20 December 2021
- After the meeting, the SFC published updates to some of the FAQs on implementation of the Hong Kong Investor Identification Regime (“HKIDR”) and the over-the-counter securities transactions reporting regime (“OTCR”) on 21 January 2022

Significant Wins and Pain Points



Significant Wins

- FAQ B.1 – The term “Relevant Client” generally refers to a person which has placed or proposed to place a securities order ***through a securities trading account with an relevant regulated intermediary*** (“RRI”)
- “Where an order is routed through an intermediating chains of brokers, the “relevant client” is the first person in the chain who is not an RRI. Generally speaking, the relevant client in this case are the overseas affiliates of the RRIs instead of the clients of the overseas affiliates. Hence, BCAN should be assigned to the overseas affiliates by the RRI and should be tagged to the orders placed by the overseas affiliates.
- The SFC has stressed during the meeting on 20 December 2021 that this regime is “account based” (i.e. it only applies to accounts booked in Hong Kong)

Example:

HK Client with accounts booked to Singapore places orders with HK RM → HK RM asks Singapore trader to execute the trade → Singapore trader asks HK EP to execute the trade

HK EP executes the trades and assign BCAN to the Singapore entity – and not the underlying clients.

Significant Wins

- This clears up the “confusion” by paragraphs 61-64 of the consultation conclusion, which provides, amongst other things, that:
 - “under the HKIDR, the RRI must assign BCAN to the Relevant Client. When the RRI routes these orders abroad to an overseas broker, the RRI must include the client’s BCAN in the securities order and put in place arrangements with that overseas broker so that the securities order can be transmitted together with the BCAN to the EP”; and
 - “failure by a RRI to provide a BCAN in a securities order to its overseas brokers for onward transmission to an EP or to establish arrangements with its overseas brokers for onward transmission of the BCAN may constitute a breach of the Code of Conduct”.
- See also FAQ B.4

Pain Points

Obtaining Individual Client Consent

- Applies to individuals (therefore ASIFMA did not make any submission in this regard)
- Code of Conduct Paragraph 5.6(p) for HKIDR and Paragraph 5.6(h) for OTCR
- SFC's Circular to Intermediaries on Obtaining Client under HKIDR and OTCR dated 13 September 2021 ("Client Consent Circular")

Pain Points

Obtaining Individual Client Consent

- The SFC adopts a very prescriptive approach and requires explanation of consent and express consent.
- No consent can be implied by the client's conduct, silence or omission (see also D.4 of the FAQ).
- The SFC has provide a sample language in the Appendix to the Client Consent Circular; however, even if you choose not to follow the SFC's circular, you need to obtain client's explicit consent on the following matters (set out in paragraph 4 of the Client Consent Circular):-
 - disclosure and transfer of the client's personal data by the RRI to SEHK and/or the SFC in accordance with the rules and requirements of SEHK and SFC in effect from time to time;
 - allowing SEHK to (i) collect, store, process and use personal data for market surveillance and monitoring purposes and enforcement of the Rules of the Exchange of the SEHK; (ii) disclose and transfer such information to the relevant regulators and law enforcement agencies in Hong Kong so as to facilitate the performance of their statutory obligations with respect to the Hong Kong financial markets; and (iii) use such information for conducting analysis for the purposes of market oversight; and
 - allowing the SFC to (i) collect, store and process and use their personal data for the performance of its statutory obligations including monitoring, surveillance and enforcement functions with respect to the Hong Kong financial markets; and (ii) disclose and transfer such information to relevant regulators and law enforcement agencies in Hong Kong in accordance with applicable laws and requirements.

Pain Points

Obtaining Individual Client Consent

- Consequences of not obtaining individual client's consent:
 - under the HKIDR, the RRI should only effect sell orders
 - under the OTCR, if client consent cannot be obtained from any client, the RRI can only effect transfer of shares out of and withdrawal of physical share certificates from, the client account
- How do you put in place operations and IT procedures to ensure the above?

Updates/“Mapping”

Following the publication of the consultation conclusion, ASIFMA and S&S submitted a letter to the SFC, requesting clarification in the following areas:

*Highlighted cell means the SFC has only partially responded

Clarification	Response by the SFC
Bonds – whether bonds which are listed on the SEHK but traded OTC will be in-scope of the HKIDR and OTCR	Question A.1 Even if the bonds are listed, if you trade bonds on an OTC basis, it is not in-scope of the HKIDR
Trade Give Up – we request for flexibility for relevant regulated intermediaries (“ <u>RRI</u> ”) to assign BCAN in a trade give up Scenario. We have requested for clarification in our responses to the consultation paper	Question B.2 “The HKIDR applies at the trading level, and not at the settlement level. There is no requirement to assign BCAN to the beneficial owner of an executed trade if they are not the “Relevant Clients” of the RRI. The BCAN tagged to the order should not be changed throughout the trade execution even though the executed trade is subsequently given up to a prime broker.

Updates/“Mapping”

Clarification	Response by the SFC
<p>Assignment of BCAN – originator or account holder?</p> <ul style="list-style-type: none">• authorised traders and account holders• advisory accounts• trust accounts	<p>Question F.3</p> <p>The SFC requires BCAN to be assigned to the account holder, regardless of who “operates” the account.</p>
<p>Head Office/Branch</p> <p>HKIDR should only apply to the HK branch</p>	<p>Question B.3</p> <p>For the purposes of the HKIDR and the OTCR, our policy intent is that an overseas branch or an overseas head office of an RRI should be treated as an overseas affiliate, provided that (i) the Hong Kong branch has opened and maintained separate securities trading accounts for its overseas branches/overseas head office and orders are placed through these accounts; and (ii) the CID of these overseas branches/overseas head offices are distinguishable from one another (i.e. the name of the branch should be included in the CID). If these two criteria are met, the “Relevant Client” is the overseas branches/overseas head office but not their clients.</p>

Updates/“Mapping”

Clarification	Response by the SFC
<p>Primary market creation and redemption orders submitted by PDs of ETFs – whether these are in-scope of HKIDR and OTCR</p>	<p>Question A.2 Primary creation and redemption of ETF units or shares are out of scope of the HKIDR. For transfers of a basket of securities for allotment or redemption of an ETF with a stamp duty remission are not reportable under the OTCR</p>

Outstanding Areas

- Assignment of BCAN in a trade give-up scenario
- Suspension of BCAN
- Definition of “RRI” should be expanded to include “in its capacity as an exchange participant of SEHK”
- Confirm the definition of “Relevant Clients” for overseas booking model also applies to OTCR - for example, if the transfer of shares happen between the same Relevant Client (i.e. the overseas affiliate entity), although the transfer was between two different underlying clients of the overseas affiliate, confirm that this does not trigger OTCR reporting requirement
- FIX Tag
- Missing BCAN
- Language for inputting names (the SFC is working on it)
- Timeline for implementation
- ECM Block Trade



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