



Circulars

19 Nov 2003

The Revised Return of Securities Related Activities

Our Ref: B1/15C

19 November 2003

The Chief Executive
All Authorized Institutions

Dear Sir / Madam,

The Revised Return of Securities Related Activities

Further to my [letter of 26 June 2003](#), I would like to draw to your attention that due to certain clarifications recently obtained from the Securities and Futures Commission (SFC), some necessary refinements have been made to the revised Return and the completion instructions issued in June. Please be assured that the amendments concerned only serve to give more specific guidance for registered institutions (RIs) to complete the revised Return and do not constitute additional reporting burden. The purpose and rationale of the amendments are set out below.

Type 7 regulated activity - providing automated trading services (ATS)

According to the Frequently Asked Questions¹ recently posted on the SFC website, provision of order routing services would not be regarded as Type 7 regulated activity under the SFO. As such, authorized institutions (AIs) registered for Type 1 and / or 2 regulated activity would not be required to register for Type 7 regulated activity if they are only providing order routing services and the services that they provide by means of electronic facilities do not meet the definition of ATS².

In light of the above clarification, the section "Channels through which clients' securities / futures contracts orders were received", which was originally incorporated under ATS in Item 6 of the revised Return, is now presented as a separate item (i.e. a new Item 8) to cover clients' orders received in relation to Type 1, 2 and / or 9 regulated activity.

Provision of private banking services by AIs

By virtue of Part V of the SFO, subject to some exceptions, any person who carries on a business in asset management or holds out as carrying on such business needs a licence or registration in Type 9 regulated activity - asset management. On the basis that the provision of private banking services generally constitutes asset management (or holding out to be

providing asset management³), both the SFC and the HKMA expect that, where an AI engages in private banking activities and the client portfolios involve securities and / or futures contracts, it has to be registered in Type 9 regulated activity regardless of:

- whether the client assets are booked in Hong Kong or elsewhere, with the AI itself or with another institution; and
- whether the client accounts are operated on a discretionary or non-discretionary basis.

In view of the above interpretation, an RI applicant that intends to conduct private banking activities should apply for registration in Type 9 regulated activity⁴. Accordingly, the definition of "private banking" as stated in the completion instructions of the revised Return has been amended to highlight the registration requirement.

Taking this opportunity, I would also like to remind you that every RI, including one that is deemed under the transitional arrangements of the SFO, is required to submit the revised Return to the HKMA no later than 21 days after the end of June and December each year. The first reporting period for the revised Return will be the 6 months ending 31 December 2003. We are in the course of modifying the standard templates to facilitate completion and submission of the revised Return through the STET system, which would be available for downloading from our private website (<http://www.hkfin.net>) in mid-December 2003.

A copy of the revised Return (in bilingual form - English and Chinese) and the revised completion instructions (both English and Chinese versions) are attached. They are also accessible through the HKMA's public (<http://www.info.gov.hk/hkma>) and private (<http://www.hkfin.net>) websites. Should you have any questions relating to this letter, please feel free to contact Mr Paul Lee at 2878-8283 or Mr Samuel Leung at 2878-1541.

Yours faithfully,

Raymond Li
Executive Director (Banking Development)

Encl. [Revised return of securities related activities](#) (PDF file, 680KB)
 [Completion Instructions \(English\)](#) (PDF file, 33KB)
 [Completion Instructions \(Chinese\)](#) (PDF file, 512KB)

¹ Refer to question 1.8 of the Frequently Asked Questions on licensing matters under the Securities and Futures Ordinance (SFO) on the SFC public website at www.hksfc.org.hk.

² The SFC is in the process of issuing letters to RIs which have deemed registration in Type 7 regulated activity clarifying the registration requirement concerning ATS and setting out the required actions that should be taken by them before submission of the migration applications to the SFC.

³ In general a private banking client invests in sizeable amount. The client and the AI usually enter into an agreement in accordance with which the AI manages the client's portfolio consisting of, amongst others, securities and/or futures contracts. This is also the rationale for presuming that in relation to private banking clients, asset management is provided by

Als not wholly incidental to the carrying on of Type 1 (dealing in securities) and / or Type 2 (dealing in futures contracts) regulated activity.

⁴ In Schedule 5 to the SFO, the definition of "asset management" excludes a corporation providing asset management service solely to any of its wholly owned subsidiaries, its sole holding company or other wholly owned subsidiaries of that holding company. However, according to the SFC (refer to question 19.6 of the SFC Frequently Asked Questions on licensing matters under the SFO), the group company exclusion should not be read as applying to the management of assets belonging to the group company's clients. Managing assets belonging to third parties would constitute "asset management" as defined in the SFO and attract a licensing / registration requirement.

Last revision date : 01 August 2011