22 Dec 2003

The Revised Return of Securities Related Activities

Our Ref: B1/15C

22 December 2003

The Chief Executive
All Authorized Institutions

Dear Sir / Madam,

The Revised Return of Securities Related Activities

I refer to my letter of 19 November 2003 on the captioned. It sets out, among other things, the expectation of the SFC and the HKMA that an authorized institution (AI) engaging in private banking activities (with the relevant client portfolios containing securities and/or futures contracts) should apply for registration in Type 9 regulated activity (i.e. asset management) under the Securities and Futures Ordinance (SFO). This position was established on the understanding that, in general, private banking activities involve an AI entering into an agreement with its clients under which the AI manages the clients' portfolios.

Subsequent to the issue of the letter we noticed that some AIs had reservations in that private banking activities could conceivably be regarded as Type 9 regulated activity simply because the relevant client portfolios contain securities and/or futures contracts. To address such concern we have further considered the matter with the SFC.

Both regulators are of the view that whether a registration in Type 9 regulated activity is required depends on whether an AI is carrying on a business in "asset management" (as defined in Schedule 5 to the SFO) or holding itself out as carrying on such business. In other words an AI engaging in private banking activities (where the relevant client portfolios contain securities and/or futures contracts) may demonstrate that its activities do not fall within the definition of asset management in the SFO, and hence a Type 9 registration with the SFC is not required. This is possible if, for example, the AI is merely providing a securities brokerage service to its private banking clients, which would call for a registration in Type 1 regulated activity (i.e. dealing in securities) but not Type 9. Alternatively, if the AI is registered in Type 1 regulated activity and provides asset management service wholly incidental to the carrying on of that regulated activity, it does not need a Type 9 registration for the provision of such service. The regulators will look into the substance of the matter, including e.g. the terms and conditions of the relevant client agreements as well as the contents of the relevant marketing materials etc, in satisfying themselves that a particular registration is not required.

Upon this clarification we consider that the Return of Securities Related Activities and its completion instructions require further changes. A revised version (with changes from the version attached to the 19 November 2003 letter shown) is attached at Annex. As these changes call for certain adjustments to the electronic template under the STET system, the latter will not be available in mid-December as previously advised. We will further advise when the new STET template is available, and will accordingly postpone the reporting deadline for the position as of end-December 2003.

Please feel free to contact Samuel Leung (2878 1541), Alice Lee (2878 1603) or Danny Leung (2878 8202) should you have any question relating to this letter. You may also seek clarification from the HKMA when considering to apply for registration with the SFC under the SFO.

Yours faithfully,

Raymond Li
Executive Director (Banking Development)

Encl. Completion Instructions: Return of Securities Related Activities (Form MA(BS)14) (MS Word, 61KB)
Return of Securities Related Activities (Form MA(BS)14) (MS Word, 138KB)

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