SFC's Conclusion on its Consultation on Amendments to the Enforcement Related Provisions of the Securities and Futures Ordinance – August 2023

The SFC announced on August 8 that it has concluded its consultation on amendments to enforcement-related provisions of the Securities and Futures Ordinance (SFO) and will proceed with the proposal to broaden the scope of the SFO's insider dealing provisions.

This particular Consultation attracted a large amount of industry commentary and response as some of the original proposals had the very real possibility to create unintended consequences for the financial industry in Hong Kong. The SFC has taken these comments on board thoughtfully and responded to the industry in a collaborative way.

Amendments will be made to the insider dealing provisions of the SFO to cover insider dealing perpetrated in Hong Kong in overseas-listed securities or their derivatives, as well as insider dealing outside of Hong Kong involving Hong Kong listed securities or their derivatives. This change was widely supported by the legal and compliance community in Hong Kong and the SFC intends to consult further on this.

However, proposed amendments to section 213 of the SFO will not proceed at this stage after the SFC recognised the: (i) legal and jurisprudence concerns when a breach of non-statutory SFC codes or guidelines may give rise to legal remedies; (ii) implementation issues arising out of the perceived conflation of the disciplinary regime and section 213; (iii) fairness and proportionality concerns; (iv) the impact of the amendments on the competitiveness and status of Hong Kong as an international financial centre; and (v) the need for a broader and more holistic review of compensation orders as a remedy in Hong Kong. The SFC is keeping a watching brief on other ways to address misconduct.

In addition, the proposed amendments to section 103(3)(k) and (j) of the SFO to the advertising rules for investment products will also not be implemented. The industry did not believe that the SFC had sufficiently identified a harm which may be caused to retail investors by firms advertising their products which may only be suitable for professional investors generally, as it should not be the SFC's regulatory objective to protect investors from merely seeing advertisements particularly if a retail investor cannot actually invest in such products. The SFC also took into consideration the practical problem raised that professional investors are generally unwilling to provide their KYC information at the preliminary marketing stage, and this proposal would significantly reduce intermediaries' ability to market to prospective investors or may create a disjointed marketing process.

The full press release can be found here.

If you have questions about the consultation conclusions, please contact Philippa Allen, Managing Director of Regulatory Compliance, Asia at philppa.allen@complianceasia.com or visit www.complianceasia.com for more information.

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