



AIMA WEBINAR

APAC GOVERNMENT & REGULATORY AFFAIRS UPDATE

29TH March 2017

AGENDA

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- **Japan**
 - Christopher Wells - Partner - Morgan, Lewis & Bockius LLP
- **China**
 - Natasha Xie – Partner – JunHe LLP
- **Hong Kong**
 - Gaven Cheong – Partner – Simmons & Simmons
 - Stella Wai – Associate – Simmons & Simmons
- **Singapore**
 - Jek-Aun Long – Partner – Simmons & Simmons JWS
- **Australia**
 - Nikki Bentley – Partner – Henry Davis York
- **Q&A**
 - Please submit questions via the “Questions” dropdown box on your webinar control panel throughout the webinar. We will answer as many as we can.

JAPAN

Christopher Wells

Partner

Morgan, Lewis & Bockius LLP

Registering New Businesses

- **Increased difficulty in obtaining regulatory registrations**
 - Type 1 and DIM registrations now require 9-12 months to complete
 - Expected capabilities of full-time compliance officers have increased along with compensation costs for best qualified individuals
 - Compliance officer has become the “key hire” in the application process
 - KLFB is less willing to process applications with outside counsel except together with a qualified senior executive; expectation is that FIBO senior officer fully understands all operations of the business
 - Type 2 and IAA Registrations now require 7-9 months to complete
 - Meeting requirement for “compliance function” now most difficult element of registration
 - KLFB expects sufficient demonstration of “knowledge” and “experience” in compliance by relevant staff member; meeting expectations is tough for smaller firms
 - Despite FSA desire to be “welcoming” business model tends to be subject to considerably greater scrutiny

Developments in Raising Capital

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- **Paragraph 1 Securities (Corporate and trust form funds):**
 - Additional boutique distributors are entering the market
 - Regulator awareness and surveillance of unauthorized solicitation activity is increasing, especially with increase in Japanese capital moving abroad
 - Increased investor awareness of the rules is separating the “successful” raises from unsuccessful ones
 - Japan “SIT” conduit structures are gradually predominating over offshore funds in the publicly offered funds market
- **Paragraph 2 Securities (LP Form Funds):**
 - Implementation of Article 63 Amendments is now complete
 - Many PE Fund managers have abandoned Article 63 filing approach to support solicitation in favor of obtaining or hiring Type 2 registered FIBOs
 - Caution must be taken to comply with “de minimis test”
 - Some uncertainty remains with viability of “file and withdraw” model

Regulatory Supervision: Return to Principles- Based Supervisory Policies



- **Recent FBO Principles Statement represents a shift back to a principles-based supervisory regime for FBOs registered in Japan**
- **The FBO Principles Statement will require all FBOs to prepare and document implementation of a principles statement for client-oriented business. The Principles Statement includes the following items:**
 - FIBOS must implement a system to address potential conflicts of interest
 - FIBOs must make increased fee disclosures:
 - Fee disclosures must be clear, detailed and accurate including full disclosure of fees paid by product provider where product is sold from offshore
 - Disclosure of availability of “unbundled” fee arrangements where affiliates are involved
 - Better and more easily understood product disclosures
 - Better documentation of client background for purposes of determining product suitability (for institutional as well as retail clients)
 - FIBOs must be ready to review and implement staff compensation arrangements that ensure fair treatment of clients free of conflicts of interest (i.e., out-of-market fee arrangements could be subject to review and sanction)



CHINA

Natasha Xie

Partner

JunHe LLP

Welcome to China – More Clarities Given by Regulators

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- **Investment Decision Making & Trading Connectivity**
- **Localization & Relying on Shareholder Support**
- **Segregation with QDLP business**
- **Outsourcing**

Ambiguity or Uncertainty – How to Live and Play with it?

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◆ Implication of unified asset management rules



◆ “Look-through” principle & strengthened law enforcement

◆ New Securities Law & Futures Law

◆ Operational Issues, e.g, AML check, implication of Cybersecurity Law etc.

QDLP – Still Alive But Keeping Low Profile

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- **Just like all other out-flow channels.....**
- **Limited quota and unpredictable future**
- **Local government efforts appreciated**
- **How to structure your onshore businesses?**
- **How many entities do you need?**
- **How to segregate and share resources**

HONG KONG

Gaven Cheong

Partner

Simmons & Simmons

Stella Wai

Associate

Simmons & Simmons

“Manager-in-Charge” Regime

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- **SFC issued a Circular and a set of FAQs on 16 December 2016 regarding the “Manager-in-Charge” Regime.**
- **Information on MICs needs to be submitted to the SFC from 18 April 2017.**
 - An MIC is an individual appointed by a licensed corporation to be principally responsible for managing any of the eight “Core Functions” of the licensed corporation.
- **SFC clarifies “senior management” to include MICs, in addition to directors and ROs.**
 - Implication – SFC will have clearly identified individuals to be held accountable for regulatory lapses.
 - s194 of SFO empowers the SFC to discipline any “regulated person” (which is defined to include persons involved in the management of a licensed corporation) who is guilty of misconduct.
 - General Principle 9 of the Code of Conduct states that senior management (not defined) should bear primary responsibility for ensuring the maintenance of appropriate standards of conduct and adherence to proper procedures by a licensed corporation.
- **MICs may need to be appointed as ROs if they oversee regulated activities.**

FAQs on Client Agreement Requirements and Suitability Obligations



- **SFC issued FAQs on:**
 - Client agreement requirements (September 2016)
 - provides guidance on the application of the new paragraph 6.2(i) of the Code (a mandatory clause to be included in all client agreements)
 - takes effect on 9 June 2017
 - Compliance with suitability obligations by licensed or registered persons (December 2016)
 - lists out six suitability obligations
 - Triggering of suitability obligations (December 2016)
 - provides guidance and examples on when the suitability obligations will be triggered (communication or relationship involving solicitation or recommendation of an investment product)

Proposed amendments to the Fund Manager Code of Conduct



- **SFC Consultation Paper on Proposals to Enhance Asset Management Regulation and Point-of-sale Transparency – November 2016**
- **The changes proposed to the FMCC would impose greater formal responsibilities on Hong Kong fund managers, in particular, managers of private funds.**
- **Significant proposed amendments to note:**
 - Clarified scope of application to managers of discretionary accounts
 - Fund managers must put in place various policies relating to securities lending and repos (e.g. collateral valuation and margin requirements, eligible collateral and haircut policy, reinvestment of cash collateral)
 - Fund managers must maintain policies on ongoing monitoring of liquidity risk and disclose maximum level of leverage
 - Fund managers must arrange for the appointment of a functionally independent custodian and exercise due skill and care in the selection and ongoing monitoring

Proposed amendments to the PI Rules

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- **SFC Consultation Paper on the Proposed Amendments to the Securities and Futures (Professional Investor) Rules – March 2017**
 - Allow aggregation of an individual's assets with his/her share of assets held in investment vehicles or in joint accounts with friends, siblings, parents or grandparents (not just spouse and children)
 - Expand definition of corporations to qualify as professional investors
 - Allow alternative forms of evidence to support that a person meets the relevant assets or portfolio threshold
- **Implication – more people should qualify as professional investors, thereby increasing the size of the pool of potential investors who can participate in private placement activities (and access non-SFC authorised funds)**

SINGAPORE

Jek-Aun Long

Partner

Simmons & Simmons JWS

- **Refinements to the Investor Classes under the SFA and FAA (including Accredited Investor Opt-In Regime)**
- **Marking of Short Sell Orders and Short Position Reporting**
- **Singapore Variable Capital Companies (S-VACCs)**

Refinements to the Investor Classes under the SFA and FAA

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- **New definition of “accredited investor”**
- **New definition of “institutional investor”**
- **“Accredited Investor” opt-in regime**

Marking of Short Sell Orders and Short Position Reporting

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- **Marking of short sell orders**
- **Short position reporting**
 - Scope
 - Threshold & reporting
 - Timeline & process
 - Exemptions

AUSTRALIA

Nikki Bentley

Partner

Henry Davis York

Key updates

AIMA

01



Foreign financial
services providers

02



New collective
investment vehicles

03



Product design & ASIC
intervention powers

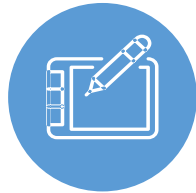
04



Fees & costs
disclosure

Foreign financial services providers

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ASIC reviews licensing
relief



Recent enforcement
action

New collective investment vehicles

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New company and partnership types

Designed to encourage foreign investment as well as the export of funds management services from Australia



Design and Distribution Obligations & Product Intervention Powers

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The Australian Government released a Proposals Paper seeking feedback. Submissions closed on 15 March 2017.

01

Design and distribution obligation

These measures will make product issuers and distributors more accountable for the products they sell



02

Product intervention powers

To provide ASIC with the ability to take a more proactive approach in reducing the risk of significant detriment to consumers.



Other updates

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01

Fees and costs disclosure
ASIC Regulatory Guide 97



02

Portfolio holdings
Disclosure obligations for super funds



Q&A

Please submit questions via the “Questions” dropdown box on your webinar control panel

THANK YOU TO OUR SPEAKERS



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