

Updated Guidance on Documents to Clients via Websites

Pursuant to section 17 of the Securities and Futures (Contract Notes, Statements of Account and Receipts) Rules (Laws of Hong Kong, Cap. 571Q) (the “**CNR**”), intermediaries are required to provide specified documents to clients (the “**Trade Documents**”) within the prescribed time limit. The CNR, however, does not prescribe how the Trade Documents are to be provided. In this regard, the Securities and Futures Commission (the “**SFC**”) issued a circular on 28 July 2010 (the “**2010 Circular**”) to elucidate that the Trade Documents can be made available to clients electronically. For example, the intermediaries may provide clients with access to the Trade Documents through the intermediaries’ websites (the “**Access Service**”). The Access Service is acceptable for the purpose of section 17 of the CNR, provided that the intermediaries have (a) obtained positive, revocable consent from the clients to the Access Service, and (b) put in place operational safeguards to ensure adequate notice and access is given to clients.

On 29 September 2020, the SFC issued a circular to reiterate its policy positions explained in the 2010 Circular (i.e. the Access Service is acceptable for the purpose of section 17 of the CNR provided that the aforementioned conditions are met) and further provided updated guidance on the operational safeguards for acceptable use of Access Service for complying with the CNR. The updated guidance is set out below:



1. Client Consent

- (i) For new clients, consent to the Access Service could be obtained by incorporating express clauses into the terms and conditions (the “T&C”) for the client’s access to and use of the intermediary’s online trading platform in a client agreement executed at the time of account opening.

(ii) For existing clients, consent to the Access Service could be obtained by sending individual notifications to the clients that additional clauses to be added in the T&C to their client agreements and such clauses will be effective from a specified date provided that the clients give their consent by one of the following ways:

- (a) In writing;
- (b) electronically; or
- (c) by logging in to their account on the intermediary's online trading platform once.



- (iii) The notification sent by the intermediary or the consent given by the existing clients should specify clearly that by giving consent to the added T&C clauses, the clients acknowledge their understanding and acceptance of the Access Arrangements (as described in detail under paragraph 2).
- (iv) The intermediary should send a notice to the client confirming the commencement date of the Access Service as well as the methods of revocation of consent, upon identifying that an existing client has given his consent.
- (v) The intermediary is reminded that the notification for the added T&C clauses and commencement date of the Access Service should be sent to clients by way of effective means of communication such as by written notice, email and SMS. The consent obtained should also be kept and recorded by the intermediary.

2. Disclosure of Access Arrangements

Consent to the Access Service of new and existing clients should be accompanied by the client's acknowledgment that he understands and accepts the Access Arrangements set out below:

- (i) Appropriate hardware and software, internet access and a specific email address, mobile phone number or other electronic address provided and designated by the client for receiving email, SMS or other electronic notifications from the intermediary are required for using the Access Service. The client should be aware that the Internet, email, SMS and other electronic information services may be subject to certain IT risks and disruption.

- (ii) The client may revoke his consent to the Access Service subject to the methods specified by the intermediary. The intermediary should offer more than one convenient method for the clients to revoke their consent. Further, the required period of advance notice of revocation of consent should not be more than 2 months.
- (iii) The client may be required to pay a reasonable charge for (a) obtaining a copy of any Trade Document that is no longer available for access; or (b) requesting the Trade Documents from the intermediary in addition to the request for the Access Service.
- (iv) Whenever the client changes his designated email address, mobile phone number or other electronic address, the client should immediately inform the intermediary to avoid missing notifications.



3. Notification of the Posting of Trade Documents

- (i) When the Trade Documents are posted on the intermediary's website on any particular day, the intermediary should alert the client by sending an individual notification to the client using a prompt and effective means of communication.
- (ii) The notification should remind the client to promptly review the Trade Documents and to report to the intermediary immediately once any error is detected. In addition, the client should be reminded by the notification or a prominent message in the Trade Documents to save a soft or hard copy of the Trade Documents for future reference.

4. Security and Functionality of the IT systems

- (i) Access to the Trade Documents posted on the intermediary's website should be protected by username and passwords, and the intermediary should adopt sufficient and comprehensive IT measures to ensure the integrity, security and confidentiality of the posted Trade Documents.
- (ii) The Trade Documents posted on the intermediary's website should be downloadable and capable of being saved by the client electronically.

(iii) The Trade Documents should continue to be available for access, review and downloading by the client for not less than the following respective specified retrieval periods from the date of the notification to the client of their posting:

- (a) For daily statement of account, contract note and receipt: 3 months
- (b) For monthly statement of account: 2 years



5. Contingency Plan

- (i) The intermediary shall monitor and maintain proper records of posting the Trade Documents on its website for access by the client.
- (ii) Handling procedures should be in place to contact clients when the notifications are undelivered.
- (iii) The intermediary should update clients' contact details as soon practicable in case of any changes to the clients' contact details.
- (iv) In case of the intermediary's failure to provide the Trade Documents via the Access Service for whatever reason within the prescribed period under the CNR, other means of service prescribed under section 400 of the Securities and Futures Ordinance (Laws of Hong Kong, Cap. 571) shall be adopted for providing the Trade Documents to clients as soon as practicable.
- (v) A proper contingency plan shall be in place for the provision of the Trade Documents in case of an outage of its website or any other IT incident preventing access to the Trade Documents.

Should you have any question, please contact our Mr. Lawrence Yeung on (852) 2854 3070 or by email at lawrence.yeung@ycylawyers.com.hk.

Please be aware that this explanatory note is for information only and not intended to provide a formal legal advice.

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