

Measures for augmenting senior management accountability in Platform Operators

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A. Introduction

Q1: Why are Platform Operators required to have measures in place for augmenting the accountability of senior management?

A: Paragraph 5.1(k) of the VATP Guidelines states that the “senior management of a Platform Operator should bear primary responsibility for ensuring the maintenance of appropriate standards of conduct and adherence to proper procedures by the Platform Operator. As part of the requirements under paragraph 5.1(k) of the VATP Guidelines, in determining where responsibility lies, and the degree of responsibility of a particular individual, regard shall be had to that individual’s apparent or actual authority in relation to the particular business operations, the level of responsibility of the individual within the Platform Operator, any supervisory duties he or she may perform, and the degree of control or knowledge he or she may have concerning any failure by the Platform Operator or persons under his or her supervision to follow the VATP Guidelines.

It is therefore important that the scope of each senior manager’s duties is clear and that each senior manager is fully aware of his or her obligations under Hong Kong’s regulatory regime.

Q2: Why is the SFC introducing measures to augment the accountability of senior management?

A: The initiative, including the introduction of the “Managers-In-Charge of Core Functions” (MICs) concept, aims to:

(a) articulate the SFC’s view as to who should be regarded as members of senior management of the Platform Operators (see Parts B and C);

(b) promote awareness of the regulatory obligations and potential liabilities of senior management and their accountability (see Parts D and E);

(c) express the SFC’s general expectation that certain members of senior management should seek the SFC’s approval to be responsible officers (ROs) to better align senior management with the existing regime governing ROs (see Part F);

(e) provide more guidance as to the information a Platform Operator (or corporate applicant for licence(s) to carry out Relevant Activities) should submit and standardize the format for submission of information in respect of its human resources and organisational structure (see Part H); and

(f) help further strengthen the corporate governance of Platform Operators.

The measures set out in these FAQs are consistent with the existing provisions of the SFO and the AMLO, subsidiary legislation made by the SFC and codes and guidelines published by it under the SFO and the AMLO.

B. Meaning of "senior management"

Q3 : Which individuals are members of the senior management of a Platform Operator?

A: The SFC is of the view that the senior management of a Platform Operator includes, among others, its (a) directors, (b) ROs, and (c) Managers-In-Charge of Core Functions (MICs). These categories are not mutually exclusive. For instance, an individual can simultaneously be a director, RO and MIC of the corporation.

The term “director” is defined in Schedule 1 to the SFO and section 53ZR of the AMLO to include “a shadow director and any person occupying the position of director by whatever name called” .

Q4 : Why does the SFC regard non-executive directors as senior management of a Platform Operator?

A: The board of directors of a Platform Operator is the ultimate decision-making body within the corporation. Accordingly, the SFC is of the view that all members of the board play an essential role in managing the Platform Operator’ s business and should therefore be regarded as part of senior management.

C. Managers-In-Charge of Core Functions

Q5 : What does “Manager-In-Charge of Core Function(s)” or “MIC” mean?

A: The term “Manager-In-Charge of Core Function(s)” or “MIC” , refers to an individual appointed by a Platform Operator to be principally responsible, either alone or with others, for managing any of the following functions of the Platform Operator (referred to as “Core Functions” and further explained in Question 6):

(i) Overall Management Oversight

(ii) Key Business Line

(v) Finance and Accounting

(vi) Information Technology

(vii) Compliance

(viii) Anti-Money Laundering and Counter-Terrorist Financing

The SFC considers that for each Core Function of a Platform Operator, there should be at least one individual appointed by the Platform Operator as its MIC responsible for managing that function. However, the SFC recognises that Platform Operators may adopt different organisational and governance structures based on their commercial and operational needs. For instance, a Platform Operator may appoint one individual to act as the MIC for more than one Core Function where appropriate considering its scale of operations and control measures. Also, a Platform Operator may appoint two or more individuals as MICs to jointly manage a particular Core Function (also see Q8).

Q6: What does “Core Functions” mean in relation to a Platform Operator?

A: “Core Functions” , in relation to a Platform Operator, comprise the following eight functions:

| | Core Function | Description |
|---|--------------------------------|---|
| 1 | Overall Management Oversight | <p>A function responsible for directing and overseeing the effective management of the overall operations of the Platform Operator on a day-to-day basis</p> <p>Key responsibilities may include:</p> <p>Developing the Platform Operator’ s business model and associated objectives, strategies, organisational structure, controls and policies;</p> <p>Developing and promoting sound corporate governance practices, culture and ethics;</p> <p>Executing and monitoring the implementation of Board-approved business objectives, strategies and plans, and the effectiveness of the organisational structure and controls.</p> <p>Example#: Chief Executive Officer, President</p> |
| 2 | Key Business Line | <p>A function responsible for directing and overseeing a line of business which comprises one or more types of regulated activity and/or VA service</p> <p>Example#: Head of ATS, Head of Brokerage Services, Head of Sales</p> |
| 3 | Operational Control and Review | <p>A function responsible for:</p> <p>Establishing and maintaining adequate and effective systems of controls over the Platform Operator’ s operations;</p> <p>Reviewing the adherence to, and the adequacy and effectiveness of, the Platform Operator’ s internal control systems</p> |

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| 4 | Risk Management | A function responsible for the identification, assessment, monitoring and reporting of risks arising from the Platform Operator's operations Example#: Chief Risk Officer, Head of Risk Management |
| 5 | Finance and Accounting | A function responsible for ensuring the timely and accurate financial reporting and analyses of the operational results and financial positions of the Platform Operator Example#: Chief Finance Officer, Financial Controller, Finance Director |
| 6 | Information Technology | A function responsible for the design, development, operation and maintenance of the computer systems of the Platform Operator Example#: Chief Information Officer, Head of Information Technology |
| 7 | Compliance | A function responsible for: Setting the policies and procedures for adherence to legal and regulatory requirements in the jurisdiction(s) where the Platform Operator operates; Monitoring the Platform Operator's compliance with the established policies and procedures; Reporting on compliance matters to the Board and senior management Example#: Chief Compliance Officer, Head of Legal and Compliance |
| 8 | Anti-Money Laundering and Counter-Terrorist Financing | A function responsible for establishing and maintaining internal control procedures to safeguard the Platform Operator against involvement in money laundering activities or terrorist financing Example#: Head of Financial Crime Prevention, Head of Compliance |

These examples of job title are for illustration only and are not exhaustive. A Platform Operator is not required to appoint MICs bearing the same job titles. However, there should be at least one individual to manage each Core Function as described in the table, and the Platform Operator may adopt any job title relevant to that MIC's position and duties as it considers appropriate.

Q7: How to determine whether an individual is an MIC of a particular Core Function?

A: In determining whether an individual is an MIC of a particular Core Function, a Platform Operator should take into account the apparent or actual authority of that individual in relation to that Core Function. For example, an individual may be an MIC of a particular Core Function if he or she has one or more of the following attributes:

(a) occupies a position within the Platform Operator which is of sufficient authority to enable the individual to exert a significant influence on the conduct of that Core Function;

(b) has authority to make decisions (eg, assume business risks within pre-set parameters or limits) for that Core Function;

(c) has authority to allocate resources or incur expenditures in connection with the particular department, division or functional unit carrying on that Core Function; and

A Platform Operator should also take into account an individual's seniority. In this regard, the SFC generally expects that an MIC should:

(a) report directly to the Board of the Platform Operator, or to the MIC who assumes the Overall Management Oversight function of the Platform Operator; and

(b) be accountable for the performance or achievement of business objectives set by the Board, or by the MIC who assumes the Overall Management Oversight function.

Therefore, in determining whether an individual is an MIC for a particular Core Function, the Platform Operator should take into account the individual's seniority and authority within the Platform Operator. An MIC should hold a senior position with sufficient authority to make decisions and manage the Core Function on a day-to-day basis. Also, he or she should report directly, and be accountable, to the Platform Operator's board of directors or its MIC of the Overall Management Oversight function.

The SFC does not mandate any particular organisational or governance structure for Platform Operators. It is the responsibility of a Platform Operator's Board to determine the proper delegation of authority and responsibilities among its senior management (including MICs).

MICs will not necessarily be employees of the Platform Operator. However, they hold positions of authority within the Platform Operator, so they will not be external parties merely providing outsourced services. They may be located in Hong Kong or overseas. Furthermore, depending on the particular functions they perform in relation to the business of the Platform Operator, they may or may not be licensed under the SFO or the AMLO.

The SFC does not seek to apply regulatory approval to an MIC who is not a licensed person or a licence applicant. However, a Platform Operator should ensure that any person it employs or appoints to conduct business is fit and proper and qualified to act in the capacity so employed or appointed (see paragraph 11.7 of the VATP Guidelines).

Q8: Can a Platform Operator appoint more than one individual to act as MIC of one particular Core Function?

A: A Platform Operator may appoint one or more individuals to head a Core Function. Having said that, the key attributes expected of individual MICs in terms of seniority and authority (see Q7) should be observed. It is the responsibility of the Platform Operator's board of directors to determine the proper delegation of powers (also see Q35).

Q9: If a Platform Operator is governed by an internal management committee, who will be regarded as the MIC of the Overall Management Oversight function?

A: A Platform Operator which is governed by an internal management committee is still required to designate an individual, such as the committee chairperson, to be the MIC of the Overall Management Oversight function of the Platform Operator. Where the Platform Operator designates more than one MIC to head the same Core Function, its board of directors should clearly set out the

Q10: Can an MIC report to the Platform Operator's parent company or other group companies?

A: In addition to reporting to and being accountable to the Platform Operator's board of directors or its MIC of the Overall Management Oversight function, an MIC may also report directly to the parent company and/or to senior management personnel of the group in accordance with established policies and procedures of the group.

Q11: Can an MIC be located outside Hong Kong?

A: An MIC can be located in Hong Kong or outside Hong Kong. In either case, he or she should be properly accountable to the Platform Operator. It is the responsibility of the Platform Operator's board of directors to determine the proper delegation of authority and responsibilities among its senior management (including MICs).

Q12: Does an MIC need to be an employee of the Platform Operator?

A: MICs will not necessarily be employees of the Platform Operator. However, an MIC should hold a position of authority within the Platform Operator and should be properly accountable to it. Therefore it is not appropriate to designate as an MIC an external party who does not hold a position of authority within the Platform Operator and who merely provides outsourced services to it.

Q13: If the day-to-day responsibility for overseeing an outsourced Core Function is assigned to a relatively junior person, can that person be an MIC of that function?

A: In determining whether an individual is an MIC for a particular Core Function, one should take into account the individual's seniority within the organisation and whether he or she has sufficient authority to make decisions and is accountable for the performance of the outsourced function (see Q7).

Q14: In addition to acting as an MIC for a Platform Operator, can an individual also act as an MIC for other licensed corporations?

A: An individual acting as an MIC for a Platform Operator may only be designated as an MIC by other licensed corporation(s), provided there are no conflict of interest concerns. For example, an MIC for a Platform Operator could also serve licensed corporations that are within the same corporate group owned by the same controlling shareholders.

Q15: One of the Core Functions is “Key Business Line”. Is there any financial threshold to determine whether a particular business line is “key” to a Platform Operator?

A: For the purpose of this initiative, the Key Business Line function comprises business activities constituting one or more types of regulated activity and/or VA service (see Q6). A Key Business Line, especially when it is newly developed or still in its developing stage, may not necessarily generate any revenue. The combined business areas covered by all MIC(s) of the Key Business Line(s) should encompass all regulated activities and VA service conducted by the Platform Operator.

Q16: If the internal legal counsel function and compliance function of a Platform Operator are headed by two different individuals, are both individuals regarded as MICs?

A: For the purpose of this initiative, only the compliance function falls within the scope of Core Functions (see Q6), while the internal legal counsel function does not. Therefore, the compliance head will be regarded as an MIC but the legal head will not. Where an in-house legal counsel also serves as an MIC of the Compliance function, the focus of this initiative is placed on his or her role in Compliance (instead of legal counsel).

Q17: Do MICs of Core Functions that do not constitute regulated activity or VA service (eg, Finance and Accounting, Information Technology) need to be approved by the SFC? What are the criteria for determining whether an MIC, who is not a licensed person or a licence applicant, is a fit and proper person?

A: The SFC does not intend to impose any regulatory approval requirement to an individual MIC who is not a licensed person or a licence applicant. However, as set out in paragraph 2.7(b)(i) of the VATP Guidelines, the SFC is not likely to be satisfied that a corporation is fit and proper to be licensed if the corporation has non-executive directors, key personnel (such as manager, officer, director, chief executive), substantial shareholders, ultimate owners or other controllers who fail to meet Part II of the VATP Guidelines other than the requirement regarding competence to carry on the Relevant Activities (unless such requirements are otherwise applicable).

Q18: Are the training requirements under Part IV of the VATP Guidelines applicable to MICs who are not licensed?

A: While Part IV of the VATP Guidelines is not applicable to MICs who are not licensed, paragraph 11.9 of the VATP Guidelines sets out guidance in relation to personnel and training expected of Platform Operators and their management. Among other things, management should ensure that adequate training suitable for the specific duties which staff member(s) perform is provided both initially and on an ongoing basis. A Platform Operator’s training programme should ensure that staff possess or acquire appropriate and practical experience through “on-the-job” training and where appropriate, structured courses.

Q19 : What are the conduct expectations applicable to senior management (including MICs)?

A: The VATP Guidelines provide guidance on the responsibilities of senior management of Platform Operators. In particular:

(a) Paragraph 5.1(k) of the VATP Guidelines states that the senior management of a Platform Operator should bear primary responsibility for ensuring the maintenance of appropriate standards of conduct and adherence to proper procedures by the Platform Operator.

(b) Paragraph 11.1 of the VATP Guidelines specifies that senior management of a Platform Operator should assume full responsibility for the Platform Operator's operations and its Associated Entity's operations to ensure that the operations are conducted in a sound, efficient, effective and compliant manner, including:

(i) the development and implementation of the Platform Operator's internal controls and its Associated Entity's internal controls and ensuring the ongoing effectiveness of these controls and adherence thereto by employees; and

(ii) the establishment and maintenance of proper and effective policies and procedures for the identification and management of the risks associated with the Platform Operator's business and its Associated Entity's business.

(c) Paragraphs 11.2 and 11.3 of the VATP Guidelines further specifies that senior management of a Platform Operator should:

(i) understand the nature of the business of the Platform Operator, its internal control procedures and its policies on the assumption of risk; and

(ii) understand their own authority and responsibilities.

(d) The Guideline on Anti-Money Laundering and Counter-Financing of Terrorism (For Licensed Corporations and SFC-licensed Virtual Asset Service Providers) sets out detailed expectations regarding compliance and control functions that will be particularly relevant to MICs responsible for managing the Anti-Money Laundering and Counter-Terrorist Financing function.

Where policies, practices and actions are determined or formulated by or together with other companies in the group, the senior management of a Platform Operator should examine their appropriateness and make any necessary amendments or changes so that they are appropriate for the operations of the Platform Operator's regulated business activities in Hong Kong.

E. Legal liabilities of senior management

Q20 : What are the legal liabilities on the senior management of a Platform Operator?

A: Under Part IX of the SFO and/or Division 9 of Part 5B of the AMLO, the SFC may exercise its disciplinary powers to sanction a regulated person if the person is, or was at any time, guilty of misconduct or is considered not fit and proper to be or to remain the same type of regulated person. The term "regulated person" means a person who is or at the relevant time was any of

(b) an RO of a Platform Operator; or

(c) a person involved in the management of the business of a Platform Operator (regardless of whether he or she is licensed).

All members of the senior management of a Platform Operator (even if they are not licensed) are regulated persons because of their involvement in the management of the Platform Operator's business.

Where a Platform Operator is (or was) guilty of misconduct as a result of the commission of any conduct occurring with the consent or connivance of, or attributable to any neglect on the part of, a person involved in the management of the business of the Platform Operator, then that person is also guilty of misconduct (see section 193(2) of the SFO and section 53ZSR(5) of the AMLO).

"Misconduct" includes an act or omission relating to the carrying on of any regulated activity or VA service for which a person is licensed which, in the opinion of the SFC, is or is likely to be prejudicial to the interest of the investing public or to the public interest. Before forming any opinion for this purpose, the SFC shall have regard to its various codes and guidelines (see section 193(3) of the SFO and section 53ZSR(3) and (4) of the AMLO).

Furthermore, in determining whether a regulated person, including a person involved in the management of a Platform Operator, is a fit and proper person for the purpose of considering taking disciplinary action, the SFC may, among other matters, take into account the past or present conduct of the person (see section 194(3) and section 129 of the SFO, and section 53ZSR(6) and section 53ZRJ of the AMLO). For instance, if an MIC fails to ensure a Platform Operator's compliance with the codes or guidelines published by the SFC, the failure may call into question the MIC's fitness and properness, having regard to his or her level of responsibility within the firm.

Q21 : How does the SFC determine a particular individual's degree of responsibility when considering disciplinary action?

A: Whether the SFC is to discipline a regulated person depends on the specific facts of each case. In determining where responsibility lies, and the degree of responsibility of a particular member of senior management, the SFC will take into account the individual's apparent or actual authority in relation to the particular business and operations, his or her level of responsibility within the Platform Operator concerned, any supervisory duties he or she may perform, and the degree of control or knowledge he or she may have concerning any failure by the Platform Operator or persons under his or her supervision to follow the VATP Guidelines (see paragraphs 1.4 and 5.1(k) of the VATP Guidelines).

Q22 : Are there any circumstances that may lead to a criminal prosecution against senior management?

A: The disciplinary sanctions which the SFC may impose on a regulated person under Part IX of the SFO and/or Division 9 of Part 5B of the AMLO (eg, licence revocation or suspension, pecuniary fine and reprimand) are civil rather than criminal in nature. In addition to potential disciplinary

proved to have been aided, abetted, counselled, procured or induced by, or committed with the consent or connivance of, or attributable to any recklessness of, any officer of the corporation, then that officer is also guilty of the offence.

Q23 : Will the SFC refer to its Disciplinary Fining Guidelines as its standards for disciplining MICs? Will the SFC provide any additional guidance on how it will use its disciplinary powers when disciplining MICs?

A: The two Disciplinary Fining Guidelines published by the SFC under section 199(1)(a) of the SFO and section 53ZSS(1) of the AMLO apply to all regulated persons (including MICs), regardless of whether they are licensed. The guidelines indicate the manner in which the SFC will perform its function in imposing a fine on a regulated person. Other sanctions that the SFC is empowered to impose on a regulated person are revocation or suspension of licence (where the regulated person is a licensed person), revocation or suspension of approval to be an RO (where the regulated person is an RO), prohibition of a regulated person from applying for licence, becoming an RO, and reprimand.

Q24 : Will the SFC discipline individuals who are located outside Hong Kong?

A: The disciplinary powers under Part IX of the SFO and Division 9 of Part 5B of the AMLO apply to all regulated persons as defined. Such powers do not differentiate between regulated persons located in Hong Kong and those outside Hong Kong.

Q25 : In the event of an investigation, will the secrecy obligation under section 378 of the SFO and sections 76A to 76G of the AMLO prevent any communication/notification to be made to the relevant MICs, regardless of the entity that they sit within?

A: The relevant persons should continue to observe the secrecy obligations applicable to them under section 378 of the SFO and sections 76A to 76G of the AMLO. In the case of a corporation, the SFC's consent to notification to its board of directors and holding company can be presumed. Disclosure in other circumstances is subject to the SFC's consent.

Q26 : Does the MIC regime create any additional liability for senior management?

A: The MIC regime is consistent with the existing provisions of the SFO and the AMLO, subsidiary legislation made by the SFC and codes and guidelines published by it under the SFO and the AMLO. It does not impose any additional liability on the senior management of Platform Operators (including MICs).

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Q27 : Are all MICs required to be approved as ROs?

A: The SFC generally expects that MICs of the Overall Management Oversight function and the Key Business Line function should be ROs in respect of the Relevant Activities they oversee. This is because, in most cases, MICs of these Core Functions actively participate in or are responsible for directly supervising the business of the Relevant Activities. For the avoidance of doubt, the SFC does not expect MICs of Core Functions other than these two to be ROs. The SFC also does not require every RO to be an MIC.

Q28 : Does a new CEO of a Platform Operator, who will assume the Overall Management Oversight function, need to be approved as an RO before taking up the post?

A: The new CEO does not need to become an RO before his appointment as CEO. However, the Platform Operator should clearly indicate to the SFC its intention for the CEO to apply to become RO.

Q29 : If a CEO has no direct experience conducting Relevant Activities, can he or she become an RO?

A: In considering whether an RO applicant, who is or will be an MIC of the Overall Management Oversight function, meets the industry experience tests set out in Part III of the VATP Guidelines, the SFC takes into account, among other things, the applicant's overall career history within the industry, as well as his or her proposed activities and the resources (including system and expertise) available to the Platform Operator in totality. An applicant who has held a senior position to manage a control or operational function (eg, risk management, compliance, financial or operational control) for a long time may be approved as RO subject to appropriate licensing conditions, even if he or she has not had any experience in conducting or directly supervising Relevant Activities. Typically in this situation, a licensing condition may be imposed to the effect that he or she should work together with another RO who is fully competent. After accumulating sufficient experience in Relevant Activities, he or she may apply for waiving the licensing condition. The SFC will consider every RO application or waiver application based on the specific facts of the case.

Q30 : Does an MIC of the Overall Management Oversight function need to be approved as an RO of all regulated activities or VA service that the Platform Operator is licensed for?

A: It depends on whether the MIC of the Overall Management Oversight function actually oversees the operations of all or certain regulated activities or VA service of the Platform Operator. In general, the SFC expects an MIC of the Overall Management Oversight function to become an RO in respect of the Relevant Activities he or she oversees.

Business Line function to become an RO?

A: MICs may be located in Hong Kong or outside Hong Kong. Like other ROs based outside Hong Kong, the SFC will consider imposing appropriate conditions on the licence of these individuals, such as a condition requiring him or her to act together with another RO who is fully competent and is based in Hong Kong.

Q32 : What exemptions are available from the requirement to obtain recognised industry qualification or to pass local regulatory framework papers?

A: As regards licensing examinations, paragraphs 3.24 to 3.38 of the VATP Guidelines currently provide various exemptions from the recognised industry qualification requirement and the local regulatory framework paper requirement.

For instance, an RO applicant, who is assuming a very senior management position in a Platform Operator, may be exempt from taking the local regulatory framework paper if he or she has sufficient industry experience and there is regulatory support available to him or her from other personnel within a controlled environment. For more details, you may refer to paragraph 3.33 of the VATP Guidelines.

Q33 : If both the regional CEO and the local CEO of a financial group are located in Hong Kong, who should be appointed as an MIC of the Overall Management Oversight function?

A: It depends on the roles and responsibilities of the two individuals. If either of them is responsible for overseeing the overall operations of the Platform Operator within the group on a day-to-day basis, he or she will be regarded as an MIC of the Overall Management Oversight function and expected to become an RO. If both of them are responsible for that function, both of them should be regarded as MICs.

Q34 : Does the SFC expect a Platform Operator to downgrade the status of existing ROs, who are not MICs of the Overall Management Oversight function or the Key Business Line function, to licensed representatives?

A: In addition to the MICs of the Overall Management Oversight function and the Key Business Line function, a Platform Operator may propose to appoint any other individuals, who possess sufficient authority, to be ROs to supervise its Relevant Activities. A Platform Operator must have at least two ROs to supervise each regulated activity and/or VA service for which it is licensed.

G. Roles and responsibilities of the Board

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A: The Board of a Platform Operator has the ultimate responsibility for the conduct, operations and financial soundness of the corporation. The Board works with senior management (including MICs) to achieve the objective of a soundly and efficiently run corporation, and senior management is accountable to the Board.

Any member of the Board (regardless of whether he or she plays an executive or non-executive role with respect to the business of the Platform Operator) has a duty to exercise independent judgement in relation to the exercise and delegation of the Board's powers. The Board retains responsibility for delegated decisions and is required to have systems and controls in place to supervise those who act under the delegated authority.

The VATP Guidelines state that a Platform Operator should establish, document and maintain an effective management and organisational structure. To this end, the SFC expects that a Platform Operator should adopt a formal document, approved by the Board, clearly setting out the management structure of the corporation, including the roles, responsibilities, accountability and reporting lines of its senior management personnel. Where a Platform Operator designates more than one individual to be the MICs of a particular Core Function, the Board should ensure that the aforesaid document contains sufficient details regarding the specific responsibilities of each MIC concerned. The SFC may request a Platform Operator to provide the document for its review. Certain key information regarding a Platform Operator's management structure should be submitted to the SFC under the VATP Guidelines.

The management structure of a Platform Operator (including its appointment of MICs) should be approved by the Board of the corporation. Furthermore, the Board should ensure that each of the corporation's MICs has acknowledged his or her appointment as MIC and the particular Core Function(s) for which he or she is principally responsible.

H. Submission of management structure information

Q36 : When should the MIC information be submitted by a Platform Operator?

A: When applying for a licence under section 116(1) of the SFO and/or section 53ZRK of the AMLO, a Platform Operator is required to provide information about its human resources and organisational structure showing that it is capable of carrying on Relevant Activities competently under the VATP Guidelines. This information is relevant to the SFC's assessment, under section 129 of the SFO and/or section 53ZRJ of the AMLO, of the corporation's fitness and properness for carrying on Relevant Activities. It is also relevant to the performance of the SFC's other regulatory functions, including ongoing intermediaries supervision and enforcement. Accordingly, the SFC expects the corporation to provide information regarding its MICs and its organisational chart in its application.

In respect of each of its MICs, the Platform Operator should submit the following particulars:

(a) full name;

(b) identification information;

(c) job title (which should indicate an individual's position and his or her particular business or operational area (eg, Chief Executive Officer, Chief Administrative Officer, Head of Risk

(e) the Core Function(s) which he or she is in charge of; and

(f) the job title(s) of the person(s) to whom he or she reports within the corporation and, if applicable, within its corporate group.

In addition, the Platform Operator should submit an organisational chart depicting its management and governance structure, business and operational units and key human resources and their respective reporting lines. The chart should capture all MICs engaged by the corporation, their respective reporting lines (as described in item (f) above) and the job titles of the persons reporting directly to these MICs in relation to the operations of the corporation.

A Platform Operator should notify the SFC of any changes in its appointment of MICs (including any new appointment and cessation of appointment) or any changes in the particulars of its MICs (as mentioned above) within seven business days of the changes. Where a change involves a new appointment or cessation of appointment, or a change in the particulars referred to in items (e) and (f) above, the Platform Operator should also submit an updated organisational chart in its notification of that change under the VATP Guidelines.

The Board of a Platform Operator or a corporate licence applicant should ensure that the information submitted to the SFC is complete and accurate. Under section 383 or 384 of the SFO and/or section 53ZTO, 53ZTP or 53ZTQ of the AMLO, a person may commit an offence if he provides false or misleading information in support of a licence application or in relation to a notification (as the case may be).

Q37 : Who should submit the MIC information to the SFC?

A: The Platform Operator (rather than the MIC) is responsible for submitting the MIC information to the SFC. All MIC appointments should be approved by the board of directors of the Platform Operator, and the board should ensure that each of the MICs has acknowledged his or her appointment as MIC and the particular Core Function(s) for which he or she is principally responsible.

Q38 : Does a Platform Operator need to submit information regarding the temporary acting appointment of an MIC (eg, to provide cover for another MIC who is precluded by illness or absence from carrying out his or her functions, or to fill a position temporarily pending a permanent appointee)?

A: A Platform Operator is not required to notify the SFC of its temporary acting appointment of an MIC, provided that such appointment is expected to last for a period of no more than a few months and is not expected to continue on a permanent basis. However, if a temporary appointment becomes a permanent appointment, the Platform Operator should notify the SFC of the change within 7 business days.

Q39 : What should be included in the organisational chart submitted by a Platform Operator?

(a) the Platform Operator's corporate hierarchy and its business and operational units;

(b) the positions of all MICs of the Platform Operator, the job titles of the persons to whom the MICs report and the job titles of the persons reporting directly to the MICs in relation to the operations of the Platform Operator.

Q40 : Should a Platform Operator submit an updated organisational chart every time there is a change of personnel?

A: A Platform Operator should submit an updated organisational chart when there is a change in the identity of any of the MICs it has engaged or in the job title of the person to whom an MIC reports. It is not necessary to submit an updated organisational chart when there is only a change in the personnel reporting to the MICs.

Q41 : Will the MIC information be displayed in the Public Register of Licensed Persons and Registered Institutions (Public Register) maintained by the SFC?

A: The Public Register includes names of licensed representatives and ROs as set out in Schedule 4 to the Securities and Futures (Licensing and Registration) (Information) Rules and section 53ZRH of the AMLO. Organisational charts and MIC information of Platform Operators will not be displayed in the Public Register.

Q42 : Should a Platform Operator submit an updated organisational chart every time there is a change of personnel?

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