

CHARLTONS

SOLICITORS



Hong Kong

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LATEST SFC DECISIONS AGAINST SFC LICENSED CORPORATIONS AND UNLICENSED AND SFC LICENSED INDIVIDUALS FOR COMPLIANCE FAILURES UNDER THE SECURITIES AND FUTURES ORDINANCE

SFC Reported Cases for Compliance Failures under the Securities and Futures Ordinance: mid-December 2019 to mid-February 2020

The SFC has published updates on over ten disciplinary actions and related prosecutions between 17 December 2019 and 14 February 2020, including the following:¹

¹ The SFC is empowered by the Securities and Futures Commission Ordinance (SFO) to take disciplinary actions against related persons, including but not limited to the licensed corporations, licensed representatives and responsible officers.

In determining whether to take disciplinary action and the level of sanction against the subject corporation or individual, the SFC will generally consider the following factors but this list is not exhaustive:

- Nature and seriousness of the conduct;
- Amount of profits accrued or loss avoided;
- Circumstances of the corporation or individual;
- SFC's action in previous similar cases; and
- Any other regulatory action by other authorities.

The SFC is empowered to impose one or more of the following sanctions:

- Revocation of licence, registration or approval;
- Suspension of licence, registration or approval;
- Prohibition of application for license or approval;
- Fine up to the maximum of HK\$10 million or three times of the profit gained or loss avoided, whichever is higher, to be paid to the SFC within a prescribed deadline; and
- Private or public reprimand.

Individual/Entity	Conduct	Disciplinary Action
17 December 2019 Regulated Persons under section 194(7)(c) of the SFO (Ang Wing Fung and Chan Kam Wah)	Providing false and misleading information to the SFC and failure to make proper notifications to the SFC.	Prohibited from re-entering for life and 3 years respectively.
23 December 2019 Adamas Asset Management (HK) Limited (licensed to carry on Type 9 regulated activity)	Inadequate measures to ensure accurate and timely disclosure of notifiable interested in eight Hong Kong-listed company shares.	Reprimanded and fined HKD 2.5 million.

Individual/Entity	Conduct	Disciplinary Action	Individual/Entity	Conduct	Disciplinary Action
<p>30 December 2019</p> <p>FIL Investment Management (Hong Kong) Limited (licensed to carry on Type 1, Type 4, Type 5 and Type 9 regulated activities)</p>	<p>Unlicensed dealing in futures contracts, delay in reporting breach to the SFC and submitting incorrect information during an application.</p>	<p>Reprimanded and fined HKD 3.5 million.</p>	<p>22 January 2020</p> <p>Individuals including one or more officers of China Ding Yi Feng (listed under Chapter 21 of the Main Board Listing Rules on HKEx 00612)</p>	<p>Suspected market manipulation in the shares of China Ding Yi Feng Holdings Limited.</p>	<p>Commencing proceedings for suspected market manipulation.</p>
<p>2 January 2020</p> <p>RHB Securities Hong Kong Limited (licensed to carry on Type 1 and Type 4 regulated activities)</p>	<p>Failures to comply with regulatory requirements on conflicts of interest and supervision of account executives.</p>	<p>Reprimanded and fined HKD 6.4 million.</p>	<p>29 January 2020</p> <p>Type 1, Type 2 and Type 4 Licensed Individual (Shiu Yau Wah)</p>	<p>Conducting trades on a discretionary basis without the client's written authorisation and failing to comply with internal policies and procedures.</p>	<p>Suspended for five months.</p>
<p>6 January 2020</p> <p>Unlicensed individual (Yau Ka Fai)</p>	<p>Carrying on a business in asset management without a licence from the SFC.</p>	<p>Convicted by Eastern Magistrates Court.</p>	<p>6 February 2020</p> <p>Type 4 Licensed Individual (Christopher Tse)</p>	<p>Breach of internal policies and Code of Conduct.</p>	<p>Banned from re-entering the industry for 12 months.</p>
<p>21 January 2020</p> <p>China Fund Securities Limited (licensed to carry on Type 1 and Type 9 regulated activities)</p>	<p>Client accounts related to suspected market manipulation of the shares of Hon Corporation Limited.</p>	<p>Restriction notice issued prohibiting it from dealing with or processing HKD 170 million worth of assets held in six client accounts.</p>	<p>11 February 2020</p> <p>BMI Securities Limited and BMISL's responsible officer (licensed to carry on Type 1 and Type 9 regulated activities)</p>	<p>Failures in complying with AML and CFT regulatory requirements.</p>	<p>Reprimanded and fined HKD 3.7 million.</p> <p>Responsible officer suspended for five and a half months.</p>

Individual/Entity	Conduct	Disciplinary Action
14 February 2020 Capital Global Management Limited (licensed to carry on Type 1, Type 4 and Type 9 regulated activities)	Failures to ensure compliance with applicable laws and regulations in distributing investment funds and offering investment advice in Taiwan and failure to supervise business activities of representatives to ensure compliance.	Reprimanded and fined HKD 1.5 million.

Further details of these actions are outlined below.

1. SFC Banned W. Falcon Asset Management (Asia) Limited's Former Chairman for Life and ex-CFO for Three Years for Providing False and Misleading Information and Failure of Making Notifications to the SFC

On 17 December 2019, the SFC announced² that it had prohibited Ang Wing Fung (**Ang**), the former chairman and a director of W. Falcon Asset Management (Asia) Limited (**Falcon**) and Chan Kam Wah, its chief financial officer / financial controller and company secretary (**Chan**) from doing all or any of the following in relation to any regulated activities for life and 3 years respectively, pursuant to section 194(1)(iv) of the Securities and Futures Ordinance (**SFO**):

- a) applying to be licensed or registered;
- b) applying to be approved under section 126(1) of the SFO as a responsible officer (RO) of a licensed corporation;
- c) applying to be given consent to act or continue to act as an executive officer of a registered institution under section 71C of the Banking Ordinance; and

- d) seeking through a registered institution to have their names entered in the register maintained by the Monetary Authority under section 20 of the Banking Ordinance as that of a person engaged by the registered institution in respect of a regulated activity.

Ang was the mastermind of the window-dressing scheme, whilst Chan facilitated it. The disciplinary action against Ang and Chan was based upon contravention of sections 135, 146, 383 and 384 of the SFO and rules 6 and 55 of the Securities and Futures (Financial Resources) Rules (**FRR**). It followed the SFC's revocation of the licence of Falcon in February 2019 for window-dressing its liquid capital and other failures.

Breach 1: Provision of False and Misleading Information in Falcon's Licence Application

Under section 383(1) of the SFO, a person commits an offence if he either makes a representation that is false or misleading in a material particular, or he knows that, or is reckless as to whether the representation is false or misleading in a material particular.

1. Regarding Falcon's licence application, Chan prepared firstly, a "supplement 7 - financial resources" form stating it had excess liquid capital in the sum of HK\$1.9 million, and secondly, a copy deposit slip showing that a cheque for the sum of HK\$4 million was deposited on 30 June 2014. Ang caused Falcon to submit both documents to the SFC. Therefore, Falcon held out that it had the requisite liquid capital to fulfil the requirements for qualifying for a licence.
2. Apart from the HK\$4 million cheque, the supplement form also considered another cheque in the sum of HK\$990,000 in arriving at the figure of HK\$1.9 million for excess capital. Both cheques were dishonoured upon presentation. In short, Ang and Chan caused Falcon to provide information in its licence application which was false and misleading.

Breach 2: Provision of False and Misleading Information in the Financial Returns (FRs) and Failure to Maintain Sufficient Liquid Capital

Section 56(1) of the FRR requires a licensed corporation to submit to the SFC its FR in respect of each month end. The FR shall include, among other things, the month-end liquid capital computation of the licensed corporation. Under section 384(1) of the SFO, a person commits an offence if he, either in

² <https://www.sfc.hk/edistributionWeb/gateway/EN/news-and-announcements/news/doc?refNo=19PR118>

purported compliance with the SFO, provides to the SFC any information which is false or misleading in a material particular, or he knows that, or is reckless as to whether the information is false or misleading in a material particular. Under rule 6 of the FRR, a licensed corporation shall at all times maintain liquid capital which is not less than its required liquid capital. The required amount for Falcon was HK\$3 million.

Between 2014 and 2017, Falcon submitted a total of 28 FRs each containing a computed amount of liquid capital which purportedly exceeded the required minimum. According to the computation prepared by Falcon, the major component of its liquid capital was its “bank balance held in other accounts and cash in hand”. Such bank balance amount included 38 cheques issued by Ang (30 of which were prepared by Chan or his subordinate) in favour of Falcon and were deposited at month end into its bank accounts (**38 Cheques**).

The 38 Cheques were dishonoured upon presentation. Had the amounts of such cheques been excluded from the computation, Falcon would have liquid capital deficit. Ang and Chan caused Falcon to provide false and misleading information in the FRs as it failed to maintain sufficient liquid capital.

Breach 3: Failure to Notify the SFC of Insufficient Liquid Capital

Section 146 of the SFO provides that if a licensed corporation becomes aware of its inability to maintain sufficient liquid capital, it shall notify the SFC in writing as soon as reasonably practicable. According to rule 55 of the FRR, a licensed corporation shall notify the SFC as soon as reasonably practicable and within one business day of it becoming aware of certain matters including its liquid capital having fallen below 120% of its required liquid capital and any information contained in any of its previous FRs had become false or misleading in a material particular.

Notwithstanding such requirements, Falcon failed to notify the SFC of either its inability to maintain liquid capital, its liquid capital had fallen below 120% of its required liquid capital, or the information contained in its FRs had become false or misleading in a material particular. Ang being the person who orchestrated the window-dressing scheme enlisted the aid of Chan to perpetuate it. As such, they deliberately refrained from notifying the SFC of Falcon’s insufficient liquid capital.

Breach 4: Failure to Notify the SFC of Cessation of a Director

Section 135(6) of the SFO provides that where a person becomes or ceases to be a director of a licensed corporation, both the person and corporation shall provide the SFC with such notification together with certain details within 7 business days.

The SFC did not receive Ang’s notification about his resignation as a director.

Breach of Code of Conduct

Section 193(2)(a) of the SFO provides that where an intermediary is, or was at any time, 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 licensed corporation, the conduct shall also be regarded as misconduct on the part of that other person.

Ang was the sole authorised signatory of the accounts on which the 38 Cheques were drawn. The 38 Cheques were deposited into Falcon’s accounts at Dah Sing Bank (**DSB**). Apart from Ang, Chan also had full access to Falcon’s accounts at DSB and was therefore privy to knowledge about the true financial condition of Falcon. Given Chan’s accounting background and professional qualifications, he was fully aware of the implications and pitfalls of the window-dressing scheme engineered by Ang. Chan took part in disguising Falcon’s failure to maintain sufficient capital so that Falcon could hold out the facade of compliance with the FRR for as long as possible.

If Ang and Chan were persons licensed by the SFC, their conduct would have been inconsistent with General Principle 1 (**GP**) of the Code of Conduct for Persons Licensed by or Registered with the SFC (**Code of Conduct**) which imposed a duty on one to act honestly, fairly, in the best interests of its clients and the integrity of the market. According to GP 9 and paragraph 1.3 of the Code of Conduct, Ang and Chan, as members of senior management of Falcon, bore primary responsibility for ensuring the maintenance of appropriate standards of conduct and adherence to proper procedures by Falcon.

The SFC is of the view that the misconduct of Falcon was a result of Ang and Chan’s consent or connivance, or attributable to neglect on their part as members of senior management and should also be regarded as misconduct on their part. Their

failures cast serious doubt on their ability to carry on regulated activities competently and call into question their fitness and properness to be licensed by the SFC.

In deciding the penalty, the SFC have taken into account all the circumstances of the case, including:

- a) the honesty and integrity of Ang and Chan have been impugned;
- b) their egregious and serious misconduct caused Falcon to damage investors' and the public's confidence in market integrity;
- c) their otherwise clean disciplinary record; and
- d) the need to prohibit them from the industry in order to protect the investing public.

A copy of the Statement of Disciplinary Action³ is available on the SFC website.

2. SFC Fined Adamas Asset Management (HK) Limited HK\$2.5 million for Regulatory Breaches of Disclosure of Notifiable Interest from February 2013 to March 2016

On 23 December 2019, the SFC announced⁴ that it had reprimanded and imposed fines totalling HK\$2.5 million on Adamas Asset Management (HK) Limited (**Adamas**) for inadequate measures to ensure accurate and timely disclosure of notifiable interests in eight Hong Kong company shares listed on The Stock Exchange of Hong Kong Limited (**SEHK**), in compliance with the applicable regulatory requirements (as explained below).

In view of this, a disciplinary action was taken and Adamas applied to the Securities and Futures Appeals Tribunal (**SFAT**) for review of the SFC's sanction on 11 September 2019. Ultimately, Adamas discontinued its application and an order for costs was granted by the SFAT in favour of the SFC on 20 December 2019.

The SFC's Statement of Disciplinary Action⁵ and Decision on Costs regarding the Application for Review by Adamas at the

³ <https://www.sfc.hk/edistributionWeb/gateway/EN/news-and-announcements/news/openAppendix?refNo=19PR118&appendix=0>

⁴ <https://webb-site.com/codocs/SFC191223.pdf>

⁵ <https://webb-site.com/codocs/SFC191223.pdf>

SFAT⁶ are available on the SFC and SFAT website respectively.

Regulatory Requirements on Disclosure of Notifiable Interests

Part XV of the SFO sets out the requirements for the disclosure of interests in the securities of listed corporations, consisting of:

Relevant Sections in Part XV of the SFO	Details of Sections
Section 310(1)	where a person acquires an interest in, or ceases to be interested in, voting shares in a listed corporation; or any change occurs affecting a person's existing interest in shares in a listed corporation, then in the circumstances specified in section 313(1), he comes under a duty of disclosure.
Section 311	the interests to be taken into account for the purposes of the duty of disclosure arising under section 310 are those in voting shares in the listed corporation concerned.
Section 313(1)	the circumstances referred to in section 310(1) are those where the person: (a) first acquires a notifiable interest; (b) ceases to have a notifiable interest; (c) has a notifiable interest but the percentage levels of his interest have changed; or (d) has a notifiable interest but the nature of his interest has changed.
Section 315	the notifiable percentage level for notifiable interests is 5% and the specified percentage level for changes to notifiable interests is 1%.
Section 322(5)(b)	inter alia, that a person is taken to have an interest in shares if he is entitled to exercise any right conferred by the holding of the voting shares or control the exercise of any such right.

⁶ https://www.sfat.gov.hk/english/determination/SFAT_2019-2-Decision_on_Costs.pdf

Relevant Sections in Part XV of the SFO	Details of Sections
Section 322(6)	a person is taken to be entitled to exercise or control the exercise of any right conferred by the holding of voting shares if he has a right the exercise of which would make him so entitled or he is under an obligation the fulfilment of which would make him so entitled.
Section 324	inter alia, that where a person comes under a duty of disclosure under section 310, he should give notification to the listed corporation concerned and the SEHK of the interests which he has, or ceases to have, in the voting shares of the listed corporation. The notification should be given at the same time or, if not practicable, one immediately after the other.
Section 325(1)(a)	notification required by section 324 should be given within 3 business days after the day on which the relevant event occurs.

Background

Since February 2013, Adamas has been licensed by the SFC to carry on Type 9 (asset management) regulated activity. It acted as an investment manager and / or investment advisor for a number of funds and invested in Hong Kong listed shares on behalf of the funds. Additionally, it was responsible for preparing and filing disclosure notices with the SEHK and the relevant listed companies, disclosing notifiable interests in Hong Kong listed shares held by the funds managed by it and other related entities.

Failure to Disclose Notifiable Interests in Hong Kong Listed Share

Between February 2013 and March 2016 (**Relevant Period**), Adamas failed to properly disclose to SEHK and the relevant listed companies all notifiable interests in eight Hong Kong listed shares held in client portfolios.

Adamas made three submissions regarding its internal controls for monitoring notifiable interests and ensuring compliance with the disclosure requirements. In response to these submissions, some refutations were made in the Statement as follows:

Submissions by Adamas	Refutations in the Statement
<p>1. Adamas had engaged a third party service provider for compliance services including training, support and assistance in respect of Part XV of the SFO.</p> <p>(Paragraph 14(a) of the Statement)</p>	<p><i>“Notwithstanding the engagement of a third party service provider in March 2013, Adamas failed to disclose accurately or promptly all notifiable interests in eight Hong Kong listed shares held in client portfolios it managed in relation to 65 notifiable events during the Relevant Period”</i></p> <p>(Paragraph 15 of the Statement) (Emphasis added)</p>
<p>2. Written policies and procedures were in place since February 2013 including the Operations / Compliance Manual and the Operating Procedures Manual which were prepared by and updated by the third party service provider.</p>	<p><i>“Prior to July 2015, Adamas’ written policies and procedures did not contain a specific section on disclosure of notifiable interests and gave no clear guidance to members of its Operations team on how to identify and make disclosure to the SEHK and the relevant listed corporations for the purpose of Part XV of the SFO.”; and</i></p> <p>(Paragraph 17 of the Statement) (Emphasis added)</p>

Submissions by Adamas	Refutations in the Statement
(Paragraph 14(b) of the Statement)	<p><i>“There also appears to be no clear delineation and documentation of the responsibilities of the Investment Team and Operations Team in relation to the monitoring and reporting of notifiable interests prior to July 2015. The gaps in the procedures were exacerbated by Adamas’ lack of specific training on disclosure of notifiable interests prior to November 2015.”</i></p> <p>(Paragraph 18 of the Statement) (Emphasis added)</p>
<p>3. Since February 2013 Adamas’ Operations Team used a portfolio management system, the Tradar PMS, to facilitate disclosure of notifiable interests.</p> <p>(Paragraph 14(c) of the Statement)</p>	<p><i>“the use of the portfolio management system which enabled changes to listed securities to be updated via an automatic data feed linked to Bloomberg, and a dedicated Compliance Team to file the relevant regulatory disclosures, did not prevent Adamas from filing 339 disclosure notices inaccurately or late during the Relevant Period”</i></p> <p>(Paragraph 16 of the Statement) (Emphasis added).</p>
<p>4. Adamas implemented certain remedial measures to ensure compliance with the disclosure requirements on notifiable interests in 2016.</p> <p>(Paragraph 19 of the Statement)</p>	<p><i>“These measures were put in place subsequent to the SFC’s investigation in an attempt to address its regulatory concerns.”</i></p> <p>(Paragraph 19 of the Statement) (Emphasis added)</p>

Breach of the Code of Conduct for Persons Licensed by or Registered with the SFC (Code of Conduct)

In addition to the failure to disclose notifiable interests, Adamas failed to implement appropriate procedures to ensure proper disclosure of notifiable interests in Hong Kong-listed corporations as required by the Code of Conduct in the following:

- a) General Principle 7 of the Code of Conduct, which provides that a licensed corporation should comply with all regulatory requirements applicable to the conduct of its business activities so as to promote the best interests of clients and the integrity of the market; and
- b) Paragraph 12.1 of the Code of Conduct, which provides that a licensed corporation should comply with, and implement and maintain measures appropriate to ensuring compliance with the law, rules, regulations and codes administered or issued by the SFC.

A Review of the SFC’s Sanction at the SFAT

On 20 December 2019, Adamas discontinued its application and an order for costs was granted by the SFAT in favour of the SFC on the grounds that:

“The simple and central issue relevant to an order of costs is the fact that the Applicant now seeks to discontinue the Application for Review, two and a half months after having commenced those proceedings. No good reason has been advanced as to why the Applicant should not bear the costs of the Respondent for these proceedings.” (Paragraph 16 of the Decision) (Emphasis added)

Conclusion

In reaching the decision to take disciplinary action against Adamas, SFC took into account all the circumstances of this case, including:

1. the duration and extent of Adamas’ failures;
2. Adamas’ self-report to the SFC upon discovery of its failings;
3. Adamas has taken remedial measures to improve its systems and controls; and

4. Adamas' otherwise clean disciplinary record.

SFC formed the view that Adamas is guilty of misconduct and / or is not a fit and proper person to remain licensed. Thus, SFC has decided to publicly reprimand and fine Adamas \$2.5 million in light of the seriousness of its regulatory breaches.

Regarding the decisions on costs, SFAT granted Adamas leave to discontinue the application for review, but ordered that Adamas to pay the costs of the SFC for the review proceedings.

3. SFC Reprimanded and Fined FIL Investment Management (Hong Kong) Limited HK\$3.5 million for Carrying on Regulated Activity without the Required License and Providing Incorrect Information to the SFC when Applying for Authorisation of a New Fund

On 30 December 2019, the SFC announced⁷ that it had reprimanded and fined FIL Investment Management (Hong Kong) Limited (**FIMHK**) HK\$3,500,000 pursuant to section 194 of the Securities and Futures Ordinance (**SFO**).

Time	Types of Licensed Activities
Since 29 March 2005	Type 1 (dealing in securities), Type 4 (advising on securities), Type 5 (advising on futures contracts) and Type 9 (asset management) regulated activities
Since 30 May 2019	Type 2 (dealing in futures contracts) regulated activity

The disciplinary action was taken because FIMHK carried on Type 2 (dealing in futures contracts) regulated activities without the required licence and provided incorrect information to the SFC when applying for authorisation of a new fund.

Incident 1 - Dealing in Futures Contracts without a Type 2 Licence

⁷ <https://www.sfc.hk/edistributionWeb/gateway/EN/news-and-announcements/news/doc?refNo=19PR124>

On 10 August 2018, FIMHK reported to the SFC that it had conducted the regulated activity of dealing in futures contracts from August 2007 to July 2018 (**Relevant Period**) without a Type 2 (dealing in futures contracts) licence (**Incident 1**). FIMHK claimed that it relied on two exemptions (**Exemptions**) under the SFO in dealing in futures contracts for its managed accounts whilst not being licensed for Type 2 regulated activity as below. Nevertheless, during a licensing review performed by FIMHK's Business Compliance team in May 2018 (**Licensing Review**), FIMHK identified the following instances where orders for futures contracts originated outside FIMHK were placed through FIMHK which do not qualify for the Exemptions (**Trading Activities**). They are as follows:

Exemptions Claimed by FIMHK	Trading Activities
(a) performing the activity solely for the purposes of carrying on its Type 9 (Asset Management) regulated activity; and/or (b) performing the activity through a futures dealer who is licensed or registered for Type 2 regulated activity without receiving any commission, rebate or other remuneration in return for the activity.	(a) the orders originated from FIMHK's overseas affiliates for funds or accounts managed by them which FIMHK had no investment discretion over; and (b) FIMHK had received fees from its affiliates for the Trading Activities on a cost-plus basis.

It should also be noted that the Trading Activities involved 6,738 trades in futures contracts (with an aggregate transaction value of about US\$39.7 billion) executed by FIMHK for its affiliated entities during the Relevant Period.

Breach

FIMHK's conduct constituted a breach of:

- a) General Principle 2 (Diligence) of the Code of Conduct for Persons Licensed by or Registered with the Securities and Futures Commission (**Code of Conduct**), which requires a licensed corporation to act with due skill, care and diligence, in the best interests of its clients and the integrity of the market; and

- b) General Principle 7 (Compliance) and paragraph 12.1 (Compliance: in general) of the Code of Conduct, which require a licensed corporation to comply with, and implement and maintain measures appropriate to ensure compliance with, relevant regulatory requirements.

Relevant Breach to Incident 1: Delay in Reporting Incident 1 to the SFC

FIMHK identified Incident 1 during the Licensing Review conducted between 1 May and 1 June 2018. However, it did not report Incident 1 to the SFC until 10 August 2018, after it had obtained external legal advice on the matter.

FIMHK's failure to report Incident 1 to the SFC immediately upon discovery of the incident was in breach of paragraph 12.5(a) of the Code of Conduct, which requires a licensed person to report to the SFC immediately upon the happening of any material breach, infringement of or non-compliance with any law, rules, regulations, and codes administered or issued by the SFC, or where it suspects any such breach, infringement or non-compliance whether by itself or persons it employs to conduct business with clients or other licensed or registered persons.

Incident 2: Submission of Incorrect Information Checklist to the SFC During an Application for Authorisation of a New Fund

In March 2017, FIMHK submitted an information checklist (**Checklist**) to the SFC supporting an application for authorisation of a new fund (**Incident 2**).

In the Checklist, FIMHK confirmed that:

"...all information contained in this Information Checklist (including all confirmations and undertakings) and the documents submitted relating thereto are true and accurate; and unless otherwise specifically allowed for in this Information Checklist, no deletion, addition or amendment has been made to the standard templates of these current prescribed documents as published on the SFC's website."

Due to inadvertent human errors, the Checklist was prepared based on an outdated template, with the version date at the footer and effective period shown on the first page of the template amended to give the appearance that the document was prepared using the latest version of the template. Thus, certain required information was not completed or provided in the Checklist submitted to the SFC.

FIMHK conducted an internal investigation into Incident 2 (**Investigation**). It also engaged an independent reviewer to review its internal systems and controls in relation to the fund application process (**Reviews**). The Investigation and Reviews identified certain deficiencies and weaknesses in FIMHK's internal controls and systems. For example, there were no formally documented maker/checker controls in place regarding the legal team's drafting of documents submitted to the SFC.

Breach

The SFC took the view that FIMHK failed to:

- a) act with due skill, care and diligence in submitting the Checklist to the SFC in breach of General principle 2 (Diligence) of the Code of Conduct; and
- b) put in place satisfactory and effective systems and controls to ensure the accuracy of information submitted to the SFC, in breach of General Principle 3 (Capabilities) of the Code of Conduct and paragraph 1.2(c) of the Fund Manager Code of Conduct.

Conclusion

The SFC found FIMHK guilty of misconduct and its fitness and properness to carry on regulated activities were called into question.

In deciding the disciplinary sanctions set out in paragraph 1 above, the SFC considered that:

- a) there is no evidence to suggest that FIMHK's failures were intentional or deliberate;
- b) there is no evidence of clients having suffered any financial loss;
- c) FIMHK engaged an independent reviewer to review its internal controls in relation to the fund application process and took steps to rectify the deficiencies identified;
- d) FIMHK took remedial actions to strengthen its internal systems and controls;
- e) FIMHK co-operated with the SFC in resolving the SFC's concerns; and

- f) FIMHK has an otherwise clean disciplinary record with the SFC.

A copy of the Statement of Disciplinary Action⁸ is available on the SFC website

4. SFC Fined RHB Securities Hong Kong Limited \$6.4 million for Various Failures in Compliances with Regulatory Requirements

On 2 January 2020, the SFC announced⁹ that it had reprimanded and fined RHB Securities Hong Kong Limited (RHBSHK) HK\$6.4 million for its failures to comply with regulatory requirements on conflicts of interest and supervision of account executives in section 194 of the Securities and Futures Ordinance (SFO).

Failure to Effectively Implement the Policy on Avoiding Analyst Conflicts of Interest

Paragraph 16.7 of the Code of Conduct for Persons Licensed by or Registered with the SFC (Code of Conduct) requires a licensed corporation that issues research reports to establish, maintain and enforce a set of written policies and control procedures to eliminate, avoid or manage actual and potential analyst conflicts of interest.

RHBSHK's policies and procedures provide that no research report should be issued for a company on the research restricted list (RRL) to avoid conflicts of interest between its investment banking business and research reports.

In 2015, RHBSHK issued two research reports on a listed company which was on the RRL, claiming that it was the oversight of its head of research at the relevant time. Nevertheless, the former head of research and a former research analyst of RHBSHK asserted that they were never informed of the policy on RRL and the regulatory compliance of research reports was the responsibility of the supervisory analysts at RHBSHK's head office in Malaysia. Ultimately, RHBSHK admitted that the supervisory analysts were not provided with the RRL and the compliance department was not involved in the approval of the research reports. Therefore, the above facts explain why the violations of the RRL in 2015 were not identified until the SFC's inspection in 2016 and shows that

8 <https://www.sfc.hk/edistributionWeb/gateway/EN/news-and-announcements/news/openAppendix?refNo=19PR124&appendix=0>

9 <https://www.sfc.hk/edistributionWeb/gateway/EN/news-and-announcements/news/doc?refNo=20PR1>

RHBSHK failed to effectively implement the policy to avoid analyst conflicts of interest in breach of paragraph 16.7 of the Code of Conduct.

Failure to Adequately Disclose its Investment Banking Relationship in Research Report

Paragraph 16.5(d) of the Code of Conduct provides that a firm that has an investment banking relationship with the issuer or the new listing applicant should disclose that fact in the research report. Any compensation or mandate for investment banking services received within the preceding 12 months would constitute an investment banking relationship. Paragraphs 16.3(f) and 16.10 of the Code of Conduct require such disclosure to be complete, timely, clear, concise, specific and prominent.

In August 2015, a member of RHBSHK's group of companies entered into a sponsorship agreement with a listed company. The research report issued by RHBSHK in November 2015 only disclosed that RHBSHK and its group companies may have received compensation and a mandate of an investment banking services from the listed company.

The disclosure made in the research report is incomplete and lacks specificities of the sponsorship agreement. For instance, it did not stipulate the amount of compensation and the agreement that RHBSHK would engage in the promotion of the listing shares, which includes issuing research reports before listing.

Failure to Effectively Monitor the Trading of its Research Analysts

Paragraph 16.4(b) of the Code of Conduct provides an analyst should not trade any securities in respect of an issuer that the analyst reviews: (i) in a manner contrary to his outstanding recommendation; or (ii) within 30 days prior to and 3 business days after the issue of investment research on the issuer, except in special circumstances outlined in the firm's policy and preapproved by the relevant legal or compliance function.

During the relevant period, the former head of research sold shares of a listed company before the issue of two research reports on the listed company by RHBSHK. Although the former head of research had followed RHBSHK's employee trading policy in obtaining trading approval and submitting trading statements to RHBSHK, RHBSHK failed to identify his disposals of the shares of a listed company within 30 days before the issue of two research reports.

RHBSHK's written policies and procedures state that the compliance department would add a stock to the RRL for a period of 30 days after the stock has been traded by a research analyst. However, the RRL during the relevant period did not show that the shares disposed by the former head of research was being recorded or a breach of paragraph 16.4 of the Code of Conduct was identified despite the former head of research's trading records were submitted to RHBSHK.

Failures to Adequately Supervise Account Executives and Implement Effective Controls to Ensure Account Executive Compliance

The Code of Conduct also provides that a licensed corporation should:

- a) ensure order instructions received from clients should be recorded in writing or tape recorded (paragraph 3.9);
- b) ensure that it has adequate resources to supervise diligently and does supervise diligently persons employed or appointed by it to conduct business on its behalf (paragraph 4.2);
- c) be satisfied on reasonable grounds the identity of the person ultimately responsible for originating the instruction in relation to a transaction, and should not effect a transaction unless the identity of the person originating the order is satisfied (paragraph 5.4); and
- d) not effect a transaction for a client unless before the transaction is effected the client has specifically authorized the transaction or authorized in writing the licensed corporation to effect transactions for the client (paragraph 7.1).

During the SFC's inspection in 2016, RHBSHK was not able to produce telephone order records for the securities trading account of a client. Eventually, RHBSHK claimed that the account executive involved was verbally authorised at account opening to discretionarily trade for the client in July 2014. It further explained that the discretionary trading went undetected because the client account and the account executive were not selected in its sample telephone recording checking. The sample checking only involved checking the order records of 10 trades each month.

From it, the frequency and extent of review were not commensurate with the size of business. As a result, RHBSHK's failure to detect the account executive's discretionary trading activities in the client account which lasted for 23 months also indicate that it had not taken adequate steps to satisfy itself about the identity of the person ultimately responsible for originating the order instructions in the client account.

Having considered all the circumstances, the SFC considers that the failures of RHBSHK constitute a breach of General Principles 2, 3 and 6 and paragraphs 4.2, 5.4, 7.1, 16.3, 16.4, 16.5, 16.7 and 16.10 of the Code of Conduct.

In deciding the disciplinary sanction, the SFC considered all the relevant circumstances of the case, including RHBSHK's:

- a) failures were not detected until an SFC's inspection;
- b) steps to remediate its internal control deficiencies; and
- c) cooperation with the SFC to resolve the disciplinary proceedings.

A copy of the Statement of Disciplinary Action¹⁰ is available on the SFC website.

5. Eastern Magistrates' Court Convicts Individual for Carrying on Business in Asset Management Without a Licence from the SFC

On 6 January, it was announced¹¹ that the Eastern Magistrates' Court had convicted Mr Yau Ka Fai for holding himself out as carrying on a business in asset management without a licence from the SFC.

Asset management is a regulated activity under the SFO, and accordingly, it is an offence to hold oneself out as carrying on a business in a regulated activity without a licence from the SFC under s.114(1)(b).

From September 2011 to November 2015, Yau represented to investors that he was the manager of a fund known as Tai Chi Hedge Fund and received commission for his service. Yau

¹⁰ <https://www.sfc.hk/edistributionWeb/gateway/EN/news-and-announcements/news/openAppendix?refNo=20PR1&appendix=0>

¹¹ <https://www.sfc.hk/edistributionWeb/gateway/EN/news-and-announcements/news/doc?refNo=20PR3>

however was not licensed by the SFC during this period, and had never been licensed with the SFC in any capacity or in relation to any regulated activity.

Yau pleaded guilty to the charge and the case was adjourned until 16 January 2020 for sentencing.

6. SFC Issues Restriction Notice to China Fund Securities Limited to Freeze Client Accounts Linked to Suspected Market Misconduct

On 21 January 2020, the SFC announced¹² it had issued a restriction notice pursuant to sections 204 and 205 of the SFO to China Fund Securities Limited (**CFSL**), prohibiting it from dealing with or processing HKD 170 million worth of assets held in six client accounts, related to suspected market manipulation in the shares of Hon Corporation Limited between November 2019 and December 2019.

The restriction notice prohibits CFSL, without the SFC's prior written consent, from disposing of or dealing with, assisting, counselling or procuring another person to dispose of or deal with any assets in the client accounts, including:

- entering into transactions for any securities; and/or
- processing any withdrawals or transferring of securities and/or cash arising from the disposal; and/or
- disposing of or dealing with any securities or cash on the instructions of any authorised person of the Client Accounts or by any person acting on their behalf; and/or
- assisting another person to dispose of or deal with any relevant property in a specified manner.

The SFC emphasised in the announcement that such is desirable bearing in mind the interests of the investing public and public interest.

The SFC investigation continues.

7. SFC Announces Decision to Commence Proceedings for Suspected Market Manipulation in the Shares of China Ding Yi Feng

¹² <https://www.sfc.hk/edistributionWeb/gateway/EN/news-and-announcements/news/enforcement-news/doc?refNo=20PR7>

On 22 January 2020, the SFC announced¹³ it had decided to commence proceedings for suspected market manipulation in the shares of China Ding Yi Feng Holdings Limited against a number of individuals, including one or more officers of China Ding Yi Feng.

The decision has been made in accordance with the SFC's Policy Statement on Disclosure of Certain Information to the Public¹⁴, which enables the SFC to make an announcement in relation to such an investigation or inquiry where it is in the interest of protecting members of the public and to maintain public confidence in the market.

Further, the SFC outlined in the announcement that the restriction notices that had been issued to nine brokers on 20 March 2019¹⁵ and 25 June 2019¹⁶ to freeze certain client securities accounts suspected to be related to market manipulation in the shares of China Ding Yi Feng would remain in place following trading resuming.

Additionally, the SFC announced the decision to lift the suspension of trading in the company's shares that was directed by the SFC on 8 March 2019 under section 8(1) of the Securities and Futures (Stock Market Listing) Rules. Accordingly, the trading of the shares of China Ding Yi Feng resumed on 23 January 2020.

The SFC will issue a further press release upon formal commencement of the proceedings.

8. SFC Suspends Shiu Yau Wah for Five Months following SFC Investigation

On 29 January 2020, the SFC announced its decision to suspend MR Shiu Yau Wah, an account executive at RHBSHK who is licensed under the SFO to carry out Type 1, Type 2 and Type 4 regulated activities, for five months pursuant to section 194 of the SFO.

This follows an SFC investigation which found Shui:

¹³ <https://www.sfc.hk/edistributionWeb/gateway/EN/news-and-announcements/news/enforcement-news/doc?refNo=20PR8>

¹⁴ <https://www.sfc.hk/web/EN/quick-links/others/disclosure-policy.html>

¹⁵ <https://www.sfc.hk/edistributionWeb/gateway/EN/news-and-announcements/news/enforcement-news/doc?refNo=19PR23>

¹⁶ <https://www.sfc.hk/edistributionWeb/gateway/EN/news-and-announcements/news/enforcement-news/doc?refNo=19PR55>

- conducted trades involving over HKD 1.62 billion worth of shares for a client account on a discretionary basis for almost two years without obtaining the client's written authorisation; and
- failed to comply with RHBSHK's policies in procedures in relation to discretionary accounts.

Such actions were found to breach the Code of Conduct, notably:

- Paragraph 7.1(a) – a licensed person should not effect a transaction unless before the transaction is effected the client has specifically authorized the transaction, or authorized in writing for the licensed person to effect transactions for the client within the client's specific authorisation;
- Paragraph 7.1(c) and (d) – a licensed person must designate such accounts as "discretionary accounts" and senior management to approve the opening of discretionary accounts; and
- General Principle 2 - a licensed person should act with due skill, care and diligence, in the best interests of clients and integrity of the market when carrying on business in regulated activities.

A copy of the Statement of Disciplinary Action¹⁷ is available on the SFC website.

9. SFC Announces 12 month Ban on Former Analyst at RHBSHK

On 6 February 2020, the SFC announced that Mr Christopher Tse, a former research analyst at RHBSHK had been banned from re-entering the industry for 12 months following an SFC investigation finding Tse:

- Conducted trades through his father's securities trading account held at another brokerage between August 2013 and October 2015 without informing his then employer, RHBSHK; and
- Traded in a stock on RHBSHK's restricted list on two occasions.

¹⁷ <https://www.sfc.hk/edistributionWeb/gateway/EN/news-and-announcements/news/enforcement-news/openAppendix?refNo=20PR9&appendix=0>

Evidence found that the trades conducted by Tse through his father's account were:

- In a manner contrary to his recommendations; and
- In the shares of companies covered in some of his research reports within 30 days prior to or three days after the issue of the reports.

Such actions breached RHBSHK's internal policies and the Code of Conduct and the SFC ultimately concluded that Tse is not a fit and proper person to be licensed, having regard to:

- Paragraph 16.4(b) of the Code of Conduct – an analyst or his associate should not deal in or trade any securities in respect of an issuer that the analyst reviews: (i) in a manner contrary to his outstanding recommendation; or (ii) within 30 days prior to and 3 business days after the issue of investment research on the issuer, except in special circumstances outlined in the firm's policy and pre-approved by the relevant legal or compliance function; and
- Paragraph 16.4(d) of the Code of Conduct - if an analyst or his associate has any financial interests in relation to an issuer or a new listing applicant that the analyst reviews, he should disclose that fact in the research report.

In taking action, the SFC emphasised the importance of market integrity and investor confidence and took account of relevant circumstances, including:

- Tse's trading activities in the account over the two years;
- The necessity of sending a deterrent message to the industry; and
- Tse's clean disciplinary record.

A copy of the Statement of Disciplinary Action¹⁸ is available on the SFC website.

10. SFC Reprimanded and Fined BMI Securities Limited HK\$3.7 million for Breaches of AML Regulatory Requirements and Suspended its Responsible Officer for Attributable for the Breaches

¹⁸ <https://www.sfc.hk/edistributionWeb/gateway/EN/news-and-announcements/news/enforcement-news/openAppendix?refNo=20PR12&appendix=0>

On 11 February 2020, the SFC announced¹⁹ that it had:

- reprimanded and fined BMI Securities Limited (**BMISL**) HK\$3.7 million for failures to comply with AML and counter-terrorist financing (**CFT**) regulatory requirements under the Anti-Money Laundering and Counter-Terrorist Financing Ordinance (**AMLO**) and the Guideline on AML and CFT (**AML Guideline**); and
- suspended BMISL's responsible officer, Ms Maggie Tang Wing Chi, for five and a half months.

Section 23 of Schedule 2 of the AMLO and Paragraph 2.1 of the AML Guidelines requires licensed corporations to take all reasonable measures to ensure that proper safeguards exist to mitigate the risks of money laundering and terrorist financing, including the implementation of appropriate internal AML/CFT policies, procedures and controls to ensure compliance.

Accordingly, the SFC found that from 1 May 2016 to 30 November 2017, BMISL failed to:

- implement adequate internal controls to mitigate the risk of money laundering and terrorist financing associated with suspicious transactions conducted through bought and sold notes;
- identify, and conduct proper enquiries and sufficient scrutiny on, suspicious transactions and consider reporting them to the Joint Financial Intelligence Unit where appropriate;
- perform appropriate customer due diligence and keep customer information up-to-date and relevant; and
- put in place adequate and effective procedures for the identification of politically exposed persons and the screening of terrorist and sanction designations.

The relevant conduct involved a number of BMISL's clients subscribing for and placing shares of two Hong Kong-listed companies and subsequently transferring most or all of these shares to third parties using bought and sold notes in a series of off-exchange transactions, of which ranged from HK\$4.4 million to HK\$855.9 million apiece, and displayed various suspicious features, including:

- subscription amounts for the placing shares incommensurate with the clients' financial profile; and
- the clients not conducting any other transactions in their BMISL accounts, other than the acquisition and disposal of the placing shares.

Such suspicious activities have been reported by the SFC to the Joint Financial Intelligence Unit.

Further to this, the SFC found that BMISL's breaches were attributable to Tang's failure to discharge her duties as a responsible officer and member of BMISL's senior management, noting particularly Tang's failures to:

- identify and conduct appropriate enquiries on the suspicious transactions; and
- to ensure BMISL had established and implemented adequate and effective AML/CFT systems to mitigate the risks of money laundering and terrorist financing.

The SFC outlined in the Statement of Disciplinary Action that the following considerations were had when deciding the sanctions against BMISL:

- the importance of sending a clear and deterrent message to the market that AML/CFT failures will not be tolerated;
- the cooperation of both BMISL and Tang;
- the remedial actions taken by BMISL to enhance its AML/CFT systems and controls;
- BMISL's undertaking to provide the SFC with a report prepared by an independent reviewer within 12 months to confirm that all concerns that were identified have been satisfactorily rectified;
- BMISL and Tang had no disciplinary record with the SFC; and
- BMISL's financial situation.

A copy of the Statement of Disciplinary Action²⁰ is available on the SFC website.

¹⁹ <https://www.sfc.hk/edistributionWeb/gateway/EN/news-and-announcements/news/doc?refNo=20PR15>

²⁰ <https://www.sfc.hk/edistributionWeb/gateway/EN/news-and-announcements/news/openAppendix?refNo=20PR15&appendix=0>

11. SFC Reprimanded and Fined Capital Global Management Limited HK\$1.5 million for its Failures to Ensure Compliance with Applicable Laws and Regulations in Distributing Investment Funds and Offering Investment Advice in Taiwan and to Provide Adequate Supervision of Compliance

On 14 February 2020, the SFC announced²¹ that it had fined and reprimanded Capital Global Management Limited (CGML) HK\$1.5 million for:

- failure to ensure compliance with applicable laws and regulations in distributing investment funds and offering investment advice in Taiwan; and
- failure to adequately supervise the business activities of its representatives to ensure such compliance.

The SFC's investigation found that CGML's licensed representatives operated and performed sales functions and distributed investment products to clients in Taiwan between July 2014 and April 2015, which in turn drew the SFC's concern to the fitness and properness of CGML as a licensed corporation.

The SFC found CGML's failures to breach:

- General Principle 7 and Paragraph 12.1 of the Code of Conduct for Persons Licensed by or Registered with the SFC (**Code of Conduct**), which requires a licensed corporation to comply with, and implement and maintain measures appropriate to ensuring compliance with, the law and applicable regulatory requirements; and
- Paragraph 4.2 of the Code of Conduct, which requires a licensed corporation to supervise diligently persons employed to conduct its business.

In taking such disciplinary action against CGML, the SFC noted their consideration of the CGML's lack of a previous disciplinary action with the SFC.

However, in August 2015, the Prosecution Office of Taipei District Court fined the former owners of CGML NTD 2.5 million (in total) for distributing offshore investment funds and offering investment advice in Taiwan from 2005 to 2014, without obtaining prior approval, in contravention of Article 16 of the Securities Investment Trust and Consulting Act of Taiwan.

²¹ <https://www.sfc.hk/edistributionWeb/gateway/EN/news-and-announcements/news/doc?refNo=20PR16>

Article 16 provides that:

"No person may, itself or as an agent, engage within the Republic of China in the public offer, sale, or investment consultancy of offshore funds without first obtaining approval from the Competent Authority or effective registration upon filing with the Competent Authority."

The SFC, in the Statement of Disciplinary Action, emphasised the importance of compliance with the applicable laws and regulations, noting the significance of such to an intermediary reliably carrying on its business in regulated activities.

Indeed, in January 2014 the SFC issued a circular²² to intermediaries reminding them of their obligations when conducting cross-border business, particularly maintaining effective policies, procedures and controls to monitor and ensure regulatory compliance.

The circular outlined that before conducting any cross-border business activities, a licensed corporation should:

- Make proper enquiries as to how the law of the other jurisdiction applies to the particular activity;
- Where employees or agents are conducting business activities on its behalf in other jurisdictions, be mindful that the Commission will likely regard the corporation as responsible for their conduct, and failure to ensure these persons are licensed under the laws and regulations of such other jurisdictions when they should be, may constitute a breach of Paragraph 12.1 of the Code of Conduct; and
- When opening a new account, comply with the "know your client" (**KYC**) provisions of the Code of Conduct and the AML Guidance.

A copy of the Statement of Disciplinary Action²³ is available on the SFC website.

²² <https://www.sfc.hk/edistributionWeb/gateway/EN/circular/intermediaries/supervision/doc?refNo=14EC4>

²³ <https://www.sfc.hk/edistributionWeb/gateway/EN/news-and-announcements/news/doc?refNo=20PR16>

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