

CHARLTONS
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Webinar

**2022 HKEX AND SFC
DISCIPLINARY &
ENFORCEMENT ACTIONS
JANUARY - APRIL 2022**



OVERVIEW OF ENFORCEMENT TRENDS

- JANUARY TO APRIL 2022

HKEX

- Enforcing the Stock Exchange Listing Rules and the Directors' Form B undertaking by conducting enforcement actions targeting corporate misconduct or misgovernance, internal control failures and anti-money laundering
- Not merely focusing on the problematic events but undertaking investigations on the issuer's internal controls, and also, the steps taken by individual directors for discharging their responsibilities in respect of internal controls.

SFC

- Demonstrate changes of the regulatory enforcement atmosphere by increasingly using civil tools and remedies rather than criminal prosecution to achieve enforcement outcomes against licensed individuals and corporations
- Focus on larger and more impactful cases involving large scale licensed corporation and imposing sanctions with a notable amount of fines



ENFORCEMENT AND DISCIPLINARY ACTION - JANUARY 2022

SFC reprimands and fines Zhonghui International Futures Company Limited HK\$5 million

- Between May 2017 and July 2018, Zhonghui (licensed under the SFO to carry on Type 2 - dealing in futures contracts regulated activity) failed to conduct adequate due diligence on the customer supplied systems used by its clients for placing orders
- Customer supplied systems are trading software platforms developed for use by clients to conduct electronic trading through the internet, on mobile phones and other electronic channels
- Zhonghui failed to properly assess and manage the money laundering, terrorist financing and other risks associated with clients' use of customer supplied systems

ENFORCEMENT AND DISCIPLINARY ACTION - JANUARY 2022 (CONT.)

SFC reprimands and fines Zhonghui International Futures Company Limited HK\$5 million

- Failed to take reasonable steps to establish the true and full identity and ultimate beneficial owners of eight clients who authorised multiple third parties to place orders for their accounts
- Failed to make proper enquiries before approving the relevant client requests to set up third party operated accounts
- Failed to put in place an effective ongoing monitoring system, which led to its failure to detect the unusual money movements in client accounts and more than 1,000 instances of self-matched trades among client accounts
 - *Self-matched trades*: clients' orders are matched with their own orders in the opposite direction, creating the illusion of trading, and thus indicating market manipulation

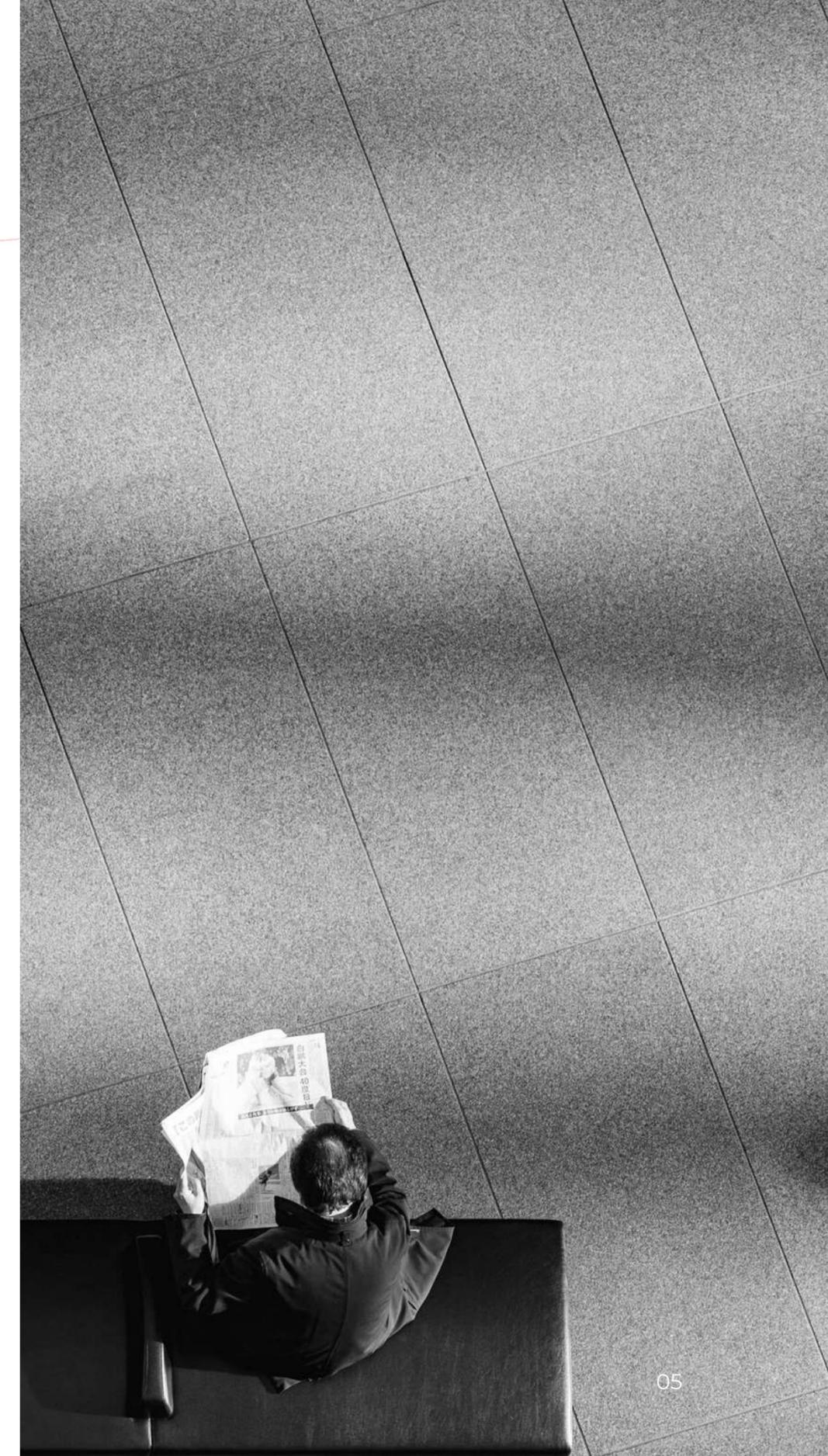


ENFORCEMENT AND DISCIPLINARY ACTION - JANUARY 2022 (CONT.)

SFC reprimands and fines Zhonghui International Futures Company Limited HK\$5 million

SFC findings & actions

- Breached the Anti-Money Laundering and Counter-Terrorist Financing Ordinance, the SFC's Guideline on Anti-Money Laundering and Counter-Terrorist Financing and the SFC Code of Conduct
- Breach of the SFC's Cybersecurity Guidelines on two-factor authentication requirements
- Pursuant to section 194 of the SFO, the SFC reprimanded and fined Zhonghui HK\$5 million
- Suspending the company's responsible officer and executive director at the material time for seven months for his failure to discharge his duties



ENFORCEMENT AND DISCIPLINARY ACTION - JANUARY 2022 (CONT.)

SFC's action against Tianhe Chemicals Group Limited and its executive director

- In June 2014, Tianhe Chemicals Group Limited issued the prospectus for its initial public offering on the Stock Exchange which raised net proceeds of approximately HK\$3.52 billion
- SFC investigation revealed that 53% of Tianhe's total track record revenue of RMB12.6 billion disclosed in the prospectus was overstated
- Tianhe and Wei, who was the chief executive officer and substantial indirect shareholder, were considered to be reckless or negligent as to whether the information stated in Tianhe's prospectus was false or misleading as to a material fact or was false or misleading through the omission of a material fact.
- The SFC's action under the MMT was brought pursuant to section 277 of the SFO, and it was found by MMT that the company's prospectus overstated its revenue for its track record period of the financial years from 2011 to 2013 by over RMB6.7 billion.

ENFORCEMENT AND DISCIPLINARY ACTION - JANUARY 2022 (CONT.)

SFC's action against Tianhe Chemicals Group Limited and its executive director

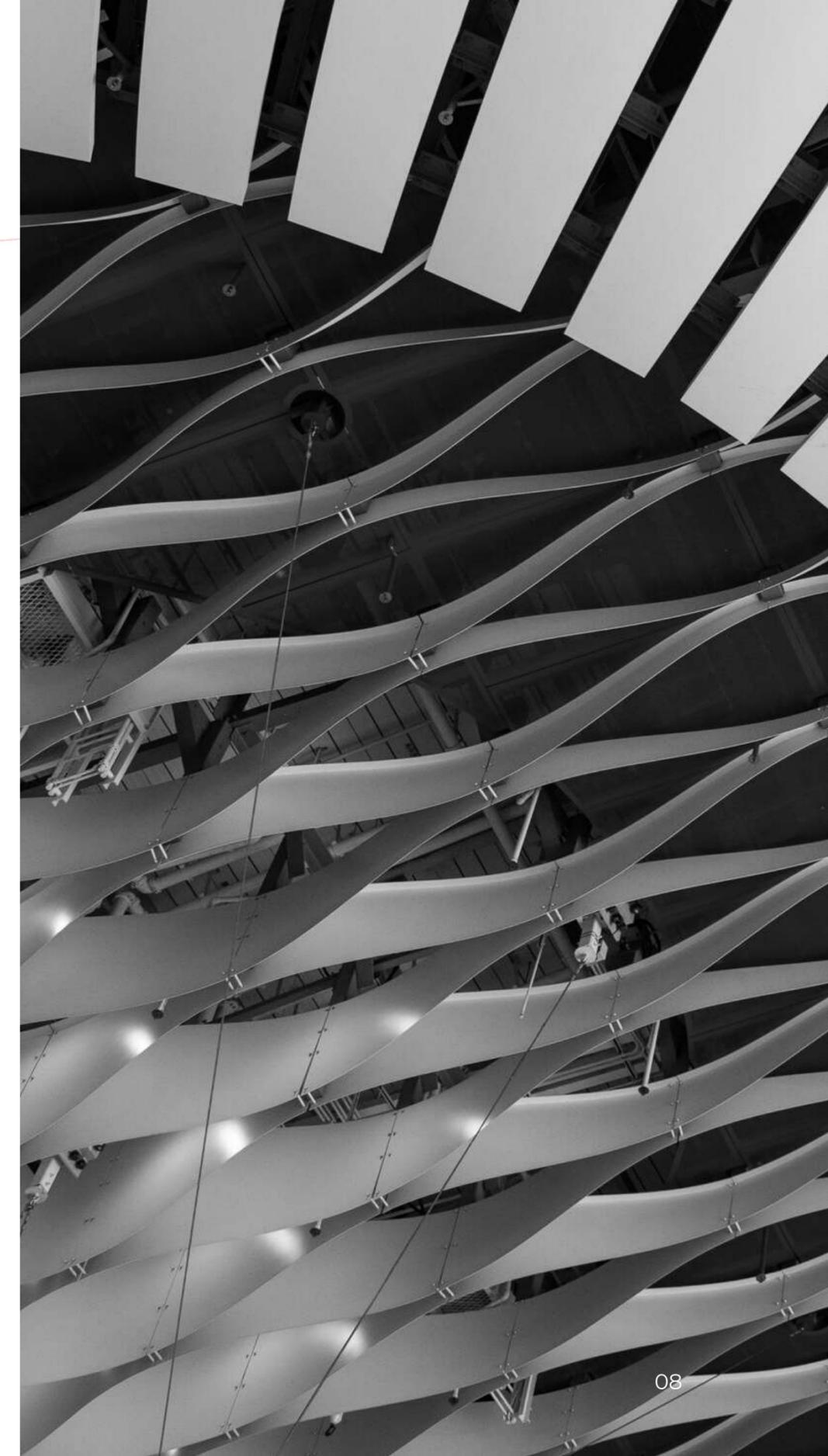
- Under section 277 of the SFO, liability arises where
 - “a person discloses, circulates or disseminates false or misleading information which is likely to induce subscription, sale or purchase of securities, or dealings in futures, or increase, reduce, maintain or stabilise price, and the person knows or is reckless or negligent as to whether it is false or misleading. Such liability extends to the persons who authorise or are concerned in the disclosure, circulation or dissemination of false or misleading information.”
- MMT granted orders against Tianhe including:
 - disqualifying Mr. Wei Xuan, a former substantial indirect shareholder and chief executive officer of Tianhe, from being a director and being involved in the management of a listed company for four years
 - Tianhe and Mr. Wei Xuan were ordered to pay the HKSAR Government and SFC costs
 - Mr. Wei Xuan was further ordered not to engage in any conduct which would constitute market misconduct



ENFORCEMENT AND DISCIPLINARY ACTION - JANUARY 2022 (CONT.)

SFC reprimands and fines Citigroup Markets Asia Limited HK\$348.25 million for serious regulatory breaches over client facilitation activities

- Citigroup Global Markets Asia Limited was found by the SFC to have allowed various trading desks under its cash equities business to send mislabelled Indications of Interest to its clients when there was no actual genuine client interest or specific client that Citigroup was in touch with
- An indication of interest is a form of advertisement or representation made by licensed corporations to clients to source potential clients with an interest in trading.



ENFORCEMENT AND DISCIPLINARY ACTION - JANUARY 2022 (CONT.)

SFC reprimands and fines Citigroup Markets Asia Limited HK\$348.25 million for serious regulatory breaches over client facilitation activities

- SFC found that the desk heads and traders were involved in certain actions constituting misrepresentation and non-disclosure breaches under the SFC Code of conduct:
 - made express misrepresentation to clients by giving factually incorrect information or concealed the principal nature of the trades;
 - made misleading statements that led clients to misinterpret trades as being executed on an agency basis, or in some cases, remained silent notwithstanding some indication of the client's incorrect belief that the trades were agency trades; and/or
 - remained silent or were not explicit with clients about the involvement of the facilitation desk and failed to obtain clients' consent before routing the clients' orders to the facilitation desk for execution



ENFORCEMENT AND DISCIPLINARY ACTION - JANUARY 2022 (CONT.)

SFC reprimands and fines Citigroup Markets Asia Limited HK\$348.25 million for serious regulatory breaches over client facilitation activities

- SFC also found that the prevalence of the dishonest behaviour among the trading desks over more than 10 years in respect of Citigroup's governance and controls framework, which had particularly failed to:
 - put in place any policies or controls to guide and monitor the issuance of certain indications of interest
 - have and enforce adequate internal guidelines on pre-trade disclosure of, and obtaining client consent for, facilitation trades; and
 - implement effective compliance monitoring in respect of its facilitation activities
- Pursuant to section 194 of the SFO, the SFC reprimanded Citigroup and fined it HK\$348.25 million for its serious regulatory breaches and internal control failures



ENFORCEMENT AND DISCIPLINARY ACTION - JANUARY 2022 (CONT.)

Stock Exchange's Disciplinary Action against Beijing Media Corporation Limited

- Between January 2018 and March 2019, Beijing Media, through its subsidiaries, provided:
 - 13 loans totaling RMB 333.2 million to its controlling shareholder, which constituted advances to an entity under Chapter 13 of the Listing Rules; and
 - 7 loans totaling RMB 220 million to its associate, constituting major and connected transactions under Chapters 14 and 14A of the Listing Rules.
- Some of these loans did not have written agreements



ENFORCEMENT AND DISCIPLINARY ACTION - JANUARY 2022 (CONT.)

Stock Exchange's Disciplinary Action against Beijing Media Corporation Limited

- The HKEX found that Beijing Media failed to comply with the Chapters 13, 14 and 14A of the Listing Rules by
 - failing to announce and disclose in its financial results the details of the loans to controlling its controlling shareholders
 - failing to comply with the announcement, circular, independent shareholders' approval and reporting requirements for the loans; and
 - failing to enter into the written agreements for two of the controlling shareholders' loans, which were connected transaction.



ENFORCEMENT AND DISCIPLINARY ACTION - FEBRUARY 2022

Stock Exchange's Disciplinary Action against Beijing Media Corporation Limited

- The HKEX found deficiencies in the internal control systems of Beijing Media which failed to implement relevant internal controls at the subsidiary level while relevant staff lacked the requisite knowledge in relation to the reporting of transaction under the Listing Rules
- Directors breached Rule 3.08(f) of the Listing Rules and their directors' undertakings by failing to ensure the company maintained adequate and effective internal controls

ENFORCEMENT AND DISCIPLINARY ACTION - FEBRUARY 2022

Stock Exchange's Disciplinary Action against Beijing Media Corporation Limited

- The HKEX's enforcement action
 - directed the 17 former and existing directors of Beijing Media to attend 24 hours of training on regulatory and legal topics, including Listing Rules compliance
 - further imposed a prejudice to investor's interests statement, a "PII statement", against three former directors of the company who had failed to cooperate with the investigation of Stock Exchange by stating that had any of the these three directors remained on the board of directors of the Company, their retention of office would have been prejudicial to the interests of investors

ENFORCEMENT AND DISCIPLINARY ACTION - FEBRUARY 2022

SFC reprimands and fines South China Commodities Limited HK\$4.8 million for regulatory breaches

- The SFC's investigation found that South China, a company licensed under the SFO to carry on Type 2 regulated activity, between June 2017 and October 2018, had failed to:
 - conduct any due diligence on the customer supplied systems used by its clients for placing orders;
 - conduct proper enquiries and assessments of deposits made into various client accounts, which were incommensurate with the relevant clients' declared financial profiles; and
 - put in place an effective ongoing monitoring system to detect suspicious trading patterns in client accounts, which resulted in the company's failure to detect more than three thousand self-matched trades in nine client accounts.



ENFORCEMENT AND DISCIPLINARY ACTION - FEBRUARY 2022

SFC reprimands and fines South China Commodities Limited HK\$4.8 million for regulatory breaches

- Inadequacy and ineffectiveness of the systems and controls of South China Commodities Limited for ensuring compliance with the AML and CFT Ordinance, and Guideline and the SFC Code of Conduct
- the SFC reprimanded South China and fined it HK\$4.8 million for its failures to comply with AML and CFT and other regulatory requirements under section 194 of the SFO



ENFORCEMENT AND DISCIPLINARY ACTION - FEBRUARY 2022

Court orders insider dealers to pay HK\$12.9 million to investors in TeleEye shares

- An interim injunction order granted by the CFI against individuals involving in insider dealing earning a profit of HK\$12.9 million from innocent investors under a civil proceeding brought by the SFC under section 213 of the SFO
- the SFC commenced such proceedings under section 213 of the SFO against Ms. Yik Fong Fong, who was the executive director and chief executive officer of Chinese Energy Holdings Limited, a Hong Kong listed company, and two of her associates, Ms. Wei Juan, being Ms. Yik's niece, and Mr. Huang Yi, being the husband of Ms. Wei
- Mr. Huang falsely claimed to be an investment consultant of a securities investment firm in China, and the three of them engaged in insider dealing in the shares of TeleEye Holdings Limited, which is now known as CircuTech International Holdings Limited, earning a profit of HK\$12.9 million from innocent investors



ENFORCEMENT AND DISCIPLINARY ACTION - FEBRUARY 2022

Court orders insider dealers to pay HK\$12.9 million to investors in TeleEye shares

- Section 213 of the SFO
 - the SFC is allowed to apply for injunction or restraining or remedial orders from the Court of First Instance in situations where a person has contravened any of the relevant provision of the SFO
- January 2017
 - CFI granted an interim injunction order against Ms. Yik to freeze her assets up to the value of HK\$25.9 million
 - Ordered Ms. Wei and Mr. Huang to pay a total of HK\$12.9 million into the court for the purposes of preventing the disposal of assets until judgment could be obtained
- February 2022
 - CFI ordered Ms. Yik, Ms. Wei and Mr. Huang to collectively pay HK\$12.9 million, the illicit profits of their insider dealing in the shares of CircuTech, to 63 investors, to restore them, as far as possible, to the position they would have been in had the illicit transactions not taken place



ENFORCEMENT AND DISCIPLINARY ACTION - MARCH 2022

Stock Exchange's Disciplinary Action Against Six Former Directors of National Investments Fund Limited

- National Investments Fund Limited
 - a Chapter 21-listed investment company
 - primary investment objective is achieving short to medium term capital appreciation by investing in listed and unlisted companies, mainly in Hong Kong and the PRC
 - recorded a loss and incurred net operating cash outflows and net investing cash outflows in most of the years during the relevant period
 - cash and bank balance dropped from HK\$59 million in 2011 to HK\$0.1 million in 2018
- Between 2011 and 2015, National Investments Fund Limited spent over HK\$61 million acquiring luxury assets, particularly a HK\$24.5 million yacht, a HK\$20 million diamond and cars worth HK\$8.48 million.



ENFORCEMENT AND DISCIPLINARY ACTION - MARCH 2022

Stock Exchange's Disciplinary Action Against Six Former Directors of National Investments Fund Limited

- Acquisitions of the luxury assets were approved by Mr. Wong, the Chairman and sole substantial shareholder of National Investments from 2010 to 2018, without convening a board meeting
- Mr. Wong also approved the monthly financial updates sent by the company's chief financial officer to its directors. He submitted that these investments were needed for meeting investors, as alternate investment opportunities and to enhance the company's image and reputation
- Loss incurred in the disposals of luxury assets
 - Yacht - loss of HK\$4.5 million
 - Diamond - loss of HK\$4 million
- National Investments claimed that the disposal was made in settlement of a loan it owed to Mr. Wong, and it booked a loss of almost HK\$6.2 million in respect of the assets or purported investments
- Mr. Wong resigned after the issuance of an announcement of a connected transaction of disposal of luxury asset in 2019



ENFORCEMENT AND DISCIPLINARY ACTION - MARCH 2022

Stock Exchange's Disciplinary Action Against Six Former Directors of National Investments Fund Limited

- Listing Rule 3.08 requires listed company directors to fulfil fiduciary duties and duties of skill, care and diligence to a standard at least commensurate with the standard established by Hong Kong law.
- Every director must in the performance of his duties as a director:
 - act honestly and in good faith in the interests of the listed company as a whole;
 - act for a proper purpose;
 - be answerable to the listed company for the application or misapplication of its assets;
 - avoid actual and potential conflicts of interest and duty;
 - disclose fully and fairly his interests in contracts with the listed company; and
 - apply such degree of skill, care and diligence as may reasonably be expected of a person of his knowledge and experience and holding office within the listed company.
- Appendix 5B to the Stock Exchange Listing Rules, Directors also undertake, in their undertaking to the Stock Exchange, to comply to the best of their ability with the Stock Exchange Listing Rules, cooperate with any investigation conducted by the Stock Exchange, and update their contact details in a timely manner



ENFORCEMENT AND DISCIPLINARY ACTION - MARCH 2022

Stock Exchange's Disciplinary Action Against Six Former Directors of National Investments Fund Limited

HKEX's finding

- Mr. Wong, the former chairman and executive director
 - breached his fiduciary duties and duties of skill, care and diligence under Listing Rule 3.08 in approving National Investments Fund Limited's acquisition of luxury assets
 - breached his undertaking to comply with the HKEX Listing Rules to the best of his ability
- Mr. Liu, former INED
 - breached his undertaking to cooperate in any Stock Exchange investigation by failing to respond to the Listing Division's enquiry letter and reminder
- Other directors
 - breached their fiduciary and directors' duties under Stock Exchange Listing Rule 3.08 in failing to take an active interest in National Investments' affairs and to follow up on untoward matters coming to their attention in relation to National Investments Fund Limited's purchase of luxury assets given the company's financial situation
 - breached their undertakings to comply with the HKEX Listing Rules to the best of their ability

ENFORCEMENT AND DISCIPLINARY ACTION - MARCH 2022

SFC Obtained Court Order to Disqualify Former Directors of DBA Telecommunications (Asia) Holdings Limited

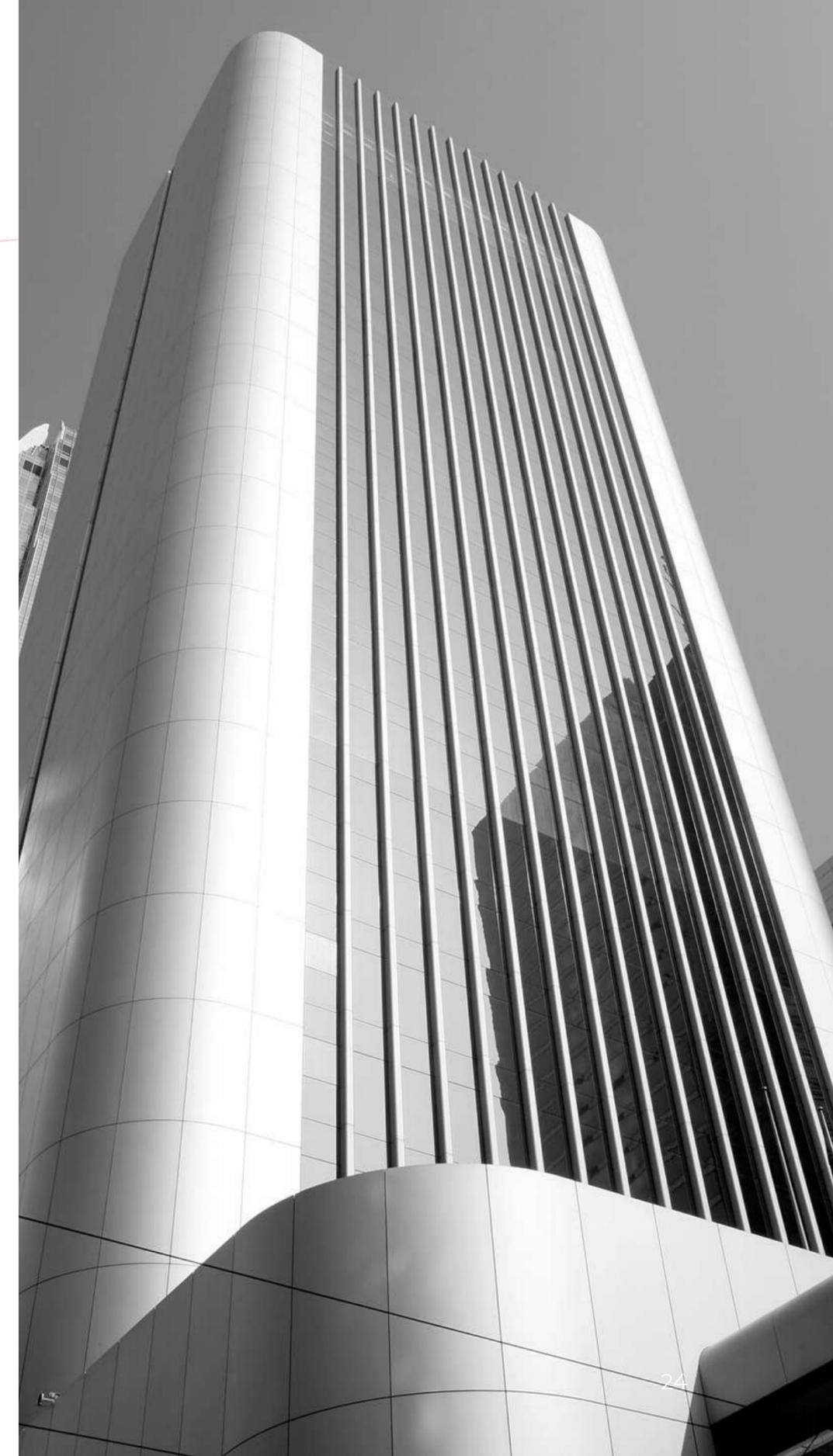
- DBA had been listed on the Main Board of the Stock Exchange since May 2006, and was primarily engaged in the manufacture and sale of telecommunications equipment and in payment services for public utilities, such as pre-paid phone cards
- On 28 March 2013, DBA published its results announcement for the year ended 31 December 2012 on the Stock Exchange website, which was not agreed by the auditors
- However, such results announcement was found to impliedly represent that the financial statements disclosed had been “agreed with the auditors” of the company, which was not true
- DBA subsequently issued a clarification announcement admitting that the consolidated financial statement set out in the results announcement had not been audited or agreed to by its auditors



ENFORCEMENT AND DISCIPLINARY ACTION - MARCH 2022

SFC Obtained Court Order to Disqualify Former Directors of DBA Telecommunications (Asia) Holdings Limited

- Section 214 of the SFO
 - the SFC is allowed to petition the CFI for various types of order specified in the section where the SFC considers that a listed company's business or affairs have been conducted in a manner:
 - (i) oppressive to its members or any part of its members;
 - (ii) involving defalcation, fraud, misfeasance or other misconduct towards it or its members or any part of its members;
 - (iii) resulting in its members or any part of its members not being given all the information with respect to its business or affairs that they might reasonably expect; or unfairly prejudicial to its members or any part of its members.



ENFORCEMENT AND DISCIPLINARY ACTION - MARCH 2022

SFC Obtained Court Order to Disqualify Former Directors of DBA Telecommunications (Asia) Holdings Limited

CFI's disqualification order

- Against Mr. Chan Wai Chuen, a former executive director
 - found to have acted in a grossly incompetent or negligent manner since (i) the company's financial position was seriously misrepresented; (ii) the misstatements resulted in prejudice to the company's shareholders and the investing public; (iii) fraud was involved; and (iv) the misstatements lasted for at least three years
 - disqualified for 6 years
- Against Mr. Yun Lok Ming, a former independent non-executive director and a member of the audit committee
 - fully aware that the financial statements had not been agreed by the DBA's auditors at relevant times
 - permitted or allowed the company to continue to perpetrate the misrepresentation for almost three months, and failed to cause the company to timely correct or clarify the same
 - disqualified for 18 years



ENFORCEMENT AND DISCIPLINARY ACTION - MARCH 2022

SFC Reprimands and Fines Emperor Securities Limited and Emperor Futures Limited for Breaches of Anti-money Laundering Regulatory Requirements

SFC's reprimand and fines of HK\$ 5.4 million on Emperor Securities Limited and Emperor Futures Limited for its breaches of anti-money laundering regulatory requirements according section 194 of the SFO

Background

- Emperor Securities Limited processed and approved over seven hundred third party fund transfers, constituting an aggregate amount of around HK\$1.05 billion whilst Emperor Futures Limited processed and approved third party fund transfers, amounting in aggregate to around HK\$17.6 million (Emperor Securities Limited and Emperor Futures Limited, collectively, "Emperor")
- Insufficient due diligence to validate the relationship between the clients and third parties, and/or the reason for each of the third-party fund transfers was conducted
- Transfers raised red flags as they had no apparent economic or lawful purpose and were outside the ordinary range of services normally requested by clients
- Unverified relationships or situations might have given rise to suspicion under the Anti-Money Laundering and Counter-Terrorist Financing Ordinance and the Guideline on Anti-Money Laundering and Counter-Terrorist Financing

ENFORCEMENT AND DISCIPLINARY ACTION - MARCH 2022

SFC Reprimands and Fines Emperor Securities Limited and Emperor Futures Limited for Breaches of Anti-money Laundering Regulatory Requirements

SFC's found that Emperor Securities Limited and Emperor Futures Limited:

- failed to take all reasonable measures to ensure that proper safeguards exist to mitigate the risks of money laundering or terrorist financing associated with third party fund transfers
 - breached Section 23 of Schedule 2 to the AMLO, and paragraph 2.1 of the AML Guideline
- failed to conduct appropriate scrutiny when processing third party fund transfers, and diligently monitor the activities of its clients for mitigating any possible money laundering or terrorist financing risks
 - breached Section 5(1) of Schedule 2 to the AMLO and paragraphs 5.1, 5.10 and 5.11 of the AML Guideline



ENFORCEMENT AND DISCIPLINARY ACTION - MARCH 2022

SFC Reprimands and Fines Emperor Securities Limited and Emperor Futures Limited for Breaches of Anti-money Laundering Regulatory Requirements

SFC's found that Emperor Securities Limited and Emperor Futures Limited:

- failed to have and employ effectively the resources and procedures which are needed for the proper performance of its business activities
 - breached General Principle 3 of the Code of Conduct
- failed to comply with, and implement and maintain measures appropriate to ensuring compliance with, the requirements under the AMLO and AML Guideline
 - breached General Principle 7 and paragraph 12.1 of the Code of Conduct



ENFORCEMENT AND DISCIPLINARY ACTION - MARCH 2022

SFC Publicly Censures Wonderful Sky Financial Group Holdings Limited and Liu Tianni and Publicly Criticises Liu Kiki Ching Tung for Breaching the SFC Code on Share Buy-backs

- On 17 March 2022, the SFC publicly censured Wonderful Sky Financial Group Holdings Limited and Liu Tianni, and publicly criticised Liu Kiki Ching Tung (Kiki Liu) for breaching the SFC Code on Share Buy-backs with regards to a buy-back transaction in the shares of Wonderful Sky conducted on 27 March 2020
- Wonderful Sky is listed on Main Board of the HKEx since 2012, which is principally engaged in the provision of financial public relations services and the organisation and coordination of international roadshow services
- On 27 March 2020, Wonderful Sky bought back 42.5 million shares at HK\$0.4 per share which represented approximately 3.56% of the then issued share capital of Wonderful Sky. The buy-back was not conducted in the open market in the Stock Exchange but via a block trade



ENFORCEMENT AND DISCIPLINARY ACTION - MARCH 2022

SFC Publicly Censures Wonderful Sky Financial Group Holdings Limited and Liu Tianni and Publicly Criticises Liu Kiki Ching Tung for Breaching the SFC Code on Share Buy-backs

Breach of the Code on Share Buy-backs

- An on-market share buy-back would not normally have implications for being unfair as all shareholders would have access to on-market trading, and would therefore be provided with an equal opportunity to participate in the buy-back
- An off-market share buy-back is only available to a limited number of shareholders. The offer is therefore not available to all shareholders, and hence shareholders are not treated equally. The off-market buy-back of the shares was therefore in clear breach of Rule 2 as it had not been previously approved by the Takeovers Executive
- The SFC publicly censured Wonderful Sky and Liu, and publicly criticised Kiki Liu on the basis that shareholders of Wonderful Sky were prejudiced, and received unequal or unfair treatment



ENFORCEMENT AND DISCIPLINARY ACTION - MARCH 2022

SFC Bans Kim Bum Suk for 27 Months

- On 29 March 2022, the SFC banned Mr Kim Bum Suk, a former relevant individual of BNP Paribas Wealth Management and BNP Paribas, from re-entering the industry for 27 months
- Between March 2015 and August 2017, Kim circumvented BNP's internal requirements by operating his clients' accounts discretionarily without obtaining their written authorisation under the guise of pre-signed client instruction forms
- A false appearance that the instructions originated from his clients was also created by Kim



ENFORCEMENT AND DISCIPLINARY ACTION - MARCH 2022

SFC Bans Kim Bum Suk for 27 Months

- Kim was a relevant individual engaged by BNP from 4 December 2014 to 29 March 2018, but he is not currently licensed by the SFC or registered with the HKMA
- In January 2018, BNP self-reported to the HKMA and to the SFC that a client complained about Kim, as his relationship manager, due to investment losses incurred on his BNP account
- SFC found that Kim, on the basis of his client's verbal authorisation to trade on a discretionary basis on his non-discretionary account, asked his client to pre-sign blank instruction forms in order to trade discretionarily on the client's non-discretionary account
- It was also found that Kim asked his assistant to complete pre-signed blank documents with trade details for execution, and produce false call reports



ENFORCEMENT AND DISCIPLINARY ACTION - MARCH 2022

SFC Bans Kim Bum Suk for 27 Months

- Paragraph 7.1 of the SFC Code of Conduct provides that a registered person should not effect a transaction for a client unless, before the transaction is effected, the client has specifically authorised the transaction or given written authorisation for the registered person to effect transactions for the client without the client's specific authorisation
- Kim also failed to designate his clients' accounts as discretionary accounts and obtain senior management's approval to open them as is required by paragraphs 7.1(c) and (d) of the SFC Code of Conduct.
- Kim also breached General Principle 1 of the SFC Code of Conduct which requires registered persons to act honestly, fairly, and in the best interests of their clients and the integrity of the market, in conducting business activities
- The SFC concluded that Kim was not fit and proper to be a regulated person since his conduct was deceptive and dishonest, and casted doubt on his character and reliability and his ability to carry on regulated activities competently and honestly



ENFORCEMENT AND DISCIPLINARY ACTION - APRIL 2022

Stock Exchange's Disciplinary Action against Hsin Chong and seven former Directors

Background

In 2016, Hsin Chong entered into:

(i) a sale and leaseback agreement to acquire two properties for RMB500 million from a related company of Mr. Zhou Wei, a former executive director, under which Hsin Chong paid RMB129 million as the first instalment; and

(ii) a renovation cooperation agreement with another related company of Mr. Zhou to renovate the properties under which Hsin Chong would pay consideration of RMB247.5 million

- The transactions constituted discloseable and connected transactions under the HKEx Listing Rules
- However, the transactions were not announced until March 2017, and as at 31 December 2019, when the company was delisted, Hsin Chong had not despatched a circular to its shareholders
- Hsin Chong did not comply with the applicable reporting, announcement, circular and shareholders' approval requirements.

ENFORCEMENT AND DISCIPLINARY ACTION - APRIL 2022

Stock Exchange's Disciplinary Action against Hsin Chong and seven former Directors

HKEx concluded that there was no commercial rationale for the sale and leaseback agreement

- (i) the eight-year leaseback allowed Mr Zhou's related company to lease the properties for an aggregate rent of RMB203.5 million, which was less than half the purchase price paid by Hsin Chong;
- (ii) Hsin Chong was subject to a buy-back provision requiring it to sell the properties back to Mr. Zhou's related company for RMB100 at the end of the eight-year lease.

Mr. Zhou, a former executive director

- was the sole approver of the transactions
- did not notify Hsin Chong's board of directors, seek the board's approval of the transactions, or disclose his personal interests in them before the company entered into the transactions.



ENFORCEMENT AND DISCIPLINARY ACTION - APRIL 2022

Stock Exchange's Disciplinary Action against Hsin Chong and seven former Directors

Hsin Chong's Listing Rule Breaches

The HKEx Listing Committee found that Hsin Chong had breached:

- HKEx Listing Rules 13.46(2) and 13.49(1) which set out the timing for the publication or despatch of a listed company's preliminary announcement of annual results and its annual reports; and
- HKEx Listing Rules 14.34, 14A.35, 14A.36 and 14A.46 which require a listed company to comply with the announcement, circular and/or independent shareholders' approval requirements for discloseable transactions and connected transactions

Directors' responsibilities

- Pursuant to Stock Exchange Listing Rules 3.08, 3.16, and 13.04, the board of directors is collectively responsible for a listed company's management and operations



ENFORCEMENT AND DISCIPLINARY ACTION - APRIL 2022

Stock Exchange's Disciplinary Action against Hsin Chong and seven former Directors

Directors' Listing Rule Breaches

The HKEx Listing Committee found that Mr Zhou had breached HKEx Listing Rules 3.08(a), (b), (e) and (f) and his declaration and undertaking in:

- failing to avoid an actual conflict of interest;
- failing to disclose to Hsin Chong his personal interests in the transactions between his related companies and Hsin Chong;
- not acting honestly and in good faith in the interests of Hsin Chong and its shareholders;
- failing to conduct the business of Hsin Chong in accordance with applicable laws, rules and regulations, including the HKEx Listing Rules; and
- wilfully failing to exercise due skill, care and diligence in discharging his director's duties as indicated by the seriousness of the Listing Rule breaches.



ENFORCEMENT AND DISCIPLINARY ACTION - APRIL 2022

Stock Exchange's Disciplinary Action against Hsin Chong and seven former Directors

Directors' Listing Rule Breaches

The HKEx Listing Committee found that the other six directors of Hsin Chong had breached HKEx Listing Rules 3.08 (f) by failing to:

- take an active interest in Hsin Chong's operations and use of its financial assets;
- ensure that adequate and effective internal controls were in place to safeguard the company's assets in relation to identifying and reporting material transactions and processing significant payments; and
- ensure that the company had adequate and effective internal controls for compliance with the HKEx Listing Rules' requirements for financial reporting and connected and notifiable transactions.



ENFORCEMENT AND DISCIPLINARY ACTION - APRIL 2022

Stock Exchange's Disciplinary Action against Hsin Chong and seven former Directors

HKEx

- censured Hsin Chong and Mr. Zhou Wei, a former executive director of the company;
- criticised the other six Hsin Chong directors and directed them to attend directors' training; and
- made a PII statement against Mr. Zhou



ENFORCEMENT AND DISCIPLINARY ACTION - APRIL 2022

Takeovers Executive's Public Criticism of Directors for Breach of the SFC Takeovers Code's No Frustrating Action Rule 4

- Takeovers Executive of the SFC has publicly criticised two directors, Mr. Gao Yunhong and Ms. Feng Xuelian for disposing of material assets of Steering Holdings Limited during an offer period in respect of the company, in breach of Rule 4 of the SFC Takeovers Code, the “No frustrating action rule”

Background

- Masterveyor Holdings Limited, a company wholly-owned by Mr. Ng, an executive director of Steering, acquired 49% of Steering's shares in April 2021 from CMBC Capital Finance Limited
- Steering's shares acquired from CMBC was used as security for a loan made by CMBC to Gentle Soar Limited, which was a company wholly-owned by a non-executive director of Steering, Mr. Gao
- CMBC sold the shares in enforcing the security for the loan
- The share acquisition resulted in the interest in Steering of Mr. Ng and parties acting in concert with him increasing from 4.62% to 53.62%, triggering an obligation on the part of the Masterveyor to make an unconditional mandatory offer for Steering under Rule 26.1 of the Takeovers Code.

ENFORCEMENT AND DISCIPLINARY ACTION - APRIL 2022

Takeovers Executive's Public Criticism of Directors for Breach of the SFC Takeovers Code's No Frustrating Action Rule 4

Background

- Steering announced that Mr. Ng and all the independent non-executive directors had been removed from Steering's board when the SFC's Takeover Executive was vetting the offer announcement of Mastervevor following the acquisition
- Steering also announced that Mr. Gao had informed the board that Gentle Soar had commenced legal proceedings against the Mastervevor, CMBC and Mr Ng in relation to CMBC's enforcement of its security over the Steering's shares and the sale of those shares to the Mastervevor
- A new executive director and 3 new INEDs were appointed to the board, which subsequently approved the disposal of 137,740,000 shares in CMBC held by a wholly-owned subsidiary of Steering

ENFORCEMENT AND DISCIPLINARY ACTION

- APRIL 2022

Takeovers Executive's Public Criticism of Directors for Breach of the SFC Takeovers Code's No Frustrating Action Rule 4

- Mastervevor announced its intention to make an offer for the shares of Steering under Rule 3.5 of the Takeovers Code, and an offer period in respect of Steering commenced on the same day
- One day later, the Mastervevor's legal advisers wrote to the legal advisers of Gentle Soar, Mr. Gao and Ms. Feng reminding them that any disposal of Steering's assets (including the disposal of 137,740,000 shares in CMBC Capital Holdings Limited held by Jet Speed) may result in a breach of the frustrating action provisions of Rule 4 of the Takeovers Code
- Gentle Soar's legal advisers wrote to the Takeovers Executive to consult on whether a general offer obligation under Rule 26.1 of the Takeovers Code was triggered by Mastervevor
- The Takeovers Executive confirmed that Mastervevor's obligation to make a general offer had been triggered under the Takeovers Code

ENFORCEMENT AND DISCIPLINARY ACTION - APRIL 2022

Takeovers Executive's Public Criticism of Directors for Breach of the SFC Takeovers Code's No Frustrating Action Rule 4

Subsequent announcements of Steering

- Steering announced that the 137,740,000 shares in CMBC Capital Holdings Limited held by Jet Speed had been disposed of between 27 May and 1 June 2021, constituting a discloseable transaction under the Stock Exchange Listing Rules
- Steering further announced the new board's resolutions that the previous resolutions approving the removal of Mr. Ng and the previous INEDs and the appointment of a new executive director and INEDs were suspended as if they had not been effected. Consequently, Mr Ng and the original three INEDs of Steering were reinstated to its board.



ENFORCEMENT AND DISCIPLINARY ACTION - APRIL 2022

Takeovers Executive's Public Criticism of Directors for Breach of the SFC Takeovers Code's No Frustrating Action Rule 4

Rule 4 of the Takeovers Code provides that:

“Once a bona fide offer has been communicated to the board of an offeree company or the board of an offeree company has reason to believe that a bona fide offer may be imminent, no action which could effectively result in an offer being frustrated, or in the shareholders of the offeree company being denied an opportunity to decide on the merits of an offer, shall be taken by the board of the offeree company in relation to the affairs of the company without the approval of the shareholders of the offeree company in general meeting. In particular the offeree company's board must not, without such approval, do or agree to... (c) sell, dispose of or acquire assets of a material amount...”

ENFORCEMENT AND DISCIPLINARY ACTION - APRIL 2022

Takeovers Executive's Public Criticism of Directors for Breach of the SFC Takeovers Code's No Frustrating Action Rule 4

Note 1 to Rule 4 provides that:

"The requirement of a shareholders' meeting may be waived by the Executive if the offeror ... agrees."

Note 6 to Rule 4 further provides that:

"For the purpose of determining whether a disposal or acquisition is of a "material amount" the Executive will, in general, apply the same tests as those set out in the Listing Rules to determine whether a transaction is a "discloseable transaction."

If several transactions relevant to this Rule 4, but not individually material, occur or are intended, the Executive will aggregate such transactions to determine whether the requirements of this Rule 4 are applicable to any of them.

The Executive should be consulted in advance where there may be any doubt as to the application of the above."



ENFORCEMENT AND DISCIPLINARY ACTION - APRIL 2022

Takeovers Executive's Public Criticism of Directors for Breach of the SFC Takeovers Code's No Frustrating Action Rule 4

Breach of Rule 4 of the Takeovers Code

- Constituted a frustrating action - the disposal of the 137,740,000 shares in CMBC Capital Holdings Limited held by Jet Speed was a discloseable transaction under the HKEx Listing Rules carried out during an offer period
- No shareholders' approval or a waiver of the requirement under Rule 4 of the Takeover code from the Takeovers Executive was obtained

Disciplinary actions against the directors

- Takeovers Executive took disciplinary action against each of Mr. Gao and Ms. Feng because of their substantial involvement in the share disposal and their position as directors who owed duties to Steering

ENFORCEMENT AND DISCIPLINARY ACTION - APRIL 2022

SFC Bans Mr. Poon Choi Yung, a licensed representative of China Tonghai Securities Limited for 20 Months for Trading without Client Authorisation under section 194 of the SFO

- Between June 2019 and March 2020, among over a thousand trades in six clients' stock options accounts at China Tonghai conducted by Mr. Poon, less 90 of those trades were in fact agreed with the clients
- Mr. Poon had no specific authorisations on over 90% of the total trades executed, nor had the clients authorised him in writing to effect the trades on a discretionary basis

SFC investigation revealed that:

- a) Mr. Poon called those six clients on each trading day to indicate his trading intention with the clients' accounts on his own initiatives
- b) Mr Poon never specified any details of the thousand of trades which he executed in those six client's stock options accounts at China Tonghai, with no evidence showing such execution was agreed with the client;
- c) Mr. Poon breached China Tonghai internal policies on discretionary trading arrangements by not putting clients' consents in writing



ENFORCEMENT AND DISCIPLINARY ACTION - APRIL 2022

SFC Bans Mr. Poon Choi Yung, a licensed representative of China Tonghai Securities Limited for 20 Months for Trading without Client Authorisation under section 194 of the SFO

Breaches of SFC Code of Conduct

1. Conducting Discretionary Trades without Clients' Written Authorisation

- Breached paragraph 7.1(a) of the SFC Code of Conduct, which stipulates that
 - "a licensed person should not effect a transaction for a client unless before the transaction is effected, (i) the client has specifically authorised the transaction; or (ii) the client has authorised in writing the licensed person to effect transactions for the client without the client's specific authorisation"

2. Failed to act with due skill, care and diligence and in the best interests of the clients when conducting business activities

- Breached general Principle 2 of the SFC Code of Conduct, which stipulates that:
 - "licensed persons is required to act with due skill, care and diligence, in the best interests of their clients and the integrity of the market."



ENFORCEMENT AND DISCIPLINARY ACTION - APRIL 2022

SFC Bans Mr. Poon Choi Yung, a licensed representative of China Tonghai Securities Limited for 20 Months for Trading without Client Authorisation under section 194 of the SFO

Breaches of SFC Code of Conduct

3. Failed to take all reasonable steps on verifying clients' identity in respect of clients' account opening
 - Breached paragraph 5.1(a) of the SFC Code of Conduct, which stipulates that:
 - "a licenced person is required to take all reasonable steps to establish the true and full identity of each of its clients, and each client's financial situation, investment experience and investment objectives"
 - Failed to steps to establish and verify their financial situations and investment experience of clients
 - Failed to properly conduct the risk disclosure procedures required by the account opening forms

