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SFC suspends Eric Shum Kam Chi for three years for sponsor failures

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The Securities and Futures Commission (SFC) has suspended Mr Eric Shum Kam Chi as a representative in all regulated activities and withdrawn approval for him to act as a responsible officer for three years from 15 September 2014 to 14 September 2017 for serious deficiencies in the sponsor work relating to the listing of Sino-Life Group Limited (Sino-Life) on the Growth Enterprise Market (GEM) of The Stock Exchange of Hong Kong Limited (SEHK) (Note 1).

Shum was previously a responsible officer and sponsor principal of Sun Hung Kai International Limited (Sun Hung Kai International) which acted as the sole sponsor for Sino-Life.

An SFC investigation revealed that Sun Hung Kai International had failed to conduct proper due diligence between October 2007 and September 2009 on Sino-Life's business in relation to a number of material issues, and had placed undue reliance on the work delegated to external experts. Disciplinary action against Sun Hung Kai International was taken in January 2014 (Note 2).

Sun Hung Kai International's regulatory breaches are attributable to Shum who failed to discharge his duties as its senior management. In summary, the SFC found that Shum as head of the firm's transaction team had failed to:

- assess the accuracy and the completeness of the information submitted by Sino-Life to demonstrate that it satisfied the financial requirements to list on the GEM;
- ascertain the existence of various encumbrances on the title of a major business deal of Sino-Life in Taiwan;
- properly assess the business of the Sino-Life's wholly-owned subsidiary in Taiwan;
- ensure true, accurate and complete disclosure was made to the SEHK and in Sino-Life's prospectus and breached the sponsor undertaking to the SEHK by filing untrue statements in the sponsor declaration; and
- keep proper books and records in relation to the sponsor work conducted.

Shum sought to review the SFC's decision at the Securities and Futures Appeals Tribunal (SFAT) but withdrew his application before the SFAT hearing.

In deciding the penalty, the SFC took into account that although Shum had knowledge of the fact that Sun Hung Kai International was selective in its disclosure to the SEHK during the listing process, he still signed the sponsor declaration thereby holding out that all information submitted to the SEHK was true, accurate and complete to his knowledge. The SFC also took into account his otherwise clean disciplinary record.

End

Notes:

1. Shum is licensed under the Securities and Futures Ordinance to carry on Type 6 (advising on corporate finance) regulated activity and was accredited to Sun Hung Kai International between 29 March 2000 and 10 July 2010. Shum is not currently accredited to any principal.
2. Please see the SFC's press release dated [27 January 2014](#) and the Reasons for Determination which is available on the Securities and Futures Appeals Tribunal's website (<http://www.sfat.gov.hk/>).

[A copy of the Statement of Disciplinary Action is available on the SFC website](#)

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STATEMENT OF DISCIPLINARY ACTION

I. The Disciplinary Action

1. The Securities and Futures Commission (**SFC**) has suspended the licence of Shum Kam Chi Eric (**Shum**) as a representative in all regulated activities and the approval for him to act as a responsible officer for three years.
2. The disciplinary action concerns the failures of Sun Hung Kai International Limited (**Sun Hung Kai International**) in acting as sponsor for Sino-Life Group Limited (**Sino-Life**) in relation to its application to list on the Growth Enterprise Market (**GEM**) Board of The Stock Exchange of Hong Kong (**SEHK**) between October 2007 and September 2009 (**Relevant Period**). Sun Hung Kai International's regulatory breaches are attributable to Shum who failed to discharge his duties as a sponsor principal, responsible officer and a member of its senior management.

II. Summary of facts

3. Sino-Life initially planned to list in 2008. However, a change in the GEM Listing Rules requiring listing applicants to have achieved positive operating cash flow of not less than \$20 million in aggregate for two preceding financial years rendered Sino-Life ineligible in light of a draft report compiled by its auditors retained at the time. Following an unsuccessful attempt to obtain a waiver from the SEHK in May 2008, the listing project was halted.

Failure to draw to the attention of the SEHK certain discrepancies in the accounts of Sino-Life

4. In late 2008, Sino-Life revived its listing plan and requested that Sun Hung Kai International reactivate its due diligence work. For the purposes of its second attempt to list on the GEM Board, Sino-Life replaced its original auditors with a different auditing firm. There is a material difference in the accounts for the year ending 31 December 2007 (**Discrepancy**) between the draft reports compiled by the original and newly-appointed auditors.
5. The SFC's investigation reveals that Sun Hung Kai International ignored the Discrepancy and adopted the accounts prepared by the newly-appointed auditors which met the requirement regarding operating cash flow. The SEHK was unaware of the Discrepancy and was therefore unable to make an assessment of its impact on the listing of Sino-Life.

6. Shum failed to follow up on the Discrepancy¹ and refrained from informing the SEHK of the same². Such omission is material³ given the significance of the Discrepancy in determining the eligibility of Sino-Life's listing on the GEM Board.

Failure to ascertain various encumbrances on the title of a major business deal

7. In February 2008, a wholly-owned Taiwanese subsidiary of Sino-Life, Bau Shan Life Science Technology Company Limited (**Bau Shan**) entered into an agency agreement in relation to a columbarium in Taiwan (**Columbarium**), whereby Bau Shan was appointed as the sales agent of cubicles and spaces for urn storage in the Columbarium (**Products**).
8. A member of the Sun Hung Kai International transaction team (**DD Team**) discovered from a search on the internet in June 2009 that an auction against the Columbarium was halted and sought advice from the Taiwanese legal advisers of Sino-Life. The Taiwanese lawyers claimed that firstly, the process of compulsory auction was stopped pursuant to a court notice dated 31 October 2007; secondly, the rights of the Columbarium were not affected; and thirdly, Bau Shan being a sales agent had no right to ask about the current debt position of the Columbarium. The Taiwanese lawyers also held out that once the Columbarium was released from foreclosure on 31 October 2007, it could start selling the Products.
9. In response, Shum's subordinates urged Sino-Life to disclose the risk of the Columbarium being auctioned and to provide documents in support of the purported settlement of the relevant debt. They also warned that any loan recovery or foreclosure action would affect Sino-Life's earnings and hence disclosure should be made in Sino-Life's prospectus (**Prospectus**).
10. Shum relied unduly on the opinion of the Taiwanese legal advisers of Sino-Life, and did not take any action to ascertain whether Bau Shan could lawfully conduct business by selling the Products. Disclosure of the relevant risks was not made either to the SEHK or in the Prospectus, even though approximately 10% of the proceeds of Sino-Life's initial public offering were to be invested into this project.
11. Apart from the failure to make disclosure, Sun Hung Kai International did not carry out thorough due diligence checks on the legal actions encumbering the Columbarium's title that might materially affect its business viability. As a result, the problems associated with the title of the Columbarium since 2005 were not uncovered. Furthermore, the Columbarium lacked the necessary operation approval and was not authorised by the Government of Taiwan.

Failure to properly assess the business viability of Bau Shan

12. The SFC found that Sun Hung Kai International had failed to properly review the business viability of the Columbarium, which was held out to generate income for Bau Shan. Specifically, Shum failed to properly identify the following issues:

¹ The need for further enquiries has been highlighted by the Securities and Futures Appeals Tribunal (**SFAT**) in paragraphs 114, 115 and 117 and its Reasons for Determination dated 27 January 2014 in SFAT No 3/2013 (**Determination**)

² Paragraph 126 of the Determination

³ Paragraphs 127 and 128 of the Determination

- The readiness of the Columbarium to generate income immediately after listing is doubtful;
- There is no support for the purported annual sales growth rate; and
- Representations on the market supply of the Products were inaccurate and incomplete.

Breach of sponsor's undertaking

13. It is a regulatory requirement for every sponsor to submit Appendix 7 (Form G) of the GEM Listing Rules (**Declaration**) to declare that it has conducted reasonable due diligence and that, among other things, it is reasonably satisfied that the listing document does not omit material information, and all information contained is true in all material aspects. Shum signed the Declaration on behalf of Sun Hung Kai International without having performed proper due diligence and ensured accurate and sufficient disclosure in the Prospectus.

Failure to maintain proper audit trail of work done

14. Sun Hung Kai International also failed to maintain proper books and records in relation to work carried out as sponsor for Sino-Life. The SFAT found that a failure to record certain matters, for example the Discrepancy, suggested an intention to disguise and constituted a material omission on the part of a sponsor⁴.
15. Further, no minutes or records of regular internal meetings and discussions on the progress of the listing application were kept, and correspondence records between Sino-Life and DD Team was scanty and incomplete. Handwritten comments and queries by the DD Team were found on various documents, but on many occasions, Sino-Life's replies to the DD Team's handwritten queries were not documented at all. Certain research that was purported to have been undertaken by the DD Team was also not documented, making it impossible to ascertain whether due diligence had actually been conducted.

III. Role of Shum

16. Shum did not closely monitor and properly supervise due diligence work carried out by the DD Team. Whilst he was in charge of the supervision of certain staff members and was aware of certain risks in the due diligence work, he did not insist upon taking the necessary measures to address such risks:
 - Even though Shum knew about the Discrepancy, he neither contacted Sino-Life to make enquiries into the same nor ensured that this would be carried out by his staff.
 - Despite being aware of an auction of the Columbarium (albeit purportedly halted), Shum failed to investigate further into the matter by causing checks to be undertaken as to whether the title of the Columbarium was free from encumbrances.

⁴ Paragraphs 241, 242 and 252 to 255 of the Determination

- Shum also ignored his subordinate's suggestion urging Sino-Life to make disclosure of the encumbrances by way of a risk factor in the Prospectus. In short, Shum did not critically assess the reasonableness of the advice of Sino-Life's Taiwanese lawyers and his reliance upon their advice was misplaced⁵.
17. Furthermore, Shum held out to the SEHK, by signing the Sponsor Declaration and undertaking, that all information submitted to it was true, accurate and complete to his knowledge. This was so even though he was well aware of the unresolved Discrepancy, Sino-Life's reluctance to make adequate disclosure in the Prospectus regarding the legal encumbrances of the Columbarium, and the unrealistic business profit forecasts submitted to the SEHK.
18. Shum also attempted to abdicate responsibility for Sun Hung Kai International's due diligence failures repeatedly by shifting part of the blame onto his subordinates:
- Shum claimed that the decision to accept the accounts prepared by the newly-appointed auditors without following up on the Discrepancy was made jointly with a subordinate.
 - He attributed the failure to identify the legal actions encumbering the title of the Columbarium to another subordinate.
 - Shum also emphasised that the submissions to the SEHK were co-signed with his subordinate, and asserted that despite difficulties encountered during the listing process, he and his subordinate jointly decided to continue to act as Sino-Life's sponsor.
19. Shum had been accredited with Sun Hung Kai International as a responsible officer and a sponsor principal since 2000 and 2007 respectively. Notwithstanding his rank as Managing Director of Sun Hung Kai International's Corporate Finance division during the Relevant Period and his role as the final decision maker in respect of due diligence work carried out by Sun Hung Kai International, he failed to appreciate the scope of responsibility that senior management and sponsor principals are required and expected to shoulder.

IV. Breaches and reasons for action

20. Shum breached the regulatory requirements below during the Relevant Period:
- General Principle 2 of the Code of Conduct and paragraph 5.1 of the CFA Code of Conduct by failing to exercise due skill, care and diligence and observe proper standards of market conduct in the handling of Sino-Life's listing application.
 - General Principle 9 of the Code of Conduct and paragraph 2 of the CFA Code of Conduct by failing to ensure the maintenance of appropriate standards of conduct and adherence to proper procedures by Sun Hung Kai International.
 - Paragraph 4.2 of the Code of Conduct, paragraph 2.4 of the CFA Code of Conduct, paragraphs 1.2.4 and 1.3.3 of the Sponsor Guidelines by failing to

⁵ See paragraphs 155, 156 and 164 to 166 of the Determination

diligently supervise his subordinates and the sponsor work undertaken by Sun Hung Kai International.

V. Conclusion

21. The SFC is conscious that firstly, sponsors have a critical function and role in protecting the market and in particular retail investors; and secondly, a failure to discharge their obligations will possibly lead to significant retail investment loss. The breaches of Shum are serious and pose risks to the investing public.