

SFC bans Roger Albert John and Hamish Gordon Cruden for life

14 Oct 2014

The Securities and Futures Commission (SFC) has banned Mr Roger Albert John and Mr Hamish Gordon Cruden, both former directors and responsible officers of Salisbury Securities Limited (Salisbury), from re-entering the industry for life (Notes 1 & 2).

The disciplinary actions follow an SFC investigation which found that Salisbury:

- misused or misapplied securities and sale proceeds belonging to other clients to settle another client's instructions and to discharge its own operational expenses (Notes 3 & 4);
- failed to maintain the required minimum level of liquid capital from April 2012 to February 2013 (Note 5); and
- provided false and misleading information to the SFC about the level of its liquid capital in financial returns submitted to the SFC.

The SFC investigation found that John was directly responsible for Salisbury's misconduct in that he authorized the use of securities and monies belonging to other clients for the settlement of another client's instructions and for the discharge of Salisbury's operational expenses and his own personal expenses.

John also masterminded the window dressing activities of Salisbury's liquid capital and the submission of false and misleading financial returns to the SFC.

The SFC also found that Cruden, who moved to Manila in 2011 but remained as a director and responsible officer of Salisbury, nevertheless failed to keep himself informed as to the business of Salisbury and did not visit Salisbury's office despite making regular trips back to Hong Kong. As part of Salisbury's senior management, Cruden's failure to participate at all in the management of Salisbury contributed to the breaches and failures of the company for which he must be equally responsible.

The disciplinary actions against John and Cruden follow swift action by the SFC in June 2013 to obtain a winding up order from the court and to close down Salisbury's business after the issuance of an urgent restriction notice in March 2013 (Note 6).

End

Notes:

1. Salisbury was licensed under the Securities and Futures Ordinance (SFO) to carry on Type 1 (dealing in securities), Type 4 (advising on securities), Type 6 (advising on corporate finance) and Type 9 (asset management) regulated activities. On 28 August 2013, the Court of First Instance ordered that Salisbury be wound up. Please see the SFC's press release dated [28 August 2013](#).
2. John and Cruden were licensed under the SFO to carry on Type 1 (dealing in securities), Type 4 (advising on securities), Type 6 (advising on corporate finance) and Type 9 (asset management) regulated activities. Their licences were revoked on 30 August 2013.
3. Section 4 of the Securities and Futures (Client Money) Rules requires a licensed corporation who receives or holds client money to establish and maintain segregated accounts with an authorized financial institution and to designate such accounts as trust account or client account.
4. Section 10(1) of the Securities and Futures (Client Securities) Rules requires an intermediary to reasonably ensure that client securities are not deposited, transferred, lent, pledged, re-pledged or otherwise dealt with.
5. Section 6(1) of the Securities and Futures (Financial Resources) Rules require a licensed corporation to maintain at all times no less than the minimum required liquid capital. Schedule 1 of the Securities and Futures (Financial Resources) Rules set out in Table 2 the required liquid capital. The required liquid capital for Salisbury was \$3 million.
6. On 28 June 2013, the SFC obtained orders from the Court of First instance to appoint provisional liquidators for Salisbury after filing a petition to the court earlier to wind up Salisbury under section 212 of the SFO. The SFC's restriction notice against Salisbury was issued on 18 March 2013 under sections 204

and 205 of the SFO. Please see the SFC's press releases dated [28 June 2013](#) and [19 March 2013](#).

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

Page last updated : 14 Oct 2014

STATEMENT OF DISCIPLINARY ACTION

The Disciplinary Action

1. The Securities and Futures Commission (SFC) has prohibited Mr Roger Albert John (John) and Mr Hamish Gordon Cruden (Cruden) from re-entering the industry for life pursuant to section 194 of the Securities and Futures Ordinance (SFO).
2. The disciplinary actions are taken because:
 - (a) John was directly responsible for the failures and breaches of the SFO by Salisbury Securities Limited (Salisbury); and
 - (b) Cruden had contributed to the failures and breaches of Salisbury by failing to actively participate in and to take care and diligence in the management of Salisbury.

Summary of Facts

3. On 24 December 2012, the SFC received a complaint from a client of Salisbury (the "Client") that Salisbury had failed to account to the Client the securities and monies it held on behalf of the client despite numerous verbal and written requests.
4. The SFC conducted an investigation into the activities of Salisbury and into the conduct of John and Cruden.
5. On 18 March 2013, the SFC issued a restriction notice following concerns about the management and financial position of Salisbury.
6. On 21 June 2013, the SFC filed a petition to the Court of First Instance to wind up Salisbury. On 28 August 2013, the court made an order to wind up Salisbury.

Misuse and/or misapplication of client assets

7. The SFC found that the securities and monies stated in the monthly statements issued by Salisbury to the Client were significantly different to the amounts recorded by Salisbury in its internal records. Salisbury's internal records for August 2012 in comparison to the amounts stated in the Client's monthly statements showed the following significant shortfalls:
 - (a) 12,092 Jardine Matheson Holdings Limited ("Jardine") shares;
 - (b) 36,000 Wilmar International Limited ("Wilmar") shares;
 - (c) 177,500 Blackrock New Energy ("Blackrock NE") shares;
 - (d) 220,00 Turbo Power Systems Inc ("Turbo Power") shares; and
 - (e) Singapore Dollars 990,148 in cash.
8. Although on various dates in October 2012, March 2013 and April 2013 Salisbury transferred about HK\$7 million and 9,887 Jardine shares to the

Client's nominated account, the monies that Salisbury used to partially settle the Client's instructions belonged to other clients of Salisbury, overseas remittances (of which the ultimate source was unknown) and a personal loan of US\$70,000 taken out by John. As at 19 April 2013, around USD 150,000 still remained unaccounted to the Client. There was no reason for Salisbury not to comply with the Client's instructions had the Client's assets been available.

9. Furthermore, on various dates between May 2011 to September 2012 and without the Client's instructions, Salisbury instructed its overseas securities custodian to sell 6,000 Jardine shares belonging to the Client. Salisbury used the sale proceeds to discharge its operational expenses. Salisbury also transferred some of the sale proceeds to a bank account controlled by John for his personal use.
10. John was directly responsible for Salisbury's misuse and/or misapplication of client assets.

Failure to maintain the minimum required liquid capital, window dressing activities and providing the SFC with false and misleading information

11. The liquid capital computations submitted by Salisbury to the SFC in its FRR Returns for the period April 2012 to February 2013 showed Salisbury's "proprietary positions in securities and specified investments assets" formed the majority of its liquid capital. The value of the liquid capital purportedly maintained by Salisbury during this period ranged from HK\$4.76 million to HK\$5.97 million.
12. In March 2011, Salisbury instructed its overseas custodian for Jardine shares to open a new account for Salisbury's house positions and to transfer 14,967 Jardine shares from the original client account to the new house account. There is no evidence that Salisbury owned these Jardine shares or had obtained the consent of the clients whose securities had been so transferred. The transfer of the Jardine shares from Salisbury's client account to its house account was simply to window dress its liquid capital position so that its liquid capital deficiencies would not be reflected in the FRR Returns and to conceal its failure to maintain the minimum required liquid capital.
13. The monthly FRR Returns from April 2012 to March 2013 submitted by Salisbury were false and misleading in that they included, as part of its proprietary assets, the 14,967 Jardine shares. If the 14,967 Jardine shares were excluded from Salisbury's monthly liquid capital computation from April 2012 to February 2013, Salisbury would have failed to comply with the minimum liquid capital requirement of HK\$3 million throughout the entire period. The liquid capital maintained by Salisbury during this period would only be around HK\$1.25 million to HK\$2.65 million.
14. John masterminded Salisbury's window dressing activities and submitted the false and misleading FRR Returns to the SFC.
15. Cruden, as part of Salisbury's senior management, failed to carry out his responsibilities and to properly manage the risks associated with Salisbury's business. Cruden moved to Manila in or around 2011 but did not participate in the management of Salisbury or keep himself informed as to what was

happening in Salisbury despite remaining a director and responsible officer of Salisbury.

Conclusion

16. The SFC concludes the conduct of John and Cruden serious in that John was directly responsible for Salisbury's failings and breaches of the SFO while Cruden contributed to Salisbury's failings by his failure to actively participate in the management of Salisbury's business.