

STATEMENT OF DISCIPLINARY ACTION

The Disciplinary Actions

1. The Securities and Futures Commission (**SFC**) has:
 - (a) publicly reprimanded and fined Asia Research & Capital Management Limited (**ARCM**) HK\$1.75 million; and
 - (b) banned Wong Billy Yim Chi (**Wong**) for two months from 10 October 2022 to 9 December 2022,pursuant to section 194 of the Securities and Futures Ordinance (**SFO**).
2. The disciplinary actions are taken in relation to:
 - (a) ARCM's failure to:
 - (i) implement adequate and effective internal control measures in its compliance framework to monitor short positions and ensure compliance with the reporting obligations under the European Union's short selling regulation (**EU Regulation**)¹; and
 - (ii) notify the SFC immediately upon becoming aware that it had materially breached the EU Regulation; and
 - (b) Wong's failure to discharge his duties as ARCM's Manager-In-Charge (**MIC**) of Compliance and a member of ARCM's senior management at the material time.

Summary of facts

Background

3. ARCM has been licensed under the SFO to carry on Type 9 (asset management) regulated activity since 2 February 2012.
4. On 14 October 2020, the Financial Conduct Authority in the United Kingdom (**FCA**) published a final notice of its enforcement action against ARCM for breaches of the EU Regulation.
5. The FCA found that, between 22 February 2017 and 3 December 2019 (**Relevant Period**), ARCM failed to make a total of 155 notifications to the FCA and 153 public disclosures of its net short position in Premier Oil plc (**Premier Oil**), a company listed on the London Stock Exchange, in breach of the EU Regulation. The FCA imposed a financial penalty of £873,118 on ARCM for its breaches of the EU Regulation.

¹ Regulation (EU) No 236/2012 of the European Parliament and of the Council of 14 March 2012 on short selling and certain aspects of credit default swaps.

6. Following the conclusion of the FCA's enforcement action, the SFC conducted an investigation into ARCM's failures to comply with the EU Regulation and its internal control environment.

ARCM's compliance failures and Internal control deficiencies

7. The SFC found that, during the Relevant Period, ARCM was not aware that the EU Regulation applied to its short position in Premier Oil held through swap transactions, until alerted by its legal advisor in October 2019.
8. ARCM attributed its failure to comply with the reporting obligation under the EU Regulation to:
 - (a) a wrong assumption held by its staff members that the reporting regime in the European Union (**EU**) was the same as the other primary jurisdictions that ARCM routinely traded in and did not require the disclosure of short positions held through swap transactions;
 - (b) the failure to take specific legal advice on the short position reporting obligations in the EU, and relying instead on reference materials provided by its prime brokers; and
 - (c) the absence of regulatory reporting obligation alerts from its investment bank counterparties to the swap transactions, which were usually drawn to ARCM's attention for transactions entered into by ARCM.
9. The SFC found that ARCM failed to implement adequate measures to ensure compliance with the EU Regulation, which was applicable to its investments in the EU market. In particular, ARCM:
 - (a) did not have any formal process in place for its compliance framework to: (i) require its staff members to analyse and understand the applicable shareholding and short position reporting requirements when ARCM invests in a new jurisdiction and (ii) incorporate additional controls to ensure compliance with such obligations in the new jurisdiction(s); and
 - (b) failed to implement any systems and controls in its compliance framework to monitor and ensure its portfolio positions in the EU markets complied with the reporting obligations under the EU Regulation.
10. The SFC also found that ARCM failed to seek legal advice on its reporting obligations under EU regulations before entering into swap transactions and establishing a short position in Premier Oil even though it was unfamiliar with the EU market. Instead, it relied on reference materials provided by its prime brokers, without conducting any further analysis. Such reliance was misplaced, as these materials only contained a summary of the regulatory reporting obligations in various jurisdictions and were not meant to be relied on as legal or regulatory advice for a particular jurisdiction. Had ARCM taken steps to check on the EU regulations or sought legal advice on the matter, it would have known about the reporting obligations on short position held through swap transactions under the EU Regulation.

11. ARCM's compliance failures and internal control deficiencies had breached:
 - (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 licensed corporations to act with due skill, care and diligence, in 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 licensed corporations to comply with, and implement and maintain measures appropriate to ensure compliance with, relevant regulatory requirements.

ARCM's delay in notifying the SFC of its breaches of the EU Regulation

12. Paragraph 12.5 (Notifications to the Commission) of the Code of Conduct requires a licensed corporation to report to the SFC immediately upon the occurrence of any material breach, infringement or non-compliance with the requirements of any regulatory authority which apply to the licensed corporation, or when it suspects any such breach, infringement or non-compliance.
13. The SFC found that ARCM failed to notify the SFC immediately upon becoming aware it had materially breached the EU Regulation, in breach of paragraph 12.5 of the Code of Conduct.
14. On 8 November 2019, following an alert from its legal advisor, ARCM determined that the EU Regulation applied to its short position in Premier Oil and it had an obligation to make disclosures to the FCA.
15. Instead of reporting to the SFC (and the FCA) immediately upon determination of the EU Regulation breaches, ARCM focused on the preparation of the remedial filings with the FCA and ensuring the accuracy of the data. ARCM notified the FCA about the breaches on 29 November 2019 and submitted its remedial filings on 3 December 2019.
16. ARCM only notified the SFC about its breaches of the EU Regulation over two months later on 16 January 2020 and submitted a written notification the next day.

Wong's roles and responsibilities at ARCM

17. Wong was ARCM's Head of Compliance and Operations since February 2012 and the MIC for Compliance since 28 June 2017 until 30 April 2020, and a person involved in the management of ARCM's business during the Relevant Period². He was also a licensed representative accredited to ARCM to carry on Type 9 (asset management) regulated activity between 16 March 2012 to 30 April 2020.
18. Wong was in charge of ARCM's compliance function and responsible for implementing and maintaining a robust risk management framework to ensure

² Wong took medical leave from ARCM from April to October 2019.

compliance with applicable laws and regulations. He was also responsible for handling regulatory filings in relation to ARCM's portfolio positions, and consulting external legal advisor whenever he considered it necessary to do so.

19. The SFC found that ARCM's failures as set out in paragraphs 9 to 11 above were attributable to Wong's neglect in discharging his responsibilities as ARCM's MIC for Compliance and a member of its senior management. In particular, Wong failed to:
 - (a) implement adequate systems and controls to ensure ARCM's compliance with the EU Regulation; and
 - (b) seek legal advice on the reporting obligations for ARCM's short position in Premier Oil or instruct the compliance and operations team under him to do so, even though the investment was in a new jurisdiction and both Wong and his team were unfamiliar with the reporting regime in the EU.
20. Wong's conduct had breached:
 - (a) General Principle 9 (Responsibility of senior management) of the Code of Conduct, which requires senior management of a licensed corporation to bear primary responsibility for ensuring the maintenance of appropriate standards of conduct and adherence to proper procedures by the firm; and
 - (b) Paragraph 14.1 (Responsibility of senior management) of the Code of Conduct, which requires senior management of a licensed corporation to properly manage the risks associated with the firm's business.

Conclusion

21. Having considered all relevant circumstances, the SFC is of the view that the fitness and properness of ARCM and Wong to carry on regulated activities have been called into question.
22. In deciding the disciplinary sanctions set out in paragraph 1 above, the SFC has taken into account all relevant circumstances, including:
 - (a) ARCM has taken remedial steps to enhance its internal controls to avoid recurrence of similar breaches;
 - (b) the financial penalty of £873,118 already imposed by the FCA for ARCM's breaches of the EU Regulation;
 - (c) the cooperation of ARCM and Wong with the SFC in resolving the SFC's concerns; and
 - (d) ARCM and Wong have otherwise clean disciplinary records.