

STATEMENT OF DISCIPLINARY ACTION

The Disciplinary Action

1. The Securities and Futures Commission (**SFC**) has banned Xie Yangxiong (**Xie**)¹, a director of Wansom Asset Management (Hong Kong) Limited (**WAML**) and Wansom Securities (Hong Kong) Limited (**WSL**), from the industry for life pursuant to section 194(i)(iv) of the Securities and Futures Ordinance (**SFO**)².
2. The SFC found that WAML and WSL:
 - (a) provided false and misleading financial information to the SFC in support of their licence applications in July and August 2018; and
 - (b) failed to maintain sufficient liquid capital and notify the SFC of their insufficient liquid capital in accordance with the requirements under the SFO and the Securities and Futures (Financial Resources) Rules (**FRR**) following the grant of their licences.
3. The SFC further found that Xie was directly responsible for WAML's and WSL's breaches and failures, in that he:
 - (a) provided the false and misleading financial information of WAML and WSL to an external consultant (**Consultant**) that he had engaged to handle their licence applications, knowing that the information would be provided to the SFC to support their licence applications; and
 - (b) withdrew funds from the bank accounts of WAML and WSL for his personal use which resulted in their liquid capital deficits and failed to ensure that WAML and WSL notified the SFC of their liquid capital deficits within one business day of their liquid capital falling below the required level.

Summary of facts

Background

4. WAML was granted a licence by the SFC to conduct Type 4 (advising on securities) and Type 9 (asset management) regulated activities on 25 July 2018.
5. WSL was granted a licence by the SFC to conduct Type 1 (dealing in securities) regulated activity on 23 August 2018.

¹ Xie was also the sole owner of the entity which wholly owned WAML and WSL.

² Xie is prohibited from (i) applying to be licensed or registered; (ii) applying to be approved under section 126(1) of the SFO as a responsible officer of a licensed corporation; (iii) 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 (BO); and (iv) seeking through a registered institution to have his name entered in the register maintained by the Monetary Authority under the BO as that of a person engaged by the registered institution in respect of a regulated activity.

6. Xie was not a licensed person under the SFO. However, he was a person involved in the management of WAML's and WSL's business and therefore came within the definition of "regulated persons" under section 194(7)(c) of the SFO.
7. On 18 September 2018, WAML and WSL reported to the SFC their liquid capital deficits.
8. The SFC suspended WAML's and WSL's licences on 30 October 2018 and revoked their licences on 28 September 2020 following their applications.

Providing false and misleading information in WAML's and WSL's licence applications

9. Section 116(3)(b) of the SFO provides that the SFC shall refuse to grant a licence to carry on a regulated activity unless the applicant satisfies the SFC that it will be able to comply with the FRR.
10. Rules 4 and 6 of the FRR require a licensed corporation to maintain at all times a minimum amount of required liquid capital. WAML and WSL were each required to maintain a minimum liquid capital of \$3 million.
11. The licence applications for WAML and WSL were handled by the Consultant engaged by Xie.
12. In support of the licence applications and to show that WAML and WSL had the requisite liquid capital to fulfil the FRR requirements for qualifying for a licence, the Consultant provided the following information to the SFC:
 - (a) for WAML, a "Supplement 7 – Financial Resources" form (**Supplement 7**) stating that WAML held liquid capital of \$5 million as at 12 July 2018 together with a copy of a photograph of WAML's bank account summary (**WAML Account Summary**) showing WAML held \$5.019 million in cash in its bank accounts; and
 - (b) for WSL, a Supplement 7 stating that WSL held liquid capital of \$9.83 million as at 13 August 2018 together with a screen capture of WSL's bank account summary (**WSL Account Summary**) showing WSL held \$9.83 million in cash in its bank accounts.
13. The SFC's investigation found that Xie:
 - (a) was the only person with control of, and access to, the bank accounts of WAML and WSL;
 - (b) provided the WAML Account Summary and the WSL Account Summary to the Consultant knowing the information would be used to support WAML's and WSL's licence applications; and
 - (c) orchestrated the fund movements in the bank accounts of WAML and WSL to window-dress their liquid capital positions prior to the grant of their licences as follows:

WAML

- (i) on 12 July 2018, to meet the capital requirements under the FRR, Xie transferred \$2 million to WAML's bank account which increased its bank balance to HK\$5.019 million with an excess liquid capital of \$2 million³;
- (ii) Xie then took a photograph of the WAML Account Summary before withdrawing \$4.5 million from WAML's bank account, which reduced its bank balance to \$0.519 million and resulted in a liquid capital deficit of \$2.48 million for WAML;
- (iii) later on the same day, and after Xie had already withdrawn the \$4.5 million, Xie sent the photograph of the WAML Account Summary to the Consultant but did not inform the Consultant or the SFC about his earlier withdrawal;

WSL

- (iv) on 13 August 2018, Xie transferred \$9 million to WSL's bank account which increased its bank balance to \$9.83 million with an excess liquid capital of \$6.83 million;
- (v) on the same day, Xie took a photograph of the WSL Account Summary and sent it to the Consultant; and
- (vi) two days later, on 15 August 2018, Xie withdrew \$9.04 million from WSL's bank account which reduced its bank balance to \$0.57 million and resulted in a liquid capital deficit of \$2.43 million for WSL. Xie did not inform the Consultant or the SFC about the withdrawal.

14. In the circumstances, had the funds withdrawn by Xie been excluded from the liquid capital calculations of WAML and WSL, their applications for licences to carry on regulated activities would have been denied due to their inability to fulfil the applicable FRR requirements.

Liquid capital deficits of WAML and WSL and failures to notify the SFC

15. Section 146(1) of the SFO requires a licensed corporation to notify the SFC as soon as reasonably practicable when it becomes aware of its inability to maintain financial resources specified by the FRR. Rule 55(1) of the FRR also requires a licensed corporation to notify the SFC as soon as reasonably practicable and in any event within one business day of becoming aware of its liquid capital falling below 120% of the required level.
16. After the grant of WAML's and WSL's licences, Xie withdrew funds from their bank accounts for his own use which resulted in their liquid capital deficits varying from \$1.58 million to \$3 million from July to October 2018⁴.

³ WAML represented that the remaining \$19,000 was payable to its shareholder and related party.

⁴ WAML's liquid capital was in deficit for the periods from 25 to 30 July 2018, 13 to 14 August 2018 and 30 August 2018 to 30 October 2018. WSL's liquid capital was in deficit from 23 to 26 August 2018 and 30 August 2018 to 30 October 2018.

17. WAML and WSL also failed to notify the SFC their inability to maintain sufficient liquid capital until 18 September 2018.

Xie's responsibility for WAML's and WSL's misconduct

18. 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.
19. Xie was the only person with access to, and authority to operate WAML's and WSL's bank accounts, and the fund movements in WAML's and WSL's bank accounts were orchestrated entirely by him.
20. Despite repeated requests from WAML's and WSL's staff members, Xie denied them access to their bank accounts which, in turn, prevented them from monitoring and knowing the true financial condition of WAML and WSL. Consequently, WAML's and WSL's staff members had no knowledge of WAML's and WSL's true financial condition and their failure to maintain the required minimum liquid capital.
21. The SFC considers that the misconduct of WAML and WSL in contravening the relevant provisions of the SFO and the FRR as set out in paragraphs 10 and 15 was the direct result of Xie's consent or connivance, and should be regarded as misconduct on his part under section 193(2) of the SFO.

Conclusion

22. The SFC concludes that Xie's conduct casts serious doubt on his reputation, character and reliability and calls into question his fitness and properness to be a regulated person.
23. In deciding the disciplinary sanction set out in paragraph 1 above, the SFC took into account all relevant circumstances including:
 - (a) Xie's honesty and integrity had been impugned;
 - (b) a strong deterrent message to the industry on zero tolerance of attempt to mislead the SFC;
 - (c) WAML and WSL had not conducted any regulated activities before the suspension of their licences and no clients were prejudiced by their regulatory failures; and
 - (d) Xie's otherwise clean disciplinary record.