

STATEMENT OF DISCIPLINARY ACTION

The Disciplinary Action

1. The Securities and Futures Commission (**SFC**) has:
 - (a) revoked the licence of Axial Capital Management Limited (**Axial**)¹; and
 - (b) suspended Eugene Chung (**Chung**)², a responsible officer of Axial, for 5 years from 7 September 2023 to 6 September 2028,pursuant to section 194 of the Securities and Futures Ordinance (**SFO**).
2. The disciplinary actions are taken in relation to:
 - (a) Axial's prolonged failure to maintain the minimum required liquid capital pursuant to the Securities and Futures (Financial Resources) Rules (**FRR**) and to notify the SFC of the same, as well as its repeated failure to submit its financial returns pursuant to the FRR (**FRR returns**) and the audited financial statements and other documents that a licensed corporation is required to submit under the SFO (**Annual Documents**) within the prescribed time; and
 - (b) Chung's failure to discharge his duty as a responsible officer and member of the senior management of Axial.

Summary of Facts

3. For a continuous period of 19 months from March 2019 to October 2020, Axial failed to maintain the minimum required liquid capital (**RLC**) pursuant to the FRR. The SFC was not aware of Axial's RLC deficit until October 2020 because:
 - (a) Axial delayed notifying the SFC of its insufficient liquid capital until 27 October 2020.
 - (b) Axial did not submit its FRR returns for the 6-month periods ending 30 June 2019 (**June 2019 FRR Return**), 31 December 2019 (**December 2019 FRR Return**) and 30 June 2020 (**June 2020 FRR Return**) until October 2020 to January 2021.
 - (c) Axial also did not submit the Annual Documents for the year ended 31 December 2019 (**2019 Annual Documents**) until October 2020.

¹ Axial is licensed to carry on Type 9 (asset management) regulated activity under the SFO.

² Chung has been accredited to Axial and approved to act as its responsible officer in respect of Type 9 regulated activity since June 2005. Chung has been Axial's Manager-In-Charge of all core functions namely Overall Management Oversight, Key Business Line, Operational Control and Review, Risk Management, Finance and Accounting, Information Technology, Compliance and Anti-money Laundering and Counter-Terrorist Financing since April 2018.

4. The SFC's investigation found that as early as April 2019, Axial and Chung became aware of Axial's liquid capital falling below the required level, as well as the need to notify the SFC. However, Axial neither reported its RLC deficit to the SFC nor rectify it.
5. In July 2019 and January 2020, the SFC made multiple attempts to follow up with Axial on its overdue June 2019 and December 2019 FRR Returns, but received no response from Axial.
6. By 30 April 2020, Axial's 2019 Annual Documents, including its audited accounts, the Business and Risk Management Questionnaire (**BRMQ**) and the Compliance Report, had also become due but were not submitted by Axial. The SFC followed up with Axial on multiple occasions but only received a response from Axial on 6 July 2020, when it proffered some unacceptable explanations for its failure to submit the 2019 Annual Documents.
7. In July 2020:
 - (a) the SFC requested Axial/Chung to confirm on 4 occasions whether there had been any FRR breaches since December 2018 (when it last submitted an FRR return) but they responded evasively on each occasion; and
 - (b) Axial's June 2020 FRR Return had also become overdue, and despite the SFC's request for it to be submitted as soon as practicable, Axial only provided the SFC with a holding response the following month.
8. In August 2020, the SFC issued a letter to Axial and requested that Axial:
 - (a) directly respond to its questions on its financial status;
 - (b) confirm whether there had been any breach of the required liquid capital requirements under the FRR since 31 December 2018; and
 - (c) submit the outstanding June 2019, December 2019 and June 2020 FRR Returns and 2019 Annual Documents immediately.
9. Axial did not address the questions raised in the aforementioned letter, and only:
 - (a) submitted the outstanding June 2019, December 2019 and June 2020 FRR Returns and 2019 Annual Documents 6 to 15 months after they were due for submission;
 - (b) notified the SFC in October 2020 that it had a RLC deficit of \$42,000 as of June 2019; and
 - (c) rectified the RLC deficit in October 2020.
10. Subsequently, Axial's FRR returns for the 6-month periods ending 30 June 2021 (**June 2021 FRR Return**), 30 June 2022 (**June 2022 FRR Return**) and 31 December 2022 (**December 2022 FRR Return**), as well as its Annual Documents for the year ended 31 December 2021, were also submitted to the SFC out of time.

Breaches and reasons

Late submission of FRR returns

11. Section 56(3) of the FRR states that a licensed corporation which is licensed solely for Type 9 regulated activity and subject to the specified licensing condition, must, in respect of each period of 6 months at the end of which it remains licensed, being such period in a year ending at the end of the month of June or December, respectively, submit to the SFC its FRR return, no later than 3 weeks after the end of the period concerned (ie, on 21 July and 21 January respectively).
12. Axial engaged an external service provider for the preparation of its FRR returns. 3 days before the June 2019 FRR Return became due, the service provider sought Axial's instruction to submit the June 2019 FRR Return and reminded Axial that it was in breach of the financial resources requirements. Axial did not give the service provider instruction to submit the June 2019 FRR Return.
13. In early January 2020, shortly before the December 2019 FRR Return became due, the service provider sent Axial an invoice for, among other things, the preparation of the June 2019 and December 2019 FRR Returns. Axial did not settle the service provider's invoice promptly, and the service provider made it clear to Axial at the end of February 2020 that it had done nothing on Axial's June and December 2019 FRR Returns as its fees had not been paid.
14. It was only after Axial eventually settled the service provider's invoice in October 2020 that the June 2019, December 2019 and June 2020 FRR Returns were submitted to the SFC out of time in October 2020, November 2020 and January 2021 respectively. Subsequently, Axial also submitted the June 2021 FRR Return late in January 2022. In short, these FRR returns were submitted 5 to 15 months after the prescribed deadlines.
15. Axial's delay in submitting its FRR returns persisted notwithstanding the commencement of disciplinary proceedings against it in December 2022 – its June 2022 and December 2022 FRR Returns were only submitted to the SFC on 17 February 2023, ie, 6 months and 27 days after the respective submission deadlines.

Failure to maintain the required liquid capital and delay in notifying the SFC of the same

16. Section 4 of the FRR provides that a licensed corporation must at all times maintain financial resources in the amount required of it under Part 3 of the FRR.
17. Section 6(1) of the FRR states that a licensed corporation must at all times maintain liquid capital³ which is not less than its required liquid capital (ie, HK\$100,000 in the case of Axial as per Table 2 in Schedule 1 to the FRR).
18. Section 55(1) of the FRR states that a licensed corporation must notify the SFC in writing as soon as reasonably practicable and in any event within one business day of becoming aware that its liquid capital falls below 120% of its required liquid capital.

³ Under section 2 of the FRR, "*liquid capital*" means the amount by which the liquid assets of a licensed corporation exceed its ranking liabilities.

19. Section 146(1) of the SFO states that if a licensed corporation becomes aware of its inability to maintain, or to ascertain whether it maintains, financial resources in accordance with the specified amount requirements that apply to it, it shall as soon as reasonably practicable notify the SFC by notice in writing of that fact and immediately cease carrying on any regulated activity for which it is licensed.
20. According to the FRR returns submitted out of time by Axial to the SFC, Axial had required liquid capital deficits of \$42,000, \$69,000 and \$115,000 as of June 2019, December 2019 and June 2020 respectively.
21. The SFC investigation revealed that Axial actually had required liquid capital deficits ranging from \$26,490 to \$114,459 for a continuous period of nearly 19 months from March 2019 to October 2020⁴. As mentioned in paragraph 4 above, the SFC found that Axial and Chung became aware of Axial's liquid capital falling below the required level and the need to notify the SFC of the same as early as April 2019. However, Axial only reported the shortfall in required liquid capital to the SFC in writing 18 months later, on 27 October 2020, after the SFC's repeated enquiries about its liquid capital position since July 2020 (see paragraphs 7 to 9 above).
22. The SFC considers Axial's delay in notifying the SFC of its failure to comply with financial resources requirements to be deliberate given the prolonged period of inaction following Axial and Chung becoming aware of the required liquid capital deficit and the need to report it, as well as the evasive manner in which they responded to the SFC's repeated enquiries about Axial's liquid capital.

Failure to submit the Annual Documents on time

23. Section 156(1) of the SFO states that a licensed corporation shall (a) prepare such financial statements and other documents, for such periods, as are prescribed by rules made under section 397 of the SFO for the purposes of that section; and (b) submit the financial statements and other documents, together with an auditor's report, to the SFC not later than 4 months after the end of the financial year to which they relate.
24. Section 3(1) of the Securities and Futures (Accounts and Audit) Rules (**Account and Audit Rules**), which were made by the SFC under section 397 of the SFO, stipulates that for the purposes of section 156(1) of the SFO, the financial statements and other documents that should be submitted by a licensed corporation to the SFC in respect of each financial year are the audited accounts, FRR returns and BRMQ.
25. Under Section 4(1) of the Account and Audit Rules, the auditor of a licensed corporation is required to prepare the Compliance Report as part of the auditor's report
26. Axial's 2019 Annual Documents were due for submission on 30 April 2020. However, despite reminders that the SFC had sent to it (see paragraphs 6 and 8 above):
 - (a) The BRMQ was submitted 5 months late on 23 October 2020.
 - (b) The audited financial statements and Compliance Report were submitted 6 months late on 4 November 2020.

⁴ Axial rectified the breach by an injection of capital of US\$10,000 from Chung on 17 October 2020.

27. When the SFC commenced its disciplinary action against Axial in December 2022, the SFC had not received the 2021 Annual Documents, which had become due on 30 April 2022. The 2021 Annual Documents were eventually submitted to the SFC on 17 February 2023, more than 9 months after the submission deadline.

Breach of the Code of Conduct

28. As a licensed corporation, Axial is under a duty to act honestly, fairly, as well as with due skill, care and diligence, in the best interests of its clients and the integrity of the market under General Principles (**GP**) 1 and 2 of the Code of Conduct for Persons Licensed by or Registered with the SFC (**Code of Conduct**). According to GP 7, Axial should comply with all regulatory requirements applicable to the conduct of its business activities so as to promote the best interests of clients and the integrity of the market. It should also comply with, and implement and maintain measures appropriate to ensuring compliance with the law, rules, regulations and codes administered or issued by, among other regulatory authorities, the SFC, pursuant to paragraph 12.1 of the Code of Conduct.
29. Axial's failures cast serious doubt on its ability to carry on regulated activities competently, honestly and fairly, and call into question its fitness and properness to remain licensed by the SFC.

The SFC's findings

30. The failures of Axial and Chung set out above constitute breaches of:
- (a) GPs 1, 2, 7 and paragraph 12.1 of the Code of Conduct;
 - (b) sections 4, 6(1), 55(1) and 56(3) of the FRR; and
 - (c) sections 146(1) and 156(1) of the SFO.
31. Axial's failures were attributable to Chung's failures to discharge his duties as a responsible officer and a member of senior management of Axial, including his failure to ensure the maintenance of appropriate standards of conduct and adherence to proper procedures by Axial, in breach of GP 9 of the Code of Conduct, which provides that the senior management of a licensed corporation should bear primary responsibility for ensuring the maintenance of appropriate standards of conduct and adherence to proper procedures by the firm.

Conclusion

32. Having considered all relevant circumstances, the SFC is of the opinion that that Axial and Chung are guilty of misconduct and their fitness and properness to carry on regulated activities have been called into question.
33. In deciding the disciplinary sanction set out in paragraph 1 above, the SFC has taken into account all relevant circumstances of the case, including:
- (a) Axial's failure to maintain the required liquid capital and delay to notify the SFC of the failure were both prolonged;
 - (b) Axial repeatedly failed to submit its FRR returns and the Annual Documents on time;

- (c) Axial's flouting of the FRR regime threatens the integrity of the market because the regime provides significant statutory safeguards for investors, and enables the SFC to monitor the risks and liquidity level of licensed corporations;
- (d) the cooperation of Axial and Chung in resolving the SFC's concerns; and
- (e) Axial and Chung have an otherwise clean disciplinary record with the SFC.