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## SFC reprimands and fines Value Partners \$4 million

25 Jan 2017

The Securities and Futures Commission (SFC) has reprimanded Value Partners Limited (VPL) and Value Partners Hong Kong Limited (VPHKL) (collectively, Value Partners), and fined them \$2 million respectively for failures to comply with the regulatory requirements in managing two SFC-authorized funds (Notes 1 & 2).

The SFC found that the two funds, namely, Value Partners China Greenchip Fund Limited (Greenchip Fund) and Value Partners Greater China High Yield Income Fund (High Yield Fund), had issued shares in excess of their authorized share capital as provided in their Memorandum and Articles of Association (Notes 3 & 4).

In doing so, VPL and VPHKL have failed to manage the funds in accordance with their constitutive documents as required by the Code on Unit Trusts and Mutual Funds (Note 5).

The SFC also found that Value Partners did not report the incidents to the SFC until six months after they were uncovered.

The SFC considers the incidents serious as they called into question the validity of the shares issued to investors of the funds. In deciding the penalty, the SFC took into account that Value Partners:

- co-operated with the SFC in resolving the SFC's concerns;
- took actions to rectify the failures and there were no apparent investor losses (Note 6); and
- engaged an independent reviewer to conduct a review of Value Partners' internal control systems with respect to all SFC-authorized funds managed by Value Partners.

End

Notes:

1. VPL is licensed under the Securities and Futures Ordinance (SFO) to carry on Type 1 (dealing in securities), Type 4 (advising on securities), Type 5 (advising on futures contracts) and Type 9 (asset management) regulated activities.
2. VPHKL is licensed under the SFO to carry on Type 1 (dealing in securities), Type 4 (advising on securities), Type 5 (advising on futures contracts) and Type 9 (asset management) regulated activities.
3. VPL and VPHKL are the respective investment managers of the Greenchip Fund and the High Yield Fund. The funds are open-ended mutual fund corporations established under the laws of Cayman Islands.
4. With respect to the Greenchip Fund, the number of issued shares exceeded the number of authorized shares during the period from 1 June 2015 to 29 February 2016. In respect of the High Yield Fund, the number of issued shares exceeded the number of authorized shares during the period from 15 November 2012 to 14 August 2016.
5. Paragraph 5.10(a) of the Code on Unit Trusts and Mutual Funds provides that a management company must manage the scheme in accordance with the scheme's constitutive documents in the best interest of the holders.
6. Value Partners had, among other things, increased the authorised share capital of the two funds in their Memorandum and Articles of Association through ordinary resolutions of their shareholders.

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

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## STATEMENT OF DISCIPLINARY ACTION

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### The Disciplinary Action

1. The Securities and Futures Commission (**SFC**) has reprimanded Value Partners Limited<sup>1</sup> (**VPL**) and Value Partners Hong Kong Limited<sup>2</sup> (**VP HKL**) (collectively **Value Partners**), and fined them HK\$2 million each pursuant to section 194 of the Securities and Futures Ordinance (**SFO**).
2. The SFC found that, while acting as the investment managers of two SFC-authorized funds, VPL and VP HKL have failed to:
  - (a) manage the funds in accordance with their constitutive documents by issuing shares of the funds in excess of their authorized share capital; and
  - (b) report the non-compliance to the SFC in a timely manner.

### Summary of facts

3. VPL and VP HKL are the respective investment managers of Value Partners China Greenchip Fund Limited (**Greenchip Fund**) and Value Partners Greater China High Yield Income Fund (**High Yield Fund**) (collectively “the **Funds**”). The Funds are open-ended mutual fund corporations established under the laws of Cayman Islands. The Greenchip Fund and the High Yield Fund were authorized by the SFC in March 2007 and June 2013 respectively.
4. On 12 April 2016, Value Partners reported to the SFC that shares of the Greenchip Fund and the High Yield Fund have been issued to investors in excess of their respective authorized share capital due to administrative and operational oversights (the “**Incidents**”).

### Issue of shares in excess of authorized share capital

#### *Greenchip Fund*

5. As provided in its Memorandum and Articles of Association, the Greenchip Fund’s authorized share capital was set at HK\$20,000,000 divided into 200,000,000 shares of a nominal or par value of HK\$0.10 each.
6. During the period from 1 June 2015 to 29 February 2016, the number of issued shares of the Greenchip Fund exceeded the number of authorized shares of the Greenchip Fund. As at 31 December 2015, the number of issued shares of the Greenchip Fund totalled 206,127,334 shares. This exceeded the number of authorized shares available for issue by 6,127,334 shares.

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<sup>1</sup> VPL is licensed under the SFO to carry on Type 1 (dealing in securities), Type 4 (advising on securities), Type 5 (advising on futures contracts) and Type 9 (asset management) regulated activities.

<sup>2</sup> VP HKL is licensed under the SFO to carry on Type 1 (dealing in securities), Type 4 (advising on securities), Type 5 (advising on futures contracts) and Type 9 (asset management) regulated activities.

### *High Yield Fund*

7. As provided in its Memorandum and Articles of Association, the High Yield Fund's authorized share capital was set at US\$50,000 divided into 100 Administrative Shares of a nominal or par value of US\$1.00 each and 49,900,000 Participating Shares of a nominal or par value of US\$0.001 each.
8. During the period from 15 November 2012 to 14 August 2016, the number of issued shares of the High Yield Fund exceeded the number of authorized shares of the High Yield Fund. As at 12 April 2016, the number of Participating Shares in issue was 864,178,349. This exceeded the number of authorized shares available for issue by 814,278,349 Participating Shares.

### Reporting of the Incidents to the SFC

9. Value Partners first identified the Incidents in October 2015 but did not act upon them since they considered that the Incidents were administrative in nature, which did not impact the economic interests of the investors.
10. The auditors of the Funds subsequently discovered the Incidents during the course of preparing the Funds' annual financial statements. Following the advice of the auditors, Value Partners reported the matters to the SFC in April 2016.

### **Breaches and reasons for actions**

11. Under General Principle 6 (Diligence) of the Overarching Principles Section of the SFC Handbook for Unit Trusts and Mutual Funds, Investment-Linked Assurance Schemes and Unlisted Structured Investment Products (**Products Handbook**), product providers are required to discharge their functions with due skill, care and diligence.
12. Paragraph 5.10(a) of the Code on Unit Trusts and Mutual Funds of the Products Handbook (**Code**) provides that a management company must manage the scheme in accordance with the scheme's constitutive documents in the best interest of the holders.
13. Paragraph 4.1(c) of the Products Handbook provides that the product providers shall inform the SFC promptly should there be any material breach of the Products Handbook.
14. The Funds are constituted by their Memorandum and Articles of Association. The constitutive documents govern the formation and the operation of the Funds. Value Partners must act in accordance with the terms of the constitutive documents in performing their duties as the investment managers.
15. In issuing shares in excess of the number of authorized share capital of the Funds, Value Partners have failed to manage the Funds in accordance with the Funds' constitutive documents.
16. While Value Partners considered that the economic interests of investors in the Funds have not been prejudiced by the Incidents, the SFC considers the Incidents serious as they called into question the validity of the shares issued to investors of the Funds. Value Partners ought to have promptly informed the SFC about the Incidents. However, Value Partners did not report the Incidents to the SFC until six months after they were discovered.

17. In view of the above, Value Partners have failed to act with due skill, care and diligence in the management of the Funds. Value Partners' conduct has fallen short of the standards set out in General Principle 6 (Diligence) of the Products Handbook, and is in breach of paragraph 4.1(c) of the Products Handbook and 5.10(a) of the Code.

### **Conclusion**

18. In reaching the decision to take disciplinary actions set out in paragraph 1 against Value Partners, the SFC has taken into account that Value Partners:
  - (a) co-operated with the SFC in resolving the SFC's concerns;
  - (b) took actions to rectify the failures and there were no apparent investor losses<sup>3</sup>; and
  - (c) engaged an independent reviewer to conduct a review of Value Partners' internal control systems with respect to all SFC-authorized funds managed by Value Partners.

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<sup>3</sup> Value Partners had, among other things, increased the authorised share capital of the Funds in their Memorandum and Articles of Association through ordinary resolutions of the Funds' shareholders.