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SFC bans W. Falcon Asset Management (Asia) Limited's former chairman for life and ex-CFO for three years

17 Dec 2019

The Securities and Futures Commission (SFC) has banned Mr Ang Wing Fung, the former chairman of W. Falcon Asset Management (Asia) Limited (Falcon), and its former chief financial officer and company secretary Mr Chan Kam Wah, from re-entering the industry for life and three years, respectively, in connection with their roles in window-dressing the liquid capital of Falcon (Note 1).

Ang was the mastermind of the window-dressing scheme and its operation was facilitated by Chan.

The disciplinary action against Ang and Chan follows the SFC's revocation of the licence of Falcon in February 2019 for window-dressing its liquid capital and other failures. The SFC also found that Falcon provided the SFC with false or misleading information in its licence application and financial returns between June 2014 and June 2017 (Note 2). Ang also failed to notify the SFC of Falcon's insufficient liquid capital and his resignation as a director.

Under Ang's scheme, Falcon's month-end liquid capital was window-dressed by including in its liquid capital computation the amount of cheques he drew on certain bank accounts, which were subsequently dishonoured. This practice was adopted from the time of Falcon's SFC licence application in June 2014. Had the amount of these cheques issued by Ang been excluded, Falcon would have been denied a licence to carry on regulated activities due to a liquid capital deficit at the time of its licence application and at each of the month-ends over a three-year period.

Chan, who reported to Ang, had full access to various bank accounts of which Ang was a signatory. As the person in charge of accounting, he was fully aware of the true financial condition of Falcon. He was also aware that cheques signed by Ang would certainly be dishonored upon presentation due to insufficient funds in the bank accounts on which they were drawn and closure of some of these accounts. But he continued to take part in the window-dressing scheme to disguise Falcon's failure to maintain sufficient capital as required for as long as possible.

Ang subsequently resigned from Falcon on 23 October 2017, but he failed to provide the SFC with written notification of such resignation within seven business days as required.

The SFC is of the view that the misconduct of Falcon was a result of Ang and Chan's consent or connivance, or attributable to neglect on their part as members of senior management, and should also be regarded as misconduct on their part. Their failures cast serious doubt on their ability to carry on regulated activities competently and call into question their fitness and properness to be licensed by the SFC.

In deciding the penalty, the SFC took into account all relevant circumstances, including:

- the honesty and integrity of Ang and Chan have been impugned;
- their egregious and serious misconduct caused Falcon to damage investors' and the public's confidence in market integrity;
- their otherwise clean disciplinary record; and
- the need to prohibit them from the industry in order to protect the investing public.

End

Notes:

1. Ang and Chan were not licensed persons under the Securities and Futures Ordinance. Both come within the definition of a "regulated person" which include a person who is or at the relevant time was a person involved in the management of the business of a licensed corporation.
2. Falcon's licence to carry on regulated activities was revoked by the SFC. Please refer to the SFC's press release dated [4 February 2019](#).

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

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證監會分別規定年興行資產管理（亞洲）有限公司前主席及前首席財務官終身和三年內不得重投業界

2019年12月17日

證券及期貨事務監察委員會（證監會）因年興行資產管理（亞洲）有限公司（年興行）前主席洪榮鋒（男）及前首席財務官兼公司秘書陳錦華（男）涉及粉飾年興行的速動資金，分別規定二人終身和三年內不得重投業界（註1）。

洪是粉飾速動資金計劃的主謀，而陳則協助執行該計劃。

證監會對洪及陳採取上述紀律行動前，已於2019年2月就年興行粉飾其速動資金及其他缺失，撤銷該公司的牌照。證監會亦發現，年興行於2014年6月至2017年6月期間，在其牌照申請書及財務申報表內向證監會提供虛假或具誤導性的資料（註2）。洪亦沒有將年興行速動資金不足的情況和其辭任董事一事通知證監會。

在洪的策劃下，他透過一些銀行帳戶開出多張其後無法兌現的支票，並將有關金額包括在年興行的速動資金計算表內，從而粉飾該公司的月底速動資金。他自年興行於2014年6月向證監會申請牌照之時起便已採取這種做法。假如將洪開出支票的金額剔除，年興行便會因在申請牌照之時及三年期間內每個月月底出現速動資金短欠而不獲發從事受規管活動的牌照。

陳當時為洪的下屬，並能全面查閱由洪作為簽署人的多個銀行帳戶。身為會計事務的負責人，陳完全知悉年興行的真實財務狀況。他亦明知由洪簽發的支票在過戶時會因用以開票的銀行帳戶內資金不足或部分帳戶已被關閉而無法兌現，但他卻繼續參與粉飾速動資金計劃，盡量拖長為年興行掩飾其未能維持足夠資金一事的時間。

洪其後在2017年10月23日辭去年興行的職務，但他沒有按規定在七個營業日內就辭任一事向證監會發出書面通知。

證監會認為，年興行的失當行為乃因洪及陳的同意或縱容所致，或可歸因於二人作為高級管理人員的怠忽，故亦應視為他們的失當行為。二人的缺失令人嚴重懷疑他們能否稱職地進行受規管活動，以及令人質疑他們是否成為證監會持牌人的適當人選。

證監會在釐定罰則時，已考慮到所有相關情況，包括：

- 洪和陳的誠信及操守令人置疑；
- 二人的失當行為極其惡劣及嚴重，使年興行損害到投資者及公眾對市場廉潔穩健的信心；
- 他們過往並無遭受紀律處分的紀錄；及
- 有需要禁止二人重投業界，以保障投資大眾。

完

備註：

1. 洪及陳並非《證券及期貨條例》下的持牌人，但均符合“受規管人士”的定義。“受規管人士”包括屬或曾在有關時間屬參與持牌法團的業務的管理的人。
2. 年興行進行受規管活動的牌照已被證監會撤銷。請參閱證監會2019年2月4日的新聞稿。

[有關紀律行動聲明載於證監會網站](#)

最後更新日期：2019年12月17日

STATEMENT OF DISCIPLINARY ACTION

The Disciplinary Action

1. The Securities and Futures Commission (**SFC**) has prohibited Ang Wing Fung (**Ang**), the former chairman and a director of W. Falcon Asset Management (Asia) Limited (**Falcon**) and Chan Kam Wah, its chief financial officer / financial controller and company secretary (**Chan**) from doing all or any of the following in relation to any regulated activities for life and 3 years respectively pursuant to section 194(1)(iv) of the Securities and Futures Ordinance (**SFO**):
 - (a) applying to be licensed or registered;
 - (b) applying to be approved under section 126(1) of the SFO as a responsible officer (**RO**) of a licensed corporation;
 - (c) 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; and
 - (d) seeking through a registered institution to have their names entered in the register maintained by the Monetary Authority under section 20 of the Banking Ordinance as that of a person engaged by the registered institution in respect of a regulated activity.

Summary of facts

2. Falcon was granted a licence by the SFC to carry on Types 1, 4 and 9 regulated activities on 17 July 2014. Less than two months later, Ang became the sole owner of the entity which wholly owned Falcon. Chan was in charge of accounting, company secretarial and compliance-related work at Falcon and reported mainly to Ang. Both Ang and Chan were not licensed persons under the SFO. However, they were persons involved in the management of Falcon's business and hence came within the definition of "regulated persons" under section 194(7)(c) of the SFO.
3. The SFC found that both Ang and Chan had caused Falcon to, during the period between June 2014 and June 2017, firstly, provide false or misleading information in its licence application and financial returns (**FRs**); and secondly, fail to maintain sufficient liquid capital and to notify the SFC of its inability to do so. Ang also failed to give the SFC notice of his resignation as a director.
4. Falcon had a practice of window-dressing its month-end liquid capital. This was made possible by depositing cheques signed by Ang which were included in the bank balance amount of the relevant FRs submitted to the SFC which were in turn included in Falcon's liquid capital computation. However, such cheques were dishonoured upon presentation on the next business day. The practice had been adopted since the time of the application of Falcon's licence. If Falcon's liquid capital did not include the amount of the dishonoured cheques,

it would have firstly, been denied a licence to carry on regulated activities; and secondly, had a liquid capital deficit on each of those month-end dates for 3 years from June 2014.

5. On 7 July 2017, a restriction notice (**RN**) was issued to prohibit Falcon from carrying on all regulated activities, disposing of or dealing with any relevant property in any manner without the SFC's prior written consent, except for the return of any client money, client securities or any other client assets held by it as directed by the relevant clients. The SFC's decision to issue an RN followed a self-report by Falcon that its liquid capital had dropped below the amount required under the Securities and Futures (Financial Resources) Rules (**FRR**). This was uncovered as a result of an RO being notified of a dishonoured cheque issued by Ang in favour of Falcon.

Breaches and reasons

6. Ang was the mastermind of the window-dressing scheme whilst Chan facilitated it. Ang resigned from Falcon on 23 October 2017. The SFC did not receive from Ang either notice of Falcon's insufficient liquid capital or notification about his resignation as a director. The disciplinary action against Ang and Chan was based upon contravention of sections 135, 146, 383 and 384 of the SFO and rules 6 and 55 of the FRR.

Provision of false and misleading information in Falcon's licence application

7. Under section 383(1) of the SFO, a person commits an offence if he either makes a representation that is false or misleading in a material particular, or he knows that, or is reckless as to whether the representation is false or misleading in a material particular.
8. In support of Falcon's licence application, Chan prepared firstly, a "supplement 7 - financial resources" form stating it had excess liquid capital in the sum of HKD1.9 million, and secondly, a copy deposit slip showing that a cheque for the sum of HKD4 million was deposited on 30 June 2014. Ang caused Falcon to submit both documents to the SFC. By doing so, Falcon held out that it had the requisite liquid capital to fulfil the requirements for qualifying for a licence.
9. In addition to the HKD4 million cheque, the supplement form also took into account another cheque in the sum of HKD990,000 in arriving at the figure of HKD1.9 million for excess capital. Both cheques were dishonoured upon presentation. In short, Ang and Chan caused Falcon to provide information in its licence application which was false and misleading.

Provision of false and misleading information in the FRs and failure to maintain sufficient liquid capital

10. Section 56(1) of the FRR requires a licensed corporation to submit to the SFC its FR in respect of each month end. The FR shall include, among other things, the month-end liquid capital computation of the licensed corporation. Under section 384(1) of the SFO, a person commits an offence if he, either in purported compliance with the SFO, provides to the SFC any information which is false or misleading in a material particular, or he knows that, or is reckless as to whether the information is false or misleading in a material particular. Under rule 6 of the FRR, a licensed corporation shall at all times maintain

liquid capital which is not less than its required liquid capital. The required amount for Falcon was HKD3 million.

11. Between 2014 and 2017, Falcon submitted a total of 28 FRs each containing a computed amount of liquid capital which purportedly exceeded the required minimum. According to the computation prepared by Falcon, the major component of its liquid capital was its “bank balance held in other accounts and cash in hand”. Such bank balance amount included 38 cheques issued by Ang (30 of which were prepared by Chan or his subordinate) in favour of Falcon and were deposited at month end into its bank accounts (**38 Cheques**).
12. The 38 Cheques were dishonoured upon presentation. Had the amounts of such cheques been excluded from the computation, Falcon would have liquid capital deficit. Ang and Chan caused Falcon to provide false and misleading information in the FRs as it failed to maintain sufficient liquid capital.

Failure to notify the SFC of insufficient liquid capital

13. Section 146 of the SFO provides that if a licensed corporation becomes aware of its inability to maintain sufficient liquid capital, it shall notify the SFC in writing as soon as reasonably practicable. According to rule 55 of the FRR, a licensed corporation shall notify the SFC as soon as reasonably practicable and within one business day of it becoming aware of certain matters including its liquid capital had fallen below 120% of its required liquid capital and any information contained in any of its previous FRs had become false or misleading in a material particular.
14. Notwithstanding such requirements, Falcon failed to notify the SFC of either its inability to maintain liquid capital, its liquid capital had fallen below 120% of its required liquid capital, or the information contained in its FRs had become false or misleading in a material particular. Ang being the person who orchestrated the window-dressing scheme enlisted the aid of Chan to perpetuate it. As such, they deliberately refrained from notifying the SFC of Falcon’s insufficient liquid capital.

Failure to notify the SFC of cessation of a director

15. Section 135(6) of the SFO provides that where a person becomes or ceases to be a director of a licensed corporation, both the person and corporation shall provide the SFC with such notification together with certain details within 7 business days.
16. The SFC did not receive Ang’s notification about his resignation as a director.

Breach of the Code of Conduct

17. 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.
18. Ang was the sole authorised signatory of the accounts on which the 38 Cheques were drawn. The 38 Cheques were deposited into Falcon’s

accounts at Dah Sing Bank (**DSB**). Apart from Ang, Chan also had full access to Falcon's accounts at DSB and was therefore privy to knowledge about the true financial condition of Falcon. Given Chan's accounting background and professional qualifications, he was fully aware of the implications and pitfalls of the window-dressing scheme engineered by Ang. Chan took part in disguising Falcon's failure to maintain sufficient capital so that Falcon could hold out the facade of compliance with the FRR for as long as possible.

19. If Ang and Chan were persons licensed by the SFC, their conduct would have been inconsistent with General Principle 1 (**GP**) of the Code of Conduct for Persons Licensed by or Registered with the SFC (**Code of Conduct**) which imposed a duty on one to act honestly, fairly, in the best interests of its clients and the integrity of the market. According to GP 9 and paragraph 1.3 of the Code of Conduct, Ang and Chan, as members of senior management of Falcon, bore primary responsibility for ensuring the maintenance of appropriate standards of conduct and adherence to proper procedures by Falcon.

Conclusion

20. The SFC concludes that the misconduct of Falcon was a result of Ang and Chan's consent or connivance, or attributable to neglect on their part as members of senior management, and should also be regarded as misconduct on their part. The above failures cast serious doubt on the ability of Ang and Chan to carry on regulated activities competently, honestly and fairly, and call into question their fitness and properness as regulated persons.
21. In deciding the disciplinary sanction set out in paragraph 1, the SFC has taken into account all the circumstances of this case, including:
 - the honesty and integrity of Ang and Chan have been impugned;
 - their egregious and serious misconduct caused Falcon to damage investors' and the public's confidence in market integrity;
 - their otherwise clean disciplinary record; and
 - the need to prohibit them from the industry in order to protect the investing public.

紀律行動聲明

紀律行動

1. 證券及期貨事務監察委員會（**證監會**）依據《證券及期貨條例》（**該條例**）第 194(1)(iv)條，分別規定年興行資產管理（亞洲）有限公司（**年興行**）前主席兼董事洪榮鋒（**洪**）及該公司前首席財務官／財務總監兼公司秘書陳錦華（**陳**）終身和三年內不得就任何受規管活動作出以下所有或其中任何事情：
 - (a) 申請牌照或註冊；
 - (b) 申請根據該條例第 126(1)條獲核准成為持牌法團的負責人員；
 - (c) 申請根據《銀行業條例》第 71C 條獲給予同意以或繼續以註冊機構的主管人員的身分行事；及
 - (d) 透過註冊機構，尋求名列於金融管理專員根據《銀行業條例》第 20 條備存的紀錄冊並顯示他們就某類受規管活動受聘於該機構。

事實摘要

2. 年興行在 2014 年 7 月 17 日獲證監會發牌進行第 1、4 及 9 類受規管活動。在不到兩個月後，洪成為一家全資擁有年興行的實體的唯一擁有人。陳當時在年興行掌管會計、公司秘書及合規的相關工作，並主要向洪作出匯報。洪及陳並非該條例下的持牌人。然而，他們是參與年興行業務的管理的人，因此屬於該條例第 194(7)(c)條所界定的“受規管人士”。
3. 證監會發現，洪及陳於 2014 年 6 月至 2017 年 6 月期間促使年興行干犯以下事宜：一是在其牌照申請書及財務申報表（**財務申報表**）內提供虛假或具誤導性的資料；及二是未能維持足夠的速動資金，也沒有將此情況通知證監會。洪亦沒有就其辭任董事一事通知證監會。
4. 年興行曾慣常地粉飾其月底速動資金，其做法是存入由洪簽發的支票，而這些支票的金額會被計入呈交予證監會的有關財務申報表內的銀行結餘款額，繼而被包括在年興行的速動資金狀況計算表內。然而，該等支票在下一個營業日過戶時卻無法兌現。年興行自申請牌照之時起便已採取這種做法。若年興行的速動資金不包括該等無法兌現的支票，首先該公司不會獲發從事受規管活動的牌照，其次該公司在 2014 年 6 月起三年內各有關月結日便會出現速動資金短欠。
5. 證監會於 2017 年 7 月 7 日發出限制通知書，禁止年興行在未獲證監會事先書面同意的情況下從事所有受規管活動及以任何方式處置或處理任何有關財產，惟依照有關客戶的指示歸還該公司持有的任何客戶資金、客戶證券或任何其他客戶資產除外。證監會在接獲年興行的自行匯報，指其速動資金低於《證券及期貨（財政資源）規則》（**《財政資源規則》**）所規定的數額後，決定發出限制

通知書。此事是在一名負責人員接獲通知指一張由洪所發出、以年興行為收款人的支票無法兌現後而被揭發的。

違規事項及採取紀律行動的理由

6. 洪是粉飾速動資金計劃的主謀，而陳則協助執行該計劃。洪於 2017 年 10 月 23 日辭去在年興行的職務。證監會並無接獲洪就年興行速動資金不足的情況或其辭任董事一事所發出的通知。是次針對洪及陳的紀律行動是基於他們違反該條例第 135、146、383 及 384 條和《財政資源規則》第 6 及 55 條的行為而作出的。

年興行在牌照申請書內提供虛假及具誤導性的資料

7. 根據該條例第 383(1)條，任何人作出在要項上屬虛假或具誤導性的陳述，或知道該陳述在要項上屬虛假或具誤導性，或罔顧該陳述是否在要項上屬虛假或具誤導性，即屬犯罪。
8. 為支持年興行提出的牌照申請，陳預備了兩份文件：首先是一份“補充文件 7—財政資源”表格，當中述明該公司擁有為數 190 萬港元的速動資金盈餘；其次是一份存款單副本，當中顯示一張為數 400 萬港元的支票在 2014 年 6 月 30 日被存入該公司的帳戶。洪促使年興行向證監會呈交該兩份文件。年興行藉此顯示其擁有符合有關申領牌照資格的規定所需的速動資金。
9. 除了上述 400 萬港元的支票外，有關補充文件在得出 190 萬港元的資金盈餘數字時，亦計及另一張為數 99 萬港元的支票。這兩張支票在過戶時均無法兌現。簡言之，洪及陳促使年興行在其牌照申請書內提供了虛假及具誤導性的資料。

在財務申報表內提供虛假及具誤導性的資料，以及未能維持足夠的速動資金

10. 《財政資源規則》第 56(1)條規定，持牌法團須就每月終結時的財務狀況向證監會呈交財務申報表，當中須載有（除其他事項外）在該月份終結時該持牌法團的速動資金的狀況的計算表。根據該條例第 384(1)條，任何人在看來是遵從該條例的規定時，向證監會提供在要項上屬虛假或具誤導性的資料，或知道該等資料在要項上屬虛假或具誤導性，或罔顧該等資料是否在要項上屬虛假或具誤導性，即屬犯罪。根據《財政資源規則》第 6 條，持牌法團須時刻維持的速動資金不得少於其規定速動資金。就年興行而言，規定金額為 300 萬港元。
11. 在 2014 年至 2017 年期間，年興行呈交了合共 28 份財務申報表，各自載有經計算所得看來是超逾規定最低金額的速動資金款額。根據年興行編製的計算表，其速動資金的主要組成部分是該公司“在其他帳戶內持有的銀行結餘及手頭現金”。有關銀行結餘款額包括由洪所發出、以年興行為收款人並在月底存入該公司銀行帳戶的 38 張支票（其中 30 張由陳或其下屬準備）（該 38 張支票）。
12. 該 38 張支票在過戶時全部無法兌現。假如將該等支票的金額剔出計算表，年興行便會出現速動資金短欠。由於年興行未能維持足夠的速動資金，洪及陳於是促使年興行在該等財務申報表中提供了虛假及具誤導性的資料。

沒有就速動資金不足通知證監會

13. 該條例第 146 條規定，如持牌法團察覺本身無能力維持足夠的速動資金，則該法團須在合理地切實可行的範圍內盡快以書面通知證監會。根據《財政資源規則》第 55 條，如持牌法團察覺有某些情況（包括其速動資金跌至低於其規定速動資金的 120%，及其過往任何財務申報表所載的資料已變成在要項上屬虛假或具誤導性的資料），則該法團須在合理地切實可行的範圍內盡快（但須於察覺有該情況後的一個營業日之內）通知證監會。
14. 儘管有該等規定，但年興行沒有通知證監會其無能力維持速動資金，其速動資金跌至低於其規定速動資金的 120%，或其財務申報表所載的資料已變成在要項上屬虛假或具誤導性的資料。洪作為粉飾速動資金計劃的策劃人，在執行該計劃時得到了陳的協助。故此，二人刻意不將年興行速動資金不足一事通知證監會。

沒有就董事終止職務通知證監會

15. 該條例第 135(6)條規定，凡任何人成為或終止擔任持牌法團的董事，則該人及該法團須在七個營業日內向證監會發出有關通知連同若干詳情。
16. 證監會並無接獲洪就其辭任董事一事發出的通知。

違反《操守準則》

17. 該條例第 193(2)(a)條訂明，如某中介人因作出某行為，而屬犯或曾在任何時間屬犯失當行為，而該行為是在以參與該法團的業務的管理的人身分行事的另一人的同意或縱容下發生，或是可歸因於該另一人的怠忽的，則該行為亦視為該另一人的失當行為。
18. 洪是用以開出該 38 張支票的帳戶的唯一獲授權簽署人。該 38 張支票被存入年興行於大新銀行開立的帳戶內。除了洪外，陳亦能全面查閱年興行的大新銀行帳戶，故此知道年興行的真實財務狀況。鑑於陳的會計背景及專業資格，他是完全知悉由洪策劃的粉飾速動資金計劃所帶來的影響及隱憂。陳參與掩飾年興行未能維持足夠資金一事，使年興行得以盡量拖長顯示其已遵從《財政資源規則》的假象的時間。
19. 假如洪及陳是證監會的持牌人，他們的行為便會與《證券及期貨事務監察委員會持牌人或註冊人操守準則》（《操守準則》）第 1 項一般原則相悖，而該原則對持牌人或註冊人施加了一項責任，要求他們以誠實、公平和維護客戶最佳利益得態度行事及確保市場廉潔穩健。根據《操守準則》第 9 項一般原則及第 1.3 段，洪及陳身為年興行的高級管理人員，對於確保年興行能夠維持適當的操守標準及遵守適當的程序，負有首要責任。

結論

20. 證監會認為年興行的失當行為乃因洪及陳的同意或縱容所致，或可歸因於二人作為高級管理人員的怠忽，故亦應視為他們的失當行為。上述缺失令人嚴重懷疑洪及陳能否稱職地、誠實地及公平地進行受規管活動，以及令人質疑他們作為受規管人士的適當人選資格。

21. 在決定採取第 1 段所述的紀律制裁時，證監會已考慮到本個案的所有相關情況，包括：
- 洪和陳的誠信及操守令人置疑；
 - 二人的失當行為極其惡劣及嚴重，使年興行損害到投資者及公眾對市場廉潔穩健的信心；
 - 他們過往並無遭受紀律處分的紀錄；及
 - 有需要禁止二人重投業界，以保障投資大眾。