

SFC reprimands and fines Adamas Asset Management (HK) Limited \$2.5 million

23 Dec 2019

The Securities and Futures Commission (SFC) has reprimanded and fined Adamas Asset Management (HK) Limited (Adamas) \$2.5 million for inadequate measures to ensure accurate and timely disclosure of notifiable interests in eight Hong Kong-listed company shares (Note 1).

The SFC found that **between February 2013 and March 2016**, Adamas had failed to disclose to The Stock Exchange of Hong Kong Limited (SEHK) and the relevant listed companies all notifiable interests in the shares of these Hong Kong-listed companies in the client portfolios it managed by filing 339 disclosure notices incorrectly or late (Notes 2 & 3).

The SFC considers Adamas had failed to implement appropriate procedures to ensure proper disclosure of notifiable interests in Hong Kong-listed corporations as required by the Code of Conduct (Notes 4 & 5).

In deciding the sanctions, the SFC took into account:

- the duration and extent of Adamas' failures;
- Adamas made a self-report to the SFC upon discovery of its disclosure failings;
- Adamas has taken remedial measures to improve its systems and controls; and
- Adamas' otherwise clean disciplinary record.

Adamas applied to the Securities and Futures Appeals Tribunal (SFAT) for a review of the SFC's sanction on 11 September 2019. Subsequently, Adamas discontinued its application and an order for costs was granted by the SFAT in favour of the SFC on 20 December 2019 (Note 6).

End

Notes:

1. Adamas is licensed under the Securities and Futures Ordinance (SFO) to carry on Type 9 (asset management) regulated activity.
2. At the material time, Adamas acted as an investment manager and/or investment advisor for a number of funds and invested in Hong Kong-listed shares on behalf of the funds.
3. Part XV of the SFO sets out the requirements for the disclosure of interests in the securities of listed corporations. A person who acquires an interest in or ceases to be interested in voting shares in a listed corporation, or a change occurs affecting a person's existing interest in shares in a listed corporation in specified circumstances, comes under a duty of disclosure. The specified circumstances are those where the person first acquires a notifiable interest, ceases to have a notifiable interest, has a notifiable interest but the percentage levels of his interest have changed or has a notifiable interest but the nature of his interest has changed. The notifiable percentage level for notifiable interests is 5% and the specified percentage level for changes to notifiable interests is 1%. Notification should be given to the SEHK and the listed corporation within three business days after the day on which the relevant event occurs.
4. General Principle 7 of the Code of Conduct for Persons Licensed by or Registered with the SFC (Code of Conduct) provides that a licensed corporation 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.
5. Paragraph 12.1 of the Code of Conduct provides that a licensed corporation should comply with, and implement and maintain measures appropriate to ensuring compliance with the law, rules, regulations and codes administered or issued by the SFC.
6. Please see SFAT Application No. 2 of 2019 published on the SFAT's website at www.sfat.gov.hk.

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

Page last updated : 23 Dec 2019

STATEMENT OF DISCIPLINARY ACTION

The Disciplinary Action

1. The Securities and Futures Commission (**SFC**) has reprimanded and fined Adamas Asset Management (HK) Limited (**Adamas**) \$2.5 million pursuant to section 194 of the Securities and Futures Ordinance (**SFO**).
2. The disciplinary action is taken in respect of Adamas' failure to implement adequate measures to ensure notifiable interests in shares of corporations listed on The Stock Exchange of Hong Kong Limited (SEHK) held in client portfolios it managed were properly disclosed in compliance with the applicable regulatory requirements.

Regulatory requirements on disclosure of notifiable interests

3. Section 310(1) of the SFO provides that where a person acquires an interest in, or ceases to be interested in, voting shares in a listed corporation; or any change occurs affecting a person's existing interest in shares in a listed corporation, then in the circumstances specified in section 313(1), he comes under a duty of disclosure.
4. Section 311 of the SFO provides that the interests to be taken into account for the purposes of the duty of disclosure arising under section 310 are those in voting shares in the listed corporation concerned.
5. Section 313(1) of the SFO provides that the circumstances referred to in section 310(1) are those where the person: (a) first acquires a notifiable interest; (b) ceases to have a notifiable interest; (c) has a notifiable interest but the percentage levels of his interest have changed; or (d) has a notifiable interest but the nature of his interest has changed.
6. Section 315 of the SFO provides that the notifiable percentage level for notifiable interests is 5% and the specified percentage level for changes to notifiable interests is 1%.
7. Section 322(5)(b) of the SFO provides, *inter alia*, that a person is taken to have an interest in shares if he is entitled to exercise any right conferred by the holding of the voting shares or control the exercise of any such right.
8. Section 322(6) of the SFO provides that a person is taken to be entitled to exercise or control the exercise of any right conferred by the holding of voting shares if he has a right the exercise of which would make him so entitled or he is under an obligation the fulfilment of which would make him so entitled.
9. Section 324 of the SFO provides, *inter alia*, that where a person comes under a duty of disclosure under section 310, he should give notification to the listed corporation concerned and the SEHK of the interests which he has, or ceases to have, in the voting shares of the listed corporation. The notification should be given at the same time or, if not practicable, one immediately after the other.

10. Section 325(1)(a) of the SFO provides that notification required by section 324 should be given within 3 business days after the day on which the relevant event occurs.

Failure to disclose notifiable interests in Hong Kong listed shares

11. Adamas is licensed by the SFC to carry on Type 9 (asset management) regulated activity since February 2013. It acted as an investment manager and / or investment advisor for a number of funds and invested in Hong Kong listed shares on behalf of the funds.
12. Adamas was responsible for preparing and filing disclosure notices with the SEHK and the relevant listed companies, disclosing notifiable interests in Hong Kong listed shares held by the funds managed by it and other related entities.
13. From February 2013 to March 2016 (**Relevant Period**), Adamas failed to properly disclose to the SEHK and the relevant listed companies all notifiable interests in eight Hong Kong listed shares held in client portfolios it managed. It failed to file 339 disclosure notices accurately or promptly in relation to 65 notifiable events during the Relevant Period.
14. Adamas made the following submissions in relation to its internal controls for monitoring notifiable interests and ensuring compliance with the disclosure requirements:
 - (a) it had engaged a third party service provider for compliance services including training, support and assistance in respect of Part XV of the SFO;
 - (b) written policies and procedures were in place since February 2013 including the Operations / Compliance Manual and the Operating Procedures Manual which were prepared by and updated by the third party service provider; and
 - (c) **since February 2013 Adamas' Operations Team used a portfolio management system, the Tradar PMS, to facilitate disclosure of notifiable interests.**
15. Notwithstanding the engagement of a third party service provider in March 2013, Adamas failed to disclose accurately or promptly all notifiable interests in **eight Hong Kong listed shares held in client portfolios** it managed in relation to 65 notifiable events during the Relevant Period.
16. Also, the use of **the portfolio management system which enabled changes to listed securities to be updated via an automatic data feed linked to Bloomberg,** and a dedicated Compliance Team to file the relevant regulatory disclosures, **did not prevent Adamas from filing 339 disclosure notices inaccurately or late during the Relevant Period.**
17. Prior to July 2015, Adamas' written policies and procedures did not contain a specific section on disclosure of notifiable interests and gave no clear guidance to members of its Operations team on how to identify and make disclosure to the SEHK and the relevant listed corporations for the purpose of Part XV of the SFO.

18. There also appears to be no clear delineation and documentation of the responsibilities of the Investment Team and Operations Team in relation to the monitoring and reporting of notifiable interests prior to July 2015. The gaps in the procedures were exacerbated by Adamas' lack of specific training on disclosure of notifiable interests prior to November 2015.
19. In July 2016, Adamas implemented certain remedial measures to ensure compliance with the disclosure requirements on notifiable interests. These measures were put in place subsequent to the SFC's investigation in an attempt to address its regulatory concerns.

Conclusion

20. Having considered all the circumstances, the SFC is of the view that Adamas is guilty of misconduct and / or is not a fit and proper person to remain licensed.
21. The SFC has decided to publicly reprimand and fine Adamas \$2.5 million in light of the seriousness of its regulatory breaches.
22. In coming to the decision to take disciplinary action against Adamas, the SFC has taken into account all the circumstances of this case, including:
 - the duration and extent of Adamas' failures;
 - Adamas' self-report to the SFC upon discovery of its failings;
 - Adamas has taken remedial measures to improve its systems and controls; and
 - Adamas' otherwise clean disciplinary record.

IN THE SECURITIES AND FUTURES APPEALS TRIBUNAL

IN THE MATTER OF a Decision made by the
Securities and Futures Commission under
section 194 of the Securities and Futures
Ordinance, Cap. 571

AND IN THE MATTER OF section 217 of the
Securities and Futures Ordinance, Cap. 571

BETWEEN

ADAMAS ASSET MANAGEMENT (HK) LIMITED

Applicant

and

SECURITIES AND FUTURES COMMISSION

Respondent

Tribunal: Mr. Michael Lunn, Chairman

Date of Determination: 20 December 2019

DECISION ON COSTS

A
B
C
D
E
F
G
H
I
J
K
L
M
N
O
P
Q
R
S
T
U
V

A
B
C
D
E
F
G
H
I
J
K
L
M
N
O
P
Q
R
S
T
U
V

1. By a Notice of Application for Review, dated 11 September 2019, the Applicant commenced these proceedings. Following a directions hearing on 9 October 2019, the Applicant filed an Amended Notice of Application for Review, dated 30 October 2019. By an order, dated 5 November 2019, the Tribunal fixed the hearing of the application on 24 to 28 February 2020 inclusive and gave related procedural directions.

2. By a letter dated 2 December 2019, to which was attached a Notice of Discontinuance, solicitors representing the Applicant informed the Tribunal that the Applicant wished to discontinue the application and invited the Tribunal to make an order that the application be dismissed with “no order as to costs.”

3. In submissions dated 10 December 2019, counsel for the Securities and Futures Commission (“SFC”) invited the Tribunal to dismiss the application, but order that the Applicant “pay the costs of the Application to the Commission.”

4. In submissions filed with the Tribunal on 18 December 2019, the solicitors for the Applicant reiterated their request that the application be dismissed with no order as to costs.

The Applicant’s submissions

5. In the Applicant’s solicitors letter, dated 2 December 2019, complaint was made of the “manner in which this investigation has been conducted and the long period of time taken to conclude it”, in consequence of which it was asserted that “the investigation has materially affected every aspect of our client’s business, from fundraising to portfolio management to securing investment deals.”

A 6. Of the length of the investigation and delay, having noted that
B the investigation into the Applicant began in October 2014, complaint was
C made that:

D "...the SFC issued 57 section 183 notices to produce information and
E documents. It conducted 11 interviews. Three individuals were
F interviewed twice. Between March 2018, when Adamas submitted its
representations in response to the SFC's Notice of Proposed Disciplinary
Action, and June 2019, when the SFC issued its response to Adamas'
representations, the matter was left in abeyance by the SFC for some 17
months."

G *The SFC's submissions*

H 7. For the SFC, Ms. Bonnie YK Cheng submitted that where a
I party withdraws or discontinues an action the general rule is that he has to
J pay the costs of the other party.¹ She said that the applicable principles were
K those articulated in the judgment of the Court of Appeal of England and
L Wales in *Brookes v HSBC plc*, cited with approval in judgments of the Court
M of First Instance.² She contended that no good reasons had been advanced to
N depart from those principles: the scope and duration of the investigation was
O necessitated by the circumstances of the case; the Applicant had failed to file
P 339 disclosure of interests forms accurately and/or to timeously over an
Q overall period of three years; the Amended Notice of Application for
R Review did not challenge determinations of liability, rather they are
S addressed the appropriateness of the pecuniary penalty; no legal costs would
T have been incurred by the Applicant in the period of 17 months from the
U submission of representations to the service of the SFC's Decision Notice,
V dated 31 July 2019; there had been no change of circumstances caused by
the respondent.

¹ *Re China Solar Energy Holdings Limited* (HCCW 108/2015; unreported, 1 March 2016.)

² *Re China Solar Energy Holdings Limited*, paragraph 17; *Re Smart Land Investment Limited* (HCCW 96/2016; unreported, 30 April 2018) paragraph 11.

A
B
C
D
E
F
G
H
I
J
K
L
M
N
O
P
Q
R
S
T
U
V

A
B
C
D
E
F
G
H
I
J
K
L
M
N
O
P
Q
R
S
T
U
V

The Applicant’s submissions in reply

8. In the Applicant’s Submissions in Reply, it was contended that “the discontinuance of the Application was necessitated by a change in circumstances since the commencement of the Application which was unforeseen, and which the Applicant did not contribute to.” That was a reference to the abandonment of a proposed investment with a fund managed by the Applicant by a Korean investor. It was contended that in consequence “the Applicant was left with insufficient additional revenue to fund unbudgeted business expenses, such as the Application.” Secondly, it was submitted that the Respondent had cited no reasons for the order it sought, other than relying on the general principle that a party who discontinued proceedings that he had begun ought to bear the costs. Thirdly, it was contended that it was not plain that the application would have failed. Fourthly, reiterating complaints as to the manner and length of the investigation and the delay in making the determination in the Decision Notice, it was contended that the Respondent’s alleged conduct was relevant to a consideration of the exercise of the Tribunal’s discretion in costs, albeit that the Applicant acknowledged no legal costs had been incurred by the Applicant in the period of 17 months from the submission of representations by the Applicant to the service of the SFC’s Decision Notice.

Discussion

9. Section 223 of the Securities and Futures Ordinance, Cap. 571 (see “Ordinance”) provides that:

- (1) the Tribunal may, in relation to a review, by order award to-
 - (a)...
 - (b) any party to the review,
- such sum as it considers appropriate in respect of the costs reasonably incurred by the person or the party (as the case may be) in relation to the review of the application for review in question.

A
B
C
D
E
F
G
H
I
J
K
L
M
N
O
P
Q
R
S
T
U
V

A
B
C
D
E
F
G
H
I
J
K
L
M
N
O
P
Q
R
S
T
U
V

10. The principles relevant to the award of costs on the discontinuance of action begun by a party approved of by the Court of Appeal in *Brookes v HSBC plc*, cited with approval in Hong Kong, are:

- (1) when a claimant discontinues the proceedings, there is a presumption by reason of CPR 38.6 that the defendant should recover his costs; the burden is on the claimant to show a good reason for departing from that position;
- (2) the fact that the claimant would or might well have succeeded at trial is not itself a sufficient reason for doing so;
- (3) however, if it is plain that the claim would have failed, that is an additional factor in favour of applying the presumption;
- (4) the mere fact that the claimant's decision to discontinue may have been motivated by practical, pragmatic or financial reasons as opposed to a lack of confidence in the merits of the case will not suffice to displace the presumption;
- (5) if the claimant is to succeed in displacing the presumption he will usually need to show a change of circumstances to which he has not himself contributed;
- (6) however, no change in circumstances is likely to suffice unless it has been brought about by some form of unreasonable conduct on the part of the defendant which in all the circumstances provides a good reason for departing from the rule.

11. In his judgment in *Re Smart Land Investment Limited*, Lam J said:³

“The court has a very broad discretion on the matter of costs. The general rule or starting point is that an applicant who has given up as application by withdrawing it has to pay the costs of the respondent unless there is a good reason for a different order to be made.”

12. The unanticipated financial circumstances that the Applicant apparently now finds itself in due to the conduct of a third party is no such good reason.

³ *Re Smart Land Investment Limited*, paragraph 7.

A
B
C
D
E
F
G
H
I
J
K
L
M
N
O
P
Q
R
S
T
U
V

13. It is readily apparent from the very detailed description of the SFC's investigation contained in the **Notice of Proposed Disciplinary Action (17 pages)** that the material obtained and considered was voluminous and of some complexity. In response, the Applicant's solicitors filed very lengthy written submissions (over 19,000 words in 35 pages), in which, *inter alia*, it was asserted that:

- the Commission had "misstated" the Applicant's systems and controls for monitoring and reporting notifiable interests in Hong Kong and the Applicant had in place such systems;
- the proposed disciplinary action was disproportionate and unreasonably punitive, in that it was not appropriate to find the Applicant culpable of "misconduct", contrary to section 193 of the Ordinance; the proposed disciplinary action was inconsistent with the action taken in previous similar cases and would significantly affect the Applicant's business and future fund-raising activities;
- the Commission had failed to consider as mitigating circumstances that the application of Part XV of the Ordinance to the Applicant's dealings was complex and unclear and provided a reasonable excuse for why other disclosures will not be made as required and/or timeously and the remedial measures taken by the Applicant;

14. It is clear that the very considerable length of the Decision Notice (43 pages) is, in very large part, due to the fact that the SFC considered it necessary to identify, analyse and ultimately refute *seriatim* the multiple submissions made on behalf of the Applicant in their written submissions.

15. Although ultimately the limited ambit of the review, as identified in the Amended Notice of Application for Review, was to invite this Tribunal to reduce the pecuniary penalty from HK\$2.5 million to HK\$1.8 million, nevertheless the Amended Notice extended to no less than 14 pages.

A
B
C
D
E
F
G
H
I
J
K
L
M
N
O
P
Q
R
S
T
U
V

A
B
C
D
E
F
G
H
I
J
K
L
M
N
O
P
Q
R
S
T
U
V

A
B
C
D
E
F
G
H
I
J
K
L
M
N
O
P
Q
R
S
T
U
V

16. The simple and central issue relevant to an order of costs is the fact that the Applicant now seeks to discontinue the Application for Review, two and a half months after having commenced those proceedings. No good reason has been advanced as to why the Applicant should not bear the costs of the Respondent for these proceedings.

Conclusion

17. In the result, I grant the Applicant leave to discontinue the Application for Review, but order that the Applicant pay the costs of the Respondent for these proceedings, to be taxed if not agreed.



(Mr. Michael Lunn)

Chairman, Securities and Futures Appeals Tribunal

Proskauer Rose, Solicitors for the Applicant

Ms. Bonnie YK Cheng, instructed by SFC
for the Respondent