
REGULATORY NEWSLETTER

2024 Vol.3



Get ready to March into Spring!

March is a time for renewal and growth. As we embark on this transformative month, ComplianceDirect would like to express gratitude to our readers and business partners for the ongoing support and look forward to reaching new heights together. Embrace the energy of March as winter fades away and spring awakens - wishing you a month filled with vibrancy and joy.

Let's kick start with our Regulatory Updates from the SFC!

REGULATORY UPDATES

Circular on disciplinary proceedings under Part 5B of the Anti-Money Laundering and Counter-Terrorist Financing Ordinance

28 Feb 2024

The Securities and Futures Commission (SFC) today published a guide to outline the disciplinary process under the new licensing regime for virtual asset trading platforms (VATP), aiming to help regulated persons to understand the disciplinary process.

The guide provides the reasons for the SFC's disciplinary actions, persons subject to them, criteria for

determining to take action, potential disciplinary measures and disciplinary process, amongst others.

Under the new VATP licensing regime under the Anti-Money Laundering and Counter-Terrorist Financing Ordinance (Cap. 615)(AMLO) (AMLO VATP Regime), the SFC is given the power to discipline a regulated person who is, or was at any time, guilty of misconduct or not fit and proper to be or to remain the same type of regulated person.

The disciplinary process under the AMLO VATP Regime is based largely on the disciplinary process applicable to persons licensed by or registered with the SFC (including those involved in their management) under the Securities and Futures Ordinance (Cap. 571).

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Circular to Licensed Corporations Engaged in Asset and Wealth Management Activities - Asset and Wealth Management Activities Survey 2023

22 Feb 2024

As an annual exercise to collect information on asset and wealth management activities in Hong Kong for regulatory and market facilitation purposes and to better understand the state of the asset and wealth management industry in Hong Kong, SFC have commenced the Asset and Wealth Management Activities Survey 2023 (the "AWMAS").

SFC expects the questionnaire to be completed through the online submission system on or before 19 April 2024.

For those licensed corporations which had gross operating income derived from asset management, giving advice on funds / portfolios and / or private banking / private wealth management during the year of 2023, please complete the whole questionnaire. If your corporation did not engage in any of the activities covered in the survey throughout the year, please fill in the part of General Information in the questionnaire.

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ENFORCEMENT NEWS

SFC secures first criminal conviction of securities fraud via illegal short selling

27 Feb 2024

The Eastern Magistrates' Court convicted Ms Christine Yeung Tak Sum, an unemployed retail trader, after she pleaded guilty to securities fraud involving illegal short selling in proceedings brought by the Securities and Futures Commission (SFC).

The conviction of Yeung of a charge of employing a fraudulent scheme with intent to defraud in transaction involving securities under section 300 of the Securities and Futures Ordinance (SFO) in the context of illegal short selling is first-of-its-kind. This case stemmed from a ramp-and-dump investigation during which the SFC discovered that Yeung had engaged in a fraudulent scheme to commit the offence.

Yeung was remanded in custody pending sentencing on 20 March 2024.

The Court heard that, on 28 May 2020, Yeung submitted a settlement instruction form to her broker Aristo Securities Limited purporting to show that she had 15 million shares in Hong Kong-listed Aurum Pacific (China) Group Limited (Aurum) in another brokerage firm, when in fact she did not. The broker, being misled, allowed Yeung to sell the shares in Aurum before the purported transfer of shares was settled.

Yeung did not hold any of Aurum shares at the time she submitted the settlement instruction form and when she sold the shares. After illegal short-selling Aurum shares, she proceeded to buy back the same quantity of shares at a lower price to cover her short-sold positions within the same day. As a result, she obtained an illicit profit of about \$602,600.

The SFC reminds intermediaries of their obligation to implement and maintain appropriate measures to comply with the short selling requirements and to be mindful of red flags indicating illegal short selling by its clients.

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First ramp-and-dump criminal prosecution at District Court commences

27 Feb 2024

The first ramp-and-dump case for criminal prosecution at the District Court began in proceedings brought by the Securities and Futures Commission (SFC) involving a highly sophisticated ramp-and-

dump syndicate.

The two defendants in the case, Mr Stevens Yip Chi Fai and Ms So Lung Ying, are suspected core members of the syndicate. They were charged on 3 August 2023 at the Eastern Magistrates' Court with the offence of conspiracy to employ a scheme with intent to defraud or deceive in transactions involving securities following an extensive investigation by the SFC. An application was granted to transfer the case to the District Court on 8 February 2024.

No plea was taken from Yip and So and the case was adjourned to 25 April 2024, as the prosecution intends to apply for consolidation with another case to be heard together at the District Court. The defendant in the other case, Mr Lau Ka Wing, was previously charged with the same offence as Yip and So at the Eastern Magistrates' Court.

The District Court granted bail to Yip and So on the conditions that: (i) they are not to leave Hong Kong; (ii) they surrender all travel documents; (iii) they pay cash bail of \$500,000 and \$50,000 respectively and (iv) they reside at the reported residential address and inform the police of any change of residential address.

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SFC commences proceedings against Ding Yi Feng former chairman and to seek compensation for investors

26 Feb 2024

The Securities and Futures Commission (SFC) has commenced proceedings in the Court of First Instance against former chairman and non-executive director of Ding Yi Feng Holdings Group International Limited (Ding Yi Feng), Mr Sui Guangyi, and 20 other individuals for allegedly manipulating the shares of Ding Yi Feng between 1 March 2018 and 14 September 2018.

The SFC is seeking various orders under section 213 of the Securities and Futures Ordinance (SFO) to restore the affected counterparties to their pre-transaction positions and restrain the defendants from disposing of or otherwise dealing with any assets and/or property, and to ensure that there are sufficient assets to meet the restoration orders, if the Court finds the defendants in contravention of the relevant provisions of the SFO.

The SFC had earlier issued restriction notices to a total of 17 brokers, freezing assets of the defendants and prohibiting them from dealing with or processing certain assets held in their clients' accounts that are related to the suspected market manipulation of Ding Yi Feng shares without the SFC's prior written consent. The restriction notices remain in force.

The SFC appreciates the support and assistance provided by the China Securities Regulatory Commission during the investigation.

SFC suspends dealings in the shares of LET Group Holdings Limited and Summit Ascent Holdings Limited

14 Feb 2024

The Securities and Futures Commission (SFC) has directed The Stock Exchange of Hong Kong Limited (SEHK) to suspend dealings in the shares of LET Group Holdings Limited (LET) and Summit Ascent Holdings Limited (Summit Ascent) under the Securities and Futures (Stock Market Listing) Rules (SMLR) with effect from 9:00 am on 14 February 2024.

The SFC took action due to concerns regarding a very substantial disposal (VSD) of a major asset of LET and Summit Ascent, namely, the sale of assets in Russia for US\$116 million, which came to its attention on 29 January 2024. The major asset was at all material times indirectly held by Summit Ascent through a 77.5% owned subsidiary.

The VSD is subject to the reporting, announcement, circular and approval of shareholders of both companies under Chapter 14 of the Listing Rules (LR). Since there was a change in control of LET in May 2022, any material disposal under Rule 14.06E of the LR is restricted for a period of 36 months from the change in control unless the remaining group after the change in control can meet the requirements of Rule 8.05 of the LR.

It appears to the SFC that after the completion of the VSD, LET and Summit Ascent may not have a business with a sufficient level of operations and assets of sufficient value to support their operations to warrant a continued listing status of their shares under Rule 13.24 of the LR. As a result, LET and Summit Ascent may not be regarded as suitable for listing under the LR.

The SFC also noted that LET and Summit Ascent are required to consult the Takeovers Executive under Note 7 to Rule 2 of the Code on Takeovers and Mergers (Takeovers Code) and meet the requirements under Rule 2.10 of the Takeovers Code. This includes obtaining shareholders' approval of the VSD in a general meeting, with the VSD being approved by at least 75% of the votes cast by disinterested shareholders at the meeting and the disapproving votes representing not more than 10% of the votes attached to all disinterested shares.

However, it appears to the SFC that the VSD has not complied with the above-mentioned requirements. In particular, the sale and purchase agreement relating to the VSD had been executed and the completion of which was not made subject to obtaining the required approval of shareholders.

The SFC has asked LET and Summit Ascent to address its concerns by providing an undertaking that the completion of the VSD is made conditional on shareholders' approval and in full compliance with the relevant rules and regulations. However, both companies have failed to respond to the SFC. The SFC also has serious concerns about the conduct of the two companies and their management.

The SFC considers that suspending the dealings in the shares of LET and Summit Ascent is desirable for the purpose of maintaining a fair and orderly market and protecting the interest of the investing public.

The SFC's investigation is ongoing.

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The first ramp-and-dump case transferred to District Court

8 Feb 2024

The Eastern Magistrates' Court today granted an application by the Department of Justice to transfer a ramp-and-dump case brought by the Securities and Futures Commission (SFC) to the District Court. This is the first time a ramp-and-dump case was transferred to the District Court for criminal prosecution.

The two defendants in the case, Mr Stevens Yip Chi Fai and Ms So Lung Ying, are suspected core members of a sophisticated ramp-and-dump syndicate. They were charged on 3 August 2023 at the Eastern Magistrates' Court with the offence of conspiracy to employ a scheme with intent to defraud or deceive in transactions involving securities following an extensive investigation of the SFC.

The first hearing in the District Court will take place on 27 February 2024.

The Court granted bail to Yip and So on these conditions: (i) not to leave Hong Kong; (ii) surrender all travel documents; (iii) cash bail \$500,000 and \$50,000 respectively; (iv) reside at the reported residential address and inform Police of any change of residential address.

No further comment will be made as legal proceedings are ongoing.

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SFC obtains court order to disqualify former chief financial officer of Fuguiniao Co., Ltd for two years

6 Feb 2024

The Securities and Futures Commission (SFC) has obtained a disqualification order in the Court of First Instance against Mr Chan Wai Shing, former chief financial officer (CFO) and company secretary of Fuguiniao Co., Ltd (Fuguiniao).

Chan was disqualified from being a director, liquidator, or receiver or manager of the property or business, of Fuguiniao or any corporation in Hong Kong or being involved in the management of Fuguiniao or any listed corporation in Hong Kong, without the leave of the court, for a period of two years. He was also ordered to pay the SFC's costs in the proceedings.

The disqualification order was made after Chan admitted his failures, which showed a serious lack of understanding of his role, responsibilities, and duties as CFO of a listed company. In its judgment, the

court said: "There is no excuse for a man occupying the important position of CFO of a listed company not to have discharged his duties to Fuguiniao so that the interest of the innocent investing public may be safeguarded".

The SFC's investigation found that Fuguiniao provided a number of deposit pledges totalling about RMB5.349 billion as security for bank credit facilities extended to a substantial shareholder and other external parties without proper disclosure. In the end, RMB1.788 billion worth of the deposit pledges were withheld by the banks after defaults on the loans, with the balance released. The non-disclosed deposit pledges rendered the annual and interim reports of Fuguiniao for the financial years from 2013 to 2015 false and misleading.

The SFC alleged that Chan, in his capacity as Fuguiniao's CFO and company secretary, had acted in serious dereliction of his duties, while three former directors of the company were also involved in and/or had knowledge of these undisclosed deposit pledges. Specifically, Chan failed to ascertain whether deposits of Fuguiniao were subject to pledges with banks, monitor the company's financial affairs (including its material transactions and significant deposit pledges), and follow up the matter even after revelation of the undisclosed deposit pledges by the company's auditor and forensic investigator. He also failed to ensure or verify the accuracy of the company's consolidated financial statements and other corporate announcements, and ensure its proper compliance with the Listing Rules and relevant disclosure requirements.

The SFC's proceedings against the three former directors of Fuguiniao are ongoing.

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SFC bans Lam Ching Chiu and Wong Siu Fung for five years

6 Feb 2024

The Securities and Futures Commission (SFC) has banned Mr Lam Ching Chiu and Mr Wong Siu Fung, both former licensed representatives of Nerico Brothers Limited, from re-entering the industry for five years from 6 February 2024 to 5 February 2029 following their criminal convictions of bribery offences.

Lam and Wong were found guilty in August 2022 at the District Court of paying the then chief executive officer (CEO) of Hong Kong Financial Engineering Company Limited (HKFECL) bribes in relation to utilising a computerised algorithmic programme used for futures trading. The CEO was the developer of the trading programme and was responsible for its operation, while Lam and Wong, as well as their clients, used it to invest in futures contracts from late 2014 to early 2015.

Around December 2014 or January 2015, in addition to the service fee charged by HKFECL, the CEO asked Lam and Wong to pay a commission for each profitable transaction conducted as a reward for his staff who assisted with the operation of the trading programme. Lam subsequently paid the CEO between \$60,000 and \$70,000. Wong also gave a mobile phone and cosmetic products worth \$12,500 to the CEO in December 2014 at his request, out of a desire to maintain a good relationship with him.

Neither Lam nor Wong had checked whether the above practices were known or acceptable to HKFECL

before they made the payments or gifts to the CEO.

In deciding the sanctions, the SFC considers that Lam and Wong are not fit and proper persons to be licensed to carry on regulated activities due to their criminal convictions.

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SFC reprimands and fines PICC Asset Management (Hong Kong) Company Limited \$2.8 million for fund management failures

5 Feb 2024

The Securities and Futures Commission (SFC) has reprimanded and fined PICC Asset Management (Hong Kong) Company Limited (PICC) \$2.8 million over its failures to discharge duties as the manager of a Cayman-incorporated fund between May 2018 and May 2020.

The SFC's investigation found that PICC failed to properly manage the fund to ensure that its investments were in line with its stated investment strategy, objectives and investment restrictions. PICC also failed to implement adequate and effective internal controls for the fund's risk management and to adequately supervise the staff designated as the fund's investment manager.

In particular, the SFC found that:

- contrary to the fund's investment objective and strategy, there were only one to three stocks at any given point in time in the fund's portfolio during a 21-month period from its inception in May 2018 to January 2020. In addition, the fund held highly concentrated positions in two Hong Kong-listed stocks, one of which was not on the permitted securities list approved by PICC's senior management.
- PICC did not have adequate internal controls in place to ensure the fund's adherence to the investment mandate and to manage non-compliance in this respect. It also lacked effective controls to manage the liquidity and concentration risks of the fund, and to ensure compliance with its stop loss procedure.
- PICC placed significant reliance on the investment manager to manage the fund and the associated risks and failed to properly supervise his investment activities.

In deciding the disciplinary sanctions against PICC, the SFC has taken into account all relevant circumstances, including:

- the gravity of PICC's failures to ensure the fund's adherence to its investment mandate and to properly manage the risks of the fund could undermine the confidence of the investing public and market integrity;
- a strong deterrent message to the market that such failures are not acceptable;
- PICC has taken steps to enhance its risk management and liquidity monitoring controls; and
- PICC's otherwise clean disciplinary record.

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