



## Regulatory Update – Brilliance Asset Management Limited Fined HK\$3.15 Million over Short Position Reporting Failures (February 2021)

On 22 February 2021, the Securities and Futures Commission (“SFC”) announced that it has reprimanded and fined Brilliance Asset Management Limited (“Brilliance”) HK\$3.15 million over failing to ensure the accuracy and compliance of the short position reports (“SPRs”) for four of its collective investment schemes under its management. The case also highlights that the consequences of self-reporting can lead to further SFC investigation but that under the Guidelines on Co-operation with the SFC and the Disciplinary Fining Guidelines, such co-operation mitigates the ensuing disciplinary action.

The rules that are applicable to short position reporting in Hong Kong are:-

- Under rule 4(2) of the SPR Rules, a person who has a reportable short position in any specified shares at the close of trading on the SEHK on the last trading day of each week must notify the SFC of the position within two business days.
- Rules 3(1) and 3(2)(b) of the SPR Rules stipulate that a person has a reportable short position if the net short position value the person holds in a specified share is equal to or more than the lower of (i) HK\$30 million; and (ii) 0.02% of the value of the total number of the specified shares issued.

### SFC Investigation

Brilliance submitted two self-reports to inform the SFC that they had failed to comply with the requirements under the Securities and Futures (Short Position Reporting) Rules (“SPR Rules”).

Following the self-reports, the SFC commenced an investigation into Brilliance and found that Brilliance prepared and submitted the SPRs to the SFC for these CISs between 8 July 2016 and 30 August 2019, but the SPRs either misstated or omitted a total of 7,814 short positions that were currently held in the CISs.

This was partly due to when onboarding a new prime broker, Brilliance failed to incorporate the brokers code in its automated trading program which resulted in the short positions held through the broker not being included in the total short positions set out in the SPRs submitted to the SFC.

To compound this matter, Brilliance then mistakenly aggregated its calculations of its short positions and reported the calculations under the name of one of the four CIS it manages. When the reporting should actually be done on a per fund basis.

Brilliance also incorrectly used data sources which included the market capitalisation of A-shares and non-listed shares of the issuers when calculating whether its net short positions in the CISs exceed the 0.02 per cent reportable threshold. In this case, Brilliance should have only used the market capitalisation of the Hong Kong-listed shares which is a requirement as per the SPR Rules when making such calculation.





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## Disciplinary Action

During any investigation the SFC will take into consideration all relevant circumstances when deciding on an appropriate sanction. In this case, the fact that Brilliance took prompt remedial actions and were cooperative throughout the SFC investigation on top of its otherwise clean disciplinary record, played a considerable part when the SFC chose to hand out the fine of HK\$3.15 million.

## How we can help

If your firm is managing CISs that hold short positions and you are concerned that your short position reporting policies and procedures are not compliant or may not be up to the standards expected in the SPR rules, our dedicated projects team can assist you with undertaking a gap analysis of your position limit reporting policies and procedures to identify and remediate any gaps you have within your SPR practices.

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## About ComplianceAsia

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