



Regulatory Update – SFC Fines Optimas Capital Limited \$1.05 million over Short Position Reporting Failures (April 2021)

On 15 April 2021, the Securities and Futures Commission (“SFC”) announced, that pursuant to s194 of the Securities and Futures Ordinance (“SFO”), it has reprimanded and fined Optimas Capital Limited (“Optimas”) HK\$1.05 million for failing to ensure the accuracy of the short position reports (“SPR”) submitted to the SFC for a collective investment scheme (“CIS”) under its management.

Optimas is licensed to carry on Type 1 (dealing in securities), Type 4 (Advising on Securities) and Type 9 (Asset Management) regulated activities. In this regulatory update we have outlined the key facts identified and conclusions reached by the SFC during its inspection into Optimas’ internal control failures relating to the filing of SPR which followed a self-report on certain mistakes identified by Optimas.

Short Position Reporting Requirements

Any person who has a reportable short position in any specified shares at the close of trading on the Stock Exchange of Hong Kong Limited (“HKEX”) on the last trading day of each week must notify the SFC of the position within two business days. This requirement is detailed under rules 4(1) and 4(2) of the SPR Rules.

SPR Rules 3(1) and 3(2) addresses the specific thresholds that qualify as a reportable position. A person will have a reportable short position if the net short position value the person holds in a specific share is equal to or more than the lower of:

- (i) HK\$30 million; and or
- (ii) 0.02% of the value of the total number of the specified shares issued (0.02% threshold).

Facts

Optimas identified a total of 350 reportable short positions that were held by the CIS which were not reported in 56 SPRs submitted by Optimas to the SFC between 23 June 2017 and 9 July 2018 (“Relevant Period”). The errors were a result of a programming mistake within a script that was developed by the operations manager at Optimas during the relevant period.

The script which caused the error was created to automate the process of identifying short positions held by the CIS and would filter out the positions that warranted a report. Due to inadequate supervision and oversight of the work performed by the operations manager, Optimas failed to detect the programming mistake.

The key mistake made was when setting up the reporting criteria in the script in June 2017, the reportable threshold was set as below 0.02%, when actually, it should have been set to equal or above the 0.02% threshold as required under the SPR rules. Due to this error, Optimas reported all new short positions in specified shares held by the CIS that were equal to or above the HK\$30 million in value and/or below 0.02% threshold but failed to include the SPRs short positions that were equal to or above the 0.02% threshold.

When the script was originally implemented the operations manager was the only member of the operations team and was personally responsible for preparing SPRs for the CIS. The operations manager failed to inform other management within Optimas that he had implemented the script. Without being aware of the script there was no possibility for other management to conduct any form of testing on the script’s reliability.

The mistake was finally discovered in July 2018 following the eventual resignation of the operations manager. His replacement identified the mistake when preparing SPRs where he double checked the formulas in the original script.

It was clear to the SFC that Optimas did not have adequate supervision and review processes to effectively monitor the accuracy of the SPRs completely by the original operations manager. This mistake should have been identified and remediated by Optimas at a much earlier stage.

Although the statutory obligation to make SPRs falls on a CIS and not the investment manager under the SPR Rules, Optimas was found to have prepared and submitted SPRs on behalf of the CIS during the relevant period.

Disciplinary Action

It was clear to the SFC that Optimas failed to act competently by not ensuring the SPRs it prepared were accurate and compliant with the applicable requirements under the SPR Rules. In deciding on what would be the appropriate disciplinary action the SFC took into account Optimas' clean disciplinary record, the fact Optimas took prompt remedial actions and cooperated continually with the SFC to resolve the SFC's concerns.

How we can help

ComplianceAsia's dedicated projects team can assist you with reviewing and updating your internal policies and procedures relating to short position reporting obligations. In addition, we can provide training to the individuals directly responsible for short position reporting to ensure that they are aware of and have a clear understanding of their obligations to report.

About ComplianceAsia

ComplianceAsia is the longest established compliance consulting firm in Asia Pacific established in 2003 with offices in Hong Kong, Shanghai, Singapore, Tokyo and London. We have an unmatched track record of completing complex compliance consulting projects for financial firms in the APAC region.

With over 70 staff, including compliance experts with experience in dealing with the SFC, HKMA, MAS, CSRC, JFSA and Asian exchanges, we provide independent, unbiased advice on Asian financial industry legislation and regulations. Our international client base consists of asset managers, hedge funds, private equity funds, family offices, broker-dealers, insurers, wealth managers and investment banks.

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