

## **First SFC Action Against MIC of Compliance over Short Selling Failures**

On 12 October 2022, the Securities and Futures Commission (“SFC”) announced that they have reprimanded and fined Asia Research & Capital Management Limited (“ARCM”) who are licensed by the SFC to carry out Type 9 (“Asset Management”) regulated activities. ARCM were fined HK\$1.75 million for failing to comply with the European Union’s short selling reporting requirements (“EU Regulation”). To compound the issue, ARCM failed to promptly notify the SFC of such material regulatory breaches. ARCM’s Manager-In-Charge (“MIC”) of Compliance was banned for a period of two months for his involvement in this matter.

In this regulatory update we have address the various breaches by ARCM that ultimately resulted in fines from both the SFC and FCA in addition to the MIC of Compliance Mr. Billy Wong Yim Chi (“Mr. Wong”) being banned for a period of two months.

### **Background**

The FCA found that between 22 February 2017 and 3 December 2019 (“relevant period”), ARCM failed to make 155 notifications to the United Kingdom’s Financial Conduct Authority Financial Conduct Authority (“FCA”) and failed to make 153 public disclosures of its net short position in Premier Oil which was a direct breach of EU Regulation. The FCA fined ARCM £873,118 for these breaches.

### **SFC Investigation**

The FCA published its final notice regarding its enforcement of ARCM on 10 October 2020. Following this publication, the SFC took up its own investigation into this matter. During its investigation, the SFC found that ARCM failed to:

- Have in place a suitable compliance framework and internal controls systems to appropriately monitor and ensure its short position in Premier Oil was properly reported to the FCA and disclosed to the public as per the requirement of the EU regulations;
- Seek legal advice on its reporting obligations under EU regulation before establishing a short position in Premier Oil even though ARCM were in the process of investing in a totally new jurisdiction, and were unfamiliar with EU market requirements; and
- Immediately notify the SFC upon becoming aware that it had materially breached the EU Regulations, and only notified the SFC following a two-month delay.

Mr. Wong was ARCM’s Head of Compliance and Operations from 2 February 2012 and was later appointed the MIC of Compliance from 28 June 2017 to 30 April 2020. In addition, Mr. Wong was a licensed representative of ARCM for Type 9 asset management activities.

As Head of Compliance and Operations, Mr. Wong was in charge of ARCM’s compliance function and was directly responsible for implementing and maintaining a robust risk management framework to ensure ARCM was fully compliant with the rules and regulations of the jurisdictions in which it conducts business. Mr. Wong was also responsible for handling position limit filings for the portfolio positions of ARCM and was expected to consult external legal counsel whenever he considered it necessary to do so.

The SFC stated that Mr. Wong’s conduct fell short of the standards expected of him as MIC of Compliance and as a member of ARCM’s senior management team. Mr. Wong failed to maintain and adhere to appropriate policies and procedures and manage the risks associated with the activities of ACRM. These failures were a direct breach of General Principle 9 and Paragraph 14.1

of the Code of Conduct which ultimately resulted in ARCM breaching the short selling rules in the EU and failing to notify the SFC of this substantial breach.

## **Conclusion**

The SFC found that ARCM's failures were the fault of Mr. Wong's negligence in his role as Head of Compliance and Operations. These actions have ultimately left the SFC to call into question the fitness and properness of ARCM and Mr. Wong. In deciding on its disciplinary action, the SFC took into account the remedial steps taken by ARCM to enhance its internal controls and the subsequent financial penalty already handed down by the FCA.

## **How we can help**

As we have seen recently the SFC will not hesitate in suspending key parties over their involvement in market misconduct and has set a clear standard of what is expected from licensed persons and senior management of licensed corporations.

It is clear with the recent level of enforcement taken by the SFC that they are cracking down on poor internal controls around position limit reporting with a particular focus on cross border trading activities. We cannot stress enough how important it is in today's regulatory environment for a firm to have in place suitable policies and procedures that provide clear and up to date guidance on wall crossing and various position limit reporting obligations.

Our dedicated projects team can assist your firm with undertaking a detailed gap analysis of your current investment and trading policies and procedures to ensure that you have in place policies and procedures that adequately address the position reporting obligations in the jurisdictions in which you are trading in. In addition, we keep a detailed library of position limit reporting guides across the APAC region that provide a clear picture of the various obligations per jurisdiction.