

SFC Reprimands and Fines Excalibur Futures Limited and Poon Kwok Wah Allan for FRR Breaches and Supervisory Failures Respectively

25 Jul 2006

The SFC has reprimanded Excalibur Futures Limited and fined it \$400,000 for failing to maintain the required liquid capital in breach of the Securities and Futures (Financial Resources) Rules (FRR) (Note 1). The SFC has also reprimanded Mr Poon Kwok Wah Allan, a responsible officer of Excalibur, and fined him \$240,000 for supervisory failures (Note 2). The reprimands and fines are the result of a settlement between Excalibur and Poon, and the SFC.

In June 2005, Excalibur and its financial controller were convicted of failing to notify the SFC of its liquid capital deficiencies (Note 3). Between 20 February and 29 March 2004, Excalibur failed to maintain the required liquid capital position for 10 days and failed to notify the SFC in writing of its liquid capital deficiencies as soon as reasonably practicable. The financial controller admitted to the SFC that he had included cheques, which were received from a related company but not deposited into the bank account of Excalibur, in the calculation of the liquid capital reported to the SFC, thus inflating the liquid capital position of Excalibur.

Poon, as a responsible officer of Excalibur and supervisor of the financial controller, failed to detect and prevent the window dressing arrangement of the financial controller (Note 4). He also failed to carefully check the cheques and FRR returns tendered to him by the financial controller before he signed them.

The SFC concludes that Excalibur and Poon have been guilty of misconduct and their fitness and properness has been called into question.

In deciding the level of fines, the SFC has considered the Disciplinary Fining Guidelines (Note 5) and all the circumstances of the case, including the fact that:

- no directors of Excalibur, including Poon, had knowledge of, endorsed or facilitated the financial controller's window dressing arrangement. However, Poon was negligent in supervising the financial controller;
- Excalibur has taken steps to improve its internal controls in order to comply with the FRR;
- Poon co-operated with our investigation and agreed to become a prosecution witness in the prosecution against Excalibur and the financial controller;
- Excalibur pleaded guilty to the FRR breaches and was fined by the court; and
- Excalibur and Poon co-operated with the SFC and accepted a resolution of the disciplinary action by settlement.

The SFC considers the settlement to be in the interest of the investing public and in the public interest.

Mr Eugene Goyne, an SFC Senior Director of Enforcement, said: "Breach of the FRR may undermine the financial integrity of a licensed corporation. Therefore, the SFC treats compliance with the FRR seriously so as to protect investors. The senior management of a licensed corporation bear primary responsibility for ensuring its liquid capital adequacy and that its FRR returns are properly compiled to reflect its actual financial position. Responsible officers should check the accuracy of FRR returns and make appropriate inquiries before signing them."

"Window dressing of liquid capital position is very serious misconduct since it involves deceiving the SFC about the true financial position of the licensed corporation. Any responsible officer who conducts or facilitates others to conduct, or turns a blind eye to, window dressing activities will face criminal prosecution and severe disciplinary sanctions. In this case, had the management of Excalibur and Poon known, deliberately turned a blind eye to or in any way facilitated the window dressing arrangement of the financial controller, Excalibur would have been subject to a much higher fine and Poon would have been suspended for a lengthy period," Mr Goyne added.

Ends

Notes:

1. Excalibur Futures is licensed under the Securities and Futures Ordinance to carry on business in Type 2 (dealing in futures contracts) and Type 7 (providing automated trading services) regulated activities.
2. Poon is licensed under the SFO to carry on Type 1 (dealing in securities), Type 2 (dealing in futures contracts) and Type 7 (providing automated trading services) regulated activities. He is a responsible officer accredited to Excalibur.
3. Please see [SFC press release dated 9 June 2005](#) for details. The financial controller is not a licensed person.
4. Window dressing means the misleading presentation of information to give a deceptively favourable impression of a firm's financial position. It often includes unusual fund transfers with related parties, understatement of liabilities and fictitious transactions, etc.
5. The [Disciplinary Fining Guidelines](#) are available on the SFC website at www.sfc.hk.

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