

# SFC sanctions China Rise Securities Asset Management Company Limited's former responsible officers

31 Mar 2020

The Securities and Futures Commission (SFC) has banned Mr Sammy Shiu Kin Keung, former chief executive officer and responsible officer (RO) of China Rise Securities Asset Management Company Limited (China Rise), from re-entering the industry for 28 months from 30 March 2020 to 29 July 2022 (Note 1).

Mr Wat Hin Pong, a former RO and ex-head of dealing of China Rise, has also been suspended for seven months from 30 March 2020 to 29 October 2020 (Note 2).

The SFC's disciplinary action against Shiu follows his criminal conviction in 2017 for illegal short selling and the SFC's sanction against China Rise over its internal control failures and regulatory breaches related to short selling and cross trades between January and May 2014 (Note 3).

The SFC's investigation revealed that Shiu placed 199 illegal short selling orders involving 21 listed securities through his personal account and the discretionary account of a client during the material time but concealed them from China Rise and the client.

Shiu also took advantage of the discretionary power granted to him by the client and conducted nine pairs of cross trades in eight listed securities between his personal account and the client's account without the client's knowledge. Eight out of the nine pairs of cross trades were executed at a price to Shiu's advantage but to the client's detriment when compared with the nominal price of the relevant shares (Note 4).

The SFC further found that Shiu had failed to:

- obtain proper approval for his personal dealings, short sales and cross trades as required by China Rise's internal policies;
- avoid conflict of interest and take steps to ensure fair treatment of the client in operating the client's discretionary account; and
- report cross trades to The Stock Exchange of Hong Kong Limited on four occasions as required by the Rules of the Exchange.

Wat, responsible for monitoring employee dealings and supervising the operation of discretionary accounts at the material time, routinely approved Shiu's transactions without making any inquiries nor checking whether there were any irregularities.

Although Wat issued a warning letter to Shiu on behalf of China Rise in early April 2014 following enquiries by the Hong Kong Exchanges and Clearing Limited on some of Shiu's short sales, he continued to rubber-stamp Shiu's personal dealings. As a result, Shiu was able to continue to conduct illegal short selling in April and May 2014.

The SFC found that Wat was derelict in his duties. Specifically, he had failed to:

- detect and prevent illegal short selling in relation to Shiu by approving his orders without realising they were uncovered;
- take any steps to ascertain whether Shiu had disclosed his interest to and obtained consent from the client as required by China Rise's internal policy before approving Shiu's cross trades; and
- review the trading activities in Shiu's account and the client's account properly.

The SFC considers that Shiu and Wat had failed to discharge their duties as members of China Rise's senior management, and their failures contributed to the breakdown in China Rise's internal controls in relation to the monitoring of employee dealings, supervision of discretionary accounts, and avoidance of conflicts of interest, jeopardising China Rise's ability to act in the best interest of its clients and market integrity (Note 5).

In deciding the sanction, the SFC took into account all relevant circumstances of the case, including:

- Shiu's exploitation of China Rise's lax internal controls for his own benefit and abuse of the trust that his

client placed upon him;

- Shiu's conduct was dishonest, contrary to the best interest of the client and market integrity;
- Shiu's guilty plea to illegal short selling and the court's fine against him;
- the cooperation of Shiu and Wat with the SFC in accepting the disciplinary action and their otherwise clean disciplinary record.

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Notes:

1. Shiu was licensed under the Securities and Futures Ordinance (SFO) and was accredited to China Rise as an RO in respect of its Type 1 (dealing in securities) regulated activity from 28 August 2009 to 27 April 2015, Type 4 (advising on securities) regulated activity from 14 February 2014 to 27 April 2015, and Type 9 (asset management) regulated activity from 14 February to 14 October 2014. Shiu is currently not licensed by the SFC.
2. Wat was licensed under the SFO and was accredited to China Rise as an RO in respect of its Type 1 (dealing in securities) regulated activity from 28 August 2009 to 3 February 2017. Wat is currently accredited to Canfield Securities Company Limited as an RO in respect of its Type 1 (dealing in securities) regulated activity.
3. Shiu was convicted on 8 June 2017 for breach of section 170 of the SFO on 14 occasions. Please refer to the SFC's press release dated [9 June 2017](#). China Rise was reprimanded and fined \$6.3 million by the SFC. Please refer to the SFC's press release dated [31 October 2019](#).
4. General Principle 6 of the Code of Conduct for Persons Licensed by or Registered with the SFC (Code of Conduct) provides that a licensed person should try to avoid conflicts of interest and ensure that clients are fairly treated. Paragraph 10.1 of the Code of Conduct further provides that where a licensed person has a material interest in a transaction with or for a client, the licensed person should not deal in relation to the transaction unless he or she has disclosed that material interest to the client.
5. General Principle 9 of the Code of Conduct requires the senior management of a licensed corporation to bear primary responsibility for ensuring the maintenance of appropriate standards of conduct and adherence to proper procedures by the firm. Paragraph 14.1 of the Code of Conduct further provides that the senior management of a licensed corporation should properly manage the risks associated with the firm's business.

[A copy of the Statement of Disciplinary Action is available on the SFC website](#)

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## STATEMENT OF DISCIPLINARY ACTION

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### The Disciplinary Action

1. The Securities and Futures Commission (**SFC**) has prohibited Mr Shiu Kin Keung, Sammy<sup>1</sup> (**Shiu**), former chief executive officer, executive director and responsible officer (**RO**) of China Rise Securities Asset Management Company Limited (**China Rise**), from doing all or any of the following in relation to any regulated activities for 28 months pursuant to section 194(1)(iv) of the Securities and Futures Ordinance (**SFO**):
  - (a) applying to be licensed or registered;
  - (b) applying to be approved under section 126(1) of the SFO as an RO of a licensed corporation;
  - (c) applying to be given consent to act or continue to act as an executive officer of a registered institution under section 71C of the Banking Ordinance; and
  - (d) seeking through a registered institution to have his name entered in the register maintained by the Monetary Authority under section 20 of the Banking Ordinance as that of a person engaged by the registered institution in respect of a regulated activity.
2. The SFC has also suspended the licence of Mr Wat Hin Pong<sup>2</sup> (**Wat**), former RO and head of dealing of China Rise, as well as the approval for him to act as an RO, for seven months pursuant to section 194(1)(i)(B) and (ii)(B) of the SFO.

### Summary of facts and breaches

3. The SFC found that between 1 January and 31 May 2014 (**Relevant Period**), China Rise<sup>3</sup> failed to:
  - (a) implement sufficient internal controls to detect and prevent illegal short selling activities by its staff;

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<sup>1</sup> Shiu was licensed under the SFO and was accredited to China Rise as an RO in respect of its Type 1 (dealing in securities) regulated activity from 28 August 2009 to 27 April 2015, Type 4 (advising on securities) regulated activity from 14 February 2014 to 27 April 2015, and Type 9 (asset management) regulated activity from 14 February to 14 October 2014. Shiu is currently not licensed by the SFC.

<sup>2</sup> Wat was licensed under the SFO and was accredited to China Rise as an RO in respect of its Type 1 (dealing in securities) regulated activity from 28 August 2009 to 3 February 2017. Wat is currently accredited to Canfield Securities Company Limited as an RO in respect of its Type 1 (dealing in securities) regulated activity.

<sup>3</sup> Please refer to the SFC's press release and Statement of Disciplinary Action published on 31 October 2019.

- (b) ensure fair treatment of clients in light of its lack of internal controls to monitor cross trades between its staff members and clients which gave rise to conflicts of interest; and
  - (c) report direct business transactions (i.e. cross trades) to The Stock Exchange of Hong Kong Limited (**Exchange**) in accordance with Rule 526 of the Rules of the Exchange.
4. The SFC considers that China Rise's internal control deficiencies and regulatory breaches as summarized in the preceding paragraph were attributable to Shiu and Wat's failures to discharge their duties as members of China Rise's senior management.
- A. *Short selling*
5. Shiu placed a total of 199 uncovered short selling orders in 21 listed securities for his personal account and the discretionary account of a client (**Client**) on 24 trading days during the Relevant Period. On each occasion, he bought back sufficient amount of securities to square off his position before day-end. Shiu did not inform or consult the Client before placing the short selling orders for the Client's account.
6. On 8 June 2017, Shiu pleaded guilty to 14 specimen charges out of the 199 occasions of illegal short selling identified by the SFC. He was convicted for breach of section 170 of the SFO<sup>4</sup>, fined a total of \$35,000 and ordered to pay the SFC's investigation costs.<sup>5</sup>
7. Wat was responsible for monitoring employee dealings, including the personal dealings of Shiu, who was required by China Rise's Operation & Internal Control Manual (**Manual**) to submit a dealing ticket to Wat for approval before placing any orders for his personal account. Wat was also responsible for supervising Shiu's operation of clients' discretionary accounts.
8. It was Wat's practice to approve any dealing tickets submitted by Shiu without making any inquiries or checking whether there were any irregularities, such as the sufficiency of securities in the relevant account to cover a sell order. Accordingly, Wat approved Shiu's short selling orders without realizing they were uncovered. Even though Wat claimed that he had reviewed the trading activities in Shiu's and the Client's accounts at day-end, he failed to detect the short sales.
9. Further, Wat failed to notice that Shiu did not always obtain approval before trading for his personal account, which was against China Rise's employee dealing policy. In fact, the Manual required China Rise's licensed staff members to obtain special approval from an RO before executing any short sales, but Shiu did not obtain such approval for any of the 199 short selling orders.

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<sup>4</sup> Section 170 of the SFO prohibits a person from selling securities unless at the time of sale, he has a presently exercisable and unconditional right to vest the securities in the purchaser, or believes and has reasonable grounds to believe that he has such a right.

<sup>5</sup> Please refer to the SFC's press release dated 9 June 2017.

10. In early April 2014, the Hong Kong Exchanges and Clearing Limited (HKEx) made inquiries about some of the short sales Shiu conducted in March and on 1 April 2014. Without carrying out any investigation, Wat accepted that Shiu's short sales were unintentional and assumed that Shiu had not conducted any short sales other than those identified by HKEx. As a result of HKEx' inquires, Wat issued a warning letter to Shiu on behalf of China Rise. However, Wat continued to rubber-stamp Shiu's dealing tickets oblivious of whether the proposed orders would lead to short sales. This facilitated Shiu in persisting his malpractice by placing 52 short selling orders involving five listed securities on six different trading days between 4 April and 22 May 2014.

*B. Cross trades*

11. Shiu took advantage of the discretionary power granted to him by the Client and executed nine pairs of cross trades in eight listed securities between his personal account and the Client's account during the Relevant Period (Nine Cross Trades) without the Client's knowledge.
12. Shiu acted as buyer on seven occasions and as seller on two occasions. In six out of the seven pairs of cross trades where Shiu was the buyer, he bought the securities from the Client at a price lower than the nominal price at the time of the transaction. In the two pairs of cross trades where Shiu was the seller, he sold the securities to the Client at a price higher than the nominal price at the time of the transaction.
13. On two occasions, Shiu short sold the relevant securities before squaring off his position by purchasing an identical or larger quantity from the Client at a price lower than the one at which he sold the securities.
14. Although the Nine Cross Trades clearly gave rise to conflicts of interest, Shiu failed to disclose his interest in the transactions to the Client, or obtain either the Client's prior informed consent or Wat's prior approval in accordance with the Manual.
15. Even when Shiu sought Wat's approval, Wat never made inquiries about or disapproved any cross trades by Shiu. Despite his duty to supervise the trading activities in discretionary accounts to ensure that there were no conflicts of interest, Wat did not take any steps to check that Shiu had complied with the relevant requirements in the Manual and the Client was fairly treated.
16. Further, Shiu failed to report four of the Nine Cross Trades to the Exchange within 15 minutes after the conclusion of the transactions, in breach of Rule 526(1) of the Rules of the Exchange as well as the Manual. On one occasion, the cross trade was never reported. On the other three, the cross trades were reported between 22 and 51 minutes after the conclusion of the transactions.
17. The failures of Shiu and Wat as set out in paragraphs 5 to 15 above contributed to the breakdown in China Rise's internal controls in relation to the monitoring of employee dealings, supervision of discretionary accounts, and avoidance of conflicts of interest, jeopardizing China Rise's ability to act in the best interest of its clients and market integrity.

18. The SFC is concerned that:
- (a) Shiu has failed to:
    - (i) act honestly, fairly, and in the best interests of his / China Rise's client and the integrity of the market, in breach of General Principle (GP) 1 of the Code of Conduct for Persons Licensed by or Registered with the SFC (**Code of Conduct**);
    - (ii) avoid conflicts of interest and ensure his / China Rise's client was fairly treated, in breach of GP 6 of the Code of Conduct;
    - (iii) refrain from dealing in relation to a transaction with or for a client in which he had a material interest, in breach of paragraph 10.1 of the Code of Conduct; and
    - (iv) comply with all regulatory requirements applicable to the conduct of his business activities, including the Rules of the Exchange, in breach of GP 7 and paragraph 12.1 of the Code of Conduct;
  - (b) Wat has failed to act with due skill, care and diligence, and in the best interests of China Rise's clients and the integrity of the market, in breach of GP 2 of the Code of Conduct; and
  - (c) both Shiu and Wat have failed to
    - (i) ensure the maintenance of appropriate standards of conduct and adherence to proper procedures by China Rise, in breach of GP 9 of the Code of Conduct; and
    - (ii) manage properly the risks associated with the business of China Rise, in breach of paragraph 14.1 of the Code of Conduct.

## **Conclusion**

19. The SFC concludes that:
- (a) in light of Shiu's conviction for illegal short selling, his abuse of the discretionary power granted to him by the Client, and his breaches of the Code of Conduct, Shiu has been guilty of misconduct and his fitness and properness as a regulated person is called into question;
  - (b) Wat's fitness and properness as a regulated person is also called into question as he likewise breached the Code of Conduct; and
  - (c) the misconduct of China Rise was a result of Shiu and Wat's consent or connivance, or attributable to neglect on their part as members of the senior management, and should also be regarded as misconduct on their part.
20. In deciding the disciplinary sanctions set out in paragraphs 1 and 2 above, the SFC has taken into account all relevant circumstances, including:

- (a) in respect of Shiu:
  - (i) he exploited China Rise's lax internal controls for his own benefit in complete disregard of the regulatory requirements and his duties as RO and senior management;
  - (ii) he abused the trust that the Client placed upon him and profited at the Client's expense;
  - (iii) he pleaded guilty to illegal short selling and was fined by the court; and
  - (iv) it is necessary to send a clear and strong message to the industry that misconduct such as Shiu's will not be tolerated; and
- (b) in respect of both Shiu and Wat:
  - (i) they have been in the financial industry for a considerable period of time, yet they failed to appreciate the level of responsibility that the senior management of a licensed corporation was expected to bear;
  - (ii) they cooperated with the SFC in accepting the disciplinary action; and
  - (iii) they have an otherwise clean disciplinary record.