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## STATEMENT OF DISCIPLINARY ACTION

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### The Disciplinary Action

1. The Securities and Futures Commission (**SFC**) has publicly reprimanded Swiss-Asia Asset Management (HK) Limited (**Swiss-Asia**) and fined it \$3 million pursuant to section 194 of the Securities and Futures Ordinance (**SFO**).
2. The disciplinary action relates to Swiss-Asia's internal control deficiencies and regulatory breaches in relation to the monitoring of trading activities in discretionary accounts and record keeping. Specifically, Swiss-Asia failed to:
  - (a) properly monitor the trading activities in a client's discretionary account (**Account**) from around May 2015 to August 2016 (**Relevant Period**);
  - (b) have procedures in place to ensure proper supervision of the operation of discretionary accounts; and
  - (c) maintain proper records of its compliance checks on discretionary accounts.

### Summary of facts and breaches

3. In mid-April 2015, a client signed an asset management mandate agreement granting Swiss-Asia full discretionary power to manage the Account, subject to certain management restrictions (**Agreement**), including, among others, that Swiss-Asia could sell covered call options on existing securities and option strategies which have defined risk, and that it should not include any option strategies that involved uncapped risk or purchase options as a speculative strategy for the portfolio (**Management Restrictions**).
4. In late August 2016, the client complained to Swiss-Asia that its licensed representative conducted option trading in the Account which was much riskier than agreed.
  - A. *Failure to properly monitor the trading activities in the Account during the Relevant Period*
5. During the Relevant Period, the licenced representative of Swiss-Asia placed a total of 869 options trades in the Account. Swiss-Asia only submitted to the SFC in April 2017 that it had identified 225 of these options trades to be outside the Management Restrictions.
6. Swiss-Asia's lack of monitoring of trading activities resulted in options trades, which it identified to be outside the mandate, being placed by its licenced representative in the Account for a duration of around 15 months.
7. Swiss-Asia's failure summarised in paragraphs 5 and 6 above constitutes a breach of:

- (a) General Principle 2 (diligence) of the Code of Conduct for Persons Licensed by or Registered with the Securities and Futures Commission (**Code of Conduct**), which requires a licensed person to act with due skill, care and diligence, in the best interests of its clients and the integrity of the market;
- (b) paragraph 4.3 (internal control, financial and operational resources) of the Code of Conduct, which requires a licensed person to have internal control procedures and financial and operational capabilities which can be reasonably expected to protect its operations, its clients and other licensed or registered persons from financial loss arising from theft, fraud, and other dishonest acts, professional misconduct or omissions; and
- (c) paragraph 2 of Part VII of the Management, Supervision and Internal Control Guidelines for Persons Licensed by or Registered with the SFC (**Internal Control Guidelines**), which provides, among others, that where the firm exercises discretionary authority over a client's account, procedures should be used to ensure that only transactions which are consistent with the investment strategies and objectives of the relevant client, are effected on the client's behalf.

*B. Failure to have procedures in place to ensure proper supervision of the operation of discretionary accounts*

- 8. Swiss-Asia's internal policy required its relationship managers to make investment decisions in accordance with the investment objectives and directives contained in the relevant portfolio management agreement. Nevertheless, it is not apparent that it had procedures in place to ensure proper supervision of the operation of discretionary accounts.
- 9. Swiss-Asia asserted that its responsible officers would randomly select five to seven portfolios on a monthly basis and conduct rough high-level reviews on them. However, the SFC considers such reviews to be inadequate – the options trades which Swiss-Asia identified to be outside the Management Restrictions, and which have been ongoing for around 15 months in the Account, were not detected until the client filed a complaint with Swiss-Asia.
- 10. Swiss-Asia's failure summarised in paragraphs 8 and 9 above constitutes a breach of paragraph 7.1(e) of the Code of Conduct, which requires a licensed person to implement internal control procedures to ensure proper supervision of the operation of discretionary accounts.

*C. Failure to maintain proper records of its compliance checks on discretionary accounts*

- 11. Swiss-Asia admitted that it did not maintain records of the random sample checks conducted by its responsible officers in their supervisory roles over the trades conducted by its licensed representatives.
- 12. Although Swiss-Asia claimed that it operated with the support of the three lines of defence, namely, management supervision, oversight by the legal and compliance team, and audit by external auditors, it is questionable how legal and compliance as well as external auditors could perform their functions properly and effectively without records of the sample checks.
- 13. Swiss-Asia's failure to maintain proper records of its compliance checks on

discretionary accounts was a breach of paragraph 6 of Part IV of the Internal Control Guidelines, which provides that management should establish and maintain effective record retention policies which ensure that all relevant legal and regulatory requirements are complied with, and which enable the firm, its auditors, and other interested parties such as the SFC to carry out routine and ad hoc comprehensive reviews or investigations.

## **Conclusion**

14. Having considered all relevant circumstances, the SFC is of the opinion that Swiss-Asia has been guilty of misconduct, and its internal control failures and regulatory breaches set out above have called into question its fitness and properness to remain a licensed corporation.
15. In deciding the disciplinary sanction set out in paragraph 1, the SFC has taken into account all relevant circumstances, including:
  - (a) the Disciplinary Fining Guidelines made under section 199(1)(a) of the SFO;
  - (b) Swiss-Asia's failure to properly monitor the trading activities in the client's Account for a period of around 15 months;
  - (c) adequate internal procedures and controls are fundamental to the fitness and properness of a licensed corporation, in particular, those relating to the monitoring of trading activities are important for the detection and prevention of potential market misconduct;
  - (d) a clear message should be sent to the market on the importance of effective internal controls and procedures;
  - (e) Swiss-Asia has revised its internal control policies and procedures such that post-trade checks would be conducted on all accounts on a weekly basis, and that any breaches in investment strategies or exceptions in the investment restrictions would be documented and escalated to executive management;
  - (f) Swiss-Asia's cooperation in resolving the SFC's concerns and undertaking to provide the SFC with a report prepared by an independent reviewer within six months confirming that all the identified concerns were properly rectified; and
  - (g) Swiss-Asia had no previous disciplinary record with the SFC.