STATEMENT OF DISCIPLINARY ACTION

The Disciplinary Action

1. The Securities and Futures Commission (**SFC**) has taken the following disciplinary action against Chan Tsz Kin Ernest (**Chan**), a former responsible officer (**RO**) of Keptain Securities and Asset Management Limited (**Keptain**)[1] [2], pursuant to section 194(1) of the Securities and Futures Ordinance (**SFO**) for window dressing Keptain's financial resources:

    (a) revoked his licence and the approval for him to act as an RO[3]; and

    (b) prohibited him from re-entering the industry for ten years from 24 August 2026 to 23 August 2036[4].

2. The SFC found that, during the period from June 2016 to March 2018 (**Relevant Period**), Keptain breached various requirements under the SFO and the Securities and Futures (Financial Resources) Rules (**FRR**), in that it:

    (a) window dressed its liquid capital on 15 occasions and provided information which was false and/or misleading in a material particular regarding its month-end liquid capital position in 15 financial returns submitted to the SFC (**15 FRR Returns**);

    (b) failed to maintain the required liquid capital (**RLC**) of $3 million at all times for 20 months; and

    (c) failed to notify the SFC of (i) its liquid capital falling below 120% of the RLC; and (ii) its inability to maintain the RLC.

3. The SFC found that Chan was directly responsible for Keptain's breaches and failures, in that he caused Keptain to window dress its liquid capital by including the amounts of various dishonoured cheques in Keptain's liquid capital

[1] Keptain (formerly known as Frontier Global Asset Management Limited) was / has been licensed by the SFC to carry on Type 1 (dealing in securities) regulated activity from 24 January 2013 to 31 August 2022, Type 4 (advising on securities) regulated activity since 3 August 2020, and Type 9 (asset management) regulated activity since 24 January 2013. It has applied to the SFC for a voluntary revocation of its licence.

[2] Chan was Keptain's RO for Type 1 and Type 9 regulated activities from 24 January 2013 to 31 May 2019.

[3] Before the revocation, Chan was accredited to CIS Securities Asset Management Limited and approved to act as its RO for Type 1, Type 4 and Type 9 regulated activities from 11 July 2023 to 23 August 2026.

[4] During this period, Chan is prohibited from (i) applying to be licensed or registered; (ii) applying to be approved as an RO of a licensed corporation; (iii) 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 (iv) seeking through a registered institution to have his name entered in the register maintained by the Monetary Authority under the Banking Ordinance as that of a person engaged by the registered institution in respect of a regulated activity.

computation in the 15 FRR Returns, creating the false appearance that Keptain complied with the FRR requirements, when in fact Keptain failed to maintain the RLC.

Regulatory Requirements

4. Section 4 of the FRR provides that a licensed corporation must at all times maintain financial resources in the amount required of it under Part 3 of the FRR.

5. Section 6(1) of the FRR states that, for the purpose of section 4, a licensed corporation must at all times maintain liquid capital which is not less than its RLC. Pursuant to Table 2 in Schedule 1 to the FRR, the RLC applicable to Keptain during the Relevant Period was $3 million.

6. Section 56(1) of the FRR requires a licensed corporation to submit to the SFC an FRR return in respect of each month at the end of which it remains licensed, which shall include, amongst other things, the liquid capital computation of the licensed corporation as at the end of the month.

7. Section 146(1) of the SFO requires a licensed corporation to notify the SFC as soon as reasonably practicable when it becomes aware of its inability to maintain financial resources specified by the FRR. Section 55(1) of the FRR also requires a licensed corporation to notify the SFC in writing as soon as reasonably practicable and in any event within one business day of becoming aware of its liquid capital falling below 120% of its RLC.

8. Under section 384(1) of the SFO, a person commits an offence if he (a) in purported compliance with a requirement to provide information imposed by any provisions of the SFO or its subsidiary legislation, provides to the SFC any information which is false or misleading in a material particular; and (b) knows that, or is reckless as to whether, the information is false or misleading in a material particular.

Summary of Facts

Providing false and misleading information in FRR Returns

9. During the Relevant Period, Keptain submitted 21 FRR returns to the SFC, reporting its liquid capital positions as at each month-end. All 21 FRR returns were signed and submitted electronically by Chan as Keptain's RO. By signing the 21 FRR returns, Chan declared and certified that the information in the 21 FRR returns, including the liquid capital computation, was true and correct to the best of his knowledge and belief.

10. In each of the 21 FRR returns, Keptain represented that its liquid capital exceeded the RLC. According to the liquid capital computation in the 21 FRR returns, Keptain's liquid capital consisted entirely of its "*bank balance held in other accounts and cash in hand*". This amount was determined with reference to the month end balance in Keptain's bank account held with HSBC (**Bank Account**)[5].

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[5] Keptain did not have any other bank account during the Relevant Period.

11. The SFC's investigation revealed that, in 15 of the 21 FRR returns (i.e. the 15 FRR Returns), the bank balance amount included the amount of 15 cheques issued by Chan or companies connected to him. While those cheques were deposited into the Bank Account at or around month-end, they were subsequently dishonoured a few days later (**15 Dishonoured Cheques**), before the FRR returns for the relevant reporting months were submitted to the SFC.

12. The amounts of the 15 Dishonoured Cheques were not genuinely part of, and should not have been included in the computation of, Keptain's liquid capital. Had the amounts represented by the 15 Dishonoured Cheques been excluded from the liquid capital calculations, the 15 FRR Returns would have shown that Keptain had failed to meet the RLC at the end of each relevant reporting months[6].

13. It follows that Keptain had provided false and/or misleading information regarding its bank balance amount, liquid capital and excess liquid capital in the 15 FRR Returns, in breach of section 384(1) of the SFO.

Failures to maintain sufficient liquid capital and to notify the SFC

14. The SFC found that, after excluding the amounts represented by the 15 Dishonoured Cheques, Keptain had liquid capital deficits ranging from $731,000 to $3,473,000, in breach of sections 4 and 6(1) of the FRR, over 20 months during the Relevant Period[7].

15. Notwithstanding the requirements under section 146(1) of the SFO and section 55(1) of the FRR, Keptain did not notify the SFC of its failure to maintain the RLC during the Relevant Period.

Chan's responsibility for Keptain's misconduct

16. Section 193(2)(a) of the SFO provides that where an intermediary is, or was at any time, guilty of misconduct as a result of the commission of any conduct occurring with the consent or connivance of, or attributable to any neglect on the part of, another person as a responsible officer of, or a person involved in the management of the business of, the licensed corporation, the conduct shall also be regarded as misconduct on the part of that other person.

17. Chan was Keptain's RO from 24 January 2013 to 31 May 2019 and Manager-in-Charge for Overall Management Oversight, Operational Control and Review, Risk Management, and Finance and Accounting from 24 January 2013 to 31 May 2019. He was also a substantial shareholder of Keptain from 24 January 2013 to 17 January 2019.

18. Chan was responsible for monitoring Keptain's liquid capital position and approving and submitting Keptain's FRR returns to the SFC during the Relevant Period. He was aware that Keptain did not have sufficient liquid capital to meet the RLC requirement at the material time, and admitted that the 15 Dishonoured Cheques were issued to address this issue.

[6] Namely, June, October and November of 2016, January to June and September to December of 2017 and January and February of 2018.

[7] Namely, during 1 June 2016 to 4 July 2016, 14 October 2016 to 8 December 2016, 12 December 2016 to 29 December 2016, 5 January 2017 to 30 July 2017, 1 August 2017 to 30 August 2017, and 1 September 2017 to 30 March 2018.

19. In dereliction of his duties as an RO and a member of the senior management of Keptain, Chan knowingly caused Keptain to window dress its liquid capital using the 15 Dishonoured Cheques and provide false and/or misleading information in the 15 FRR Returns. Further, he deliberately refrained from causing Keptain to notify the SFC of Keptain's inability to maintain the RLC as required under section 146(1) of the SFO and section 55(1) of the FRR.

20. The SFC considers that Keptain's failures and breaches summarized in paragraph 2 above occurred with Chan's consent or connivance, and shall be regarded as misconduct on his part under section 193(2)(a) of the SFO.

21. The above indicates that Chan has failed to:

    (a) act honestly, fairly, and with due skill, care and diligence, in the best interest of the integrity of the market, in breach of General Principle 1 (Honesty and fairness) and General Principle 2 (Diligence) of the Code of Conduct for Persons Licensed by or Registered with the Securities and Futures Commission (**Code of Conduct**); and

    (b) properly discharge his duty as an RO and a member of the senior management of Keptain to ensure its maintenance of appropriate standards of conduct and adherence to proper procedures, in breach of General Principle 9 (Responsibility of senior management) of the Code of Conduct.

Conclusion

22. The SFC is of the view that Chan is guilty of misconduct and not a fit and proper person to remain licensed for the purpose of section 194(1)(b) of the SFO. His conduct casts serious doubt on his character, reliability and ability to carry on regulated activities competently, honestly and fairly, thereby calling into question his fitness and properness to remain licensed.

23. In deciding the disciplinary sanction set out in paragraph 1 above, the SFC has taken into account that:

    (a) the FRR represent significant statutory safeguards for the interests of the investors in the market;

    (b) Keptain's window dressing of its liquid capital position was serious and amounted to flouting the FRR regime, preventing the SFC from assessing its financial soundness;

    (c) Chan was directly responsible for Keptain's window dressing activities and its failures to maintain its required liquid capital for a prolonged period;

    (d) Chan's conduct was intentional and called into question his honesty and integrity;

    (e) providing false or misleading information in FRR returns is a serious misconduct;

(f) Keptain did not have any active clients or conduct any regulated activities during the Relevant Period; and

(g) Chan’s cooperation with the SFC in resolving the SFC’s concerns.