

STATEMENT OF DISCIPLINARY ACTION

The Disciplinary Action

1. The Securities and Futures Commission (**SFC**) has prohibited Ng Ka Shun (**Ng**), responsible officer (**RO**)¹ of Agg. Asset Management Limited (**Agg**)², from re-entering the industry for life and fined him \$1,700,000 pursuant to section 194 of the SFO.
2. On 3 April 2020, the SFC issued a restriction notice (**RN**) to Agg because of doubts over Agg's reliability, integrity, and ability to carry on regulated activities competently, honestly and fairly, and its fitness and properness to remain licensed³.
3. The SFC's investigation revealed that Agg had window-dressed its liquid capital position and mismanaged two funds. Specifically, the SFC found that Agg had:
 - (a) in connection with its failure to maintain sufficient liquid capital:
 - (i) window-dressed its liquid capital as of 31 March 2017 to mislead the SFC into believing that it had satisfied the financial requirements for a licence;
 - (ii) window-dressed its liquid capital from May 2017 to February 2020 (**Relevant Period**) by providing false or misleading information in the financial returns submitted to the SFC (**FRR returns**) in respect of its month-end liquid capital; and failed to maintain the required liquid capital (**RLC**) of \$3 million for 34 months (**\$3M Requirement**) during the Relevant Period;
 - (iii) failed to notify the SFC in writing of insufficient liquid capital as soon as reasonably practicable; and
 - (iv) failed to notify the SFC in writing within 7 business days of changes in the particulars in respect of its bank accounts relating to the conduct of regulated activities, including whether an account has been opened or closed;
 - (b) in respect of its management of Fund A:
 - (i) failed to prevent, manage and minimise actual or potential conflicts arising from the transactions regarding 5 debentures issued by companies wholly owned and controlled by Ng, and take measures to ensure that Fund A and its investors would be treated fairly;

¹ Ng was accredited to Agg and approved to act as its RO for Type 1 (dealing in securities) regulated activity from 4 May 2017 to 12 October 2020. Apart from being Agg's sole shareholder and director, Ng was also Agg's Manager-in-Charge (**MIC**) of Overall Management Oversight and Key Business Line from 13 July 2017 to 3 April 2020, and MIC of Compliance, Anti-Money Laundering and Counter-Terrorist Financing, Operational Control and Review, Finance and Accounting and Information Technology from 11 April 2019 to 3 April 2020.

² Agg was licensed under the Securities and Futures Ordinance (**SFO**) to carry on Type 1 (dealing in securities), Type 4 (advising on securities) and Type 9 (asset management) regulated activities. On 5 July 2024, a notice was published in the Gazette which stated that Agg had been struck off the Companies Register and dissolved. Under section 195 of the SFO, the licence of Agg is deemed to be revoked.

³ The RN prohibited Agg, without prior written consent from the SFC, from carrying on any business, whether directly or through agents, which constitutes regulated activities for which it is licensed under the SFO until further notice.

- (ii) failed to ensure that it had sufficient risk management measures in place to properly protect investors' interests; and
 - (iii) caused Fund A to invest in 2 debentures which appeared to have been constructed for the purpose of inflating the fund's net asset value (**NAV**); and
 - (c) in respect of its management of Fund B:
 - (i) failed to ensure that Fund B's investments were in line with its stated investment objective and strategy;
 - (ii) failed to ensure that the assets entrusted to it had been properly safeguarded; and
 - (iii) failed to ensure that all assets held by it on behalf of clients were valued in accordance with the fund's constitutive documents.
- 4. The SFC considers that Agg's failures occurred with Ng's consent, or were attributable to his neglect in discharging his duties as an RO of Agg and a person involved in the management of its business. The SFC also finds that:
 - (a) Ng failed to act honestly and fairly by:
 - (i) window-dressing Agg's liquid capital and creating the appearance that Agg had met the \$3M Requirement (1) for the purpose of its licence application and (2) during the Relevant Period;
 - (ii) directing Fund A to invest in debentures issued by companies controlled by him and procuring the subscription proceeds to be lent to him; and
 - (iii) dissipating the assets held by Fund B by purportedly investing in the mining of cryptocurrencies which were outside the scope of the fund's investment strategy and objective, and causing the subscription proceeds to be transferred to him which he used for his own purposes; and
 - (b) Ng failed, as an RO and a member of the senior management of Agg, to ensure Agg's maintenance of appropriate standards of conduct and adherence to relevant regulatory requirements.

Regulatory requirements

- 5. The relevant regulatory requirements are set out in the **Appendix**.

Summary of Facts

Window-dressing Agg's liquid capital

- 6. On 31 March 2017, Agg submitted an application to the SFC for a licence to carry on Type 1, Type 4 and Type 9 regulated activities (**Licence Application**). The Licence Application was signed by Ng and included the following supporting documents:

- (a) A Supplement Form stating that Agg had total liquid assets of \$5 million and excess liquid capital of \$2 million as at 31 March 2017 (**Supplement Form**); and
 - (b) A screen capture of a deposit slip showing that a cheque for the sum of \$5 million (**\$5m Cheque**) had been deposited into Agg's bank account (**Agg's Bank Account**) on 29 March 2017.
7. It transpired that Ng drew the \$5m Cheque on his personal bank account on 29 March 2017, i.e. 2 days before the Supplement Form was submitted to the SFC, but on 6 April 2017, Ng drew a \$5 million cheque on Agg's Bank Account and deposited the same back into his personal account. Following the withdrawal of \$5 million, Agg's Bank Account only had a balance of \$6,458.32 by day end on 6 April 2017.
8. Ng acknowledged in the Licence Application that Agg must notify the SFC immediately if any information contained in the Licence Application were to change prior to a decision being made in respect of the same. Despite such acknowledgement, neither Agg nor Ng reported to the SFC the decline in Agg's liquid assets. In reliance upon the representation contained in the Supplement Form, the SFC granted a licence to Agg.
9. After obtaining a licence, Ng perpetuated the façade that Agg had sufficient liquid capital during the Relevant Period by masking the full extent of Agg's liabilities and making bare assertions about the existence of substantial amounts of cash in Agg's office.
10. In each of the 37 FRR returns⁴ submitted to the SFC (**37 Returns**) for the Relevant Period and signed by Ng in his capacity as RO, Agg claimed that its liquid capital had exceeded the \$3M Requirement. In fact, Agg had an RLC deficit at the end of each reporting month and the 37 Returns were false or misleading. Specifically, Agg window-dressed its liquid capital by:
- (a) including 2 dishonoured cheques signed by Ng in the sums of \$5 million and \$4.2 million in the computation of Agg's liquid capital for the months of June 2017 and December 2018 respectively;
 - (b) failing to disclose in its FRR returns the existence of other bank accounts of Agg, including accounts which were subject to overdraft facilities agreements signed by Ng; and
 - (c) holding out in the FRR returns for the period between January 2019 and February 2020 that Agg had sufficient month-end "cash in hand" positions⁵.

Failure to maintain sufficient liquid capital and to notify the SFC of non-compliance as soon as reasonably practicable

11. During the Relevant Period, Agg had RLC deficits for a continuous period for nearly 34 months and should have notified the SFC of its inability to comply with the \$3M Requirement as soon as reasonably practicable. However, it was only upon the

⁴ Agg revised and resubmitted the FRR returns for the months of December 2017, January 2019 and February 2019.

⁵ Ng claimed to have kept cash amounting to as much as \$3 million to \$4 million at the end of 2018 in a small safe inside Agg's office, and the source of the cash was purportedly an accumulation of his personal wealth.

SFC's enquiries that Agg belatedly reported to the SFC that its liquid capital had fallen below 120% of the RLC for 5 months.

12. Agg was required to notify the SFC of the change in the particulars of its bank accounts relating to the conduct of regulated activities within 7 business days of the change⁶. Some of Agg's bank accounts mentioned in paragraph 10(b) above were opened 4 months after the SFC granted the Licence Application. However, Agg did not notify the SFC of the opening of these bank accounts.

Mismanagement of Fund A

13. Fund A, of which Ng was a director, was incorporated in the Cayman Islands. According to its Private Placement Memorandum:
 - (a) A Cayman incorporated entity of which Ng was the sole owner and a director (**Agg 1**) was the manager and the guarantor under a corporate guarantee, which guaranteed the make-up of any shortfall between the guaranteed price and the NAV per share determined on the prescribed valuation day.
 - (b) Agg was the investment manager, appointed to manage and invest the assets of Fund A, under the delegation by the manager.
14. During the period from February 2018 to February 2019, Fund A subscribed for:
 - (a) 1 debenture issued by Agg 1 dated 28 February 2019, in the principal amount of \$1 million (**Agg 1 Debenture**); and
 - (b) 4 debentures issued by another entity of which Ng was also the sole owner and a director (**Agg 2**) in aggregate principal amounts of \$4.55 million (**Agg 2 Debentures**)(collectively the **Agg Debentures**).
15. The SFC found that:
 - (a) During the period from March 2018 to May 2019, 88.83% to 100% of Fund A's total investment (or 62.78% to 82.83% of its NAV) was invested in the Agg Debentures.
 - (b) Shortly after Fund A transferred subscriptions totalling \$4,250,000 to Agg 2 for 3 of the Agg 2 Debentures, Ng withdrew \$4,120,180 as personal loans from Agg 2. He subsequently repaid \$1 million to Agg 2.
 - (c) Although Agg 2 had only made partial repayment of the some of the principals and coupons of the Agg 2 Debentures to Fund A, Fund A took no action to seek repayment from Agg 2.
 - (d) In December 2019, Ng informed the investors of Fund A that the fund's operation was suspended, and personally offered to purchase their shares held in the fund at a 5% premium of the investors' investment principal. By August 2020, Ng had repaid to the investors around 60% to 70% of their investment principals.

⁶ See paragraph 3 of the Appendix.

16. Fund A's subscription for the Agg Debentures has given rise to conflicts of interest. As the sole owner of Agg, Agg 1 and Agg 2 and one of the directors of Fund A, Ng was able to make all the investment decisions relating to these companies and caused Fund A to invest substantially all of its assets in debentures issued by companies controlled by him.
17. Despite Ng's senior management role in Agg, he did not take any steps to avoid conflicts of interest or ensure that Fund A and its investors would be fairly treated with respect to Fund A's subscriptions for the Agg Debentures.
18. Furthermore, it appears that 2 of the Agg Debentures that Agg had caused Fund A to enter (namely, the one of the Agg 2 Debentures and the Agg 1 Debenture) were for the purpose of inflating Fund A's NAV:
 - (a) Under the relevant Agg 2 Debenture:
 - (i) Fund A essentially provided a one-year loan of \$300,000 to Agg 2, and in return Agg 2 agreed to repay \$1.28 million (over 4 times the loan amount – comprising the principal sum of \$300,000, a corporate commitment fee of \$950,000 (**Corporate Commitment Fee**), and interests) to Fund A.
 - (ii) Although Agg 2's agreement to pay the Corporate Commitment Fee defies commercial sense and was subject to a cancellation clause in the subscription agreement, Agg instructed the fund administrator responsible for calculating the NAV of Fund A to book the Corporate Commitment Fee in the accounts of Fund A for the 2018 year-end.
 - (b) As for the Agg 1 Debenture:
 - (i) On the same day that Fund A subscribed for the Agg 1 Debenture in the principal amount of \$1 million, Agg 1 provided a "Corporate Guarantee" signed by Ng to Fund A, stating that it had irrevocably honoured and guaranteed payment of \$1 million to Fund A on 28 February 2019 (**Corporate Guarantee**).
 - (ii) The subscription fee payable to Agg 1 was settled by netting off against the Corporate Guarantee. While Fund A's subscription for the Agg 1 Debenture involved no actual transfer of funds, the sum of \$1 million payable under the Corporate Guarantee was included in Fund A's valuation report for February 2019 as "*cash and equivalents*" under "*Revenues*".
 - (c) As such, both the Corporate Commitment Fee and the Corporate Guarantee inflated the NAV of Fund A.
19. Agg also failed to take any action towards quantifying and adequately managing the financial risks that Fund A would be exposed to by investing substantially all of its assets in the Agg Debentures, including concentration risks, the risk of conflicts of interest, credit risks of the Agg Debentures.

Mismanagement of Fund B

20. The set up of Fund B, which was incorporated in the Cayman Islands, resembled that of Fund A. According to the PPM of Fund B (**Fund B PPM**), Ng was one of the

directors and Agg was the investment manager, appointed to manage and invest the assets of Fund B, under the delegation by the manager Agg 1.

21. The investment objective of Fund B was to provide long term capital growth by investing in companies around the world in the information technology and/or eSports sectors. The "investment strategy" section of the Fund B PPM stated that Fund B would also invest in companies developing technology and gaming products and services.
22. The SFC found that:
 - (a) Within 1 month after 3 initial investors had invested a total of \$3 million, Fund B transferred a total sum of \$1.2 million to Company A, of which Ng was the sole director, shareholder and authorised signatory of its bank accounts. The sum was applied as follows:
 - (i) Ng withdrew \$300,000 in cash from the bank account of Company A; and
 - (ii) Company A made 3 payments in the total sum of \$1,140,300 to a computer shop in Wanchai Computer Center.
 - (b) According to Ng, Fund B appointed Company A to purchase computer hardware to facilitate Fund B engaging in the mining of cryptocurrencies.
 - (c) Shortly after 2 other investors deposited a total of \$1.3 million into the bank account of Fund B, Ng procured transfers of the same amounts from Fund B to his personal bank accounts.
 - (d) Despite provisions in the Fund B PPM that the fund administrator was responsible for calculating the NAV of Fund B, the administrator named in the Fund B PPM denied that it was appointed to do so.
 - (e) According to Ng, Fund B had ceased operation following the issue of the RN, and there was no money left in its accounts. As such, no refunds were made to the investors.
23. Agg and Ng's management of Fund B shows a complete disregard of their responsibility to ensure that the monies entrusted to them for investments were within the scope of the Fund B PPM and that the fund's assets were properly valued and accounted for, with clear audit trail and supporting documentary records.
24. Firstly, Agg and Ng failed to ensure that Fund B's investments were in line with its stated investment objective and strategy:
 - (a) Ng channelled part of the subscription proceeds to Company A allegedly for the mining of cryptocurrencies. However, the investment in cryptocurrencies or the mining of cryptocurrencies were not among Fund B's investment objectives as specified in its PPM.
 - (b) Agg and Ng were unable to provide any documentary records in support of such investments, including records of Fund B's arrangement with Company A, the fund's ownership of the computer hardware or the cryptocurrencies.
25. Further, Agg and Ng failed to ensure that the assets entrusted to it had been properly safeguarded:

- (a) Under the Fund B PPM, portfolio assets of Fund B which were not held by brokers and dealers carrying the fund's trading accounts should be held by a custodian. The funds transferred to Company A allegedly for purchasing computer hardware to mine cryptocurrencies were not held by a custodian.
 - (b) The lack of documentary records mentioned in paragraph 24(b) above suggests Agg's disregard as to the outcome of that investment and an indifference to its obligation to safeguard the assets of Fund B.
 - (c) The ability of Ng to procure subscription funds deposited into Fund B to be handled in the manner outlined in paragraph 22 above indicates an absence of safeguards over the fund's assets.
26. Lastly, Agg and Ng failed to ensure valuation of Fund B had been performed in accordance with the terms of the Fund B PPM. Agg and Ng were not able to provide any documentation to evidence the valuation, NAV and the auditing of Fund B. There were no objective criteria to support how Fund B was performing. Accordingly, investors were kept in the dark about what happened to their investment after subscribing for Fund B.
27. The 5 investors who had injected a total of \$4.3 million into Fund B failed to receive anything in return. Of this sum of \$4.3 million, it appears that Ng took the benefit of, or is otherwise unable to account for, \$1.7 million.

The SFC's findings

28. The failures of Agg constitute breaches of:
- (a) General Principle (**GP**) 1 (Honesty and fairness), GP 2 (Diligence), GP 6 (Conflicts of interest), GP 7 (Compliance), and paragraph 12.1 (Compliance: in general) of the Code of Conduct for Persons Licensed by or Registered with the Securities and Futures Commission (**Code of Conduct**);
 - (b) sections 146(1), 383(1) and 384(1) of the SFO and sections 4 and 6(1) of the Securities and Futures (Financial Resources) Rules (**FRR**);
 - (c) section 135(3) of the SFO and section 4 of the Securities and Futures (Licensing and Registration) (Information) Rules (**Information Rules**); and
 - (d) paragraphs 1.2(d), 3.1, 4 and 5.3 of the Fund Manager Code of Conduct (**FMCC**) (2nd and 3rd editions), paragraphs 1.5, 1.7.1 and 5.3.5 of the FMCC (3rd edition).
29. The SFC is of the view that under section 193(2)(a) of the SFO⁷, Agg's conduct occurred with Ng's consent, or was attributable to his neglect in discharging his duties as an RO of Agg and a person involved in the management of its business. The SFC also finds that Ng breached GP 1 and GP 9 of the Code of Conduct.

Conclusion

⁷ Section 193(2)(a) of the SFO states 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 an RO of the licensed corporation 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.

30. Having considered all relevant circumstances, the SFC is of the opinion that that Ng is guilty of misconduct and his fitness and properness to carry on regulated activities have been called into question.
31. In deciding the disciplinary sanction set out in paragraph 1 above, the SFC has taken into account all relevant circumstances of the case, including:
- (a) Ng's actions in window-dressing Agg's liquid capital position are serious, and demonstrate an outright disregard of the FRR which serve as significant statutory safeguards for the interests of the investors in the market;
 - (b) the window-dressing activities of Agg started when the firm applied for a SFC licence and lasted until the SFC issued the RN;
 - (c) Ng acted dishonestly and exploited the investors of the 2 funds;
 - (d) Ng took the benefit of or is otherwise unable to account for \$1.7 million of the subscription proceeds of Fund B;
 - (e) removing Ng from the industry is necessary to protect the investing public; and
 - (f) Ng had an otherwise clean disciplinary record.

Appendix

The SFO:

1. Sections 4 and 6 of the FRR provide that a licensed corporation must at all times maintain financial resources in the amount required of it under Part 3 of the FRR and that a licensed corporation must at all times maintain liquid capital which is not less than its RLC.
2. Section 116(3)(b) of the SFO provides that the SFC shall refuse to grant a licence to carry on a regulated activity under section 116(1) unless the applicant satisfies the SFC that, among other things, it will be able, if licensed, to comply with the FRR.
3. Under section 135 of the SFO, section 4 and Schedule 3 of the Information Rules, a licensed corporation is required to report to the SFC changes in the particulars in respect of bank accounts of the licensed corporation relating to the conduct of regulated activities, including whether an account has been opened or closed within 7 days.
4. Section 146(1) of the SFO states that if a licensed corporation becomes aware of its inability to maintain, or to ascertain whether it maintains, financial resources in accordance with the specified amount requirements that apply to it, it shall as soon as reasonably practicable notify the SFC by notice in writing of that fact and immediately cease carrying on any regulated activity for which it is licensed, otherwise than for the purpose of completing such transactions as the SFC may permit.
5. Section 383(1) of the SFO provides that a person commits an offence if he (a) in support of any application made to the SFC under or pursuant to any provision of the SFO, whether for himself or for another person, makes a representation, whether in writing, orally or otherwise, that is false or misleading in a material particular; and (b) knows that, or is reckless as to whether, the representation is false or misleading in a material particular.
6. Section 384(1) of the SFO provides that a person commits an offence if he (a) in purported compliance with a requirement to provide information imposed by or under any of the relevant provisions⁸, provides to a specified recipient⁹ 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.

The Code of Conduct:

7. GP 1 of the Code of Conduct requires a licensed person to act honestly, fairly, and in the best interests of its clients and the integrity of the market in conducting its business activities.
8. GP 2 of the Code of Conduct 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 in conducting its business activities.

⁸ Under section 1 of Part 1 of Schedule 1 to the SFO, "*relevant provisions*" includes provisions of the SFO. Under section 12 of Part 1 of Schedule 1 to the SFO, a reference to the SFO or any other ordinance shall, unless the context otherwise requires, be construed as including any subsidiary legislation made under such an ordinance (such as the FRR).

⁹ "*Specified recipient*" is defined in section 384(8) of the SFO to mean either the SFC, a recognised exchange company, clearing house or exchange controller.

9. GP 6 of the Code of Conduct requires a licensed person to try to avoid conflicts of interest, and when they cannot be avoided, to ensure that its clients are fairly treated.
10. GP 7 of the Code of Conduct requires a licensed person to comply with all regulatory requirements applicable to the conduct of its business activities so as to promote the best interests of clients and the integrity of the market.
11. GP 9 of the Code of Conduct requires the senior management of a licensed person to bear primary responsibility for ensuring the maintenance of appropriate standards of conduct and adherence to proper procedures by the firm.
12. Paragraph 12.1 of the Code of Conduct requires a licensed person to comply with, and implement and maintain measures appropriate to ensuring compliance with, the law, rules, regulations and codes administered or issued by the SFC.

The FMCC¹⁰

13. Paragraph 1.2(d) of the FMCC (2nd and 3rd editions) requires a fund manager to maintain satisfactory risk management procedures commensurate with its business.
14. Paragraph 1.5 of the FMCC (3rd edition) requires a fund manager to maintain and operate effective organizational and administrative arrangements with a view to taking all reasonable steps designed to identify, prevent, manage and monitor any actual or potential conflicts of interest, including conducting all transactions in good faith at arm's length and in the best interests of the fund on normal commercial terms. Where an actual or potential conflict arises, the conflict should be managed and minimised by appropriate safeguards and measures to ensure fair treatment of fund investors, and any material interest or conflict should properly be disclosed to fund investors.
15. Paragraph 1.7.1 of the FMCC (3rd edition) requires a fund manager to establish and maintain effective policies and procedures as well as a designated risk management function to identify and quantify the risks, whether financial or otherwise, to which the fund manager and, if applicable, the funds are exposed. The fund manager should take appropriate and timely action to contain and otherwise adequately manage such risks.
16. Paragraph 3.1 of the FMCC (2nd and 3rd editions) requires a fund manager to ensure that transactions carried out on behalf a client are in accordance with the portfolio's stated objectives, investment restrictions and guidelines, whether in terms of asset class, geographical spread or risk profile.
17. Paragraph 4 of the FMCC (2nd edition) and paragraph 4.1.1 of the FMCC (3rd edition) require a fund manager to ensure that the assets entrusted to it are properly safeguarded.
18. Paragraph 5.3 of the FMCC (2nd edition) and paragraph 5.3.5 of the FMCC (3rd edition) require that all assets held by a fund manager on behalf of clients should be valued on a regular basis and the basis of valuation disclosed to clients.

¹⁰ During the Relevant Period, the 2nd edition of the FMCC (dated January 2014 and valid from 1 January 2014 to 16 November 2018) was applicable until 16 November 2018, and the 3rd edition of the FMCC (dated November 2018 and valid from 17 November 2018 to 19 August 2022) was applicable from 17 November 2018.