STATEMENT OF DISCIPLINARY ACTION

The disciplinary action

1. The Securities and Futures Commission (**SFC**) has publicly reprimanded and fined Kylin International (HK) Co., Limited (**Kylin**)[1] HK$9 million pursuant to section 194 of the SFO.

2. The SFC found that, while acting as the investment manager or consultant of 6 closed-end sub-funds (**Segregated Portfolios**) of Kylin Global Capital Gain SPC (**Fund**) between August 2018 and January 2022, Kylin:

   (a) failed to avoid, manage and minimise conflicts of interest arising from 6 loans extended by it or its director to 4 of the Segregated Portfolios between May 2019 and September 2020 (**Loans**) and disclose such conflicts to the investors;

   (b) failed to perform monthly reconciliations and regular valuations of the assets of the Segregated Portfolios before July 2021, and ensure that an independent auditor was appointed to audit the financial statements of the Segregated Portfolios annually before July 2020;

   (c) incorrectly informed the investors of the Segregated Portfolios that, due to their classification as PIs, Kylin was exempted from complying with certain regulatory requirements during the period prior to April 2021;

   (d) failed to implement adequate and effective systems and controls in relation to know your client (**KYC**) and suitability assessment requirements prior to April 2021; and

   (e) failed to keep records that could demonstrate that it had, during the period between August 2018 and March 2021, complied with regulatory requirements regarding anti-money laundering and counter-terrorist financing (**AML / CTF**).

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

Summary of facts

A. Background

4. Between August 2018 and January 2022, Kylin was the investment manager or consultant responsible for managing 6 Segregated Portfolios of the Fund, a private fund incorporated in the Cayman Islands.

5. Following a limited review of Kylin's business activities in late 2020 (**2020 SFC Inspection**), which revealed various deficiencies in Kylin's fund management

[1] Kylin was licensed to carry on Type 9 (asset management) regulated activity under the Securities and Futures Ordinance (**SFO**) from 4 April 2014 to 22 January 2025. Its licence was subject to the condition that it shall only provide services to "professional investors" (**PIs**) as defined in the SFO and its subsidiary legislation. Kylin has ceased to carry on regulated activities since 31 December 2023. Following its application, the SFC revoked its licence on 22 January 2025.

activities, the SFC conducted an investigation into the conduct of Kylin and persons connected with it regarding the management of the Segregated Portfolios.

B. Failure to avoid, manage, minimise and disclose conflicts of interest arising from the Loans

6. Between May 2019 and September 2020, Kylin and its director, Zhu Hong (**Zhu**)[2], entered into 6 loan agreements with 4 of the Segregated Portfolios (the **4 SPs**) (collectively, the **Loan Agreements**), allegedly to support fund operations or other expenses. The 4 SPs borrowed approximately HK$83 million from Kylin while 1 of the 4 SPs borrowed US$8.1 million from Zhu under the Loan Agreements. The Loans were for terms ranging between 6 months to 3 years, and each charged interest at the rate of 10% per annum.

7. Kylin and Zhu received interest payment of approximately HK$1.3 million and US$87,485 respectively from the Loans.

8. Kylin placed itself in a conflict of interest situation by acting as both the investment manager for the 4 SPs and the lender under the respective loan agreements. Furthermore, by facilitating the loan from Zhu to 1 of the 4 SPs, Kylin allowed a conflict of interest to arise from Zhu's dual roles as a director of both Kylin and the Fund, as well as her position as the lender in the loan agreement.

9. The SFC found that Kylin failed to avoid, manage and minimise the conflicts of interest arising from the Loan Agreements by implementing appropriate safeguards and measures to ensure fair treatment of the fund investors and make proper disclosure of the conflicts to the fund investors. In particular, the SFC identified the following issues:

   (a) The interest rate of 10% per annum charged under the Loan Agreements was considerably higher than the interest rates charged by execution brokers for margin loans to the 4 SPs (which ranged from 5.1% to 7.5% per annum).

   (b) In 2019 and 2020, Kylin charged interests below 10% per annum for loans to other connected parties.

   (c) Kylin failed to maintain any records of its assessment of whether the Loan Agreements were on normal commercial terms negotiated at an arm's length basis. Furthermore, there was no evidence that Kylin took adequate measures to ensure that the 10% annual interest rate on the Loans was not higher than the prevailing commercial rate for similar loans.

   (d) Kylin did not disclose the Loan Agreements or their terms to the investors of the 4 SPs.

10. Kylin's failures constitute breaches of:

[2] Zhu has been a substantial shareholder of Kylin since 31 August 2018. Zhu was also Kylin's manager-in-charge (**MIC**) for (i) AML / CTF; (ii) Risk Management; and (iii) Finance and Accounting during different periods between 30 April 2019 and 22 January 2025.

(a) General Principle (**GP**) 2, GP 6 and paragraph 10.1 of the Code of Conduct for Persons Licensed by or Registered with the Securities and Futures Commission (**Code of Conduct**); and

(b) paragraph 1.5 of the Fund Manager Code of Conduct (third edition, November 2018) (**FMCC**).

C. Failure to preform reconciliations, valuations and annual audit

11. The SFC found that:

(a) Kylin did not have any policy on reconciliations before April 2021 and did not perform any reconciliations in respect of the Segregated Portfolios' assets before July 2021.

(b) It was not until July 2021 that Kylin appointed a fund administrator to perform fund reconciliation.

12. In respect of fund asset valuation, the evidence showed that:

(a) The policy implemented by Kylin before July 2021 for valuation of fund assets did not specify the valuation frequency.

(b) Kylin also failed to produce records to demonstrate that the assets of the Segregated Portfolios were valued on a regular basis.

(c) It was only after the 2020 SFC Inspection that Kylin engaged the fund administrator in July 2021 to perform valuation on the assets of the Segregated Portfolios on a monthly basis.

13. Further, the SFC's investigation revealed that Kylin neither appointed any external auditor to audit the financial statements of the Segregated Portfolios before July 2020, nor made available annual reports for 5 of the Segregated Portfolios.

14. Kylin's failures constitute breaches of paragraphs 5.2.2, 5.3.1, 5.3.5 and 5.6 of the FMCC.

D. Incorrect information to investors classified as PIs

15. All of the investors[3] of the Segregated Portfolios were classified by Kylin as either Individual PIs or Corporate PIs. They were required to complete the same PI assessment and classification form (**PI Form**) to confirm that they consented to be treated as a PI and accepted the relevant risk and consequence.

16. The PI Form states that certain regulatory requirements would not be applicable to the client. In particular:

(a) if the client declared to have a specialised investment team, Kylin would not need to:

[3] Excluding Kylin itself, which was one of the investors of two of the Segregated Portfolios and falls within the definition of Institutional PI.

(i) establish the client's financial situation and investment experience; and

(ii) assess the client's knowledge of derivatives and characterise the client based on his / her / its knowledge of derivatives; and

(b) the client would be regarded as familiar with the securities and investment products traded via Kylin, and Kylin would not need to ensure the suitability of a recommendation or solicitation (collectively, the **Statements**).

17. The Statements are incorrect because the relevant exemptions under paragraph 15.4 of the Code of Conduct:

(a) would only apply to Corporate PIs if Kylin had conducted the required assessment and been reasonably satisfied that the client met the criteria set out in paragraph 15.3A of the Code of Conduct. However, Kylin failed to do so and did not have any written polices or controls for such assessment at the material time; and

(b) were not applicable to Individual PIs under any circumstances.

18. By making the incorrect Statements in the PI Form, Kylin breached paragraph 2.1 of the Code of Conduct. It was only after the 2020 SFC Inspection that Kylin remedied the issue by revamping the PI Form in April 2021.

E. Lack of effective KYC and suitability systems and controls

19. Prior to January 2020, Kylin's KYC questionnaire did not contain any questions about the client's risk tolerance and investment objectives, knowledge and horizon.

20. In January 2020, Kylin replaced the KYC questionnaire with the PI Form, which contains questions about the client's (a) investment experience and knowledge; (b) investment objective and risk tolerance; (c) knowledge of derivatives; and (d) financial situation.

21. However, upon examining 84 PI Forms completed by investors of the Segregated Portfolios, the SFC identified various irregularities. Examples include missing or incomplete information on investment experience, inconsistencies in reported investment experience across forms, and the selection of multiple, potentially conflicting investment objectives and risk tolerance levels without explanation.

22. According to Kylin's then chief executive officer and responsible officer (**RO**), Steven Wong Yung (**Wong**)[4]:

(a) Although Kylin assigned a "high" risk rating to the Segregated Portfolios, he recommended the Segregated Portfolios to clients regardless of their risk tolerance levels indicated on the PI Form.

[4] Wong was Kylin's RO from 25 November 2016 to 30 November 2023. He was also Kylin's executive director from 13 June 2019 to 30 November 2023 and MIC for (i) Overall Management Oversight; (ii) Key Business Line; (iii) AML / CTF; (iv) Compliance; (v) Operational Control and Review; (vi) Risk Management; and (vii) Information Technology during different periods between 3 July 2017 and 30 November 2023.

(b) If a client with a risk tolerance level of "medium" or below wished to invest in the Segregated Portfolios, he would provide the investor with a "notice of discrepancy in risk" (**Risk Notice**), which includes the following disclaimers (among others):

(i) Kylin is not required to establish the investor's financial situation, investment experience and investment objectives. Therefore, it might not be appropriate for Kylin to assess the suitability of the product for the investor. The investor assumes full responsibility for the investment and the decision made.

(ii) Kylin is not required to assess the investor's knowledge of derivatives and characterise the investor based on the investor's knowledge of derivatives. The investor assumes full responsibility as a client regarded as having knowledge of derivatives.

23. The SFC found that Kylin's KYC and suitability process was deficient in various ways. Specifically:

(a) There is no record showing that Kylin alerted the investors or sought clarification from them regarding any conflicting or incomplete information provided in the PI Forms.

(b) By allowing investors to select multiple and conflicting investment objectives and risk tolerance levels without requiring clarification, Kylin might not have had sufficient information to properly assess the investors' risk profiles and their suitability for the Segregated Portfolios.

(c) Although investors were requested to indicate their own risk tolerance level in the PI Forms, Kylin did not have a system in place to independently assess the risk profile of each client based on the client's overall circumstances or document the results of its assessment.

(d) Investors were considered to have knowledge of derivatives based solely on their self-declarations in the PI Form. There is no record demonstrating that Kylin made appropriate enquiries or gathered relevant information to properly assess their relevant knowledge.

(e) In 81 of the 84 PI Forms, the clients indicated a risk tolerance level of "medium" or below, which was lower than the "high" risk rating of the Segregated Portfolios (**Risk Mismatch Cases**). However, there is no documentation of Kylin's justification for considering the products suitable for the investors despite the risk mismatch.

(f) For the Risk Mismatch Cases, Kylin claimed to have provided the Risk Notice to the investors cautioning them about the risk mismatch. However, Kylin was unable to produce any records demonstrating that the Risk Notice had actually been provided to the investors. Nor were the investors required to sign the Risk Notice to confirm that they had reviewed and accepted its contents.

(g) Similar to the SFC's findings stated in section D above, the disclaimers in the Risk Notice mentioned in paragraph 22(b) above are incorrect.

24. It was only after the 2020 SFC Inspection that Kylin implemented a new risk profiling questionnaire in April 2021 to independently assess and establish clients' risk profiles and knowledge of derivatives.

25. Kylin's failures prior to April 2021 constitute breaches of GP 3 and paragraphs 4.3, 5.1, 5.1A and 5.2 of the Code of Conduct.

F. Lack of records of clients' money laundering and terrorist financing (ML / TF) risk assessment and screening

26. Until at least November 2021, Kylin's compliance manual did not set out any guidelines or procedures for assessing the ML / TF risks of clients, determining whether a client is a politically exposed person (**PEP**), and screening clients against any database of terrorists and sanction designations.

27. With respect to the investors of the Segregated Portfolios, Kylin failed to produce any records showing:

    (a) whether the investor was classified as high-risk or low-risk;

    (b) how Kylin assessed, and the factors taken into account in assessing, the ML / TF risks of the investor;

    (c) whether the investor (or its beneficial owner) was a PEP and what measures had been taken to determine this; and

    (d) whether Kylin had screened the investor against any database of terrorists and sanction designations.

28. According to Wong, before April 2021, Kylin used publicly available search engines to conduct background check on its clients, including checking whether the client was a PEP. However, Kylin did not keep any records of the searches performed.

29. Kylin claimed that it had since April 2021 enhanced its AML procedures by acquiring an independent AML software tool.

30. The SFC found that Kylin has failed to:

    (a) demonstrate how it assessed the ML / TF risks of the investors of the Segregated Portfolios as it did not keep proper records of its assessment for the period between August 2018 and December 2020, in breach of paragraph 3.8 of the Guideline on Anti-Money Laundering and Counter-Financing of Terrorism (For Licensed Corporations) (November 2018 edition) (**AML Guideline**);

    (b) maintain a database of terrorists and sanction designations or make arrangements to access to such a database maintained by third party service providers from September 2019 to March 2021, in breach of paragraph 6.13 of the AML Guideline; and

    (c) keep proper records that could demonstrate that it had, for the period between August 2018 and March 2021:

(i) in compliance with paragraphs 4.11.9 and 4.11.21 of the AML Guidelines, taken reasonable measures to determine whether the investors of the Segregated Portfolios (or their beneficial owners) were PEPs; and

(ii) in compliance with paragraph 6.16 of the AML Guideline, screened the investors of the Segregated Portfolios (or their beneficial owners) against current database at the establishment of the relationship and against all new and any updated designations to the database as soon as practicable,

in breach of paragraphs 8.2 and 8.3 of the AML Guideline.

G. Misconduct of Wong and Zhu

31. The SFC considers that Kylin's misconduct was attributable to Wong's and Zhu's failures to discharge their duties as members of Kylin's senior management.[5]

32. Wong was accountable for the failures of Kylin as outlined in sections B to F above. Specifically, he:

(a) approved the Loans without ensuring that Kylin had taken steps to avoid, manage and disclose the conflicts of interest arising from them;

(b) failed to act with due skill, care and diligence in ensuring proper execution and oversight of the KYC process and client risk assessments;

(c) failed to ensure that the Segregated Portfolios he recommended to investors were suitable for them; and

(d) failed to ensure Kylin implemented adequate internal controls and procedures to ensure regulatory compliance.

33. Zhu was responsible for Kylin's failures related to the Loans and AML / CTF compliance. Similar to Wong, she approved the Loans without ensuring proper management and disclosure of the conflicts of interest arising from them. Additionally, she placed herself in a direct conflict of interest by personally providing a loan to one of the Segregated Portfolios. As Kylin's MIC of AML / CTF, she also failed to ensure that Kylin implemented adequate internal control procedures to comply with the AML Guideline.

Conclusion

34. In the circumstances, the SFC is of the opinion that Kylin is guilty of misconduct.

35. In determining the sanctions set out at paragraph 1 above, the SFC has taken into account all relevant considerations including the following:

(a) Kylin's failures have the potential to undermine public confidence and damage market integrity;

[5] Please refer to the SFC's press release dated 19 March 2025 for information regarding the SFC's disciplinary action against Wong, and its press release dated 18 August 2025 for information regarding its disciplinary action against Zhu.

(b) a strong deterrent message must be sent to the market that the SFC will not tolerate misconduct as shown in Kylin's failures;

(c) Kylin implemented remedial measures subsequent to the 2020 SFC Inspection;

(d) Kylin has ceased carrying on regulated activities and is no longer licensed; and

(e) Kylin has an otherwise clean disciplinary record.

Appendix

Relevant regulatory requirements

*Code of Conduct for Persons Licensed by or Registered with the Securities and Futures Commission (**Code of Conduct**)*

1. General Principle (**GP**) 2 of the Code of Conduct requires a licensed corporation 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.

2. GP 3 of the Code of Conduct requires a licensed corporation to have and employ effectively the resources and procedures which are needed for the proper performance of its business activities.

3. GP 4 of the Code of Conduct requires a licensed corporation to seek from its clients information about their financial situation, investment experience and investment objectives relevant to the services to be provided.

4. GP 6 of the Code of Conduct provides that a licensed corporation should try to avoid conflicts of interest, and when they cannot be avoided, should ensure that its clients are fairly treated.

5. Paragraph 2.1 of the Code of Conduct provides that, where a licensed corporation advises or acts on behalf of a client, it should ensure that any representations made and information provided to the client are accurate and not misleading.

6. Paragraph 4.3 of the Code of Conduct requires a licensed corporation 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.

7. Paragraph 5.1 of the Code of Conduct requires a licensed corporation to take all reasonable steps to establish the financial situation, investment experience and investment objectives of each client.

8. Paragraph 5.1A of the Code of Conduct requires a licensed corporation to, as part of the know-your-client procedures, assess the client's knowledge of derivatives and characterise the client based on his knowledge of derivatives.

9. Paragraph 5.2 of the Code of Conduct provides that a licensed corporation should, when making a recommendation or solicitation, ensure the suitability of the recommendation or solicitation for that client is reasonable in all the circumstances having regard to the information about the client of which the licensed corporation is or should be aware through the exercise of due diligence.

10. Paragraph 10.1 of the Code of Conduct provides that, where a licensed corporation has a material interest in a transaction with or for a client or a relationship which gives rise to an actual or potential conflict of interest in relation to the transaction, it should neither advise, nor deal in relation to the transaction unless it has disclosed that material interest or conflict to the client and has taken all reasonable steps to ensure fair treatment of the client.

11. Paragraph 15.1(b) of the Code of Conduct provides that notwithstanding that some legal restrictions imposed by the SFO do not apply to licensed corporations in dealing with PIs, all the requirements in the Code of Conduct (including the requirement to ensure the suitability of a recommendation or solicitation for a client is reasonable in all the circumstances) must still be strictly observed subject to exemptions.

12. Paragraph 15.2 of the Code of Conduct classified PIs into 3 categories, namely:

    (a) Institutional PIs under paragraphs (a) to (i) of the definition of "professional investor" in section 1 of Part 1 of Schedule 1 to the SFO;

    (b) Corporate PIs under sections 4, 6 and 7 of the Securities and Futures (Professional Investor) Rules (**PI Rules**); and

    (c) Individual PIs under section 5 of the PI Rules.

13. Paragraph 15.4 of the Code of Conduct outlines the requirements that a licensed corporation may be exempted from when dealing with Corporate PIs (subject to compliance with paragraphs 15.3A and 15.3B), including:

    (a) the need to establish the client's financial situation, investment experience and investment objectives under paragraph 5.1 of the Code of Conduct;

    (b) the need to ensure the suitability of a recommendation or solicitation under paragraph 5.2 of the Code of Conduct; and

    (c) the need to assess the client's knowledge of derivatives and characterise the client based on his knowledge of derivatives under paragraph 5.1A of the Code of Conduct.

14. Paragraph 15.3A of the Code of Conduct requires a licensed corporation to:

    (a) assess in writing whether, and be reasonably satisfied that, the Corporate PI meets all of the following 3 criteria before applying the exemptions in paragraph 15.4:

        (i) the Corporate PI has appropriate corporate structure and investment process and controls;

        (ii) the person(s) responsible for making investment decisions on behalf of the Corporate PI has sufficient investment background; and

        (iii) the Corporate PI is aware of the risks involved which is considered in terms of the person(s) responsible for making investment decisions; and

    (b) keep records of all relevant information and documents obtained in the assessment so as to demonstrate the basis of the assessment.

15. Paragraph 15.3B(a) of the Code of Conduct provides that prior to disapplying the provisions set out in paragraph 15.4, a licensed corporation should, among other things:

(a) obtain a signed declaration from the client that the client has given consent; and

(b) fully explain to the client the consequences (i.e., all relevant regulatory exemptions that the licensed corporation is entitled to) of being treated as a PI.

*Fund Manager Code of Conduct (third edition, November 2018) (**FMCC**)*

16. Paragraph 1.5 of the FMCC provides that a fund manager should:

(a) maintain and operate effective organisational 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;

(b) manage and minimise any actual or potential conflict that has arisen by appropriate safeguards and measures to ensure fair treatment of fund investors; and

(c) properly disclose any material interest or conflict to fund investors.

17. Paragraph 3.8.2 of the FMCC provides that a fund manager should not, on behalf of a fund, borrow funds from a connected person unless the interest charged is no higher than the prevailing commercial rate for a similar loan.

18. Paragraph 5.2.2 of the FMCC provides that a fund manager should ensure that an independent auditor is appointed to perform an audit of the financial statements of the fund in order to make available, at a minimum, an annual report for each of the funds it manages. The annual report should also be made available to fund investors upon request.

19. Paragraph 5.3.1 of the FMCC provides that a fund manager should ensure that, in respect of the fund it manages, appropriate policies and procedures are established so that a proper and independent valuation of the fund assets can be performed and valuation methodologies are consistently applied to the valuation of similar types of fund assets.

20. Paragraph 5.3.5 of the FMCC provides that all fund assets managed by a fund manager should be valued on a regular basis. The frequency of such valuations should be appropriate to the fund assets and the dealing frequency of the fund.

21. Paragraph 5.6 of the FMCC provides that:

(a) a fund manager should arrange to carry out reconciliations of the fund manager's internal records against those issued by third parties to identify and rectify any errors, omissions or misplacement of assets; and

(b) reconciliations should be performed at least monthly.

*Guideline on Anti-Money Laundering and Counter-Financing of Terrorism (For Licensed Corporations) (November 2018 edition) (**AML Guideline**)*

22. Paragraph 3.4 of the AML Guideline states that a licensed corporation may assess the ML / TF risks of clients by assigning a ML / TF risk rating to them.

23. Paragraph 3.8 of the AML Guideline requires a licensed corporation to keep records and relevant documents of its assessment of the ML / TF risks of its clients so that it can demonstrate to the SFC how it assessed the clients' ML / TF risks.

24. Paragraphs 4.11.9 and 4.11.21 of the AML Guideline require a licensed corporation to establish and maintain effective procedures for determining whether a client or a beneficial owner of a client is a PEP.

25. Paragraph 6.13 of the AML Guideline requires a licensed corporation to maintain a database of names and particulars of terrorists and designated parties or make arrangements to access to such a database maintained by third party service providers.

26. Paragraph 6.16 of the AML Guideline requires a licensed corporation to implement an effective screening mechanism which should include screening its clients against current database at the establishment of the relationship and against all new and any updated designations to the database as soon as practicable.

27. As part of the record-keeping obligations under paragraphs 8.2 and 8.3 of the AML Guideline, a licensed corporation should maintain adequate records of the results of any analysis and screening undertaken to demonstrate compliance with the requirements set out in paragraphs 4.11.9, 4.11.21, 6.13 and 6.16 of the AML Guideline.

*Frequently Asked Questions (**FAQs**)*

28. On 23 December 2016, the SFC issued a set of FAQs providing guidance on the suitability obligations under paragraph 5.2 of the Code of Conduct. The answers to questions 2 and 5A of the FAQs state that:

    (a) for the purpose of suitability assessments, a licensed corporation should collect from each client information that includes the client's investment knowledge, investment horizon, and risk tolerance (including risk of loss of capital);

    (b) if conflicting or incomplete information is provided by a client, the licensed corporation should alert the client and seek clarification from the client before performing the suitability assessments;

    (c) each client's information should be properly documented and updated on a continuous basis; and

    (d) a licensed corporation should assess diligently whether the characteristics and risk exposures of each recommended investment product are actually suitable for the client and are in the best interests of the client, taking into account the client's investment objectives, investment horizon, investment knowledge and experience, risk tolerance, and financial situation.

29. On 3 June 2011, the SFC issued a set of FAQs regarding the requirement under paragraph 5.1A of the Code of Conduct, which states that:

"Q1: Is self declaration by a client that he / she has knowledge of derivatives acceptable?

A: In assessing whether a client has knowledge of derivatives, intermediaries should make appropriate enquiries of or gather relevant information about the client during the know your client ("KYC") process so as to enable them to make the assessment instead of relying merely on the client's declaration that he/she has knowledge of derivatives. A proper audit trail should also be maintained to demonstrate that they have made the assessment."