STATEMENT OF DISCIPLINARY ACTION

The Disciplinary Action

1. The Securities and Futures Commission (**SFC**) has publicly reprimanded Hampton Securities (Asia) Limited (**Hampton Securities**) and revoked the licence of Mr Daniel Lam Ka Kuen (**Lam**), its Managing Director and responsible officer, pursuant to section 194 of the Securities and Futures Ordinance (**SFO**).

2. The disciplinary action relates to Hampton Securities' window dressing activities and other misconduct during the period from 1 June 2010 to 31 December 2010 (**Relevant Period**). The SFC found that Hampton Securities had:

   (a) failed to maintain the minimum required liquid capital of HK$3 million on 189 days during the Relevant Period, in breach of section 6(1) of the Securities and Futures (Financial Resources) Rules (**FRR**);

   (b) failed to comply with the notification requirements under section 55(1)(a) of the FRR and section 146(1) of the SFO;

   (c) failed to cease carrying on its Type 1 regulated activity under section 146(1) of the SFO when it was unable to maintain its required level of liquid capital;

   (d) window dressed its liquid capital position during the Relevant Period in order to give the appearance of compliance with the minimum liquid capital requirement under the FRR;

   (e) provided false and/or misleading information to the SFC in its financial returns submitted under the FRR (**FRR returns**);

   (f) failed to put in place adequate and effective internal controls and procedures to ensure its compliance with the FRR; and

   (g) held client money in its house account, in breach of the condition of its Type 1 licence which prohibits it from holding client assets, and section 4 of the Securities and Futures (Client Money) Rules (**CMR**) which requires a licensed corporation to pay client money into a segregated account.

3. The failures set out above also suggest that Hampton Securities has breached:

(a) General Principle 1 (Honesty and fairness) of the Code of Conduct[1] for window dressing its liquid capital position and providing false and/or misleading information to the SFC;

(b) General Principle 3 (Capabilities) and paragraphs 4.1 and 4.3 of the Code of Conduct for failing to employ fit and proper staff to conduct its business and have proper internal controls and procedures in place to ensure its compliance with the FRR; and

(c) General Principle 7 (Compliance) and paragraph 12.1 of the Code of Conduct for failing to comply with all regulatory requirements applicable to the conduct of its business activities.

4. In respect of Lam, the SFC found that:

(a) he masterminded the window dressing activities of Hampton Securities during the Relevant Period, and was directly responsible for Hampton Securities' breaches of the FRR requirements set out in paragraphs 2(a) to (c) above, and the provision of false and/or misleading FRR returns to the SFC;

(b) he failed to properly discharge his duty as a responsible officer of Hampton Securities in that he failed to put in place adequate and effective internal controls and procedures to ensure Hampton Securities' compliance with the FRR;

(c) he procured his relatives and friends to deposit money into Hampton Securities' house account, and was directly responsible for Hampton Securities' breach of the condition of its Type 1 licence and section 4 of the CMR mentioned in paragraph 2(g) above;

(d) he has breached (i) General Principle 1 (Honesty and fairness), (ii) General Principle 7 (Compliance) and paragraph 12.1, and (iii) General Principle 9 (Responsibility of Senior Management) of the Code of Conduct; and

(e) his conduct has cast serious doubt on his ability to carry on the regulated activity competently, honestly and fairly, as well as his reputation, character and reliability.

Summary of facts

5. This case stemmed from an enquiry conducted by the SFC regarding the FRR returns filed by Hampton Securities. The SFC found that there was a recurring pattern of fund movements in and out of Hampton Securities' house account each month during the Relevant Period. Typically, funds would be transferred out of Hampton Securities' house account at the beginning or in the middle of the month, leading to a drop in its liquid capital to a level below its required amount; and a similar amount of funds would be returned to Hampton Securities at the end of the month, before Hampton Securities filed its FRR return for that month.

[1] Code of Conduct for Persons Licensed by or Registered with the Securities and Futures Commission

6. The SFC's analysis of the fund movements during the Relevant Period shows that:

   (a) funds were transferred from Hampton Securities' house account at the beginning of the months to a company wholly owned by Lam (**Lam's Co**);

   (b) funds that were temporarily deposited to Hampton Securities' house account at month-ends were either from Lam's Co or Lam's relatives and friends; and

   (c) cheques from Lam's Co which were not yet deposited to Hampton Securities' bank account were included in the computation of its liquid capital for November and December 2010.

7. Hampton Securities and Lam have failed to provide a credible explanation to justify the fund movements.

Failure to maintain its required liquid capital and comply with other related FRR requirements

8. Hampton Securities is required under section 6(1) of the FRR to maintain at all times liquid capital which is not less than its required liquid capital of HK$3 million. The SFC's analysis of the fund movements shows that Hampton Securities has breached section 6(1) of the FRR for failing to maintain its required level of liquid capital from 8 to 13 June 2010, and 2 July to 31 December 2010 (a total of 189 days). The deficit in the required liquid capital ranged from around HK$282,000 to HK$2,873,000.

9. Section 55(1)(a) of the FRR provides that a licensed corporation shall notify the SFC in writing as soon as reasonably practicable and in any event within one business day after it becomes aware that its liquid capital falls below 120% of its required liquid capital (i.e. HK$3.6 million in the case of Hampton Securities).

10. Section 146(1) of the SFO provides that if a licensed corporation becomes aware of its inability to maintain financial resources in accordance with the specified amount requirements that apply to it, it shall:

    (a) as soon as reasonably practicable notify the SFC by notice in writing of that fact; and

    (b) 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.

11. The SFC's investigation shows that Hampton Securities' liquid capital has fallen below HK$3.6 million since 2 June 2010, triggering the notification obligation under section 55(1)(a) of the FRR.

12. In addition, its liquid capital fell below the required level of HK$3 million from 8 to 13 June 2010, and 2 July to 31 December 2010. Hampton Securities was obliged under section 146(1) of the SFO to notify the SFC of its inability to

maintain its required liquid capital, and to immediately cease carrying on its Type 1 regulated activity.

13. Despite the prolonged period when Hampton Securities' liquid capital has fallen below HK$3.6 million and the required level of HK$3 million, it was only after the SFC's enquiry in January 2011 that Hampton Securities reported its liquid capital deficit to us in its letter of 27 January 2011. There is no evidence that Hampton Securities had stopped carrying on its Type 1 regulated activity during the Relevant Period. The SFC concludes that Hampton Securities has breached section 55(1)(a) of the FRR and section 146(1) of the SFO.

14. Hampton Securities' failure to comply with the FRR requirements means that it has also failed to comply with General Principle 7 (Compliance) and paragraph 12.1 of the Code of Conduct which require Hampton Securities to comply with all regulatory requirements applicable to the conduct of its business activities.

Window dressing activities and providing the SFC with false and/or misleading information

15. The FRR return which Hampton Securities is required to submit to the SFC has to include its liquid capital computation as at the end of the month. Evidence shows that at the month-ends of July to December 2010, Hampton Securities had received cheque payments from Lam's Co and/or Lam's relatives and friends which temporarily increased its liquid capital to a level beyond its required minimum of HK$3 million:

    (a) For the months of July to October 2010, Hampton Securities received cheque deposits from Lam's relatives and friends. These were incorrectly reflected in its general ledgers as money returning from Lam's Co and were included in the computation of Hampton Securities' liquid capital.

    (b) For the months of November and December 2010, Hampton Securities allegedly received cheques of HK$3 million and HK$2.2 million from Lam's Co on 30 November 2010 and 31 December 2010 which Hampton Securities did not deposit into its bank accounts. These were nevertheless included in the computation of Hampton Securities' liquid capital for the two months in question.

16. The SFC found that the cheque receipts at the month-ends of July to October 2010 served the sole purpose of inflating Hampton Securities' liquid capital as at the reporting dates of the relevant FRR returns. The money was withdrawn shortly after the month-ends, leaving Hampton Securities' liquid capital position to be significantly below its required level. Such arrangements were apparently window dressing activities for the purpose of concealing its failure to maintain the minimum required liquid capital.

17. The cheques received at the month-ends of November and December 2010 which were not deposited into Hampton Securities' bank account served the same purpose.

18. The SFC further found that the window dressing activities were masterminded by Lam who has failed to provide a credible explanation for the fund movements.

19. As a result of the window dressing activities mentioned above, the FRR returns submitted by Hampton Securities on 12 August 2010, 13 September 2010, 12 October 2010, 11 November 2010, 13 December 2010 and 11 January 2011 did not reflect the true and accurate liquidity position of Hampton Securities. On the contrary, the returns reflected a false and/or misleading picture, and overstated Hampton Securities' liquid capital to be above HK$3 million in purported compliance with section 6(1) of the FRR.

20. The SFC was therefore misled as to the real state of liquidity of Hampton Securities during the Relevant Period. The conduct constitutes a breach of General Principle 1 of the Code of Conduct and calls into question Hampton Securities' fitness and properness to remain licensed, and its ability to carry on its regulated activity competently, honestly and fairly, and its reputation, character, financial integrity and reliability.

Failure to put in place internal controls and procedures

21. The SFC's investigation findings further suggest that Hampton Securities has failed to put in place adequate internal controls and procedures to ensure continuous compliance with the FRR. In particular:

    (a) it has failed to ensure that the persons charged with the responsibility for preparing and verifying the FRR returns for submission to the SFC had proper and adequate knowledge of the FRR requirements to discharge that duty;

    (b) there was no system or procedure in place to ensure Hampton Securities' compliance with the FRR requirements; and

    (c) it has failed to keep proper and complete accounting records to clearly reflect the sources of its income and expenses.

22. The SFC considers that Hampton Securities has breached General Principle 3 (Capabilities) and paragraphs 4.1 and 4.3 of the Code of Conduct for failing to employ fit and proper staff to conduct its business and have proper internal controls and procedures in place to ensure its compliance with the FRR.

Breach of condition of licence and client money requirement

23. The SFC is of the view that the deposits from Lam's relatives and friends to Hampton Securities' house account were client money. By holding money from Lam's relatives and friends in its house account, Hampton Securities has breached:

    (a) the condition of its Type 1 licence which prohibits it from holding client assets; and

    (b) section 4 of the CMR which requires a licensed corporation that receives or holds client money to maintain, and pay client money into, a segregated account.

Lam's responsibility for the window dressing arrangement and his failures as a responsible officer of Hampton Securities

24. The SFC found that Lam masterminded the window dressing activities of Hampton Securities during the Relevant Period. He procured the fund movements between Hampton Securities and Lam's Co, and arranged his relatives and friends to issue cheque payments to Hampton Securities which he deposited into its house account at month-ends. He has failed to provide a credible explanation for the fund movements. The SFC considers that his action in timing withdrawals and deposits to coincide with Hampton Securities' obligation to submit FRR returns at month-ends was intended to conceal its breaches of the FRR.

25. The SFC's investigation findings also suggest that Lam was directly responsible for Hampton Securities' breaches and failures set out in paragraphs 2 and 3 above.

26. The SFC considers that Lam failed to:

    (a) act honestly and fairly in conducting his business activities, in breach of General Principle 1 of the Code of Conduct;

    (b) comply with, and implement and maintain measures appropriate to ensuring compliance with the law and all regulatory requirements applicable to the conduct of his business activities, in breach of General Principle 7 and paragraph 12.1 of the Code of Conduct; and

    (c) properly discharge his responsibility as a responsible officer and the senior management of Hampton Securities as required under General Principle 9 of the Code of Conduct.

27. His conduct in devising the window dressing arrangement and causing false and misleading information to be provided to the SFC, and his failure to ensure Hampton Securities' compliance with applicable regulatory requirements has cast serious doubt on his ability to carry on the regulated activity competently, honestly and fairly, as well as his reputation, character and reliability.

Conclusion

28. Having considered all the circumstances, the SFC is of the view that Hampton Securities and Lam are guilty of misconduct and their fitness and properness to carry on regulated activities have been called into question.

29. The SFC has decided that the sanctions of public reprimand against Hampton Securities and revocation of Lam's licence are most appropriate and commensurate with the view of the SFC on the gravity of the failures. In coming to the decision to take disciplinary action against Hampton Securities and Lam for their failures, the SFC has taken into account:

    (a) Hampton Securities has failed to maintain its required level of liquid capital on 189 days during the Relevant Period;

(b) Hampton Securities and Lam's deliberate attempts to window dress the firm's liquid capital position;

(c) the window dressing activities of Hampton Securities persisted for more than six months, demonstrating an outright disregard of the FRR;

(d) Lam masterminded the window dressing activities. His conduct was dishonest and intentional, and his actions directly led to Hampton Securities' breaches and failures set out in paragraphs 2 and 3 above;

(e) the above failings of Hampton Securities were only brought to an end as a result of the SFC's enquiry;

(f) Hampton Securities and Lam have no disciplinary record with the SFC; and

(g) window dressing of liquid capital position is a very serious misconduct. The SFC would have imposed a heavy fine on Hampton Securities but for the firm's financial position.