

## STATEMENT OF DISCIPLINARY ACTION

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### The Disciplinary Action

1. The Securities and Futures Commission (**SFC**) has publicly reprimanded and fined China On Securities Limited (**China On**)<sup>1</sup> \$6 million pursuant to section 194 of the Securities and Futures Ordinance.
2. During the period between 25 November and 6 December 2019, China On acted as the placing agent for the then majority shareholder (**Vendor**) of Hon Corporation Limited (**Hon Corp**)<sup>2</sup> to procure placees to subscribe for shares representing up to 45% of Hon Corp's total issued share capital (**Shares**). The agreed total placing price for the Shares would amount to HK\$57.24 million (ie, HK\$0.265 per share).
3. The SFC found that upon identifying purchasers (**Placees**) for the share placement, China On failed to ensure that it acted within the scope of the Vendor's authority and adequately safeguard the Vendor's assets, by:
  - (a) entering into bought and sold notes on the Vendor's behalf, in which the transaction prices were inconsistent with the placing price agreed with the Vendor;
  - (b) transferring the Shares to the Placees without first requiring payment of the placing price by the Placees or the certainty that they would be able to make payment of the placing price to the Vendor; and
  - (c) executing a purported instruction by a third party for part of the Shares to be transferred to one of the Placees for no payment of price at all, without taking any step to ascertain whether this actually represented the Vendor's intention.

### Summary of Facts

4. On 25 November 2019, China On entered into a share placing agreement with the Vendor, under which it agreed to procure, as the Vendor's agent, not less than 6 placees to subscribe for the Shares, and when completion takes place, all (but not part only) of a series of businesses shall be transacted, including: (i) China On should pay, or procure the placees to pay, to the Vendor the aggregate placing price; and (ii) the Vendor should allot the Shares to the placees. The Vendor deposited the Shares into its account with China On thereafter.
5. In the meantime, China On entered into a subscription agreement with each of the Placees on 27 November 2019. Subsequently, on 28 November 2019,

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<sup>1</sup> China On was known as China On Global Capital Group Limited from 22 July 2020 to 19 February 2021, Pan Asia Financial Services Limited from 30 May 2020 to 21 July 2020, China Fund Securities Limited from 10 May 2019 to 29 May 2020 and Hong Kong Wealthy Trade Limited before 10 May 2019. It is licensed to carry on Type 1 (dealing in securities) and Type 9 (asset management) regulated activities.

<sup>2</sup> At the material time, the shares of Hon Corp were listed on the Growth Enterprise Market of The Stock Exchange of Hong Kong Limited, with stock code 8259.

without the Vendor's specific authority, China On entered into a bought and sold note relating to the Shares on behalf of the Vendor with each of the Placees, in which the transaction prices were inconsistent with the placing price agreed with the Vendor.

6. On 6 December 2019, in the absence of the Vendor's consent or any funds deposited by the Placees to settle the placing price, China On arranged to transfer the Shares from the Vendor's account to the Placees' accounts. Such arrangements were made by China On in the mere hope that the Placees would sell the Shares on the market and the sale proceeds from such disposal would be sufficient to settle the placing price with the Vendor, without even considering that the sale proceeds (if any) might fall short of the agreed placing price, not to mention other settlement risks which had not been accepted by the Vendor.
7. China On's then responsible officer handling the placement (RO) claimed that he carried out the above arrangement because he had received instructions from two individuals (including a consultant of China On and a person associated with the minority shareholder of China On, both were not licensed representatives or employees of China On (Associates)), that the Vendor had agreed to allot the Shares to the Placees and receive payment from the Placees only after the Placees successfully sold the Shares on the market<sup>3</sup>. Whilst the RO had no idea how the Associates communicated with the Vendor, he did not seek written or any other direct confirmation from the Vendor before effecting the above arrangement<sup>4</sup>.
8. Almost all the Shares were immediately sold by the Placees on the market on 6 December 2019, and the account statements issued by China On show that HK\$53 million was credited from the Placees' accounts to the Vendor's account on the next business day (9 December 2019). This amount fell short of the total agreed placing price for the Shares of HK\$57.24 million because the RO was under the unverified and unsupported belief that the Vendor had agreed with one of the Placees for the placing price of HK\$4.24 million to be settled "off market", ie, not through China On<sup>5</sup>.
9. On 9 and 10 December 2019, China On was informed by law enforcement agencies that the Placees were suspected to be involved in market manipulation. On 21 January 2020, the SFC issued a restriction notice on China On, prohibiting it from disposing of or dealing with any assets in the Placees' accounts up to the total value of HK\$170 million<sup>6</sup>. Since the Placees did not have any additional funds in their accounts, China On refused to make payment of the agreed price for the Shares to the Vendor.

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<sup>3</sup> The Vendor has denied agreeing to such arrangement.

<sup>4</sup> The arrangement was inconsistent with the terms set out in the placing agreement. Pursuant to the placing agreement, any variation to the terms of the agreement should be binding only if it was recorded in a document signed by all parties.

<sup>5</sup> Similar to paragraph 7 above, the RO claimed that he received this instruction from the Associates but he did not seek written or any other direct confirmation from the Vendor before effecting the arrangement. The Vendor has denied agreeing to such arrangement.

<sup>6</sup> Please see the SFC's press release dated [21 January 2020](#).

## The SFC's findings

10. Based on the facts summarised above, the SFC found that **China On was grossly negligent, if not reckless, in its disregard of its fundamental duties to safeguard its client's assets** and ensure that it was acting under its client's instructions and authorities. China On's conduct constitutes breaches of the following provisions of the Code of Conduct for Persons Licensed by or Registered with the Securities and Futures Commission:
- (a) GP 8 (Client assets) and paragraph 11.1(a) (Handling of client assets), which require it to properly account for and adequately safeguard the Shares (and their sale proceeds) owned by the Vendor;
  - (b) paragraphs 5.4(a)(ii), 5.4(c) (Client identity: origination of instructions and beneficiaries) and 7.1(a) (Authorization and operation of a discretionary account), by failing to satisfy itself on reasonable grounds that the steps it took in effecting a transaction for the Vendor were authorised, including whether the instructions it acted on were given by the person ultimately responsible for the origination of the instructions; and
  - (c) GP 2 (Diligence), which require it to act with due skill, care and diligence, in the best interests of the Vendor and the integrity of the market, by its grossly negligent or reckless conduct described above.

## Conclusion

11. Having considered all the circumstances, the SFC is of the view that China On has been guilty of misconduct.
12. In reaching the decision to take the disciplinary action set out in paragraph 1 above, the SFC has taken into account all relevant circumstances, including the follows:
- (a) **the existing evidence is insufficient to support any finding of dishonesty against China On**, or that the misconduct in question had been recurrent;
  - (b) nevertheless, acting with due care and in the best interests of a client is fundamental to the fitness and properness of a licensed corporation;
  - (c) a deterrent message needs to be sent to the industry that grossly negligent or reckless conduct will not be tolerated; and
  - (d) China On has no previous disciplinary record with the SFC.