Application No. 2 of 2021

IN THE SECURITIES AND FUTURES APPEALS TRIBUNAL

IN THE MATTER OF the Decisions made by the Securities and Futures Commission under section 194 of the Securities and Futures Ordinance, Cap. 571

AND IN THE MATTER OF section 217 of the Securities and Futures Ordinance, Cap. 571

BETWEEN

CARDINALASIA CONSULTING LIMITED	1st Applicant
LEE SHIU LUN EDWARD	2nd Applicant
And	
SECURITIES AND FUTURES COMMISSION	Respondent

Tribunal: Mr Michael Hartmann, Chairman

Dates of Hearing: 7, 8, 10, 11, 17 March & 6 April 2022

Date of Determination: 27 January 2023

DETERMINATION

The Applicants

1. This application for review has been brought by two Applicants ('the Applicants'). The first is a company registered in Hong Kong, Cardinalasia Consulting Limited ('Cardinalasia'). The second is the sole shareholder of that company, Lee Shiu Lun ('Edward Lee'), a man of high academic qualification and experience in matters of finance.

2. At all times relevant to this matter, that is, between about August 2014 and October 2017, the Applicants, that is, both Cardinalasia and Edward Lee, were licensed by the Securities and Futures Commission ('the SFC') to carry on Type 4 (advising on securities) and Type 9 (asset management) regulated activities pursuant to the provisions of the Securities and Futures Ordinance, Cap 571 ('the Ordinance'). As licensed persons, both Applicants were subject to the Code of Conduct[1].

3. Edward Lee, the Second Applicant, was further approved to act as the Responsible Officer of Cardinalasia. In respect of all matters relevant to this application for review, it is accepted that Edward Lee has played a primary and decisive role in representing Cardinalasia.

An introductory overview

4. In early 2014, in Hong Kong, the Second Applicant, Edward Lee, struck up a business relationship with a man named Yeung Chun Wai ('Anthony Yeung'), also a man of experience in the financial sector. Anthony Yeung intended to set up and run a number of investment funds and Edward Lee agreed to assist him in this undertaking.

[1] That is: the "Code of Conduct for Persons licensed by or registered with the Securities and Futures Commission".

5. Although no documentary evidence to that effect was put before the Tribunal, it would appear that Anthony Yeung was 'the promoter' of the investment funds in the sense that he appears to have been primarily responsible for setting up the funds.

6. Between about April 2014 and June 2015, five investment funds were set up, each fund investing in small and medium enterprise ('SME') stocks.

7. The offering memorandum given to potential investors by each fund made it clear that the investment strategy of each would be aggressive in nature, seeking returns of 20% per annum. To achieve such returns, potential investors were informed that each fund would employ leverage mechanisms in order to enhance returns, the limit being around 300% of each fund's net asset value. That being the case, it followed that margin financing would be used[2].

8. Potential investors were further informed that, with each fund concentrating on SME stocks, there would be a limited diversification of investment which itself "may expose the Fund to losses disproportionate to those incurred by the market in general".

9. The five funds that were set up – the 'Funds' – were:

(1) the Taiping Quantum China Opportunities Fund launched in April 2014 (the 'Opportunities Fund');

(2) the Taiping Quantum Strategic Fund launched in May 2014 (the 'Strategic Fund');

(3) the Taiping Quantum Prosperity Fund launched in July 2014 (the 'Prosperity Fund');

[2] As to the intention of the Funds to borrow money, potential investors were informed that: "The Fund will employ leverage including, without limitation, through pledge assets as security for borrowings for enhancement of return. The limit of the leverage is around 300% of the Fund's net asset value."

(4) the Quantum Advantage Fund launched in March 2015 (the Advantage Fund') and

(5) the Quantum Enhanced Fund launched in June 2015 (the 'Enhanced Fund').

10. Between about August 2014 and October 2017, Cardinalasia, under the control of Edward Lee, acted as Principal Investment Adviser ('Investment Adviser') to these five Funds, each appointment being in terms of an investment advisory agreement.

11. In December 2020, after a period of investigation, the Securities and Futures Commission ('the SFC') informed the two Applicants that it had come to the preliminary determination that, during the time that Cardinalasia, under the control of Edward Lee, had acted as Investment Adviser to the Funds, the company and Edward Lee, as the company's Responsible Officer, had failed, as licensed persons under the Ordinance, to give appropriate advice to the Manager of each Fund in an attempt to ensure fair dealing in respect of two matters that were at the time of importance to the financial integrity of the Funds.

12. Those matters were, first, a series of loan arrangements entered into between the funds at a time when certain of the Funds were experiencing severe liquidity problems and, second, a little later in time, a series of cross trades entered into between the Funds at a time when the Managers of the Funds were seeking a rebalancing of their investment portfolios.

13. It was the SFC assertion that the Applicants, in their role as Investment Advisers, had failed to seek to protect the best interests of the Funds in respect of the internal loan arrangements and the cross trades and that, in the wake of the Applicants' asserted neglect, certain of the Funds had been prejudiced financially.

14. In light of these asserted failures, it was the SFC's preliminary finding that the Applicants, as licensed persons, had acted in a culpable manner under the Code of Conduct in that they had failed to -

(a) ensure that the 'internal loan arrangements' entered into between the Funds had been fair to, and in the best interests of, *both* the borrowing and lending Funds, and

(b) had further failed to properly assess the basis for certain of the cross trades conducted between the funds in order to ensure that they had been executed on the best available terms for, and in the best interests of, *both* the buying and selling funds.

15. It was further said that Edward Lee, as Responsible Officer for Cardinalasia, in failing to ensure the maintenance of appropriate standards of conduct, that is, conduct seeking to bring about fair outcomes for investors in the funds, had been in breach of General Principle 9 of the Code of Conduct which relates to the responsibilities of senior management. General Principle 9 commences by stating that -

> "The senior management of a licensed or registered person should bear primary responsibility for ensuring the maintenance of appropriate standards of conduct and adherence to proper procedures…"

16. As to the imposition of sanctions, the SFC informed the Applicants that it proposed the following –

(a) that Cardinalasia, the company, be publicly reprimanded and fined a sum of HK$1,500,000;

(b) that Edward Lee's licence to act as a representative in respect of all regulated activities be suspended for a period of seven months.

17. Both Applicants, through their legal representative, sought - without success - to persuade the SFC that its preliminary determinations of culpability were without merit. In the result, in decision notices dated 19 July 2021, the Applicants were informed that the SFC had come to final determinations confirming their culpability and that the sanctions earlier proposed were now confirmed.

18. In August 2021, the Applicants filed their Notice of Application for Review with the Tribunal, seeking to set aside the SFC findings of culpability in respect of both the internal loan arrangements and the cross trades. An amended version of that notice was filed with the Tribunal in October 2021.

19. It was further the case for the Applicants that, should they not be successful in having the findings of culpability set aside, they sought nevertheless to challenge the reasonableness of the sanctions imposed upon them.

The regulatory requirement for the investment advisory agreements

20. It is apparent that a material reason why Cardinalasia was chosen as Investment Adviser to each Fund lay in the fact that it - and Edward Lee – were licensed under the Ordinance to carry on Type 4, and especially Type 9, regulated activities.

21. At no time between 2014 and 2017 did the companies which managed each of the Funds hold a Type 9 licence and accordingly it was accepted by Edward Lee that in the circumstances it was a regulatory requirement that each Fund enter into an investor advisory agreement.

22. In order to put matters into context, it should also be said that the offering memorandum given to potential investors - under the heading of 'risk management' - spoke of each Fund placing reliance on its management team, this team including each Manager and each Investment Adviser:

> "Although the Directors have the ultimate authority and responsibility for the management of the Fund, subject to the parameters determined by the Directors, the decisions relating to the investment of the Fund's assets have been delegated to the Manager which in turn are delegated to the Principal Investment Adviser…"

23. The offering memorandum continued by stressing the fact that the loss of the Investment Adviser "could materially and negatively impact the value of the fund."

24. At this early stage of the determination, it is important to point to the fact that Edward Lee, the Second Applicant, in the course of his testimony, spoke of the range of his duties being mapped out not entirely in accordance with the written terms and conditions of the investment advisory agreements but instead, to a greater and more decisive extent, being mapped out in accordance with private, unwritten arrangements reached with Anthony Yeung.

25. It was Edward Lee's evidence that he considered that the unwritten arrangements - seemingly never formalised in any way and never passed on to third parties (such as the SFC) - were determinative of the nature and extent of his obligations. Accordingly, when referred to the citation set out above (in paragraph 22), this being information supplied to potential investors in each Fund, he stated that this was inaccurate and did *not* reflect the role of Cardinalasia, the First Applicant, in the management of the Funds. However, this inaccuracy in an important set of documents was not something which he referred to Anthony Yeung.

26. It was the effect of Edward Lee's own case therefore that potential investors reading offering memoranda would have been given incorrect information as to the true role of the Investment Adviser.

The Code of Conduct

27. Of course, as licensed persons under the Ordinance, both Applicants were subject to the Code of Conduct, it being a fundamental requirement of the Code

that licensed persons must deal with each client - each being considered separately - in a manner that is fair. In this regard -

(a) The first general principle of the Code provides that, in conducting their licensed business activities, licensed persons (such as the Applicants) must act honestly, fairly, in the best interests of their clients and in accordance with the integrity of the market.

(b) A complementary principle requires licensed persons to ensure that client positions in the market or assets held are adequately safeguarded.

(c) The Code further makes reference to conflicts of interest – of direct relevance in the present matter - requiring that licensed persons must seek to avoid such conflicts but, if they cannot be avoided, they must ensure that their clients are fairly treated.

The hearing before this Tribunal

28. Prior to the hearing, the parties agreed in writing, in accordance with the provisions of the Ordinance, that the Chairman should determine the application for review alone.

29. The substantive hearing was held over a period of five days in March 2022 with final submissions being made on a day in April 2022. Due to the fact that the Chairman was at the time in Australia and was prevented, by reason of prevailing Hong Kong Covid 19 regulations, from returning to Hong Kong, the full hearing was conducted by way of video communication: the parties and counsel being in Hong Kong, the Chairman in Australia.

Underlying legal principles

30. Before looking to the disputed issues before this Tribunal, reference must be made to certain of the fundamental legal principles that have governed the context in which the Tribunal has reached its determination of the merits.

A. This application constitutes a 'de novo' hearing

31. In determining an application for review, it is now well established that the Tribunal conducts a hearing *de novo*, undertaking a full merits review. Its duty, therefore, is not to act as a court of appeal but rather to act as a court of first instance. The duty to conduct a hearing *de novo* extends also to matters of possible sanctions.

32. On the basis that this application is conducted as a hearing *de novo*, it follows that the burden of proof has at all times remained on the SFC.

B. The standard of proof

33. Section 218 (7) of the Ordinance directs that the standard of proof required to determine any issue in this application is the standard applicable to civil proceedings. Matters must therefore be proved on a balance of probabilities. This standard requires that the Tribunal be satisfied that an event has occurred if it considers that, on the evidence, the occurrence of the event was more likely than not.

C. Expert evidence

34. During the course of the hearing, the Tribunal received evidence which, after consideration, it accepted as being expert evidence. That evidence was given by Richard Harris. The Tribunal received that evidence because it was likely to be outside the knowledge and experience of the Tribunal. That being said, the Tribunal recognised that it was entitled to accept or reject all or part of that evidence,

coming to its own conclusion on such matters based on a consideration of all the evidence.

35. As it is, in respect of the expert evidence of Richard Harris, the Tribunal found it to be balanced, prudent and based on years of experience working in different financial jurisdictions. As it was put by counsel for the SFC in final submissions: Mr Harris had substantial experience in fund management, stock brokerage and even private banking roles, with exposure to both global and Asian securities and small-cap stocks in particular. The Tribunal found Mr Harris to be an impressive witness, his testimony, as an objective observer, being both balanced and considered.

D. Good character

36. During the course of the hearing, it was emphasised that Edward Lee, the Second Applicant, held academic qualifications of the highest order and, arising from this, was able to boast an excellent professional record. He was a man therefore who could be expected to have a sophisticated understanding of how best to protect the interests of clients in adverse times even if what he did was not entirely orthodox. The Tribunal has taken this into account.

37. It was also stressed that Edward Lee was a man of good character in that he had not at any earlier time been found guilty of any criminal offences or regulatory infraction. The Tribunal has taken this into account, doing so in the following manner, namely, that a person of good character such as Edward Lee is less likely than otherwise might be the case to have committed the misconduct alleged and, in addition, good character supports his credibility in respect of both his evidence before the Tribunal and his evidence provided in his records of interview and other statements.

The fact that Anthony Yeung did not give evidence before the Tribunal

38. It should be said that, although Anthony Yeung would have been a central character in both the internal loan arrangements and the cross trades, he did not give evidence before the Tribunal. In this regard, in directions filed prior to the hearing, it was agreed that certain documents may be admitted into evidence without the need to call their makers. These documents included records of Anthony Yeung's interviews with the SFC.

The management structure of the five Funds

39. An understanding of the management structure of each of the Funds is fundamental in this matter.

40. In the view of the Tribunal, in looking to that management structure, an important point of emphasis is that, although the Funds were each concentrated on SME investments, although each shared aggressive investment policies, and although the managing personalities were the same, each Fund was structured as an independent corporate structure and no doubt that is how they would have been seen by investors.

41. In this regard, each Fund was incorporated as a Cayman Islands exempted company limited by shares. As an incorporated body, each fund had its own board of directors, the board being the ultimate source of authority with power to direct and supervise all investment and managerial matters concerning that Fund. Anthony Yeung sat on the board of directors of each Fund, he and two others.

42. Each board of directors appointed a 'Manager' to be responsible for providing investment management and advisory services, effectively in charge of – that is, the CEO – of each Fund, and in this regard, initially, each Fund appointed Quantum China Asset Management Limited ('QCAML') a company incorporated in the Cayman Islands, as its Manager.

43. QCAML's sole shareholder was Anthony Yeung who, together with two others, sat on the board of directors of QCAML.

44. As to the duties of QCAML, it was set down in each management agreement that –

> "… During the term of this agreement, the Manager shall provide investment management and advisory services to the Fund in accordance with the investment objectives and policies determined by the Fund's directors and subject to the investment restrictions set by the Funds directors and described in the offering memorandum. In particular, the Manager shall –
>
> (a) prepare and make available for use at the request of the Fund such research reports, trading advice, and such other advisory services that the Manager provides to its internal and external clients;
>
> (b) review and evaluate the proposed asset acquisition and investment strategies of the Fund when required to do so by the Fund or as may be necessary from time to time;
>
> (c) execute, or cause to be executed, purchases and sales of investments on behalf of the fund as the Manager, in its discretion and subject to the parameters determined by the Fund's directors, deemed to be in the best interests of the Fund;
>
> (d) carry out reviews of the investments whenever the Manager shall deem it necessary, or when required to do so by the Fund;
>
> (e) recommend to the Fund and the Administrator the manner in which monies required for the redemption or repurchase of participating shares or for other purposes of the fund should be realized;
>
> (f) advise the fund and the Administrator as to the making of distributions by the fund;
>
> (g) open any correspondence it receives that is addressed to the Fund and to promptly notify the directors of the Fund of any matter requiring their attention;
>
> (h) prepare material for inclusion in the annual and other financial reports of the Fund whenever the Fund shall properly require such material;
>
> (i) enter into side letters for an on behalf of the Fund with potential investors and investors of the Fund, and

(j) issue the annual audited financial statement of the Fund to shareholders at their registered addresses within six months of the financial year end."

45. These specific obligations, however, did not limit the broad discretionary authority given to the Manager to trade in shares, this authority being described in the following terms –

> "Subject to the investment objectives and policies and investment restrictions as set out in the offering memorandum, to the overall supervision of the directors of the Fund and to the directions given by the board of directors of the Fund, the Manager shall have complete discretion in the investment and reinvestment of the investments with full power and authority to make purchases and sales of investments or to issue directly to a broker or dealer orders for such purchases and sales of investments."

46. Of importance in this matter, in accordance with each agreement, the Manager had the power to delegate its powers, that power of delegation being broad in its terms and being described as follows:

> "The Manager may appoint delegates to perform *in whole or part* any of its duties or obligations upon such terms as to authority, liability and indemnity as shall be determined by the Manager and subject to the parameters determined by the Fund's directors. The Manager shall exercise due care and diligence in such appointment and shall supervise the conduct of such delegates."[3] [emphasis added]

47. On the evidence, it was pursuant to these delegatory powers that, in a series of separate investment advisory agreements, QCAML appointed Cardinalasia to be the Principal Investment Adviser – the 'Investment Adviser' - to each of the Funds. It is, in this regard, of significance to note that the responsibilities assumed by the Investment Adviser in terms of each of the investment advisory agreements were effectively a direct substitution of the responsibilities assumed by the Manager in each management agreement.

[3] This citation and the ones set out earlier are taken from the agreement dated 3 August 2016 between the Enhanced fund and QCAML.

48. In short, in terms of each agreement, while the Manager, of course, retained important powers of supervision over the Investment Adviser, and therefore retained the authority, if required, to disagree in whole or part with any advice received, or to set aside any actions taken, the Manager nevertheless, for all effective purposes, delegated 'in whole' its duties and obligations to the Investment Adviser. In this regard, the duties of the Investment Adviser detailed in each contract were described in the exact same language as the duties of the Manager under each management agreement. By way of illustration –

> "… during the term of this agreement, the principal investment adviser shall provide investment management and advisory services to the Manager in respect of the Fund in accordance with the investment objectives and policies determined by the Fund's directors and subject to the investment restrictions set by the Fund's directors and described in the offering memorandum."

49. That, when delegated, the Investment Adviser's duties were (for all intents and purposes) a duplication of the Manager's broad duties was further explained in offering memoranda given to potential investors, it being stated that the Investment Adviser would –

> "… be responsible for providing investment management and advisory services to the Manager in respect of the Fund in accordance with the Fund's investment objectives and policies; providing reasonable assistance to the Manager in the preparation of offering materials, financial records, reports to investors and regulatory filings; evaluating the proposed asset acquisition and investment strategies of the Fund; executing (or causing to be executed) purchases and sales of investments on behalf of the Fund; recommending the manner in which monies required for the redemption or repurchase of participating shares or for purposes of the Fund should be realised; and advising as to the making of distributions by the Fund."

50. On any ordinary reading, it is apparent that the delegated duties of the Investment Adviser were not limited to proffering advice concerning what stocks to buy, hold or sell. The duties of the Investment Adviser, acting in its delegated role, were more diverse, looking, by way of 'investment management' and by way of providing 'advisory services', to protecting the general interests of

each Fund, each Fund, of course, being an investment fund. By way of illustration, the duties included the following –

> (a) *to review and evaluate the proposed asset acquisition* and investment strategies of the Fund when required to do so by the Manager or as may be necessary …
>
> (b) to recommend to the Manager and the Administrator the manner in which monies required for the redemption or repurchase of participating shares *or for other purposes of the Fund* should be utilised…

51. On the basis of these provisions, the Investment Adviser would have had an important advisory role to play concerning proposed asset acquisitions and, in addition, would have had a complementary role to play by way of giving advice concerning the use of monies required for "other purposes[4].

Edward Lee's evidence as to an overriding 'understanding'.

52. As the Tribunal understands it, it was Edward Lee's evidence, set out in his witness statement, that there was an overriding understanding constituting an agreement reached between himself and Anthony Yeung in terms of which his role as Investment Adviser was far more limited than the role set out in the formal agreements, those formal agreements being described by Edward Lee as being just 'legal template'. This agreement, he said, was reached at a coffee shop meeting in February 2014.

53. In terms of this verbal agreement, Cardinalasia's responsibilities would be restricted to three matters. These matters were, first, advising on investments but only when required by the directors of each Manager Company or

[4] By way of illustration, within the present context, it would seem to the Tribunal that advice concerning the use of monies for purposes other than buying investments would include making loans

the board of directors of each Fund; second, facilitating the operations of the Funds, more of an administrative back-up role, and third, placing orders with stockbrokers when directed by the Manager of one of the Funds. However, when he testified before the Tribunal, these 'specifics' appeared to be reduced to what may – at best - be understood as 'general understandings'. In this regard, the following appears from the record of cross examination –

> Q. Mr Lee, I will ask you one more time. Mr Yeung, at this meeting in February 2014, did not specifically tell you what your duties or responsibilities may be as Investment Adviser?
>
> A. Well, at that time I cannot remember. But Mr. Yeung is well experienced and I am also well experienced. So it is a mutual understanding, it is a normal understanding that the back-support work will be conducted by us.
>
> Q. He did not tell you that you were only required to advise on investments when required by the Fund Manager or board of directors to do so?
>
> A. Well, I cannot remember whether he had mentioned or not. But it is they who will invest with the money they raised.

54. In short, when questioned, it was the essential ambit of Edward Lee's answers that, as both Anthony Yeung and himself were experienced financiers, and as Anthony Yeung had many years of experience in running funds, Anthony Yeung would require him to play a back-up role only. In this regard, Edward Lee said:

> "Well, at that time I cannot remember. But Mr Yeung is well experienced and I am also well experienced so it is a mutual understanding, it is a normal understanding that the back-support work will be conducted by us."

55. Much earlier in the SFC proceedings, however, Edward Lee appears to have denied any settled verbal agreement being reached in February 2014. At the time when investigations were being made, Edward Lee had informed the SFC that no specific, clearly demarcated role had been given to him at that early stage. As it was put: "It was not said very solidly… what would be advised on."

56. In the view of the Tribunal, concerning the coffee shop meeting in February 2014, taking into account that it was a very early meeting, the Tribunal is satisfied that Edward Lee's statement to the SFC would have been far more accurate. Detailed agreement as to responsibilities would have come later and would have included the drafting of the investment advisory agreements.

57. That later stage - manifestly – would have been the time to give instructions to the draftsman as to the intended scope of duties of the Investment Adviser to each Fund and thereafter, when the drafts were ready, to discuss their intent and scope with involved parties.

58. No doubt the agreements that were signed – the investment advisory agreements - constituted a form of 'legal template', that is, very much a form of standard terms and conditions relative to the matter at hand. But it is to be remembered that such agreements had a regulatory basis and were required, therefore, to be detailed, setting out clearly all respective obligations so that they could be understood by interested parties (including investors and potential investors) and would constitute an important basis for the protection of their rights.

59. During the course of the hearing, at least as the Tribunal understood it, considerable emphasis was placed on Edward Lee's assertion that his true responsibilities under the Code of Conduct were to be considered within the context of the private verbal arrangements reached with Anthony Yeung and not within the context of the formal agreements entered into, that is, the investment advisory agreements. In short, it was submitted that the formal agreements which were never formally altered, and which would have constituted protection for investors and would-be investors, should be ignored and instead some form of verbal arrangement, the specific terms being forgotten, an arrangement that was entirely private in nature, should constitute the measure by which the culpability of the Applicants should be judged. The proposition needs only to be stated to appreciate how lacking in substance it was.

60. It should be noted that this was not the only time that Edward Lee, when it suited his purposes, made assertions of verbal agreements reached, the terms of those agreements (or understandings) supporting his case. None, it seems, were reduced to writing. There was therefore, in respect of such assertions, no contemporary documentary evidence in support.

61. Of importance, when considering these assertions of verbal agreements reached, is the fact that the investment advisory agreements contained 'entire agreement' and 'variation' clauses, the 'variation' clauses providing that –

> "No variation of this agreement shall be valid unless it is in writing and signed by or on behalf of each of the parties."

62. The importance of such provisions was stated by Lord Sumption in *MWB Business Exchange Centres Ltd v Rock Advertising Ltd*[5], more particularly in the following respects –

(a) That the law should and does give effect to a contractual provision requiring specified formalities to be observed in respect of any intended variation, and

(b) that there are legitimate commercial reasons for insisting on the formalities required. First, it prevents attempts to undermine written agreements by informal means. Second, it avoids disputes as oral discussions can easily give rise to misunderstandings and crossed purposes. Third, a measure of formality in recording variations makes it easier for corporations to police internal rules.

[5] [2019] AC 119, paras 10 and 12.

63. These requirements take on added importance in respect of agreements governing investment funds as they prevent the interests of investors, and indeed the general integrity of the market, being unknowingly frustrated.

64. In the opinion of the Tribunal, it is plain that, when the investment advisory agreements were signed, the Applicants were obligated from that time to actively fulfil their terms and conditions, doing so when required by the management of any of the five Funds but doing so also[6] – on an independent basis - when it was, in the circumstances, reasonable (that is, in the interests of each Fund and its investors) to do so.

65. The nature and extent of those contractual obligations could not be changed by way of informal discussions that were never reduced to writing and were never made known in any general, formal manner to investors.

The internal loan arrangements

66. When they came into operation, the first four Funds benefitted from a booming market in SME stocks. It appears that only the fifth Fund – the Enhanced Fund – became operational too late to benefit.

67. To illustrate this early success, Edward Lee said that, according to his calculations, as at 30 June 2015 the total net asset value of the five Funds had been in excess of US$417.65 million. As to the fortunes of each individual fund on that date, he asserted that -

(1) the Opportunities Fund had a net asset value of US$75,515,125, all representing an increase of 122.7% since its inception in April 2014;

(2) the Strategic Fund had a net asset value of US$70,221,122, representing an increase of 660.9% since inception in May 2014;

[6] If the relevant provisions in the agreements permitted.

(3) the Prosperity Fund had a net asset value of US$203,814,462, representing an increase of 450.6% since inception in July 2014;

(4) the Advantage Fund had a net asset value of US$53,339,942, representing an increase of 125.1% since inception in March 2015, while

(5) the Enhanced Fund alone, which had a net asset value of US$14,759,970, had suffered a small decrease (of 2.9%) in its value but it had been in operation for less than a single month.

68. In 2015, however, the surge in the SME market came to an abrupt end. SME stocks held by the Funds began to lose value. The evidence presented at the hearing indicated that during this adverse period certain of the Funds – particularly the Opportunities Fund, the first Fund launched - came under financial stress, this Fund in particular being the subject of margin calls[7].

69. With a number of the Funds suffering a liquidity squeeze, between about January 2015 and June 2016, a series of internal loan arrangements were set up. These arrangements were signed by the then directors of the Funds and, with the exception of the first loan, the necessary instructions to make payment of the loans were signed by Edward Lee on behalf of Cardinalasia.

70. Edward Lee therefore knew of and was required to play a significant role in activating each of the internal loan arrangements (with the exception of the first loan).

71. Importantly, it was recorded in the minutes of the board meetings of the Funds that these loan arrangements had been structured for a single, central

[7] During the course of the hearing, there was a dispute as to the exact number and size of margin calls made or threatened to be made. The Tribunal was satisfied, however, that the margin calls – those that were made, those threatened to be made or apprehended as being likely to be made - were substantial.

purpose, namely, to assist those Funds under most severe financial stress by enabling them to borrow from those under less stress[8].

72. It is to be remembered, of course, that, although the managing personalities behind the Funds may have been the same, each Fund stood as an independent body, each Fund having its own investors, and accordingly at all times it was the primary obligation of the management of each Fund to protect the best interests of its own investors.

73. On this basis, with the purpose of the internal loan arrangements being to extract funding from the financially more viable Funds in order to assist the financially weakest Funds, those responsible for putting the loan arrangements into effect clearly faced the danger of a conflict of interest: acting so as to benefit the interests of the weakest Funds at the expense of the strongest. In such circumstances, the Code of Conduct made it plain that, if a conflict could not avoided, then fair treatment of the Funds from which assets were being taken must be assured.

74. As the Tribunal understands it, it has been fundamental to the SFC case that the Applicants – both being subject to the Code of Conduct - failed in either avoiding a conflict by advising on an alternative way of meeting the liquidity problems of certain of the Funds or, if that was not possible, by seeking to ensure that the terms and conditions of all loan agreements contained fair and adequate protection for the Funds obliged to make the loans.

75. As it was - and as will be looked at in more detail later - the SFC presented evidence to show that the internal loan arrangements were financially damaging to the lending Funds, none of the loans being fully repaid, indeed the majority remaining entirely unpaid.

[8] The terminology used was that the borrowing Funds were facing "liquidity issues".

The later changing of the investment portfolios of the Funds by way of 'cross trades'

76. As stated earlier, when the Funds were first launched, each of them appointed QCAML as Manager: the company's sole shareholder being Anthony Yeung who, together with two others, sat on its board of directors.

77. In or around July 2015, however, Anthony Yeung gave up his shareholding in QCAML to a group of third parties[9] who (in late August 2015) were appointed as directors of QCAML and took over the management responsibilities of three of the Funds, namely: the Opportunities Fund, the Strategic Fund and the Advantage Fund.

78. As for the two remaining Funds, that is, the Prosperity Fund and the Enhanced Fund, a further company incorporated in the Cayman Islands by the name of Nova Asia Asset Management Limited ('NAAM') was appointed as the Manager of those two Funds. Anthony Yeung was the sole shareholder of NAAM. In addition, Anthony Yeung remained as a director of these two Funds.

79. The changes just detailed did not result in any change to Cardinalasia's continuing contractual obligations to each of the five Funds as Investment Adviser.

80. In the wake of these corporate changes, in the course of November 2015, a rebalancing of the Fund portfolios took place. In respect of this rebalancing, it is important to recognize two matters; first, that the rebalancing exercise was substantial and, second, that, according to Edward Lee, it took place in an atmosphere of animosity between the negotiating parties.

81. Of central importance, the undisputed evidence showed that Edward Lee made the decision not to fulfil his contractual obligations as Investment Adviser in respect of this rebalancing. As to why, although his evidence was at times difficult

[9] The third parties were persons by the name of Chen Rongbin, Ding Dadu and Xu Haiou.

to follow, it seems that he did not think that he needed to play any role to protect the interests of investors.

82. Edward Lee, in the course of his testimony before the Tribunal, when asked to explain the reason for this rebalancing, said:

> "Well, to be simple, the five funds were once managed by one manager and now they are managed by two managers [QCAML and NAAM] and, between them, they have something unhappy [that has] happened and, as I said, they hate each other so they would like to get something that they think belongs to them…"

83. When asked by counsel for the SFC why – in circumstances in which large blocks of shares were being negotiated in an atmosphere of animosity - as Investment Adviser to each of the Funds, he had not seen fit to seek to mediate, that is, to give appropriate advice, in the interests of the investors of each Fund, Edward Lee replied by saying:

> "Well, because these two managers, they already have what they need and they don't need me and, therefore, I don't want to be involved - as they were fighting actually from July 2015 until November 2015."

84. The point of course is not whether the negotiating parties needed the assistance of the Investment Adviser – no doubt they were happy to get on with it without any oversight - the point is that the Investment Adviser was at the time under a clear contractual obligation to take all reasonable steps to ensure that the rebalancing exercise – a series of investment trades - was in the interests of the Funds. Edward Lee, representing Cardinalasia, could not simply wash his hands of the matter because the negotiators "already have what they need'.

85. As it was, on three days in November 2015, a total of 14 pairs of cross trades were conducted between the Funds by way of bought and sold notes. These trades were conducted at significant discounts.

86. During the course of the hearing there was some dispute as to whether the 'cross trade' transactions should more accurately be described as 'block trades'. Edward Lee, the Second Applicant, was of this view. Richard Harris, however, the expert witness called by the SFC, was of the view that the trades that took place should be considered to be 'cross trades'.

87. Although the factual circumstances in which the trades were conducted were particular, it is to be remembered that the Funds were all 'client funds' of the same Investment Adviser, Cardinalasia. Three of the Funds were managed by QCAML and two by NAAM. In these circumstances – although not a great deal turns on it - the Tribunal is satisfied that describing the transactions as 'cross trades' is more accurate.

88. As to the integrity of the rebalancing exercise, it was the opinion of Richard Harris that this pairing of two offsetting 'buy' and 'sell' orders between funds that were managed/or advised by the same asset manager and/or investment adviser may be used to rebalance portfolios after redemptions or subscriptions into a fund, or if big market movements have affected the asset allocation.

89. As Mr Harris put it, the raison d'être for 'crossing' is to save the cost (by way of commissions and expenses) involved in the rebalancing of portfolios in the best interests of all underlying investors

90. The 'Fund Manager Code of Conduct' (in force at the material time) stated that a fund manager should only undertake sale and purchase transactions between client accounts – cross trades – when the following was evident. First, that the sale and purchase decisions are in the best interests of both clients and fall within the investment objectives and policies of both clients; second, when the trades are executed at arm's length at current market values; third, when the reasons for such trades are documented prior to execution and, fourth, when such activity is disclosed to the client.

91. The Applicants may not have been the Fund Managers but they held delegated authority to act in the place of the Manager of each Fund, exercising that authority when, in respect of investment dealings, it was reasonably required to protect the interests of the Funds. As such, in addition to the plain fact of their contractual obligations, the Tribunal is satisfied that the Fund Manager Code of Conduct – which sets out standard terms of ethical conduct - applied to them.

92. In the judgment of the Tribunal, it was a primary duty of the Applicants to investigate the nature and extent of the cross trades. This was a required and important process to ensure the financial interests of each client Fund and to ensure the general integrity of the market. That, however, on the admission of the Applicants, was not done.

93. In all the circumstances, recognizing that Edward Lee was a well experienced financier and a licensed fund manager, the Tribunal finds it difficult to comprehend how - in the absence of some clear written agreement absolving the Applicants from responsibility – Edward Lee should have seen fit, so he testified, to step back from any advisory role in respect of the cross trades.

94. What is more puzzling is that, according to Edward Lee, he did, in fact, choose to give verbal advice in respect of two matters, both of importance. He did not therefore entirely wash his hands of the cross trades. First, Edward Lee said that he recommended a uniform discount of 20% in respect of each trade; second, he said that he advised QCAML that, following each trade, the parties should conduct a further rebalancing exercise in order to ensure that the respective Funds would not be making any gain or loss, in other words that each trade would be in the best interests of both parties.

The core issues

95. It is not disputed that at all material times there was a management hierarchy in place in respect of each of the five Funds.

96. The Tribunal is satisfied that, within that hierarchy, in fulfilling the role of Investment Adviser, Cardinalasia, under the executive control of Edward Lee, enjoyed very limited executive powers and certainly possessed no powers that superseded the powers of the Manager of each Fund and/or the board of directors of each Fund. However, in its advisory role, it played a role of central importance.

97. The Investment Adviser's advisory powers were extensive, including matters that, by way of timely and appropriate advice, would underpin the profitable trading of each Fund in a way that would not undermine the integrity of the market. Whether in each instance the Manager of each Fund, or the board of directors of each Fund, chose to follow that advice or to reject or amend it, was a matter for each of them in the discharge of their executive functions.

98. If it is shown that, at the material time, the Applicants, as Investment Advisers, were under an obligation to look to the interests of investors in the five Funds, the core issues may then be expressed in the following questions –

a) With the internal loan arrangements proceeding, did the Applicants take the required steps (of an advisory nature) to try and ensure that the internal loan arrangements entered into between the Funds were fair to, and in the best interests of both borrowing and lending Funds (and thereby the Funds' investors)?

b) With the cross trades proceeding, did the Applicants take the required steps (of an advisory nature) to try and ensure that the cross trades were fair to, and in the best interests of, both the buying and selling Funds (and thereby the Funds' investors)?

The SFC case in respect of the internal loan arrangements

99. In respect of the internal loan arrangements, the SFC case was essentially illustrated by, and founded upon, the following table –

	Date	Lending fund	Borrowing fund	Amount (HK$)	Annual interest rate	Duration
(1)	28/01/2015	Strategic Fund	Prosperity Fund	70,900,000	2%	2 years
(2)	08/07/2015	Advantage Fund	Opportunities Fund	10,000,000	2%	1 year
(3)	08/07/2015	Prosperity Fund	Opportunities Fund	6,500,000	2%	1 year
(4)	08/07/2015	Prosperity Fund	Opportunities Fund	50,000,000	2%	1 year
(5)	09/07/2015	Advantage Fund	Prosperity Fund	10,000,000	2%	1 year
(6)	09/07/2015	Advantage Fund	Opportunities Fund	45,000,000	2%	1 year
(7)	06/06/2016	Prosperity Fund	Enhanced Fund	11,500,000	0%	2 years

100. Looking solely to the capital amounts involved in this table, the total sum constituting the seven loans came to HK$203.9 million.

101. As to repayment of those loans, the evidence showed that only loans (2) and (4) were partially repaid; loan (2) recording a repayment of HK$8.3 million made in February 2017 and loan (4) recording a repayment of HK$30 million in July 2017.

102. Of significance, the remaining five loans – loans (1), (3), (5), (6) and (7) – did not receive any repayment. In short, in respect of these loans, the records reveal total default.

103. What the table makes evident, therefore, is that, while the borrowing Funds which were under financial pressure, needing to meet margin calls, may have fared well, the same was not the case for the lending Funds (and their investors). The total capital loss for those Funds, as calculated by the SFC, was a sum of HK$165.6 million.

104. Nor were the lending Funds able to seek compensation by way of executing on collateral securities. The loan agreements had provided no such

protection. It was the case for the SFC that the loan agreements that were entered into were entirely inadequate.

105. It was the submission of the SFC that, at the time when the loans were under consideration, it must have been appreciated by the Applicants that, in discharging the responsibility of Investment Adviser, they faced a conflict of interest. What was being planned was that the Funds under financial stress, their financial integrity uncertain, should be able to borrow significant sums of money from those Funds that enjoyed greater financial liquidity and be able to do so free of the sort of protections for the lending Funds that would have been a matter of course if the funds had been borrowed from banking institutions or the like.

106. It was further the submission of the SFC that, as an experienced financier, Edward Lee – acting on behalf of Cardinalasia - must have appreciated that the only way to avoid the looming conflict of interest was, first, to look for some alternative way of raising money or, if time and circumstances did not make that possible, to take reasonable, professional steps to ensure that the interests of the lending Funds were nevertheless protected by way both of possible collateral security and certainly by ensuring that the terms of any loan arrangements adequately protected the interests of the lending Funds.

107. It was the SFC submission that there was no evidence, certainly no documentary evidence, to show that Edward Lee took any steps to meet his fiduciary obligations.

108. On behalf of the Applicants, it was submitted that this approach by the SFC was both blinkered (in the sense that it ignored the greater picture) and therefore unrealistic.

109. On behalf of the Applicants, it was emphasised that the shock to the market, certainly in respect of SME stocks, reached out not only to the Funds that were under severe cash restraints but also threatened to reach out to the Funds that

at the time enjoyed higher levels of liquidity. While the Opportunities Fund in particular was at the time facing numerous margin calls and lacked the liquidity to meet those calls, the malaise, it was said, would have spread to all five Funds if the internal loan arrangements had not been put into effect.

110. During the course of the hearing, it was never seriously challenged by counsel for the SFC that, even though each Fund was an independent body with its own internal management structures, nevertheless – at the time - there had been a strong correlation between the individual investments or class of investments held by each of the Funds.

111. It followed that, should the investments in one Fund show strong gains, those gains would be expected to be mirrored by gains in the other Funds. Equally, however, should those investments show a material depreciation in value, it followed that this loss in value could well be expected to be mirrored by losses in the other Funds. In this regard, during the hearing, the Applicants submitted a table – called by their counsel 'the correlation co-efficient table' – which showed that the principal four Funds at that time held very similar investment assets. The table presented to the Tribunal (and seemingly prepared well after the event for the purposes of the hearing) was as follows –

	Opportunities Fund	*Strategic Fund*	*Prosperity Fund*	*Advantage Fund*
Opportunities Fund		0.80	0.82	0.88
Strategic Fund	0.80		0.86	0.88
Prosperity Fund	0.82	0.86		0.96
Advantage Fund	0.88	0.88	0.96	

112. It was the Second Applicant's evidence – not challenged by counsel for the SFC - that the correlation between four of the Funds was above 0.80, As it was argued by his counsel, this suggested that the constituents of the Funds were

highly similar and should one of the Funds be forcibly liquidated, it would substantially impact on the value of the constituents, which, in turn, would in all likelihood lead to further margin calls and forced liquidation of the other Funds.

113. As to the final result, it was argued by counsel that, if matters had proceeded to the stage when all the Funds faced margin calls and lacked the financial means to satisfy those calls, the result would be a catastrophic plummeting of the prices of the constituent stocks of the Funds, further diminishing the value of the overall portfolio.

114. That being the case, so it was argued, having regard to the state of the market at the time, the decision made in terms of which the internal loan arrangements were put in place could not be faulted and had clearly been in the best interests of *all* parties, both the lending Funds and the borrowing Funds.

115. In the judgment of the Tribunal, if that was the thinking at the time, it is a pity that no documentary records appear to remain, assuming there were any in the first place, to demonstrate that thinking. It was said during the course of the hearing that matters had to be dealt with by way of urgency. That is not disputed. But that, of itself, does not prevent the maintenance of succinct and relevant records. Yet, as with other matters in this application for review, Edward Lee, while he was able to make a number of assertions, some only coming forward during the course of the hearing, was not able to present any documentary material to support those assertions. It is, therefore, not surprising that counsel for the SFC should have criticised what was seen to be an extended exercise in post-rationalisation.

116. Concerning the Applicants' submissions, the Tribunal has had no dispute with what may be described as the facts of the background crisis. But the fact that at the time there was a danger of market contagion spreading from the Funds with the greatest liquidity problems to those with the least, did not remove from the Applicants the contractual obligation (allied to their obligation under the

Code of Conduct) to deal with each client, each being considered separately, in a manner that was fair.

117. Accordingly, the question still remains: were reasonable steps taken to protect the interests of the lending Funds, that is, to ensure that the lending Funds were treated fairly?

118. As to the Applicants' knowledge of these internal loan arrangements, it was the SFC case (and appears to have been accepted by the Applicants) that -

(a) in respect of the first loan (set out in the table above), Edward Lee had not had any involvement in advising on its setting up but had become aware of its existence shortly after it had been put in place;

(b) in respect of the second, third, fourth, fifth and sixth loans, however, Edward Lee had been in active discussions with Anthony Yeung and had further involved himself in the exercise by undertaking necessary payment instructions, and

(c) in respect of the seventh loan, having given advice in respect of the previous five loans, Edward Lee had signed the payment instructions in respect of that last 'internal' loan.

119. Concerning the first and seventh loans, while the Applicants may not have known of them at the time they were approved, they still had the ability, in their advisory role, to ask that the integrity of the loans be reconsidered. Yes, matters had to be dealt with urgently but that did not prevent the boards of directors reconsidering their decisions and making amendments that best met the requirement of fairness.

120. It was, therefore, the case for the SFC that (for all practical purposes) the Applicants had full knowledge of, and indeed had helped to orchestrate the loans.

121. Indeed, it was the SFC case that, as licensed persons under the Ordinance, and subject to the provisions of the Code of Conduct, Cardinalasia and Edward Lee had both been under a fiduciary obligation to seek either to find an alternative source of funding (so as to avoid a conflict of interest) or, failing that, to seek to ensure that the terms of the loan agreements between the Funds were fair in the sense that they protected the interests of all parties, including those Funds obligated to make the loans.

122. In this regard, reference was made to the fact that, in the period of investigation, representations had been made to the SFC on behalf of the Applicants supporting the reasonableness of the decision to enter into the internal loan arrangements on the basis that, taking into account the prevailing abnormal market conditions, the interest rates that would have been charged by the banks[10] and the fact that the loans were intended to be short-term only, entering into the loans had, in fact, been both fair and in the best interests of each Fund's investors.

123. In this regard, the Tribunal was informed that, in their representations to the SFC –

(a) The Applicants had explained that loans (2) to (6) had been made under strict time pressures, there not being sufficient time to engage professionals to draw up a 'more comprehensive loan agreements' offering greater protection to the lending Funds in the event of default or late payment.

(b) The Applicants had further explained that the Applicants did not think that the terms would become an issue of significance because they (and Anthony Yeung) viewed the loan arrangements as short-term measures only to resolve the liquidity problems faced by the

[10] In particular, Credit Suisse AG.

borrowing Funds which would be able to make repayment as soon as possible[11].

124. In respect of these submissions, the Tribunal is satisfied that neither carry weight -

(a) As to the first representation, even if there was insufficient time to engage legal professionals from one or more firms in Hong Kong – that itself being a questionable assertion - Edward Lee must surely have had knowledge of the basic protective measures accompanying such arrangements, for example, the provision of some form of security by the borrowing Funds, and must also have had at least a working knowledge of the terms to be included in the loan agreements to best protect the lending Funds. The lending of money is hardly a distant, esoteric function for financiers.

(b) As it is, in the judgment of the Tribunal, the terms and conditions (and collateral protections) of the loan arrangements were patently one-sided.

(c) More than that, as counsel for the SFC emphasised, the loan agreements expressly included terms which were in themselves *disadvantageous* to the lending funds such as omitting the requirement to make repayment within a specified period of time, leaving the important question of repayment open-ended.

(d) As to the second representation, large sums of money were involved and, even if Edward Lee, and those working with him, were optimistic as to the fact that the loans would be settled within a short period of time, as experienced members of the financial industry, they must surely have appreciated that nothing was guaranteed and that the loan agreements – in order to protect the investors in the

[11] A hope that was not borne out in reality.

lending Funds - must still contain all reasonable safeguards for the lending funds.

(e) Indeed, in the judgment of the Tribunal, to ignore such safeguards in circumstances of such uncertainty constituted a blatant disregard for Cardinalasia's fiduciary obligations to the lending Funds and to its investors.

125. As to the lack of protection for the lending Funds, counsel for the SFC *inter alia* made the following submissions, namely, that -

(a) The terms of the loans afforded only minimal, if any, protection to the lending Funds. By way of example, there were no fixed repayment schedules; the borrowing funds could repay the loans in whole or part at their discretion. Nor did the loan agreements specify any rights or remedies available to the lending Funds should there be default on the part of the borrowing Funds.

(b) Importantly, the loans were not backed by any form of collateral or guarantee.

(c) The interest rates of 2% per annum in respect of the first six loans were far lower than the 8% to 10% charged by the execution brokers on margin loans provided to the Funds. The rates were also much lower than those advanced by Anthony Yeung himself to the Prosperity Fund and the Enhanced Fund in December 2016 and June 2017, the rates being 8% and 8.5%, these loans being requested by the borrowing Funds on the basis that they too were facing "liquidity issues".

(d) In respect of the seventh loan, no interest at all was charged. In the result, the loan – that is, the removal of the lending Fund's assets - with all its inherent risks, offered no financial benefit to the lending

Fund. Clearly, on its face, only the interests of the borrowing Fund were given weight.

(e) It was apparent that one of the lending funds – the Prosperity Fund - had not, on any objective and prudent consideration, enjoyed sufficient liquidity at the time when it granted the loans to be able to meet one of its primary obligations, that is, to meet redemption requests. Indeed, the Prosperity Fund had been forced to borrow from a third fund just a day after granting the loans and had (at a later time) been the subject of legal proceedings by its own investors for its failure to meet redemption requests.[12]

126. As it was put by counsel for the SFC, having regard to the manner in which the interests of the lending Funds were simply set to one side, the Tribunal should have no difficult in drawing the inference, it being a compelling inference, that, with there being an urgent and pressing need to secure finance for the borrowing Funds, they being under financial pressure, the interests of those Funds clearly became the dominating concern, indeed, for all practical purposes, the *only* concern. The practical consequence was that the legitimate interests of the lending Funds – the ones supplying that cash – were ignored. In the result, in the adverse market conditions prevailing at the time, the Funds that had advanced the loans - each being an independent body – were sacrificed on the altar of expediency, each being left at high risk of loss (to be endured by its investors) in order to try and shore up the liquidity of those weaker Funds.

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[12] The Prosperity Fund granted loans (3) and (4) for a total amount of HK$56.5 million to the Opportunities Fund on 8 July 2015 and loan (7) for the amount of HK$11.5 million to the Enhanced Fund on 6 June 2016 when it still owed money to other Funds under loans (1) and (5). On 9 July 2015, a day after it had granted loans (3) and (4) above, the evidence indicates that it encountered liquidity issues and had to borrow HK$10 million from the Advantage Fund.

The evidence further indicates that in the second half of 2015 redemption amounts payable to four different investors in the Prosperity Fund were outstanding when it granted a loan of HK$11.5 million to the Enhanced Fund. In this regard, as it was put by counsel for the SFC, the failure to meet the redemption requests led to proceedings being instituted by investors against the Fund. Put simply, the loans made by the Fund acted to the direct prejudice of its own investors.

127. On a consideration of all the evidence, even conceding that Edward Lee at the relevant time believed that the internal loan arrangements were necessary in the interests of all the Funds, the Tribunal is satisfied to the required standard that Edward Lee did not take into account the interests of the lending Funds and those who had invested in those Funds. Put bluntly, it is apparent that they were dealt with as temporary 'cash cows'. Any protections afforded to the lending funds were woefully inadequate.

The SFC case in respect of the cross trades

128. It was accepted that the circumstances surrounding the cross trades – which took place later in time - were different from those surrounding the internal loan arrangements. There was no urgency in respect of the cross trades and no external financial pressures by way of margin calls and the like.

129. Concerning the issue of the 'cross trades', the SFC case was again illustrated by and founded upon a table of figures, that table being set out as follows -

	Date of Bought/Sold Notes	Seller	Buyer	Stock code	Quantity	Execution Price (HK$)	Closing price (HK$)	
							Previous trading day	Difference (%)
1	09/11/2015	Prosperity	Strategic	1089.HK	15,620,000	0.6240	0.7400	-15.68%
2	09/11/2015	Prosperity	Advantage	1089.HK	15,620,000	0.6240	0.7400	-15.68%
3	09/11/2015	Opportunities	Prosperity	6828.HK	58,552,000	0.3360	0.4200	-20.00%
4	16/11/2015	Prosperity	Strategic	1089.HK	35,715,000	0.5600	0.6800	-17.65%
5	16/11/2015	Prosperity	Advantage	1089.HK	35,715,000	0.5600	0.6800	-17.65%
6	16/11/2015	Advantage	Prosperity	3823.HK	13,024,000	1.5360	1.9800	-22.42%
7	16/11/2015	Advantage	Prosperity	3823.HK	13,024,000	1.5360	1.9800	-22.42%
8	20/11/2015	Prosperity	Advantage	1129.HK	13,308,000	1.2720	1.5900	-20.00%
9	20/11/2015	Prosperity	Opportunities	1089.HK	19,000,000	0.5520	0.8000	-31.00%
10	20/11/2015	Prosperity	Advantage	1089.HK	18,050,000	0.5520	0.8000	-31.00%
11	20/11/2015	Advantage	Prosperity	2223.HK	236,000	2.2800	2.8400	-19.72%

130. The purpose of the cross trades was to bring about a rebalancing of the assets held by each Fund. If that was to be done fairly, it required an assessment of the value of the assets to each Fund and the advantages or disadvantages of the acquisition or disposal of those assets. That fell squarely within the advisory responsibilities of the Applicants.

131. As mentioned earlier in this determination, although it was Edward Lee's assertion that the cross trades were not matters for his concern and were therefore not matters in respect of which he exercised any formal responsibility, he did accept that he gave entirely verbal advice in respect of two issues that were relevant to the terms and conditions of the cross trades, indeed of significant relevance.

132. First, he said that, when asked, he recommended to members of Anthony Yeung's team that a uniform 20% discount be applied to each trade. Further, he accepted that he did not make this recommendation in light of a study of relevant data. As the Tribunal has understood it, it appeared to be more his case that he made the recommendation based simply on his experience in the market. As it was, that advice was accepted and a uniform 20% was applied. The following extract from Edward Lee's cross-examination is relevant -

> Q: So, when you were approached by Mr Yeung's team and also the QCAML team, you had answered them that 20% is appropriate and you based that opinion on your view that there is a common business practice to impose this discount: correct?
>
> A: Correct.
>
> Q: And, despite that, on your own case, it was not your duty to advise on the trades but you nevertheless gave the advice that a uniform 20% would be appropriate. Why?
>
> A: They asked and I answered.

133. In respect of this uniform 20% discount, Edward Lee agreed that the directors of the Funds had adopted this discount (across-the-board) for the 14 trades.

In this regard, the following exchange took place in the course of Edward Lee's testimony –

> Q. Well, Mr Lee, I was asking you about that, despite that it was not your duty to advise on these trades, you nonetheless provided your advice on this uniform 20% discount and I believe your answer was that, because they asked, you provided the answer.
>
> A. Correct
>
> Q. And the directors of the Funds did rely on your advice and ultimately agreed to impose this so-called uniform discount to the 14 trades: correct?
>
> A. Correct.

134. As stated above, Edward Lee conceded that this 20% uniform discount had been recommended by him without any prior detailed analysis. It was, therefore, on his part, an 'off-the-cuff' recommendation made not after a careful consideration of the particular market dynamics of the trades in question, but on his general experience and expertise.

135. In his witness statement, Edward Lee had said that discounts on what he described as 'block trades' were a common business practice in Hong Kong and that a uniform 20% discount, when rebalancing a portfolio, was common in the business world. As the Tribunal best understood him, therefore, it appeared to be Edward Lee's evidence that, in the prevailing circumstances at the time, a 20%, discount, while not inevitable, was more common than not: hence presumably – without any focused analysis - his recommendation of a uniform 20% discount.

136. Edward Lee testified that he played no concerted part in the cross trades. He accepted that he played no part in deciding on their commercial wisdom. He did not consider that the cross trades fell within the scope of his duties. It was therefore his evidence that he did not know how the execution prices had been determined. He was only asked to sign formal documentation. How was it then – if he believed that the cross trades fell outside his area of responsibility - that Edward Lee came to recommend a uniform discount of 20%? In the course of his testimony,

he said that he was asked by members of both negotiating teams if 20% would be appropriate and he replied by saying words to the effect: "It's very normal, 20% is very normal. You can just go and implement it."

137. In the course of his testimony, in an exchange with the Chairman of the Tribunal, Edward Lee went on to say: "Because most of the SME stocks I encounter, their offer is 15% to 20% discount…"

138. During the course of giving evidence, however, Edward Lee was drawn to agree that, in respect of any single asset, whether a discount was given and, if so, at what rate, would depend very much on the circumstances: including such factors as the liquidity of those assets.

139. Richard Harris, the expert witness called by the SFC, was of the view that there was no 'common' business practice. Nor was there, to his knowledge and understanding, a uniform 20% discount on cross trades; uniform in the sense that it was common in the market. As Mr Harris emphasised, many factors would act to influence, first, the need for a discount and, second, the amount of that discount.

140. In respect of this issue of the uniform 20% discount, what is to be remembered is that the essential allegation made by the SFC was not related simply to a recommendation that a 20% discount should be given, it went deeper than that. The essential allegation made was that the Applicants had failed to take ownership of the entire issue related to the cross trades. It may, therefore, be said that the issue of the recommendation made by Edward Lee that a 20% discount would be appropriate was no more than an aggravating factor in that broader consideration

141. In that limited sense, the Tribunal is satisfied that the point made was relevant and of assistance.

142. Bringing matters back to their central core, it was, of course, the SFC case that, even if the cross trades exercise could be justified, it did not change the

fact that, on his own admission, Edward Lee had failed to give *considered* advice – advice tailored to meet the best interest of the Funds - and that accordingly the Applicants had failed to meet their obligations as Investment Advisers.

143. As indicated, because he did not consider the trades to be his legitimate concern, Edward Lee accepted that he had not conducted any independent assessment of the cross trades to determine whether those trades were in the interests of the participating Funds. Accordingly, any recommendations given by him to the management teams arranging the cross trades, even though he must have appreciated the likelihood that they would be accepted, were – as stated earlier – essentially 'off-the-cuff' estimates.

144. As it was, it was the case for the SFC that the cross trades had not been equitable. This is illustrated in the following table which shows that each of the Funds suffered net MTM gains or losses on each of the three trade dates as well as when the trades are considered on a cumulative basis.

	Net MTM gain/(loss) (HK$)			
	09/11/2015	16/11/2015	20/11/2015	Total
Prosperity Fund	1,271,410.40	2,993,712.00	(4,160,592.00)	104,530.40
Opportunities Fund	(4,918,368.00)	-	4,712,000.00	(206,368.00)
Strategic Fund	1,823,478.80	4,285,800.00	-	6,109,278.80
Advantage Fund	1,823,478.80	(7,279,512.00)	(551,408.00)	(6,007,441.20)

145. Richard Harris, the expert witness for the SFC, testified that (for a number of reasons which he detailed) cross trades should generally be carried out on an MTM[13] price basis, that being the basis set out in the table above.

146. It was Edward Lee's submission that the calculations contained in the table above were, from his perspective, incorrect, one of the reasons being that there had been a failure on the part of QCAML to follow his second

[13] MTM means 'mark to market' and is a method of measuring the fair value of assets that can fluctuate in value over time.

recommendation concerning the cross trades, namely, his recommendation that, in the completion process of each trade, a rebalancing exercise should take place to ensure a final result of fairness. As to how exactly this rebalancing should be accomplished, Edward Lee said that he did not give specific directions to the director of QCAML and simply told him "to do further rebalancing".

147. Again, in regard to this matter, no documentary evidence was placed before the Tribunal, nothing, therefore, to suggest that Edward Lee had followed up this instruction with a prudent email or something similar. It was, of course, the SFC case that this was, on the part of Edward Lee, a further exercise in post-rationalisation.

148. The Tribunal accepts that the figures contained in the table above may not be found to be entirely correct; indeed, depending on the accuracy of the data upon which the table is founded, there may be more than one correct answer. In the opinion of the Tribunal, however, the mathematical accuracy of the table is not the true issue. The true issue goes to the actions of Edward Lee and the degree to which, if at all, they illustrated that he attempted in a *bona fide* fashion to meet his obligations as investment adviser and as a licensed person under the Ordinance. The accuracy of the figures, therefore, goes more to the gravity of any culpability on Edward Lee's part.

The lack of contemporary documentary materials supporting the case for the Applicants

149. During the course of the hearing, detailed submissions were made to the Tribunal on behalf of the Applicants. Edward Lee himself gave extensive evidence and, in the course of that evidence, made reference to a number of events and agreements/understandings reached at those events. In respect of those submissions and evidence given, however, there was a puzzling lack of supporting

'documentary evidence'[14]; indeed, it can be said that, for all practical purposes, there was none.

150. During the course of final submissions, counsel for the SFC laid particular emphasis on two matters; first, what was described as the shifting nature of the case for the Applicants and, second, this marked lack of documentary evidence which would have anchored the Applicants' case to contemporaneous paper and/or electronic communications.

151. Having considered the nature – and range – of all the evidence given in this matter, including evidence given on behalf of the Applicants, the Tribunal has found this lack of documentary evidence to be a matter of central concern.

152. Whether (in any particular case) documentary evidence should reasonably be expected will of course depend on the circumstances. In the present case, however, while there was clearly an urgency in getting matters done, records could still – and *should* still - have been kept. In this regard, it is to be remembered that Cardinalasia was acting as the investment adviser to five separate Funds, the amounts involved running into millions of dollars, and, in doing so, was required to report to the Manager of each of the five Funds and, through the Manager, to the board of directors of each Fund. To that must be added the fact that, over a period of several months, the Funds were under increasing financial pressure, that pressure requiring active consideration (and consultation) in respect of how best each to deal with the crisis.

153. To that must be added the fact that – clearly – it must at some early stage have been understood by Edward Lee that, in dealing differently with the five Funds, he ran a real risk of facing a conflict of interest. That issue alone, in the

[14] In this context, the Tribunal includes electronic – computer-created – records as well as physical documentary records such as minutes of meetings and similar.

opinion of the Tribunal, must have alerted Edward Lee that, in order to protect the integrity of his dealings, matters needed to be reduced to a documentary form.

154. As the Tribunal has noted at the beginning of this determination, both Edward Lee and Anthony Yeung were experienced, well-versed (and therefore sophisticated) financiers.

155. Surely, therefore, if matters had been dealt with in an objective, even-handed manner, with decisions being made in an attempt to meet the legitimate needs of all parties, even taking into account the urgency of the situation and the need to make decisions within hours rather than weeks, surely records of some substance would have been created?

156. It was the submission of counsel for the SFC that - in the circumstances of this particular matter - the lack of supporting documentary evidence must cast doubt on whether, at the appropriate times, the Applicants had in fact carried out any detailed and balanced assessment of either the internal loan arrangements or the cross trades, submitting those assessments to the Fund Managers for consideration.

157. As to how the Tribunal itself should view this lack of supporting documentary evidence, counsel for the SFC cited the following dicta of Arden LJ in *Re Mumtaz Properties Ltd* [15] -

> "In my judgement, contemporaneous written documentation is of the very greatest importance in assessing credibility. Moreover, it can be significant not only where it is present and the oral evidence can then be checked against it. *It can also be significant if written documentation is absent.* For instance, if the judge is satisfied that certain contemporaneous documentation is likely to have existed were the oral evidence correct, and that the party using oral evidence is responsible for its non-production, then the documentation may be conspicuous by its absence and the judge may be able to draw inferences from its absence." [emphasis added]

[15] [2012] 2 BCLC 109 at para 14.

158. It was (effectively) accepted by Edward Lee that the nature of his duties as Investment Adviser were in many ways concurrent with the duties of each Manager. More particularly, it was (effectively) accepted by Edward Lee that, as investment adviser to the five Funds, he had a duty – to be independently exercised - to seek to ensure that all Fund transactions were fair and in the best interests of investors. This was a duty, he agreed, which had to be carried out whether ultimately the advice given to each Manager was or was not accepted [16]. But where is the documentary evidence that he attempted to carry out that duty?

159. In the opinion of the Tribunal, even if there was at the time a degree of urgency in resolving matters, that urgency requiring face-to-face meetings, it is difficult to comprehend why, at the very least, skeleton presentation papers were not prepared by Edward Lee on behalf of Cardinalasia and then retained in the archives of the company. This must especially be the case when it is remembered that the material financial interests of five different investment funds were at stake. Failing that, even if discussions were of an on-going fluid nature, verbal rather than written, surely, with the interests of the investors of each fund being taken into consideration, the meetings that were held would have generated minutes recording what had been spoken about - or chains of emails - and, if Edward Lee had put forward propositions which sought to arrive at some solution fair to all the Funds, why those interests would not have been recorded. But, again, nothing was placed before the Tribunal.

160. In making final submissions, it was fundamental to the case presented by the SFC that the case for the Applicants was never firmly rooted; it shifted in direct relationship to the difficulties faced. It was further fundamental to the SFC's case – indeed, it went to the core of its submissions - that the lack of relevant documentary materials was, in the circumstances, a strong indicator of the

[16] In this regard, the following exchange took place in the course of Edward Lee's cross-examination – *"And do you agree that Cardinalasia must perform these duties irrespective of whether the Fund Manager ultimately takes its advice or makes its own decisions in respect of the Fund's investments? A. Agree."*

fact that no care was taken by the Applicants to give consideration to the individual interests of each Fund; in short, to ensure fairness.

161. The Tribunal accepts the strength of these submissions. On a consideration of all the evidence, the Tribunal has been unable to place any reliance on the evidence put forward by Edward Lee other than that of the most bland and neutral nature. The Tribunal was satisfied that Edward Lee would speak to whatever seemed to him to serve his momentary purpose.

The grounds of review advanced by the Applicant

162. On behalf of the Applicants, six grounds of review were originally advanced. During the course of the hearing, however, without any criticism intended of the force and effectiveness of the submissions made by counsel for the Applicants, those grounds became woven into the general fabric of submissions, changing their nature. To a considerable degree, in the end result, it became difficult for the Tribunal to identify the intended subject matter of each ground. That is why, even though certain grounds are now given independent consideration, the balance - in so far as the Tribunal has considered it necessary to do so – have been placed into the general body of this determination.

Misconstruing the advisory agreements

163. This ground of review was originally to the following effect, namely, that the SFC had misconstrued the advisory agreements, coming to the erroneous view that the agreements delegated to the Applicants powers which superseded decisions made by the Manager of each Fund and/or the board of directors of each Fund and/or, alternatively, had come to the erroneous view that the responsibilities of the Applicants included matters related to the 'raising of finance'.

164. During argument, three matters appeared to arise from this ground of review, namely -

a) whether, on a consideration of the responsibilities imposed on the Applicants pursuant to the investment advisory agreements, it gave them authority which *superseded* that of the Manager of each Fund;

b) whether the internal loan arrangements and/or the cross trades were not properly 'investment strategies' but were rather fund-raising exercises – that is, the raising of capital - and therefore subject to the authority of the promoter or the individual boards of directors only, and

c) whether, in any event, there was a verbal agreement reached between Edward Lee and Anthony Yeung which limited Cardinalasia's responsibilities under the investment adviser agreements, relieving the Applicants of any obligations concerning the internal loan arrangements and/or the cross trades.

165. The third matter - (c) above – has already been determined earlier in this determination, the Tribunal coming to the conclusion - one reached without difficulty - that there was no verbal agreement reached with Anthony Yeung in terms of which Cardinalasia's contractual responsibilities were reduced. Accordingly, that leaves matters (a) and (b) to consider.

a. Superseding powers

166. With respect to the well-argued submissions of counsel for the Applicants, the Tribunal never understood the SFC position to be that the powers delegated by the Managers of each Fund to the Investment Advisers of each Fund included powers which *superseded* those of the Manager and/or the board of directors of each Fund. That was never part of the SFC case nor did it need to be.

167. To the understanding of the Tribunal, it was instead the essential submission of counsel for the SFC that, pursuant to the terms of the investment advisory agreements, the Applicants, acting under the powers delegated to them in

terms of those agreements, had a delegated, but nevertheless independent obligation, to provide effective, professional advice in a timely manner, that advice not being based solely on a request to provide it but arising independently when the Applicants considered it advisable to give it. And that, of course, implied the need for the Applicants to remain cognizant of market movements and the best interests of each Fund in the light of those movements and to give advice in a timely manner. Whether that advice was followed by the Manager of each Fund (or the board of directors of each Fund) was a matter for them (and therefore an entirely separate issue).

168. The Tribunal is satisfied that the obligations of the Investment Adviser just described clearly arise from the terms of the investment advisory agreements. There is, for example, nothing in the investment advisory agreements to the effect that the investment adviser should remain passive, doing nothing, until and unless required to do so by the Manager of any Fund or the board of directors of any Fund. The clear intent of the language is to the opposite effect.

169. To the understanding of the Tribunal, therefore, it has been the asserted failures of the Applicants to exercise this independent obligation at a time when it manifestly needed to be exercised that, in the submission of the SFC, has constituted their culpability under the Code of Conduct. That asserted failure has not relied on any form of *superseding* authority vested in the Applicants.

170. Of interest, although it appeared to run against his own case, Edward Lee appeared to accept that, pursuant to a full and proper reading of the investment advisory agreements, this independent obligation did rest on his shoulders. In this regard, for example, the following exchange took place in the course of Edward Lee's cross-examination –

> Q. And do you agree that Cardinalasia must perform these duties irrespective of whether the Fund Manager ultimately takes its advice or makes its own decisions in respect of the Fund's investments?
>
> A. Agree.

171. During the course of submissions, it was said on behalf of the Applicants that the responsibilities of the Manager of each Fund were greater than those of the Investment Adviser, this unequal division of labour being evidenced by the fact that the Applicants, in their investment advisory role, received a lower remuneration than the Manager of each Fund. That there was such a difference in 'pay scales' may be the case. No doubt, on a day-to-day basis, the Manager of each Fund, holding a more senior position in the management hierarchy, exercised more rigorous responsibilities. In the view of the Tribunal, however, any difference in remuneration does not in any way alter the responsibilities imposed by the investment advisory agreements on the Applicants.

b. Capital raising

172. On behalf of the Applicants, it was further submitted that both the internal loan arrangements and the cross trades, when viewed correctly, did not constitute 'investment dealings'. They were instead specific dealings undertaken at a difficult time in the market to try and protect the financial welfare of each of the Funds. As such, they constituted an exercise in 're-financing' or the 'raising of capital' and, as such, they were the sole responsibility of the promoter[17].

173. As it was put by counsel for the Applicants in final written submissions -

> "It is clear from the description above [citing from the standard investment advisory agreement] that there is no express mention of 're-financing'. Any attempts or suggestions to artificially widen the ambit of the principal investment advisory role and responsibilities should be restrained. Simply put, financing and/or re-financing is distinct from investment and as the principal investment adviser, the said loans did not form part of their responsibility."

[17] Presumably, that was Anthony Yeung.

174. It was further submitted that –

> "Premised on the understanding between Anthony Yeung and the Applicants, and the provisions of the investment advisory agreements, the function of re-financing was more overseen by the board of directors of the five funds as it is the responsibility of the fund promoter[18] to ensure liquidity and sustainability of the funds."

175. Manifestly, no suggestion could be made that the cross trades constituted a form of raising capital. On the evidence, the cross trades took place to enable the new Managers of each Fund to be able to assemble – by way of investment trading - a portfolio of stocks that better suited their individual investment strategies.

176. The submissions made by the Applicants, therefore, had to relate to the internal loan arrangements. But what were the foundations of those submissions? No contractual provisions – positive or negative – taken from any of the hierarchy of agreements were put before the Tribunal to support the submissions. Nor, again, was there any external documentary evidence.

177. As to the nature of the supposed fund-raising exercise, it did not constitute an approach to any third-party banking institution or similar. Nor did it consist of any invitation to other third parties, such as potential investors, to provide funds. It was not therefore a fund-raising exercise of the classic kind: reaching out to third parties.

178. The fund-raising exercise itself was a purely internal exercise in the sense that it involved only the five Funds. And, as to its nature, it consisted of arranging for Funds with available cash – that is, cash already held by that Fund - to lend all or part of that cash to other Funds facing a cash shortage, doing so on a short-term basis.

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[18] The Fund Promoter, as earlier stated, had to be Anthony Yeung.

179. The Tribunal does not see how these short-term loans made by one Fund to another are to be considered to be exercises in fund-raising of such moment that, absent any contractual provision, they must - by implication only - be reserved to the promoter or the board of directors of each Fund.

The asserted error of relying on allegations made by Anthony Yeung

180. On behalf of the Applicants, it was argued that the SFC had been wrong to rely on allegations made by Anthony Yeung who did not appear before the Tribunal in order to testify.

181. As stated earlier in this determination, prior to the hearing the parties agreed to a direction in terms of which it was stated that certain documents may be admitted into evidence without the need to call the maker. At no time was any formal application made to the Tribunal to amend this agreed direction.

182. That said, prior to the hearing before the Tribunal, there was correspondence between the parties in which the solicitors representing the Applicants sought agreement that the SFC would call Anthony Yeung as its witness so that he could then be cross-examined by counsel for the Applicants.

183. The SFC did not agree to this course of action. As counsel for the SFC put it, the basis of the SFC's original findings (as expressed in its Decision Notice) had not relied on Anthony Yeung's evidence and, with the Applicants seemingly seeking to both support and disavow parts of Anthony Yeung's evidence, there was no obligation on the SFC to now present Anthony Yeung as its witness.

184. During the course of the hearing, the Tribunal raised the issue with counsel, essentially in passing, of whether Anthony Yeung was to be called. That said, no formal application was forthcoming. In the result, Anthony Yeung did not give evidence. Nor, by way of submissions to the Tribunal, was any reference – certainly any material reference – made to Anthony Yeung's records of interview

185. If the hearing before the Tribunal was of the nature of a classic appeal, whether and to what degree the SFC had relied on the evidence of Anthony Yeung may perhaps have been of relevance. These proceedings, however, constitute a hearing *de novo* and at no time during these proceedings was the Tribunal asked by counsel for the SFC, or indeed counsel for the Applicants, to adopt as evidence any allegation or assertion made at any time by Anthony Yeung.

186. It must further be emphasised that the Tribunal has not itself paid heed to anything said by Anthony Yeung in any record of interview (or other document). In the result, outside of his actions or words objectively proven, the Tribunal has considered Anthony Yeung to be an entirely neutral figure.

A footnote on the large amount of detail placed into evidence

187. During the course of the hearing, in best seeking to represent the interests of their respective clients, counsel put a great deal of detail before the Tribunal, that detail, for example, including chains of contested arithmetical calculations. The Tribunal does not suggest that this detail was necessarily unhelpful or unnecessary. The Tribunal simply wishes to make the point that, while it has considered all of the evidence put before it by counsel, giving that evidence due consideration, it has not considered it necessary to revisit in the text of this determination each and every matter raised.

The Tribunal's determinations as to culpability

188. On a consideration of all the evidence, the Tribunal is satisfied that the SFC has demonstrated to the required level that its findings of culpability made against both Applicants were properly founded.

189. With respect to the best efforts of counsel, the longer the hearing continued, the more evident it became that Edward Lee, the person who spoke for and controlled Cardinalasia, was not a witness in whom any trust as to the truth

could be settled. The strong impression gained was that he would shift his testimony as he saw best to try and meet the difficulties of his case. His apparent failure, despite his experience in the field of finance and fund management, to maintain even the most basic records, or to show any desire to fulfil his role as investment adviser in an objective, prudent and enquiring manner, added to the Tribunal's concern as to his professionalism and integrity. Indeed, a strong impression gained was that Edward Lee was, for all practical purposes, dismissive of his ethical responsibilities as a licensed person under the Ordinance.

190. The Tribunal is satisfied that Edward Lee, in his capacity as responsible officer for Cardinalasia, in failing to ensure the maintenance of appropriate standards of conduct, that is, appropriate standards of fairness by Cardinalasia, was in breach of General Principle 9 of the Code of Conduct.

191. The applications for review instituted by the First and Second Applicants are therefore dismissed.

The issue of sanctions

192. In respect of sanctions, in its notice of final decision, the SFC proposed that Cardinalasia should be subject to a public reprimand and a fine in the sum of HK$1,500,000 while Edward Lee's licence to carry on Type 4 and Type 9 regulated activities pursuant to the provisions of the Ordinance should be suspended for a period of seven months. On behalf of the Applicants, it was submitted by counsel that these sanctions were excessive and, taking all circumstances into account, were unfair.

193. In determining the issue of sanctions, what must be emphasized is that the culpability of the Applicants has been founded on the fact that, as licensed persons under the Ordinance, they were bound to a code of conduct, that code requiring them at all times to act in a manner that sought to protect the legitimate interests of the investors they represented and, more generally, the integrity of the

market. That gave to the Applicants not only contractual obligations pursuant to the investment advisory agreements but independent obligations. The issue of sanctions must be viewed in this light.

194. As the Tribunal best understands it, the criticism of the level of the sanctions imposed was based on the assertion that the role of the Applicants was for all practical purposes severely undermined by the actual authority conferred on them by Anthony Yeung. As it was expressed in final written submissions: "As a result, the Applicants did not have the power to supersede any decisions already made by the Manager and the board of directors".

195. For the reasons already given in the body of this determination, the Tribunal is satisfied that this approach is misplaced. It was never disputed that Cardinalasia was at all times acting under delegated authority; as such, Cardinalasia, together with Edward Lee, while they had advisory authority to suggest that decisions already made should be reconsidered, they had no power to actually set aside decisions already made by the Manager of each Fund and/or the board of directors of each Fund. But that is not to denigrate the importance of the authority vested in Cardinalasia – effectively, therefore, in Edward Lee himself - in terms of the investment advisory agreements. As the Tribunal has noted earlier, the authority delegated to Cardinalasia was a mirror of the authority already vested in the Manager of each fund. It was a proactive authority, one that required the Applicants to keep abreast of all investment management matters of any substance and, when it was considered prudent to do so, to give advice in respect of such matters (in the best interests of investors) prior to any final decision being made or, if time did not allow, to give advice in a timely fashion so that any decisions already made, could be reviewed.

196. On the evidence, however, it is apparent that Edward Lee, the controlling force of Cardinalasia, exercised only the most limited interest in seeking to fulfil his obligations, commercial and ethical, as Investment Adviser and, more importantly, as a person licensed under the Ordinance. A single example illustrates

the point. When the cross trades were taking place, Edward Lee accepted that the Fund Managers who were negotiating those trades harboured considerable animosity towards each other. Yet, despite the very broad delegated authority under which he was supposed to act, Edward Lee said that he did nothing: the corporate parties appeared to know what they wanted and he was satisfied to leave it at that. It would appear that any potential danger of the existing animosity warping the fairness of proceedings was not his concern.

197. Of equal significance, and concerning the two crises which were the subject of this application for review, namely, the internal loan arrangements and the cross trades, there is no independent evidence by way of paper advice or electronic messaging that the Applicants took any action of substance (or indeed of any kind) to discharge their delegated but nevertheless highly important obligations. Arising out of these two crises, especially as there was, in respect of the first matter, a real danger apparently of one or more of the Funds going into liquidation, if the applicants had been discharging their delegated duties, one would have expected a relatively large volume of evidence recording advice given. But there was none.

198. It could not have been a case of the Applicants not having the experience or the wit to understand the true nature of the authority delegated to them in the various investment advisory agreements and how, as licensed persons under the Ordinance, they should set about their obligations.

199. Edward Lee, it appears, had an enviable education in matters of finance and equally enviable experience. As such, surely, he would have ensured that he understood the true nature and extent of the advisory agreements and his obligations under them and would, at all times, have been aware of the broader responsibilities placed on his shoulders as a licensed person. Regrettably, however, if he did understand the true nature and extent of his obligations, there is little or no evidence that he bothered to act in accordance with that understanding.

200. The clear importance of an investment adviser in protecting the interests of investors lies in the simple, single fact that the person so appointed acts in an independent way, even if acting under delegated powers, employing his or her knowledge and understanding of financial matters in order to ensure the best interests of investors even if, in giving advice, that advice is contrary to the intended wishes, or decisions actually made, of those higher in the delegated chain of management. In the judgement of the Tribunal, Edward Lee, appears not to have been too concerned to ensure that he discharged his fiduciary obligations in a timely and independent manner.

201. As the Tribunal has noted in earlier decisions, sanctions that are imposed are not designed to punish, in the sense, that is, of punishment under criminal law. That they may cause hurt to individuals is not the point. The point is that the sanctions are designed to be defensive, that is, they are designed to protect the essential integrity of the market and the investors in that market. As such, there may be occasions - and the Tribunal considers this to be one of them - when the maintenance of public confidence can only be attained by removing a party from the market for a period of time of some length.

202. In the present case, on a consideration of all relevant evidence, the Tribunal is of the view that the period of suspension imposed by the SFC was insufficient in order to protect the market.

203. In the view of the Tribunal, it is important that others acting in the same capacity should appreciate that the role of an investment adviser is a role of real substance.

204. In coming to its determination on an entirely *de novo* basis, without any consideration for the fact that the SFC had imposed a period of suspension of seven months only, the Tribunal would have considered a period of suspension of 12 months to have been appropriate. But, looking to the fact that a period of suspension 12 months would be very significantly greater, and being satisfied that

the protection of the market will not be undermined, the Tribunal has determined that a period of nine months suspension is appropriate.

205. The Tribunal, therefore, orders that Edward Lee be suspended for a period of nine months.

206. In respect of the other sanctions orders made by the SFC, the Tribunal is satisfied, again viewing matters *de novo*, that they are fair and reasonable and there will be no change in respect of those orders.

Costs

207. In light of the fact that this application for review by both Applicants has been dismissed, and there being no persuasive reasons to come to any other determination, the Tribunal is satisfied that costs must follow the event. Accordingly, costs are to be paid by the Applicants, the obligation being joint and several.

208. Having regard to the detailed nature of much of the evidence, the Tribunal is further satisfied that the SFC should be entitled to a certificate for two counsel.

(Mr Michael Hartmann)

(Chairman)

Mr Edwin Choy, SC leading Mr Philip C.L. Wong, instructed by Messrs Michael Li & Co
for the Applicants

Ms Sara Tong, Counsel and Ms Esther Mak, Counsel instructed by the SFC
for the Respondent