

SFC reprimands and fines Schroder Investment Management (Hong Kong) Limited \$1.8 million for disclosure failures

15 Jun 2016

The Securities and Futures Commission (SFC) has reprimanded and fined Schroder Investment Management (Hong Kong) Limited (Schroder) \$1.8 million for failing to disclose all notifiable interests in Hong Kong listed shares (Note 1).

An SFC investigation found that from August 2005 to January 2013, Schroder failed to disclose to the Stock Exchange of Hong Kong Limited (SEHK) and the relevant listed companies all notifiable interests in Hong Kong listed shares held in client portfolios and managed by Schroders plc and certain of its subsidiaries (Schroder Entities) where they did not have or were unable to exercise proxy voting rights. Schroder is responsible for preparing and filing the notices disclosing all notifiable interests in Hong Kong listed shares for the Schroder Entities to SEHK and the relevant listed companies (Notes 2, 3, 4 & 5).

Although legal advice obtained by Schroder advised that an "interest" in shares was broadly defined and was not confined to the exercise of a voting right, Schroder failed to properly follow the advice.

According to Schroder, it discovered the disclosure failures in November 2012 when it was preparing to implement a new global system for the monitoring and reporting of disclosable interests in shares. In February and March 2013, Schroder filed a total of 236 substantial shareholders notices to the SEHK to correct the disclosure notices filed for the Schroder Entities from July 2010 to January 2013.

In deciding the penalty, the SFC took into account the duration and extent of Schroder's disclosure failings, Schroder's self-report to the SFC upon discovery of its disclosure failings, Schroder's co-operation with the SFC's investigation and disciplinary process and that it has taken steps to improve its global system for monitoring and disclosing shares in Hong Kong listed companies and its clean disciplinary record.

End

Notes:

1. Schroder is a licensed corporation under the Securities and Futures Ordinance (SFO) to carry on Type 1 (dealing in securities), Type 4 (advising in securities) and Type 9 (asset management) regulated activities.
2. Schroders plc is a company incorporated in England and Wales which carries on asset management business together with its subsidiaries on a global basis. The Schroder Entities invest directly in Hong Kong listed shares for their clients.
3. Part XV of the SFO sets out the requirements for the disclosure of interests in the securities of listed corporations. A person who acquires an interest in or ceases to be interested in shares in the relevant share capital of a listed corporation, or where a change occurs affecting a person's existing interest in shares in a listed corporation's share capital in specified circumstances, comes under a duty of disclosure. The specified circumstances are those where the person first acquires a notifiable interest, ceases to have a notifiable interest, has a notifiable interest but the percentage levels of his interest have changed or he has a notifiable interest but the nature of his interest has changed. The notifiable percentage level for notifiable interests is 5% and the specified percentage level for changes to notifiable interests is 1%. Notification should be given to the SEHK and the listed corporation concerned of the interests which he has, or ceases to have, in the shares of the listed corporation within three business days after the day on which the relevant event occurs.
4. General Principle 7 of the Code of Conduct for Persons Licensed by or Registered with the SFC (Code of Conduct) provides that a licensed corporation should comply with all regulatory requirements applicable to the conduct of its business activities so as to promote the best interests of clients and the integrity of the market.
5. Paragraph 12.1 of the Code of Conduct provides that a licensed corporation should comply with, and implement and maintain measures appropriate to ensuring compliance with, the law and relevant regulatory requirements.

[A copy of the Statement of Disciplinary Action is available on the SFC website](#)

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STATEMENT OF DISCIPLINARY ACTION

The Disciplinary Action

1. The Securities and Futures Commission (**SFC**) has reprimanded and fined Schroder Investment Management (Hong Kong) Limited (**Schroder**) \$1.8 million pursuant to section 194 of the Securities and Futures Ordinance (**SFO**).
2. The disciplinary action is taken in respect of Schroder's failure to disclose to the Stock Exchange of Hong Kong Limited (**SEHK**) and the relevant listed companies all notifiable interests in shares of corporations listed on the SEHK and held in client portfolios managed by Schroders plc and its subsidiaries from August 2005 to January 2013.

Summary of Facts

Regulatory requirements on disclosure of notifiable interests

3. Section 310(1) of the SFO provides that where a person acquires an interest in or ceases to be interested in shares comprised in the relevant share capital of a listed corporation; or where any change occurs affecting a person's existing interest in shares in a listed corporation's share capital, then in the circumstances specified in section 313(1), he comes under a duty of disclosure.
4. Section 311 of the SFO provides that the interests to be disclosed for the purposes of the duty of disclosure arising under section 310 are those shares comprised in the relevant share capital of the listed corporation concerned.
5. Section 313(1) of the SFO provides that the circumstances referred to in section 310(1) are those where the person: (a) first acquires a notifiable interest; (b) ceases to have a notifiable interest; (c) has a notifiable interest but the percentage levels of his interest have changed; (d) has a notifiable interest but the nature of his interest has changed.
6. Section 315 of the SFO provides that the notifiable percentage level for notifiable interests is 5% and the specified percentage level for changes to notifiable interests is 1%.
7. Section 324 of the SFO provides, inter alia, that where a person comes under a duty of disclosure under section 310, he should give notification to the listed corporation concerned and the SEHK of the interests which he has, or ceases to have in the shares of the listed corporation. The notification should be given at the same time or, if not practicable, one immediately after the other.
8. Section 325(1)(a) of the SFO provides that notification required by section 324 should be given within 3 business days after the day on which the relevant event occurs.
9. Section 322(5)(b) of the SFO provides that a person is taken to have an interest in shares if he is entitled to exercise any right conferred by the holding of the shares or control the exercise of any such right.

10. Section 322(6) of the SFO provides that a person is taken to be entitled to exercise or control the exercise of any right conferred by the holding of shares if he has a right the exercise of which would make him so entitled or he is under an obligation the fulfilment of which would make him so entitled.

Failure to disclose notifiable interests in Hong Kong listed shares where Schroder Entities did not have or were unable to exercise voting rights

11. Schroders plc is a company incorporated in England and Wales which carries on asset management business together with its subsidiaries on a global basis. Schroders plc and certain of its subsidiaries directly invest in Hong Kong listed shares for their own clients (**Schroder Entities**). Schroder, a company incorporated in Hong Kong, is responsible for preparing and filing the notices disclosing the notifiable interests in Hong Kong listed shares held by the Schroder Entities to SEHK and the relevant listed companies.
12. On 8 February 2013 and 28 March 2013, Schroder filed a total of 236 Corporate Substantial Shareholder Notices to SEHK to correct the notices it had previously filed for the period from 6 July 2010 to 25 January 2013 (**Corrected Notices**). Schroder explained to the SFC that the 236 Corrected Notices rectified previous disclosure notices that failed to include notifiable interests in Hong Kong listed shares held in client portfolios and managed by the Schroder Entities where they did not have or were unable to exercise proxy voting rights.
13. In April 2005, the Schroder Entities conducted a review into their disclosure obligations and whether they could adopt a non-aggregate approach¹ for the disclosure of notifiable interests in Hong Kong listed shares. In the course of the review, one of the Schroder Entities raised concerns that it may have over-disclosed its interests in Hong Kong listed shares because it did not have or was unable to exercise proxy voting rights in the relevant shares.
14. Schroder sought legal advice regarding the disclosure obligations in Hong Kong listed shares and whether the Schroder Entities could adopt the non-aggregate approach. In late April 2005 and June 2005, Schroder's legal adviser advised that an "interest" in shares was broadly defined and included an interest in shares of any kind even where the Schroder Entities did not have a voting discretion in the relevant shares. **The legal position was therefore clear that the Schroder Entities were required to disclose all notifiable interests in Hong Kong listed shares held in client portfolios irrespective of whether or not they had a mandate to exercise proxy voting rights in those shares.**
15. Schroder subsequently prepared an internal memorandum setting out the approach for disclosing notifiable interests in Hong Kong listed shares. **However, the memorandum did not correctly follow the legal advice and wrongly concluded that, going forward, mandates where the Schroder Entities did not have voting discretion would not be included in future disclosures.**
16. This resulted in Schroder's failure to include the Schroder Entities' notifiable interests in Hong Kong listed shares where they did not have proxy voting

¹ Under the non-aggregate approach, disclosure notices are submitted in the name of the relevant Schroder Subsidiary holding notifiable interests in shares in a Hong Kong listed company to SEHK and the relevant listed companies.

mandates in disclosure notices filed to the SEHK and the relevant listed companies.

17. Schroder advised it discovered its failure to disclose all notifiable interests in Hong Kong listed shares held in client portfolios managed by the Schroder Entities following preparatory work to implement a new global system for the monitoring and reporting of disclosable interests in shares in November 2012.
18. The disclosure notices filed by Schroder from August 2005 to early July 2010 remain uncorrected. Schroder advised the data for this period was stored in different formats and on different storage systems and the reconstruction exercise would be difficult and complex. Schroder further advised that it was not confident that the resulting reconstructed historical data would be accurate.
19. Schroder also advised that, upon discovering the disclosure failings, it has together with Schroders plc taken remedial measures to file corrective notices and conducted a review of its global reporting procedures to ensure compliance with the reporting requirements in Part XV of the SFO.

Conclusion

20. The SFC concludes that Schroder failed to properly disclose all notifiable interests in Hong Kong listed shares held in client portfolios and managed by the Schroder Entities in compliance with the regulatory requirements.
21. In deciding the disciplinary action against Schroder in paragraph 1 above, the SFC has taken into account all relevant circumstances including:
 - (a) the duration and extent of Schroder's disclosure failings;
 - (b) the self-report made by Schroder to the SFC upon discovery of its disclosure failings;
 - (c) the steps taken by Schroder and Schroders plc to address the SFC's concerns relating to the monitoring and reporting of notifiable interests in Hong Kong listed shares held by the Schroder Entities;
 - (d) Schroder's co-operation in the SFC's investigation and disciplinary process; and
 - (e) Schroder's clean disciplinary record.