
STATEMENT OF DISCIPLINARY ACTION

The Disciplinary Action

1. The Securities and Futures Commission (SFC) has suspended Ms Ching Yim Har (Ching)¹ for a period of 3 years pursuant to section 194 of the Securities and Futures Ordinance (SFO).
2. The disciplinary action is taken because Ching had:
 - (a) conducted transactions in a client's account on a discretionary basis without written authorization; and
 - (b) accepted performance fees from the client for managing a portfolio of securities for the client without the knowledge and consent of her employer.

Summary of facts

Discretionary trading without written authorization

3. Among other things, paragraph 7.1 of the Code of Conduct² provides that a licensed person should not effect a transaction for a client unless before the transaction is effected, the client has specifically authorized the transaction, or the client has authorized in writing the licensed person to effect transactions for the client without the client's specific authorization. If the licensed person has obtained the authority in writing, it should designate the client's account as a discretionary account and should implement internal control procedures to ensure proper supervision of the operation of discretionary accounts.
4. General Principle 2 of the Code of Conduct requires all licensed persons to act with due skill, care and diligence, and in the best interests of their clients and the integrity of the market when conducting regulated activities.
5. Between January 2006 and March 2008, as an account executive of Phillip Securities (Hong Kong) Limited (PSL), Ching traded in securities for her client on a discretionary basis. In the absence of the required authorization in writing, Ching relied on the verbal authorization given by the client. Ching would decide which stocks to buy and sell and the client would only be reported the transactions after their completion.

¹ Ching is licensed to carry on Type 1 (dealing in securities), Type 2 (dealing in futures contracts) and Type 4 (advising on securities) regulated activities. She was accredited to Phillip Securities (Hong Kong) Limited and Phillip Commodities (HK) Limited between February 2004 and April 2012. She is currently not accredited to any licensed corporation.

² Code of Conduct for Persons Licensed by or Registered with the Securities and Futures Commission

6. Ching explained that she did not realize at the material time that she was operating her client's account as a discretionary account. Such explanation is not acceptable given that she had been licensed to carry on securities dealing activities since 1993.
7. Ching's failure to obtain the required written authorization from the client before trading for her on a discretionary basis is an apparent breach of her regulatory duties under paragraph 7.1 of the Code of Conduct.
8. Without the authority in writing from the client, the client's account was not designated by PSL as a discretionary account and not properly monitored and supervised by PSL as such under paragraph 7.1 of the Code of Conduct. The client's interests were prejudiced and not properly protected as a result. In the circumstances, Ching's conduct demonstrated her failure to act with due skill and care and in the best interests of her client under General Principle 2 of the Code of Conduct.

Acceptance of performance fees

9. In trading in securities for the client on a discretionary basis, Ching had accepted performance fees from the client in the sums of \$99,688 and \$265,688 in respect of the trades conducted in the client's account for the years of 2006 and 2007 respectively. She subsequently repaid to the client the fee arising from the trades executed in 2007.
10. Ching had received the performance fees without the knowledge and consent of PSL.
11. As a licensed representative with significant experience in the industry, Ching knew or ought to have known that it is inappropriate to make secret profits by entering into arrangement with her client.
12. The SFC considers Ching's conduct of solicitation and/or acceptance of a fee from her client without PSL's permission when conducting its business affairs was dishonest and clearly fell short of what is expected of a licensed representative. Her conduct constitutes a breach of General Principle 1 of the Code of Conduct and caused concern to her fitness and properness.

Conclusion

13. Having considered all the circumstances, the SFC is of the view that Ching's fitness and properness to be a licensed person has been called into question. The suspension of 3 years is most appropriate and commensurate with the view of the SFC on the gravity of her failures.
14. In coming to the decision to take disciplinary action against Ching, the SFC has taken into account that:
 - (a) Ching's conduct took place over a prolonged period of time;
 - (b) acting in the best interests of a client is fundamental to the fitness and properness of a licensed representative;
 - (c) a clear message needs to be sent to the market that misconduct similar to Ching's are not tolerated; and
 - (d) Ching has no disciplinary record.