
STATEMENT OF DISCIPLINARY ACTION

The Disciplinary Action

1. The Securities and Futures Commission (**SFC**) has prohibited Mr Lam Chin Man (**Lam**) from re-entering the industry for 15 months pursuant to section 194 of the Securities and Futures Ordinance (**SFO**).
2. The disciplinary action is taken because Lam had:
 - (a) concealed from his then employer Eternal Pearl Securities Limited (**EPSL**):
 - i) the procurement of the opening of a nominee account; and
 - ii) the effecting of transactions in such account placed by third parties (who were the ultimate beneficial owners),

for the purpose of earning commission income; and
 - (b) i) placed a purchase order for 500,000 units of a warrant (**Warrant**) in the nominee account when in fact one of the third parties instructed Lam to place a sell order (**Error Trade**); and
 - ii) failed to report the Error Trade to EPSL and allowed the Warrant to mature without rectifying the Error Trade which led to a loss in the sum of \$143,900 to the nominee account.
3. Lam's conduct demonstrates a lack of honesty and diligence, in breach of General Principle 1 (Honesty and fairness) and General Principle 2 (Diligence) of the Code of Conduct¹.

Summary of facts

4. Lam was an account executive of EPSL responsible for handling a securities trading account under the name of a client during the period from October 2011 to March 2013.
5. The client's mother also has a securities trading account maintained with EPSL which is handled by another account executive. Since Lam did not want to take away clients from his colleagues, he advised the client to open an account and authorise her mother to trade in it so that he could earn commission income from such account.

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

6. As a result, the client, with Lam's assistance, opened a margin account in her name with EPSL for the use of her mother (**Nominee Account**).
7. Lam admitted that the client has never called him to place orders since the Nominee Account was opened in October 2011. He placed orders to the Nominee Account upon receiving instructions from the client's mother and her mother's friend (either or collectively, the **Third Party**). Lam also confirmed trades with the Third Party. This was done notwithstanding that the client did not give any written authorisation allowing the Third Party to operate the Nominee Account.
8. The client has never deposited money into the Nominee Account or informed Lam that she has done so. It was the client's mother who deposited funds in settlement of the transactions in the Nominee Account.
9. In relation to fund withdrawals, EPSL's policy states that cheques shall only be made payable to the account holder. For cheques to be made payable to a third party, the account holder is required to sign a withdrawal form every time such request is made. In order to circumvent such policy, the client and her mother opened a bank account in their joint names (**Joint Bank Account**) upon Lam's advice so that proceeds deposited into the same could be withdrawn by the client's mother alone.
10. The client has never withdrawn funds from the Nominee Account or instructed Lam to do so. Lam accepted withdrawal instructions from the client's mother and the proceeds were deposited into the Joint Bank Account on various occasions. The client's mother would then give half of the proceeds to her friend (ie the other Third Party) in cash.
11. In January 2013, Lam placed a purchase order for 500,000 units of the Warrant in the Nominee Account when in fact the Third Party instructed him to sell the same (ie the Error Trade). As a result, there were 1,000,000 more units of Warrant in the Nominee Account than there should be.
12. The Third Party noted such discrepancy between their own records and that reported by Lam. Despite repeated requests by the Third Party to clarify the holdings of the Warrant in the Nominee Account a few days after the Error Trade was placed, Lam failed to do so. Lam eventually failed to rectify such trade or report the same to EPSL before the Warrant expired in March 2013. This caused a total loss of \$143,900 to the Nominee Account.

Conclusion

13. General Principle 1 of the Code of Conduct requires licensed persons to act honestly, fairly, and in the best interests of its clients and the integrity of the market, when conducting licensed activities.
14. Licensed persons are also required under General Principle 2 of the Code of Conduct to act with due skill, care and diligence, in the best interests of their clients and the integrity of the market.
15. In order to earn commission income, Lam has failed in his duty to act honestly by procuring the opening of and effecting transactions placed by the Third Party in the Nominee Account. He also circumvented EPSL's fund withdrawal policy by advising the client and her mother to open the Joint Bank

Account. His conduct constitutes a breach of General Principle 1 of the Code of Conduct.

16. Further, Lam has, in breach of General Principle 2 of the Code of Conduct, failed to act with due skill, care and diligence by placing the Error Trade and thereafter failing to rectify and/or report the same to EPSL before the Warrant expired, thereby causing a loss in the sum of \$143,900 to the Nominee Account.
17. Having considered all the circumstances, the SFC is of the opinion that Lam is guilty of misconduct and/or not a fit and proper person to remain licensed. The SFC has decided to take the disciplinary action against Lam as described in paragraph 1 above.
18. In deciding the appropriate sanction, the SFC has taken into account all relevant circumstances, including that:
 - (a) Lam had been a licensed representative for over 14 years;
 - (b) it is dishonest of Lam to procure a person to open and operate a securities account in another individual's name for his personal gain;
 - (c) Lam caused a loss of \$143,900 to the Nominee Account. Lam admitted responsibility for causing such loss and offered to make repayment by way of instalments;
 - (d) a clear message needs to be sent to the market that misconduct similar to Lam's will not be tolerated; and
 - (e) Lam's otherwise clean disciplinary record.