
STATEMENT OF DISCIPLINARY ACTION

The Disciplinary Action

1. The Securities and Futures Commission (SFC) has banned Mr Fa Kwan Lun (Fa)¹ from re-entering the industry for a period of 12 months pursuant to section 194 of the Securities and Futures Ordinance (SFO).
2. The disciplinary action is taken because Fa had:
 - (a) concealed from his employer his beneficial interest in, and his personal trading activities conducted through, the securities account of his mother-in-law; and
 - (b) handled client money by transferring funds for his clients to their trading accounts through his personal bank account.

Summary of facts

Personal trading through mother-in-law's account

3. General Principle 1 of the Code of Conduct² requires all licensed persons to act honestly, fairly, and in the best interests of their clients and the integrity of the market when conducting regulated activities.
4. Paragraph 12.2 of the Code of Conduct requires all transactions in employees' accounts and related accounts to be reported and actively monitored by the senior management of the licensed corporation.
5. Between March 2007 and December 2012, as an account executive of BOCI Securities Limited (BOCI), Fa conducted securities trading for himself in the account of his mother-in-law maintained with BOCI and contributed all the trading funds in the account. However, BOCI had no knowledge of Fa's personal trading and interest in the account.
6. Pursuant to the staff dealing rules of BOCI, all staff members are required to provide a declaration of their own investment accounts and related accounts and a complete list of investment holdings including those in the related accounts.

¹ Fa was licensed to carry on Type 1 (dealing in securities), Type 2 (dealing in futures contracts) and Type 3 (leveraged foreign exchange trading) regulated activities under the SFO and was accredited to BOCI Securities Limited between May 2006 and December 2012. He is currently not licensed by the SFC.

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

7. When Fa made declarations to BOCI of his investments and investment accounts, he did not disclose his beneficial interest and personal trading activities in his mother-in-law's account.
8. Fa explained that he used his mother-in-law's account for his own securities trading because he wished to carry on personal trading as a regular client without being subject to his supervisor's approval and the holding period imposed by BOCI on securities purchased by its staff members.
9. Fa's concealment of his beneficial interest in and personal dealings through his mother-in-law's account was dishonest and amounts to a breach of General Principle 1 of the Code of Conduct.
10. Convenience for carrying out personal trades is not an excuse for Fa's dishonest conduct and his non-compliance with the requirements of BOCI which are implemented to enable it to monitor employee trading under paragraph 12.2 of the Code of Conduct. Fa's misconduct had made it impossible for BOCI to actively identify and monitor his trading activities and detect any potential conflict of interest situations and/or other malpractices arising from such activities.

Handling client money

11. 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.
12. General Principle 8 of the Code of Conduct requires all licensed persons to ensure that client assets are promptly and properly accounted for and adequately safeguarded.
13. BOCI's policy also prohibits its representatives from handling client money and requires them to seek prior approvals from department head and compliance division for receipt of money from a third party to a client's account.
14. Between June 2011 and July 2012, Fa assisted four clients of BOCI to transfer funds to their BOCI trading accounts. In doing so, he received funds from the clients and transferred funds of the same amount from his own bank account to the clients' trading accounts. Fa did not seek the required prior approval from BOCI for depositing funds to the clients' accounts from his own bank account.
15. Fa said he was aware of BOCI's policy that clients' money and account executives' money were not allowed to be mingled. However, his clients were not able to procure the transfer of money to their securities accounts directly at the material time.
16. Clients' difficulty in depositing money to their securities accounts is not an acceptable excuse for Fa to assist in transferring money for them. He should have advised his clients to deposit money into their securities accounts through a proper channel instead of having the money transferred through his bank account. Alternatively, he should have brought the matter to his employer's attention and consulted its opinion on possible solutions.
17. Fa has been in the securities industry since 2003. As a licensed person with substantial experience in the industry, he is expected to have the necessary

experience and skill in handling client money, in compliance with his employer's internal policies and all applicable regulatory requirements.

18. The manner in which Fa handled his clients' money contrary to BOCI's internal policy suggests that he had failed to act with due skill, care and diligence in managing his clients' accounts and in the best interests of his clients. By letting his clients' money mingle with his money in his bank account, he also failed to diligently ensure that his clients' assets are properly safeguarded. In the circumstances, Fa had breached General Principles 2 and 8 of the Code of Conduct.

Conclusion

19. Having considered all the circumstances, the SFC is of the view that Fa was guilty of misconduct and is not fit and proper to be licensed. The prohibition of 12 months is most appropriate and commensurate with the view of the SFC on the gravity of his failures.
20. In determining the penalty, the SFC has taken into account that:
 - (a) Fa's concealment of personal trading activities and beneficial interest in his mother-in-law's account from his employer was deliberate and dishonest;
 - (b) Fa's handling of client money fell short of the standard expected of a licensed representative with his experience;
 - (c) Fa's misconduct spanned over a prolonged period of time;
 - (d) the ability to carry out regulated activities honestly and act in the best interests of clients is fundamental to the fitness and properness of a licensed representative;
 - (e) Fa is remorseful about his misconduct;
 - (f) a clear message needs to be sent to the market that misconduct similar to Fa's is not acceptable; and
 - (g) Fa has an otherwise clean disciplinary record.