
STATEMENT OF DISCIPLINARY ACTION

The Disciplinary Action

1. The Securities and Futures Commission (SFC) has revoked the licences of Union Securities Limited (Union Securities) and its responsible officers, Ma Kin Chung (Ma) and Cheng Tai Ha (Cheng), and prohibited Ma and Cheng from re-entering the industry for life pursuant to section 194 of the Securities and Futures Ordinance (SFO).
2. The SFC found that Union Securities, Ma and/or Cheng have:
 - (a) failed to, as introducing agent, refer two clients (collectively the Clients) to open accounts with Topmore Securities Limited (TSL), and communicate their order placing instructions to TSL to effect dealings in securities, and instead accepted their order placing instructions, contrary to the condition of Union Securities' licence that it shall not conduct business other than communicating offers to effect dealings in securities to TSL, in the names of the persons from whom those offers are received, and introducing persons to TSL in order that they may effect dealings in securities or make offers to deal in securities;
 - (b) caused the Clients to deposit funds into a bank account which Ma falsely declared in Union Securities' Form 5 to the SFC on 21 October 2008 (the Notification) that Union Securities has ceased using such bank account since 1 January 2007 (the Allegedly Closed Bank Account), in purported settlement of their securities transactions, contrary to the condition of Union Securities' licence that it shall not hold client assets; and
 - (c) issued bogus statements under the name of "Union Company" (the Union Company Statements) to the Clients to lead them into believing that the funds they deposited into the Allegedly Closed Bank Account were used to settle their securities transactions when such client assets were ultimately misappropriated by Union Securities, Ma and/or Cheng, in breach of General Principle 1 of the Code of Conduct for Persons Licensed by or Registered with the Securities and Futures Commission (the Code of Conduct).
3. The SFC also found that Union Securities has concealed from the SFC an overdraft (the Overdraft) in one of its accounts which was unreported to the SFC (the Unreported Bank Account). When taking the Overdraft into consideration, Union Securities has in fact:

- (a) failed to maintain the minimum required liquid capital of \$500,000 since 1 January 2012, in breach of section 6(1) of the Securities and Futures (Financial Resources) Rules (FRR);
- (b) failed to comply with the notification requirements under section 55(1)(a) of the FRR and section 146(1) of the SFO;
- (c) failed to cease carrying on its Type 1 regulated activity under section 146(1) of the SFO when it was unable to maintain its required level of liquid capital; and
- (d) provided false and/or misleading information to the SFC in its monthly financial returns submitted under the FRR for the months of January to August 2012 (the FRR Returns),

in breach of General Principle 1 of the Code of Conduct. Ma was directly responsible for such breaches whereas Cheng connived in, or was negligent of the matters constituting such breaches. Both were also in breach of GP1 of the Code of Conduct.

Summary of facts

- 4. On 26 September 2012, the SFC received a letter dated 24 September 2012 from Ma that Union Securities was closed due to his personal indebtedness.
- 5. On 10 October 2012, the SFC received a complaint from one of the Clients alleging that "Union Securities" had suddenly closed down and that she has been unable to contact her account executive for over two weeks. This led to an investigation by the SFC.
- 6. On 2 July 2013, the SFC received a complaint from another of the Clients. He claimed that when he tried calling Ma or Cheng to sell his shares in his account with Union Securities Co (USC), he discovered that the telephone lines of USC were disconnected and that it had closed down.

Misappropriating client assets, creating false statements, making false declaration and breaching licensing conditions

- 7. By way of an agreement between Union Securities and TSL, Union Securities would as an introducing agent refer clients to TSL. Clients would open accounts with TSL through Union Securities which would relay the orders of such clients to TSL for the trading of securities. In return, Union Securities would receive a monthly commission rebate from TSL.
- 8. One of the Clients opened a securities account with USC, the predecessor of Union Securities, in 1993 with Ma's assistance. She called Ma at Union Securities' telephone numbers to give him order instructions and Ma called her for the purpose of trade confirmation. Pursuant to Ma's request, such client made deposits into the Allegedly Closed Bank Account to settle her transactions. She received Union Company Statements which set out her holdings of various securities. In fact, Union Company has never been licensed by the SFC and the statements issued by it are fictitious.

9. Ma called that Client on 25 September 2012 informing her that Union Securities has closed down. As at 24 September 2012, the securities in her "account" with USC, which had in fact ceased to be licensed with the SFC in October 2005, were worth approximately \$290,000. She has been unable to contact Ma since. Thereafter, she made enquiries with TSL and was informed that she did not have an account with TSL.
10. Another of the Clients likewise opened a securities account with USC in 1992 with Ma's assistance and called Union Securities' telephone numbers to give order instructions. He deposited funds into the Allegedly Closed Bank Account pursuant to Ma's request in purported settlement of his securities transactions and received Union Company Statements as well.
11. This other Client was unable to reach Ma or Cheng at Union Securities' telephone numbers recently when he wished to sell his holdings. He then went to the office of USC but it has already been closed down. As at 24 September 2012, the securities in his "account" with USC were worth \$118,800. According to the client list provided by TSL, he does not have an account with it.
12. Union Securities' Type 1 licence is subject to various conditions, including:
 - (a) it must not hold client assets and
 - (b) it shall not conduct business other than communicating offers to effect dealings in securities to TSL, in the names of the persons from whom those offers are received, and introducing persons to TSL in order that they may effect dealings in securities or make offers to deal in securities.
13. Union Securities, Ma and/or Cheng therefore breached the above conditions imposed on Union Securities' licence by:
 - (a) failing to refer the Clients to open accounts with TSL and accepting their order placing instructions which should have been communicated to TSL for execution, and
 - (b) holding client assets by inducing Clients to deposit funds into the Allegedly Closed Bank Account in purported settlement of their transactions.
14. Ma left Hong Kong on 24 September 2012 and has not returned since. Cheng also left Hong Kong on 24 September 2012. She returned on 5 December 2012 but left again on 6 December 2012 and, similar to Ma, has not returned since. Union Securities' premises were found to be vacant when inspection was conducted on 1 October 2012 by the estate agent who introduced Ma to rent such premises.
15. As at 11 October 2012, the balance in the Allegedly Closed Bank Account was \$95.27. Union Securities, Ma and/or Cheng have misappropriated approximately \$400,000 from the Clients.

Failing to maintain Union Securities' required liquid capital

16. Union Securities is required under section 6(1) of the FRR to maintain at all times liquid capital which is not less than its required liquid capital of \$500,000¹. Section 7 of the FRR states that a licensed corporation shall account for all its assets, liabilities and transactions for the purposes of calculating its liquid capital and required liquid capital. This minimum amount must be maintained on a daily basis.
17. Union Securities opened the Unreported Bank Account in April 2008. Ma is the sole signatory of such account. However, the opening of such account has never been reported to the SFC.
18. A time deposit of approximately \$601,000 in the Unreported Bank Account was included in the computation of Union Securities' liquid capital in the FRR Returns. However, the Overdraft of approximately \$570,000 was not reported as a bank loan in such returns.
19. The Overdraft was repaid when the time deposit matured on 24 September 2012. Union Securities has not filed any returns since its submission of the FRR Return for the month of August 2012 on 5 September 2012. Taking into consideration the balances in the Unreported Bank Account and the account which Union Securities received commission rebate from TSL, Union Securities' liquid capital by the end of September 2012 was approximately \$1,528.
20. Union Securities has failed to report to the SFC the Unreported Bank Account and the Overdraft in the FRR Returns since 1 January 2012, contrary to section 7 of the FRR. When the Overdraft is taken into consideration, the liquid capital of Union Securities would have been in the approximate range of \$1,500 to \$38,000. Union Securities has therefore breached section 6(1) of the FRR for failing to maintain its required liquid capital of no less than \$500,000 since 1 January 2012.

Failing to inform the SFC of non-compliance as soon as reasonably practicable and to immediately cease carrying on its regulated activity

21. Section 55(1)(a) of the FRR provides that a licensed corporation shall notify the SFC in writing as soon as reasonably practicable and in any event within one business day after it becomes aware that its liquid capital falls below 120% of its required liquid capital (ie \$600,000 in the case of Union Securities).
22. Section 146(1) of the SFO provides that if a licensed corporation becomes aware of its inability to maintain financial resources in accordance with the specified amount requirements that apply to it, it shall:
 - (a) as soon as reasonably practicable notify the SFC by notice in writing of that fact; and

¹ According to Schedule 1 (Table 2) to the FRR, the minimum amount of required liquid capital for Type 1 regulated activity where the licensed corporation in question is an approved introducing agent or trader is \$500,000.

- (b) immediately cease carrying on any regulated activity for which it is licensed, otherwise than for the purpose of completing such transactions as the SFC may permit.
23. Union Securities concealed from the SFC the Overdraft in the Unreported Bank Account but included the value of the time deposit in the FRR Returns to mislead the SFC into believing that Union Securities has satisfied the relevant FRR requirements.
 24. The SFC's investigation shows that Union Securities' liquid capital has in fact fallen below \$600,000 since 1 January 2012, triggering the notification obligation under section 55(1)(a) of the FRR. Union Securities was obliged under section 146(1) of the SFO to notify the SFC of its inability to maintain its required liquid capital, and to immediately cease carrying on its Type 1 regulated activity.
 25. Although Union Securities' liquid capital has fallen below \$600,000 and the required level of \$500,000 since 1 January 2012, it was only after Ma absconded from Hong Kong on 24 September 2012 that the SFC was informed on 26 September 2012 of Union Securities' closure. However, Union Securities continued to receive monthly commission rebate from TSL from January to August 2012. This shows that Union Securities has continued to accept and place clients' orders with TSL for such duration. In short, Union Securities has breached section 55(1)(a) of the FRR and section 146(1) of the SFO.

Providing the SFC with false and/or misleading information

26. Due to Union Securities' concealment of the Overdraft, the FRR Returns submitted overstated Union Securities' liquid capital to be above \$500,000 in purported compliance with section 6(1) of the FRR.

Conclusion

27. The SFC has decided that the sanctions of revocation of the licences of Union Securities, Ma and Cheng, as well as prohibition of Ma and Cheng from re-entering the industry for life are the most appropriate and commensurate with the gravity of the regulatory breaches. In coming to the decision to take disciplinary action set out in paragraph 1 against Union Securities, Ma and Cheng, the SFC has taken into account all relevant considerations, including:
 - (a) the regulatory breaches of Union Securities, Ma and Cheng are egregious and deliberate. Ma and Cheng were seriously dishonest and both gravely abused the trust their clients placed in them;
 - (b) Union Securities, Ma and Cheng damaged investors' and the public's confidence in market integrity;
 - (c) the losses suffered by the Clients in the approximate sum of \$400,000 as a result of misappropriation by Union Securities, Ma and/or Cheng;
 - (d) Union Securities, Ma and Cheng have not been previously disciplined by the SFC; and

- (e) the need to remove Union Securities, Ma and Cheng from the industry in order to protect the investing public.