
STATEMENT OF DISCIPLINARY ACTION

The disciplinary action

1. The Securities and Futures Commission (**SFC**) has suspended the licence of Mr Chan Hung Nin (**Chan**) for a period of 15 months under section 194(1)(i)(B) of the Securities and Futures Ordinance.
2. The disciplinary action addresses Chan's failures in handling the account (**Account**) of a client (**Client**) at Celestial Securities Limited (**Celestial**) between 2 April 2011 and 21 August 2012 (**Relevant Period**).
3. The SFC's investigation found that Chan had failed to carry on regulated activities honestly, diligently and compliantly, by operating the Account on a discretionary basis without written authorization and asking the Client to make false representations to Celestial in order to conceal from Celestial the fact that he was operating the Account on a discretionary basis.
4. Chan's conduct was in breach of General Principle (**GP**)1, GP2 and paragraph 7.1(a)(ii) of the Code of Conduct.¹

Summary of facts

5. Investigation into Chan's conduct stemmed from a complaint by the Client, who alleged, among other things, that Chan had conducted unauthorized trades in the Account.
6. The Account was opened on 6 December 2007 and Chan had been the handling account executive since its opening.
7. The Account traded actively in stocks as well as callable bull/bear contracts throughout the Relevant Period. Such trading was done without the Client's specific authorization.
8. Celestial's compliance manual for front-line staff sets out its internal requirements on discretionary accounts, which included:
 - (a) a Power of Attorney signed by the client is required before an account executive could operate the client's account on a discretionary basis;

¹ Code of Conduct for Persons Licensed by or Registered with the SFC

- (b) upon receiving such a request, Celestial would then call the client to re-confirm his intention to set up a discretionary account; and
 - (c) the request must also be approved by management of Celestial before the authorization becomes effective.
- 9. According to Celestial's records, the Client had never signed a Power of Attorney to authorize Chan or any other third party to operate the Account.
- 10. Celestial periodically conducts checks on trades without telephone recordings. During the Relevant Period, Celestial conducted such checks and identified six instances when trades were carried out in the Account without telephone recordings of order placing and confirmation.
- 11. Celestial staff then made enquiries with the Client over the phone. In the four instances between 21 June 2011 and 18 April 2012 where he could be reached, the Client told Celestial that he had placed the relevant orders by making calls to Chan's mobile phone.
- 12. However, the Client informed the SFC that Chan had in fact told him to make such confirmations to Celestial despite they were untrue. This was admitted by Chan.
- 13. Although the Client alleged that Chan had conducted unauthorized trades in the Account, the evidence suggests that he must have known that Chan had conducted trades in the Account without his specific authorization by 21 June 2011 at the latest, when he was requested by Celestial to confirm a trade in the Account on the previous day (see paragraph 111 above). The fact that he confirmed, falsely and at Chan's request, to Celestial the order was placed by him suggests that he had impliedly authorized Chan to conduct trades in the Account without his specific authorization. The fact that he did so again on three further occasions further buttresses the inference that he had impliedly authorized Chan to conduct trades in the Account without his specific authorization.

Breaches and reasons

- 14. As a licensed person, Chan is required to comply with standards set out in the Code of Conduct. In particular:
 - (a) Paragraph 7.1(a)(ii) requires licensees to obtain written authorization prior to operating a client's account on a discretionary basis;
 - (b) GP1 requires licensees to act honestly, fairly, in the best interests of clients and the integrity of the market; and
 - (c) GP2 requires licensees to act with due skill, care and diligence, in the best interests of clients and the integrity of the market.
- 15. By failing to obtain written authorization from the Client to operate the Account on a discretionary basis, the Client is deprived of the protection to which he is entitled under paragraph 7.1 of the Code of Conduct.

16. In addition, by failing to obtain the approval of Celestial's management for the operation of the Account on a discretionary basis, Celestial was prevented from discharging its regulatory obligation of monitoring discretionary trading activities in the Account.
17. Further, Chan deliberately asked the Client to lie to Celestial in order to conceal the fact that he was operating the Account on a discretionary basis. Such conduct is deliberate and dishonest, and has prevented Celestial from discovering the situation.
18. Apart from breaching GP1, Chan's handling of the matter also reflects his lack of due care in conducting business activities as required by GP2.

Conclusion

19. Having considered all the circumstances, the SFC is of the view that Chan is not fit and proper to be licensed, and has decided to take the disciplinary action against Chan as described in paragraph 1.
20. In deciding the appropriate sanction, the SFC has taken into account all relevant circumstances including the fact that Chan had been in the industry for over two decades and should have been aware of the requirements on discretionary accounts set out in paragraph 7.1 of the Code of Conduct.