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## STATEMENT OF DISCIPLINARY ACTION

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### The Disciplinary Action

1. The Securities and Futures Commission (**SFC**) has banned Mr Ng Hongs (**Ng**)<sup>1</sup> for a period of 10 months pursuant to section 194(1)(iv) of the Securities and Futures Ordinance (**SFO**).
2. The SFC found that Ng obtained a written authorization from his client (**Client**) which authorized him to conduct trades on a discretionary basis in the Client's account. He did not, however, obtain China Merchants Securities (HK) Co., Limited (**CMSHK**)'s management approval before entering into such arrangement with the Client and effected transactions for the Client on a discretionary basis between August 2010 and September 2011.
3. Ng's conduct was in breach of paragraphs 7.1(c) and 7.1(d) of the Code of Conduct for Persons Licensed by or Registered with the SFC (**Code of Conduct**).

### Summary of Facts

4. The SFC investigation stemmed from a complaint from the Client against Ng.
5. Ng was the Client's account executive at CMSHK.
6. The evidence shows that:
  - (a) CMSHK's policies and procedures set out a number of requirements in relation to the operation of a discretionary account. They are as follows:
    - (i) A written Discretionary Broking Authorization had to be executed by a client if he authorized an account executive to trade for him on a discretionary basis.
    - (ii) All account executives were strictly prohibited from concluding private discretionary trading arrangement with clients.
    - (iii) The execution of the Discretionary Broking Authorization had to be witnessed by an account executive.
    - (iv) The Discretionary Broking Authorization had to be approved by CMSHK.
    - (v) Discretionary trading was discouraged by CMSHK and was only allowed in special cases.

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<sup>1</sup> Ng was licensed under the Securities and Futures Ordinance to carry on Type 1 (dealing in securities) and Type 2 (dealing in futures contracts) regulated activities and was accredited to China Merchants Securities (HK) Co., Limited and China Merchants Futures (HK) Co., Limited from 5 August 2010 to 25 February 2013. Ng is currently not licensed by the SFC.

- (vi) The Discretionary Broking Authorization was effective for only one year and had to be renewed by the client annually, otherwise it would expire automatically.
- (b) The Client signed a private Discretionary Broking Authorization which authorized Ng to conduct trades for the Client on a discretionary basis.
- (c) The Discretionary Broking Authorization signed by the Client was not approved by CMSHK. The person who signed as witness of the Discretionary Broking Authorization was also not an account executive or employee of CMSHK.
- (d) CMSHK was not aware of the discretionary arrangement between Ng and the Client. It therefore did not designate the Client's account as a discretionary account.

### **Breaches and reasons for action**

- 7. Under paragraph 7.1 of the Code of Conduct, a licensed person is required to (a) obtain the client's written authorization for operating a discretionary account; (b) confirm at least on an annual basis whether the client wishes to revoke such authority; (c) designate such account as a discretionary account; and (d) obtain senior management's approval for opening the discretionary account.
- 8. Ng breached paragraphs 7.1(c) and (d) of the Code of Conduct as he failed to obtain CMSHK's management approval before entering into discretionary arrangement with the Client.
- 9. As a licensed representative, Ng had a duty not only to ensure that the Client signed a written authorization before conducting trades in the Client's account on a discretionary basis, he also had a duty to ensure that the Client's account was designated as a discretionary account, and to obtain senior management's approval of his operation of the Client's account under paragraphs 7.1(c) and (d) of the Code of Conduct.
- 10. As the management of CMSHK was not aware of Ng's discretionary arrangement with the Client, the Client's account was not designated as a discretionary account by the firm and senior management's approval to operate it as such had never been obtained. The firm also could not confirm with the Client on an annual basis whether the Client wanted to revoke his discretionary authority under paragraph 7.1(b) of the Code of Conduct. Accordingly, the operation of the Client's account was not properly monitored and supervised by the firm.
- 11. In determining the sanction, the SFC took into account all relevant circumstances, including Ng's discretionary arrangement in the Client's account without CMSHK's management approval lasted for more than a year.

### **Conclusion**

- 12. The SFC considers that a licensed person entering into a written authorization with the client to conduct discretionary trading without the firm's approval and knowledge is no different from the situation where no written authorisation had been obtained at all. By failing to obtain the firm and senior management's approval to operate the client's account on a discretionary basis, the client's

interests were prejudiced as he was deprived of the protection to which he was entitled under paragraph 7.1 of the Code of Conduct.