

STATEMENT OF DISCIPLINARY ACTION

The Disciplinary Action

1. The Securities and Futures Commission (**SFC**) has prohibited Mr Xu Tao (**Xu**), a former investment consultant of China International Capital Corporation Hong Kong Securities Limited (**CICC**), from re-entering the industry for a period of four months pursuant to section 194 of the Securities and Futures Ordinance (**SFO**).
2. The SFC found that Xu used his mobile phone and WeChat messaging to accept order instructions from thirteen clients (**Clients**) between February and August 2015, in breach of General Principle 2 and paragraph 3.9(b) of the Code of Conduct for Persons Licensed by or Registered with the SFC (**Code of Conduct**), and the policies and procedures of CICC.

Summary of facts

3. General Principle 2 (diligence) of the Code of Conduct requires a licensed person to act with due skill, care and diligence, in the best interests of its clients and the integrity of the market.
4. Paragraph 3.9(b) of the Code of Conduct provides that where order instructions are received from clients through the telephone, a licensed person should use a telephone recording system to record the instructions and maintain telephone recordings as part of its records for at least six months.
5. Paragraph 3.9 of the Code of Conduct further notes that the use of mobile phones for receiving client order instructions is strongly discouraged. However, where orders are accepted by mobile phones outside the trading floor, trading room, usual place of business where order is received or usual place where business is conducted, staff members should immediately call back to their licensed or registered person's telephone recording system and record the time of receipt and the order details. The use of other formats (e.g. in writing by hand) to record details of clients' order instructions and time of receipt should only be used if the licensed or registered person's telephone recording system cannot be accessed.
6. CICC's compliance manual required investment consultants to accept client order instructions via its telephone recording system and prohibited taking client orders via mobile phone, SMS or other forms of text messages. If an investment consultant receives a mobile phone call or a text message relating to dealing or order instructions, he should call the client on an office recorded telephone line to confirm the client's order instructions or further discuss the matter.
7. CICC's compliance manual reflect the order recording provisions under paragraph 3.9 of the Code of Conduct.

8. Xu admitted that he used his mobile phone and the WeChat messaging application to take order instructions from the Clients instead of using CICC's telephone recording system. He also admitted that he was aware of CICC's policies and procedures.
9. Xu has knowingly disregarded CICC's policies and procedures and accepted client orders via his mobile phone simply because it was a convenient communication tool for him and the Clients.
10. The recording of client order instructions is an integral part of keeping an audit trail and ensuring that there is reliable evidence to resort to when assessing any dispute between a broker and its client concerning the particulars of a trade order. The recording of client order instructions, therefore, protects the interests of both the intermediary and the client. It is also an effective compliance monitoring tool to prevent or detect any irregularities or fraudulent activities.

Conclusion

11. Xu's failure to keep proper records of all client order instructions received and accepted via his mobile phone is in breach of General Principle 2 and paragraph 3.9 of the Code of Conduct, as well as CICC's internal policies and procedures.
12. Xu's breach of the Code of Conduct has called into question his ability to carry out regulated activities competently, reliability and reputation as well as his fitness and properness to be licensed.
13. In reaching the decision to prohibit Xu from re-entering the industry for 4 months, the SFC has taken into account all relevant circumstances of this case, including his otherwise clean disciplinary record.