
STATEMENT OF DISCIPLINARY ACTION

The Disciplinary Action

1. The Securities and Futures Commission (**SFC**) has prohibited Ms Chu Lai Wa, Joanna (**Chu**), former director, responsible officer (**RO**) and head of dealing of Guosen Securities (HK) Brokerage Company, Limited (**Guosen**), from doing all or any of the following in relation to any regulated activities for 12 months pursuant to section 194(1)(iv) of the Securities and Futures Ordinance (**SFO**):
 - (a) applying to be licensed or registered;
 - (b) applying to be approved under section 126(1) of the SFO as an RO of a licensed corporation;
 - (c) applying to be given consent to act or continue to act as an executive officer of a registered institution under section 71C of the Banking Ordinance; and
 - (d) seeking through a registered institution to have her name entered in the register maintained by the Monetary Authority under section 20 of the Banking Ordinance as that of a person engaged by the registered institution in respect of a regulated activity.

Summary of facts

2. Chu was licensed under the SFO and approved as an RO of Guosen in respect of its Type 1 (dealing in securities) and Type 4 (advising on securities) regulated activities from 26 February 2010 to 20 February 2019, and Type 2 (dealing in futures contracts) and Type 5 (advising on futures contracts) regulated activities from 14 March 2011 to 20 February 2019. Chu is currently not licensed by the SFC.
3. The SFC found that between 1 November 2014 and 31 December 2015 (**Relevant Period**), Guosen failed to¹:
 - (a) implement adequate and proper internal controls to mitigate the risk of money laundering and terrorist financing (**ML/TF**) associated with third party deposits (**TPDs**). In particular, Guosen:
 - (i) did not have in place any policies or procedures to verify the identities of third party depositors, ascertain the relationship between its clients and third party depositors, and scrutinize the reasons for making TPDs;
 - (ii) did not have in place an effective approval process in respect of TPDs;

¹ Please refer to the SFC's press release and Statement of Disciplinary Action published on 18 February 2019.

- (iii) did not have in place any systems or controls to identify and monitor TPDs made into the bank sub-accounts maintained by Guosen for its clients; and
 - (iv) failed to effectively communicate its anti-money laundering (**AML**) and counter financing of terrorism (**CFT**) policies in relation to TPDs to its staff and ensure they took steps to enforce the same;
 - (b) identify and make enquiries about TPDs with AML red flags and report the same to the Joint Financial Intelligence Unit (**JFIU**) in a timely manner. In particular, Guosen:
 - (i) effected numerous TPDs which were incommensurate with the financial profile of its clients without making any enquiries;
 - (ii) failed to make enquiries in situations where TPD funds were withdrawn by clients shortly after receiving the funds without using the same for trading;
 - (iii) failed to make any enquiries where a number of third party companies made a considerable number of TPDs to numerous clients; and
 - (iv) did not submit any suspicious transaction reports to JFIU in relation to TPDs with AML red flags during the Relevant Period;
 - (c) conduct adequate ongoing monitoring of its business relationship with clients. In particular, Guosen:
 - (i) failed to maintain proper documentation of its assessment of clients' ML/TF risk levels;
 - (ii) did not monitor clients' fund movements to ensure they were consistent with the clients' nature of business, risk profiles and source of funds; and
 - (iii) did not undertake periodic review of existing records of its clients.
- 4. The SFC considers that Guosen's series of AML/CFT related internal control deficiencies as summarized in the preceding paragraph was attributable to Chu's failure to discharge her duties as an RO and a member of Guosen's senior management.
- 5. In early 2013, Chu was made aware of various Guosen's internal control deficiencies mentioned in paragraph 3(a) above, which were pointed out by certain staff members via email. Although Chu was copied in those emails, she considered that such AML/CFT issues concerning TPDs were irrelevant to her. She neither took any steps to ensure that the deficiencies identified in the relevant emails were properly remediated, nor escalated the matter to her supervisor or other members of senior management, whether in 2013 or subsequently.
- 6. Guosen's then Head of Settlement kept records of TPDs and sent the same to the Legal and Compliance Department (**LCD**) from time to time via email

copying Chu. Those records showed that, contrary to its purported policy of discouraging third party deposits, Guosen processed a significant number of TPDs for its clients. Chu claimed that she did not know why the records were sent to her. She did not discuss the matter with the Head of Settlement who sent her the records nor any member of LCD staff. Instead, she only assumed that LCD would review the TPDs.

7. Although Chu was one of the two ROs overseeing Guosen's retail brokerage business, she failed to ensure that Guosen had in place adequate and effective procedures to monitor and report suspicious fund deposits and withdrawals by retail clients. Notwithstanding her position, she was unaware of the significant number of TPDs with AML red flags mentioned in paragraph 3(b) above and had no idea whether they were reported to the JFIU.
8. Further, as one of the approvers of clients' account opening applications, Chu knew that Guosen's staff did not in practice assess and document the ML/TF risk levels of retail clients using the risk assessment form prescribed in its compliance manual (**Manual**). In short, she did not take any steps to ensure that client risk assessment was properly performed and acquiesced in the staff's non-compliance with the Manual.
9. Chu did not see it as her responsibility to ensure that Guosen had complied with its internal AML/CFT policies and the regulatory requirements in relation to ongoing monitoring of business relationships with clients. She assumed that the back office (such as the Settlement Department and LCD) would monitor whether clients' activities were consistent with their profiles and regularly review and update existing client records. In fact, none of the departments within Guosen carried out these tasks during the Relevant Period.
10. In light of the above, the SFC is concerned that Chu had turned a blind eye to the ML/TF risks associated with TPDs and her conduct was contrary to:
 - (a) General Principle 9 of the Code of Conduct for Persons Licensed by or Registered with the SFC (**Code of Conduct**), which requires senior management of a licensed corporation to bear primary responsibility for ensuring the maintenance of appropriate standards of conduct and adherence to proper procedures by the firm; and
 - (b) paragraph 14.1 of the Code of Conduct, which requires senior management of a licensed corporation to properly manage the risks associated with the firm's business.

Conclusion

11. The SFC concludes that the misconduct of Guosen was a result of Chu's consent or connivance, or attributable to neglect on her part as an RO and a member of senior management, and should also be regarded as misconduct on her part. As Chu has breached General Principle 9 and paragraph 14.1 of the Code of Conduct, her fitness and properness as a regulated person is called into question.
12. In deciding the disciplinary sanction set out in paragraph 1, the SFC has taken into account all relevant circumstances, including:

- (a) Guosen's AML/CFT internal control deficiencies and regulatory breaches were serious;
- (b) Chu was informed of certain deficiencies in Guosen's TPD procedures as early as 2013 but turned a blind eye to the same;
- (c) Chu has been in the financial industry for a considerable period of time, yet she failed to appreciate the level of responsibility that an RO and senior management of a licensed corporation is expected to bear; and
- (d) Chu has an otherwise clean disciplinary record.