

STATEMENT OF DISCIPLINARY ACTION

The Disciplinary Action

1. The Securities and Futures commission (**SFC**) has banned Mr Lai Wing Fat¹ from re-entering the industry for 20 months pursuant to section 194 of the Securities and Futures Ordinance.
2. The SFC found that Lai:
 - (a) traded in a client's account (**Client**) on a discretionary basis without obtaining the Client's prior written authorization; and
 - (b) failed to explain the Chinese account opening documents and risk disclosure statements to the Client before he signed the documents.
3. Lai's conduct was in breach of General Principle 2, paragraphs 6.1 and 7.1 of the Code of Conduct for Persons Licensed by or Registered with the Securities and Futures Commission (**Code of Conduct**).

Summary of Facts

4. Lai was a licensed representative of Black Marble Securities Limited (**BMSL**) from 22 April 2016 to 9 October 2017.
5. On 5 July 2016, the Client opened a securities account at BMSL.
6. BMSL's policies and procedures required clients who wanted to open a discretionary account to sign a discretionary management agreement (witnessed by either a licensed representative or responsible officer).
7. From August 2016 to June 2017, Lai effected transactions in the Client's securities account on a discretionary basis even though the Client had not signed a written authorization authorizing the discretionary operation of his account.
8. Lai admitted he accessed the Client's securities account online by using the Client's password and that he conducted all discretionary trades in the Client's account via BMSL's internet trading platform.
9. Lai also admitted he conducted discretionary trades in the securities accounts of three other clients at BMSL without their prior written authorizations.
10. During the account opening process, Lai failed to explain the Chinese account opening documents and risk disclosure statements to ensure the Client understood their contents and relevant risks before he signed the documents even though he was aware the Client could not understand the Chinese documents.

Breaches and reasons for action

¹ Lai was licensed under the Securities and Futures Ordinance to carry on Type 1 (dealing in securities) regulated activity and was accredited to Black Marble Securities Limited from 22 April 2016 to 9 October 2017.

11. Under General Principle 2 of the Code of Conduct, a licensed person is required to act with due skill, care and diligence, in the best interests of its clients and the integrity of the market, in conducting business activities.
12. Under paragraph 6.1 of the Code of Conduct, a licensed person is required to enter into a written agreement with each client before services are provided to the client. The Client Agreement should be in Chinese or English according to the language preference of the client, as should any other agreement, authority, risk disclosure, or supporting document. Licensed or registered persons should provide a copy of these documents to the client and draw to the client's attention the relevant risks.
13. 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.
14. As a licensed representative, Lai had a duty to ensure that written authorizations for the operation of discretionary accounts are obtained from clients under paragraph 7.1(a) of the Code of Conduct. A written authorization, with a clearly defined scope of authority and precise terms and conditions on how the discretion will be exercised is important because it protects the client from the risk of unauthorized trades and the licensed corporation from unnecessary claims in case the client dispute the trades.
15. Lai also had a duty to ensure that relevant accounts were designated as discretionary accounts, and to obtain the approval of BMSL's management of his operation of discretionary accounts under paragraph 7.1(c) and (d) of the Code of Conduct. Lai's failures meant that BMSL's management was not aware of the discretionary operation of these accounts and to supervise them accordingly.
16. Lai further failed in his duty to explain the Chinese account opening documents and risk disclosure statements to the Client in breach of General Principle 2 and paragraph 6.1 of the Code of Conduct.

Conclusion

17. Having considered all the circumstances, the SFC is of the view that Lai is not a fit and proper person to be licensed.
18. In reaching the decision to take the disciplinary action set out in paragraph 1 above, the SFC has taken into account all relevant circumstances, including Lai's disregard of the requirements under the Code of Conduct and his otherwise clean disciplinary record.