

SFAT affirms SFC decision to revoke approval of Miranda Sham Sze Wai as responsible officer over internal control failures

13 Aug 2015

The Securities and Futures Appeals Tribunal (SFAT) today affirmed the decision of the Securities and Futures Commission (SFC) to revoke the approval of Ms Miranda Sham Sze Wai to act as a responsible officer over findings that she was involved in serious internal control deficiencies at Ping An of China Securities (Hong Kong) Company Limited (Ping An) between August 2010 and April 2011 (Notes 1 & 2).

The SFC's decision followed an earlier disciplinary action against Ping An (Note 3).

The SFC alleged that Sham, who was also in charge of Ping An's compliance function between mid-October 2010 and March 2011, should have identified and reported to the SFC and the Joint Financial Intelligence Unit suspicious transactions in a timely manner but failed to do so (Notes 4, 5 & 6).

Sham also failed to establish anti-money laundering internal control procedures for Ping An and provide anti-money laundering training to its staff (Notes 7 & 8).

Furthermore, she failed to establish and follow appropriate and effective procedures to protect client assets in effecting payments, nor communicated and enforced Ping An's internal policies on employee dealings and account opening procedures.

In deciding the disciplinary sanction, the SFC took into account all relevant circumstances including Sham's otherwise clean record.

End

Notes:

1. Sham was licensed under the Securities and Futures Ordinance (SFO) to carry on business in Type 1 (dealing in securities), Type 2 (dealing in futures contracts) and Type 4 (advising on securities) regulated activities. Sham was accredited to Ping An as a responsible officer between 30 July 2009 and 19 August 2011.
2. The SFAT was presided over by the Hon Justice Suffiad, Chairman of the SFAT. The SFAT's reasons for determination is available on its website at www.sfat.gov.hk.
3. Ping An was reprimanded by the SFC and fined \$6 million in July 2014 over internal control deficiencies and other matters. Please refer to the SFC's press release dated [9 July 2014](#).
4. Sham oversaw Ping An's compliance function during the material period as the previous compliance officer resigned in October 2010 and his replacement did not arrive until almost five months later.
5. The Joint Financial Intelligence Unit, which receives reports of suspicious financial activities, is jointly run by staff of the Hong Kong Police Force and the Hong Kong Customs and Excise Department.
6. Section 25A of the Organized and Serious Crimes Ordinance requires a person who suspects that any property represents proceeds of, or was used in connection with or is intended to be used in connection with, an indictable offence to disclose that suspicion to an authorized officer "as soon as it is reasonable for him to do so".
7. During the relevant period, the "Prevention of Money Laundering and Terrorist Financing Guidance Note", published by the SFC in September 2009 under section 399 of the SFO, was in force. From 1 April 2012, it was superseded by the "Guideline on Anti-Money Laundering and Counter-Terrorist Financing" and the "Prevention of Money Laundering and Terrorist Financing Guideline" issued by the SFC.
8. Licensed corporations should have proper systems and controls in place for the identification and reporting of suspicious transactions. The first and foremost step is to gain sufficient knowledge about a customer's business and financial circumstances (through customer due diligence and ongoing monitoring) to recognise that a transaction, or a series of transactions, is unusual. There should also be procedures in place for reporting internally by escalation to senior management and reporting externally to the Joint Financial Intelligence Unit.

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IN THE SECURITIES AND FUTURES APPEALS TRIBUNAL

IN THE MATTER of a Decision made by the
Securities and Futures Commission under
section 194 of the Securities and Futures
Ordinance, Cap. 571

and

IN THE MATTER of section 217 of the
Securities and Futures Ordinance, Cap. 571

Between

SHAM SZE WAI MIRANDA

Applicant

and

SECURITIES AND FUTURES COMMISSION

Respondent

Before: Chairman, Mr. Justice Azizul Rahman Suffiad

Date of Hearing: 30 July 2015

Date of Determination: 13 August 2015

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REASONS FOR DETERMINATION

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V*The application*

1. This is an application for review made in terms of s. 217(1) of the Securities and Futures Ordinance, Cap 571 ('the Ordinance'). The applicant, Ms Sham Sze Wai Miranda ('Ms Sham'), seeks the review of a decision of the Securities and Futures Commission ('the SFC') dated 27 January 2015 in terms of which it ordered revocation of the approval given to Ms. Sham to act as Responsible Officer ('RO') under s. 194 of the Ordinance.

2. Ms Sham does not contest or challenge the findings of culpability and liability made by the SFC. Her review is limited to penalty, that is, the revocation of the approval given to her to act as RO.

The role of this Tribunal

3. Since the judgment of the Court of Appeal in *Tsien Pak Cheong David v Securities and Futures Commission* [2011] 3 HKLRD 533 it is now settled that this Tribunal is required to make a full merits review, conducting the review as if it is the original decision-maker.

Background

4. Ms Sham has been employed in the financial industry in Hong Kong for over 13 years. She began as a settlement officer in 1999 and later became a compliance officer. Later, in 2003, she worked as a

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dealer representative. In December 2004 Ms Sham obtained the SFC approval to be RO and has since then been working as RO.

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5. Ms Sham was employed by Ping An of China Securities (Hong Kong) Company Limited ('Ping An') as RO between July 2009 and August 2011.

6. Ms Sham's position of responsibility within Ping An is depicted in the organizational chart at Appendix III of the Decision Notice which shows, by virtue of her position as RO, she was immediately below the Chief Executive Officer ('CEO') in Ping An's reporting structure with immediate overseeing authority over, inter alia, the Head of Dealing, the Head of Operations, Legal & Compliance, Finance & Accounts and HR & Administration.

7. Ms Sham was one of two ROs at Ping An between 1 August 2010 and 30 April 2011 ('the Relevant Period'). The other RO, Danny Chan, was based in Shenzhen.

8. As the only RO based in Hong Kong, Ms Sham had overall responsibility for daily operations of Ping An during the Relevant Period. In particular, between mid-October 2010 and March 2011, Ms Sham was solely in charge of Ping An's compliance function as the previous compliance officer, Lam Kam Fung, had resigned in October 2010, and his successor, Douglas Chan, did not arrive until March 2011, about five months after Lam Kam Fung left Ping An.

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9. The SFC found that Ping An had a number of deficiencies, during the Relevant Period, in its internal control systems and procedures in the following areas:

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(a) Lack of internal controls on Anti-Money Laundering ('AML'):

(i) Ping An failed to identify and follow-up on a series of suspicious transactions involving Sino-Tech shares;

(ii) there was a lack of internal AML policies at Ping An; and

(iii) Ping An did not provide AML training to members of staff.

(b) In the handling of third party payments ('3PPs'), Ping An effected a number of 3PPs before proper written directions had been obtained from clients, in situations including the following:

(i) clients' signatures were obtained only after 3PPs were made;

(ii) 3PPs instruction forms were signed by another client;

(iii) clients' 3PPs instruction form was signed by Ping An staff;

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(iv) clients' signature is incomplete and on an incorrect instruction form;

(v) clients' signatures on 3PPs instruction forms do not match with account opening documents;

(vi) Ping An effected a 3PP to its employee;

(vii) Ping An effected a number of 3PPs without having conducted any assessment on the payment recipients or reasons for payment; and

(viii) there was a lack of internal policy on 3PPs payments.

(c) Employee dealing, for which Ping An failed to:

(i) have in place measures to ensure compliance with its internal employee dealing policies, which were designed to help minimize conflicts of interests;

(ii) communicate its employees dealing policies to Ping An staff; and

(iii) provide adequate training to ensure staff awareness on conflicts of interests and compliance.

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(d) Account opening:

- (i) during the Relevant Period, 15 clients accounts were opened without valid address proof at Ping An; and
- (ii) out of 1,181 clients accounts 117 were opened without approval by Ms Sham as RO

(e) Lack of compliance function:

- (i) Ping An did not have an appropriate and effective compliance function during the Relevant Period.

10. In a Notice of Proposed Disciplinary Action dated 2 January 2014, the SFC informed Ms Sham that her fitness to remain as RO was being called into question in that she had failed to:

- (a) act with due skill, care and diligence, in the best interests of Ping An’s clients and the integrity of the market, in breach of General Principle (‘GP’) 2 of the Code of Conduct for Persons Licensed by or Registered with the SFC (‘the Code’);
- (b) ensure the maintenance of appropriate standards of conduct and adherence to proper procedures by Ping An, in breach of GP 9 of the Code; and
- (c) diligently supervise Ms Sham’s subordinates at Ping An, in breach of paragraph. 4.2 of the Code.

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11. In the Notice of Proposed Disciplinary Action, Ms Sham was informed that the SFC proposed to revoke the approval for Ms Sham to act as RO

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12. On 11 March 2014 and 20 November 2014, the solicitors then acting for Ms Sham, Messrs Li & Partners, submitted two representations to the SFC (collectively the ‘Representations’) on her behalf.

13. On 27 January 2015, by the Decision Notice, the SFC maintained its view that a revocation in relation to the approval given to Ms Sham to act as RO was the suitable penalty.

14. On 17 February 2015, Ms Sham filed the present application for review of the penalty revoking the approval for her to act as RO.

Suspicious transactions involving Sino-Tech shares

15. As a result of an investigation under section 182 of the Ordinance by the SFC, on 8 April 2010 Ms Sham met with representatives of the SFC at which meeting Ms Sham made certain allegations against He Zhihua who had been appointed by Ping An’s parent company, Ping An Securities Company Limited (‘Ping An Securities’) to be the CEO of Ping An in April 2010.

16. Ms Sham told the SFC she had reported to the Joint Financial Intelligence Unit (‘JFIU’) certain suspicious transactions involving voluminous trading of shares in Sino-Tech International Ltd. (‘Sino-Tech’) in the accounts of He Zhihua and three of Ping An’s clients,

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namely, Qian Feng Lei ('Qian'), Ying Xu Gang ('Ying') and Ng Kai Chak ('Ng').

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17. Qian came to be acquainted with He Zhihua in Beijing some 5 years ago and had opened an account in Ping An on 4 August 2010 upon the referral of He Zhihua. Qian claims to be the chairman of a company called Universal International Holdings and gives his residential and correspondence address to be in Stubbs Road, Mid-levels Hong Kong.

18. Ying was introduced to He Zhihua by Qian and later opened an account in person in Ping An on 31 August 2010. Ying claims to be a manager of Universal International Holdings with an annual income of below \$200,000 and net worth of below \$500,000. Ying gave a mainland address as his residential address but the same Stubbs Road address as Qian as his correspondence address and stated that he had no investment experience in securities trading.

19. Ng was also introduced to He Zhihua by Qian and also opened an account in person in Ping An on 27 October 2010. He stated he was unemployed at the time his account at Ping An was opened, but with an annual income of between \$200,000 and \$500,000. He stated that he was living in a public housing estate in Kwai Chung and had no investment experience in securities trading.

20. There was widespread hearsay amongst the staff of Ping An that Ying and Ng worked for Qian, that Ying was the assistant of Qian, and Ng the driver of Qian.

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21. On 18 October 2010, Ping An received instructions to deposit:

(a) physical scrip of 300 million shares of Sino-Tech into the account of He Zhihua with Ping An (with market value of \$123 million);

(b) physical scrip of 350 million shares of Sino-Tech into the account of Qian with Ping An (with market value of \$144 million); and

(c) physical scrip of 350 million shares of Sino-Tech into the account of Ying with Ping An (with market value of \$144 million).

22. On 4 November 2010 Ping An also received instructions to deposit physical scrip of 300 million shares of Sino-Tech into the account of Ng with Ping An (with market value of \$120 million).

23. Between 28 October 2010 and 22 November 2010, 200 million of the Sino-Tech shares in He Zhihua's account at Ping An were disposed of in the market. The proceeds from the sale of same totaling over \$78 million net of brokerage fees and other trading expenses were paid out of He Zhihua's account to a number of third parties including Ng and Ying between 4 and 24 November 2010.

24. On 22 November 2010, Qian, Ying and Ng transferred all 1,000,000,000 Sino-Tech shares from their accounts at Ping An to Guotai Junan Securities (HK) Ltd. ('Guotai Junan').

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25. On the same day, Qian transferred \$175,000 and \$150,000 into Ying's account and Ng's account respectively which were exactly the same amount of the transaction fees charged by Ping An for the transfer of the Sino-Tech shares out of Ying's account and Ng's account at Ping An to Guotai Junan.

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26. On 24 November 2010, He Zhihua transferred the remaining 100 million shares of Sino-Tech to an account at Guotai Junan held by a third party named Fang Yuan.

27. The SFC was concerned that, firstly, Ping An failed to identify and follow-up the Suspicious Sino-Tech Transactions at the material time, and secondly, there was a lack of properly formulated AML policies at Ping An.

28. Ms Sham, in her Representations to the SFC, had denied:

(a) that she had failed to take steps to identify and report the Suspicious Sino-Tech Transactions in a timely manner; and

(b) that she did not recall if Ping An had established any AML policy during the Relevant Period.

The extent of Ms Sham's culpability in respect of the Suspicious Sino-Tech Transactions

29. The SFC took the view that the Suspicious Sino-Tech Transactions had characteristics which fell squarely within examples

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given in the AML Guidance Notes and should have been easily recognizable:

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- (a) the deposit of 350 million shares of Sino-Tech into the account of Ying was not commensurate with his reported financial background;
- (b) on the same day, 350 million shares of Sino-Tech was also deposited into the account of Qian whom Ping An staff knew to be the boss of Ying;
- (c) Qian and Ying shared the same correspondence address in their opening account documents;
- (d) similarly, the deposit of 300 million shares of Sino-Tech into the account of Ng was not commensurate with his reported financial background;
- (e) Qian, Ying and Ng did not trade in any of the shares of Sino-Tech deposited into their accounts, but transferred the lot of the shares to accounts at Guotai Junan;
- (f) such transfer of the shares of Sino-Tech by the three of them to Guotai Junan occurred on the same day, 22 November 2010;
- (g) the \$175,000 and \$150,000 transferred by Qian to Ying's account and Ng's account at Ping An, matching the handling

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fees charged by Ping An, suggested that Qian paid for such handling fees on behalf of Ying and Ng;

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(h) the sale proceeds of the 200 million shares of Sino-Tech in He Zhihua's account were entirely paid to various third parties including Ying and Ng within 3 weeks; and

(i) the remaining 100 million shares of Sino-Tech in He Zhihua's account were also transferred to a third party with an account at Guotai Junan.

30. Paragraph 10.2 of the AML Guidance Note required an officer responsible for compliance function with a licensed corporation to act as a central reference point within the organization to facilitate onward reporting to the JFIU. The role of the Compliance Officer is "... not simply that of a passive recipient of ad hoc reports of suspicious transactions, but rather, he or she plays an active role in the identification and reporting of suspicious transactions...."

31. The Suspicious Sino-Tech Transactions took place at Ping An between October and November 2010, a time when there was no compliance officer at Ping An and Ms Sham, as the RO had assumed the role of the compliance officer. That matter was only reported to the JFIU by Ms Sham on 11 March 2011. The SFC therefore took the view that there was delayed identification and reporting of the Suspicious Sino-Tech Transactions.

32. In relation thereto, Ms Sham in her Representations stated that:

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- (a) she did not agree that she did not have any suspicion on those Suspicious Sino-Tech Transactions until the SFC made enquiries with her in March 2011;
- (b) she had suspicion about the Suspicious Sino-Tech Transactions in or about November 2010 when Qian, Ying and Ng transferred their shares to the third party at Guotai Junan, bearing substantial amount of handling fees;
- (c) she had promptly notified Irene Ho, senior management of Ping An Securities, of her suspicion in or about December 2010, but did not receive any constructive response;
- (d) she had approached the compliance department of Ping An Securities and reported her suspicion;
- (e) in or about January 2011, the compliance department of Ping An Securities had advised her to wait until after the internal audit had been completed before deciding how to handle the matter;
- (f) she reported the Suspicious Sino-Tech Transactions to the JFIU on 11 March 2011;
- (g) she had co-operated with the SFC and met with SFC representatives in April 2011 and gave a voluntary statement to the SFC on 16 September 2011;

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(h) she was aware of the importance of implementing comprehensive AML controls and reporting any suspected transactions as soon as practicable, and had done so to senior management and compliance department of Ping An Securities;

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(i) she had reported the matter to JFIU as soon as it was reasonable for her to do so after consultation with senior management and compliance department of Ping An Securities; and

(j) the Suspicious Sino-Tech Transactions have not caused any loss to any clients; no complaint had been made against Ping An and no one has been criminally prosecuted for money laundering or for market misconduct in relation to them.

33. The SFC, however, found that her submissions were inconsistent with the evidence given by Ms Sham previously during the SFC's investigation in 2011 and 2012 in that:

(a) Ms Sham said in her voluntary statement to the SFC that she had reported her suspicion to Irene Ho in December 2010 and had approached the compliance department of Ping An Securities in March 2011 after the arrival of Douglas Chan.

(b) However, during interviews with the SFC in 2012, Ms Sham repeatedly told the SFC that she did not have suspicion over the Suspicious Sino-Tech Transactions at the time and did not carry out further review or enquiries on the same.

A 34. The SFC also took the view that the obligation set out
B paragraph 10.2 of the AML Guidance Note (already set out above), was
C to report the matter to the JFIU and not merely to the compliance
D department or to senior management of the head office. In her capacity
E as the officer responsible for compliance at the time, it was the role of
F Ms Sham to act as a central reference point with Ping An to facilitate
G onward reporting to the JFIU which should be made on a timely basis.
H Therefore waiting for the completion of an internal audit would not, in
I any event, provide valid justification for the delay in making a report to
J the JFIU.

K 35. The SFC found that Ms Sham's evidence conflicted with that
L of Irene Ho. According to Irene Ho, at no time did Ms Sham disclose to
M her prior to March 2011 that a report about suspicious transactions
N needed to be made to the JFIU.

O 36. Irene Ho gave evidence that a regular internal audit covering
P all work areas of Ping An was initiated after Chinese New Year in
Q February 2011. This was because by that time Ping An had commenced
R operations for more than a year and it was necessary to conduct an
S internal audit of comprehensive scope.

T 37. Prior to Ms Sham reporting to the JFIU in March 2011, Irene
U Ho learned from casual chats with members of the internal audit team that
V Ping An appeared to have failed to follow certain operational procedures.
But the internal audit team had not yet submitted any draft report before
Ms Sham reported to the JFIU. At that time Ms Sham did not discuss
with Irene Ho about any findings made as a result of the internal audit,
nor did Irene Ho receive any request or suggestion from Ms Sham to wait

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for the completion of the internal audit on the basis that this would prevent Ping An from making a report about suspicious transactions to the regulator.

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38. After Jian Lu Yang told Irene Ho in March 2011 about Ms Sham's intention to make a report to the JFIU, Irene Ho asked Ms Sham for particulars of the report, but Ms Sham told Irene Ho she had to keep the matter confidential and could not disclose to her the details. Irene Ho then requested Ping An Securities to ask the internal audit team which was already carrying out the internal audit to conduct a special investigation into the suspicious transactions. As a result, that special investigation by the internal audit team only began after the report was made by Ms Sham to the JFIU.

39. Ms Sham's response to the evidence of Irene Ho was that:

- (a) Ms Sham denied Irene Ho's allegation that Ms Sham did not report or notify her of any suspicious transactions of Ping An's clients before March 2011 and reiterated her earlier representations;
- (b) Ms Sham asserted that Irene Ho's memory may not be accurate as to what happened between November 2010 and March 2011 given that SFC did not interview Irene Ho when she was still in the employ of Ping An; and
- (c) Ms Sham believed that when Irene Ho gave her two statements to the SFC, Irene Ho did not have any document to check or verify what she recalled

A 40. The SFC took the view that other than a bare denial of Irene
B Ho's evidence and saying that Irene Ho's memory may not be accurate,
C Ms Sham could not adduce any further evidence to support her version of
D events. Ms Sham's belief that Irene Ho did not have any documents to
E check or verify her recollection when giving her statements was also
F erroneous in that when obtaining Irene Ho's evidence, Irene Ho was
G shown more than 10 documents (exhibited to Irene Ho's record of
H Interview as HSM-3 to HSM-23) generated or supplied by Ping An.

I 41. The SFC further took the view that as Irene Ho had left Ping
J An in December 2013 and she does not have any personal interest in this
K matter, plus the fact that Irene Ho's account on two separate occasions
L were consistent, but that Ms Sham had given different versions of events
M at different times. The SFC therefore came to the conclusion that Ms
N Sham's evidence that she had made a report to Irene Ho in December
O 2010 had been refuted by Irene Ho.

*The extent of Ms Sham's culpability in respect of the lack of internal AML
policies at Ping An*

O 42. The SFC found that generally there was a lack of properly
P formulated internal AML policies at Ping An and its staff members were
Q unaware of any internal requirements on AML during the Relevant Period.

R 43. The SFC was informed by Ping An that Chapter 19 of its
S Operation and Compliance Manual dated 5 August 2010, which sets out
T its AML and anti-terrorist financing policy, was the only AML policy in
U force during the Relevant Period. However, Ping An could not provide
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any evidence of the Operation Manual being circulated to its staff during the same period.

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44. Ping An also admitted that it did not provide any training relating to AML practices to its staff during the Relevant Period other than circulating to its staff the AML Guidance Note and a related SFC circular dated 29 October 2010 to its staff in October and November 2010.

45. Front line staff of Ping An told the SFC that they were not aware of any internal AML policies during the Relevant Period and that they were not aware of any company policy on AML. They were not provided with any guidance or training on AML until Douglas Chan, the new compliance officer, joined Ping An in March 2011.

46. Douglas Chan also told the SFC that he was not aware of Ping An having established any internal AML policy when he joined the company in March 2011.

47. The CEO of Ping An stated that what Ping An had at the time was only a draft AML policy, and that the draft AML policy had not been made available to members of staff.

48. Ms Sham told the SFC that she could not recall if Ping An had established any AML policy during the Relevant Period or whether she had provided any AML training to the staff of Ping An. Ms Sham could only remember that she had verbally reminded the Head of Accounting and Head of Dealing to take note of and report any suspicious activities.

Extent of Ms Sham's culpability in respect of effecting 3PPs before proper written directions have been obtained

49. When she was queried by the SFC as to why she had approved 3PPs where clients' signatures were missing and it could not be verified that indeed such instructions had been obtained from the clients, Ms Sham attempted to explain by saying that such payments had been approved by He Zhihua (i.e. the CEO of Ping An) and that it was the job of two other staff members of Ping An (Phoenix Hui being a customer service officer at Ping An and Wang Yaoyao a relationship manager of Ping An Securities) to confirm and check. Ms Sham being the last one to sign and approve the payments had assumed that others had done the necessary checks. Ms Sham further said that if there was a problem, the clients would have complained but did not.

50. In respect of 3PPs instruction forms being signed by another client, the SFC found that two 3PPs instruction forms both dated 18 October 2010 gave instructions to Ping An to transfer \$6 million and \$31.385 million from the account of Qian to two third parties with accounts at respectively HSBC and Hang Seng Bank. Against the signatures on both forms were scribbled the words "Ying Xu Gang for Qian Feng Lei". On one of those forms the approving signature for signature verification was missing. Despite such deficiencies, the forms were processed by Ping An.

51. When confronted with those forms, Ms Sham told the SFC that she could not read the handwriting next to the client signatures but believed that Wong Chun (a licensed representative and the principal dealer at Ping An) had called Qian to confirm the instructions as indicated

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on the 3PP instruction form (where Wong Chun’s extension number was written on the top right corner of both forms and according to Ms Sham the normal practice where such a handwritten remark appears means that Wong Chun had called the client to confirm the instructions). Furthermore, Ms Sham approved the payments because they had been “confirmed by” He Zhihua already, as evidenced by his signature on the 3PPs instruction forms under the heading “Confirmed by”.

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52. When it was put to Ms Sham by the SFC that the requirement for third party payment is a written instruction from the client and that it was apparent that the 3PP instruction forms were actually signed by someone else, Ms Sham replied that she had already double checked by calling the client and “chasing” after him for his signature afterwards. When it was pointed out that Ping An did not even manage to obtain Qian’s signature on those two 3PPs instruction forms post-event, Ms Sham merely said that she had already told her staff to “chase after” Qian for his signatures.

53. As for client’s 3PP instruction form being signed by Ping An staff, it was found by the SFC that on one 3PP instruction form dated 17 February 2011, which purported to be instructions to Ping An to transfer \$390,000 from the account of a client, Happy Sunflower Ltd. (‘Happy Sunflower’), to a third party with an account with Bank of America, the client signature of that 3PP instruction form was in fact the signature of Shang Rongrong, a customer service officer of Ping An against which was the Chinese word (代) meaning “on behalf of”.

54. Shang Rongrong told the SFC that she had confirmed those instructions with the client by phone and also admitted that she had

A signed the 3PP instruction form as she had been instructed to do by
B Ms Sham. She also told the SFC that Ms Sham would sometimes tell her
C and another staff (Phoenix Hui) to sign on behalf of clients on various
D documents, including but not limited to such 3PP instruction forms.

E 55. This evidence from Shang Rongrong was corroborated by
F another staff of Ping An, one Mary Wong being a settlement officer of
G Ping An, who said that there had been discussion between Ms Sham and
H the previous compliance officer on receiving verbal instructions for third
I party payments and that Ms Sham had instructed the customer service
officers to sign on 3PP instruction forms on behalf of clients and to
indicate this with the Chinese character (代) meaning “on behalf of”.

J 56. Although not specifically stated in the Decision Notice, there
K can be little doubt from all the circumstances that this evidence from
L Shang Rongrong and Mary Wong was accepted by the SFC, in particular,
M due to the fact that there is nothing to indicate, in the Decision Notice,
that such evidence was even challenged by Ms Sham.

N 57. Subsequent to the Happy Sunflower payment being
O processed, Ping An’s staff tried to obtain written direction from the client
P in relation to it. However, the instruction was filled in on a Withdrawal
Q Instruction form rather than a 3PP instruction form because the client had
R downloaded the wrong form from Ping An’s website. Moreover, the
S client’s signature was incomplete. The authorized signature according to
T Happy Sunflower’s account opening form should consist of the signature
U of Mao Ying as well as the company chop of Happy Sunflower, but the
signature given on the Withdrawal Instruction form only contained Mao
Ying’s signature without the company chop.

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58. Notwithstanding the incomplete signature on an incorrect instruction form, obtained post-event, the same was “approved” by Ms Sham.

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59. In so far as effecting 3PP to an employee at Ping An being in breach of the Client Money Rules was concerned, it was found by the SFC that in a 3PP instruction form dated 24 March 2011 Ping An was instructed to pay \$44,000 from a client, Wang Yazhen, to Shang Rongrong, being the customer service officer of Piing An at the time.

60. Shang Rongrong confirmed receiving such payment from Wang Yazhen who is her mother and stated that the payment was approved by Ms Sham who did not consider it inappropriate for Ping An to effect third party payments to its employees.

61. When asked for her explanation, Ms Sham told the SFC that she was aware of the requirement in the Client Money Rules that client money should not be paid to employees, but that she had inadvertently approved that payment to Shang Rongrong, not being aware that this payment was made to a staff member of Ping An (Ping An had only 15 employees based in Hong Kong during the Relevant Period). Ms Sham also said she was “not aware” of the relationship between Shang Rongrong and Wang Yazhen despite the fact that Ping An staff were required to inform Ping An of their relations when joining. Ms Sham further denied negligence in handling this 3PP saying that other people were involved in the verification process.

62. Although this was an isolated incident, the SFC was concerned that during the Relevant Period, Ping An did not have in place

A any measures which would ensure compliance with section 5(3)(a) of the
B Client Money Rules.

C 63. Ms Sham also told the SFC that at the material time, Ping An
D would process 3PPs upon telephone instructions, and Ping An would try
E their best to “chase after” clients for their signatures post-payment, but
F when asked whether it was a strict requirement for post-payment
G signatures to be obtained, Ms Sham answered that it was merely “best if
H post-payment signatures could be obtained”.

H *Extent of Ms Sham’s culpability in respect of employee dealing*

I 64. Paragraph 4.1 of Chapter 12 of the Operation Manual
J requires Ping An employees to declare their personal accounts upon
K joining Ping An.

L 65. During the Relevant Period, the “Employee Personal
M Account Declaration Form” in English was used. From April 2011, a
N new “Employee Account Declaration” in both English and Chinese came
O into use.

P 66. The SFC found that 3 of the 15 employees who joined Ping
Q An during and prior to the Relevant Period did not submit the Employee
R Declaration when they joined Ping An in November 2009, May 2010 and
S July 2010 respectively.

T 67. Ping An confirmed to the SFC that all its staff were subject
U to a 30-day holding period policy during the Relevant Period as set out in
V Part 5 of the Operation Manual Employee Dealing Policy.

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68. However, trading records revealed that the principal dealer at Ping An bought and sold shares in his personal account at Ping An frequently and even conducted day-trading during the Relevant Period. He had conducted day trades on 12 days in February 2011 and also conducted day trades on 5 days between the period from 11 October 2010 to 10 January 2011.

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69. Ping An informed the SFC that all the day-trading transactions conducted by its principal dealer during the Relevant Period were approved by Ms Sham in accordance with Part 5 of the Operation Manual Employee Dealing Policy.

70. There also existed another document entitled “Staff Dealing Policy” dated October 2009 but which did not contain the 30-day holding period requirement.

71. When Ms Sham was asked by the SFC whether the 30-day holding period requirement was in force when she was RO at Ping An, she told the SFC that the October 2009 Staff Dealing Policy was the more updated one and hence the 30-day holding period requirement was not in force when she was RO at Ping An.

72. This, however, contradicted what Ping An had submitted in its reply dated 13 August 2012, that both the October 2009 Staff Dealing Policy and the Operation Manual Employee Dealing Policy were in force from 1 August 2010 and 5 August 2010 respectively up until 30 April 2011 (i.e. throughout the Relevant Period).

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73. The SFC took the view that even as Ping An's senior management, Ms Sham was not clear on which staff dealing policies were in force during the Relevant Period. As such, even though the day trades were approved by Ms Sham as Ping An's RO, such "approvals" were not meaningful.

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74. Ping An staff, who were subject to the employee dealing policies, were not aware of what was required of them. Shang Rongrong told the SFC that she never knew of the 30-day holding period until the arrival of the new RO, Iris Wong. Phoenix Hui told the SFC she had never heard of the 30-day holding period requirement until the new compliance officer Douglas Chan arrived. Mary Wong told the SFC that there was no 30-day holding period requirement when Ms Sham was RO at Ping An.

75. Therefore the 30-day holding period requirement set out in the Operation Manual Employee Dealing Policy was not communicated or enforced by Ping An when Ms Sham was RO during the Relevant Period.

76. Ping An had 12 employees at its Hong Kong office on 12 August 2010. Ping An could only show that its then compliance officer had, by email, circulated on only one occasion the October 2009 Staff Dealing Policy to eight recipients on 12 August 2010, of whom, only four of the recipients were employees based in the Hong Kong office. In other words, seven of the then Ping An employees in the Hong Kong office did not receive and were not made aware of the October 2009 Staff Dealing Policy.

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77. As for the Operation Manual Employee Dealing Policy, Ping An could not locate any evidence of it being circulated to its staff during the Relevant Period.

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78. When the staff of Ping An were interviewed, Shang Rongrong told SFC she had never seen the Operation Manual Employee Dealing Policy nor the October 2009 Staff Dealing Policy. Phoenix Hui said she had never seen the Operation Manual Employee Dealing Policy. Wong Chun, the principal dealer, said he had never seen the Operation Manual Employee Dealing Policy nor any written dealing policy at Ping An. Mary Wong told the SFC that there was no internal policy at Ping An when Ms Sham was RO and it was only when the new compliance officer Douglas Chan arrived that he requested Ping An's staff to come up with a policy for their respective departments. Mary Wong further said that she and her colleagues had never seen the Operation Manual until Ping An submitted same in response to a regulator's inquiries subsequently, and it was only then that they realized that what the Operation Manual stipulated was very different from their daily operational practices.

Extent of Ms Sham's culpability in respect of account opening

79. In response to the SFC's request under section 183 of the Ordinance, dated 26 July 2012, Ping An conducted a review on all 1,181 active client accounts as at 17 May 2012 and submitted a report to the SFC dated 7 August 2012 ('Account Opening Review') which revealed that 117 of the 1,181 client accounts were opened without RO approval, and 15 accounts were opened without valid documentary proof of address.

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80. Records further revealed that 3 of the 117 accounts, which were opened without RO approval, made 3PPs. One of such accounts is that of Happy Sunflower, dealt with above.

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81. Ping An explained that accounts were opened without RO approval because the relevant customer service officer had activated the client accounts on the basis that the RO approval would be obtained 'at a later time'.

82. Evidence given by Shang Rongrong was that it was common practice at Ping An to activate accounts first before passing the account opening application to the RO (Ms Sham) for approval. In relation to the 117 accounts opened without RO approval, Shang Rongrong's understanding was that Ms Sham had refused to approve newly opened accounts due to management conflicts between Ms Sham and He Zhihua (i.e. the CEO).

83. This evidence from Shang Rongrong was consistent with and corroborated by Douglas Chan who told the SFC that the reason why such a large number of accounts were opened without RO approval between late 2010 and early 2011 was due to management conflict between Ms Sham and He Zhihua as to who should be responsible for overseeing the customer service department. For that reason Ms Sham had refused to review and approve the new account openings.

84. Douglas Chan further told the SFC that despite Ms Sham's refusal to approve account openings, the two customer service officers still activated newly opened accounts because on some occasions, Ms Sham had told the customer service officers that she would approve the

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account openings at a later time, and on some occasions, He Zhihua instructed them to do so, saying that it was Ms Sham who did not perform her duty as RO by refusing to approve account openings.

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85. When interviewed, Ms Sham told the SFC the fact that the 117 accounts were opened without RO approval was “He Zhihua’s problem” as, officially speaking, the customer service officers reported to the CEO. When it was put to Ms Sham that the procedures in fact required approval by the RO, Ms Sham claimed that she was not aware that so many accounts were opened and that the responsibility to check and confirm account opening documents lay with the customer service officers. Ms Sham also claimed that the customer service officers did not obtain her approval to open those accounts and that she was unaware of the large number of client accounts being opened without RO approval until a later stage but could not remember when and how she found out.

86. The SFC found that this claim of Ms Sham was contradicted by documentary evidence. During the period from October 2010 to April 2011, the Settlement Department of Ping An had prepared daily and monthly reports detailing the number of new client accounts opened in Ping An’s system, and such reports were sent via email to its senior management members, including Ms Sham. Ping An was able to provide the SFC with a copy of such email. As a result, the SFC found the claim of ignorance by Ms Sham not to be credible.

87. As for accounts opened without valid address proofs, Ping An’s Account Opening Manual requires compliance staff to review address proof of individual retail client as part of pre-account opening

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checking and stipulates that utility statements should be produced as proof of residential address.

88. The Account Opening Review showed that 15 client accounts without valid documentary proof of address, of which, 8 had no residential / business / correspondence address proof, 6 had no correspondence address proof and 1 had an outdated residential address proof.

89. Of the 117 accounts opened without RO approval during the Relevant Period, 6 accounts did not have any residential address proof, 1 did not have business address proof, 6 did not have correspondence address proof, and 1 had an outdated residential address proof.

Extent of Ms Sham's culpability in respect of lack of compliance function

90. During the five months period between the departure of the previous compliance officer Lam Kam Fung in October 2010 and the arrival of Douglas Chan, Ping An had no designated compliance officer. As the only RO of Ping An based in the Hong Kong office at the time, Ms Sham therefore took over the responsibility of overseeing the compliance function at Ping An.

91. It was found by the SFC that Ms Sham did little to discharge her responsibilities vis-à-vis compliance and her awareness of the importance of compliance appeared to be low. For example:

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- (a) Ms Sham was oblivious as to the red flags in relation to the Suspicious Sino-Tech Transactions until the SFC made inquiries;
- (b) when Ms Sham was asked specifically about the AML systems in place during that five months when Ping An had no designated compliance officer, Ms Sham told the SFC that she had asked the previous compliance officer to come up with a series of procedures and systems, and she had expected staff to just follow those during that five months period. When asked what sort of systems and procedures were in place prior to and during that five months period, Ms Sham told the SFC she did not know how to answer the question as she had already given instructions on what the compliance officer had to do;
- (c) Ms Sham approved 3PPs where proper client instructions had not been obtained;
- (d) when asked why she had approved third party payments when client instructions was missing, Ms Sham could only say that since those payments were made into banks, one could always check with the bank afterwards;
- (e) when it was put to Ms Sham whether she agreed that she should have waited for a complete set of instructions before approving the payments, Ms Sham still reiterated that missing information can be provided in due course;

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(f) Ms Sham repeatedly said that the 3PPs were checked and approved by many other staffs, not just herself, and that her approval was merely “part of the process”;

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(g) Ms Sham did not carry out any compliance checking during those five months without a compliance officer and did not see the need to remind employees of Ping An’s staff dealing policies, her stated reason being that it was not necessary since no new staff joined during those five months; and

(h) Ms Sham refused to review and approve newly opened accounts during that five months without any compliance officer, yet accounts were allowed to be opened notwithstanding the lack of RO approval.

92. Moreover, even prior to the five months when Ping An was without any compliance officer, it appeared that there had not been an effective compliance function at Ping An given:

(a) no ongoing monitoring was conducted for the purpose of identifying suspicious transactions;

(b) no training on AML practices had been provided to its staff; and

(c) there was no internal policy on 3PPs.

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Matters of mitigation advanced by Ms Sham

93. Counsel for Ms Sham relies on the statement of principle as stated in *Wong Ting Choi Joe v Securities and Futures Commission* (SFAT No. 5 of 2007, 8 May 2008), in which the Tribunal approved a statement of principled approach in relation to the level of sanction concerning disciplinary offences as follows:

“57. ...a non-exclusive indication of the factors which the regulator will take into account in determining the level of sanction, including the impact of the conduct in question upon market integrity, the degree of losses caused to clients, the duration and frequency of the conduct, whether such conduct is widespread within the industry, whether there has been a breach of fiduciary duty, the manner of reporting the conduct by the applicant and the degree of co-operation with the SFC as demonstrated by the applicant, the applicant’s previous disciplinary record, experience and position, and SFC action in similar cases.”

94. Given the principle stated above, it was submitted on Ms Sham’s behalf that the Tribunal should take into consideration the following matters when determining the penalty that should be imposed:

- (a) Ms Sham has been working in the financial industry for over 13 years with an hitherto unblemished record;
- (b) the Relevant Period of some 9 months is but a small fraction of Ms Sham’s career in the financial industry;
- (c) the deficiencies in Ping An’s internal control systems and procedures was such that the conduct of Ms Sham
 - (i) was not intentional;

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(ii) did not cause any loss to any clients of Ping An or others; and

(iii) did not constitute any breach of fiduciary duty on Ms Sham's part.

(d) Ms Sham did fully co-operate with the SFC and had given voluntary statement at the early stage of the investigation to provide assistance.

95. This application for review was brought on the basis that the decision to revoke the approval given to Ms Sham to act as RO is manifestly wrong and excessive and that in the light of cases of similar gravity to the present case, the SFC had failed to take or maintain a consistent approach in imposing this penalty to Ms Sham.

96. It was submitted by Counsel for Ms Sham that revocation of the approval to act as RO would prevent Ms Sham from acting as an RO in the near future, and although technically, Ms Sham can still apply to the SFC for approval to act as RO in future, the revocation would effectively mean that Ms Sham would be out of the profession as RO for an indefinite period of time.

97. It was also submitted by counsel for Ms Sham that whether it is a revocation or merely a suspension instead, more likely than not, Ms Sham will not be able to act as RO or be employed in position involving work of a similar nature.

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98. Counsel for Ms Sham relied on two previous determinations of the Tribunal, namely, *Peter Leung v Securities and Futures Commission* (SFAT No. 7 of 2013, 23 May 2014) and *Chan Pik Ha Jenny v Securities and Futures Commission* (SFAT No. 8 of 2013, 9 June 2014) which, counsel says, involve licensed or registered persons breaching similar provisions of the Code. However, counsel for Ms Sham also accepted that the gravity of the failures on the part of Ms Sham were more serious than those of the respective applicants in either *Peter Leung* or *Chan Pik Ha Jenny* but says that these cases are relied upon because they also, like the present case, involve breaches of GP2 and GP9.

99. Lastly, it was submitted by counsel for Ms Sham that instead of a revocation, a suspension should be imposed on Ms Sham for a period longer than 12 months and that would be a sufficient penalty to reflect the gravity of her failings. When asked what period of suspension should be considered by this Tribunal in relation to Ms Sham, counsel for Ms Sham indicated a possible period of between 18 months and 24 months would be appropriate.

Responses by the SFC to the mitigation put forward by Ms Sham

100. The SFC maintained quite firmly, that the revocation of Ms Sham’s status as RO is the proper penalty in this case for the following reasons.

101. The sheer range and density of Ms Sham’s failings as RO is particularly striking, showing that it was not an isolated incident or matters of occasional oversight.

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102. Ms Sham’s responses during the SFC investigation also showed an inability on the part of Ms Sham to appreciate the level of responsibility expected of an RO and also showed a lack of awareness on fundamental concepts of compliance despite her having been an RO for a considerably long period of time.

103. Ms Sham’s attempt to downplay her own responsibility by attempting to deflect the blame to others in Ping An also highlighted her inability to appreciate the true nature and extent of her duties as RO.

104. As for the two main assertions put forward by Ms Sham, namely, that the decision of the SFC to revoke Ms Sham’s status under the Ordinance as an RO being “manifestly wrong and excessive, and that such revocation is inconsistent with previous penalties imposed by the SFC in “cases of similar gravity”, the SFC submitted that neither of the two assertions is remotely sustainable.

105. Therefore, given the seriousness of Ms Sham’s failings and the critical importance of safeguarding the integrity and reputation of the financial markets, the SFC maintained firmly the view that the decision of the SFC to revoke Ms Sham’s status as an RO is the appropriate penalty for her misconduct and this Tribunal was asked to confirm such revocation in the exercise of its independent judgment in this review given all the facts and circumstances of this case.

Decision

106. The findings made by the SFC in its Decision Notice in respect of Ms Sham in her role as RO of Ping An, which has already been

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detailed at length above in this Determination, has not been challenged by Ms Sham. Those findings include the following failures by Ms Sham:

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- (a) failing to identify and follow up on the Suspicious Sino-Tech Transactions;
- (b) the absence of any AML policies and guidelines at Ping An;
- (c) making 3PPs before proper written directions have been obtained from clients;
- (d) effecting 3PPs to a Ping An employee in breach of the Client Money Rules;
- (e) effecting 3PPs without assessment of reasons or verification of recipients;
- (f) lack of any internal policy on 3PPs;
- (g) inadequate employee dealing policies;
- (h) improper implementation of client account opening procedures; and
- (i) lack of compliance function.

107. The above summarizes Ms Sham’s failings in her role as RO and calls into question whether she is a fit and proper person to be an RO.

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108. The submissions made by the two opposing sides in this review bring into focus what is the proper role and responsibilities of RO in the regulatory scheme and its importance in the overall context of that scheme.

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109. An RO is an officer within a licensed corporation with primary responsibility for the corporation's compliance with all applicable standards of conduct including statutory requirements under the Ordinance and codes promulgated by the SFC.

110. The importance of the role of RO and its responsibilities is highlighted by the provisions within the Ordinance governing the approval and revocation of approvals of ROs.

111. These provisions require the SFC to be satisfied that ROs be fit and proper persons with sufficient authority within the licensed corporation to discharge their responsibilities (see sections 126, 129 and 194(1)(b) of the Ordinance).

112. The SFC's Licensing Information Booklet details the following:

- (a) An RO is a licensed representative who is also approved as a responsible officer under section 126 of the Ordinance to supervise the regulated activity of the licensed corporation to which he is accredited.

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(b) For each regulated activity of a licensed corporation, [it] should have at least one RO available at all times to supervise the business.

(c) Those applying for approval as an RO, should have sufficient authority to supervise the business of regulated activity within the licensed corporation that they will be accredited to.

113. Given their importance, ROs are subject to an array of practice codes. Of importance to the present case is the Code (i.e. the Code of Conduct for Persons Licensed by or Registered with the SFC.)

114. GP 2 of the Code provides that:

“In conducting its business activities, a licensed or registered person should act with due skill, care and diligence, in the best interests of its clients and the integrity of the market.”

115. GP 9 of the Code states:

“Responsibility of senior management

The senior management of a licensed or registered person should bear primary responsibility for ensuring the maintenance of appropriate standards of conduct and adherence to proper procedures by the firm. In determining where responsibility lies, and the degree of responsibility of a particular individual, regard shall be had to that individual’s apparent or actual authority in relation to the particular business operations, and the factors referred to in paragraph 1.3 below”.

116. Paragraph 1.3 of the Code states:

“Persons to which the Code applies

...In considering the conduct of representatives under the Code, the Commission will consider their levels of responsibility within the firm, any supervisory duties they may have concerning any failure by their firms or persons under their supervision to follow the Code”.

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117. Paragraph 4.2 of the Code provides:

“Staff supervision

A licensed or registered person should ensure that it has adequate resources to supervise diligently and does supervise diligently persons employed or appointed by it to conduct business on its behalf.”

118. Paragraph 14.1 of the Code states:

“Responsibility of senior management

Senior management of a licensed or registered person should properly manage the risks associated with the business of the licensed or registered person, including performing periodic evaluation of its risk management processes. Senior management should understand the nature of the business of the licensed or registered person, its internal control procedures and its policies on the assumption of risk...”

119. Given therefore the scheme of things as set out above in relation to the role and responsibilities of an RO, and the fact that corporations can only function through individuals within them, so that within a licensed corporation the responsibility for compliance within the regulatory system and those applicable standards fall upon certain specifically designated and licensed persons, the most important of which is the RO.

120. I have no hesitation in accepting the submission made by counsel for the SFC that the RO of a licensed corporation is the person who bears primary responsibility for the compliance with all applicable regulatory standards and that where there is a failure in respect of compliance there is little or no room for blame-shifting.

121. For the provisions of the Ordinance to be applied effectively and efficiently in this respect, when disciplinary action is directed at the

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RO for failure of compliance within the licensed corporation, it is not possible for the RO to shift responsibility either upwards towards more senior management or downwards towards employees who do not stand in the same position or level of the RO.

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122. Should authority be needed for the proposition above, it can be found in *Cheung Wah Fung Christopher & Christfund Securities Limited* (SFAT 12/2006) where it was said in paragraphs 62-63 of the Determination:

“62. We accept the contention put forward on behalf of the SFC that a licensee for securities dealing and its Responsible Officer are expected to possess the necessary knowledge and expertise to ensure the proper and lawful conduct of the licensee’s operations, and that the Responsible Officer has, as the name implies, the responsibility for ensuring that the licensee’s activities are in full compliance with the FRR, notwithstanding that within this area certain activities are delegated to employees; this is why, in order to discharge this responsibility, the Responsible Officer is expected to exercise the requisite degree of control over employees in order to ensure that nothing is done which would lead to contravention of the regulatory requirements.

63. Absent such control, the regulatory system fails, as indeed it did in this case in terms of this documented breach of the FRR. These Rules have been put in place for the protection of the investing public and in our firm view represent far more than merely some form of ‘technical’ or ‘doctrinaire’ obstruction to the pursuit of commercial interest.”

123. Turning now to deal generally with the mitigating factors put forward by Ms Sham, namely that Ms Sham has been working in the financial industry for some 13 years with an unblemished record, the Relevant Period of 9 months represents only a small fraction of her career, and that she had co-operated fully with the SFC, even giving evidence as a prosecution witness against a Mr. Wong, a former licensed representative of the parent company charged with false trading.

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124. As was said by Bingham MR (as he then was) in *Bolton v Law Society* [1994] 1 WLR 512, a case concerning disciplinary sanction of a solicitor, at 518E – 519E:

“It is important that there should be full understanding of the reasons why the tribunal makes orders which might otherwise seem harsh. There is, in some of these orders, a punitive element ... Those are traditional objects of punishment. But often the order is not punitive in intention ... In most cases the order of the tribunal will be primarily directed to one or other or both of two other purposes. One is to be sure that the offender does not have the opportunity to repeat the offence... The second purpose is the most fundamental of all: to maintain the reputation of the solicitors’ profession as one in which every member of whatever standing, may be trusted to the ends of the earth. To maintain this reputation and sustain public confidence in the integrity of the profession it is often necessary that those guilty of serious lapses are not only expelled but denied re-admission.... A profession’s most valuable asset is its collective reputation and the confidence which that inspires.

Because orders made by the tribunal are not primarily punitive, it follows that considerations which would ordinarily weigh in mitigation of punishment have less effect on the exercise of this jurisdiction than on the ordinary run of sentences imposed in criminal cases...The reputation of the profession is more important than the fortunes of any individual member. Membership of a profession brings many benefits, but that is a part of the price.”

125. From this it can be seen that in conducting disciplinary actions, much more consideration has to be given by the regulatory body to maintaining the reputation of the profession concerned, in our present case, the reputation of the financial markets in Hong Kong in the way it is regulated by the regulatory scheme.

126. I am therefore of the view that little weight could be attached to the mitigating factors put forward by Ms Sham.

127. I turn now to consider the submission made on behalf of Ms Sham that the decision to revoke her status as RO is manifestly wrong

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and excessive and inconsistent with other penalty meted out by the SFC in similar cases.

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128. In making this submission, counsel for Ms Sham has relied on the two cases of *Peter Leung* (ibid above) and *Chan Pik Ha Jenny* (ibid above).

129. In the case of *Peter Leung*, the applicant was employed by a licensed corporation carrying on securities trading. The applicant had obtained a Type 1 licence to deal in securities about the same time as he was appointed a licensed representative and responsible officer of that licensed corporation. It was found by the SFC that there was a breach of GP 2, GP 7 and GP 9 of the Code in that the licensed corporation had:

- (a) failed to keep proper order records, i.e. records sufficient to ensure the fair allocation of trade executions and to enable such trade executions to be traced through its trading systems;
- (b) consented to or connived in the performance of its regulated functions by two other persons who were unlicensed; and
- (c) failed diligently to supervise dealing functions in order to ensure the maintenance of appropriate standards of conduct and adherence to proper procedures.

130. As a result, the SFC ordered the applicant's Type 1 license be suspended for 12 months and his application for review of the penalty was dismissed by the Tribunal with costs.

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131. In the case of *Chan Pik Ha Jenny*, the applicant who has been in the securities industry for some 25 years with an unblemished record, was engaged as a sales director of a licensed corporation and responsible for regulatory compliance there for the four months she worked in that licensed corporation between June and October 2011 when she transferred to another licensed corporation. The SFC found that the applicant had breached GP 2 and Paragraph 3.9 of the Code in that she had:

- (a) failed fully and accurately to record and keep a proper audit trail of the dealing instructions given to her by at least 14 of her clients;
- (b) accepted trading instructions from a third party in relation to the accounts of three clients when she had no written authority from the clients enabling the third party to trade on their behalf; and
- (c) deposited a sum of \$300,000 of her own funds into the trading account of a client without declaring the true source of the funds and indeed indicating on the face of the documentation that it was the client's own deposit.

132. As a result, the SFC ordered the applicant's licence to conduct Type I and Type 2 activities, namely, dealing in securities and in futures contracts, be suspended for a period of six months.

133. Upon the applicant's application to the Tribunal to review the penalty imposed on her by the SFC, the Tribunal took the view that

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normally, given the facts of that case, the Tribunal would have upheld the 6 months suspension. However, in that case, when the applicant applied to the SFC to transfer her accreditation to her new employer in October 2011, such an application would in a normal case have taken no more than 7 days, but because a report had been received by the SFC from the applicant's first employer as to the applicant's apparent misconduct, it took the SFC some four and a half months for such application to be processed.

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134. The Tribunal therefore took into account that earlier period of *de facto* suspension and reduced the 6 months suspension by 2 months resulting in a period of 4 months suspension as being the proper penalty.

135. As already indicated above, counsel for Ms Sham very properly conceded at the outset that the culpability involved in both the cases of *Peter Leung* and *Chan Pik Ha Jenny*, were less serious in nature than the present case. Counsel's explanation for referring this Tribunal to those two cases was due to the fact that those cases also involved breaches of GP 2 and GP 9 of the Code as the present case and was used by way of comparison on that basis.

136. I am not persuaded by the submission made by counsel for Ms Sham that the cases of *Peter Leung* and *Chan Pik Ha Jenny* can provide any assistance to this Tribunal in so far as the exercise of its discretion goes in determining the correct and proper penalty in the present case simply on the basis that those two cases involve breaches of GP 2 and GP 9 of the Code. The correct basis in determining the proper penalty must be the seriousness and the gravity of the conduct and the

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culpability involved in each case subject to any mitigation to be taken into account.

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137. On the other hand, counsel for the SFC has referred this Tribunal to three other cases, all of which involved revocation of the approval given to act as RO to each of the RO involved in the three cases.

138. All of these 3 cases were only reported by way of press release since in none of these three cases did the ROs seek to review the penalty meted out by the SFC so that none of those three cases came before the Tribunal.

139. In the first case, the SFC reprimanded and fined Fukoku Investment (Asia) Ltd, ('Fukoku') \$2 million for failing to detect and stop an unlicensed firm from carrying out activities which appeared to be a boiler room scam in Fukoku's office premises. The SFC also revoked the approval given to Anthony Wong Kin Man to act as RO and suspended his license for 2 years as Wong had agreed to the stationing of the unlicensed firm's staff in Fukoku's office premises.

140. In the second case, the SFC revoked the approval of Richard Howard Gorges to act as RO of any licensed corporation and suspended his Type 6 licence for 18 months, also fining him \$250,000 when it found Gorges not familiar with internal control structures of three companies of which Gorges was RO, and failed to properly, actively and diligently supervise the performance of duties by those to whom he had delegated them and which contributed to:

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- (a) the first company failing to enforce its staff dealing policy to avoid conflicts of interest arising;
- (b) the second company failing to comply with the Financial Resources Rules under the Ordinance and the Securities and Futures (Financial Resources) Rules, the Securities and Futures (Client Money) Rules; and
- (c) the third company failing to adequately carry out its due diligence responsibilities when acting as the sponsor of a listing applicant for listing on the Growth Enterprise Market and to ensure representations made to regulators were true, accurate, complete and not misleading in a material aspect.

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141. In the third case, the SFC revoked the licence of Hong Hui Lung ('Hong'), a former managing director of Mega Capital (Asia) Co. Ltd. ('Mega Capital'), to act as a representative and the approval for him to act as RO due to Hong failing to discharge his duties as a sponsor principal and RO in that:

- (a) Hong refused to accept responsibilities by denying he was in charge of Mega Capital's transaction team on the listing application and tried to shift responsibility to another RO and sponsor principal of Mega Capital;
- (b) Hong failed to properly and adequately supervise the transaction team, failed to oversee the progress of the listing and admitted that he did not read most of the emails relating to the listing; and

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(c) Hong was also in breach of the sponsor’s undertaking and filing untrue declaration with the Stock Exchange of Hong Kong Limited, and failed to take reasonable steps to ensure that the transaction team had conducted due diligence as required, albeit that the SFC found no evidence that Hong was involved in any fraud, any dishonesty or taking unfair advantage from his failures.

142. Given their proper perspectives, there can be little doubt in my mind that the extent of culpability of Ms Sham and the seriousness of her failings are far more akin to those of the three cases cited and relied upon by the SFC than the two cases of *Peter Leung* and *Chan Pik Ha Jenny*.

143. It should also be noted that in the present case, a major concern of the SFC relates to the lack of AML policies within Ping An during the Relevant Period when Ms Sham was the RO there.

144. Money laundering is, in the current climate of things, one enormous area of concern to national governments, banks and financial institutions all over the world, yet nothing seem to have been done by Ms Sham to rectify the lack of AML policy within Ping An during the Relevant Period, and it was not until the new compliance officer arrived in March 2011 that guidelines were put in place and staff notified of same.

145. When viewed together with all of the other failings of Ms Sham, there can be little doubt in my mind that her failings, taken globally, are serious and systemic. They are wholesale failures and not

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one-off incidents. Neither can all of such failures be wholly explained by the conflict between Ms Sham and He Zhihua, the CEO of Ping An.

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146. The key regulatory concern for the SFC in the present case must be the risk to not only the firm, but also its clients and the general public.

147. Any losses to clients or others would be aggravating factors. The absence of such losses counts for very little by way of mitigation, and can only be said to be fortuitous. The same would be equally applicable to absence of breaches of fiduciary duties.

148. Ms Sham's conduct and her culpability from such conduct in this matter was both serious and persistent. There can be no doubt that such misconduct as detailed above greatly threatened the integrity as well as the reputation of the financial and securities market in Hong Kong.

149. Having taken into account all the relevant matters urged upon me by both counsel, this Tribunal is of the view that the order for revocation of the approval given to Ms Sham to act as RO is the appropriate penalty.

150. In that respect, it needs also to be noted that in so far as proportionality goes, the revocation of Ms Sham's status as RO is far from being the most severe penalty that can be visited upon her.

151. Section 194 of the Ordinance confers very wide powers upon the SFC to deal with regulatory failings on the part of ROs which can even extend to lifetime orders preventing a person from carrying out any

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kind of regulated activities including acts as a licensed representative under the Ordinance.

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152. In the present case, the revocation is directed only at Ms Sham's status as RO. It does not affect her as a licensed representative under section 120 of the Ordinance, which has not yet lapsed. Effectively, the order will not prevent Ms Sham from assuming other less critical positions in the financial industry as a licensed representative.

Conclusion

153. Accordingly, the application for review by Ms Sham is dismissed and the order of revocation by the SFC is hereby affirmed.

Costs

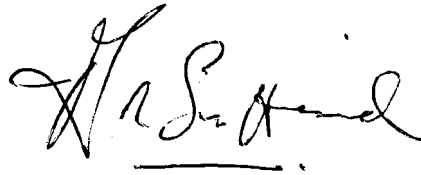
154. Submissions as to costs have not been made by the parties.

155. However, there is no indication that the SFC was waiving any claim for costs.

156. This application for review having been dismissed, I shall make an order *nisi* granting costs of this application to the SFC to be taxed if not agreed.

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157. Should Ms Sham see fit to oppose this order for costs, she should file notice of her intention to do so within 28 days of the date of this Determination.



(Mr. Justice Azizul Rahman Suffiad)
Chairman, Securities and Futures Appeals Tribunal

Mr. Philip Chan, instructed by F. Zimmern & Co.
for the Applicant

Mr. Abraham Chan, instructed by the Securities and Futures Commission,
for the Respondent