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SFC reprimands Unicorn Securities Company Limited and fines it and its former responsible officer \$3.2 million

14 Mar 2016

The Securities and Futures Commission (SFC) has reprimanded Unicorn Securities Company Limited (Unicorn Securities) and fined it and its former responsible officer, Mr Chan Hoi Shu, \$3 million and \$200,000, respectively, relating to failures in handling clients' money and securities (Notes 1 & 2).

Chan, who was primarily responsible for the failures of Unicorn Securities in this connection, was also suspended for a period of 15 months from 12 March 2016 to 11 June 2017.

The SFC found that between March 2011 and December 2013, Unicorn Securities mishandled its clients' dividend entitlements of shares of HSBC Holdings PLC (HSBC) by going against clients' instructions in their choices between cash or scrip dividends (i.e. HSBC shares) when submitting their instructions to Hong Kong Securities Clearing Company Limited, and giving the clients' dividends to others.

On seven occasions, Unicorn Securities chose and received scrip dividends for all clients regardless of the clients' instructions. After allocating the dividends to clients who elected to receive scrip dividends, Unicorn Securities deposited the remaining scrip dividends into the account of Chan or the account of a client. Chan would then sell these HSBC shares in the market and pay Unicorn Securities an amount equivalent to the clients' cash dividend entitlements for making payments to the clients who chose cash dividends. Chan kept the profit arising from the difference between the amount he received from selling the HSBC shares and the amount he had to pay to the firm.

Separately, Unicorn Securities chose and received cash dividends for all the clients on two occasions. For clients who opted for scrip dividends, Unicorn Securities would give the clients' cash dividends to Chan who would then buy HSBC shares in the market to meet clients' requests for scrip dividend, and he made a profit in the process.

The SFC also found that Unicorn Securities had connived in Chan's transfer of client money into his personal account and withdrew securities from a client's account without the necessary written direction from the client.

The conduct of Unicorn Securities demonstrated its failure to put in place adequate and effective internal controls to ensure compliance with relevant regulatory requirements in relation to segregation and proper handling of client assets (Note 3).

Chan masterminded and involved the firm in the malpractice in handling its clients' dividend entitlements, initiated and directed his staff to act contrary to clients' instructions and to transfer clients' money and securities to his personal accounts and instructed the share withdrawal from the client account without the required written direction.

In determining the penalties, the SFC took into account that:

- Unicorn Securities and Chan had abused the trust placed by their clients in the firm;
- Unicorn Securities co-operated in resolving the disciplinary proceedings while Chan admitted to his misconduct;
- Unicorn Securities engaged an external consultant to conduct a review of its systems and controls in relation to compliance with applicable regulatory requirements and has adopted an automated operation system to reduce the risk of fraud; and
- there is no evidence that clients suffered any loss as a result of the malpractice.

End

Notes:

1. Unicorn Securities is licensed under the Securities and Futures Ordinance (SFO) to carry on Type 1 (dealing in securities) regulated activity.

2. Chan is licensed under the SFO to carry on Type 1 (dealing in securities) regulated activity. He acted as licensed representative and responsible officer of Unicorn Securities between October 1994 and October 2015. Chan had also been a shareholder of the firm until November 2014 and a director until October 2015. He is currently not accredited to any licensed corporation.
3. Sections 5, 6 and 10 of the Securities and Futures (Client Securities) Rules and section 4 of the Securities and Futures (Client Money) Rules require an intermediary to ensure that client securities and client money should be segregated and dealt with in accordance with the clients' instructions and cannot be transferred to officers or employees of the firm.

[A copy of the Statement of Disciplinary Action is available on the SFC website](#)

Page last updated : 14 Mar 2016

STATEMENT OF DISCIPLINARY ACTION

The Disciplinary Action

1. The Securities and Futures Commission (**SFC**) has publicly reprimanded Unicorn Securities Company Limited (**Unicorn Securities**)¹ and fined it \$3 million and suspended its former responsible officer, Mr Chan Hoi Shu (**Chan**)², for a period of 15 months effective from 12 March 2016 to 11 June 2017 and fined him \$200,000 pursuant to section 194 of the Securities and Futures Ordinance (**SFO**).
2. The disciplinary action is taken because the SFC found that:
 - (a) Unicorn Securities had:
 - (i) failed to handle its clients' dividend entitlements properly, in particular it selected for its clients a form of dividend of HSBC Holdings PLC (Stock Code: 005) (**HSBC**) which was contrary to clients' instructions, and gave the clients' cash / scrip dividends to Chan and another client (**Client L**) which Chan dealt with for his benefit and the benefit of Client L³;
 - (ii) failed to safeguard client money and assets of Client L, in that it connived in Chan depositing Client L's money into his personal account and withdrew shares from Client L's account without his written direction; and
 - (iii) failed to put in place adequate and effective internal controls to properly handle client assets and ensure compliance with relevant regulatory requirements; and
 - (b) Chan was directly responsible for Unicorn Securities' failures:
 - (i) he masterminded and involved the firm in the malpractice in relation to the handling of its clients' dividend entitlements;
 - (ii) Unicorn Securities' failures in properly handling client money and securities were attributable to his conduct;
 - (iii) he failed to discharge his duty as a member of Unicorn Securities' senior management by failing to ensure adequate and effective internal controls were in place to properly handle client assets and ensure compliance with relevant regulatory requirements; and
 - (iv) he breached the trust which the clients placed in Unicorn Securities.

¹ Unicorn Securities is licensed under the Securities and Futures Ordinance (SFO) to carry on business in Type 1 (dealing in securities) regulated activity.

² Chan is licensed under the SFO to carry on Type 1 (dealing in securities) regulated activity. He acted as licensed representative and responsible officer of Unicorn Securities between October 1994 and October 2015. Chan was also a shareholder of the firm until November 2014 and a director until October 2015. He is currently not accredited to any licensed corporation.

³ In return for the dividends received, Chan would arrange payment or purchase stock from the market for Unicorn Securities' distribution to the clients to settle their cash or scrip dividend entitlements as per their original instructions.

Summary of facts

Unicorn Securities

Improper handling of clients' dividend entitlement

3. Between March 2011 and November 2013, Unicorn Securities submitted electronic instructions to Hong Kong Securities Clearing Company Limited to elect one form of dividend only, i.e. either cash or scrip dividend, for all its clients holding HSBC stock (**HSBC Clients**) on ten occasions of HSBC dividend distribution (**Dividend Events**).
4. However, Unicorn Securities' records show that the instructions which it received from the HSBC Clients were for a mixture of cash dividends and scrip dividends for each of the 10 Dividend Events. The HSBC Clients who the SFC interviewed confirmed that they were eventually allotted the form of dividends they selected, but they did not know that Unicorn Securities had elected for them a form of dividend inconsistent with their instructions.
5. Amongst the ten Dividend Events, nine of them were found to involve malpractice in handling clients' dividend entitlements (**Malpractice**) for the benefit of Chan and Client L⁴. The modus operandi of the Malpractice was as follows:
 - (a) in the Dividend Events where scrip dividends were elected for all HSBC Clients, Chan would:
 - (i) instruct Unicorn Securities' staff to deposit those scrip dividends which were received contrary to the clients' instructions in his or Client L's account; and
 - (ii) sell the stock under the clients' scrip dividends in his and Client L's accounts. Chan would arrange payment to Unicorn Securities for the stock received by himself and Client L and the firm would make payment to the clients who elected cash dividends;
 - (b) in the Dividend Events where cash dividends were elected for all HSBC Clients, Chan would:
 - (i) instruct Unicorn Securities' staff to allocate the cash dividends which were received contrary to the clients' instructions to himself. Unicorn Securities would issue a cheque to Chan in the sum equivalent to the amount of the dividends and Chan would sign the cheque himself; and
 - (ii) use the money to purchase HSBC stock for Unicorn Securities to distribute to the clients who elected scrip dividends; and
 - (c) Chan and Client L would retain the profits generated during this process.
6. The Malpractice enabled Chan to make an aggregate profit of \$95,426.34 and Client L to make an aggregate profit of \$26,894.47.
7. The conduct of Unicorn Securities in the Malpractice was in breach of:
 - (a) sections 5(1), 6(1)(a), 6(1)(c) and 10 of the Securities and Futures (Client Securities) Rules (**Client Securities Rules**), and sections 4(4) and 4(6) of the

⁴ Unicorn Securities elected cash dividends for all HSBC Clients in one Dividend Event, namely the dividend distribution of 2013 (1st Interim), due to its staff's failure to input the scrip dividend instruction in CCASS system.

Securities and Futures (Client Money) Rules (**Client Money Rules**), which require an intermediary to ensure that client securities and client money should be segregated and dealt with in accordance with the clients' instructions and cannot be transferred to officers or employees of the firm; and

- (b) General Principle 8 and paragraph 11.1 of the Code of Conduct⁵ which require a licensed corporation to properly account for and adequately safeguard client assets.
8. In addition, Unicorn Securities abused the trust that the clients placed in it by acting contrary to the HSBC Clients' instructions.
9. In light of the above, we are of the view that Unicorn Securities' conduct in the Malpractice calls into question the firm's character and reliability, and fitness and propriety to remain licensed.

Failure to safeguard client money and assets

10. Chan was authorized by Client L to handle cheques regarding sale proceeds of stock and receipt of cash dividends. At Client L's request, Chan started to transfer money of Client L to Client L's bank account in Singapore via Chan's own bank accounts from January 2008. According to the record of the funds that Chan kept for Client L, between February 2011 and August 2014, Chan had remitted a total amount of \$913,441 to Client L on 21 occasions.
11. Unicorn Securities confirmed that 8 cheques in respect of HSBC dividends issued to Client L were deposited in Chan's personal account between May 2011 and December 2013. Copies of the cheques showed that Chan changed the payee name of Client L to himself and signed the cheques.
12. Chan's practice of depositing and retaining Client L's money in his personal accounts was known to Unicorn Securities and its other responsible officer but no steps were taken by them to stop it.
13. In addition, in July 2013, Chan instructed Unicorn Securities to withdraw 355 HSBC shares from Client L's account for distribution to the HSBC Clients who elected scrip dividends in the Dividend Event of 2013 (1st Interim) to cover up the failure of its staff to input the scrip dividend instruction in CCASS system. However, such withdrawal was procured without any written direction from Client L.
14. We are of the view that:
- (a) Unicorn Securities' connivance in Chan depositing client money in his personal bank accounts contravened the requirement to pay client money into a segregated account or to the client, and the prohibition from paying client money to any of its officers or employees under sections 4(4) and 4(6) of the Client Money Rules; and
 - (b) its withdrawal of securities from Client L's account without his written direction contravened sections 6(1)(b) and 10 of the Client Securities Rules which require a client's written direction before such withdrawal can be made.

⁵ Code of Conduct for Persons Licensed by or Registered with the Securities and Futures Commission.

Internal control deficiencies

15. The conduct of Unicorn Securities in the incidents regarding the Malpractice, the deposit of Client L's money in Chan's personal accounts, and the share withdrawal from Client L's account demonstrated:
 - (a) its failure to put in place adequate internal control procedures and operational capabilities to properly account for and properly handle client assets under General Principle 8 and paragraphs 4.3 and 11.1 of the Code of Conduct; and
 - (b) its failure to implement and maintain measures appropriate to ensuring compliance with the regulatory requirements relating to proper handling of client money and securities under General Principle 7 and paragraph 12.1 of the Code of Conduct.

Chan

16. The evidence shows that Chan masterminded the Malpractice, involved Unicorn Securities' staff in transferring clients' dividends to his personal accounts, and generated a profit through the Malpractice for himself and Client L. He was directly responsible for Unicorn Securities' failure to properly handle its clients' dividend entitlements.
17. Unicorn Securities' failure to safeguard Client L's money and securities were also attributable to Chan's conduct.
18. In addition to the above, the Malpractice and Unicorn Securities' mishandling of Client L's money and securities suggest that:
 - (a) Chan failed, as a member of Unicorn Securities' senior management, to ensure that it had in place effective internal controls to safeguard client assets and ensure compliance with relevant regulatory requirements, in breach of General Principles 7, 9 and paragraph 12.1 of the Code of Conduct. In particular, instead of setting appropriate standards for his staff to follow:
 - 1) he initiated, instructed and took active steps to mingle client money with his own money rather than ensuring segregation of client money; and
 - 2) he failed to observe his duty as a licensed person to ensure that client assets are promptly and properly accounted for and adequately safeguarded under General Principle 8 and paragraph 11.1 of the Code of Conduct; and
 - (b) he breached the trust which the clients placed in Unicorn Securities by deliberately acting contrary to their instructions when notifying CCASS their choices of dividend entitlements and by taking steps to make profit from the clients' dividends which the firm collected on their behalf.
19. We are of the view that Chan's conduct and failures have cast serious doubt on his ability to carry on regulated activities competently as well as his character and reliability, and fitness and propriety to remain licensed.
20. In determining the penalties, the SFC took into account:
 - (a) Unicorn Securities and Chan had abused the trust placed by their clients in the firm;

- (b) Unicorn Securities co-operated in resolving the disciplinary proceedings while Chan admitted to his misconduct;
- (c) Unicorn Securities engaged an external consultant to conduct a review of its systems and controls in relation to compliance with applicable regulatory requirements and has adopted an automated operation system to reduce the risk of fraud; and
- (d) there is no evidence that clients suffered any loss as a result of the malpractice.

Conclusion

21. In handling their clients' money and securities including their dividend entitlements, Unicorn Securities and Chan had failed to ensure compliance with regulatory requirements in relation to segregation and proper handling of client assets. Their acts of directing the clients' stock dividends to Chan and Client L and withdrawing securities from Client L's account without the client's written direction were in breach of the applicable regulatory requirements. Chan's deposit of client money into his personal account and Unicorn Securities' connivance to such act also breached their duty to ensure segregation of client money for the protection of client interests.
22. In addition, Unicorn Securities' and Chan's acts of electing stock dividends contrary to their clients' instructions and giving their dividends to Chan and Client L to make a profit without their clients' knowledge and consent abused the trust that clients placed in the firm.

證監會譴責益群證券有限公司並對其及其前負責人員處以罰款320萬

2016年3月14日

證券及期貨事務監察委員會（證監會）譴責益群證券有限公司（益群證券），並對其及其前負責人員陳海樹（男）分別處以罰款300萬元及20萬元，原因是他們在處理客戶的款項及證券時犯有缺失（註1及2）。

陳對益群證券在有關方面的缺失負有主要責任，故亦被暫時吊銷牌照，為期15個月，由2016年3月12日起至2017年6月11日止。

證監會發現，在2011年3月至2013年12月期間，益群證券不當地處理其客戶就滙豐控股有限公司（滙豐）股份的股息權益，在向香港中央結算有限公司呈交客戶就選擇現金股息還是代息股份（即滙豐股份）的指示時違反客戶的指示，及將客戶的股息給予他人。

益群證券曾經七次不理會客戶指示，一律為所有客戶選擇及收取代息股份。在向選擇以股代息的客戶分配代息股份後，益群證券將剩餘的代息股份存入陳的帳戶或一名客戶的帳戶。然後，陳在市場上出售該等滙豐股份，及向益群證券支付一筆相等於客戶現金股息權益的款額，以便向選擇現金股息的客戶支付有關款項。陳將他出售滙豐股份而收取的款額與須向益群證券支付的款額之間的利潤差額據為己有。

另外，益群證券曾經兩次為所有客戶選擇及收取現金股息。對於選擇代息股份的客戶，益群證券會將該等客戶的現金股息交予陳，然後陳會在市場上買入滙豐股份以滿足該等客戶收取代息股份的要求，並在過程中獲利。

證監會亦發現，益群證券縱容陳把客戶款項轉入他的個人帳戶，以及在未獲得必要的客戶書面指示的情況下，從一名客戶的帳戶提取證券。

益群證券的行為顯示其沒有設立足夠且有效的內部監控措施，以確保有關分開存管及妥善處理客戶資產的監管規定獲得遵守（註3）。

陳負責策劃及令該商號參與處理其客戶的股息權益的不當行為、主動安排及指示其職員以違反客戶指示的方式行事及將客戶的款項和證券轉入其個人帳戶，以及在未獲得必要的書面指示的情況下指示從客戶的帳戶提取股份。

證監會在釐定罰則時，已考慮到：

- 益群證券及陳濫用了客戶對該商號的信任；
- 益群證券在解決紀律處分行動一事上表現合作，而陳亦承認犯有失當行為；
- 益群證券已聘請外間顧問，對其在遵守適用的監管規定方面的系統及監控措施進行檢討，並已設立一套自動化操作系統，以減低發生欺詐的風險；及
- 並無證據顯示客戶因為有關的不當行為蒙受任何損失。

完

備註：

1. 益群證券根據《證券及期貨條例》獲發牌進行第1類（證券交易）受規管活動。
2. 陳根據《證券及期貨條例》獲發牌進行第1類（證券交易）受規管活動。他於1994年10月至2015年10月期間擔任益群證券的持牌代表及負責人員。陳亦是該商號的股東（直至2014年11月）及董事（直至2015年10月）。他現時並不隸屬任何持牌法團。
3. 《證券及期貨（客戶證券）規則》第5、6及10條以及《證券及期貨（客戶款項）規則》第4條規定，中介人須確保客戶證券及客戶款項應分開存管，並根據客戶的指示處理，以及不得將客戶證券及客戶款項轉移給該商號的高級人員或僱員。

有關紀律處分行動聲明載於證監會網站

最後更新日期：2016年3月14日

紀律處分行動聲明

紀律處分行動

1. 證券及期貨事務監察委員會（**證監會**）根據《證券及期貨條例》第 194 條公開譴責益群證券有限公司（**益群證券**）¹並處以罰款 300 萬元，以及暫時吊銷其前負責人員陳海樹先生（**陳**）²的牌照 15 個月（由 2016 年 3 月 12 日起至 2017 年 6 月 11 日止）並處以罰款 20 萬元。
2. 證監會採取上述紀律處分行動是因為發現：
 - (a) 益群證券：
 - (i) 沒有妥善處理其客戶的股息權益，特別是替其客戶就滙豐控股有限公司（股份代號：005）（滙豐）選擇與他們的指示相反的股息形式，並把客戶的現金股息／代息股份交予陳及另一名客戶（**客戶 L**）。陳負責處理有關現金股息／代息股份，令他及客戶 L 受惠³；
 - (ii) 未能保障客戶 L 的客戶款項和資產，縱容陳把客戶 L 的款項存入他的個人帳戶，以及在未獲得客戶 L 書面指示的情況下，從其帳戶提取股份；及
 - (iii) 沒有設立足夠且有效的內部監控措施，以妥善處理客戶資產及確保有關的監管規定獲得遵守；及
 - (b) 陳對益群證券的缺失負有直接責任：
 - (i) 他負責策劃及令該商號參與處理其客戶的股息權益的不當行為；
 - (ii) 益群證券沒有妥善處理客戶的款項和證券，是由於他的行為所致；
 - (iii) 他未能履行其作為益群證券高級管理層成員的職責，沒有設立足夠且有效的內部監控措施，以妥善處理客戶資產及確保有關的監管規定獲得遵守；及
 - (iv) 他違背了客戶對益群證券的信任。

¹ 益群證券根據《證券及期貨條例》獲發牌經營第 1 類（證券交易）受規管活動的業務。

² 陳根據《證券及期貨條例》獲發牌進行第 1 類（證券交易）受規管活動。他於 1994 年 10 月至 2015 年 10 月期間擔任益群證券的持牌代表及負責人員。陳亦是該商號的股東（直至 2014 年 11 月）及董事（直至 2015 年 10 月）。他現時並不隸屬任何持牌法團。

³ 陳會就所接獲的股息，安排付款或從市場購買股票，以供益群證券分派予客戶，從而按照客戶的原有指示清償他們的現金股息或代息股份權益。

事實摘要

益群證券

不當處理客戶的股息權益

3. 2011年3月至2013年11月期間，益群證券曾在滙豐的十次股息分派（**股息事件**）中，向香港中央結算有限公司提交電子指示，僅替持有滙豐股票的所有客戶（**滙豐客戶**）選擇單一種股息形式（即現金股息或代息股份）。
4. 然而，益群證券的紀錄顯示，其就該十次股息事件從滙豐客戶接獲的指示當中，每次均混合了現金股息及代息股份的選擇。曾與證監會會面的滙豐客戶確認，他們最終按其選擇的形式獲分配股息，但並不知道益群證券曾替他們選擇與他們的指示不符的股息形式。
5. 本會發現在該十次股息事件中，有九次涉及處理客戶的股息權益以令陳及客戶 L 受惠的不當行為（**不當行為**）⁴。不當行為的手法如下：
 - (a) 在替所有滙豐客戶選擇代息股份的股息事件中，陳會：
 - (i) 指示益群證券的職員把與客戶指示相反而收取的代息股份存入他或客戶 L 的帳戶；及
 - (ii) 把在他及客戶 L 的帳戶內涉及客戶的代息股份的股票出售。陳會安排就他及客戶 L 所接獲的股票向益群證券付款，而該商號會向選擇收取現金股息的客戶支付款項；
 - (b) 在替所有滙豐客戶選擇現金股息的股息事件中，陳會：
 - (i) 指示益群證券的職員把與客戶指示相反而收取的現金股息分配予他。益群證券會向陳發出一張相等於股息金額的支票，而陳會自行簽署該張支票；及
 - (ii) 使用該筆款項購買滙豐股票讓益群證券分派予選擇代息股份的客戶；及
 - (c) 陳及客戶 L 會保留在此過程中產生的利潤。
6. 不當行為分別令陳及客戶 L 合共獲利 95,426.34 元及 26,894.47 元。
7. 益群證券在不當行為中的行為違反了：
 - (a) 《證券及期貨(客戶證券)規則》（《**客戶證券規則**》）第 5(1)、6(1)(a)、6(1)(c)及 10 條，以及《證券及期貨(客戶款項)規則》（《**客戶款項規則**》）第 4(4)及 4(6) 條，當中規定中介人須確保客戶證券及客戶款項應分開存管，並根據客戶的指示處理，以及不得將客戶證券及客戶款項轉移給該商號的高級人員或僱員；及
 - (b) 《操守準則》⁵第 8 項一般原則及第 11.1 段，當中規定持牌法團須妥善地把客戶的資產加以記帳及令該等資產獲得充分的保障。
8. 此外，益群證券以與滙豐客戶的指示相反的方式行事，濫用了客戶對其的信任。

⁴ 益群證券在其中一次股息事件（即 2013 年（第一次中期）股息分派）中，替所有滙豐客戶選擇了現金股息，原因是其員工沒有把代息股份指示輸入中央結算系統。

⁵ 《證券及期貨事務監察委員會持牌人或註冊人操守準則》。

9. 鑑於上述情況，本會認為益群證券在不當行為中的行為，令人對該商號的品格及可靠程度，以及作為繼續獲發牌的適當人選的資格產生質疑。

未能保障客戶款項和資產

10. 陳獲客戶 L 授權，處理與出售股票所得款項以及所接獲現金股息有關的支票。在客戶 L 的要求下，陳自 2008 年 1 月開始透過其本身的銀行帳戶，把客戶 L 的款項轉入客戶 L 於新加坡的銀行帳戶。根據陳替客戶 L 保存的資金的紀錄顯示，於 2011 年 2 月至 2014 年 8 月期間，陳曾 21 次把合共 913,441 元的款項匯給客戶 L。
11. 益群證券確認，於 2011 年 5 月至 2013 年 12 月期間，有八張就滙豐股息發出予客戶 L 的支票存入了陳的個人帳戶。該等支票的副本顯示，陳把收款人姓名由客戶 L 改為他本人，然後簽署該等支票。
12. 陳把客戶 L 的款項存入及保留在其個人帳戶的做法，均為益群證券及其另一名負責人員所知悉，但他們並沒有採取步驟加以制止。
13. 此外，於 2013 年 7 月，陳指示益群證券從客戶 L 的帳戶提取 355 股滙豐股份，以用作分派予於 2013 年（第一次中期）股息事件中選擇代息股份的滙豐客戶，從而掩飾其員工沒有把代息股份指示輸入中央結算系統一事。然而，該項提取是在未獲得客戶 L 任何書面指示的情況下進行的。
14. 本會認為：
- (a) 益群證券縱容陳把客戶款項存入其個人銀行帳戶，違反了根據《客戶款項規則》第 4(4)及 4(6)條須把客戶款項存入獨立帳戶或支付予客戶，以及禁止把客戶款項支付予其任何高級人員或僱員的規定；及
 - (b) 益群證券在未獲得客戶 L 書面指示的情況下，從其帳戶提取證券，違反了根據《客戶證券規則》第 6(1)(b)及 10 條須在作出該等提取前獲得客戶書面指示的規定。

內部監控缺失

15. 益群證券在不當行為、把客戶 L 的款項存入陳的個人帳戶以及從客戶 L 的帳戶提取股份的事件中的行為顯示：
- (a) 其未能根據《操守準則》第 8 項一般原則以及第 4.3 及 11.1 段設有足夠的內部監控程序及操作能力，以妥善地把客戶的資產加以記帳及令該等資產獲得適當處理；及
 - (b) 其未能根據《操守準則》第 7 項一般原則及第 12.1 段實施及維持適當的措施，以確保有關妥善處理客戶款項及證券的監管規定獲得遵守。

陳

16. 證據顯示陳負責策劃不當行為及令益群證券的員工參與把客戶的股息轉入他的個人帳戶，以及透過不當行為令他自己及客戶 L 賺取利潤。他對益群證券沒有妥善處理其客戶的股息權益一事負有直接責任。
17. 益群證券未能保障客戶 L 的款項及證券，亦是由於陳的行為所致。
18. 除此之外，不當行為及益群證券不當地處理客戶 L 的款項和證券顯示：

- (a) 陳作為益群證券的高級管理層成員，未能確保益群證券設立有效的內部監控措施，以保障客戶資產及確保有關的監管規定獲得遵守，違反了《操守準則》第 7 及 9 項一般原則以及第 12.1 段。特別是，他並沒有制訂適當的標準供其員工遵守，反而：
- 1) 主動安排、指示及採取積極步驟，將客戶資金與他自己的資金混合起來，而並非確保把客戶資金分開存管；及
 - 2) 未能根據《操守準則》第 8 項一般原則及第 11.1 段履行他作為持牌人的職責，確保客戶的資產盡快及妥善地加以記帳及獲得充分的保障；及
- (b) 違背客戶對益群證券的信任，當向中央結算系統通知客戶的股息權益選擇時，蓄意地以與客戶指示相反的方式行事，並採取步驟從商號代表客戶領取的股息中賺取利潤。
19. 本會認為，陳的行為及缺失令人對其是否有能力稱職地進行有關的受規管活動，以至其品格及可靠程度，以及作為繼續獲發牌的適當人選的資格產生重大質疑。
20. 證監會在釐定罰則時，已考慮到：
- (a) 益群證券及陳濫用了客戶對該商號的信任；
 - (b) 益群證券在解決紀律處分行動一事上表現合作，而陳亦承認犯有失當行為；
 - (c) 益群證券已聘請外間顧問，對其在遵守適用的監管規定方面的系統及監控措施進行檢討，並已設立一套自動化操作系統，以減低發生欺詐的風險；及
 - (d) 並無證據顯示客戶因為有關的不當行為蒙受任何損失。

結論

21. 在處理客戶的款項及證券（包括他們的股息權益）時，益群證券及陳沒有確保遵守有關分開存管及妥善處理客戶資產的監管規定。他們把客戶的股息轉移至陳及客戶 L，以及在未獲得客戶書面指示下從客戶 L 的帳戶提取證券的行為，違反了適用的監管規定。陳把客戶款項存入他的個人帳戶，以及益群證券縱容該項行為，亦違反了他們須確保把客戶款項分開存管，從而保障客戶權益的責任。
22. 此外，益群證券及陳以與客戶指示相反的方式選擇股息，以及在其客戶不知情及未獲他們同意的情況下，把他們的股息交予陳及客戶 L 以賺取利潤的行為，濫用了客戶對該商號的信任。