

STATEMENT OF DISCIPLINARY ACTION

The Disciplinary Action

1. The Securities and Futures Commission (**SFC**) has publicly reprimanded The Bank of East Asia, Limited (**BEA**) and fined it HK\$4.2 million pursuant to section 196 of the Securities and Futures Ordinance (**SFO**).
2. The disciplinary action is taken in relation to BEA's failure to segregate its client securities from proprietary securities into separate accounts maintained at two external custodians as required by the Securities and Futures (Client Securities) Rules (**Client Securities Rules**).

Summary of Facts

3. Section 5(1) of the Client Securities Rules requires an intermediary or an associated entity of an intermediary which receives any client securities to ensure client securities are deposited in safe custody in a segregated account which is designated as a trust account or client account established or maintained in Hong Kong by the intermediary or associated entity for the purpose of holding client securities with an authorized financial institution, an approved custodian or other intermediaries licensed for dealing in securities, as soon as reasonably practicable.
4. Further, General Principle 8 (Client assets) and paragraph 11.1(a) (Handling of client assets) of the Code of Conduct for Persons Licensed by or Registered with the SFC (**Code of Conduct**) require a licensed corporation or registered institution to ensure that client assets are promptly and properly accounted for and adequately safeguarded.
5. Licensed corporations or registered institutions are also required under General Principle 7 (Compliance) and paragraph 12.1 (Compliance: in general) of the Code of Conduct to comply with, and implement and maintain measures appropriate to ensuring compliance with, relevant regulatory requirements.
6. Between November 2015 and January 2016, the Hong Kong Monetary Authority (**HKMA**) conducted an on-site examination on BEA and expressed concerns regarding BEA's non-compliance with section 5(1) of the Client Securities Rules.
7. In December 2016, following further enquiries from the HKMA, BEA made a report to the SFC and the HKMA regarding its failure to deposit client securities in a designated segregated account in accordance with the Client Securities Rules.
8. The SFC conducted an investigation and found that BEA failed to segregate its client securities and proprietary securities in accounts maintained at two external custodians, Central Clearing and Settlement System (**CCASS**) and Sumitomo Mitsui Banking Corporation, Tokyo (**SMBC**), from April 2003 to December 2016.

CCASS accounts

9. Although BEA opened a custodian account and a number of sub-accounts with CCASS in May 1992 for the purpose of safekeeping its client securities and proprietary securities, it failed to segregate client securities and proprietary securities, and instead kept them together in one account from 1 April 2003 to 15 December 2016.
10. It was not until 16 December 2016 that BEA segregated its client securities from proprietary securities held with CCASS by transferring its proprietary securities into a separate designated account at CCASS.

SMBC accounts

11. Similarly, BEA opened two accounts at SMBC in January 2003 for the purpose of safekeeping client securities and proprietary securities separately. However, from 1 April 2003 to 10 October 2016, BEA did not segregate client securities¹ and proprietary securities and kept them together in one account.
12. BEA segregated its client securities and proprietary securities held with SMBC on 11 October 2016 following the transfer of its proprietary securities into a separate designated account at SMBC.
13. According to BEA, its failure to segregate client securities and proprietary securities was caused by its belief that the identification and segregation of client securities and proprietary securities in its internal electronic accounting records was sufficient to comply with section 5(1) of the Client Securities Rules.

Conclusion

14. Having considered all the circumstances of this case, the SFC is of the view that BEA has breached section 5(1) of the Client Securities Rules, General Principles 7 and 8 and paragraphs 11 and 12.1 of the Code of Conduct.
15. In deciding the disciplinary sanction against BEA, the SFC took into account the following considerations:
 - (a) there is no evidence of client loss as a result of BEA's breaches;
 - (b) BEA's breaches lasted for a substantial period;
 - (c) BEA has taken action to segregate its client securities and proprietary securities upon discovery of its regulatory breaches;
 - (d) BEA has also taken steps to enhance its internal systems and controls to avoid recurrence of similar breaches; and
 - (e) BEA's co-operation with the SFC in resolving its concerns and accepting the SFC's findings and disciplinary action.

¹ While the Japan listed securities held in BEA's accounts at SMBC do not fall within the ambit of the Client Securities Rules as they are listed or traded outside of Hong Kong, the provisions in the Code of Conduct requiring BEA to adequately safeguard client assets and ensure client assets are promptly and properly accounted for would still apply.