

STATEMENT OF DISCIPLINARY ACTION

The Disciplinary Action

1. The Securities and Futures Commission (**SFC**) has suspended the licence of Mr Mung Wai Sun (**Mung**)¹, a former licensed representative of Ewarton Securities Limited (**Ewarton**), for 9 months pursuant to section 194 of the Securities and Futures Ordinance (**SFO**).
2. The SFC found that, during the period from 15 May 2017 to 23 March 2018 (**Relevant Period**), Mung:
 - (a) effected transactions for a client (**Client**) on a discretionary basis without obtaining the Client's prior written authorisation; and
 - (b) failed to ensure that transactions undertaken on behalf of the Client were given priority over orders for his own account.
3. Mung's conduct was in breach of General Principles 2 and 6 and paragraphs 7.1(a)(ii) and 9.1 of the Code of Conduct for Persons Licensed by or Registered with the Securities and Futures Commission (**Code of Conduct**).

Summary of Facts

4. On 11 May 2017, upon Mung's introduction, the Client opened a margin account at Ewarton (**Account**). Mung was the account executive responsible for the Account.

Failure to obtain written authorisation to operate a discretionary account

5. In April and May 2018, the Client lodged a complaint to Ewarton and the SFC against Mung, alleging (*inter alia*) that while she had orally authorised Mung to operate the Account on a discretionary basis, Mung had not obtained proper authorisation to manage her account.
6. Mung admitted that during the Relevant Period, the Client had never placed any specific order for any of the trades in the Account. He had been conducting trades in the Account on the basis of the client's requests as he understood, i.e. that he would trade for the Account by replicating the trades he would execute in his own account or whenever there were good prospects in the market.
7. However, Mung did not obtain proper written authorisation from the Client to operate the Account on a discretionary basis, seek Ewarton's senior management's approval for the discretionary arrangement in the Account, or designate the Account as a discretionary account in the client agreement.
8. Mung's conduct was not in compliance with Ewarton's internal procedures, which require that an authorisation letter be prepared by the Client and submitted to Ewarton for review and approval in order to set up a

¹ Mung is licensed under the SFO to carry on Type 1 (dealing in securities) regulated activity. He was accredited to Ewarton from 30 August 2007 to 14 August 2020. He is currently not accredited to any licenced corporation.

discretionary account. As a result of Mung's failure, Ewarton's management was not aware of the Account's discretionary nature and could not properly monitor or supervise Mung's operation of the Account.

9. The conduct of Mung also constituted a breach of:
 - (a) General Principle 2 of the Code of Conduct, which requires a licensed person to act with due skill, care and diligence, in the best interests of its clients and the integrity of the market, in conducting business activities; and
 - (b) paragraph 7.1(a)(ii) of the Code of Conduct, which requires a licensed person to obtain written authorisation from a client before he can effect transactions for a client without the client's specific authorisation.

Failure to ensure priority for client orders

10. Separately, the SFC obtained from Ewarton records of all trades executed during the Relevant Period for Mung's personal account on one hand, and for the Account on the other. A comparison of these transaction records revealed that:
 - (a) there were at least 542 pairs of transactions where orders placed for Mung were within 30 seconds ahead of orders in the same securities and same direction placed for the Account; and
 - (b) 133 of these 542 pairs of transactions ended up with more favourable outcomes to Mung's personal account, either because:
 - (i) the orders placed for Mung's account were executed at a better price than those placed for the Account (where Mung was able to buy at a lower price or sell at a higher price). Mung was \$14,300 better off than the client from these transactions; or
 - (ii) Mung has been able to execute the sale or purchase of more shares at the same price than the client.
11. Whilst it does not appear that Mung has deliberately sought to take advantage of the Client under these 133 pairs of transactions, the fact that at least 542 pairs of such transactions have been identified in the first place shows that Mung neglected to strictly ensure the priority of the Client's transactions over his personal transactions.
12. The conduct of Mung constituted a breach of:
 - (a) General Principle 6 of the Code of Conduct, which requires a licensed person to try avoiding conflicts of interest, and when such conflicts cannot be avoided, the licensed person should ensure that his clients are fairly treated; and
 - (b) paragraph 9.1 of the Code of Conduct, which requires that transactions undertaken on behalf of clients should have priority over orders for the account of the licensed person.

Conclusion

13. Having considered all the circumstances, the SFC is of the view that Mung has been guilty of misconduct and/or is not fit and proper to remain licensed.
14. In reaching the decision to take the disciplinary action set out in paragraph 1 above, the SFC has taken into account all relevant circumstances, including the duration of Mung's conduct, his remorse and his otherwise clean disciplinary record.