

## STATEMENT OF DISCIPLINARY ACTION

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### The Disciplinary Action

1. The Securities and Futures Commission (**SFC**) has banned Mr Ma Kwok Ho (**Ma**), a former licensed representative of Win Wong Securities Limited (**Win Wong**), from re-entering the industry for two years pursuant to section 194 of the Securities and Futures Ordinance.
2. The disciplinary action is taken because Ma had effected discretionary trades in the accounts of three clients (**Clients**) without obtaining their prior written authorisation between around March 2011 and January 2017.

### Summary of facts

3. General Principle 2 of the Code of Conduct for Persons Licensed by or Registered with the Securities and Futures Commission (**Code of Conduct**) requires a licensed person to act with due skill, care and diligence, and in the best interests of his clients in conducting business activities.
4. Paragraph 7.1(a)(ii) of the Code of Conduct stipulates that a licensed person should not effect a transaction for a client unless before the transaction is effected, the client has authorised in writing the licensed person or any person employed by it to effect transactions for the client without the client's specific authorisation.
5. Paragraphs 7.1(b) and 7.1(c) of the Code of Conduct require a licensed person to explain the terms of the authority to the client, confirm at least on an annual basis whether the client wishes to revoke such authority, and designate such account as a discretionary account. Paragraph 7.1(d) of the Code of Conduct requires senior management to approve the opening of a discretionary account.
6. Win Wong did not allow discretionary accounts to be opened or its account executives to conduct trades in client accounts on a discretionary basis. It also did not allow clients to authorise a third party to operate their trading accounts.
7. During a circularisation exercise conducted on Win Wong in July 2017, Client K and Client T reported discrepancies in their margin account balances. In addition, Client C wrote to Win Wong in August 2017 complaining that the investment amount in his account exceeded his financial capacity.
8. Client T is Ma's wife and opened a margin securities trading account at Win Wong in May 2008. She was aware since at least 2011 that Ma conducted trades in her margin account. Ma ceased purchasing stocks in her account in around October 2016.
9. Client K and Client C opened margin securities trading accounts at Win Wong in March 2011 and May 2011. Ma was their account executive at all material times. Their accounts recorded trades from March 2011 to January 2017.
10. While the evidence does not suggest that Ma had conducted trading in the Clients' accounts (**Accounts**) without their authorisation, he admitted that he

had traded in the Accounts on a discretionary basis without obtaining the Clients' written authorisation.

11. As a licensed person, Ma should conduct trades for a client on a discretionary basis only when there is a written authorisation from the client, and should have known that paragraphs 7.1(b) to 7.1(d) of the Code of Conduct require specific procedures to be followed for the opening and management of discretionary accounts (see paragraph 5 above). As Win Wong did not allow discretionary trades for clients, the Accounts were not designated as discretionary accounts by the firm. In the circumstances, the interests of the Clients were prejudiced as they were deprived of the protection to which they were entitled under paragraph 7.1 of the Code of Conduct.
12. Further, a written authorisation, with a clearly defined scope of authority and precise terms and conditions on how the discretion will be exercised, is important because it protects the client from the risk of unauthorised trades and the licensed corporation from unnecessary claims in the case the client disputes the trades.
13. The SFC is of the view that Ma breached paragraph 7.1(a)(ii) of the Code of Conduct by conducting trades for the Accounts on a discretionary basis without obtaining the Clients' prior written authorisation. His conduct also falls short of the standards expected of a licensed person in that he failed to act with due skill, care and diligence and in the best interests of his clients, in breach of General Principle 2 of the Code of Conduct.

## **Conclusion**

14. The SFC is of the view that Ma is guilty of misconduct and his fitness and properness to carry on regulated activities have been called into question.
15. In deciding the disciplinary sanction set out in paragraph 1 above, the SFC has taken into account all relevant circumstances, including:
  - (a) Ma admitted that he had operated the Accounts on a discretionary basis without obtaining written authorisation from the Clients during the SFC's investigation;
  - (b) his failure affected the accounts of three clients;
  - (c) a deterrent message needs to be sent to the industry that similar conduct will not be tolerated; and
  - (d) Ma has no previous disciplinary record with the SFC.

## STATEMENT OF DISCIPLINARY ACTION

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### The Disciplinary Action

1. The Securities and Futures Commission (**SFC**) has banned Mr Gee King Yip (**Gee**), a former licensed representative of Win Wong Securities Limited (**Win Wong**), from re-entering the industry for 16 months pursuant to section 194 of the Securities and Futures Ordinance.
2. The disciplinary action is taken because Gee:
  - (a) traded in stocks jointly with a client of Win Wong in the client's accounts, without having his own transactions separately recorded and clearly identified as transactions for an employee of Win Wong between May 2015 and August 2016; and
  - (b) allowed another licensed representative employed by Win Wong to conduct discretionary trades in the account of his client without obtaining the client's prior written authorisation between November 2011 and October 2016.

### Summary of facts

#### *Trading jointly with client*

3. General Principle 2 of the Code of Conduct for Persons Licensed by or Registered with the Securities and Futures Commission (**Code of Conduct**) requires a licensed person to act with due skill, care and diligence, and in the best interests of his clients in conducting business activities.
4. Paragraph 12.2(b) of the Code of Conduct requires that in the event that employees of a licensed person are permitted to deal or trade for their own accounts in securities, futures contracts or leveraged foreign exchange contracts:
  - (a) any transactions for employees' accounts and related accounts be separately recorded and clearly identified in the records of the licensed person (*paragraph 12.2(b)(v)*); and
  - (b) transactions of employees' accounts and related accounts be reported to and actively monitored by senior management of the licensed person who should not have any beneficial or other interest in the transactions and who should maintain procedures to detect irregularities and ensure that the handling by the licensed person of these transactions or orders is not prejudicial to the interests of the licensed person's other clients (*paragraph 12.2(b)(vi)*).
5. Win Wong's operation manual applicable during the relevant period has the following provisions on employee accounts:
  - (a) all employees who request to open accounts at the firm for trading in stocks are required to follow account opening procedures applicable to regular clients;

- (b) employee accounts are required to be approved by the responsible officer of Win Wong; and
  - (c) each employee account is to be closely monitored by the responsible officer and the Compliance Team to ensure normal operation.
6. Gee joined Win Wong as an account executive (**AE**) in 2006 and started to handle the account of Client W in around May 2015.
  7. Gee admitted that he and Client W traded jointly in two stocks in Client W's accounts at Win Wong between May 2015 and August 2016. They shared the investments in the two stocks and the ensuing losses equally.
  8. By trading in stocks in Client W's accounts instead of his own employee account, Gee failed to comply with Win Wong's policy as set out in paragraph 5 above, deprived Win Wong of the opportunity to monitor his trading activities of the stocks, and prevented it from performing the following duties under paragraphs 12.2(b)(v) and 12.2(b)(vi) of the Code of Conduct:
    - (a) ensuring that any transactions for employees' accounts and related accounts be separately recorded and clearly identified in the records of Win Wong and actively monitored by its senior management; and
    - (b) ensuring that proper procedures be applied to detect irregularities of employees' transactions and that Win Wong's handling of the transactions is not prejudicial to the interests of its other clients.
  9. The SFC is of the view that Gee's conduct of trading in stocks jointly with Client W in the client's accounts demonstrated that he failed to act with due skill, care and diligence in conducting business activities of Win Wong, and in the best interests of its clients, in breach of General Principle 2 of the Code of Conduct.

*Allowing another licensed representative to conduct discretionary trades in client's account without written authorisation*

10. Paragraph 7.1(a)(ii) of the Code of Conduct stipulates that a licensed person should not effect a transaction for a client unless before the transaction is effected, the client has authorised in writing the licensed person or any person employed by it to effect transactions for the client without the client's specific authorisation.
11. Paragraphs 7.1(b) and 7.1(c) of the Code of Conduct require a licensed person to explain the terms of the authority to the client, confirm at least on an annual basis whether the client wishes to revoke such authority, and designate such account as a discretionary account. Paragraph 7.1(d) of the Code of Conduct requires senior management to approve the opening of a discretionary account.
12. Win Wong did not allow discretionary accounts to be opened or its AEs to conduct trades in client accounts on a discretionary basis. It also did not allow clients to authorise a third party to operate their trading accounts.
13. When Gee acted as the AE of Client T of Win Wong between November 2011 and October 2016, he allowed another licensed representative (**M**) of Win

Wong to conduct discretionary trades in Client T's account without written authorisation. M is the husband of Client T.

14. Gee knew that the trades that M conducted in Client T's account were not made according to her specific instructions because he did not find telephone records of her instructions when he checked the records.
15. Although he was aware that M conducted discretionary trades in Client T's account without her written authorisation, he did not appear to see any issue with the arrangement. He took no steps to check, and/or enquire with Win Wong's senior management, as to whether M's discretionary trading in Client T's account was permitted by the firm.
16. By allowing M to conduct discretionary trading in Client T's account without her written authorisation, Gee failed to ensure that discretionary trades were only conducted in Client T's account with her written authorisation. Gee's conduct therefore facilitated a breach of paragraph 7.1(a)(ii) of the Code of Conduct. As Client T's account was not designated as a discretionary account by Win Wong, her interests were prejudiced as she was deprived of the protection to which she was entitled under paragraph 7.1 of the Code of Conduct.
17. Further, a written authorisation, with a clearly defined scope of authority and precise terms and conditions on how the discretion will be exercised, is important because it protects the client from the risk of unauthorised trades and the licensed corporation from unnecessary claims in the case the client disputes the trades.
18. The SFC is of the view that Gee's conduct of allowing M to conduct trades for Client T's account on a discretionary basis without obtaining her prior written authorisation further demonstrated that Gee failed to act with due skill, care and diligence in conducting business activities of Win Wong, and in the best interests of its clients, in breach of General Principle 2 of the Code of Conduct.

## **Conclusion**

19. The SFC is of the view that Gee is guilty of misconduct and his fitness and properness to carry on regulated activities have been called into question.
20. In deciding the disciplinary sanction set out in paragraph 1 above, the SFC has taken into account all relevant circumstances, including:
  - (a) Gee admitted that he had traded in stocks jointly with Client W in his accounts during the SFC's investigation;
  - (b) the ability to carry on regulated activities diligently and act in clients' best interests is fundamental to the fitness and properness of a licensed person;
  - (c) a deterrent message needs to be sent to the industry that similar breaches are not acceptable; and
  - (d) Gee has no previous disciplinary record with the SFC.