

STATEMENT OF DISCIPLINARY ACTION

The Disciplinary Action

1. The Securities and Futures Commission (**SFC**) has reprimanded and fined CSC Futures (HK) Limited (**CSC**)¹ \$4.95 million pursuant to section 194 of the Securities and Futures Ordinance (**SFO**).
2. The disciplinary action is taken because CSC failed to:
 - (a) perform adequate due diligence on the customer supplied systems (**CSSs**)² used by clients for placing orders, and assess and manage the associated money laundering and terrorist financing (**ML/TF**) and other risks; and
 - (b) establish effective monitoring system to detect, assess and conduct relevant enquiries on suspicious money movements in client accounts.

Summary of Facts

A. *Background*

3. The SFC received a complaint against various licensed corporations (**LCs**), including CSC, for allowing clients to place orders to their broker supplied system (**BSS**)³ through a software called Xinguanjia (**XGJ**).
4. The complainant alleged that XGJ allowed the LCs' clients to create sub-accounts under their accounts maintained with the LCs, and the clients solicited investors in Mainland China to trade through the sub-accounts via XGJ without having to open separate securities accounts with the LCs in Hong Kong.
5. Between January 2017 and December 2018 (**Relevant Period**), CSC has permitted 100 clients to use their designated CSSs, including XGJ, to place orders to its BSSs.

B. *Failure to perform adequate due diligence on the CSSs and assess and manage the associated ML/TF and other risks*

6. CSC did not have any written policies regarding the approval process for the use of the CSSs. Before allowing its clients to connect their CSSs to its BSS, CSC would require its clients to apply for authorisation from the supplier of its BSS.

¹ CSC is licensed to carry on Type 1 (dealing in securities), Type 2 (dealing in futures contracts), Type 4 (advising on securities) and Type 5 (advising on futures contracts) regulated activities under the SFO.

² A CSS is a trading software developed and/or designated by the clients that enables them to conduct electronic trading through the Internet, mobile phones and other electronic channels.

³ BSSs are trading facilities developed by exchange participants or vendors that enable the exchange participants to provide electronic trading services to investors through the internet, mobile phones, and other electronic channels.

7. CSC did not perform any due diligence on the CSSs used by its clients before allowing them to be connected to its BSS. The test performed by CSC was limited to checking if the CSSs were compatible with CSC's BSS.
 8. The supplier of its BSS also did not conduct any due diligence on the reliability and security of the CSSs because this was not within its scope of work.
 9. Without thorough knowledge of the features and functions of the CSSs, CSC was not in a position to properly assess the ML/TF and other risks associated with the use of the CSSs. Neither did it implement any appropriate measures and controls to mitigate and manage such risks.
 10. In the absence of proper control over the use of CSSs by its clients, CSC has exposed itself to the risks of improper conduct such as unlicensed activities, money laundering, nominee account arrangement and unauthorized access to client accounts.
- C. *Failure to establish effective monitoring system to detect, assess and conduct relevant enquiries on suspicious money movements in client accounts*
11. The SFC's review of the fund movements in sample client accounts showed that the amounts of deposits made into the accounts of five clients (**Five Clients**) were incommensurate with their financial profiles declared in their account opening documents, which were unusual and/or suspicious (**Anomalies**).
 12. CSC did not require its staff to monitor the deposits in its client accounts to ensure they were commensurate with their declared financial profiles. There are also no records indicating CSC was aware of the Anomalies and had made relevant enquiries on the suspicious money movements in the Five Clients' accounts.
 13. The above shows that CSC has failed to establish an effective monitoring system to detect, assess and conduct relevant enquiries on suspicious money movements in client accounts.

The SFC's findings

14. CSC's failures set out above constitute breaches of:
 - (a) General Principle (**GP**) 2 of the Code of Conduct for Persons Licensed by or Registered with the Securities and Futures Commission (**Code of Conduct**), which requires an LC to act with due skill, care and diligence, in the best interests of its clients and integrity of the market in conducting its business activities.
 - (b) GP 3 and paragraph 4.3 of the Code of Conduct, which provide that an LC should have and employ effectively the resources and procedures which are needed for the proper performance of its business activities and have internal control procedures and operational capabilities which can be reasonably expected to protect its operations and its clients from financial loss arising from theft, fraud, and other dishonest acts, professional misconduct or omissions.

- (c) Section 23 of Schedule 2 to the Anti-Money Laundering and Counter-Terrorist Financing Ordinance (**AMLO**) and paragraph 2.1 of the Guideline on Anti-Money Laundering and Counter-Terrorist Financing (April 2015, March 2018 and November 2018 editions) (**AML Guideline**), which require an LC to mitigate the risks of ML/TF and prevent contravention of any customer due diligence and record keeping requirements under the AMLO. To ensure compliance with this requirement, the LC should:
 - (i) establish and implement adequate and proper internal anti-money laundering (**AML**) and counter-financing of terrorism (**CFT**) policies, procedures and controls pursuant to paragraph 2.2 of the AML Guideline; and
 - (ii) assess the risks of any new products and services (especially those that may lead to misuse of technological developments or facilitate anonymity in ML/TF schemes) before they are introduced and ensure appropriate additional measures and controls are implemented to mitigate and manage the associated ML/TF risks pursuant to paragraph 2.3 of the AML Guideline.
- (d) Section 5(1)(b) of Schedule 2 to the AMLO and paragraph 5.1(b) of the AML Guideline, which require an LC to continuously monitor its business relationship with the clients by monitoring their activities to ensure that they are consistent with its knowledge of the clients and the clients' nature of business, risk profile and source of funds.
- (e) Section 5(1)(c) of Schedule 2 to the AMLO and paragraphs 5.1(c), 5.10 and 5.11 of the AML Guideline, which require an LC to identify transactions that are complex, large or unusual or patterns of transactions that have no apparent economic or lawful purpose, make relevant enquiries to examine the background and purpose of the transactions, document the enquiries made (and their results), and report the findings to the Joint Financial Intelligence Unit where there is any suspicion of ML/TF. Pursuant to paragraph 7.11 of the AML Guideline, where a transaction is inconsistent in amount, origin, destination, or type with a client's known, legitimate business or personal activities, the transaction should be considered as unusual and the LC should be put on alert.

Conclusion

15. Having considered all relevant circumstances, the SFC is of the opinion that CSC is guilty of misconduct.
16. In deciding the disciplinary sanction set out in paragraph 1 above, the SFC has taken into account all relevant circumstances, including:
 - (a) CSC's failures to diligently monitor its clients' activities and put in place adequate and effective AML/CFT systems and controls are serious as they could undermine public confidence in, and damage the integrity of, the market;
 - (b) a strong deterrent message needs to be sent to the market that such failures are not acceptable;

- (c) there has been a change in CSC's senior management after the Relevant Period;
- (d) CSC cooperated with the SFC in resolving the SFC's concerns; and
- (e) CSC has an otherwise clean disciplinary record.