

STATEMENT OF DISCIPLINARY ACTION

The Disciplinary Action

1. The Securities and Futures Commission (**SFC**) has suspended Singh Amit Kishan (**Singh**)¹, a former employee of Bank Julius Baer & Co. Ltd. (**Julius Baer**), for seven months pursuant to section 194 of the Securities and Futures Ordinance.
2. The SFC found that:
 - (a) between 17 December 2018 and 11 February 2019, Singh misrepresented to Julius Baer that he had a face-to-face meeting with a client (**Client**) on 10 December 2018 in Hong Kong as part of the account opening procedure required by Julius Baer; and
 - (b) between 21 June 2019 and 20 February 2020, Singh advised the Client to make 14 transactions in a manner which created a false appearance that they were unsolicited trades when they were not so. Among these 14 trades, 11 trades concerned products which were not allowed for solicitation under Julius Baer's then applicable policies and would otherwise not have been allowed to proceed, and the other three involved concentration risk and would require pre-trade approval had they been solicited, which Singh did not obtain.

Summary of Facts

- A. *Misrepresentation of a face-to-face meeting with the Client for account opening*
3. Singh was introduced to the Client in or around 2016 when he was employed by another financial institution. The Client opened an account with that institution and Singh was his relationship manager (**RM**).
4. Singh joined Julius Baer on or around 8 November 2018 as a private banker responsible for onboarding clients and managing their portfolios, and the Client eventually transferred his banking relationship to Julius Baer.
5. Julius Baer's internal policy in relation to account opening at the time provided that a face-to-face meeting is an important part of the overall client due diligence (**CDD**) process, and in general, Julius Baer will not establish a private banking relationship without a face-to-face meeting with a customer. The RM should document the details of the meeting, eg, date and time of the meeting, place of meeting, name of attendees, summary of discussions (eg, purpose of the meeting), etc in a call report.
6. According to Julius Baer, a face-to-face meeting was a pre-requisite to account opening and was required to take place before the account could be opened.

¹ Singh was a relevant individual engaged by JB in respect of Type 1 (dealing in securities) and Type 4 (advising on securities) regulated activities between 28 November 2018 and 10 June 2020. He is currently licensed by the SFC and accredited to Carret Private Capital Limited to carry on Type 1 (dealing in securities), Type 4 (advising on securities) and Type 9 (asset management) regulated activities.

7. **On 17 December 2018, Singh submitted a meeting log to Julius Baer which stated that a meeting took place at 18:30 on 10 December 2018 between Singh and the Client in Hong Kong for the purpose of account opening (Meeting Log).** Singh modified the Meeting Log on 31 January 2019 and 11 February 2019, but all versions of the Meeting Log mentioned that a meeting was held at a venue in Hong Kong during which (a) the account opening process was explained to the Client and all account opening documents were provided; (b) required documents such as ID, passport, address proof, were “cited” (*sic*) in original and copies were made; and (c) relevant account opening disclosures were made to the Client and documents were provided accordingly.
8. **Singh also signed as a witness on the Client’s Account Opening Application form dated 10 December 2018 and other documents.**
9. **Singh did not have a face-to-face meeting with the Client for the purpose of the account opening at Julius Baer. Instead, he spoke with the Client on the phone and conducted the account opening, and the know-your-client (KYC) and due diligence on the Client during the telephone call. Singh also did not witness the Client’s signing of his Account Opening Application form.**
10. Singh’s conduct has circumvented the account opening procedures and KYC / CDD controls which Julius Baer put in place. His conduct constitutes breaches of General Principle (GP) 2 and paragraph 5.1² of the Code of Conduct for Persons Licensed by or Registered with the Securities and Futures Commission (**Code of Conduct**):
 - (a) GP 2 of the Code of Conduct requires a licensed or registered person to act with due skill, care and diligence, in the best interests of its clients and the integrity of the market; and
 - (b) paragraph 5.1(a) of the Code of Conduct requires a licensed or registered person to take all reasonable steps to establish the true and full identity of each of its clients, and of each client’s financial situation, investment experience, and investment objectives. Where an account opening procedure other than a face-to-face approach is used, it should be one that satisfactorily ensures the identity of the client. Where the account opening documents are not executed in the presence of an employee of the licensed or registered person, the signing of the client agreement and sighting of related identity documents should be certified by certain specified individuals³; and paragraph 5.1(b) of the Code of Conduct further provides alternative procedural steps to be followed for proper verification of the identity of the client⁴.

² The applicable version refers to paragraph 5.1 of the November 2018 Twenty-first edition of the Code of Conduct.

³ Any other licensed or registered person, an affiliate of a licensed or registered person, a Justice of the Peace, or a professional person such as a branch manager of a bank, certified public accountant, lawyer or notary public.

⁴ The provision requires, among others, the licensed or registered person to obtain and encash a cheque with an amount not less than HK\$10,000, and bearing the client’s name as shown in his identity document and the same client’s signature as the one on the client agreement. The client should be informed of this account opening procedure and proper records must be kept by the licensed or

B. *Creating a false appearance of unsolicited trades*

11. Julius Baer had put in place internal policies and guidelines which set out the products that its staff (including Singh) can solicit or recommend to clients. Under such policies and guidelines:
- (a) “Solicited” and “unsolicited” trades refer to the following:
 - (i) *Solicited*: Staff recommends the client with investment ideas and recommendations for a specific investment product based on the client’s personal circumstances. If staff counter-proposes another investment idea or product, the transaction is considered as “reverse solicited”.
 - (ii) *Unsolicited*: Client contacts staff with the detailed investment idea and instruction containing sufficient specific details to identify the product concerned for execution.
 - (b) Staff should, in general, only solicit an investment product which meets certain criteria or is covered by Julius Baer’s internal recommended product list or investment ideas (**Product Requirement**).
 - (c) Staff should obtain pre-trade exceptional approval from their team head or group head for transactions with concentration risk when conducting solicited trades (including reverse solicited trades) (**Concentration Requirement**).
12. Singh attended Julius Baer’s compliance training on 27 November 2018, the content of which included the Product Requirement and Concentration Requirement.
13. Between 24 April 2019 and 20 February 2020, there were a total of 49 purchase transactions in the Client’s account with Julius Baer, among which 31 were marked as “unsolicited”. Among these 31 transactions, the SFC found that 14 trades were in fact solicited (**14 Trades**). The Client also confirmed with the SFC that each of the 14 Trades was initiated by Singh.
14. From the available communication records between Singh, the Client and two assistant relationship managers who assisted Singh at Julius Baer (**ARMs**), the SFC found that each of the 14 Trades was initiated with a text message(s) from Singh via a mobile messaging application platform setting out the precise description of the investment product to be bought, and the correspondences that led to the execution of the trade follow a similar pattern:
- (a) Singh would send the Client a message(s) asking him to send an email to Singh or one of the ARMs, and providing a draft of the email to be sent, which contained detailed trade instructions for a particular investment product.
 - (b) The Client would then send an email to Singh or the relevant ARM along the lines of the text message(s) to place an order for the product.

registered person to demonstrate that the client identification procedures have been followed satisfactorily.

- (c) The relevant ARM would then send a pre-trade email to the Client (copying Singh) containing product information and alerts (if applicable), seeking the Client's confirmation to proceed with the transaction.
 - (d) Singh would then send a text message to the Client reminding him to reply to the ARM to confirm the transaction and the Client would do so accordingly.
- 15. There were no available written communication records between Singh and the Client concerning each of the 14 Trades prior to Singh's sending out of draft trade instructions to the Client, and there was no record of any occasion where the Client had first indicated that he wanted to buy specific product, or specific types of products among the 14 Trades.
- 16. The ARMs were both unaware of the text messages exchanged between Singh and the Client prior to receiving the Client's emails with trade instructions for the 14 Trades. As the initial trade instruction to Julius Baer came from the Client, the ARMs would mark these trades as being unsolicited in Julius Baer's system.
- 17. According to Julius Baer, among the 14 Trades, 11 trades concerned products which were not allowed to be solicited according to the Product Requirement. In relation to the three remaining transactions, the Concentration Requirement would have been triggered requiring pre-trade approval before they were able to proceed had they been marked as solicited transactions.
- 18. By creating the false appearance that the 14 Trades were unsolicited trades, Singh has circumvented the internal controls Julius Baer put in place to ensure the suitability of products recommended to clients, which in turn are relevant to Julius Baer's compliance with paragraph 5.2 of the Code of Conduct. The SFC is of the view that Singh's failure in this regard constitutes a breach of GP 2 of the Code of Conduct.

Conclusion

- 19. Having considered all the circumstances, the SFC is of the view that Singh is guilty of misconduct and is not a fit and proper person to remain licensed.
- 20. In deciding the sanction set out in paragraph 1 above, the SFC has taken into account all relevant circumstances, including:
 - (a) there is no evidence to suggest that the substantive personal information and risk profile of the Client contained in the account opening documents were materially deficient or misleading or that the products traded in the 14 Trades were unsuitable for the Client; and
 - (b) Singh's otherwise clean disciplinary record.

Name of Relevant Individual : SINGH, AMIT KISHAN
Chinese Name of Relevant Individual :
HKMA Registration Number : AF6571

Current Registration

Not Applicable

Business Address

Not Applicable

Conditions

Not Applicable

Registration History

| HKMA Registration Number | Registered Institution | Regulated Activity | Effective Period | Is an Executiv Officer? (Yes / No) |
|--------------------------------|---|--------------------------------|---------------------------|--|
| AF6571 | AUSTRALIA AND NEW ZEALAND BANKING GROUP LIMITED | Type 1: dealing in securities | 18 Jul 2012 - 18 Jun 2014 | No |
| AF6571 | AUSTRALIA AND NEW ZEALAND BANKING GROUP LIMITED | Type 4: advising on securities | 18 Jul 2012 - 18 Jun 2014 | No |

Public Disciplinary Actions

Records of public disciplinary actions taken against the relevant individual by the SFC

Not Applicable

Records of public disciplinary actions taken against the relevant individual by the HKMA

Not Applicable

Public disciplinary actions (if any) that took effect over five years ago are not shown.

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|--------------------------------|--------------------------------|--------------------------------|---------------------------|---|
| AG3971 | BANK JULIUS BAER & CO. LTD. | Type 1: dealing in securities | 28 Nov 2018 - 10 Jun 2020 | No |
| AG3971 | BANK JULIUS BAER & CO. LTD. | Type 4: advising on securities | 28 Nov 2018 - 10 Jun 2020 | No |
| AG3971 | BANK J. SAFRA SARASIN AG | Type 1: dealing in securities | 05 Mar 2016 - 10 Aug 2018 | No |
| AG3971 | BANK J. SAFRA SARASIN AG | Type 4: advising on securities | 05 Mar 2016 - 10 Aug 2018 | No |
| AG3971 | ABN AMRO BANK N.V. | Type 1: dealing in securities | 04 Jul 2014 - 02 Dec 2015 | No |
| AG3971 | ABN AMRO BANK N.V. | Type 4: advising on securities | 04 Jul 2014 - 02 Dec 2015 | No |

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