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## Enforcement News

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28 June 2010

### SFC resolves compliance concerns with Julius Baer (Hong Kong) Ltd

The Securities and Futures Commission (SFC) has resolved its compliance concerns with Julius Baer (Hong Kong) Ltd (Julius Baer) (Note 1). Under the resolution, the SFC reprimands and fines Julius Baer \$3 million.

An SFC investigation revealed that Julius Baer, which is licensed to provide services only to professional investors, failed:

- to take adequate steps to identify clients as professional investors before treating them as such (Note 2);
- to conduct an annual confirmation as to whether its clients continued to fulfil the professional investor requirements; and ?
- to maintain adequate written records of its investment advice given to clients (Note 3).

In deciding the disciplinary sanction, the SFC took into account that:

- the failures took place between October 2006 and July 2008 when they were detected;
- Julius Baer has a clean disciplinary record;
- Julius Baer co-operated in resolving these disciplinary proceedings;
- Julius Baer does not admit to the failures as identified by the SFC; and
- Julius Baer will engage an independent reviewer to review its internal controls in relation to its compliance with the regulatory requirements for treating clients as professional investors and the provision of investment advice.

"The difference between professional investors and ordinary retail customers is a profoundly important one. Firms that do not classify customers properly, in strict compliance with the requirements, impose undue risks on those customers. The SFC will not hesitate to take deterrent action in these cases," said Mr Mark Steward, the SFC's Executive Director of Enforcement (Note 4).

End

Notes:

1. Julius Baer is licensed under the Securities and Futures Ordinance (SFO) to carry on business in Type 1 (dealing in securities) and Type 4 (advising on securities) regulated activities.

2. The SFO and in particular the Securities and Futures (Professional Investor) Rules prescribe that, among various categories of professional investors, an individual person may be a professional investor if the individual, either alone or with any of his associates on a joint account, has a portfolio of not less than \$8 million or its equivalent in any foreign currency, as evidenced by a certificate issued by an auditor or certified public accountant of the individual within the last 12 months or one or more custodian statements issued to the individual in the last 12 months.

As well, the Code of Conduct for Persons Licensed by or Registered with the SFC (the Code of Conduct) provides that intermediaries have

(a) to know and assess the investment experience of the clients in terms of the investment products

- they have traded, the frequency and size of their trades, the years of experience in the relevant market, and their awareness of risks involved in the relevant market;
- (b) to provide a written explanation of the risks and consequences of being treated as a professional investor to the clients and inform the clients of their right to withdraw from being treated as a professional investor;
  - (c) to obtain a signed declaration from the clients agreeing to be treated as a professional investor; and
  - (d) to annually confirm if the clients continue to fulfil the requirements for a professional investor.

3. The Management, Supervision and Internal Control Guidelines for Persons Licensed by or Registered with the SFC provide that a licensed corporation in its provision of investment advice should document the rationale of the advice or recommendations and provide the clients a copy of the advice.

4. One of the consequences of being treated as a professional investor is that certain provisions of the Code of Conduct designed to protect investors can be waived. One of the key provisions that intermediaries can waive when dealing with professional investors is the requirement under the Code of Conduct (paragraph 5.2) to ensure that, when recommending, giving advice or soliciting the sale of a financial product, the product is suitable for the customer.

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