

# SFC reprimands and fines A One Investment Company Limited \$1.2 million and suspends its responsible officer for internal control failures

29 Jul 2013

The Securities and Futures Commission (SFC) has reprimanded A One Investment Company Limited (A One) and fined it \$1.2 million for internal control failures relating to the unauthorized sales of client securities and the unauthorized transfers of more than \$7 million in client funds held by A One to third party accounts (Note 1).

The SFC has also suspended the approval granted to Ms Alysia Ann Lee to act as a responsible officer for A One and suspended her licence for eight months from 29 July 2013 to 28 March 2014 (Note 2).

The disciplinary action follows an SFC investigation into a self report by A One about suspected fraudulent activities in the account of one of its clients.

The SFC found that, between 4 July 2012 and 10 August 2012, 538,000 shares of Li & Fung Limited in the relevant client's account were sold and a total of EUR676,000 and GBP160,000 were transferred out of the client's account in 13 transfers to third party bank accounts in Italy, Norway, Singapore and the United Kingdom. The sales and transfers were carried out pursuant to instructions that were sent to Lee at A One's email account (the Email Instructions) from an email account that the client had previously used in his communications with A One. The client denied that the instructions were given by him and claimed that his email account had been compromised.

The SFC also found that:

- A One did not have any manual, written policy or procedure for handling client requests to transfer funds to third party accounts.
- A One claimed that clients who requested to transfer funds to third party accounts were required to provide a signed authorization letter, so that the client's signature could be verified by comparing it against the signature on his/her account opening documents. However, A One never received the original signed authorization letters for the above 13 transfers. It received a scanned copy of the signed authorization letter on the day it processed the client's request for only one of the transfers. In all other cases, scanned copies of the signed authorization letters were received only after the transfers had been completed.
- A One did not take any other step to verify the identity of the person who gave instructions for the sales and the transfers, or to verify the authenticity of the instructions.
- Although two responsible officers were required to endorse the remittance application form (which gives the bank instructions to effect a remittance), it does not appear that they bore any responsibility for verifying the authenticity of the client's instructions.
- The circumstances of the transfers did not accord with the historical pattern of transfers from the relevant client's account to third party bank accounts, but A One made no enquiries to satisfy itself that the transfers were reasonable.

The SFC found that A One has failed to ensure that client assets are adequately safeguarded and has failed to establish effective internal control procedures for ensuring that client assets are protected from theft, fraud and other acts of misappropriation. The SFC also found that A One has failed to effectively monitor activities in its clients' accounts to mitigate the risks of money laundering.

The SFC found that in response to the Email Instructions, Lee set in train the chain of

events that facilitated the unauthorized transfers from the relevant client's account. In her capacity as a responsible officer of A One, Lee was primarily responsible for ensuring the maintenance of appropriate standards of conduct and adherence to proper procedures by A One. She should have ensured that A One's procedures in handling client requests to transfer funds to third party accounts adequately safeguarded client assets. However, the SFC found that she acted negligently in handling the relevant transfers and failed to properly discharge her managerial duties. Therefore, A One's failures are attributable to her.

In deciding the disciplinary sanction, the SFC took into account all relevant circumstances, including that A One agreed to pay compensation to the client, and that A One and Lee co-operated with the SFC and have no previous disciplinary record.

The SFC's investigation into suspected offences involving fraudulent or deceptive devices, etc in transactions in securities, futures contracts or leveraged foreign exchange trading under section 300 of the Securities and Futures Ordinance is continuing.

End

Notes:

1. A One is licensed under the Securities and Futures Ordinance (SFO) to carry on Type 1 (dealing in securities) and Type 4 (advising on securities) regulated activities.
2. Lee is licensed under the SFO to carry on Type 1 (dealing in securities) and Type 4 (advising on securities) regulated activities. Lee is a responsible officer of A One.
3. A copy of the [Statement of Disciplinary Action](#) in relation to the matter is available on the SFC website.
4. The SFC has advised intermediaries to be on alert of fraudulent email instructions. A copy of the [Circular to All Intermediaries – Beware of "Email Scam"](#) dated 7 September 2012 is available on the SFC website.

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## STATEMENT OF DISCIPLINARY ACTIONS

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### 1. The Disciplinary Actions

1.1. The Securities and Futures Commission (SFC) has taken the following disciplinary action against A One Investment Company Limited (A One), pursuant to section 194 of the Securities and Futures Ordinance (SFO):

1.1.1. publicly reprimanded A One, pursuant to section 194(1)(b)(iii) of the SFO; and

1.1.2. imposed a financial penalty of HK\$1.2 million on A One, pursuant to section 194(2) of the SFO.

1.2. The SFC has also taken the following disciplinary action against Alysia Ann Lee (Lee), a responsible officer of A One, pursuant to section 194 of the SFO:

1.2.1. suspended Lee's licence for eight (8) months, pursuant to section 194(1)(b)(i)(B) of the SFO; and

1.2.2. suspended Lee's approval to act as a responsible officer of A One for eight (8) months, pursuant to section 194(1)(b)(ii)(B) of the SFO.

1.3. The disciplinary actions relate to A One's practices and procedures in handling client requests to transfer funds to third party accounts, and to Lee's discharge of her managerial duties in her capacity as a responsible officer of A One.

### 2. Summary of facts

2.1. This case stemmed from a self report by A One to the SFC on 17 August 2012 about suspected fraudulent activities in the account of one of its clients, Mr. X. A One's self report was, in turn, triggered by an enquiry that Mr. X had made with A One about his account balance on 17 August 2012.

2.2. Between 4 July 2012 and 10 August 2012, 538,000 shares in Li & Fung Limited (stock code: 494) in Mr. X's account with A One were sold and a total of EUR676,000 and GBP160,000 were transferred in 13 transfers out of Mr. X's account to third party accounts in Italy, Norway, the United Kingdom and Singapore. The instructions for the sales and the transfers (the Email instructions) were given to A One by emails that were sent to Lee at A One's email account from an email account that, according to A One, Mr. X usually used in his communications with A One. However, Mr. X claimed that he did not send any email to A One giving those instructions and that his email account had been compromised.

2.3. The SFC's investigation found that, at the material time, A One did not have any operational manual, staff handbook or written guideline governing the procedures for handling client requests to transfer funds to third party

accounts. A One, however, asserted that it often asked for written authorizations from clients for fund transfers to third party accounts. Scanned copies of the written authorizations were accepted so long as clients committed to return the originals to A One.

- 2.4. While a client request to transfer funds to third party accounts should only be processed upon receiving the client's signed written authorization and upon verifying the client's signature against his/her signature in the account opening documents, departure from this practice was well accepted at A One.
- 2.5. The responsible officer who received a client request to transfer funds to third party accounts had discretion to decide whether or not to process the request pending receipt of the signed authorization letter, whether the original or a scanned copy. In other words, a client request to transfer funds to third party accounts could be processed when the client had not even provided a scanned copy of the signed authorization letter. In such a situation, A One would not have been able to verify the authenticity of the client request by verifying the client's signature on the authorization letter against his/her signature in the account opening documents.
- 2.6. In the case of the 13 transfers in question, A One received a scanned copy of the signed authorization letter on the day it processed the client's request for only 1 of the transfers; in all other cases, scanned copies of the signed authorization letters were only received after the requested transfers had been completed. A One never received the original signed authorization letters for the transfers.
- 2.7. This meant that A One could not have verified the authenticity of the requests to transfer funds from Mr. X's account to third party accounts by verifying Mr. X's signature on the authorization letters against his signature in the account opening documents. No other step was taken by A One to verify the identity of the person who gave instructions for the sales and the transfers, or to otherwise verify the authenticity of the instructions. In other words, A One processed 12 of the 13 transfers in question on the strength of only instructions sent to it by email.
- 2.8. When asked why she proceeded with processing the fund transfer requests pending receipt of the authorization letters, Lee, who handled the requests, explained that she only wanted to fulfil the client's instructions and provide good service to the client.
- 2.9. Although two responsible officers were required to endorse the remittance application form which gives the bank instructions to effect a remittance (TT Form), it appears that the requirement was a mere formality. The TT Form could be endorsed by any two of A One's responsible officers, which may or may not include the responsible officer who received the client request to transfer funds to third party accounts. There was no requirement that the endorsing responsible officers took any step to verify the authenticity of the client's instructions, and it appears that reliance was placed exclusively upon the responsible officer who received the client request to verify the authenticity of the client's instructions.
- 2.10. Further, a review of Mr. X's historical dealing with A One shows that fund transfers to third party accounts had been infrequent and the vast majority of such transfers had been made to bank accounts belonging to Mr. X or Mr. X

and his wife jointly. In light of that, the frequency with which requests were made to transfer funds from Mr. X's account to third parties between 4 July and 10 August 2012, the fact that the transferees were distributed over 4 countries, and the fact that there did not appear to be any discernible relationship between Mr. X and the transferees, should have raised A One's suspicion and caused A One to make further enquiries to satisfy itself as to the reasonableness of the transfers. However, no such enquiries were made.

2.11. As a result of A One's slack procedures in handling client requests to transfer funds to third party accounts, and its management's low awareness of the importance of having adequate internal controls in safeguarding client assets, A One processed 13 unauthorised fund transfers from Mr. X's account to third party accounts between 4 July and 10 August 2012 without noticing anything untoward about the transfers. It appears that but for Mr. X's enquiry about his account balance, A One would not have discovered that the transfers were neither requested nor authorised by Mr. X.

### **3. Breaches and reasons for action**

#### ***A One***

3.1. As a licensed corporation, A One is obliged, under General Principle 2 (Diligence), General Principle 8 (Client assets) and paragraph 11.1 (Handling of client assets) of the Code of Conduct<sup>1</sup>, to ensure, through acting with due skill, care and diligence, that client assets are promptly and properly accounted for and adequately safeguarded.

3.2. A One is also obliged, under General Principle 3 (Capabilities) and paragraph 4.3 (Internal control, financial and operational resources) of the Code of Conduct, and Part VII of the Internal Control Guidelines<sup>2</sup>, to have, maintain and ensure compliance with internal control procedures which can be reasonably expected to protect its clients from financial loss arising from theft, fraud and other acts of misappropriation.

3.3. A One's failure to ensure that client assets were adequately safeguarded and to establish an effective procedure which protects clients' assets from theft, fraud and other acts of misappropriation breaches the provisions of the Code of Conduct and Internal Control Guidelines set out in paragraphs 0 and 3.2 above. The SFC considers that A One's failure is prejudicial to the interest of its clients.

3.4. Further, paragraph 5.12, Chapter 5 (Ongoing Monitoring) of the Anti-Money Laundering Guideline<sup>3</sup> provides that where cash transactions (including deposits and withdrawals) and transfers to third parties are being proposed by customers, and such requests are not in accordance with the customer's known reasonable practice, a licensed corporation must approach such situations with caution and make relevant further enquiries. Where the

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<sup>1</sup> Code of Conduct for Persons Licensed by or Registered with the SFC

<sup>2</sup> Management, Supervision and Internal Control Guidelines for Persons Licensed by or Registered with the SFC

<sup>3</sup> Guideline on Anti-Money Laundering and Counter-Terrorist Financing (July 2012)

licensed corporation has been unable to satisfy itself that any cash transaction or third party transfer is reasonable, and therefore considers it suspicious, it should make a suspicious transaction report to the Joint Financial Intelligence Unit.

- 3.5. As mentioned in paragraph 2.10 above, A One failed to make enquiries with respect to the multiple requests to transfer funds from Mr. X's account to third party accounts despite that the characteristics of such requests did not accord with the historical pattern of transfers from Mr. X's account to third party bank accounts. Such failure constitutes a breach of paragraph 5.12 of the Anti-Money Laundering Guideline as well as General Principle 7 of the Code of Conduct, which requires a licensed person to comply with all regulatory requirements applicable to the conduct of its business activities so as to promote the best interests of clients and the integrity of the market.

**Lee**

- 3.6. The SFC is of the view that A One's breaches are attributable to Lee. The SFC's view is based on the following:

- 3.6.1. In response to the Email Instructions, Lee set in train the chain of events that facilitated the unauthorised transfer of more than \$7 million from Mr. X's account to various third party accounts in circumstances where:

- 3.6.1.1. as mentioned in paragraphs 2.6 and 2.7 above, she did not, and could not, check the client's signature on the authorisation letter against his/her signature in the account opening forms in order to verify the genuineness of the instructions; and

- 3.6.1.2. she failed to detect the suspicious circumstances surrounding the requests to transfer, including those set out in paragraph 2.10 above.

- 3.6.2. Lee is a responsible officer of A One. In such capacity, she was primarily responsible for ensuring the maintenance of appropriate standards of conduct and adherence to proper procedures by A One. In particular, considering that she personally handled the relevant requests to transfer funds from Mr. X's account to third party accounts, she should have ensured that A One's procedures in handling such requests adequately safeguarded client assets. However, the SFC considers that she has failed to properly discharge her managerial duties:

- 3.6.2.1. she failed to ensure that A One has in place sufficient procedures and controls that would ensure that client assets are safeguarded in handling requests to transfer funds from client accounts to third party accounts; and

- 3.6.2.2. she personally flouted the requirement for clients to provide a signed authorisation letter before their requests to transfer funds to third party accounts are processed.

3.6.3. As a member of senior management of A One and pursuant to paragraph 14.1 of the Code of Conduct, Lee should have properly managed the risks associated with A One's business. Her conduct in handling the requests to transfer funds from Mr. X's account to third party accounts suggests that she has failed to appreciate / underestimated, and therefore did not properly manage, the risk of loss of client assets arising from theft, fraud and other dishonest acts.

3.7. In the circumstances, the SFC is of the view that Lee should bear primary responsibility for A One's failures, and that she has breached General Principles 2 and 9 and paragraph 14.1 of the Code of Conduct

#### **4. Conclusion**

4.1. Having regard to the seriousness of A One's and Lee's breaches, and the risks that such breaches posed to A One's clients' assets, the SFC has decided to take the disciplinary action against A One and Lee as described in paragraphs 1.1 and 1.2 above.