

SFC bans Suen King Shan for four years

22 Dec 2015

The Securities and Futures Commission (SFC) has banned Mr Suen King Shan from re-entering the industry for four years from 22 December 2015 to 21 December 2019 over breaches of the SFC's Code of Conduct (Notes 1 & 2).

The SFC found that Suen had failed to perform proper account opening procedures in relation to the accounts (Nominee Accounts) opened in the names of his mother, his aunt and his cousin-in-law (Nominees) at his then employer, Ko's Brother Securities Company Limited (Ko's Brother Securities). Despite being their account executive at the material time, he did not conduct know-your-client procedures with the Nominees and left the account opening matters to his wife, who was not a staff member of Ko's Brother Securities. He also falsely declared on his mother's account opening forms that he had witnessed her signature and explained the contents of the risk disclosure statement to her.

Moreover, Suen was found to have executed his wife's instructions to place orders in the Nominee Accounts without verifying whether the transactions were authorized by the Nominees. Suen's wife did not have the required authorization to operate the Nominee Accounts at the material time.

Furthermore, Suen was found to have conducted personal trading in the Nominee Account opened in the name of his cousin-in-law. In doing so, he concealed his beneficial interest and personal trading activities in this account, in breach of the employee code of share trading of Ko's Brother Securities.

The SFC is of the view that Suen's conduct was in breach of the Code of Conduct and called into question his fitness and properness to be a licensed person (Note 3).

In deciding the penalty, the SFC took into account all relevant circumstances, including that:

- Suen's conduct was dishonest and he had abused the trust that Ko's Brother Securities had placed in him;
- his conduct had made it possible for his wife to open the Nominee Accounts and carry out personal trading in them;
- he was an experienced practitioner and as such, he either knew or ought to have known that his conduct was improper;
- his misconduct was serious even though no reported loss was suffered by the clients; and
- he had no previous disciplinary record with the SFC.

End

Notes:

1. Suen was first registered as a securities dealer's representative on 6 April 1988. He became licensed under the Securities and Futures Ordinance to carry on Type 1 (dealing in securities) regulated activity on 27 May 2003 and was accredited to Ko's Brother Securities Company Limited from 27 May 2003 to 31 December 2014. Suen is currently not a licensed person.
2. The Code of Conduct for Persons Licensed by or Registered with the Securities and Futures Commission.
3. General Principles 1 and 2 of the Code of Conduct require licensed persons to act honestly, fairly, with due skill, care and diligence, and in the best interests of their clients and the integrity of the market, in conducting their business activities; licensed persons are required under paragraph 5.1 of the Code of Conduct to take all reasonable steps to establish the true and full identity of their clients and their financial situation, investment experience and investment objectives; at the material time, under paragraph 7.1 of the Code of Conduct, a licensed person should not effect a transaction for a client unless before the transaction is effected the client, or a person designated by the client, has specifically authorized the transaction, or the client has authorized in writing the licensed or registered person to effect transactions for the client without the client's specific authorization. (Paragraph 7.1 of the Code of Conduct has been amended since 1 December 2012).

[A copy of the Statement of Disciplinary Action is available on the SFC website](#)

STATEMENT OF DISCIPLINARY ACTION

The Disciplinary Action

1. The Securities and Futures Commission (**SFC**) has prohibited Mr Suen King Shan (**Suen**) for four years, pursuant to section 194 of the Securities and Futures Ordinance, from doing all or any of the following in relation to any regulated activities:
 - (a) applying to be licensed as a representative;
 - (b) applying to be approved as a responsible officer of a licensed corporation;
 - (c) applying to be given consent to act or continue to act as an executive officer of a registered institution under section 71C of the Banking Ordinance; and
 - (d) seeking through a registered institution to have his name entered in the register maintained by the Hong Kong Monetary Authority under the Banking Ordinance as that of a person engaged by a registered institution in respect of a regulated activity.
2. The disciplinary action is taken because Suen failed to perform proper account opening procedures in relation to the accounts (Nominee Accounts) of his mother, his aunt and his cousin-in-law (Nominees), falsely declared on his mother's account opening forms that he had witnessed her signature and explained the contents of the risk disclosure statement to her, allowed his wife to operate the Nominee Accounts without authorization from the Nominees, and operated his cousin-in-law's account for personal trading in breach of the restriction imposed on him by his employer.

Summary of facts

3. Suen was accredited to Ko's Brother Securities Company Limited (Ko's Brother Securities) as a licensed representative from 27 May 2003 to 31 December 2014. He worked as a floor trader and an account executive at Ko's Brother Securities. His wife was not employed by Ko's Brother Securities.
4. Suen was the account executive of the Nominee Accounts. However, he did not conduct know-your-client procedures with the Nominees or take any steps to verify their account opening information. He left the account opening matters to his wife. Suen also falsely declared on his mother's account opening documents that he had witnessed her signature and that he had explained the contents of the risk disclosure statement to her.
5. Suen allowed his wife to place orders with him to buy and sell shares in the Nominee Accounts since at least 2005, and he simply executed her instructions without verifying whether the transactions were authorized by

the Nominees. At the material time, his wife did not have the required authorization to operate the Nominee Accounts.

6. Suen also conducted personal trading in the account opened in the name of his cousin-in-law with Ko's Brother Securities from 2007 to 2012. He did not notify Ko's Brother Securities of his beneficial interest in and his personal trading activities conducted through this account.

Breaches and reasons for action

7. General Principles 1 and 2 of the Code of Conduct¹ require licensed persons to act honestly, fairly, with due skill, care and diligence, and in the best interests of their clients and the integrity of the market, in conducting their business activities.
8. In the context of account opening, licensed persons are required under paragraph 5.1 of the Code of Conduct to take all reasonable steps to establish the true and full identity of their clients and their financial situation, investment experience and investment objectives.
9. It is a fundamental duty for licensed persons to conduct proper know-your-client procedures and identify the true holder of an account. Allowing a person to operate a securities account in another individual's name without conducting proper know-your-client procedures could make it difficult for regulatory bodies to trace and identify those who are ultimately behind a transaction and may hinder their investigation in relation to potential market misconduct.
10. With respect to the authorization for transactions and the operation of a discretionary account, at the time when Suen's conduct took place, paragraph 7.1 of the Code of Conduct provided that a licensed person should not effect a transaction for a client unless before the transaction is effected the client, or a person designated by the client², has specifically authorized the transaction, or the client has authorized in writing the licensed or registered person to effect transactions for the client without the client's specific authorization.
11. It is also imperative that only the account holder, or a person who has been authorized by the account holder, is able to operate the account. Written authorizations are necessary to identify the people entitled to place orders in a client's account and to protect clients from improper or illegal trading activities unauthorized by clients. Allowing an unauthorized party to place orders for the account holder can not only put the financial interests of the account holder in jeopardy, but may also expose the licensed corporation to unnecessary risks.
12. Paragraph 12.2 of the Code of Conduct requires licensed corporations to implement procedures and policies on employee trading and to actively

¹ Code of Conduct for Persons Licensed by or Registered with the SFC

² With effect from 1 December 2012, the Code of Conduct provides that a licensed person should not effect a transaction for a client unless before the transaction is effected the client, or a person designated in writing by the client, has specifically authorized the transaction, or the client has authorized in writing the licensed or registered person to effect transactions for the client without the client's specific authorization. (Emphasis added)

monitor the trading activities in their employee's accounts and their related accounts. Ko's Brother Securities' Employee Code of Share Trading (Employee Code of Share Trading) states that the trading of securities by an employee or a related party of that employee must be carried out in the name of the employee or related party, as the case may be, and that employee dealings would be monitored by Ko's Brother Securities on a daily basis. Suen signed a copy of the Employee Code of Share Trading when he joined Ko's Brother Securities in 1998 and confirmed that he would follow the specified provisions.

13. Employees of licensed corporations (including licensed representatives) should follow the employee dealing procedures of their employers. A failure to honour those controls will not only breach the internal policies of their employers but also prevent employers from monitoring personal trading of their employees, which is important for the prevention and identification of potential market misconduct.
14. Having considered all the circumstances, the SFC is of the view that Suen had:
 - (a) failed to perform proper account opening and know-your-client procedures in relation to the Nominee Accounts, in breach of General Principle 2 and paragraph 5.1 of the Code of Conduct;
 - (b) acted dishonestly, in breach of General Principle 1 of the Code of Conduct, by:
 - falsely representing that he had witnessed the execution of the account opening documents by and explained the contents of the risk disclosure statement to his mother; and
 - conducting personal trading activities in the account opened in the name of his cousin-in-law without notifying Ko's Brother Securities, contrary to the restriction imposed on him by Ko's Brother Securities; and
 - (c) allowed his wife to operate the Nominee Accounts without obtaining authorization from the Nominees, in breach of paragraph 7.1 of the Code of Conduct.

Conclusion

15. The SFC has decided that a prohibition of 4 years is appropriate and commensurate with the SFC's view on the gravity of Suen's conduct. In coming to the decision to take disciplinary action against Suen, the SFC has taken into account all relevant circumstances, including that:
 - (a) his conduct was dishonest and he had abused the trust that Ko's Brother Securities had placed in him;
 - (b) his conduct had made it possible for his wife to open the Nominee Accounts and carry out personal trading in them;
 - (c) he was an experienced practitioner and as such, either knew or ought to have known that his conduct was improper; and

- (d) his misconduct was serious even though no reported loss was suffered by the clients; and
- (e) he had no previous disciplinary record with the SFC.

證監會禁止孫景山重投業界四年

2015年12月22日

證券及期貨事務監察委員會（證監會）因孫景山（男）違反證監會的《操守準則》的規定，禁止他重投業界，為期四年，由2015年12月22日起至2019年12月21日止（註1及2）。

證監會發現，孫未有就以其母親、姨母及其妻子的表弟（代名人）的名義在其當時的僱主高氏兄弟證券有限公司（高氏兄弟證券）開立的帳戶（代名人帳戶）執行適當的開戶程序。雖然他在關鍵時期是他們的客戶主任，但他沒有為代名人進行“認識你的客戶”程序，並把開戶事宜交給其妻子，而其妻子並非高氏兄弟證券的員工。他亦在其母親的開戶文件中訛稱他曾見證其簽署，以及曾向其解釋風險披露聲明的內容。

此外，孫被發現在沒有核實交易是否獲得代名人授權的情況下執行其妻子發出在代名人帳戶落盤的指示。在關鍵時間，孫的妻子並無取得操作代名人帳戶所需的授權。

另外，孫被發現在以其妻子的表弟的名義開立的代名人帳戶進行個人交易。在這過程中，他隱瞞了自己在該帳戶中的實益權益和個人交易活動，違反了高氏兄弟證券的僱員買賣股票守則的規定。

證監會認為孫的行為違反了《操守準則》的規定，而其作為持牌人的適當人選資格亦受到質疑（註3）。

證監會在釐定罰則時已考慮到所有相關情況，當中包括：

- 孫的行為並不誠實及濫用了高氏兄弟證券對他的信任；
- 他的行為令其妻子可以開立代名人帳戶，並在帳戶中進行個人交易；
- 他是一名資深的從業員，因此他知道或理應知道他的行為屬失當行為；
- 雖然並無舉報指有客戶蒙受損失，但他的失當行為嚴重；及
- 他以往並無遭受證監會紀律處分的紀錄。

完

備註：

1. 孫先於1988年4月6日註冊成為證券交易商代表。他在2003年5月27日根據《證券及期貨條例》獲發牌進行第1類（證券交易）受規管活動，並由2003年5月27日至2014年12月31日期間隸屬高氏兄弟證券有限公司。孫現時並非持牌人士。
2. 《證券及期貨事務監察委員會持牌人或註冊人操守準則》
3. 《操守準則》第1項及第2項一般原則規定，持牌人在經營其業務時，應以誠實、公平、適當的技能、小心謹慎和勤勉盡責的態度，以維護客戶的最佳利益及確保市場潔淨穩健；《操守準則》第5.1段規定，持牌人須採取一合步驟，以確其每位客戶的真實和全部的身分、各客戶的財政狀況、投資經驗及投資目標；在關鍵時間，《操守準則》第7.1段規定，持牌人應為客戶進交，除非在進交之前，已獲得該客戶或其指定的人士特定授權進交，或該客戶已經以書面授權持牌人或註冊人，即使在未有該客戶特定授權的情況下，仍可為其進交。（《操守準則》第7.1段已自2012年12月1日起予以修訂）。

有關上述事宜的紀律處分行動聲明載於證監會網站

最後更新日期：2015年12月22日

紀律處分行動聲明

紀律處分行動

1. 證券及期貨事務監察委員會（**證監會**）已根據《證券及期貨條例》第 194 條，禁止孫景山（孫）就任何受規管活動進行以下全部或任何事宜，為期四年：
 - (a) 申請牌照成為代表；
 - (b) 申請獲核准成為持牌法團的負責人員；
 - (c) 申請根據《銀行業條例》第 71C 條獲給予同意以或繼續以註冊機構的主管人員的身分行事；及
 - (d) 透過註冊機構，尋求名列於香港金融管理局根據《銀行業條例》備存的紀錄冊並顯示其就某類受規管活動受聘於該註冊機構。
2. 本會採取上述紀律處分行動是因為：孫未有就其母親、姨母及其妻子的表弟（代名人）的帳戶（代名人帳戶）執行適當的開戶程序；在其母親的開戶文件中訛稱他曾見證其簽署，以及曾向其解釋風險披露聲明的內容；容許他的妻子在沒有得到代名人授權的情況下操作代名人帳戶；及操作其妻子的表弟的帳戶以作個人交易，違反了其僱主向他所施加的限制。

事實摘要

3. 孫在 2003 年 5 月 27 日至 2014 年 12 月 31 日期間，以持牌代表身分隸屬高氏兄弟証券有限公司（高氏兄弟証券），並於高氏兄弟証券擔任入市代表及客戶主任。他的妻子並無受聘於高氏兄弟証券。
4. 孫是代名人帳戶的客戶主任。然而，他沒有為代名人進行“認識你的客戶”程序，或採取任何步驟以核實他們的開戶資料，並把開戶事宜交給其妻子。孫亦在其母親的開戶文件中訛稱他曾見證其簽署，以及曾向其解釋風險披露聲明的內容。
5. 孫至少自 2005 年起准許其妻子向他落盤，在代名人帳戶中買賣股份，他亦只執行其妻子的指示，而沒有核實那些指示是否獲得代名人授權。在關鍵時間，他的妻子並無取得操作代名人帳戶所需的授權。
6. 孫亦在 2007 年至 2012 年間在以其妻子的表弟的名義在高氏兄弟証券開立的帳戶中進行個人交易。他沒有通知高氏兄弟証券自己在此帳戶的實益權益，及他透過此帳戶進行的個人交易。

違反規定及採取行動的理由

7. 《操守準則》¹第 1 及 2 項一般原則規定，持牌人在經營其業務時，應以誠實、公平、適當的技能、小心謹慎和勤勉盡責的態度行事，以維護客戶的最佳利益及確保市場廉潔穩健。
8. 就開立帳戶而言，《操守準則》第 5.1 段規定，持牌人須採取一切合理步驟，以確立其每位客戶的真實和全部的身分、其財政狀況、投資經驗及投資目標。
9. 執行適當的“認識你的客戶”程序及識別帳戶的真正持有人是持牌人至為重要的責任。未有執行適當的“認識你的客戶”程序而容許任何人以他人名義操作證券帳戶，會令監管機構難以追查和識別交易背後的最終操控者，亦可能會妨礙監管機構對潛在市場失當行為的調查。
10. 就交易的授權及委託帳戶的操作而言，《操守準則》第 7.1 段（在孫的行為出現的那個時期）規定，持牌人不應為客戶進行交易，除非在進行交易之前，已獲得該客戶或其指定的人士²特定授權進行交易，或該客戶已經以書面授權持牌人或註冊人，即使在未有該客戶特定授權的情況下，仍可為其進行交易。
11. 另外，只有帳戶持有人或由帳戶持有人授權的人士才可操作帳戶。為了識別有權在客戶帳戶內落盤的人士及保障客戶免受未獲客戶授權的不當或不法交易活動所損害，書面授權是必需的。容許未獲授權者為帳戶持有人落盤，不僅損害帳戶持有人的財務權益，還可能令持牌法團承受不必要的風險。
12. 《操守準則》第 12.2 段規定，持牌法團應就僱員的交易活動實施程序及政策，並積極監察在僱員帳戶及關連帳戶的交易活動。高氏兄弟証券的《僱員買賣股票守則》（《僱員買賣股票守則》）列明，僱員或其聯繫人的證券交易必須以該僱員或其聯繫人的名義進行（視情況而定），高氏兄弟証券亦會每天監察僱員交易。孫在 1998 年加入高氏兄弟証券時曾簽署一份《僱員買賣股票守則》的副本，並確認他會遵守該等特定條文。
13. 持牌法團的僱員（包括持牌代表）應遵守其僱主的僱員交易程序。僱員如未能遵守該等監控措施，不僅違反其僱主的內部政策，還會妨礙僱主監察其僱員的個人買賣活動，而監察其僱員的個人買賣活動是防止及識別潛在市場失當行為過程中的重要一環。
14. 經考慮所有情況後，證監會認為孫曾作出以下行為：
 - (a) 未有為代名人帳戶執行適當的開戶及“認識你的客戶”程序，違反了《操守準則》第 2 項一般原則及第 5.1 段的規定；及
 - (b) 作出以下不誠實行為，違反了《操守準則》第 1 項一般原則：

¹ 《證監會持牌人或註冊人操守準則》

² 由 2012 年 12 月 1 日開始，《操守準則》規定，持牌人不應為客戶進行交易，除非在進行交易之前，已獲得該客戶或其以書面指定的人士特定授權進行交易，或該客戶已經以書面授權持牌人或註冊人，即使在未有該客戶特定授權的情況下，仍可為其進行交易。（底線為本文所加，以示強調）

- 訛稱自己曾見證其母親簽立開戶文件，及曾向其解釋風險披露聲明的內容；及
 - 在沒有通知高氏兄弟証券的情況下在以其妻子的表弟的名義開立的帳戶進行個人交易活動，違反了高氏兄弟証券向他所施加的限制；及
- (c) 容許其妻子在沒有得到代名人授權的情況下操作代名人帳戶，違反了《操守準則》第 7.1 段的規定。

結論

15. 證監會認為，四年的禁止期是適當的處分，此決定亦符合本會對孫的行為嚴重性的看法。在決定對孫採取紀律處分行動時，證監會已考慮到所有相關情況，包括：
- (a) 他的行為並不誠實及濫用了高氏兄弟証券對他的信任；
 - (b) 他的行為令其妻子可以開立代名人帳戶，並在帳戶中進行個人交易；
 - (c) 他是一名資深的從業員，因此他知道或理應知道自己的行屬失當行為；
 - (d) 雖然並無舉報指有客戶蒙受損失，但他的失當行為嚴重；及
 - (e) 他以往並無遭受證監會紀律處分的紀錄。