

SFC suspends Fabiano Hugues Joseph Mascolo for three months

23 Dec 2015

The Securities and Futures Commission (SFC) has suspended Mr Fabiano Hugues Joseph Mascolo for three months from 21 December 2015 to 20 March 2016 (Note 1).

The disciplinary action follows a SFC investigation which found that in October 2013, Mascolo, who was an employee of BTIG Hong Kong Limited at the material time, received order instructions from a client via WhatsApp messaging on his mobile phone. In doing so, Mascolo was in breach of BTIG's internal control policy (Note 2).

The SFC also found that between April 2010 and September 2013, Mascolo allowed a friend, who was a licensed representative of another firm, to use his personal securities account at a brokerage firm to conduct personal trades without obtaining prior written consent from his friend's then employers.

Mascolo's conduct, in breach of the Code of Conduct, made it difficult for his employer to properly monitor his trading activities and to ensure compliance with regulatory requirements (Note 3).

His conduct also made it impossible for his friend's employers to identify and effectively monitor his friend's personal trading activities to ensure there were no conflicts of interests or other malpractices arising from his personal trading (Note 4).

End

Notes:

1. Mascolo was licensed as a representative under the Securities and Futures Ordinance to carry on Type 1 (dealing in securities) regulated activities and was accredited to BTIG Hong Kong Limited from 7 December 2011 to 22 November 2013. Mascolo was subsequently accredited to MCM Asia Limited (trading as MCM Partners) from 18 December 2014 to 30 October 2015. Mascolo is currently not accredited to any licensed corporation.
2. BTIG's written electronic communications policy prohibited employees from using text-messaging on mobile phones that are not supported by its IT department and if the intended purpose is related to its Hong Kong business activities.
3. General Principle 2 of the Code of Conduct for Persons Licensed by or Registered with the Securities and Futures Commission provides that in conducting its business activities, a licensed or registered person should act with due skill, care and diligence, in the best interests of its clients and the integrity of the market.
4. Paragraph 12.2(c) of the Code of Conduct for Persons Licensed by or Registered with the Securities and Futures Commission requires that a licensed or registered person should not knowingly deal in securities or futures contracts for another licensed or registered person's employee unless it has received written consent from that licensed or registered person.

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

Page last updated : 23 Dec 2015

STATEMENT OF DISCIPLINARY ACTION

The Disciplinary Action

1. The Securities and Futures Commission (SFC) has suspended the licence of Mr Fabiano Hugues Joseph Mascolo (Mascolo) as a representative in all regulated activities for three months pursuant to section 194 of the Securities and Futures Ordinance (SFO). Mascolo is licensed as a representative under the SFO to carry on Type 1 (dealing in securities) regulated activity. He was accredited to BTIG Hong Kong Limited (BTIG) from 7 December 2011 to 22 November 2013. Mascolo is currently not accredited to any licensed corporation.

Summary of Facts

Breach of employer's internal control policy

2. The SFC received a self-report from BTIG that Mascolo breached its internal policies in relation to the execution by BTIG of a buy order placed by a US based client.
3. The SFC found that Mascolo used WhatsApp messaging via his mobile phone to receive and discuss the client's order instructions in relation to the buy order in breach of BTIG's internal control policy.
4. BTIG had in place a written electronic communication policy that strictly prohibited its employees from using electronic communication including text messaging on mobile phones that are not supported by BTIG's IT department and if the intended purpose is related to BTIG's business activities.
5. Mascolo admitted he used the WhatsApp messaging application on his mobile phone to discuss the buy order with a representative of the client to persuade him to be more forthcoming about his reasons for the buy order. Mascolo told us he believed BTIG monitored WhatsApp messages because he sent the WhatsApp messages using a mobile phone issued by BTIG. Mascolo also told us he saved the WhatsApp messages and disclosed them to his supervisor at his request.
6. The SFC found that Mascolo signed an acknowledgement stating that he had received, read and understood BTIG's policies, procedures and trading manual and agreed to abide by them. BTIG's electronic communication policy formed part of the policies and procedures provided to Mascolo. The acknowledgement signed by Mascolo and a WhatsApp message sent by Mascolo to the client to "let's talk here, email monitored" regarding the buy order showed Mascolo was clearly aware that BTIG prohibited WhatsApp messaging on mobile phones in relation to BTIG's business activities.
7. Mascolo's failure to ensure all communications involving BTIG's business activities took place on BTIG's authorised systems potentially prevented BTIG from monitoring and complying with its regulatory requirements. Notwithstanding Mascolo's claim that he disclosed his entire saved WhatsApp messages to his supervisor at his request, BTIG has no control over the recording and retention of the WhatsApp messages.

Facilitating the personal trades of a licensed representative

8. The SFC also found that Mascolo facilitated the personal trades of his friend by allowing his friend to use his personal securities account from April 2010 to September 2013. Mascolo's friend was a licensed representative who was accredited to two licensed corporations at separate times during the relevant period. Although Mascolo knew his friend was a licensed representative he failed to obtain the prior written consent of his friend's respective employers before allowing his friend to conduct personal trades in his securities account in breach of paragraph 12.2(c) of the Code of Conduct for Persons Licensed by or Registered with the Securities and Futures Commission (Code of Conduct).
9. Mascolo admitted he allowed his friend to conduct personal trades in his personal securities account without obtaining the prior written consent of his friend's employers. However, Mascolo told us that the failure was due to his ignorance of the relevant provisions in the Code of Conduct and not because he wished to conceal his friend's personal trades from them.
10. Mascolo's failure to obtain the prior written consent of his friend's employers before allowing his friend to trade in his personal securities account deprived his friend's employers the opportunity to monitor his friend's personal trades and assess whether there were any conflicts of interest.

Conclusion

11. Compliance by employees with their firm's internal control policies is essential to allow their firms to monitor employees to ensure they are carrying out their dealing responsibilities competently and with integrity and to also ensure firms comply with their regulatory obligations. Furthermore, licensed representatives are expected to know the provisions in the Code of Conduct and the importance of complying with them. Mascolo's conduct falls short of the standard expected of him and breached General Principle 2 and paragraph 12.2(c) of the Code of Conduct.
12. In coming to the decision to take disciplinary action set out in paragraph 1 against Mascolo, the SFC took into account all relevant circumstances including Mascolo's clean disciplinary record.