

## SFC bans Philip Leung Ming Yin for six months

20 Mar 2017

The Securities and Futures Commission (SFC) has banned Mr Philip Leung Ming Yin, a former account executive of HSBC Broking Securities (Asia) Limited (HSBC Securities), from re-entering the industry for six months from 17 March 2017 to 16 September 2017 (Note 1).

The SFC found that Leung used his mobile phone and messaging application WeChat to receive and confirm order instructions with nine clients between March and July 2015 without maintaining a proper record of the instructions as required by the SFC's Code of Conduct (Note 2).

The SFC also found that Leung effected transactions in a client account on a discretionary basis from March to August 2015 without obtaining proper authorization from the client as required by the Code of Conduct.

Although the client had verbally authorized Leung to conduct discretionary trades in her account, he failed to obtain her written authorization. Furthermore, HSBC Securities' internal policy does not allow its account executives to operate client accounts on a discretionary basis (Note 3).

The SFC considers Leung's conduct exposed his clients to risks and his former employer to potential disputes arising from claims of unauthorized transactions in the client account.

In deciding the penalty, the SFC took into account that Leung has admitted and expressed remorse for his misconduct.

End

Notes:

1. Leung was licensed under the Securities and Futures Ordinance to carry on Type 1 (dealing in securities), Type 2 (dealing in futures contracts), Type 3 (leveraged foreign exchange trading) and Type 4 (advising on securities) regulated activities and accredited to HSBC Broking Securities (Asia) Limited, HSBC Broking Futures (Asia) Limited and HSBC Broking Forex (Asia) Limited until 15 October 2015. Leung is currently not accredited to any licensed corporation.
2. Paragraph 3.9(b) of the Code of Conduct for Persons Licensed by and Registered with the SFC (Code of Conduct) provides that where order instructions are received from clients through the telephone, a licensed person should use a telephone recording system to record the instructions and maintain telephone recordings as part of its records for at least six months.

Paragraph 3.9 of the Code of Conduct further notes that the use of mobile phones for receiving client order instructions is strongly discouraged. However, where orders are accepted by mobile phones, staff members should immediately call back to their licensed or registered person's telephone recording system and record the time of receipt and the order details. The use of other formats (e.g. in writing by hand) to record details of clients' order instructions and time of receipt should only be used if the licensed or registered person's telephone recording system cannot be accessed.

3. Paragraph 7.1(a)(ii) of the Code of Conduct provides that a licensed person is required to obtain written authorization from a client before he can effect transactions for a client without the client's specific authorization.

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

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## STATEMENT OF DISCIPLINARY ACTION

### The Disciplinary Action

1. The Securities and Futures Commission (**SFC**) has prohibited Mr Leung Ming Yin, Philip (**Leung**), a former account executive of HSBC Broking Securities (Asia) Limited (**HSBC Securities**)<sup>1</sup>, from re-entering the industry for a period of six months pursuant to section 194 of the Securities and Futures Ordinance (**SFO**).
2. The SFC found that Leung:
  - (a) used his mobile phone and a social media application, WeChat messaging, installed on his mobile phone to receive and confirm clients' order instructions without maintaining a proper record of those instructions in breach of General Principle 2 and paragraph 3.9(b) of the Code of Conduct for Persons Licensed by or Registered with the SFC (**Code of Conduct**); and
  - (b) effected transactions for a client on a discretionary basis without obtaining prior written authorization as required by paragraph 7.1(a)(ii) of the Code of Conduct.

### Summary of Facts

3. On 15 and 27 October 2015, HSBC Securities reported to the SFC that it could not locate some client order instructions handled by Leung in its telephone recording system and that Leung had effected discretionary transactions in a client account in breach of its internal policies.

#### *Failure to record client order instructions*

4. General Principles 2 (diligence) of the Code of Conduct requires a licensed person to act with due skill and care and diligence, in the best interests of its clients and the integrity of the market.
5. Paragraph 3.9(b) of the Code of Conduct provides that where order instructions are received from clients through the telephone, a licensed person should use a telephone recording system to record the instructions and maintain telephone recordings as part of its records for at least six months.
6. Paragraph 3.9 of the Code of Conduct further notes that the use of mobile phones for receiving client order instructions is strongly discouraged. However, where orders are accepted by mobile outside the trading floor, trading room, usual place of business where order is received or usual place where business is conducted, staff members should immediately call back to their licensed or registered person's telephone recording system and record the time of receipt and the order details. The use of other formats (e.g. in writing by hand) to record details of clients' order instructions and time of receipt should only be used if the licensed or registered person's telephone recording system cannot be accessed.

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<sup>1</sup> At the material time, Leung was also a licensed representative of HSBC Broking Futures (Asia) Limited and HSBC Broking Forex (Asia) Limited.

7. Leung was an account executive of HSBC Securities from October 2014 to October 2015.
8. From March 2015 to July 2015, Leung failed to keep proper records of all client order instructions received and confirmed via his mobile phone and WeChat messaging.
9. HSBC Securities' compliance manual did not permit account executives to use mobile phones to receive and confirm client order instructions during office hours and while in the office. In cases where an account executive received order instructions from clients via email, SMS or an unrecorded telephone line, HSBC Securities required account executives to re-confirm instructions with the client via its approved telephone recording system before placing their orders.
10. HSBC Securities' compliance manual reflect the order recording provisions under paragraph 3.9 of the Code of Conduct.
11. Leung admitted he was aware of HSBC Securities' policies and procedures on order recording and the requirement to use HSBC Securities' approved telephone recording system to receive and confirm client order instructions. Leung asserted he had difficulties communicating with clients because they resided in the Mainland and either refused to take his calls or had requested him to use WeChat messaging to contact them. There is no evidence Leung raised these difficulties to his team head or any other person at HSBC Securities to seek their advice and approval. In short, Leung disregarded the order recording requirements in the Code of Conduct and HSBC Securities' compliance manual.

#### *Operating discretionary account*

12. Paragraph 7.1(a)(ii) of the Code of Conduct provides that a licensed person is required to obtain a written authorisation from a client before he can effect transactions for a client without the client's specific authorization.
13. From March 2015 to August 2015, Leung also effected transactions on a discretionary basis for a client who had opened a capital investment entrant scheme account (the **Account**) at HSBC Securities. The account opening statements for the Account do not contain any written authorization authorizing Leung or any third party to operate the account on a discretionary basis.
14. Although Leung received verbal authorization from the client to operate the Account on a discretionary basis, he failed to obtain a written authorization from the client before effecting the discretionary transactions in the Account in breach of the requirement under paragraph 7.1(a)(ii) of the Code of Conduct.
15. Leung also breached HSBC Securities' internal policy which strictly prohibits discretionary trading in client accounts.

#### **Conclusion**

16. Leung's conduct breached General Principle 2, paragraph 3.9(b) and paragraph 7.1(a)(ii) of the Code of Conduct and has called into question his fitness and properness to remain licensed.

17. In reaching the decision to prohibit Leung from re-entering the industry for six months, the SFC has taken into account all relevant circumstances, including Leung's misconduct lasted for more than five months, his admissions of his failings, his remorse for his conduct and his clean disciplinary record.