

SFC reprimands and fines Guoyuan Securities Brokerage (Hong Kong) Limited \$4.5 million for breaches of anti-money laundering guidelines

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The Securities and Futures Commission (SFC) has reprimanded Guoyuan Securities Brokerage (Hong Kong) Limited (Guoyuan) and fined it \$4.5 million for its failure to conduct proper enquiries and scrutiny to mitigate the risks of money laundering and terrorist financing when processing third party fund transfers for clients between September 2010 and July 2012 (Note 1).

Specifically, the SFC's investigation found that:

- Guoyuan failed to conduct proper enquiries and sufficient scrutiny when processing a large number of frequent and unusual fund transfers between Guoyuan's clients and third parties which were unverified and unrelated to the clients. Two clients' accounts alone recorded an aggregate of fund transfers to and from third parties totalling \$665.3 million. These third party fund transfers, which were purportedly repayment to or receipt from "friends" or "business partners", were routinely processed and accepted by Guoyuan's senior management without making further enquiries.
- Suspicious patterns suggesting the two clients' accounts were used as depository accounts or conduits for transfers were evident in some instances where monies from third parties were deposited in the clients' accounts and equivalent or roughly similar amounts were withdrawn shortly thereafter, and then transferred to numerous other third parties without any securities trading in the clients' accounts at the material time. Furthermore, the activities in some Guoyuan's clients' accounts who received third party funds from the two clients were inconsistent with the clients' declared net worth or annual income.
- Despite such red flags, Guoyuan failed to identify them as suspicious transactions and/or follow up on them, and/or failed to adequately record enquiries which were allegedly made on these transactions.
- Guoyuan also failed to properly implement and communicate policies and procedures regarding anti-money laundering and counter-terrorist financing to relevant staff members.

The SFC is of the view that Guoyuan's conduct was in breach of the Prevention of Money Laundering and Terrorist Financing Guidance Note, the Guideline on Anti-Money Laundering and Counter-Terrorist Financing, and the Code of Conduct which require licensed corporations to:

- conduct ongoing due diligence and scrutiny on clients' transactions and pay special attention to all complex, unusual large transactions and all unusual patterns of transactions which have no apparent economic or lawful purpose. The findings and outcomes of these examinations should be properly documented in writing; and
- take all reasonable measures to ensure that proper safeguards exist to mitigate the risks of money laundering and terrorist financing, including implementation of appropriate policies and procedures and ensuring their effectiveness and compliance with all relevant legal and regulatory requirements (Notes 2 to 6).

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

- the duration of Guoyuan's failures was more than a year;
- Guoyuan cooperated with the SFC in resolving the SFC's concerns;
- Guoyuan has implemented new policies and procedures in relation to anti-money laundering and counter-terrorist financing, taken steps to remedy its internal control deficiencies and the former senior management team has left;
- Guoyuan agreed to engage an independent reviewer to conduct a review of its internal controls; and
- Guoyuan has an otherwise clean disciplinary record.

End

Notes:

1. Guoyuan is licensed under the Securities and Futures Ordinance to carry on Type 1 (dealing in securities) and Type 4 (advising on securities) regulated activities.
2. The "Prevention of Money Laundering and Terrorist Financing Guidance Note" (AMLGN) was published by the SFC in September 2009 and remained effective until 31 March 2012. From 1 April 2012, the AMLGN

was superseded by the "Guideline on Anti-Money Laundering and Counter-Terrorist Financing" (AML/CFT Guideline) and the "Prevention of Money Laundering and Terrorist Financing Guideline issued by the Securities and Futures Commission for Associated Entities".

3. Paragraph 6.1.2(d) of the AMLGN and paragraph 5.1(b) of the AML/CFT Guideline require licensed corporations to conduct ongoing due diligence and scrutiny, i.e. perform ongoing scrutiny of the transactions and account throughout the course of the business relationship to ensure that the transactions being conducted are consistent with the licensed corporation's knowledge of the customer, its business and risk profile, taking into account, where necessary, the customer's source of funds.
4. Paragraph 6.2.8 of the AMLGN and paragraphs 5.1(c) and 5.10 of the AML/CFT Guideline require licensed corporations to pay special attention to all complex, unusual large transactions and all unusual patterns of transactions which have no apparent economic or lawful purpose. The background and purpose, including where appropriate the circumstances, of the transactions should be examined. The findings and outcomes of these examinations should be properly documented in writing and be available to assist the relevant authorities.
5. Paragraph 4.2.2 of the AMLGN and paragraph 2.1 of the AML/CFT Guideline require licensed corporations to take all reasonable measures to ensure that proper safeguards exist to mitigate the risks of money laundering and terrorist financing, including implementation of appropriate policies and procedures for the prevention of money laundering and terrorist financing and ensuring their effectiveness and compliance with all relevant legal and regulatory requirements.
6. General Principles 3 and 7 of the Code of Conduct for Persons Licensed by or Registered with the Securities and Futures Commission require licensed corporations to have and employ effectively the resources and procedures which are needed for the proper performance of their business activities, and to comply with all regulatory requirements applicable to the conduct of their business activities.
7. Licensed corporations are reminded to refer to the "[Circular to Licensed Corporations and Associated Entities – Anti-Money Laundering / Counter Financing of Terrorism \(AML/CFT\) Compliance with AML/CFT Requirements](#)" issued by the SFC on 26 January 2017 which sets out key areas of concern identified by the SFC in its review of some licensed corporations' AML/CFT systems.

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

Page last updated : 5 Apr 2017

STATEMENT OF DISCIPLINARY ACTION

The Disciplinary Action

1. The Securities and Futures Commission (**SFC**) has publicly reprimanded Guoyuan Securities Brokerage (Hong Kong) Limited (**Guoyuan**) and fined it \$4.5 million pursuant to section 194 of the Securities and Futures Ordinance.
2. The SFC found that between September 2010 and July 2012 (**Relevant Period**), Guoyuan failed to:
 - (a) conduct proper enquiries and sufficient scrutiny on a significant number of transactions involving third party fund deposits and withdrawals (**Third Party Transactions**) which were large, frequent, unusual and/or suspicious and/or adequately record enquiries which were allegedly made on these transactions;
 - (b) ensure activities in clients' accounts were consistent with the clients' net worth/annual income as stated on their account opening forms; and
 - (c) properly implement and communicate policies and procedures regarding anti-money laundering and counter-financing of terrorism (**AML/CFT**) to relevant staff members.
3. The failures constitute a breach of:
 - (a) paragraphs 4.2.2, 6.1.2(d) and 6.2.8 of the Prevention of Money Laundering and Terrorist Financing Guidance Note¹ (**AMLGN**);
 - (b) paragraphs 2.1, 5.1 and 5.10 of the Guideline on Anti-Money Laundering and Counter-Terrorist Financing (**AML/CFT Guideline**); and
 - (c) General Principles 3 and 7 of the Code of Conduct for Persons Licensed by or Registered with the SFC (**Code of Conduct**).

Summary of regulatory requirements

4. Licensed corporations are required under the AMLGN and AML/CFT Guideline to be vigilant in monitoring the activities of customers and detecting unusual or suspicious transactions which may indicate money laundering and terrorist financing.
5. Paragraph 6.1.2(d) of the AMLGN and paragraph 5.1(b) of the AML/CFT Guideline require licensed corporations to conduct ongoing due diligence and scrutiny, i.e. perform ongoing scrutiny of the transactions and account throughout the course of the business relationship to ensure that the transactions being conducted are consistent with the licensed corporation's knowledge of the customer, its business and risk profile, taking into account, where necessary, the customer's source of funds.

¹ The AMLGN was published by the SFC in September 2009 and remained effective until 31 March 2012. The AMLGN was applicable during part of the Relevant Period. From 1 April 2012, the AMLGN was superseded by the AML/CFT Guideline and the "Prevention of Money Laundering and Terrorist Financing Guideline issued by the Securities and Futures Commission for Associated Entities".

6. Paragraph 6.2.8 of the AMLGN and paragraphs 5.1(c) and 5.10 of the AML/CFT Guideline require licensed corporations to pay special attention to all complex, unusual large transactions and all unusual patterns of transactions which have no apparent economic or lawful purpose. The background and purpose, including where appropriate the circumstances, of the transactions should be examined. The findings and outcomes of these examinations should be properly documented in writing and be available to assist the relevant authorities.
7. In detecting unusual or suspicious transactions, licensed corporations should have regard to the relevant suspicious indicators set out in the AMLGN and AML/CFT Guideline² which would assist them in identifying the types of activities or transactions that could be a cause of scrutiny and should prompt further enquiries. Suspicious indicators include, among others, transactions which have no apparent legitimate purpose, unnecessary routing of funds from/to third parties, frequent fund transfers to or from third parties that are unrelated, unverified or difficult to verify and/or transactions where the source of funds is unclear or not consistent with the customers' apparent standing.
8. Further, effective policies, procedures and controls for monitoring, detecting and reporting suspicious activities of clients are critical for licensed corporations and their licensed representatives to comply with the AML/CFT statutory and regulatory requirements.
9. Paragraph 4.2.2 of the AMLGN and paragraph 2.1 of the AML/CFT Guideline require licensed corporations to take all reasonable measures to ensure that proper safeguards exist to mitigate the risks of money laundering and terrorist financing, including implementation of appropriate policies and procedures for the prevention of money laundering and terrorist financing and ensuring their effectiveness and compliance with all relevant legal and regulatory requirements.
10. General Principle 3 of the Code of Conduct requires licensed corporations to have and employ effectively the resources and procedures which are needed for the proper performance of their business activities.
11. General Principle 7 of the Code of Conduct requires licensed corporations to comply with all regulatory requirements applicable to the conduct of their business activities.

Summary of facts

Failure to identify and follow up on suspicious transactions and to ensure activities in clients' accounts were consistent with the clients' net worth/annual income as stated on their account opening forms

12. During the Relevant Period, Guoyuan executed a substantial volume of Third Party Transactions for its clients. Some of these transactions and the activities in some of the clients' accounts had the characteristics of the suspicious indicators set out in paragraph 7 above:
 - (a) Client A and Client B (who was also an authorized person to operate Client A's account) were two of the clients who conducted the most Third Party Transactions at Guoyuan:

² Appendix C(ii) of AMLGN and paragraphs 7.14 and 7.39 of AML/CFT Guideline.

- (i) Their account documentation revealed frequent and large number of fund transfers to and from third parties that were unrelated and unverified. In the account of Client A, there were 49 withdrawals to third parties (total sum: \$365,292,846.60) and 4 deposits from third parties (total sum: \$101,698,955). In the account of Client B, there were 22 withdrawals to third parties (total sum: \$117,905,985) and 8 deposits from third parties (total sum: \$80,402,895).
 - (ii) In the third party fund deposit / fund withdrawal to third party request forms (**Third Party Forms**) signed by Client A and Client B in respect of these fund transfers, the same reason was given by the clients – either “repayment” or “on behalf of account holder” without further elaboration; and the relationship between the clients and the third parties was often stated as “friends” or “business partners”.
 - (iii) Some of the third parties were also clients of Guoyuan, but the others were third parties whose identities were not verified by Guoyuan.
 - (b) The SFC’s investigation further revealed that some unverified third parties had deposited significant sums of money into Client B’s account and had simply used Client B’s account as a depositary account or conduit for transfer. There were at least four occasions where significant sums of third party deposits were made to Client B’s account, all with a simple explanation of “on behalf of account holder” from “friends”, and shortly thereafter, equivalent or roughly similar amounts were withdrawn and transferred to numerous other clients of Guoyuan or other unverified third parties, again with a simple explanation of “repayment” to either “friends” or “business partners”. Client B did not conduct any trading in his account at the material time. Two of Guoyuan’s clients who received funds from Client B in this process opened their accounts with Guoyuan shortly before the fund transfers, and the money from Client B was the first deposit in their accounts.
 - (c) Similar suspicious pattern can be found in Client A’s account where monies were transferred from third parties to Client A’s account and withdrawn and transferred to other third parties without any securities trading in the account at the material time. One of the third parties who received funds from Client A’s account opened an account with Guoyuan less than a month before the fund transfer; the money from Client A was the first deposit in his account and was substantially withdrawn shortly thereafter.
 - (d) Further, the activities in some of Guoyuan’s clients’ accounts who also received third party funds from Client A and Client B were inconsistent with the clients’ net worth / annual income as stated in their account opening forms.
13. Notwithstanding the numerous indicators which suggest that some of the Third Party Transactions during the Relevant Period appeared to be unusual and/or potentially suspicious, Guoyuan and its employees failed to identify them as potentially suspicious transactions and/or follow up on them, and/or failed to adequately record enquiries which were allegedly made. Guoyuan’s conduct was in breach of paragraphs 6.1.2(d) and 6.2.8 of the AMLGN and paragraphs 5.1 and 5.10 of the AML/CFT Guideline:
- (a) In relation to the large number of Third Party Transactions which stated “business partners” or “friends” as relationship and “on behalf of account holder” or “repayment” as reason for the transfer (see paragraphs 12(a)(i) and 12(a)(ii) above), Guoyuan was not able to state what steps were taken at the time to ensure that the Third Party Transactions were not unusual

and/or suspicious. Apart from the Third Party Forms and the CRM System³, it was also unable to provide the SFC with any records as to how it reviewed these transactions.

- (b) In relation to the inconsistencies between activities in clients' accounts and clients' net worth / annual income as recorded in their account opening documentation (see paragraph 12(d) above), Guoyuan was also unable to state positively whether it was aware of such inconsistencies at the time, whether it had made any enquiries with its clients regarding the inconsistencies, or to provide the SFC with records of the steps it took (if any) in identifying the inconsistencies.
- (c) Customer service officers of Guoyuan who assisted clients in filling in the Third Party Forms were not required to make further enquiries with the clients or maintain record of any enquires made in relation to suspicious transactions.
- (d) Although review by Compliance Department was part of the process in handling Third Party Transactions, by the time the transactions were reviewed by Compliance, they had already been approved by the relevant responsible officer (**RO**) and executed by Finance Department. Compliance had raised concerns as to whether the Third Party Transactions were appropriate, and on a number of occasions, refused to process the transactions and indicated that it reserved its opinion. Despite such concerns, Third Party Transactions were continuously approved and executed by Guoyuan.
- (e) The RO who approved all these Third Party Transactions during the Relevant Period claimed that he had reviewed the Third Party Transactions carefully and had enquired with Guoyuan's Managing Director about the Third Party Transactions in the accounts of Client A and Client B. However, the RO had no information as to why the clients specified "repayment" as a reason for almost all the withdrawals from Client A's / Client B's accounts to third parties. Apart from the alleged enquiries with the Managing Director, the RO had not made any enquiries with the clients as to the nature of the third party transactions. He also did not keep any written records of his alleged enquiries with the Managing Director.
- (f) Neither the Managing Director nor the RO could properly explain the underlying reasons for the Third Party Transactions in Client B's account. The Managing Director claimed that he had made enquiries with Client B and there were internal discussions about the transactions in the account of Client B as a whole and concluded that the possibility of money laundering in Client B's account was not high. There were however no records of such enquiries or discussions.
- (g) It was not until September 2012 that Guoyuan reported to the Joint Financial Intelligence Unit about the Third Party Transactions in Client A's and Client B's accounts.

Failure to properly implement AML/CFT policies and procedures

14. Guoyuan claimed that it had a Compliance Manual which contained AML/CFT procedures applicable during the Relevant Period. However, the compliance officer, RO and other key personnel responsible for approving, vetting and/or

³ CRM System is Guoyuan's computer management system that would keep an audit trail of the transactions being processed by each relevant department at Guoyuan.

handling Third Party Transactions were not aware of the existence of the manual. Even if the Compliance Manual was in place at the material time, Guoyuan failed to ensure that its employees were aware of it as it was not communicated to them.

15. Although Guoyuan appeared to have certain procedures for dealing with Third Party Transactions during the Relevant Period, such procedures were not effectively employed to ensure that the risks of money laundering could be mitigated, in breach of General Principle 3 of the Code of Conduct:
 - (a) The Third Party Transactions were brought to the attention of the RO, compliance officer and risk controller, but despite the apparent red flags and the concerns raised by the Compliance Department, the transactions were just routinely approved and executed.
 - (b) As explained in paragraph 13(d) above, Compliance's review was part of the process in handling Third Party Transactions. However, Compliance's comments would not affect the decision on whether the Third Party Transactions would be accepted.
 - (c) The Managing Director and the RO claimed that they had made certain enquiries in relation to the Third Party Transactions, but these enquiries were not properly recorded in writing to assist the SFC and other relevant authorities (see paragraphs 13(e) and 13(f) above).
16. For the reasons set out above, Guoyuan failed to take all reasonable measures to ensure that proper safeguards exist to mitigate the risks of money laundering and terrorist financing during the Relevant Period, in breach of paragraph 4.2.2 of AMLGN and paragraph 2.1 of the AML/CFT Guideline.
17. Guoyuan also failed to comply with General Principle 7 of the Code of Conduct which requires a licensed corporation to comply with all regulatory requirements applicable to the conduct of its business activities.

Conclusion

18. Having considered all the circumstances, the SFC is of the view that Guoyuan is guilty of misconduct and its fitness and properness to carry on regulated activities have been called into question.
19. In deciding the disciplinary sanction set out in paragraph 1, the SFC has had regard to its Disciplinary Fining Guidelines and has taken into account all relevant considerations, including:
 - (a) the duration of Guoyuan's failures was more than a year;
 - (b) Guoyuan cooperated with the SFC in resolving the SFC's concerns;
 - (c) Guoyuan has implemented new policies and procedures in relation to AML/CFT, taken steps to remedy its internal control deficiencies and the former senior management team has left;
 - (d) Guoyuan agreed to engage an independent reviewer to conduct a review of its internal controls; and
 - (e) Guoyuan has an otherwise clean disciplinary record.