

SFC reprimands and fines FXCM Asia Limited HK\$2 million

13 Dec 2017

The Securities and Futures Commission (SFC) has reprimanded and fined FXCM Asia Limited (HK FXCM) (now known as Rakuten Securities Hong Kong Limited) HK\$2 million for regulatory breaches and internal control failings relating to under-segregation of client money (Notes 1 & 2).

The SFC’s investigation found that from January 2013 to January 2015, HK FXCM under-segregated client monies as a result of:

- meeting clients’ withdrawals of monies that are in excess of the amounts HK FXCM segregated for them with the monies that are held for other clients; and
- understating the amount of monies that should have been segregated due to erroneous calculation.

These actions of HK FXCM were contrary to the Client Money Rules and the Code of Conduct (Notes 3 & 4).

The amount of client monies that were under-segregated ranged from HK\$2.9 million to HK\$11.6 million at the end of each month between January 2013 and December 2014 and was as high as HK\$72 million in January 2015.

The SFC considers that HK FXCM failed to have adequate internal controls in place to prevent under-segregation of client monies, and to ensure that client assets were properly accounted for and adequately safeguarded.

In deciding the disciplinary sanctions, the SFC took into account that HK FXCM:

- co-operated with the SFC in resolving the SFC’s concerns;
- has taken actions to remediate its internal control deficiencies; and
- is now under new ownership and management and the failures relating to its client money handling procedures were attributable to the former management of HK FXCM.

End

Notes:

1. HK FXCM is licensed under the Securities and Futures Ordinance to carry on Type 3 (leveraged foreign exchange trading) regulated activity.
2. The business of HK FXCM was acquired by Rakuten Securities, Inc. in September 2015. HK FXCM changed its company name to Rakuten Securities Hong Kong Limited in April 2016 and is under new ownership and management.
3. Securities and Futures (Client Money) Rules (Client Money Rules).
4. Code of Conduct for Persons Licensed by or Registered with the Securities and Futures Commission (Code of Conduct).

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

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證監會對福匯亞洲有限公司作出譴責並罰款200萬港元

2017年12月13日

福匯亞洲有限公司（香港福匯）（現稱樂天證券香港有限公司）因違反監管規定及干犯內部監控缺失，遭證券及期貨事務監察委員會（證監會）譴責及罰款200萬港元。有關違規行為及缺失均與客戶款項分隔不足有關（註1及2）。

證監會的調查發現，香港福匯於2013年1月至2015年1月期間進行了以下行為，因而沒有充分分隔客戶款項：

- 接受某些客戶提取多於香港福匯代他們分隔存放的款項，並動用香港福匯代其他客戶持有的款項來支付有關提款要求；及
- 因計算錯誤，以致本應分隔的客戶款額較正確的數額為少。

香港福匯的有關行為違反了《客戶款項規則》及《操守準則》（註3及4）。

在2013年1月至2014年12月期間的每個月底，分隔不足的客戶款額介乎290萬港元至1,160萬港元。於2015年1月，有關金額更高達7,200萬港元。

證監會認為，香港福匯沒有制訂足夠的內部監控措施，以防止出現客戶款額分隔不足的情況，並且沒有確保客戶的資產被妥善地加以記帳及獲得充分保障。

證監會在決定上述紀律處分時，已考慮到香港福匯：

- 在解決證監會的關注方面表現合作；
- 已採取行動糾正其在內部監控方面的不足；及
- 現時已易主和換上新的管理層，而有關客戶款項處理程序的缺失可歸因於香港福匯的前管理層。

完

備註：

1. 香港福匯根據《證券及期貨條例》獲發牌進行第3類（槓桿式外匯交易）受規管活動。
2. 香港福匯的業務於2015年9月被Rakuten Securities, Inc.收購。香港福匯已於2016年4月改名為樂天證券香港有限公司，有關業務已由新的東主及管理層接手經營。
3. 《證券及期貨(客戶款項)規則》。
4. 《證券及期貨事務監察委員會持牌人或註冊人操守準則》（《操守準則》）。

[有關紀律處分行動聲明載於證監會網站](#)

最後更新日期：2017年12月13日

Statement of Disciplinary Action

The Disciplinary Action

1. The Securities and Futures Commission (**SFC**) has reprimanded FXCM Asia Limited¹ (**HK FXCM**) (now known as Rakuten Securities Hong Kong Limited) and fined it HK\$2,000,000 pursuant to section 194 of the Securities and Futures Ordinance (**SFO**).
2. The SFC found that from January 2013 to January 2015, HK FXCM had:
 - (a) failed to segregate client monies in accordance with the Securities and Futures (Client Money) Rules (**Client Money Rules**);
 - (b) failed to properly account for and adequately safeguard client assets; and
 - (c) failed to put in place adequate internal control procedures which can be reasonably expected to protect its operations and its clients.
3. The SFC is of the view that HK FXCM has been guilty of misconduct, calling into question its fitness and properness as a licensed person.

Summary of regulatory requirements

4. Section 4 of the Client Money Rules requires licensed corporations that receive or hold client money to establish and maintain segregated accounts in Hong Kong for deposit of such money within one business day of receipt. Section 5(1) of the Client Money Rules specifies the circumstances in which client money may be paid out of segregated accounts.
5. The Code of Conduct for Persons Licensed by or Registered with the Securities and Futures Commission (**Code of Conduct**) requires licensed persons to:
 - (a) comply with, and implement and maintain measures appropriate to ensuring compliance with, relevant regulatory requirements (General Principle 7 and paragraph 12.1);
 - (b) ensure that client assets are promptly and properly accounted for and adequately safeguarded (General Principle 8 and paragraph 11.1); and
 - (c) have internal control procedures and financial and operational capabilities to protect their operations and their clients from financial loss arising from professional misconduct or omissions (paragraph 4.3).

¹ HK FXCM is licensed under the Securities and Futures Ordinance to carry on business in Type 3 (leveraged foreign exchange trading) regulated activity.

Summary of facts

Handling of withdrawals of “unrealized gains” by clients

6. Prior to May 2015, HK FXCM had a policy of permitting clients to withdraw monies which constituted “unrealized gains” of their open trade positions from HK FXCM.
7. Given that the withdrawals of “unrealized gains” by clients were effected through HK FXCM’s segregated accounts directly, when the fund withdrawals of those clients exceeded the amounts that HK FXCM held for them in the segregated accounts, payment of monies to them would have been made out of the amounts HK FXCM held for other clients in the segregated accounts.
8. The amount of client monies that were under-segregated ranged from HK\$2.9 million to HK\$11.6 million as at the end of each month between January 2013 and December 2014.

Handling of client accounts with negative balances

9. On 15 January 2015, the Swiss National Bank announced the removal of the 1.2000 EUR/CHF peg, which triggered a sharp appreciation in CHF (**Swiss Franc Incident**). **The Swiss Franc Incident caused certain clients of HK FXCM to incur trading losses and resulted in negative balances in 72 client accounts.**
10. In order to comply with the Client Money Rules, **HK FXCM conducted a daily transfer of client monies between the client segregated accounts and the operating accounts through which trading activities were conducted.**
11. **In calculating the appropriate transfer amount, HK FXCM aggregated all clients’ account balances, including the negative balances. The negative balances ought to have been excluded from the calculation as they represented deficits owed to HK FXCM. The inclusion of the negative balances led to an understatement of the amount of client money that should have been segregated.**
12. As a result of the wrong calculation, HK FXCM erroneously transferred excess client monies out of the client segregated accounts into the operating accounts.
13. As at 15 January 2015, HK FXCM under-segregated client monies by HK\$72 million.
14. HK FXCM’s control and operational deficiencies as reflected in its mishandling of client monies had put clients’ interests at risk and breached its obligation to properly account for and adequately safeguard client monies.
15. The SFC is of the view that HK FXCM has:
 - (a) contravened section 5(1) of the Client Money Rules in that client monies were not retained in a segregated account until it is paid other than where it is specifically allowed by the Client Money Rules;
 - (b) failed to segregate client monies in accordance with the Client Money Rules, in breach of General Principle 7 and paragraph 12.1 of the Code of Conduct;

- (c) failed to properly account for and adequately safeguard client assets in breach of General Principle 8 and paragraph 11.1 of the Code of Conduct; and
- (d) failed to put in place adequate internal control procedures which can be reasonably expected to protect its operations and its clients in breach of paragraph 4.3 of the Code of Conduct.

Conclusion

16. In reaching the decision to take disciplinary action against HK FXCM for the matters set out in paragraph 2, the SFC has taken into account that HK FXCM:
- (a) co-operated with the SFC in resolving the SFC's concerns;
 - (b) has taken actions to remediate its internal control deficiencies; and
 - (c) is now under new ownership and management and the failures relating to its client money handling procedures were attributable to the former management of HK FXCM.

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**）依據《證券及期貨條例》第 194 條對福匯亞洲有限公司¹（**香港福匯**）（現稱樂天證券香港有限公司）作出譴責並罰款 200 萬港元。
2. 證監會發現，由 2013 年 1 月至 2015 年 1 月期間，香港福匯沒有：
 - (a) 遵照《證券及期貨(客戶款項)規則》（《**客戶款項規則**》）的規定分隔客戶款項；
 - (b) 對客戶的資產妥善地加以記帳及令該等資產獲得充分的保障；及
 - (c) 設立妥善的內部監控程序以保障其運作和客戶。
3. 證監會認為香港福匯犯有失當行為，令其作為持牌人的適當人選資格受到質疑。

監管規定摘要

4. 《客戶款項規則》第 4 條規定，持牌法團如收取或持有客戶款項，便須在香港開立和維持獨立帳戶，以便在收取款額後的一個營業日內，將該款額存入獨立帳戶。《客戶款項規則》第 5(1)條指明可從獨立帳戶提取客戶款項的情況。
5. 《證券及期貨事務監察委員會持牌人或註冊人操守準則》（《**操守準則**》）規定，持牌人須：
 - (a) 遵守、實施及維持適當的措施，以確保有關的監管規定獲得遵守（第 7 項一般原則及第 12.1 段）；
 - (b) 確保對客戶的資產盡快及妥善地加以記帳，並且令該等資產獲得充分的保障（第 8 項一般原則及第 11.1 段）；及
 - (c) 設有內部監控程序、財政資源及操作能力，以保障其運作及客戶，以免其因專業上的失當行為或不作為而招致財政損失（第 4.3 段）。

事實摘要

處理客戶“未實現收益”的提款

6. 在 2015 年 5 月之前，香港福匯的政策允許客戶從該公司提取相等於他們持倉中的“未實現收益”的款項。

¹ 香港福匯根據《證券及期貨條例》獲發牌進行第 3 類（槓桿式外匯交易）受規管活動的業務。

7. 由於客戶提取的“未實現收益”是直接從香港福匯的獨立帳戶中支取，當客戶提取的款項多於獨立帳戶內香港福匯代他們持有的款額時，該等款項便會從獨立帳戶內香港福匯代其他客戶持有的款額中支取。
8. 在 2013 年 1 月至 2014 年 12 月期間的每個月底，分隔不足的客戶款額介乎 290 萬港元至 1,160 萬港元。

處理結餘為負數的客戶帳戶

9. 瑞士國家銀行於 2015 年 1 月 15 日宣布取消歐羅兌瑞士法郎 1.2000 的匯率掛鉤限制，引發瑞士法郎大幅升值（**瑞士法郎事件**）。瑞士法郎事件導致香港福匯的某些客戶遭受交易虧損，結果令 72 名客戶的帳戶出現負數結餘。
10. 為符合《客戶款項規則》，香港福匯每日在客戶的獨立帳戶與進行交易活動的營運帳戶之間轉移客戶款項。
11. 在計算適當的轉帳數額時，香港福匯將所有客戶的帳戶餘額（包括負數結餘）匯集起來。該等負數結餘不應被計算在內，因為它們代表著結欠香港福匯的數額。將負數結餘計算在內的做法，導致本應分隔的客戶款額較正確的數額為少。
12. 因計算錯誤，以致香港福匯錯誤地從客戶的獨立帳戶中將超出正確數額的客戶款項轉移至營運帳戶。
13. 截至 2015 年 1 月 15 日，香港福匯沒有充分地分隔客戶款項，涉及的差額為 7,200 萬港元。
14. 香港福匯以不當方式處理客戶款項，反映了其在監管措施及運作方面存在不足，令客戶的利益面臨風險，並且違反了對客戶款項妥善地加以記帳及充分保障客戶款項的責任。
15. 證監會認為，香港福匯：
 - (a) 沒有將客戶款項一直保留在獨立帳戶內直至《客戶款項規則》所明確允許的情況下被支付為止，因而違反了《客戶款項規則》第 5(1)條；
 - (b) 沒有遵照《客戶款項規則》的規定分隔客戶款項，違反了《操守準則》第 7 項一般原則和第 12.1 段；
 - (c) 沒有對客戶的資產妥善地加以記帳及充分保障客戶資產，違反了《操守準則》第 8 項一般原則和第 11.1 段；及
 - (d) 沒有設立妥善的內部監控程序以保障其運作和客戶，違反了《操守準則》第 4.3 段。

結論

16. 證監會在達致對香港福匯就第 2 段所述事宜而採取的紀律處分行動的決定時，已考慮到香港福匯：
 - (a) 在解決證監會的關注方面表現合作；

- (b) 已採取行動糾正其內部監控的不足；及
- (c) 現時已易主和換上新的管理層，而與客戶款項處理程序有關的缺失則可歸因於香港福匯的前管理層。