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SFC reprimands and fines HSBC \$2.1 million for breaching telephone recording requirements

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The Securities and Futures Commission (SFC) has reprimanded and fined The Hongkong and Shanghai Banking Corporation Limited (HSBC) \$2.1 million for non-compliance with the telephone recording requirements under the Code of Conduct (Notes 1 & 2).

The disciplinary action arose from HSBC's failures to set up or enable voice recording of some of the telephone lines in its Private Banking Division between 8 April 2017 and 31 January 2018, during which **5,830 client order instructions received through 59 affected telephone lines were not tape-recorded.**

The SFC considered that HSBC has failed to put in place effective internal control procedures to ensure proper implementation of the telephone recording function and timely detection of any telephone recording failures.

In deciding the sanction, the SFC took into account that HSBC:

- self-reported the failures to the SFC and the Hong Kong Monetary Authority (HKMA);
- took remedial actions upon discovery of the incidents;
- cooperated with the SFC in resolving the SFC's concerns; and
- agreed to engage an independent reviewer to review the effectiveness of the remedial actions undertaken in relation to the maintenance and functionality of the voice recording system used by its Private Banking Division and to submit to the SFC and the HKMA the review report to ensure its compliance with the regulatory requirements.

The case was referred to the SFC following an investigation by the HKMA as part of the joint enforcement collaboration between the SFC and the HKMA.

End

Notes:

1. HSBC is registered under the Securities and Futures Ordinance to carry on business in Type 1 (dealing in securities), Type 2 (dealing in futures contracts), Type 4 (advising on securities), Type 5 (advising on futures contracts), Type 6 (advising on corporate finance) and Type 9 (asset management) regulated activities.
2. Paragraph 3.9(b) of the Code of Conduct for Persons Licensed by or Registered with the Securities and Futures Commission provides that, where order instructions are received from clients through the telephone, the registered 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.

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

Page last updated : 10 Sep 2019

Statement of Disciplinary Action

The Disciplinary Action

1. The Securities and Futures Commission (**SFC**) has publicly reprimanded and fined The Hongkong and Shanghai Banking Corporation Limited (**HSBC**) \$2,100,000 pursuant to section 196 of the Securities and Futures Ordinance (**SFO**).
2. The disciplinary action is taken in relation to two incidents of failure by HSBC to comply with the telephone recording requirements under the Code of Conduct for Persons Licensed by or Registered with the Securities and Futures Commission (**Code of Conduct**).
3. HSBC is registered under the SFO to carry on business in Type 1 (dealing in securities), Type 2 (dealing in futures contracts), Type 4 (advising on securities), Type 5 (advising on futures contracts), Type 6 (advising on corporate finance) and Type 9 (asset management) regulated activities.

Summary of facts

Failure to record client order instructions received through the telephone

4. In February 2018, HSBC reported to the Hong Kong Monetary Authority (**HKMA**) and the SFC two incidents of failure regarding the voice recording function of the telephone lines in its Private Banking Division (**PBD**) during various periods between 8 April 2017 and 31 January 2018.
5. The two incidents affected a total of 59 telephone lines which were used by the PBD to receive client order instructions including: (a) one primary line for the first incident (**Incident One**); and (b) 58 shared lines for the second incident (**Incident Two**). As a result of the failure, the client order instructions received through the affected telephone lines were not recorded.
 - (a) *Incident One*
 6. Incident One concerned the primary telephone line of a client service executive of the PBD. The primary line was not enabled with recording function during the period from 13 July 2017 to 15 January 2018. It is estimated that 630 order instructions from 44 client accounts received through the primary line were not tape-recorded.
 7. The likely root cause of the incident was an inadvertent manual error made by a system engineer when performing routine system updates and/or configuration changes to the telephone recording system. The engineer inadvertently disabled the recording function of the telephone line.

(b) *Incident Two*

8. Incident Two concerned 58 shared telephone lines. The shared lines were not enabled with recording function during various periods between 8 April 2017 and 31 January 2018. It is estimated that a total of 5,200 order instructions from 627 client accounts received through the shared lines were not tape-recorded as a result.
9. The root cause contributing to the failure of the voice recording function of 57 shared telephone lines (among the 58 affected shared telephone lines) was a miscommunication in processing requests in respect of telecom-related services within HSBC. Prior to June 2017, the telephone line set-up and maintenance function for the PBD was handled by an engineer group which used to pre-set all shared telephone lines of the PBD with recording function by default. Since June 2017, the telephone line set-up and maintenance function for the PBD was handled by a different engineer group. The team was not aware of the practice adopted by the previous team and did not pre-set the shared lines with recording function by default.
10. For the remaining affected shared telephone line, the most likely root cause of the recording failure was due to an inadvertent manual error made by a system engineer when performing routine system updates and/or configuration changes to the telephone recording system.

Failure to put in place effective internal controls to ensure proper implementation and timely detection of any failure of the recording function of telephone lines

11. The telephone recording failures were not discovered promptly – the failures lasted nearly 6 months in the case of Incident One and 9 months in the case of Incident Two.
12. HSBC's internal policies and procedures were not adequate and effective in ensuring proper implementation, and timely detection of any failure, of the recording function of the telephone lines:
 - (a) HSBC did not require user acceptance test be performed after updates and/or changes were made to telephone lines or after telephones lines were set up; and
 - (b) While HSBC performed monthly sample checks on all recorded telephone lines to ensure the quality of the recording, the checks only covered the primary telephone lines but not the shared telephone lines.

Our concerns

13. The conduct of HSBC as set out in paragraphs 4 to 12 constitutes a breach of:
 - (a) paragraph 3.9(b) (Order recording) of the Code of Conduct, which provides that, where order instructions are received from clients through the telephone, a registered 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;

- (b) General Principle 3 (Capabilities) and paragraph 4.3 (Internal control, financial and operational resources) of the Code of Conduct, which require a registered person to employ effectively the resources and procedures which are needed for the proper performance of its business activities and have internal control procedures which can be reasonably expected to protect its operations and its clients from financial loss arising from professional misconduct or omissions;
- (c) General Principle 2 (Diligence) of the Code of Conduct, which requires a registered person to act with due skill, care and diligence, in the best interests of its clients and the integrity of the market; and
- (d) General Principle 7 (Compliance) and paragraph 12.1 (Compliance: in general) of the Code of Conduct, which require a registered person to comply with, and implement and maintain measures appropriate to ensure compliance with, relevant regulatory requirements.

Conclusion

- 14. Having considered all the circumstances, the SFC is of the opinion that it is in the interest of the investing public and in the public interest to resolve the above concerns with HSBC, and take the disciplinary action set out in paragraph 1.
- 15. In deciding the disciplinary sanctions, the SFC has taken into account that HSBC:
 - (a) self-reported the failures to the SFC and the HKMA;
 - (b) took remedial actions upon discovery of the incidents;
 - (c) cooperated with the SFC in resolving the SFC's concerns; and
 - (d) agreed to engage an independent reviewer to review the effectiveness of the remedial actions taken in relation to the maintenance and functionality of the voice recording system used by PBD and to submit to the SFC and the HKMA the review report to ensure its compliance with the regulatory requirements.