
STATEMENT OF DISCIPLINARY ACTION

The Disciplinary Action

1. The Securities and Futures Commission (**SFC**) has banned Mr Philip John Shaw (**Shaw**), a former responsible officer (**RO**), board member and Head of Pan-Asia Execution Services of Citigroup Global Markets Asia Limited (**CGMAL**), from re-entering the industry for 10 years from 4 March 2023 to 3 March 2033 pursuant to section 194 of the Securities and Futures Ordinance (**SFO**).
2. The disciplinary action follows the SFC's earlier sanctions against CGMAL for serious regulatory breaches and internal control failures in relation to issuance of Indications of Interest (**IOIs**) and client facilitation activities by its Cash Equities business, which included the High Touch Equities Sales Trading Desk (**HT Desk**), Programme Trading Desk, Electronic Execution Desk, Multi-Product Trading Team and Facilitation Desk (collectively, the **Desks**), from 2008 to 2018¹.
3. The SFC is of the view that CGMAL's breaches and failings were attributable to Shaw's failure to discharge his duties as an RO and a member of CGMAL's senior management.

Summary of Facts

Shaw's role at CGMAL

4. Shaw was licensed to carry on Type 1 (dealing in securities) and Type 2 (dealing in futures contracts) regulated activities under the SFO. He was accredited to CGMAL as a licensed representative from 12 June 2007 to 8 July 2016 and approved as its RO from 8 July 2016 to 22 March 2019. Shaw is currently not licensed by the SFC.
5. CGMAL appointed Shaw as its Head of APAC Sales Trading in November 2008 to manage the HT Desk. He was promoted as the Head of Pan-Asia Execution Services in April 2016 and assumed management and supervisory duties over the Desks. He also became a member of CGMAL's board of directors from July 2016 to August 2018.
6. In March 2019, CGMAL summarily dismissed Shaw and all members of the HT Desk after its internal investigation (which was triggered by an on-site inspection conducted by the SFC) revealed misconduct on their part in relation to client facilitation activities.

¹ CGMAL was reprimanded and fined \$348.25 million by the SFC. Please refer to the SFC's press release dated [28 January 2022](#).

Mislabeled IOIs

7. Since at least 2008, the HT Desk had sent IOIs tagged as “Natural”, “In Touch With” and / or “P:1” to clients when there was no genuine client interest or specific client that CGMAL was in touch with (**Mislabeled IOIs**)².
8. The Mislabeled IOIs were generated with reference to certain percentage of the average daily volumes of selected blue-chip stocks in the market. The purpose was to provoke client enquiries with a purported belief that traders would be able to find natural opposite flows to cross with the client order given the active trading of the stocks and the size of CGMAL’s trading platform. The Facilitation Desk would step in to provide liquidity when traders failed to source natural liquidity upon client enquiry.
9. In 2015, Shaw introduced an Excel spreadsheet with built-in macros to allow bulk generation and uploading of Mislabeled IOIs by reference to the top 30 or 40 most actively traded stocks in the market on the previous day (**Spreadsheet**). The list of Mislabeled IOIs would be shown to the then head of the Facilitation Desk for agreement before they were posted. This practice of using the Spreadsheet to generate and disseminate Mislabeled IOIs lasted until December 2018.
10. Contemporaneous correspondence reveals that Shaw referred to the “In Touch With” and “P:1” IOIs generated using the Spreadsheet as “*fake flow*” and “*the fakes*”, indicating that he did not genuinely believe that they were correctly labelled.
11. A number of clients had complained about the quality and accuracy of CGMAL’s IOIs, emphasised the importance of labelling IOIs correctly, and / or pointed out that it was unacceptable for CGMAL to advertise facilitation flow using “In Touch With” IOIs. Although these complaints were either made to Shaw or brought to his attention, he did not stop the dissemination of Mislabeled IOIs. Instead, he assured the clients that CGMAL followed the AFME Framework in classifying its IOIs.
12. On one occasion, after a trader of the Desks had admitted to a client that CGMAL advertised facilitation flow using “Natural” IOIs, Shaw instructed the trader to refrain from being honest with clients about the source of liquidity behind such IOIs. In order to perpetuate the falsehood created by the Mislabeled IOI, Shaw made misrepresentations to the client to mislead it into thinking that the IOI in question represented natural flow.
13. The SFC is concerned that the HT Desk intentionally disseminated Mislabeled IOIs over a prolonged period pursuant to Shaw’s instruction and with his consent or connivance, contrary to the fundamental principles of being honest with clients and treating clients fairly. The SFC is of the view that Shaw has failed to:

² According to the AFME/IA Framework for Indications of Interest (**AFME Framework**) issued by the Association for Financial Markets in Europe and the Investment Association in March 2017, “P:1” or “In Touch With” IOIs could be issued where there was a reasonable expectation of interest from a specific client and resulting trades were expected to be of a riskless nature. Since early 2017, CGMAL and Shaw represented to clients that the AFME Framework was adopted in classifying and qualifying its IOIs.

- (a) act honestly, fairly, and in the best interests of clients and the integrity of the market under General Principle 1 of the Code of Conduct for Persons Licensed by or Registered with the SFC (**Code of Conduct**);
- (b) make adequate disclosure of relevant material information in dealings with clients under General Principle 5 of the Code of Conduct;
- (c) ensure that any representations made and information provided to clients and advertisements are accurate and not misleading under paragraphs 2.1 and 2.3 of the Code of Conduct; and
- (d) ensure the maintenance of appropriate standards of conduct and adherence to proper procedures by CGMAL and properly manage the risks associated with its business, under General Principle 9 and paragraph 14.1 of the Code of Conduct.

Misrepresentation and non-disclosure to conceal the principal nature of facilitation trades

14. The SFC has reviewed 174 sample facilitation trades executed by the Desks during the period from January 2014 to December 2018 and found that in 127 of the sample trades, 23 traders / heads of the Desks, including Shaw:
 - (a) gave factually incorrect information to the client or took positive steps to conceal the principal nature of the trade (ie, express misrepresentation);
 - (b) made misleading statements that could be interpreted by the client as indicating that the trade would be executed on an agency basis, or remained silent notwithstanding some indication of the client's belief that the trade was an agency trade (ie, misrepresentation by omission); and / or
 - (c) remained silent or were not explicit with the client about the involvement of the Facilitation Desk (ie, non-disclosure) and failed to obtain client's consent before routing the client's order to the Facilitation Desk for execution.
15. Out of the 174 samples reviewed, 12 were handled by Shaw. The SFC found that eight of them involved misrepresentation or non-disclosure of the principal nature of the trades. In one of the samples, Shaw made misrepresentations about the involvement of the Facilitation Desk when the client was responding to a Mislabeled IOI.
16. In short, the practice of making misrepresentations to clients about, or refraining from disclosing, the true nature of the trades existed at least since 2014, and dominated the facilitation trades conducted by the Desks and Shaw during the period examined³.
17. The evidence indicates that Shaw knew that it was the Desks' practice to deliberately misrepresent facilitation trades as agency trades because clients generally preferred natural liquidity over facilitation. By misrepresenting a

³ The SFC has not reviewed any facilitation trades prior to 2014, as CGMAL no longer retained audio records for such period.

facilitation trade as an agency trade or refraining from informing the client about the involvement of the Facilitation Desk, they could avoid “losing a trade” to a competitor.

18. The SFC is concerned that Shaw had, by committing the misconduct himself and consenting to or conniving in the Desks’ misconduct, engendered a culture of chasing revenue at the expense of client interests and basic standards of honesty within CGMAL.
19. The above demonstrates that Shaw has not only breached General Principles 1, 5 and 9 and paragraphs 2.1 and 14.1 of the Code of Conduct as set out in paragraph 13 above, but also failed to:
 - (a) avoid and disclose conflicts of interest and ensure fair treatment of clients, in breach of General Principle 6 and paragraph 10.1 of the Code of Conduct;
 - (b) execute client orders on the best available terms and act in the best interests of clients, in breach of paragraphs 3.2 and 3.10 of the Code of Conduct; and
 - (c) supervise diligently members of the Desks, in breach of paragraph 4.2 of the Code of Conduct.

Misrepresentation when responding to client’s complaint

20. In September 2018, a client of CGMAL found out that a trader of CGMAL’s overseas affiliate (who was under Shaw’s supervision) advertised a Mislabelled IOI on a Malaysian stock and misrepresented the resulting trade as a natural cross when the client’s order was in fact facilitated. The client lodged a formal complaint with Shaw and expressed concern that it was a common behaviour in CGMAL and its affiliates.
21. In order to mislead the client into believing that it was a one-off incident, Shaw told the client that CGMAL had effective controls to ensure that principal trades would not be misrepresented as natural flow, when he must have known that it was not the case in reality.
22. This incident is a further demonstration of Shaw’s failure to act honestly, fairly and in the best interests of clients, and to properly discharge his senior management responsibility to ensure maintenance of appropriate standards of conduct and adherence to proper procedures, in breach of General Principles 1 and 9 and paragraph 14.1 of the Code of Conduct. It also shows that he has failed to handle the client’s complaint appropriately and remedy issues of broader concern arising from the complaint, in breach of paragraph 12.3 of the Code of Conduct.

Shaw’s responsibilities for CGMAL’s internal control failures

23. The prevalence of the misconduct among the Desks over a prolonged period indicates that there were serious and systemic lapses across the Desks and CGMAL’s controls framework. Specifically, before November 2018, CGMAL failed to:

- (a) put in place any policies or controls to monitor the issuance of “In Touch With” and “P:1” IOIs and ensure that such IOIs were backed by specific client interest;
 - (b) have adequate internal guidelines and enforce them in relation to pre-trade disclosure of and obtaining client consent for facilitation trades. Instead, it deliberately excluded the requirement for obtaining prior client consent for facilitation trades when revising its compliance guidelines in 2018;
 - (c) implement effective compliance monitoring in respect of its facilitation activities to ensure that traders had made pre-trade disclosure of CGMAL’s principal capacity and obtained clients’ prior consent;
 - (d) provide training to traders on IOIs and pre-trade consent for facilitation activities;
 - (e) record and monitor communications and ensure sufficient segregation between agency and facilitation desks; and
 - (f) identify and rectify system errors that had led to the sending of erroneous post-trade FIX⁴ messages to clients, which incorrectly indicated that CGMAL acted in an agency capacity when in fact it acted as principal.
24. The SFC is of the view that Shaw was accountable for CGMAL’s internal control failures for the following reasons:
- (a) The regulatory requirements in relation to client consent for facilitation activities had been brought to Shaw’s attention on various occasions since at least 2014. He must have known that CGMAL’s policies in this regard were ineffective but chose to acquiesce to the inadequacy.
 - (b) He actively promoted the use of IOIs by the Desks to increase business opportunities but did not see to it that adequate policies and effective controls were put in place to monitor and ensure the accuracy of the IOIs issued by the Desks, and that proper training was provided to traders on the classification of IOIs.
 - (c) On 14 February 2018, the SFC issued a circular to licensed corporations on client facilitation (**Circular**) to remind intermediaries that when they assume a risk-taking principal position in client facilitation activities, the nature of the trades should be disclosed to clients and their prior consent obtained so that they would be fully aware of the inherent conflicts of interest. The Circular also states that IOIs should only be disseminated when they are based on a genuine client or proprietary intent to trade, they should provide sufficient details, and controls and monitoring should be implemented to ensure they are accurate and updated in a timely manner.
 - (d) Despite the Circular, Shaw requested, consented to or connived in, the exclusion of the prior client consent requirement for facilitation trades from

⁴ Financial Information eXchange (**FIX**) is an electronic communications protocol for the international real-time exchange of securities transaction information.

CGMAL's compliance guidelines when the same were updated in response to the Circular.

- (e) Although he was aware that "In Touch With" and "P:1" IOIs were left out of CGMAL's scope when it implemented procedures to check the accuracy of various types of IOIs in mid-2018, he did not take any step to ensure that other controls would be set up in respect of "In Touch With" and "P:1" IOIs.

Conclusion

- 25. Having considered all relevant circumstances, we concluded that Shaw has failed to discharge his duties as an RO, a board member and a member of the senior management of CGMAL, and CGMAL's misconduct (as set out in the SFC's press release dated 28 January 2022) occurred with his consent or connivance, or was attributable to neglect on his part, and should be regarded as misconduct on his part under section 193(2)(a) of the SFO.
- 26. The SFC is of the opinion that Shaw is guilty of misconduct and his fitness and properness as a regulated person has been called into question.
- 27. In deciding the disciplinary sanction set out in paragraph 1 above, the SFC has taken into account all relevant circumstances, including:
 - (a) Shaw's misconduct was intentional, dishonest and contrary to a licensed person's overarching duty to act in clients' best interests;
 - (b) CGMAL's serious internal control failures and regulatory breaches could not have prevailed for over 10 years had he properly discharged his management and supervisory responsibilities;
 - (c) notwithstanding his experience and seniority, he denied any wrongdoing and attempted to shift all the blame to other management personnel and the compliance function of CGMAL, which reflected a lack of understanding of his duties as an RO and a member of the senior management as well as a lack of remorse;
 - (d) it is necessary to send a clear and strong message to the industry that the SFC will not tolerate misconduct such as his; and
 - (e) his otherwise clean disciplinary record.