SFAT Upholds SFC's Ability to Adjust Disciplinary Penalties to Suit Circumstances

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The Securities and Futures Appeals Tribunal (SFAT) handed down the reasons for its decision in the Kwok Wai Shun case.

Kwok allowed a third party to operate a client’s accounts without keeping any identity information of the third party nor details of the instructions given by him. Kwok has been suspended for three months for his improper conduct. For details of the Kwok case, please see SFC press release issued on 7 June 2004.

At the appeal hearing, Kwok submitted that the SFC’s penalty was too harsh because those for previous similar cases were lighter. The SFC accepted this but told the Appeals Tribunal that the improper conduct in question was too prevalent in the market and it had come to a point where the SFC should impose a harsher penalty to deter the conduct.

In dismissing Kwok’s application for review, the SFAT wrote: "Whilst it is clearly desirable to attempt to maintain consistency of treatment in like disciplinary situations, it cannot be the case ....that the regulator is in a sense "hamstrung" by precedent, and is thus unable to respond to prevailing market conditions by subsequently adopting a different disciplinary approach towards types of market misconduct".

The SFC welcomes the SFAT’s rulings. Mr Alan Linning, the SFC’s Executive Director of Enforcement, said: "The general principle is that like cases should receive like punishments, but this case is a reminder that the SFC will change its disciplinary penalties from time to time in light of various considerations it deems relevant to the discharge of its statutory duties to enforce proper conduct and deter improper practice in the securities and futures markets, and of changing market circumstances, particularly market participants’ behaviour."

Mr Linning continued: "Knowing your clients and keeping client identity information are basic duties of a licensed person. Licensed persons should be aware that nominee accounts are often used to hide illegal or improper conduct, such as market manipulation, insider dealing, and so on. The use of nominee accounts can be prevented if licensed persons properly discharge these duties. Further, allowing a third party to operate a client’s accounts without obtaining a written authorisation not only puts the client at financial risk but also the brokerage firm if the client were to dispute the trades done by the third party. This improper practice must stop."

"Everyone who trades through an account must be recorded as a client holding an account or have a written authority to place orders for that account from the relevant clients. This applies to everyone, including spouses, family members and friends. Anything else is unacceptable. The SFC will suspend or fine for similar failings," Mr Linning said.

A copy of the Appeals Tribunal’s "Reasons for Determination" is posted on the SFC’s website.

Ends