

## SFC bans Andy Pau Chin Hung for 10 years

7 May 2013

The Securities and Futures Commission (SFC) has prohibited Mr Andy Pau Chin Hung from re-entering the industry for 10 years from 7 May 2013 to 6 May 2023 (Note 1).

The disciplinary action follows the SFC's investigation which revealed that Pau had:

- assisted a third party to open three nominee securities trading accounts for the purpose of disposing of certain shares of a listed company;
- facilitated the disposal of these shares and, in return, accepted via the securities trading accounts under the name of his mother, his sister and his own which were not disclosed to his employer, a pecuniary advantage from the third party;
- maintained three secret accounts under his name for a period of almost three years;
- caused his mother and sister to avoid disclosing to his employer in their account opening forms that they are persons related to its staff member; and
- refrained from disclosing to his employer that his mother and sister are persons related to him in a staff declaration form.

The SFC is of the view that Pau is not a fit and proper person to be licensed and he should be prohibited from the industry for a lengthy period because his various failures are of a serious nature.

In determining the penalty, the SFC took into account the surrendering of the pecuniary advantage obtained by Pau as well as his clean disciplinary record.

Pau had applied to the Securities and Futures Appeals Tribunal for a review of the SFC's decision but withdrew the application yesterday. Hence the SFC's decision to prohibit him from re-entering the industry now takes effect.

End

Notes:

1. Pau was licensed as a representative under the Securities and Futures Ordinance to carry on Type 1 (dealing in securities) and Type 2 (dealing in futures contracts) regulated activities. At the material time, he was accredited to KGI Asia Limited and KGI Futures (Hong Kong) limited. Pau's licence has lapsed on 11 May 2011 and he is currently not a licensed person.
2. A copy of the [Statement of Disciplinary Action](#) in relation to the matter is available on the SFC website.

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## STATEMENT OF DISCIPLINARY ACTION

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### The Disciplinary Action

1. The Securities and Futures Commission (SFC) has prohibited Pau Chin Hung Andy<sup>1</sup> (Pau) from re-entering the industry for a period of 10 years from 7 May 2013 to 6 May 2023 pursuant to section 194 of the Securities and Futures Ordinance (SFO).
2. The disciplinary action is taken due to Pau's failure to comply with General Principle 1 of the Code of Conduct<sup>2</sup> relating to his failure to act honestly and in the best interests of the integrity of the market.

### Summary of facts

#### *Assisting in the opening of nominee accounts*

3. The SFC's investigation revealed that Pau assisted a client (the Client) in setting up accounts for three persons (the 3 Nominees) to house some shares of a listed company (the Shares) for disposal (the Disposal) upon the request of the Client.
4. The Client first introduced two persons to Pau for the purpose of opening nominee accounts to facilitate the transfer of Shares and the Disposal. Certain Shares were then transferred from a company owned by the former chairman of the listed company to the two nominees.
5. Subsequently, the Client requested Pau to look for another nominee, which he did, to set up an account for the purpose of transfer and Disposal of further Shares since the Client could not locate the two nominees. Likewise, the further Shares were transferred from another company owned by the former chairman of the listed company to such nominee.

#### *Facilitating the Disposal and accepting a pecuniary advantage*

6. The Client gave Pau a blanket instruction to help him dispose of the Shares held in the accounts of the 3 Nominees as swiftly as possible without specifying the prices or volumes for his sell orders. Only one of the 3 Nominees gave Pau a written authorisation to dispose of the Shares in her account. In any event, Pau disposed of all the Shares from the accounts of the 3 Nominees as per the Client's instructions.

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<sup>1</sup> Pau was licensed as a representative under the Securities and Futures Ordinance (SFO) to carry on Type 1 (dealing in securities) and Type 2 (dealing in futures contracts) regulated activities. At the material time, he was accredited to KGI Asia Limited and KGI Futures (Hong Kong) limited. Pau's licence has lapsed on 11 May 2011. He is currently not a licensed person.

<sup>2</sup> The Code of Conduct for Persons Licensed by or Registered with the Securities and Futures Commission

7. In return for Pau's assistance in opening accounts under the names of the 3 Nominees, facilitating the transfer of Shares and the Disposal, he received a total of \$1,119,001, representing approximately 5% of the proceeds generated from the Disposal (the Nominee Fees). The Nominee Fees were deposited into various accounts under the name of Pau's mother, his sister and his own.
8. The KGI Anti-Bribery Guidelines provide that other than an advantage that is modest in value or customary in nature, approval from KGI's Business Unit Head or a member of its Management Committee must be obtained if an employee is to receive extra advantage in relation to his work. However, Pau had not submitted any application to KGI in relation to his acceptance of the Nominee Fees.

*Maintenance of secret accounts*

9. KGI required its staff to declare on the Staff Declaration Statement their existing accounts maintained with outside brokerages. The KGI Staff Dealing Policy also provides that staff members who maintained accounts with outside brokerages were required to make arrangements to lodge the relevant trade confirmations and account statements with KGI.
10. Pau has maintained three securities trading accounts since 1997, 2004 and 2007 respectively. However, he did not disclose his three secret accounts to KGI until February 2010, almost 3 years after he had joined KGI. Neither has he lodged trade confirmations and account statements of these secret accounts with KGI.
11. A portion of the Nominee Fees was deposited into one of these secret accounts.

*Causing his relatives to avoid disclosing in their account opening forms that they are persons related to staff of KGI*

12. Both the mother and sister of Pau opened accounts at KGI shortly before the Disposal. Although KGI required family members of its staff to disclose their accounts maintained at KGI, Pau's mother and sister did not indicate on their respective account opening forms that they were persons related to the staff of KGI.
13. In particular, Pau's sister gave evidence that she initially declared on her account opening form that she was a related person of KGI staff member. However, Pau told her not to, as a result of which she refrained from making such declaration on her account opening form.
14. Part of the Nominee Fees was deposited into the undeclared accounts of Pau's mother and sister.

*Refraining from disclosing his relationship with his relatives to KGI*

15. KGI's Staff Dealing Policy requires staff members to disclose in the Staff Declaration Form if their relatives maintain accounts at KGI. Although it was stated in the Staff Declaration Form that "relative and family members" was as defined in KGI's Staff Dealing Policy which included, *inter alia*, parents and sisters, Pau failed to make disclosure of the accounts of his mother and sister

maintained with KGI by refraining from filling in the relevant sections of the Staff Declaration Form.

### **Breaches and reasons for action**

16. Under General Principle 1 of the Code of Conduct, Pau has a duty to act honestly and in the best interests of the integrity of the market.
17. In this case, the evidence shows that Pau has failed to meet the standard expected of a licensee due to:
  - (a) his involvement in the Disposal;
  - (b) his acceptance of the Nominee Fees;
  - (c) the handling of various accounts, including his undisclosed accounts, the non-disclosure of related accounts of his mother and sister, as well as the accounts of the 3 Nominees.
18. The SFC is of the view that Pau has failed to take reasonable steps to enquire into the motive of the Client for conducting the Disposal, and/or turned a blind eye to obviously suspicious trading activity by the Client with a view to generating income at the expense of market integrity. The intentional non-disclosure of accounts of his own as well as related persons was to conceal the fact that he and his family members received the Nominee Fees from the proceeds of the Disposal. In short, Pau has breached General Principle 1 of the Code of Conduct.

### **Conclusion**

19. Having regard to the nature and seriousness of Pau's failings, the SFC is of the opinion that Pau is guilty of misconduct and not a fit and proper person to remain licensed given his lack of regard for market integrity. The SFC has therefore decided to take the disciplinary action against Pau as described in paragraph 1 above.