

## SFC reprimands and fines Hung Lai Ping for managerial and supervisory failures

19 Aug 2014

The Securities and Futures Commission (SFC) has issued a reprimand to Ms Hung Lai Ping, a former responsible officer of Delta Asia Securities Limited (Delta Asia), and fined her \$150,000 for managerial and supervisory failures (Notes 1 & 2).

The SFC found that during the period from January 2010 to February 2013, Delta Asia used shares belonging to clients and held in segregated client accounts at the Central Clearing and Settlement System (CCASS) to settle transactions for its other clients who did not have sufficient shares in their accounts to discharge their respective settlement obligations on the settlement date.

This occurred without the consent or authorization of the clients whose shares were used for settlement in contravention of the Securities and Futures (Client Securities) Rules on 36 occasions during the period (Notes 3 & 4).

The SFC also found that Delta Asia failed to implement proper controls to safeguard client securities and to supervise the staff of Delta Asia in discharging its settlement function, thus allowing the unauthorized transfers of client securities from Delta Asia's CCASS segregated client accounts to its CCASS clearing account to have gone unchecked for more than three years (Note 5).

The SFC is of the view that Delta Asia's settlement malpractice and failures were attributable to negligence on the part of Hung.

Hung was responsible for overseeing the compliance function and all front and back office operations of Delta Asia, including its settlement functions. In her capacity as a responsible officer and a member of senior management, Hung bore primary responsibility for ensuring the maintenance of appropriate standards of conduct and adherence to proper procedures by Delta Asia, for properly managing the risks associated with the business of Delta Asia, and for supervising diligently persons employed or appointed by Delta Asia to conduct business on its behalf.

Hung has failed to fulfil such responsibility and her failure has manifested itself in the failures that Delta Asia, under her management, has displayed. In deciding the sanctions, the SFC took into account that Hung has accepted the SFC's findings.

Safe custody of client assets is a fundamental obligation of licensed corporations. Any transgression of this obligation, even if the relevant clients are made whole again, cannot be tolerated.

End

Notes:

1. Delta Asia is licensed under the Securities and Futures Ordinance (SFO) to carry on Type 1 (dealing in securities), Type 3 (leveraged foreign exchange trading) and Type 4 (advising on securities) regulated activities.
2. Hung is licensed under the SFO to carry on Type 4 (advising on securities) and Type 9 (asset management) regulated activities. During the period from April 2007 to June 2012, Hung was accredited to Delta Asia and approved to act as its responsible officer.
3. Sections 6 and 10 of the Securities and Futures (Client Securities) Rules respectively specifies the circumstances in which intermediaries may withdraw or otherwise deal with client securities received or held on behalf of clients and requires intermediaries to take reasonable steps to ensure that client securities are not deposited, transferred, etc, except in the manner specified in the rules.
4. In addition, the SFC found that on two occasions during the period, Delta Asia had transferred shares belonging to clients and held in the CCASS segregated client accounts to its CCASS clearing account, with a view to settling the transactions for Delta Asia's other clients who did not have sufficient shares in their accounts to discharge their respective settlement obligations on the settlement date. However, the transferred shares were eventually not sent to the Hong Kong Securities Clearing Company Limited for settlement purpose as a result of the netting of Delta Asia's positions in the same security on the same day. This occurred without the consent or authorization of the clients whose shares were transferred and

were in breach of the Securities and Futures (Client Securities) Rules notwithstanding that the transferred shares were eventually not used for settlement purpose.

5. The SFC has also taken disciplinary action against Delta Asia as a result of the same investigation. Please see the SFC's press release dated [4 June 2014](#).

[A copy of the Statement of Disciplinary Action 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 publicly reprimanded Ms Hung Lai Ping, a former responsible officer of Delta Asia Securities Limited (Delta Asia) and fined her \$150,000, pursuant to section 194 of the Securities and Futures Ordinance (SFO).
2. The disciplinary action is taken because Hung has failed to properly discharge her managerial and supervisory responsibilities in her capacity as a responsible officer, and a member of senior management, of Delta Asia.

### Summary of facts

3. During the course of a limited review of Delta Asia's operation conducted by the SFC's Intermediaries Supervision Division (**ISD**) in April 2013, Delta Asia reported to ISD that there had been 35 incidents of settlement shortfalls between 17 March 2010 to 20 February 2013, with the shortfall temporarily covered by other shares or by purchase of the relevant shares on the next day.
4. The SFC conducted an investigation into the activities of Delta Asia, including but not limited to its internal policies and controls in relation to trade settlement. In the course of the investigation, Delta Asia reported 3 additional incidents of settlement shortfalls to the SFC.

### Use of client securities to settle the transactions of other clients

5. Delta Asia is a participant of the Central Clearing and Settlement System (CCASS) of the Hong Kong Securities Clearing Company Limited (HKSCC) and it maintains a number of stock accounts in CCASS, including the following:
  - (a) "01" Clearing account (for settling transactions in CCASS)
  - (b) "03" Margin Clients account (for holding margin clients' securities)
  - (c) "07" Custody account (for holding custodian clients' securities)
  - (d) "011" BDA-client account (an omnibus account for holding securities belonging to clients of Banco Delta Asia<sup>1</sup>).
6. The SFC found that the settlement shortfalls reported by Delta Asia arose as a result of late delivery of physical scrip for settlement / late registration of physical scrip delivered for settlement, or as a result of overselling due to a mistake made by the client / by Delta Asia's sales staff.

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<sup>1</sup> Banco Delta Asia is a Macao-based bank and it provides securities trading services to its customers through an omnibus client account maintained with Delta Asia. Both Banco Delta Asia and Delta Asia belong to the Delta Asia Financial Group.

7. In 36 of the 38 incidents of settlement shortfall reported by Delta Asia, which occurred between January 2010 to February 2013 (**Relevant Period**), Delta Asia transferred securities belonging to other clients and held in its CCASS "03" Margin Clients account or "07" Custody account or "011" BDA-client account to its CCASS "01" Clearing account to enable it to settle the relevant transaction with HKSCC. The securities so transferred were then sent to HKSCC for settlement purpose.
8. With respect to the 2 remaining reported incidents of settlement shortfall, Delta Asia had transferred client securities from its CCASS segregated client accounts to its CCASS clearing account, with a view to covering the settlement shortfall, but the securities so transferred were ultimately not sent to HKSCC for settlement purpose as a result of the netting of Delta Asia's positions in the same security on the same day.
9. There is no evidence that Delta Asia had obtained the consent of the clients whose securities had been so used or transferred.
10. Although there is no evidence that Delta Asia's clients have suffered any loss as a result of its practice of using client securities to settle, or transferring client securities from its CCASS segregated client accounts to its CCASS clearing account with a view to settling, other clients' transactions, such practice clearly and fundamentally jeopardizes its clients' interests. Such practice also breaches sections 6 and 10 of the Securities and Futures (Client Securities Rules) (**CSR**), which respectively specifies the circumstances in which intermediaries may withdraw or otherwise deal with client securities received or held on behalf of clients and requires intermediaries to take reasonable steps to ensure that client securities are not deposited, transferred, etc, except in the manner specified in the CSR.

#### Internal Control and Supervisory Failures

11. During the Relevant Period, Delta Asia had no written manual, guidelines, policy or procedure as to how settlement shortfalls should be handled.
12. According to the information provided by Delta Asia's Operations Officer, during the Relevant Period, when a settlement shortfall was identified, Delta Asia's then Operations Manager would instruct him to check whether Delta Asia had the relevant stocks in its CCASS client accounts. If so, he would use the stocks Delta Asia held for other clients in its CCASS account to settle the transaction.
13. The evidence of Delta Asia's Operations Officer was consistent with the way in which Delta Asia handled the 38 incidents of settlement shortfall it reported, as revealed by the documentary evidence provided by Delta Asia. As such, during the Relevant Period, the practice of using client securities to cover the settlement shortfalls of other clients pending the latter delivering and/or buying back the requisite securities seems to have been well established.
14. The above suggests that Delta Asia did not have adequate internal controls and procedures in place in relation to the handling of shortfalls during the settlement process, thus allowing the practice of using client assets (securities)

to settle other clients' transactions to have gone unchecked for at least more than 3 years.

15. Further, although Delta Asia had a Stock Short Summary Report which identified the short positions of its clients, neither the management nor the compliance function reviewed this report. The settlement staff was left to review, and resolve issues arising out of, the report with little, if any, guidance and supervision from management. This shows that Delta Asia's management took no active steps to supervise or monitor the operation of the settlement functions, and they simply relied on the settlement staff to identify and report any settlement issues to them.

#### Hung's failures

16. The SFC is of the view that Delta Asia's settlement malpractice and failures are attributable to the neglect on Hung's part, in her capacity as a responsible officer of Delta Asia, of her supervisory and managerial duties. The SFC's view is based on the following:
  - (a) During the period when Hung was a responsible officer of Delta Asia (from April 2007 to June 2012), Delta Asia had used client securities to settle the transactions of other clients or otherwise transferred client securities out of its CCASS client segregated accounts without the relevant clients' prior consent on 30 occasions.
  - (b) Hung was responsible for overseeing the compliance function and all front/back office operations of Delta Asia, including its settlement functions. However, responsibility for monitoring the short position of clients and following up with the account executives/clients on the delivery of shares on the settlement date was placed on the Operations team without proper supervision.
  - (c) As noted in paragraph 15 above, settlement staff was left to identify and resolve settlement issues, including settlement shortfalls, with little guidance from management.
  - (d) Hung was not aware that the Operations team had used client securities to cover the settlement shortfalls of other clients despite the fact that this practice had existed for more than 3 years.
  - (e) Settlement is an integral function of licensed corporations. The fact that:
    - (i) DASL has no guideline or policy as to how settlement shortfalls should be handled; and
    - (ii) DASL's practice of using one client's securities to settle another client's transactions had lasted more than 3 years,

either without Hung noticing it or with her connivance suggests that she has acted negligently in discharging her duty to oversee Delta Asia's operations, and that she has failed to appreciate and properly manage the risks associated with Delta Asia's business (in this case, the risk of jeopardy to client assets).

## **Breaches and reasons**

17. In her capacity as a responsible officer of Delta Asia, and as a member of senior management of Delta Asia, pursuant to General Principles 2, 9 and paragraphs 4.2 and 14.1 of the Code of Conduct of the Code of Conduct<sup>2</sup>, Hung bore primary responsibility for:
  - (a) ensuring the maintenance of appropriate standards of conduct and adherence to proper procedures by Delta Asia, so that Delta Asia and its staff conduct its business activities in compliance with the laws, rules and regulations and codes administered or issued by the SFC;
  - (b) properly managing the risks associated with the business of Delta Asia, including performing periodic evaluation of its risk management processes, through understanding the nature of Delta Asia's business, its internal control procedures and policies on the assumption of risk; and
  - (c) supervising diligently persons employed or appointed by Delta Asia to conduct business on its behalf.
18. In the circumstances, we are of the view that Hung has breached General Principles 2, 9 and paragraphs 4.2 and 14.1 of the Code of Conduct of the Code of Conduct by failing to ensure that Delta Asia implemented proper procedures and controls that could be reasonably expected to protect the operation of its settlement function and clients' interests, and failing to supervise the Operations staff in discharging Delta Asia's settlement function. Hung's failure has manifested itself in the failures and misconduct that Delta Asia, under her management, has displayed.

## **Conclusion**

19. Having considered all the circumstances, the SFC is of the view that the fitness and properness of Hung as a licensed person has been called into question and decided to take the disciplinary action against Hung as described in paragraph 1 above.
20. In deciding the disciplinary sanction, the SFC has had regard to SFC Disciplinary Fining Guidelines and taken into account all relevant circumstances, including the seriousness and the duration of the settlement malpractice, the risks that such malpractice posed to Delta Asia's clients' interests and that Hung has accepted the SFC's findings that Delta Asia's misconduct is attributable to the neglect on her part, in her capacity as a responsible officer of Delta Asia.

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<sup>2</sup> Code of Conduct for Persons Licensed by or Registered with the SFC