

## SFC reprimands and fines Nomura International (Hong Kong) Limited HK\$4.5 million for regulatory breach

30 Jul 2015

The Securities and Futures Commission (SFC) has reprimanded and fined Nomura International (Hong Kong) Limited (Nomura Hong Kong) HK\$4.5 million for failing to report significant misconduct by a former trader in a timely manner (Note 1).

On 11 June 2013, Nomura Hong Kong informed the SFC that Mr X, a trader on secondment from Nomura Securities Co., Ltd in Japan (Nomura Japan), had incurred a US\$3.3 million trading loss on 23 May 2013 and that he had been sent back to Japan on 5 June 2013 (11 June Report) (Note 2).

However, the SFC subsequently found out that at the time of the 11 June Report, Nomura Hong Kong already knew Mr X had admitted to making false entries in Nomura Hong Kong's risk management system to conceal the real risk exposure of his trades and to providing false information to Nomura Hong Kong. Yet, none of these matters were disclosed to the SFC immediately when they should have been under the Code of Conduct (Note 3).

The SFC also found out that by the time Mr X left Hong Kong following the termination of his secondment with Nomura Hong Kong, Nomura Hong Kong had already noticed some apparent discrepancies between his actual trading activities and the information he had provided to management. Mr X was sent back to Nomura Japan before the SFC had been properly alerted and before Nomura Hong Kong had completed its internal investigation into his conduct.

The SFC further found that by 19 June 2013, Nomura Hong Kong had already prepared a draft preliminary report of its investigation on Mr X's trading activities, but it did not provide the report or its subsequent drafts to the SFC until the SFC made further enquiries.

It was not until 17 July 2013, after the SFC followed up on Nomura Hong Kong's 11 June Report, that Nomura Hong Kong informed the SFC for the first time that Mr X had engaged in inappropriate conduct. The SFC was eventually provided with the preliminary report two days later.

Mr Mark Steward, the SFC's Executive Director of Enforcement, said: "Nomura left out highly relevant information from its first report to the SFC and then had to be chased to report properly. There can be no excuses for such delays in reporting matters requiring our immediate attention. Delays, like these, contribute to misconduct and prejudice investigations. Intermediaries must report problems to us immediately - not after internal investigation, not after legal advice has been obtained but straightaway, without leaving out any important information."

End

Notes:

1. Nomura Hong Kong is licensed under the Securities and Futures Ordinance (SFO) to carry on Type 1 (dealing in securities), Type 2 (dealing in futures contracts), Type 4 (advising on securities), Type 5 (advising on futures contracts) and Type 6 (advising on corporate finance) regulated activities.
2. Mr X was licensed under the SFO to carry on Type 1 (dealing in securities) and Type 2 (dealing in futures contracts) regulated activities and was accredited with Nomura Hong Kong between 31 December 2012 and 6 June 2013.
3. Under paragraph 12.5 of the Code of Conduct for Persons Licensed by and Registered with the SFC, a licensed or registered person is required to notify the SFC immediately on the happening of any material breach, infringement, non-compliance with any rules, laws, regulations and codes administered or issued by the SFC, or where it suspects any such breach, infringement or non-compliance by itself or persons it employs or appoints to conduct business with clients.

[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 publicly reprimanded Nomura International (Hong Kong) Limited (**Nomura Hong Kong**)<sup>1</sup> and fined it HK\$4.5 million pursuant to section 194 of the Securities and Futures Ordinance (**SFO**).
2. The disciplinary action is taken because Nomura Hong Kong failed to report significant misconduct of a former trader to the SFC in a timely manner.

### Summary of facts

3. Mr X was a trader on Nomura Hong Kong's Delta One trading desk. He was seconded from Nomura Securities Co., Ltd. in Japan (**Nomura Japan**)<sup>2</sup>.
4. On 23 May 2013, Mr X reported to his supervisors that he had made a US\$3.3 million trading loss and provided an explanation about the cause of the loss. In light of the trading loss he made, Mr X was repatriated to Japan to resume his employment with Nomura Japan.
5. Upon seeing Mr X's report, Nomura Hong Kong's Operational Risk department decided to initiate an inquiry as Mr X had reported an earlier trading loss, on 4 April 2013. Nomura Hong Kong had not yet completed its inquiry into Mr X's conduct when Mr X left Hong Kong on 4 June 2013.
6. On or about 30 May 2013, Nomura Hong Kong discovered that Mr X's actual trading activities on 23 May 2013 were apparently inconsistent with the explanation he had provided to management about his trading loss on that day and brought this to the attention of Nomura Japan on 4 June 2013. Nomura Japan therefore sought to clarify these apparent inconsistencies with Mr X upon his return to Japan on 4 June 2013.
7. In an interview conducted in Japan on 5 June 2013 by Nomura Japan, Mr X admitted that he had made manual adjustments in Nomura Hong Kong's risk management system on 4 April and 23 May 2013 in order to avoid showing the real

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<sup>2</sup> Mr X was licensed under the SFO to carry on Type 1 (dealing in securities) and Type 2 (dealing in futures contracts) regulated activities and was accredited with Nomura Hong Kong between 31 December 2012 and 6 June 2013.

level of risk exposure resulting from his trading activities on those days. The content of that interview was relayed to Nomura Hong Kong on 10 June 2013.

8. On 11 June 2013, Nomura Hong Kong informed the SFC that Mr X had incurred a US\$3.3 million trading loss on 23 May 2013 and was repatriated to Japan on 5 June 2013 (**11 June Report**). Nomura Hong Kong informed the SFC that a review of Mr X's trades was being undertaken and it would report to the SFC should any issues be identified. Nomura Hong Kong did not inform the SFC that Mr X had admitted to making false entries in its risk management system to avoid the real risk exposure of his trades being apparent and to providing false information to Nomura Hong Kong.
9. In fact, when Nomura Hong Kong learnt of Mr X's admission on 10 June 2013, a senior member of its Compliance staff had initially raised the question whether the matter was reportable to the SFC and said that he believed it was, but at the end, it was not, until more than a month later.
10. Nomura Hong Kong's internal inquiry continued and by 19 June 2013, it had prepared a draft preliminary report of its investigation on Mr X's activities. The draft report set out a number of preliminary findings, including that:
  - Mr X had made certain misrepresentations to management concerning his trading activities on 4 April and 23 May 2013; and
  - Mr X had made manual adjustments in Nomura Hong Kong's risk management system on 7 March, 4 April and 23 May 2013 which had the effect of flattening his intraday risk and profit and loss, and no legitimate reason could be found for making those adjustments.
11. Nomura Hong Kong did not provide the draft preliminary report, or its subsequent drafts, or the information contained therein, to the SFC until the SFC made further enquiries about the results of Nomura Hong Kong's review on Mr X's trades on 10 July 2013. In its 17 July 2013 response to the SFC, Nomura Hong Kong informed the SFC for the first time that Mr X had engaged in inappropriate conduct. Nomura Hong Kong's preliminary report was eventually provided to the SFC on 19 July 2013.

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

12. Paragraph 12.5 of the Code of Conduct for Persons Licensed by and Registered with the SFC (**Code of Conduct**) requires licensed corporations to report to the SFC immediately upon any material breach, infringement of or non-compliance with any law, rules, regulations and codes administered or issued by the SFC, or where it suspects any such breach, infringement or non-compliance whether by

itself or persons it employs or appoints to conduct business with clients or other licensed persons.

13. Further, section 129 of the SFO provides that, in considering whether a person is fit and proper, the SFC may consider, in addition to any other matter that the SFC may consider relevant, the person's ability to carry on the regulated activity competently, honestly and fairly.
14. By 10 June 2013, Nomura Hong Kong was aware that Mr X had admitted to inappropriate and dishonest activities, *viz.* manual adjustments in Nomura Hong Kong's risk management system in order to avoid showing the real level of risk exposure resulting from his trading activities and providing false information to Nomura Hong Kong. This information should have been, but was not, disclosed to the SFC in the 11 June Report.
15. By 19 June 2013, Nomura Hong Kong's draft preliminary report on Mr X's activities showed that it had collected and analysed evidence of Mr X's misconduct. No report was made to the SFC at that stage.
16. Nomura Hong Kong explained that it needed to conclude its investigation into Mr X's conduct in order to finalise its report and determine whether the matter was reportable to the SFC. This is contrary to the duty to report misconduct or suspected misconduct immediately upon discovery, as entrenched in paragraph 12.5 of the Code of Conduct.
17. In the circumstances, the SFC is of the view that Nomura Hong Kong had left out highly relevant information in the 11 June Report to the SFC and had to be chased to report properly. Such conduct has breached paragraph 12.5 of the Code of Conduct. As a result, Nomura Hong Kong's fitness and properness to be a licensed person has been called into question. The SFC has accordingly decided to take the disciplinary action described in paragraph 1 against it.

## **Conclusion**

18. Nomura Hong Kong, and other intermediaries, have a duty to report misconduct and suspected misconduct to the SFC immediately upon discovery, not when they have completed their own internal investigations into the matter. Delay in reporting may help the wrongdoer to perpetuate his/her misconduct, and may jeopardize the investigations of law enforcement agencies.
19. In coming to the decision to take the disciplinary action set out in paragraph 1 above against Nomura Hong Kong, the SFC has taken into account all relevant circumstances, including the SFC's previous statements emphasizing that

intermediaries have an obligation to report misconduct to the SFC immediately<sup>3</sup> as well as Nomura Hong Kong's co-operation with the SFC's investigation.

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<sup>3</sup> See the press release dated 3 October 2011 concerning the SFC's disciplinary action against Citigroup Global Markets Asia Limited on the SFC website.