

## SFC bans Poon Kin Lung for two years

15 Dec 2016

The Securities and Futures Commission (SFC) has prohibited Mr Poon Kin Lung, a former account executive of Phillip Securities (Hong Kong) Limited (Phillip), from re-entering the industry for two years from 15 December 2016 to 14 December 2018 over breaches of the SFC's Code of Conduct (Notes 1 & 2).

The SFC found that from 1 January 2014 to 28 June 2014, Poon had effected transactions for two of his clients without obtaining the proper authorization required under the Code of Conduct. Although the clients had given Poon a degree of discretionary authority to conduct trades in their accounts, Poon did not have their written authorization to operate their accounts on a discretionary basis, and there were uncertainties as to the scope of the authority given to him.

Poon's conduct was also in breach of Phillip's internal policies which did not permit him to operate the clients' accounts on a discretionary basis.

The SFC further found that Poon had received order instructions from one of these two clients and another client via WhatsApp and mobile phone, but he had failed to keep a proper record of their instructions in accordance with Phillip's internal policies.

The SFC considers that Poon had failed to act with due skill, care and diligence in performing his duties as a licensed representative and to meet the standards required of him under the Code of Conduct. As a result, his fitness and properness as a licensed person has been called into question (Note 3).

End

Notes:

1. Poon was licensed under the Securities and Futures Ordinance to carry on Type 1 (dealing in securities) and Type 2 (dealing in futures contracts) regulated activities, and was accredited to Phillip Securities (Hong Kong) Limited and Phillip Commodities (HK) Limited until 28 June 2014. Poon is currently not licensed by the SFC.
2. Code of Conduct for Persons Licensed by or Registered with the Securities and Futures Commission
3. General Principle 2 (diligence) of the Code of Conduct provides that a licensed person should act with due skill, care and diligence in conducting his business activities. Paragraph 3.9 of the Code of Conduct requires a licensed person to record and immediately time stamp records of order instruction particulars. Paragraph 7.1 provides that a licensed person should not effect a transaction for a client unless before the transaction is effected: (i) the client, or a person designated in writing by the client, has specifically authorized the transaction; or (ii) the client has authorized the licensed or registered person in writing (or someone in its employ) to operate his or her account on a discretionary basis.

[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 prohibited Mr Poon Kin Lung (**Poon**) from re-entering the industry for 2 years pursuant to section 194 of the Securities and Futures Ordinance (**SFO**).
2. Poon 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 to Phillip Securities (Hong Kong) Limited and Phillip Commodities (HK) Limited (collectively, **Phillip**) until 28 June 2014. He is currently not licensed by the SFC.
3. The SFC found that Poon had: (i) effected transactions for two of his clients (**Clients A & B**) without obtaining the proper authorization required under the Code of Conduct;<sup>1</sup> (ii) failed to act with due skill, care and diligence and in the best interests of his clients, through failing to ascertain the scope of his discretionary authority to effect transactions for Clients A & B and to ensure that they understood and authorized the transactions that he effected in their accounts, and through failing to ensure that the information he provided to Client B in respect of the transactions that he effected in her accounts was accurate; and (iii) received order instructions from Client B and another client (**Client C**) via WhatsApp and mobile phone without keeping a proper record of those instructions.
4. Poon's conduct was in breach of paragraphs 7.1, 3.9 and General Principle 2 of the Code of Conduct.

### Summary of Facts

5. Poon was the account executive of Clients A, B & C at Phillip.
6. The SFC's investigation stems from: (i) Phillip's report to the SFC regarding Poon's mishandling of Clients A, B & C's securities and stock options accounts; and (ii) a complaint from Client B regarding allegedly unauthorized transactions effected by Poon in her accounts at Phillip.

#### Clients A & B's accounts – effecting transactions without proper authorization

7. The SFC found that, from 1 January 2014 to 28 June 2014 (**Relevant Period**), Poon had effected transactions in Client A & B's securities and stock options accounts at Phillip without specific authorization:
  - (a) there was no telephone recording in respect of a significant proportion of the transactions that were effected in Client A & B's accounts during

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<sup>1</sup> Code of Conduct for Persons Licensed by or Registered with the Securities and Futures Commission.

the Relevant Period. Poon admitted that he had effected some of these transactions at his own discretion; and

- (b) even on the occasions when Poon spoke to the two clients prior to effecting the transactions for them, he often only mentioned the transactions in vague and ambiguous terms, without specifying clearly the relevant contractual terms, and he proceeded to effect the transactions without ensuring that the clients understood or authorized them. Many of these were stock options transactions, and Poon knew that Clients A & B had no prior experience in stock options trading.
- 8. Poon claimed that Clients A & B had verbally given him discretionary authority to effect transactions for them. However, this was denied by both clients, who disputed the transactions in their accounts at Phillip after they started to suffer losses.
- 9. The recorded discussions between Poon and the clients from the Relevant Period revealed that Clients A & B had given Poon a certain degree of discretionary authority to conduct trades for them. However, Poon did not have written authorization from the clients to operate their accounts on a discretionary basis. In addition, Poon did not take steps to ascertain the terms of his discretionary authority to effect transactions for Clients A & B, and there were considerable uncertainties as to the scope of the authority that was given to him.
- 10. Phillip's internal policies also did not permit Poon to operate Client A & B's accounts on a discretionary basis.

#### Client B's accounts – order recording and other failures

- 11. The SFC also found that Poon received order instructions from Client B via WhatsApp in respect of a number of stock options and IPO transactions during the Relevant Period. Under Phillip's internal policies, where an account executive of Phillip receives a client's orders via WhatsApp, the communication must be made via a phone pre-approved by Phillip and a WhatsApp group of which the client, the account executive and Phillip are all parties. The account executive must also email a screenshot of the client's instructions to Phillip. However, Poon did not follow the procedures set out in Phillip's internal policies to ensure that the order instructions he received from Client B via WhatsApp were properly recorded and that Phillip was made aware of them.
- 12. Further, Poon did not ensure that the information he provided to Client B regarding the transactions that he effected in her accounts was accurate. On a number of occasions, he told the client that he had effected certain transactions in her accounts even though, at the time of the conversation, the transactions had not yet been effected.

#### Client C's accounts – order recording failures

- 13. The SFC also found that Poon received order instructions from Client C via his mobile phone in respect of a number of transactions that were effected in her securities and stock options accounts during the Relevant Period. Under Phillip's internal policies, in cases where an account executive receives trade

instructions by mobile phone, he must record the instructions immediately via calling Phillip's office recording system or using a line connected to the recording system. However, Poon did not follow the required procedures to ensure that the order instructions that he received from Client C via his mobile phone were properly recorded.

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

14. As a licensed person, Poon was required to comply with the standards set out in the Code of Conduct. In particular:
  - (a) in terms of the authorization required before a transaction can be effected for a client, paragraph 7.1 of the Code of Conduct requires that either: (i) the client (or a person designated in writing by the client) has specifically authorized the transaction, or (ii) the client has authorized in writing the licensed or registered person (or someone in its employ) to operate his or her account on a discretionary basis;
  - (b) paragraph 3.9 provides, among others, that a licensed person should record and immediately time stamp records of order instruction particulars; and
  - (c) GP 2 requires a licensed person to act with due skill, care and diligence, in the best interests of his clients and the integrity of the market when conducting his business activities.
15. The evidence shows that Poon had breached paragraph 7.1 of the Code of Conduct as he had effected transactions in the accounts of Clients A & B with neither: (i) the clients' specific authorization in respect of those transactions; nor (ii) the required written authorization to operate Client A & B's accounts on a discretionary basis. Further, Poon's exercise of discretion in conducting trades for the two clients was contrary to his employer's internal policies.
16. The order recording requirements in Phillip's internal policies reflect the principles set out in paragraph 3.9 of the Code of Conduct. As such, Poon had also breached paragraph 3.9 by failing to follow the procedures required under Phillip's internal policies to keep a proper record of the order instructions that he received from Clients B and C via WhatsApp and mobile phone.
17. Both paragraphs 7.1 and 3.9 of the Code of Conduct are aimed at preventing unnecessary trade disputes by ensuring, respectively, that: (i) where a client grants authorization to an account executive to operate his account on a discretionary basis, the terms of that account executive's authorization are clearly defined, recorded and clearly explained to the client; and (ii) where a client has specifically authorized a transaction, there is a proper audit trail of the client's order instructions. Both provisions protect the account executive, his employer and the client. Poon's failings meant that, when his clients disputed the transactions in their accounts at Phillip after they started to suffer losses, it was difficult to ascertain whether the transactions in question were authorized by the clients.
18. Apart from breaching paragraphs 7.1 and 3.9 of the Code of Conduct, Poon's handling of his clients' accounts also reflects his lack of due skill, care and diligence in conducting his business activities, contrary to GP 2.

## Conclusion

19. Having taken into account all the circumstances, the SFC is of the opinion that Poon's fitness and properness as a licensed person has been called into question.
20. The SFC has decided to take the disciplinary action against Poon as described in paragraph 1 above, after taking into account all relevant considerations, including:
  - (a) his failings lasted at least 6 months;
  - (a) his conduct was contrary to his employer's internal policies;
  - (b) his clients suffered losses as a result of the trading in their accounts, but he was willing to compensate them for their losses;
  - (c) there is no evidence of churning in the clients' accounts during the Relevant Period;
  - (d) after his employment with Phillip was terminated, Poon applied for his accreditation to be transferred to another licensed corporation. His application required a longer processing time because of the SFC's investigation into his mishandling of the three clients' accounts, and was eventually withdrawn; and
  - (e) he has a clean disciplinary record.