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## SFC bans Chan Wai Nun for six months

22 Jan 2018

The Securities and Futures Commission (SFC) has banned Mr Chan Wai Nun, a former investment counsellor of DBS Bank (Hong Kong) Limited (DBSHK), from re-entering the industry for six months from 19 January 2018 to 18 July 2018 for transferring client data out of DBSHK prior to his departure from DBSHK to join another bank (Note 1).

The SFC found that in December 2015, Chan forwarded a list containing personal data of approximately 208 clients from his work email account at DBSHK to his personal email account.

In February 2016, about two months before he was due to commence his new employment with another bank, Chan forwarded the client list from his personal email account to the personal email account of an ex-colleague who was working for Chan's new employer at that time and would have been Chan's supervisor when he joined the bank. Unknown to Chan, the ex-colleague then forwarded the client list to his work email account.

The email containing the client data was identified by the new employer during its email surveillance and the origin of the email was traced back to Chan.

Chan's conduct was in breach of DBSHK's internal policies, the Personal Data (Privacy) Ordinance (PDPO) and the Code of Conduct for Persons Licensed by or Registered with the SFC (Code of Conduct) (Notes 2 & 3).

In deciding the sanction, the SFC took into account all relevant circumstances, including Chan's remorse and admission of his misconduct, as well as his otherwise clean disciplinary record.

The case was referred to the SFC by the Hong Kong Monetary Authority (HKMA).

End

Notes:

1. Chan was registered as a relevant individual of DBSHK between 25 December 2007 and 11 March 2016 to carry on Type 1 (dealing in securities) and Type 4 (advising on securities) regulated activities under the Securities and Futures Ordinance. Chan is currently not registered with the HKMA nor licensed by the SFC.
2. Data Protection Principle 3 in Schedule 1 of the PDPO provides that personal data shall not, without the prescribed consent of the data subject, be used for a new purpose, i.e. any purpose other than the purpose for which the data was to be used at the time of the collection of the data or a purpose directly related to such purpose. "Use" is also defined in the PDPO to include disclose or transfer personal data.
3. General Principle 2 (diligence) of the Code of Conduct provides that, in conducting its business activities, a registered person should act with due skill, care, diligence, in the best interests of its clients and the integrity of the market. Paragraph 12.1 of the Code of Conduct provides that a registered person should comply with the law, rules, regulations and codes administered or issued by the SFC and the requirements of any regulatory authority which apply to the registered person.

[A copy of the Statement of Disciplinary Action is available on the SFC website](#)

Page last updated : 22 Jan 2018

## STATEMENT OF DISCIPLINARY ACTION

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### The Disciplinary Action

1. The Securities and Futures Commission (**SFC**) has banned Mr Chan Wai Nun (**Chan**) from re-entering the industry for a period of six months pursuant to section 196(1)(iii) of the Securities and Futures Ordinance (**SFO**).
2. Chan was registered as a relevant individual of DBS Bank (Hong Kong) Limited (**DBSHK**) between 25 December 2007 and 11 March 2016 to carry on Type 1 (dealing in securities) and Type 4 (advising on securities) regulated activities under the SFO. Chan is currently not registered with the Hong Kong Monetary Authority (**HKMA**) or licensed by the SFC.
3. The SFC found that Chan transferred data of approximately 208 clients of DBSHK for purposes other than that for which the data was collected, in breach of DBSHK's internal policies, the Personal Data (Privacy) Ordinance (**PDPO**), and the Code of Conduct for Persons Licensed by or Registered with the SFC (**Code of Conduct**).

### Summary of Facts

4. Chan was an investment counsellor (**IC**) at DBSHK before he tendered his resignation on 29 February 2016. His last day of employment with DBSHK was to be 31 March 2016. He was scheduled to join another bank (**New Employer**) as a relationship manager on 1 April 2016.
5. When Chan took up the role as an IC, his predecessor passed him a list which contained names, account numbers, telephone numbers, email addresses and outdated asset under management figures of approximately 208 DBSHK clients (**Client List**). The Client List also contained information which appeared to be investments made by the clients or in which the clients were interested, as well as information on credit extended to the clients. Chan utilised the Client List for the purposes of carrying out his duties at DBSHK. He came into possession of the Client List, as well as the information which he subsequently used to update it, as an employee of DBSHK.
6. During its email surveillance on new joiners conducted in March 2016, the New Employer identified an email enclosing the Client List in the email account of an existing staff member and traced the origin of the email to Chan. That existing staff member was Chan's former colleague at DBSHK and who was designated to be Chan's supervisor when he joined the New Employer.
7. The New Employer found in its internal investigation that:
  - (a) on 4 December 2015, Chan emailed the Client List from his DBSHK work email account to his personal email account;
  - (b) on 4 February 2016, Chan forwarded the Client List to his ex-colleague from his personal email account to his ex-colleague's personal email account; and

- (c) on 5 February 2016, Chan's ex-colleague forwarded the Client List from his personal email account to his work email account at the New Employer.
- 8. Chan claimed that in sending the Client List to his ex-colleague (who was designated to be his supervisor at the New Employer), he merely wanted to show that he was capable of building up a client base. At the time he sent the Client List to his ex-colleague, he had already secured employment with the New Employer and he had no intention to poach DBSHK's clients or obtain any benefit.
- 9. Subsequently, Chan confirmed that he had deleted the Client List and all information obtained from DBSHK from his personal email account and his personal laptop.
- 10. The incident was reported to the HKMA and the SFC in late March to early April 2016. Consequently, DBSHK terminated the employment of Chan on 30 March 2016. The New Employer also revoked its offer to Chan.

### **Conclusion**

- 11. By transferring the Client List first to his personal email account and then to his ex-colleague's personal email account, Chan was in breach of DBSHK's internal policies, Data Protection Principle 3 in Schedule 1 of the PDPO, and General Principle 2 (diligence) and paragraph 12.1 of the Code of Conduct.
- 12. The SFC is of the view that Chan is not a fit and proper person to be registered with the HKMA or licensed by the SFC.
- 13. In deciding the disciplinary sanction set out in paragraph 1, the SFC has taken into account all relevant circumstances, including:
  - (a) the risk of any further leakage of the information in the Client List appears to have been contained;
  - (b) Chan reported the incident to DBSHK on his own initiative;
  - (c) Chan was remorseful and admitted liability for his misconduct;
  - (d) Chan has been in the industry for a substantial period of time at the time of the misconduct;
  - (e) a deterrent message needs to be sent to the market; and
  - (f) Chan's otherwise clean disciplinary record with the SFC.

## 證監會禁止陳威能重投業界六個月

2018年1月22日

星展銀行（香港）有限公司（星展香港）前投資顧問陳威能（男）因在離開星展香港加入另一家銀行前將客戶資料轉移至星展香港以外，被證券及期貨事務監察委員會（證監會）禁止重投業界六個月，由2018年1月19日至2018年7月18日止（註1）。

證監會發現，陳於2015年12月將載有大約208名客戶的個人資料的名單從其於星展香港的工作電郵帳戶轉發到其個人電郵帳戶。

陳於2016年2月，即大約在他開始受僱於另一家銀行前的兩個月，把客戶名單從其個人電郵帳戶轉發到一名當時受僱於新僱主的前同事的個人電郵帳戶，而該前同事將成為陳在加入新銀行時的主管。該前同事在陳不知情的情況下，將客戶名單轉發到他的工作電郵帳戶。

新僱主在進行電郵監察程序時發現該附有客戶資料的電郵，並追溯到該電郵是由陳所發出。

陳的行為違反了星展香港的內部政策、《個人資料(私隱)條例》（《私隱條例》），以及《證監會持牌人或註冊人操守準則》（《操守準則》）（註2及3）。

證監會在決定上述紀律處分時，已考慮到所有相關情況，包括陳承認犯有失當行為並感到後悔，以及他過往並無遭受紀律處分的紀錄。

本個案由香港金融管理局（金管局）轉介證監會跟進。

完

備註：

1. 陳在2007年12月25日至2016年3月11日期間獲註冊為星展香港的有關人士，以進行《證券及期貨條例》下第1類（證券交易）及第4類（就證券提供意見）受規管活動。陳目前沒有名列於金管局的紀錄冊，亦並非證監會持牌人。
2. 《私隱條例》附表1第3原則規定，如無有關的資料當事人的訂明同意，個人資料不得用於新目的，即在收集該資料時擬將該資料用於的目的或直接與該目的有關的目的以外的任何目的。“使用”在《私隱條例》中亦被定義為包括披露或移轉個人資料。
3. 《操守準則》第2項一般原則（勤勉盡責）規定，註冊人在經營其業務時，應以適當的技能、小心審慎和勤勉盡責的態度行事，以維護客戶的最佳利益及確保市場廉潔穩健。《操守準則》第12.1段規定，註冊人應遵守有關的法例、證監會所執行或發出的規則、規例及守則、及適用於該註冊人的任何監管當局的規定。

[有關紀律處分行動聲明載於證監會網站](#)

最後更新日期：2018年1月22日

## 紀律處分行動聲明

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### 紀律處分行動

1. 證券及期貨事務監察委員會（**證監會**）依據《證券及期貨條例》（**該條例**）第 196(1)(iii)條禁止陳威能先生（**陳**）重投業界，為期六個月。
2. 陳在 2007 年 12 月 25 日至 2016 年 3 月 11 日期間獲註冊為星展銀行（香港）有限公司（**星展香港**）的有關人士，以進行該條例下第 1 類（證券交易）及第 4 類（就證券提供意見）受規管活動。陳目前沒有名列於香港金融管理局（**金管局**）的紀錄冊，亦並非證監會持牌人。
3. 證監會發現，陳轉移大約 208 名星展香港客戶的資料，以作收集該等資料的原來目的以外的用途，違反了星展香港的內部政策、《個人資料(私隱)條例》（《**私隱條例**》），以及《證監會持牌人或註冊人操守準則》（《**操守準則**》）。

### 事實摘要

4. 陳在 2016 年 2 月 29 日請辭前是星展香港的投資顧問。他最後受僱於星展香港的日期原為 2016 年 3 月 31 日，並原定於 2016 年 4 月 1 日加入另一家銀行（**新僱主**）擔任客戶關係經理。
5. 在陳出任投資顧問一職時，他的前任者把一份載有大約 208 名星展香港客戶的名稱、帳戶號碼、電話號碼、電郵地址及未更新的管理資產數據的名單（**客戶名單**）交給他。客戶名單亦載有看來是該等客戶所作出或有興趣的投資的資料，及與向該等客戶提供的信貸有關的資料。陳利用客戶名單履行他在星展香港的職務。他以星展香港僱員的身分獲得客戶名單及他其後用以更新客戶名單的資料。
6. 新僱主在 2016 年 3 月對新入職僱員進行電郵監察程序期間，於一名現職員工的電郵帳戶發現一封附有客戶名單的電郵，並追溯到該電郵是由陳所發出。該名現職員工是陳在星展香港的前同事，並已被安排在陳加入新僱主時出任陳的主管。
7. 新僱主在內部調查中發現：
  - (a) 於 2015 年 12 月 4 日，陳從他於星展香港的工作電郵帳戶將客戶名單傳送到其個人電郵帳戶；
  - (b) 於 2016 年 2 月 4 日，陳將客戶名單從其個人電郵帳戶轉發到他的前同事的個人電郵帳戶；及
  - (c) 於 2016 年 2 月 5 日，陳的前同事從其個人電郵帳戶轉發客戶名單到他在新僱主的工作電郵帳戶。
8. 陳聲稱在將客戶名單傳送給前同事（該前同事獲安排作為陳在新僱主的主管）時，他純粹想表現出他有能力開拓客源。在他向前同事傳送客戶名單時，他已獲新僱主聘用，而且沒有意圖搶奪星展香港的客戶或取得任何利益。

9. 其後，陳確認他已在其個人電郵帳戶及個人電腦內刪除客戶名單及從星展香港取得的所有資料。
10. 金管局及證監會於 2016 年 3 月底至 4 月初接獲事件的匯報。星展香港因有關事件於 2016 年 3 月 30 日解僱陳，新僱主亦撤銷對陳的聘用。

## 結論

11. 陳先後將客戶名單轉移至自己及他的前同事的個人電郵帳戶，違反了星展香港的內部政策、《私隱條例》附表 1 保障資料原則的第 3 原則及《操守準則》一般原則第 2 項（勤勉盡責）及第 12.1 段。
12. 證監會認為陳並非獲金管局註冊或獲證監會發牌的適當人選。
13. 證監會在決定第 1 段所述的紀律處分時，已考慮到所有相關情況，包括：
  - (a) 客戶名單內資料進一步外洩的風險看來已受控；
  - (b) 陳自行向星展香港匯報事件；
  - (c) 陳感到後悔並對他的失當行為承認責任；
  - (d) 陳在干犯失當行為時在業界已工作了一段相當長的時間；
  - (e) 必須向市場傳遞具阻嚇力的訊息；及
  - (f) 陳過往並無遭受證監會紀律處分的紀錄。