

SFC bans former responsible officer of Guosen Securities (HK) Brokerage Company, Limited for 10 months

23 Apr 2019

The Securities and Futures Commission (SFC) has prohibited Mr Su Xiqiang, former head of retail brokerage and responsible officer (RO) of Guosen Securities (HK) Brokerage Company, Limited (Guosen), from re-entering the industry for 10 months from 17 April 2019 to 16 February 2020 (Note 1).

The disciplinary action follows the SFC's sanctions against Guosen over its failures to comply with anti-money laundering (AML) and counter financing of terrorism (CFT) regulatory requirements when handling third party fund deposits between November 2014 and December 2015 (Note 2).

The SFC found that Guosen's breaches were attributable to Su's failure to discharge his duties as an RO and a member of Guosen's senior management (Note 3).

In particular, Su, who was the most senior person overseeing Guosen's retail brokerage business during the relevant time, failed to ensure that Guosen had:

- put in place effective policies to scrutinise and approve third party deposits received by retail clients;
- implemented adequate systems and controls to identify and monitor third party deposits made into its bank sub-accounts;
- communicated and enforced its internal AML/CFT policies effectively; and
- put in place proper procedures for reporting suspicious transactions.

Su also failed to supervise staff members diligently to ensure they adhered to Guosen's AML/CFT policies by:

- documenting the assessment of retail clients' level of risk on money laundering and terrorist financing at account opening; and
- regularly reviewing and updating existing records of retail clients.

In deciding the disciplinary sanction, the SFC took into account all relevant circumstances, including Su's cooperation with the SFC in resolving its concerns and accepting the disciplinary action, as well as Su's otherwise clean disciplinary record.

End

Notes:

1. Su was licensed under the Securities and Futures Ordinance to carry on business in Type 1 (dealing in securities), Type 2 (dealing in futures contracts), Type 4 (advising on securities) and Type 5 (advising on futures contracts) regulated activities. Su was accredited to Guosen as an RO between 4 November 2014 and 1 February 2019 in respect of Guosen's Type 1 (dealing in securities) and Type 4 (advising on securities) regulated activities. Su is currently not licensed by the SFC.
2. Guosen was reprimanded and fined \$15.2 million by the SFC. Please refer to the SFC's press release dated [18 February 2019](#).
3. General Principle 9 of the Code of Conduct for Persons Licensed by or Registered with the SFC (Code of Conduct) requires senior management of a licensed corporation to bear primary responsibility for ensuring the maintenance of appropriate standards of conduct and adherence to proper procedures by the firm. Paragraph 14.1 of the Code of Conduct further provides that senior management of a licensed corporation should properly manage the risks associated with the firm's business.
4. Licensed corporations are reminded to refer to the "[Circular to Licensed Corporations and Associated Entities – Anti-Money Laundering/Counter Financing of Terrorism \(AML/CFT\) Compliance with AML/CFT Requirements](#)" issued by the SFC on 26 January 2017 which sets out key areas of concern identified by the SFC in its review of certain licensed corporations' AML/CFT systems.

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

STATEMENT OF DISCIPLINARY ACTION

The Disciplinary Action

1. The Securities and Futures Commission (**SFC**) has prohibited Mr Su Xiqiang (**Su**), former Head of Retail Brokerage and responsible officer (**RO**) of Guosen Securities (HK) Brokerage Company, Limited (**Guosen**), from doing all or any of the following in relation to any regulated activities for 10 months pursuant to section 194(1)(iv) of the Securities and Futures Ordinance (**SFO**):
 - (a) applying to be licensed or registered;
 - (b) applying to be approved under section 126(1) of the SFO as an RO of a licensed corporation;
 - (c) applying to be given consent to act or continue to act as an executive officer of a registered institution under section 71C of the Banking Ordinance; and
 - (d) seeking through a registered institution to have his name entered in the register maintained by the Hong Kong Monetary Authority under section 20 of the Banking Ordinance as that of a person engaged by the registered institution in respect of a regulated activity.

Summary of facts

2. Su was licensed under the SFO to carry on business in Type 1 (dealing in securities), Type 2 (dealing in futures contracts), Type 4 (advising on securities) and Type 5 (advising on futures contracts) regulated activities and acted as an RO of Guosen in respect of its Type 1 (dealing in securities) and Type 4 (advising on securities) regulated activities between 4 November 2014 and 1 February 2019. Su is currently not licensed by the SFC.
3. The SFC found that between 1 November 2014 and 31 December 2015 (**Relevant Period**), Guosen failed to
 - (a) implement adequate and proper internal controls to mitigate the risk of money laundering and terrorist financing (**ML/TF**) associated with third party deposits (**TPDs**). In particular, Guosen:
 - (i) did not have in place any policies or procedures to verify the identities of third party depositors, ascertain the relationship between its clients and third party depositors, and scrutinize the reasons for making TPDs;
 - (ii) did not have in place an effective approval process in respect of TPDs;
 - (iii) did not have in place any systems or controls to identify and monitor TPDs made into the bank sub-accounts maintained by Guosen for its clients (**Sub-accounts**); and

- (iv) failed to effectively communicate its anti-money laundering (**AML**) and counter financing of terrorism (**CFT**) policies in relation to TPDs to its staff and ensure they took steps to enforce the same;
 - (b) identify and make enquiries about TPDs with AML red flags and report the same to the Joint Financial Intelligence Unit (**JFIU**) in a timely manner. In particular, Guosen:
 - (i) effected numerous TPDs which were incommensurate with the financial profile of its clients without making any enquiries;
 - (ii) failed to make enquiries in situations where TPD funds were withdrawn by clients shortly after receiving the funds without using the same for trading;
 - (iii) failed to make any enquiries where a number of third party companies made a considerable number of TPDs to numerous clients; and
 - (iv) did not submit any suspicious transaction reports (**STRs**) to JFIU in relation to TPDs with AML red flags during the Relevant Period;
 - (c) conduct adequate ongoing monitoring of its business relationship with clients. In particular, Guosen:
 - (i) failed to maintain proper documentation of its assessment of clients' ML/TF risk levels;
 - (ii) did not monitor clients' fund movements to ensure they were consistent with the clients' nature of business, risk profiles and source of funds; and
 - (iii) did not undertake periodic review of existing records of its clients.¹
- 4. The SFC found that Guosen's series of AML/CFT related internal control deficiencies as summarized in the preceding paragraph was attributable to Su's failure to discharge his duties as a responsible officer and a member of Guosen's senior management. As the most senior person overseeing Guosen's retail brokerage business during the Relevant Period, Su should have ensured that Guosen had in place adequate and effective internal controls to mitigate the ML/TF risks associated with the business. Nonetheless:
 - (a) Su did not take any steps to ascertain and ensure that Guosen had proper policies for the scrutiny and approval of TPDs. He reckoned that the banks from which the TPDs originated would have conducted AML checks before releasing the funds to Guosen and therefore Guosen need not make enquiries about the relationship between the clients and the third party depositors and their reasons for making TPDs. He failed to recognize that any step taken by the banks to scrutinize the TPDs (if any) would not absolve Guosen from its own responsibility to mitigate the risk of ML/TF associated with TPDs.

¹ See the SFC's press release dated 18 February 2019

- (b) Su did not take any steps to ensure Guosen had proper systems and controls to identify and monitor TPDs made into the Sub-accounts. Su considered that a client was in effect transferring funds from his/her own bank account to his/her securities account at Guosen when the client received a TPD via the Sub-account assigned to him/her. This is misconceived as the Sub-accounts were not opened and maintained by the clients but by Guosen for the sole purpose of facilitating clients' fund deposits.
- (c) Su failed to ensure that Guosen's AML/CFT policies, including the proper channel to report suspicious transactions, were effectively communicated to and properly understood by its staff. Although Guosen claimed that its policy was to discourage TPDs, staff members under Su's supervision had advised and assisted clients to make TPDs without taking steps to ascertain if the TPDs were commensurate with the clients' profiles.
- (d) Although most if not all of the TPDs processed by Guosen during the Relevant Period were credited to retail client accounts, Su:
 - (i) did not know whether any staff members had made enquiries about TPDs and verified the identities of the third party depositors;
 - (ii) was not aware of the significant number of TPDs with AML red flags;
 - (iii) had no idea why suspicious transactions were not identified and reported to JFIU;
 - (iv) assumed the TPDs were in order on the basis that no one brought any questions about them to his attention; and
 - (v) failed to ensure Guosen had adequate and proper suspicious transaction reporting procedures in place.
- (e) Su approved account opening applications of Guosen's retail clients notwithstanding that staff members responsible for the process did not fill in the prescribed risk assessment form as required by Guosen's compliance manual.
- (f) Su did not take any steps to make sure that the business units under his supervision carried out adequate ongoing monitoring and regularly reviewed and updated existing records of retail clients in compliance with Guosen's internal policies.

5. In light of the above, the SFC considers that Su has breached:

- (a) General Principle 9 of the Code of Conduct for Persons Licensed by or Registered with the SFC (**Code of Conduct**), which requires senior management of a licensed corporation to bear primary responsibility for ensuring the maintenance of appropriate standards of conduct and adherence to proper procedures by the firm;
- (b) paragraph 4.2 of the Code of Conduct, which provides that a licensed persons should ensure that it has adequate resources to supervise

diligently and does supervise diligently persons employed or appointed by it to conduct business on its behalf; and

- (c) paragraph 14.1 of the Code of Conduct, which requires senior management of a licensed corporation to properly manage the risks associated with the firm's business.

Conclusion

- 6. The SFC concludes that the misconduct of Guosen was a result of Su's consent or connivance, or attributable to neglect on his part as an RO and a member of senior management, and should also be regarded as misconduct on his part. As Su's conduct was inconsistent with General Principle 9 and paragraphs 4.2 and 14.1 of the Code of Conduct, his fitness and properness as a regulated person is called into question.
- 7. In deciding the disciplinary sanction set out in paragraph 1, the SFC has taken into account all relevant circumstances, including:
 - (a) Guosen's AM L/C FT internal control deficiencies and regulatory breaches were serious;
 - (b) virtually all of the suspicious TPDs during the Relevant Period were received by retail clients and Su was the most senior person overseeing Guosen's retail brokerage business during the Relevant Period;
 - (c) Su has been in the financial industry for a considerable period of time, yet he failed to appreciate the level of responsibility that an RO and senior management of a licensed corporation is expected to bear; and
 - (d) Su has an otherwise clean disciplinary record.