

## SFC bans Mak Shu Pan for three years

2 Apr 2014

The Securities and Futures Commission (SFC) has banned Mr Mak Shu Pan from re-entering the industry for three years from 1 April 2014 to 31 March 2017 (Note 1).

The disciplinary action follows an SFC investigation which found that Mak had allowed a woman to open and operate an account at BOCOM International Securities Limited in her mother's name. Mak had never met and conducted know-your-client procedures with the mother, who was the account holder, but falsely declared in the account opening forms that he had witnessed her signature and explained the contents of the risk disclosure statement to her. The account holder had not authorized any third party, including her daughter, to operate her account.

The SFC also found that Mak had conducted transactions in the account on a discretionary basis in reliance upon the daughter's acquiescence, but without the authorization of the account holder.

The SFC considers that Mak's conduct called into question his fitness and propriety to be a licensed person. In deciding the penalty, the SFC took into account all relevant circumstances, including that:

- Mak had abused the trust his employer placed in him by falsely representing to his employer that he had witnessed the signature of the account holder and explained the risk disclosure statement to her;
- Mak's actions seriously jeopardised the account holder's interests and resulted in financial loss of around \$1 million to her;
- As compensation, Mak has paid the account holder \$100,000 and has entered into an agreement to pay a further sum of \$1,000,000; and
- Mak has an otherwise clean disciplinary record.

End

Notes:

1. Mak was licensed as a representative 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 BOCOM International Securities Limited between 14 January 2008 and 8 June 2012. He is currently not a licensed person.
2. 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 prohibited Mr Mak Shu Pan for three years, pursuant to section 194 of the Securities and Futures Ordinance, from doing all or any of the following in relation to any regulated activities:
  - (a) applying to be licensed as a representative;
  - (b) applying to be approved as a responsible officer 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 her name entered in the register maintained by the Hong Kong Monetary Authority under the Banking Ordinance as that of a person engaged by the registered institution in respect of a regulated activity.
2. The disciplinary action is taken because Mak has allowed a woman to open and operate an account in her mother's name, falsely declared that he had witnessed the account holder's signature on the account opening documents, and conducted transactions in the account on a discretionary basis without obtaining the client's authorization.

### Summary of facts

3. Mak was an account executive of BOCOM International Securities Limited (**BOCOM**) between 14 January 2008 and 8 June 2012.
4. In January 2010, Mak gave BOCOM's account opening and settlement instruction forms to a daughter and asked her to arrange for her mother to sign the documents. After the mother had signed the documents, Mak filled in the account opening forms according to information provided by the daughter.
5. Mak had never met and conducted know-your-client procedures with the account holder (that is, the mother), but falsely declared in the account opening forms that he had witnessed her signature and explained the contents of the Risk Disclosure Statement to her. Based on the documents provided by Mak, BOCOM opened an account in the name of the account holder (**Account**).
6. Monthly statements for the Account show that:
  - (a) Securities worth more than \$1 million were transferred from an account held by the account holder with another firm into the Account on 1

February 2010. All those securities were sold between 5 and 22 February 2010, leaving a cash balance of around HK\$1.21 million in the Account.

- (b) Around 15 to 20 ordinary share transactions were conducted in the Account in each of March and April 2010, but from May 2010 to March 2011, the number of transactions per month increased substantially to around 60 to over 100, and derivative products such as callable bull/bear contracts and warrants were transacted in the Account.
  - (c) By the end of March 2011, there was only one warrant remaining in the Account. The market value of this warrant dropped from HK\$554,000 on 31 March 2011 to HK\$177,600 on 31 May 2011. By the end of June 2011, the said warrant had expired and become worthless.
  - (d) The balance in the Account dropped from \$1.21 million in February 2010 to around \$4,000 in June 2011.
7. During interviews with the SFC, Mak informed the SFC that up until about April 2010, he had sought the daughter's consent before conducting transactions in the Account. Starting from around May 2010, however, the daughter agreed that he could report to her after he had conducted transactions in the Account. He therefore began conducting more trades in the Account.
  8. The account holder had not authorised any third party, including her daughter, to operate her account. Nor had the account holder authorised Mak to effect transactions in the Account without her specific authorisation.
  9. Mak has paid the account holder \$100,000 as compensation and has entered into an agreement to pay a further sum of \$1,000,000 as compensation.

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

10. General Principles 1 and 2 of the Code of Conduct<sup>1</sup> require licensed persons to act honestly, fairly, with due skill, care and diligence, and in the best interests of their clients and the integrity of the market, in conducting their business activities.
11. In the context of account opening, licensed persons are required under paragraph 5.1 of the Code of Conduct to take all reasonable steps to establish the true and full identity of their clients and their financial situation, investment experience and investment objectives.
12. With respect to the authorization for transactions and the operation of a discretionary account, at the time when Mak's conduct took place, paragraph 7.1 of the Code of Conduct provided that a licensed person should not effect a transaction for a client unless before the transaction is effected the client, or a person designated by the client<sup>2</sup>, has specifically authorised the transaction, or

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<sup>1</sup> Code of Conduct for Persons Licensed by or Registered with the SFC

<sup>2</sup> With effect from 1 December 2012, the Code of Conduct provides that a licensed person should not effect a transaction for a client unless before the transaction is effected the client, or a person designated in writing by the client, has specifically

the client has authorised in writing the licensed or registered person to effect transactions for the client without the client's specific authorization.

13. It is a fundamental duty for licensed persons to conduct proper know-your-client procedures and identify the true holder of an account. Allowing a person to operate a securities account in another individual's name without conducting proper know-your-client procedures could make it difficult for regulatory bodies to trace and identify those who are ultimately behind a transaction and may hinder their investigation in relation to potential market misconduct.
14. It is also imperative that only the account holder, or a person who has been authorised by the account holder, is able to operate the account. Written authorisations are necessary to identify the people entitled to place orders in a client's account and to protect clients from improper or illegal trading activities unauthorised by clients. Allowing an unauthorised party to place orders for the account holder would not only put the financial interests of the account holder in jeopardy, but would also expose the licensed corporation to unnecessary risks.
15. Having considered all the circumstances, the SFC is of the view that Mak has failed to conduct know-your-client procedures in relation to the Account and has misrepresented to BOCOM that he had witnessed the account holder's signature on the account opening forms. Mak has also permitted himself and the account holder's daughter to operate the Account without the account holder's authorisation. Mak has breached General Principles 1 and 2, and Paragraphs 5.1 and 7.1 of the Code of Conduct, and his conduct also calls in question his fitness and propeness to be a licensed person.

## **Conclusion**

16. The SFC has decided that a prohibition of 3 years is most appropriate and commensurate with the SFC's view on the gravity of Mak's conduct. In coming to the decision to take disciplinary action against Mak, the SFC has taken into account all relevant circumstances, including that:
  - (a) Mak had abused the trust his employer placed in him by falsely representing to his employer that he had witnessed the signature of the account holder and explained the risk disclosure statement to her;
  - (b) Mak's actions seriously jeopardized the account holder's interests and resulted in financial loss to her;
  - (c) Mak has paid the account holder \$100,000 as compensation and has entered into an agreement to pay a further sum of \$1,000,000 as compensation; and
  - (d) Mak has no previous disciplinary record.

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authorised the transaction, or the client has authorised in writing the licensed or registered person to effect transactions for the client without the client's specific authorization. (Emphasis added)