

## SFC bans Leung Wai Hung for 18 months

3 Nov 2014

The Securities and Futures Commission (SFC) has banned Mr Leung Wai Hung from re-entering the industry for 18 months from 31 October 2014 to 30 April 2016 (Note 1).

The disciplinary action follows an SFC investigation which found that from February 2011 to August 2013, Leung failed to make proper records of the order instructions from his clients and circumvented the order recording requirements of his employer.

During that period, Leung executed orders for holders of seven accounts which were designated as discretionary accounts but which were never operated on a discretionary basis. All order instructions were in fact given by the clients by calling his mobile phone. However, Leung failed to make proper records of the order instructions. By designating the accounts as discretionary when they were not, Leung avoided the scrutiny of his employer on order recordings for those accounts.

The SFC has looked into the trading in these accounts and found no sign of any other misconduct. Nonetheless, the SFC considers Leung's conduct calls into question his fitness and properness as a licensed person as Leung has not only failed to record and maintain proper audit trail of the orders placed by his clients, but also misused the discretionary account arrangement to circumvent the order recording requirements.

Keeping proper audit trail of client orders is a basic and fundamental requirement expected of licensed persons. Order instructions which are received from clients who have given discretionary authority to operate their accounts should be recorded in the same way as order instructions from other clients, in accordance with the Code of Conduct (Note 2).

End

Notes:

1. Leung was licensed as a representative under the Securities and Futures Ordinance to carry on Type 1 (dealing in securities) regulated activities and was accredited to Fulbright Securities Limited between 14 June 2010 and 31 October 2013. He is currently not a licensed person.
2. Paragraph 3.9 of the Code of Conduct for Persons Licensed by or Registered with the Securities and Futures Commission.

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

Page last updated : 3 Nov 2014

---

## STATEMENT OF DISCIPLINARY ACTION

---

### The Disciplinary Action

1. The Securities and Futures Commission (**SFC**) has prohibited Mr Leung Wai Hung (**Leung**) for eighteen months, 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 his 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 Leung has failed to record and maintain proper audit trail of the orders placed by his clients and circumvented the order recording requirements of his employer.

### Summary of facts

3. Leung was an account executive of Fulbright Securities Limited (**Fulbright**) between 14 June 2010 and 31 October 2013.
4. Investigation into Leung's conduct stemmed from a report by Fulbright in March 2013 that Leung might have committed market misconduct because there were some unusual trading activities in his own trading account and a number of client accounts (including a number of discretionary accounts he managed).
5. One of the discretionary account holders told the SFC that although she had given Leung discretionary authority to operate her account, orders in her account were, in fact placed at her specific instructions. In light of that, the SFC looked into the operation of other discretionary accounts managed by Leung.
6. During his employment at Fulbright, Leung was responsible for managing seven discretionary accounts.
7. Leung told us that shortly after he started working in Fulbright, he was found to have failed to record his clients' orders, whereupon someone in Fulbright suggested that he could open discretionary accounts for his clients. It was

his understanding that he did not need to record the orders placed by clients who have given him discretionary authority.

8. Leung admitted that although he had been authorised to operate some of his clients' accounts on a discretionary basis, those accounts were in fact never operated on a discretionary basis – instructions for all orders in those accounts were given to him by the relevant clients by calling his mobile phone. This is consistent with what one of Leung's discretionary clients told the SFC: see paragraph 5 above.
9. A further discretionary client similarly told the SFC that all order instructions for transactions in his account were given by him, and that he placed orders with Leung by calling his mobile phone. Further, he also told the SFC that Leung had told him that Fulbright did not allow Leung to take client orders by mobile phone, and Leung could not take his orders by mobile phone unless he authorised Leung to operate his account on a discretionary basis.
10. Information provided by Fulbright revealed that telephone order recording exists for only a small proportion of the transactions effected in the accounts of Leung's discretionary clients, even though, according to Leung and to some of the relevant clients, specific order instructions were in fact given by the clients (see paragraphs 5, 8 and 9 above). This is notwithstanding that Fulbright had given Leung several reminders and warnings about the requirement to record client orders.
11. The SFC has also looked into the trading in the discretionary accounts managed by Leung but found no sign of any other misconduct.

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

#### Breach of Paragraph 3.9, Code of Conduct<sup>1</sup>

12. Keeping proper audit trail of client orders is a basic and fundamental requirement expected of licensed persons. A proper audit trail helps the management of intermediaries to detect, and possibly prevent, any irregularities or fraudulent activities. It also ensures that there is reliable evidence to fall back on when assessing any dispute between a broker and its clients concerning the particulars of a trade order.
13. The order recording requirements are set out in both paragraph 3.9 of the Code of Conduct and Fulbright's Compliance Manual. Neither paragraph 3.9 of the Code of Conduct nor Fulbright's Compliance Manual provides any exemption for order instructions which are received from clients who have given discretionary authority to operate their accounts. In other words, order instructions which are received from clients who have given discretionary authority to operate their accounts must be recorded in the same way as order instructions from other clients.

---

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

14. In the present case, Leung received order instructions from his clients through his mobile phone and failed to make proper records of the order instructions, in breach of paragraph 3.9 of the Code of Conduct.

#### Breach of General Principle 1, Code of Conduct

15. The SFC is of the view that Leung has obtained discretionary authority from his clients in order to circumvent the order recording requirements. Leung's explanation that he believed that it is not necessary to record orders given by clients who have given him discretionary authority is not credible, considering:
  - (a) the background leading to the opening and the actual operation of the discretionary accounts as set out in paragraphs 7, 8 and 9 above;
  - (b) the evidence of one of Leung's discretionary client as set out in paragraph 9 above;
  - (c) both the Code of Conduct and Fulbright's Compliance Manual contain express and specific requirements for order recording, including for orders received on the mobile phone and there is no exemption from such requirements for discretionary accounts; and
  - (d) Leung has attended an in-house training provided by Fulbright in relation to the SFC's order recording requirement.
16. By designating his clients' accounts as discretionary accounts for his clients when they were not, Leung avoided the scrutiny of his employer on order recordings for those accounts.
17. In the circumstances, Leung has misused the discretionary account arrangement with a view to circumventing the order recording requirements. Such conduct was dishonest and in breach of General Principle 1 of the Code of Conduct.

#### **Conclusion**

18. In deciding the disciplinary sanction, the SFC has taken into account all relevant circumstances, including that Leung's conduct was deliberate and dishonest and could jeopardize the best interests of his clients and expose Fulbright to unnecessary risk in the event of a dispute between a client and Fulbright concerning particular orders. It has also diminished Fulbright's ability to properly monitor its business operations, detect and prevent possible irregularities and/or fraudulent activities and could impede the ability of regulatory authorities to investigate suspected market misconduct and carry out regulatory functions.