

## SFC bans Jia Zhen for 10 months

24 Feb 2016

The Securities and Futures Commission (SFC) has banned Mr Jia Zhen, a former account executive of China Merchants Securities (HK) Co., Limited (CMSHK), from re-entering the industry for 10 months from 20 February 2016 to 19 December 2016 for breach of the SFC's Code of Conduct (Notes 1 & 2).

The SFC found that between February 2010 and June 2011, Jia entered into a private arrangement with a client and effected transactions in the client's account on a discretionary basis without obtaining the client's written authorization.

The SFC considers that the client's interests were prejudiced as Jia's failure deprived the client from the firm's protection on discretionary account. As the client's securities account was not designated as a discretionary account by the firm, the operation of the client's securities account could not be properly monitored and supervised by the firm.

End

Notes:

1. Jia was licensed under the Securities and Futures Ordinance to carry on Type 1 (dealing in securities) regulated activity and was accredited to China Merchants Securities (HK) Co., Limited from 11 May 2010 to 16 July 2012. Jia is currently not licensed by the SFC.
2. Paragraph 7.1 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](#)

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## STATEMENT OF DISCIPLINARY ACTION

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### The Disciplinary Action

1. The Securities and Futures Commission (**SFC**) has banned Mr Jia Zhen (**Jia**)<sup>1</sup> for a period of 10 months pursuant to section 194(1)(iv) of the Securities and Futures Ordinance (**SFO**).
2. The SFC found that between February 2010 and June 2011, Jia effected transactions in a securities account of a client (**Client**) at China Merchants Securities (HK) Co., Limited (**CMSHK**) on a discretionary basis without obtaining written authorization from the Client.
3. Jia's conduct was in breach of paragraph 7.1 of the Code of Conduct for Persons Licensed by or Registered with the SFC (**Code of Conduct**).

### Summary of Facts

4. The SFC investigation stemmed from a complaint from the Client against Jia.
5. Jia was the Marketing Development Manager of CMSHK and the Client opened a securities account at CMSHK with Jia.
6. The evidence shows that:
  - (a) CMSHK's policies and procedures set out a number of requirements in relation to the operation of a discretionary account. They are as follows:
    - (i) A written Discretionary Broking Authorization had to be executed by a client if he authorized an account executive to trade for him on a discretionary basis.
    - (ii) All account executives were strictly prohibited from concluding private discretionary trading arrangement with clients.
    - (iii) The execution of the Discretionary Broking Authorization had to be witnessed by an account executive.
    - (iv) The Discretionary Broking Authorization had to be approved by CMSHK.
    - (v) Discretionary trading was discouraged by CMSHK and was only allowed in special cases.
    - (vi) The Discretionary Broking Authorization was effective for only one year and had to be renewed by the client annually, otherwise it would expire automatically.

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- (b) Jia had a private discretionary arrangement with the Client to operate his securities account.
- (c) Most transactions in the Client's securities account were effected by Jia.
- (d) There was no written authorization to conduct discretionary trading in the Client's account.
- (e) According to Jia, he knew that CMSHK's policies required him to obtain a written authorization from the Client before he could operate the Client's securities account. He failed to do so. He claimed that he accepted the Client's oral authorization to operate his securities account as Jia and the Client were friends and the Client said that it was not necessary to sign an authorization.

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

7. Under paragraph 7.1 of the Code of Conduct, a licensed person is required to (a) obtain the client's written authorization for operating a discretionary account; (b) confirm at least on an annual basis whether the client wishes to revoke such authority; (c) designate such account as a discretionary account; and (d) obtain senior management's approval for opening the discretionary account.
8. Jia breached paragraph 7.1 of the Code of Conduct as he effected transactions in a securities account of a Client on a discretionary basis without obtaining written authorization from the Client.
9. As a licensed representative, Jia had a duty to ensure that the Client signed a written authorization before conducting trades in his securities account on a discretionary basis under paragraph 7.1(a) of the Code of Conduct. Jia's explanation that the Client declined to sign the authorization is not a valid excuse for his failure to do so.
10. Jia also had a duty to ensure that the Client's securities account was designated as a discretionary account, and to obtain senior management's approval of his operation of the Client's securities account under paragraphs 7.1(c) and (d) of the Code of Conduct.
11. As the management of CMSHK was not aware of Jia's discretionary arrangement with the Client, the Client's securities account was not designated as a discretionary account by the firm and senior management's approval to operate it as such had never been obtained. The firm also could not confirm with the Client on an annual basis whether the Client wanted to revoke his discretionary authority under paragraph 7.1(b) of the Code of Conduct. Accordingly, the operation of the Client's securities account was not properly monitored and supervised by the firm.
12. A written authorization, with clearly defined scope of authority and precise terms and conditions on how the discretion will be exercised, is important because it protects the client from the risk of unauthorized trades and the licensed corporation from unnecessary claims in case the client disputes the trades. Jia failed to procure the Client to sign a written authorization setting out the precise terms and conditions on how his securities account would be handled.

13. In determining the sanction, the SFC took into account all relevant circumstances, including Jia's discretionary arrangement in the Client's account without written authorization lasted for more than two years.

**Conclusion**

14. By failing to obtain the firm and senior management's approval to operate the Client's account on a discretionary basis, the Client's interests were prejudiced as he was deprived of the protection to which he was entitled under paragraph 7.1 of the Code of Conduct.

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## 證監會禁止賈臻重投業界十個月

2016年2月24日

證券及期貨事務監察委員會（證監會）因招商證券（香港）有限公司（香港招商證券）前客戶主任賈臻（男）違反證監會《操守準則》，禁止其重投業界十個月，由2016年2月20日起至2016年12月19日止（註1及2）。

證監會發現，在2010年2月至2011年6月期間，賈與一名客戶訂立私人安排，並在未取得客戶的書面授權下，以委託形式在該客戶的帳戶內進行交易。

證監會認為，賈的缺失使該客戶不受香港招商證券在委託帳戶方面所提供的保障，令其權益受損。由於該客戶的證券帳戶沒有被香港招商證券指明為委託帳戶，故該帳戶的操作情況並沒有得到香港招商證券的妥善監察及監督。

完

備註：

1. 賈曾根據《證券及期貨條例》獲發牌進行第1類（證券交易）受規管活動，並在2010年5月11日至2012年7月16日期間隸屬招商證券（香港）有限公司。他現時並非證監會持牌人。
2. 《證券及期貨事務監察委員會持牌人或註冊人操守準則》第7.1段。

[有關紀律處分行動聲明載於證監會網站](#)

最後更新日期：2016年2月24日

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## 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**）根據《證券及期貨條例》第 194(1)(iv) 條禁止賈臻（**賈**）<sup>1</sup>重投業界，為期十個月。
2. 證監會發現，在 2010 年 2 月至 2011 年 6 月期間，賈在未取得招商證券（香港）有限公司（**香港招商證券**）的一名客戶（**該客戶**）的書面授權下，以委託形式在該客戶的證券帳戶內進行交易。
3. 賈的行為違反了《證監會持牌人或註冊人操守準則》（《**操守準則**》）第 7.1 段。

### 事實摘要

4. 證監會的調查源自於該客戶針對賈的投訴。
5. 賈曾為香港招商證券的市場拓展經理，而該客戶在香港招商證券向賈開立了一個證券帳戶。
6. 有關證據顯示：
  - (a) 香港招商證券的政策和程序載有有關操作委託帳戶的多項規定。有關規定如下：
    - (i) 客戶如欲授權客戶主任以委託形式操作其帳戶，必須簽署委託經紀授權書。
    - (ii) 所有客戶主任均嚴禁與客戶訂立私人委託交易安排。
    - (iii) 簽署委託經紀授權書必須由客戶主任見證。
    - (iv) 委託經紀授權書必須獲得香港招商證券的批准。
    - (v) 香港招商證券並不鼓勵委託交易，並只會在特殊情況下才容許進行該類交易。
    - (vi) 委託經紀授權書的有效期限只有一年，而客戶須每年續簽授權書，否則授權會自動失效。
  - (b) 賈與該客戶就操作其證券帳戶訂有私人委託安排。
  - (c) 該客戶的證券帳戶內大部分交易均由賈經手進行。
  - (d) 沒有取得在該客戶的帳戶內進行委託交易的書面授權。

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<sup>1</sup> 賈曾根據《證券及期貨條例》獲發牌進行第 1 類（證券交易）受規管活動，並在 2010 年 5 月 11 日至 2012 年 7 月 16 日期間隸屬招商證券（香港）有限公司。他現時並非證監會的持牌人。

- (e) 根據賈所述，他明知香港招商證券的政策要求他須事先取得該客戶的書面授權，才可操作該客戶的證券帳戶，但他卻沒有如此行事。賈聲稱，由於他和該客戶是朋友，故接受了該客戶的口頭授權，代為操作其證券帳戶，而且該客戶表示無必要簽署授權書。

### 違反規定及採取行動的理由

7. 根據《操守準則》第 7.1 段，持牌人須(a)就操作委託帳戶獲得客戶的書面授權；(b)至少每年與客戶確認其是否希望取消該項授權；(c)指明該帳戶為委託帳戶；及(d)獲得高級管理層批准開立委託帳戶。
8. 賈在未取得該客戶的書面授權下便以委託形式在該客戶的證券帳戶內進行交易，因而違反了《操守準則》第 7.1 段的規定。
9. 賈身為持牌代表，有責任根據《操守準則》第 7.1(a)段，在以委託形式於該客戶的證券帳戶內進行交易前，確保該客戶已簽署授權書。賈表示該客戶拒絕簽署授權書，但這解釋並非他干犯缺失的合理理由。
10. 除此之外，賈也有責任根據《操守準則》第 7.1(c)及(d)段，確保該客戶的證券帳戶獲指明為委託帳戶，以及就他操作該客戶的證券帳戶取得高級管理層批准。
11. 由於香港招商證券的管理層對賈與該客戶訂立的委託安排並不知情，故該公司並無將該客戶的證券帳戶指明為委託帳戶，而賈亦從未就操作該帳戶取得高級管理層的批准。該公司亦無法根據《操守準則》第 7.1(b)段，每年向該客戶確認一次其是否想取消委託授權。因此，該客戶的證券帳戶的操作情況沒有得到該公司的妥善監察及監督。
12. 授權書是相當重要的文件，當中除清楚界定授權範圍，亦就如何行使酌情權列明了明確條款及條件，這既可保障客戶，免其承受未經授權交易的風險，並可在客戶對交易提出爭議時保障持牌法團免遭不必要的索償。賈沒有促使該客戶簽署當中就如何處理其證券帳戶列明了明確條款及條件的授權書。
13. 證監會在決定上述罰則時已考慮到所有相關情況，包括賈在沒有書面授權下就該客戶的帳戶訂立委託安排已持續超過兩年。

### 結論

14. 賈未有就以委託形式操作該客戶的帳戶一事取得該公司及高級管理層的批准，剝奪了該客戶在《操守準則》第 7.1 段下所享有的保障，令其權益受損。