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SFC suspends Ernest Ho Gar Fai for four months

24 Mar 2016

The Securities and Futures Commission (SFC) has suspended Mr Ernest Ho Gar Fai for four months from 24 March 2016 to 23 July 2016 (Note 1).

The SFC investigation found that from September to December 2013, Ho allowed a client, who is his mother's friend, to trade in futures contracts through his mother's account held with Fulbright Futures Limited (Fulbright Futures). He also failed to properly receive and keep records of the client's order instructions.

Although Ho's mother allowed the client to trade through her futures account, it is inexcusable for Ho to have allowed the trades to be conducted in such a way. Ho's conduct falls short of the standard set out in the Code of Conduct and casts doubt on his fitness and properness as a licensed person (Note 2).

In deciding the sanction, the SFC took into account all relevant circumstances, including that Ho had no previous disciplinary record with the SFC.

End

Notes:

1. Ho is licensed under the Securities and Futures Ordinance to carry on Type 1 (dealing in securities) and Type 2 (dealing in futures contracts) regulated activities, and has been accredited to Fulbright Securities Limited for Type 1 regulated activity and Fulbright Futures Limited for Type 2 regulated activity since 2007.
2. General Principle 2 (diligence) of the Code of Conduct for Persons Licensed by or Registered with the Securities and Futures Commission provides that a licensed person should act with due skill, care and diligence in conducting business activities. Among others, paragraph 3.9 provides that licensed person should record and immediately time stamp records of order instruction particulars, and paragraph 5 provides a licensed person should take steps to establish the true and full identity of each client, and before effecting a transaction, be satisfied on reasonable grounds as to the identity of the person ultimately responsible for originating transaction instructions and the identity of the person who stand to gain the commercial or economic benefit and/or bear the commercial or economic risk of the transaction.

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

Page last updated : 24 Mar 2016

STATEMENT OF DISCIPLINARY ACTION

The Disciplinary Action

1. The Securities and Futures Commission (**SFC**) has suspended the licence of Mr Ernest Ho Gar Fai (**Ho**) as a representative in all regulated activities for four months pursuant to section 194 of the Securities and Futures Ordinance (**SFO**).
2. Ho is licensed under the SFO to carry on Type 1 (dealing in securities) and Type 2 (dealing in futures contracts) regulated activities, and has been accredited to Fulbright Securities Limited for Type 1 regulated activity and Fulbright Futures Limited (**Fulbright Futures**) for Type 2 regulated activity since 2007.
3. The SFC found that from September to December 2013 (the **Material Period**), Ho allowed a client to trade futures contracts through his mother's account held with Fulbright Futures. He also failed to properly receive and keep records of the client's order instructions.
4. Ho's conduct falls short of the standard set out in General Principle 2 (diligence) and paragraphs 5 and 3.9 of the Code of Conduct for Persons Licensed by or Registered with the Securities and Futures Commission, and casts doubt on his fitness and properness as a licensed person.

Summary of facts

5. In March 2014, the SFC received complaints from a client of Fulbright Futures alleging, among other things, that Ho traded in futures contracts for her and caused her to suffer trading losses. During the Material Period, Ho was the account executive responsible for handling the client's account.
6. According to Fulbright Futures' records, there has been no trading activities in the client's account since March 2013. However, the statements and trading records of Ho's mother's account show two September 2013 Hang Seng Index Futures contracts (**Futures Contracts**) were sold on 2 September 2013. These two Futures Contracts were rolled over to the next trading month in September, October and November 2013. Eventually, two December 2013 Futures Contracts were bought on 13 December 2013. Telephone recordings show that Ho and his assistant telephoned the client on 2 September 2013 and 13 December 2013 to confirm with her the relevant trades.
7. Ho admitted he provided the client with the login details for his mother's internet trading account. The client used the login details to access Ho's mother's account on 17 December 2013 to buy one and sell one December 2013 Futures Contracts. Ho acknowledged that he had lent his account and his mother's account to the client to conduct trading from as early as August 2013 because the client's account did not have sufficient funds for trading. The evidence suggests Ho's mother had allowed the client to trade through her account.
8. Ho claimed that he took the client's instructions using a mobile phone communication application and did not immediately call back to the firm's

telephone recording system after receiving the client's order instructions. He could no longer produce the records of the order instruction messages because he changed his mobile phone and did not keep a backup record of the communication history.

Conclusion

9. Under paragraph 5 of the Code of Conduct, Fulbright Futures is required to, among others, take steps to establish the true and full identity of each client, and before effecting a transaction, be satisfied on reasonable grounds as to the identity of the person ultimately responsible for originating transaction instructions and the identity of the person who stand to gain the commercial or economic benefit and/or bear the commercial or economic risk of the transaction.
10. Although Ho's mother allowed the client to trade through her futures account, it is inexcusable for Ho to have allowed the trades to be conducted in such a way. By "lending" his account and his mother's account to the client, Ho's conduct had the effect of leading Fulbright Futures to believe the client's trades in Ho's account and his mother's account were Ho's and his mother's trades. Ho's conduct was neither in the interest of Fulbright Futures, his mother, nor the client.
11. Paragraph 3.9 of the Code of Conduct provides, among others, that licensed person should record and immediately time stamp records of order instruction particulars. In particular, the paragraph makes it plain that the use of a mobile phone to receive client order instructions is strongly discouraged. In the event that orders are accepted by a mobile phone outside office premises, the licensed representative should immediately call the licensed entity's telephone recording system and record the time of receipt and other relevant order details.
12. In the circumstances, Ho's failure to keep a proper record of client order instructions has cast doubts on his fitness and properness.
13. In coming to the decision to take disciplinary action against Ho as set out in paragraph 1 above, the SFC took into account all relevant circumstances, including Ho's clean disciplinary record at the time of the misconduct.

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證監會暫時吊銷何家輝的牌照四個月

2016年3月24日

證券及期貨事務監察委員會（證監會）暫時吊銷何家輝（男）的牌照，為期四個月，由2016年3月24日至2016年7月23日止（註1）。

證監會的調查發現，何在2013年9月至12月期間，容許一名客戶（何母的朋友）透過何母在富昌期貨有限公司（富昌期貨）持有的帳戶進行期貨合約交易。他亦沒有恰當地收取及備存其客戶交易指示的紀錄。

雖然何母容許該客戶透過其期貨帳戶進行買賣，但這並不可作為何容許以此方式進行有關買賣的藉口。何的行為未能符合《操守準則》所載的準則，令他作為持牌人的適當人選資格受到質疑（註2）。

證監會在釐定罰則時，已考慮到所有相關情況，包括何以往並無遭受證監會紀律處分的紀錄。

完

備註：

1. 何根據《證券及期貨條例》獲發牌進行第1類（證券交易）及第2類（期貨合約交易）受規管活動，他自2007年起以第1類受規管活動的代表身分隸屬於富昌證券有限公司，及以第2類受規管活動的代表身分隸屬於富昌期貨有限公司。
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2項一般原則（勤勉盡責）規定，持牌人在經營業務時應以適當的技能、小心審慎和勤勉盡責的態度行事。除其他事項外，第3.9段規定持牌人應記錄指示的細節，並即在有關紀錄之上蓋上時間印章，及第5段規定持牌人應採取步驟，以確保每位客戶的真實和全部的身分，並應在進交前基於合的原因信納最初負責發出交指示的人士的身分及將會從該宗交取得商業或經濟利益及／或承擔其商業或經濟風險的人士的身分。

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3月24日

紀律處分行動聲明

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 條暫時吊銷何家輝（**何**）以代表身分進行所有受規管活動的牌照，為期四個月。
2. 何根據《證券及期貨條例》獲發牌進行第 1 類（證券交易）及第 2 類（期貨合約交易）受規管活動，並自 2007 年起以第 1 類受規管活動的代表身分隸屬於富昌證券有限公司，及以第 2 類受規管活動的代表身分隸屬於富昌期貨有限公司（**富昌期貨**）。
3. 證監會發現，何在 2013 年 9 月至 12 月期間（**關鍵期間**）容許一名客戶透過他母親在富昌期貨持有的帳戶進行期貨合約交易。他亦沒有恰當地收取及備存客戶交易指示的紀錄。
4. 何的行為未能符合《證券及期貨事務監察委員會持牌人或註冊人操守準則》第 2 項一般原則（勤勉盡責）及第 5 和 3.9 段所載的準則，令他作為持牌人的適當人選資格受到質疑。

事實摘要

5. 證監會在 2014 年 3 月接獲富昌期貨一名客戶的投訴，指（除其他事項外）何為她買賣期貨合約，及導致她蒙受交易虧損。在關鍵期間內，何是負責處理該客戶帳戶的客戶主任。
6. 根據富昌期貨的紀錄，該客戶的帳戶自 2013 年 3 月起便再無交易活動。然而，何母的帳戶結單及交易紀錄顯示，在 2013 年 9 月 2 日沽出了兩張 2013 年 9 月恒生指數期貨合約（**期貨合約**）。這兩張期貨合約在 2013 年 9 月、10 月及 11 月均獲轉倉至下一個交易月。最後，在 2013 年 12 月 13 日買入兩張 2013 年 12 月期貨合約。電話錄音紀錄顯示，何及其助手在 2013 年 9 月 2 日及 2013 年 12 月 13 日致電該客戶，與她確認有關交易。
7. 何承認他向該客戶提供其母的互聯網交易帳戶的登入資料。該客戶在 2013 年 12 月 17 日使用有關登入資料接達何母的帳戶，以買入一張和沽出一張 2013 年 12 月期貨合約。何確認，他早在 2013 年 8 月起已將其本人的帳戶及其母的帳戶借給該客戶進行買賣，因為該客戶的帳戶沒有足夠資金進行買賣。有關證據顯示，何母曾經容許該客戶透過她的帳戶進行買賣。
8. 何聲稱，他是使用某個流動電話通訊應用程式收取該客戶的指示，及沒有在接獲該客戶的交易指示後立即回電至富昌期貨的電話錄音系統。由於他已更換了流動電話，故已無法提供有關交易指示訊息的紀錄，並且沒有就通訊歷史保存備份紀錄。

結論

9. 根據《操守準則》第 5 段，富昌期貨須（其中包括）採取步驟，以確立每位客戶的真實和全部的身分，並須在進行交易前基於合理的原因信納最初負責發出交易指示的人士的身分及將會從該宗交易取得商業或經濟利益及／或承擔其商業或經濟風險的人士的身分。
10. 儘管何母容許該客戶透過她的期貨帳戶進行買賣，但這並不可作為何容許以此方式進行有關買賣的藉口。何向該客戶“借出”其帳戶及其母的帳戶的行為，令富昌期貨相信該客戶在何的帳戶及其母的帳戶內進行的買賣是何及其母進行的買賣。何的行為並不符合富昌期貨、其母及該客戶的利益。
11. 《操守準則》第 3.9 段規定（其中包括）持牌人應記錄交易指示的細節，並立即在有關紀錄之上蓋上時間印章。尤其是，該段表明證監會極不鼓勵利用流動電話收取客戶交易指示。若在辦公室以外的地方以流動電話接受交易指示的話，持牌代表應立即致電持牌實體的電話錄音系統，記錄其收到交易指示的時間及有關指示的其他詳情。
12. 因此，何未能就客戶交易指示保存適當的紀錄，令人質疑他作為適當人選的資格。
13. 證監會在決定對何採取上文第 1 段所述的紀律處分行動時，已考慮到所有相關情況，包括何在干犯失當行為時並無遭受紀律處分的紀錄。