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SFC reprimands and fines broker for breaching telephone recording requirements

5 Dec 2013

The Securities and Futures Commission (SFC) has reprimanded Ms Tang Wai Chun, an account executive of China Merchants Securities (HK) Co., Limited (China Merchants), and fined her \$40,000 for non-compliance with order recording requirements under the Code of Conduct (Notes 1 & 2).

The disciplinary action follows an SFC investigation which found that between 22 December 2010 and 24 January 2011, Tang did not use China Merchant's Centralized Telephone Recording System (CTRS) to record order instructions from a client. Instead, Tang accepted order instructions from the client via her mobile phone. Tang was obliged but failed to record the time of receipt of the orders and the order details by making a call to the CTRS or in writing by hand.

Order details must be properly recorded so as to protect the interests of clients.

In deciding the disciplinary sanction, the SFC took into account all relevant circumstances, including Tang's clean disciplinary record.

End

Notes:

1. Tang 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.
2. Paragraph 3.9 of the Code of Conduct for Persons Licensed by or Registered with the Securities and Futures Commission.
3. 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

The Disciplinary Action

1. The Securities and Futures Commission (**SFC**) has taken the following disciplinary action against Tang Wai Chun (**Tang**), pursuant to section 194 of the Securities and Futures Ordinance (**SFO**):
 - (a) publicly reprimanded Tang, pursuant to section 194((1)(b)(iii) of the SFO; and
 - (b) imposed a financial penalty of HK\$40,000 on Tang, pursuant to section 194(2) of the SFO.
2. The disciplinary action relates to Tang's failure to properly record order instructions received from a client through her mobile phone.

Summary of facts

3. Tang is an account executive of China Merchants Securities (HK) Company Ltd.
4. The SFC's investigation found that one of Tang's clients purchased a substantial quantity of shares in China Lumena New Materials Corporation ("**China Lumena**" Stock Code 00067) between 22 December 2010 and 24 January 2011. The client bought:
 - (a) a total of 1,500,000 China Lumena shares on 22 December 2010;
 - (b) a total of 2,220,000 China Lumena shares on 23 December 2010;
 - (c) a total of 1,454,000 China Lumena shares on 29 December 2010; and
 - (d) a total of 5,322,000 China Lumena shares on 24 January 2011.
5. When China Merchants was asked to produce supporting documents (including telephone tapes, emails, dealing tickets, trade blotters, handwritten notes, facsimile, etc) for the orders placed by the client, it informed the SFC that:
 - (a) the client called Tang on her mobile phone to place orders for China Lumena shares during the period 22 December 2010 to 31 January 2011;
 - (b) Tang did not record the details of the instructions; and
 - (c) Tang did, however, confirm the details of executed transactions with the client through China Merchant's centralized telephone recording lines.
6. Tang also confirmed that the client placed all the orders in her account with China Merchants by calling her mobile phone and she did not make any written record of the order instructions. Tang claimed that although she had

reminded the client that she should place orders via China Merchant's recorded telephone lines, the client did not take heed of her advice.

7. Further, Tang claimed that she did not know that there is a requirement for client instructions to be recorded, and she thought that having recorded trade confirmations with clients sufficiently complied with the regulatory requirements.

Breaches and reasons for action

8. As a licensed person, Tang is obliged, under General Principle 2 and paragraph 3.9 (Order recording) of the Code of Conduct¹ to act with due skill, diligence and care and in the best interests of clients and to record the particulars of instructions for client orders.
9. In particular, paragraph 3.9 of the Code of Conduct notes that the use of mobile phones for receiving client order instructions is discouraged, and where orders are accepted by mobile phones, the time of receipt and the order details should be recorded immediately (e.g. by a call to the office system or in writing by hand).
10. China Merchant's internal policy also requires staff to record and immediately time stamp records of the particulars of order instructions and where instructions are received from clients through the telephone, staff should use the firm's centralized telephone recording system to record the instructions. Such policy also discourages the use of mobile phones for receiving client orders.
11. Tang's failure to record the time of receipt and the order details of her client's instructions, given to her through her mobile phone, to purchase China Lumena shares between 22 December 2010 and 24 January 2011 by a call to China Merchant's centralized telephone recording lines or in writing by hand constitutes a breach of General Principle 2 and paragraph 3.9 of the Code of Conduct as well as the internal policy of China Merchants.
12. Keeping proper audit trail of clients' orders is a basic and fundamental requirement expected of licensed persons. A proper audit trail facilitates the resolution of trade disputes and, at the same time, act as an effective means for intermediaries to monitor and detect any irregularities or fraudulent activities.

Conclusion

13. Having considered all the circumstances, the SFC is of the opinion that Tang's fitness and properness as a licensed person has been called into question.
14. In deciding the disciplinary sanction, the SFC has had regard to SFC Disciplinary Fining Guidelines and taken into account all relevant circumstances, including that Tang has no previous disciplinary record.

¹ Code of Conduct for Persons Licensed by or Registered with the SFC