
STATEMENT OF DISCIPLINARY ACTION

The Disciplinary Action

1. The Securities and Futures Commission (SFC) has suspended Mr Stephen Cho Yu Kwan for 3 years and publicly reprimanded Ms Ju You Li and fined her \$100,000 pursuant to section 194 of the Securities and Futures Ordinance.
2. The disciplinary action is taken because Cho and Ju have allowed their personal bank accounts to be used for transferring funds for Mainland-based clients and failed to take reasonable steps to identify and verify the source of such funds.

Summary of facts

3. Cho and Ju are a married couple. At the relevant time, Cho was an account executive of BOCOM International Securities Limited (**BOCOM**); and Ju was an account executive of Quam Securities Company Limited (**Quam**) (from 24 February 2005 to 23 October 2010) and Phillip Securities (Hong Kong) Limited (**Phillip**) (since 25 October 2010).
4. From August to December 2010 (**Enquiry Period**), there were a number of fund transfers of significant amounts to and from the Bank of China (**BOC**) bank accounts of Cho and Ju. Our investigation reveals that:

Cho

- (a) 42 deposits for an aggregate sum of around HK\$88.3 million were made by 29 different depositors to Cho's BOC account.
- (b) 10 transfers for an aggregate sum of around HK\$101 million were made from Cho's BOC account to various parties. Out of which, HK\$80 million was transferred to Ju's BOC account, HK\$10 million to Quam and HK\$5 million to a client's account at Phillip.

Ju

- (c) 11 deposits for an aggregate sum of around HK\$93 million were made by 4 different depositors to Ju's BOC account. 5 of these deposits (for a total amount of HK\$80 million) came from Cho.
 - (d) 20 transfers for an aggregate sum of HK\$86 million were made from Ju's BOC account to various parties. 16 of these transfers (for a total sum of around HK\$74.5 million) were made by cheques payable to BOCOM.
 - (e) According to Cho's instructions, the money paid to BOCOM was subsequently transferred to the securities trading accounts of 15 Mainland clients of BOCOM.
5. According to Cho and Ju, the funds deposited to Cho's BOC account came from their Mainland-based clients. As these clients could not directly remit

funds from Mainland to Hong Kong through banks due to the foreign exchange control in Mainland, they requested Cho to assist them in transferring their funds from Mainland to Hong Kong.

6. According to Cho, the usual money transfer process would involve:
 - (a) Cho liaised with the money changers on behalf of the Mainland clients who wanted to transfer money to Hong Kong.
 - (b) The money changers would arrange Hong Kong dollars (**HKD**) in the amount requested by the clients to be deposited into Cho's BOC account.
 - (c) The Mainland clients would deposit Renminbi (**RMB**) into Mainland bank accounts designated by the money changers.
 - (d) For his BOCOM clients, Cho transferred the HKD he received from his BOC account to Ju's BOC account and instructed her to issue cheques payable to BOCOM. Cho then deposited Ju's cheques to BOCOM's account, prepared relevant deposit slips and passed them to BOCOM's settlement department so that the funds would be allocated to his clients' securities trading accounts.
 - (e) For Ju's clients at Quam and Phillip, Cho issued cheques payable to Quam and Phillip.
7. Cho admitted that he received a service fee from some of these clients for the services he rendered. Cho also admitted that on some occasions, if the clients' securities trading accounts at BOCOM had not yet been opened, the money received from the money changers might be kept in his personal bank account temporarily until the clients' accounts were opened.
8. Cho issued cheques for Ju's clients and Ju issued cheques for his clients because they knew that, as licensed representatives and account executives, they should not be personally involved in arranging money transfers for their clients.
9. Although Cho believed that all funds deposited into his account came from the money changers, he had limited knowledge as to who actually deposited the funds into his BOC account. Out of the 29 depositors, Cho was only able to identify two or three of them as money changers.
10. Ju knew that Cho had been assisting the Mainland clients to transfer funds across the border. She admitted that she assisted Cho in the money transfer process.

Breaches and reasons for action

Breach of General Principle 1, Code of Conduct

11. General Principle 1 of the Code of Conduct¹ requires licensed persons to act honestly, fairly and in the best interests of their clients and the integrity of the market, in conducting their business activities.

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

12. The manner in which Cho and Ju allowed their bank accounts to be used as conduits for transferring funds of unverified sources, Cho's transfer of funds to Ju to conceal his involvement in the money transfer process, and their attempts to bypass the internal requirements of their employers were dishonest conduct and posed a serious threat to the integrity of the market. Such step might also hinder their respective employers from ascertaining the origin of their clients' money which is important for the prevention and identification of money laundering and terrorist financing activities.
13. Cho's conduct was further aggravated by the fact that he was actively involved in transferring funds for clients, and on some occasions, he received a fee for the service without the knowledge and consent of his employer.

Breach of General Principle 2, Code of Conduct

14. Cho and Ju had failed to exercise due skill, care and diligence in handling the clients' funds in breach of General Principle 2 of the Code of Conduct.
15. For Cho, he arranged transfer of the HKD received in his BOC account to BOCOM through Ju and informed BOCOM's settlement department that the money should be accounted for specific Mainland clients. However, Cho did not know whether the HKD received in his BOC account were actually provided by the money changers. Also, Cho did not know whether the relevant Mainland clients had transferred the equivalent amount of RMB to the money changers' accounts in the Mainland.
16. For Ju, she knew that Cho had deposited funds into the accounts of her clients at Quam and Phillip but she did not know how such funds were transferred to Cho in the first place and from whom these funds originated. Ju nonetheless submitted to and supported Cho's arrangement.

Breach of General Principle 8, Code of Conduct

17. With respect to the client assets, General Principle 8 of the Code of Conduct requires a licensed or registered person to ensure that client assets are promptly and properly accounted for and adequately safeguarded.
18. The procedures adopted by Cho to transfer money for his clients from Mainland to Hong Kong would not only involve the use of accounts of money changers in Mainland and Hong Kong, but also the personal bank accounts of Cho and Ju. The clients' money was not segregated and properly accounted for during the entire routing process. Further, the clients would be exposed to the risk of non-recovery if Cho and/or Ju refuse to return the money to them.

Breach of Paragraphs 6.1.2(c) and 6.1.2(d) of the Prevention of Money Laundering and Terrorist Financing Guidance Note (Guidance Note)

19. The Guidance Note sets out the steps that a licensed corporation should implement to discourage and identify any money laundering or terrorist financing activities. In particular, paragraph 6.1.2 of the Guidance Note imposes a duty on licensed representatives and corporations to conduct ongoing due diligence and scrutiny on clients, and verify the source of the clients' funds where necessary:

"6.1.2 The customer due diligence process should comprise the following:

...

(c) identify and verify beneficial ownership and control, i.e. determine which individual(s) ultimately own(s) or control(s) the customer; and / or the person on whose behalf a transaction is being conducted; and

(d) conduct ongoing due diligence and scrutiny, i.e. perform ongoing scrutiny of the transactions and account throughout the course of the business relationship to ensure that the transactions being conducted are consistent with the licensed corporation's or associated entity's knowledge of the customer, its business and risk profile, taking into account, where necessary, the customer's source of funds."

20. During the Enquiry Period, i.e. from August to December 2010, frequent fund transfers of significant amounts had been made to Cho's BOC account, and then from Cho's BOC account to Ju's BOC account. The source of the money that they actually received in their BOC accounts was unclear. Neither Cho nor Ju had actual knowledge as to whether the money was indeed from the money changers or originated from the relevant Mainland-based clients.
21. The circumstances should have triggered Cho and Ju to consider whether the relevant Mainland clients were beneficial owners of their accounts and/or verify the source of the funds to ensure that they indeed originated from the relevant Mainland clients, in discharge of their duty to conduct ongoing due diligence and scrutiny on clients.
22. However, Cho and Ju had no actual knowledge, nor did they verify, whether the funds that were ultimately deposited in the clients' securities accounts did originate from the relevant clients. They did not know:
 - (a) whether the relevant clients had transferred money to the money changers; and
 - (b) whether all funds received in Cho's bank account were provided by the money changers.

Conclusion

23. In view of the above, the SFC concluded that the conduct of Cho and Ju has called into question their fitness and properness to remain licensed and decided to suspend the licence of Cho for 3 years and reprimand Ju and fine her HK\$100,000.
24. In deciding the appropriate sanction, the SFC has taken into account all relevant considerations, including:
 - the manner in which Cho and Ju allowed their personal bank accounts to be used as conduits for transferring funds of unverified sources and their attempts to bypass the internal requirements of their employers were dishonest conduct and posed a serious threat to the integrity of the market;

- Cho and Ju failed to perform proper know-your-client procedures in that they failed to identify and verify beneficial ownership of the relevant client accounts and the source of the clients' funds;
- a clear message need to be sent to the market that account executives should not meddle with the settlement procedures of their firms which are designed to protect their firms and their clients from financial loss, fraud and other misconduct;
- Ju played a secondary role in this matter; Cho was primarily involved in liaising with the money changers and the Mainland clients for arranging the transfer of funds; and
- the effect on the family of Cho and Ju if both of their licences were suspended.