

## STATEMENT OF DISCIPLINARY ACTION

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### **The Disciplinary Action**

1. The Monetary Authority (MA) has taken disciplinary action against MO Wei (MO)<sup>1</sup> pursuant to section 58A(1) of the Banking Ordinance (BO) and suspended all of MO's relevant particulars from the register maintained by the Hong Kong Monetary Authority (HKMA) under section 20(1)(ea) of the BO for a period of 10 weeks from 28 July 2015 to 5 October 2015 (both dates inclusive).
2. The disciplinary action was taken because MO had failed to:
  - (a) obtain the specific instructions of her client before selling the client's shares in two listed companies and entering into a dual currency investment (DCI) transaction on the client's behalf; and
  - (b) record the order instructions of the client for those transactions.

### **Summary of Facts and Breaches**

#### *Sales of shares without client's specific instructions*

3. The HKMA's investigation found that MO, who was a Client Advisor of the registered institution concerned responsible for handling client accounts, sold 12,000 shares in China Merchants Bank Co., Ltd. at HK\$25.25 per share and 18,000 shares in Air China Limited at HK\$7.01 per share on behalf of one of her clients on 25 March 2008 without obtaining the specific instructions of the client. Consequently, there was no written or audio record of the specific instructions of the client authorising the said sales transactions.
4. MO informed the client that the above shares had been sold by email on 25 March 2008. The client subsequently replied to MO's email and confirmed the cost and quantity of the shares in question without raising any objection. These facts, together with other evidence, including an audio recording of a telephone conversation between MO and the client, support a finding that the sales of the

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<sup>1</sup> At the material time, MO was engaged by UBS AG as a relevant individual with the register maintained by the Hong Kong Monetary Authority under section 20(1)(ea) to carry on Type 1 regulated activity under the Securities and Futures Ordinance (SFO). MO is currently a relevant individual engaged by another registered institution.

shares in the two companies by MO was done on the basis of MO's understanding that the client agreed to such sales rather than the client's specific instructions.

5. MO admitted that she had not obtained specific authorisation from the client before she executed the sales transactions of the two listed shares in question.

#### Purchase of dual currency investment without client's specific instruction

6. The HKMA's investigation further found that MO entered into transaction to purchase DCI for the same client in the amount of AUD360,942.98 on 28 March 2008<sup>2</sup> without obtaining specific instructions of the client. Consequently, there was no written or audio record of a specific instruction of the client authorising the said transaction.
7. An audio recording of a telephone conversation between MO and the client after the DCI was purchased supports the finding that MO executed the DCI transaction based on instructions from the spouse of the client. Even though the client appeared to be aware of MO's execution of the DCI purchase transaction, the client's spouse was neither a holder of the account in question nor authorised to operate the account at the material time.
8. MO, as the Client Advisor of the client who had handled the opening and operation of the account in question knew or ought to have known that the client's spouse was neither a holder nor an authorised representative of the account at the material time. It was not until 8 January 2012 that the client authorised her spouse to operate her account in question by granting him a general power of attorney.

#### Breaches and reasons for action

9. Paragraph 7.1(a) of the Code of Conduct for Persons Licensed by or Registered with the Securities and Futures Commission prevailing at the material time (SFC Code of Conduct) provides that a licensed or registered person should not effect a transaction for a client unless before the transaction is effected (i) the client, or a person designated by the client, has specifically authorized the transaction; or

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<sup>2</sup> Interest rate at 28.5567% p.a. for a tenor of 14 days with AUD as the principal currency and USD as the alternate currency

- (ii) the client has authorized in writing the licensed or registered person or any person employed by the licensed or registered person (who should in turn be a licensed or registered person) to effect transactions for the client without the client's specific authorization.
10. Paragraph 3.9 of the SFC Code of Conduct provides in part that where order instructions are received from clients through the telephone, a licensed or registered person should use a telephone recording system to record the instructions and maintain telephone recordings as part of its records for at least three months.
  11. General Principle 2 of the SFC Code of Conduct provides that in conducting its business activities, a licensed or registered person should act with due skill, care and diligence, in the best interests of its clients and the integrity of the market.
  12. Moreover, although authorized institutions are not required to be registered for carrying on a business in Type 3 regulated activity (i.e. leveraged foreign exchange trading), this does not mean that their clients were not entitled to the same level of protection required under the SFC Code of Conduct in respect of leveraged foreign exchange trading provided by a Type 3 licensed corporation. Authorized institutions and their staff are expected to meet the same standards as persons regulated by the Securities and Futures Commission with respect to Type 3 regulated activities. The foreign exchange business service offered by the registered institution concerned, i.e. entering into the DCI transaction was in substance leveraged foreign exchange trading. Therefore, the registered institution concerned was expected to comply with the SFC Code of Conduct when it engaged in DCI transactions.
  13. The internal policies of the registered institution concerned had also incorporated the above-mentioned regulatory requirements. MO knew or should have known such requirements. The HKMA is of the view that these requirements were important and served to protect clients from unnecessary and excessive risks in client investment activities. MO's failure to obtain and record the client's specific instructions thus prejudiced the client's interests.

## **Conclusion**

14. Having considered all of the circumstances of the case, the MA found MO guilty

of misconduct and is of the opinion that MO is not a fit and proper person to be a relevant individual, in that MO failed to act with due skill, care and diligence, and in the best interests of her client and the integrity of the market in breach of General Principle 2, paragraph 3.9 and paragraph 7.1(a) of the SFC Code of Conduct by failing to obtain the specific instructions of the client prior to selling the shares in the two listed companies and entering into the DCI transaction in question and record the order instructions of the client for those transactions. The MA has therefore decided to take disciplinary action against MO.

15. In deciding the disciplinary action set out in paragraph 1 above, the MA has taken into account all of the relevant circumstances, including:
  - (a) the sales of the shares in question were conducted on the basis of MO's understanding that the client had agreed with such sales;
  - (b) the client appeared to be aware that MO had effected a DCI transaction in the client's account in accordance with the instructions given by the client's spouse; and
  - (c) MO has no previous disciplinary record.