SFC reprimands and fines Ping An of China Securities (Hong Kong) Company Limited $6 million over internal control failures

9 Jul 2014

The Securities and Futures Commission (SFC) has reprimanded Ping An of China Securities (Hong Kong) Company Limited (Ping An) and fined it $6 million over serious internal control deficiencies and other matters (Note 1).

An SFC investigation found that, between 1 August 2010 and 30 April 2011, Ping An failed to:

- establish anti-money laundering internal control procedures (Notes 2 & 3);
- actively identify and report to the SFC and the Joint Financial Intelligence Unit suspicious transactions in a timely manner (Notes 4 & 5);
- provide anti-money laundering training to its staff;
- establish and follow appropriate and effective procedures to protect client assets in effecting payments;
- effectively communicate and enforce its internal policies on employee dealings;
- enforce its account opening procedures in relation to address proofs; and
- have in place an effective compliance function.

In deciding the disciplinary sanction, the SFC took into account all relevant circumstances including Ping An's otherwise clean record, the steps taken by Ping An to remedy its internal control deficiencies, including the appointment of a new management team and a new chief executive officer, as well as its agreement to engage an independent reviewer to confirm the new procedures have been implemented and are working properly.

Mr Mark Steward, the SFC's Executive Director of Enforcement, said, "This was a case of serious internal control failures. Ping An has reacted properly and, in doing so, has saved itself from a harsher outcome. This case should send a clear warning to the industry that cavalier attitudes have no place in our market."

The SFC would like to acknowledge and publicly thank the China Securities Regulatory Commission for its assistance in the investigation of this case.

End

Notes:

1. Ping An is licensed under the Securities and Futures Ordinance (SFO) to carry on business in Type 1 (dealing in securities), Type 4 (advising on securities) and Type 9 (asset management) regulated activities.
2. During the relevant period, the "Prevention of Money Laundering and Terrorist Financing Guidance Note", published by the SFC in September 2009 under section 399 of the SFO, was in force. From 1 April 2012, it was superseded by the "Guideline on Anti-Money Laundering and Counter-Terrorist Financing" and the "Prevention of Money Laundering and Terrorist Financing Guideline" issued by the SFC.
3. Licensed corporations should have in place proper systems and controls for the identification and reporting of suspicious transactions. The first and foremost step is to gain sufficient knowledge about a customer's business and financial circumstances (through customer due diligence and ongoing monitoring) to recognise that a transaction, or a series of transactions, is unusual. There should also be procedures in place for reporting internally by escalation to senior management and reporting externally to the Joint Financial Intelligence Unit.
4. The Joint Financial Intelligence Unit receives reports of suspicious financial activity and is jointly run by staff of the Hong Kong Police Force and the Hong Kong Customs and Excise Department.
5. Section 25A of the Organized and Serious Crimes Ordinance requires a person who suspects that any property represents proceeds of, or was used in connection with or is intended to be used in connection with, an indictable offence to disclose that suspicion to an authorized officer "as soon as it is reasonable for him to do so".
6. A copy of the Statement of Disciplinary Action in relation to the matter is available on the SFC website.

Page last updated : 9 Jul 2014

STATEMENT OF DISCIPLINARY ACTION

I. The Disciplinary Action

1. The Securities and Futures Commission (**SFC**) has taken the following disciplinary action against Ping An of China Securities (Hong Kong) Company Limited (**Ping An**):

   (a) publicly reprimanded Ping An, pursuant to section 194(1)(b)(iii) of the Securities and Futures Ordinance (**SFO**); and

   (b) imposed on Ping An a financial penalty of a total of $6 million, pursuant to section 194(2)(b) of the SFO.

2. The disciplinary action addresses Ping An's internal control deficiencies during the period between 1 August 2010 and 30 April 2011 (**Relevant Period**). Specifically, Ping An failed to:

   (a) establish anti-money laundering internal control procedures;

   (b) actively identify and report to the SFC and the Joint Financial Intelligence Unit (**JFIU**) suspicious transactions in a timely manner;

   (c) provide anti-money laundering (**AML**) training to its staff;

   (d) establish and follow appropriate and effective procedures to protect client assets, by effecting:

   - third party payments without having obtained the client's written direction;

   - a client payment to its employee at the time;

   - third party payments without having conducted assessment on payment recipients and reasons for payments;

   (e) effectively communicate and enforce its internal policies on employee dealings;

   (f) enforce its account opening procedures in relation to address proofs; and

   (g) have in place an effective compliance function.

II. Summary of facts and breaches

3. In summary, the SFC has concerns over Ping An's internal control deficiencies in the following areas during the Relevant Period:

    (i) Lack of internal controls on AML

4. Ping An failed to identify and follow-up on a series of suspicious transactions carried out by its clients between October and November 2010 notwithstanding a number of apparent red flags.

5. The reporting of these suspicious transactions to JFIU took place only around four months after the same were carried out, and hence was not done in a timely fashion as required.[1]

6. There was a lack of properly formulated internal AML policies at Ping An and, as Ping An did not provide AML training to members of staff, its staff were unaware of any internal requirements on AML during the Relevant Period.

7. These failures were in breach of paragraphs 4.2, 9, 10 and 11 of the AML Guidance Note[2] as well as paragraph 5.4, General Principle (**GP**) 2, GP3 and GP7 of the Code of Conduct[3].

    (ii) Handling of client assets

8. It was revealed that there was also a lack of internal policies on the handling of third party payments at Ping An during the Relevant Period.

9. For all the 37 third party payments effected during the Relevant Period, Ping An did not conduct any assessment on the reasons for making the third party payments. In addition, Ping An did not obtain identity proof of payment recipients for 23 of these third party payments.

10. Moreover, in some cases, third party payments were effected by Ping An without having received proper written directions from the relevant client. In particular, the SFC observed cases where:

    (a) client's signatures were obtained after the relevant third party payments were made;

    (b) third party payment instruction forms were signed by another client;

    (c) a client's third party payment instruction form was signed by a member of staff of Ping An;

    (d) client's signature is incomplete and on an incorrect instruction form; and

---

[1] Section 25A of the Organized and Serious Crimes Ordinance requires a person who suspects that any property represents proceeds of, or was used in connection with, or is intended to be used in connection with an indictable offence to disclose that suspicion to an authorized officer *"as soon as it is reasonable for him to do so"*.

[2] During the Relevant Period, the "Prevention of Money Laundering and Terrorist Financing Guidance Note" (**AML Guidance Note**), published by the SFC in September 2009 under section 399 of the SFO, was in force. From 1 April 2012, the "Guideline on Anti-Money Laundering and Counter-Terrorist Financing", together with the "Prevention of Money Laundering and Terrorist Financing Guideline", superseded the AML Guidance Note.

[3] The Code of Conduct for Persons Licensed by or Registered with the SFC

(e) client's signature on third party payment instruction forms does not match with account opening documents.

11. There was also an occasion where Ping An effected a third party payment to its employee. It concerned a payment made from a client's account into the account of the client's daughter, who was then a customer service officer at Ping An.

12. The manner in which Ping An handled client assets and its lack of policy and control in relation to third party payments during the Relevant Period was in breach of sections 5(1)(b) and 5(3) of the Client Money Rules[4], paragraphs 2 and 3 of the Suggested Control Techniques[5], paragraph 9 under Part VII of the Internal Control Guidelines[6], as well as GP2, GP3, GP8, paragraphs 4.3 and 11.1 of the Code of Conduct.

(iii) Staff dealing policies

13. During the Relevant Period, Ping An failed to ensure compliance with its staff dealing policies, which were designed to help minimize conflicts of interests.

14. Ping An employees are required to declare their personal account(s) upon joining the firm by way of filling in an employee declaration form. However, two of the 15 employees who joined Ping An during and prior to the Relevant Period did not submit the relevant employee declaration forms until after 12 and 19 months upon joining respectively.

15. Generally, Ping An did not have a set of staff dealing policy that was clearly formulated, communicated to its employees and enforced by compliance or senior management, nor did it provide adequate training to ensure staff awareness on conflicts of interests and compliance during the Relevant Period. This is in breach of paragraphs 2 and 3 under Part III of the Internal Control Guidelines, and paragraph 12.2, GP2, GP6 and GP7 of the Code of Conduct.

(iv) Account opening procedures

16. During the Relevant Period, 15 client accounts were opened without valid address proof. Although Ping An had in place a set of account opening procedures, it had failed to diligently enforce such procedures. Ping An was in breach of paragraph 1 under Part VII of the Internal Control Guidelines, and paragraph 5.4, GP2 and GP7 of the Code of Conduct.

(v) Lack of compliance function

17. The above internal control deficiencies reflect the inadequacy of Ping An's compliance function during the Relevant Period.

18. In particular, between mid-October 2010 and March 2011, Ping An had no independent designated compliance officer. The then responsible officer of Ping An at the material time took up the responsibility of overseeing the compliance function at Ping An. However, she did little to discharge her responsibilities vis-à-vis compliance.

---

[4] Securities and Futures (Client Money) Rules

[5] The Suggested Control Techniques and Procedures for Enhancing a Firm's Ability to Comply with the Securities and Futures (Client Securities) Rules and the Securities and Futures (Client Money) Rules

[6] The Management, Supervision and Internal Control Guidelines for Persons Licensed By or Registered with the SFC

19. The SFC considers that Ping An did not have an effective compliance function during the Relevant Period, in breach of Part V of the Internal Control Guidelines and paragraph 12.1, GP2, GP3 and GP7 of the Code of Conduct.

III. Conclusion

20. Having considered all relevant circumstances, the SFC is of the opinion that Ping An had serious internal control deficiencies during the Relevant Period and its fitness and properness has been called into question.

21. The SFC is of the view that there is a need to send a clear message to the market on the importance of effective internal controls and procedures. A breakdown of the fine in paragraph 1(b) is as follows:

    (a) $4,000,000 for the failures of Ping An as summarised in paragraphs 2(a) to 2(c) above;

    (b) $1,000,000 for the failures of Ping An as summarised in paragraph 2(d) above; and

    (c) $1,000,000 for the failures of Ping An as summarised in paragraphs 2(e) to 2(g) above.

22. In deciding the disciplinary sanction set out in paragraph 1, the SFC has had regard to the SFC Disciplinary Fining Guidelines and has taken into account all relevant circumstances, including:

    (a) the need to send a clear message to the market about the importance of effective internal anti-money laundering controls and procedures;

    (b) the steps taken by Ping An to remedy the internal control deficiencies identified since these matters were brought to light;

    (c) Ping An has appointed a new management team and a new chief executive officer;

    (d) Ping An has a clean disciplinary record and has co-operated with the SFC; and

    (e) Ping An's agreement to engage, and pay for, a further independent external review to confirm its remediated practices are working properly and effectively.