

## SFC bans Ng Hong for 10 months

14 Mar 2016

The Securities and Futures Commission (SFC) has banned Mr Ng Hong, a former account executive of China Merchants Securities (HK) Co., Limited (CMSHK), from re-entering the industry for 10 months from 12 March 2016 to 11 January 2017 for breach of the SFC's Code of Conduct (Notes 1 & 2).

The SFC found that Ng obtained a written authorization from his client which authorized him to conduct trades on a discretionary basis in the client's account. He did not, however, obtain CMSHK's management approval before entering into such arrangement with the client and effected transactions for the client on a discretionary basis between August 2010 and September 2011 without CMSHK's knowledge.

The SFC considers that the client's interests were prejudiced as Ng's failure deprived the client from the firm's protection on discretionary account. A written authorization which was signed by the client without the firm's knowledge and approval did not offer the client any protection as the client's securities account was not designated as a discretionary account by the firm and the operation of the client's securities account could not be properly monitored and supervised by the firm.

End

Notes:

1. Ng was 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 was accredited to China Merchants Securities (HK) Co., Limited and China Merchants Futures (HK) Co., Limited from 5 August 2010 to 25 February 2013. Ng is currently not licensed by the SFC.
2. Paragraphs 7.1(c) and (d) of the Code of Conduct for Persons Licensed by or Registered with the Securities and Futures Commission.

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

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## STATEMENT OF DISCIPLINARY ACTION

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### The Disciplinary Action

1. The Securities and Futures Commission (**SFC**) has banned Mr Ng Hongs (**Ng**)<sup>1</sup> for a period of 10 months pursuant to section 194(1)(iv) of the Securities and Futures Ordinance (**SFO**).
2. The SFC found that Ng obtained a written authorization from his client (**Client**) which authorized him to conduct trades on a discretionary basis in the Client's account. He did not, however, obtain China Merchants Securities (HK) Co., Limited (**CMSHK**)'s management approval before entering into such arrangement with the Client and effected transactions for the Client on a discretionary basis between August 2010 and September 2011.
3. Ng's conduct was in breach of paragraphs 7.1(c) and 7.1(d) of the Code of Conduct for Persons Licensed by or Registered with the SFC (**Code of Conduct**).

### Summary of Facts

4. The SFC investigation stemmed from a complaint from the Client against Ng.
5. Ng was the Client's account executive at CMSHK.
6. The evidence shows that:
  - (a) CMSHK's policies and procedures set out a number of requirements in relation to the operation of a discretionary account. They are as follows:
    - (i) A written Discretionary Broking Authorization had to be executed by a client if he authorized an account executive to trade for him on a discretionary basis.
    - (ii) All account executives were strictly prohibited from concluding private discretionary trading arrangement with clients.
    - (iii) The execution of the Discretionary Broking Authorization had to be witnessed by an account executive.
    - (iv) The Discretionary Broking Authorization had to be approved by CMSHK.
    - (v) Discretionary trading was discouraged by CMSHK and was only allowed in special cases.

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<sup>1</sup> Ng was 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 was accredited to China Merchants Securities (HK) Co., Limited and China Merchants Futures (HK) Co., Limited from 5 August 2010 to 25 February 2013. Ng is currently not licensed by the SFC.

- (vi) The Discretionary Broking Authorization was effective for only one year and had to be renewed by the client annually, otherwise it would expire automatically.
- (b) The Client signed a private Discretionary Broking Authorization which authorized Ng to conduct trades for the Client on a discretionary basis.
- (c) The Discretionary Broking Authorization signed by the Client was not approved by CMSHK. The person who signed as witness of the Discretionary Broking Authorization was also not an account executive or employee of CMSHK.
- (d) CMSHK was not aware of the discretionary arrangement between Ng and the Client. It therefore did not designate the Client's account as a discretionary account.

### **Breaches and reasons for action**

- 7. Under paragraph 7.1 of the Code of Conduct, a licensed person is required to (a) obtain the client's written authorization for operating a discretionary account; (b) confirm at least on an annual basis whether the client wishes to revoke such authority; (c) designate such account as a discretionary account; and (d) obtain senior management's approval for opening the discretionary account.
- 8. Ng breached paragraphs 7.1(c) and (d) of the Code of Conduct as he failed to obtain CMSHK's management approval before entering into discretionary arrangement with the Client.
- 9. As a licensed representative, Ng had a duty not only to ensure that the Client signed a written authorization before conducting trades in the Client's account on a discretionary basis, he also had a duty to ensure that the Client's account was designated as a discretionary account, and to obtain senior management's approval of his operation of the Client's account under paragraphs 7.1(c) and (d) of the Code of Conduct.
- 10. As the management of CMSHK was not aware of Ng's discretionary arrangement with the Client, the Client's account was not designated as a discretionary account by the firm and senior management's approval to operate it as such had never been obtained. The firm also could not confirm with the Client on an annual basis whether the Client wanted to revoke his discretionary authority under paragraph 7.1(b) of the Code of Conduct. Accordingly, the operation of the Client's account was not properly monitored and supervised by the firm.
- 11. In determining the sanction, the SFC took into account all relevant circumstances, including Ng's discretionary arrangement in the Client's account without CMSHK's management approval lasted for more than a year.

### **Conclusion**

- 12. The SFC considers that a licensed person entering into a written authorization with the client to conduct discretionary trading without the firm's approval and knowledge is no different from the situation where no written authorisation had been obtained at all. By failing to obtain the firm and senior management's approval to operate the client's account on a discretionary basis, the client's

interests were prejudiced as he was deprived of the protection to which he was entitled under paragraph 7.1 of the Code of Conduct.

## 證監會禁止伍匡時重投業界十個月

2016年3月14日

證券及期貨事務監察委員會（證監會）因招商證券（香港）有限公司（香港招商證券）前客戶主任伍匡時（男）違反證監會《操守準則》，禁止其重投業界十個月，由2016年3月12日起至2017年1月11日止（註1及2）。

證監會發現，伍取得一名客戶的書面授權，授權他以委託形式在該名客戶的帳戶內進行交易。然而，他與該客戶訂立有關安排前，沒有取得香港招商證券管理層的批准，並在2010年8月至2011年9月期間，在香港招商證券不知情的情況下以委託形式為該客戶進行交易。

證監會認為，伍的缺失使該客戶得不到香港招商證券在委託帳戶方面所提供的保障，令其權益受損。若書面授權在該行不知情及沒有取得該行批准下簽署，有關客戶並不會得到任何保障，因為其證券帳戶沒有被該行指明為委託帳戶，而該帳戶的操作情況亦未得到該行的妥善監察及監督。

完

備註：

1. 伍曾根據《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，並在2010年8月5日至2013年2月25日期間隸屬於招商證券（香港）有限公司及招商期貨（香港）有限公司。伍現時並非證監會的持牌人。
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7.1(c)及(d)段。

[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14日

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## 紀律處分行動聲明

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### 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》（**該條例**）第 194(1)(iv)條禁止伍匡時（**伍**）<sup>1</sup>重投業界，為期十個月。
2. 證監會發現，伍取得客戶（**該客戶**）的書面授權，授權他以委託形式在該客戶的帳戶內進行交易。然而，他與該客戶訂立有關安排前，沒有取得招商證券（香港）有限公司（**香港招商證券**）管理層的批准，並在 2010 年 8 月至 2011 年 9 月期間以委託形式為該客戶進行交易。
3. 伍的行為違反了《證監會持牌人或註冊人操守準則》（**《操守準則》**）第 7.1(c) 及 7.1(d)段的規定。

### 事實摘要

4. 證監會的調查源自該客戶針對伍的投訴。
5. 伍曾是該客戶在香港招商證券的客戶主任。
6. 有關證據顯示：
  - (a) 香港招商證券的政策和程序載有有關操作委託帳戶的多項規定。有關規定如下：
    - (i) 客戶如欲授權客戶主任以委託形式為其進行交易，必須簽署委託經紀授權書。
    - (ii) 所有客戶主任均嚴禁與客戶訂立私人委託交易安排。
    - (iii) 簽署委託經紀授權書必須由客戶主任見證。
    - (iv) 委託經紀授權書必須獲得香港招商證券的批准。
    - (v) 香港招商證券並不鼓勵委託交易，並只會在特殊情況下才容許進行該類交易。
    - (vi) 委託經紀授權書的有效期只有一年，而客戶須每年續簽授權書，否則授權會自動失效。
  - (b) 該客戶簽署私人委託經紀授權書，授權伍以委託形式在其帳戶內進行交易。
  - (c) 該客戶簽署的委託經紀授權書並未取得香港招商證券的批准。以見證人身分在委託經紀授權書上簽署的人士亦非香港招商證券的客戶主任或僱員。

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<sup>1</sup> 伍曾根據《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，並在 2010 年 8 月 5 日至 2013 年 2 月 25 日期間隸屬於招商證券（香港）有限公司及招商期貨（香港）有限公司。他現時並非證監會的持牌人。

- (d) 香港招商證券對伍與該客戶之間的委託安排並不知情，因而沒有指明該客戶的帳戶為委託帳戶。

#### 違反規定及採取行動的理由

7. 根據《操守準則》第 7.1 段，持牌人須(a)就操作委託帳戶獲得客戶的書面授權；(b)至少每年與客戶確認其是否希望取消該項授權；(c)指明該帳戶為委託帳戶；及(d)獲得高級管理層批准開立委託帳戶。
8. 伍與該客戶訂立委託安排前，沒有取得香港招商證券管理層的批准，違反了《操守準則》第 7.1(c)及(d)段的規定。
9. 伍身為持牌代表，根據《操守準則》第 7.1(c)及(d)段，除了有責任在他以委託形式於該客戶的帳戶內進行交易前，確保該客戶已簽署書面授權外，亦有責任確保該客戶的帳戶已獲指明為委託帳戶，並就操作該客戶的帳戶一事取得高級管理層的批准。
10. 由於香港招商證券的管理層對伍與該客戶訂立的委託安排並不知情，故該公司並無將該客戶的帳戶指明為委託帳戶，而伍亦從未就操作該帳戶取得高級管理層的批准。該公司亦無法根據《操守準則》第 7.1(b)段，每年向該客戶確認一次其是否想取消委託授權。因此，該客戶的帳戶的操作情況沒有得到該公司的妥善監察及監督。
11. 證監會在決定上述罰則時已考慮到所有相關情況，包括伍在沒有取得香港招商證券的管理層的批准下就該客戶的帳戶訂立委託安排已持續超過一年。

#### 結論

12. 證監會認為，持牌人士在沒有公司批准及在公司不知情下與客戶訂立書面授權以進行委託交易，與從沒有取得任何書面授權的情況無異。伍未有就以委託形式操作該客戶的帳戶一事取得該公司及高級管理層的批准，剝奪了該客戶在《操守準則》第 7.1 段下所享有的保障，令其權益受損。