

SFC bans Xu Tao for four months

11 Oct 2017

The Securities and Futures Commission (SFC) has prohibited Mr Xu Tao, a former investment consultant of China International Capital Corporation Hong Kong Securities Limited (CICC), from re-entering the industry for four months from 11 October 2017 to 10 February 2018 (Note 1).

The SFC found that Xu used his mobile phone and WeChat messaging application to accept order instructions from 13 clients between February and August 2015, in breach of the SFC's Code of Conduct and the internal policies and procedures of CICC (Note 2).

The SFC considers Xu's breach of the Code of Conduct has called into question his reliability, reputation, and ability to carry out regulated activities competently, as well as his fitness and properness to be licensed.

End

Notes:

1. Xu was licensed under the Securities and Futures Ordinance to carry on Type 1 (dealing in securities), Type 2 (dealing in futures contracts) and Type 4 (advising on securities) regulated activities and accredited to CICC between September 2008 and October 2015. Xu is currently not licensed by the SFC.
2. Paragraph 3.9(b) of the Code of Conduct for Persons Licensed by or Registered with the SFC (Code of Conduct) provides 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 six months.

Paragraph 3.9 of the Code of Conduct further notes that the use of mobile phones for receiving client order instructions is strongly discouraged. However, where orders are accepted by mobile phones, staff members should immediately call back to their licensed or registered person's telephone recording system and record the time of receipt and the order details. The use of other formats (e.g. in writing by hand) to record details of clients' order instructions and time of receipt should only be used if the licensed or registered person's telephone recording system cannot be accessed.

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

Page last updated : 11 Oct 2017

證監會禁止許韜重投業界四個月

2017年10月11日

證券及期貨事務監察委員會（證監會）禁止中國國際金融香港證券有限公司（中金香港）前投資顧問許韜（男）重投業界四個月，由2017年10月11日至2018年2月10日止（註1）。

證監會發現，許在2015年2月至8月期間利用他的流動電話及微信通訊程式接受13名客戶的交易指示，違反了證監會的《操守準則》及中金香港的內部政策和程序（註2）。

證監會認為，許違反《操守準則》的行為已令人懷疑他是否有能力稱職地進行受規管活動、其可靠程度及信譽，以至其獲發牌的適當人選資格。

完

備註：

1. 許曾根據《證券及期貨條例》獲發牌進行第1類（證券交易）、第2類（期貨合約交易）及第4類（就證券提供意見）受規管活動，並在2008年9月至2015年10月期間隸屬中金香港。許現時並非證監會持牌人。
2. 《證券及期貨事務監察委員會持牌人或註冊人操守準則》（《操守準則》）第3.9(b)段規定，凡透過電話收取客戶指示，持牌人或註冊人應用電話錄音系統記錄有關的指示，並保存有關電話錄音作為其紀錄的一部分，為期至少六個月。

《操守準則》第3.9段進一步述明，證監會極不鼓勵持牌人或註冊人利用 動電話收取客戶交易指示。不過，以 動電話接受交易指示的話，職員應立即致電其持牌人或註冊人的電話錄音系統，記錄其收到交易指示的時間及有關指示的詳情。只有在不能接駁到持牌人或註冊人的電話錄音系統的情況下才應使用其他方式（例如用人手以書面方式）將客戶交易指示的詳情及收到交易指示的時間記錄下 。

有關紀律處分行動聲明載於證監會網站

最後更新日期：2017年10月11日

STATEMENT OF DISCIPLINARY ACTION

The Disciplinary Action

1. The Securities and Futures Commission (**SFC**) has prohibited Mr Xu Tao (**Xu**), a former investment consultant of China International Capital Corporation Hong Kong Securities Limited (**CICC**), from re-entering the industry for a period of four months pursuant to section 194 of the Securities and Futures Ordinance (**SFO**).
2. The SFC found that Xu used his mobile phone and WeChat messaging to accept order instructions from thirteen clients (**Clients**) between February and August 2015, in breach of General Principle 2 and paragraph 3.9(b) of the Code of Conduct for Persons Licensed by or Registered with the SFC (**Code of Conduct**), and the policies and procedures of CICC.

Summary of facts

3. General Principle 2 (diligence) of the Code of Conduct requires a licensed person to act with due skill, care and diligence, in the best interests of its clients and the integrity of the market.
4. Paragraph 3.9(b) of the Code of Conduct provides that where order instructions are received from clients through the telephone, a licensed person should use a telephone recording system to record the instructions and maintain telephone recordings as part of its records for at least six months.
5. Paragraph 3.9 of the Code of Conduct further notes that the use of mobile phones for receiving client order instructions is strongly discouraged. However, where orders are accepted by mobile phones outside the trading floor, trading room, usual place of business where order is received or usual place where business is conducted, staff members should immediately call back to their licensed or registered person's telephone recording system and record the time of receipt and the order details. The use of other formats (e.g. in writing by hand) to record details of clients' order instructions and time of receipt should only be used if the licensed or registered person's telephone recording system cannot be accessed.
6. CICC's compliance manual required investment consultants to accept client order instructions via its telephone recording system and prohibited taking client orders via mobile phone, SMS or other forms of text messages. If an investment consultant receives a mobile phone call or a text message relating to dealing or order instructions, he should call the client on an office recorded telephone line to confirm the client's order instructions or further discuss the matter.
7. CICC's compliance manual reflect the order recording provisions under paragraph 3.9 of the Code of Conduct.

8. Xu admitted that he used his mobile phone and the WeChat messaging application to take order instructions from the Clients instead of using CICC's telephone recording system. He also admitted that he was aware of CICC's policies and procedures.
9. Xu has knowingly disregarded CICC's policies and procedures and accepted client orders via his mobile phone simply because it was a convenient communication tool for him and the Clients.
10. The recording of client order instructions is an integral part of keeping an audit trail and ensuring that there is reliable evidence to resort to when assessing any dispute between a broker and its client concerning the particulars of a trade order. The recording of client order instructions, therefore, protects the interests of both the intermediary and the client. It is also an effective compliance monitoring tool to prevent or detect any irregularities or fraudulent activities.

Conclusion

11. Xu's failure to keep proper records of all client order instructions received and accepted via his mobile phone is in breach of General Principle 2 and paragraph 3.9 of the Code of Conduct, as well as CICC's internal policies and procedures.
12. Xu's breach of the Code of Conduct has called into question his ability to carry out regulated activities competently, reliability and reputation as well as his fitness and properness to be licensed.
13. In reaching the decision to prohibit Xu from re-entering the industry for 4 months, the SFC has taken into account all relevant circumstances of this case, including his otherwise clean disciplinary record.

紀律處分行動聲明

紀律處分行動

1. 證券及期貨事務監察委員會（**證監會**）依據《證券及期貨條例》（**該條例**）第 194 條，禁止中國國際金融香港證券有限公司（**中金香港**）前投資顧問許韜（**許**）重投業界，為期四個月。
2. 證監會發現，許在 2015 年 2 月至 8 月期間利用他的流動電話及微信通訊應用程式接受 13 名客戶（**該等客戶**）的交易指示，違反了《證券及期貨事務監察委員會持牌人或註冊人操守準則》（**《操守準則》**）第 2 項一般原則和第 3.9(b)段及中金香港的政策和程序。

事實摘要

3. 《操守準則》第 2 項一般原則（勤勉盡責）規定，持牌人應以適當的技能、小心審慎和勤勉盡責的態度行事，以維護客戶的最佳利益及確保市場廉潔穩健。
4. 《操守準則》第 3.9(b)段規定，凡透過電話收取客戶交易指示，持牌人應利用電話錄音系統記錄有關的指示，並保存有關的電話錄音作為其紀錄的一部分，為期至少六個月。
5. 《操守準則》第 3.9 段進一步述明，證監會極不鼓勵持牌人或註冊人利用流動電話收取客戶交易指示。不過，若在交易場地、盤房、收取交易指示的通常營業地點或通常經營業務的地點以外的地方以流動電話接受交易指示的話，職員應立即致電其持牌人或註冊人的電話錄音系統，記錄其收到交易指示的時間及有關指示的詳情。只有在不能接駁到持牌人或註冊人的電話錄音系統的情況下才應使用其他方式（例如用人手以書面方式）將客戶交易指示的詳情及收到交易指示的時間記錄下來。
6. 中金香港的合規手冊規定投資顧問須透過其電話錄音系統接受客戶交易指示，並禁止他們透過流動電話、短訊或其他形式的文字訊息接受客戶的交易指示。若某投資顧問收到與買賣或交易指示有關的流動電話來電或文字訊息，他應使用辦公室的錄音電話線致電有關客戶以確認客戶的交易指示或進一步商討有關事宜。
7. 中金香港的合規手冊反映了《操守準則》第 3.9 段的記錄交易指示條文。
8. 許承認曾使用他的流動電話及微信通訊應用程式收取該等客戶的交易指示，而沒有使用中金香港的電話錄音系統。他亦承認知悉中金香港的政策和程序。
9. 許明知而漠視中金香港的政策和程序，純粹因為流動電話對他及該等客戶來說都是較為方便的通訊工具，便透過他的流動電話接受客戶的交易指示。
10. 在經紀與其客戶就某項交易指示的細節有任何爭議時，記錄客戶交易指示是備存審計線索的重要部分，亦是確保有可靠的證據可供依據以便對爭議進行評估的關鍵所在。因此，記錄客戶交易指示保障了中介人及客戶的利益。這亦是有效防止或偵察任何違規或欺詐活動的合規監察工具。

結論

11. 許沒有為透過他的流動電話收取和確認的所有客戶交易指示備存妥善的紀錄，違反了《操守準則》第 2 項一般原則和第 3.9 段以及中金香港的內部政策和程序。
12. 許違反《操守準則》的行為已令人對其是否有能力稱職地進行受規管活動、其可靠程度及信譽，以至其獲發牌的適當人選資格，產生懷疑。
13. 證監會在達至禁止許重投業界四個月的決定時，已考慮到與本個案有關的所有情況，包括他以往並無遭受紀律處分的紀錄。