

IN THE MATTER OF

A Complaint made under Section 34(1)(a) and 34(1A) of the Professional Accountants Ordinance (Cap.50) ("the PAO") and referred to the Disciplinary Committee under Section 33(3) of the PAO

BETWEEN

The Registrar of the Hong Kong Institute of
Certified Public Accountants COMPLAINANT

AND

Mr. Poon Ming Pui
Membership No. A10636 RESPONDENT

Before a Disciplinary Committee of the Hong Kong Institute of Certified Public Accountants

Members: Ms. Lee Wai Yan Susanna (Chairman)
Mr. Hong Wing Kwong Wallace
Mr. Lam Sze Cay Kevin
Mr. Shen Ka Yip Timothy
Ms. Yeung Kit Kam Lesley

ORDER & REASONS FOR DECISION

1. This is a complaint made by the Registrar of the Hong Kong Institute of Certified Public Accountants (the "Institute") against Mr. POON MING PUI, a certified public accountant (the "Respondent"). Section 34(1)(a)(vi) of the PAO applies to the Respondent.
2. The particulars of the Complaint as set out in a letter dated 30 March 2015 (the "**Complaint**") are as follows:-

Background

- (1) The Respondent was licensed under the Securities and Futures Ordinance to carry on Type 1 (dealing in securities), Type 4 (advising on securities) and Type 9 (asset management) regulated activities.
- (2) During the period from about 2005 to 2009, the Respondent was effectively employed by the China International Capital Corporation (Hong Kong) Limited ("CICCHK") group of companies, which included CICCHK, China International Capital Corporation Hong Kong Securities Limited ("CICCHK Securities"), and

China International Capital Corporation Hong Kong Asset Management Limited ("CICCHK AM"). After that, from about 2009 to 2011, he was employed by Yuanta Securities (Hong Kong) Company Limited ("Yuanta").

- (3) Respondent was accredited to CICCHK Securities from 5 October 2005 to 3 June 2009, CICCHK AM from 6 June 2008 to 20 June 2009, and Yuanta from 6 August 2009 to 21 April 2011. As of 13 January 2014, the Respondent was not accredited to any licensed corporation.
- (4) In December 2014, the Respondent informed the Institute in his membership renewal that he had been disciplined by the Securities and Futures Commission ("SFC") for having breached the Code of Conduct for Persons Licensed by or Registered with the SFC ("SFC Code") by failing to disclose to his former employers CICCHK and Yuanta his securities trading activities through two of his friends' securities accounts. He was banned from re-entering the securities industry for 10 months from 9 January 2014 to 8 November 2014.
- (5) As such the Respondent had been in breach of the then applicable ethical standards including Statement 1.200 Professional Ethics ("Statement 1.200") and the Code of Ethics for Professional Accountants ("COE").

Complaint 1

- (6) Section 34(1)(a)(vi) of the PAO applies to the Respondent in that he failed or neglected to observe, maintain or otherwise apply professional standards as provided in Statement 1.200 §4 (from July 2005 to June 2006) and COE §§100.4(a) and 110.2 (from July 2006 to 2009), when he made various declarations to CICCHK group of companies from July 2005 to April 2009 to the effect that he did not maintain outside brokerage accounts and did not hold any securities not already disclosed, which were materially false or misleading.

Complaint 2

- (7) Section 34(1)(a)(vi) of the PAO applies to the Respondent in that he failed or neglected to observe, maintain or otherwise apply professional standards as provided in COE §§100.4(a) and 110.2, when he made a declaration dated 6 August 2009 to Yuanta which was materially false or misleading, in that he failed to declare his trading in securities through his friends' securities accounts.

Complaint 3

- (8) Section 34(1)(a)(vi) of the PAO applies to the Respondent in that he failed or neglected to observe, maintain or otherwise apply professional standards as provided in COE §§100.4(a)/100.5(a) and 110.1, when he failed to declare in 2010-2011 to Yuanta his trading in securities through his friends' securities accounts as required by Yuanta's policies and procedures, and such failure to disclose was dishonest and not being straightforward.

Relevant Professional Standards

(9) Statement 1.200 (September 2004 version) provides, inter alia:-

"4. A member should follow the ethical guidance of the HKICPA and in circumstances not provided for by that guidance should conduct himself in a manner consistent with the good reputation of the profession and the HKICPA."

(10) COE (issued December 2005, effective on 30 June 2006) provides, inter alia:-

"100.4 A professional accountant is required to comply with the following fundamental principles:

(a) Integrity

A professional accountant should be straightforward and honest in all professional and business relationships."

"110.1 The principle of integrity imposes an obligation on all professional accountants to be straightforward and honest in professional and business relationships. Integrity also implies fair dealing and truthfulness.

"110.2 A professional accountant should not be associated with reports, returns, communications or other information which they believe that the information:

(a) Contains a materially false or misleading information;

(b) Contains statements or information furnished recklessly; or

(c) Omits or obscures information required to be included where such omission or obscurity would be misleading."

(11) In the COE (issued December 2005; revised June 2010) which applied from June to December 2010, §§100.4(a) and 110.1 remained unchanged.

(12) The COE (revised June 2010, effective on 1 January 2011) provides, inter alia:-

"100.5 A professional accountant shall comply with the following fundamental principles:

(a) Integrity – to be straightforward and honest in all professional and business relationships.

.....

110.1 The principle of integrity imposes an obligation on all professional accountants to be straightforward and honest in all professional and business relationships. Integrity also implies fair dealing and truthfulness."

Facts and Circumstances in support of Complaints 1 to 3

- (13) From 2005-2009, Respondent signed and submitted 3 declarations dated 10 July 2005, 4 September 2008, and 3 April 2009 to the CICCHK group of companies. The said declarations included statements to the effect that the Respondent maintained no outside brokerage accounts, or he did not hold any securities in other companies that were not already disclosed.
- (14) From 2009 to 2011, Respondent signed and submitted to Yuanta a "PAD Declaration Form – New Employees" dated 6 August 2009 (the "PAD Form"), and 3 annual acknowledgement forms dated 6 August 2009, 6 January 2010, and an undated one in 2011. In the PAD Form, he declared his securities account in CICCHK Securities which was stated to consist of 2 stocks (stock codes 00604 and 01812). In the 3 annual acknowledgement forms, Respondent declared that he would adhere to the Personal Account Dealing Rules. There was no additional disclosure or declaration made by the Respondent in those 3 annual acknowledgement forms.
- (15) Both CICCHK and Yuanta had written policies and procedures which required their employees to declare their personal trading activities when they joined the firms, and annually thereafter. Moreover, in the declaration dated 4 September 2008 in which the Respondent declared that he maintained no outside brokerage accounts, it was stated that "outside brokerage accounts" included accounts which were opened under the name of the employee's associate or nominee, or wholly or partially, directly or indirectly owned or controlled by the employee.
- (16) Contrary to the aforesaid declarations made by the Respondent, he conducted trading activities through others' securities accounts from June 2005 to April 2011:-
 - (a) Between 2005 and 2007, Respondent requested 2 of his friends to lend him their securities accounts to purchase shares in Company X. By mid 2007, he held a total of 30 million shares in Company X. In July 2007, he instructed his friend to sell all these shares and used some of the sale proceeds to trade in a number of other securities through one of the friend's securities account.
 - (b) Between 2007 and 2009, Respondent had traded in 83 shares through his friends' securities accounts. These activities continued to about April 2011.
- (17) The Respondent had admitted to SFC that he had used his friends' securities accounts to trade in securities.
- (18) In the circumstances, the declarations made by the Respondent to CICCHK group of companies and in the PAD Form to Yuanta were materially false or misleading, in that the aforesaid trading through his friends' securities accounts were never disclosed or declared (Complaints 1 and 2). In the PAD Form of August 2009, he had only declared his own securities account in CICCHK Securities, which was different from his trading in his friends' securities accounts.

- (19) The Respondent also failed to declare or disclose to Yuanta, in 2010-2011, of his trading in his friends' securities accounts (Complaint 3). There was no disclosure made in the annual acknowledgement forms signed by the Respondent in January 2010 and 2011. The failure to disclose was dishonest and not being straightforward, as the Respondent was well aware of the requirement to report personal trading activities.
- (20) Respondent had further admitted to SFC that he knew that his employers required him to disclose his personal trading activities, and that he had not reported his trading activities conducted through his friends' securities accounts to his employers.
- (21) In the SFC disciplinary action, Respondent was found to have breached General Principle 1 of the SFC Code, which requires a licensed person to act honestly, fairly and in the best interests of its clients and the integrity of the market. His concealment of his personal trading activities was deliberate and dishonest. It also circumvented his employers' policies and prevented his employers from monitoring his trading activities.
- (22) SFC is of the view that the Respondent is not fit and proper to be licensed and he was prohibited from re-entering the industry for 10 months. In deciding the appropriate sanction, SFC has taken into account all relevant circumstances, including the fact that the misconduct lasted for more than 5 years, his admission and co-operation with the SFC's investigation, and his otherwise clean disciplinary record.
- (23) In the letter dated 16 January 2015 in response to inquiry from the Institute, the Respondent stated that the reason for him for not reporting his trades in his friends' securities accounts was "...just for convenience as there are many restrictions in the dealing of the shares once I reported to the company like 3 months lock up etc". He also said that "I must confess that I have done something wrong by not reporting the trades to my employers at that time. I am regret for my conduct [sic] and I admitted my trading activities to the SFC.....".

Conclusion

- (24) In the premises, the Respondent was in breach of §§100.4(a)/100.5(a), 110.1 and 110.2 of the COE as he was not being honest or straightforward, made materially false or misleading declarations, and failed to make the necessary declarations. Further, the making of false or misleading declarations constituted conduct inconsistent with the good reputation of a professional accountant under Statement 1.200.
3. On 8 May 2015, the Respondent admitted the complaints against him. He did not dispute the facts as set out in the complaints. The parties agreed that the steps set out in paragraphs 17 to 30 of the Disciplinary Committee Proceedings Rules ("DCPR") be dispensed with.
4. The Complaints are found proved based on the admission by the Respondent.

5. On 10 August 2015, the Disciplinary Committee agreed to the parties' joint application to dispense with the steps set out in Rule 17 to 30 of the DCPR in light of the admission made by the Respondent and the Disciplinary Committee directed the parties to make written submissions on sanctions and costs.
6. The Complainant and the Respondent provided their submissions on sanctions respectively on 24 and 20 August 2015.
7. In considering the proper order to be made in this case, the Disciplinary Committee has had regard to all the aforesaid matters, including the particulars in support of the Complaints, the Respondent's personal circumstances, and the conduct of the Complainant and the Respondent throughout the proceedings.
8. The Disciplinary Committee orders that:-
 - (1) the name of the Respondent be removed from the register of certified public accountants for 1 year on the 45th day from the date of this order under Section 35(1)(a) of the PAO; or
 - (2) the Respondent pay a penalty of HK\$10,000 under Section 35(1)(c) of the PAO;
 - (3) the Respondent do pay the costs and expenses of and incidental to the proceedings of the Complainant in the sum of HK\$21,947 under Section 35(1)(iii) of the PAO.

Dated the 4th day of December 2015

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Dated the 4th day of December 2015