

SFC Circular - SFC bans Citigroup Global Markets Asia Limited's former responsible officer Philip John Shaw for 10 years

The Securities and Futures Commission (SFC) has banned Mr Philip John Shaw, a former responsible officer (RO), board member and Head of Pan-Asia Execution Services of Citigroup Global Markets Asia Limited (CGMAL), from re-entering the industry for 10 years from 4 March 2023 to 3 March 2033.

The disciplinary action follows the SFC's earlier sanctions against CGMAL for serious regulatory breaches and internal control failures in allowing various trading desks under its Cash Equities business to disseminate mislabelled Indications of Interest (IOIs) and make misrepresentations to institutional clients when executing facilitation trades from 2008 to 2018.

The SFC is of the view that CGMAL's breaches and failings were attributable to Shaw's failure to discharge his duties as an RO and a member of CGMAL's senior management.

Mr Christopher Wilson, the SFC's Executive Director of Enforcement, said: "A key concern of the SFC is that Shaw had, through his misconduct, engendered a culture of chasing revenue at the expense of client interests and basic standards of honesty within CGMAL. In the circumstances, his conduct fell far short of the standards expected of a member of senior management of a licensed intermediary and the sanction against him is warranted."

"The disciplinary action against Shaw also underscored the SFC's determination to hold errant senior management accountable for their firms' failures. This is imperative for driving changes in the culture and behaviour of intermediaries," Mr Wilson added.

Specifically, the SFC found that:

- in 2015, Shaw introduced a mechanism to facilitate bulk generation of mislabelled IOIs by CGMAL's Equities Sales Trading Desk involving some of

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the most actively traded blue-chip stocks in the market. Such IOIs were not backed by any potential order or interest from specific clients, but they were tagged as “Natural”, “In Touch With” and/or “P:1” with a view to provoking client enquiries. Shaw’s description of such IOIs as “the fakes” and “fake flow” indicated that he did not believe they were correctly labelled;

- although the quality and accuracy of the IOIs had drawn client complaints, Shaw did not stop the dissemination of mislabelled IOIs and represented to the clients that they were classified in accordance with industry standards; and
- on one occasion, after a trader had told a client that CGMAL advertised facilitation flow using “Natural” IOIs, Shaw instructed the trader to refrain from being honest with clients about the source of liquidity behind such IOIs and made misrepresentations to the client to perpetuate the falsehood created by the mislabelled IOI.

Furthermore, since at least 2015, Shaw had personally committed, and allowed his subordinates to commit, the following misconduct when executing facilitation trades:

- gave factually incorrect information to the client or took positive steps to conceal the principal nature of the trade;
- made misleading statements that could be interpreted by the client as indicating that the trade would be executed on an agency basis, or sometimes remained silent notwithstanding some indication of the client’s belief that the trade was an agency trade; and/or
- remained silent or were not explicit with the client about the involvement of the Facilitation Desk and failed to obtain client’s consent before routing the client’s order to the Facilitation Desk for execution.

These findings demonstrate that Shaw had failed to ensure the maintenance of appropriate standards of conduct and adherence to proper procedures by CGMAL, including ensuring that adequate policies and systems controls were in place to effectively monitor the issuance of IOIs and facilitation activities, and that proper training had been provided to traders.

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In deciding the disciplinary sanction, the SFC has taken into account all relevant circumstances, including:

- Shaw's misconduct was intentional, dishonest and contrary to a licensed person's overarching duty to act in clients' best interests;
- CGMAL's serious internal control failures and regulatory breaches could not have prevailed for over 10 years had he properly discharged his management and supervisory responsibilities;
- notwithstanding his experience and seniority, he denied any wrongdoing and attempted to shift all the blame to other management personnel and the compliance function of CGMAL, which reflected a lack of understanding of his duties as an RO and a member of the senior management as well as a lack of remorse;
- it is necessary to send a clear and strong message to the industry that the SFC will not tolerate misconduct such as his; and
- his otherwise clean disciplinary record.

中文版本

證監會禁止花旗環球金融亞洲有限公司前負責人員Philip John Shaw重投業界十年

證券及期貨事務監察委員會（證監會）禁止花旗環球金融亞洲有限公司（花旗環球金融）前負責人員、董事會成員及泛亞執行服務主管Philip John Shaw（男）重投業界，為期十年，由2023年3月4日起至2033年3月3日止。

證監會在採取上述紀律行動前，已在較早前處分花旗環球金融，因該公司在2008年至2018年期間，一直容許其現貨股票業務部轄下多個交易櫃檯向機構客戶發布被錯誤標

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籤的申購意向，並在執行利便交易時向該等客戶作出失實陳述，嚴重違反監管規定和犯有內部監控缺失。

證監會認為，花旗環球金融的違規行為及缺失，可歸因於Shaw沒有履行其作為負責人員及花旗環球金融高級管理層成員的職責。

證監會法規執行部執行董事魏弘福先生（Mr Christopher Wilson）表示：“證監會其中一個主要關注點是，Shaw透過其失當行為，在花旗環球金融內部鼓吹一種犧牲客戶利益及基本誠信標準以追求利益的文化。在此情況下，他的行為遠遜於持牌中介人高級管理層成員理應達到的標準，故有必要對其施加制裁。”

魏弘福先生續說：“對Shaw採取的紀律行動亦闡明了證監會決心就公司的缺失向其失職的高級管理層追究責任，這對推動中介人改變其文化及行為來說極其重要。”

具體而言，證監會發現：

- Shaw在2015年引入一項機制，以利便花旗環球金融的股票銷售交易櫃檯大量製備被錯誤標籤的申購意向，當中涉及市場上某些交投最活躍的藍籌股。該等申購意向的背後並無來自某特定客戶的任何潛在交易指示或意向，但卻被標示為“自然”、“接觸中”及／或“P:1”，以期引發客戶查詢。Shaw曾將該等申購意向描述為“the fakes（意即虛假意向）”及“fake flow（意即虛假流通量）”，顯示他並不相信它們被正確標籤；
- 雖然申購意向的質素及準確性已引致多宗客戶投訴，但Shaw並無停止發布被錯誤標籤的申購意向，並向客戶表示它們已按照業界標準予以分類；及
- 有一次，在一名交易員告訴某客戶花旗環球金融利用“自然”的申購意向來宣傳利便流通量後，Shaw指示該交易員不要向客戶坦白說出有關申購意向背後的流通量來源，並向該客戶作出失實陳述，以令被錯誤標籤的申購意向造成的假象得以繼續留存。

此外，至少自2015年起，Shaw本人在執行利便交易時干犯及容許下屬在執行利便交

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易時干犯以下失當行為：

- 向客戶提供了與事實不符的資料，或採取了積極步驟以隱瞞有關交易的主事人性質；
- 作出了具誤導性的聲明，而客戶有可能將該等聲明詮釋為有關交易是以代理方式執行，或即使有跡象顯示客戶相信有關交易為代理交易，但仍保持沉默；及／或
- 對於利便服務櫃檯參與交易一事保持沉默或沒有向客戶表明此事，並且在將客戶的交易指示轉發至利便服務櫃檯以供執行前，沒有取得客戶的同意。

上述調查結果顯示，**Shaw**沒有確保花旗環球金融能夠維持適當的操守標準及遵守恰當的程序，包括確保有足夠的政策及系統監控措施以監察申購意向的發出和利便客戶活動，以及向交易員提供適當的培訓。

證監會在決定採取上述紀律處分時，已考慮到所有相關情況，包括：

- **Shaw**的失當行為是故意及不誠實的，且違反了持牌人以維護客戶最佳利益的態度行事的首要責任；
- 假如他妥善地履行其管理及監督責任，花旗環球金融的嚴重內部監控缺失及監管違規行為不可能持續超過十年；
- 儘管他富有經驗且具備資歷，但他否認有任何過錯，並試圖將所有責任推卸給其他管理人員及花旗環球金融的合規職能，反映他並不了解自己作為負責人員及高級管理層成員的職責，且毫無悔意；
- 有必要向業界傳達強而有力的訊息，表明證監會絕不容忍如他所干犯的失當行為；及
- 他過往並無遭受紀律處分的紀錄。