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Application No 10 of 2009

IN THE SECURITIES AND FUTURES APPEALS TRIBUNAL

IN THE MATTER of a Decision made by the Securities and Futures Commission pursuant to s 196 of the Securities and Futures Ordinance, Cap 571, (the Ordinance)

And

IN THE MATTER of s 217 of the Ordinance

BETWEEN

IP CHUN CHUN Applicant

and

SECURITIES AND FUTURES COMMISSION Respondent

Before: Hon Saunders J, Chairman,

Dr Cynthia Lam, Mr Michael T P Sze, Members

Dates of Hearing: 21-23, 25 June 2010

Date of Decision: 16 July 2010

DECISION

Background:

1. The Applicant, Ms Ip, was registered with the Hong Kong Monetary Authority (HKMA), as a "relevant individual", pursuant to s 20(1)(ea)(i) Banking Ordinance. As a relevant individual, Ms Ip was able to perform regulated activity, including giving investment advice, on behalf of her employer, China Construction Bank (Asia) Corporation Ltd (CCB).

2. On 31 January 2007, Ms Penny Fung, the Regional Security Director, Asia, at the request of the Head of Consumer Banking of CCB undertook an internal inquiry into certain signatures on four documents which had been dealt with by Ms Ip in her capacity as a relevant individual. The results of that enquiry were referred to the HKMA by CCB. The HKMA thereafter undertook its own investigation into the circumstances upon which those signatures came to appear on the four documents and, pursuant to s 58A Banking Ordinance, referred the results of the investigation to the Securities and Futures Commission (SFC).

3. As a result of that enquiry, the SFC concluded that Ms Ip had forged those signatures. The use of the expression "forged" was perhaps unfortunate, because it was not suggested by the SFC that Ms Ip had committed the offence of forgery, as that offence is defined by s 71 Crimes Ordinance Cap 200. As we see it, the SFC was using the expression

"forged" in its common parlance, rather than its strict technical form, to indicate that Ms Ip had written the signatures of other persons, without authority. Mr Westbrook for the SFC acknowledged that the action that the SFC found that Ms Ip had taken might perhaps be better described using the expression in s 24 Bills of Exchange Ordinance, Cap 19. The essential finding made against Ms Ip was that she had placed signatures on the various documents, without authority of the persons whose signatures, the signatures purported to be.

4. Having reached this preliminary view of the facts, the SFC was of the view that Ms Ip was not a fit and proper person to remain registered as a relevant individual, because the forging of client signatures constituted a breach of general principles 1 and 4 of the Code of Conduct.

5. On 17 August 2009, the SFC gave notice to Ms Ip of a proposed disciplinary action against her (NPDA), and their intention to prohibit her for a period of five years from (i) applying to be licensed or registered; (ii) applying to be approved under s 126(1) Securities and Futures Ordinance (SFO) as a responsible officer of a licensed corporation; (iii) applying to be given consent to act or continue to act as an executive officer of a registered institution under s 71C Banking Ordinance; and (iv) seeking through a registered institution to have her name entered in the register maintained by the Monetary Authority under s 20 Banking Ordinance as that of a person engaged by the registered institution in respect of a regulated activity.

6. Ms Ip was invited to make submissions to the SFC in respect of this proposed disciplinary action. She did so by letter dated

9 September 2009, in the following terms:

> "I refer to your letters dated 26 August 2009. I deny all allegations made in your letters which mean to incriminate me.
>
> I wish to give no further statement in relation to this matter and in addition, no admission is to be made by me.
>
> I had previously committed in last meeting with your council that I will be from now on not making any application for a licence from the Hong Kong Monetary Authority or SFC and will not engage myself in the financial activities requiring that licence now and thereafter.
>
> I have nothing further to say or to answer." (sic)

7. On 21 September 2009, the SFC issued its Notice of Final Decision (NFD), confirming the proposed disciplinary action, finding the allegations established and prohibiting Ms Ip from obtaining licences as indicated in para 5 above.

8. Ms Ip has applied for a review of that decision by this Tribunal. It was apparent from the application for review, prepared by Ms Ip herself, that the conclusion reached by the SFC that Ms Ip had "forged" the various signatures was to be challenged.

The burden of proof:

9. In the usual course of events in applications for review before the Tribunal, the applicant for review commences the argument, calling such witnesses as are considered appropriate, with the SFC responding with such witnesses as it thinks appropriate. In virtually all of the cases

that have come before the Tribunal there has been no challenge to the fundamental facts found which underpin the decisions upon which the SFC has based its disciplinary action. In most cases any evidence is confined to addressing the inferences to be drawn from the established facts, for example, whether or not, on undisputed facts, misconduct has been established. Often, expert witnesses are called to assist the Tribunal on matters of practice in the particular securities area at issue.

10. It is well established that the burden of proof in an application for review before the Tribunal lies upon the applicant to show that the sanctions visited upon the applicant as a consequence of the regulator's disciplinary action should be varied: see e.g. *Ng Chiu Mui v SFC*, SFAT 7/2007, 15 May 2009, per Stone J, Chairman. That decision has recently been endorsed by the Court of Appeal in *Ng Chiu Mui & Anor v SFC* CACV 141/2009, (unreported, 14 May 2010). There, the approach adopted by Stone J was found to be "perfectly proper and entirely beyond reproach".

11. In separate proceedings, under SFAT 8 & 9/2009, the issue of the presentation of the evidence in an application for review involving factual findings of forgery was considered by the Chairman at the preliminary conference stage. The factual findings were under challenge. The parties in that matter accepted that in such circumstances it was appropriate that the application should be heard "de novo", that is with the evidence from the witnesses as to fact being called as witnesses before the Tribunal.

12. At the preliminary conference in this matter, with the

Chairman sitting alone, pursuant to s 26(a) Schedule 8, SFO, proposed directions for the conduct of the hearing were put before the Chairman by the SFC. The SFC at that hearing accepted that it was appropriate that the *viva voce* evidence should be called in respect of allegations of forgery. That procedure had been followed in the one previous case that appears to have come before the Tribunal, and taken to a decision, involving a challenge to factual allegations of forgery, that of *Lau Hing Hung Joie v SFC*, SFAT 6/2004, 27 January 2005.

13. At the preliminary conference the Chairman expressed the view that having regard to the nature of the allegation, the burden of proof would lie with the SFC. Counsel for SFC then took the view that the burden of proof should lie with the applicant in the traditional way. The issue was reserved for a ruling following the hearing of the application for review.

14. Both counsel addressed the issue in their opening and closing submissions. Counsel for the SFC accepted that it was appropriate that the witnesses as to fact should be called by the SFC first, and then be subjected to cross-examination by counsel for the applicant. If the applicant was to call any evidence, that evidence would follow that called by the SFC.

15. For the reasons that follow, the Chairman has directed the Members, as a matter of law, that in this appeal the burden of proof lay upon the SFC.

16. Unlike the standard of proof, there is no statutory provision

placing the burden of proof on either an applicant for review or the SFC. By s 218(1) SFO, after an application for review has been made the Tribunal "shall review the specified decision to which the application relates". The various powers vested in the Tribunal following the review are set out in s 218(2) and s 219. By s 24 Schedule 8, SFO:

> "The order of proceedings at any sitting of the Tribunal shall be determined by the Tribunal in the manner most appropriate to the circumstances of the case."

Thus, it is for the Tribunal to determine its procedure for any given application for review.

17. Mr Westbrook, in arguing that the burden of proof lay with the applicant, relied upon the authorities set out in paragraphs 10 and 12 above, and these further propositions:

1. by s 217(2) SFO, it is the applicant who is required to "set out the grounds of the application";

2. the powers of the Tribunal in s 218(2) permit the Tribunal to;

   (a) confirm, vary or set aside the decision, and, where the decision is set aside, substitute the decision with any other decision which the Tribunal considers appropriate: s 218(2)(a);

   (b) remit the matter in question to the relevant authority with the directions it considers appropriate, which may

include a direction to the relevant authority to make the decision afresh in respect of any matter specified by the Tribunal: s 218(2)(b);

3. the implication from those provisions must be that the Tribunal takes as the starting point the specified decision, which is subject to challenge by the applicant. The onus is thus on the applicant to raise the appropriate issues or grounds of concern upon which the decision may be queried;

4. it is accordingly not appropriate, given the statutory framework, to simply "start afresh".

18. Mr Westbrook recognised that the Tribunal has wide powers to admit evidence, see s 219(1)(a), and generally to determine the procedure for the review, but said that this did not detract from, and was not inconsistent with, the position of the SFC that the applicant should bear the burden of proof.

19. He submitted further that given the clear statutory framework in place, and the fact that the applicant was given ample opportunity during investigation by the SFC to make representations, both during her interview and when invited to make submissions after the NPDA, fairness does not require the burden to be on the SFC at the stage of review.

20. Notwithstanding those submissions Mr Westbrook accepted that, instinctively, it was appropriate, if the evidence was to be heard de novo, that the SFC should commence by calling the various witnesses it

intended to call, the Tribunal hearing their evidence and those witnesses being subject to cross-examination by counsel for the applicant. He accepted too, quite properly, that the usual rule is that the party who bears the burden of proof should go first.

21. The allegation, whether characterised as an act of forgery, or the application of the signature without the authority of the person whose signature the signature purports to be, is an undoubtedly serious allegation. Even if the allegation was not, as was the situation in this case, the subject of a criminal charge, the allegation bears all the hallmarks of a criminal charge. The approach to be adopted by the Tribunal to the resolution of this purely factual allegation is influenced by the serious nature of the allegation.

22. The procedure adopted by the SFC in reaching its conclusion is to first conduct interviews of the relevant witnesses, including a compelled interview from the subject of the inquiry. In this case, the SFC did not conduct its own interviews, but merely adopted the interviews that had been undertaken by the HKMA.

23. Having obtained those interviews and such other documentary evidence as may be relevant, the SFC, in private, considered those interviews and that other documentary evidence and reached a preliminary conclusion as to the facts it believed were established. That conclusion is reached without any hearing, and without the subject of the interview having been able to cross-examine other witnesses who have given statements, or without any submissions being made on the quality of the evidence.

24. It is right that in the NPDA the preliminary conclusions of the SFC are set out, and the applicant is invited to make submissions on those preliminary conclusions. But it is important to remember that at that stage, the subject of the inquiry still does not have access to the full statements of other witnesses, nor to the whole of the documentary evidence considered by the SFC in reaching its preliminary conclusions. In making any submissions that the subject of the inquiry chooses to make, she does not have before her all of the information that is before the SFC when it reached its preliminary conclusions. She merely has the summary of that portion of the information that the SFC chooses to include in the NPDA.

25. When the submissions, if any, are received, no oral hearing is undertaken, and the submissions, and their impact on the NPDA, are considered in private by the SFC, and the NFD is then issued. Consequently, except in so far as comment may have been made in submissions on the NPDA, none of the evidence upon which the SFC has relied upon to reach its conclusion has been subject to any direct challenge.

26. The rationale for placing the burden in an application to review on the applicant lies in the fact that the SFC is a specialist regulator, and it is not for the Tribunal to impose its views on the regulator. The principles are set out in the decision of the Tribunal in *Radland International Ltd v SFC*, SFAT 3/2008, 7 August 2008, per Stone J, at para 56 in the following terms:

> "In its published decisions over the past five years the SFAT has time and again emphasised that it does not exist in order to "second-guess" the regulator by attempting to impose its own (frequently uneducated) view of what should, or should not, take place within any particular market activity - viewed thus, the

> SFAT is not in any sense to be regarded by applicants for review as an 'alternative regulator' or as a 'regulator of last resort', but represents an arbiter of fundamental fairness within the context of regulatory disciplinary decision-making, no more and no less, the Tribunal being minded to interfere with any particular regulatory disciplinary decision *only if and when* it is clear that something obviously has gone wrong, and thus requires to be rectified." (original emphasis)

27. That is entirely right, and, invariably, when an application for review relates to the characterisation of particular market activity, as most applications do, it is right that the burden should lie with the applicant to show that the SFC has "obviously gone wrong". It is the SFC who is the specialist regulator, with specialist knowledge in the area of securities.

28. But the issue under challenge in the present application for review is not merely a characterisation of a particular market activity, but a challenge to the fundamental facts upon which the disciplinary action is founded. It cannot be argued that the SFC has a specialist ability in the determination of fundamental facts, even when those fundamental facts might relate to arise from a particular area of dealing in securities. The finding of fundamental facts is quite a different exercise from the characterisation of market activity or an assessment of a particular market activity found by way of fundamental facts, not in dispute in a review, to have occurred.

29. The standards of fairness and reasonableness to be accorded in quasi judicial proceedings vary according to the circumstances of the case: see *Doody v Secretary of State the Home Department* [1994] 1 AC 531 at 560D-G. Where a factual allegation made against an applicant for review by way of a decision by the SFC is one which is tantamount to a criminal

offence, the Chairman is of the view that fairness demands that it is appropriate that on the hearing of the application for review the burden should be on the SFC to establish those factual allegations, to the appropriate standard of proof. In reaching its conclusion on fundamental facts the SFC is not acting as a specialist regulator, but as a mere fact-finding Tribunal. And it does so with the limitations on fact-finding set out in paragraphs 24 and 25 above.

30. The acknowledgement by Mr Westbrook that it is appropriate that the SFC should commence by calling the witnesses to establish the factual allegation, carries with it an implication that in so far as the factual allegations are concerned the Tribunal is not merely reviewing the decision of the SFC but is itself determining whether or not the facts as alleged are established by the evidence. That the SFC should commence by calling its witnesses demonstrates that in these circumstances the hearing is a true "rehearing" of the evidence, with the Tribunal free to reach its own conclusions as to the evidence.

31. Were it otherwise, an applicant for review would be faced with the burden of establishing that, on the basis of virtually untested evidence, the SFC had "obviously gone wrong" in reaching its conclusion. That would be quite unfair.

32. Accordingly for the foregoing reasons, the Chairman directed the Members that the burden of proof lay upon the SFC.

33. Nothing that is said in this decision will alter the usual situation that in an application for review the burden will lie upon the

applicant to establish that the SFC has "obviously gone wrong" in reaching its conclusion. However where the challenge in the application for review is a challenge to the fundamental facts as found by the SFC, the appropriate procedure will usually be by way of rehearing de novo, with the assessment of the evidence, and the factual findings being undertaken by the Tribunal, untrammelled by the conclusions the SFC may have reached.

The standard of proof:

34. Mr Ng sought to argue that in the present context, bearing in mind the nature of the allegation made against Ms Ip, the facts ought to be proved beyond reasonable doubt. With respect to Mr Ng, the submission is plainly wrong.

35. The Tribunal has no discretion in the matter. The standard of proof in proceedings before the Tribunal is established by statute in s 218(7) SFO in the following terms:

> "Subject to s 221(3), the standard of proof required to determine any question or issue before the Tribunal shall be the standard of proof applicable to civil proceedings in a court of law."

Section 221(3) relates to contempt proceedings before the Tribunal and is not relevant for present purposes.

36. The appropriate standard of proof is accordingly the civil standard, that is on the balance of probabilities. When applying that standard of proof the Tribunal recognises that the more serious the act or

omission alleged, the more inherently improbable it must be regarded. Consequently the more inherently improbable a fact is to be regarded, the more compelling would be the evidence needed to prove that fact on the balance of probabilities: see *Solicitor v Law Society of Hong Kong* (2008) 11 HKCFAR 117, especially Bokhary PJ at para 116, p 167.

37. The Chairman directed the Members accordingly.

The evidence as to the disputed signatures:

(i) Wong Kit Ming

38. The allegation against Ms Ip was that on about 8 January 2007, she had, without authority, placed a signature for Wong Kit Ming on a mutual funds investment instruction form, as a result of which a purchase of US$32,000 worth of units in an ABN-Amro Global Emerging Markets Bond Fund was made in the name of Wong Kit Ming.

39. On 8 January 2007, Ms Wong went to the Mongkok Branch of CCB, where Ms Ip was employed. Her purpose was to learn about fixed deposits. At the bank she was introduced to Ms Ip who was to be the relationship manager who would deal with Ms Wong in future. Ms Wong said that Ms Ip "marketed a fund to her", but that at that time Ms Wong did not say that she would buy the fund. Her evidence was that instead, she said that she would go home and think about it before deciding whether to buy. Ms Wong said that she did not sign any investment documents to buy any fund when at the bank.

40. Some days later Ms Wong received a statement from CCB at her home, which stated that her investment account had subscribed to an ABN-Amro Global Emerging Markets Bond Fund in the sum of US$32,000. Ms Wong said that she did not immediately go to the bank to find out about this fund as she did not want to be inconvenienced. She said that about a month later, when at the bank, she asked a bank supervisor, "in passing" why no signature was required to make a fund purchase. She was given no direct answer at that time, but when she arrived home she received a telephone call asking her to return to the bank.

41. When Ms Wong returned to the bank she was shown a mutual funds investment instruction form with the signature, "Wong Kit Ming". She told the bank that she did not sign that document.

42. In evidence, Ms Wong identified her genuine signatures in six places on her statements to the HKMA. When presented with the mutual funds investment instruction form bearing the signature "Wong Kit Ming", she stated that she had not signed any document to purchase the fund.

43. She was asked to identify the particular distinguishing features of her signature, and referred to a stroke in the middle character "Kit", which, on the funds investment instruction form, contained a hook at the base of a lower central downward stroke in the character, to the left. She said that when she wrote that character, instead of using a hook in that particular stroke, she used a left sliding stroke. Further, she identified two strokes on each side of the lower part of the character which, on the mutual funds investment instruction form, tended to point upwards. She said that she would write those two strokes either vertically down or diagonally

down, rather than pointing up, as on the form. She was firm in her assertion that she had given no instructions to buy the fund.

44. In the course of cross-examination Mr Ng presented Ms Wong the document prepared by his solicitors, entitled "Questionnaire". On that document various signatures of the name "Wong Kit Ming" had been copied, with the opportunity for Ms Wong to identify, in a multiple-choice manner, whether they were hers, or not hers, or whether she was unsure as to the signature. Mr Ng informed us that the signatures had been photocopied from various sources amongst the documents contained in the bundle before the tribunal, and in the unused material.

45. Having identified the source of the various signatures, we allowed the questionnaire to be put to Ms Wong. She correctly identified three of the signatures as her own, but was unable to identify a number of other signatures, which were her own, as hers. She positively identified the signature copied from the mutual funds investment instruction form as not being hers.

46. In cross-examination she was pressed as to why, when she had received the notice from the bank indicating that the fund purchase had been made, she did not immediately go back to the bank and demand a reversal of the transaction and a refund of her money. She explained that she had thought that the fund purchase was "pretty safe", and that she was concerned that if she demanded a reversal of the transaction she would have to pay to the bank redemption fees and other expenses as well.

47. Ultimately, CCB agreed to reverse the transaction, and

restored Ms Wong's funds to her, at no loss or expense to her.

48. The undisputed evidence was that Ms Ip had investment targets that she was expected to meet, and that the investment by Ms Wong of US$32,000 in the ABN-Amro fund would have gone towards meeting those targets, a matter that was to Ms Ip's advantage.

49. When Ms Ip was subsequently interviewed by CCB's Regional Security Director, Ms Penny Fung, the signature on the mutual funds investment form was not put to Ms Ip for comment.

(ii) Yiu Lei:

50. The allegation against Ms Ip was that on about 25 January 2007, she had, without authority, placed a signature for Ms Yiu on a client investment profile questionnaire, and had completed particulars on that questionnaire, which particulars did not properly reflect Ms Yiu's true investment profile.

51. Ms Yiu said that in January 2007, she went to the Mongkok branch of CCB to make a withdrawal of $200,000 in cash for her elder sister, to make investments in the Shanghai stock market. She said that when the teller learned of her purpose she was introduced to Ms Ip. The evidence was that Ms Ip told her that if she wanted to invest in the mainland market, apart from direct investment, she could also buy funds that held mainland constituent stocks. After being questioned about her investment philosophy, she signed what she described as a "yellow document", and that she purchased investment products, including funds

totalling $300,000 in value.

52. Subsequently, in February 2007, when at the bank, Ms Yiu was asked by the branch manager to go to her office. There, Ms Yiu was told that the bank had discovered a signature on a document that did not seem to be correct, and she was asked to verify the signature. The signature was on the client investment profile questionnaire. Ms Yiu said that she responded immediately that the signature was not hers. She said that a new client investment profile questionnaire was completed, and she identified that, bearing her own signature.

53. When interviewed by the HKMA officers Ms Yiu was shown the client investment profile questionnaire, dated 25 January 2007, in her name, and bearing what purported to be her signature. She said then that the signature was not her signature.

54. She said further that the answers to certain questions in the questionnaire were not correct answers.

55. As to question 6, which indicated her investment experience, on a scale from 1, representing little or no experience to 5, representing considerable experience, she said that her experience was in fact, 1, that is little or none, and not 2, as indicated on the form.

56. For question 7, her correct age was 46-55, not 56-64, as indicated on the form.

57. Question 8 asked: “How would you handle the income earned

in your portfolio?" Ms Yiu said the correct answer should be: "I want to receive the income", not "I want to reinvest the income", as indicated on the form.

58. Question 11 asked:

> "Investment portfolios may rise or fall in value. Which of the following best describes your feelings towards investment value fluctuations?"

On the form the answer:

> "I have a moderate investment attitude and accept that the potential for higher returns means accepting fluctuations in my portfolio's value and possible loss of principal;"

had been marked. Ms Yiu said that she was a conservative person who would not reinvest her investment returns, and the correct answer should have been:

> "I would be very concerned about any volatility; I am not comfortable with fluctuations in the value of my investment value portfolio."

59. The client investment portfolio questionnaire ascribed points to each answer, with a higher score indicating that the client was prepared to undertake a higher level of risk. On the form in question the total score was 38. On the form subsequently completed by Ms Yiu, the total score was 27, indicating a willingness to undertake a substantially lower level of risk than that on the questioned form.

60. In cross-examination Ms Yiu said that she had told Ms Ip that

she had no experience in investing, and that she could tolerate no risk, because she had no job and no income and that she depended on the money generated from conservative investments for her living expenses. Her recollection was that it was Ms Ip who had filled in the answers during the process of filling in the questionnaire, and said that Ms Ip had not shown her the form.

61. In evidence, immediately on being shown the questionnaire dated 25 January 2007, Ms Yiu stated: "That's not my signature". When questioned as to the identifying characteristics of her signature she referred to the last part of the character: "Lei", which when correctly executed has, at the base of a lower central stroke, a hook to the left. Ms Yiu said she did not write the last part of that character with a hook, instead using a stroke that went simply straight down, without a hook.

62. It was demonstrated in cross-examination that Ms Yiu could not recall precisely what the products were that she had purchased in February 2007. It was pointed out to her that statements given in evidence in chief before the tribunal, including:

> "I have no job and I did not have much money and I would depend on these kind of money for my living expenses."
>
> "Well, I can only win. I cannot afford to suffer loss."

were not included in her statement to the HKMA. Ms Yiu responded that she had not been asked that further detail.

63. In her statement to the HKMA, Ms Yiu said:

> "Later, as the bank had to charge me handling fees for my deposits, I lost confidence in the bank. I therefore cancelled all the services".

In her evidence to the Tribunal she said:

> "After one and a half month's time, I suffered loss. I suffered quite an amount of loss. I was scared because I could not afford to suffer loss. The bank said, "Well, you cannot withdraw the funds right now. You have to wait for a period of time". I was scared. Then the accounts were all closed."

64. It was suggested to her in cross-examination that the discrepancies between her witness statement to the Hong Kong Monetary Authority, and her evidence indicated that she had not told the truth to the Monetary Authority. She responded that counsel was merely playing with words.

65. When Ms Ip was subsequently interviewed by CCB's compliance officer, Ms Penny Fung, the client investment profile questionnaire purportedly signed by Ms Yiu was put to Ms Ip. Ms Ip did not admit that she had placed the signature on the document.

(iii) Chiang Chi Hang:

66. The allegation against Ms Ip was that on about 19 January 2007, she had, without authority, placed a signature for Mr Chiang Chi Hang, the donee of a power of attorney granted to him by his mother, Mdm Siu Lan, a client of CCB, to enable Mr Chiang to operate Mdm Siu's bank account on her behalf.

67. Mr Chiang is a resident in Hong Kong, and a law lecturer at

the City University. He said that on about 19 January 2007, he went with his mother to the Mongkok branch of CCB, where he saw Ms Ip. The purpose of the visit was to execute a power of attorney in order that Mr Chiang may operate his mother's bank account on her behalf, as she was elderly and had difficulty in going to the bank. Documents were executed, but he did not recall signing anything himself.

68. Some time after January 2007, he was telephoned by a CCB bank officer who asked him if he had authorised Ms Ip to sign his name on the power of attorney for him. He said that he had not given that authority. He was told that she might have falsified his signature. He was asked if he wished to make a report to the police. He responded that he did not wish to do so because neither he nor his mother had suffered any loss. In his statement to the Monetary Authority he said that he felt that Ms Ip might have been too eager to help them to complete the power of attorney, and for that reason, she may have signed his signature. He found Ms Ip helpful and was satisfied with her service. He said he did not wish to pursue the matter.

69. Subsequently, on 13 March 2007, at the bank's request, he went to the bank where a new power of attorney was completed which was signed by him.

70. When shown the power of attorney dated 19 January 2007, by the Monetary Authority he said:

> "I feel that the attorney signature on the document does not look like my normal signature."

In his statement he said also:

> "However, I remember that I have signed a Power of Attorney form in respect of the CCBA accounts of my mother and passed this Power of Attorney form that had been duly signed by me to (Ms Ip). At that time my mother was also present at the scene. Therefore, I am sure that I have signed and passed a Power of Attorney form to (Ms Ip)."

71. In evidence, he identified his signature on the power of attorney document dated 13 March 2007, and upon being shown the document dated 19 January 2007 said variously:

> "This signature did not quite appear to be my signature."

> "Well, the one appearing on 19 January 2007, that is not similar to my signature."

> "As far as I can remember, I had signed a lot of other documents. But, as regards the power of attorney, I only signed one."

In re-examination when asked:

> "Did you sign that or not? Can you just answer directly with a yes or a no?"

The response was:

> "It did not seem to be my signature."

72. Mr Chiang identified distinguishing features of his signature, (which was in English), including the particular angle of the letters and that he would not make a backstroke on the letter H. He said he would seldom write the word "Chi" when signing his signature in its full form.

He described how he made a loop around his signature from the base of the letter G in the word "Hang", and distinguished that from the signature formed in the questioned power of attorney. He explained how he used a different signature on an "informal" basis from the signature he used on a "formal" basis, distinguishing the two by the importance of the document he had to sign. It appeared to us that he used a short version of his signature on less important documents, or where a signatory might place initials to signify acknowledgement to a page.

73. Mr Chiang was cross-examined extensively both on the identifying characteristics of both the short and long form of his signature, and as to whether in fact he did sign, and pass, a power of attorney document to Ms Ip in the presence of his mother.

74. CCB's compliance officer, Ms Penny Fung said that when the power of attorney dated 19 January 2007 was put to Ms Ip in the interview on 7 February 2007, Ms Ip admitted that she had forged Mr Chiang's signature on that document.

(iv) Wong Kam Wah:

75. The allegation against Ms Ip was that on about 16 January 2007, she had, without authority, placed a signature for Mdm Wong Kam Wah on a Client Appropriateness Questionnaire-FX Linked Deposit form and had completed particulars on that questionnaire, which particulars did not properly reflect Mdm Wong's true investment profile.

76. Mdm Wong did not give evidence before us, as she still lived

in Australia, the SFC relying on the statement made by Mdm Wong to the HKMA on 6 February 2009. That statement was accepted as the evidence in chief of Mdm Wong pursuant to s 219(2) SFO.

77. Mdm Wong and her husband, Tsang Kwok Leung, had emigrated to Australia in 1992. In December 2006, they came to Hong Kong for a family visit. They had not previously used CCB, but as Mr Tsang wanted to do some investment trading through Hong Kong banks they selected CCB after some comparison exercises on the internet. In due course they went to the Mongkok Branch of CCB, where they were attended by Ms Ip.

78. With her assistance, they opened joint accounts and signed a number of documents. Mdm Wong's recollection was that they attended Ms Ip on two occasions, as after the accounts were originally opened they wanted to open other types of accounts. She recalled that they were due to fly back to Australia on 20 January 2007, and that on 19 January 2007, Ms Ip arranged for them to sign documents at another branch of CCB, in Tsuen Wan, as it was inconvenient for them to go to Mongkok. At that branch they received copies of all of the documents that had been signed.

79. After returning to Australia, Mdm Wong looked through the copies of the documents and found that her signature on one of the documents, a Client Appropriateness Questionnaire-FX Linked Deposit form, was not authentic. She was worried that the bank would use that signature for the purpose of verifying his signature in future, and so telephoned the Mongkok branch of CCB where she spoke to Grace Wan, who was the manager at the branch. The evidence of Grace Wan was that

Mdm Wong told her that the signatures were not signed by Mdm Wong, and that that was not the way Mdm Wong signed her signature.

80. Mdm Wong was interviewed by the HKMA on 6 February 2009. She was shown the questionnaire and said that she found that the signatures were "not really made by me".

81. She acknowledged that she had discussed her investment experience with Ms Ip, but said that her financial situation should have been reflected by the answer: "$780,000 or below", rather than: "$780,001-$1,500,000"' that was chosen. She said:

> "The signature at "Client's signature" at the bottom of page 2 was not my own signature either."

82. CCB's compliance officer, Ms Penny Fung, said that when the Client Appropriateness Questionnaire was put to Ms Ip, at interview on 6 February 2007, Ms Ip admitted that she had forged Mdm Wong's signature on that document.

83. As Ms Wong was not called to give evidence, she was not subjected to cross-examination.

The evidence as to admissions:

84. Mr Pierre Leung was the Operations Manager at the Mongkok branch of CCB at the relevant time. In the course of reviewing various documents in his normal duties in January 2007, he noticed discrepancies between specimen signatures held by the bank, and that of Mdm Wong

Kam Wah, appeared to be different. He informed the branch manager, Grace Wan Wing Sze.

85. Ms Wan telephoned Mdm Wong in Australia and was informed that the signature of Mdm Wong was not her signature. On 30 January 2007, Ms Wan interviewed Ms Ip about the discrepancies. In her statement Ms Wan said this:

> "(Ms Ip) initially denied any knowledge about Wong Kam Wah's signatures on the documents. But she later confessed to me that she falsified Wong Kam Wah's signatures when she was under pressure to complete the account opening documents. Then, I reported the case to my supervisor and took immediate action to suspend (Ms Ip's) service in CCBA."

86. Her evidence clarified this statement. Rather than immediately denying any knowledge about the signature, it appeared that Ms Ip had insisted, more neutrally, that the documents were "not problematic". Ms Wan's response to Ms Ip's answers were to suggest that Ms Ip "had better sleep on the matter".

87. Later, Ms Wan could not remember if it was on the same day or another day, Ms Ip knocked on Ms Wan's door and came in and sat in front of Ms Wan. Ms Wan's evidence was that Ms Ip cried a little bit, and said:

> "Sorry boss, in fact it was not Ms Wong who signed that document on that day. I was in the wrong, I had done something wrong."

88. In Ms Wan's evidence in chief, when counsel sought to clarify this she said:

> "…actually cannot recall exactly what she said, but to my impression, she had indirectly admitted that she had signed the signatures. I said 'indirectly', because she did not say, "Sorry boss, I forged the signatures". She didn't say that. She said, I was in the wrong I had done something wrong. That's all. That's why I said 'indirectly'."

89. Ms Wan reported the matter to the district manager on that day, and Ms Ip was immediately suspended.

90. Subsequently, a comprehensive investigation of the documents handled by Ms Ip was undertaken by Mr Pierre Leung as a result of which the documents, the subject of the other complaints against Ms Ip, were identified.

91. The matter was placed in the hands of CCB's compliance department and on 6 February 2007 and 7 February 2007 Ms Ip was interviewed by Ms Penny Fung, in the presence of Mr Paul Lee Kee Kee.

92. Ms Fung made notes of the interviews and subsequently transcribed those notes into a formal report which was in evidence. She did not produce the notes to the Tribunal. She did not maintain a contemporaneous record of the interview, and did not ask Ms Ip to sign the notes that were made.

93. She explained in cross-examination that she did not make a formal record of the interview, nor audiotape or videotape the interview, because they were under a lot of time pressure, and at the time they undertook the interview they did not have all the information that they thought they needed.

94. In cross-examination, Penny Fung volunteered the fact that "cooperation" was mentioned by her. She said in response to a question relating to the engagement of a lawyer, or the subsequent disclosure of the contents of the interview:

> "I did not touch on that area. What I did tell her was I represented the management to interview her, and from the management standpoint we expected her to cooperate and we would appreciate her cooperation. I did remind her that any questions I asked you, if she is not willing to answer, she can choose not to answer."

She was pressed as to the concept of cooperation and said:

> "What I mean was exactly what I said to her. I represented the management to interview her. We wanted to find out about the facts of the matter. At the same time, I also told her that if I asked any questions - I may ask her any questions and if I ask her any questions that she is not comfortable and she didn't want to answer, she could choose not to answer."

She was pressed further and said that the precise expression used, expressed in Cantonese was:

> "We hope you can cooperate with us."

95. It was put to Ms Fung that in the course of the interview she tried to give an impression to Ms Ip that the issues involved in the interview were internal matters and would not be disclosed elsewhere, a proposition that was denied. It was put to Ms Fung that Ms Ip did not make any admissions at all during the two days on which the interviews took place, again a proposition that was denied.

96. Mr Paul Lee was called to corroborate Ms Fung's evidence. He could not recall whether Ms Fung told Ms Ip that she was entitled to refuse to give answers. Because he was not the one to compile the final report, he did not give any consideration to how the contents of the interview would later be used. Broadly, it may be said that he had little recollection of the precise events of the interview, other than its general nature.

Ms Ip's statements:

97. On 1 April 2008, Ms Ip was interviewed by the HKMA. The interview was a compelled interview. In the interview she denied forging customers' signatures on any documents at all and in respect of each of the questioned documents said that she was certain that she did not forge the customer's signature on the document.

98. As to the investigation undertaken by CCB itself, she denied admitting to the bank that she had forged customers' signatures on any bank documents.

99. Ms Ip elected not to give evidence. No witnesses were called on her behalf.

The assessment of the evidence:

The admissions:

100. Although in her witness statement Ms Wan had said that Ms

Ip confessed to her that she falsified Wong Kam Wah's signatures when she was under pressure to complete the account opening documents, Ms Wan subsequently resiled from that assertion. Instead she limited herself to a statement that Ms Ip "indirectly" admitted that she had signed the signatures.

101. We are of the view that the statement: "I have done something wrong", even when linked with the circumstances in which the statement arose, and the fact that Ms Ip was crying when she made that statement, is sufficiently ambiguous that, when having regard the appropriate standard of proof, we are unable to say that the statement constitutes an admission on the part of Ms Ip that she had falsified signatures. It is not, in those circumstances, entirely clear just what it was that Ms Ip was saying that she had "done wrong".

102. Accordingly, in reaching our conclusion, we placed no weight at all on the conversation between Ms Ip and Ms Wan on 30 January 2007.

103. The evidence of the admissions to Ms Penny Fung on 6 and 7 February 2007 falls into quite a different category. On its face, the evidence from Penny Fung was evidence of clear admissions on the part of Ms Ip to falsification of the signatures of Mr Chiang on the power of attorney, and of Mdm Wong Kam Wah on the Client Appropriateness Questionnaire, without authority.

104. Mr Ng argued that as the hearing related to a disciplinary proceedings, the considerations of admissibility of admissions in criminal proceedings were irrelevant and inapplicable. He said that the admissions

were denied. He said further that the evidence of the admissions was "highly prejudicial and highly unreliable".

105. Ms Ip elected not to give evidence before us. However part of the evidence that we are entitled to consider are the interviews with Ms Ip by the HKMA. The interview was on 1 April 2008. In that interview Ms Ip simply denied forging customers signatures on any documents at all.

106. In her response to the NPDA Ms Ip again simply denied the allegations, declined to give a further statement, and asserted that no admission would be made by her.

107. In her notice of application for review Ms Ip said this:

> "3 The 'discovery' of forged signatures was not discovered by customers of the bank's but rather it is 'discovered' by bank officers. As a matter of fact, I was briefed beforehand before the bank officers conducted an interview with me. I had been told that they received complaints from various customers and if I would co-operate to agree to what they said, it would then be no problem on my side and they would settle the matter for me. They then showed me a bundle of papers telling me that they receive complaints from those customers that I had forged the signatures and asked me to admit the same and then they would close the matter.
>
> ….
>
> Secondly, they had induced me to give their wanted answers as above-mentioned.
>
> …..
>
> ii) Further, (Paul Lee Kee Kee) had stated in Line 7 of Paragraph c) of his statement that 'But Ip had not admitted that

> she forged any customers signatures on the Documents 3 and 4. She also had not admitted that she forged the signature of the customer Siu Lan on the Document 6'. Further, 'But, Ip had not signed on any written documents to confirm that she forged customers' signatures on the bank documents.'
>
> It is obvious that there is no admission was ever made on my part that I had committed the crime as alleged by you and I therefore could hardly agree with you that you had found me committing such crime by only replying on the allegations made by 'certain persons'." (sic)

108. Notwithstanding those assertions, Ms Ip elected not to give evidence before us. In the absence of any evidence from her, there was simply no evidence at all, other than her mere assertion in the application for review, as to the circumstances in which the alleged admissions to Penny Fung were made. Those assertions were not made from the witness box to us, and they were not tested in any way in cross-examination.

109. Where an applicant seeks review of a decision of the SFC for insufficiency of evidence, the applicant faces a high hurdle if he/she elects not to give or not to call evidence on the application for review. The SFO, in s 219, provides for the Tribunal to receive evidence on an application for review, but if an applicant does not avail himself/herself of this right, particularly when the evidence is being heard de novo, the Tribunal simply has no evidence to contradict the evidence led by the SFC.

110. Consequently, the denials made by Ms Ip are just that, simply unsupported assertions, not tested in any way. Little or no weight can be placed on such bare assertions.

111. The fact that evidence is prejudicial is not of itself a ground to

reject that evidence. Any evidence which tends to establish facts alleged against a person may be described as prejudicial, when that person denies those facts. However, it may be that assertions potentially constituting admissions may have arisen in circumstances which are such that the prejudicial nature of the circumstances outweigh the probative value of the alleged admissions. In such circumstances, in criminal proceedings, the admissions may be rejected.

112. Bearing in mind the standard of proof required in these proceedings, the Chairman has directed the Members that if the circumstances in which the alleged admissions made were such that the admissions could be shown to be involuntary, then the prejudicial nature of those circumstances outweighed the probative value of the statements, and the Tribunal should reject the admissions.

113. Although the Rules and Directions Issued by the Secretary for Security in relation to the Taking of Statements from Accused Persons, (commonly referred to as the Judges Rules), are not strictly applicable to disciplinary proceedings, the Chairman directed the Members that a statement containing an admission taken in circumstances in which those rules were breached, would be an admission that was liable to be rejected if the breach was such that the prejudicial nature of the breach outweighed the probative value of the statement.

114. Accordingly, although there was no evidence at all from Ms Ip as to the assertions made by her as to the circumstances in which the alleged admissions to Penny Fung were made, we had regard to those assertions and examined the evidence of Penny Fung, in the light of the

matters set out in paragraphs 111-113 above, to determine whether or not the circumstances in which the alleged admissions were made were so prejudicial that we ought to reject evidence of the admissions.

115. In her application for review Ms Ip made the assertions as to the requirement for cooperation as set out in paragraph 107 above. If established, the assertions made could constitute an inducement of such a nature that the circumstances of the admissions were so prejudicial that we ought to reject the evidence.

116. Penny Fung's evidence as to the introductory matters said by her at the interview has been set out in paragraph 94 above.

117. At no stage in cross-examination was it suggested to Penny Fung that she said to Ms Ip that, if Ms Ip cooperated, there would be "no problem on (Ms Ip's) side and they would settle the matter for her".

118. It is right too, that Penny Fung did not suggest to Ms Ip that she should have a lawyer with her during the interview. There is no requirement at law that a person in that situation should have a lawyer with her in such an interview. It would not be so prejudicial to Ms Ip, should she not have a lawyer with her, that the admissions would have to be rejected. The fact that Penny Fung told Ms Ip that she did not have to answer questions if she did not want to makes it plain that Ms Ip was not prejudiced at all by the circumstances of the interview.

119. The interview was neither recorded in writing nor audio nor videotaped. It would have been better if it had been recorded in some way.

But the absence of such a record, having regard to the subsequent internal report made, virtually contemporaneously, by Penny Fung, in which the admissions were recorded, the absence of other records does not lead us to conclude either, that the circumstances in which the admissions were made ought to be rejected, or to doubt that they were in fact so made.

120. It was submitted that because Paul Lee, assigned as a witness to the interviews, did not make any record of the interviews casts serious doubt on whether the alleged admissions were in fact made. But it was not Ms Ip's position that the admissions were not made. In her application to review she did not deny making the admissions. Instead she set out circumstances inferring that the admissions were made in response to an inducement and that for that reason they should not be relied upon. That is quite a different proposition, and one which was not supported by any evidence at all from Ms Ip.

121. It was submitted that Penny Fung's evidence that she had reminded Ms Ip that she could refuse to answer any questions was contradicted by Paul Lee. That was not the case. Paul Lee's evidence was that he could not remember that being said. That does not constitute a contradiction.

122. It was next submitted that Ms Ip was misled into believing that the interviews were for internal use only. That was a proposition which was put to Penny Fung but denied. There was no evidence from Ms Ip, or from any other source, to contradict the denial.

123. We have had careful regard to the whole of the circumstances

in which the admissions were made. We are satisfied that the evidence of Penny Fung was that there were clear admissions on the part of Ms Ip that she had placed an authorised signature on two clearly identified documents. We are satisfied that those admissions were made voluntarily by Ms Ip, and that she was, at the time she made the admissions, neither induced to make them nor oppressed in such a manner that she might make the admissions falsely, not believing them to be true, and against her will.

124. We are accordingly satisfied that full weight may be placed upon the admissions.

The signature of Ms Wong Kit Ming:

125. Ms Ip did not admit placing Ms Wong's signature on the mutual fund subscription document. We have heard and seen Ms Wong give her evidence, and are satisfied that she was firm and clear in her assertion that the signature on the document was not hers. It is right that the way she expressed the matter was to say that she "did not sign any document to buy the fund", but that was a plain statement that the signature was not hers.

126. Her identification of the way in which she wrote the middle character "Kit" was such as to clearly establish the signature as not hers.

127. We have considered the possibility, even though it was not put in cross-examination to any of the bank officers, that the signature may have been placed on the document by some other bank officer than Ms Ip. We reject such a proposition as fanciful. No basis was offered why any

other bank officer might perform such an act. On the other hand, there was a clear advantage to Ms Ip in falsifying the signatures. The concept does not raise any doubt in our minds.

128. First, it was not suggested by Ms Ip that some other bank officer may have made the signature. The only suggestion was that Ms Wong might have been wrong in saying that the signature was not hers. For the reasons given above we reject that proposition. Second, Ms Ip had every reason to make the signature.

129. Ms Ip had targets to meet, and the investment by Ms Wong in the fund would have gone towards meeting those targets. It was accordingly in Ms Ip's interest that Ms Wong invest in the fund. Further, if, as appeared to be her position, Ms Ip was embarrassed at not having completed the form properly and did not wish to get the client back to the bank to re-complete the form, completing and signing the form herself would avoid embarrassment.

130. It is right that most people, receiving the notice from the bank that Ms Wong received indicating that a purchase of funds had been made, would, if they had not authorised the purchase, go immediately to the bank and complain. Ms Wong did not do that immediately, but she explained her reasons for not doing so. We accept that most people would not expect the bank to charge redemption fees in these circumstances.

131. But we cannot reject Ms Wong's statement that she believed there may be redemption fees charged if she complained about the situation. She was not a sophisticated investor, and although the belief she

held was not one we think most people would hold, we accept her evidence that that was her belief. It provided ample justification for her delay in raising the matter with the bank. It is entirely consistent also, with the indirect manner, said by her to be "in passing", with which she raised the matter with the bank.

132. It was put to us by Mr Ng in submissions, that Ms Wong may have been confused as to whether or not she had in fact invested in the fund deliberately, by the statement she received, as the statement showed that five fund products had been purchased between 2 January 2007 and 22 January 2007, including the ABN-Amro fund.

133. But a careful examination of the statement shows that the submission was not justified. In fact the statement demonstrates that four other funds were already held by Ms Wong prior to 2 January 2007, and that the ABN-Amro fund was the only fund purchased in January. There was no basis for confusion on the part of Ms Wong.

134. We are accordingly satisfied, to the appropriate standard of proof, that Ms Ip, without the authority of Ms Wong, placed the signature of Ms Wong on the mutual funds investment instruction form, as a result of which the purchase of US$32,000 worth of units in the ABN-Amro Global Emerging Markets Bond Fund was made in the name of Ms Wong.

The signature of Yiu Lei:

135. Again, just as with Ms Wong, Ms Yiu was clear and forthright in her assertion that the signature on the client investment profile

questionnaire was not hers. She too was able to identify characteristics of her signature which enabled her to say that the signature on the document was not hers. While it is right that, having been told by the bank that the signature might not be hers, a seed may have been sown in her mind, the clear difference in the characteristics of the signature make it plain that her identification of the signature as not being hers was genuine, and not as a result of a preconception.

136. The fact that Ms Yiu could not recall in evidence precisely which products were purchased on that day, whereas she identified with some particularity the products purchased in her earlier witness statement, does not in any way challenge her reliability. The hearing was over three years after the event and we would not be at all surprised if details such as that cannot be remembered.

137. We accept that there was a difference between her witness statement and her evidence as to the precise answers she gave to the various questions in relation to the investment profile. But we agree entirely with Ms Yiu that the differences constitute nothing more than a play on words. The meaning is the same, the differences do not challenge her credibility.

138. The fact that the answers endorsed on the investment profile were as wrong as they were, corroborates the statements made by Ms Ip at interview that signatures on other documents were made because she was under pressure. It is entirely realistic that, although having asked the appropriate questions, Ms Ip did not complete the investment profile properly and rather than call Ms Yiu back to the bank, an act which might

have been embarrassing, Ms Ip elected to simply complete and sign Ms Yiu's signature on a fresh investment profile herself. Having not completed the questionnaire properly in the first place Ms Ip guessed at the answers to the various questions, which were later shown to be significantly wrong.

139. We are accordingly satisfied, to the appropriate standard of proof, that Ms Ip, without the authority of Yiu Lei, placed a signature for Yiu Lei on a client investment profile questionnaire, and completed particulars on that questionnaire, which particulars did not properly reflect Yiu Lei's true investment profile.

The signature of Mr Chiang Chi Hang:

140. It is fair to say that in his evidence Mr Chiang did not unequivocally identify the questioned signature as not being his own signature. He was specifically asked to identify it by answering the question: "Is that your signature?" with a yes or no answer. He declined to do so, instead answering in a less than positive manner.

141. Were the evidence of Mr Chiang the only evidence before us on this signature we would be unable to say, to the appropriate standard of proof, that the SFC have established that the signature was not that of Mr Chiang.

142. But in assessing the signature we have also the admission by Ms Ip to Penny Fung, which we accept, that she wrote Mr Chiang's signature on the power of attorney.

143. It was put to us in submission by Mr Ng that the signature of Mr Chiang was not required for the power of attorney to be legally effective. He argued that consequently the allegation that the signature was falsified was inherently improbable and implausible. We reject the submission. It is quite right that the signature is not required for the power of attorney to be effective. But it was required for the bank's records as that signature would provide a specimen from which the bank would ensure that the correct person was acting under the power of attorney. Ms Ip's admission to Penny Fung that she had forgotten to complete the form during the account opening process simply renders the unauthorised placing of the signature by Ms Ip both probable and plausible.

144. In the light of the admission, and having regard to the whole of the evidence, we are satisfied to the appropriate standard of proof that on or about 19 January 2007, Ms Ip, without authority, placed a signature on the power of attorney document for Mr Chiang, the donee of a power of attorney granted to him by his mother, Mdm Siu Lan, a client of CCB, to enable Mr Chiang to operate Mdm Siu's bank account on her behalf.

The signature of Mdm Wong Kam Wah:

145. Mdm Wong did not appear before us to give evidence. Notwithstanding that, by s 219 SFO, we are entitled to receive her statement and place weight upon it.

146. However, although she was clear in her statement to the Hong Kong Monetary Authority that the questioned signature was not hers, the fact that she was not subject to cross-examination in any way inevitably

means that, having regard to the appropriate standard of proof in this case, we must be extremely cautious in relying upon on her evidence alone, to reach a conclusion that Ms Ip had made the allegedly falsified signatures on the questionnaire.

147. Again however, in assessing Mdm Wong's evidence, we were entitled to have regard to the admission made by Ms Ip that she had made that signature. We have accepted that admission as having been voluntarily made by Ms Ip.

148. Mdm Wong and her husband Mr Tsang have subsequently separated. Although the proposition was not put, either in evidence as a proposition in cross-examination, or suggested by Ms Ip in her application for review, we have considered the possibility that Mr Tsang may have placed Mdm Wong's signature on the document. No reason for him doing so was suggested to us, and there appears to be no particular advantage to him in doing so. Mdm Wang did not suggest that possibility in any of her conversations either by telephone with CCB, or in interview with the Monetary Authority. We reject the possibility as being without any basis in the evidence at all.

149. Having regard to the way in which Ms Ip conducted herself, it is entirely probable that she inadvertently failed to obtain Mdm Wong's signature on the document. It is entirely consistent with the statement that Ms Ip made to Penny Fung as to being under pressure to complete documents, and having realised that she had failed to obtain Mdm Wong's signature, Ms Ip placed the signature on the document herself. That would have saved Ms Ip the embarrassment of having to contact Mdm Wong

about the situation, which was accordingly to Ms Ip's advantage.

150. Having regard to the evidence of Mdm Wong, albeit untested, the admission to Penny Fung by Ms Ip that she made that signature, and the complete absence before us of any evidence from Ms Ip to the contrary, we are satisfied, to the appropriate standard of proof, that on or about 16 January 2007, Ms Ip, without authority, falsified the signature of Mdm Wong on the Client Appropriateness Questionnaire-FX Linked Deposit form, and completed particulars on that questionnaire, which particulars did not properly reflect Mdm Wong's investment profile.

Conclusions as to liability:

151. From the foregoing reasons we are satisfied that the SFC was correct in its conclusion that Ms Ip had, without authority, written the signatures of her clients on the four documents.

152. It was not suggested to us, and it is simply beyond argument, that to fabricate signatures in such a manner on client documents, is the act of a person who is not fit and proper to be a regulated person.

153. We accordingly dismiss the application for review and uphold the decision of the SFC.

The penalty imposed:

154. In her application for review, Ms Ip did not, in terms, challenge the penalty of five years prohibition from making application for

appropriate licences. Instead, she confined herself to challenging the finding that the signatures had been falsified and that the decision on SFC as to the circumstances was to be publicised through the press or other media. In her response to the NPDA, she made it plain that she would not in future be making any application for a licence from the Hong Kong Monetary Authority or the SFC, and would not engage herself in financial activities requiring such a licence.

155. Ms Ip did not offer any justification for not publishing the decision of the SFC other than to suggest that in the absence of appropriate proof that she had falsified signatures publication would have an adverse consequences on her, and she had no dishonest intention.

156. Although Ms Ip has not given evidence before us it is quite apparent that she has falsified the signatures primarily through embarrassment of having to call clients back to the bank in circumstances where she has omitted to properly complete the necessary documentation. We are unable to discern any dishonest intention on the part of Ms Ip, to benefit herself financially at the direct expense of any of the clients.

157. But that is not a satisfactory explanation for the signatures.

158. The falsification of the signature of Ms Wong Kit Ming is of particular concern to us. As a result of the falsification of that signature a sum of US$32,000 was withdrawn from Ms Wong's account and placed into an investment fund. That plainly jeopardised, and potentially prejudiced Ms Wong's financial position. It had the advantage to Ms Ip that she was assisted in meeting the targets she was required to meet. In

any terms, it was an action which went well beyond merely covering up an embarrassing situation.

159. The same may be said for the falsification of both the answers and the signature to Ms Yiu's client investment profile questionnaire. The false answers provided by Ms Ip resulted in Ms Yiu having an investment profile by which she was apparently willing to accept a substantially higher investment risk than she was, in reality, willing to accept. That placed Ms Yiu's position in prejudice, and again went well beyond merely covering up an embarrassing situation.

160. As Mdm Wong demonstrated in her statement to the Monetary Authority, the risk in the falsification of her signature was that the bank may have not been prepared to accept other signatures actually signed by her, if they did not match that on the questionnaire. It was not a position which prejudiced her, but was a situation which had the potential to cause her a great deal of difficulty, particularly having regard to the fact that Mdm Wong resided outside Hong Kong.

161. In respect of Mr Chiang, the falsification of his signature meant that should he have endeavoured to act upon the power of attorney on behalf of his mother, perfectly properly, his actions may have been rejected, because the signature given by him did not match the specimen signature on the power of attorney document. That would have caused him considerable inconvenience.

162. We accept entirely is that nobody has suffered any loss as a result of Ms Ip's actions. However that is merely fortuitous. We accept

also that Ms Ip may well have been under pressure to complete her work and may have felt considerable embarrassment of having to call customers back to the bank to rectify situations which had arisen as a result of her failure to have the documentation properly completed.

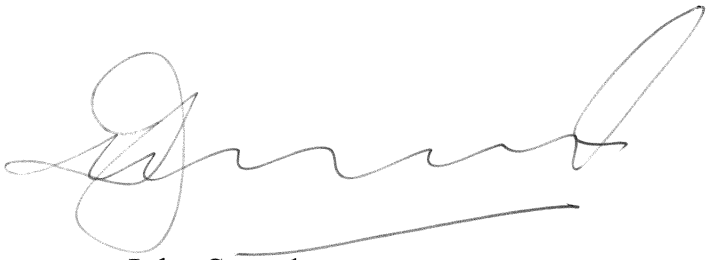
163. But the matters set out in paragraphs 158-162 above cannot be disregarded. These matters put Ms Ip's wrongdoing in a proper context and appropriately justify the publication of the circumstances. Bearing these matters in mind, the five-year ban was appropriate.

164. Publication of the decision by the SFC properly serves to warn those in the financial industry that shortcuts, such as that taken by Ms Ip, have consequences beyond mere convenience to a bank officer and client, and simply cannot be tolerated. Publication is accordingly an appropriate aspect of the penalty imposed.

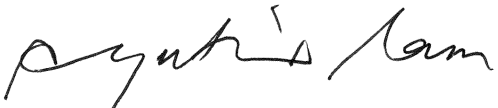
Disposition of the application for review:

165. For these reasons the application for review is rejected.

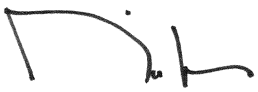
166. There will be an order nisi that Ms Ip must pay the costs of the SFC on the application for review, on a party and party basis, to be taxed if not agreed.



John Saunders
Judge of the Court of First Instance
High Court
Chairman



Dr Cynthia Lam
Member



Mr Michael T P Sze
Member

Mr Danny Ng instructed by Messrs Tung, Ng, Tse & Heung, solicitors for the Applicant

Mr Simon Westbrook SC, leading Ms Rachel Lam, instructed by the Securities and Futures Commission, for the Respondent