

Soliciting former clients: do's and don'ts

By CFA Society Singapore Advocacy Team

THE Singapore labour market recovery continues to be uneven across different sectors a year and the half into the Covid-19 pandemic. With hospitalisation numbers up, fresh restrictions on dining out continue to hobble the food and beverage sector. Uncertainties in the external economic environment are also concerns for trade-dependent sectors.

Nevertheless, there are pockets of growth that could see employers putting in budgets to hire executives in 2022. This includes some companies in the financial sector especially in the environmental, social and governance (ESG) space. For employees who do get hired, they must not violate employment non-solicitation clauses, company codes and standards, including rules and regulations.

The Loyalty Standard

As a global professional body for investment management professionals, CFA Institute provides guidance to employees and professionals who leave an employer, through the Loyalty Standard. The standard requires employees to protect the interests of their employer by refraining from any conduct that would injure the firm, deprive it of profit, or deprive it of their skills and ability.

In matters related to their employment, employees must not engage in conduct that harms the interests of their employer. Implied in this standard is the obligation of employees to comply with the policies and procedures established by their employers that govern the employer-employee relationship – to the extent that such policies and procedures do not conflict with applicable laws, rules or regulations or the code and standards.

This standard is not meant to be a blanket requirement to place employer interests ahead of personal interests in all matters. For example, the standard does not require employees to subordinate important personal and family obligations to their work when working from home.

Employees should enter into a dialogue with their employer about balancing personal and employment obligations when personal matters may

interfere with their work on a regular or significant basis.

Leaving an employer

When employees are planning to leave their current employer, they must continue to act in the employer's best interest. They must not engage in any activities that would conflict with this duty until their resignation becomes effective.

It is difficult to define specific guidelines for those employees who are planning to compete with their employer as part of a new venture.

The circumstances of each situation must be reviewed to distinguish permissible preparations from violations of duty. Activities that might constitute a violation, especially in combination, include the following:

- Misappropriation of trade secrets
- Misuse of confidential information
- Solicitation of the employer's clients prior to cessation of employment
- Self-dealing (appropriating for one's own property a business opportunity or information belonging to one's employer)
- Misappropriation of clients or client lists

A departing employee is generally free to make arrangements or preparations to go into a competitive business before terminating the relationship with his or her employer, as long as such preparations do not breach the employee's duty of loyalty. An employee who is contemplating seeking other employment must not contact existing clients or potential clients prior to leaving his or her employer for purposes of soliciting their business for the new employer.

Once notice is provided to the employer of the intent to resign, the employee must follow the employer's policies and procedures related to notifying clients of his or her planned departure. In addition, the employee must not take records or files to a new employer without the written permission of the previous employer.

Once an employee has left the firm, the skills and experience that an employee obtained while em-



A departing employee is generally free to make arrangements or preparations to go into a competitive business before terminating the relationship with his or her employer, as long as such preparations do not breach the employee's duty of loyalty. PHOTO: PIXABAY

ployed are not "confidential" or "privileged" information. Similarly, simple knowledge of the names and existence of former clients is generally not confidential information unless deemed such by an agreement or by law.

The Loyalty Standard does not prohibit experience or knowledge gained at one employer from being used at another employer.

Firm records or work performed on behalf of the firm that is stored in paper copy or electronically for the employees' convenience while employed, however, should be erased or returned to the employer unless the firm gives permission to keep those records after employment ends.

The standard also does not prohibit former employees from contacting clients of their previous firm as long as the contact information

does not come from the records of the former employer or violate an applicable "non-compete agreement".

Employees are free to use public information after departing to contact former clients without violating the standard as long as there is no specific agreement not to do so.

Employers often require employees to sign non-solicitation agreements that preclude a departing employee from engaging in certain conduct for a period of time. Employees should take care to review the terms of any such agreement when leaving their employer to determine what conduct, if any, those agreements may prohibit.

Ethics in action

Here is a case to illustrate how the Loyalty Standard works. The case is

adapted from material developed by CFA Institute based on facts from a CFA Institute Professional Conduct enforcement action.

Alisa Sulisto has been a private banker for a bank for the past eight years. She has been very successful and built a considerable client portfolio during that time but is extremely frustrated by the recent loss of reputation by her current employer and subsequent client insecurity.

A locally renowned headhunter contacted Ms Sulisto and offered her an interesting job with a competing private bank. This bank offers a substantial signing bonus for advisers with their own client portfolios. Ms Sulisto figures that she can solicit at least 70 per cent of her clients to follow her and gladly enters into the new employment contract.

Ms Sulisto may contact former cli-

ents upon termination of her employment, but she is prohibited from using client records built by and kept with her in her capacity as an employee of her current bank.

Client lists are proprietary information of her current employer and must not be used for her or her new employer's benefit. The use of written, electronic or any other form of records other than publicly available information to contact her former clients will be a violation of the Loyalty Standard.

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