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## STATEMENT OF DISCIPLINARY ACTION

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### The Disciplinary Action

1. The Securities and Futures Commission (**SFC**) has publicly reprimanded Guangdong Securities Limited (**GSL**), now known as Sinolink Securities (Hong Kong) Company Limited (**Sinolink**), and fined it \$3 million pursuant to section 194 of the Securities and Futures Ordinance.
2. The SFC found that between February 2011 and March 2013 (**Relevant Period**), GSL's internal controls for handling payments from client accounts to third parties were deficient and inadequate. GSL failed to demonstrate that it had conducted appropriate enquiries before processing third party payments. Enquiries which were allegedly made at the time, and the rationale for approving the payments, were not properly documented in writing.<sup>1</sup>
3. The failure set out above suggests that GSL has breached:
  - (a) paragraphs 4.2.2 and 6.2.8 of the Prevention of Money Laundering and Terrorist Financing Guidance Note<sup>2</sup> (**AML Guidance Note**);
  - (b) paragraphs 2.1 and 5.10 of the Guideline on Anti-Money Laundering and Counter-Terrorist Financing (**AML Guideline**); and
  - (c) General Principles 2 and 7 of the Code of Conduct for Persons Licensed by or Registered with the SFC (**Code of Conduct**).

### Summary of regulatory requirements

4. Licensed corporations are required under the AML Guidance Note and AML Guideline to be vigilant in monitoring the activities of customers and detecting unusual or suspicious transactions which may indicate money laundering and terrorist financing (**ML/TF**).
5. Paragraph 6.2.8 of the AML Guidance Note and paragraph 5.10 of the AML Guideline require licensed corporations to pay special attention to all complex, unusual large transactions and all unusual patterns of transactions which have no apparent economic or lawful purpose. The background and purpose, including where appropriate the circumstances, of the transactions should be examined. The findings and outcomes of these examinations should be properly documented in writing and be available to assist the relevant authorities.

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<sup>1</sup> The breaches occurred during the Relevant Period before the business of GSL was acquired by Sinolink Securities Co., Ltd. in March 2015. The firm changed its name to Sinolink in November 2015.

<sup>2</sup> The AML Guidance Note was published by the SFC in September 2009 and remained effective until 31 March 2012. The AML Guidance Note was applicable during part of the Relevant Period. From 1 April 2012, the AML Guidance Note was superseded by the AML Guideline and the "Prevention of Money Laundering and Terrorist Financing Guideline issued by the Securities and Futures Commission for Associated Entities".

6. In detecting unusual or suspicious transactions, licensed corporations should have regard to the relevant suspicious indicators set out in the AML Guidance Note and AML Guideline<sup>3</sup> which would assist them in identifying the types of activities or transactions that could be a cause of scrutiny and should prompt further enquiries. Suspicious indicators include, among others, transfers of funds between securities accounts of parties that do not appear to have an apparent relationship, and frequent fund transfers to third parties that are unrelated, unverified or difficult to verify.
7. Further, effective policies, procedures and controls for monitoring, detecting and reporting suspicious activities of clients are critical for licensed corporations and their licensed representatives to comply with relevant statutory and regulatory requirements to mitigate the risks of ML/TF.
8. Paragraph 4.2.2 of the AML Guidance Note and paragraph 2.1 of the AML Guideline require licensed corporations to take all reasonable measures to ensure that proper safeguards exist to mitigate the risks of ML/TF, including implementation of appropriate policies and procedures for the prevention of money laundering and terrorist financing and ensuring their effectiveness and compliance with all relevant legal and regulatory requirements.
9. General Principle 2 of the Code of Conduct requires a licensed corporation to act with due skill, care and diligence, in the best interests of its clients and the integrity of the market.
10. General Principle 7 of the Code of Conduct requires a licensed corporation to comply with all regulatory requirements applicable to the conduct of its business activities.

### **Summary of facts**

11. GSL's policies and procedures provided that third party transfers were generally not accepted. Under the exceptional circumstance that third party transfers were to be made, clients had to provide their relationship with the third party and the reason for the payment by completing an application form. The identity of the third party had to be verified and the payment had to be approved by management.
12. In short, the background, purpose and circumstances of the third party payment were expected to have been reviewed and examined in light of the identity of the third party, and the relationship between the client and the third party, before it could be approved by management.
13. Notwithstanding the policy of general prohibition of third party payments, GSL's records indicated that there were approximately 700 payments from client accounts to third parties during the Relevant Period. Only about 570 application forms for these 700 third party payments were found during the course of the SFC's investigation. Among these 570 third party payments with accompanying application forms:
  - (a) only about 67 third party payments were supported with proper documentation and records; and

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<sup>3</sup> Appendix C(ii) of AML Guidance Note and paragraphs 7.14 and 7.39 of the AML Guideline.

- (b) for at least 184 payments, the relationship between the client and the third party and/or the purpose of payment was not / could not be verified because the relationship and/or reason for payment was either not stated or stated to be “friends transfer”/“business dealings”/“loan”/“repayment” without any supporting documentation.
- 14. In particular, the top 30 client accounts most actively involved in third party payments accounted for over 270 third party payments, out of which at least 35 payments involving more than \$212.5 million were approved without supporting documentation and/or adequate records of the client’s relationship with the third party and/or the reason for payment. These payments were suspicious for the purposes of the AML Guidance Note and the AML Guideline not only because they were not services rendered by GSL to customers under ordinary circumstances, but they were also irregular in that:
  - (a) the third party payments involved millions and in one case up to over \$39 million;
  - (b) out of the 35 third party payments, the reason for 8 payments was not provided, 27 payments was merely “friend transfer” or “business dealings” without any apparent economic or visible lawful purpose;
  - (c) on one occasion, payments for a total of \$3.88 million were made from three unrelated client accounts to the same third party on the same day, all using “friend transfer” as the reason; and
  - (d) on a separate occasion, \$10 million were made from two unrelated client accounts to the same third party on the same day, also using “friend transfer” as the reason.
- 15. The application forms for third party payments offered little information in understanding the relationship between the client accounts and the third parties, as well as the economic and lawful purpose of the third party payments.
- 16. In addition, despite having no meaningful purpose recorded on the application forms for third party payments, staff of the dealing department and management proceeded to approve such payments without providing any meaningful reasons for approval or documenting rationale which also could not explain any economic or lawful purpose behind those third party payments, contrary to GSL’s internal policies and procedures.
- 17. GSL should have been vigilant in monitoring and detecting unusual or suspicious transactions which might suggest money laundering. Third party payments are potentially suspicious or unusual activities which require increased scrutiny. Effective internal control measures to monitor the activities of its clients and to mitigate the risks of money laundering and terrorist financing are required.
- 18. The SFC found that GSL’s controls for third party payments were deficient and inadequate because:
  - (a) the exception of third party payment apparently became a norm;
  - (b) the responsible officers did not properly document the enquiries, if any, made of the third party payments before giving their approval;
  - (c) there was no record of the verification of the third party’s identity and their relationships with the clients;

- (d) the reason and relationship stated to be “friends” or “business” transfer did not offer any meaningful explanation to the background and purpose of the payments but were subsequently approved by management; and
  - (e) the application forms for third party payment also failed to establish or record in writing the enquiries allegedly made by staff of GSL.
19. The SFC considered that GSL failed to:
- (a) effectively implement its policies and procedures for handling third party payments, in breach of paragraph 4.2.2 of the AML Guidance Note and paragraph 2.1 of the AML Guideline; and
  - (b) demonstrate that it had conducted appropriate enquiries before processing the third party payments. Enquiries which were allegedly made at the time, and the rationale for approving the payments, were not properly documented in writing, in breach of paragraph 6.2.8 of the AML Guidance Note and paragraph 5.10 of the AML Guideline.
20. GSL’s failures were also in breach of General Principles 2 and 7 of the Code of Conduct which require the firm to act with due skill, care and diligence in the best interests of the integrity of the market, and to comply with all regulatory requirements applicable to the conduct of its business activities.

## **Conclusion**

21. Having considered all the circumstances, the SFC is of the view that GSL is guilty of misconduct and its fitness and properness to carry on regulated activities have been called into question.
22. In deciding the disciplinary sanction set out in paragraph 1, the SFC has had regard to its Disciplinary Fining Guidelines and has taken into account all relevant circumstances, including:
- (a) GSL’s misconduct lasted for over two years;
  - (b) GSL has been under the ownership of Sinolink Securities Co., Ltd. since March 2015 and the failures were attributable to the former senior management which has changed since the misconduct occurred;
  - (c) neither GSL nor Sinolink has a disciplinary record with the SFC in relation to AML failures; and
  - (d) the cooperation of Sinolink in accepting the disciplinary action and not disputing the regulatory concerns.