

STATEMENT OF DISCIPLINARY ACTION

The Disciplinary Action

1. The Securities and Futures Commission (**SFC**) has publicly reprimanded BMI Securities Limited (**BMISL**)¹ and fined it \$3,700,000 pursuant to section 194 of the Securities and Futures Ordinance (**SFO**).
2. The SFC has also suspended the licence of BMISL's responsible officer, Tang Wing Chi, Maggie (**Tang**)², for 5.5 months from 11 February 2020 to 25 July 2020.
3. The disciplinary action is taken in respect of BMISL's internal control deficiencies and regulatory breaches in relation to anti-money laundering and counter financing of terrorism (**AML/CFT**) between 1 May 2016 and 30 November 2017 (**Relevant Period**). Specifically, BMISL failed to:
 - (a) implement adequate internal controls to mitigate the risk of money laundering and terrorist financing (**ML/TF**) associated with suspicious transactions conducted through bought and sold notes (**BS Notes**);
 - (b) identify, and conduct proper enquiries and sufficient scrutiny on, suspicious transactions and consider reporting them to the Joint Financial Intelligence Unit (**JFIU**) where appropriate;
 - (c) perform appropriate customer due diligence (**CDD**) and keep customer information up-to-date and relevant; and
 - (d) put in place adequate and effective procedures for the identification of politically exposed persons (**PEP**) and the screening of terrorist and sanction designations.

Summary of facts

Inadequate internal controls to mitigate the ML/TF risk associated with suspicious transactions conducted through BS Notes

4. A number of clients had, through BMISL, subscribed for the placing shares of two listed companies in 2016. The clients subsequently transferred most or all of their placing shares to third parties using BS Notes in off-exchange transactions for substantial amounts of consideration ranging from \$4,462,500 to \$855,869,760.
5. Despite the unusual and/or suspicious circumstances of the transactions (see paragraphs 7 to 19 below), BMISL did not make appropriate enquiries to understand the reasons for, and the circumstances leading to, the clients' sale of shares to third parties by way of BS Notes, nor did BMISL take any steps to ascertain the relationships between the clients and the third parties.

¹ BMISL is licensed to carry on business in in Type 1 (dealing in securities) regulated activity under the SFO.

² Tang is licensed under the SFO to carry on Type 1 (dealing in securities) regulated activity on behalf of BMISL and Type 9 (asset management) regulated activity on behalf of BMI Funds Management Limited. Tang has been a responsible officer of BMISL since 17 February 2016.

6. BMISL in fact did not put in place any policies or procedures governing the handling of suspicious transactions conducted through BS Notes.

Failure to identify and conduct proper enquiries and scrutiny on suspicious transactions

Case 1

7. BMISL was engaged as a sub-placing agent in the placement of the shares of Bank of Jinzhou Co Ltd (**BOJ**) in or around December 2016. It placed 93,232,000 BOJ shares to Client A for the consideration of around \$699 million.
8. In less than three months after it was allotted with BOJ shares, Client A transferred all the BOJ shares to Client B by way of BS Notes for the consideration of around \$856 million. Client A and Client B were companies incorporated in the British Virgin Islands (**BVI**).
9. The circumstances in relation to the subscription of 93,232,000 BOJ shares by Client A and their subsequent transfer to Client B are unusual and suspicious. For example:
 - (a) Client A changed its sole shareholder and beneficial owner shortly (thirteen days) after it opened the account with BMISL.
 - (b) The amounts involved in the transactions were incommensurate with the financial profiles of Client A and Client B. The account opening forms of Client A and Client B indicated that their net asset values were under \$1 million at the time of account opening.
 - (c) There are a number of similarities in the circumstances in which the accounts of Client A and Client B were opened:
 - (i) Client A and Client B were both incorporated in BVI on the same date.
 - (ii) They opened a bank account in Macau on the same date.
 - (iii) They opened the securities accounts with BMISL on the same date.
 - (iv) Their account opening forms were signed on the same date. The signing of the account opening forms and the related identity documents of the two accounts were witnessed and certified by the same certified public accountant in Mainland China on the same date.
 - (d) Apart from the transactions stated above, Client A and Client B did not conduct any other transactions in their BMISL accounts.
10. Despite the red flags set out above, BMISL failed to identify the suspicious features of the transactions and conduct proper enquiries on the transactions. In particular, BMISL did not make appropriate enquiries to ascertain the clients' source of funds, the background and underlying reasons for conducting the transaction by BS Notes, and the relationship between the two clients.

Case 2

11. In May 2016, Client C, a lady residing in Beijing, opened an account with BMISL and submitted an application to subscribe for the shares of Yadea Group Holdings Ltd (**Yadea**)³.
12. On 19 May 2016, 109,830,000 shares of Yadea were allotted to Client C for the consideration of \$188,907,600.
13. Between May and December 2016, Client C disposed of all the Yadea shares, of which 99% (i.e. 109,020,000 shares) were sold by way of BS Note to 19 third parties for the total consideration of \$190,191,420.
14. The circumstances in relation to Client C's subscription of 109,830,000 Yadea shares and their subsequent transfer to the 19 third parties are unusual and suspicious in that:
 - (a) Client C was a housewife with no previous investment experience in stocks and other investment products, and her risk tolerance level was indicated as "low" in the account opening form.
 - (b) The use of BS Notes suggests that the transactions were pre-arranged off-exchange trading that were out of the ordinary range of services normally requested and out of line with the pattern of transactions previously engaged by Client C.
 - (c) The relationships between Client C and the 19 third parties were unknown, and no explanations regarding the background and purpose of the transactions have been provided.
 - (d) Except for the transactions in the Yadea shares stated above, Client C did not conduct any other securities transactions in her BMISL account.
15. Notwithstanding the unusual and/or suspicious features set out above, BMISL did not make any enquiries to examine the background and purpose of the relevant transactions or take any steps to ascertain the relationships between Client C and the 19 third parties.

Case 3

16. Client D opened a securities account with BMISL in September 2016. Eight days after he opened the account, he purchased 9,275,000 Yadea shares from another BMISL client, Client E, using BS Notes for the consideration of \$14,840,000.
17. In March 2017, Client D sold all 9,275,000 Yadea shares to a third party for the consideration of \$15,000,000 by BS Notes.
18. The circumstances in relation to the transactions in Client D's account are unusual and/or suspicious in that:

³ BMISL was engaged as a sub-underwriter in relation to the initial public offering of the shares of Yadea in May 2016.

- (a) Client D did not conduct any on-exchange transactions through his BMISL account. It appears that he had opened the account to conduct two transactions only, i.e. buying Yadea shares from Client E and selling the same to the third party through BS Notes. Client D closed his BMISL account shortly after he transferred all the Yadea shares to the third party.
 - (b) The use of BS Notes suggests that the transactions were pre-arranged off-exchange trading that were out of the ordinary range of services normally requested.
 - (c) The relationships between Client D and Client E/the third party, and the reasons for using BS Notes to conduct the two transactions were unknown.
19. Notwithstanding the unusual/suspicious circumstances of the transactions, BMISL did not made any enquiries to examine the background and purpose of the relevant transactions or take any steps to ascertain the relationships between Client D and Client E/the third party.

Failure to conduct appropriate CDD and keep customer information up-to-date and relevant

20. The evidence reveals that:
- (a) BMISL failed to conduct appropriate CDD to understand the background and source of wealth and funds of Client A and Client B. Both clients stated in their account opening forms that their business nature was “investment”. However, no further details regarding their businesses have been provided. BMISL did not make any enquiries regarding the clients’ source of funds, and there was limited information about the background of the clients’ beneficial owners.
 - (b) Notwithstanding that the sizes of the transactions were inconsistent with the financial information stated in the clients’ account opening forms, BMISL did not carry out further CDD procedures to review the clients’ information, and ensure that the ML/TF risks involved were fully understood and the clients’ data and information remained up-to-date and relevant.
 - (c) Despite the material change in Client A’s beneficial ownership, BMISL did not carry out any enquiries to examine the reasons for the change in such a short period of time after account opening, and to ascertain the background of the new beneficial owners of Client A.

Inadequate and ineffective procedures for the identification of PEP and the screening of terrorist and sanction designations

21. Prior to December 2017, BMISL relied on its settlement clerks to perform internet searches for information about a prospective client. If the searches revealed information relating to any PEPs or current terrorist and sanction designations, the settlement clerks would carry out further checking and print out all relevant information for the responsible officers’ handling. However, if the searches did not reveal any exceptions, the settlement clerks were not required to print out a copy of the search result for the responsible officers’ review.

22. The systems and procedures adopted by BMISL were deficient:
- (a) BMISL did not provide any written guidelines on the determination of PEP. In performing the internet search, the settlement clerks would exercise their own judgement in determining whether a prospective client was a PEP or high risk individual.
 - (b) As there was no requirement to document the search results (unless exceptions were noted), there was no way for BMISL's management to monitor and assess whether the settlement clerks had performed the search on all connected persons of the clients properly, or at all.
 - (c) Further, without proper records, BMISL was unable to demonstrate its compliance with the regulatory requirements in relation to the identification of PEP and the screening of terrorist and sanction designations.
23. The evidence also revealed that BMISL did not put in place any procedures to screen its entire client base as soon as practicable after new terrorist and sanction designations were published as required by the regulatory requirements.

Tang's failures

24. During the Relevant Period, Tang was responsible for the overall management of BMISL. She was also assigned as the Money Laundering Reporting Officer at BMISL responsible for the identification and reporting of suspicious transactions and the establishment of internal AML/CFT policies and procedures.
25. The SFC found that BMISL's breaches were attributable to Tang's failure to discharge her duties as a responsible officer and a member of BMISL's senior management. In particular, Tang failed to identify and conduct appropriate enquiries on the suspicious transactions and to ensure that BMISL had established and implemented adequate and effective AML/CFT systems to mitigate the risks of ML/TF.

The SFC's findings

26. The failures of BMISL set out above constitute a breach of:
- (a) Section 23 of Schedule 2 to the Anti-Money Laundering and Counter-Terrorist Financing Ordinance (**AMLO**) and paragraph 2.1 of the of the Guideline on Anti-Money Laundering and Counter-Terrorist Financing (April 2015) (**AML Guideline**), which require licensed corporations to take all reasonable measures to ensure that proper safeguards exist to mitigate the risks of ML/TF and to prevent a contravention of any CDD and record keeping requirements under the AMLO.
 - (b) Paragraph 2.2 of the AML Guideline, which requires licensed corporations to establish and implement adequate and appropriate internal AML/CFT policies.

- (c) General Principle 3 of the Code of Conduct for Persons Licensed by or Registered with the Securities and Futures Commission (**Code of Conduct**), which requires licensed corporations to have and employ effectively the resources and procedures which are needed for the proper performance of its business activities.
- (d) Paragraph 5.1 of the Code of Conduct, which requires licensed corporations to take all reasonable steps to establish the true and full identity of each of its clients and of each client's financial situation.
- (e) Section 2(1)(c) of Schedule 2 of the AMLO and paragraphs 4.6.1 and 4.6.2 of the AML Guideline, which require licensed corporations to obtain satisfactory information from all new customers as to the intended purpose and reason for opening the account or establishing the relationship.
- (f) Section 5(1)(a) of Schedule 2 to the AMLO and paragraphs 4.7.12 and 5.1(a) of the AML Guideline, which require licensed corporations to review from time to time client data and information to ensure that they are up-to-date and relevant.
- (g) Section 5(1)(b) of Schedule 2 to the AMLO and paragraph 5.1(b) of the AML Guideline, which require licensed corporations to continuously monitor their business relationship with the clients by monitoring the clients' activities to ensure that they are consistent with their knowledge of the clients and the clients' business, risk profile and source of funds.
- (h) Paragraphs 5.4 and 5.5 of the AML Guideline, which require licensed corporations to be vigilant for changes on the basis of the business relationship with the customer over time and, where the basis of the business relationship changes significantly, carry out further CDD procedures to ensure that the ML/TF risk involved and basis of the relationship are fully understood.
- (i) Section 6(1) of Schedule 2 to the AMLO and paragraph 4.18.1 of the AML Guideline, which require licensed corporations to perform CDD measures when (i) a transaction takes place with regard to a customer, which is, by virtue of the amount or nature of the transaction, unusual or suspicious; or is not consistent with the licensed corporation's knowledge of the customer or the customer's business or risk profile, or with its knowledge of the source of the customer's funds; or (ii) a material change occurs in the way in which the customer's account is operated.
- (j) Section 5(1)(c) of Schedule 2 to the AMLO and paragraphs 5.1(c), 5.10 and 5.11 of the AML Guideline, which require licensed corporations to identify transactions that are complex, large or unusual, make relevant enquiries to examine the background and purpose of the transactions, document the enquiries made (and their results), and report the findings to the JFIU where appropriate.
- (k) Paragraphs 7.5(b), 7.11, 7.14 and 7.39 of the AML Guideline, which require licensed corporations to identify situations that might give rise to a suspicion of ML/TF and make appropriate disclosure to JFIU.
- (l) Section 19(1) of Schedule 2 to the AMLO and paragraphs 4.13.9 and 4.13.15 of the AML Guideline, which require licensed corporations to

establish and maintain effective procedures for determining whether a customer or a beneficial owner of a customer is a PEP or domestic PEP.

- (m) Paragraphs 6.22 of the AML Guideline, which requires licensed corporations to screen customers against current terrorist and sanction designations at the establishment of the relationship, and thereafter, screen their entire client base as soon as practicable after new terrorist and sanction designations are published by the relevant authorities under their respective regulatory regimes.
 - (n) Paragraph 6.25 of the AML Guideline, which requires licensed corporations to record the screening (and any results) performed pursuant to paragraph 6.22 of the AML Guideline.
27. The failures of Tang set out above constitute a breach:
- (a) General Principle 9 of the Code of Conduct, which provides that the senior management of a licensed corporation should bear primary responsibility for ensuring the maintenance of appropriate standards of conduct and adherence to proper procedures by the firm; and
 - (b) paragraph 14.1 of the Code of Conduct, which requires the senior management of a licensed corporation to properly manage the risks associated with the business of the licensed corporation.

Conclusion

28. Having considered all relevant circumstances, the SFC is of the opinion that BMISL and Tang have been guilty of misconduct and their fitness and properness to carry on regulated activities have been called into question.
29. In deciding the disciplinary sanction set out in paragraphs 1 and 2 above, the SFC has taken into account all of the circumstances, including:
- (a) a clear and deterrent message needs to be sent to the market that AML/CFT failures will not be tolerated;
 - (b) the cooperation of BMISL and Tang with the SFC in resolving the SFC's concerns;
 - (c) BMISL has taken remedial actions to enhance its AML/CFT systems and controls;
 - (d) BMISL has undertaken to provide the SFC with a report prepared by an independent reviewer within twelve months to confirm that all the identified concerns are satisfactorily rectified;
 - (e) BMISL and Tang have otherwise clean disciplinary records with the SFC; and
 - (f) BMISL's financial situation.