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## STATEMENT OF DISCIPLINARY ACTION

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### The Disciplinary Action

1. The Securities and Futures Commission (**SFC**) has reprimanded and fined Emperor Securities Limited (**ESL**)<sup>1</sup> and Emperor Futures Limited (**EFL**)<sup>2</sup> (collectively, **Emperor**) \$5.4 million pursuant to section 194 of the SFO.
2. The SFC's investigation revealed that between 1 December 2016 and 10 December 2017 (**Relevant Period**), Emperor failed to take all reasonable measures to ensure that proper safeguards exist to mitigate the risks of money laundering and terrorist financing (**ML/TF**) associated with third party deposits and payments, as they failed to:
  - (a) implement adequate and effective policies and procedures for handling third party fund transfers; and
  - (b) conduct appropriate enquiries before approving third party fund transfers.

### Summary of facts

#### *Regulatory requirements*

3. Section 23 of Schedule 2 to the Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) Ordinance (**AMLO**) and paragraph 2.1 of the Guideline on Anti-Money Laundering and Counter-Terrorist Financing (**AML Guideline**) require licensed corporations to take all reasonable measures to ensure that proper safeguards exist to mitigate the ML/TF risks, and to prevent a contravention of any customer due diligence and record-keeping requirements under the AMLO. To ensure compliance with this requirement, licensed corporations should implement appropriate internal anti-money laundering and counter-terrorist financing (**AML/CFT**) policies, procedures and controls.
4. Section 5(1) of Schedule 2 to the AMLO and paragraphs 5.1, 5.10 and 5.11 of the AML Guideline require licensed corporations to continuously monitor their business relationship with their clients. The requirements include but are not limited to the following:
  - (a) Monitoring the activities of the clients to ensure that they are consistent with the licensed corporation's knowledge of the nature or business, risk profile and source of funds of the clients.

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<sup>1</sup> ESL is licensed to carry on Type 1 (dealing in securities) and Type 4 (advising on securities) regulated activities under the Securities and Futures Ordinance (**SFO**).

<sup>2</sup> EFL is licensed to carry on Type 2 (dealing in futures contracts) and Type 5 (advising on futures contracts) regulated activities under the SFO.

- (b) Identifying transactions that are complex, large or unusual or patterns of transactions that have no apparent economic or lawful purpose and which may indicate ML/TF.
  - (c) Where transactions that are complex, large or unusual, or patterns of transactions which have no apparent economic or lawful purpose are noted, licensed corporations should make relevant enquiries, examine the background and purpose, including where appropriate the circumstances, of the transactions. The findings and outcomes of these examinations should be properly documented in writing and be available to assist the relevant authorities.
5. Paragraphs 7.14 and 7.39 of the AML Guideline set out examples of situations that might give rise to suspicion, or red flags, which include but are not limited to the following:
- (a) Transactions or instructions which have no apparent legitimate purpose and/or appear not to have a commercial rationale.
  - (b) Where the transaction being requested by the client, without reasonable explanation, is out of the ordinary range of services normally requested, or is outside the experience of the financial services business in relation to the particular client.
6. General Principle 3 of the Code of Conduct for Persons Licensed by or Registered with the Securities and Futures Commission (**Code of Conduct**) requires a licensed corporation to have and employ effectively the resources and procedures which are needed for the proper performance of its business activities.
7. General Principle 7 and paragraph 12.1 of the Code of Conduct require licensed corporations to comply with, and implement and maintain measures appropriate to ensuring compliance with, all regulatory requirements applicable to the conduct of their business activities.

*Inadequate measures to mitigate ML/TF risk associated with third party fund transfers*

8. During the Relevant Period, ESL and EFL processed and approved 732<sup>3</sup> and 32<sup>4</sup> third party fund transfers respectively (**Concerned Transfers**) without undergoing sufficient due diligence to validate the relationship between the clients and the third parties, and/or the reason for the third party fund transfers.
9. The Concerned Transfers involved unverified relationship and/or situation that might give rise to suspicion under the AMLO and AML Guideline:

*Transfers with unverified relationship*

- (a) All the transfers were made to/from third parties whose relationships with the clients were unverified or difficult to verify, including:

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<sup>3</sup> The 732 transfers comprised 272 third party deposits, 381 third party payments, and 79 intra-account fund transfers, with an aggregate amount of around \$1.05 billion.

<sup>4</sup> The 32 transfers comprised 19 third party deposits, four third party payments, and nine intra-account fund transfers, with an aggregate amount of around \$17.6 million.

- (i) spouse and relatives;
- (ii) director, shareholder, business partner and money lender; and
- (iii) friend and colleague.

*Transfers which raised red flags*

- (b) The transfers have no apparent economic or lawful purpose and were out of the ordinary range of services normally requested by a client. Specifically:
  - (i) the reasons for 25% of the transfers were not provided in the third party fund transfer request forms<sup>5</sup> (**Third Party Forms**) and were therefore unknown;
  - (ii) the reasons for 40% of the transfers were stated to be loan, loan repayment, fund allocation, and business development/arrangement, which were not supported by any relevant documents that could meaningfully explain whether the transfers had any apparent economic or lawful purpose, and why the clients had to use their securities accounts for conducting those transfers to/from the third parties; and
  - (iii) the reasons for 26% of the transfers were stated to be not being in Hong Kong, not having a Hong Kong bank account, payment of living expenses, and not convenient to get around or handle financial matters, which were not satisfactory explanation for the third party fund transfers, and/or were out of the ordinary range of services normally requested by a client.
- (c) Some of the transfers appeared to be unusual and involve frequent transfers to/from the same third party. For instance:
  - (i) there were six third party payments to, and two intra-account transfers with, the same person (**H**). H was also a client of ESL and claimed to be:
    1. sister-in-law, niece and daughter of seven different clients who instructed third party payments or transfers to her as loan repayments; and
    2. daughter-in-law of another client who instructed third party payment to her as payment of living expense;
  - (ii) \$160 million was transferred among three clients on the same day, namely from Company C to Client A as business partner, and then from Client A to Company S as business partner, for the same reason of business arrangement. However, the corporate documents of Company C and Company S provided for the transfers disclose no information on the alleged

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<sup>5</sup> Emperor required clients to fill in and sign designated forms for requesting third party deposits, third party payments and intra-account fund transfers.

relationship and reason for the transfers. ESL made no enquiry as to why the transfer from Company C to Company S had to be routed via Client A's account; and

(iii) there were four intra-account transfers to the same person (**G**). G was a client of EFL and claimed to have:

1. relationships of father/daughter and father-in-law/son-in-law with two other clients who instructed payments to him for the reason of having no bank account in Hong Kong in two transfers; and
2. different relationships of friends and uncle/nephew with the same client who instructed payments to him for the reason of having no bank account in Hong Kong in two transfers.

10. Emperor adopted a box-ticking approach and routinely processed third party fund transfers in reliance on the information provided by the clients, without properly scrutinizing whether these transfers were reasonable. Emperor's procedures and controls were not effective in enabling their staff to detect red flags and ensure that suspicious transactions were properly monitored and reported to the Joint Financial Intelligence Unit. In particular:

- (a) While Emperor's policy stated that third party deposits and intra-account transfers between clients were not encouraged, Emperor did not have adequate procedures in place to ensure that they were properly scrutinized.
- (b) Although Emperor's policy required their staff to make telephone confirmations with clients for third party payments, there were no such requirements for third party deposits even though they were discouraged under the policy.
- (c) While Emperor appeared to rely on the telephone confirmations to confirm the relationship and the reason for some of the third party fund transfers, the firms provided no guidance to their staff on what enquiries they had to make when making telephone confirmations. Emperor staff admitted that they would simply reconfirm the information on the Third Party Forms with clients when conducting telephone confirmations, without making further enquiries to verify the information.
- (d) While Emperor's policy stated that clients' requests for third party fund transfers were subject to special approval by their management and clients need to provide justifiable reason for the requests:
  - (i) Not all versions of the Third Party Forms required clients to state the reasons for the transfers. The design of these forms did not facilitate staff to follow Emperor's policy.
  - (ii) Emperor staff and management appeared to lack a proper understanding of the requirement for clients to provide justifiable reason for the transfers, as shown by (a) the staff's evidence that they were not required under the then policy to

ask the client to provide reason for the transfers; and (b) the fact that Emperor still approved the transfers when no reasons were provided.

- (e) Even when the reasons were stated in the Third Party Forms, Emperor's policy did not require their staff to make further enquiries or require clients to provide any supporting documents for verifying the reasons provided by the clients. As a result, Emperor had approved transfers even though there were apparent red flags.
- (f) Similarly, even though clients needed to state their relationship with the third parties in the Third Party Forms, Emperor's policy did not require clients to provide documents to support the relationship.

### *The SFC's findings*

- 11. The inadequacies of Emperor set out above constitute a breach of:
  - (a) Section 23 of Schedule 2 to the AMLO and paragraph 2.1 of the AML Guideline by failing to take all reasonable measures to ensure that proper safeguards exist to mitigate the risks of ML/TF associated with third party fund transfers.
  - (b) Section 5(1) of Schedule 2 to the AMLO and paragraphs 5.1, 5.10 and 5.11 of the AML Guideline by failing to conduct appropriate scrutiny when processing third party fund transfers and diligently monitor the activities of its clients for mitigating any possible ML/TF risks.
  - (c) General Principle 3 of the Code of Conduct by failing to have and employ effectively the resources and procedures which are needed for the proper performance of its business activities.
  - (d) General Principle 7 and paragraph 12.1 of the Code of Conduct by failing to comply with, and implement and maintain measures appropriate to ensuring compliance with, the relevant regulatory requirements under the AMLO and AML Guideline.

### **Conclusion**

- 12. The SFC is of the view that Emperor are guilty of misconduct and their fitness and properness to carry on regulated activities have been called into question.
- 13. In deciding the disciplinary sanction set out in paragraph 1 above, the SFC has taken into account all relevant circumstances, including:
  - (a) Emperor's misconduct lasted for at least one year;
  - (b) Emperor adopted a lax attitude when handling third party fund transfers of their clients;
  - (c) a strong deterrent message needs to be sent to the market that AML/CFT failures are not acceptable;
  - (d) Emperor have taken remedial actions to enhance their internal controls and systems in relation to the handling of third party fund transfers;

- (e) Emperor cooperated with the SFC in resolving the SFC's concerns;  
and
- (f) Emperor have no disciplinary record with the SFC in relation to  
AML/CFT failures.