

STATEMENT OF DISCIPLINARY ACTION

The Disciplinary Action

1. The Securities and Futures Commission (**SFC**) has publicly reprimanded and fined Yardley Securities Limited (**YSL**) \$5 million pursuant to section 194 of the Securities and Futures Ordinance.
2. The SFC found that YSL failed to take all reasonable measures to ensure that proper safeguards exist to mitigate the risks of money laundering and terrorist financing between February and October 2016 as it failed to:
 - (a) conduct proper enquiries and sufficient scrutiny on **a number of third party deposits/withdrawals in margin accounts belonging to two clients, Client A and Client B (Third Party Fund Transfers)**, which were unusual and/or suspicious and involved significant sums of monies, and/or failed to adequately record enquiries which were allegedly made on these transactions; and
 - (b) have adequate policies, procedures, controls and provide adequate training to its staff to ensure compliance with the regulatory requirements on anti-money laundering and counter-financing of terrorism (**AML/CFT**).

Summary of facts

- A. Failure to conduct proper enquiries and sufficient scrutiny on the unusual/suspicious Third Party Fund Transfers and/or adequately record enquiries which were allegedly made**
3. The SFC found that the **Third Party Fund Transfers processed in Client A's and Client B's margin accounts (totalling over \$984 million) between February and May 2016** were large, frequent and/or unusual. They also appear to display the characteristic of the suspicious indicators as set out in paragraphs 7.14 and 7.39 of the Guideline on Anti-Money Laundering and Counter-Terrorist Financing¹ (**AML Guideline**) and in the website of the Joint Financial Intelligence Unit (**JFIU**)²:
 - (a) There were frequent and/or significant sums of monies transferred from/to Client A's and Client B's margin accounts to/from third parties who appeared to be unrelated to them and/or whose identities were unknown to or not verified by YSL. **Some of these transfers were from/to third parties which were in the casino and gaming industry.**
 - (b) **Client A's and Client B's margin accounts were used as a conduit for transfers where substantial sums of money were deposited to their accounts by a third party and then withdrawn and transferred to another third party on the same dates.**

¹ The version in effect between 1 April 2015 and 28 February 2018.

² Paragraphs 7.14 and 7.39 of the AML Guideline and the website of the JFIU (https://www.jfiu.gov.hk/en/str_screen.html) set out examples of situations that might give rise to suspicion, or red flags.

- (c) There were “U-turn” transactions where funds from a company involved in the casino and gaming industry were deposited into Client B’s margin account, and the same or similar amounts were subsequently returned to the same company.
 - (d) The transactions or activities in Client A’s and Client B’s margin accounts appear unnecessarily complex and do not constitute the most logical, convenient or secure way to do business and/or is out of the ordinary range of service normally requested of a licensed corporation.
4. Notwithstanding the numerous indicators which suggest that the Third Party Fund Transfers appeared to be unusual and/or potentially suspicious, YSL approved the fund transfers, and did not maintain proper documentation to justify the reasons for the approval at the relevant time.
5. It was only after an inspection by the SFC that YSL tried to retrospectively document the evaluation it claimed to have made when approving the Third Party Fund Transfers. However, the written evaluation forms which YSL prepared several months after the transfers show that inadequate enquiries were made by YSL. Further, records of enquiries which YSL claimed to have done remain absent:
- (a) There was no record that a company search was conducted or enquiry was made on the third party who deposited \$30,000,000 into Client A’s margin account and who used Client A’s margin account as a conduit to transfer the sum to another third party.
 - (b) There was no record that enquiries / searches were made on some of the third parties’ identities and/or their relationships with Client B.
 - (c) A total of \$296,000,000 was deposited by four third parties involved in the casino and gaming industry to Client B’s margin account, purportedly to be used as proof of Client B’s financial ability to assume the indebtedness of a loan to a company. There was however inadequate enquiry as to why:
 - (i) Client B would act as a guarantor to repay a loan for that company in which he was not a shareholder and held no position; and
 - (ii) third parties would transfer funds to Client B’s margin account to be used as proof of his financial soundness as guarantor of the loan.
 - (d) There was inadequate enquiry and/or record of enquiry made to Client B as to why his margin account was used as a conduit for receiving a deposit of \$30,000,000 from an unknown third party, and transferring, on the same day, \$28,415,000 to another third party involved in the casino and gaming industry.
 - (e) The written evaluation form regarding the Third Party Fund Transfers in Client B’s margin account stated that the unnecessary routing of funds from/to third parties or through third party accounts were not suspicious as “although there were fund transfers of substantial amounts from/to third parties, most of the funds were subsequently returned to originators”. The reason given did not appear to justify

the conclusion made as “U-turn” transaction and the involvement of a casino are in fact among the suspicious indicators identified by the JFIU.

6. The SFC found that YSL failed to conduct proper enquiries and sufficient scrutiny on the unusual/suspicious Third Party Fund Transfers in Client A’s and Client B’s margin accounts and/or adequately record enquiries which were allegedly made on the Third Party Fund Transfers. YSL’s conduct was in breach of section 5(1) of Schedule 2 to the Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) Ordinance (**AMLO**) and paragraphs 5.1, 5.10, 5.11 and 5.12 of the AML Guideline which require licensed corporations to continuously monitor their business relationship with their clients by, among others:
- (a) monitoring the activities of the clients to ensure that they are consistent with the nature of business, risk profile and source of funds;
 - (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 money laundering and/or terrorist financing³; and
 - (c) making enquiries and examining the background, purpose and/or circumstances of potentially suspicious transactions, and making a report to the JFIU when there is any suspicion. The findings and outcomes of these examinations should be properly documented in writing and be available to assist the relevant authorities.

B. Inadequate AML/CFT policies, procedures, controls and training to staff to ensure compliance with AML/CFT regulatory requirements

7. The SFC found that YSL did not have adequate policies, procedures, controls and provide adequate training to its staff to ensure compliance with the AML/CFT regulatory requirements:
- (a) YSL had no written policies and procedures on AML/CFT. YSL only added a new chapter to its operations manual setting out its procedures on AML/CFT in October 2016.
 - (b) YSL failed to ensure that its staff were made aware of its AML/CFT policies and procedures, including suspicious transaction identification and reporting such transactions to money laundering reporting officer (**MLRO**). In particular, its staff member responsible for processing money deposits and withdrawals was not aware YSL had an MLRO.
 - (c) YSL did not provide adequate AML/CFT training to its staff.
 - (d) YSL failed to ensure that its staff followed the requirements set out in its operations manual.

³ See also “Circular to Licensed Corporations and Associated Entities – Anti-Money Laundering / Counter Financing of Terrorism – Suspicious Transactions Monitoring and Reporting” issued by the SFC on 3 December 2013 which reminds licensed corporations to be vigilant in monitoring the activities of clients and detecting unusual or suspicious transactions which may indicate money laundering and terrorist financing.

8. In light of the matters set out in paragraphs 3 to 7 above, YSL was in breach of:
- (a) section 23 of Schedule 2 to the AMLO and paragraph 2.1 of the AML Guideline which require licensed corporations to take all reasonable measures to ensure that proper safeguards exist to mitigate the risks of money laundering and terrorist financing and to prevent a contravention of any customer due diligence and record-keeping requirements under the AMLO;
 - (b) paragraph 7.23 of the AML Guideline which requires licensed corporations to establish and maintain procedures to ensure that all staff are made aware of the identity of the MLRO and of the procedures to follow when making an internal disclosure report to the MLRO;
 - (c) paragraph 9.6(c) of the AML Guideline which requires licensed corporations to ensure that their staff are made aware of the firms' AML/CFT policies and procedures, including suspicious transaction identification and reporting;
 - (d) 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 their business activities; and
 - (e) General Principle 7 and paragraph 12.1 of the Code of Conduct which require licensed corporations to comply with, and implement and maintain measures appropriate to ensuring compliance with, applicable regulatory requirements.

Conclusion

9. The SFC is of the view that YSL is guilty of misconduct and its fitness and properness to carry on regulated activities have been called into question.
10. 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 considerations, including:
- (a) YSL's failures lasted for at least nine months – while the Third Party Fund Transfers conducted in Client A's and Client B's margin accounts occurred between February and May 2016, YSL only documented the evaluation that it claimed to have made when approving them, and also put in place written policies and procedures on AML/CFT, in October 2016. Further, records of the searches that YSL claimed to have conducted on some of the third parties involved remain absent; and
 - (b) YSL adopted a lax attitude when handling a substantial amount of Third Party Fund Transfers in Client A's and Client B's margin accounts.