STATEMENT OF DISCIPLINARY ACTION

The Disciplinary Action

1. The Securities and Futures Commission (**SFC**) has reprimanded Black Marble Securities Limited (**BMSL**) and fined it $1,800,000 pursuant to section 194 of the Securities and Futures Ordinance (**SFO**).

2. The disciplinary action is taken because BMSL has failed to implement adequate and effective internal controls for monitoring trading activities, employee dealings, characterisation of client accounts without derivatives knowledge and ensuring that its compliance manual and other internal policies and procedures were adequately and properly communicated to all staff members.

Summary of Facts

3. On 24 July 2017, BMSL reported to the SFC a complaint it received from a client (**Client**) that alleged one of its licensed representatives had conducted unauthorized trades in the client's account from August 2016 to July 2017 (**Relevant Period**). The SFC received a similar complaint from the Client in September 2017.

4. In light of the Client's complaint, the SFC conducted an investigation into, among other things, BMSL's internal controls and procedures in connection with its business activities.

Inadequate procedures for monitoring trading activities

5. Although BMSL claimed trading activities were monitored by its account executives on a real-time basis and further reviewed by its senior management / responsible officers in the form of a daily trading report circulated at the end of each trading day (**Daily Trading Report**), there were no policies nor procedures to explain or guide account executives and responsible officers on their responsibilities for monitoring trading activities. This led to some dealers and responsible officers not understanding the extent of their monitoring responsibilities.

6. The post-trade monitoring by BMSL's senior management / responsible officers was also inadequate and ineffective as the Daily Trading Report was not circulated to them on a daily basis at the end of each trading day. There were also no records or reports to show that its senior management / responsible officers had actually reviewed those Daily Trading Report that were circulated to them.

7. BMSL's failure to establish adequate internal controls to monitor trading activities have breached:

   (a) General Principle 2 (Diligence) of the Code of Conduct for Persons Licensed by or Registered with the Securities and Futures Commission (**Code of Conduct**), which 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;

(b) Paragraph 4.3 (Internal control, financial and operational resources) of the Code of Conduct, which requires a licensed / registered person to have internal control procedures and financial and operational capabilities which can be reasonably expected to protect its operations, its clients and other licensed or registered persons from financial loss arising from theft, fraud, and other dishonest acts, professional misconduct or omissions; and

(c) Paragraph 12.1 (Compliance: in general) of the Code of Conduct, which requires a licensed / registered person to comply with, and implement and maintain measures appropriate to ensure compliance with the law, rules, regulations and codes administered or issued by the SFC.

Inadequate procedures for derivatives trading

8. BMSL knew or ought to have known from the Client's account opening documents that the Client did not have experience in derivatives trading. However, BMSL did not have any procedures in place to characterise and identify client accounts without derivatives knowledge, such as a description or an alert, to warn dealers and relevant staff members to conduct further enquiries should these accounts trade in derivatives.

9. Furthermore, while the volume and frequency of the warrant trades in the Client's account during the Relevant Period coupled with the Client's lack of derivatives experience was a conspicuous red flag, BMSL failed to follow up and independently enquire with the Client about these trades and ensure the Client understood the risks associated with such trades.

10. Consequently, BMSL's failure to implement procedures to characterise client accounts without derivatives knowledge and to make further enquiries into the Client's sudden increase in warrant trades and ensure the Client understood the risks associated with exchange traded derivatives are in breach of:

(a) General Principle 2 of the Code of Conduct; and

(b) Paragraphs 5.1A(a) and 5.1A(b)(i) (Know your client: investor characterisation) of the Code of Conduct, which provides that a licensed / registered person should, as part of the know-your-client procedures, assess the client's knowledge of derivatives and characterize the client based on his knowledge of derivatives. Where a client without knowledge of derivatives wishes to purchase a derivative product (hereafter refer to as a "transaction") which is traded on an exchange and the licensed / registered person has not solicited the client or made a recommendation to the client in relation to the proposed transaction, the licensed / registered person should explain the relevant risks associated with the product to the client.

No written employee trading policy

11. BMSL permitted staff members to trade for their own accounts maintained with BMSL and with outside brokerage firms. However, this policy was only communicated verbally to staff members upon joining. There was no written policy on employee dealings to, among other things, specify the conditions under which employees may deal for their own accounts and require

employees to identify all related accounts and report them to senior management.

12. Furthermore, prior to 2017, BMSL did not require staff members to provide written confirmations of their existing securities accounts with outside brokerages nor to arrange for duplicate copies of their monthly account statements to be provided by the outside brokerages to BMSL. Without obtaining the duplicate securities account statements of staff members from outside brokerage firms, BMSL could not actively monitor the personal trades of its staff members and ensure they were not prejudicial to the interests of its clients.

13. A clearly communicated written policy on employee dealings and an effective monitoring system is essential to curb potential staff trading malpractices and to detect possible irregularities and/or fraudulent activities.

14. BMSL's failings have breached paragraph 12.2 of the Code of Conduct which requires a licensed corporation to, among other things, implement a written employee dealing policy and specify the conditions on which they may deal or trade and to actively monitor the trading activities in the employees' accounts and related accounts.

Inadequate procedures to communicate internal policies

15. Although BMSL advised that its compliance manual and internal policies were available on its common computer drive and accessible to all staff members, there were no policies or procedures to ensure that staff members had actually accessed the compliance manual and other internal policies and that they were adequately and properly communicated to all staff members.

16. BMSL's failure in this regard have breached General Principle 2 of the Code of Conduct and Part III of the Management, Supervision and Internal Control Guidelines for Persons Licensed by or Registered with the SFC.

Conclusion

17. Having considered all the circumstances, the SFC is of the view that BMSL's fitness and properness to carry on regulated activities have been called into question.

18. In deciding the disciplinary sanction set out in paragraph 1 above, the SFC has had regard to its Disciplinary Fining Guidelines and has taken into account all relevant circumstances, including BMSL's previous clean disciplinary record with the SFC.