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SFC reprimands and fines Wan Xing \$200,000

1 Mar 2016

The Securities and Futures Commission (SFC) has reprimanded and fined Ms Wan Xing \$200,000 for breach of the SFC's Code of Conduct (Notes 1 & 2).

The SFC investigation found that shortly after BYD Company Limited announced on 23 May 2014 a placement of shares to be listed on the Stock Exchange of Hong Kong, Wan incorrectly represented to some placees that the placing shares allotted to them through the placement could be sold on 28 May 2014 without violating the short selling restriction under the Securities and Futures Ordinance (Notes 3 & 4).

Three placees proceeded to sell a total of 2,300,000 placing shares before completion of the placement when the shares were still subject to conditions and could not be sold until 30 May 2014.

The SFC considers it is imperative that all licensed representatives understand the short selling restriction because short selling may carry serious consequences for the uncovered short seller.

Wan did not have an adequate understanding of the short selling restriction and had failed to ascertain when the placement would become unconditional such that the placing shares could legitimately be sold by the placees.

In deciding on the sanction, the SFC considers that Wan's misconduct had subjected the placees to legal and regulatory risks and fell short of the standard expected of a licensed representative under the Code of Conduct. The SFC also took into account that Wan showed remorse for her conduct (Note 5).

End

Notes:

1. Code of Conduct for Persons Licensed by or Registered with the SFC.
2. Wan Xing is licensed under the Securities and Futures Ordinance (SFO) to carry on Type 1 (dealing in securities), Type 2 (dealing in futures contracts) and Type 7 (providing automated trading services) regulated activities, and is accredited to UBS Securities Asia Limited for Type 1 and Type 2 regulated activities and UBS Securities Hong Kong Limited for Type 1 and Type 7 regulated activities.
3. Section 170(1) of the SFO provides that a person shall not sell securities at or through a recognized stock market unless at the time he sells the securities, he or his principal has, or believes and has reasonable grounds to believe that he or his principal has, a presently exercisable and unconditional right to vest the securities in the purchaser of them. Illegal short selling is a criminal offence which carries a maximum penalty of \$100,000 fine and two years imprisonment upon conviction.
4. The SFC issued a press release titled "[Premature selling of placing shares may constitute illegal short selling](#)" on 1 August 2013 to remind the public that persons could face criminal prosecution for illegal short selling under the SFO if they sell placing shares before completion of a placement.
5. General Principle 2 (Diligence) of the Code of Conduct provides that a licensed person should act with due skill, care and diligence in conducting business activities.

[A copy of the Statement of Disciplinary Action is available on the SFC website](#)

Page last updated : 1 Mar 2016

STATEMENT OF DISCIPLINARY ACTION

The Disciplinary Action

1. The Securities and Futures Commission (**SFC**) has publicly reprimanded Ms Wan Xing (**Wan**) and fined her \$200,000 pursuant to section 194 of the Securities and Futures Ordinance (**SFO**).¹
2. The SFC found that Wan incorrectly represented to the placees of shares listed on the Hong Kong Stock Exchange on 26 and 28 May 2014 that the shares allotted to them through a placement could be sold on 28 May 2014 without violating the short selling restrictions under the SFO. In fact, because the placement was subject to conditions, the allotted shares could not be sold until the completion of the placement on 30 May 2014.
3. Wan's misconduct fell short of the standard set out in General Principle 2 (Diligence) of the Code of Conduct for Persons Licensed by or Registered with the Securities and Futures Commission.

Summary of facts

4. At the material time, Wan was a sales director of UBS Securities Hong Kong Limited and was responsible for servicing client accounts.
5. On 23 May 2014, BYD Company Limited (stock code: 1211) (the **Company**) announced it had entered into a placing agreement with the placing agents to place its shares (the **Placement**). The placing agreement provided that the completion of the Placement was conditional upon the fulfilment of a number of conditions, including approval from the Listing Committee of the Stock Exchange of Hong Kong Limited (**SEHK**) and delivery of certain legal opinions.
6. On 26 May 2014, the placing agents sent letters to the placees confirming the number of shares they had been allotted (the **Placing Shares**). The confirmation letters further stated that the expected date of completion was on or about 30 May 2014 and the Placement might be terminated if the Company failed to perform its obligations under the placing agreement.
7. After market close on 28 May 2014, the SEHK confirmed its conditional listing approval for the Placing Shares, which was subject to fulfilment of all other conditions of the Placement. On 30 May 2014, the Company fulfilled the remaining conditions for the Placement and announced that the Placement was completed.

¹ At all material times, Wan was licensed under the SFO to carry on Type 1 (dealing in securities), Type 2 (dealing in futures contracts) and Type 7 (providing automated trading services) regulated activities, and is accredited to UBS Securities Asia Limited for Type 1 and Type 2 regulated activities and UBS Securities Hong Kong Limited for Type 1 and Type 7 regulated activities.

8. Under section 170(1) of the SFO, a person shall not sell securities at or through a recognized stock market unless at the time he sells the securities, he or his principal has, or believes and has reasonable grounds to believe that he or his principal has, a presently exercisable and unconditional right to vest the securities in the purchaser of them (the **Short Selling Restriction**). The Short Selling Restriction can be triggered where a person sells his placing shares, which are subject to various conditions, before completion of a placement. Illegal short selling is a criminal offence which carries a maximum penalty of \$100,000 fine and two years imprisonment upon conviction.
9. **In the circumstances of the Placement, the placees were prohibited from selling the Placing Shares before 30 May 2014 because all conditions were not fulfilled until that day and the placees did not have a presently exercisable and unconditional right to vest the relevant shares in the purchasers.**
10. **The evidence shows Wan represented to a number of placees through telephone calls, email and Bloomberg message on 26 and 28 May 2014 that the Placing Shares could be sold on 28 May 2014. Three of these placees sold a total of 2,300,000 Placing Shares before 30 May 2014.**
11. During the SFC's investigation, Wan explained, among other things, that she knew about the Short Selling Restriction. Nevertheless, she thought there was no short selling in the circumstances because the settlement date for the sale and the date on which the placees received the relevant shares were both 30 May 2014. Wan said she could no longer recall if she had received the placement completion confirmation, nor could she recall if she had checked the placement documentation or with the relevant teams to see if the Placement had been completed before she contacted the placees.

Conclusion

12. All licensed representatives are expected to act with due skill, care and diligence in conducting business activities. In particular, it is imperative that all licensed representatives understand the Short Selling Restriction because short selling may carry serious consequences for the uncovered short seller.
13. Wan's understanding that the Short Selling Restriction would not be violated if the seller of placing shares was able to deliver the shares on the settlement date was incorrect because the relevant restriction applies at the time when the placing shares are sold and not at the time of settlement of the sale.
14. Wan did not have an adequate understanding of the Short Selling Restriction at the time of the Placement. Also, she failed to ascertain when the Placement would become unconditional such that the Placing Shares could legitimately be sold by the placees. Her misconduct subjected the placees to legal and regulatory risks.
15. The SFC considers the sanction of a public reprimand and a fine of HK\$200,000 is commensurate with the gravity of Wan's misconduct after taking into account all relevant circumstances, including Wan showed remorse for her conduct, she did not intend for the placees to short sell their shares and her otherwise clean disciplinary record at the time of the misconduct.

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證監會譴責万星並處以罰款200,000元

2016年3月1日

万星（女）因違反證券及期貨事務監察委員會（證監會）的《操守準則》，遭證監會譴責及罰款200,000元（註1及2）。

證監會調查發現，在比亞迪股份有限公司於2014年5月23日公布將配售股份並安排該等股份在香港聯合交易所上市後不久，万向部分承配人作出錯誤陳述，表示他們透過配售獲配發的股份可於2014年5月28日出售而不會違反《證券及期貨條例》所訂的賣空限制（註3及4）。

三名承配人遂在該次配售完成前將合共2,300,000股配售股份出售，而當時該等股份仍受若干條件限制，並不可於2014年5月30日前出售。

證監會認為，持牌代表了解賣空限制尤關重要，因為賣空可能會為無擔保賣空者帶來嚴重後果。

万對賣空限制的了解不足，亦沒有查明該次配售在何時成為無條件，以便有關承配人可合法地出售該等配售股份。

在決定制裁時，證監會考慮到万的失當行為令有關承配人蒙受法律及監管風險，以及不符合《操守準則》要求持牌代表所需達到的標準。證監會亦考慮到万已對其失當行為表示悔意（註5）。

完

備註：

1. 《證監會持牌人或註冊人操守準則》
2. 万根據《證券及期貨條例》獲發牌進行第1類（證券交易）、第2類（期貨合約交易）及第7類（提供自動化交易服務）受規管活動，她現時以第1及第2類受規管活動的代表身分隸屬於UBS Securities Asia Limited，及以第1及第7類受規管活動的代表身分隸屬於UBS Securities Hong Kong Limited。
3. 根據《證券及期貨條例》第170(1)條，除非任何人在認可證券市場或透過認可證券市場售賣證券時具有或他的當事人具有，或相信並有合理理由相信他或他的當事人具有，一項即時可行使而不附有條件的權利，以將該等證券轉歸於其購買人名下，否則不得如此售賣該等證券。非法賣空屬刑事罪行，一經定罪，最高可罰款100,000元及監禁兩年。
4. 證監會曾於2013年8月1日發佈題為“過早出售配售股份或構成非法賣空”的新聞稿，提醒公眾如任何人在配售完成前出售配售股份，可能會因干犯《證券及期貨條例》所指的非法賣空而遭刑事檢控。
5. 《操守準則》第2項一般原則（勤勉盡責）規定，持牌人在經營業務時應以適當的技能、小心審慎和勤勉盡責的態度行事。

[有關紀律處分行動聲明載於證監會網站](#)

最後更新日期：2016年3月1日

紀律處分行動聲明

紀律處分行動

1. 證券及期貨事務監察委員會（**證監會**）依據《證券及期貨條例》第 194 條，對 万星（万）作出公開譴責並罰款 200,000 元。¹
2. 證監會發現，万於 2014 年 5 月 26 及 28 日向在香港聯交所上市的股份的承配人作出錯誤陳述，表示他們透過配售獲配發的股份可於 2014 年 5 月 28 日出售而不會違反《證券及期貨條例》所訂的賣空限制。事實上，由於該配售受到若干條件限制，獲配發的股份須待配售於 2014 年 5 月 30 日完成後，方可出售。
3. 万的行為失當，不符合《證券及期貨事務監察委員會持牌人或註冊人操守準則》第 2 項一般原則（勤勉盡責）所訂的標準。

事實摘要

4. 在關鍵時間，万是 UBS Securities Hong Kong Limited 的一名銷售董事，負責為客戶帳戶提供服務。
5. 在 2014 年 5 月 23 日，比亞迪股份有限公司（股份代號：1211）（**該公司**）公布其與配售代理訂立了配售協議，以配售其股份（**該次配售**）。該份配售協議訂明，該次配售須待若干條件（包括獲得香港聯合交易所有限公司（**聯交所**）上市委員會的批准和若干法律意見書已獲交付）獲符合後，方告完成。
6. 在 2014 年 5 月 26 日，配售代理致函承配人，確認他們獲配發的股份數目（**該等配售股份**）。該等確認函更註明，預計該次配售的完成日期為 2014 年 5 月 30 日或前後，而倘若該公司未能履行其在配售協議下的責任，該次配售便有可能終止。
7. 在 2014 年 5 月 28 日收市後，聯交所確認其就該等配售股份授出附有條件的上市批准，即該批准須待該次配售的所有其他條件獲符合後方可作實。在 2014 年 5 月 30 日，該公司符合了該次配售的餘下條件，並公布該次配售已告完成。
8. 根據《證券及期貨條例》第 170(1)條，除非任何人在認可證券市場或透過認可證券市場售賣證券時具有或他的當事人具有，或相信並有合理理由相信他或他的當事人具有，一項即時可行使而不附有條件的權利，以將該等證券轉歸於其購買人名下，否則不得如此售賣該等證券（**賣空限制**）。凡任何人在配售完成

¹在關鍵時間，万根據《證券及期貨條例》獲發牌進行第 1 類（證券交易）、第 2 類（期貨合約交易）及第 7 類（提供自動化交易服務）受規管活動，她現時以第 1 及第 2 類受規管活動的代表身分隸屬於 UBS Securities Asia Limited，及以第 1 及第 7 類受規管活動的代表身分隸屬於 UBS Securities Hong Kong Limited。

前將受多項條件限制的配售股份出售，便有可能觸發賣空限制。非法賣空屬刑事罪行，一經定罪，最高可罰款 100,000 元及監禁兩年。

9. 觀乎該次配售的情況，承配人被禁止於 2014 年 5 月 30 日前將該等配售股份出售，理由是在該日之前所有條件尚未符合，而承配人並不具有一項即時可行使而不附有條件的權利，以將有關股份轉歸於購買人名下。
10. 有關證據顯示，万曾於 2014 年 5 月 26 及 28 日透過電話、電郵及彭博（Bloomberg）訊息向數名承配人作出陳述，表示該等配售股份可於 2014 年 5 月 28 日出售。其中三名承配人於 2014 年 5 月 30 日前將合共 2,300,000 股該等配售股份出售。
11. 在證監會調查期間，万解釋（除其他事項外）她知悉賣空限制。然而，由於售股交收日期與承配人獲取有關股份的日期同為 2014 年 5 月 30 日，所以她以為在該等情況下出售配售股份不屬賣空。万表示，她記不起有否收到配售完成確認，亦不記得她在聯絡有關承配人前有否查閱配售文件或向有關團隊查詢該次配售是否已告完成。

結論

12. 持牌代表在經營業務時，一律應以適當的技能、小心審慎和勤勉盡責的態度行事。尤其重要的是，所有持牌代表都必須了解賣空限制，因為賣空可能會為無擔保賣空者帶來嚴重後果。
13. 万認為配售股份的賣方只要能在交收當日交付有關股份，便不會違反賣空限制，但這理解並不正確，因為有關限制乃適用於配售股份出售之時，而非售股交收之時。
14. 在該次配售進行時，万對賣空限制了解不足，而且她沒有查明該次配售何時成為無條件，以便有關承配人可合法地出售該等配售股份。她所犯的失當行為令有關承配人蒙受法律及監管風險。
15. 經考慮所有相關情況（包括万對其行為表示悔意、她非故意安排有關承配人賣空其股份及她在干犯失當行為時並無遭受紀律處分的紀錄）後，證監會認為，以公開譴責及罰款 200,000 港元的方式作為制裁與万所犯的失當行為的嚴重性相稱。