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## SFC reprimands and fines BNP Paribas Securities (Asia) Limited \$11 million for failing to report cross trades to the Stock Exchange

1 Jun 2015

The Securities and Futures Commission (SFC) has reprimanded and fined BNP Paribas Securities (Asia) Limited (BNP) a total of \$11 million for its failures to report its direct business transactions (cross trades) to The Stock Exchange of Hong Kong Limited (SEHK) over a 10-year period (Notes 1 & 2).

The SFC's investigation found that BNP failed to report a total of 4,443 pairs of cross trades to the SEHK involving a total of over \$6 billion worth of shares conducted by BNP from December 2002 to January 2013. BNP's reporting failures breached the trading requirements of the SEHK and the Code of Conduct (Notes 3 & 4).

As a licensed corporation, BNP also failed to employ effectively resources and procedures needed for the proper performance of its business, including the failure to provide the dealers responsible for the reporting at BNP with sufficient resources to enable them to discharge their reporting duties. The SFC considers BNP's failures are particularly serious as it lasted for an extended period of time and involved a large number of trades (Note 5).

"This case demonstrates that reporting failures cannot be taken lightly. This is because market transparency and displaying accurate information to the investing public are essential not only to aid informed investment decisions but also to maintain a fair and orderly market." the SFC's Executive Director of Enforcement, Mr Mark Steward said.

End

Notes:

1. BNP is licensed under the Securities and Futures Ordinance to carry on business in Type 1 (dealing in securities), Type 2 (dealing in futures contracts), Type 4 (advising on securities), Type 6 (advising on corporate finance), and Type 7 (providing automated trading services) regulated activities. BNP is also an Exchange Participant registered with the SEHK.
2. Cross trades or direct business transactions are business transacted by an Exchange Participant which acts for both the buyer and the seller of securities.
3. Rule 526 of the Rules of the Exchange requires Exchange Participants to report cross trades to the SEHK within specific timeframes.
4. General Principle 7 and paragraph 12.1 of the Code of Conduct for Persons Licensed by or Registered with the Securities and Futures Commission (Code of Conduct) provide that a licensed person should comply with all regulatory requirements applicable to the conduct of its business, including the rules of any exchange of which it is a participant.
5. Under General Principles 2 and 3 of the Code of Conduct, BNP is required to conduct its business activities with due skill, care and diligence, in the best interests of its clients and the integrity of the market, and to have and employ effectively the resources and procedures which are needed for the proper performance of its business activities. Under paragraph 4.2 of the Code of Conduct, BNP is required to supervise diligently and does supervise diligently persons employed by it to conduct business on its behalf.

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

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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 BNP Paribas Securities (Asia) Limited (“**BNP**”) a total of \$11 million<sup>1</sup> pursuant to section 194 of the Securities and Futures Ordinance (“**SFO**”) for failures relating to the reporting of its direct business transactions (cross trades) to The Stock Exchange of Hong Kong (“**SEHK**”) between 2002 and 2013 in breach of General Principles 2, 3 and 7 and paragraphs 4.2 and 12.1 of the Code of Conduct.<sup>2</sup>
2. BNP is licensed under the SFO to carry on business in Type 1 (dealing in securities), Type 2 (dealing in futures contracts), Type 4 (advising on securities), Type 6 (advising on corporate finance), and Type 7 (providing automated trading services) regulated activities.

### Summary of facts

#### *Failure to comply with the Trading Rules*

3. As an Exchange Participant, BNP is required to report to the SEHK cross trades which were not input into the Automatic Order Matching and Execution System before the end of trading on a trading day and conducted outside the trading hours (“**Late Cross Trades**”) within the stipulated timeframes as set out under Rule 526 of the Rules of the Exchange (“**Trading Rules**”).
4. In February 2013, BNP reported to the SFC that it had failed to report around 4,000 cross trades to the SEHK. As it turns out, a total of 4,443 Late Cross Trades involving a total of over \$6 billion worth of shares had not been reported to the SEHK during the period from December 2002 to January 2013.
5. The number of unreported Late Cross Trades increased from 23 in 2003 to 366 in 2009 and 1,557 in 2012. Over 81% of the reporting failures

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<sup>1</sup> Being: (a) HK\$6.5 million for BNP’s failure to report to the SEHK details of all cross trades it conducted between December 2002 and January 2013 in breach of General Principle 7 and paragraph 12.1 of the Code of Conduct; and (b) HK\$4.5 million for BNP’s failure to conduct its cross trade business with due skill, care and diligence, to employ effectively the resources and procedures needed for the proper performance of its cross trade business, and to diligently supervise its dealing function in breach of General Principles 2 and 3, and paragraph 4.2 of the Code of Conduct.

<sup>2</sup> Code of Conduct for Persons Licensed by or Registered with the Securities and Futures Commission

concentrated in the period from January 2009 to January 2013. In respect of this period, the evidence indicates that:

- (a) BNP was aware of its reporting duties but failed to completely report all of the Late Cross Trades on about half of the trading days where reporting was required;
  - (b) BNP was able to completely report all of the trades even when there were over 100 Late Cross Trades to report per day on some of the reporting days;
  - (c) many of the reporting failures occurred on reporting days when BNP had only 10 or less Late Cross Trades to report per day; and
  - (d) in over 85% of the reporting days where BNP had either not reported or only partly reported the Late Cross Trades, BNP only had 10 or less Late Cross Trades left unreported on a reporting day.
6. As a licensed corporation, BNP was required to comply with all regulatory requirements, including the Trading Rules. BNP's failure to report is particularly serious as it lasted for an extended period of time and involved a large number of trades.

*Failure to employ effectively resources and procedures needed for the proper performance of its business and the failure to adequately supervise its dealing function*

7. The SFC found that the dealers were not able to completely and timely report the Late Cross Trades because there was a conflict between their trade execution and reporting duties. Not only were the dealers responsible for reporting the Late Cross Trades, they also had to handle and execute orders at the same time. This apparently explained why nearly half of the reporting failures occurred on days when BNP only had 10 or less Late Cross Trades to report per day. In other words, BNP's dealing function was not being provided with sufficient resources to enable the dealers to properly discharge their reporting duties.
8. The dealers did not appear to have concealed the reporting failures and they did seek assistance by expressing their reporting difficulties. The unreported trades were also reported to BNP's operations department to enable daily trade reconciliation to be conducted. Given that the information about the unreported Late Cross Trades was readily available, the reporting failures could not have escaped BNP's attention if it had diligently supervised its dealers.
9. As a licensed corporation, BNP not only has to employ effectively resources and procedures needed for the proper performance of its business, but it also has the duty to supervise diligently and does supervise diligently persons employed by it to conduct business on its behalf in accordance with paragraph 4.2 of the Code of Conduct.
10. In reaching its decision to take enforcement action against BNP, the SFC had considered BNP's submission that it had introduced an automated process to electronically report the Late Cross Trades.