

## SFC reprimands and fines Zhongtai International Securities Limited \$2.6 million for non-compliance with anti-money laundering regulatory requirements

14 Mar 2017

The Securities and Futures Commission (SFC) has reprimanded Zhongtai International Securities Limited, formerly known as Qilu International Securities Limited (Zhongtai), and fined it \$2.6 million for failures in complying with anti-money laundering regulatory requirements when handling third party fund deposits (Note 1).

The SFC found that between January 2013 and December 2014 (Relevant Period), Zhongtai failed to:

- monitor and/or conduct sufficient and timely enquiries and scrutiny on numerous deposits made by third parties to its clients' sub-accounts at Industrial and Commercial Bank of China (Asia) Limited (ICBC Sub-Accounts); and
- establish adequate and implement appropriate internal procedures and controls to detect and report suspicious third party fund deposits in a timely manner, and to ensure that there was clear delineation of duties among its senior management and staff in handling third party deposits.

Specifically, the SFC's investigation found that:

- Zhongtai processed more than 300 third party deposits which were made via the ICBC Sub-Accounts during the Relevant Period without adequate monitoring or scrutiny by its Compliance Department and senior management as required under its internal policies. These third party deposits were accepted and transferred to the clients' accounts when the origins of the deposits and/or the identities of the third parties have not been clarified and verified;
- the lack of adequate monitoring of deposits made via these ICBC Sub-Accounts demonstrates that there were deficiencies in Zhongtai's internal controls at the material time. Zhongtai's staff did not observe the requirement that a third party deposit should in principle be rejected and returned unless (i) the client provided a reasonable explanation for the deposit and (ii) the deposit was approved by its Compliance Department and at least one responsible officer; and
- there is evidence of relevant compliance staff and responsible officers showing a lack of mutual understanding of their respective roles and responsibilities in the handling of third party deposits.

The SFC further found that when Zhongtai took steps to re-assess certain third party deposits, it failed to maintain proper and accurate records of the assessments conducted by its senior management and compliance officers.

The SFC is of the view that Zhongtai's conduct failed to comply with regulatory requirements under the Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) Ordinance (AMLO), Guideline on Anti-Money Laundering and Counter-Terrorist Financing (AML Guideline), and the Code of Conduct for Persons Licensed by or Registered with the SFC (Code of Conduct) (Notes 2 to 4).

In deciding the disciplinary sanction, the SFC took into account that Zhongtai:

- cooperated with the SFC in resolving the SFC's concerns;
- took remedial steps and enhanced its policies and procedures after discovering its failures in the handling of third party deposits via the ICBC Sub-Accounts;
- agreed to engage an independent reviewer to conduct a review of its internal controls; and
- has an otherwise clean disciplinary record.

End

Notes:

1. Zhongtai is licensed under the Securities and Futures Ordinance to carry on Type 1 (dealing in securities) and Type 4 (advising on securities) regulated activities.
2. Section 5(1) of Schedule 2 of 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, including conducting appropriate scrutiny of transactions carried out for their clients, identifying transactions that are complex, large or unusual or patterns of transactions that have no apparent economic or lawful purpose, making relevant enquiries to examine the background and purpose of the transactions, and reporting to the Joint Financial Intelligence Unit where appropriate. The findings and outcomes of these examinations should be properly documented in writing and be available to assist the relevant authorities.

3. Section 23 of Schedule 2 to the AMLO and paragraph 2.1 of the AML Guideline 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. To ensure compliance with this requirement, licensed corporations should implement appropriate internal anti-money laundering and counter-terrorist financing policies, procedures and controls.
4. General Principles 2 and 7 and paragraph 12.1 of the Code of Conduct require licensed corporations to (a) act with due skill, care and diligence, in the best interest of their clients and the integrity of the market, in conducting their business activities; and (b) comply with, and implement and maintain measures appropriate to ensuring compliance with, all regulatory requirements applicable to the conduct of their business activities.
5. Licensed corporations are reminded to refer to the "Circular to Licensed Corporations and Associated Entities – Anti-Money Laundering / Counter Financing of Terrorism (AML/CFT) Compliance with AML/CFT Requirements" issued by the SFC on [26 January 2017](#) which sets out key areas of concern identified by the SFC in its review of some licensed corporations' AML/CFT systems.

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

Page last updated : 14 Mar 2017

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## STATEMENT OF DISCIPLINARY ACTION

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### The Disciplinary Action

1. The Securities and Futures Commission (**SFC**) has reprimanded Zhongtai International Securities Limited (formerly known as Qilu International Securities Limited) (**Zhongtai**) and fined it \$2.6 million pursuant to section 194 of the Securities and Futures Ordinance (**SFO**).
2. The SFC found that:
  - (a) between January 2013 and December 2014 (**Relevant Period**), Zhongtai failed to:
    - (i) monitor and/or conduct sufficient and timely enquiries and scrutiny on numerous deposits made by third parties to its clients' sub-accounts maintained at Industrial and Commercial Bank of China (Asia) Limited (**ICBC Sub-Accounts**); and
    - (ii) establish adequate and implement appropriate internal procedures and controls to detect and timely report suspicious third party fund deposits and to ensure that there was clear delineation of duties among staff and senior management of Zhongtai in handling third party deposits; and
  - (b) when steps were taken by Zhongtai in January to February 2015 to re-assess certain third party deposits made in September to November 2014, it failed to maintain proper and accurate records of senior management's and compliance officer's assessment of such deposits. The records failed to show the dates of assessment and gave the inaccurate and misleading impression that the third party deposits were approved or assessed contemporaneously at the time the deposits were made.
3. Zhongtai failed to comply with:
  - (a) sections 5(1) and 23 of Schedule 2 to the Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) Ordinance (**AMLO**);
  - (b) paragraphs 2.1, 5.1, 5.10 and 5.11 of the Guideline on Anti-Money Laundering and Counter-Terrorist Financing (**AML Guideline**); and
  - (c) General Principles 2, 7 and 12.1 of the Code of Conduct for Persons Licensed by or Registered with the SFC (**Code of Conduct**).

### Summary of regulatory requirements

4. Under the AMLO and the AML Guideline:
  - (a) Section 23 of Schedule 2 to AMLO and paragraph 2.1 of AML Guideline: Licensed corporations are required to take all reasonable measures to ensure that proper safeguards exist to mitigate the risks of money laundering

and terrorist financing (**ML/TF**), 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/CTF**) policies, procedures and controls.

- (b) Section 5(1) of Schedule 2 to AMLO and paragraphs 5.1, 5.10 and 5.11 of AML Guideline: Licensed corporations must continuously monitor their business relationship with their clients. The requirements include but are not limited to the following:
    - (i) Conducting appropriate scrutiny of transactions (including cash and non-cash transactions) carried out for the client.
    - (ii) 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.
    - (iii) 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. Where there is any suspicion, a report must be made to the Joint Financial Intelligence Unit (**JFIU**). The findings and outcomes of these examinations should be properly documented in writing and be available to assist the relevant authorities.
  - (c) Paragraph 8.2 of AML Guideline: Licensed corporations should maintain client, transaction and other records that are necessary and sufficient to meet the record-keeping requirements under the AMLO.
  - (d) Section 20(1)(a) of Schedule 2 to AMLO and paragraph 8.5 of AML Guideline: Licensed corporations should maintain records sufficient to permit reconstruction of individual transactions and establish a financial profile of any suspected account or client.
5. Under the “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, licensed corporations are reminded to be vigilant in monitoring the activities of clients and detecting unusual or suspicious transactions which may indicate ML/TF. Specifically, to guard against the ML/TF risks associated with third party fund transfers, licensed corporations should pay attention to the following:
- (a) Third party payments should be discouraged and should only be accepted after approvals have been obtained from the designated senior staff member.
  - (b) Reasonable steps should be taken to identify funds from third party sources.
  - (c) Special attention should be paid to monitoring any frequent and/or large third party fund transfers or cheque payments involved in the transactions of their client.
  - (d) Enhanced customer due diligence and ongoing monitoring should be undertaken and additional risk-sensitive measures be adopted to mitigate the ML/TF risks involved in cases where, for instance, the client requests

payment to a third party or money is paid by a third party having no apparent connection with the client.

- (e) Licensed corporations should conduct appropriate enquiries and evaluate what they know about the client and the third party, and whether the third party fund transfers are consistent with the clients' known legitimate business or personal activities.
  - (f) Where upon evaluation, licensed corporations conclude that there are grounds for suspicion, they should file a suspicious transaction report to the JFIU.
6. General Principle 2 of the Code of Conduct requires licensed corporations to act with due skill, care and diligence, in the best interests of their clients and the integrity of the market, in conducting their 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.

### **Summary of facts**

#### *Failure to monitor and scrutinise third party deposits made via ICBC Sub-Accounts*

8. Under Zhongtai's internal policies:
- (a) its staff should make proper enquiries with its clients and take reasonable steps to understand the clients' source of funds;
  - (b) if Finance or Settlement Departments found out that a deposit was from a third party, they had to notify Compliance Department immediately. The third party deposit could only be processed after it had been approved by Compliance Department;
  - (c) clients who received third party deposits were required to fill in a Third Party Fund Deposit Request Form (**Third Party Deposit Form**) setting out, among others, the relationship between the client and the depositor and the reason for the deposit;
  - (d) in principle, third party deposits would be rejected and returned. However, if there was reasonable explanation with supporting evidence, Zhongtai might accept the third party deposit upon approval from the Compliance Department and the consent of at least one responsible officer; and
  - (e) if Zhongtai could not return or determine the source of the third party deposit, it could accept such deposit after consulting the Compliance Department and obtaining written approval from the responsible officer in charge and at least half of Zhongtai's senior management personnel.
9. During the Relevant Period, Zhongtai engaged ICBC to provide sub-account service to its clients. Clients who wanted to deposit money into their securities accounts with Zhongtai could deposit the money through the ICBC Sub-Accounts.
10. Evidence from settlement staff and responsible officers of Zhongtai shows that there were deficiencies in the handling of third party deposits made through the ICBC Sub-Accounts:

- (a) Zhongtai could not immediately detect the ultimate identity of the party who deposited the funds into the sub-account. It would only find out the identity of the depositor when it received the remittance advice from ICBC one to two weeks later.
  - (b) Settlement staff did not know during the Relevant Period that they could have access to information on the source of funds made to the ICBC Sub-Account. Relevant settlement staff who the SFC interviewed stated that he did not know until 2015 that ICBC would provide remittance advice (which identified the depositors) to Zhongtai's Finance Department.
  - (c) Clients who received third party deposits through their ICBC Sub-Accounts were not required to provide the relevant deposit slips or fill in a Third Party Deposit Form to inform Zhongtai about the fund deposits. The funds would shortly and automatically be deposited into the clients' securities accounts.
  - (d) As Zhongtai could not immediately ascertain whether the funds deposited to the sub-account originated from the client or a third party, the funds might have already been transferred to the client's account, and might have already been used by the client, before Zhongtai knew that the money might come from a third party.
  - (e) Some Third Party Deposit Forms were filled in after the third party deposits had already been accepted and transferred to the clients' securities accounts.
11. During the Relevant Period, Zhongtai handled numerous third party deposits and approximately 329 third party deposits were made via the ICBC Sub-Accounts. Due to the failure to detect whether the deposits were third party deposits, such deposits were processed without the monitoring or scrutiny by the Compliance Department and senior management as required under its internal policies.
- (a) Zhongtai's records show that there were no assessment or no conclusion being made in respect of 325 of these third party deposits, in that:
    - (i) there was either no Third Party Deposit Form;
    - (ii) there was a Third Party Deposit Form but it was not endorsed by personnel of the Compliance Department;
    - (iii) the deposit was not recorded in the relevant AML register of Zhongtai at the time; or
    - (iv) the deposit was recorded in the relevant AML register of Zhongtai at the time but the register shows that there was no information relating to the assessment for that deposit, or it appears from the register that the relevant deposit was pending further assessment.
  - (b) Among these 325 third party deposits where no assessment or no evidence of assessment was made, they were accepted when:
    - (i) the origins of the deposits and/or the identities of the third parties have not been clarified or identified;
    - (ii) on occasions where a Third Party Deposit Form was filled in, the

reasons provided for the deposit and/or the relationship between the depositor and the client did not appear to be sufficient to show that the third party fund was reasonable and/or the risk of money laundering was negligible. For instance, “friend” was a common relationship between the third party and the client and “friend helping to deposit” was a common reason for the deposit; and/or

- (iii) some of the deposits appeared particularly unusual as the same third party deposited large sums of money to various clients of Zhongtai for different reasons within a short period of time. For instance, Company K deposited a total sum of HK\$70,789,280 to three clients in the last two weeks of October 2014:
- HK\$1,253,908, HK\$7,523,500 and HK\$1,005,015 to client A on around 16, 17 and 30 October 2014. The relationship given was “friend” and the reason for the deposit was “friend helping to deposit”;
  - HK\$10,000,000, HK\$20,000,000 and HK\$30,000,000 to client B on 20 October 2014. The relationship given was “business partner” and the reason for the deposit was “repayment”; and
  - HK\$1,006,857 to client C on 30 October 2014. The relationship given was “friend” and the reason for the deposit was “friend helping to deposit”.<sup>1</sup>

12. Zhongtai’s failure to monitor third party deposits made via the ICBC Sub-Accounts constitutes a failure to comply with the regulatory obligations under section 5(1) of Schedule 2 to the AMLO and paragraphs 5.1, 5.10 and 5.11 of the AML Guideline.

*Failure to establish adequate and implement appropriate internal procedures and to ensure clear delineation of duties among staff and senior management*

13. The lack of adequate monitoring of deposits made via the ICBC Sub-Accounts demonstrates that there were deficiencies in Zhongtai’s internal controls at the material time. Zhongtai’s policies on the handling third party deposits as summarised in paragraph 8 above were not properly implemented, in that:
- (a) there were no procedures and controls in place at all to review, scrutinise and identify third party deposits made via the ICBC Sub-Accounts;
  - (b) as such, a majority of these third party deposits were processed without the relevant approval by the Compliance Department; and
  - (c) the requirement that third party deposits should in principle be rejected and returned unless (i) the client provided a reasonable explanation for the deposit, and (ii) it was approved by the Compliance Department and at least one responsible officer was not strictly adhered to by its staff members.
14. Evidence of relevant Compliance staff and responsible officers further shows a lack of mutual understanding of their respective roles and responsibilities in the handling of third party deposits. For instance:

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<sup>1</sup> The relationship between the third party and the clients and the reasons for these deposits were obtained in around January to February 2015, several months after the deposits were made. See paragraphs 17 to 18 below.

- (a) The Compliance Manager considered that he had clearly expressed his view that all third party deposits should be rejected, and if the responsible officers wanted to accept the deposits despite his advice, they had to approve the deposits.
  - (b) Responsible officers who had signed on Third Party Deposit Forms claimed that they signed the forms as a matter of procedure, and their signing the forms did not necessarily mean that they approved the deposits. They considered that the Compliance Department should assess the deposits and report the matter to JFIU if appropriate.
15. The SFC also found that there was inadequate communication between Settlement and Finance staff, and a lack of procedure for Finance staff who received remittance advice from ICBC (which identified the person who deposited funds to the ICBC Sub-Account) to provide such information to Settlement staff.
16. In light of the above, the SFC concluded that Zhongtai's internal controls for ongoing monitoring of clients' activities and the handling of third party deposits were insufficient, and Zhongtai failed to comply with the regulatory requirements set out in section 23 of Schedule 2 to the AMLO and paragraph 2.1 of the AML Guideline.

*Failure to maintain proper records of senior management's / compliance officer's assessment and/or approval of third party deposits*

17. During its investigation, the SFC obtained from Zhongtai a number of Third Party Deposit Forms in relation to deposits made during the Relevant Period. Those forms merely stated the deposit dates, but the dates on which the forms were handled by the relevant Customer Service staff, and the dates on which they were reviewed and/or approved by senior management and Compliance officer were not specified.
18. Evidence of Zhongtai's staff revealed that most of the Third Party Deposit Forms in relation to deposits made via the ICBC Sub-Accounts from September to November 2014 were in fact completed in January to February 2015, after the SFC made enquiries about the firm's handling of third party deposits and Zhongtai took steps to re-assess such deposits. Whilst there is no evidence to show that it is the intention of Zhongtai to create any misleading impression by not specifying the dates of review and approval, the forms may give an inaccurate and misleading impression that they were completed contemporaneously at the time the deposits were made.
19. The SFC found that Zhongtai failed to maintain proper and accurate records of senior management's and compliance officer's assessment of the third party deposits. Records which Zhongtai were required to maintain under section 20(1)(a) of Schedule 2 to the AMLO and paragraphs 8.2 and 8.5 of the AML Guideline should be accurate to assist relevant authorities (including the SFC) in the discharge of their duties. Zhongtai has failed to comply with its obligation under General Principle 2 of the Code of Conduct to act with due skill, care and diligence in conducting its business activities.
20. In light of the matters set out in paragraphs 8 to 19, the SFC further found that Zhongtai has failed to comply with General Principle 7 and paragraph 12.1 of the Code of Conduct which require the firm to comply with, and implement measures appropriate to ensuring compliance with, all relevant AML/CTF requirements when handling third party deposits for clients.

## **Conclusion**

21. Having considered all the circumstances, the SFC is of the view that Zhongtai is guilty of misconduct and its fitness and properness to carry on regulated activities have been called into question.
22. 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 that Zhongtai:
  - (a) co-operated with the SFC in resolving the SFC's concerns;
  - (b) took remedial steps and enhanced its policies and procedures after discovering its failures in the handling of third party deposits via the ICBC Sub-Accounts;
  - (c) agreed to engage an independent reviewer to conduct a review of the internal controls and systems of Zhongtai in relation to AML/CTF and the handling of third party deposits; and
  - (d) has an otherwise clean disciplinary record.

## 中泰國際證券有限公司因沒有遵守打擊洗錢的監管規定而遭證監會譴責及罰款260萬元

2017年3月14日

證券及期貨事務監察委員會（證監會）因中泰國際證券有限公司（前稱齊魯國際證券有限公司）（中泰）在處理第三者存款時沒有遵守打擊洗錢的監管規定，對其作出譴責及處以260萬元罰款（註1）。

證監會發現於2013年1月至2014年12月期間（有關期間），中泰沒有：

- 就多筆由第三者存入其客戶在中國工商銀行（亞洲）有限公司開立的子帳戶（工銀子帳戶）的存款，作出監察及／或進行充分和及時的查詢及審查；及
- 設立足夠和實施適當的內部程序及監控措施，以偵測和及時申報可疑的第三者存款，並確保對其高級管理層及職員在處理第三者存款方面的職責，作出明確劃分；及

具體而言，證監會的調查發現：

- 中泰曾於有關期間，處理超過300宗透過工銀子帳戶存入的第三者存款，但其合規部及高級管理層沒有按該公司的內部政策所規定，作出足夠的監察或審查。該等第三者存款是在其來源及／或第三者的身分未獲澄清及核實的情況下，獲接納及轉往客戶的帳戶；
- 中泰未有對透過工銀子帳戶存入的存款作出足夠監察，顯示其內部監控措施在關鍵時間存在缺失。根據中泰的規定，除非 (i) 客戶就第三者存款提供合理解釋；及 (ii) 第三者存款獲其合規部及至少一名負責人員核准，否則原則上應拒絕及退回有關存款，但中泰的職員並無遵守這項規定。
- 有證據顯示，相關的合規部職員與負責人員對其各自在處理第三者存款方面的角色和責任缺乏互相了解。

證監會進一步發現，當中泰採取步驟對某些第三者存款進行重新評估時，並沒有就其高級管理層及合規主任進行的評估，備存適當及準確的紀錄。

證監會認為，中泰的行為未能遵守《打擊洗錢及恐怖分子資金籌集（金融機構）條例》（《打擊洗錢條例》）、《打擊洗錢及恐怖分子資金籌集的指引》（《打擊洗錢指引》）及《證監會持牌人或註冊人操守準則》（《操守準則》）下的監管規定（註2至4）。

證監會在決定紀律處分制裁時，已考慮到中泰：

- 與證監會合作解決證監會關注的事項；
- 於發現其在處理透過工銀子帳戶存入第三者存款方面的缺失後，已採取補救措施，以及改進其政策和程序；
- 同意委聘獨立的檢討機構就其內部監控措施進行檢討；及
- 過往並無遭受紀律處分的紀錄。

完

備註：

1. 中泰根據《證券及期貨條例》獲發牌進行第1類（證券交易）及第4類（就證券提供意見）受規管活動。
2. 《打擊洗錢條例》附表2第5(1)條及《打擊洗錢指引》第5.1、5.10及5.11段規定，持牌法團須持續監察與客戶的業務關係，包括對為客戶執行的交易進行適當的審查；識辨複雜、大額或異乎尋常的交易，或無明顯經濟或合法目的之交易模式；作出相關查詢，以查驗該等交易的背景及目的，並在適當情況下向聯合財富情報組報告。這些查驗的發現及結果應以書面方式記錄在案，藉以為有關當局提供協助。
3. 《打擊洗錢條例》附表2第23條及《打擊洗錢指引》第2.1段規定，持牌法團須採取一切合理措施，確保設有合適的保障設施，以減低洗錢及恐怖分子資金籌集的風險，以及防止違反《打擊洗錢條例》下任何有關客戶盡職審查及備存紀錄的規定。為確保符合此項規定，持牌法團應執行適當的內部打擊洗錢及恐怖分子資金籌集政策、程序及監控措施。
4. 《操守準則》第2及7項一般原則以及第12.1段規定，持牌法團(a)在經營其業務時，應以適當的技能、小心審慎和勤勉盡責的態度行事，以維護客戶的最佳利益及確保市場潔淨穩健；及(b)應遵守、實施及維持適當的措施，以確保所有適用於其業務活動的監管規定獲得遵守。
5. 持牌法團應參閱證監會於2017年1月26日發出的《致持牌法團及有聯繫實體的通函－打擊洗錢／恐怖分子資金籌集 遵從打擊洗錢／恐怖分子資金籌集規定》，當中載列了證監會在檢視部分持牌法團的打擊洗錢／恐怖分子資金籌集制度時所發現的主要關注範疇。

中泰國際證券有限公司因沒有遵守打擊洗錢的監管規定而遭證監會譴責及罰款260萬元 | 證券及期貨事務監察委員會

紀律處分行動聲明載於證監會網站

最後更新日期：2017年3月14日

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## 紀律處分行動聲明

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### 紀律處分行動

1. 證券及期貨事務監察委員會（**證監會**）根據《證券及期貨條例》第 194 條對中泰國際證券有限公司（前稱齊魯國際證券有限公司）（**中泰**）作出譴責及處以 260 萬元罰款。
2. 證監會發現：
  - (a) 於 2013 年 1 月至 2014 年 12 月期間（**有關期間**），中泰沒有：
    - (i) 就多筆由第三者存入其客戶在中國工商銀行（亞洲）有限公司開立的子帳戶（**工銀子帳戶**）的存款，作出監察及／或進行充分和及時的查詢及審查；及
    - (ii) 設立足夠和實施適當的內部程序及監控措施，以偵測和及時申報可疑的第三者存款，並確保對中泰的職員及高級管理層在處理第三者存款方面的職責，作出明確劃分；及
  - (b) 當中泰於 2015 年 1 月至 2 月採取步驟，以重新評估於 2014 年 9 月至 11 月期間存入的某些第三者存款時，沒有就高級管理層及合規主任對該等存款的評估，備存適當及準確的紀錄。有關紀錄沒有顯示評估日期，並令人產生不準確及具誤導性的印象，以為該等第三者存款已於存入的同時獲得核准或經過評估。
3. 中泰沒有遵守：
  - (a) 《打擊洗錢及恐怖分子資金籌集（金融機構）條例》（《**打擊洗錢條例**》）附表 2 第 5(1)條及第 23 條；
  - (b) 《打擊洗錢及恐怖分子資金籌集的指引》（《**打擊洗錢指引**》）第 2.1、5.1、5.10 及 5.11 段；及
  - (c) 《證監會持牌人或註冊人操守準則》（《**操守準則**》）第 2 及 7 項一般原則以及第 12.1 段。

### 監管規定摘要

4. 根據《打擊洗錢條例》及《打擊洗錢指引》：
  - (a) 《打擊洗錢條例》附表 2 第 23 條及《打擊洗錢指引》第 2.1 段：持牌法團須採取一切合理措施，確保設有合適的保障設施，以減低洗錢及恐怖分子資金籌集（**洗錢／恐怖分子資金籌集**）的風險，以及防止違反《打擊洗錢條例》下任何有關客戶盡職審查及備存紀錄的規定。為確保符合此項規定，持牌法團應執行

適當的內部打擊洗錢及恐怖分子資金籌集（**打擊洗錢／恐怖分子資金籌集**）政策、程序及管控措施。

- (b) 《打擊洗錢條例》附表 2 第 5(1)條及《打擊洗錢指引》第 5.1、5.10 及 5.11 段：持牌法團須持續監察與客戶的業務關係。有關規定包括但不限於下列事項：
- (i) 對為客戶執行的交易（包括現金及非現金交易）進行適當的審查。
  - (ii) 識辨複雜、大額或異乎尋常的交易，或無明顯經濟或合法目的之交易模式；這些都可能顯示洗錢／恐怖分子資金籌集的活動。
  - (iii) 如發現複雜、大額或異乎尋常的交易，或無明顯經濟或合法目的之交易模式，持牌法團應作出相關查詢、查驗該等交易的背景、目的及情況（如適合）。如有任何懷疑情況，必須向聯合財富情報組（**財富情報組**）提交報告。這些查驗的發現及結果應以書面方式記錄在案，藉以為有關當局提供協助。
- (c) 《打擊洗錢指引》第 8.2 段：持牌法團應保存所需及充分的客戶、交易及其他紀錄，以符合《打擊洗錢條例》下有關備存紀錄的規定。
- (d) 《打擊洗錢條例》附表 2 第 20(1)(a)條及《打擊洗錢指引》第 8.5 段：持牌法團應保存足以重組個別交易及確立任何可疑戶口或客戶的財政概況的紀錄。
5. 根據證監會於 2013 年 12 月 3 日發出的《致持牌法團及有聯繫實體的通函－打擊洗錢／恐怖分子資金籌集監察及舉報可疑交易》，證監會提醒持牌法團應時刻保持警覺，監察客戶的活動以及偵查可能與洗錢／恐怖分子資金籌集有關的不尋常或可疑交易。具體而言，為了防範第三者資金轉帳所帶來的洗錢／恐怖分子資金籌集風險，持牌法團應注意下列事項：
- (a) 不應受理第三者付款；如受理的話，應事先獲得指定的高級職員批准。
  - (b) 採取合理步驟識別第三者資金的來源。
  - (c) 特別注意及監察客戶交易中有否任何頻繁及／或金額龐大的第三者資金轉帳或支票付款。
  - (d) 執行更嚴格的客戶盡職審查及持續監控程序，同時採取能充分顧及風險的額外措施，藉此減低某些情況下的洗錢／恐怖分子資金籌集的風險，例如有客戶要求向第三者付款或有關款項由第三者支付，但該名第三者與客戶並無明顯聯繫。
  - (e) 持牌法團應進行適當的查詢，評估其對客戶及有關第三者的認識，以及第三者資金轉帳是否與客戶的已知合法業務或個人活動相符。
  - (f) 持牌法團經評估後，假如認為有懷疑的理由，應向財富情報組提交可疑交易報告。
6. 《操守準則》第 2 項一般原則規定，持牌法團在經營其業務時，應以適當的技能、小心審慎和勤勉盡責的態度行事，以維護客戶的最佳利益及確保市場廉潔穩健。

7. 《操守準則》第 7 項一般原則及第 12.1 段規定，持牌法團應遵守、實施及維持適當的措施，以確保所有適用於其業務活動的監管規定獲得遵守。

## 事實摘要

*沒有對透過工銀子帳戶存入的第三者存款作出監察及審查*

8. 根據中泰的內部政策：
- (a) 中泰的職員應向客戶作出適當查詢，並採取合理步驟了解客戶的資金來源；
  - (b) 如財務部或交收部發現存款是由第三者存入，便須即時知會合規部。第三者存款須待合規部核准後，方可處理；
  - (c) 接收第三者存款的客戶，須填寫一份第三者存款申請書（**第三者存款表格**），列明（其中包括）客戶與存款人的關係及存款的理由；
  - (d) 原則上，第三者存款會被拒絕及退回。然而，如具有合理解釋及相關證據，中泰可在其合規部批准及獲得至少一名負責人員同意的情況下，接納有關的第三者存款；及
  - (e) 如中泰未能退回第三者存款或確定其來源，它可在諮詢合規部的意見，以及取得負責有關存款的負責人員及中泰至少一半高級管理人員的書面批准後，接納有關的第三者存款。
9. 於有關期間，中泰委聘工銀為其客戶提供子帳戶服務。客戶如希望把款項存入他們於中泰的證券帳戶，可以透過工銀子帳戶存入款項。
10. 中泰的交收部職員及負責人員提供的證據顯示，中泰在處理透過工銀子帳戶存入的第三者存款方面存在缺失：
- (a) 中泰未能即時偵測把資金存入子帳戶的人士的最終身分，而只能於一至兩個星期後當它從工銀接獲匯款通知書時，才得悉存款人的身分。
  - (b) 於有關期間，交收部職員並不知道，他們可以取得有關存入工銀子帳戶的資金來源的資料。曾與證監會會面的相關交收部職員表示，他在 2015 年之前並不知道工銀會向中泰的財務部提供匯款通知書（當中識別了存款人的身分）。
  - (c) 透過他們的工銀子帳戶接收第三者存款的客戶，均無須提供相關的存款單或填寫第三者存款表格，以將有關存款知會中泰。有關資金會於短時間內自動存入客戶的證券帳戶。
  - (d) 由於中泰未能即時確定存入子帳戶的款項是否源自客戶或第三者，於中泰得悉款項是可能來自第三者之前，有關資金可能已轉往客戶的帳戶，或已被客戶動用。
  - (e) 有部分第三者存款表格是於第三者存款獲接納並轉往客戶的證券帳戶後才填寫的。
11. 於有關期間，中泰曾處理多宗第三者存款，而其中約 329 宗第三者存款是透過工銀子帳戶存入的。由於未能偵測存款是否第三者存款，有關存款在沒有按照中泰的內部政策規定須接受合規部及高級管理層的監察或審查的情況下，便已被處理。
- (a) 中泰的紀錄顯示，在該等第三者存款當中，有 325 宗並無進行評估或達致結論，原因是：
    - (i) 沒有填寫第三者存款表格；

- (ii) 第三者存款表格即使已填寫，但並未由合規部的人員批簽；
  - (iii) 有關存款並無記錄在中泰當時的相關打擊洗錢登記冊內；或
  - (iv) 有關存款即使已記錄在中泰當時的相關打擊洗錢登記冊內，但登記冊顯示關於該項存款的資料欠奉，或登記冊顯示有關存款須待進一步評估。
- (b) 該 325 宗沒有進行評估或沒有證據顯示曾進行評估的第三者存款，是於以下情況下獲接納：
- (i) 存款的來源及／或第三者的身分未獲澄清或識別；
  - (ii) 在某些有填寫第三者存款表格的情況中，表格內所述的存款理由及／或存款人與客戶的關係似乎不足以證明第三者的資金為合理及／或涉及洗錢的風險極低。例如，“朋友”常被用作說明第三者與客戶的關係，而“朋友幫忙轉款”則為常用的存款理由；及／或
  - (iii) 部分存款顯得特別不尋常，同一第三者於一段短時間內，以不同理由把多筆巨額款項存入中泰多名客戶的帳戶。例如，公司 K 曾於 2014 年 10 月的最後兩個星期，把合共 70,789,280 港元的款項存入三名客戶的帳戶：
    - 當中的 1,253,908 港元、7,523,500 港元及 1,005,015 港元是在大約 2014 年 10 月 16、17 及 30 日存入客戶 A 的帳戶。表格內所述的關係為“朋友”，而存款理由則為“朋友幫忙轉款”；
    - 當中的 10,000,000 港元、20,000,000 港元及 30,000,000 港元是於 2014 年 10 月 20 日存入客戶 B 的帳戶。表格內所述的關係為“生意夥伴”，而存款理由則為“還款”；及
    - 當中的 1,006,857 港元是於 2014 年 10 月 30 日存入客戶 C 的帳戶。表格內提供的關係為“朋友”，而存款理由則為“朋友幫忙轉款”<sup>1</sup>。

12. 中泰沒有對透過工銀子帳戶存入的第三者存款作出監察，未能遵守《打擊洗錢條例》附表 2 第 5(1)條及《打擊洗錢指引》第 5.1、5.10 及 5.11 段下的監管責任。

沒有設立足夠和實施適當的內部程序，並確保職員及高級管理層之間的職責得到明確劃分

13. 中泰未有對透過工銀子帳戶存入的存款作出足夠監察，顯示其內部監控措施在關鍵時間存在缺失。上文第 8 段所撮述中泰在處理第三者存款方面的政策未獲得適當執行，原因是：
- (a) 中泰沒有設立程序及監控措施，以檢討、審查及識別透過工銀子帳戶存入的第三者存款；
  - (b) 因此，大部分該等第三者存款均在沒有取得合規部的相關核准的情況下被處理；及

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<sup>1</sup> 第三者與客戶之間的關係以及作出該等存款的理由，是於存款存入數個月後，在大約 2015 年 1 月至 2 月取得。見下文第 17 至 18 段。

- (c) 第三者存款原則上應被拒絕及退回，除非 (i) 客戶能夠就該存款提供合理解釋；及 (ii) 存款獲合規部及至少一名負責人員核准，但中泰的職員並無嚴格恪守這項規定。
14. 相關的合規部職員及負責人員提供的證據進一步顯示，他們對其各自在處理第三者存款方面的角色和責任缺乏互相了解。例如：
- (a) 合規經理認為他已清晰地表達其意見，即應拒絕所有第三者存款，而倘若負責人員不顧其意見，仍然希望接納有關存款，則必須由負責人員核准。
- (b) 曾在第三者存款表格上簽署的負責人員稱，他們只是按照程序簽署表格，而他們在表格上簽署，並不一定代表他們核准有關存款。他們認為合規部應對存款作出評估，並在適當時向財富情報組報告有關事宜。
15. 證監會亦發現，交收部與財務部的職員之間溝通不足，以及沒有制訂程序，規定從工銀接獲匯款通知書（當中識別了把資金存入工銀子帳戶的人士的身分）的財務部職員，須把該資料提供予交收部職員。
16. 鑑於上文所述，證監會認為中泰於持續監察客戶活動及處理第三者存款方面的內部監控措施並不足夠，以及中泰沒有遵守《打擊洗錢條例》附表 2 第 23 條及《打擊洗錢指引》第 2.1 段所載的監管規定。

沒有就高級管理層／合規主任對第三者存款的評估及／或核准備存適當紀錄

17. 證監會在調查期間，從中泰取得了多份涉及於有關期間內的存款的第三者存款表格。該等表格僅列出存款日期，但並無註明相關的客戶服務部職員處理表格的日期，以及高級管理層及合規主任審閱及／或核准表格的日期。
18. 中泰的職員提供的證據顯示，大部分在 2014 年 9 月至 11 月期間透過工銀子帳戶存入的存款有關的第三者存款表格，實際上是於證監會就中泰處理第三者存款的程序作出查詢，以及中泰採取步驟重新評估該等存款後，於 2015 年 1 月至 2 月期間填寫的。雖然沒有證據顯示中泰的目的是要透過不註明審閱及核准日期，製造任何具誤導性的表象，但該等表格卻可能會令人產生不準確及具誤導性的印象，以為表格是在款項存入時同步填寫的。
19. 證監會發現中泰沒有就其高級管理層及合規主任對第三者存款的評估，備存適當及準確的紀錄。中泰須根據《打擊洗錢條例》附表 2 第 20(1)(a) 條及《打擊洗錢指引》第 8.2 及 8.5 段備存準確的紀錄，以協助有關當局（包括證監會）履行它們的職責。中泰沒有遵守其在《操守準則》第 2 項一般原則下，在經營其業務時應以適當的技能、小心謹慎和勤勉盡責的態度行事的責任。
20. 鑑於第 8 至 19 段所載列的事項，證監會進一步發現中泰沒有遵守《操守準則》第 7 項一般原則及第 12.1 段，當中規定商號應遵守及實施適當的措施，以確保於替客戶處理第三者存款時，遵守所有相關的打擊洗錢／恐怖分子資金籌集規定。

**結論**

21. 在考慮過所有情況後，證監會認為中泰犯有失當行為，及其進行受規管活動的適當人選資格受到質疑。
22. 證監會在決定第 1 段所述的紀律處分制裁時，已顧及其《紀律處分罰款指引》，並已考慮到中泰：
- (a) 與證監會合作解決證監會關注的事項；

- (b) 於發現其在處理透過工銀子帳戶存入的第三者存款方面的缺失後，已採取補救措施，以及改進其政策和程序；
- (c) 同意委聘獨立檢討機構，對中泰於打擊洗錢／恐怖分子資金籌集以及處理第三者存款方面的內部監控措施及制度進行檢討；及
- (d) 過往並無遭受紀律處分的紀錄。