

The SFC publicly censures CLSA Limited, CITIC Securities Brokerage (HK) Limited, Beijing Enterprises Holdings Limited and their representatives for breaching the Code on Share Buy-backs in respect of share buy-backs conducted by Beijing Enterprises Holdings Limited

Introduction

1. The Securities and Futures Commission (**SFC**) publicly censures the following entities and individuals ("**Individuals**"¹, and together with the entities, the "**Parties**") in respect of certain buy-back transactions in the shares of Beijing Enterprises Holdings Limited conducted in 2016 in breach of the Code on Share Buy-backs:

CLSA Limited (**CLSA**)

Andrew James WALTERS (**Mr Walters**)

Stuart Richard WILSON (**Mr Wilson**)

CITIC Securities Brokerage (HK) Limited (**CSB**)

Ka Yip Eddy LAU (**Mr Eddy Lau**)

King Yuen LAU (**Mr KY Lau**)

Stephanie LI (**Ms Li**)

Beijing Enterprises Holdings Limited (**Beijing Enterprises**)

Woon Cheung Eric TUNG (**Mr Tung**)

Background

2. CLSA is licensed to carry out Type 1 (dealing in securities), Type 4 (advising on securities) and Type 7 (providing automated trading services) regulated activities under the Securities and Futures Ordinance (**SFO**). Mr Walters was a licensed representative (Type 1) and Head of

The buy-backs

17 February 2016 trade (February Trade)

6. CLSA approached Beijing Enterprises prior to the February Trade and asked if it was interested in acquiring a block of its shares from one of its clients. The February Trade, executed on the Stock Exchange on 17 February 2016, involved the buy-back of 10.362 million Shares at \$34 per share by Beijing Enterprises, which was matched with the sell orders for a total of approximately 10.4 million Shares of an institutional client of CLSA. CLSA acted as broker for the institutional client while CSB acted as broker for Beijing Enterprises.
7. Although the trade was executed on the Stock Exchange, hence was on the face of it on-market, there were in fact communications among various personnel at CLSA, CSB and Beijing Enterprises beforehand. In particular:
 - (a) CLSA's institutional client and Beijing Enterprises, through CLSA and CSB, agreed on the price for and the quantity of the Shares to be bought back;
 - (b) staff of CLSA and CSB discussed the sequencing of the orders to be placed on the Stock Exchange, which allowed CSB to take up 99.5% of the Shares sold by CLSA; and
 - (c) the execution staff at CLSA and CSB coordinated and communicated the

Relevant provisions of the Codes on Takeovers and Mergers and Share Buy-backs (Codes)

12. Share buy-back is defined in the Codes as *"a buy-back of shares, or an offer to buy back, redeem or otherwise acquire shares of an offeror made by an offeror, including a privatisation, scheme of arrangement or other form of reorganisation that consists in whole or in part of such an offer."*

13. Off-market share buy-back is defined as *"a share buy-back that is not a share buy-back by general offer, an exempt share buy-back or an on-market share buy-back."*

14. On-market share buy-back is defined as *"a share buy-back made by:- (1) a company having a listing on the Stock Exchange through the facilities of the Stock Exchange in accordance with the Listing Rules; ..."*.

15. Rule 1 of the Code on Share Buy-backs provides that: *"[a] company may only engage in the following types of share buy-back:-*

(a) an on-market share buy-back;

(b) an off-market share buy-back approved in accordance with Rule 2;

(c) an exempt share buy-back; and

(d) a share buy-back by general offer in accordance with the General Principles and Rules of the Codes."

16. Rule 2 of the Code on Share Buy-backs provides that *"[o]ff-market share buy-backs must be approved by the Executive² before a repurchasing company acquires any shares pursuant to such share buy-back. Such approval will normally be conditional upon the following:-*

(a) approval of the proposed off-market share buy-back by at least three-fourths of the votes cast on a poll by disinterested shareholders in

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threshold (75% of the disinterested shares) for shareholder approval of off-market share buy-backs.

18. Although the February and May Trades were executed on the Stock Exchange, they were in fact pre-arranged and were in substance off-market share buy-backs. Therefore, the February and May Trades should have complied with the relevant requirements under Rule 2 of the Code on Share Buy-backs (ie, approvals from the Executive and Beijing Enterprises' independent shareholders should have been obtained). The SFC considers the breaches of the Code on Share Buy-backs in this case to be serious and to merit the present disciplinary sanction.
19. Beijing Enterprises, in conducting the February and May Trades, clearly breached Rules 1 and 2 of the Code on Share Buy-backs. Shareholders of Beijing Enterprises were deprived of the opportunity to vote on an important corporate action. Mr Tung, on behalf of Beijing Enterprises, gave instructions to CLSA and CSB in respect of the February and May Trades.
20. Section 1.7 of the Introduction to the Codes emphasises the importance of the role and responsibility of financial and professional advisers: they should use all reasonable efforts to ensure that their clients understand and abide by the requirements of the Codes. It also provides that they must have the competence, professional expertise and adequate resources to fulfil their role and discharge their responsibility under the Codes.
21. CLSA and CSB, through their employees, played an active role in coordinating and arranging the February and May Trades. At the relevant time, CLSA and CSB did not have proper systems in place to ensure that share buy-back transactions were conducted in accordance with the Code on Share Buy-backs, nor were there any established policies or procedures regarding the conduct of share buy-back transactions or pre-arranged trades in the nature of the February and May Trades. There was no specific requirement for compliance approval to be obtained on a share buy-back transaction.
22. Mr Walters and Mr Wilson were senior members of CLSA involved in the February and May Trades, and Mr Eddy Lau, Mr KY Lau and Ms Li were senior members or responsible officers of CSB involved in the February and May Trades. While the Individuals from CLSA in particular followed existing internal procedures and obtained advice internally, including from Mr Tung, Mr KY Lau and Ms Li, they did not obtain any external advice from CLSA or CSB in relation to the February and May Trades.

Codes. As per section 1.7 of the Codes, advisers are expected to be conversant with the Codes as it is part of their responsibility to ensure their clients understand and abide by the requirements of the Codes. If there is any doubt about the application of the Codes, the Executive should be consulted at the earliest opportunity.

30 December 2019