

Enforcement

Our mission is to protect investors and uphold the integrity of Hong Kong markets by deterring unlawful or improper activities through effective surveillance and enforcement.

Achievements

- Identified 18 cases of suspect warrants market activities for investigation
- Substantially concluded three cases before the Insider Dealing Tribunal
- Successfully prosecuted 72 companies and people for various offences
- Concluded 84 disciplinary inquiries and took action against 98 companies and people
- Excluded a sponsor from the listings market for 13 months
- Banned an analyst for five years for trading contrary to his research reports
- Assisted the Court in a successful ICAC prosecution of a high profile market manipulation case
- Referred 24 cases to the Police
- Concluded 570 cases of which 427 cases were completed within 12 months

This Chapter Is About

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What We Do

- Monitor the trading of Hong Kong's stock and derivative markets and inquire into irregularities
- Monitor reporting of large open positions in futures and options
- Inspect books and records of listed companies if impropriety is suspected
- Enforce laws relating to the securities and futures industry, leveraged foreign exchange trading, and collective investment schemes
- Report suspected market misconduct to the Financial Secretary
- Enforce disclosure of interests of substantial shareholders, directors and chief executives of listed companies
- Discipline dishonest, incompetent and financially unstable regulated intermediaries
- Co-operate with domestic and overseas regulatory bodies in local and overseas investigations

What We Did

During the year, we continued 494 inquiries or investigations from 2004-05. Another 524 new cases were opened as a result of information from sources including the public, other law enforcement agencies, HKEx and foreign regulators. Out of these 1,018 cases handled, 570 were concluded and the remaining 448 were subject to continuing inquiries, investigations, hearings or prosecutions.

Surveillance

✓ Unusual price and volume movements

The Surveillance Department monitors day-to-day trading in Hong Kong's securities and futures markets. With the help of sophisticated computer systems, we identify and inquire into unusual price and turnover movements, which may be signs of market misconduct including insider dealing and market manipulation. We actively monitor media reports for disclosure failures. We also surf the Internet to detect possible unlicensed dealing, unauthorised advertising of investment services, or other abnormal financial activities.

Where we suspect there are possible false or misleading announcements or withholding of material information from the public, we seek clarification from listed companies or recommend suspension of trading of their shares. We have not recommended suspensions in the past year.

In 2005-06, there were 253 trading suspensions due to unusual price or volume movements. These suspensions were usually lifted on the day after the companies released news which might have an impact on their stocks, or statements that they were unaware of the reason for the unusual movements. HKEx directed one of the suspensions as the management of the company could not be contacted.

In case of suspected market manipulation, insider dealing, dissemination of false or misleading information or other trading malpractices, we will obtain trading details from brokers to conduct preliminary assessments before referring these matters to the Investigation Department.

During the year, we sought trading records from brokers in 162 inquiries into untoward share price and volume movements. On many occasions, our early inquiries stopped potentially improper trading activities. 49 cases were passed to our Investigation Department for further investigation. Of these, eight cases were concluded with the issuance of warning letters, 14 cases were concluded with no further action, and 27 cases were still under investigation.

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✔ Market trading practices

During the year, we conducted 32 inquiries into activities in the derivative warrants market, including possible false trading, fixing of the settlement price during the expiry process, non-compliance with the liquidity provider obligations and illegal short selling of warrants. We concluded 14 cases with no further action. 18 cases were still being investigated.

✔ Client identity rule

Under this rule, intermediaries are required to provide information relating to the ultimate beneficiaries of clients trading through them within two business days of our request. If they fail to comply, they may be required by the SFC to cease accepting orders from the clients concerned and be subject to disciplinary action. In 2005-06, we requested 11 intermediaries to cease trading for 18 clients. Four of these requests were subsequently lifted after we were satisfied that the intermediaries concerned would comply with the rule in the future.

✔ Large open positions and position limits

During the year, there were 11 cases relating to reporting violations and position limits breaches. Four cases were written off, with warning letters issued in three instances. The others were under review or being investigated.

✔ Expert advisory services

In 2005-06, we provided expert advisory services in 32 SFC investigations and three investigations conducted by other law enforcement agencies. In addition, we gave expert evidence before the Courts or the Insider Dealing Tribunal (IDT) on six occasions.

Investigations

During the year, we opened 252 new cases and continued investigation in 224 cases brought forward from 2004-05.

✔ Listed companies

A petition was made to the Courts seeking a SFO section 214 order to disqualify a former director. This matter will be heard in the coming year. Similar action in another case to disqualify five directors is at an advanced stage.

We investigated 27 cases involving listed companies in 2005-06, including 14 cases brought forward. We referred seven cases to the Police, ICAC, HKEx or Hong Kong Institute of Certified Public Accountants. Five cases were concluded with no further action.

✔ Market misconduct

In combating market misconduct, we continued to work closely with other law enforcement agencies including the Police Commercial Crime Bureau and the ICAC.

The high-profile manipulation of Shanghai Land Holdings Ltd shares case was heard during the year. The former general manager of the company, Ms Mo Yuk Ping, and four others were convicted for manipulating the shares of Shanghai Land and perverting the course of justice by giving false information to the SFC. They were given custodial sentence of six months to three and a half years.

The conviction followed an ICAC investigation in which considerable assistance was provided by the SFC. The expert evidence given by an SFC officer on the manipulative trades was fully accepted by the Courts. This case is a good example of the excellent co-operation that exists between law enforcement agencies in Hong Kong, and demonstrates that efforts to combat market misconduct extend well beyond the SFC.



Five people jailed in market manipulation case at the District Court in Wanchai.

✓ Insider dealing

The IDT last year released the full decisions of two concluded cases. In the Gilbert Holdings Ltd case (Case 1 in Table 1), it was found that two directors and two people related to them were insiders. In addition to fines and costs totalling \$11.7 million, all four insiders were banned from being directors or taking part in the management of any listed companies for three years.

In the case of HKCB Bank Holding Company Ltd and Hong Kong China Ltd (Case 2), two insiders were banned from being directors of listed companies for five years and ordered to pay fines and costs totalling \$56 million.

The IDT substantially completed one hearing relating to Easy Concepts International Holdings Ltd and Easyknit International Holdings Ltd (Case 3). Five people were found to be insiders. Two of them appealed the findings.

Fewer cases were concluded during the year due to challenges and appeals lodged. In this regard, the constitution of the IDT, the appointments of its members and the IDT's decision not to stay proceedings were challenged in the cases concerning Vanda Systems & Communications Holdings Ltd, Asia Orient Holdings Ltd and Harbour Ring International Holdings Ltd respectively. The applications have now been dismissed and substantial hearings are due to commence this year.

In 2005-06, we investigated eight cases carried forward and 17 new cases. We concluded 10 cases: one of which was referred to HKEx, warning letter or letters of advice were issued to parties concerned in three cases, and six cases were concluded with no further action. We continued investigations in the remaining 15 cases.

Altogether we have eight cases before the IDT, two of which were referred to the IDT during last year.

Table 1
Penalty ordered by IDT on insiders

Case	Insider dealers	Shares of listed company	Date of decision/penalty	Disgorgement of profit/loss avoided (\$)	Penalty (\$)	Cost (\$)	Bar from being a director
1	Wong Wing Wah	Gilbert Holdings Ltd	15.12.05	1,754,541	2,631,812	\$3,648,439 to be paid jointly and severally by the 4 insiders	3 years
	Clarence			—	529,940		3 years
	Hung Shiu Shan			353,293	529,940		3 years
	Wong Man Fu Sunny			110,673	2,219,940		3 years
2	Carlton Poon	HKCB Bank Holding Company Ltd and Hong Kong China Ltd (now renamed Lippo China Resources Ltd)	9.8.05	3,422,158	6,844,316	—	5 years
	Jenny Kong			11,797,939 [^]	23,595,878 [^]		10,543,546 [^]
3	Koon Wing Yee*	Easy Concepts International Holdings Ltd and Easyknit International Holdings Ltd	19.1.06	31,367,553	15,000,000	1,895,044	5 years
	Chan Kin Shing Sonny*			5,090,219	1,500,000	758,017	2 years
	Alan Tsang			442,127	1,000,000	947,522	4 years
	Helena Sum			442,127	500,000	758,017	N/A
	Christina Tsang			589,502	800,000	947,522	N/A
Total: 11 entities				55,370,132	55,151,826	19,498,107	

[^] Liability to pay is joint and several between Carlton Poon and Jenny Kong

* Under appeal

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✓ Market manipulation

We successfully prosecuted eight people in the Courts for manipulating the shares of Dynamic Holdings Ltd, EVI Education Asia Ltd, Artel Solution Group Holdings Ltd, Essex Bio-Technology Ltd, Innovis Holdings Ltd and GP Nano Technology Group Ltd (Table 2). One manipulator was sentenced to seven months' imprisonment. One was sentenced to four months' immediate custodial sentence but allowed bail with conditions pending appeal on 11 July 2006. There are four entities awaiting trial.

✓ Market Misconduct Tribunal

The SFO provides for parallel civil and criminal regimes to combat market misconduct. A Market Misconduct Tribunal (MMT) has been set up to build on the work of the IDT by

handling civil cases of all forms of market misconduct in addition to insider dealing, including market manipulation, price rigging and related abuses and the dissemination of false or misleading information about securities or futures contracts.

During the year, we referred one case to the Financial Secretary to consider instituting proceedings before the MMT regarding dissemination of false or misleading information. This matter is under review by the Department of Justice. Currently, we have two other matters that we regard as suitable for referral to the Financial Secretary.

Table 2
Successful prosecutions – market manipulation

Case	Defendants	Date of conviction	No. of summonses involved		Fine (\$)/penalty	Costs of investigation awarded (\$)
1	Zou Yishang	11.4.05	1	4 months' immediate custodial sentence*		56,924
2	Lam Chee Wing Alan	17.6.05	2	3-month imprisonment suspended for 18 months		8,202
3	Tang Shui Fai	29.12.05	2	6-month imprisonment suspended for 2 years and a fine of \$20,000		25,000
4	Lee Sing Wai Stephen	10.1.06	1	7-month imprisonment		10,054
5	Cheung Wan Chiu	12.1.06	1	4-month imprisonment suspended for 3 years and a fine of \$30,000		10,000
6	Ng Hon Chung	21.3.06	1	2-month imprisonment suspended for 12 months		34,433.33
7	Ng Kwok Wing	21.3.06	1	2-month imprisonment suspended for 12 months		34,433.33
8	Cheung Joe Kin Cho	21.3.06	1	2-month imprisonment suspended for 12 months		34,433.33
Total: 8 entities			10		50,000	213,480

* Allowed bail with conditions pending appeal

✔ Cold calling

Unsolicited calls are prohibited in the SFO to protect investors from being pressured into hasty decisions to buy financial products they do not want or cannot afford. We prosecuted nine people in 2005-06 (Table 3).

✔ Failing to assist SFC investigations

Two people were convicted for failing to attend SFC investigation interviews and a third person was convicted for failure to provide assistance in connection with an investigation (Table 4). People who have information relevant to an investigation have a legal duty to attend the SFC's interviews to give complete, accurate and true answers.

Table 3
Successful prosecutions – cold calling

Case	Defendants	Date of conviction	No. of summonses involved	Fine (\$)	Costs of investigation awarded (\$)
1	Chan Man Kit	28.7.05	1	5,000	5,000
	Cheng Chun Fai	28.7.05	2	10,000	6,000
2	Chow Wai Ho	29.9.05	3	7,500	10,000
3	Mak Wing Shun Agnes	10.11.05	2	10,000	15,000
4	Lam Wing Chit	17.11.05	1	5,000	9,975
5	Leung Wing	1.12.05	1	2,000	14,533
6	Chau Sik Ki	24.1.06	1	6,000	4,716
7	Chan Kei	21.3.06	3	15,000	14,420
	Yeung Wan Yiu	21.3.06	3	15,000	14,420
Total: 9 entities			17	75,500	94,064

Table 4
Successful prosecutions – failing to assist SFC investigations

Case	Defendants	Date of conviction	No. of summonses involved	Fine (\$)/penalty	Costs of investigation awarded (\$)
1	Chan Kim Wing	15.4.05	2	30,000	2,248
2	Lee Sing Wai Stephen	7.10.05	1	15,000*	9,380
3	Tan King Yu	8.2.06	1	5,000	2,500
Total: 3 entities			4	50,000	14,128

* Lee was sentenced to 6-month imprisonment because his failure to attend an SFC interview was committed during the time his prison term for another offence was suspended

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✔ Unlicensed activities

We will prosecute those who engage in or aid and abet unlicensed activities. Licensees may also face disciplinary action. We prosecuted 16 people and two companies last year (Table 5).

✔ Disclosure of interests

HKEx refers late filings of disclosure of interests to the SFC. We may also detect cases of failure to disclose in our inquiries. Minor and first time offenders are usually warned. Serious cases may result in prosecutions. We have made public our investigation policy since May 2005.

Table 5
Successful prosecutions – unlicensed activities

Case	Defendants	Date of conviction	No. of summonses involved	Fine (\$)/penalty	Costs of investigation awarded (\$)
Unregistered dealing/aiding and abetting					
1	Ng Ka Man	5.5.05	1	3,000	9,671
	Chan Pang	5.5.05	1	3,000	9,671
2	Wong Yuen Sze Angel	29.6.05	1	1,500	13,317
	Lo Po Wah Julie	29.6.05	1	1,500	13,317
3	Ng Kit Fai Paris	22.9.05	3	20,000*	20,000
4	Chiu Chui Yi	9.3.06	1	3,000	10,686
Unlicensed advising on corporate finance					
1	Brodick Capital Ltd	2.6.05	1	10,000	10,000
	Lam Chi Yin Henry	2.6.05	1	10,000	10,000
2	Yam Wang Lap	2.12.05	1	6,000	13,131
Unlicensed investment advising					
1	Ng Yuk Chan Michael	7.7.05	1	3,000	18,138
2	Pang Yin Har	25.8.05	1	5,000	17,560
3	Lam Kwok Fai	8.9.05	1	2,000	9,053
4	Kwan Sok Un Samantha	22.9.05	1	5,000*	5,000
Unlicensed foreign exchange trading/aiding and abetting					
1	Mok Sze Wan	1.9.05	1	5,000	5,000
2	Tan King Yu	8.2.06	1	5,000	2,500
Unregistered asset management					
1	Ming Tak Sang	22.9.05	1	5,000*	5,000
2	Chow Kwok Chung Bruce	10.11.05	1	2-month imprisonment suspended for 1 year and a fine of \$5,000	10,000
	Universal Funds and Asset Management Inc	10.11.05	1	50,000	–
Total: 18 entities			20	143,000	182,044

* Amount of fine was paid to the SFC as investigation costs

In the third year of operation of the SFO, investors became more familiar with their disclosure obligations. This is evident from a 10% decrease in late filings HKEx referred to us, from 4,185 in 2004-05 to 3,766 in 2005-06.

Last year, 16 people and 15 companies were prosecuted (Table 6). 91 warnings were issued. 16 cases were still under investigation.

Table 6
Successful prosecutions – disclosure of interests

Case	Defendants	Date of conviction	No. of summonses involved	Fine (\$)	Costs of investigation awarded (\$)
1	Lee Fung Hong (Cheung's) Forex Dealers Ltd	14.4.05	4	10,000	3,000
	Luk Hon Sum Peter	14.4.05	4	6,000	2,000
2	Lee Eng Chhong	5.5.05	2	2,000	5,439
3	Mo Shikang	26.5.05	4	20,000	8,393
	Rhythorth Ltd	26.5.05	2	10,000	—
4	Lin Ko Ming	30.6.05	2	10,000	782
5	Brilliant Path Ltd	8.7.05	1	3,000	11,492
6	Wang Li Hua	4.8.05	10	30,000	18,709
7	Wong Tin Sang	25.8.05	2	3,000	10,699
	Bioleader Ltd	25.8.05	2	3,000	—
8	Chu Yat Lam	6.10.05	13	13,000	2,265
9	TingKong-RexCapital Holdings Ltd	13.10.05	6	18,000	8,718
	Rexcapital Partners Inc	13.10.05	6	18,000	8,718
	Tees Corp	13.10.05	6	18,000	8,718
10	Chan Lai Keung	3.11.05	10	20,000	3,000
11	China Northern Enterprises Investment Fund	3.11.05	4	12,000	—
	Yau Chung Hong	3.11.05	4	8,000	17,000
12	Power Assets Enterprises Ltd	9.11.05	2	5,000	—
	Gouw Kar Yiu Carl	9.11.05	2	6,000	3,584
	Gouw San Bo Elizabeth	9.11.05	2	4,000	3,585
13	Raymond Dennis Neoh	10.11.05	2	5,000	—
	Upflow Holdings Ltd	10.11.05	2	10,000	22,000
14	Bava Ashraf Akathoottu	22.12.05	6	12,000	5,000
15	Wong Kam Yim	29.12.05	1	3,000	5,000
16	Everbest Investments Ltd	26.1.06	4	8,000	15,000
	Yu Chiu Wo	26.1.06	4	8,000	5,000
17	Heritage International Holdings Ltd	10.2.06	2	5,000	2,316
	Coupeville Ltd	10.2.06	2	5,000	2,316
	Dollar Group Ltd	10.2.06	2	5,000	2,316
18	New-Alliance Asset Management (Asia) Ltd	23.2.06	6	12,000	13,876
19	Tsoi Man Chi	23.2.06	2	4,000	9,098
Total: 31 entities			121	296,000	198,024

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✔ Provision of false or misleading information

Two people were convicted for misleading the SFC. One person and one company were prosecuted for making reckless and fraudulent misrepresentations respectively in a brochure promoting guaranteed funds (Table 7). They were also prosecuted for holding out as carrying on unlicensed activities.

✔ Others

One person was prosecuted for short selling a warrant through four accounts under his control. One person and one company were prosecuted for Financial Resources Rules (FRR) breaches. They failed to notify the SFC of liquid capital deficiencies (Table 8).

During the year, we successfully prosecuted 72 companies and people in total, four were prosecuted for more than one offence. We offered no evidence against five entities. There was one acquittal after trial.

Table 7
Successful prosecutions – provision of false or misleading information

Case	Defendants	Date of conviction	No. of summonses involved	Fine (\$)/penalty	Costs of investigation awarded (\$)
1	Kong Kwok Yee	29.9.05	1	20,000	11,849
2	Ngai Leung Wai	27.10.05	1	Sentencing adjourned	N/A
3	Chow Kwok Chung Bruce	10.11.05	1	10,000	—
	Universal Funds and Asset Management Inc	10.11.05	1	20,000	—
Total: 4 entities			4	50,000	11,849

Table 8
Other successful prosecutions

Case	Defendants	Date of conviction	No. of summonses involved	Fine (\$)	Costs of investigation awarded (\$)
Short selling					
1	Ha But Yee	30.6.05	16	64,000	20,952
Total: 1 entity			16	64,000	20,952
FRR breaches					
1	Excalibur Futures Ltd	9.6.05	7	35,000	10,000
	Chan Cheung Wah Linus	9.6.05	7	35,000	5,000
Total: 2 entities			14	70,000	15,000

This year, we will continue investigation of the 18 cases on derivative warrants trading as a priority. In addition, we have 20 cases awaiting hearing in the Courts including two market manipulation cases, and eight cases before the IDT.

Discipline

Intermediaries play a crucial role in Hong Kong's financial markets. They must be honest, efficient and financially sound. We take tough disciplinary action against those who put their clients' interests and market integrity at risk.

✔ Disciplinary priorities

Sponsors, investment advisers, fund managers and serious conflicts of interest continued to be our priorities. We made steady progress on these areas in 2005-06 and we intend to keep this focus into the coming year and successfully finish a number of important cases started during the year. We will then review our results and consider adjusting our focus.

Sponsors play a central role in protecting our investors and markets. However, some sponsors have failed to act according to the high standards expected.

During the year, the SFC concluded action against CSC Asia Ltd, which agreed to stop acting as a sponsor for 13 months and to an internal control review. The SFC had identified during an inspection of CSC due diligence failings in two listing applications it sponsored. Two senior executives of CSC, who each supervised one listing, agreed to withdraw from supervising sponsorship activities for eight months.

We took the above action together with HKEx, demonstrating our joint commitment to raising listing standards in Hong Kong. We currently have one significant action against a sponsor carried over from 2004-05 that we expect to conclude shortly, and three more actions pending which we hope to conclude in the coming year.

We intend our actions to send a clear message to sponsors who fail to act to the high standards expected that they will suffer severe economic and reputational consequences by being excluded from the listings market for lengthy periods.

More investors are relying on investment advisers to help manage their assets. We are concerned that many investment advisers do not appear to sufficiently understand their obligations to give investors sound advice. Our largest case involving an investment adviser remains in progress.

During the year, the Securities and Futures Appeals Tribunal (SFAT) decided our case against Mr Andrew Barber. After admitting new evidence that Barber did not produce to the civil courts or to us, the SFAT reduced the SFC's sanction against him but upheld a suspension. The SFAT made clear that investment advisers must ensure their clients understand a product sold to them and that it is reasonably suitable for them, even if promotional material contains warnings and other information that the clients read. The SFAT also held that an investment adviser cannot avoid liability for advice given by designating a client "execution only". Barber appealed the SFAT's decision to the Court of Appeal and the SFC appealed in response. We are waiting for the Court's decision.

The SFC also took action against three investment advisers for failing to supervise staff properly etc. The SFC reminds the industry that employers and management must ensure only competent, licensed staff advise clients. As noted in our recently released Regulatory Challenges and Responses document, we wish to raise standards among advisers and ensure they meet their obligations.

We also have a number of cases against other investment advisers pending that we aim to conclude in the coming year.

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We hope that our enforcement action, together with the clarification of standards expected of investment advisers and a programme of inspections by our Intermediaries and Investment Products Division, will improve conduct and lead to better advice for investors.

Last year, we continued our watch on fund managers' compliance failings. We settled allegations of compliance failings by fund manager Allianz Global Investors Hong Kong relating to the non-disclosure of changes in the valuation time of certain funds.

We are reassured that we have not yet discovered serious failings in Hong Kong's fund management industry and by the responsible attitude of those fund managers that we have found failings with. We will keep monitoring activities and take harsher action against more serious failings.

We expect licensees to avoid conflicts of interest and will severely punish those who fail to put clients' interest first. We banned Mr Wong Wing Fai Eric from the market for five years for trading contrary to research he prepared for traders in the firm that employed him. In 2004-05, we suspended him for 18 months for front running his research reports. We punished him more severely for being a repeat offender.

✔ Workload and penalty trends

In 2005-06, we conducted 206 disciplinary inquiries. Of these, we concluded 84 cases, and took action against 98 companies and people. We commenced disciplinary proceedings against five licensees which ended with no further action taken.

Last year, penalties have been consistent with the previous two years, after we raised them in 2003 on the commencement of the SFO.

Now, three years after the SFO commenced, more of our cases are being run under the SFO with the newer sanctions available.

We fined 26 licensees last year. We also accepted voluntary payments in settlements from 10 licensees. Fines and payments ranged from \$30,000 to \$1.4 million for companies and \$6,000 to \$400,000 for individuals. We fined about \$6.6 million in total.

We consider that a fine and a public reprimand are often appropriate penalties for failings which are negligent but not too serious and which do not warrant the removal of an individual or entity from the market.

We banned more licensees – six people for three months to five years. Previously, when a licensee surrendered their licence, we could not punish them. We can now fine people who have surrendered their licences or ban them from re-applying for a period or forever.

We suspended 36 licensees for periods up to three years and accepted three voluntary undertakings not to conduct regulated activities for up to 13 months.

We reprimanded 51 licensees with 33 reprimands being imposed with other sanctions, and privately warned 54 licensees.

It has been three years since the SFO came into force. Early in 2006-07, we will review the level of penalties against some comparable foreign markets to determine whether they should be increased. Our goal is to ensure that penalties secure appropriate regulatory outcomes by remaining proportionate, protective and dissuasive.

Table 9 highlights the most significant disciplinary actions.

Table 9
Significant actions

Case	Registrants	Date of action	Misconduct	Action/settlement/SFAT decision
1	Berich Brokerage Ltd	18.4.05	Failure to comply with undertakings to the SFC and other internal control failures.	As the result of a settlement, Berich paid \$1,400,000 and the SFC publicly reprimanded Berich.
2	Chung Tin Ming	18.4.05	Window-dressing of FRR returns by effecting fund transfers between margin client accounts to understate a particular client's margin shortfall.	As the result of a settlement, SFC suspended Chung for 2 years.
3	Han Sze Chao Richard	3.10.05	Market manipulation.	As the result of a settlement, SFC suspended Han for 18 months.
4	Lam Ho Chu	7.10.05	Failure to detect suspicious transactions executed through his company.	Suspension for 9 months.
5	Kung Chiu Nam Edmond	16.11.05	Providing misleading information to SFC and lending account to another licensee for personal use.	Suspension for 20 months.
6	Wong Wing Fai Eric	28.11.05	Conflicts of interest resulting from trading substantial amounts of securities which were the subject matter of the research reports prepared for traders in the firm.	As the result of a settlement, the SFC banned Wong from re-entering the industry for 5 years.
7	Hooray Securities Ltd	14.12.05	Breaches of Anti-Money Laundering Guidelines, FRR, Code of Conduct, and lack of internal controls.	As the result of a settlement, SFC reprimanded Hooray and fined it \$700,000.
8	Wong Tak Yuen Adrian	20.2.06	Facilitating an unlicensed person to impersonate his brother (a licensee) to engage in unlicensed activities.	As the result of a settlement, SFC banned Wong from re-entering the industry for 3 years.
9	Ng Hung Yu	22.2.06	Providing false information at an SFC interview, allowing clandestine and unauthorised third party orders and operating discretionary accounts without written authorisations.	Banned from re-entering the industry for 2 years and 9 months.
10	CSC Asia Ltd	7.3.06	Failure to comply with Code of Conduct in relation to due diligence work and preparation of prospectuses and submissions to HKEx.	As the result of a settlement, CSC undertook not to act as a sponsor for any new listing application on both the Main Board and the GEM Board for 13 months. CSC agreed to commission an accounting firm to conduct a comprehensive review of its operations and procedures.*
11	Chiu Chi Kin Andrew	7.3.06	ditto	As the result of a settlement, Chiu undertook not to act as principal supervisor of CSC for any new listing application for 8 months.*
12	Tang Ho Wai Howard	7.3.06	ditto	As the result of a settlement, Tang undertook not to act as principal supervisor of CSC for any new listing application for 8 months.*

* Joint action between HKEx and the SFC

Enforcement

✓ Appeals and checks and balances

During the year, the SFAT received appeals from 14 entities against SFC disciplinary actions and six were carried forward from 2004-05. The SFAT decided four of these cases. Five appeals were settled before full hearings.

Of the four appeals decided by the SFAT, two were dismissed and the penalty in the other two was reduced. No appellant was acquitted. Extraordinary mitigating factors reduced the suspension in one case from eight to five weeks. In another, the SFAT admitted new evidence that the appellant had not presented previously to two civil courts and to the SFC despite two opportunities to do so. As a result of findings based on the new evidence, the SFAT reduced the suspension from six months to one month.

We await a decision in one appeal already heard and 10 appeals are awaiting full hearing, though some of them are related and will be heard at the same time.

The Securities and Futures Appeals Panel (SFAP), the predecessor of SFAT, made its last decision last year. The SFAP decided, after lengthy legal arguments and hearing some new evidence not put before the SFC, that a public

reprimand instead of a suspension of licence was the appropriate penalty in the case in light of the endorsement of the misconduct by the appellant's supervisor.

We find our appeal record in front of the SFAT encouraging. The fact that only two decisions out of a total of 98 disciplinary decisions made by the SFC in 2005-06 (about 2%) were varied on appeal suggests that the great majority of our decisions were proportionate and either accepted by the defendants or not viewed as realistically appealable. The fact that no appellant has been acquitted and only one costs order was awarded against the SFC (in the SFAP appeal) out of five appeals decided also indicates a level of comfort and acceptance by the appeal tribunals of our findings of fact and that we are making our decisions responsibly.

In making its decisions, the SFAT also made some important statements of principle, including those noted above on investment advisers. On the issue of bringing appeals, the SFAT stated that, in the unusual circumstances that an appeal is plainly meritless, it might increase the SFC's penalty or impose a harsher costs order than usual basis.

To further enhance the transparency of our disciplinary procedures, we revised our plain language booklet on the disciplinary process, *Disciplinary Proceedings at a Glance*. We also issued a public statement of our policy on co-operation by defendants, the *Guidance Note on Co-operation with the SFC*, including through settling cases. On the advice of the Process Review Panel, we have also sought to standardise the audit trail of our justification for settlements. We also gave guidance on how the complex secrecy laws apply to disciplinary actions.



The SFAT website, www.sfat.gov.hk, contains the full text of all determinations or reasons for determination of concluded review cases handed down.

✔ Settlements

The SFC settled with 67 entities (68% of all the entities we disciplined) during the year. Settlements are common in civil and criminal proceedings in both Hong Kong and many foreign markets. The SFO gives the SFC the express power to settle.

In deciding to settle, we aim to balance giving an incentive to defendants to co-operate with the authorities by ending proceedings more quickly and by taking steps they are not obliged to do (e.g. compensating victims), with imposing sanctions that adequately deter and punish.

Last year, more cases were settled. The faster results allowed us to achieve greater investor protection with the same resources. We did this by actively making settlement approaches in suitable cases before starting formal action. We chose to settle only cases where defendants had co-operated in investigations, the facts were relatively clear and the likely penalty was relatively predictable because there were enough previous similar cases.

Settlements without admission of liability were controversial with some a year ago. Noting the public concern, we were more cautious in settling cases without admission. We only settled on a without admission basis with one licensee – a fund manager who had committed minor technical breaches and who had compensated those who may have potentially been disadvantaged, along with other remedial steps. However, we will continue our policy of settling with no admissions in appropriate cases. We firmly believe that, in exceptional circumstances, such settlements can help achieve a satisfactory outcome that would not be otherwise achieved. However, we will rigorously test the justification for such an outcome before concluding a settlement on this basis.

Co-operation with other law enforcement agencies

We keep close contact with other local law enforcement agencies, and overseas and Mainland regulators to tackle international financial crime and misconduct.

In 2005-06, we referred 24 cases to the Police for further action and three cases to the ICAC.

We regularly share intelligence information with, and collect evidence on behalf of foreign regulators.

We sought regulatory assistance from the China Securities Regulatory Commission (CSRC) on five occasions. We also gave the CSRC regulatory assistance on four occasions. Often, however, the CSRC was not able to give us the investigatory assistance we needed to bring enforcement proceedings. The Central People's Government has recently passed amendments to its securities laws enabling the CSRC to provide assistance to non-Mainland regulators. We trust that closer co-operation between the CSRC and the SFC will be possible in the future.

We are making improved co-operation with the CSRC our highest cross-border priority. We will also seek to involve the HKSAR Government more closely in reflecting our concerns to the relevant Mainland authorities.