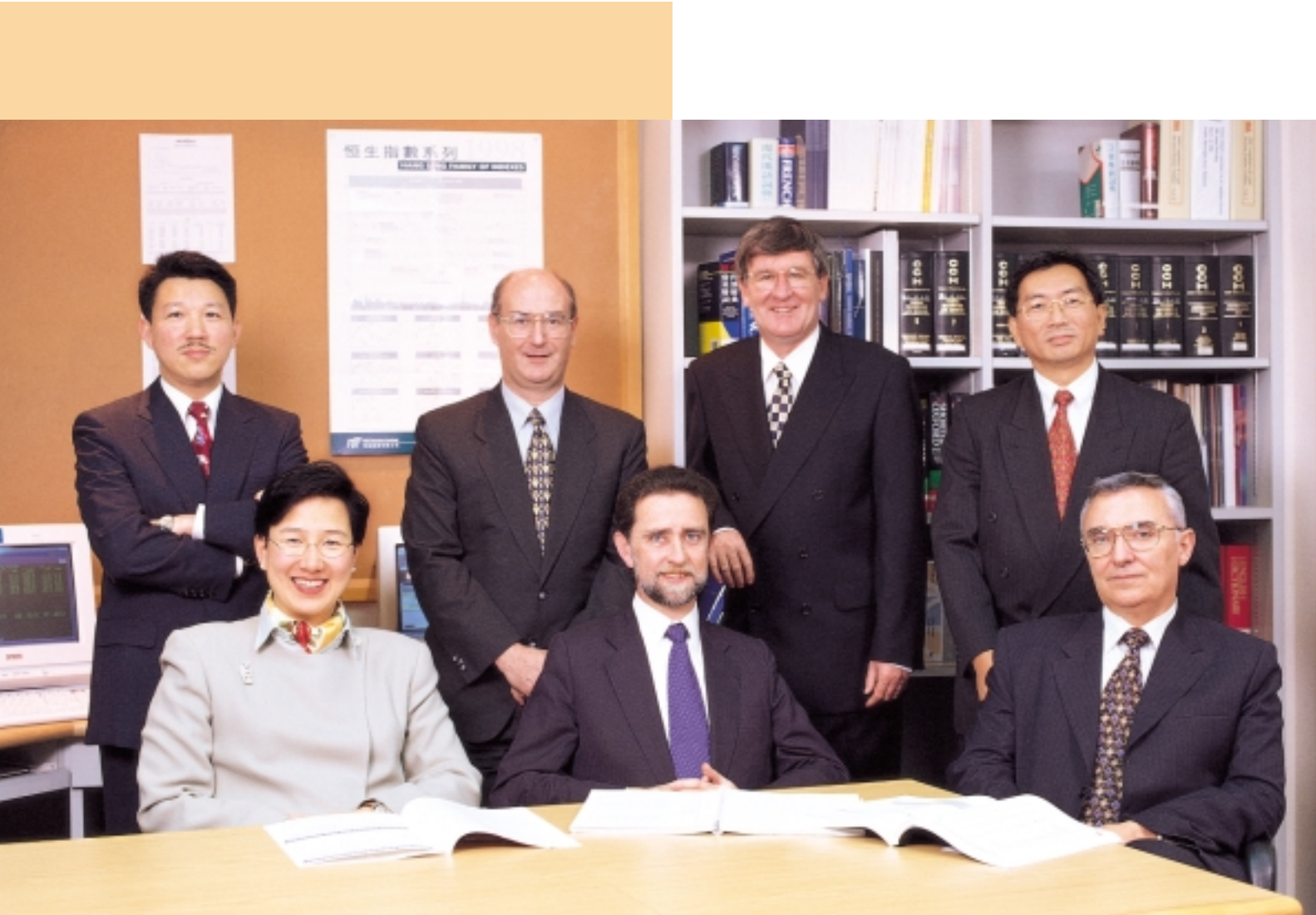


## Enforcement Division



(seated, left to right):  
Angelina Kwan, Director  
Mark Dickens, Executive Director  
Paul Bailey, Senior Director  
(standing, left to right):  
Alex Pang, Director  
Geoffrey Harris, Director  
Kim Roden, Director  
Richard Chow, Director

## Highlights

❖ concluded 228 investigations

❖ commenced major investigation into short selling on 27 and 28 August 1998 following Government's intervention in the stock market

❖ 52 persons prosecuted for unregistered activities, breaches of the SDIO and short selling

❖ 4 cases of suspected insider dealing referred by SFC either completed or currently before the Insider Dealing Tribunal

❖ 39 disciplinary actions concluded

❖ amendments to SFC Code of Conduct made for better client identification for surveillance purposes

## FUNCTIONS

- ❖ ensuring compliance with laws relating to the securities and futures industries, leveraged foreign exchange trading, and investment arrangements;
- ❖ reporting suspected insider dealing to the Financial Secretary;
- ❖ suppressing illegal, dishonourable or improper practices in dealing in securities, trading in futures and leveraged foreign exchange contracts, entering into investment arrangements, and providing investment advice or other financial services;
- ❖ inspecting the books and records of listed companies when directors and officers are suspected of impropriety in the management of a listed company's affairs; and
- ❖ cooperating with domestic or overseas regulatory bodies concerned with securities, futures, leveraged foreign exchange trading, banking, insurance or other financial services, or with the affairs of corporations.

## 1. SURVEILLANCE

The SFC's surveillance team monitors trading on the SEHK and the HKFE, using computer analysis to identify unusual price and volume movements. When appropriate, the surveillance team also conducts preliminary inquiries to determine whether the movements raise suspicions of market manipulation and/or insider dealing.

The first step in such surveillance work is to analyse trading information from the SEHK or the HKFE. If this information raises suspicions of insider trading or market manipulation, then client details and records are obtained from brokers. If further analysis of these records suggests the occurrence of insider dealing or market manipulation or other misconduct, an investigation is initiated.

During the year, the surveillance team obtained trading records from brokers on 57 occasions and referred 24 cases for full investigation.



Left: Surveillance library  
Right: Surveillance room

## 1.1 Unusual Share Price Movement

### *Suspension of Stock Trading*

During the year, there were a total of 11 cases of suspension of trading, of which eight were initiated by the companies concerned, one was directed by SEHK and two were directed by the SFC under Rule 9 of the Securities (Stock Exchange Listing) Rules. However, suspensions were usually lifted on the day after a company had issued an announcement to disseminate news which might have an impact on its stock, or statements that it was unaware of the reason for the unusual price/volume movement in its shares.

### *Marking Closing Prices*

During the year, the surveillance team also identified a total of 51 cases in which there was a suspicion of some activities apparently calculated to mark the closing prices of a number of thinly traded stocks. After preliminary enquires, a total of 17 cases were referred by the surveillance team for full investigation.

## 1.2 Complaints and Enquiries

4,071 complaints and enquiries were received by the Commission, 26 were identified for full investigation.

## 2. INVESTIGATION

174 cases were carried forward as ongoing investigations from the previous year. During the year, a further 305 cases were referred to the Division by the public, foreign regulators, law enforcement agencies in Hong Kong, the Exchanges and from within the SFC.

Out of the total of 479 cases handled, 228 have been concluded. The remaining 251 are the subject of continuing investigations, hearings or prosecutions.

## 2.1 Takeovers Code Matters

The Enforcement Division co-operates with the Executive to the Panel in investigating potential breaches of the Takeovers Code and in verifying information provided to the Executive. It also carries out investigations for the Panel. In many cases, investigations are initiated while takeover transactions are under way, with the emphasis on securing fair treatment for shareholders rather than on imposing sanctions after breaches have occurred. During the year, one investigation has been initiated which is still under inquiry.

## 2.2 Market Manipulation

The SFC continues to devote resources to the investigation of apparent cases of market manipulation. Most of these cases, which are highly resource intensive, are not public and not to be disclosed. During the year, three cases have been referred to the Secretary for Justice.

## 2.3 Insider Dealing

During the year, 38 cases of apparent insider dealing were handled by the Division. Of these, four were referred by the SFC to the Financial Secretary for his consideration of whether an Insider Dealing Tribunal (IDT) should be appointed to conduct inquiries and hearings, 14 were concluded with no further action, and 20 are the subject of continuing investigations. The Financial Secretary has appointed IDTs to inquire into two of the suspected insider dealing cases and his decision is awaited in respect of the other two.

During the year, the following suspected insider dealing cases were heard by the respective IDTs appointed by the Financial Secretary :

*Emperor (China Concept) Investment Limited (Emperor)*

On 15 April 1998, the IDT found that Mr Albert Yeung Sau Shing and two companies under his control had carried out insider dealing in the shares of Emperor. The IDT ordered him to pay the Government the sum of \$6,811,400 being the amount of profit gained as a result of the insider dealing; and in addition to pay a penalty of \$10,000,000; and costs of \$3,882,033 being expenses of and incidental to the inquiry. He was also disqualified as a director of a listed company for a period of two years.

*Ngai Hing Hong Company Limited (Ngai Hing Hong)*

On 21 September 1998, the IDT found that Mr Taylor Ho, the financial controller of Ngai Hing Hong had carried out insider dealing in the shares of Ngai Hing Hong. It ordered him to pay to the Government the sum of \$1,945,338 being the profit gained as a result of his insider dealing; and in addition to pay a penalty of \$1,000,000; and costs of \$1,084,951 being expenses of and incidental to the inquiry. He was also disqualified as a director of a listed company for one year.

*Chinese Estates Holdings Limited (Chinese Estates)*

The Financial Secretary appointed an IDT to inquire into a case of apparent insider dealing in the shares of Chinese Estates during the year. The IDT conducted hearings between 18 January 1999 and 12 March 1999 and its report has yet to be published.

*Hanny Holdings Limited (Formerly Hanny Magnetics (Holdings) Limited) (Hanny)*

The Financial Secretary also appointed an IDT to inquire into a case of apparent insider dealing in the shares of Hanny. The IDT conducted a preliminary hearing on 5 March 1999 and substantive hearings were scheduled to commence on 10 May 1999.

In addition, court proceedings arising from IDT hearings resulted in the following :-

*CNPC (Hong Kong) Limited (Formerly Paragon Holdings Limited)*

On 1 April 1998, the Court of First Instance held that there were procedural irregularities at the hearing of the IDT and that the decisions made by the IDT be quashed. The IDT appealed and the Court of Appeal heard the appeal from 15 to 16 December 1998. The Court of Appeal upheld the decision of the Court of First Instance and dismissed IDT's appeal.

*Beijing Development (Hong Kong) Limited (Formerly Hong Kong Worsted Mills Limited)*

As reported last year, on 21 January 1998, the IDT found five individuals to be insider dealers. Four of them appealed to the Court of Appeal in respect of the financial orders made against them. The Court of Appeal handed down its judgment on 31 July 1998, allowing the appeal of one of the appellants, namely Shek Mei Ling (Shek). The financial orders made by the IDT against her for disgorgement of profit in the sum of \$600,000 and penalty in the sum of \$1,200,000 were set aside and substituted by orders for payment of \$231,745 and \$150,000 respectively. The appeals by the other three individuals were nevertheless dismissed. The IDT appealed to the Court of Final Appeal in respect of the judgment in favour of Shek. On 16 March 1999, the Court of Final Appeal dismissed the IDT's appeal.

*Tysan Holdings Limited (Formerly Chee Shing Holdings Limited)*

On 17 June 1998, two of the parties involved in this case lodged an application for judicial review with the Court of First Instance with a view to quashing the unpublished findings of the IDT. The hearings were held between 21 and 23 December 1998. In its judgement of 31 March 1999 the Court of First Instance dismissed the judicial review.

#### **2.4 Inspection of Books and Records of Listed Companies**

Section 29A of the SFCO empowers the SFC to inspect a listed company's books and records if its directors and officers are suspected of impropriety in the management of a company's affairs. There was one inspection, which was carried forward from the previous year, completed this year. Nevertheless, owing to the secrecy provision applicable to the SFC, details of the inspection and the result of it cannot be disclosed.

#### **2.5 Publication of Investigation Report**

On 6 August 1998, the consent of the Secretary for Justice was obtained to publish an edited report, *Report of Inquiry Dealings in HSBC Holdings Plc Shares 29 and 30 October 1997*, in respect of an investigation into the heavy selling of HSBC shares on 29 and 30 October 1997 prior to the announcement issued by Moody's Investors Service at around 11:00 a.m. on 30 October 1997 downgrading the outlook of Hong Kong banks and placing the ranking of HSBC and its subsidiary, Hang Seng Bank, on review for possible downgrading. The report was published on 29 October 1998 in which it was concluded that the selling was not based on information relating to Moody's downgrading.

#### **2.6 Disciplinary Actions**

Most investigations involved registered persons and were normally followed by disciplinary inquiries. During the year, the Disciplinary Section of the Enforcement Division conducted 84 disciplinary inquiries. Of these, 39 cases were concluded which resulted in 60 entities being disciplined by the SFC.

Nine registrants were found to have been involved in "rat trading", a generic term used in the local securities and futures markets covering a wide range of malpractices by staff of brokers, particularly floor traders and account executives, trading to the disadvantage of clients. Six of them had their registrations suspended for periods ranging from one to two years while the remaining three had their registrations revoked. Two directors of corporate dealers, who were not themselves registered, were also publicly reprimanded for being involved in, or having actively facilitated, "rat trading".

Four registrants were found to have been involved in unregistered dealing and related offences. Three were publicly reprimanded and one had her registration suspended for six months.

Five registrants were found to have misappropriated their clients or employers' funds. They all had their registrations revoked.

21 registrants, who were found to have been involved in a variety of other misconduct, were disciplined. Three were privately reprimanded, ten were publicly reprimanded, and eight had their registrations suspended for periods ranging from one month to two years.

In conducting disciplinary inquiries, the Disciplinary Section would also inquire into both whether the internal control systems of the companies concerned had failed to guard against the commitment of various offences and misconduct, and the conduct of the responsible dealing directors of the companies in performing their functions in this regard. During the year, ten registered brokerage firms were publicly reprimanded and one was privately reprimanded for inadequate internal control systems. Three dealing directors were publicly reprimanded and five dealing directors had their registrations suspended for periods ranging from seven days to 15 months for having failed to ensure that proper internal controls and procedures were developed and firmly implemented in the companies concerned.

*Details of all the Commission's Disciplinary Actions can be found on the SFC Website <<http://www.hksfc.org.hk>>*

### 3. PROSECUTION

#### 3.1 Short Selling

During the year, 17 persons were prosecuted for short selling (Table 1). Short selling contravenes S.80 (1) of the Securities Ordinance, which prohibits the sale of securities when the seller does not have a presently exercisable and unconditional right to sell.

#### *Suspected Illegal Short Selling on 27 and 28 August 1998*

On 14 August 1998, the Government entered the local stock and futures markets to deter currency manipulation by those who had built up large short positions in Hang Seng Index futures contracts. This reached a height on 28 August 1998, the day Hang Seng Index Futures Contracts were to expire, when turnover reached an all time record of \$79 billion.

Table 1  
**Results of Prosecutions**  
1 April 1998 to 31 March 1999

#### Short Selling

Case	Defendant	Date of Conviction	No. of Summonses Involved	Fine (\$)	Costs of Investigation Awarded (\$)
1)	Chan Kwai Ming	21-Apr-98	14	42,000	13,800
2)	Kwong Wai Tong	4-Jun-98	74	34,000	10,510
3)	Wong Ka Chun	24-Jun-98	2	6,000	7,284
	Chang Shun Yu		2	2,000	2,000
	Leung Chiu Bun		2	Sentenced to 80 hours of community services	5,000
4)	Man Tak Hong	15-Sep-98	8	16,000	5,000
5)	Prime Assets Ltd	24-Sep-98	14	1,400	—
	Nigam Kim Tee Christine		14	28,000	13,223
6)	Tsang Kwing Yin	13-Oct-98	2	6,000	4,700
	Lam Mei Lin Ada		1	2,000	4,700
	Lee Kang		1	500	1,000
7)	Sung Wah Ting	02-Dec-98	37	185,000	38,099
8)	Deng Haitao	09-Mar-99	19	38,000	8,380
9)	Ng Kwok Leung	23-Mar-99	19	38,000	3,000
	Chu Wing Kin		3	6,000	3,000
	Chan Nga Sze Catherine		14	28,000	3,700
	Tam Wah Shing		24	96,000	2,900
17 Persons			248	528,900	126,296

Table 2  
**Results of Prosecutions**  
 1 April 1998 to 31 March 1999

Unregistered Dealing and Related Offences

Case	Defendant	Date of Conviction	No. of Summonses Involved	Fine (\$)	Costs of Investigation Awarded (\$)
Securities Ordinance					
1)	Chu Poy Ying	24-Jun-98	3	3,000	10,000
	Chan Man Tin Michael		3	3,000	10,000
	Ping On Securities Ltd		5	3,000	10,000
2)	Yu Hung Wai Angel	20-Aug-98	1	3,000	5,000
	Lo Wai Tai		1	3,000	5,000
3)	Teng Cheng Pao	20-Oct-98	1	4,000	4,888
	Kwok Ming Tai		1	8,000	4,888
4)	Choi Mei Yee *	11-Dec-98	2	5,000	2,604
	Cheung Yiu Chung *		2	7,500	2,604
	Lui Siu Ming, Paul Louis *		2	5,000	2,604
	Tung Oi Chu *		2	3,500	2,604
	Lang Shing Hong, Alan *		2	5,000	2,604
	Law Wai Kuen		1	2,500	2,393
	Chau Kwok Chi		1	2,000	2,393
	Cheuk Chu Kai		1	2,500	2,393
	Lee Lik Hang		1	2,500	2,393
	Lee Wing Sang		1	2,500	2,393
	Lui Hon Ching		1	2,500	2,393
	Ng Shek Kwong	18-Dec-98	17	13,000	—
	Kong Wai Man		12	6,000	—
5)	Amber Global Ltd	5-Jan-99	1	10,000	7,400
6)	Chan Wai Chow Johnnie	19-Jan-99	1	7,000	5,848
7)	Cornucopia International Trading Inc *	22-Feb-99	2	6,000	7,000
	Dexter Patrick Yeh *		2	6,000	7,000
	Sze Chit Hay *		2	6,000	7,000
8)	Cheung Hon Chung David	23-Feb-99	2	10,000	6,500
9)	Kong York Hay	18-Mar-99	1	2,000	4,000
	Ng Kai Wah Henry		1	2,000	4,000
	28 Persons		72	135,500	125,902

\* also summoned for unregistered dealing activities under the Commodities Trading Ordinance

Table 3  
**Results of Prosecutions**  
 1 April 1998 to 31 March 1999

Securities (Disclosure of Interests) Ordinance

Case	Defendant	Date of Conviction	No. of Summonses Involved	Fine (\$)	Costs of Investigation Awarded (\$)
1)	Chan Ying Ming Simon	28-Apr-98	2	10,000	11,713
	Ming Kee Investments Ltd		2	10,000	11,714
2)	Yeung Kwok Fan	22-Dec-98	1	16,000	—
	Lucky Bingo Investment Ltd		1	8,000	12,200
3)	Lai Yiu Keung	29-Dec-98	1	16,000	4,700
4)	Kanjanapas Keeree (alias Wong Chong Shan)	24-Feb-99	6	12,000	8,900
	Flying Elephant Investment Co Ltd		3	6,000	—
	7 Persons		16	78,000	49,227

The result of trading on 27 and 28 August 1998 was that there was a substantial number of shares that could not be settled on the trade day plus two trading days (T+2). For example, \$14 billion worth of sales conducted on 28 August 1998 remained unsettled in the CCASS on T+2. This led to public complaints that there had either been naked short selling or serious system failures. A joint investigation was commenced by both the SFC and SEHK.

While, due to stringent secrecy provisions applicable to the SFC, it is not possible to provide details of the investigation, it covers sales by some 550 brokers of which 30 brokers accounted for over 95% of the unsettled sales. The investigation has involved the collation of detailed information concerning explanations as to why sales were unsettled on T+2 and the verification of such explanations from custodians and overseas clients/intermediaries. The investigation is ongoing.

### 3.2 Unregistered Dealing

Continued enforcement action against unregistered activities in the securities, commodities and leveraged foreign exchange trading markets resulted in 28 persons being prosecuted and disciplinary action being taken against four registered persons (Table 2).

### 3.3 The Securities (Disclosure of Interests) Ordinance

Continued monitoring of compliance with the SDIO during the year resulted in seven prosecutions (Table 3). In addition to prosecutions, warning letters were sent to 39 persons for minor and inadvertent breaches of the SDIO.

## 4. AMENDMENTS TO THE CODE OF CONDUCT – CLIENT'S IDENTITY RULE

Consistent with the Government's "Measures to Strengthen the Order and Transparency of Securities and Futures Markets", the SFC modified the proposal to change the SFC Code of Conduct published in the *Report on an Investigation into Possible Contraventions of Securities (Insider Dealing) Ordinance and Securities (Disclosure of Interests) Ordinance in relation to the Trading of Shares in Crownhampton International Limited* to remove loopholes.

On 19 October 1998, the SFC approved changes to the SEHK Rules of the Exchange to enable the SEHK to obtain more detailed client information from its Members. Those changes took effect on 26 October 1998. To complement the new SEHK rules and to implement the Government's program, the SFC amended its Code of Conduct for persons registered with it. The new rule took effect on 13 November 1998.

The new rule requires that, before a transaction, a registered person obtain and record the identity, address and contact details of those who will ultimately benefit from, or take the risk of, that transaction and those who originated the instructions in relation to it. The record is to be kept in Hong Kong and made available to the SFC upon request. Public comment suggested that the new rule would impose burdens on business.

After consulting with various registered persons, the SEHK and the HKFE, the SFC released for public comment on 31 December 1998 a draft policy on how the SFC would enforce the new rule. The draft policy relaxed the strict application of the rule to minimise the burden on business while ensuring that the rule's aim was not compromised.

Business comment on the draft policy was received and, after taking those comments into account, the SFC issued a final version of the enforcement policy to all registered persons and exempt dealers on 9 March 1999.