



# SFC Enforcement Reporter

A monthly summary of SFC enforcement action

證監會 June 2004

## Highlights

### In May, the SFC:

- successfully prosecuted one company and two people
- disciplined six licensees
- settled with one licensee with no admission of liability

## Prosecution

### **First person to be jailed for defrauding the SFC**

Mr Cheng Kwok Cheung, ex-director of Pacific Pearl Securities Limited responsible for the accounting and financial affairs of Pacific Pearl Securities Limited and Pacific Pearl Futures Limited, pleaded guilty to defrauding the SFC. Cheng falsely represented to the SFC that the companies could comply with the requirements of the Financial Resources Rules (FRR). Cheng was sentenced to three months' imprisonment, the first time that a jail sentence has been imposed on a person for such matters. Cheng was granted bail pending his appeal against sentence.

Mr Yung Ki Cheong Philip, ex-director and major shareholder of Pacific Pearl Securities Limited and Pacific Pearl Futures Limited, was sentenced to two months' imprisonment, suspended for 12 months. Yung was ordered to pay investigation costs to the SFC.

Pacific Pearl Securities Limited and Pacific Pearl Futures Limited were both fined.

(Press releases issued on 2 April 2004, 18 and 25 May 2004)

*Compliance with the FRR is very important for investor protection. Any scams to deceive the SFC about due compliance with the FRR is taken very seriously. Do not risk imprisonment by defrauding or deceiving the SFC about FRR compliance.*

### **Community service sentence imposed on unlicensed activities**

CSF Consultancy Limited was found guilty of acting as investment advisors whilst unlicensed and issuing an unauthorised invitation to the public to invest in securities. Mr Chan Wing Chuen Freeman, director of CSF was prosecuted for consent to and connivance in CSF's unlicensed activities. Chan also promoted investment products on behalf of CSF whilst licensed as an investment adviser of another corporation. An 80-hours community service sentence was imposed on Chan for one summons. Both CSF and Chan were also fined for contravening the Securities Ordinance and the Protection of Investors Ordinance on two other summonses each. Two CSF employees the SFC prosecuted were acquitted.

(Press releases issued on 10 and 21 May 2004)

*Regulated activities performed by unlicensed persons are prohibited. The SFC will prosecute and take disciplinary action against those who engage in such activities. Investors dealing with unlicensed persons risk financial loss. Therefore investors are advised to check that they are licensed before dealing with them.*

### **Licence applicant prosecuted for providing false and misleading information to the SFC**

Mr Wong Chi Cheong pleaded guilty to breaching the Securities and Futures Ordinance by providing false or misleading representations in his application for a representative licence. Wong submitted a false degree certificate and made false representations about his financial status to the SFC. Wong was fined and ordered to pay investigation costs to the SFC.

(Press release issued on 12 May 2004)



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*Applicants should submit honest and accurate information to the SFC. Any form of deception will result in prosecution.*

## Discipline

### **SFC settles disciplinary matter on payment without admission of liability basis**

The SFC has for the first time settled a disciplinary case on the basis of payment without admission of liability. Mr Raphael Blot's licence was suspended by the SFC for six months by reason of his use of placing schemes from October 1998 to May 1999 to meet the placing requirements of the Rules Governing the Listing of Securities on the Stock Exchange of Hong Kong Limited (these Rules were repealed with effect from 10 December 2001). Blot appealed against, and was granted leave for judicial review, of the SFC's decision. As part of the settlement, Blot consented to pay the SFC, on a without admission of liability basis, \$750,000 which will be paid into government revenue. Blot's appeal to the Securities and Futures Appeals Tribunal and his application for judicial review were withdrawn. In return, the SFC withdrew its decision and Blot's licence will not be suspended.

(Press release issued on 13 May 2004)

*This is the first time that the SFC has entered into a settlement agreement of this nature. The SFC decides whether to settle cases on a case by case basis but only if it determines that the settlement is in the public interest. If the SFC decides to settle a case with a payment as part of the settlement, the SFC will insist the payment be paid personally and not by the person's employer, their insurer or any other third party.*

### **Thieves face revocation**

The SFC revoked the licence of Mr Chow Yuk Wah trading as Teil Stock Investment Company owing to a finding of misappropriation. The SFC found that, without his clients' consent, Chow had pledged his clients' securities to a bank as security for a loan to enable him to meet his personal financial needs. Chow further sold his clients' securities and misappropriated the proceeds of sale of approximately \$1,500,000. Chow created false transaction records to conceal his misappropriation. Chow has now bought back the securities and compensated his clients through the administrators of Chow's property.

(Press release issued on 21 May 2004)

*The SFC will not tolerate any form of misappropriation. Dealing with client's money without their consent is an extremely serious form of misconduct and shall result in the requisite punishment. The SFC considers that only revocation is appropriate to punish the offender and to deter such acts. The SFC delayed disciplinary action in order to allow the court appointed administrators to use Chow's licence during their work, which would be in the best interest of Chow's clients and creditors. Now the administrator's work is almost completed, Chow's licence should be revoked.*

### **Strengthen internal controls**

The SFC severely reprimanded Selina & Co Limited (S&C) and reprimanded one of its directors Ko Tze Ha Salina for S&C's seriously lax internal controls and virtually no supervision of staff. Ko felt that all employees had worked for S&C for a long time and were familiar with S&C's operation and therefore did not need supervision. To compound matters, almost all S&C staff knew or should have known that one of the settlement clerks, who has now left S&C, was dealing while unlicensed. Furthermore, in order to satisfy the SFC's licensing requirements that a dealing director be appointed, S&C appointed a dealing director as a token, rather than substantive, appointee, who accordingly had no real supervisory role. The SFC found that the lack of supervision facilitated the settlement clerk's misappropriation of clients' assets. In reprimanding S&C, the SFC took into account that S&C had implemented the recommendations of the accountants who reviewed S&C's internal control procedures and, amongst other things, compensated clients who have suffered loss.

(Press release issued on 20 May 2004)

The SFC also reprimanded CLSA Limited for its internal control failings. CLSA discovered that a former employee had exploited certain internal control weaknesses and misappropriated \$22 million over a



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period of 10 years. Pursuant to the review of CLSA's internal controls by independent accountants, CLSA has fully implemented the recommendations. CLSA has taken internal disciplinary action against its employees (who were not required to hold SFC licences) for their failings and has also compensated clients for the loss caused by the misappropriation and further undertaken to compensate future claimants.

(Press release issued on 20 May 2004)

*To protect client assets is among the most basic duties a licensee has. Companies should ensure that proper internal control procedures are in place and that there is a clear segregation of duties to avoid fraudulent activities of employees. Lax monitoring and supervision is totally unacceptable. There should be diligent supervision and companies should implement and maintain appropriate measures to ensure compliance with the applicable regulations. It appears that reprimands have not had the sufficient deterrent effect to wake up companies to get their houses into order. Under the Securities and Futures Ordinance, the SFC may fine and partially suspend or revoke licences and in order to protect the investing public, the SFC will impose heavier penalties for internal control failings that give rise to misappropriation in future.*

## **Report staff misconduct**

Sun Growth Securities Limited was reprimanded and the licence of Mr Ng Kei Choy, Stephen, a responsible officer of Sun Growth, was suspended for one month for failing to report to the SFC the illegal activities of an employee and to exercise diligent supervision of its staff. The weak internal controls of Sun Growth gave the employee the chance to intentionally create a false market by making single board lot orders near market close. At the time, Ng was the employee's supervisor and had noticed the suspicious activities and gave the employee repeated verbal and written warnings. Despite Ng's suspicions, Ng failed to report such activities to the SFC as required by the Code of Conduct for Persons Licensed by or Registered with the Securities and Futures Commission.

(Press release issued on 7 May 2004)

*Licensees must report material non-compliance with applicable regulations to the SFC. Failure to do so may result in discipline.*

## **General Enforcement Statistics**

Since 1 April 2004, the SFC has successfully prosecuted 11 entities. The SFC has withdrawn all summonses issued against three persons and there have been two acquittals. In the same period, the SFC disciplined 12 licensees for various regulatory breaches and entered into one settlement with no admission of liability. The SFC also took disciplinary actions against five licensees which were eventually concluded with no formal sanction imposed, four of them received private warnings. Disciplinary proceedings were also commenced and discontinued against one deemed licensee who left his firm before the conclusion of the action. A person's deemed licence is effectively revoked on the day the person leaves his or her firm. Under the transitional arrangements, which came into force on 1 April 2003, the SFC has no jurisdiction to continue with disciplinary proceedings against such a person. However, the person would be required to answer the SFC's concerns about him or her if he or she re-applies for a licence or other regulatory approval.

*If you want to know more, the SFC's press releases are available at [www.hksfc.org.hk](http://www.hksfc.org.hk).*

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