

Enforcement

Securities and Futures Appeal Tribunal (SFAT)

The SFAT upheld our disciplinary action against HSBC Private Bank (Suisse) SA which was fined a record sum of \$400 million. The SFAT affirmed our findings that there were material systemic failures in the bank's sale and marketing of Lehman Brothers-related investment products.

Court proceedings

The Court of First Instance (CFI) dismissed a judicial review lodged by Tang Hanbo against our search warrant obtained for an ongoing investigation into suspected breaches of the Takeovers Code and suspected offences under the Securities and Futures Ordinance (SFO), and our subsequent transmission of some materials to the China Securities Regulatory Commission.

The Court of Appeal (CA) upheld the decision of the CFI which ruled in our favour in an insider dealing and fraud case brought against two solicitors, Betty Young Bik Fung and Eric Lee Kwok Wa, and Lee's two sisters. The CA ruled that the Hong Kong courts had jurisdiction to hear this case because a substantial measure of activities constituting the contravention took place in Hong Kong, and that the application of section 300 of the SFO¹ would not be limited to a case in which the counterparties in the securities transaction were the victims of the fraud. The significance of this ruling is that the SFC can now take action against insider dealings of securities listed outside Hong Kong, so long as a substantial measure of the constituting fraudulent acts are perpetrated in Hong Kong.

The CFI allowed our appeal against the Eastern Magistrates' Court's acquittal of Wong Hung and ordered that the case, of illegal short selling in the shares of five listed companies, be remitted to the Magistrates' Court for a re-trial by a different magistrate.

Disciplinary actions

We disciplined two corporations and five licensed representatives during the quarter.

Internal control failures

- FXCM Asia Limited² was reprimanded and fined \$2 million for regulatory breaches and internal control failures relating to under-segregation of client monies.
- Standard Chartered Securities (Hong Kong) Limited was reprimanded and fined \$2.6 million for internal control failures relating to short-selling orders.

Unauthorised trading

- Danny Fung Kwong Shing, a former account executive at Fulbright Securities Limited, was banned from re-entering the industry for life and fined over \$542,000 and Yeung Leung Yuen Marvin, a former relationship manager of Citibank (Hong Kong) Limited, was banned for three years, both for conducting unauthorised transactions in clients' accounts.

Breach of Code of Conduct³

- Ng Chau, a former account executive at Get Nice Securities Limited, was banned from re-entering the industry for six months for conducting transactions in a client's accounts without written authorisation.
- Abbie Yip Ka Ying, a former trader at BNP Paribas in Hong Kong, was banned for 18 months for her attempts to conceal a trade execution error.
- Xu Tao, a former investment consultant at China International Capital Corporation Hong Kong Securities Limited, was banned for four months for using his mobile phone and instant messaging to accept order instructions.

¹ Section 300 of the SFO prohibits the use of fraudulent or deceptive schemes in transactions involving securities listed in Hong Kong or overseas.

² Now known as Rakuten Securities Hong Kong Limited.

³ Code of Conduct for Persons Licensed by or Registered with the Securities and Futures Commission.

Enforcement

Updated Guidance Note on Cooperation with the SFC

We issued an updated guidance note⁴ and a set of frequently-asked questions to highlight the benefits of cooperation in our investigation and enforcement proceedings⁵. The new measures are designed to encourage cooperative conduct to achieve timely and desirable enforcement outcomes.

Market surveillance

We made 1,644 requests for trading and account records from intermediaries in the quarter. In addition, we posted eight high shareholding concentration announcements on our website to remind investors to exercise caution when trading shares in companies where a small number of shareholders hold a high concentration of shares.

Enforcement activities

	Quarter ended 31.12.2017	Nine months ended 31.12.2017	Nine months ended 31.12.2016	YoY change (%)
S179 ^a inquiries commenced	5	20	18	11.1
S181 ^b inquiries commenced (number of letters sent)	51 (1,644)	199 (6,561)	207 (6,488)	1.1
S182 ^c directions issued	55	203	313	-35.1
Investigations started	62	215	317	-32.2
Investigations completed	62	174	457	-61.9
Individuals/corporations charged in criminal proceedings	1	11	4	175
Criminal charges laid	2	44	15	193.3
Notices of Proposed Disciplinary Action ^d issued	6	22	42	-47.6
Notices of decision ^e issued	7	19	39	-51.3
Individuals/corporations subject to ongoing civil proceedings ^f	110	110	109	0.9
Compliance advice letters issued	53	215	409	-47.4
Cases with search warrants executed	4	19	24	-20.8

^a Section 179 of the SFO gives the SFC the power to compel the production of records and documents from persons related to a listed company in relation to fraud or other misconduct.

^b Section 181 of the SFO gives the SFC the power to require information from intermediaries about trading transactions, including information identifying the ultimate clients, the particulars and instructions relating to the transactions.

^c Section 182 of the SFO gives the SFC the power to investigate SFO offences, market misconduct, fraud, misfeasance and disciplinary misconduct.

^d A notice issued by the SFC to regulated persons that it proposes to exercise its disciplinary powers, on grounds that they appear to be guilty of misconduct or not fit and proper.

^e A notice that sets out the SFC's decision and its reasons to take disciplinary action against regulated persons.

^f As of the last day of the period.

⁴ The updated guidance note replaces the previous version issued in March 2006.

⁵ These include disciplinary proceedings under Part IX of the SFO, civil court proceedings initiated by the SFC under sections 213 or 214 of the SFO and Market Misconduct Tribunal proceedings initiated by the SFC under Parts XIII or XIVA of the SFO. The guidance note does not apply to criminal cases as the Department of Justice has unfettered discretion over criminal prosecutions.