

Enforcement



Ms Sally Shin Sheung Mei, an amateur Chinese calligrapher, writes the Chinese character “正”, which means fairness and impartiality, in clear and purposeful strokes. We enforce the law without fear or favour.



Our mission is to protect investors and improve the quality of Hong Kong's markets by detecting and deterring unlawful or unethical activities and behaviour through effective enforcement.



Achievements

- Concluded 990 investigations of which 910 were completed within 12 months
- Successfully prosecuted 60 entities for breaches of various ordinances including seven entities for market manipulation
- Concluded 69 disciplinary inquiries and disciplined 78 licensees or concerned persons
- Referred 32 cases of fraud and corruption to Police and ICAC including six boiler room cases to Police

This Chapter Is About

>> Surveillance

- Inquiries into unusual price movements and trading
- Disclosure of Interests

>> Investigations

- Listed companies
- Market misconduct including market manipulation and insider dealing

- Disclosure of Interests
- Unlicensed activities
- FRR breaches
- Obstruction of SFC investigations
- Other investigations

>> Disciplinary actions and appeals

- >> Co-operation with other law enforcement agencies and overseas regulators

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WHAT WE DO

- >> **Enforce laws relating to the securities and futures industry, leveraged foreign exchange trading, and collective investment schemes;**
- >> **Inspect books and records of listed companies if impropriety is suspected;**
- >> **Report suspected civil market misconduct to the Financial Secretary;**
- >> **Enforce disclosure of interests of substantial shareholders, directors and chief executives of listed companies;**
- >> **Suppress illegal or improper practices in trading, collective investment schemes and the provision of advice or other financial services;**
- >> **Discipline dishonest, incompetent and financially unstable regulated intermediaries; and**
- >> **Co-operate with domestic and overseas regulatory bodies in investigations in Hong Kong and overseas.**

WHAT WE DID

This was another rewarding year. The number of cases handled rose significantly due to the stricter Disclosure of Interests reporting requirements embodied in the SFO. Our efforts to streamline work processes and to target priorities helped us investigate cases faster without compromising quality.

We continued 313 ongoing investigations from 2002-2003. Another 1,223 cases were opened during the year as a result of information provided by the public, foreign regulators, law enforcement agencies in Hong Kong, HKEx and internal referrals. Out of these 1,536 cases, 990 were concluded, with the remaining 546 subject to ongoing investigations, hearings or prosecutions.

To ensure our markets are ethical and transparent, our priorities in 2003-2004 were to fight corporate misgovernance, market misconduct and intermediaries who are dishonest or put clients at risk. Our focus on corporate governance resulted in a larger number of listed company inspections. More market manipulators and dishonest intermediaries were successfully prosecuted. Also, we disciplined intermediaries for poor internal controls in their businesses and for failing to protect their clients' assets.

During the year, the majority of investigations related to events that predated the implementation of the SFO. These cases continued to be investigated under the old legislation. There were also new inquiries relating to post SFO events or offences and some of them concerned significant and complex matters. Investigations of these cases are resource intensive and take time. There will be some lead time before the results of our enforcement efforts become apparent. Yet, we expect to conclude some cases in the near future, resulting in sanctions under the SFO.

On the disciplinary front, we have already imposed tougher sanctions under the SFO. For example, we saw the first life ban of a person from re-entering the industry and the first fine. As more investigations on post SFO offences are concluded, we will use the variety of SFO sanctions to punish intermediaries more proportionately.

Surveillance

> **Inquiries into Unusual Price Movements and Trading**

Our Surveillance Department is responsible for monitoring day-to-day trading in the stock and derivative markets in Hong Kong. Using sophisticated computer systems, we identify and make preliminary assessments of unusual price and turnover movements. Suspicious activities are reported to the Investigation Department.

In cases of suspected market manipulation, insider dealing or dissemination of false or misleading information, we obtain trading details from brokers, conduct preliminary inquiries and refer cases for full investigation.

Our daily surveillance programme actively monitors the media for reports of improper activities. We also surf the Internet to detect possible unlicensed dealing, unauthorised advertising of investment services, or other abnormal activities.

During the year, we concluded 153 inquiries into untoward share price and volume movements necessitating the obtaining of trading records from brokers. On many occasions our early inquiries either explained the untoward movements or put a stop to the potentially improper trading activities, hence removing the need for further inquiries. However, 24 cases were referred to the Investigation Department for full investigation.

There were 314 trading suspensions in listed securities due to unusual price or volume movements. In all but four cases, the suspensions were requested by the companies concerned following inquiries by HKEx or the SFC. These suspensions were usually lifted on the day after the concerned company released news which might have an impact on its stock, or statements that it was unaware of the reason for the unusual movements. Three suspensions were directed by HKEx because the management could not be contacted for clarification of potentially price sensitive matters and on one occasion we directed the suspension of trading. These cases are subject to further investigation.

Last year we commenced investigations into trading activities during the pre-opening sessions before the listing debuts of PICC Property and Casualty Company Ltd and Great Wall Automobile Holding Company Ltd, to determine if there was market manipulation or other misconduct.

We found that bid orders at levels substantially higher than the IPO subscription price were placed and cancelled within a very short period of time during the pre-opening sessions. Although ultimately these orders did not affect the opening prices because they were cancelled, the SFC considers that these actions distorted the price discovery process during the pre-opening sessions and gave a misleading impression to the public that the stocks would be traded at substantially higher prices than they were reasonably expected to.

We discovered that the majority of these orders belonged to accounts controlled by licensed persons. Although the majority of such cases were concluded with the issue of warning letters to brokers and licensed persons, some are still being actively pursued.

➤ **Disclosure of Interests**

The SFO has set a tighter threshold for disclosure (a shareholder owning 5%, down from 10%, must disclose) and has prescribed more timely notification (three business days as compared to five days previously) and more notifiable items. The aim is to ensure that investors are provided with complete, timely and better quality information so they can make informed investment decisions.

With the new stringent reporting requirements we saw an upsurge in the number of late filings referred by HKEx. Altogether 775 cases of late disclosures were opened. Given the market's concern about the complexity of the new reporting regime, we exercised considerable discretion in determining whether cases warranted further investigation. For the first three months of the new regime, we adopted a more tolerant attitude towards delays. Thereafter, wherever possible, we chose to warn instead of prosecute offenders. Altogether 185 warning letters were issued. However, the filing delays in 36 cases were sufficiently long to justify further investigation.

Investigations

With the introduction of the Dual Filing regime, we have been taking a more proactive approach to company disclosure. We opened three cases involving false and misleading disclosure and in the course of conducting company inspections discovered a further five instances of misleading disclosure.

➤ **Listed Companies**

The SFO has empowered us to investigate listed companies and related corporations more effectively. During the year we focused our resources on this area. We continued five ongoing investigations from a year ago and conducted 10 new investigations. Two cases were concluded with no further action. Five cases were

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referred to the Police for further investigation, although in four of these cases our own investigations are continuing. We are taking legal advice on two cases about the prospects of seeking orders under Section 214 of the SFO. The section enables the Courts to make a range of orders including disqualification of directors. Investigations into the remaining cases are continuing.

In addition to targeting delinquent corporations and their associates, we will also take action against the sponsors of newly listed companies whose work falls short of the standards required of them and damages investors.

➤ Market Misconduct

Our enforcement programme continued to focus on the fundamentals of maintaining a fair and open market by fighting serious market misconduct.

■ Market Manipulation

Market manipulation continued to be a priority. We are encouraged to see the successful prosecution of seven people in the Courts for manipulating the shares of Pioneer Global Group Ltd (Case 1 in Table 1), Yeebo (International Holdings) Ltd (Case 2), China Development Corporation Ltd (Case 3), Climax International Company Ltd (Case 4), Victory Group Ltd (Case 5), SEEC Media Group Ltd (formerly known as Sino Infotech Holdings Ltd) (Case 6), Daido Group Ltd, Perennial International Ltd and Chinney Alliance Group Ltd (Case 7). This was a marked improvement over the four convictions last year. We are confident this trend will continue because we have three cases awaiting trial and another seven awaiting legal advice and clearance to prosecute. One of these cases relates to attempted manipulation of the pre-opening price of index futures.

The Courts passing the sentences have commented that market manipulation is a serious offence that involves dishonesty and deception, and the public should be protected from misleading pictures of both the price and supply and demand for shares. As a reflection of this tougher judicial stance, suspended terms of imprisonment appeared to be the standard tariff under

the Securities Ordinance. Under the SFO, misconduct offences carry a maximum jail sentence of 10 years and fines of up to \$10 million. As such, increased penalties are anticipated in the future.

Successful Prosecutions — Market Manipulation						Table 1
1 April 2003 to 31 March 2004						
Case	Defendants	Date of Conviction	No of Summonses Involved	Fine(\$)/ Penalty	Costs of Investigation Awarded(\$)	
1)	Poon Lak To Joseph	20.05.03	1	\$50,000 fine	12,945	
2)	Wong Chi Kit	20.05.03	1	4 months' imprisonment suspended for 2 years	27,757	
3)	Chan Yuk Fei	20.05.03	7	3 months' imprisonment suspended for 18 months	8,257	
4)	Choi Kam Tui	10.06.03	1	4 months' imprisonment suspended for 2 years	13,574	
5)	Wong On Ching Johnny	22.07.03	1	\$15,000 fine and 3 months' imprisonment suspended for 1 year	44,550	
6)	Wang Changhua	29.07.03	1	\$5,000 fine and 2 months' imprisonment suspended for 1 year	18,217	
7)	Lam Yat Wa	05.09.03	3	\$30,000 fine and 6 months' imprisonment suspended for 1 year	37,006	
Total: 7 entities			15	100,000	162,306	

■ Insider Dealing

In 2003-2004, there was a notable decline in market activities that gave rise to suspicions of insider dealing. The SFC investigated four cases carried forward from a year ago and six new cases. We concluded two cases with no further action and investigations continued in the remaining eight cases.

During the year, the Insider Dealing Tribunal (IDT) completed its hearing relating to Siu Fung Ceramics Holdings Ltd. The company's former chairman and four other parties were found to have engaged in insider dealing. A hearing in May 2004 will determine the penalties. The inquiry on Firststone International Holdings Ltd was also heard and four people were found to have engaged in insider dealing. The IDT started an inquiry

on HKCB Bank Holdings Company Ltd/Lippo China Resources Ltd/Lippo Ltd and the hearings continue. Another inquiry concerning Chinney Alliance Group Ltd started in April 2004. There are seven more inquiries with the IDT waiting to be heard.

➤ Disclosure of Interests

Eleven people and two companies (compared to 15 people and six companies in the previous year) were prosecuted for material Disclosure of Interests related breaches (Table 2). The numbers declined because we exercised discretion whether to prosecute, considering the fact that shareholders might experience difficulties in complying with the new SFO requirements.

Successful Prosecutions — Disclosure of Interests						Table 2
1 April 2003 to 31 March 2004						
Case Defendants	Date of Conviction	No of Summonses Involved	Fine(\$)		Costs of Investigation Awarded(\$)	
1) Wong Lin Chooi	27.05.03	1	5,000		5,000	
2) Chau King Nui Helen	03.06.03	12	18,000		3,414	
3) Lai Ping Keung	24.06.03	8	20,000		15,183	
4) Tung Fai	08.07.03	2	10,000		7,990	
Wisdom Latch Ltd		2	10,000		7,990	
5) Chiu Kwong Chi	15.07.03	1	3,000		15,000	
Wong Wai Ying		1	3,000		15,000	
6) Cheung Kee Wee	18.11.03	6	15,000		4,685	
Anthony						
Cheung Lin Wee		6	15,000		4,685	
Cheung Ying Wai Eric		6	15,000		4,685	
7) Ho Shu Wah	03.03.04	2	5,000		4,071	
Hotung Eric Edward		2	5,000		4,071	
Hotung Enterprise Ltd		4	10,000		4,071	
Total: 13 entities		53	134,000		95,845	

➤ Unlicensed Activities

The down trend of unlicensed dealing was reversed during the year. In 2003-2004, 14 people and two companies were prosecuted for different types of unlicensed activities (Table 3), including aiding or abetting.

➤ FRR Breaches

During the year, two people and two companies were prosecuted for providing false and misleading information to the SFC. All of them related to submission of monthly financial returns. Four people and two companies were prosecuted for other FRR related breaches (Table 4).

Successful Prosecutions — Unlicensed Activities						Table 3
1 April 2003 to 31 March 2004						
Case Defendants	Date of Conviction	No of Summonses Involved	Fine(\$)/ Penalty		Costs of Investigation Awarded(\$)	
Unlicensed Dealing in Securities						
1) Chan Kin Hung	21.10.03	2	10,000		5,000	
Lam Ka Yuk		2	10,000		5,000	
2) Ma Chun Wah	18.11.03	1	3,500		2,500	
President Securities (Hong Kong) Ltd		1	3,500		2,500	
Wong Lai Sze		1	3,500			
3) Chan Siu Tung	04.02.04	1	2,500		1,000	
6 entities		8	33,000		16,000	
Unlicensed Dealing in Commodities						
1) Ng Man Wai	03.06.03	1	7,500		2,962	
1 entity		1	7,500		2,962	
Unlicensed Investment Advising						
1) Wong Wai Kuen	09.09.03	1	3,500		5,000	
Chan Pui Sing	16.09.03	1	3,500		5,000	
Thomas						
Moy Kwok Chiu	04.12.03	1	1,000		3,000	
Theodore						
3 entities		3	8,000		13,000	
Unlicensed Forex Trading						
1) Chew Chun Ming	01.04.03	1	10,000		14,128	
Anthony						
2) Wong Chi Ho	31.10.03	2	13,000		19,814	
3) Lee Kam Wa Patrick	29.12.03	1	80 hours' community service			
4) Lam Hon Wing	27.02.04	1	10,000		10,000	
5) Yu Wai Fong	15.03.04	3	60,000		37,957	
Hong Kong Forex Investment Ltd	16.03.04	1	30,000		9,489	
6 entities		9	123,000		91,388	
Total: 16 entities		21	171,500		123,350	

Successful Prosecutions — Financial Resources Rules Related Breaches						Table 4
1 April 2003 to 31 March 2004						
Case Defendants	Date of Conviction	No of Summonses Involved	Fine (\$)		Costs of Investigation Awarded(\$)	
Provision of False / Misleading Information						
1) Ho Yan Lock Salex	01.04.03	2	90,000		18,215	
2) Prosperous Securities Ltd	29.07.03	1	10,000			
3) Kwok Wood Yan	18.08.03	11	22,000		14,743	
Tiffit Securities (Hong Kong) Ltd		11	22,000		14,743	
4 entities		25	144,000		47,701	
Breach of Financial Resources Rules						
1) Lim Boon Kick	27.05.03	4	35,000		28,332	
Tartan Securities (Asia) Ltd		4	35,000		28,333	
2) Chan Man Ching	29.07.03	1	5,000		22,934	
Lee Po Wing		1	5,000		9,828	
Prosperous Securities Ltd		1	5,000			
3) Lam Kwong Tim	30.03.04	1	7,000		18,660	
Spencer						
6 entities		12	92,000		108,087	
Total: 9 entities		37	236,000		155,788	

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➤ Obstruction of SFC Investigations

We welcomed the Courts' decision to sentence four people convicted of failing to co-operate with SFC investigations to imprisonment and to community service work (Table 5). In passing the sentences the Courts commented that this was not a minor offence as it carried a maximum penalty of \$100,000 and six months' imprisonment.

Failing to co-operate in investigations undermines the SFC's effort to curb illicit activities that threaten Hong Kong's markets. The SFC will not hesitate to prosecute. Licensees will also face disciplinary action.

Successful Prosecutions — Obstruction of SFC Investigations					Table 5
1 April 2003 to 31 March 2004					
Case Defendants	Date of Conviction	No of Summonses Involved	Fine(\$)/ Penalty	Costs of Investigation Awarded(\$)	
1) Chan Kim Wing	30.09.03	2	20,000		
Tang Kin Lok Eddie		2	20,000		
2) Cheung Wai Kei	13.01.04	1	10,000	17,699	
Ken					
3) Cheuk Yik Cheung	10.02.04	2	80 hours' community service	500	
4) Tang Kin Lok Eddie	10.02.04	2	2 weeks' imprisonment	2,248	
Total: 4 entities		9	50,000	20,447	

➤ Other Investigations

We noted a decline in unauthorised investment promotion and illegal short selling prosecutions. Four people and one company were prosecuted for unauthorised investment promotion and one person for short selling. There were also four people prosecuted for hawking of futures contracts. One person was prosecuted for disposition of securities without authority and another one was prosecuted for breaches relating to the keeping of trust accounts (Table 6).

During the year, the SFC successfully prosecuted 60 entities. There were no acquittals.

Successful Prosecutions — Others					Table 6
1 April 2003 to 31 March 2004					
Case Defendants	Date of Conviction	No of Summonses Involved	Fine (\$)	Costs of Investigation Awarded(\$)	
Breach of Protection of Investors Ordinance					
1) Brunner Piers Daniel	08.04.03	4	24,000	9,474	
Carlyle					
Colliers International Agency Ltd		7	70,000	9,474	
Lam Kar Yan Rosaline		4	20,000	9,474	
2) Chan Kwok Ho	03.06.03	2	6,000	9,477	
Raymond					
Ng Man Wai		2	10,000	5,923	
5 entities		19	130,000	43,822	
Short Selling					
1) Sang Yee Pan Rondy	25.07.03	2	5,000	19,667	
1 entity		2	5,000	19,667	
Hawking of Futures Contracts					
1) Li Man Hin	16.12.03	1	4,000	2,500	
Lui Kim Ho		1	2,500	2,500	
Yau Oi Yi		1	2,500	2,500	
2) Lung Chai Yu	17.03.04	1	2,000	12,996	
4 entities		4	11,000	20,496	
Disposition of Securities without Authority					
1) Tong On Jimmy	05.02.04	3	60,000	26,181	
1 entity		3	60,000	26,181	
Failure to Maintain Trust Accounts					
1) Fong Shik Yee	18.08.03	7	7,000	7,371	
1 entity		7	7,000	7,371	
Total: 12 entities		35	213,000	117,537	

Disciplinary Actions and Appeals

➤ Disciplinary Inquiries

Honest and effective intermediaries help Hong Kong remain an international financial centre. To protect investors and market confidence, it is essential that we take tough disciplinary actions against those who put their clients' interests and the integrity of the market at risk.

In June 2003, we stated that we would refocus our disciplinary resources on the areas of corporate finance, fund managers and investment advisers, and banks. A tougher stance would be taken on three key failings - dishonesty, conflicts of interests and control-supervision failures that put investors at risk. We expect to conclude some of these cases in 2004-2005. A significant increase in penalties should become evident this year.

In 2003-2004, we conducted 167 disciplinary inquiries. Of these we concluded 69 cases resulting in discipline of 78 entities, with a broader range of sanctions. The penalties were heavier and more precisely tailored to the misconduct involved.

We also took disciplinary actions against 18 licensees which were eventually concluded with no formal sanction imposed. Disciplinary proceedings were commenced and discontinued against a further eight deemed licensees who left their firms before the conclusion of the actions.

One difficulty during the year was that, under the SFO transitional provisions, we lost jurisdiction to discipline if, after we started proceedings, a licensee left his employer and only held a transitional deemed licence. There were also cases in which we lost disciplinary jurisdiction when a licensee left the industry before we commenced any disciplinary proceedings. We referred all these cases to our Licensing Department for possible refusal if they ever re-applied for a licence.

Significant Disciplinary Actions			Table 7
1 April 2003 to 31 March 2004			
Registrants	Date of Action	Misconduct	Disciplinary Action
1) Chu Yuet Wah	05.04.03	SFC allegations of facilitating market manipulation	Mutual agreement that she would surrender her licence and not re-apply for 2 years and not be involved in running the business of her securities dealer firm
2) Yeung Tsz Chung	07.04.03	Misappropriation of stocks to the value of some \$21 million over a period of more than 10 years	Revocation
3) Kwok Wai Keung	06.05.03	Front running	12 months' suspension
4) Leung Tak Shing Raymond	10.09.03	Improperly destroying documents, failing to issue account statements and contract notes and creating a conflict of interest	14 months' suspension
5) Li Hon Kay	02.10.03	Improperly sold a client's shares and misappropriated the sale proceeds	Revocation
6) Do Yu Lun	17.10.03	Attempted theft	Life ban
7) Fan Yee Wai Richard	17.10.03	Giving false and misleading information to SFC and deceiving his employer and other breaches	12 months' suspension
8) Richard John Patterson	23.10.03	Carried out dealings in securities prior to approval of his license application	\$287,372 fine and public reprimand
9) Tam Siu Ki Simon	30.10.03	Rat trading and other trading malpractices	Revocation

During the year, we disciplined nine licensees for serious misconduct (Table 7). Of these, we:

- Imposed one prohibition order for life under the SFO on a licensee for misappropriation. We revoked the licences of three licensees for misappropriation of stocks, rat trading and other trading malpractice.
- Suspended the licences of three persons for 12 to 14 months for:
 - front running
 - improperly destroying documents, failing to issue statements of account and contract notes, and creating a conflict of interest
 - giving misleading information to the SFC, deceiving his employer and other breaches
- Agreed with one licensee that she would surrender her licences and not re-apply for two years and not be involved in running the business of her securities dealer firm for the same period on the basis of SFC allegations that she had facilitated market manipulation.
- Fined a licensee \$287,372 — the first fine under the SFO — and publicly reprimanded him for dealing in securities prior to getting a licence.

We also:

- Suspended the licences of 20 licensees from one week to six months for:
 - breaches of the Code of Conduct
 - poor internal controls
 - trading malpractice
 - misconduct relating to handling client accounts
 - facilitating potentially improper or illegal client trades
 - facilitating unlicensed dealing activities
 - providing misleading information in SFC interviews
 - falsely holding out an unlicensed firm as an investment adviser

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- Publicly reprimanded 44 licensees for:
 - circumventing HKEx's rules, breaches of FRR and the Code of Conduct
 - poor internal controls and inadequate staff supervision to conduct business properly
 - selective disclosure of price sensitive information
 - improper conduct relating to handling of client accounts
 - providing misleading information and other breaches

We also issued 39 warning letters in less serious cases.

We disciplined a total of 29 licensees for internal control and supervision failures in 2003-2004 as compared to seven in the previous year. Such failures allow individual and corporate misconduct to occur. They also expose investors to actual or possible loss and damage market integrity. We will continue to focus on this area in the coming year.

Lessons to Learn

In November 2002, we started publishing a monthly digest of enforcement actions, the *SFC Enforcement Reporter*. It aims to provide the industry and the public with information on our disciplinary and prosecution actions to reinforce regulatory messages. We continued to receive positive feedback from the market. The following are important messages worthy of intermediaries' attention:

Case 1. Do Yu Lun

We banned Mr Do Yu Lun for life from re-entering the industry for attempted theft of \$12,000 from a client. Do's employer sacked him when it discovered his attempted theft and thwarted it. Under the SFO, we were able to impose the prohibition order on him even after he had left his employer.

The prohibition order is one of the new disciplinary measures available to the SFC under the SFO. This case illustrates that the SFC will only allow persons whose honesty and integrity are unquestioned to work in the industry. Licensees who steal or attempt to steal from their clients will have their licences revoked and will not be allowed back into the industry.

Case 2. Richard John Patterson

We reprimanded and fined Mr Richard John Patterson \$287,372 for unlicensed dealing before the approval of his licence.

Unlicensed dealing is both a crime and a ground for discipline. Since the SFC may impose harsher sanctions with its new power to fine, it may choose to pursue licensed persons through discipline alone. It may also choose to pursue both routes. There is no double jeopardy. Although circumstances of individual cases differ, the level of fine imposed indicates the relative severity with which the SFC will treat each case. Fines will enable the SFC to deal far more flexibly with disciplinary cases.

Case 3. Chu Yuet Wah

Ms Chu Yuet Wah voluntarily surrendered her licences and undertook not to apply for new licences for two years. She also agreed with the SFC not to have any involvement in or influence over the day-to-day running of her firm, Kingston Securities Ltd, during that period. The SFC alleged that she had either actively assisted or turned a blind eye to the manipulative activities of two former employees of Merrill Lynch (Asia Pacific) Ltd in derivative warrants for a six-month period. We settled on a no finding/no admission basis to achieve a firm but pragmatic regulatory result in the interests of the market and investors.

Case 4. Ting Chuk Kwan

We reprimanded Ms Ting Chuk Kwan for selectively disclosing non-public price sensitive information which she received from the management of New World Development Ltd prior to the company's release of interim results. She disclosed the information to the sales and trading staff of her firm, Goldman Sach (Asia) LLC, in an internal broadcast before the information became public.

It is important for analysts not to disclose non-public price sensitive information at all. The only acceptable disclosure is for the listed company concerned to disclose the information to the investing public as a whole in accordance with the Listing Rules. If an analyst has published a research report and the report is rendered inaccurate by the new information, he should withdraw the report without comment.

We view this case as a warning, and are pleased that it seems to have prompted reforms in industry practice. We will punish future similar acts more harshly. On 31 March 2004, the SFC issued guidance to analysts on how to handle non-public price sensitive information.

➤ Disciplinary Appeals

The Enforcement Division handles appeals cases stemming from its own disciplinary decisions before the appeals bodies.

In 2003-2004, three appeal cases were decided by the Securities and Futures Appeals Panel (SFAP) established under the old laws. One decision was upheld in our favour, one was discontinued due to lack of jurisdiction, and in the remaining case, the SFAP reduced the SFC's penalty. The SFAP will continue to hear appeals lodged before 1 April 2003, and two appeal cases are still before it. A decision in one is expected shortly and the hearing of the other is set for early May 2004. Appeals to SFAP are only public if, at the end, a public sanction is imposed.

Applications for review lodged after 1 April 2003 are heard by the Securities and Futures Appeals Tribunal (SFAT), a new body established under the SFO to replace the SFAP. The SFAT consists of a chairman, who is a High Court judge, and two lay members (drawn

from a panel of 22 members appointed by the HKSAR Chief Executive). All SFAT hearings are held in public unless in the interests of justice the Tribunal determines otherwise.

During the year, the SFAT concluded three cases. This is encouraging and faster than the SFAP. Two cases involved substantive applications for review of SFC's decisions, and the SFAT dismissed both. The other one involved an application for a time extension to lodge an appeal outside the time limit, and similarly the SFAT dismissed it. Four cases are pending before the SFAT. Review hearings on one matter will take place in April 2004 and on two matters in early June 2004. The review hearing on another matter is delayed as the applicant has applied to judicially review the SFC's decision. A hearing of that judicial review application is scheduled for early September 2004.

The SFAT made a number of guiding statements in its decisions. It made it clear that it would be reluctant to interfere with the SFC's decision unless the applicant could demonstrate that a clear error had been made by the SFC and good and cogent reason existed for varying the SFC's decision. In another case, the Tribunal stated that, for the sake of certainty, it would not allow appeals outside the statutory 21-day time limit, unless the appellant could prove "good cause". The SFAT decided that the appellant's delay in instructing lawyers because of her concern about legal costs and antagonising the SFC, and her spending time to discuss the matter with friends were not "good cause". In a third case, the appellants applied for the review hearing to be held in private, on the ground that any public hearing would adversely affect their reputation. The SFAT rejected the application, and decided that private hearings should only be confined to cases which are of their nature unusual and highly sensitive. The SFAT considered that it would be essential that the regulation of the financial market is conducted with a high degree of transparency, and private hearings, by their very nature, do not help.

Co-operation with Other Law Enforcement Agencies and Overseas Regulators

To fight financial crime and misconduct effectively, we maintain close contacts with domestic enforcement agencies and our counterparts in other jurisdictions.

We continued our co-operation with the CSRC in the investigation of corporate misconduct involving the

activities of Hong Kong listed companies in the Mainland. We worked closely with the Hong Kong Police (in particular the Commercial Crime Bureau) and the Independent Commission Against Corruption (ICAC) on matters ranging from corporate fraud and misappropriation by brokerage staff to boiler room fraud and market manipulation. We assisted their investigations by providing expert evidence and other support as required. We also co-operated with the Hong Kong Monetary Authority (HKMA) in cases involving misconduct and trading malpractice by staff of registered institutions.

During the year we referred 32 cases to the Police and ICAC for further investigation and action. To enhance the understanding of each other's work, an officer from the ICAC was seconded to the SFC's Enforcement Division for two months to exchange expertise and experience. Similar secondment will take place in the coming year.

We continued our efforts to enhance international regulatory co-operation, information sharing and cross-border investigation. The SFC currently has 33 bilateral or tri-lateral co-operative arrangements with regulatory bodies around the world. We are discussing arrangements with five other jurisdictions. We are also one of the signatories of the IOSCO Multilateral Memorandum of Understanding, which greatly enhances regulatory co-operation among all signatories (Please see further details in *Cross-Border Regulatory Co-operation* chapter).

Boiler Rooms

We received 43 complaints about boiler room operations, compared with 68 in 2002-2003.

"Boiler room" operators are salespersons who cold call potential investors and use high pressure sales tactics to promote real or bogus investments. Very often, they are located in one country and approach investors in another by telephone, email, fax or post. As both the operators and the purported investments are based overseas, their legitimacy is often difficult to verify and their operations are difficult to trace. Often they disappear after receiving investors' money.

Since November 2000, we have set up an Alert List on our website to warn investors of unlicensed overseas companies that have come to our attention. We are aware that some companies solicit Hong Kong investors and we have put a remark beside those companies on the Alert List.

In 2003-2004, we referred six complaints to the Joint Financial Intelligence Unit, the Hong Kong anti-money laundering body jointly run by the Police and the Customs & Excise Department. All these boiler rooms maintained bank accounts in Hong Kong.