

Highlights

In July 2005, the SFC:

- successfully prosecuted one company and three people
- disciplined six licensees
- settled with one licensee with voluntary payment without formal sanction

Prosecution

Market manipulator given suspended imprisonment terms

Mr Lam Chee Wing Alan was convicted after trial on 17 June 2005 of intentionally creating a false or misleading appearance of active trading in the shares of EVI Education Asia Ltd. Lam bought and sold EVI shares from and to himself with the intention of raising EVI's share price. Lam was sentenced on 4 July 2005 to three months' imprisonment for each of the two summonses to run concurrently but to be suspended for 18 months. Lam was ordered to pay the SFC's investigation costs. The magistrate took into account that Lam had spent 17 days in prison awaiting sentencing and that he was remorseful.

(Press release issued on 4 July 2005)

See also an earlier press release issued on 17 June 2005)

Market manipulation distorts the supply and demand in the securities market. It affects market integrity and undermines the investing public's confidence. Market manipulation is a serious criminal offence and offenders face possible immediate custodial sentences if convicted after trial (i.e. if convicted after having pleaded not guilty).

Individual prosecuted for unlicensed regulated activities

Mr Ng Yuk Chan Michael pleaded guilty to advising on futures contracts whilst unlicensed. Between August and November 2004, Ng, while unlicensed, set up a website and invited the public to join as members on a subscription basis to have access to Ng's advice regarding trading in Hang Seng Index futures contracts. Ng was fined \$3,000 and ordered to pay the SFC's investigation costs.

(Press release issued on 7 July 2005)

Only people licensed by the SFC may perform regulated activities. The SFC has repeatedly warned that it will prosecute those who engage in unlicensed activities. Engaging in unlicensed activities can, upon conviction upon indictment, lead to a maximum fine of \$5 million and a maximum imprisonment term of seven years under the Securities and Futures Ordinance (SFO).

Individuals prosecuted for making unsolicited calls

Mr Chan Man Kit and Mr Cheng Chun Fai both pleaded guilty to making unsolicited calls on various occasions inducing others to enter into agreements for trading in leveraged foreign exchange contracts, in breach of section 174 of the SFO. Chan and Cheng were fined \$5,000 and \$10,000 respectively, and were ordered to pay the SFC's investigation costs.

(Press release issued on 28 July 2005)

It is a criminal offence to make unsolicited calls with the intention of inducing a person to buy SFC regulated financial products. Investors should not be pressured into buying financial products they do not want or cannot afford during the course of unsolicited calls. Tough disciplinary action will be taken against those who mis-sell risky financial products to vulnerable groups who suffer loss as a result.



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Licensed corporation prosecuted for failure to disclose interests

Brilliant Path Ltd was convicted after trial of failing to disclose its transfer of 110 million Jackley Holdings Ltd shares in circumstances requiring disclosure. Brilliant Path was fined \$3,000 and ordered to pay the SFC's investigation costs.

(Press release issued on 8 July 2005)

Disclosure of interests is essential to ensuring market transparency yet this continues to be a regular compliance deficiency amongst listed companies, their shareholders and officers. Failure to observe timely disclosure will result in prosecution by the SFC.

Discipline

Securities and Futures Appeals Tribunal affirms suspension

The Securities and Futures Appeals Tribunal (SFAT) has affirmed an SFC decision to suspend the licence of Mr Andrew Nicholas Barber for giving unsuitable investment advice. However, the SFAT reduced the length of the suspension after Barber put forward new evidence at the hearing and the SFAT made findings more favourable to Barber as a result. On 17 June 2003, a monetary judgement was entered against Barber Asia Ltd in the civil proceedings that one of its clients, Ms Susan Field, had brought against the firm. The Court of First Instance concluded that Barber had negligently advised Ms Field, causing her financial loss. On the basis of the judgment and the dismissal of Barber's appeal to the Court of Appeal, the SFC, having taken into account Barber's representations, found that Barber had given his client insufficiently diligent and unsuitable advice and had called into question his fitness and properness. The SFC suspended Barber for six months. The SFAT reduced his suspension to one month in light of new oral and documentary evidence put forward by Barber. The SFAT, like the SFC, held that Barber had been insufficiently diligent in explaining to his client the downside risks of the investments and had failed to properly assess the suitability of the investments to Ms Field.

(Press release issued on 4 July 2005)

Advice or recommendations given by licensees to clients must be suitable, based on thorough analysis and must take into account investment alternatives. Licensees must also ensure that the client understands the nature and risks of the transaction and has sufficient net worth to be able to assume the risks and bear the potential losses of any transaction. The SFAT importantly held that investment advisers have overriding duties to adequately explain the product and to ensure the suitability of their advice even if product information includes disclosures and warnings that the client has read. Barber's classification of Ms Field as an "execution only" client did not protect him because he did, in fact, give Ms Field advice. The SFC looks at the facts of a case to decide if advice is, in fact, given and does not accept the classification of a client as "execution only" at face value. The practical effect of this is that advisers cannot artificially limit their regulatory obligations by simply designating clients "execution only". This case shows that licensees will be financially liable for client losses due to unsound investment advice and will open themselves to SFC disciplinary sanction as well as investor lawsuits. Barber has appealed the SFAT decision to the Court of Appeal.

SFC settles with fund manager for breaches of SFC Codes

The SFC has settled with Allianz Global Investors Hong Kong, formerly known as Allianz Dresdner Asset Management Hong Kong Ltd (ADAM), over allegations of breaches of the Fund Manager Code of Conduct and the Code on Unit Trusts and Mutual Funds. ADAM acted as the administrator, investment adviser and Hong Kong representative of four SFC-authorized funds. In August 2004, an SFC inspection revealed that the valuation time of the four funds had been changed to 6:00pm since 2 May 2000 inadvertently without the approval of the board and without notification to shareholders. The valuation time as stipulated in the offering documents was 5:00pm. Without admission of liability, ADAM made voluntary ex-gratia payments to each of the four funds. The SFC considered the settlement to be in the public interest and the interest of the investing public and took into account matters including: the fact that the change in valuation time was in investors' interests, the failure to update the offering document was inadvertent, no investor could have taken advantage of the time change as it affected all



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investors equally, the impact on investors was immaterial and ADAM's full co-operation with the SFC in reaching the settlement.

(Press release issued 4 July 2005)

It is the obligation of fund managers to manage funds in accordance with the funds' offering or constitutive documents as investors make their decisions based on the information in these offering documents. Notifications to holders must be issued about changes or proposed changes to these documents. Fund managers should provide clear, accurate and up-to-date disclosure about funds' operational requirements in these documents. Failure by a fund manager to comply with the Fund Manager Code of Conduct or to ensure its management comply with the Code on Unit Trusts and Mutual Funds may result in enforcement action.

Suspension extended for improper trading

The SFC has extended the current suspension of Ms See Ting Hing Mary by eight and a half months to 30 June 2006. The original eight-month suspension stemmed from See's use of client accounts for her own trading and improper allocation of client orders. The extension of her suspension arose from an investigation into the trading activities in the shares of Samson Paper Holdings Ltd. See traded in Samson shares with the awareness that her trading activities could have misled the investing public into believing there was a genuine market for the shares of Samson.

(Press release issued on 11 July 2005)

See also an earlier press release issued on 16 February 2005)

Licensees have to avoid conducting suspicious trades as they may create a false perception of the market and may mislead the investing public in relation to the true supply of and demand for the shares in question. The SFC takes a serious view of improper trading. The extension of See's suspension would have been even longer if she had not co-operated with the SFC in settling the disciplinary action.

Failure to inquire into suspicious trades results in suspension

Mr Lok Siu Kee, a licensed representative of Kwai Hung Securities Company Ltd, was suspended for five months for failing to inquire into and report suspicious trades placed by a third party despite tell-tale signs that the orders were manipulative. Lok had the discretion to allot shares in the nominee accounts and he put up scaffolding orders in those accounts. Further, Lok failed to obtain written authorisations from the account holders for the third party to place orders for the accounts. Lok did not even know the full name of the third party. Lok also falsely represented that he had witnessed the signing of two of the account opening documents. In deciding the length of suspension, the SFC took into account that Lok attended training courses to improve his professional knowledge, improved operational procedures at Kwai Hung, showed remorse for his failures and co-operated with the SFC in settling the disciplinary proceedings.

(Press release issued on 15 July 2005)

It is the duty of all licensed representatives to inquire into suspicious trades and report them to their supervisors so that manipulative trades can be identified and stopped at the earliest opportunity. Those licensed representatives that play a part in any manipulative scheme cast doubt on their own integrity and ultimately will be severely punished.

FRR breaches result in reprimands and fines

China Southern Securities (Hong Kong) Ltd and its responsible officer Mr Cheung Tung Woon were both reprimanded and they were fined \$400,000 and \$35,000 respectively for breaching the Securities and Futures (Financial Resources) Rules (FRR). China Southern Securities had a liquid capital deficiency on a total of seven days in November and December 2003 arising from two bank loans to finance its clients in two IPO subscriptions. Cheung did not know that bank loans had to be included in computing the required liquid capital until he was told by the SFC. In deciding the level of fine, the SFC took into account that both China Southern Securities and Cheung were negligent, they both co-



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operated with the SFC's investigations and in settling the disciplinary action, and no loss or damage was suffered by clients, market users or the general public.

(Press release issued on 20 July 2005)

Compliance with the FRR is vital to ensuring that licensees have adequate financial resources to meet their ongoing obligations and provide a buffer against insolvency. A responsible licensee should pay heed to SFC warnings. Having been alerted by the SFC to a breach or other deficiencies, a licensee should endeavour to take proper investigative, preventive and/or remedial measures as necessary. If ignored, the SFC will view further breaches more seriously.

Responsible officer suspended for supervisory failures

Mr Chan Wing Yuen, the sole responsible officer of Manble Securities Ltd, was suspended for three months. During an SFC investigation, Manble repeatedly informed the SFC in writing that orders for shares of Victory Group Ltd were placed by a client's friend when in fact the orders were actually placed by the client. Chan failed to properly supervise Manble's employees and negligently signed correspondence to the SFC prepared by them which contained inaccurate and misleading information. In deciding to suspend Chan for three months, the SFC took into account the fact that Chan assisted the SFC in the prosecution of the client and co-operated in settling the disciplinary action.

(Press release issued on 13 July 2005)

See also an earlier press release dated 22 July 2003)

Management of licensed corporations may be held responsible for signing correspondence to the SFC that is prepared by their subordinates if they fail to take reasonable steps to ensure its accuracy. A responsible officer is held to a higher standard and cannot blindly accept all correspondence to be signed and sent off to the SFC, particularly when it concerns important matters like a market manipulation investigation and they have relevant personal knowledge.

General Enforcement Statistics

From 1 April 2005 to end of July, the SFC successfully prosecuted 22 entities and offered no evidence against one entity. In the same period, the SFC took action against 21 licensees for various regulatory breaches, of which two cases were settled with voluntary payment and with no formal sanction imposed.

If you want to know more, the SFC's press releases are available at www.sfc.hk.

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