

Highlights

In November 2005, the SFC:

- successfully prosecuted four companies and eight people
- disciplined seven licensees

and the Takeovers Executive criticised one company

Prosecution

Joint action by the ICAC and the SFC

On 7 December 2005, three people including the former general manager of Shanghai Land Holdings Ltd, Ms Mo Yuk Ping, were convicted at District Court for their respective roles in manipulating the shares of Shanghai Land and perverting the course of justice by giving false information to the SFC. Sentencing has been adjourned to 16 January 2006.

The conviction followed an ICAC investigation fully assisted by the SFC. Expert evidence from an SFC officer on the manipulative trades was fully accepted by the court. Mo's husband, Mr Chau Ching Ngai, was jailed on the Mainland for three years in June last year.

(ICAC press release issued on 8 December 2005)

With increasing co-operation between the ICAC, the Police and the SFC, serious cases of market crimes can be more effectively dealt with. The SFC will continue to work closely with the ICAC and the Police in cases involving corporate fraud and market crimes.

Prosecutions for reckless and fraudulent misrepresentations and unlicensed activities

Universal Funds and Asset Management Inc. and its director, Mr Chow Kwok Chung Bruce, pleaded guilty to reckless and fraudulent misrepresentations and unlicensed asset management. Between January and August 2004, Chow and Universal made reckless and fraudulent misrepresentations respectively in a brochure advertising guaranteed funds purportedly managed by Universal, for the purpose of inducing others to enter into agreements to acquire these funds. Over that period Chow and Universal, while not licensed by the SFC, held themselves out as carrying on a business of asset management. Chow was sentenced to two-month imprisonment, suspended for 12 months, fined \$15,000 and ordered to pay the SFC's investigation costs. Universal was fined \$70,000.

(Press release issued on 10 November 2005)

Unlicensed persons cannot perform regulated activities. The SFC will prosecute those who engage in such activities. To protect their interests, investors should check from the SFC website if persons they deal with are licensed. In addition, people who make reckless or fraudulent misrepresentations to sell investment products will face prosecution with heavy maximum penalties of a \$1,000,000 fine and/or seven years' imprisonment.

Individuals prosecuted for making unsolicited calls

Ms Mak Wing Shun Agnes and Mr Lam Wing Chit, both licensed representatives of Tanrich Futures Ltd at the time, pleaded guilty to making unsolicited calls on various occasions inducing others to enter into agreements for trading in futures contracts. Mak and Lam were fined \$10,000 and \$5,000 respectively, and were ordered to pay the SFC's investigation costs.

(Press release issued on 10 & 17 November 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. Tougher disciplinary action will be taken against those who mis-sell risky financial products to vulnerable groups who suffer loss as a result.

Prosecutions for failure to disclose interests

China Northern Enterprises Investment Fund Ltd and its director, Mr Yau Chung Hong, pleaded guilty to their failures to disclose within the prescribed period China Northern's acquisitions and disposals of Ningbo Yidong Electronic Company Ltd shares. The acquisitions and disposals caused China Northern to have or cease to have a notifiable interest in Ningbo Yidong. China Northern and Yau were fined \$12,000 and \$8,000 respectively and ordered to pay the SFC's investigation costs.

(Press release issued on 3 November 2005)

Mr Chan Lai Keung, a substantial shareholder of China Northern, pleaded guilty to his failure to disclose his acquisitions and disposals of China Northern shares. The acquisitions and disposals caused Chan to have or cease to have a notifiable interest in China Northern. Chan was fined \$20,000 and ordered to pay the SFC's investigation costs.

(Press release issued on 3 November 2005)

Power Assets Enterprises Ltd and its directors, Mr Gouw Kar Yiu Carl and Ms Gouw San Bo Elizabeth, pleaded guilty to their failures to disclose within the prescribed period the changes in nature of their interest in Gorient (Holdings) Ltd (now known as Carico Holdings Ltd) shares, after these shares were mortgaged as a security for a loan facility. Power Assets, Carl Gouw and Elizabeth Gouw were fined \$5,000, \$6,000 and \$4,000 respectively and ordered to pay the SFC's investigation costs.

(Press release issued on 9 November 2005)

Upflow Holdings Ltd and its director, Mr Raymond Dennis Neoh, pleaded guilty to their failures to disclose within the prescribed period the changes in nature of their interest in Global Digital Creations Holdings Ltd shares, after these shares were charged as collateral for a loan facility and the subsequent release of the charge. Upflow and Neoh were fined \$10,000 and \$5,000 respectively and ordered to pay the SFC's investigation costs.

(Press release issued on 10 November 2005)

Disclosure of interests in listed companies is essential to ensuring market transparency. The SFC will prosecute for failure to do so.

Discipline

Ban from re-entering the industry for conflicts of interest

The SFC banned Mr Wong Wing Fai Eric, a former licensed representative of Shun Loong Securities Co Ltd, from re-entering the industry for five years for conflicts of interest. The penalty is the result of a settlement between Wong and the SFC. From December 2003 to April 2004, Wong put himself in a position of a conflict of interest by trading substantial amounts of securities which were the subject matter of the research reports he prepared for Shun Loong staff, who in turn made recommendations to clients on the basis of the research reports. Some of Wong's trades were contrary to the recommendations in his research reports. The SFC considered the settlement to be in the interest of the investing public and in the public interest.

(Press releases issued on 28 November 2005 and 2 August 2004)

The market expects securities analysts to provide objective, independent and unbiased recommendations which accurately reflect the prospects of target companies. It is vital to the maintenance of investor confidence that analysts act with high standards of integrity when producing their reports. Those who do not comply should expect tough sanctions. Repeated offences will face even tougher sanctions.

Lengthy suspension for providing misleading information

The SFC suspended Mr Kung Chiu Nam Edmond, a former responsible officer of CNK Investment Management Ltd, for 20 months for providing misleading information to the SFC. During an investigation into the insider dealing of shares in HKCB Bank Holdings Co Ltd (HKCBH) and Hong Kong China Ltd (HKC) in 1997, Kung told the SFC that the HKC warrants in his account belonged to him and it had been his decision to purchase the warrants. Subsequently, he admitted that he had lent his

account to Mr Leonard Carlton Poon for personal trades including the purchase of the HKC warrants. Poon was found by the Insider Dealing Tribunal in March 2005 to have engaged in insider dealing in the shares of HKCBH and HKC. The SFC considered Kung had breached the Code of Conduct by lying to the SFC and lending his securities account to another person for personal use.

(Press release issued on 16 November 2005)

People attending SFC's interviews have a statutory duty to provide true and complete answers. It is a criminal offence to provide false and misleading information to the SFC. Licensees who are found to have given us misleading information will also face suspension or revocation. This case is further aggravated by Kung's lending his account to Poon and his failure to make enquiries with Poon as to the use of the account, which facilitated Poon's misconduct. Kung should have known Poon would only borrow his account to hide illegal or improper trades.

Suspension for deceiving employer

The SFC settled its disciplinary action against Mr Yan Chi Pang, a former licensed representative of Get Nice Investment Ltd, with a four-month suspension. Yan acted dishonestly in conducting his own securities trading, without his employer knowing, through an account opened in the name of his friend. His purpose was to earn a bonus from his employer's bonus scheme which rewarded account executives on the basis of turnover generated in their clients' accounts. Yan also provided false information about his friend's background in opening the trading account. By concealing his trading in his friend's account, Yan deprived his employer of the opportunity to monitor his trading activities. The SFC considered the settlement to be in the interest of the investing public and in the public interest.

(Press release issued on 18 November 2005)

The SFC expects complete honesty from licensees to protect the integrity of the financial markets. Dishonesty in any form or shape casts doubts on a licensee's reliability. It will not be tolerated and will result in suspension or even revocation.

FRR Breaches resulted in reprimand and fine

Grand Investment (Futures) Ltd was reprimanded and fined \$300,000 for breaches of the Securities and Futures (Financial Resources) Rules (FRR). The penalty is the result of a settlement between Grand Investment and the SFC. Grand Investment had a liquid capital deficiency on 22 days between March and June 2004. Grand Investment claimed that it had misinterpreted the relevant FRR provisions and had been unaware of the breaches until pointed out by the SFC. The SFC found that Grand Investment had failed to ensure FRR compliance and its reliance on a staff with no recognised accounting qualification to compile the FRR returns unreasonable.

(Press release issued on 8 November 2005)

FRR compliance is fundamental to the fitness and properness of a licensed corporation. A licensed corporation must reasonably ensure that its FRR return is properly compiled to reflect its actual financial position. Otherwise, it will be held liable for erroneous FRR returns.

Licensee suspended for conflicts of interest

Mr Chow Kin Yuen, a former licensed representative of CITIC Capital Securities Ltd, was reprimanded and suspended for two months for breaching the Code of Conduct and the internal policies of CITIC. The penalty is the result of a settlement between Chow and the SFC. Between April 2004 and March 2005, Chow traded jointly with a client of CITIC in his sister's account without his sister's prior consent and written authorisation. Chow failed to report a trading error to CITIC but asked the client to take up a portion of the over-purchased shares while he took the rest. Chow also failed to execute a market order placed by the client to sell the over-purchased shares as he had a vested interest in the shares and hoped to sell the shares at a higher price. When the client subsequently complained to Chow about his failure to execute her market order, Chow failed to report the complaint to CITIC.

(Press release issued on 1 November 2005)

Licensees should not conduct trading jointly with their clients as this creates a conflict of interest. If licensees have a vested interest in clients' positions, they are unable to exercise objective judgment in handling transactions and may even fail to execute clients' instructions which are contrary to their own interests. It is also unacceptable to ask clients to take up shares bought by mistake and to conceal

clients' complaints from the management. Licensees are obliged to act in the best interests of their clients, avoid any conflicts of interest with their clients and handle complaints in a timely and appropriate manner. Those who fail to do so will face disciplinary action.

Licensee reprimanded for not monitoring manipulative trades

Young Champion Securities Ltd was reprimanded for breaching the Code of Conduct and the Management, Supervision and Internal Control Guidelines for Persons Registered with or Licensed by the SFC. On 30 days between October 2001 and July 2002, a corporate client of Young Champion bought two warrants at prices above those of their underlying stocks, which made no economic sense. Upon receipt of the dealing instructions in question, Young Champion's staff failed to ascertain basic information relating to the warrants such as the gearing ratio and premium. Two dealing directors of Young Champion were aware of the client's transactions, but none of them made any enquiry with the client as to whether there was an error in the dealing instructions and advised the client of the irregularity. The SFC also found that Young Champion had failed to put in place appropriate and effective procedures in relation to dealing and related review processes to prevent or detect improper activities.

(Press release issued on 16 November 2005)

In conducting its business activities, a licensee should act with due skill, care and diligence, in the best interests of its clients and the integrity of the market. A licensee must establish and maintain appropriate and effective procedures in relation to dealing and related review processes to prevent or detect errors, omissions, fraud and other unauthorised or improper activities. Failure to do so will subject the licensee to disciplinary action.

Licensee reprimanded for discretionary trades without authority

Mr Tsui Wing Kit, a former licensed representative of Celestial Commodities Ltd, was reprimanded for breaching the Code of Conduct. Between July and November 2001, Tsui conducted discretionary trading without proper written authorisation from the client. He failed to record clients' orders on Celestial's central telephone recording system, and failed to record the order receipt and confirmation time and mark on the order sheets indicating that the orders were not centrally recorded as required by Celestial.

(Press release issued on 10 November 2005)

A licensed person must not operate a client's account on a discretionary basis without obtaining a written authorisation from the client. This is for the protection of both the client and the licensee if a dispute arises at a later date. Furthermore, the use of mobile phone to take clients' orders is discouraged as it prevents an employer from keeping a proper audit trail of its clients' order placing. Where orders are accepted by mobile phone, the time of receipt and the order details should be recorded immediately. Failure to comply with these requirements may lead to disciplinary action by the SFC.

Takeovers regulation

Criticism for breaching Rule 21.3 of the Takeovers Code

The Takeovers Executive criticised the board of directors of ITC Corporation Ltd for breaching Rule 21.3 of the Takeovers Code, which restricts share dealings and transactions by an offeror and parties acting in concert with it during securities exchange offers. On 19 April 2005, Hanny Holdings Ltd announced it would make a possible voluntary securities exchange offer for all shares of a company. As ITC held over 20% of the shares in Hanny, it was presumed to be acting in concert with Hanny under the Takeovers Code. On 21 October 2005, a wholly owned subsidiary of ITC acquired 11 million Hanny shares, which increased ITC's shareholding in Hanny from 20.61% to 25.48%. ITC's acquisition of the Hanny shares constituted a breach of Rule 21.3 of the Takeovers Code. ITC's board of directors admitted the breach and accepted the Executive's criticism. Hanny, ITC, and their respective board of directors also undertook to put in place suitable measures to ensure future compliance with the Takeovers Code.

(Press release issued on 15 November 2005)



SFC Enforcement Reporter

A monthly summary of SFC enforcement action

證監會 December 2005

The Executive reminds all those involved in takeovers and mergers in Hong Kong of the dealing restrictions in Rule 21 of the Takeovers Code, which include restrictions on share dealings in securities exchange offers. If there is any doubt about the application of the Takeovers Code, the Executive should be consulted at the earliest opportunity.

General Enforcement Statistics

From 1 April 2005 to the end of November 2005, the SFC successfully prosecuted 51 entities and offered no evidence against three entities. In the same period, the SFC took action against 66 licensees for various regulatory breaches, of which three cases were settled with voluntary payment and with no formal sanction imposed. Another four licensees settled with a voluntary payment and received statutory sanctions.

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

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