



SFC Enforcement Reporter

A monthly summary of SFC enforcement action

February 2005

Highlights

In January, the SFC:

- successfully prosecuted one person
- disciplined six licensees
- settled with one licensee

Prosecution

Convictions for unauthorised advertisements and unlicensed investment advice

Mr Tsoi Leung Po, an unlicensed person, pleaded guilty to issuing advertisements in newspapers inviting the public to enter into an agreement to acquire or dispose of securities. He also gave investment advice to some investors. Tsoi was fined \$16,000 and ordered to pay the SFC's investigation costs of \$20,325.

(Press release issued on 6 January 2005)

Investors dealing with unlicensed persons are at risk. It is important that investors are protected from such dangers. The SFC has repeatedly warned that it will prosecute those who engage in unlicensed activities. Unlicensed dealing is a gaolable offence under the Securities and Futures Ordinance.

Discipline

\$30 million settlement with a sponsor

ICEA Capital Ltd (ICEAC) agreed to pay \$30 million in full and final settlement of an SFC disciplinary case against it, without admission of liability. The SFC alleged that ICEAC had not exercised due skill, care and diligence whilst performing its duties as a sponsor for the listing of Euro Asia Agricultural (Holdings) Company Ltd. In coming to a settlement, the SFC considered that: (i) members of the senior management who were responsible for ICEAC's work on Euro Asia had left ICEAC; (ii) ICEAC had upgraded its internal systems and controls in relation to its duties as a sponsor; (iii) ICEAC had undertaken to engage independent accountants to review its systems and controls and to implement the accountants' recommendations; and (iv) ICEAC's current senior management had co-operated with the SFC's enquiries.

(Press release issued on 27 January 2005)

This is the SFC's second disciplinary action against sponsors recently. Investors rely on sponsors to provide them with full and accurate information on the companies that are to be listed. Sponsors have a duty to help ensure that only suitable companies are listed and to assist companies in making frank disclosure. Sponsors remain an SFC enforcement priority.

The SFC will only settle disciplinary actions if it is in the interest of the investing public or in the public interest to do so. The sum will be paid to the government revenue.

Impersonator has licence revoked and banned for 10 years

The Securities and Futures Appeals Tribunal (SFAT) upheld the SFC's decision to revoke the licence of Mr Lau Hing Hung Joie, a dealer's representative of C A Pacific Securities Ltd (CAPS) (in liquidation), and ban him from re-entering the industry for 10 years. The SFAT found that Lau had been dishonest

and abused the trust of an investor. The investor, an old friend of Lau, complained that Lau had impersonated him to open an account with CAPS, using a copy of the complainant's identity card. Lau traded in the account resulting in substantial losses of over \$1 million. The liquidators of CAPS pursued the complainant to recover the debt and only then did Lau's actions come to light. In SFC interviews, Lau blatantly lied that he did not know the complainant, nor did he know about the account and the trading despite compelling evidence to the contrary.

(Press release issued on 28 January 2005)

Investors should safeguard all personal data to avoid losses as a result of identity theft. The SFC will severely punish those who abuse their fiduciary duties. Honesty is a basic prerequisite of a licensed person as they are acting in a position of trust.

Suspension for facilitating unlicensed dealing

Ms Lau Yin Ying Bonnie, a licensed representative of Berich Brokerage Ltd, was suspended by the SFC for three months for facilitating unlicensed dealing. The SFC discovered that, from May 2000 to September 2002, Lau had employed a friend, whom she knew was unlicensed, to assist her in receiving clients' orders, relaying the orders to the dealing room and confirming the execution of trades with clients. Considering Lau's very difficult personal circumstances, co-operation with the SFC's investigations, her frank admission and her genuine remorse, the SFC proposed to suspend Lau for four months, which was reduced by the SFAT to three months.

(Press release issued on 31 January 2005)

Only licensed persons should handle clients' money. Companies should closely monitor their staff to ensure that unlicensed staff do not engage in regulated activities.

Suspension for improper trading activities and breaches of staff trading policy

The SFC suspended Mr Chan Yuk Fu, a licensed representative of China Point Stock Brokers Ltd, for three months for improper trading activities and breaches of staff trading policy. An SFC inquiry revealed that Chan: (i) had input five consecutive single-board-lot ask orders for the shares of Tradeeasy Holdings Ltd within the last minute before market close on 17 October 2002 with an intention to push down the share price (ii) had traded through his wife's account with China Point without recording the arrangement properly or obtaining authorisation from China Point; (iii) was not clear about China Point's staff trading policy; and (iv) had not obtained subsequent endorsement from his supervisor for his transactions in his wife's account.

(Press release issued on 27 January 2005)

Licensed persons should know that placing a series of single-board-lot ask orders of successively lower prices may cause the closing price of the shares to fall. This may also give the market a false impression of the demand for the shares in question. Licensed persons should act fairly and in the best interest of the integrity of the market as set out in the Code of Conduct for Persons Licensed by or Registered with the SFC. Licensed persons should also strictly comply with their firms' staff dealing policies and order recording requirements.

Reprimands and suspension for breaches of investment restrictions

The SFC reprimanded Bank Consortium Trust Company Ltd (BCT), the trustee of Bank Consortium Pooled Retirement Scheme, an authorised ORSO pooled retirement fund. In breach of the Scheme's investment restrictions applicable to its guaranteed portfolio, Asia Insurance (Pensions Fund) Ltd (Asia Insurance), which managed the guaranteed portfolio, caused the portfolio, without obtaining the required prior approval from BCT, to invest in unauthorised investments, and in September 2002 enter into certain related party transactions. BCT was unaware of the breaches until it was informed by Asia Insurance and the SFC. The unauthorised investments took place over a lengthy period, but they were undetected because of the poorly drafted compliance checklist which did not show that prior approval was necessary. BCT also relied on Asia Insurance to obtain the prior approval. In reaching its decision



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to reprimand BCT, the SFC took into account that, despite the breaches, the investments were considered to be consistent with the investment objectives of the guaranteed portfolio and that BCT had improved and strengthened its control procedures on the guaranteed portfolio.

The SFC also reprimanded Asia Insurance and suspended Mr Wong Kok Ho, its responsible officer and director responsible for compliance and supervision, for four weeks. Asia Insurance failed to consider the investment restrictions and other compliance issues like possible conflicts of interest when entering into the related party transactions. Asia Insurance also failed to have a designated compliance officer as stipulated in the *Fund Manager Code of Conduct*. No harm was suffered by investors.

(Press releases issued on 27 January 2005)

Fund managers are responsible for handling vast amount of investors' money and as such, good internal controls and supervision are vital to avoiding potential loss and damage to investors. Fund managers should closely monitor their controls and systems to prevent any possible abuse. Trustees must properly discharge their important duty to supervise fund managers. Fund managers and trustees who fail their duties will face enforcement action. Sanctions will be harsher if there are investor losses.

General Enforcement Statistics

Since 1 April 2004, the SFC has successfully prosecuted 64 entities. Summonses were withdrawn against eight entities and a further five entities were acquitted after trial. There were also four cases which the SFC offered no evidence. In the same period, the SFC disciplined 66 licensees for various regulatory breaches and entered into settlements with voluntary payments with four licensees. The SFC also took disciplinary actions against 26 licensees which were eventually concluded with no formal sanction imposed, although 13 of them received private warnings. Disciplinary proceedings were also commenced and discontinued against four deemed licensees who left their firms 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.)

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