SFC 證監會

SFC Enforcement Reporter

A monthly summary of SFC enforcement action

July 2005

Highlights

In June 2005, the SFC:

- **successfully prosecuted two companies and seven people**
- **disciplined four licensees**

Prosecution

Market manipulator convicted and remanded in custody pending sentence

Mr Lam Chee Wing Alan was convicted after trial of intentionally creating a false or misleading appearance of active trading in the shares of EVI Education Asia Ltd. On 8 May 2002, Lam bought and sold EVI shares via accounts held by him with two brokers with the intention of raising the market price of EVI shares. Such trades led to no change in the beneficial ownership of the EVI shares. Sentencing was adjourned until 4 July 2005 pending background reports. Lam was remanded in custody.

(Press release issued on 17 June 2005)

Market manipulation interferes with the genuine supply and demand of securities or derivatives and creates a false or misleading appearance as to their price or turnover or the market for them. It harms market integrity and undermines the investing public's confidence. It is a serious offence and the SFC will continue to take firm action in combating such misconduct. The remanding of Lam in custody and recent jailing of Mr Zou Yishang demonstrate the serious approach the courts take to market manipulation. Lam and Zou were convicted under the old laws. Under the Securities and Futures Ordinance (SFO), maximum penalties on conviction have risen to 10 years' imprisonment and a fine of $10 million.

Licensed corporation and its financial controller prosecuted for FRR breaches

Excalibur Futures Ltd and its former financial controller, Mr Chan Cheung Wah Linus, pleaded guilty to failing to notify the SFC of its liquid capital deficiencies. From 20 February to 29 March 2004, Chan included cheques received from a related company but not deposited into the bank account of Excalibur in the calculation of liquid capital pursuant to the Financial Resources Rules (FRR). The liquid capital position was inflated by between $770,000 and $3.3 million. Excalibur and Chan were each fined $35,000 and ordered to pay the SFC's investigation costs.

(Press release issued on 9 June 2005)

A licensed corporation should notify the SFC as soon as reasonably practicable of its inability to maintain financial resources in accordance with the FRR, or otherwise will face prosecution and subject to disciplinary action. Under section 390(1) of the SFO, an officer of a licensed corporation is also liable for prosecution if an offence is committed with the assistance, consent, or caused by the recklessness of that officer. Financial controllers or management who are responsible for FRR compliance would face prosecution if they are found deliberately circumventing or breaching FRR requirements. Disciplinary action is also likely.

Companies and individuals prosecuted for unlicensed regulated activities

Brodick Capital Ltd and its director, Mr Lam Chi Yin Henry, pleaded guilty to holding out on its website as carrying on a business of advising on corporate finance whilst unlicensed. They were each fined $10,000 and ordered to pay the SFC's investigation costs.

(Press release issued on 2 June 2005)

Between 24 April and 2 October 2003, Ms Wong Yuen Sze Angel introduced clients to open trading accounts at Sun Hung Kai Investment Services Ltd, received orders from clients and confirmed execution of trades with clients whilst unlicensed. Ms Lo Po Wah Julie, the branch manager of Sun Hung Kai and supervisor of Wong, aided and abetted Wong's unlicensed activities. Both were convicted after trial. Wong and Lo were each fined $1,500 and ordered to pay the SFC's investigation costs.

(Press release issued on 29 June 2005)

It is a serious offence to carry out regulated activities without being licensed or registered with the SFC. The SFC will prosecute those who engage in or aid and abet unlicensed activities. Licensees may also face disciplinary action. To protect their interests, investors should check in advance if persons they deal with are licensed by the SFC.

Ultimate controller prosecuted for late disclosures

Mr Lin Ko Ming pleaded guilty to his failure to make timely disclosures to both HKEx and Shaanxi Northwest New Technology Industry Company Ltd of his 5.22% interest in Shaanxi Northwest when he used a nominee company to subscribe for the shares during a placement. The stock was listed on 3 July 2003 but Lin did not make disclosures until 3 November 2004. Lin was fined $10,000 and ordered to pay the SFC's investigation costs.

(Press release issued on 30 June 2005)

The disclosure of interests regime provides investors in listed companies with more complete and better quality information on a timely basis to enable them to make informed investment decisions. Under section 316(2) of the SFO, a person is taken to be interested in the listed shares even though the shares are held under the name of a nominee company, as long as the company is controlled by that person. The SFC will continue to prosecute those people who fail to comply with the disclosure requirements.

Person prosecuted for short selling

Mr Ha But Yee pleaded guilty to short selling a warrant between 17 October and 11 November 2003 through four accounts under his control knowing that he did not have any warrants on hand. He was fined $64,000 and ordered to pay the SFC's investigation costs.

(Press release issued on 30 June 2005)

The SFO prohibits the sale of securities when a person does not have a presently exercisable and unconditional right to sell them. At present, only securities specified by HKEx as Designated Securities Eligible For Short Selling can be sold short and short selling of such securities must be conducted in accordance with the Rules of the Exchange. Brokers are expected to have put in place sound internal controls to detect and prevent illegal short selling.

Discipline

FRR breaches resulted in reprimands and fines

The SFC reprimanded and fined Mansion House Securities (FE) Ltd (MHS) $450,000. MHS offered up to 90% financing to finance clients' IPO applications but failed to take these loans into account when calculating and compiling their FRR returns. This gave rise to a liquid capital shortfall, leading to MHS' failure to comply with the FRR between October to December 2003. The SFC found that MHS did not have adequate internal control in place to ensure compliance with FRR and an employee inexperienced with FRR was responsible for compiling the FRR returns. The responsible officers were also unaware of the requirement to include IPO financing when calculating liquid capital. In deciding the penalty, the SFC took into account that the breaches were unintentional and that MHS had co-operated with the SFC's investigation and in settling the disciplinary proceedings.

(Press release issued on 27 June 2005)

The SFC reprimanded Man Hon Yeung Securities Ltd (MHYSL) and its responsible officer, Mr Man Hon Yeung, for failing to maintain the required liquid capital on 32 occasions between September 2003 and February 2004. MHYSL was also fined $320,000. The breaches were caused by MHYSL's margin lending to its clients for IPO subscriptions and over-trading of its margin clients. MHYSL's accounting staff were unfamiliar with the FRR requirements and failed to include MHYSL's short-term bank loans in its FRR calculation. At all material times, Man was a responsible officer of MHYSL responsible for the general management of MHYSL and bears primary responsibility for the failures. In deciding the penalty, the SFC took into account that the breaches were unintentional and MHYSL and Man had co-operated with the SFC's investigation and in settling the disciplinary proceedings.

(Press release issued on 28 June 2005)

FRR compliance is vital to ensuring that a licensed corporation is adequately capitalised and can meet its obligations to clients, other market participants and creditors. This is essential to the stability of the industry as a whole. Under the FRR, the scale of IPO financing that a broker can provide is governed by the size of its regulatory capital. Brokers should estimate the volume of business they want to engage in for each IPO at an early stage and to update this estimate as frequently as possible. If brokers envisage a very high volume of IPO business, they must take all appropriate measures well ahead of time to avoid breaching the FRR at any time. The SFC views any breach of the FRR seriously and will prosecute and take appropriate disciplinary action against those licensed corporations and their responsible management who fail to comply. Management of firms should also ensure their staff responsible for FRR compliance have sufficient knowledge and skill, otherwise the relevant management may be held liable.

Suspension for providing misleading information

The SFC suspended the license of Mr Lee Sai Wah Daniel, a licensed representative of Manble Securities Ltd, for five months for providing misleading information to the SFC. Near the market close on 29 September 2000, a client of Manble placed sell orders in the shares of Victory Group Ltd using his friend's account at Manble and buy orders through his own account at another firm with the intention to push up the closing price of Victory. In December 2000, Lee prepared a letter for Manble to the SFC stating that it was the client's friend who placed the orders. Lee kept to his story in subsequent SFC's interviews until he was confronted with a tape of phone conversations that suggested otherwise. Lee only then admitted that it was actually the client who used his friend's account to place the orders. The client was convicted of market manipulation on 22 July 2003. The SFC suspended Lee's licence for five months taking into account that Lee did not dispute the SFC's findings and his assistance to the SFC in the prosecution of the client and co-operation in settling the disciplinary proceedings.

(Press release issued on 23 June 2005
See also an earlier press release issued on 22 July 2003)

People attending SFC's interviews have a statutory duty to provide true and complete answers. We also expect all licensees to co-operate with the SFC's investigation at all times, as they have the fundamental duty to protect the integrity of the market. 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.

General Enforcement Statistics

From 1 April 2005 to end of June, the SFC successfully prosecuted 18 entities and offered no evidence against one entity. In the same period, the SFC took action against 14 licensees for various regulatory breaches, of which one case was settled with voluntary payment and with no formal sanction imposed.

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