

Highlights

In February 2005, the SFC:

- successfully prosecuted two companies and three people
- disciplined two licensees
- entered into settlements with two licensees

Prosecution

Applicants for licence get criminal record for misleading the SFC

Mr Yuen Pak Kan was convicted of giving false information about his financial status in his application for an SFC licence. Yuen was fined \$10,000 and ordered to pay the SFC's investigation costs.

(Press release issued on 3 February 2005)

Mr He Zhao Danny was convicted of tendering a false degree certificate and making a false representation about his academic background in his application for an SFC licence. He was fined \$10,000 and ordered to pay the SFC's investigation costs.

(Press release issued on 3 February 2005)

Applicants for SFC licences must provide true and accurate information because the SFC relies on the information to assess whether they are suitable to be licensed. Applicants who provide false or misleading information to the SFC will be prosecuted, and that they will unlikely be considered fit and proper to be licensed in any future application.

Broker convicted of issuing subscription forms without a prospectus

Delta Asia Securities Ltd was convicted of issuing to the public subscription forms for shares in a listed company without a prospectus. Delta Asia was fined \$15,000 and ordered to pay the SFC's investigation costs.

(Press release issued on 3 February 2005)

The Companies Ordinance requires a subscription form for listed shares to be issued with a prospectus. Potential investors are entitled to know the background of a listed company before deciding whether to invest their money in the company. Broker firms and other company promoters are therefore reminded not to issue any subscription forms for shares to clients without a prospectus.

Failure to disclose interests prosecuted

Modern World Resources Ltd pleaded guilty to failing to make disclosure to both Hong Kong Exchanges and Clearing Limited and GP Nano Technology Group Ltd of the reduction of its interests in the shares of GP Nano on 18 June 2003 and 17 July 2003. Modern World was fined \$10,000 and ordered to pay the SFC's investigation costs.

(Press release issued on 24 February 2005)

As we mentioned repeatedly in previous issues of the Enforcement Reporter, disclosure of interests in listed companies is essential to ensuring market transparency. The SFC will continue to prosecute people who fail to comply with the disclosure requirements.

Helper of market manipulator convicted

Ms Wan Wai Chi Katherine pleaded guilty to aiding and abetting a person to create a false and misleading appearance of active trading in the shares of Sino Technology Investments Ltd. The SFC found that Wan had received money from a person to trade in Sino Tech shares through four brokers, without any change in the beneficial ownership, with the intention of raising the market price of the shares. The sentencing of Wan had been adjourned to 11 March 2005.

(Press release issued on 24 February 2005)

Market manipulation is a serious crime and the maximum penalties, on conviction of indictment, under the Securities and Futures Ordinance are a \$10 million fine and 10 years' imprisonment. Licensees are reminded that those who participate in or assist others in market manipulation will not only face criminal conviction, but also likely have their licences suspended or revoked and/or be fined.

Discipline

Responsible officer surrenders licence for conflicts of interest

Ms So Wai Yin Irene surrendered her licence to the SFC and undertook not to re-apply for a licence for five years. The SFC found that So, who was a dealing director of Mansion House Securities (FE) Ltd (MHS) and an executive director of Mansion House Group Ltd (MHG), had obtained funds from her clients at MHS to finance MHG's activities between 1999 and 2002 when she was aware of the financial difficulties facing both companies. However, she did not tell her clients that they were lending money to MHG, a company in financial difficulties. So had a duty to act in the clients' best interests by ensuring they understood the nature of their investment and the risks involved, but she failed to do so and put herself in a serious conflict of interest. The SFC regarded So's previous disciplinary record an aggravating factor. The SFC decided to revoke So's licence and So lodged an appeal against the decision. So subsequently settled the case with the SFC, withdrew her appeal, surrendered her licence and undertook not to re-apply for a licence for five years. The SFC considered the settlement to be in the public interest.

(Press release issued on 1 March 2005)

As mentioned last year, conflicts of interest are an SFC enforcement priority and the SFC takes a tough stance against licensees who abuse the trust that the investing public repose in them. Licensees who put themselves in a conflict of interest should expect to face a lengthy suspension or revocation of their licences and/or a fine.

Settlement with an investment manager who allowed late trading by clients

The SFC entered into settlement with First State Investments (Hong Kong) Ltd (FSIHK), an investment manager and the Hong Kong representative of the First State Global Umbrella Fund PLC (the Fund). The SFC found that, on a number of occasions between April and July 2003, FSIHK had forwarded trades received from two hedge funds in relation to eight sub-funds of the Fund to the Fund's administrator in Dublin for processing after the dealing cut-off time and the valuation time. The SFC was concerned that, by allowing the late trades of the two hedge funds, they might have had the opportunity to observe and take advantage of the closing positions of the London market and the opening position of the New York market. Without admission of liability, FSIHK settled with the SFC and voluntarily agreed to make ex-gratia payments to each of the affected sub-funds and to waive its annual representative fee for all the sub-funds until 30 June 2005. The SFC took into account, among other things, FSIHK's co-operation and the technical nature of the breach. The SFC considered the settlement to be in the public interest.

(Press release issued on 28 February 2005)

Dealing deadlines set out in offering documents must be strictly adhered to, and no preferential treatment should be given to any client. Allowing late trading may give a client the opportunity to take an unfair advantage of market movements which are not available to other investors. Market timing and late trading are matters of global concern as they breach the principle of equal treatment of investors. The SFC will take tough action against serious instances of market timing and late trading.

Assisting in other's misconduct will likewise be punished

The SFC suspended Mr Leung Pui Kin, a licensed representative of ICEA Securities Ltd and ICEA Futures Ltd, for six weeks for giving improper assistance to a colleague who stole from clients. The SFC found that, between May 2002 and February 2003, Leung had accepted money transfers totalling \$113,300 from the accounts of four of his colleague's clients into his own trading account at ICEA Securities, and then transferred the money to his colleague. Leung had questioned the colleague about the propriety of the transfers and agreed to help after getting the colleague's positive assurance. In fact, the colleague lied to Leung and falsified the clients' signatures on the transfer forms. Leung's action unwittingly facilitated the colleague's theft.

(Press release issued on 1 February 2005)

Assisting in another person's improper acts is misconduct in itself. Although Leung did not actually know that his colleague had misappropriated the clients' funds, he should not have allowed his colleague to use his own account for receipt of clients' money because fund transfers between account executives and their clients were susceptible to abuse and should have aroused Leung's suspicion. But for Leung's co-operation and remorse, the penalty would have been more severe.

Lengthy suspension for conducting personal trades via client accounts

The SFC suspended Ms See Ting Hing Mary, a licensed representative of Roofers Securities Ltd, for eight months. The SFC found that, from January 2001 to November 2002, See, who was then a dealer's representative of Tai Wah Securities Ltd, had conducted personal trades in the accounts of her clients. In addition, on 20 November 2002, See executed three buy orders for a client, but only confirmed two orders with the client and allocated the remaining order with a better price to another client's account.

(Press release issued on 16 February 2005)

Licensees must not use client accounts to conceal their personal trades. Licensees should only use their accounts maintained at their own firms (or other firms with their employers' consent) for personal trading because their trades have to be closely monitored by their employers. Personal trading in client accounts may create financial risks for the clients by incurring trading liabilities which do not belong to the clients. There is also the risk that clients' assets may be misused. It was also wrong for See to unfairly allocate a better order to another client since it prejudiced the original client's interests. As such, See deserved a lengthy suspension.

Do not facilitate unlicensed dealing

In June 2004, the SFC decided to suspend Mr Yu Kim Ho Douglas, formerly a licensed representative of Celestial Securities Ltd, for four months. The SFC found that, from late December 2001 to early January 2002, Yu had allowed a new recruit under his supervision to handle client orders when Yu knew that the recruit was unlicensed at that time. Yu left the industry before the suspension took effect. Yu agreed to publicity of the SFC's previous disciplinary decision as a precondition for his re-entering the industry.

(Press release issued on 17 February 2005)

The licensing system is to ensure that only fit and proper people are allowed to join the industry. The SFC acts as a gatekeeper to exclude dishonest, unqualified, incompetent and financially unsound people from entering the industry. Facilitating unlicensed activities is serious misconduct and the licensees involved should be suspended because it is of utmost importance that people who are themselves licensed be seen to help uphold the licensing system. Under the transitional arrangements of the Securities and Futures Ordinance, the SFC lost disciplinary jurisdiction over deemed licensees who left the industry. However, the SFC requires such people to answer its regulatory concerns before deciding whether to re-license them.



SFC Enforcement Reporter

A monthly summary of SFC enforcement action

證監會 March 2005

General Enforcement Statistics

Since 1 April 2004, the SFC has successfully prosecuted 68 entities. Summonses were withdrawn against eight entities and a further six entities were acquitted after trial. There were also four cases in which the SFC offered no evidence. In the same period, the SFC disciplined 68 licensees for various regulatory breaches and entered into settlements with voluntary payments with four licensees. The SFC also took disciplinary actions against 27 licensees which were eventually concluded with no formal sanction imposed, although 14 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.)

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

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