

## Highlights

In April 2005, the SFC:

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

## Prosecution

### **Listed company chairman sentenced to four months' imprisonment for market manipulation**

Mr Zou Yishang, Chairman of Plus Holdings Ltd, was convicted of intentionally creating a false or misleading appearance of active trading in the shares of Dynamic Holdings Ltd and was sentenced to four months' custodial sentence. Between 7 December 2001 and 18 January 2002, Zou used trading accounts at four different brokerages to effect 40 purchase and sale transactions of Dynamic's shares, which involved no change in beneficial ownership. During sentencing, the magistrate made it clear that market manipulation is a serious crime and a firm sentence must be given. Zou was granted bail with conditions pending appeal.

(Press releases issued on 18 May and 11 April 2005)

*Market manipulation distorts the supply and demand in the securities market. It harms market integrity and undermines the investing public's confidence. As can be seen from this case, custodial sentence is a possible penalty for market manipulators. This should serve as a warning to the public that market manipulation is a serious offence. The SFC will take tough action to prevent and penalise such conduct.*

### **Person prosecuted for failing to attend SFC's investigation interviews**

Mr Chan Kim Wing pleaded guilty to failing to attend the SFC's investigation interviews. After receiving the SFC's notices, Chan without reasonable excuse failed to attend two interviews in connection with investigations into market manipulation. Chan was fined \$30,000 and ordered to pay the SFC's investigation costs.

(Press release issued on 15 April 2005)

*People who have information relevant to an investigation have a legal duty to attend the SFC's interviews to answer questions. People who, without reasonable excuse, fail to attend SFC's interviews can face a maximum fine of \$50,000 and six months' imprisonment on summary conviction. Licensees who fail to co-operate with the SFC will also be disciplined and can expect to have their licences suspended or revoked.*

### **Remember to disclose your interests on time**

Lee Fung Hong (Cheung's) Forex Dealers Ltd and its director Mr Luk Hon Sum Peter pleaded guilty to failing to initially notify both the Hong Kong Exchanges and Clearing Ltd (HKEx) and Simsen International Corporation Ltd of Lee Fung Hong's 7.27% interest in Simsen when the Securities and Futures Ordinance came into effect on 1 April 2003 and failing to disclose on time its disposal of interests in Simsen on 3 March 2004. Lee Fung Hong and Luk were fined a total of \$16,000 and ordered to pay the SFC's investigation costs.

(Press release issued on 14 April 2005)

*Timely disclosure of securities interests is necessary for the operation of an open and transparent market. The SFC will continue to prosecute corporations and people who fail to comply with disclosure requirements.*

## **Court dismisses unlicensed trader's appeal**

The Court of First Instance dismissed an appeal brought by Ms Tsang Wai Lin against her conviction for unlicensed leveraged foreign exchange trading. Tsang was earlier fined \$60,000 after trial.

(Press releases issued on 8 April 2005 and 13 December 2004)

## Discipline

## **Window-dressing of FRR returns results in severe disciplinary sanctions**

The SFC reprimanded Berich Brokerage Ltd for window-dressing Financial Resources Rules (FRR) returns and other failures. Berich paid \$1,400,000 to the SFC to settle the SFC's disciplinary action against it. Under the settlement, Berich's general manager and licensed representative, Mr Chung Tin Ming, its responsible officer, Mr Sun Tak Sing, and another responsible officer, Mr Luk King Cheong, were suspended for two years, three months and one month respectively.

In February and March 2002, Chung transferred funds between margin client accounts to understate a particular client's margin shortfall. The SFC considered that these fund transfers were deceptive devices designed to mislead the SFC into believing that the shortfalls in the margin client's account and the liquid capital position of Berich had improved. Sun signed cheques and approved the fund transfers without making appropriate inquiries or exercising prudent judgment. The SFC also found that Berich had failed to comply with certain terms of the undertakings it gave to the SFC and failed to implement a prudent margin financing policy. Luk, as a member of Berich's senior management, failed to improve Berich's internal control procedures.

Initially, the SFC decided to suspend Berich for four months. Taking into consideration that Berich had improved its margin financing business and internal compliance and its agreement to commission an independent review of its operations in the second half of 2005, the SFC considered there was no longer a need to suspend Berich and a settlement with Berich was in the interest of the investing public. Berich also paid the SFC's legal costs and expenses incurred in the disciplinary proceedings as part of the settlement.

(Press release issued on 18 April 2005)

*Window-dressing FRR returns means the presentation of misleading information to give a deceptively favourable impression of a firm's financial position. It often involves unusual fund transfers with related parties, understatement of liabilities and fictitious transactions. Any attempt to window-dress the financial position of a licensed corporation warrants heavy penalty.*

## **Tough action against mis-selling of funds**

The SFC reprimanded Halsburg Asset Management Ltd and suspended its major shareholder and managing director, Mr Hui Chiu Kit Eddie, for three years for gross negligence in conducting due diligence on and serious misconduct in selling investment products. Halsburg introduced the Alpha<sup>2</sup> Series Fund (ASF) managed by IC Mutual Ltd (ICM) to clients between August 2001 and May 2002. Hui, who was responsible for due diligence, was unaware that overseas regulators had published warnings about the parent company of ICM. He also failed to disclose to clients that ICM faced liquidity problems in early 2002 because of large redemption requests. In mid 2002, ASF was suspended and both ICM and its parent company went into liquidation, but Hui did not tell clients until late 2002. In June and August 2002, Hui also introduced another investment product to several overseas intermediaries when he knew or should have known that the product was managed by a company closely related to ICM's parent company.

(Press release issued on 15 April 2005)

*Investment advisers must exercise due skill and diligence when acting for clients. Their recommendations to clients must be reasonable and the clients' best interests must be their top priority. When they become aware of any problems with the investment products they distribute, they should tell clients immediately. Investment advisers who sell investment products which they know or should know are problematic or deliberately or negligently conceal the problems from clients will face severe disciplinary penalties including suspension, revocation or a heavy fine.*



# SFC Enforcement Reporter

A monthly summary of SFC enforcement action

證監會 May 2005

## **Don't pledge client securities without an appropriate licence**

Gain Asset Management Ltd paid \$500,000 to the SFC to settle the SFC's disciplinary action against it. From April to November 2003, Gain pledged client securities collateral with other licensed corporations while it was not licensed to do so. From 31 October to 2 December 2003, Gain also breached the FRR by failing to maintain the required liquid capital while obtaining loans from other licensed corporations in an Initial Public Offering for itself and its clients.

(Press release issued on 25 April 2005)

*Licensees are reminded not to pledge client securities unless they are approved to carry on Type 1 or Type 8 regulated activities. They should also ensure their compliance with the FRR. Such compliance is vital to ensuring that a licensed corporation is adequately capitalised and can therefore meet its obligations to clients, other market participants and creditors. The SFC views breaches of FRR seriously and will prosecute and/or discipline those licensees who fail to comply.*

## **Company disciplined for failing to comply with the Client Identity Rule Policy**

The SFC reprimanded Instinet Pacific Ltd and fined the firm \$50,000 for breaching the client identity rule and an undertaking given to the SFC. Instinet Pacific, in breach of the *Client Identity Rule Policy*, failed to provide the SFC with details of the underlying clients of certain transactions within two business days of the date of the SFC's request. It also failed to comply with an undertaking it gave the SFC in 1999 that it would not trade with two German clients until these clients provided details of the underlying clients of certain securities transactions.

(Press release issued on 11 April 2005)

*The purpose of the Client Identity Rule Policy is to enhance the market surveillance capabilities of the SFC and HKEx so that they may readily ascertain the identity of anyone trading listed securities or futures contracts on the Hong Kong markets. All licensees must be able to provide details of the underlying clients of a transaction within two business days of a request from the SFC or HKEx, failing which they may be disciplined.*

## **Continuing actions against helpers of unlicensed activities**

The SFC reprimanded Mr Cheung Chun Matthew and fined him \$21,000 for assisting an unlicensed person to conduct regulated activities. In October 2003, a new recruit of RBC Investment Services (Asia) Ltd, who was not yet licensed to act for RBC, opened accounts for clients, took and executed clients orders and gave investment advice to clients, despite RBC's prohibition. Cheung, a licensed representative of RBC, assisted in the new recruit's unlicensed activities by signing as a witness in the account opening documents for him, executing orders taken by the new recruit and signing dealing tickets for him.

(Press release issued on 1 April 2005)

The SFC suspended Mr Wong Kwok Fan Rico for five weeks for account opening failings and aiding and abetting unlicensed dealing. Wong certified that he had explained the risk disclosure statement to a client during account opening when in fact he had not. Wong also rebated commission to a person who was engaged in unlicensed activities. The SFC originally decided to suspend Wong for two months and Wong appealed to the Securities and Futures Appeals Tribunal (SFAT). The SFAT reduced the length of suspension to five weeks in consideration of Wong's extraordinary personal circumstances but made it plain that a reprimand was insufficient for Wong's misconduct.

(Press release issued on 28 April 2005)

*The licensing regime is an important cornerstone of the regulatory framework. Only licensed representatives can conduct regulated activities on behalf of a licensed corporation. No one should assist an unlicensed person in engaging in regulated activities, or they may be prosecuted and/or disciplined. Licensees should also be reminded not to sign on an account opening form as a witness when they have not actually met the client. This is misconduct which warrants suspension or a fine.*



# SFC Enforcement Reporter

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## General Enforcement Statistics

In the first month of the financial year 2005-2006, the SFC successfully prosecuted four entities and offered no evidence against one entity. In the same period, the SFC disciplined nine licensees for various regulatory breaches and entered into settlement with one licensee 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](http://www.sfc.hk).*

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