



# SFC Enforcement Reporter

A monthly summary of SFC enforcement action

證監會 October 2005

## Highlights

### In September, the SFC:

- successfully prosecuted seven people
- disciplined 13 licensees, one of them also made a voluntary payment

## Prosecution

### **Don't lie to the SFC**

Ms Kong Kwok Yee, a suspected trader in a market manipulation investigation, pleaded guilty to providing misleading information to the SFC in relation to the operation of her account at a brokerage house. Kong was fined \$20,000 and ordered to pay the SFC's investigation costs.

(Press release issued on 29 September 2005)

*People who are interviewed by the SFC have a statutory duty to provide true and complete answers. It is a criminal offence to provide false and misleading information to the SFC.*

### **Individual prosecuted for making unsolicited calls**

Mr Chow Wai Ho, a former representative of Tanrich Futures Ltd, pleaded guilty to making unsolicited calls on various occasions inducing others to enter into agreements for trading in futures contracts. Chow was fined a total of \$7,500 and ordered to pay the SFC's investigation costs.

(Press release issued on 29 September 2005)

*It is illegal to make unsolicited calls with the intention of inducing a person to purchase securities because investors may be pressured into making hasty investment decisions during the course of unsolicited calls. Tougher action will be taken against those who mis-sell risky financial products to unsophisticated people who suffer losses as a result.*

### **Actions against unlicensed regulated activities**

Ms Mok Sze Wan pleaded guilty to engaging in leveraged foreign exchange trading activities whilst unlicensed. Between May and July 2004, Mok, who was not licensed by the SFC, solicited a person to open an account with Hong Kong Forex Investment Ltd to trade leveraged foreign exchange contracts. Mok was fined \$5,000 and ordered to pay the SFC's investigation costs.

(Press release issued on 1 September 2005)

Mr Lam Kwok Fai pleaded guilty to acting as an investment representative of Hong Kong Wealth Management Ltd whilst unregistered. Between October and November 2002, Lam, who was not registered with the SFC, advised clients to invest in certain mutual funds authorised by the SFC. Lam was fined \$2,000 and ordered to pay the SFC's investigation costs.

(Press release issued on 8 September 2005)

Mr Ng Kit Fai Paris pleaded guilty to holding out as performing a regulated function in relation to securities dealing whilst unlicensed. Between May and June 2004, Ng, who was not licensed by the SFC, introduced to his clients unauthorised funds and told his clients that he could arrange for the subscription of listed shares through a licensed securities broker. Ng was fined \$20,000 and ordered to pay the SFC's investigation costs.

(Press release issued on 22 September 2005)

Ms Kwan Sok Un Samantha pleaded guilty to advising on mutual funds whilst unlicensed. In July 2003, Kwan, who was not licensed by the SFC, advised a client to subscribe for shares in mutual fund corporations. Kwan was fined \$5,000 and ordered to pay the SFC's investigation costs.

(Press release issued on 22 September 2005)

Mr Ming Tak Sang pleaded guilty to holding out as carrying on a business in asset management whilst unlicensed. Between January and June 2004, Ming, who was not licensed by the SFC, promoted unauthorised funds and explained the details of the funds to investors. Ming was fined \$5,000 and ordered to pay the SFC's investigation costs.

(Press release issued on 22 September 2005)

*It is a criminal offence to carry out regulated activities without being licensed by or registered with the SFC. The SFC will prosecute those who engage in or aid and abet unlicensed activities. Investors should only deal with licensed persons who may perform regulated activities. To protect their interests, investors should check the register of licensed persons on the SFC website to see if persons they deal with are licensed by the SFC.*

## Discipline

### **Licensee suspended for using "scaffolding" strategy in warrants trading**

Mr Chan Chuen Leung, a licensed representative of Asia-Pac Securities Ltd, was suspended for four months for improper trading activities. Between 1 November 2002 and 31 January 2003, Chan employed a "scaffolding" strategy to trade nine covered warrants. He first placed a sell order for the warrants he just acquired, at one spread higher than his purchase price, followed immediately by successive buy orders of one million shares each at one or two spreads lower than the price of the sell order he just placed. The total quantity of the buy orders was many times greater than his sell order. He cancelled these buy orders shortly after placing them and repeatedly placed and cancelled these successive buy orders until his sell order was successfully executed. His successive buy orders of one million shares each were only placed to influence investors' order placing preferences, as those investors who were unwilling to queue their buy orders might take Chan's prior unexecuted sell order at a higher price. The suspension was the result of a settlement between Chan and the SFC.

(Press release issued on 28 September 2005)

*"Scaffolding" is a form of market manipulation. The perpetrators attempt to distort the picture of the demand and supply of a stock by inputting a large number of orders without the intention of executing them. These false orders are usually cancelled before they are matched. Scaffolding misleads investors and damages market integrity. The SFC has zero tolerance for any kind of improper trading activities, including "scaffolding". In addition to possible criminal prosecution, the SFC may fine, suspend or revoke those licensees who engage in any kind of improper trading strategy.*

### **Suspension for breaching the anti-money laundering requirements**

Mr Lau Yat Wah, a licensed representative of Hooray Securities Ltd, was suspended for four months for breaching the Money Laundering Guidance Notes. Between September and November 2001, Hooray Securities acted as the selling broker in a number of non-AMS transactions concerning the shares of various companies. At the instructions of the sellers, a large portion of the sale proceeds was transferred from the sellers to the accounts of four BVI companies, which were opened shortly before the transactions, and an individual. The flow of funds could not be traced beyond the BVI companies because the funds were subsequently transferred out of Hong Kong. Lau, who was the account executive for these BVI companies, failed to make enquiries into the identity of the ultimate beneficiary of the BVI companies. Lau also breached the Money Laundering Guidance Notes by failing to inquire into the transfers of large sums of money from the sellers' account to the accounts of the BVI companies and the individual, despite the suspicious nature of these transfers. The suspension was the result of a settlement between Lau and the SFC.

(Press release issued on 20 September 2005)

*The SFC takes a strict view of breaches of the Money Laundering Guidance Notes. Licensed representatives must ensure they know exactly whom they are dealing with and the true identity of the clients and inquire into suspicious transactions. Extra care must be taken when dealing with companies incorporated in jurisdictions with secrecy laws like the British Virgin Islands.*

## **Firms disciplined for internal control failures and regulatory breaches**

The SFC reprimanded Cheung's Securities Brokers Ltd and suspended its responsible officer, Ms Lun Han Yuk, for two months. Cheung's was also fined \$50,000. Cheung's was a liquidity provider for the transactions in structured products for a securities firm and was required to have sufficient funds in its bank accounts to settle the transactions. On 28 and 29 September 2003, there were insufficient funds in Cheung's account to settle the net long positions of the securities firm's transactions on T+2. Lun noticed the liquidity problem and arranged funds to meet the settlement demand on T+2. Before the pre-arranged funds were deposited to the house account of Cheung's, Lun transferred \$12.3 million from Cheung's client trust account to the house account as a safety measure, in breach of the Client Money Rules. The disciplinary outcome was the result of a settlement between Cheung's, Lun and the SFC.

(Press release issued on 1 September 2005)

Guotai Junan Securities (Hong Kong) Ltd was reprimanded and fined \$400,000 for failing to maintain the required liquid capital and to deposit client money with authorised financial institutions. In October 2003, Guotai Junan took out bank loans to finance clients' applications for an IPO. The amount lent to its clients had an effect on the statutory liquid capital requirement and Guotai Junan overlooked the effect. As a result, Guotai Junan's liquid capital fell below the statutory requirement by \$55 million on 30 October 2003. Furthermore, between December 2002 and November 2003, Guotai Junan inadvertently deposited client money with three overseas banks that were not authorised financial institutions under the Banking Ordinance, hence breaching the Client Money Rules. The disciplinary outcome was the result of a settlement between Guotai Junan and the SFC.

(Press release issued on 8 September 2005)

The SFC reprimanded Henyep Securities Ltd, its managing director, Mr Chiu Sin Wan Simon and its chief accountant, Mr Ng Yiu Man. Chiu also made a voluntary payment of \$57,000. Independent auditors found that Henyep had internal control problems. Address proofs and written authorisations to effect changes in client information were lacking. Henyep did not directly contact a client for a long overdue balance in the client's accounts to verify and assess the existence and recoverability of the debts. Trading and settlement activities of overdue accounts and accounts with enormous turnover were not closely monitored. The payee of certain cheques for the sale proceeds in the client's account was changed from the client to Henyep's finance company while some other cheques payable to the client were cancelled with the money credited to the client's account for settlement purposes. Henyep also lacked documented complaint handling procedures. The disciplinary outcome was the result of a settlement between Henyep, Chiu, Ng and the SFC.

(Press release issued on 14 September 2005)

*Licensed corporations should have adequate internal controls to protect the integrity of their business operations and their clients' interests. They should put in place a system to comply with the Financial Resources Rules and the Client Money Rules. Any breach of these rules may undermine the financial integrity of a broker and/or protection of client assets. The SFC has repeatedly warned licensed corporations that it will not condone lax internal controls and will hold the management of the licensed corporations responsible for such failures.*

## **Disciplinary actions against short selling**

Mr Chan Yu Man, a licensed representative of Ewarton Securities Ltd, was reprimanded and fined \$30,000 for short selling. Between April and September 2003, Chan conducted 31 short sales through his mother's account maintained at Ewarton. Chan repeatedly failed to check that the account had sufficient stock before executing a sell order. Chan was aware that he was selling short. However, he continued to execute personal sell orders through his mother's account without first checking the stock balance in the account.

(Press release issued on 7 September 2005)



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證監會 October 2005

Mr Yu Hing Fai, a licensed representative of Ewarton Securities Ltd, was reprimanded and fined \$40,000 for short selling. Between April and September 2003, Yu conducted 75 short sales through his account maintained at Ewarton. Yu repeatedly failed to check that he had sufficient stock in his account before placing his sell orders for execution. Yu was aware that he was selling short. However, he recklessly continued to place sell orders without checking the stock balance of his account.

(Press release issued on 7 September 2005)

Mr Ng Yan Ngai, the sole responsible officer of Ewarton Securities Ltd, was reprimanded and fined \$40,000. The SFC found that Ng had failed to, among other things, implement and enforce effective measures to detect and prevent short selling of securities at Ewarton. These failings allowed Mr Chan Yu Man and Mr Yu Hing Fai to engage in short selling activities.

(Press release issued on 7 September 2005)

*The Securities and Futures Ordinance prohibits the sale of securities when a person does not have a presently exercisable and unconditional right to sell them. Brokers are expected to have put in place sound internal controls to detect and prevent short selling. Illegal short selling may result in both criminal prosecution and disciplinary action against licensees who place short selling orders.*

## **Licensees disciplined for breaching the SFC's Code of Conduct**

Ms Chau Sau Lai Betty, a licensed representative of Hooray Securities Ltd, was reprimanded and fined \$6,000 for breaching the Code of Conduct. Between July and September 2004, Chau breached the Code of Conduct by conducting discretionary trades without proper written authorisation from a client. She also put the financial interest of Hooray Securities at risk by carrying on trading for the client despite the client's failure in settling previous transactions more than three years ago. Furthermore, she withheld a cheque issued by Hooray Securities to the client and obtained the client's daily statements without the client's consent. The disciplinary outcome was the result of a settlement between Chau and the SFC.

(Press release issued on 14 September 2005)

The SFC reprimanded Ms Cheung Ngai Yi Charlotte, formerly a licensed representative of OSK Asia Securities Ltd and OSK Asia Futures Ltd for breaching the Code of Conduct and the internal policy of her former employer. The reprimand follows a decision made by the Securities and Futures Appeals Panel (SFAP). The SFC found that Cheung had allowed a client to operate his parents' accounts without written authorisations. She also signed the account opening documents of the client's parents as a witness while she had not been present, and allowed the accounts of the client's parents to trade beyond the approved credit limits. The SFAP reduced the penalty from a suspension to a reprimand because Cheung's former employer endorsed Cheung's actions. This is the last case decided by the SFAP.

(Press release issued on 29 September 2005)

*All licensed representatives must adhere to the Code of Conduct strictly and without fail. Such compliance is for the benefit of the licensed representatives and for the promotion of good standards in the industry. In particular, licensees are reminded to obtain written authorisation from a client before placing discretionary orders in the client's account. This protects the client from unauthorised trades and prevents the client from disclaiming liabilities at a later date.*

## **General Enforcement Statistics**

From 1 April 2005 to end of September, the SFC successfully prosecuted 33 entities and offered no evidence against three entities. In the same period, the SFC took action against 43 licensees for various regulatory breaches, of which three cases were settled with voluntary payment and with no statutory sanction imposed. Another four licensees settled with voluntary payment and received statutory sanctions.



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