SFC Enforcement Reporter

A monthly summary of SFC enforcement action

證監會

September 2005

Highlights

In August 2005, the SFC:

- **successfully prosecuted three persons and one company**
- **disciplined five licensees**
- **settled with four licensees with voluntary payment (three of them also received a statutory sanction and one did not)**

Prosecution

Successful prosecutions for failure to disclose interests

Ms Wang Li Hua pleaded guilty to 10 summonses for breaching Part XV of the Securities and Futures Ordinance by failing to make timely disclosure to HKEx and Vaso Digital International Holdings Ltd (now known as China Photar Electronics Group Ltd) of her acquisition and disposal of Vaso Digital shares. Wang was an executive director of Vaso Digital. Wang was fined $30,000 and ordered to pay the SFC's investigation costs.

(Press release issued on 4 August 2005)

Bioleader Ltd and its director, Mr Wong Tin Sang, pleaded guilty to their failure to disclose their change of interests in the shares Dah Hwa International (Holdings) Ltd (now renamed as Pearl Oriental Enterprises Ltd) within three days after they became aware of such change. Bioleader was a substantial shareholder of Dah Hwa. They were fined $3,000 each and ordered to pay the SFC's investigation costs

(Press release issued on 25 August 2005)

It is important that substantial shareholders and company directors make timely disclosure of interests to ensure market transparency. The SFC will prosecute for failure to do so.

Conviction for unlicensed investment advice

Ms Pang Yin Har pleaded guilty to advising on futures contracts whilst unlicensed. Pang set up a website and invited the public to join as members. Members had to pay a monthly subscription to obtain Pang's advice on Hang Seng Index options contracts. Pang was fined $5,000 and ordered to pay the SFC's investigation costs.

(Press release issued on 25 August 2005)

Investors should only deal with licensed persons who may perform regulated activities. It is important to protect investors from potential dangers which may be brought about by unlicensed persons. The SFC has repeatedly warned that it will prosecute and take disciplinary action against those engaging in unlicensed activities.

Discipline

Suspension for breaches of SFC Codes and company's compliance manual

The SFC suspended Mr Tang Chi Wai Edwin for three and a half months for breaching the Code of Conduct for Persons Registered with the SFC and the compliance manual and account monitoring procedures of Tang's former employer BNP Paribas Peregrine Securities Ltd. Tang was the account executive of two corporate clients of BNP who traded extensively in two warrants, prices of which had risen rapidly after their issue to levels higher than their underlying stocks. As the conversion ratio was one warrant to one ordinary share, it was unlikely that investors would be interested in buying the warrants at those prices because they would have to pay the exercise price for converting the warrants into shares in addition to the costs of the warrants. The clients' acquisition accounted for all the daily market turnover of the two warrants on 18 trading days and 1 trading day respectively. Tang accepted the suspicious orders and failed to report them to BNP's management. Although he detected the irregularities of the transactions and enquired with the clients, he did not pursue the matter further and continued to accept the clients' orders. In the interest of the investing public and in the public interest, the SFC decided to settle with Tang. In settling the matter, the SFC took into account Tang's co-operation with the SFC's enquiries, his admission of the breach of the SFC's Code of Conduct, that there was no dishonesty on Tang's part, his clean disciplinary record, and that Tang was not knowingly involved in market manipulation or any other misconduct.

(Press release issued on 16 August 2005)

To ensure market integrity, licensees must satisfy themselves that clients' orders are genuine. If licensees receive suspicious orders, they should not execute them. The acquisition of warrants with a one-to-one conversion rate at prices higher than the underlying share price is clearly suspicious. Licensees should also comply with the SFC's Code of Conduct and report any suspicious orders to their supervisors or management.

Internal control weaknesses warrant fine and reprimand

Master Trademore Securities Ltd (MTSL) and its responsible officer Ms Lo Lim Ester were fined $30,000 each and reprimanded for internal control failings. Following an investigation into short selling activities by an MTSL licensed representative, Mr Suen Chi Keung, who was supervised by Lo, the SFC found that MTSL had failed to implement adequate procedures to detect and prevent intra-day short selling, failed to put in place a written staff dealing policy, inadequately supervised staff related accounts, had inadequate control over the use of the telephone recording system and failed to implement effective procedures to review tape recordings of staff-client telephone conversations. In deciding the penalty, the SFC took into account MTSL's and Lo's co-operation with the SFC in settling the disciplinary proceedings, that they had no previous records of internal control failings and their implementation of remedial measures.

(Press release issued on 22 August 2005)

The SFC has repeatedly warned licensed corporations that it will not condone lax internal controls. Close supervision of staff and proper procedures is essential to protecting investors against possible losses and misconduct. The SFC will hold responsible officers responsible for such failures.

Disciplinary actions against short selling

Mr Suen Chi Keung of MTSL was suspended for six weeks for short selling. Through his mother's account held at MTSL, Suen carried out intra-day short selling activities involving 15 derivative warrants on 123 occasions. Suen was earlier convicted of short-selling after pleading guilty and was fined and ordered to pay the SFC's investigation costs. In deciding the suspension, the SFC took into account that Suen had pleaded guilty to the criminal proceedings, his co-operation with the SFC in settling the disciplinary action, his personal circumstances and his clean disciplinary record.

(Press releases issued on 15 September 2004 and 22 August 2005)

The SFC reprimanded Ms Vivien Wong Webb, a former managing director of HSBC Private Bank (Suisse) SA, for short selling and other failings. In breach of HSBC's policy, Webb failed to check a client's shareholding from HSBC's online database. Instead she checked against a manually prepared spreadsheet which turned out to be incorrect. She thought that there was a certain number of shares of a stock but in fact only one-tenth of that number was in the account. The client's order was to sell all her shares in that particular stock. Webb instructed her colleague to do so by orally referring to the initials of the company name. The colleague mistakenly thought it was another company with the same initials. After checking the client's available shareholding of the other stock, the colleague discovered that the holding substantially exceeded the number of shares Webb had indicated, and asked HSBC's dealer to increase the sell order, again without mentioning the full name of the stock. The dealer thought that he was asked to sell shares in the first stock, and as a result about 20 times the number of shares actually held in the client's account were short sold. Hong Kong Exchanges & Clearing Ltd executed a buy-in of the shares for HSBC on the following day and HSBC suffered a loss of over $3 million. In deciding the penalty, the SFC took into account that the short sale was unintentional, Webb's co-operation with the SFC and that her bonus had been reduced due to the short sale.

(Press release issued on 3 August 2005)

Short selling undermines market integrity. Licensees should ensure that a client's shareholding is properly checked against a reliable source. Illegal short selling is treated seriously and will result in prosecution and disciplinary action against the licensees concerned.

Reprimand for internal control failings

The SFC settled its disciplinary actions against Sinomax Securities Ltd and its responsible officer, Mr Luk Kam, with a reprimand. Luk admitted his negligence in failing to detect and prevent unregistered dealing and agreed to make a voluntary payment of $40,000. Sinomax accepted the reprimand for its failures in preventing and detecting unregistered dealing, properly communicating its requirement to verify client identity to its staff, maintaining adequate funds in clients' segregated accounts, obtaining written directions for transferring client monies, and implementing an effective tape recording system. In settling the disciplinary action, the SFC considered Sinomax and Luk's co-operation, their admission and settling the matter, Luk's remorse, that no clients suffered pecuniary loss and that Sinomax's internal controls have been strengthened.

(Press release issued on 22 August 2005)

Companies should closely monitor their staff to ensure that improper or illegal activities are not committed. Only licensed persons should handle clients' money. Strong internal controls can aid early detection of misconduct.

Improper accounts handling attracts sanctions

Mr Ip Hon Man, a licensed representative of UOB Kay Hian (Hong Kong) Ltd and UOB Kay Hian Futures (Hong Kong) Ltd, was reprimanded for accepting orders from third parties without proper authorisations and account opening failings. Ip also agreed to pay $100,000 in lieu of a proposed three month suspension. Ip was an account executive of Luk Fook Securities Ltd and handled the accounts of four clients who traded in shares of New Chinese Medicine Holdings Ltd. Ip allowed third parties to place orders through the four accounts without obtaining written authorisations. Ip also falsely represented that he had witnessed the signing of account opening forms by two clients when he had not. In coming to the settlement, the SFC took into account Ip's co-operation, his admission and remorse regarding his misconduct and that by settling the disciplinary action, Ip had saved the SFC's resources.

(Press release issued on 26 August 2005)

The SFC reprimanded Mr Mak Wai Kwong, a licensed representative of UOB Kay Hian (Hong Kong) Ltd and UOB Kay Hian Futures (Hong Kong) Ltd for improper conduct relating to account handling. Mak also agreed to pay $35,000 in settlement. Mak was an account executive of Luk Fook Securities Ltd and was responsible for the account of a client who traded in shares of New Chinese Medicine Holdings Ltd. Mak allowed a third party to place orders for the client without proper written authorisation and also falsely represented that he had witnessed the signing of account opening forms by the client when he had not. In settling the disciplinary proceeding, the SFC considered Mak's co-operation with the SFC, his admission and remorse relating to the misconduct, and that Mak had repaid his employer part of the loss suffered as a result of the unauthorised trades conducted through the client's account.

(Press release issued on 26 August 2005)

Licensees must know their clients. It is unacceptable that licensees accept orders from third parties who are not properly authorised by the clients. This may facilitate misconduct or crime. The SFC will *not tolerate licensees who verify that they have witnessed execution of documents when in fact they have not.*

General Enforcement Statistics

From 1 April 2005 to end of August, the SFC successfully prosecuted 26 entities and offered no evidence against three entities. In the same period, the SFC took action against 30 licensees for various regulatory breaches, of which three cases were settled with voluntary payment and with no statutory sanction imposed. Another three licensees settled with voluntary payment and received statutory sanctions.

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

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