



SFC Enforcement Reporter

A monthly summary of SFC enforcement action

August 2006

Highlights

In July 2006, the SFC:

- prosecuted two people;
- disciplined six licensees; and
- issued a restriction notice on one company

Prosecution

Prosecution for cold calling

Mr Wong Yick Keung, a licensed representative of Hantec International Ltd, was convicted of cold calling. He telephoned and visited a prospective client with a view to inducing her to enter into an agreement for trading leveraged foreign exchange contracts at Hantec. Wong was fined \$8,000 and ordered to pay the SFC's investigation costs.

(Press release issued on 7 July 2006)

Making unsolicited calls and inducing others to trade SFC regulated products is a criminal offence. Investors should not be pressured into trading securities, futures contracts or leveraged foreign exchange contracts through unsolicited calls. Licensees who cold call will also be suspended. Cold calling seems to be a widespread phenomenon in some sections of the futures and leveraged foreign exchange trading industry. Firms that tolerate it can expect tough disciplinary action.

Conviction for unlicensed leveraged foreign exchange trading

Ms Yu Hoi Yan was convicted for holding out as performing a regulated function in relation to leveraged foreign exchange trading. Yu introduced a client to Tse's Investimento Internacional (Macau) Limitada, a company incorporated in Macau, to trade leveraged foreign exchange contracts. Yu handled the account opening procedures and placed orders for the client. Neither Yu, Yu's employer, Sincere Bullion Ltd, nor Tse's Investimento were licensed with the SFC. Yu was fined \$2,000 and ordered to pay the SFC's investigation costs.

(Press release issued on 20 July 2006)

The SFC has zero tolerance for people who engage in unlicensed activities. Individuals who engage or firms that condone unlicensed activities will be prosecuted. Licensed corporations and its management should review their internal controls to ensure that they are adequate to detect and eradicate these illegal activities. Investors are further reminded to check that a person is licensed before investing their money. A simple and cost free method to check is through the SFC's website at www.sfc.hk.

Trading in leveraged foreign exchange is extremely risky and suitable only for experienced or sophisticated investors. If asked to invest in leveraged foreign exchange, via an overseas intermediary, investors should check that the intermediary is regulated by checking with the overseas regulator.

Discipline

Facilitating cold calling and failing to give reasonable investment advice result in exclusion from industry

The SFC has banned Mr Leung Chin Pang from re-entering the industry for six months from 19 July 2006 to 18 January 2007 for facilitating cold calling and failing to give reasonable investment advice to clients. Leung, a former licensed representative of Tanrich Futures Ltd and Tanrich Securities Ltd, failed to make reasonable enquiries with a representative of Tanrich Futures as to the sources of her prospective clients before assisting her to meet and to induce them to open accounts to trade futures contracts. Leung also advised a client to simultaneously hold equal long and short positions in the same futures contract and misrepresented that it



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would reduce risk and help recover trading losses when this was not true. Leung is no longer licensed. Had Leung been licensed, the SFC would have suspended him for six months.

(Press release issued on 19 July 2006)

Licensees have a duty to give clients reasonable investment advice based on their clients' individual financial objectives and financial circumstances. Failure to do so will result in disciplinary action and likely suspension. Futures investors should also beware of advice to "lock". Leung is the seventh representative of Tanrich punished for cold calling in the last seven months.

Suspension for breaches of the Anti-Money Laundering Guidelines, FRR and internal control failings

The SFC suspended Mr Luk Kam Yuen Perry, a former responsible officer of Hooray Securities Ltd for five months for breaching the Anti-Money Laundering Guidelines, the FRR, the Code of Conduct, and internal control failings.

Between September to November 2001, Hooray acted as the selling broker in a number of non-AMS share transactions. The sellers subsequently transferred the sale proceeds to five parties, including four BVI companies, whose accounts were opened at Hooray shortly before the transactions. Despite the suspicious nature of these transfers, Luk failed to inquire with the sellers the reason for the fund transfers. He also failed to put in place procedures to ensure Hooray complied with the Anti-Money Laundering Guidelines and did not appoint an officer to be responsible for disclosures of suspicious transactions.

Luk also failed to appoint an experienced staff member to calculate Hooray's liquid capital returns or to supervise this staff member in calculating the FRR. This resulted in Hooray's failure to maintain the requisite liquid capital for eight days between May 2003 and March 2004 caused by mis-calculation of the liquid capital returns.

Between July and September 2004, Luk also failed to implement internal controls to ensure tape recordings were kept for at least three months, randomly check tape recording conversations between account executives and clients to ensure orders were properly handled and executed, and ensure written authorisations were received from clients before commencing discretionary trading. The failure to implement these internal procedures caused a licensed representative of Hooray to breach the Code of Conduct. Furthermore, Luk failed to ensure a written authorisation was obtained before a third party placed orders on behalf of an account holder.

(Press release issued on 18 July 2006)

The implementation of anti-money laundering measures and compliance with the Anti-Money Laundering Guidance Notes are essential to the integrity of the market. All suspicious transactions must be reported to the relevant enforcement authorities. It is also incumbent on management to ensure proper internal procedures are in place to ensure staff compliance with the Code of Conduct and all other applicable laws and regulations. Failure by responsible officers to discharge this primary responsibility will result in disciplinary sanctions.

Reprimand and fine for FRR breaches

The SFC reprimanded Excalibur Futures Ltd and fined it \$400,000 for failing to comply with the liquid capital requirement and the FRR. Excalibur and its financial controller were convicted of contravening the FRR in June 2005. The SFC also reprimanded and fined Excalibur's responsible officer, Mr Poon Kwok Wah Allan, \$240,000 for failing to detect and prevent the window dressing arrangement and to properly supervise the financial controller.

(Press release issued on 25 July 2006)

The maintenance and reporting of liquid capital form one of the cornerstones of investor protection. Prompt reporting of a company's liquid capital deficiencies is a legal requirement and is necessary to allow the SFC to assess the potential financial risks of licensed firms to investors and the market. A company can choose to initially notify the SFC by telephone followed by a written notification. Companies which fail to comply with this simple reporting requirement can expect to be prosecuted and/or disciplined.

Further crackdown on internal control failures

The SFC reprimanded Celestial Securities Ltd and fined Celestial and its responsible officer, Mr Kwan Pak Leung Horace, \$21,000 and \$7,000 respectively for internal control failures. Celestial failed to ensure dealers



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checked their clients' stock balances before executing sell orders for the clients in breach of its written internal policy and to put in place measures to detect and prevent intra day short selling. Kwan failed to supervise Celestial's dealers and Celestial's daily operations properly.

(Press release issued on 20 July 2006)

Strong internal controls in licensed corporations are essential to ensure regulatory compliance. They also minimise opportunities for staff fraud and misconduct that may prejudice clients. Licensed corporations and their management should review their internal controls regularly to reasonably ensure that the controls are sufficient to guard the company and clients against potential misconduct. Weak internal controls harm the investing public, and the SFC will impose heavier penalties in appropriate circumstances.

Restriction Notice

Restriction notice for misuse of client assets

On 18 July 2006, the SFC issued, in the public interest and the interests of the investing public, a restriction notice against Tiffit Securities (Hong Kong) Ltd to preserve the assets of the company as well as its clients. Under the restriction notice, Tiffit was prohibited from carrying on a business in any regulated activities, disposing or dealing with any client assets and assisting or procuring another person to deal or dispose of client assets without the SFC's prior consent.

During an on-site inspection of Tiffit, SFC uncovered a material shortfall in the securities held by Tiffit on behalf of its clients and breach of the FRR. Tiffit was suspected to have taken out or misused client assets and to continue to take out or misuse clients' assets. On the same day, Tiffit suspended its trading due to its inability to comply with the FRR.

The SFC has contacted the Police regarding Tiffit's suspected misuse of client assets. SFC and Police investigations are continuing.

On 24 July 2006, the SFC obtained an interim order appointing Mr Edward Middleton and Mr Jacky Chung Wing Muk of KPMG as the Joint and Several Administrators of Tiffit. On 28 July 2006, the court ordered the appointment of the Joint and Several Administrators to continue until further order as the losses reported by Tiffit's clients had increased to \$37.6 million by close of business on 26 July 2006. The SFC also obtained a court order prohibiting Mr Kwok Wood Yan, a majority shareholder and director of Tiffit, from leaving Hong Kong to ensure that he remains available to assist the Joint and Several Administrators.

(Press releases issued on 18, 21, 24 and 28 July 2006)

The use of client assets for any purpose other than the purpose authorised by the client is unacceptable in any circumstances. The SFC will take strong regulatory action against any licensee who misuses client assets. This case demonstrates the SFC will not hesitate to take all necessary action to safeguard client assets and protect the investing public including stopping a licensed company from continuing its business.

General Enforcement Statistics

From 1 April 2006 to end of July, the SFC successfully prosecuted 24 entities. In the same period, the SFC took disciplinary action against 41 licensees for various regulatory breaches. In addition, the SFC entered into settlement with three licensees with no formal sanction imposed.

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

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