

Highlights

In November 2006, the SFC:

- prosecuted two people;
- disciplined 13 licensees, including banning five licensees from the industry for life; and
- obtained a bankruptcy order against a former licensee

Insider Dealing

11 persons identified as insider dealers

On 23 November 2006, the Insider Dealing Tribunal issued a report on its inquiry in relation to the shares of Vanda Systems and Communications Holdings Ltd (renamed as Hutchison Global Communications Holdings Ltd) between 14 and 17 February 2000. According to the report, 11 persons were identified as insider dealers by unanimous decision. The tribunal will proceed to hear representations in January 2007 to determine the amount of profit gained and make consequential orders and penalties.

Starting from 1 April 2003, the parallel civil and criminal regimes under the Securities and Futures Ordinance enable the SFC to combat market misconduct like insider dealing more effectively. We may, in appropriate cases, prosecute insider dealers in criminal courts or refer the matter to the Government to pursue in the new Market Misconduct Tribunal.

Prosecution

Prosecution for misleading the SFC

Mr Li Kwok Keung Asser, a licensed representative, pleaded guilty to providing misleading information to an SFC investigator during an interview. He was fined \$4,000 and ordered to pay SFC's investigation costs.

(Press release issued on 3 November 2006)

Failing to give complete, accurate and true answers when attending SFC interviews is a criminal offence. SFC will prosecute people who obstruct its investigations. Licensees will have their licences suspended or revoked.

Conviction for cold calling and aiding and abetting unlicensed activities

Mr Chow Lai Yin, a licensed representative of Hantec International Ltd, pleaded guilty to making unsolicited calls and aiding and abetting unlicensed leveraged foreign exchange trading. Chow made an unsolicited personal visit to an investor he did not know, and induced the investor to trade in leveraged foreign exchange contracts during a meeting in May 2005.

During the meeting, Chow also aided and abetted his unlicensed subordinate Mr Lai Chung Wong to induce the investor to trade. Chow was fined \$4,500 and ordered to pay SFC's investigation costs. Lai was convicted earlier of performing unlicensed leveraged foreign exchange trading.

(Press releases issued on 8 June 2006 and
9 November 2006)

It is a crime to engage in regulated activities without being licensed or registered with the SFC. The SFC will prosecute and/or discipline those who engage in or aid and abet unlicensed activities.

During sentencing, Mr Winston Leung Wing Chung, a Magistrate at Eastern Magistracy, commented that Chow as the supervisor in his group at Hantec was supposed to supervise the work of Lai, whose cold calling activities formed the subject matter of his aiding and abetting offence. Instead of supervising him to stay within the law, Chow assisted Lai in his unlawful activities and acted dishonestly by suggesting that Lai was also licensed. Mr Leung said that although in law Chow was an aider/abettor, he was more culpable.

Discipline

Four licensees banned for life for stealing client assets

The SFC banned Mr Ching Chun Kuen from re-entering the industry for life for misappropriating client assets and forgery. The SFC found that Ching, a responsible officer of King Fook Securities Company Ltd and manager of its Mong Kok Branch, had used his daughter's account to conduct his own trading. In order to settle the transactions, Ching forged client signatures to withdraw stock holdings from client accounts and sold the shares. He also manipulated King Fook's computer records to transfer clients' stock holdings to his daughter's account. Ching's misappropriation began as early as 1999 when he was also an accounting officer at King Fook.

(Press release issued on 9 November 2006)

The SFC banned Ms Fung Kit Ching Bandie from re-entering the industry for life for stealing client assets and falsifying statements. The SFC found that Fung, a former licensed representative of Hang Tai Securities Ltd, had used client accounts and related accounts at Hang Tai to conduct her personal trading. In order to settle the unauthorised trades, Fung sold clients' stock holdings without consent and misappropriated cheques issued to and received from clients. In attempting to conceal the unauthorised trading and misappropriation, Fung falsified statements of accounts and lied to clients that only bi-annual statements would be issued.

(Press release issued on 9 November 2006)

The SFC banned both Mr Leung Moon Tong and Mr Ma Ching Ning Rick from re-entering the industry for life for misappropriating client assets. The SFC found that Leung and Ma, two former licensed representatives of Radland International Ltd, had misused client assets since 1998, altered Radland's computer records of client stock holdings and sent false transaction records to the affected clients.

(Press release issued on 13 November 2006)

Theft and forgery are very serious misconduct that the SFC will not tolerate. Licensees who misuse client assets will be banned for life.

Market manipulator banned for life

Mr Wong Wei Yin Peter, a former licensed representative of VC Brokerage Ltd and VC Futures Ltd, was banned from re-entering the industry for life for manipulating the share price of SiS International Holdings Ltd. Wong had attempted to frustrate the SFC investigation by lying to SFC investigators and blaming his clients for the manipulation. He also asked his clients to lie about this to his employer and the SFC. Wong had told one of those clients that the SFC would not take any action against her in order to coax her into assuming the responsibility for the manipulative orders. Wong was convicted of market manipulation and misleading the SFC in April 2006.

(Press releases issued on 26 April 2006 and
17 November 2006)

Market manipulation is serious misconduct which will lead to criminal prosecution. The SFC will take tough action against market manipulators.



SFC Enforcement Reporter

A monthly summary of SFC enforcement action

證監會 December 2006

Cold callers suspended

The SFC suspended Mr Chan Man Kit for two months and three weeks, and Mr Cheng Chun Fai for three months and two weeks, for cold calling to induce investors to trade leveraged foreign exchange and misrepresenting in company documents how clients came to open accounts. Chan and Cheng are licensed representatives of Hantec International Ltd and both were convicted of making unsolicited calls. The SFC also found that Chan did not orally disclose the risks of leveraged foreign exchange trading to clients and Cheng failed to supervise Chan to prevent cold calling and to ensure oral risk disclosure. Chan and Cheng consented to the SFC decisions.

(Press release issued on 3 November 2006)

Leveraged foreign exchange trading is risky and licensees who cold call to induce people to trade and fail to explain the risks to clients run the risk of suspension as well as prosecution.

Suspensions for condoning and facilitating unlicensed activities

The SFC suspended Mr Wong Sung Bun and Mr Leung Wai Hung Denny, licensed representatives of Hong Kong Forex Investment Ltd, for 12 months and six months respectively, for failing to diligently supervise three unlicensed staff, condoning and facilitating their unlicensed dealing and cold calling. The three unlicensed staff were previously convicted of offences related to unlicensed activities and cold calling. The SFC found that Wong had also breached the policy of Hong Kong Forex on promoting leveraged foreign exchange trading only under Hong Kong Forex's name, and facilitated a subordinate to breach the same policy. Despite the convictions of one unlicensed staff and Hong Kong Forex for offences relating to similar activities in 2004, Wong and Leung failed to take reasonable steps to prevent a re-occurrence of unlicensed dealing and cold calling.

(Press releases issued on 16 November 2006)

Licensed representatives should remember they can be held accountable as licensees for the conduct of those around them, especially their subordinates.

Suspension for failure to keep proper records

The SFC suspended Mr Chan Chun Wai, a licensed representative of Hong Kong Forex Investment Ltd, for three months for his failure to use his employer's centralised tape recording system to communicate with a client and to maintain proper records of the client's orders when trading leveraged foreign exchange contracts for the client.

(Press release issued on 16 November 2006)

Failure to keep proper records is regarded as failing to act in a client's best interests and these failures will not be tolerated by the SFC.

Suspension for supervisory failings

The SFC suspended Mr Li Chi On, a former responsible officer of Hong Kong Forex Investment Ltd, for two months for supervisory failings. The SFC found that Li failed to implement effective measures to prevent an unlicensed person from placing orders with the dealing room for a client despite being aware that Hong Kong Forex had already been reprimanded on two previous occasions for internal control failures. Li consented to the suspension.

(Press release issued on 16 November 2006)

This case demonstrates a clear co-relation between improper or illegal activities on one hand and lax internal controls on the other. Responsible officers must not turn a blind eye to failings within a firm if they want to avoid personal responsibility for improper activity by employees.



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Suspension for supervisory failings and failure to act in client's interest

The SFC suspended Ms Ip Pui Lan for four months for supervisory failings and failure to act in clients' interests. Ip, a former representative of Tarrich Futures Ltd, had turned a blind eye to cold calling by staff she supervised. She also failed to act in the interests of a client by advising the client to simultaneously hold equal long and short positions in the same futures contract without any reasonable explanation as to how this would benefit the client. Ip consented to the SFC decision.

(Press release issued on 22 November 2006)

Simultaneously holding of equal long and short positions is commonly known as "locking", which does not appear to serve any genuine economic purpose. Given that considerable costs will be incurred in commissions and interests, investors should ask their advisers to explain why such a strategy is in their best interests before entering into a locked position.

Licensee reprimanded and fined for breach of staff dealing policy

The SFC reprimanded Mr Ng Hung Kan and fined him \$44,000 for conducting personal trading in a client's account and concealing his trading activities from his employer.

(Press release issued on 8 November 2006)

Licensees must know their employers' staff dealing policy and comply with it and the Code of Conduct. Staff dealing policies exist to prevent conflicts of interests between a firm's clients and its staff, and to assist a firm in detecting trading malpractice by its staff.

Bankruptcy Order

Bankruptcy order against a former licensee who failed to pay costs awarded to the SFC

The SFC obtained for the first time a bankruptcy order against Mr Lau Hing Hung Joie, a former licensed person, who failed to pay costs awarded to the SFC. Lau previously made an application to the Securities and Futures Appeals Tribunal (SFAT) for a review of the SFC's decision to revoke his licence and prohibit him from re-entering the industry for 10 years. The SFAT dismissed Lau's application and ordered him to pay the SFC's costs. Lau failed to pay the costs to the SFC despite repeated demands. The SFC subsequently filed a bankruptcy petition against Lau.

(Press release issued on 22 November 2006)

This is a clear message that the SFC does not subsidise unsuccessful litigants and will seek to recover its costs when costs are awarded. Those against whom we take action and successfully obtain costs orders should understand that the SFC will enforce those orders when those costs are not paid.

Restructuring of Whole Win Securities Ltd

Agreement on Whole Win Securities Ltd

On 7 November, the Administrator of Whole Win Securities Ltd reported that he had reached an agreement with Mr Vincent Woo Wing Fai, a Hong Kong businessman, in respect of the restructuring of Whole Win. Under the agreement, Mr Woo will provide funds to facilitate the release of clients' securities that have been on-pledged to Whole Win's banks, to meet in full (without deduction) the claims of clients arising from the use of their securities to settle outstanding trades and in respect of cash balances that had not been held in segregated bank accounts, and to satisfy the claims of other creditors of Whole Win (including former employees) as they fall due. The Administrator considered that the agreement with Mr Woo was in the best interests of all clients of Whole Win.



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On 29 November, the Court sanctioned the agreement and discharged the Administrator as Administrator of Whole Win. Mr Woo has assumed control of the affairs of Whole Win and will deal with the return of securities and cash balances to clients and payment of claims of other creditors.

(Press releases of the Administrator of Whole Win issued on 7 November 2006 and 29 November 2006)

The SFC welcomes the agreement on the restructuring of Whole Win and believes that the agreement is in the best interests of Whole Win's clients.

General Enforcement Statistics

From 1 April 2006 to end of November, the SFC successfully prosecuted 37 entities. In the same period, the SFC took disciplinary action against 66 licensees for various regulatory breaches. In addition, the SFC entered into settlements 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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CONTACT US – Media Enquiry: (852) 2840 9287 / Investor Hotline: (852) 2840 9333 / Email: enquiry@sfc.hk / Feedback: enfreporter@sfc.hk