

Highlights

In December 2005, the SFC:

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

Prosecution

Market manipulator convicted

Mr Tang Shui Fai pleaded guilty to creating a false or misleading appearance with respect to the market for Artel Solution Group Holdings Ltd shares. Tang placed a series of orders to buy Artel shares at prices higher than the then prevailing market price shortly before market close between 28 June and 8 July 2005. He had no genuine intention to buy the shares but did so intentionally to create a false or misleading appearance with respect to the market for Artel shares. Tang pleaded guilty to two summonses and for each summons he was fined \$10,000 and sentenced to four months' imprisonment to be suspended for two years. Two out of four months of each jail term are served concurrently, making it a total of six months imprisonment suspended for two years. He was also ordered to pay the SFC's investigation costs.

(Press release issued on 29 December 2005)

Market manipulation is a serious crime. When passing the sentence, the Magistrate Mr Ian Candy made it clear that, if Tang had been found guilty after trial, Tang would have been given a six-month custodial sentence.

Individual prosecuted for unlicensed regulated activities

Mr Yam Wang Lap was convicted after trial of holding out as carrying on a business in a regulated activity whilst unlicensed. On 10 March 2005, MCC Capital Consulting Ltd was prosecuted for holding itself out on its website as carrying on a business of advising on corporate finance whilst unlicensed. Yam was the director of MCC and consented to MCC's offence. Yam was fined \$6,000 and ordered to pay the SFC's investigation costs.

(Press releases issued on 2 December and 10 March 2005)

Unlicensed persons cannot perform regulated activities. The SFC will prosecute those who engage in such 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.

Individuals prosecuted for making unsolicited calls

Ms Leung Wing, a licensed representative of Tanrich Futures Ltd at the relevant time, pleaded guilty to making unsolicited calls inducing a person who was not a client of Tanrich to enter into agreements for trading in futures contracts. Leung was fined \$2,000 and ordered to pay the SFC's investigation costs.

(Press release issued on 1 December 2005)

Under the SFO, it is a criminal offence to make unsolicited calls to induce a person to buy SFC regulated financial products. This is to protect the investing public from being pressured into making ill-informed and hasty investment decisions during the course of unsolicited calls. Licensed representatives must ensure that their marketing efforts and strategies comply with the law, or they will be criminally prosecuted and/or disciplined.



SFC Enforcement Reporter

A monthly summary of SFC enforcement action

January 2006

Prosecutions for failure to disclose interests

Mr Wong Kam Yim pleaded guilty to failing to make timely disclosure to SEHK of his disposal of Yip's Chemical Holdings Ltd shares on 18 January 2005 when he was an executive director of Yip's Chemical. Wong was fined \$3,000 and ordered to pay the SFC's investigation costs.

(Press release issued on 29 December 2005)

Mr Bava Ashraf Akathoottu pleaded guilty to failing to notify SEHK and Unity Investments Holdings Ltd of his acquisitions of Unity shares on three occasions. The acquisitions caused Akathoottu to have a notifiable interest in Unity.

(Press release issued on 22 December 2005)

Disclosure of interests in listed companies is essential to ensuring market transparency. Failure to do so will attract prosecution.

Discipline

Firms disciplined for breaches of anti-money laundering guidelines and other breaches

The SFC reprimanded Hooray Securities Ltd and fined it \$700,000 for breaching the Anti-Money Laundering Guidelines, the Securities and Futures (Financial Resources) Rules and Code of Conduct and for a lack of internal controls.

Between September and November 2001, Hooray acted as the selling broker in a number of non-AMS transactions concerning the shares of various companies. Following the transactions, a large portion of the sale proceeds was transferred by the sellers to the accounts of five parties, including four BVI companies. The flow of funds could not be traced beyond the BVI companies because the funds were subsequently transferred out of Hong Kong. Hooray failed to make any inquiries with the sellers into the reason for the transfers despite the suspicious nature of these transfers. It had no internal policies or procedures in place to ensure compliance with the Anti-Money Laundering Guidelines nor did it appoint an officer to be responsible for disclosure by staff members of suspicious transaction, people or property.

Hooray also failed to maintain the requisite liquid capital on eight days between May 2003 and March 2004 as a result of mistakes in calculating its liquid capital returns. Between July and September 2004, the firm failed to ensure tape recordings were maintained for at least three months, to implement measures to check the account executive's handling of orders by listening to tape recordings and checking order placing records and to prevent discretionary trades without proper written authorisations from clients. As a result, one of its licensed representatives breached the Code of Conduct. Furthermore, between July and August 2003, Hooray had no written guidelines or procedures requiring a written authorisation for orders placed by a third party on behalf of an account holder and it did not check the contents of the calls recorded by the tape recording system to ascertain whether orders had been properly executed.

In considering the penalties, the SFC took into account that the level of fine sufficiently reflected the gravity of the infractions, Hooray co-operated with the SFC in coming to a settlement and changed its management team, and the two previous responsible officers had left the company.

(Press release issued on 14 December 2005)

The SFC takes a tough view towards failures to implement adequate anti-money laundering measures. Licensed corporations should remain vigilant in guarding against money laundering and establish procedures for identifying clients, maintaining records of transactions, and disclosing and reporting suspicious transactions to the appropriate law enforcement authorities. The SFC treats any breaches of Anti-Money Laundering Guidelines seriously.

Reprimand and fine for internal control failings

Shenyin Wanguo Securities (HK) Ltd was reprimanded and fined \$353,000 for failing to detect and prevent the misconduct of an account executive, to safeguard client assets, and to establish the true and full identity of an account holder. In 2003, Shenyin Wanguo reported to the SFC on the conduct of one of its account executives, who was suspected of misappropriating client assets in two clients' accounts. The account executive impersonated clients to change the clients' addresses for account statements, conducted unauthorised trading, sold the clients' stocks without their knowledge, and breached the company policy by offering discretionary services. The account executive also appeared to have borrowed the identity of her relative to open an account for her own use. When Shenyin Wanguo found that there had been no tape-recorded client instructions for the transactions in the account, it issued a warning letter to the account executive. However, Shenyin Wanguo did not further check the account executive's dealings in other client accounts. The suspected misappropriation was not revealed until the account executive had failed to return to work and a client had lodged complaint about his account balance with the company. The disciplinary outcome was the result of a settlement between Shenyin Wanguo and the SFC. In considering the settlement, the SFC took into account that Shenyin Wanguo engaged independent accountants to review its internal controls and took remedial measures including compensating the affected clients; it co-operated with the SFC in settling the disciplinary action; its previous disciplinary record and its size of operation and financial resources.

(Press release issued on 21 December 2005)

The SFC reprimanded Luen Fat Securities Company Ltd and its responsible officer, Ms Wong Shue Yung Teresa, and fined them \$150,000 and \$30,000 respectively. Luen Fat re-pledged securities of certain margin clients to banks without valid standing authority from clients, transferred interest accrued from client money to its own account without client consent, and failed to keep adequate audit trails of client orders. The staff dealing transactions and discretionary accounts were also not adequately monitored. Wong was the responsible officer at the relevant time and bore responsibility for the above failings. The disciplinary outcome was the result of a settlement between Luen Fat, Wong and the SFC. In deciding the penalties, the SFC took into account that some of the failings were repeated breaches which was considered as an aggravating factor, the management who were responsible in 2000 had left Luen Fat, Luen Fat took remedial action and strengthened its internal control system, no loss or damage to clients was identified, Luen Fat co-operated with the SFC and it had been previously disciplined by the SFC.

(Press release issued on 12 December 2005)

Licensed corporations should ensure that proper internal control systems are in place and that there is close monitoring and supervision of staff to avoid fraudulent activities. The SFC takes a serious view about internal control inadequacies and will consider fining licensed corporations and their management when necessary.

Reprimand and suspension for internal control failings and misleading the SFC

The SFC reprimanded Soen Tak Securities Company Ltd and suspended its former responsible officer, Mr Chan Chun Shing, for eight months following an SFC inquiry into suspected misappropriation of client assets by a former representative of Soen Tak. The former representative was able to conduct unauthorised trading activities in his clients' accounts because there were deficiencies in procedures for authenticating changes of client information, and for monitoring client trading. Even if there was an outstanding balance in the cash clients' accounts, Soen Tak allowed the clients to carry on trading on the condition that the representatives of those clients agreed to pay interest on the outstanding balance. Chan reported the improper conduct of the representative to the SFC in October 2002. However, Chan later withdrew his report and provided misleading information to the SFC with a view to dissuading the SFC from initiating an investigation into the matter after the representative agreed to repay the losses he had caused Soen Tak. The disciplinary outcome was the result of a settlement between Soen Tak, Chan and the SFC. In considering the penalties, the SFC took into account Soen Tak's and Chan's agreement to resolve the disciplinary action by settlement.

(Press release issued on 21 December 2005)



SFC Enforcement Reporter

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January 2006

Licensed corporations are expected to report any material breaches of or non-compliance with any regulatory requirements whether by themselves or their staff to the SFC immediately so that the SFC can respond swiftly. Chan's conduct is unacceptable and cast serious doubt on his integrity.

Failures to inquire into suspicious trades and to know your client result in suspension

The SFC suspended Mr Lo Tai Wah, a responsible officer of Young Champion Securities Ltd, for six months following an investigation into suspected market manipulation of three warrants during the period from October 2001 to July 2002. Lo found it strange and unreasonable that a corporate client had acquired the warrants at prices higher than those of their underlying stocks but he failed to draw the attention of this client to the irrational pricing and continued to take orders from this client. Furthermore, Lo failed to take steps to verify the identity of the person who placed the orders for the client.

(Press release issued on 7 December 2005)

Licensees must not accept suspicious orders from their clients unless they are reasonably satisfied with the propriety of the orders. It is imperative that licensees establish the identity of their clients. If the client is a corporate entity, licensees should establish whether the persons giving instructions on behalf of the client have been authorised to do so by the client before acting on their instructions.

Responsible officer disciplined for supervisory failings

As a result of a settlement, the SFC reprimanded Mr Yuen Kwok Wai, a former dealing director of Dashin Securities Ltd. Yuen also agreed to make voluntary payment of \$60,000 to the SFC. A client of Dashin, whilst not registered with the SFC, placed orders for another client with Dashin's dealing room in return for commission remuneration. A Dashin account executive had facilitated such unregistered activities. Yuen was responsible for the dealing room at the relevant time and was informed of the unregistered activities. He warned Dashin's dealing staff not to accept such orders but failed to follow up the matter to ensure that the dealing staff did not receive the orders from the first client and that the unregistered dealing ceased. He also failed to report the client's unregistered dealing to the SFC as required under the Code of Conduct. The SFC took into account Yuen's co-operation in settling the SFC's disciplinary action when deciding the penalty.

(Press release issued on 20 December 2005)

This case demonstrates that lax supervision facilitates staff misconduct. It is incumbent on the management to ensure that staff are properly supervised. Licensees must report material non-compliance with applicable regulations to the SFC. Unreasonable failure by responsible officers to discharge this primary responsibility will result in disciplinary sanction.

Licensees suspended for dealing via another firm's floor terminal

The SFC suspended Mr Ting Chung Man for two months and Mr Or Kam Kai and Mr Lam Shing Wan for one month for breaching the Code of Conduct. Ting is a floor trader of Orient Securities Ltd, and Or and Lam are floor traders of Man Hon Yeung Securities Ltd. Between November and December 2004, Ting, Or and Lam conducted joint trading through Ting's accounts at Orient. They concealed their trading activities from their employers, in breach of the Code of Conduct and their respective employers' staff dealing policies. Ting also allowed Or and Lam to input their orders directly into Orient's trading terminal on the trading floor of the SEHK without authority. The suspensions are the result of a settlement between Ting, Or, Lam and the SFC.

(Press release issued on 15 December 2005)

All licensed representatives must strictly comply with the Code of Conduct. Licensees must not conceal trading activities from their employers as it deprived the employers of the opportunity to exercise compliance control over these activities. Also, licensees should not operate trading terminals of another firm. It disturbs the orderly operation of the trading floor of the Stock Exchange and subjects the firm to unnecessary financial and regulatory risks.

Firm reprimanded for failing to supervise investment advice

TMT Financial Services Ltd was reprimanded for supervisory failures following an SFC investigation into a complaint by a couple who had intended to retire and had followed the recommendation of TMT's representatives to gear up four times their investment in a with-profit fund. They ended up losing more than their entire investment because of the interest charges and exit penalties imposed. TMT's representatives failed to consider the suitability of the gearing strategy in light of the investors' investment objective, risk profile and financial circumstances before advising on geared investment. TMT did not supervise its representatives adequately to ensure that the recommendations given to its clients were reasonable and was responsible for their failures. TMT also failed to provide the investors with a balanced explanation of the advantages and disadvantages of gearing an investment. The assumed rate of return used to justify the cost of borrowing for the gearing was also unreasonably high given the nature of the fund was low risk.

(Press release issued on 12 December 2005)

Investment advisers should ensure that their investment recommendations are reasonably suitable for their clients. In considering the suitability of investment, an investment adviser should take into account an investor's investment objective, risk profile, financial circumstances and whether the investment recommended is in the interest of the investor. Licensed corporations have a duty to supervise their staff to reasonably ensure that investment strategies suggested are suitable for their clients.

The SFC regards gearing as a high risk investment strategy, even when coupled with an otherwise low risk product. Investment advisers must ensure clients' risk tolerance and ability to bear possible losses arising from gearing. Firms that promote gearing as low or no risk or put the extra commission arising from gearing before client interest can expect harsh punishment.

Licensee reprimanded for trading malpractices and inadequate audit trail of orders

The SFC reprimanded Mr Wong Kwong Sing, a licensed representative of Onshine Securities Ltd, for trading malpractices and failure to maintain an adequate audit trail of orders. In November 2003, Wong input numerous bid and ask orders, each for one million PICC Property and Casualty Co Ltd shares which were cancelled almost immediately during the trading session on the same day. Wong said that he was "testing his luck" because, due to personal reasons, he was suffering from stress and believed that if he were able to cancel the orders before they were executed he would be lucky. He admitted that the trades might have misled investors. He also failed to submit order journals printed from his terminal to Onshine and therefore failed to maintain a proper audit trail. The reprimand is the result of a settlement between Wong and the SFC. In deciding the penalty, the SFC took into account that Wong had no intention to manipulate the market, the orders in question did not have any direct impact upon the market price of PICC shares, Wong was suspended from operating a terminal by Onshine, Wong did not get year-end bonus or an increase in salary due to his malpractice, he had no previous disciplinary record and was remorseful, and he co-operated in resolving the disciplinary action by settlement.

(Press release issued on 15 December 2005)

In conducting regulated activities, a licensee should act with due skill, care and diligence, in the best interest of its clients and the integrity of the market. Licensees have to avoid conducting suspicious trades as they may create a false perception of the market and mislead the investing public in relation to the true supply of and demand for the shares in question. The SFC takes a serious view of improper trading. Wong would have been suspended or fined for his recklessness but for the unusual circumstances of his case. The SFC emphasises the unusual nature of Wong's case and that his explanation, unusually in the SFC's experience, seemed to be borne about by the facts. The SFC often receives similar explanations of suspicious trading which often are not supported by the facts and which don't serve as a defence against accusations of market manipulation.



SFC Enforcement Reporter

A monthly summary of SFC enforcement action

證監會 January 2006

General Enforcement Statistics

From 1 April 2005 to end of December 2005, the SFC successfully prosecuted 56 entities and offered no evidence against three entities. In the same period, the SFC took action against 79 licensees for various regulatory breaches, of which three cases were settled with voluntary payment and with no formal sanction imposed. Another five licensees settled with a 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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