

## Highlights

In June 2006, the SFC:

- prosecuted two companies and eight people;
- disciplined four licensees; and
- settled with three licensees without formal sanction

## Prosecution

### Prosecutions for making unsolicited calls & disclosing details of an SFC Interview

Mr Choi Chi Ming, a licensed representative of Hantec International Ltd, had visited a person who was not a client of Hantec and had made unsolicited calls to him with a view to inducing him to enter into an agreement for trading in leveraged foreign exchange contracts. Choi had also on two occasions disclosed the contents of his SFC interview to two staff of Hantec, contravening section 378 of the SFO. Choi pleaded guilty for breaching section 378 but pleaded not guilty for making unsolicited calls. Choi was convicted after trial for making unsolicited calls. Choi was fined \$18,600 and ordered to pay the SFC's investigation costs.

(Press release issued on 9 June 2006)

Mr Law Wing Sang, a licensed representative of Hantec at the time, pleaded guilty to making unsolicited calls to induce others to trade in leveraged foreign exchange contracts in August 2004. Law was fined \$3,000 and ordered to pay the SFC's investigation costs.

(Press release issued on 14 June 2006)

*It is a criminal offence to make unsolicited calls to induce a person to buy SFC regulated financial products. Investors should not be pressured into buying financial products they do not want or cannot afford during the course of unsolicited calls. As Choi and Law were licensees at the relevant time, they will also face disciplinary action.*

*Choi's case is the first prosecution for breach of the secrecy provisions of the SFO. All SFC investigations are conducted in secret in order to protect people's reputations until they are proven guilty and to avoid prejudice to the SFC's investigations. Those interviewed by the SFC can generally only tell their lawyers. Choi told two colleagues in breach of the law. Breaches of the secrecy provisions are difficult to discover, but where the SFC does discover them, it will prosecute.*

### Prosecutions for short selling

Mr Ko Hay Tat Michael pleaded guilty to seven summonses in relation to his short selling of securities between 6 and 21 April 2005 through a client's account under his control at Excalibur Securities Ltd while knowing that he and the client did not have sufficient shares on hand. Ko was fined \$35,000 and ordered to pay the SFC's investigation costs.

(Press release issued on 29 June 2006)

Ms Chow Yin Ling pleaded guilty to four summonses in relation to her short selling of two derivative warrants between 18 October and 2 November 2005 through her daughter's account at Excalibur Securities Ltd while knowing that she and her daughter did not have any units of these warrants on hand. Chow was fined \$16,000 and ordered to pay the SFC's investigation costs.

(Press release issued on 22 June 2006)

*The SFO prohibits the sale of securities when a person does not have a presently exercisable and unconditional right to sell them. Brokers can help eradicate this illegal practice by putting in place sound*

*internal controls to detect and prevent short selling. As both Ko and Chow are licensed, they will likely face disciplinary action too.*

### **Prosecutions for failure to disclose interests**

Mr Tang Yuk Kuen and Mr Cheung Tak Woo pleaded guilty to their failure to notify both the SEHK and B&S Entertainment Holdings Ltd within the specified period regarding their acquisitions and disposals of B&S shares. Tang and Cheung were fined \$15,000 each and ordered to pay the SFC's investigation costs.

(Press release issued on 1 June 2006)

*Disclosure of interests in listed companies is essential to ensuring market transparency. The SFC will prosecute for failure to do so.*

### **Company prosecuted for failure to keep and update the registers of interests in shares**

Tiger Tech Holdings Ltd pleaded guilty to failing to keep the register of interests in shares and the register of directors' and chief executives' interests in shares, and to record the register of directors' and chief executives' interests in shares, the grants of share options to two directors and the subsequent exercise of the share options. Tiger Tech was fined \$11,800 and ordered to pay the SFC's investigation costs.

(Press release issued on 22 June 2006)

*The registers of interests in shares help investors track ownership of listed companies and help ensure market transparency. Listed companies must update their registers in a timely manner or the SFC will prosecute.*

### **Convictions relating to unlicensed securities dealing and issuance of unauthorised advertisement**

World Trade Assets Market Inc. issued a letter to some investment banks and large corporations soliciting their interest to invest in the shares of a BVI company whilst unlicensed. It also provided the public and an investment bank with a summary of the share offering containing an invitation to acquire the shares of the BVI company, and arranged meetings between representatives of the investment bank and the BVI company. World Trade was convicted after trial for holding out as carrying on a business in dealing in securities whilst unlicensed and issuing unauthorised advertisements. Mr Chan Tai Jee, president of World Trade and responsible for its operation at the material time, was convicted of aiding and abetting World Trade to commit unlicensed securities dealing. World Trade and Chan were fined a total of \$36,000 and ordered to pay SFC's investigation costs.

(Press release issued on 23 June 2006)

Mr Lai Chung Wong pleaded guilty to inducing an investor to trade in leveraged foreign exchange contracts in May 2005 whilst unlicensed. Lai was fined \$1,500 and ordered to pay SFC's investigation costs.

(Press release issued on 8 June 2006)

*Unlicensed activities are taken seriously by the SFC because investors dealing with unlicensed persons risk financial losses. The SFC will prosecute and take disciplinary action against those who engage in unlicensed activities and those aiding and abetting them.*

## Discipline

### **Action against a sponsor for allegedly failing to discharge its due diligence and listing responsibilities**

Without admission of liability: (i) Deloitte & Touche Corporate Finance Ltd agreed to voluntarily refrain from acting as a sponsor for Growth Enterprise Market (GEM) and Main Board listings for a period of nine months; and (ii) Chia Kee Loong, a responsible officer of the company, agreed not to act as a supervisor to any sponsorship mandate for a period of six months. The action was the outcome of a joint settlement between Deloitte, the SEHK and the SFC.

Deloitte was the sponsor to the listing of the shares of Codebank Ltd on the GEM in December 2001 and Chia was the principal supervisor for the Codebank listing. SFC's investigation revealed irregularities in the Codebank listing including: (i) the payment arrangement stipulated by the underwriting agreement was altered without informing the SEHK; (ii) over \$10 million of the listing proceeds remained outstanding after Codebank was listed; (iii) the outstanding listing proceeds were not reported to the SEHK until May 2002; and (iv) Codebank's declaration made to the SEHK in December 2001 that all listing proceeds had been received was inaccurate. The SFC alleged Deloitte had failed to: (i) conduct reasonable due diligence on Codebank's business prospects; (ii) ensure adequate support for many of Codebank's representations made in its prospectus; (iii) report the payment arrangement change to the SEHK; (iv) make due and careful enquiry on Codebank's declaration before submitting it to the SEHK; and (v) report the outstanding listing proceeds and Codebank's inaccurate declaration to the SEHK. For Chia, the SFC alleged that he had failed to adequately supervise his subordinates to ensure that Deloitte properly discharged its duties as a sponsor. In reaching the settlement, the SFC took into account their co-operation and clean disciplinary records.

(Press release issued on 27 June 2006)

*The SFC takes sponsor failures seriously. Sponsor failures could result in the failure of a listed company which may seriously jeopardise investors' confidence in the financial markets. It is therefore vital for sponsors to diligently discharge their duty to provide complete and accurate information to the SEHK about a listing applicant. Sponsors should make reasonable inquiries and critically assess the reliability of the information and representations provided by the issuer or other experts. The SFC will continue to take tough action against sponsors who fail to meet the required standards and seek to exclude them from the industry for lengthy periods.*

### **Lengthy suspension for market manipulator**

Mr Chan Ho Yin, a former licensed representative of Celestial Securities Ltd, was suspended for 15 months for manipulating the share price of Akup International Holding Ltd. Chan had conspired with others to conduct trading activities by operating two clients' accounts on 4, 5 and 6 December 2002 with the intention to raise the share price of Akup. Chan raised the share price on those three days by sweeping the existing ask orders just a few minutes before market close. He had also impersonated a person residing in Taiwan to place orders for that person's account at Rexcapital Securities Ltd in late 2002. The action was the result of a settlement between Chan and the SFC.

(Press release issued on 15 June 2006)

*Market manipulation is serious misconduct which will lead to criminal prosecution. It creates a false perception of the market which misleads investors and could damage their interests. Licensees who knowingly render assistance to market manipulators, or participate in or orchestrate the manipulative activities, as in this case, face long suspensions, heavy fines or even revocation of their licences.*

### **Unsuitable IPO subscription recommendation leads to suspension**

Ms Fung Wing Nam, a former licensed representative of Ong Asia Securities Ltd, was suspended for 11 months. In August 2002, Fung recommended nine clients to subscribe for the IPO shares in Sino Technology Investments Company Ltd. She made this recommendation in order to earn commission from the clients' share subscription even though she did not know the nature of the business of Sino Technology. Fung even subscribed for Sino Technology shares on behalf of three other clients, including her mother, without telling them or obtaining proper authorisation. Further, Fung forged her

mother's signature to open a securities account at Ong Asia and conducted trades in her mother's account without proper authorisation. Fung also allowed a third party to sign on the account opening documents on behalf of a client.

(Press release issued on 15 June 2006)

*Complying with the Code of Conduct is a fundamental and paramount duty of a licensee. Conducting unauthorised trades and forging client's signature to open accounts are serious matters that will not be tolerated in any circumstances. Making a recommendation without regard to the suitability of the recommendation for the client is not acceptable. Fung's actions warranted a reasonably lengthy suspension.*

### **Suspension for account opening failures and failure to give reasonable investment advice**

Mr Keung Man Bun, a former licensed representative of Tanrich Futures Ltd, was suspended for three months. The SFC found that Keung had: (i) falsely represented that he had witnessed the joint account holders' execution of the account opening documents when in fact one of the clients was not present at the relevant time; (ii) falsely represented that he had explained the client agreement and the risk disclosure statement to that client when in fact he did not; and (iii) advised clients to simultaneously hold equal long and short positions in the same futures contract without reasonable explanations and misrepresented that it would reduce risk and might recover trading losses.

(Press release issued on 6 June 2006)

*Licensed representatives are under a duty to ensure that the investment advice given to clients is reasonable in the circumstances. Simultaneously holding long and short positions, which is commonly known as "locking", does not appear to serve any genuine economic purpose. Given that considerable costs will be incurred in commissions and interests, investors should exercise judgment before entering into a locked position.*

### **Reprimand for inadequate internal controls and staff supervision**

The SFC reprimanded Ever-Long Securities Company Ltd for inadequate internal controls and staff supervision. An SFC investigation found that Ever-Long Securities had failed to: (i) adequately supervise its employee Mr Tam Cheuk Hong, a then licensed representative, or put in place adequate internal control procedures to ensure that he followed its internal policy and the applicable rules and regulations; (ii) enquire into the financial standing of clients; (iii) be satisfied on reasonable grounds about the identity of the ultimate beneficiaries of the relevant subscriptions for the shares of Sen Hong Resources Holdings Ltd; (iv) safeguard clients' assets; and (v) keep proper records to account for clients' assets in the handling of clients' transactions and assets.

(Press release issued on 1 June 2006)

*It is essential for all licensed corporations to have in place strong internal controls. This will not only ensure that regulatory requirements are properly complied with but also minimise opportunities for staff to commit fraud and other misconduct that may prejudice their clients. Weak internal controls harm the investing public and the SFC will not hesitate to impose heavy penalties in appropriate circumstances. We note that this case was governed by the pre-SFO laws. Similar failings now would attract a fine in addition to the reprimand.*

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

Mr Lee Siu Hung, a former licensed representative of Rexcapital Securities Ltd, has voluntarily ceased to carry on regulated activities and has undertaken not to re-apply for a licence for five months. Lee lied to the investigators during his first SFC interview that the orders in a client's account were placed by the client himself when Lee was aware that they were in fact placed by an account executive of Celestial Securities Ltd. Lee also failed to take reasonable steps to verify the identity of the person placing orders with him. The action was the result of a settlement between Lee and the SFC.

(Press release issued on 19 June 2006)



# SFC Enforcement Reporter

A monthly summary of SFC enforcement action

證監會 July 2006

*People attending SFC's interviews have a statutory duty to provide true and complete answers. It is a criminal offence to provide false and misleading information to the SFC. Licensees who are found to have given the SFC misleading information will face suspension or, in serious cases, revocation.*

## General Enforcement Statistics

From 1 April 2006 to end of June, the SFC successfully prosecuted 22 entities. In the same period, the SFC took disciplinary action against 35 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](http://www.sfc.hk).*

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