



SFC Enforcement Reporter

A monthly summary of SFC enforcement action

證監會 June 2006

Highlights

In May 2006, the SFC:

- prosecuted three companies and four people
- disciplined 12 licensees
- issued a restriction notice on one company

Prosecution

Prosecution for short selling

Mr Cheng Chun Kin Bill pleaded guilty to short selling two warrants between 14 and 21 July 2005. Cheng sold the two warrants through his personal account at Ricofull Securities Ltd while knowing that he did not have any units of the warrants on hand. Cheng was fined \$21,000 and ordered to pay the SFC's investigation costs.

(Press release issued on 11 May 2006)

Short selling is an offence. The SFO prohibits the sale of securities when a person does not have a presently exercisable and unconditional right to sell them. Only securities specified by HKEx as designated securities eligible for short selling can be sold short and short selling of such securities must be conducted in accordance with the Rules of the Exchange. Brokers are expected to have in place internal controls to detect and prevent illegal short selling.

Individual convicted for misleading the SFC

Mr Ngai Leung Wai pleaded guilty to providing misleading information to the SFC in relation to the operation of his account at a brokerage house. Ngai was identified as one of the traders in a market manipulation investigation. Ngai was fined \$5,000 and ordered to pay the SFC's investigation costs.

(Press release issued on 11 May 2006)

See also press release issued on 27 October 2005)

When attending SFC interviews, people are under a statutory duty to give complete, accurate and true answers. Failure to do so is a criminal offence. The maximum penalty is a fine of \$50,000 and six months' imprisonment upon summary conviction.

Prosecutions for failure to disclose interests

Link Silver International Ltd pleaded guilty to failing to disclose its notifiable interest in the shares of Universal Technologies Holdings Ltd on the commencement of the SFO. Link Silver was fined \$2,000 and ordered to pay the SFC's investigation costs.

(Press release issued on 4 May 2006)

Kingston Finance Ltd, a licensed money lender, pleaded guilty to failing to disclose its notifiable interest in the shares of Medtech Group Company Ltd as security for a loan. Although the loan was repaid and the borrower withdrew the Medtech shares, Kingston Finance was under a duty to notify SEHK and Medtech Group of the change of nature of its interest in the shares within three business days of the release of the charge, but it failed to do so. Kingston Finance was fined \$8,000 and ordered to pay the SFC's investigation costs.

(Press release issued on 11 May 2006)

Mr Fong For, pleaded guilty to failing to file his disclosure of a 20.67% interest in the relevant issued share capital of Zheda Lande Scitech Ltd with the company, although he had filed a disclosure form with SEHK. Fong was fined \$6,000 and ordered to pay the SFC's investigation costs.

(Press release issued on 11 May 2006)

Mr Wang Joel J pleaded guilty to failing to notify both SEHK and Vedan International (Holdings) Ltd within the specified period regarding his cessation of interest in the shares of Vedan International. Wang was fined \$5,000 and ordered to pay the SFC's investigation costs.

(Press release issued on 11 May 2006)

Timely disclosure of interests in listed companies helps ensure a better informed market. The SFC will continue to prosecute people who fail to comply with the disclosure requirement.

Company prosecuted for failure to update its index

Universal Technologies Holdings Ltd pleaded guilty to failing to update its index to the register of interests in shares and its index to the register of directors' and chief executives' interests in shares within the prescribed period. Universal Technologies was fined \$1,800 and ordered to pay the SFC's investigation costs.

(Press release issued on 4 May 2006)

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

Discipline

SFC settles with investment adviser over mis-selling and concerns about the sale of geared products

The SFC has settled with UKFP (Asia) HK Ltd (formerly called Towry Law (Asia) HK Ltd) over allegations of mis-selling of Circus Capital Protected Growth Fund Series 1 (PGF1) and Series 2 (PGF2), and over concerns about the sale of geared products. The SFC investigated complaints from numerous clients of UKFP and was concerned that UKFP did not perform adequate due diligence into PGF1 and PGF2 and failed to have adequate regard to whether these funds were suitable for clients whose investment objectives did not match the risk profiles of the two funds. Further, UKFP was alleged to have failed to make adequate disclosure of relevant information to clients and failed to monitor PGF1 and PGF2 properly. As a result of the SFC investigations, without admission of liability, UKFP agreed to settle claims made by eligible investors in PGF1, PGF2 and geared products. UKFP agreed to provide, among other things, investors the potential to recover 80% of the amount they originally invested in PGF1 and PGF2 and 60% of the amount they invested in geared products. The SFC considered the settlement to be in the public interest and in the interest of the investing public and took into account matters including: the fact that the investor compensation offered amounted to substantial mitigation, the senior management of UKFP who were responsible for the sale of PGF1, PGF2 and geared products were no longer with UKFP, and UKFP's current management had co-operated extensively with the SFC.

(Press release issued on 2 May 2006)

Mis-selling continues to be a problem in the industry. Investment advisers must assess risk profiles of investors and reasonably and properly advise them of suitable products. The SFC will punish investment advisers who fail to have regard to the suitability of products for their customers.

Securities and Futures Appeals Tribunal affirms suspension

The Securities and Futures Appeals Tribunal (SFAT) has affirmed an SFC decision to suspend Mr Ng Shun Fu for nine months from 30 May 2006 to 28 February 2007. Ng was a responsible officer of Ever-Long Securities Company Ltd which acted as the placing agent and underwriter for a subscription of rights shares in Sen Hong Resources Ltd in a placement in June 1999. An SFC investigation revealed that Ng had failed to: (i) enquire into the financial standing of six sub-underwriters, which were British Virgin Island (BVI) companies introduced by an account executive, in breach of the Money Laundering Guidance Notes; (ii) adequately supervise the account executive in relation to account opening procedures; (iii) make enquiries about the identity of the person that stood to gain the economic benefit or bear the economic risk of the relevant subscription of Sen Hong shares; (iv) safeguard clients' assets; and (v) keep proper records to account for clients assets. Ng appealed to the SFAT and argued, amongst other grounds, that in making a statement to the SFC under the belief that he was merely assisting the SFC, he was not given a warning that he would be the subject of disciplinary proceedings, hence his statements were inadmissible for the purpose of later disciplinary proceedings. The SFAT rejected this argument and dismissed the application and upheld the SFC's decision.

(Press release issued on 30 May 2006)

Responsible officers must ensure they implement and follow the Code of Conduct and especially the Money Laundering Guidance Notes. The SFC takes a tough view on failures to implement adequate anti-money laundering measures. The SFAT decision also highlights the fact that the SFC is not obliged, as a matter of law, to inform or warn licensees they will be the subject of disciplinary proceedings. The SFAT has rejected a number of related challenges to the SFC's investigatory and disciplinary procedures as meritless.

Ex-responsible officer suspended for anti-money laundering guidelines and other breaches

Mr David Cho, an ex-responsible officer of Hooray Securities Ltd, has been suspended for six months from 25 May to 24 November 2006 for breaching the Anti-Money Laundering Guidelines, the Securities and Futures (Financial Resources) Rules, the 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. Cho failed to make any inquiries with the sellers into the reason for the transfers despite the suspicious nature of the transfers. Cho failed to put in place any internal policies or procedures to ensure compliance with the anti-money laundering guidelines, nor did he appoint an officer to be responsible for disclosure by staff of suspicious transactions, people or property.

Under Cho's supervision, Hooray also failed to maintain the requisite liquid capital on eight days between May 2003 and March 2004 as a result of miscalculating its liquid capital returns. Cho, who was not qualified or experienced to calculate FRR, signed on the FRR return and acted irresponsibly by hiring an inexperienced staff to handle FRR computations. Between July and September 2004, Cho failed to: ensure that tape recordings were maintained for at least three months, implement measures to check an account executive's handling of orders by listening to tape recordings and checking order placing records, and prevent discretionary trades without proper written authorisations from clients. As a result, one of Hooray's licensed representatives breached the Code of Conduct.

Further, 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 if orders had been properly executed.

(Press release issued on 25 May 2006)

See also press release issued on 14 December 2005)

As with Cho case above, failure to implement anti-money laundering measures can result in lengthy suspensions, especially if coupled with other supervisory and internal control failings. Responsible officers must actively ensure compliance at all levels of their business. All suspicious transactions must be reported immediately to the appropriate law enforcement authorities.



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Suspensions for breach of Code of Conduct

The SFC has suspended: Mr Man Tak Hung for 12 months from 29 April 2006 to 28 April 2007; Mr Chan Wing Tat for three weeks from 29 April to 19 May 2006; and Ms Kwong Yim Heung Angela for two weeks from 29 April to 12 May 2006, for breaching the Code of Conduct. Disciplinary actions followed SFC investigations into dealings in Sino Technology Investments Company Ltd shares during August to November 2002. Man, Chan and Kwong were securities dealer's representatives of Ong Asia Securities (HK) Ltd.

The SFC found that Man had: (i) opened an account for a client in January 2002, knowing that the account would be operated by a third party whom he believed was a market manipulator, but failed to question the arrangement; (ii) failed to obtain proper authorisation from the client for a third party to trade in her account; (iii) accepted trading instructions from a third party on his mobile phone to prevent conversations from being recorded and detected by his employer; and (iv) received a third party's instructions to trade Sino Technology shares in the client's account which formed part of a market manipulation scheme.

The SFC also found that in August 2002, Chan and Kwong had recommended six and 10 clients respectively to subscribe for the IPO of Sino Technology shares but neither Chan nor Kwong knew the background and nature of the business of Sino Technology. Chan did not inform his clients of the name and stock code of Sino Technology. In late August 2002, Chan and Kwong sold the allotted Sino Technology shares for their clients without first knowing the selling price.

(Press release issued on 2 May 2006)

Licensees have to act with due skill, care and diligence in the best interests of their clients and the integrity of the market. The SFC will not hesitate to punish those who fail to keep up with basic duties expected of all licensees and the standards set out in the Code of Conduct. In this regard, serious misconduct, as in Man's case, will entitle the SFC to impose lengthy suspensions.

Licensee banned for life for stealing client's securities, giving false information to the SFC and conspiring to pervert the course of justice

Mr Ng Ting Shag's licence has been revoked and the SFC has banned him from re-entering the industry for life for stealing clients' securities, giving false information to the SFC and conspiring to pervert the course of justice. Ng admitted to the SFC that he had stolen clients' securities by forging their signatures on transfer forms, or using transfer forms pre-signed by clients. On one occasion, Ng concealed the theft by giving forged copies of share certificates to his client and retained the original certificates. Ng further admitted he had conspired with another person to pervert the course of justice by inducing a complainant to withdraw her complaints against him, lying to the SFC during its enquiries and inducing the complainant and her father to lie to the SFC.

(Press release issued on 17 May 2006)

Serious misconduct such as this will attract a life ban from the industry. The SFC will not allow grossly dishonest licensees to participate in the market and put investors at risk.

Suspension for aiding and abetting cold calling and failing to assist in SFC investigations

Ms Tan King Yu has been suspended for five months from 19 May to 18 October 2006 for aiding and abetting unlicensed persons to cold call people to conduct leveraged foreign exchange trading and for failing to assist in SFC investigations. Tan, a licensed representative of Hong Kong Forex Investment Ltd, was found to have coached Ms Mok Sze Wan, who was unlicensed, to cold call people to promote leveraged foreign exchange trading between March and June 2004. When the SFC interviewed Tan, she gave false, misleading and evasive answers. Tan was convicted of aiding and abetting unlicensed activities and failure to give assistance in SFC investigations. After conviction, the SFC commenced disciplinary action against Tan and concluded that she had been guilty of misconduct and her fitness and properness had been called into question.

(Press release issued on 19 May 2006)

See also press releases issued on 8 February 2006 and 1 September 2005)



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Cold calling is a serious offence because of the financial risks it poses to unwary investors. The SFC will pursue and punish those who cold call as well as those who aid and abet such criminal activities.

Licensee fined for breach of staff dealing policy

The SFC has settled with Mr Wong Chi Ming by reprimanding and fining him \$35,000 for breach of his employer's staff dealing policy. Wong was found to have opened trading accounts under his brother's name with another broker and conducted personal trades without his employer's consent. Wong did not inform his employer of his interests in his brother's accounts. Wong also requested that his account executive at the other brokerage execute his orders through another party's account at the same brokerage when his brother's account did not have a sufficient trading limit.

(Press release issued on 22 May 2006)

All licensees are reminded to strictly follow their employer's staff dealing policy. 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. Breach of employer's staff dealing policy means that the employee's trading activities will not be monitored by his employer, which may jeopardise the interests of the employer and clients.

Licensees reprimanded and fined for unauthorised issue of promotional documents

The SFC has reprimanded Wilfred T. Fry (Personal Financial Planning) Ltd, Mr Kevin John Coppard and Mr Timothy John Rainsford and fined them \$100,000, \$60,000 and \$40,000 respectively for unauthorised issue of promotional documents in relation to a collective investment scheme. SFC investigations revealed that from 8 July 2003 to 22 March 2005, Wilfred T. Fry had issued to individuals on its database letters recommending investment in the Glanmore Property Fund, a collective investment scheme, the promotion of which had not been authorised by the SFC. At the time the letters were sent, some of the recipients had not signed any client agreement with Wilfred T. Fry. The letters were drafted and signed by Rainsford and, after his departure from Wilfred T. Fry's Hong Kong office, by Coppard. The actions were the result of a settlement between the SFC and Wilfred T. Fry, Coppard and Rainsford. The SFC took into account their co-operation and clean record.

(Press release issued on 29 May 2006)

Public promotion of collective investment schemes is subject to SFC authorisation. Those who are in breach will face regulatory action.

Restriction notice and appointment of administrator

On 26 May 2006, the SFC issued a restriction notice on Whole Win Securities Ltd to preserve the assets of the company and its clients. The restriction notice prohibits Whole Win from carrying on the business of dealing in securities and disposing of or dealing with any assets held by it or held on behalf of its clients without the SFC's prior written consent. During a review of the liquid capital computation of Whole Win, the SFC identified certain suspicious entries. After discussions with the senior management of Whole Win, the firm admitted there was a liquid capital deficit of \$28 million. The SFC also found that the firm had been funding its business almost entirely by bank borrowings secured by client securities collateral, hence putting margin clients' assets at risk.

An SFC investigation revealed that Whole Win had pledged the stocks of some cash clients to its banks without due authorisation, in breach of the Securities and Futures (Client Securities) Rules and that Whole Win had failed to keep cash clients' money in a segregated account in breach of the Securities and Futures (Client Money) Rules.

As a result of an SFC application, an administrator was appointed by the Court on 31 May 2006 to administer the property of Whole Win and the property it held on behalf of clients. The Court granted the administrator wide powers including the power to investigate Whole Win's affairs, to verify clients' claim and, subject to first obtaining a direction from the Court, to return client assets.

(Press releases issued on 26 May and 31 May 2006)



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This case highlights the importance of firms keeping adequate liquid capital for their operations and the dangers to clients of inappropriate pledging of client securities and poor financial management by brokerages. At appropriate times, the SFC will not hesitate to intervene with appropriate legal and regulatory measures to protect investors from brokerages whose liquid capital is called into question.

General Enforcement Statistics

From 1 April 2006 to end of May, the SFC successfully prosecuted 12 entities. In the same period, the SFC disciplined 31 licensees for various regulatory breaches.

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