SFC Enforcement Reporter

A monthly summary of SFC enforcement action

May 2006

Highlights

In April 2006, the SFC:

- **prosecuted five entities**
- **disciplined 19 licensees**

Prosecution

Market manipulator convicted

Mr Wong Wei Yin Peter pleaded guilty to creating a false or misleading appearance with respect to the share price of SiS International Holdings Ltd (SiS) and providing misleading answers to the SFC during interviews. Wong, a former account executive of VC Brokerage Ltd, placed single-board-lot orders to purchase SiS shares at prices higher than the then prevailing market prices shortly before market close on 18 and 20 May 2004 and 9 and 15 June 2004. These single-board-lot orders pushed up the closing prices of SiS shares by 8% to 10%. On the respective following trading days, Wong placed orders to sell SiS shares at prices higher than the previous days' closing prices. By placing the single-board-lot orders before market close, Wong's intention was not to buy the shares but to dispose of the shares at the artificially higher prices on each of the following days. In addition, Wong misled SFC investigators on two occasions during which he claimed that he had received client instructions to trade SiS shares and that the trades did not belong to him. In fact, Wong made the trading decisions and placed the orders. Wong was fined $28,000 and was ordered to pay the SFC's investigation costs.

(Press release issued on 26 April 2006)

The magistrate in this case made it clear that market manipulation is a serious offence since it affects Hong Kong's reputation as an international financial centre. He emphasised that Wong would have been jailed had he been convicted after trial. The SFC will continue to take action against market manipulative activities that undermine the integrity of the market.

Cold caller fined

Mr Law Chun Pon pleaded guilty to making unsolicited calls. In April 2004, Law, a representative of Delta Asia Credit Ltd, made unsolicited telephone calls to six people who were not clients of Delta Asia with a view to inducing them to enter into an agreement for trading in leveraged foreign exchange trading contracts. Law was fined $18,000 and ordered to pay the SFC's investigation costs.

(Press release issued on 27 April 2006)

It is a criminal offence to make unsolicited calls to induce a person to purchase SFC regulated financial products. Investors should not be pressured into making hasty investment decisions and purchase financial products they do not want 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.

Prosecutions for unlicensed dealing

Mr Ho Po Hung pleaded guilty to dealing in futures contracts whilst unlicensed, and Wing Lung Futures Ltd and Mr Chow Lai Him pleaded guilty to aiding and abetting Ho's unlicensed dealing. Their guilty pleas were the result of a combined criminal and disciplinary settlement with the SFC and the HKMA. Wing Lung Futures, Ho and Chow were convicted but absolutely discharged without penalty by the magistrate, who took into account the SFC's disciplinary penalties. Wing Lung Futures was ordered to pay the SFC's investigation costs. For details of this matter, please see Discipline section below.

(Press release issued on 27 April 2006)

It is a criminal offence to carry out regulated activities without being licensed. The SFC will prosecute those who engage in or aid and abet unlicensed activities. The sentence received by the defendants in this case was exceptional because the magistrate took into account the SFC's severe disciplinary penalties to be imposed on *the defendants. In normal cases, defendants convicted of unlicensed activities should not expect to receive an absolute discharge from the court.*

Discipline

Joint action by the SFC and HKMA against unlicensed dealing activities

The SFC and the Hong Kong Monetary Authority (HKMA) jointly disciplined Mr Ho Po Hung for unlicensed dealing, Mr Chow Lai Him and Wing Lung Futures Ltd for aiding and abetting unlicensed dealing and Mr Tam Po Chiu for supervisory failings. Between April 2003 and May 2004, Ho was an Assistant Manager supervising the San Po Kong Sub-section of the Securities Department of Wing Lung Bank. He and his two subordinates were not licensed by the SFC for dealing in futures contracts. However, they accepted instructions from some clients at the San Po Kong Branch of Wing Lung Bank to trade in Hang Seng Index Futures, relayed these instructions to Wing Lung Futures' dealing room for execution, and confirmed the execution of trades with the clients (the Arrangement). Ho failed to recognise that the Arrangement did not conform with the requirements of the Commodities Trading Ordinance and the SFO. Chow, then Head of the Securities Department of Wing Lung Bank as well as a responsible officer of Wing Lung Futures, instructed his three subordinates including Ho, to carry out the Arrangement without taking sufficient steps to verify its legality. Tam, the Assistant General Manager of Wing Lung Bank as well as a responsible officer of Wing Lung Futures, was responsible for supervising Chow during the relevant time but he also failed to take sufficient steps to monitor and supervise Chow to ensure that there was no unlicensed dealing in futures contracts. The practice had been in place since 1996 and ended in June 2004.

The SFC and the parties involved reached a settlement in relation to the prosecution and disciplinary action, with the concurrence of the HKMA. As part of the settlement, Ho, Chow and Wing Lung Futures pleaded guilty to unlicensed dealing/aiding and abetting unlicensed dealing on 27 April 2006. The SFC also: (i) reprimanded Wing Lung Futures and fined it $900,000; (ii) suspended Ho's licence under the SFO and prohibited him from acting as an executive officer or a relevant individual under the Banking Ordinance for six months; (iii) prohibited Chow from acting as a licensed person under the SFO and as an executive officer or a relevant individual under the Banking Ordinance for eight months; and (iv) reprimanded Tam. The SFC considered that, with the concurrence of the HKMA, the settlement was in the interest of the investing public and in the public interest.

(Press release issued on 27 April 2006)

This is the first time the SFC and the HKMA have co-operated in taking disciplinary action against parties who were, at the material time, licensed persons under the SFO and relevant individuals under the Banking Ordinance since the SFO and the Banking (Amendment) Ordinance came into force on 1 April 2003.

The SFC is empowered to punish registered institutions, their staff and management if they are guilty of misconduct or if their fitness and properness is called into question. Executive officers and relevant individuals of registered institutions are subject to the same set of legal and regulatory requirements and standards, and have to face similar disciplinary penalties as responsible officers and licensed representatives under the SFO regime. Therefore, they must understand the requirements under the SFO, the Banking Ordinance as well as related regulations and guidelines. The SFC will continue to take a tough stance on supervisory failures and non-compliance with the relevant law and regulations by registered institutions and their staff. The management of registered institutions should therefore be vigilant in ensuring compliance with applicable laws and regulations when conducting regulated activities.

Suspensions for licensees who failed to answer the SFC's questions candidly

The SFC reprimanded and suspended Mr Tong Chuck Yee Thomas, a former licensed representative of BNP Paribas Peregrine Securities Ltd and BNP Paribas Peregrine Futures Ltd, for 10 months for breaches of the Code of Conduct and providing misleading information to the SFC. The suspension followed an investigation into suspected market manipulation of the shares of a listed company between September and December 2003. Tong told his ex-employers and the SFC that he had met his client when he opened accounts for the client and that the client had instructed him to use another's account to execute the trades. In fact, Tong only met his client for the first time after he had received notification of our investigation, the client's account was opened by the client's brother and the client had never given any trading instruction to Tong. Moreover, the client's brother was a licensed person and Tong should have obtained a written consent of the employer of the client's brother before opening the trading account.

(Press release issued on 10 April 2006)

The SFC suspended Mr Lok Yuen Ming Lawrence for six months for not answering the SFC's questions with the degree of candour expected of a licensed person. The suspension was the result of a settlement with the SFC. The action followed an SFC investigation into the listing of Codebank Ltd in December 2001. The investigation revealed that, before the listing, a substantial shareholder of Codebank had authorised the Lead Manager of the listing to pay a company an amount not exceeding $22.375 million. On the day of the listing, upon a written request from that company, the Lead Manager issued five cash cheques totalling around $21 million. Lok collected the cheques and presented them for payment. Lok then paid $3 million to an account executive of the Lead Manager and transferred $7 million to the Lead Manager's bank account.

During his interviews with the SFC, Lok claimed that he had collected and disposed of the money according to the instructions of the owner of the company and had passed the remaining sum to the owner. However, the owner could not be reached. Lok also claimed that he did not know who had signed the written payment request and who had signed on the back of the cheques for and on behalf of the company. But the SFC had reasons to believe that Lok had signed the written payment request and that he had signed on the back of the cheques when presenting them for payment.

(Press release issued on 20 April 2006)

Any person interviewed by the SFC is under a statutory obligation to answer questions put to them truthfully and to the best of their ability. In particular, all licensees are expected to be forthcoming and candid to regulators. Licensees who provide the SFC with false or misleading information will face severe disciplinary sanctions.

Licensee suspended for turning a blind eye to possibly illegal activities

The SFC suspended Mr Sheung Chi Keung, Thomas for three and a half months for turning a blind eye to possibly illegal activities and other failings. Between December 2000 and November 2001, an ex-employee of Peace Town Gold & Silver Company Ltd solicited clients to open accounts with Peace Town Forex Ltd (PT Forex) to trade in leveraged foreign exchange contracts whilst not licensed. The ex-employee was convicted of engaging in unlicensed activities. Sheung, a representative of PT Forex, was responsible for processing the account opening for a number of clients referred to him by the ex-employee. Sheung failed to take reasonable steps to verify the identity of the new clients before opening an account for them and signed as a witness to these clients' signatures on their account opening documents notwithstanding that he was not present at the time when they signed. Even though Sheung knew that the ex-employee was unlicensed, he accepted the account opening forms from the ex-employee for processing without queries.

(Press release issued on 20 April 2006)

A licensed person should act honestly, fairly and in the best interests of the clients and the integrity of the market. Signing account opening documents without knowing the clients and turning a blind eye to suspicious illegal activities are acts that call into question a licensee's ability to perform honestly and fairly. The SFC will suspend or revoke those licensees who deliberately turn a blind eye to improper activities.

SFAT upholds the SFC's disciplinary decision

The Securities and Futures Appeals Tribunal (SFAT) affirmed the SFC's decision to reprimand Prudential Brokerage Ltd and its responsible officer, Mr Lau Shing Ngon, and fine them $95,000 and $45,000 respectively. The enforcement action followed a complaint of unauthorised trades made by an investor who opened an account with Prudential. The SFC found that Prudential had failed to: (i) produce telephone recordings relating to the investor's complaints; (ii) have adequate safeguards over the telephone recordings of client transactions; and (iii) put in place written complaints handling procedures and handle client complaints in a timely and appropriate manner. The SFC issued its decision to reprimand and fine Prudential and Lau, who appealed to the SFAT on the contention that no valid complaint was advanced by the investor and therefore, there was no reason to keep the telephone recordings of orders placed by that investor. The SFAT decided that there was a valid complaint and dismissed the appeal.

(Press release issued on 20 April 2006)

All licensees have a duty to ensure that they keep telephone recordings for at least three months or for as long as required if a regulatory inquiry is in progress, and that there are proper safeguards in relation to the keeping of such recordings. This case demonstrates the need of all licensees to keep the telephone recordings for their own benefit so that they can not only produce such tapes when requested by the SFC, but also protect themselves in cases of allegations of unauthorised trades. Licensees should take all complaints seriously, investigate the matter thoroughly and refrain from prematurely coming to a conclusion about a complaint for the sake of expediency.

Firms and their management disciplined for internal control and supervisory failures

The SFC suspended Mr Chong Chin for eight months and reprimanded Ms Yao Sze Ling and fined her $60,000 for their failures to competently manage Yicko Futures Ltd and Yicko Securities Ltd. They were responsible officers of Yicko Securities. The SFC also reprimanded Yicko Securities for its failure to ensure proper client margin management and compliance with the Client Money Rules. The disciplinary sanctions were the result of a settlement between Chong, Yao, Yicko Securities and the SFC.

The disciplinary action followed an SFC investigation into Yicko Futures' failure to pay its margin requirement and the variation adjustment to the HKFE Clearing Corporation Ltd in September and October 2003. The SFC found that a Client Registered Trader of Yicko Futures did not have adequate margin to support his portfolio in HSI Index options and futures contracts. Instead of restricting the Client Registered Trader's trading activities and reducing the size of his trading portfolio, Chong contributed to the Client Registered Trader's overtrading by lending him money to foot his margin shortfall. Chong and Yao also failed to exercise proper control and supervision over the Client Registered Trader's activities. Yicko Securities, among other things, did not promptly collect margin requirements due for collection and allowed clients to initiate new positions notwithstanding margin deposits were not sufficient to cover existing positions. No action has been taken against Yicko Futures as it already ceased business.

(Press release issued on 12 April 2006)

The SFC reprimanded Sun Growth Securities Ltd, its responsible officers, Mr Ng Kei Choy Stephen and Mr Kao Wing Lun, and fined them $120,000, $221,000 and $64,000 respectively. The reprimands and fines were the result of a settlement between Sun Growth, Ng and Kao and the SFC. The SFC found that Sun Growth's internal controls were deficient in the following areas: (i) lack of a well defined and segregated function for each department; (ii) insufficient guidelines to and supervision of staff in dealing procedures; (iii) insufficient cross checking of account opening documentation for new clients and subsequent change of client details; (iv) failure to provide a copy of the Client Agreement to clients and failure to keep track of and update records and documentation of clients; and (v) no formal procedure to handle clients' complaints.

(Press release issued on 24 April 2006)

The SFC reprimanded Hong Kong Wealth Management Ltd (HKWM) and fined it $100,000 for internal control and supervisory failures. This was the result of a settlement between HKWM and the SFC. HKWM failed to prevent the unlicensed activities conducted by four of its staff from late 2002 to mid 2003. The four unlicensed staff advised their clients to invest in certain mutual funds authorised by the SFC, in contravention of the provisions of the Securities Ordinance and the SFO.

(Press release issued on 27 April 2006)

The SFC prohibited Mr Ko Siu Lun, a former licensed representative of HKWM, from returning to the industry for two months for supervisory failures. The penalty was the result of a settlement between Ko and the SFC. The disciplinary action followed the conviction of an employee of HKWM for unlicensed investment advising. The unlicensed employee advised a client of HKWM to subscribe for mutual funds in July 2003, and Ko was her supervisor at the time. Ko mistakenly believed that the employee was properly licensed with the SFC, and did not prevent her from selling mutual funds to the client. Had Ko checked with the administration department of HKWM or the SFC website, he would have found that the employee was not licensed by the SFC.

(Press release issued on 27 April 2006)

Licensees have a duty to properly supervise their subordinates and ensure that their subordinates' activities comply with all the relevant laws and regulatory requirements. Close supervision of staff and proper procedures are essential to protecting investors against possible losses and misconduct. The SFC has repeatedly warned licensed corporations that it will not condone lax internal controls. The SFC will hold the management responsible for such failures.

Ban from re-entering the industry for cold calling

The SFC prohibited Mr Chau Sik Ki from returning to the industry for four months. Chau, a former licensed representative of Tanrich Futures Ltd, was convicted of making unsolicited calls inducing a person to enter into agreement to trade in futures contracts. Chau made unsolicited calls to prospective clients, with whom Chau had no acquaintance, and asked them for meetings to introduce them to futures trading. He also provided discretionary account services to a client against his employer's policies and failed to obtain proper written authorisation from the client. In deciding the penalty, the SFC took into account his co-operation in settling the disciplinary proceedings.

(Press release issued on 26 April 2006)

Licensees who made unsolicited calls will face both criminal prosecution and disciplinary sanctions. A licensed person cannot escape the disciplinary regime simply by leaving the industry and the SFC will impose prohibition orders on cold callers who are no longer licensed.

Licensee fined for executing a short selling order for a client before checking

The SFC reprimanded Ms Chow Chuen Ho, a licensed representative of Get Nice Investment Ltd, and fined her $4,000 for breaching the Code of Conduct and her employer's internal policy. The reprimand and fine were the result of a settlement between Chow and the SFC. On 23 November 2004, a client of Get Nice, who authorised a third party to place orders on his behalf, inadvertently conducted a short sale through his account maintained with Get Nice. Chow was the licensed representative responsible for placing the order but she failed to check the stock balance of the client's account before placing the order. She also failed to report the short sale to the responsible officer of Get Nice as required by Get Nice's internal policy. The short sold shares were eventually bought back by way of forced buy-in by HKEx.

(Press release issued on 18 April 2006)

In conducting regulated activities, a licensed representative should act with due skill, care and diligence in the best interests of his clients and the integrity of the market. Licensed representatives should always check if a client's account has sufficient shares before executing any sell orders.

General Enforcement Statistics

In the first month of the financial year 2006-2007, the SFC successfully prosecuted five entities. In the same period, the SFC disciplined 19 licensees for various regulatory breaches.

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