



SFC Enforcement Reporter

A monthly summary of SFC enforcement action

證監會

October 2006

Highlights

In September 2006, the SFC:

- prosecuted one company and three people;
- disciplined six licensees; and
- renewed the interim Mareva Injunction against two responsible officers of a licensee

Prosecution

Illegal short sellers convicted

Mr Ma Yuk Fat, a licensed representative of Goldenway Securities Company Ltd, and his wife, Ms Yuen Wai Chun, pleaded guilty to short selling a warrant knowing that they did not have sufficient warrants on hand. They were each fined \$18,000 and ordered to pay the SFC's investigation costs.

(Press release issued on 7 September 2006)

Section 170(1) of the SFO prohibits the sale of securities when the person does not have a presently exercisable and unconditional right to sell them. A person who illegally short sells may face criminal prosecution and a licensee who short sells or does not take enough precautions to guard against clients' short selling may also face disciplinary action.

Prosecutions for unlicensed activities

The SFC prosecuted Sun's Finance Investment Ltd and its director, Mr Ng Shiu Shing Sunny, for holding out as carrying on a securities margin financing business whilst unlicensed. They were each fined \$5,000 and ordered to pay the SFC's investigation costs.

(Press release issued on 28 September 2006)

It is a criminal offence to carry out regulated activities without being licensed or registered with the SFC. The SFC will prosecute those who engage in or aid and abet unlicensed activities. Licensees who help may also face disciplinary action.

Discipline

Court of Appeal upholds SFAT's decision in mis-selling case

The Court of Appeal unanimously dismissed an appeal by Mr Andrew Nicholas Barber against the decision of the Securities and Futures Appeals Tribunal (SFAT) dated 30 June 2005. The SFAT affirmed the SFC's decision to suspend Barber for giving unsuitable advice to his client, Ms Susan Field, and reduced his suspension from six months to one month. The SFC commenced disciplinary proceedings against Barber after the Court of First Instance held that Barber Asia Ltd was liable to Ms Field and awarded damages in her favour. The SFAT held that Barber's failure to diligently explain and amplify to Ms Field the downside risks of the investment, and properly assess the suitability of the geared product, warranted a suspension. The SFAT, in ordering the suspension, had accepted new evidence adduced by Barber at the hearing, which had not been presented to the SFC or to the civil courts previously, and which included that Ms Field had increased her risk appetite and that Barber had gone through all the risk disclosure documentation with her. In view of the new fact findings by the SFAT, Barber appealed to the Court of Appeal against the SFAT's decision. The Court of Appeal rejected Barber's argument that he had discharged his duty as an investment adviser and held that it was not sufficient for Barber to merely talk a client through all the relevant documentation. The Court held that Barber had to make clear to his client the full picture of the investment including whether she could afford the risks involved and whether she was, in the light of her investment objectives, prepared to take those risks. The Court ruled that, in doing this, Barber had to show his client an individualised example of possible loss scenarios.

(Press releases issued on 4 July 2005 & 13 September 2006)



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The SFC welcomes the Court of Appeal's decision which upholds the standards that the SFC has been applying to investment advisers. The Court's ruling made it clear that advice or recommendations given by licensees to clients must be suitable and based on thorough analysis. Advisers must ensure clients are properly informed of the risks of the products to enable them to make informed decisions. They cannot just explain documents and must independently ensure that their clients understand the product and that it is reasonably suitable for them, considering their circumstances. Advisers should beware: unsuitable advice will result in SFC disciplinary sanction and/or investor lawsuits. We will continue to seek to at least suspend investment advisers who fail their clients by giving unsuitable advice.

This was the first SFAT appeal to the Court of Appeal and an important affirmation of the checks and balances applying to the SFC's disciplinary decisions and the manner in which the SFAT is performing its role.

SFAT upholds SFC's penalty in unauthorised trading case

The SFAT upheld the SFC's decision to suspend Mr Hung Hing Chuen, a licensed representative of Sincere Securities Ltd and Hong Kong Forex Investment Ltd for six weeks. Hung allowed someone other than the client to trade in the client's account without written authorisation in breach of his employer's rules. He did not know the third party's name and had not met them. The SFC suspected, but could not prove, that the account was used to facilitate market manipulation. Hung appealed against the suspension and argued that the SFC had failed to give sufficient credit to the mitigating factors including that he had covered the losses resulting from the third parties' trades and that he had reported his misconduct to his employer. The SFAT dismissed his application and held that the SFC had already taken into account all the relevant factors when deciding the penalty.

(Press release issued on 1 September 2006)

In affirming the SFC's decision, the SFAT said it would not interfere with the SFC's view on disciplinary penalties unless there was a very good reason. In this case, the SFC had considered all the mitigating facts and there was no reason for the SFAT to interfere with its decision. The SFAT has previously warned that it might increase penalty or award costs at a higher rate than normal if an appeal is plainly meritless. The SFAT also said that it was not concerned about the consequential financial effect of a penalty like a suspension if it is otherwise the right penalty. The SFAT is currently considering a costs application by the SFC.

Handle clients' accounts properly

Ms Tau Ling Ling of BOCI Securities Ltd was suspended for eleven weeks for conducting discretionary trades in a client's margin account without written authorisation in breach of the Code of Conduct and her employer's internal policies prohibiting such trades without prior senior management approval. Tau consented to the SFC decision.

(Press release issued on 28 September 2006)

All discretionary authorities given to licensees must be in writing. Written authorisation protects the client and the brokerage from disputes over whether the discretionary trades are authorised. We will suspend licensees who do discretionary trades without written authorisation from their clients.

Do not assist unlicensed activities

Mr Chan Kin Pong Kimball, a licensed representative of Ho Fung Shares Investment Ltd, was suspended for six weeks for aiding and abetting an unlicensed person to set up a website to publish advice on trading future contracts. Chan had acted as an intermediary for the transfer of funds relating to the website between the unlicensed person and other parties and helped with administrative and technical matters. The unlicensed person was convicted of unlicensed investment advising in July 2005. Chan consented to the SFC's decision.

(Press releases issued on 7 July 2005 & 5 September 2006)

People who work in the industry are licensed in order to protect the public from the dishonest and incompetent. Those who have the privilege of being licensed themselves but flaunt it by aiding and abetting unlicensed activities will face prosecution and/or disciplinary action.



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Know and comply with your employer's staff dealing policy

The SFC reprimanded and fined Mr Tsoi Siu Ho for \$40,000 for keeping a leveraged foreign exchange trading account at another licensed firm, whilst he was a licensed foreign exchange representative of Hong Kong Forex Investment Ltd. Tsoi was not familiar with the requirements of his employer's staff dealing policy which prohibited him from holding a leveraged foreign exchange trading account at another licensed person for trading in leveraged foreign exchange contracts. Tsoi consented to the SFC's decision.

(Press release issued on 1 September 2006)

Licensees must know their employers' staff dealing policy well and comply with it and the Code of Conduct. Staff dealing policies are particularly strict for leveraged foreign exchange dealing staff, who are prohibited from holding accounts at firms other than their own.

SFC acts on internal control failings

The SFC reprimanded Business Securities Ltd (BSL) and Business Futures Ltd (BFL) for internal control failures and suspended their responsible officer, Mr Szeto Kin Chuen, for four months for misconduct including concealing discretionary trading arrangements for a client's account from the SFC. The two companies were fined \$30,000 each for poor internal controls, including the lack of proper procedures to ensure staff compliance with tape recording requirements, failure to keep an adequate audit trail of clients' orders, and failure to ensure proper supervision of discretionary accounts. BSL, BFL and Szeto consented to the SFC's decisions.

(Press release issued on 25 September 2006)

Giving false or misleading information to the SFC will at least result in a suspension. Also, discretionary trading arrangements by a licensee in a client's account without his employer's consent, and allowing him to operate a client's account without authorisation are typical signs of dodgy business. An offending firm will be disciplined for tolerating these illicit practices. The penalty to BSL and BFL would have been heavier had the two brokerage firms not put in place timely corrective measures regarding recording clients' orders and obtained the necessary written approval for the discretionary trades.

Returning of clients assets in progress by administrator

Administrator returned securities to non-indebted clients of Whole Win

On 29 September 2006, the Administrator of Whole Win Securities Ltd reported that he had returned to 451 clients, who are not indebted to Whole Win, their securities entitlements which were previously held by the firm. The total value of the returned securities was approximately \$66 million. Of the non-indebted clients who had submitted instructions forms to the Administrator for the return of their securities entitlements, the Administrator had returned to clients more than 99% of the available securities. The Administrator has had discussions with third parties who have expressed an interest in restructuring Whole Win. In the meantime, the banks holding the on-pledged securities acceded to the request from the Administrator to withhold enforcement action in respect of those securities.

(Press release issued on 29 September 2006)

The SFC monitors all its licensees regularly to ensure their compliance with the law in order to protect investors. We will take the necessary steps for preservation of the assets of the licensed corporation and its clients in cases where we suspect the misappropriation of clients' assets or other serious crime or misconduct.

Injunction

Injunction against Tiffit officers continued and disclosure of assets ordered

On 8 September 2006, on the SFC's application, the High Court continued the interim Mareva Injunction against Mr Kwok Wood Yan and Ms Fong Shik Yee, two of the responsible officers of Tiffit Securities (Hong Kong) Ltd, restraining them from removing any of their assets from Hong Kong or dealing with or diminishing the value of their assets, whether within or outside Hong Kong. The High Court also



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granted an order in terms of the SFC's application to compel Mr Kwok to disclose to the SFC in writing, all his assets of an individual value of \$100,000 or more regardless of whether the assets are located in Hong Kong or have been transferred elsewhere.

(Press release issued on 8 September 2006)

The disclosure order was the latest in a series of SFC preventive actions to safeguard and protect the interests of Tiffit's clients after the SFC suspected Tiffit of stealing its client assets during an onsite inspection. Other SFC actions included imposing a restriction notice on 18 July to preserve Tiffit and its clients' assets and obtaining an Administration Order on 24 July and a Prohibition Order preventing Kwok from leaving Hong Kong on 27 July.

The SFC takes suspected theft extremely seriously and will take whatever action is necessary and proportionate to protect investors as soon as evidence to support that action is available. The SFC will continue to assist the Administrators and the Police in this case.

General Enforcement Statistics

From 1 April 2006 to end of September, the SFC successfully prosecuted 35 entities. In the same period, the SFC took disciplinary action against 48 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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