



SFC Enforcement Reporter

A monthly summary of SFC enforcement action

證監會 April 2007

Highlights

In March 2007, the SFC:

- sought disqualification orders against former directors of a failed listed company;
- petitioned for a winding-up order against a collapsed company;
- prosecuted four persons; and
- disciplined four licensees

Invitation to improve the SFC Enforcement Reporter

As mentioned in last month's edition, the SFC is currently reviewing the SFC Enforcement Reporter and invites suggestions about what information you would like to see or what improvements can be made in future SFC Enforcement Reporters. Some suggestions have been received and the SFC welcomes further comments from the public. Feedback can be sent by email to: enfrerpoter@sfc.hk

Marking the close

Zero tolerance for "marking the close"

Mr Chaw Chi Wai Ivan pleaded guilty to charges of creating a false or misleading appearance with respect to the market for VST Holdings Ltd and Man Sang International Ltd shares. Chaw placed orders at or near market close for shares in VST on 28 trading days, between 5 May and 26 August 2005, resulting in Chaw's orders becoming the closing price on 26 of those days. On each of these occasions, the closing price was significantly higher than the prevailing market price. Further, between 11 and 31 August 2005, Chaw pursued a similar strategy on eight trading days in placing orders for Man Sang shares. Chaw was fined \$10,000 and ordered to pay the SFC's investigation costs.

(Press release issued on 9 March 2007)

Placing orders at or near market close to fix or influence an artificial closing price is commonly called "marking the close". It is a type of market manipulation and it is illegal under the SFO. It is one of the more easily detected forms of market misconduct.

The SFC has a number of current investigations on foot involving 'marking the close'. In some of these cases the SFC is examining whether the brokers involved in executing the client orders knew or should have realised the instructions were intended or would result in fixing an artificial closing price. In this context, the case Chan Yuk Chun (Press release issued on 5 March 2007), which is mentioned below is relevant.

The trading in this case was brought promptly to the SFC's attention by the online trading firm through whom the orders were executed. The SFC is grateful for this prompt co-operation which assisted the SFC in protecting the market from further harm.

Facilitating market manipulation warrants suspension but co-operation reduces length

Ms Chan Yuk Chun was suspended for three months from 5 March to 4 June 2007. Chan had placed a series of orders for a client to buy Artel Solutions Group Holdings Ltd shares at prices higher than the then prevailing market prices. The client did not genuinely intend to buy any Artel shares at such prices but only intended to artificially raise the closing prices of Artel shares. The client was subsequently convicted of creating a false or misleading appearance in relation to the market for Artel shares. Chan

ought to have known her client's orders were manipulative and, by placing those orders, she was facilitating her client's manipulation. In deciding the penalty, the SFC took into account Chan's co-operation by being willing to act as an SFC witness in the prosecution of the client.

(Press release issued on 5 March 2007)

While the SFC viewed this misconduct seriously, the value of Chan's co-operation was instrumental in assisting the SFC on another matter and justified a significant reduction in what could have amounted to a revocation of her license. The SFC's policy on co-operation is available on the SFC's website (www.sfc.hk).

The SFC reminds brokers they have an obligation under the Code of Conduct for Persons Licensed by or Registered with the SFC to conduct business not only in the best interests of their clients but also in the best interests of the integrity of the market.

Brokers should not execute orders given to them by clients where:

- *the orders are obviously tainted by a manipulative intention; or*
- *there are reasons to suspect the order or its execution may mislead the market or create a false price and they have not satisfied themselves the order is bona fide.*

Brokers who receive suspicious orders must satisfy themselves the order and its execution does not affect the best interests of the integrity of the market. This may involve querying the client and seeking further explanations. If the explanation is not reasonable, brokers should refuse to execute the order and report the matter to management and, if necessary, to the SFC. Obviously all such reports to the SFC are treated confidentially.

Listed company director disqualification orders sought

SFC seeks director disqualification orders

The SFC has started proceedings against five former directors of GP NanoTechnology Group Ltd seeking orders to disqualify them from being directors of or involved in the management of companies. The SFC alleges that Mr Ong Hong Hoon, Mr Lian En Sheng, Mr Kwong Chun Kau, Mr Chow Chun Kwong and another director, who is named in the proceedings but has not been located yet by the SFC, failed to exercise reasonable skill, care and diligence, and act in the best interests of GP Nano. In its petition to the Court, the SFC alleges that, in 2001, GP Nano recklessly entered into five transactions totalling \$35 million which ultimately caused losses to the company. The SFC alleges that the five directors failed to make proper inquiry before entering into the transactions which were not in the interests of GP Nano. The SFC further alleges that GP Nano also issued two misleading announcements to the market and included misleading information in its prospectus and annual reports. At the directions hearing on 30 March 2007, the High Court ordered the SFC and the directors to file further material in preparation for the full hearing.

(Press release issued on 30 March 2007)

These proceedings have been commenced by the SFC under section 214 of the SFO. This provision enables the SFC to make applications to the Court where, as in this case, the SFC believes there has been 'misfeasance or other misconduct' in the affairs of a company that is or was listed. Under this provision of the SFO, the Court has the power to order a person not to be or to continue to be a director of the company or any other company or to take part in the management of the company directly or indirectly (whether the company is incorporated or operating in Hong Kong).

Prosecution and Discipline

Conviction for short selling

Mr Li Kwok Wah pleaded guilty to charges of short selling 16 derivative warrants. Between 1 February and 31 March 2006, Li, who was a licensed representative of Hing Shing Securities Ltd, sold 16 derivative warrants knowing that he neither owned nor had any interest in the warrants to fulfil the sales. Li was fined \$64,000 and ordered to pay the SFC's investigation costs.

(Press release issued on 1 March 2007)

Unsolicited calls lead to conviction

Ms Wong Man Suen (formerly known as Wong Yuen Yu) pleaded guilty to charges of making unsolicited calls whilst acting as a licensed representative of Emperor Futures Ltd. Between April and May 2006, Wong made unsolicited calls to a person whom she successfully persuaded to open an account to trade in futures contracts which resulted in loss. Wong was fined \$5,000 and ordered to pay the SFC's investigation costs.

(Press release issued on 29 March 2007)

Cold calling is usually part of a pressure-selling technique designed to sell unsuitable and inappropriate products to retail clients who probably would not buy these products if they were properly advised.

The practice of cold calling adds unnecessary risks to the investing public, and prejudices the integrity, reputation and good name of Hong Kong's markets. The SFC is currently examining whether some cold calling practices by individuals are part of embedded corporate strategies by some licensed firms.

Unlicensed asset manager convicted

Mr Yeung Chun Man pleaded guilty to charges of holding himself out as carrying on a business in asset management whilst unlicensed between May 2005 and May 2006. Yeung proposed to clients that he could manage their online trading accounts and trade in securities on their behalf for commission based on any profits made from the trading. Yeung was fined \$5,000 and ordered to pay the SFC's investigation costs.

(Press release issued on 29 March 2007)

The SFC will continue to ensure the investing public is protected from unlicensed activity.

Licensee suspended for concealing trades

Ms Chow Yin Ling has been suspended for four months from 30 March to 29 July 2007 for concealing her personal trades in her daughter's account and failing to disclose the account was held in her daughter's name. This was a breach of the staff dealing policy of her employer, Excalibur Securities Ltd. Between 18 October to 2 November 2005, Chow had conducted intra-day short sellings involving two derivative warrants. Chow was convicted of short selling on 22 June 2006. In deciding the penalty, the SFC took into account that Chow co-operated and consented to the SFC's decision.

(Press release issued on 30 March 2007)

Licensed firm's staff dealing policies exist to prevent possible conflicts between the interests of staff and clients arising from trading. They also help firms to detect malpractice. It is important that licensees comply with the policies.

Suspension for inappropriate “locking” advice

The SFC has suspended Mr Ting Chun Hin Calvin for two months from 22 March to 21 May 2007. Ting, a former licensed representative of Tanrich Futures Ltd, advised clients to “lock” their futures trading losses (i.e. to simultaneously hold equal long and short positions in the same futures contract) without any reasonable explanation as to how this was in the interest of his clients. In deciding the penalty, the SFC took into account that Ting had no previous disciplinary record.

(Press release issued on 22 March 2007)

It is a licensee’s duty to give reasonable advice to a client in the light of each client’s circumstances. “Locking” advice is usually not in the interests of clients and licensees who recommend their clients to “lock” face suspension if they can’t reasonably justify their advice.

Failure to keep proper records of client orders

Ms Yan Yuk Hing Liza was fined \$30,000 for failing to keep proper records of client orders. Yan, a licensed representative of Emperor Securities Ltd, received orders on her mobile phone after office hours from a new margin client who did not have an established record of settlement. Yan failed to keep sufficiently accurate and contemporaneous written records of the client’s original orders.

(Press release issued on 1 March 2007)

It is essential to keep proper records of client orders so that a proper audit trail is established. In the SFC’s view, there is almost no reason to take client orders by mobile phone on firm premises during office hours when taped telephone lines are available. Off firm premises, or out of office hours, contemporaneous written records should be made to evidence the orders.

Winding up petition

Petition to wind-up Tiffit

The SFC has petitioned the High Court to wind up Tiffit Securities (Hong Kong) Ltd following its collapse, in order to protect the public interest and, in particular, the interests of Tiffit’s clients. The filing of the winding up petition will stay any future proceedings that may have been taken by creditors against Tiffit and will prevent any possible dissipation of Tiffit’s assets arising from competing claims from creditors. The Court ordered the appointment of Provisional Liquidators of Tiffit pending the hearing of the winding up petition on 2 May 2007 and the termination of the earlier appointment of the Provisional Liquidators in their capacity as the Administrators of Tiffit. These orders are desirable to avoid any uncertainty or complication.

(Press release issued on 2 March 2007)

Following the administration of Tiffit’s property, the SFC considers that it is in the public interest and the best interest of Tiffit’s clients to appoint the Administrators to act as Provisional Liquidators, ensuring a smooth transition for Tiffit from administration into liquidation and reducing the costs of the liquidation.

General Enforcement Statistics

In the financial year from 1 April 2006 to 31 March 2007, the SFC successfully prosecuted 51¹ entities, offered no evidence against three entities while three were acquitted after trial. In the same period, the SFC took action against a total of 82 licensees for various regulatory breaches. Among these actions,

¹ The total number of successful SFC prosecutions has been adjusted for a calculation that should not have been included in the March 2007 issue, namely the prison sentences of Mr Cheung Yum Hoi, Mr Choi Tsz Ming and Mr Fung Yuen Kwan, as the proceedings were initiated by the Commercial Crime Bureau. They have now been excluded from the calculation of the total number of SFC prosecutions.



SFC Enforcement Reporter

A monthly summary of SFC enforcement action

證監會 April 2007

the SFC entered into settlements with no formal sanction imposed with three licensees. The SFC also issued a total of 210 private warnings.

If you want to know more, the SFC's press releases are available at www.sfc.hk.

If you want to subscribe and receive the SFC Enforcement Reporter monthly by email, simply register for the SFC's Website Update Email Alert service on our homepage and select SFC Enforcement Reporter. Intermediaries licensed by the SFC receive the SFC Enforcement Reporter monthly via their FINNET email accounts.

CONTACT US – Media Enquiry: (852) 2840 9287 / Investor Hotline: (852) 2840 9333 / Email: enquiry@sfc.hk / Feedback: enfreporter@sfc.hk