

Highlights

In March the SFC:

- had five people convicted for breaking securities laws
- disciplined 16 intermediaries

The new Securities and Futures Ordinance commenced on 1 April 2003.

Prosecution

Market manipulator and illegal short-sellers convicted

Mr Chan Shing Chun pleaded guilty to intentionally creating a false market in the shares of China Mobile (Hong Kong) Limited in breach of the **Securities Ordinance**. Chan and Mr Choy Tin Woo Johnnie both pleaded guilty to illegally short-selling shares in China Mobile and Digital World Holdings Limited respectively, again in breach of the **Securities Ordinance**. Chan placed a large number of ask orders to sell shares in China Mobile, when he did not have the shares or the intention to sell them. Instead, he intended to create the false impression of great selling pressure on the stock. Both Chan and Choy were fined and ordered to pay the SFC's investigation costs.

(Press release issued on 25 March 2003)

Since April 2002, the SFC has successfully prosecuted four persons for market manipulation and three persons for illegal short-selling.

Market manipulation may result in jail terms. Those who are licensed by us also face discipline. Under the new regime effective as from this month, people engaging in market manipulation and other market misconduct will face tougher penalties. The new dual civil and criminal regime will also mean more effective enforcement.

Familiarise yourself with listed company securities disclosure requirements

The SFC successfully prosecuted Maxwick Investment Limited, Ms Leong On Kei Angela and Mr Yip Kwong under the **Securities (Disclosure of Interests) Ordinance**. Maxwick lent money against a pledge of a substantial number of shares in Fairyoung Holdings Limited (now renamed Dynamic Global Holdings Limited). Maxwick and Leong, its director and major shareholder, however, failed to disclose on time their substantial interests in the stock, arising by virtue of the pledge. Separately, Yip, a substantial shareholder of GreaterChina Technology Group Limited, also failed to disclose his disposal of GreaterChina shares on time. All three were fined and ordered to pay the SFC's investigation costs.

(Press releases issued on 11 and 25 March 2003)

Since April 2002, the SFC has successfully prosecuted 21 persons and firms for breaches of listed company securities disclosure laws.

Everyone who may come to hold substantial interests in listed company securities by whatever means should know the disclosure laws. In particular, they should beware of the expanded range of discloseable interests, lower 5% disclosure threshold and shorter three-business day notice period under the SFO. Details are on our website.

Discipline

Revocation for preferential allocation of trades

Ms Leung Yuen Yee Winnie unfairly allocated disadvantageous trades to a client. Leung did not have the relevant professional knowledge but had also inappropriately advised the client to buy warrants.

(Press release issued on 17 March 2003)

Unfair allocation of trades to the detriment of clients is a very serious abuse of the trust that clients place in their brokers. The SFC will seek out and severely punish this malpractice. Firms should have proper safeguards against it too, for example, by randomly checking trading.

SFC suspends futures firm and its director for window-dressing

Phoenix Capital Futures Limited failed to maintain the minimum level of liquid capital required by the Financial Resources Rules between January and October 2001, but window-dressed its financial position in order to report compliance in its monthly returns to the SFC. The SFC suspended the firm and its supervisory director, Mr Chan Siu Man Kirby, for two weeks.

(Press release issued on 25 March 2003)

Investors are entitled to assume that their brokers observe the FRR. Window-dressing subjects clients to risks that they do not take voluntarily. An offending firm may be suspended even where no loss has resulted.

Suspensions for dishonesty

Two brokerage firm staff lied to help a dealer's representative (DR) at another firm conceal his trades from his employer. Mr Chau Kwok Hung and Mr Liu Cheuk Sun had their registrations suspended for one month and four months respectively. Liu got a heavier penalty because he had also (a) failed to seek prior consent from the DR's employer, and (b) allowed the DR to operate another client account without written authorisation.

The SFC also reprimanded Ms Tsui Pui Yin. Tsui helped the DR open an account, and allowed him to operate three other accounts without seeking the consent of the DR's employer. The DR left the industry after the incident and the SFC has accordingly revoked his registration.

(Press release issued on 5 March 2003)

Dishonesty in every form casts grave doubts on a licensee's fitness and properness, and inevitably attracts stern penalties. Also, executing trades for the employee of a licensee without his employer's consent, and allowing him to operate another client's account without authorisation are typical signs of dodgy business. Anyone tolerating these illicit practices will be disciplined.

More penalties meted out on Listing Rules breaches

The SFC reprimanded the following licensees for breaches related to the Placing Guidelines for Derivative Warrants: (a) IPO Securities Limited, Mr Yong Ka Wai, and Mr Lau Siu Fai; (b) Mr Chan Kai Wang Kevin; (c) Ong Asia Securities (HK) Limited and Mr Lynn Kwok Hung George; and (d) Mr Li Cheung.

IPO Securities, Lau, Chan and Li all failed to ensure the warrants were not placed with connected clients under the Placing Guidelines then in force. Ong Asia Securities and Lynn failed to understand the Placing Guidelines. Yong, who was not licensed by the SFC at the relevant time but was involved in the management of IPO Securities, bears responsibility for the failings in internal controls and audit trails.

(Press releases issued on 4, 13, 27 and 28 March 2003)

Failure to comply with the basic market rules demonstrates a disregard for market integrity. Further, inadequate audit trails may frustrate investigations. The SFC therefore views such failures seriously, and fining is a definite possibility in the future. While the SFC is committed to facilitating market development, it will not tolerate blatant breaches of the basic rules and regulations.

Unlicensed activities led to reprimands for firm, its dealing director and branch manager

A routine SFC inspection discovered unlicensed dealing activities at Concord Capital Brokerage Limited. The SFC reprimanded Concord, Mr Wat Ying Hang (its dealing director) and Mr Tsang Tak Chuen (its representative and branch manager) for the failures in supervision and internal controls.

(Press release issued on 20 March 2003)

Unlicensed dealing activities may lead to both prosecution and disciplinary actions for each and every responsible persons. Firms must institute sound internal controls to protect both their clients and themselves. Under the SFO, the criminal penalties have significantly increased.



SFC Enforcement Reporter

A monthly summary of SFC enforcement action

April 2003

General Enforcement Statistics

For the financial year ended 31 March 2003, the SFC has successfully prosecuted 37 people and firms, and disciplined 86 entities.

Securities and Futures Ordinance

The SFO commenced on 1 April 2003. The new sanctions available to the SFC, new crimes and increased criminal penalties all apply to conduct on or after that date. You should have systems in place to cope with the new law now.

The disciplinary sanctions available to the SFC under the SFO are: reprimands, suspensions and revocations of licences/registrations of licensed/registered persons and approvals of responsible officers (including partial suspensions and revocations), prohibition orders, and fines.

If you want to know more, the SFC's press releases are available at www.hksfc.org.hk under the section "Press Releases, Publications & Speeches".

If you want to subscribe and receive the 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 Enforcement Reporter monthly from their FinNet email accounts.

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