

Highlights

In November, the SFC:

- successfully prosecuted two companies and seven people
- disciplined eight licensees
- settled with one licensee

Prosecution

Market manipulators prosecuted

Mr Chow Lung On was prosecuted for manipulating the shares of Tern Properties Company Ltd. Chow effected sales and purchases with no change in beneficial ownership of the securities, commonly called "wash sales", by using two trading accounts held with two different brokers with the intent to raise the market price. Chow's activities increased the price of Tern's shares by about 25%. Chow was convicted after trial and fined \$15,000 and ordered to pay the SFC's investigation costs.

(Press release issued on 1 November 2004)

On 18 October 2002, before market close, Mr Leung Tung Wa placed purchase orders through his wife's account to buy Tradeeasy Holdings Ltd's shares at a price higher than the prevailing market price. This caused the closing price of Tradeeasy's shares to rise by 30%, misleading the market that the stock price had gone up. Leung pleaded guilty to intentionally causing or creating a false market and was fined \$5,000 and ordered to pay the SFC's costs. Leung used to be a licensee and has left the industry.

(Press release issued on 15 November 2004)

Market manipulation is serious misconduct which will lead to criminal prosecution. It creates a false perception of the market which misleads investors and could damage their interests. The SFC will take appropriate action to prevent and penalise such conduct. The SFC reserves the right to discipline licensees involved in addition to prosecuting them.

Convictions relating to unlicensed investment advising, unauthorised advertisements and unlicensed dealing

Ms Wong Lee Chun provided investment advice whilst unlicensed and Mr Li Ping Hei Benjamin aided and abetted Wong in issuing advertisements about an unauthorised instrument without obtaining the SFC's prior authorisation. Wong and Li pleaded guilty and were fined \$3,000 and \$5,000 respectively and ordered to pay the SFC's investigation costs.

(Press release issued on 10 November 2004)

Ms Chang Kit Sun Lama, a former responsible officer of TradingGuru.com Securities Ltd, pleaded guilty to aiding and abetting Mr Cheung Tak Shun Dickson's unlicensed dealing. Chang was the supervisor of Cheung who knew that Cheung was unlicensed but allowed him to introduce clients to TradingGuru.com, take clients' orders and confirm executed trades with clients. Chang was fined \$2,500 and ordered to pay the SFC's investigation costs. Cheung was convicted of unlicensed dealing in October 2004.

(Press releases issued on 28 October and 12 November 2004)

Unlicensed activities are taken seriously by the SFC because investors dealing with unlicensed persons risk financial loss. The SFC will prosecute and take disciplinary action against those who engage in unlicensed activities and those aiding and abetting them.

Failure to disclose interests results in prosecution

Sky Victory Ltd and its sole director, Mr Siu Wai Keung, were fined \$2,000 and \$4,000 respectively and ordered to pay the SFC's investigation costs in pleading guilty to their failure to disclose their interests in Global Link Communications Holdings Ltd on time. Sky Victory failed to disclose its interest until almost seven months after acquiring it and Siu failed to disclose his deemed interest to HKEx and Global Link through Sky Victory.

(Press release issued on 9 November 2004)

Mr Kuk Po Shun pleaded guilty to breaching Part XV of the Securities and Futures Ordinance by failing to disclose, to HKEx and FT Holdings International Ltd, his interests in shares in FT Holdings and his subsequent reduction in those interests. Kuk was fined \$10,000 and ordered to pay the SFC's investigation costs.

(Press release issued on 25 November 2004)

SinoPac Capital Ltd's acquisition of interests in Xi'an Haitian Antenna Technologies Company Ltd and the subsequent increase in interests were not disclosed to HKEx and Xi'an Haitian promptly. SinoPac was fined \$12,000 and ordered to pay the SFC's investigation costs.

(Press release issued on 25 November 2004)

Disclosure of interests in listed companies is essential to ensuring market transparency. Failure to do so will attract prosecution.

Discipline

Life ban for poor financial integrity and false reporting

Mr Cheung Kwok Chiu Kris has been banned for life from the securities industry. Cheung lodged a complaint with the SFC against an account executive of another securities firm. He alleged that the account executive had transferred money from his account to a third party account without his consent. Cheung also alleged that his signature was forged on the fund withdrawal slips. The SFC discovered that, prior to Cheung's complaint, the account executive's mother had initiated civil proceedings against Cheung. Since 1999, Cheung had consented to the account executive's and his mother's use of Cheung's account to trade in securities. In August 1999, the account executive wanted to transfer \$1.6 million out of the account back to his mother. However, Cheung withdrew the money for himself. Cheung refused to repay the \$1.6 million and the civil proceedings began. The Court of First Instance ruled in favour of the account executive and his mother. Cheung's financial integrity, solvency and dishonesty has led to the SFC's conclusion that Cheung is not fit and proper to remain within or return to the industry.

(Press release issued on 10 November 2004)

The SFC needs to ensure that investors are protected from persons who are not fit and proper to deal with investors and their money. The SFC will not tolerate any form of dishonesty or misappropriation. The SFC considers that a life ban is the appropriate punishment in serious circumstances such as these.

Late reporting of FRR breach attracts fine and reprimand

BNP Paribas Peregrine Securities Ltd was reprimanded and fined \$375,000 for failing to maintain the required liquid capital for five consecutive days and also for reporting to the SFC the Financial Resources Rules (FRR) breaches three and a half days late. BNP Paribas, as a global co-ordinator of an IPO, took out a short term loan to finance its clients' applications. The applications exceeded an earlier estimate which caused the resulting loan to give rise to a liquid capital shortfall, which breached

the FRR. The SFC, in considering the fine, took into account that the FRR breach was unintentional and of short duration. However, even though BNP Paribas co-operated with the SFC, the delay was not intentional and no loss was suffered by clients, the public or the market, the SFC considered the delay in reporting unacceptable.

(Press release issued on 10 November 2004)

Timely reporting of FRR breaches enables the SFC to monitor and assess whether there are possible potential risks to investors and market users. Reporting is a simple task. The SFC encourages reporting at the earliest opportunity via telephone, which must then be followed-up with a formal written notification as soon as reasonably practicable as required by law.

Reprimand and fine for publishing false and misleading advertisements

Bright Smart Securities International (HK) Ltd and its managing director, Mr Yip Mow Lum Peter were reprimanded and fined \$50,000 each for publishing false and misleading advertisements despite repeated warning by the Hong Kong Securities Clearing Company Ltd (HKSCC) and the SFC. Bright Smart advertised 13 statements in two newspapers which falsely and misleadingly stated that Bright Smart's clients could make direct payment to CCASS under HKSCC for settlement. These statements were drafted by Yip. Bright Smart and Yip were informed by the SFC and HKSCC that those statements were incorrect. However, Yip continued to cause Bright Smart to publish the statements.

(Press release issued on 25 November 2004)

Despite warnings by regulators, the false and misleading statements still continued to be published. Ignoring such warnings is a flagrant disregard of the law and regulations, which will not be condoned by the SFC. Investors need to be protected from misleading and incorrect information in order to avoid possible losses and damages.

SFC settles disciplinary action with licensee

Mr Wong Seng In Victor, a licensed representative of TIS Securities (HK) Ltd, agreed to pay \$40,000 in settlement of a disciplinary action. Wong had (i) failed to check whether a former dealer's representative of another brokerage was authorised to operate a third party account with TIS before accepting instructions; (ii) failed to question his instructions to record transactions that had never taken place with TIS; (iii) allowed him to conduct trading at TIS without prior written consent from his employer; and (iv) failed to check if he had sufficient shares to settle his sale orders. The SFC considered that Wong admitted his misconduct, was contrite and that settlement was in the public interest. The payment shall be paid into the Government revenue.

(Press release issued on 8 November 2004)

The SFC decides whether to settle its disciplinary action on a case-by-case basis but only if it determines that the settlement is in the public interest. The SFC's acceptance that a licensee is unlikely to offend again and the nature of the licensee's conduct would be considered in deciding to settle.

Unlicensed dealing activities targeted

President Securities (Hong Kong) Ltd was reprimanded and its responsible officer and managing director, Mr Ma Chun Wah suspended for three months. A former dealer's representative, Ms Wong Lai Sze, engaged in unlicensed dealing activities with President's and Ma's knowledge. Furthermore, Ma was aware of Wong's sale orders and that Wong had insufficient shares to settle the sale orders, but Ma did not take steps to warn Wong to check the sufficiency of clients' shares. The SFC accepted their guilty plea to aiding and abetting Wong's unlicensed dealings and the remedial action they had taken to improve President's internal controls as mitigation factors.

(Press release issued on 30 November 2004)

Only licensed persons should handle clients' money. Companies should closely monitor their staff to ensure that unlicensed staff do not engage in licensed activities.



SFC Enforcement Reporter

A monthly summary of SFC enforcement action

December 2004

Be alert to suspicious transactions and know your clients

GC Capital was reprimanded as part of a settlement, on a no admission of liability basis, between the SFC, GC Capital (Asia) Ltd and its responsible officer and dealing director at the relevant time, Mr Lau Wang Yip Derrick. GC Capital was one of the underwriters to the listing of shares of Codebank Ltd in December 2001. GC Capital, Codebank and the lead manager varied the payment arrangements and the placees were instructed to pay the subscription proceeds to Codebank directly instead of to GC Capital. This arrangement did not allow GC Capital to discharge its duty to identify potential suspicious transactions under the Money Laundering Guidance Note issued by the SFC. Furthermore, GC Capital failed to know its client by allowing a placee to subscribe for \$10 million worth of Codebank shares whilst his income was about \$5,000 per month. Lau agreed to refrain from acting as a responsible officer for one month.

(Press release issued on 15 November 2004)

Implementation of procedures to monitor and prevent suspicious transactions is very important. Knowing your clients is an integral part of anti-money laundering due diligence. Companies should put in place sufficient internal control procedures to guard against facilitating illegal or improper conduct.

Close monitoring of internal controls

The SFC reprimanded Chan Ngok Ming Securities Ltd (CNMSL) for its internal control failings following an inspection which revealed numerous errors in CNMSL's accounting and settlement records. The internal control weaknesses were mostly related to the outdated and defective computer system and lack of supervision of staff. CNMSL's clients have not suffered financial loss and CNMSL has implemented rectification measures, e.g. putting in place a new computer system and appointing new supervisory staff. Had such remedial measures not been taken, a heavier penalty would have been imposed on CNMSL.

(Press release issued on 3 November 2004)

Companies should ensure that proper internal control procedures are in place and that there is close monitoring and supervision of staff to protect client assets and guard against losses or misconduct. As we have repeatedly warned, the SFC will have no hesitation in imposing heavier penalties for poor internal controls in appropriate circumstances in order to protect the investing public.

General Enforcement Statistics

Since 1 April 2004, the SFC has successfully prosecuted 60 entities. Summonses were withdrawn against eight entities resulting in their acquittals and a further five entities were acquitted after trial. In the same period, the SFC disciplined 44 licensees for various regulatory breaches and entered into settlements with voluntary payments with three licensees. The SFC also took disciplinary actions against 12 licensees which were eventually concluded with no formal sanction imposed, although 10 of them received private warnings. Disciplinary proceedings were also commenced and discontinued against four deemed licensees who left their firms before the conclusion of the action. (A person's deemed licence is effectively revoked on the day the person leaves his or her firm. Under the transitional arrangements, which came into force on 1 April 2003, the SFC has no jurisdiction to continue with disciplinary proceedings against such a person. However, the person would be required to answer the SFC's concerns about him or her if he or she re-applies for a licence or other regulatory approval.)

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.