



# SFC Enforcement Reporter

A monthly summary of SFC enforcement action

January 2004

## Highlights

In December 2003 the SFC:

- had five people convicted of breaking securities laws
- disciplined seven intermediaries

## Prosecution

### Unlicensed dealers and people who assist them will be punished alike

Mr Moy Kwok Chiu Theodore was convicted of acting as an investment representative of TG Holborn (HK) Ltd without being licensed. Moy promoted certain investment products concerning securities to two clients in mid 2001. After the clients subscribed to these products, TG Holborn remunerated Moy. Moy was fined \$1,000 and ordered to pay costs of \$3,000 to the SFC.

(Press release issued on 4 December 2003)

Mr Lee Kam Wa Patrick, a former licensed representative of Peace Town Forex Ltd, was convicted of aiding and abetting an unlicensed person to solicit clients to open accounts for trading leveraged foreign exchange contracts between December 2000 and November 2001. He was sentenced to 80 hours of community service.

(Press release issued on 29 December 2003 and 12 January 2004)

*It is illegal to conduct regulated activities unless a person is licensed by the SFC. It is also an offence to aid or abet others to conduct regulated activities without a licence. Investors who deal with unlicensed people risk possible financial loss. In addition to criminal conviction, licensed persons who engage in or aid or abet others' unlicensed activities should expect a lengthy suspension and/or, if their actions occur after 1 April 2003, disciplinary fines.*

### Cold calls can lead to criminal convictions

Mr Li Man Hin, Ms Yau Oi Yi and Mr Lui Kim Ho were convicted of making unsolicited calls inducing others to enter into agreements for trading in commodity contracts on commodities exchanges in Japan and the US. Li, Yau and Lui were fined \$4,000, \$2,500 and \$2,500 respectively, and ordered to pay \$2,500 each to the SFC as costs.

(Press release issued on 16 December 2003)

*Cold calling means calling a person without his express invitation. It should be noted that, the mere provision by a person of his contact details, including an address, telephone or fax number, or email address, does not by itself constitute an express invitation. Under section 174 of the Securities and Futures Ordinance (SFO), making or inducing another person to enter into an agreement for selling and buying securities, futures or leveraged foreign exchange contracts during cold calls is prohibited, unless the person receiving the call is an existing client or belongs to other classes of people expressly permitted by the SFO.*

## Discipline

### Ensure FRR returns are true and accurate or face suspension

Mr Lee Po Wing, a licensed representative, has been suspended for two months from 9 December 2003 to 8 February 2004. A former dealing director of Prosperous Securities Ltd, Lee certified that the FRR returns filed by Prosperous were true and accurate. In fact, the FRR returns were false as they did not disclose that Prosperous failed to comply with the liquid capital requirements from July 2000 to June 2002 by having a capital deficiency of as high as \$20 million.

(Press release issued on 9 December 2003)



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*Failure to comply with the liquid capital requirements under the Financial Resources Rules may seriously jeopardise client interests, and as such, licensees which fail to disclose their true liquid capital position to the SFC will be severely punished, both by criminal conviction and disciplinary penalties. In particular, responsible officers, as management of brokerage firms, have the ultimate responsibility to ensure that the FRR returns filed are true and accurate, failing which a suspension or even harsher action will likely follow.*

## Internal controls failures may lead to suspension of licence

Concord Capital Securities Ltd was reprimanded for various internal control weaknesses including: (i) failure to implement procedures to deter short selling activities, (ii) failure to put in place a written staff dealing policy and operations manual, (iii) failure to monitor trading in client, staff and related accounts properly, (iv) inadequate supervision of staff dealing activities, and (v) failure to maintain proper audit trails.

(Press release issued on 9 December 2003)

The licence of Ms Wong Wai King Mona, a responsible officer of Concord Capital Securities Ltd, has been suspended for three months from 6 December 2003 to 5 March 2004. Wong, as a responsible officer of Concord, failed to supervise staff under her direct control and was directly responsible for the internal control failings at Concord, as summarised above. In addition, she also negligently provided wrong information to the SFC about Concord's telephone records and instructed a licensed representative at Concord to request a client to backdate an authorisation letter, which had the potential for jeopardising SFC investigation.

On 10 December 2003, Wong applied to the Securities and Futures Appeals Tribunal (SFAT) for an extension of time to file a notice to review SFC's decision to suspend her, after the 21-day time limit expired on 6 December 2003. On 16 December 2003 the SFAT dismissed Wong's application. The SFAT did not consider the grounds submitted by Wong were "good cause" for granting a time extension under section 217(5) of the SFO, and decided that there should be a degree of certainty for the commencement of penalties imposed by the SFC.

(Press release issued on 17 December 2003)

Bokhary Securities Ltd and its responsible officer Syed Bagh Ali Shah Bokhary were reprimanded for Bokhary Securities' failure to keep adequate dealing records and failure to supervise and monitor the work of its employees properly.

(Press release issued on 29 December 2003)

*Internal control weaknesses are often the catalyst for other kinds of misconduct like unregistered dealing, misappropriation of clients' assets and unauthorised trading, etc. The SFC views internal control weaknesses seriously and will punish them, particularly if clients or market integrity are actually or potentially harmed. If such failings occur, the SFC will consider fining the firm and management concerned. The SFC may also consider suspending the licence of responsible managers, as can be seen from the suspension of Wong's licence.*

*Licensed persons who want to appeal an SFC disciplinary decision are best advised to do so within the statutory 21-day time limit for lodging an application for review with the SFAT. Any out-of-time application will be dismissed by the SFAT, unless "good cause" for the late application can be shown.*

## Distortion of price mechanism is unacceptable

Ms Ho Yuk Ching Kitty, an employee of UOB Kay Hian (Hong Kong) Ltd, was reprimanded for distorting the price mechanism of a stock and failing to keep records of orders. The HKEx trading rules required that ask or bid prices must be within eight spreads of the prevailing orders. To circumvent the rules, Ho placed bid orders in single board lots of 2,000 shares of a listed company at a price eight spreads below the then prevailing price, and then placed a larger size bid order four further spreads below. She immediately cancelled the single board lot orders afterwards, but as a result the bid price had been depressed by 12 spreads. She repeated this pattern several times, and in one instance, the bid price was depressed by 16 spreads.

(Press release issued on 17 December 2003)

*It is important for Hong Kong, as an international financial centre, to have a free and fair securities market. The price of a share must be determined by free market forces, rather than by artificial means. The SFC will continue to punish severely those people who use manipulative methods to try to distort the price mechanism of listed securities. Ho's acts occurred on 26 July 2002, a day of highly unusual market conditions, and in circumstances that suggested she might not have placed the orders with the intention to manipulate the price.*



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*If someone did the same on a day when market conditions were more stable, their conduct is more likely to be regarded as intended to be manipulative and so would be punished much more severely.*

## Licensed representative suspended for not knowing her client

Ms Wong Chak Lau Kate Edith, a former securities dealer's representative of Worldsec International Ltd, was suspended for one week from 20 December 2003 to 26 December 2003. The SFC found that Wong had: (i) improperly handled the opening of a client's account, (ii) failed to inquire into questionable trades placed in the account by a third party, (iii) failed to obtain written authorisation from the client for the third party to operate the account, (iv) exposed his employer to unnecessary financial risks. The third party in question was Mr Wong Wing Keung, Raymond, who was convicted of conspiracy to defraud the public by market manipulation on 22 April 2003.

Wong Chak Lau Kate Edith appealed to the Securities and Futures Appeals Panel (SFAP) against SFC's decision to suspend her for one month. The SFAP confirmed that Wong should be suspended, as she did not attempt to find out sufficient information about the client and the third party before and after the opening of the securities trading account and therefore breached the "know your clients" rule in the SFC Code of Conduct. But the SFAP reduced the penalty ascribing some of the faults to others and Wong having, in part, acted on their instructions.

(Press release issued on 22 December 2003)

*Licensed persons must "know their clients". This includes knowing a client's true identity, financial situation, investment experience and investment objectives. However, SFC licensees should look beyond these. Many money launderers and market manipulators may use securities accounts for illegal purposes, and licensees have an important duty to help maintain market integrity by reporting possible illegal activities to their employers and taking appropriate action. Therefore, any licensee who fails to inquire into or turns a blind eye to possible illegal transactions of clients should expect a suspension or disciplinary fines. In particular, it should be noted that the original one month suspension the SFC imposed on Wong before the SFAP's decision to lower it, was before the SFC announced last year it would raise penalties. A person engaging in similar behaviour can now expect much harsher decisions from the SFC.*

## General Enforcement Statistics

**Since 1 April 2003, the SFC has successfully prosecuted 47 entities and disciplined 65 licensees for various regulatory breaches.**

*If you want to know more, the SFC's press releases are available at [www.hksfc.org.hk](http://www.hksfc.org.hk).*

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**CONTACT US** – Media Enquiry: (852) 2840 9287 / Investor Hotline: (852) 2840 9333 / Email: [enquiry@hksfc.org.hk](mailto:enquiry@hksfc.org.hk)