SFC Enforcement Reporter

A monthly summary of SFC enforcement action

July 2003

Highlights

In June the SFC:
- **had five people convicted for breaking securities laws**
- **disciplined one intermediary**

Prosecution

Market manipulation is a serious offence, says Magistrate

Mr Choi Kam Tui was sentenced to four months' imprisonment, suspended for two years, and was ordered to pay the investigation costs. Choi pleaded guilty to intentionally creating a false market in the shares of Climax International Company Limited between July and September 2001, in breach of the **Securities Ordinance**. Shortly before market close on seven days during the period, Choi placed single-board-lot bid orders at prices higher than the then prevailing market price without waiting for any response from the market. As a result, the closing price of Climax was pushed up. Choi wanted to sell his Climax shares at higher prices. The magistrate in passing the sentence commented that the offence was serious.

(Press release issued on 10 June 2003)

Since April this year, the SFC has successfully prosecuted four people for market manipulation.

Put simply, convicted market manipulators can expect custodial sentences. The Magistrate in this case relied on the recent endorsement of immediate custodial sentences for two manipulators by the High Court (see the November 2002 issue of SFC Enforcement Reporter). The penalties will be even tougher under the Securities and Futures Ordinance (SFO) for market misconduct that takes place after 1 April 2003.

SFC continues to prosecute non-disclosure of interests

Ms Chau King Nui, Helen, a director of Mainland Headwear Holdings Ltd and Mr Lai Ping Keung, a former non-executive director of Welback Holdings Limited, pleaded guilty to failing to report their trades on time under the **Securities (Disclosure of Interests) Ordinance** (SDIO). Both were fined and ordered to pay the investigation costs.

(Press releases issued on 3 and 24 June 2003 respectively)

Since April this year, the SFC has successfully prosecuted three people for breaches of listed company securities disclosure laws.

The SFC reminds all market participants to beware of the changes under Part XV of the SFO, which replaces the SDIO. As announced in a press release dated 30 June 2003 upon the end of the initial three months of SFO implementation, the SFC will now enforce the disclosure laws set out in Part XV more strictly. SFC's prosecution efforts will focus on, in order of priority:
- *non-disclosure of interests*
- *false or misleading disclosure and*
- *late disclosure (late disclosure could amount to non-disclosure in many instances)*

An Outline of Part XV can be found under the section of "Bills, Legislation and Codes – Securities and Futures Ordinance" on our website (www.hksfc.org.hk).

Ensure your intermediaries are licensed

Mr Ng Man Wai, assisted by Mr Chan Kwok Ho Raymond, issued newspaper ads to offer advice on trading futures contracts. Neither of them is licensed by the SFC. The ads were not authorised by the SFC either. Ng gave advice to investors who responded to the ads. Both pleaded guilty to contravention of the **Protection of Investors Ordinance** (PIO), and Ng also pleaded guilty to a breach of the **Commodities Trading Ordinance** (CTO). Both were fined and ordered to pay costs.

(Press release issued on 3 June 2003)

Since April this year, the SFC has successfully prosecuted four people for offences under the PIO & and one person for CTO breaches.

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Investors risk substantial losses if they deal with unlicensed people. Investors can check the status of all licensees on our website (www.hksfc.org.hk). Investors are advised to stay away from unlicensed intermediaries, as well as scams that are particularly prevalent on the Internet that may look legitimate but are usually too good to be true and offered by unlicensed swindlers. If you have doubts about the legality or propriety of any investment opportunities, you may contact our Investor Hotline at 2840 9333.

Discipline

Analysts must handle non-public price sensitive information properly

Ms Ting Chuk Kwan, a licensed representative of Goldman Sachs (Asia) LLC, received non-public price sensitive information from the management of New World Development Company Limited (NWD) prior to the impending release of the company's interim results, guiding her to halve her profit estimate for the company. Ting disclosed the information to Goldman Sachs' sales and trading staff in an internal broadcast on the same day, before the information became public. This unfair selective disclosure of price sensitive information resulted in Ting being publicly reprimanded.

(Press release issued on 17 June 2003)

Ting's selective disclosure of price sensitive information that NWD's profit was being halved was improper. However, that she attributed that information to NWD's management aggravates the matter as it increased the materiality of the information as it put it beyond doubt for recipients of the information that it was non-public. Any disclosure of non-public price sensitive information on a selective basis, including disclosure to clients of the firm or even by publication on the firm's website, is unacceptable. All analysts involved in any form of selective disclosure of price sensitive information are liable to disciplinary action and possible civil or criminal insider dealing proceedings. The only acceptable means for disclosure of material non-public price sensitive information about a listed company is for the company itself to disclose the information to the investing public as a whole in accordance with the Listing Rules.

In future, analysts, whether licensed or not, should be under no illusion that they can disclose material non-public information selectively.

If an analyst receives non-public price sensitive information, the only safe course is not to disclose it. If the analyst already has a research opinion out that is rendered inaccurate by the new information, they should withdraw the report without comment. The analyst should bring their receipt of the information to the attention of their senior management and/or compliance staff and may wish to recommend via their senior management or compliance staff that the company discloses the information in a stock exchange announcement. They may also wish to bring the matter to the attention of the HKEx Listing Division and SFC in the same manner.

We recommend HKEx's Guide on Disclosure of Price-Sensitive Information available on HKEx's website (www.hkex.com.hk) for further guidance and are further liaising with the industry.

Disciplinary Focus

As an integral part of the overall enforcement priorities, the SFC has refined its disciplinary priorities. This is to reflect the coming into force of the SFO and the new sanctions available to the SFC, changing economic conditions, trends in investor participation and public concerns. A two-focus approach will be taken: (a) a focus on industry sectors, and (b) a focus on types of conduct.

On industry sectors, whilst the SFC will continue to closely examine brokerage misconduct that puts investors at risk, the SFC will take a closer look at other market sectors, including banks' capital markets departments, corporate finance advisers, fund managers and investment advisers. The refocus reflects the SFC's new jurisdiction, market concerns that have been recently expressed as well as a changing business environment.

The SFC will also refocus its disciplinary resources on the most serious types of misconduct: dishonesty, conflicts of interest and serious internal control and management failings that expose investors to actual or possible loss. And we will be taking harsher action against these key failings.

(Press release issued on 18 June 2003)

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General Enforcement Statistics

Since 1 April 2003, the SFC has successfully prosecuted 16 entities and disciplined 19 licensees for various regulatory breaches.

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

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