

Highlights

In June, the SFC:

- successfully prosecuted two companies and five people
- disciplined three licensees

Prosecution

User of internet trading account convicted of market manipulation

Mr Chung Man Keung pleaded guilty to intentionally creating a false market in the shares of MUI Hong Kong Limited (MUI) (now renamed Morning Star Resources Limited). The SFC found that, on 10 days between 9 January 2003 and 21 May 2003, Chung had placed, through his internet securities trading account, a series of single-board-lot orders to buy 2,000 shares of MUI shortly before market close at prices higher than the prevailing market price. As a result of his orders, the closing prices of MUI shares were pushed up to 8% to 60% higher than the previous closing prices. Chung was sentenced to two months' imprisonment suspended for two years plus a fine. He was also ordered to pay investigation costs to the SFC.

(Press release issued on 9 June 2004)

Market manipulation is a serious crime which results in commensurate penalties. The maximum penalties for market manipulation have become more severe under the SFO.

The SFC wishes to remind users of internet trading accounts that orders placed through internet trading accounts are placed directly to the market and therefore they must ensure that their orders comply with all the regulatory requirements. People who use their internet trading accounts to commit market misconduct will be prosecuted or referred to the Market Misconduct Tribunal.

Financial Resources Rules (FRR) breaches will be prosecuted and disciplined

Upbest Investment Company and its financial controller, Mr Choy Ye King Andy, pleaded guilty to providing false and misleading information to the SFC and failing to notify the SFC of Upbest's liquid capital deficiencies. Choy included undeposited cheques received from Upbest's related entities in the calculation of Upbest's liquid capital in the FRR returns. A few days after these cheques were deposited, similar amounts of money were withdrawn from Upbest in favour of its related entities. As a result, the liquid capital position of Upbest was inflated by \$10 million to \$14 million. Upbest and Choy were fined and ordered to pay investigation costs to the SFC.

(Press release issued on 14 June 2004)

Evergreen Securities Limited and its director and responsible officer, Mr Cheng Hok Wai, pleaded guilty to breaching the FRR. On a number of occasions, Cheng instructed that the idle funds of Evergreen be transferred to another company under his control. As a result of these fund transfers, Evergreen's liquid capital fell below the minimum capital required by FRR. Evergreen failed to notify the SFC of these liquid capital deficiencies as soon as reasonably practicable. Evergreen and Cheng were fined and ordered to pay investigation costs to the SFC.

(Press release issued on 16 June 2004)

For investor protection, it is of utmost importance for brokers to comply with FRR requirements. Brokers which have liquid capital deficiencies must report these to the SFC immediately. It has been common for some brokers to fake FRR compliance by repeatedly transferring money from related entities to the brokers temporarily and withdrawing the money soon afterwards. Licensees involved in these window-dressing schemes will be prosecuted. The SFC also reserves the right to take severe disciplinary actions against them. We have warned intermediaries repeatedly about this and will take harsher action in future.



SFC Enforcement Reporter

A monthly summary of SFC enforcement action

證監會 July 2004

Disclosure of interests must be on time

Mr Louis Rajkumar Page, a director of Television Broadcasts Limited (TVB), pleaded guilty to failing to notify Hong Kong Exchanges and Clearing and TVB regarding his disposal of 100,000 TVB shares on time. Page's disclosure was late by over four months. Page was fined and ordered to pay investigation costs to the SFC.

(Press release issued on 23 June 2004)

Mr Leung Kin Man Kenny pleaded guilty to failing to make timely initial disclosure to both First Asia Capital Investment Limited and Global Link Communications Holdings Limited of the 7.56% personal interests he owned in each of these companies. His disclosure to First Asia and Global Link were late by 13 months and seven months respectively. Leung was fined and ordered to pay investigation costs to the SFC.

(Press release issued on 23 June 2004)

Substantial shareholders are reminded that the disclosure threshold for notifiable securities interests is 5% and the reporting timeframe is three business days. People who are late in reporting or fail to disclose face possible criminal prosecution.

Discipline

SFAT confirms SFC's ability to increase penalties to suit market conditions

Mr Kwok Wai Shun, a former securities dealer's representative of Ong Asia Securities (HK) Limited, was suspended for three months. At the request of a client, Kwok allowed a third party to operate the account of this client. But Kwok failed to obtain written authorisation from his client and failed to take reasonable steps to verify the true identity of the third party. Kwok also did not disclose this arrangement to Ong Asia.

Kwok had appealed to the Securities and Futures Appeals Tribunal (SFAT) and argued that three months' suspension was too harsh because the penalties for previous similar cases were lighter. The SFC accepted that the penalties in previous cases were lighter but the misconduct in question was prevalent in the market so the SFC had to impose a harsher penalty to deter the misconduct. The SFAT confirmed that the SFC had the power to increase a disciplinary penalty if the prevailing market condition so required.

(Press releases issued on 7 & 14 June 2004)

The SFC is entrusted with the responsibility to set and maintain standards for the securities and futures profession and to gauge the effect of misconduct on the profession and the investing public from time to time. While the SFC pays regard to previous similar cases, it is not "hamstrung" by precedents and is entitled to increase penalties if market circumstances require.

Responsible officers must act responsibly

Ms Chan Sin Yu Millie, of Selina & Co Limited (S&C), was suspended for 10 months for acting as a responsible officer in name only and failing to fulfil her supervisory responsibilities. Chan was the sole responsible officer of S&C and as such she was legally required to take responsibility for supervising S&C. However, she spent most of her time as a floor trader on HKEx's trading floor. She failed to carry out any supervisory functions even when she knew that other directors of S&C would not actively supervise S&C. Chan's abdication of her supervisory responsibilities facilitated the alleged misappropriation of clients' assets by a former settlement clerk of S&C as no one effectively supervised staff in the office. (The SFC also severely reprimanded S&C and reprimanded one of its directors on 20 May 2004 for internal control failures and failure to supervise respectively. Please refer to the June issue of SFC Enforcement Reporter for details.)

(Press release issued on 3 June 2004)



SFC Enforcement Reporter

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證監會 July 2004

Responsible officers are cornerstones of brokerage firms and they are required by law to play key supervisory roles. Once appointed as responsible officers, they must supervise staff diligently and cannot excuse themselves by saying that they are appointed in name only. Responsible officers who fail to perform their supervisory role will be disciplined. A firm should have at least one responsible officer performing supervisory functions at all times. If a person is the only responsible officer, we do not accept that supervision is adequate if that person spends trading hours on the exchange floor.

Don't assist unlicensed dealers

Ms Li Fung Kuen Maggy, a licensed representative of Selina & Co Limited (S&C), was suspended for six months for falsely signing as a witness and facilitating unlicensed dealing by the former settlement clerk referred to above. The settlement clerk solicited clients for S&C, handled account opening procedures and received dealing orders from clients. Li signed as a witness on the account opening forms of these clients when she had never met the clients. Li also facilitated the unlicensed dealing by the settlement clerk by allowing the clerk to book these client accounts under Li's name as the account executive for these accounts. Li received commissions generated by the trading in these accounts.

(Press release issued on 3 June 2004)

Only licensed people are allowed by law to deal in securities on behalf of others. The SFC licensing regime is to ensure that only fit and proper people can handle others' securities investments, so that the investing public can feel safe about their assets entrusted to SFC licensees. Unlicensed dealing is a criminal offence and any licensed person who facilitates others' unlicensed dealing activities should expect a lengthy suspension and may face criminal prosecution too. The SFC wishes to remind brokerage firms to separate the settlement and dealing functions of their staff, as they are incompatible functions and pose opportunities for misappropriation.

General Enforcement Statistics

Since 1 April 2004, the SFC has successfully prosecuted 18 entities. The SFC withdrew all summonses issued against three persons and there have been five acquittals. In the same period, the SFC disciplined 15 licensees for various regulatory breaches and entered into one settlement with no admission of liability. The SFC also took disciplinary actions against five licensees which were eventually concluded with no formal sanction imposed, although four of them received private warnings. Disciplinary proceedings were also commenced and discontinued against one deemed licensee who left his firm 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.hksfc.org.hk.

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