SFC Enforcement Reporter

A monthly summary of SFC enforcement action

June 2003

Highlights

In May:

- **seven persons and one firm were convicted for breaking the securities law**
- **seven intermediaries were disciplined for various regulatory breaches**

Prosecution

Gay Giano market manipulators jailed

Police and SFC co-operation in the investigation into suspected market manipulation of the shares of Gay Giano International Group Ltd resulted in the Police prosecution of Mr Cheung Sing Chi, the former chairman of Gay Giano, and his brother, Mr Cheung For Sang, a manager of the company, for conspiracy to defraud investors by market manipulation.

The prosecution used an SFC enforcement officer as an expert witness to establish the market manipulation of the Gay Giano shares. His evidence was crucial to the convictions. Cheung Sing Chi and Cheung For Sang were sentenced to jail for 16 months and 13 months respectively. Both were also disqualified from becoming directors under the Companies Ordinance and prohibited from involvement in the management of any company for three years. In connection with the same matter, Mr Lee Sing Wai Stephen and Mr Wong Wing Keung Raymond were sentenced last year to nine months' jail (suspended for three years) and a 240-hour community service order, respectively.

(Press release issued on 12 May 2003)

This case has shown that the courts will not hesitate to impose lengthy jail terms on market manipulators. It also shows the importance of the close co-operation between the SFC and the Police over market crime. Under the relevant law at the time, the Securities Ordinance, the maximum prison sentence was two years, so the sentences imposed on the Cheungs were relatively tough. Under the Securities and Futures Ordinance (SFO), market manipulators can expect to face jail terms of up to 10 years and be fined a maximum of $10 million. The SFC's new disciplinary powers and the Market Misconduct Tribunal give us more flexible means to combat market misconduct.

The harsher sentences received by the Cheungs in comparison to those received by Lee and Wong distinguish the protagonists of the market manipulation scheme from the accomplices. The case should highlight to listed company officers and shareholders the risks of market manipulation and so encourage better corporate governance.

More convictions against market manipulators

The SFC successfully prosecuted Mr Wong Chi Kit, Mr Chan Yuk Fei and Mr Poon Lak To, Joseph, for intentionally creating false markets in breach of the Securities Ordinance.

- Wong placed a series of single board lot orders for Yeebo (International Holdings) Ltd's shares through his Internet securities trading account from 12 February 2001 to 9 March 2001. These orders accounted for 61% of all orders placed in the market and affected the market price of the shares. Wong pleaded guilty and was sentenced to four months' jail, suspended for two years.

- Chan, an ex-floor trader of Sun Growth Securities Ltd, pushed up the closing share price of China Development Corporation Ltd by placing a number of single board lot bid orders at prices up to 23% higher than the then prevailing market price shortly before the close of the market from 2 January 2002 and 7 March 2002. Chan pleaded guilty and was sentenced to three months' jail, suspended for 18 months. As Chan is an SFC licensee, disciplinary action will likely follow.

- Poon pushed up the closing share price of Pioneer Global Group Ltd by placing a single board lot bid order at a price up to 18% higher than the then prevailing market price shortly before market close on three days. Poon pleaded guilty and was fined $50,000 and ordered to pay the SFC's costs.

(Press release issued on 20 May 2003)

Market manipulators should beware. The SFC views market manipulation extremely seriously as it undermines market integrity. Cracking down on these illegal activities is a priority for the SFC. Market manipulators will be prosecuted and those who are licensed will feel the full force of our disciplinary powers.

Disclose your interests on time or face prosecution

Ms Wong Li Chooi, a director of Fairyoung Holdings Ltd (renamed Dynamic Global Holdings Ltd) was convicted under the Securities (Disclosure of Interests) Ordinance (SDIO). Wong disposed of 45,076,827 Fairyoung shares on 31 January 2002 but did not notify the HKEx of the disposal until 19 February 2002, 15 days too late under the SDIO. Wong pleaded guilty and was fined $5,000 and ordered to pay the SFC's costs.

(Press release issued on 27 May 2003)

We wish to remind directors and chief executives who hold any securities interests in a listed company that they must disclose these interests and any changes to them to both their companies and the HKEx. Those who don't comply may face prosecution. The time provided for notification under the SFO is now three business days.

Conviction for failing to report liquid capital deficiencies

Tartan Securities (Asia) Ltd and its director, Mr Lim Boon Kick, pleaded guilty for failing to notify the SFC of its liquid capital deficiencies on 57 days under the Securities Ordinance. Each was fined $35,000 and ordered to pay the SFC's costs.

(Press release issued on 27 May 2003)

Licensed companies must notify the SFC immediately of any deficiency in their liquid capital or face prosecution and/or disciplinary proceedings.

Discipline

Suspension for front running

The SFC suspended the licence of Mr Kwok Wai Keung, a licensed representative of TIS Securities (HK) Ltd, for 12 months for front running. He took advantage of his knowledge of a client's intended purchase price and quantity for Hua Lien shares and carried out transactions for his own benefit ahead of his client's purchase orders. Kwok made $14,000 from his misconduct. He also traded in the client's account for his own benefit without his employer's knowledge and approval and without written authorisation from the client.

(Press release issued on 6 May 2003)

Front running is an unacceptable practice and a breach of fiduciary duty. Licensees engaging in such practices demonstrate a fundamental lack of integrity and a blatant disregard for market integrity and can expect to face a lengthy suspension period. If Kwok had made a greater profit, he would have been suspended for even longer.

Failure to act on possible illegal trades leads to suspension

The SFC suspended Ms Luk Sze Man Anne's licence for three months. Luk had allowed two clients' trading accounts to be operated by a third client when she did not know whether the first two clients had consented to the arrangement. Luk knew or should have known that the trades placed by the third client in these two accounts as well as his own account were possibly illegal or improper. Had Luk not co-operated with the SFC, her penalty would have been much stiffer.

(Press release issued on 5 May 2003)

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Allowing third parties to operate client accounts potentially facilitates market misconduct. Companies should be vigilant in guarding against such malpractices in their offices - otherwise they may also be subject to disciplinary sanctions. If a corporate officer fails to take reasonable measures to guard against such malpractices in the company, he may breach section 279 of the SFO and may be punished by the Market Misconduct Tribunal.

Licensees disciplined for exercising clients' rights without consent

The SFC reprimanded Cargary Securities Ltd (now known as CITIC Capital Securities Ltd) and suspended the licences of Mr Wong Cheuk Ming, its former managing director, and Mr Hung Chi Ming, a responsible officer, for four months and two months respectively for exercising their clients' rights to acquire shares in relation to the rights issues of two stocks without clients' consent. Some affected clients had indicated to Cargary that they would not exercise their rights, while others could not be contacted. Nevertheless, Cargary as the custodian of its clients' shares, proceeded to acquire the shares, then sold them and had initially retained the profits for its own account. Cargary, Wong and Hung did not realise their actions were improper. When this was pointed out to them by Cargary's lawyers and auditors, they reported it to the SFC, put money aside for restitution and upgraded their internal controls.

(Press release issued on 15 May 2003)

Exercising clients' rights without their express consent is an abuse of client trust and may result in conflicts of interest. The SFC expects brokerages to devote resources to train their management and staff to recognise and comply with regulatory requirements. Failure to do so is a false economy and may result in irreparable harm to the company's reputation and enforcement action. Had Cargary acted intentionally and not rectified their actions promptly when advised they were wrong, the SFC would have imposed harsher penalties.

Suspension for improper handling of client accounts

The SFC suspended the licence of Ms Kwan Wai Fong, a dealer's representative, for four weeks. Kwan conducted discretionary trading for her clients in breach of her then employer's policy. She also failed to take reasonable steps to ascertain the identity of a client and the client's financial standing and investment objectives. She further accepted orders from a third party without confirming with the client that the third party had proper authority or ensuring the client had understood the potential risks of trading in derivative warrants and possessed sufficient financial resources. At the time of the misconduct, Kwan was a dealer's representative with HT Securities Ltd and HT Futures Ltd.

(Press release issued on 5 May 2003)

The SFC views seriously the flouting by licensees of regulatory requirements and their employers' company policy, and calls into question the licensees' integrity and fitness and properness to remain licensed.

Reprimand for allowing a third party to operate client accounts without proper inquiry as to his authority to do so

Mr Tam Chi Shing, a licensed representative of South China Securities Ltd and South China Commodities Ltd, was reprimanded for allowing three of his client accounts to be operated by Mr Leung Cheuk Ho, a third party without inquiring whether Leung was properly authorised to do so. He also failed to report Leung's activities to South China although he knew Leung was employed as a licensed representative with another brokerage firm resulting in South China's failure to obtain a written consent from Leung's employer. Tam would have received a harsher penalty had he not already been suspended by South China for one month for his failings.

(Press release issued on 22 May 2003)

Executing trades for the employee of another licensed firm without that firm's consent and permitting the employee to operate another client's account without proper authorisation casts grave doubts on a licensed person's honesty. Such practices will not be tolerated and will be punished.

General Enforcement Statistics

Since April 2003, the SFC has successfully prosecuted 11 entities and disciplined 18 licensees for various regulatory breaches.

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

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