

Highlights

In February the SFC:

- saw three people convicted
- disciplined four licensees

Prosecution

Handle clients' securities with care

Mr Tong On Jimmy, a responsible officer and the sole proprietor of Chung Tak & Co, transferred clients' shares to obtain an overdraft facility from a bank without clients' knowledge or prior approval. Tong pleaded guilty to breaching sections 81(4) and 81(9) of the **Securities Ordinance**. He was fined and ordered to pay the SFC's investigation costs.

(Press release issued on 5 February 2004)

Using cash clients' securities as collateral breaches the trust reposed in the brokers, as clients' interests are put at unnecessary risk. Using margin clients' securities for the purpose requires their prior written approval. Clients are entitled to trust that their brokers safeguard their securities properly. As a licensed person, Tong will also face disciplinary action.

Beware of unlicensed leveraged forex traders

Mr Lam Hon Wing, whilst unlicensed, recruited clients for unlicensed companies conducting leveraged forex trading business in breach of the **Leveraged Foreign Exchange Trading Ordinance**. Lam was fined and ordered to pay the SFC's investigation costs after pleading guilty.

(Press release issued on 27 February 2004)

Unlicensed leveraged forex trading is illegal. Do not deal with unlicensed traders. Whilst an SFC licence is not a guarantee, licensees are subject to ongoing supervision and, in particular, financial resources requirements. Trading with unlicensed traders is very risky as it is essentially an unregulated bet against the company the investor deals with.

Only licensees can perform regulated activities

In breach of the **Securities Ordinance**, Mr Chan Siu Tung, whilst unregistered, acted as a dealer's representative of Sinomax Securities Limited by taking and executing client orders and confirming concluded trades with clients. Chan was fined and ordered to pay the SFC's investigation costs after pleading guilty.

(Press release issued 4 February 2004)

Unlicensed individuals performing regulated activities and the firms condoning it demonstrate scant regard for client interests. Both prosecution and disciplinary actions may result.

Discipline

Own up to your errors and don't compound the problem with further misconduct

Mr Howel GR Thomas, a licensed representative of CLSA Futures Ltd, has had his licence suspended for three months. Upon receipt of a client's option order, instead of inputting it into the trading system, Thomas arranged an off-market cross trade with another client and confirmed with the clients the order had been executed. However, he was unable to register this cross trade into the trading system at the specified price because the market dropped sharply following the cross trade.



SFC Enforcement Reporter

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Thomas then: (a) executed a cross trade of the same order size, but at a lower price, and booked it to the client's account without informing the client; (b) on the following day, by conducting several trades through CLSA's house account, pushed up the options price, thereby allowing him to execute another cross trade that matched the specifications of the client's order on the previous day; and (c) then booked this trade to the client's account and cancelled the one executed at a lower price.

Thomas' actions created a false and misleading appearance as to the price of the options. Further, he failed to inform his client of the material discrepancies, as he ought to have done.

(Press release issued on 23 February 2004)

It is far better to admit your errors and remedy them by legal means than to conduct manipulative trades or engage in other misconduct, and then get exposed. Licensees must in any event keep clients accurately informed about activities in their accounts. Compounding problems by misleading clients and engaging in further misconduct casts doubt on a licensee's understanding of the standards of conduct the market demands of him.

Two Quest responsible officers reprimanded in connection with Merrill Lynch warrants investigation

Quest Stockbrokers (HK) Limited was one of the brokers used by two ex-employees of Merrill Lynch (Asia Pacific) Limited (MLAP) who conducted unauthorised and improper trading activities in warrants issued by Merrill Lynch International & Co CV, as reported in an SFC press release dated 10 April 2000. Mr Wee Teow Heng Albert and Mr Chiu Sin Ming Jason, both responsible officers of Quest, condoned the lack of proper trading records in respect of the heavy off-market trading activities in the derivative warrants. Further, Wee was or should have been aware that the trading activities were possibly manipulative, improper and/or illegal, but he turned a blind eye to it. Chiu also failed to verify that the two ex-employees were authorised to place orders for MLAP.

(Press release issued on 16 February 2004)

Poor audit trails not only hinder investigations by the SFC, but also reflect dimly on the firm's concern for market integrity, as the firm and the SFC would find it hard to follow up on any suspicious trading activities without proper trading records. Licensees must have effective systems in place to identify and investigate suspect trades. Also, this case again demonstrates the importance of obtaining proper written authorisations before accepting orders from third parties (including a corporation's employees) in all cases – accepting orders without them facilitates market manipulation and other misconduct, and is a common feature of those cases.

Never forget the basics: know your client

Mr Cheng Lit Ming, a licensed representative of DBS Vickers (Hong Kong) Limited, did not meet the clients before accepting applications to open accounts, nor did he follow the account opening procedures. Cheng was reprimanded.

(Press release issued on 6 February 2004)

Failing to observe the basic requirement to take reasonable steps to establish the full and true identity of one's clients is inexcusable. It facilitates market misconduct and risks serious financial consequences. Had harm resulted from this case, more serious disciplinary sanctions would have been warranted.

General Enforcement Statistics

Since 1 April 2003, the SFC has successfully prosecuted 53 entities. There have been no acquittals. In the same period, the SFC has disciplined 77 licensees for various regulatory breaches. The SFC has also taken disciplinary proceedings against 13 licensees which were eventually concluded with no formal sanction imposed. Disciplinary proceedings were also commenced and discontinued against a further eight deemed licensees who left their firms before the conclusion of the actions. A person's deemed licence is effectively revoked on the day he or she leaves the firm. Under the transitional arrangements, which came into force on 1 April 2003, the SFC has no jurisdiction to continue with disciplinary proceedings against these people. However, they would be required to answer the SFC's concerns about them if they re-apply 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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