

Highlights

In April, the SFC:

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

Prosecution

Four convicted of defrauding the SFC in Financial Resources Rules (FRR) returns

Pacific Pearl Securities Limited failed to notify the SFC of its liquid capital deficiencies. Worse still, to cover up the liquid capital deficiencies of Pacific Pearl Securities Limited and Pacific Pearl Futures Limited, Mr Cheng Kwok Cheung and Mr Yung Ki Cheong Philip used artificial fund transfers to inflate the two companies' bank balances, with which they then used to falsely represent to the SFC that they complied with the FRR requirements. They pleaded guilty to breaches of the Securities Ordinance and the Commodities Trading Ordinance. Both companies were fined, whereas Cheng was sentenced to three months' imprisonment and was the first person to be jailed for such an offence (Cheng was granted bail pending his appeal against sentence). Yung will be sentenced after a further hearing.

(Press releases issued on 2 April 2004 and 18 May 2004)

Compliance with the FRR is an important means through which investors are protected. Liquid capital deficiencies must be reported promptly. Upon discovery of suspicious fund transfer activities at a firm, the SFC will closely monitor it to ensure compliance. Licensees involved in schemes that fake FRR compliance will be severely punished.

SFC prosecutes inaccurate as well as late disclosures

Mr Deng Chi Yuan recklessly made a false statement to HKEx in purported performance of his duty as a substantial shareholder of Prime Investments Holdings Limited to disclose his dealings in the company's shares. Further, Deng's disclosure was late. Separately, Value Partners Limited failed to disclose its dealings in the shares in Bright Internal Group Limited. Deng and Value Partners Limited pleaded guilty to breaching the Securities (Disclosure of Interests) Ordinance. They were fined and ordered to pay the SFC's investigation costs.

(Press releases issued on 7 April 2004)

The market relies on the accuracy of disclosures made under the securities disclosure laws. All concerned should exercise due care to ensure the market is properly informed. SFC licensees in particular are reminded that they should have proper controls and procedures in place to ensure compliance with the disclosure obligations.

Don't provide margin facilities unless you are licensed

I & P Credit Limited lent to clients of I & P Securities Limited to finance their securities trading without being licensed to offer margin financing. I & P Credit's former director, Ms Wong Chung Ling, pleaded guilty to breaching the Securities Ordinance. She was fined and ordered to pay the SFC's investigation costs.

(Press release issued on 6 April 2004)

Securities margin financing is a regulated activity that requires a specific licence category. Anyone who carries on such a business without a "Type 8" licence may face prosecution and/or disciplinary action.

SFC prosecutes cold-caller

Mr Shiu Yau Wah made unsolicited calls inducing others to trade futures contracts on Japanese commodities exchanges. He pleaded guilty to breaching the Commodities Trading Ordinance, and was fined and ordered to pay the SFC's investigation costs.

(Press release issued on 21 April 2004)

Making unsolicited contact with people to entice them to trade, or "cold-calling", is, subject to some exceptions, illegal. The law is intended to stop firms pressuring people to trade financial products. We are especially concerned about firms trying to induce people to buy sophisticated, leveraged financial products that are unsuitable for them. We have encountered some recent examples involving people being enticed to buy Japanese futures contracts and leveraged foreign exchange. We advise firms to keep their sales force under close supervision and be careful that marketing doesn't cross the line into illegality.

Discipline

Poor internal controls may lead to fines

The SFC suspended Mr Or Wai Hung Kenneth's licence for six months. Prudence Securities Company Limited, of which Or was a responsible officer, was reprimanded. An SFC inquiry into trading malpractices of a former representative of Prudence revealed that the firm's internal controls were inadequate. Staff activities were not monitored, and there were no written company policies in place. In particular, settlement and dealing functions were not adequately segregated, and there were no systems to guard against short selling and unauthorised trading. As the sole dealing director at the time, Or bore direct responsibility for the internal control failings and for failing to supervise the former representative.

(Press release issued on 7 April 2004)

The SFC also reprimanded Tanrich Futures Limited and its responsible officer, Ms Lau Yim Ling. A Tanrich employee cold called a person three times and pestered the person into opening a futures account. Tanrich's internal policies on the definition of cold calling were inconsistent with the law. Further, Tanrich's lack of a proper monitoring system over its staff's activities led to unregistered staff engaging in dealing activities. Lau did not even know what constituted cold calling under the law, and therefore was deficient in an important area of her professional knowledge.

(Press releases issued on 21 April 2004)

Serious internal control failings will be treated more harshly under the SFO and may attract a fine. To avoid regulatory action and any reputational damage, step up your internal controls now. An essential part of good internal controls is proper supervision by senior staff. Senior staff found wanting in their supervisory skills and allowing staff under their charge to engage in illicit activities will be disciplined.

Even client's spouse cannot operate the account without written authorisation

Mr Wong Ping Chung Raymond's licence was suspended for four months. He helped his colleague's wife open a trading account without having met her, but he nevertheless signed as a witness on the account opening forms. Further, whilst the colleague was not registered, Wong allowed him to place orders on his wife's behalf without there being a written authorisation in place.

(Press release issued on 22 April 2004)

Signing as a witness without actually witnessing the client's signature not only is dishonest, but also opens up the possibility for further misconduct or crime, particularly where the representative accepts orders from persons other than the account holder. Imagine if your bank lets someone operate your bank account without written authority! Securities accounts are no different. Such behaviour evidences a reckless disregard for the law, market integrity and client interest and will meet with appropriate sanction.

Losing client agreements risks losing money

Core Pacific-Yamaichi International (HK) Limited was reprimanded for losing client agreements.

(Press release issued on 6 April 2004)



SFC Enforcement Reporter

A monthly summary of SFC enforcement action

證監會 May 2004

Failing in such basic duties as to keep secure client agreements can hardly be excused, and will attract a fine under the Securities and Futures Ordinance, not simply a reprimand.

General Enforcement Statistics

For the first month of the financial year 2004-2005, the SFC has successfully prosecuted eight entities. The SFC withdrew all summonses issued against three persons, but otherwise there was no acquittal. In the same period, the SFC disciplined six licensees for various regulatory breaches. The SFC also took disciplinary actions against four licensees which were eventually concluded with no formal sanction imposed. Disciplinary proceedings were also commenced and discontinued against one deemed licensee who left his firm before the conclusion of the actions. 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 reapplies 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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