



SFC Enforcement Reporter

A monthly summary of SFC enforcement action

September 2003

Highlights

In August the SFC:

- convicted three persons for breaking securities laws
- disciplined twelve intermediaries

Prosecution

Don't cheat in your FRR returns and keep client assets in trust

Kwok Wood Yan, the managing director of Tiffit Securities (HK) Ltd did not disclose a \$4m overdraft in its accounts in their financial resources reports which must be submitted to the SFC monthly. The inaccurate reports were false and misleading causing the SFC to believe that Tiffit had maintained the required liquid capital level, an offence under the Securities and Futures Commission Ordinance. Tiffit also failed to report its liquid capital deficiency to the SFC immediately in breach of the Securities Ordinance. Kwok and Tiffit pleaded guilty to 22 summonses. Fong Shik Yee, Tiffit's responsible officer, was also convicted of having transferred clients' money in and out of the trust account without the necessary authorisations from clients, a breach of the Securities Ordinance. Kwok, Fong and Tiffit were all fined and ordered to pay the SFC's investigation costs.

(Press release issued on 18 August 2003)

Since April this year, the SFC has successfully prosecuted three people for providing false or misleading information to it and six people for breaches of the FRR.

Licencees must submit honest FRR returns and promptly tell the SFC when they don't comply with the FRR. The SFC will prosecute those that don't and their responsible management and discipline them too. Brokerage staff must also only use a client's money in the client's trust account to settle the client's transactions or in accordance with the instructions of the client.

Discipline

Inquire into suspicious trades

Chiu Ming was an account executive of a trader whose activities cast suspicion on whether he was trying to manipulate the market. Chiu admitted to the SFC that he found the trading suspicious but he chose to turn a blind eye in order not to upset the client. Chiu did not properly inquire into the suspicious activities or report them to his employer. Chiu also failed to verify whether a third party had obtained written authorisation from the trader before effecting the third party's orders in the trader's account. The SFC suspended Chiu's licence for one week.

(Press release issued on 6 August 2003)

Licensees are expected to play a role in protecting the integrity of the market. Turning a blind eye to possibly improper trades is not acceptable, especially not to upset the client! The SFC will take disciplinary action and more severe punishment is likely for cases started after 1 April 2003.

Talk to senior management before opening discretionary account

An investor complained about an account executive of Emperor International Exchange (HK) Ltd who had discretionarily traded in the client's account. The account executive breached her licence condition, which prohibited her from providing discretionary account services, under the Leveraged Foreign Exchange Trading Ordinance. Wong Siu Man, a senior vice president of Emperor, failed to take sufficient steps to prevent the discretionary trading activities, failed to supervise the account executive, failed to properly inquire into the complaint and report the matter to his supervisor. Emperor, together with its directors, Cheung Woon Chuen Sangdy and Chan Pak Lam Tom failed to put in place adequate internal controls to prevent and detect discretionary trading without a proper licence, to diligently investigate clients' complaints and to properly supervise staff. All were reprimanded.

(Press release issued on 18 August 2003)

Investors should be cautious when opening discretionary accounts, especially for leveraged foreign exchange (LFE) trading. The law limits this to protect investors. It is better for a client to negotiate with the company's management, rather than junior traders who may not have any authorisation. Some LFE traders give their clients' account passwords to stop discretionary trading. Clients should never disclose the account password to their account executives.

Director remains responsible for delegated functions

A representative of Sharegain Development Limited was found to have misappropriated client assets by conducting unauthorised trades and falsifying client account statements. Sharegain dismissed her but did not report the incident to the SFC. Sharegain was found to have inadequate internal controls in segregation of duties and supervisory controls which had facilitated the misconduct. Ko Ka Wo was the sole dealing director and bore the direct responsibility for the failures. Ming Shui Shum was the owner and de facto director of Sharegain. Ming was found to have failed to delegate effectively to Ko, and to supervise the delegated functions. He also failed to make reasonable inquiry to ensure Ko had properly discharged his responsibilities. Sharegain, Ko and Ming were all reprimanded for their failures.

(Press release issued on 21 August 2003)

Misappropriation of client's asset is a serious matter. Prompt reporting to the SFC is the duty of all licensees and directors. Even if directors delegate their functions, they must still supervise the delegated functions. Harsher penalties are likely to be imposed for cases started after 1 April 2003.

Inadequate internal controls facilitate theft

A representative of Hou Tak Securities Limited was found to have misappropriated clients' assets and her licence was revoked on 21 October 2002. Hou Tak commissioned, at SFC's request, an independent accountant firm to review its internal controls. A number of weaknesses were found. They included failure to segregate settlement and dealing functions; absence of written company policies and procedures; inadequate procedures for staff dealing and reporting interests in related accounts; and failure to restrict access to its computer system and to store securely its company stamp, letterhead stationery, blank contract notes, client agreement and official receipts. These failures in internal controls facilitated the misappropriation. Besides Hou Tak, Van Tak Sun, Winston, the responsible officer of Hou Tak, and Wong Yuet Wah, the representative's supervisor, were all reprimanded for failing to manage and supervise properly.

(Press release issued on 18 August 2003)



SFC Enforcement Reporter

A monthly summary of SFC enforcement action

證監會 September 2003

Two former representatives of Victory Enterprises (Investment) Limited were found to have stolen securities held in their clients' accounts to cover up their own trading losses. Their licences were revoked in 2001. At the request of SFC, Victory conducted a review of its internal control system. Victory was reprimanded for deficiencies including a lack of segregation of incompatible duties; a lack of staff supervision; and weak control over dealing and settlement procedures, and the distribution of trade document.

(Press release issued on 13 August 2003)

All too often, brokerage staff can steal from a client because of poor supervision and internal controls. The SFC will take into account cooperation by a brokerage, such as reporting the matter, compensation to clients and reforming controls. However, the SFC must take action against the firm and its management. Reprimands are proving insufficient. In future, in appropriate cases, the SFC will consider fining the firm and management and/or suspending the management and even the firm.

General Enforcement Statistics

Since 1 April 2003, the SFC has successfully prosecuted 28 entities and disciplined 39 intermediaries 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.

CONTACT US – Media Enquiry: (852) 2840 9287 / Investor Hotline: (852) 2840 9333 / Email: enquiry@hksfc.org.hk