



SFC Enforcement Reporter

A monthly summary of SFC enforcement action

September 2004

Highlights

In August, the SFC:

- successfully prosecuted two people
- disciplined two licensed corporations

Prosecution

Illegal short seller convicted

Mr Wong Chi Wai pleaded guilty to short selling 16.7 million MAE shares through his own account and other accounts under his control when he knew there were not enough shares in the accounts to fulfil his sale orders. Wong was fined and ordered to pay the SFC's investigation costs.

(Press release issued on 25 August 2004)

Short selling is often a feature of market manipulation and harms market integrity. Brokerages can help eradicate this illegal practice by putting in place sound internal controls to detect and prevent short selling.

Continuing enforcement of disclosure of interests laws

Mr Mong Man Wai William was convicted of failing to notify both Hong Kong Exchanges and Clearing Limited (HKEx) and the Bank of East Asia Limited (BEA), of which he is a non-executive director, that he had bought two million BEA shares on 21 March 1995. Mong only notified HKEx and BEA on 12 April 2003. The Magistrate rejected submissions that Mong had forgotten signing a \$40 million cheque to pay for the shares. Mong was fined and ordered to pay the SFC's investigation costs.

(Press release issued on 30 August 2004)

Timely disclosure of securities interests is important for the operation of an open and transparent market. Since 1 April 2003, the disclosure threshold for notifiable securities interests has been reduced to 5% and the reporting period to three business days. People who fail to comply with these requirements can expect to face prosecution.

Discipline

Investment adviser offers ex-gratia payments to investors following settlement

The SFC settled its disciplinary proceedings against Towry Law (Asia) HK Limited (Towry Law International, TLI) for failings in relation to two hedge funds managed by third parties - Global Diversified Trading Limited (GDT) and Global Opportunities Trading Limited (GOT) - by severely reprimanding TLI. The SFC alleged that TLI had: failed to conduct sufficient due diligence into the two funds before recommending them to clients; sold the two funds to clients whose investment objectives and risk tolerance did not always match those of the two funds; failed to conduct proper enquiries into circumstances surrounding the two funds which indicated problems with the funds; and failed to advise clients when it became clear that the funds had problems. The funds were suspended in September 2002 and are now being liquidated.

Without any admission as to liability, TLI agreed to make ex-gratia payments to all TLI investors remaining in GDT and GOT at the time of their suspensions. GOT investors will receive an amount equal to 90% of the capital invested, plus compound interest at 1% over the HSBC US Dollars deposit rate prevailing from the date of investment to the date the offer is accepted. GDT investors will receive an amount equal to 80% of the capital invested plus compound interest on the same terms. There is a difference between the amount of ex-gratia payment offered for GOT and GDT investors because the funds were launched at different times and in



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different circumstances. The SFC will supervise the mechanism for processing investor applications for the ex-gratia payments (TLI schemes).

The SFC decided it was in the public interest to settle its disciplinary proceedings because (i) the TLI schemes amount to substantial mitigation; (ii) TLI had replaced all members of its senior management responsible for TLI's involvement in GOT and GDT ; and (iii) the high level of co-operation the SFC received from TLI's new management and the promised co-operation during the life of the TLI schemes.

(Press release issued on 17 August 2004)

The SFC regards the settlement with TLI where it reduced the penalty in return for significant ex-gratia payments to investors to be in the public interest. The SFC has no power to order compensation. If money is lost due to poor investment advice or poor investment performance, investors could consider civil proceedings to recover their money. As a matter of policy, the SFC does not intervene in civil disputes. Investors should therefore consider carefully whether an investment is right for them before investing. More investor advice and educational materials are available on the SFC website and the Electronic Investor Resources Centre (www.hkeirc.org).

Reprimand and fine for breach of liquid capital requirements

The SFC reprimanded and fined UBS Securities Hong Kong Limited \$100,000 under its new disciplinary fining power for failing to comply with the liquid capital requirements on two consecutive days in late 2003. The breach was caused by UBS' involvement as a buying broker in a share placement . UBS reported the breach to the SFC and took prompt remedial action. In deciding the level of fine, the SFC took into account UBS' prompt remedy, that no loss was caused to any third party, UBS' clean disciplinary record, UBS' full co-operation with the SFC's investigation and that the breach was unintentional and had only occurred once.

(Press release issued on 19 August 2004)

Licensed corporations must maintain minimum liquid capital at all times. This is vital for the protection of the investing public. Licensees who cannot comply with this requirement must tell the SFC immediately, otherwise they and their responsible management may be criminally prosecuted and disciplined.

General Enforcement Statistics

Since 1 April 2004, the SFC has successfully prosecuted 22 entities. Summonses were withdrawn against five persons resulting in their acquittals and a further three persons were acquitted after trial. In the same period, the SFC disciplined 27 licensees for various regulatory breaches and entered into settlements with voluntary payments with two licensees. The SFC also took disciplinary actions against six licensees which were eventually concluded with no formal sanction imposed, although five 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 they leave their 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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