

Enforcement

Combating crime and misconduct in the securities and futures markets is crucial to maintain Hong Kong's status as an international financial centre. To send strong deterrent messages, protect investors and ensure fair and efficient markets, we focus on high-impact cases which pose the greatest risks to the investing public.

Our tools under the SFO

We use the full spectrum of sanctions and remedies available to us under the Securities and Futures Ordinance (SFO), including through criminal, administrative, compensatory and disciplinary actions.

We have broad powers to hold directors and individuals responsible for misconduct committed by the companies they manage. We can discipline licensed intermediaries through reprimands, fines¹ and suspensions or revocations of licences, and apply to the court for injunctive and remedial orders against wrongdoers in favour of victims.

Our work in figures

280
cases initiated

254
investigations completed

31
disciplinary
actions

8,461
requests for trading and account records[^]

54
criminal charges laid

22
cases with search
warrants executed

[^] These requests were made to intermediaries as a result of our surveillance of untoward price movements and turnover.
Note: Data as of 31 March 2018.

¹ Fines paid by intermediaries in disciplinary actions go into the general revenue of the Government.

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To effectively communicate our enforcement priorities and new approach to the industry and stakeholders, we issued two issues of the *Enforcement Reporter* and spoke at public and private events and interviews.

We allocated resources to harder, more serious cases, reducing our overall caseload by setting aside or not taking up low-priority cases.

During the year, we commenced 280 investigations and laid 54 criminal charges against 11 individuals and three corporations and secured convictions against nine persons and five corporations.

We obtained disqualification and restorative orders against 28 persons and two corporations. Civil actions seeking financial redress and other remedial orders against 97 persons and corporations in 22 cases are pending before the court.

Disciplinary action was taken against 16 persons and 15 corporations. In addition, we commenced two cases before the MMT against two corporations and 11 persons for alleged late disclosure of inside information.

We also issued 277 compliance advice letters to address areas of regulatory concern and raise standards of conduct and compliance in the industry.

Market surveillance

On a daily basis, we monitor trading on The Stock Exchange of Hong Kong Limited and the Hong Kong Futures Exchange Limited and conduct preliminary inquiries to detect possible market manipulation or insider dealing. We also engage with firms to review how they perform their monitoring and surveillance.

During the year, we initiated an organisation-wide market surveillance intelligence project to collect and analyse data to identify market conduct risks².

Our surveillance of untoward price and turnover movements resulted in 8,461 requests for trading and account records from intermediaries. We also received and assessed 172 notifications from intermediaries³ regarding suspicious equity and derivative trading. The number of market surveillance cases rose 16% year-on-year.

30
disqualification and
restorative orders

\$483 million
in fines

97
individuals and corporations subject to
ongoing civil proceedings

23
high shareholding
concentration announcements

277
compliance advice
letters issued

² See Risk assessment on page 68.

³ Intermediaries are required to report clients' suspected market misconduct to the SFC under the Code of Conduct for Persons Licensed by or Registered with the Securities and Futures Commission.

We posted 23 announcements on our website reminding the investing public to exercise caution when trading in shares of listed companies where a small number of shareholders hold a high concentration of shares.

Enforcement actions

Corporate fraud and misbehaviour

Corporate conduct remains our top enforcement priority, especially when it relates to listed companies. Under our new approach, we engage in targeted intervention at an early stage to suppress illegal and improper market practices. We also increased our direct presence in more crucial listing matters which fall within the scope of the Securities and Futures (Stock Market Listing) Rules (SMLR) or the SFO⁴.

During the year, we suspended trading in the shares of 12 listed companies under section 8 of the SMLR for suspected misleading financial statements and corporate fraud and to protect investors from harm. We investigated 21 sponsor firms, and issued 13 notices of proposed disciplinary actions against eight firms and four sponsor principals. We are considering similar disciplinary notices and other enforcement actions against other firms and sponsor principals.

We conducted joint search operations with the Independent Commission Against Corruption in appropriate cases, efficiently using the enforcement powers and investigative tools of the two authorities to gather evidence of financial crimes.

We commenced legal proceedings under section 214 of the SFO in one case in the Court of First Instance (CFI) where we are seeking disqualification orders against Far East Holdings International Limited's former managing director and chief executive officer, Duncan Chiu, a former non-executive director and a former company secretary and financial controller for alleged misconduct towards the company and its shareholders.

We also commenced proceedings in the MMT alleging that Fujikon Industrial Holdings Limited failed to disclose inside information as soon as reasonably practicable and executive directors Yeung Chi Hung and Chow Lai Fung were reckless or negligent in causing the alleged breach.

Other notable cases during the year included:

- The MMT, in its heaviest financial sanction to date, ordered the former chairman and chief executive officer of Greencool Technology Holdings Limited, Gu Chujun, to disgorge approximately \$481 million of profit from grossly overstating financial statements over a five-year period. The MMT also made a cold shoulder order⁵ against Gu for five years as well as a cease and desist order to prohibit him from engaging in future market misconduct. He and four other former senior executives were also disqualified from serving as a director or being involved in the management of any listed company in Hong Kong for three to five years.
- The MMT ruled that Mayer Holdings Limited and nine of its former directors and senior executives failed to disclose inside information as soon as reasonably practicable and fined them a total of \$10.2 million. The MMT also imposed disqualification orders against the senior executives for periods ranging from 12 to 20 months and ordered the company to appoint an independent professional adviser to review its procedures for compliance with the corporate disclosure regime. The company and eight of the senior executives have filed appeals.
- The CFI disqualified the former chairman of Hanergy Thin Film Power Group Limited, Li Hejun, and four former independent non-executive directors of Hanergy from being a director for three to eight years for serious breaches of director's duties. It also ordered Li to procure the payment of outstanding receivables due to Hanergy from its parent company and affiliates.
- For materially overstating its turnover and understating its bank borrowings in its initial public offering (IPO) prospectus or subsequent results announcements, the CFI ordered Qunxing Paper Holdings Company Limited, its former chairman and vice-chairman Zhu Yu Guo and his son, Zhu Mo Qun, as well as a subsidiary, to compensate investors who subscribed for shares in its IPO or purchased them in the secondary market between 2007 and 2011. The CFI also ordered that payments be made to a corporate investor, which subscribed for its unlisted warrants in 2011.

⁴ See Listings and takeovers on pages 51-55.

⁵ An order which prohibits a person from dealing directly or indirectly in Hong Kong's financial markets.

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Mr Thomas Atkinson, Executive Director, Enforcement, addresses the Pan Asian Regulatory Summit 2017

- The CFI ordered Tong Shek Lun, former chairman and director of Starlight Culture Entertainment Group Limited, Ko Lai King Kinny and Chung Wai Yu Regina, two other former executive directors, to pay compensation of around US\$890,000 for their misconduct relating to a disposal of subsidiaries by Starlight in September 2008, and disqualified them for five to seven years.

Insider dealing and market manipulation

Key enforcement actions included:

- The CFI, by consent, ordered Sun Min to pay over \$15.6 million to 51 investors affected by her insider dealing in the shares of China Huiyuan Juice Group Limited.
- The CFI, by consent, ordered Augustine Cheong Kai Tjeh, a former senior executive of an affiliate of Titan Petrochemicals Group Limited, and his mother Gan Ser Soon, to pay investors for their insider dealing in the shares of Titan in 2012.
- The Court of Appeal (CA) upheld the decision of the CFI which ruled in favour of the SFC's insider dealing and fraud case against two solicitors, Betty Young Bik Fung and Eric Lee Kwok Wa, and Lee's two sisters. In March 2018, the CA granted leave to Lee and his two sisters for taking their case to the Court of Final Appeal (CFA) in relation to the interpretation of section 300 of the SFO arising from fraudulent or deceptive transactions involving foreign securities.

- The CA dismissed our leave application to appeal to the CFA against the MMT's findings that Yiu Hoi Ying and Marian Wong Nam, two former executives of Asia Telemedia Limited, had not engaged in insider dealing. In February 2018, our leave application was granted by the CFA on the basis that the questions we raised are of great general or public importance.
- We commenced criminal proceedings against Au-Yeung Siu Pang for alleged insider dealing in the shares of China CBM Group Company Limited by selling, and counselling or procuring another person to sell China CBM shares in March 2012.
- We issued restriction notices to four securities firms relating to suspected market manipulation by their clients. The SFC was not investigating these brokers, which cooperated with our investigation.
 - Caitong International Securities Co., Limited, Pacific Foundation Securities Limited and Yuanta Securities (Hong Kong) Company Limited were prohibited from dealing with or processing assets held in client accounts which are related to suspected market manipulation in the shares of GME Group Holdings Limited.
 - Interactive Brokers Hong Kong Limited was prohibited from dealing with or processing assets held in a client account which is related to suspected insider dealing in the shares of Bloomage BioTechnology Corporation Limited.

Intermediary misconduct

During the year, we disciplined 15 corporations, two responsible officers and 14 licensed representatives, resulting in total fines of \$483 million. Key disciplinary actions included:

- HSBC Private Bank (Suisse) SA was fined a record sum of \$400 million after the Securities and Futures Appeals Tribunal (SFAT) upheld our disciplinary action against the bank for material systemic failures in the sale of structured products in the run-up to the global financial crisis in 2008 (see sidebar on page 63).

Record fine for failures in selling structured products

In November 2017, the SFAT upheld our findings and fined HSBC Private Bank (Suisse) SA^a \$400 million for material systemic failings in the sale of Lehman Brothers-related structured notes (LB-Notes) and leveraged forward accumulators which caused substantial losses to clients. The bank was also suspended from advising on securities for one year and partially suspended from dealing in securities.

While investigating over 80 investor complaints^b, we found material systemic deficiencies in the bank's sale of these products. The bank was aware of Lehman Brothers' deteriorating financial condition and had materially reduced its own exposure. Nevertheless, it continued to sell LB-Notes up to two weeks before Lehman Brothers' September 2008 collapse without disclosing the identity of the issuer or providing warnings to clients about the increasing credit risk during the sales process.

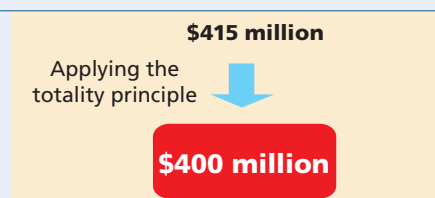
Although the bank assigned LB-Notes the riskiest rating, it allowed clients categorised with low or medium risk tolerance levels to purchase them without keeping proper records of the justifications for allowing these transactions. It also failed to implement adequate systems and controls to prevent clients from being overly exposed to accumulators.

The SFAT's determination confirms our approach in imposing a fine for each area of culpable conduct and using the number of complaints as the multiplier in assessing the appropriate fine^c (see the diagram below). The record fine is a stern warning for regulated persons to adhere to principles of professional conduct.

Our standards are designed to protect all investors including clients of retail or private banks. We will take action when breaches of the standards occur and substantial sanctions may result.

Calculating the fine

Nature of misconduct	Fine for each act of misconduct		Number of affected complainants		Total
LB-Notes: Failures to inform clients of issuer risk	\$5 million	X	15	=	\$75 million
LB-Notes: Suitability failures	\$5 million	X	55	=	\$275 million
Leveraged forward accumulators: Suitability failures	\$5 million	X	13	=	\$65 million



^a HSBC Private Bank (Suisse) SA is a registered institution under the SFO to carry on business in Type 1 (dealing in securities) and Type 4 (advising on securities) regulated activities.

^b Referred by the Hong Kong Monetary Authority.

^c Using the number of complaints as the multiplier may not be appropriate in every case. The appropriate approach in each case will depend on its facts.

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- We reprimanded and fined Guoyuan Securities Brokerage (Hong Kong) Limited \$4.5 million for failing to conduct proper enquiries to mitigate the risks of money laundering and terrorist financing when processing third-party fund transfers for clients.
- UBS Securities Asia Limited was reprimanded and fined \$4.5 million for failing to put in place effective controls to record transactions and client consents for its facilitation trading activities.
- Promising Securities Company Limited was reprimanded and fined \$3.5 million for allowing unlicensed staff to perform regulated functions and failing to ensure the effective segregation of sales and settlement, giving the settlement staff an opportunity to misappropriate client assets.
- We reprimanded and fined iSTAR International Futures Co. Limited⁶ \$3 million for failing to comply with anti-money laundering and counter-terrorist financing requirements when processing third-party fund transfers, while Wu Biwei, its former responsible officer and managing director, was suspended for six months.
- The CFA granted leave to Moody's Investors Service Hong Kong Limited to appeal in the matter of our disciplinary action in relation to its special comment report published in 2011.
- CLSA Limited was reprimanded and fined \$9 million for its internal control failures in its client facilitation services and its reporting obligations⁷. In making the determination, we took into account that CLSA undertook a review with the SFC to address our regulatory concerns and cooperated in resolving them, and that CLSA's board of directors pledged to take reasonable steps to rectify its internal control failures in relation to avoidance of conflicts of interest.
- Deutsche Bank AKTIENGESELLSCHAFT and its wholly-owned subsidiary Deutsche Securities Asia Limited were reprimanded and fined a total of \$8.3 million over their regulatory breaches related to short position reporting, unlicensed regulated activities and segregation of client monies. In making the determination, we considered the two companies' cooperation and remedial measures to strengthen internal controls and systems.
- We reprimanded and fined Interactive Brokers Hong Kong Limited \$4.5 million for failures related to its electronic and algorithmic trading systems. In making the determination, we considered the firm's cooperation and that it agreed to arrange an independent review of these systems.

We also secured convictions for breaches of the SFO by two corporations:

In four cases, we took disciplinary action against the following corporations after resolving our concerns with them:

- Credit Suisse (Hong Kong) Limited, Credit Suisse Securities (Hong Kong) Limited and Credit Suisse AG were reprimanded and fined a total of \$39.3 million over a series of internal control failures, including in segregating client securities and in ensuring product suitability. In making the determination, we considered Credit Suisse's agreement to engage an independent reviewer to investigate our regulatory concerns and review their internal controls, as well as their cooperation.
- ETRADE Securities (Hong Kong) Limited was convicted of actively marketing to the Hong Kong public US brokerage services provided by E*TRADE Securities LLC, which was not licensed by the SFC. This was the first criminal conviction secured by the SFC against a firm for marketing unlicensed activities carried out outside Hong Kong.
- QMIS Securities Limited and its former responsible officer, Huang Kuang Cheng, were convicted and fined for making false or misleading representations when submitting licensing information to the SFC.

⁶ Now known as Rifa Futures Limited.

⁷ Intermediaries are required to report to the SFC immediately about any suspected or actual material breach of any applicable legal and regulatory requirements by themselves or persons they employ or appoint to conduct business with clients under the Code of Conduct for Persons Licensed by or Registered with the Securities and Futures Commission.

Other disciplinary actions

Unauthorised trading

Company/Name	Conduct	Action	Date
Danny Fung Kwong Shing	Conducted 772 unauthorised transactions in his client's account and fabricated telephone order recordings to mislead his employer	Fined \$542,071 and banned from re-entering the industry for life	23.11.2017
Shum Kam Ming	Conducted unauthorised transactions in a client's account and provided false account statements	Banned from re-entering the industry for life	25.9.2017
Yeung Leung Yuen	Conducted unauthorised transactions in a client's account	Banned from re-entering the industry for three years	7.11.2017
Tsap Wai Ping	Caused invitations to subscribe for shares in the US to be issued to the investing public without authorisation from the SFC	Banned from re-entering the industry for two years	19.5.2017

Criminal conviction

Company/Name	Conduct	Action	Date
Daniel Chen Chi Lik	Convicted of theft	Banned from re-entering the industry for life	20.4.2017

Internal control failures

Company/Name	Conduct	Action	Date
Standard Chartered Securities (Hong Kong) Limited	Internal control failures related to short-selling orders and regulatory breaches	Reprimanded and fined \$2.6 million	18.12.2017
EFG Bank AG	Failure to ensure compliance with regulatory requirements when dealing in futures contracts	Reprimanded and fined \$2 million	11.1.2018

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Regulatory breaches

Company/Name	Conduct	Action	Date
FXCM Asia Limited ^a	Failure related to under-segregation of client money and regulatory breaches	Reprimanded and fined \$2 million	13.12.2017
Yip Ka Ying, Abbie	Attempted to conceal a trade execution error and trading loss from her employer	Banned from re-entering the industry for 18 months	13.12.2017

^a Now known as Rakuten Securities Hong Kong Limited.

Note: See Table 6 in Breakdown of SFC activity data on pages 163-169 for details of the less significant disciplinary actions.

Enhanced cooperation

We are actively developing a long-term strategic relationship with the China Securities Regulatory Commission (CSRC) to ensure effective enforcement collaboration in surveillance and joint investigations. During the year, we held regular high-level meetings, organised a staff secondment programme and hosted a CSRC-SFC joint training workshop in Xiamen. In December 2017, we entered into a memorandum of understanding (MoU) on supervisory and enforcement cooperation concerning futures, which enhances supervisory assistance, enforcement cooperation and information exchange relating to cross-boundary derivatives as well as futures exchanges and brokers.

Locally, we signed an MoU with the Hong Kong Police in August 2017 to formalise and strengthen cooperation in combating financial crime. We also closely collaborated with the Hong Kong Monetary Authority to investigate authorised institutions' misconduct under the SFO and with the Department of Justice on securities fraud, insider dealing, market manipulation and other offences.

In December 2017, we issued an updated Guidance Note on Cooperation with the SFC to highlight the benefits of cooperating in our investigations and enforcement proceedings. New measures encourage cooperation which helps the SFC investigate more serious legal or regulatory breaches and achieve timely and desirable enforcement outcomes. At the same time, we updated our Disciplinary Proceedings at a Glance guide.

New system to manage large volume of documents

Enforcement cases have become more complex and many now involve significant quantities of data and documents.

In early 2017, we enhanced our litigation support system to provide a centralised platform to manage data and documents for investigation and litigation purposes across the entire organisation.

The system enables us to search, review and analyse a large amount of litigation-related data more easily and to prepare exhibits for court proceedings more efficiently.

In addition, more users from different divisions can now readily access and review information in the system on an as-needed basis, facilitating cross-divisional cooperation.

Since its launch, more than 600 cases were handled using the enhanced system and over seven million documents were uploaded.

Enforcement activities

	2017/18	2016/17	2015/16
S179 ¹ inquiries commenced	24	27	24
S181 ² inquiries commenced (number of letters sent)	261 (8,461)	301 (8,960)	286 (7,997)
S182 ³ directions issued	274	407	507
Investigations started	280	414	515
Investigations completed	254	591	436
Individuals/corporations charged in criminal proceedings	14	10	20
Criminal charges laid ⁴	54	46	107
Notices of Proposed Disciplinary Action ⁵ issued	29	49	35
Notices of Decisions ⁶ issued	32	56	42
Individuals/corporations subject to ongoing civil proceedings	97	126	100
Compliance advice letters issued	277	548	453
Cases with search warrants executed	22	34	31

¹ Section 179 of the SFO gives the SFC the power to compel the production of records and documents from persons related to a listed company in relation to fraud or other misconduct.

² Section 181 of the SFO gives the SFC the power to require information from intermediaries about trading transactions, including the identity information of the ultimate clients, the particulars and instructions relating to the transactions.

³ Section 182 of the SFO gives the SFC the power to investigate SFO offences, market misconduct, fraud, misfeasance and disciplinary misconduct.

⁴ The SFC brought a total of 54 criminal charges against 11 individuals and three corporations.

⁵ A notice issued by the SFC to regulated persons that it proposes to exercise its disciplinary powers, on grounds that they appear to be guilty of misconduct or not fit and proper.

⁶ A notice that sets out the SFC's decision and its reasons to take disciplinary action against regulated persons.

Note: Also see Table 7 in Breakdown of SFC activity data on pages 163-169 for more details.