

Highlights

In November the SFC:

- won the SDIO appeal lodged by the majority shareholder of GR Investment International
- had three people convicted for breaking securities laws
- disciplined nine intermediaries

Prosecution

Magistrate confirms tough stance against market manipulators

Mr Daniel Hung was sentenced to 160 hours of community service and ordered to pay the SFC's investigation costs for manipulating Climax International Company Limited's shares in breach of the **Securities Ordinance**. The Magistrate had studied the Hong Kong Parkview appeal judgment and confirmed that market manipulation was a serious offence. He did not impose a prison term because Hung had pleaded guilty.

(Press release issued on 11 November 2002)

Since April this year, the SFC has successfully prosecuted three people for market manipulation.

From recent judgments it appears that market manipulators who are convicted after pleading not guilty can expect to be jailed. Further, this tough stance has to be read in the context of the even tougher penalties under the new market misconduct regime, and enhanced enforcement effectiveness with the dual civil and criminal regimes. The new regime is to take effect in early 2003.

SFC continues to enforce disclosure law

A majority shareholder of Heshun Specialized Fibre Holdings Ltd pledged 75% of the company's shares to Top New Finance Ltd. Top New failed to disclose these interests and subsequent changes under the **Securities (Disclosure of Interests) Ordinance** on time. Both Top New and its director, Mr Wu Kezhong, were convicted, fined and ordered to pay the SFC's costs. Separately, the High Court dismissed the appeal lodged by China United Holdings Limited (a substantial shareholder of GR Investment International Limited), which had been convicted under the same ordinance in August 2002.

(Press releases issued on 5 and 27 November 2002 respectively)

Since April this year, the SFC has successfully prosecuted 16 people for breaches of listed companies securities disclosure laws.

The Top New case is a timely reminder that pledgees of listed company shares must disclose their interests. Further, the Securities and Futures Ordinance significantly expands the range of discloseable interests. Ignorance of the law is no excuse, even when the transactions involved are complex.

Illegal short seller convicted

Mr Heng Hian Mok, previously a dealing director of Lei Shing Hong Securities Limited, pleaded guilty to illegal short selling between September 2001 and January 2002 in contravention of the **Securities Ordinance**. He was fined and ordered to pay the SFC's investigation costs.

(Press release issued on 26 November 2002)

Since April this year, the SFC has successfully prosecuted one person for illegal short selling.

Brokers may also be criminally liable if their clients are engaged in illegal short selling. Therefore, brokers must have a system in place that can effectively prevent such unlawful activities.

Discipline

Beware of fraudsters around you!

Mr Ngan Hei Wah of Mayfair Securities Limited had his registration suspended for one week for negligently inviting his clients to invest in a fraudulent scheme. Ngan's branch manager/supervisor ran the scheme, which bore the hallmarks of a classic scam. Despite that, Ngan failed to check its veracity and propriety.

December 2002

That the supervisor told him the scheme was “secret” should have prompted Ngan to report the matter to the management. Not only did he not do that, he encouraged his family and friends to take part.

(Press release issued on 22 November 2002)

Both investors and intermediaries should beware of bogus investments. SFC registrants in particular should always exercise independent judgment on any less than usual investment schemes before recommending them to anyone. Remember, “If it sounds too good to be true, it’s probably too good to be true”.

Dishonesty and improper acts before registering with the SFC could lead to disciplinary action

Mr Lau Chi Keung helped his friends open a trading account with an unregistered person. He then operated the account, placed orders and impersonated his friend when the account executive called to confirm orders. In so doing he put his friend at risk. Lau was not a registered person at the time, but his acts earned him a reprimand now that he is registered with the SFC.

(Press release issued on 19 November 2002)

The SFC will discipline registrants for dishonesty in any shape or form, even if it predates their registrations. Had Lau’s dishonest acts been committed after he was registered, he would no doubt have received a period of suspension.

Dealer’s representative managing client portfolio without Investment Advisor registration suspended

The SFC suspended Mr Chan Shek Hong Raymond’s registration for six months. Although not registered as an investment adviser, Chan privately agreed with a client to manage her trading account, guaranteeing a monthly return of \$30,000. Substantial losses resulted after Chan churned the account to earn more commission. Worse still, Chan tried to avoid liability by claiming that the private agreement was void!

(Press release issued on 22 November 2002)

It may be tempting for registrants to try to earn extra money by managing a client’s portfolio, but they should be properly trained and registered before doing it. Where a registrant has the necessary registration, he still has a responsibility to justify his trading decisions. If he dodges his responsibilities, he will face stiff disciplinary action.

Inadequate supervision results in unregistered dealing

The SFC reprimanded South China Securities Limited and Wing On Cheong Securities Company Limited for failing to supervise and monitor staff’s activities:

- South China: Five trainees were earlier convicted of unregistered dealing. Mr Tam Yui Man, their supervisor, was convicted of aiding and abetting the unregistered activities.
- Wing On Cheong: Two former staff had engaged in unregistered dealings.

Neither South China nor Wing On Cheong properly supervised its staff to stop unregistered activities.

(Press releases issued on 22 and 29 November 2002 respectively)

Brokerage staff and management should be well aware of the need for a person to be registered before they perform the functions of a dealer’s representative. Contraventions often result in the prosecution of not only the unregistered staff, but also any person who aids or abets. Management may find that the cost of cure, including any reputational damage, may well exceed that of prevention.

Public reprimand for poor complaint handling and failure to review tape recordings

Shenyin Wanguo Securities (HK) Limited received a client complaint and did not tell the complainant of the resolution of the complaint, nor did it properly implement its policies about maintaining complaint records. Further, no procedure existed for regularly reviewing tape recordings of broker-client telephone conversations.

(Press release issued on 20 November 2002)

Registrants must maintain and implement proper procedures for handling complaints, including keeping proper records of complaints. Registrants should tell complainants the outcome of their complaints as soon as practical. If a complaint cannot be remedied promptly, the registrant must advise the complainant to seek alternative redress. Tape recordings of broker-client conversations are a very useful tool to protect clients



SFC Enforcement Reporter

A monthly summary of SFC enforcement action

December 2002

and resolve complaints. Brokerages should review the recordings regularly on a sample basis to keep an eye on their staff.

AE suspended for allowing unauthorized trading

Mr Tsang Wa Wai William of Masterlink Securities (Hong Kong) Corporation Limited was suspended for four months. He accepted orders from a fellow employee to trade through two client accounts without authority, resulting in losses exceeding \$400,000. Masterlink knew their staff caused the losses but nevertheless tried to recover the debt from one of the clients. Masterlink was reprimanded for inappropriate debt recovery practice, insufficient credit controls, and inadequate protection of client funds. Mr Lip Siu Ming Nelson, the sole dealing director, was also reprimanded as he bore responsibility for the internal control and supervision failings.

(Press release issued on 29 November 2002)

Account executives should never let people trade in a client's account unless the client had authorized that person in writing. Allowing other brokerage staff to trade without authority is even worse. If Masterlink had tighter credit controls, it would have discovered the problem sooner by asking the clients why their accounts had large debts, which might have revealed things earlier. Pursuing the debt against the client in the circumstances was unethical to say the least. We will discipline registrants for such failings.

General Enforcement Statistics

Since 1 April 2002, the SFC has successfully prosecuted 27 people and disciplined 52 entities.

If you want to know more, the SFC's press releases are available at http://www.hksfc.org.hk/eng/press_releases/html/enforcement_2002.htm

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