

Issue 19

Part II: Penalties for the Offences under the Securities and Futures Ordinance

第二部份：證券及期貨條例的規罰

Introduction(序言)

Further to the last newsletter on the steps of investigation by Securities and Futures Commission (SFC), we now examine some of the common offences and penalties under the Securities and Futures Ordinance (SFO) (Cap.571).

(A) Minor “technical” breaches(輕微技術犯規)

They refer to the unintentional and trivial breach of the rule under the SFO. The consequence is usually light. An example would be missing the deadline to file a relevant document or become falling short of the liquid capital requirements. In 2004, SFC only imposed a fine penalty (罰款) on UBS Securities Hong Kong Limited for falling short of the liquid capital requirements on two consecutive days.

(B)Offences in relation to investigation stage (調查階段的有關罪行)

As explained in our previous newsletter, the SFC may request a person to attend or provide evidence in an investigation. The following are some common offences during the stage of investigation:-

i)Produce false or misleading information (提供虛假或誤導性資料)

It will be an offence under Section 184(3) SFO for any person who in purported compliance of the Section 183 to provide information or documents which is false or misleading in a material particular with intent to defraud.

This offence is most severe which can lead to a maximum fine of HK\$1 million and 7 years imprisonment.

ii)Destruction or concealment of documents (銷毀或隱藏文件)

Under Section 192 SFO, any person who causes or permits the destruction, falsification, concealment or disposal of any records or documents required to be produced with the criminal intent shall commit an offence and be liable for a fine of HK\$1 million and 2 years imprisonment.

iii) Failure to answer question raised by the investigator (未能回答調查員所提出的問題)

A person who, without reasonable excuse, fails to answer a question raised by the investigator under Section 183(1)(c) SFO commits an offence and is liable on conviction to a fine of HK\$200,000 and imprisonment for 1 year.

iv) Failure to attend investigation interview (未能出席調查盤問)

Failing to attend before the investigator as required under Section 183(1)(c) SFO commits an offence and is liable on conviction to a fine of HK\$200,000 and imprisonment for 1 year. In addition, he may also be guilty of contempt of court.

In November 2007, a man who failed to attend an SFC investigation interview despite a court order was guilty of contempt of Court (藐視法庭). The case reflects the importance to co-operate with the investigators (*the case of Chan Chin Yuen*).

(C) Misconduct as to not being a fit and proper person (持牌人仕或機構之專業失當)

This is the third category of wrongful acts. Under Section 194 and 196 SFO, the SFC has the powers to discipline a regulated person such as securities broker, advisor who is or was guilty of misconduct. The SFC may revoke or suspend his registration of license. The SFC may also impose a fine either on its own or together with other disciplinary sanctions.

In 2007, the SFC concluded that Ms. Chan Siu Ping was guilty of misconduct and that she was no longer fit and to be a SFC-licensed person. The SFC therefore revoked Chan's registration.

(D) Market Misconduct(市場失當行為)

This is the fourth category of wrongful acts. Here are some examples:

1) Insider dealing(內幕交易)

The SFO defines insider dealing as follows:

a) Where a person connected with a listed corporation deals in the securities of the listed corporation (or a related corporation) and when the person is however in possession of what he knows to be inside information (that is, price-sensitive information not available to the public at large): Section 270 SFO;

- b) Where a person receives inside information and then deals in the securities or derivatives to which the information relates;
- c) Where a person connected with a listed corporation receives inside information and then discloses the information to another person knowing that the other person will make use of the information to deal in the securities or derivatives to which the information relates.

An insider dealer could be subject to a maximum fine of HK\$10 million and 10 years' imprisonment upon conviction: Section 303(1) SFO.

2) False trading(虛假交易)

Where a person discloses false and misleading information inducing transactions which is contrary to Section 298 commits an offence.

A person who commits false trading could be subject to a maximum fine of HK\$10 million and 10 years' imprisonment upon conviction: Section 303(1) SFO.

A securities broker, Mr. Leung Kin Bon, was given a suspended jail sentence at the Eastern Magistracy in May 2010 for 15 charges of false trading contrary to the SFO. Leung was sentenced to four weeks' imprisonment suspended for 12 months and ordered to pay a fine of \$30,000. The court also ordered Leung to pay the Securities and Futures Commission's (SFC) investigation costs of \$29,700.

3) Price rigging(操控價格)

Price rigging under Section 275 includes actions such as Wash Sale (虛售) or Match Order (對銷交易) which control the stock price. A wash sale is a sale of a security (stock, bonds, and options) at a loss and repurchasing the same or substantially identical stock soon afterwards. A match order means entering identical buy and sell orders at the same time to create the appearance of active trading in a certain stock.

A person who commits price rigging could be subject to a maximum fine of HK\$10 million and 10 years' imprisonment upon conviction: Section 303(1) SFO.

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