

競天公誠律師事務所

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竞天公诚律师事务所有限法律责任合伙

**LEGAL PROFESSION
ADVANCEMENT ASSOCIATION
CPD SEMINAR**



**SFC's Enforcement Actions against Listed
Companies, Sponsors and their senior
management**

Jimmy Chan
28 JULY 2021

SPEAKER'S BIO

Jimmy Chan is a Partner of Jingtian & Gongcheng and a Vice President of Legal Profession Advancement Association.

Jimmy spent 14 years with the SFC and served as a Director and Head of International and Policy of the Enforcement Division. He has twice been awarded the Outstanding Individual Award by the SFC for his efforts on the Lehman Brothers Minibond resolution and the securities and futures appellate work respectively.

Jimmy has substantial experience in cross-border financial investigations and SFC disciplinary proceedings involving financial intermediaries (banks, brokerage firms and sponsors). Currently he represents numerous listed companies and financial institutions in financial regulatory investigations.

He is qualified as a solicitor in Hong Kong and England and Wales and as an attorney in the State of New York.

AGENDA

SFC recent announcements

SFC actions against Sponsors and Sponsor Principals

SFC actions against Listed Companies

SFC investigations

SFC actions against Independent Non-executive directors

Q&A

SFC steps up efforts to combat IPO-related misconduct

20 May 2021

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“The Securities and Futures Commission (SFC), in collaboration with the Stock Exchange of Hong Kong Limited (SEHK), is **intensifying its efforts** to tackle misconduct and improper behaviour related to new listings...

... “Today’s joint statement signals **our determination** to combat market misconduct in new listings and we will not hesitate to act if there are red flags indicating a lack of genuine investor interest in an IPO. In the run-up to the effective date of the new profit thresholds, we will place particular focus on new listing applications which rely on aggressive profit forecasts to justify their expected valuations.”

... As part of the regulatory response to address improper behaviour, problematic applications with red flags are now subject to **heightened scrutiny**. If necessary, the regulators will use their regulatory powers to object to or reject an application.

In addition, the SFC works closely with SEHK to **critically review** each listing applicant’s valuation, such as comparing its price-to-earnings ratio against listed peers, to assess compliance with the minimum market capitalisation and other initial listing requirements.

The SFC has also **stepped up its supervision of firms** taking part in IPO bookbuilding and placing activities. It will conduct in-depth inspections of those involved in problematic new listings and will take enforcement action against any IPO-related misconduct.”

Circular to intermediaries – Notification to the SFC of suspected ramp and dump scams involving market manipulation in the shares of companies listed on the Stock Exchange of Hong Kong

29 Jun 2021

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Reportable red flags:

- clients whose transaction amounts are generally incommensurate with their reported profiles
- clients who regularly acquire shares through bought and sold notes or on a free-of-payment basis or who receive large third-party deposits in their accounts
- clients who bought shares on a delayed settlement basis, following which the share price rose substantially during the delayed settlement period, and then gave instructions before the payment date to sell these shares
- clients who bought shares in a particular stock towards the end of the trading day in a way that had the effect of substantially raising the closing price on a number of days, particularly when the company is a thinly-traded, small-cap stock with a highly concentrated shareholding and it has experienced a sustained price increase which cannot be explained by any corporate or sector-specific news
- clients who sold a large volume of shares in a particular company shortly before a collapse of the share price which cannot be explained by any corporate or sector-specific news
- a group of clients, some of whom are identified from the trading behaviour set out above, traded in the same stock in the same direction, at more or less the same price or at the same time

SFC and ICAC search a listed company and an underwriter

7 Jul 2021

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“A senior executive of a listed company has been arrested in a joint operation of the Securities and Futures Commission (SFC) and the Independent Commission Against Corruption (ICAC).

The operation also involved a search of the offices of the listed company and one of its underwriters in its initial public offering.

The SFC conducted the search for the offences related to a suspected ramp-and-dump market manipulation scheme and other market misconduct under the Securities and Futures Ordinance. The ICAC conducted the search and made the arrest for suspected corruption offences under the Prevention of Bribery Ordinance.

The joint operation demonstrated the close collaboration between the SFC and the ICAC to tackle complex and serious financial crimes in order to protect the investing public and maintain the integrity of Hong Kong’s financial markets.”

ACTIONS AGAINST LISTED COMPANIES AND SENIOR MANAGEMENT

SFC AS A REGULATOR OF LISTED COMPANIES

- Traditionally, the SFC regulates brokers' securities business. The frontline regulator of listed companies had always been the HKEx.
- Things started to change since early 2000:

2003

The SFO became effective

2007

SFC successfully obtained director disqualification order from court for the first time

2010

The SFC commenced investigation into Hontex International

2013

- Part XIVA of SFO (disclosure of inside information) became effective
- Corporate Regulation Team was set up

2004

FSTB proposed that part of the listing rules should be enforced by the SFC

2008

The SFC commenced investigation into CITIC Pacific

2011

Ashley Alder, former Executive Director (Corporate Finance), returned to the SFC as its CEO

SFC CORPORATE REGULATION TEAM

- In December 2013, the SFC set up the Corporate Regulation Team in the Corporate Finance Division
- The Corporate Regulation Team:
 - reviews announcements of listed companies daily to identify:
 - any late disclosure of inside information
 - whether material facts are missing from the announcements
 - whether any transactions are detrimental to investors
 - analyses annual reports and other information released by the listed companies
 - monitors analyst reports and news articles



WHO WILL LOOK AT LISTED COMPANIES ANNOUNCEMENTS?

- SEHK
- SFC Corporate Finance Division (Corporate Regulation Team)
- SFC Enforcement Division (Surveillance Team)

MEANING OF FRONT-LOADED REGULATION

Front-loaded
regulatory
approach

Pre-emptive measures:

- Use of the Securities and Futures (Stock Market Listing) Rules
- Restriction Notices (sections 204, 205, 206 of SFO)

Formation of
joint cross-
divisional ICE
taskforce

More collaboration among Intermediaries Division, Corporate Finance Division and Enforcement Division and HKEx

Specialised
investigation
teams

The formation of specialized investigation teams for different types of misconduct/targets

RULE 8 OF THE SECURITIES AND FUTURES (STOCK MARKET LISTING) RULES

Where it appears to the Commission that –

- any materially false, incomplete or misleading information has been included in
 - any document issued in connection with a listing of securities on a recognized stock market
 - announcement, statement, circular or other document made or issued by or on behalf of an issuer in connection with its affairs
- it is **necessary or expedient in the interest of maintaining an orderly and fair market**
- it is in the **interest of the investing public or in the public interest**, or it is appropriate for the protection of investors generally

the Commission may, by notice to the recognized exchange company, direct the recognized exchange company to suspend all dealings in any securities specified in the notice.

LIFTING OF TRADING SUSPENSION

SFC to commence proceedings for suspected market manipulation in the shares of China Ding Yi Feng and lifts trading suspension

22 Jan 2020

The Securities and Futures Commission (SFC) announces that it has decided to commence proceedings, for suspected market manipulation in the shares of China Ding Yi Feng Holdings Limited (China Ding Yi Feng), against a number of individuals including one or more officers of China Ding Yi Feng.

The SFC has also decided to lift the suspension of the trading in the company's shares that was directed by the SFC on 8 March 2019. Trading of the shares of China Ding Yi Feng will resume at 9 am on 23 January 2020 (Note 1).

The SFC issued restriction notices to nine brokers on 20 March 2019 and on 25 June 2019 to freeze certain client securities accounts which are believed to be related to the suspected market manipulation in the shares of China Ding Yi Feng. The restriction notices will remain in place following the resumption of trading. These restriction notices cover 32.37% of the issued share capital of China Ding Yi Feng (Note 2).

The SFC's [Policy Statement on Disclosure of Certain Information to the Public](#) enables it to make an announcement in relation to an inquiry or investigation where, amongst other circumstances, it is desirable to protect members of the public and in order to maintain public confidence in the securities and futures market in Hong Kong (Note 3).

This announcement of the SFC's decision to commence proceedings for suspected market manipulation has been made in accordance with this policy. The SFC considers that, following its confirmation that proceedings will be commenced, there is now sufficient information in the market to allow the suspension to be lifted (Note 4).

MAJOR TYPES OF MISCONDUCT INVOLVING LISTED COMPANIES

- **Corporate mismanagement (s. 214)**
 - **oppressive** to its members or any part of its members
 - involving **fraud or other misconduct** towards its members
 - resulting in its members **not having been given all the information** with respect to its business or affairs
 - **unfairly prejudicial** to its members

- **Disclosure of false or misleading information inducing transactions (ss. 277 and 298)**

- **Late disclosure of price sensitive information (s. 307B)**
 - failure to disclose inside information to the public “**as soon as reasonably practicable**” after the information has come to its knowledge

PROCEEDINGS AGAINST LISTED COMPANIES AND/OR THEIR SENIOR MANAGEMENT SINCE 2018

Date	Party	Venue	Conduct/Alleged conduct	Penalty/Status
25/01/2018	Former Chairman of Pearl Oriental Oil	Civil	The Chairman caused Pearl Oriental to lend money to companies connected with himself.	Director disqualification for six years.
07/02/2018	Qunxing Paper and its former Chairman and Vice-Chairman	Civil	Qunxing Paper failed to disclose the PRC bankruptcy proceedings in relation to a major subsidiary.	The court ordered the company and the two former senior management to repay \$1.42 billion to investors.
23/02/2018	Senior executive of Titan Petrochemical	Civil & MMT	A senior executive of an affiliate of Titan Petrochemical and his mother was found by the MMT to have engaged in insider dealing in the shares of Titan.	Disgorgement of \$2.4 million plus compensation to investors.
27/02/2018	Former Chairman and directors of Starlight Culture Entertainment	Civil	The former Chairman and directors of Starlight Culture diverted a mature business opportunity of Starlight to a private company owned by the former Chairman.	Director disqualification orders from 5 to 7 years plus compensation of US\$890,000 to Starlight Culture.
28/06/2018	Former Chairman and CEO of China Forestry	MMT & Civil	The SFC alleged that the former Chairman and CEO of China Forestry disclosed false or misleading information in the IPO prospectus and annual and interim results announcements.	Pending.
28/06/2018	DBA Telecom	Criminal	DBA Telecom disclosed false or misleading information in the results announcement for the year ended 31 December 2012.	Criminal fine of \$20,000.

PROCEEDINGS AGAINST LISTED COMPANIES AND/OR THEIR SENIOR MANAGEMENT SINCE 2018

Date	Party	Venue	Conduct/Alleged conduct	Penalty/Status
21/01/2019	Former Chairman of China AU Group	MMT	The MMT found that the former CEO and her friends engaged in false trading in the shares of China AU.	Director disqualification order against CEO for 4 years, plus cold shoulder orders and cease and desist orders.
07/03/2019	Former directors of Luxey International	Civil	The SFC alleged that the former Chairman and former CEO of Luxey breached their directors' duties, resulting in Luxey's shareholders not having been given all the information as they might reasonably expect.	Pending.
11/04/2019	CFO of DBA Telecom	Criminal	The former CFO of DBA Telecom was convicted for his role in a false or misleading statement in DBA's announcement.	Criminal fine of \$60,000.
12/04/2019	Fujikon Industrial and its Chairman and directors	MMT	[Late disclosure] The MMT found that Fujikon Industrial and its Chairman and directors failed to disclose material price sensitive information to the public as soon as reasonably practicable.	Fujikon and the two individuals were fined a total of \$1.5 million.
04/06/2019	CFO of Fujian Nuoqi	Civil	The SFC commenced civil proceedings to disqualify the CFO alleging that he disregarded the red flags regarding the withdrawals of IPO proceeds and failed to alert and advise Nuoqi's board of directors regarding these withdrawals.	Pending.
25/06/2019	Health & Happiness and its Chairman	MMT	[Late disclosure] The SFC alleged that Health & Happiness failed to disclose material price sensitive information to the public as soon as practicable, which was caused by the reckless or negligent conduct of the Chairman.	A fine of \$1.6 million each.

PROCEEDINGS AGAINST LISTED COMPANIES AND/OR THEIR SENIOR MANAGEMENT SINCE 2018

Date	Party	Venue	Conduct/Alleged conduct	Penalty/Status
08/10/2019	Chairman and directors of Perfect Optronics	Civil	The SFC commenced legal proceedings to seek court orders against the chairman and executive director of Perfect Optronics Limited (Perfect Optronics), and the rest of its directors for their alleged breach of fiduciary duties.	Pending.
07/11/2019	Former Chairman and directors of Minth Group	Civil	The SFC alleged that the defendants were in breach of their fiduciary duties and common law duties to exercise due and reasonable skill, care and diligence in the course of acting as directors of Minth Group.	Chairman: disqualification for 6 years and RMB 20.3 million compensation to a Minth Group's subsidiary Directors: 3 years' disqualification.
27/04/2020	Former directors of Long Success International	Civil	The SFC alleged that the former directors of Long Success were in breach of their fiduciary duties and common law duties to act in the interest of Long Success and/or to exercise due and reasonable skill, care and diligence in the course of acting as directors of the company.	Former Vice Chairman: disqualification for 5 years. One NED and 3 INEDs: disqualification from 2 years to 2 years and 6 months.
11/05/2020	Former directors of EganaGoldpfeil	Civil	The SFC contends that EganaGoldpfeil's losses were caused by the three former directors' breaches of their fiduciary duty to act in good faith and in the best interests of the group, and breaches of the duty of care under common law to exercise due and reasonable skill, care and diligence.	Three former directors were disqualified from 6 to 9 years. Compensation in the sum of HK\$622 million to the company.

PROCEEDINGS AGAINST LISTED COMPANIES AND/OR THEIR SENIOR MANAGEMENT SINCE 2018

Date	Party	Venue	Conduct/Alleged conduct	Penalty/Status
21/05/2020	Combest Holdings and its directors	Civil	The SFC alleged that the directors of Combest and one of its subsidiaries to enter into two overpriced acquisitions and that Combest overstated its revenue by more than 84% to 99% during various accounting periods between 2016 and 2019. The SFC alleged that the overpriced acquisitions and the artificial and/or fictitious businesses caused losses of more than \$293 million to Combest.	Pending. The SFC is applying for a winding up order and director disqualification orders.
07/09/2020	Tianhe Chemicals Group and an executive director	Civil and MMT	The SFC alleges that Tianhe's prospectus contained materially false or misleading information regarding its sales revenue and profits for its track record period for the financial years from 2011 to 2013, which was likely to induce subscriptions for or purchases of the shares of Tianhe and/or to increase the share price of Tianhe in Hong Kong.	Pending.
16/10/2020	CMBC Capital Holdings and six former directors	MMT	[Late disclosure] CMBC Capital and six former directors admitted that the information about significant improvement in the company's financial performance for the five months ended 31 August 2014 came to their knowledge on or around 13 October 2014. However, such information was not made public until 7 November 2014 when a positive profit alert was published.	Former CEO was disqualified for 15 months and fined HK\$1.2 million. Former Chairman was fined HK\$900,000.
30/11/2020	New Ray Medicine International and former CEO and ED	Civil	The SFC alleges that (i) the CEO and ED breached their duties as directors of New Ray; (ii) CEO obtained a secret profit of \$26 million from transactions which he caused New Ray to enter into; and (iii) CEO caused New Ray's subsidiary to enter into a number of artificial transactions which required New Ray to pay substantial upfront payments to one of the counterparties.	Pending.

PROCEEDINGS AGAINST LISTED COMPANIES AND/OR THEIR SENIOR MANAGEMENT SINCE 2018

Date	Party	Venue	Conduct/Alleged conduct	Penalty/Status
09/02/2021	Two former directors of Far East Holdings	Civil	The former directors admitted the following misconduct: (i) the transfers of a total of \$61 million to the personal bank accounts of the then chairman without proper authorization of Far East's board of directors; (ii) the lack of any agreement on the apportionment of investments and profits or losses between Far East and its chairman; and (iii) the failure to return the unused monies to Far East in a timely manner.	The two directors were disqualified for 3 and 4 years respectively.
02/03/2021	Shandong Molong Petroleum Machinery and directors	Civil	The directors admitted to overstating revenue and understating costs of the company for the financial years of 2015 and 2016. In doing so, they had failed to present a fair picture of the financial position of the company to its shareholders.	The directors were disqualified from 7 to 9 years.
11/03/2021	Magic Holdings and its 5 directors	MMT	[Late disclosure] The MMT found that Magic's disclosure of L'Oréal's proposed acquisition, which would have a positive impact on Magic's share price, had been delayed for around three months.	<ul style="list-style-type: none"> • A total fine of HK\$6.5 million. • Disqualifications from 8 to 24 months • Attend training programme on the corporate disclosure regime, directors' duties and corporate governance.

PROCEEDINGS AGAINST LISTED COMPANIES AND/OR THEIR SENIOR MANAGEMENT SINCE 2018

Date	Party	Venue	Conduct/Alleged conduct	Penalty/Status
12/05/2021	China Medical & HealthCare Group and its directors	MMT	[Late disclosure] COL and the six directors admitted that the information relating to the profits made from COL's position in Alibaba Pictures Group Limited, the overall profit figures for March 2014 and the profit for the nine months ended March 2014, came to their knowledge in April 2014. However, the information was not made public until 10 September 2014.	<ul style="list-style-type: none"> • A total fine of HK\$4.2 million • Two directors were disqualified for 6 and 8 months respectively • All the directors have to attend training
13/07/2021	Former director of Anxin-China Holdings	Civil	Anxin grossly overstated its cash position between 2011 and 2015. In particular, the company's cash position in the audited consolidated financial statements for the two years ended 31 December 2012 and 2013 were overstated by \$1.26 billion and \$1.73 billion, respectively.	Disqualification for 8 years

TWO SETS OF SIMILAR PROVISIONS IN THE SFO

277. Disclosure of false or misleading information inducing transactions

Disclosure of false or misleading information inducing transactions takes place when... a person discloses, circulates or disseminates... information that is likely—

- (a) to induce another person to subscribe for securities, or deal in futures contracts, in Hong Kong;
- (b) to induce the sale or purchase in Hong Kong of securities by another person; or
- (c) to maintain, increase, reduce or stabilize the price of securities, or the price for dealings in futures contracts, in Hong Kong.

298. Offence of disclosure of false or misleading information inducing transactions

A person shall not, in Hong Kong or elsewhere, disclose, circulate or disseminate... information that is likely—

- (a) to induce another person to subscribe for securities, or deal in futures contracts, in Hong Kong;
- (b) to induce the sale or purchase in Hong Kong of securities by another person; or
- (c) to maintain, increase, reduce or stabilize the price of securities, or the price for dealings in futures contracts, in Hong Kong.

CRIMINAL PROSECUTION

Section 388 allows the SFC to prosecute summary offences in the magistrates' court (up to 2 years' imprisonment, or 3 years' imprisonment where there are several offences).

More serious indictable offences are prosecuted by the Department of Justice in the District Court or the Court of First Instance.

Standard of proof: Beyond reasonable doubt

Highest penalties for most SFO offences:

- Summary conviction: 3 years imprisonment and a fine of \$1 million
- Conviction on indictment: 10 years imprisonment and a fine of \$10 million



MARKET MISCONDUCT TRIBUNAL (MMT)

MMT is an administrative tribunal chaired by a judge and assisted by two market professionals (selected from a panel of lawyers, accountants, brokers, bankers, etc).

Market misconduct (Part XIII of the SFO):

- Insider dealing
- False trading, price rigging, market manipulation
- Disclosure of false or misleading information
- Late disclosure of inside information/price sensitive information

Standard of proof: Civil standard (section 252(7))

Commencement of MMT proceedings requires consent from the Secretary for Justice (section 252A)

MMT ORDERS

MMT can make the following orders (section 257):

- disqualify a person from acting as a director or taking part in the management of a listed company for not more than **5 years**
- prohibit a person from trading Hong Kong stocks for not more than **5 years** (**Cold shoulder order**)
- order a person not to perpetrate market misconduct again (**Cease and desist order**)
- order the person to disgorge an amount equivalent to profit made/loss avoided to the Government
- order a person to the SFC legal costs and investigation costs
- recommend disciplinary bodies (e.g. Law Society, HKICPA, etc) to take action against a person

Additional orders for late disclosure of inside information/PSI (section 307N):

- a fine of not more than HK\$8 million
- appoint an independent professional adviser to conduct an internal compliance review
- order the management of the listed company to undergo training program on compliance with disclosure requirements

CIVIL PROCEEDINGS (SECTION 213)

Section 213 empowers the SFC to apply to the Court of First Instance for:

- injunctive reliefs – freezing assets
- restorative orders – compensating victims

Examples:

- Disclosure of false/misleading information – Hontex was ordered to pay HK\$1 billion to 7,700 shareholders
- Insider dealing – Investment bank MD Du Jun was ordered to pay HK\$24 million to 300 counterparties
- Market manipulation – Futures trader Tsoi Bun was ordered to pay HK\$13 million to 500 counterparties

Section 213 proceedings are often used in conjunction with other forms of proceedings, especially MMT proceedings.

CIVIL PROCEEDINGS (SECTION 214)

For corporate mismanagement of listed companies (e.g. senior management's oppressive conduct towards shareholders), the SFC can apply to the Court of First Instance for the following remedies:

- Injunctive orders
- Order the company to sue specific persons (e.g. its own directors or majority shareholder)
- Appointment of a receiver
- Director disqualification order for not more than **15 years** (cf. MMT's disqualification order for 5 years only)
- Any order the court considers appropriate

WINDING UP ORDER

Section 212 allows the SFC to apply to the Court of First Instance for a winding-up order if:

- It is desirable in the public interest that the company shall be wound up
- It is just and equitable that the company should be so wound up

These include private and listed companies but not banks.

Used by the SFC in most serious fraud cases: in February 2015, the SFC successfully obtained an order from the court to wind up China Metal Recycling (Holdings) Limited.

In May 2020, the SFC commenced a winding up action against Combest Holdings Limited (a company listed on the GEM board).



INDEPENDENT NON-EXECUTIVE DIRECTORS

SFC ACTIONS AGAINST INDEPENDENT NON-EXECUTIVE DIRECTORS

No. 2
May 2017



“Heavy is the head that wears the crown”¹

The crucial role of company directors and senior executives

¹ William Shakespeare, *Henry IV, Part 2*.

“Although independent non-executive directors do not take part in the daily management of companies, they serve **a very important role** in supervising management and protecting shareholders’ interests. **When they have disagreements with the board or believe that the interests of shareholders are oppressed, they should openly communicate their views to all shareholders** and, if they choose to resign, provide substantive reasons for their resignations.

...

Directors and senior officers who fail to perform their duties can expect tough enforcement action if the company or its minority shareholders are materially harmed as a result.”

(Enforcement Reporter, May 2017)

ENFORCEMENT ACTIONS AGAINST INDEPENDENT DIRECTORS

Date	Party	Venue	Conduct/Alleged conduct	Penalty/Status
07/10/2016	5 INEDs of Freeman FinTech Corporation	Civil	<p>The SFC alleged that the directors have:</p> <ul style="list-style-type: none"> failed to act in good faith and in the best interests of Freeman including a duty to disclose relevant material information to Freeman and its shareholders allowed or caused false or misleading statements in Freeman's announcements and circulars failed to exercise reasonable care, skill and diligence and failed to take steps to pursue others for the loss suffered by Freeman 	Pending
05/04/2017	4 INEDs of Mayer Holdings	MMT	<p>[Late disclosure] The MMT decided that Mayer Holdings and its directors had failed to disclose inside information as soon as reasonably practicable as required by the SFO.</p> <p>On appeal, the Court of Appeal disagreed with the MMT's methodology of determining the "materiality" of the subject information and remitted the matter back to the MMT.</p>	Pending (following a successful appeal against the initial MMT ruling by Mayer and the INEDs).
04/09/2017	4 INEDs of Hanergy Thin Film Power Group	Civil	The Court found that the independent directors were not only incompetent but they also exhibited a marked indifference to their responsibilities as directors.	Director disqualification from 3 to 4 years
08/10/2019	3 INEDs of Perfect Optonics	Civil	The SFC commenced legal proceedings to seek court orders against the chairman and executive director of Perfect Optonics Limited (Perfect Optonics), and the rest of its directors for their alleged breach of fiduciary duties.	Pending

ENFORCEMENT ACTIONS AGAINST INDEPENDENT DIRECTORS

Date	Party	Venue	Conduct/Alleged conduct	Penalty/Status
31/10/2019	3 INEDs of China Medical & Healthcare Group	MMT	[Late disclosure] The SFC alleged that China Medical failed to disclose information in relation to its significant gains in securities trading as soon as reasonably practicable in 2014.	3 INEDs: A fine of HK\$300,000 each. Also to pay the costs of proceedings and to attend a training programme on corporate disclosure.
27/04/2020	3 INEDs of Long Success International	Civil	The SFC alleged that the former directors of Long Success were in breach of their fiduciary duties and common law duties to act in the interest of Long Success and/or to exercise due and reasonable skill, care and diligence in the course of acting as directors of the company.	3 INEDs: disqualification from 2 years to 2 years and 6 months.
16/10/2020	3 INEDs of CMBC Capital	MMT	[Late disclosure] The MMT has found that CMBC Capital Holdings Limited (CMBC Capital) and six of its former directors failed to disclose inside information as soon as reasonably practicable under the Securities and Futures Ordinance (SFO)	The 3 INEDs were ordered to pay the costs of the proceedings. They were also ordered to attend a training programme on the corporate disclosure regime.

FAILURE TO QUESTION SUSPICIOUS TRANSACTIONS

Hanergy Thin Film Power (4 Sep 2017)

The Court found that the independent directors were **not only incompetent but they also exhibited a marked indifference to their responsibilities as directors** by:

- failing to make appropriate disclosure about the viability of Hanergy's business model which a reasonable director should have questioned
- failing to properly assess the financial positions of the connected parties and hence the recoverability of the receivables due from them as a result of these connected transactions
- failing to take proper steps to recover these receivables, and so did not act in Hanergy's best interest

Fujian Nuoqi Co Ltd (4 June 2019)

The Company was listed on the Main Board in January 2014. The Chairman disappeared with more than \$200 million in July 2014.

The SFC commenced proceedings against the CFO of the Company alleging that he **failed to:**

- **properly inquire into** the basis for the withdrawals of IPO proceeds by the disappeared Chairman
- **alert and advise** Nuoqi's board of directors about the withdrawals
- **ensure that the disclosure of information** about the use of the IPO proceeds in Fujian Nuoqi's 2013 annual report was accurate

DUTY OF NON-EXECUTIVE DIRECTORS

“It is settled that executive directors and non-executive directors have the **same responsibility** in law as to the management of a company’s business. But, in its application, the duty may and usually will differ. Whilst a non-executive director cannot place unquestioning reliance on others to do their job, the extent to which a non-executive director may reasonably rely on the executive directors and other professionals to perform their duties is fact-sensitive. **A company may reasonably look to non-executive directors for independence of judgment and supervision of executive management.** Further, whilst a proper degree of delegation and division of responsibility is permissible, and is often necessary, **there cannot be total abrogation of responsibility.** A board of directors must not permit one individual to dominate them and use them.”

Mr Justice Russell Coleman in Long Success case (22 April 2020)

RECENT ACTIONS AGAINST SPONSORS

SPONSORS' FAILURES CAUSED INVESTORS' LOSSES?



We are currently investigating 15 sponsor firms, which we believe may have undertaken **sub-standard work which has resulted in billions of dollars in investment losses.**

Interestingly, what we are seeing as the common denominator is a failure of sponsors to verify critical business data such as material customers and revenue information. So we are concerned about **the relationship between sub-standard sponsor work and listed company fraud...**

... Sponsors have always been under a duty to make reasonable inquiries to satisfy themselves about the disclosures made by listing applicants. So the basic steps of confirming material customers and investigating large red flags have always and continue to be the duty of sponsors...

I want to emphasize that we intend to ensure the sponsorship regime – which is so critical to our listing process – serves its gatekeeping functions. **We will make every effort to hold sponsors accountable**, if they fail to discharge their regulatory duties. ”

Tom Atkinson's speech dated 11 October 2017

COMMON THEMES FROM THE ENFORCEMENT CASES

Inadequate supervision of team members

Failure to keep proper record of due diligence work

Failure to verify information in the prospectus

Failure to ensure that all information submitted to the regulators is accurate

Failure to act independently

Failure to conduct customer due diligence (insufficient face-to-face interviews)

Failure to ensure that all material information has been included in the Application Proof

RECENT ACTIONS AGAINST SPONSORS

Date	Sponsor	Issuer	Penalty
22/04/2012	Mega Capital (Asia)	Hontex International Holdings	Revocation of licence plus a fine of HK\$42 million
27/01/2014	Sun Hung Kai International	Sino-Life Group Limited	Suspension for 1 year and a fine of HK\$12 million
15/03/2017	BOCOM International (Asia)	China Huinong Capital Group	Reprimand and a fine of HK\$15 million
17/05/2018	Citigroup Global Markets Asia	Real Gold Mining Limited	Reprimand and a fine of HK\$57 million
09/07/2018	CCB International Capital	Fujian Dongya Aquatic Products Co., Ltd	Reprimand and a fine of HK\$24 million
14/03/2019	UBS AG UBS Securities HK	China Forestry Holdings Tianhe Chemicals Group China Metal Recycling	Suspension of licence for 1 year and a fine of HK\$375 million
14/03/2019	Morgan Stanley Asia Limited	Tianhe Chemicals Group	Reprimand and a fine of HK\$224 million
14/03/2019	Merrill Lynch Far East Limited	Tianhe Chemicals Group	Reprimand and a fine of HK\$128 million
14/03/2019	Standard Chartered Securities	China Forestry Holdings	Reprimand and a fine of HK\$59.7 million
27/05/2019	China Merchants Securities (HK)	China Metal Recycling (Holdings)	Reprimand and a fine of HK\$27 million

RECENT ACTIONS AGAINST SPONSOR PRINCIPALS

Date	Sponsor Principal	Issuer	Penalty
07/06/2012	Hong Hui Lung of Mega Capital (Asia)	Hontex International Holdings	Revocation of licence
20/11/2012	Wong Tang Chung of Mega Capital (Asia)	Hontex International Holdings	Prohibition for 3 years
16/09/2014	Eric Shum Kam Chi of Sun Hung Kai International	Sino-Life Group	Suspension for 3 years
17/07/2018	Joseph Hsu Kar Hing of Standard Chartered Securities	China Forestry Holdings	Prohibition for 3 years
27/02/2019	Wu Yinong of China Merchants Securities	China Metal Recycling	Suspension for 18 months
14/03/2019	Cen Tian of UBS	China Forestry Holdings	Suspension for 2 years
16/09/2020	Fabian Shin Yick of Yi Shun Da Capital	Imperial Sierra Group	Prohibition for 20 months
30/09/2020	Lai Voon Wai of CCBIC and BIAL	Fujian Dongya Aquatic Products China Huinong Capital Group	Prohibition for 5 years
02/06/2021	Cai Hongping of UBS	China Metal Recycling	SFC: Prohibition for 5 years SFAT: Not liable due to insufficient evidence

SFC-SEHK JOINT STATEMENT DATED 20 MAY 2021

Recent concerns of the SFC and SEHK:

- **Ramp-and-dump schemes (i.e. WeChat girls 微信女 cases)**

Using the IPO placing tranche to allocate shares to controlled placees in order to :

- Artificially satisfy the initial listing requirements under the Listing Rules
 - corner the shares to better enable market manipulation after the shares were listed
-
- **Unusually high underwriting commissions (e.g. 12% instead of 4-6%)**

A few reminders

SFC will make enquiries when one or more of the following features present in a listing application

Market capitalization barely meets the minimum requirement

Very high PE ratio (comparable to peers in the industry)

Unusually high underwriting commission or placing commissions or listing expenses

Highly concentrated shareholding in a limited number of shareholders

THE PERILS OF BEING A SPONSOR

Sponsors are easy targets of regulators and liquidators

- They are licensed and located in Hong Kong
- They are usually subsidiaries of large financial institutions (deep pockets)
- The SFC can take direct disciplinary action without going through the court or the MMT
- Liquidators of failed listed companies are inclined to sue the sponsors and accountants

(e.g. very recent settlement (June 2021) between KPMG and the liquidators of China Forestry – KPMG pays **HK\$650 million** to the liquidators for alleged failure to detect that executives of China Forestry had falsified the company's assets and revenue by submitting forged bank statements and customer records).

DISCIPLINARY PROCEEDINGS (SECTIONS 194 AND 196)

The SFC can take disciplinary actions against licensed corporations (i.e. brokers) and registered institutions (i.e. banks – which are known as Authorized Institutions for HKMA) and their staff

There are two limbs for attracting disciplinary liability:

- “Not fit and proper” – refer to various factors under section 129 of the
- “Guilty of misconduct” – contravening SFO provisions or committing any act or omissions that is likely to be prejudicial to the interest of the investing public (see section 193)

Possible disciplinary penalties:

- public reprimand (note: The SFC no longer issues any private reprimand after IMF recommended in 2000 that no private reprimand should be issued)
- suspension of licence
- revocation of licence
- prohibition from re-applying for licence (up to life ban)
- fine – HK\$10 million or three times of profit made/loss avoided per breach, whichever is higher

DEALING WITH SFC INVESTIGATIONS

POSSIBILITY OF AN INVESTIGATION

- Letter from SEHK
- Letter from SFC Corporate Finance Division
- Letter of enquiry from SFC Enforcement Division
- Letter from SFC Enforcement Division enclosing investigation direction and notices
- Note: “Person Assisting Investigation” (Witness) or “Person Under Investigation” (Suspect)

POWER TO COMPEL PRODUCTION OF DOCUMENTS UNDER SECTION 183

- Usually issued by the Enforcement Division following commencement of investigation
- Used if the SFC “*has reasonable cause to believe*” a person has in possession records/documents which contain/likely to contain information relevant to an investigation
- To obtain records and documents (and explanation) from anyone, including a person under investigation, as well as a person assisting the investigation

Most common ground for refusal: Legal Professional Privilege (LPP)

POWER TO INTERVIEW WITNESSES/SUSPECTS UNDER SECTION 183

The SFC has the power to compel interviews pursuant to section 183:

- Including persons under investigation and witnesses
- Interviewees are obliged to answer SFC's questions - no right to silence
- The interviewees can choose that their answers cannot be used in criminal proceedings against them (section 187) – **Note: the statements can still be used against others in criminal proceedings**
- Can also claim LPP in relation to contents of documents that are protected by LPP

Interviews are audio-recorded.

TIPS ON HANDLING INTERVIEWS

- Instruct external lawyers and be thoroughly prepared before the interview
- Right to make a claim under section 187 (this claim can be made in written answers as well)
- Listen to the questions carefully and be specific when answering questions
- If you do not recall the facts, just say so. Don't guess.
- Ask for a legal break (if you wish to consult your lawyers) or a comfort break

CROSS BORDER SECURITIES INVESTIGATION

- IOSCO Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information (**IOSCO MMoU**)
- Currently there are 124 IOSCO MMoU signatories, including the US SEC. CFTC, CSRC, UK FCA. ASIC, Japan FSA HK SFC and Singapore MAS.



ASIC



中国证监会
CSRC



金融庁

Financial Services Agency



SECTION 378 - SECRECY OBLIGATIONS

- People who are assisting or under SFC investigations are bound by section 378 secrecy obligations, unless:
 - the information is already public
 - reporting the matter for criminal investigation in Hong Kong
 - seeking professional advice (e.g. lawyers, forensic accountants, trading experts, etc) in relation to the matter
 - disclosure pursuant to judicial orders
- If in doubt, should send a letter to the SFC seeking its consent. Consent is assumed under the following circumstances:
 - (Individuals) disclosure to employer, firm's RO, compliance officer, in-house counsel, spouse/partner
 - (companies) disclosure to its board of directors, holding companies (not subsidiaries or related companies), indemnity insurers
- Can only disclose the general nature of the matter, the date/time/place of the production of documents or attendance of an interview (but not its contents).
- **Note: Disclosure of investigation to auditors requires prior consent of the SFC**

COMMON MISCONCEPTIONS / KEY ISSUES

- Listed companies and directors cannot be reprimanded or suspended by the SFC (unless any of the directors are licensed by the SFC)
- Listed companies and directors can be subject to Market Misconduct proceedings and civil proceedings in court (i.e. disgorgement fine, compensation, director disqualification, etc)
- Sponsors and sponsor principals can be disciplined by the SFC (reprimand, suspension of licence, prohibition, monetary fine)
- No more private reprimand
- Right against self-incrimination under section 187 (oral and written)
- Secrecy obligation under section 378 – SFC Secrecy Provisions FAQ

<https://www.sfc.hk/en/Regulatory-functions/Enforcement/Secrecy-provisions>

QUESTIONS AND ANSWERS

THANK YOU

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