

MESSAGE

To: consult/SFC@SFC
cc: ac_cytae@stu.ust.hk
ac_lwmac@stu.ust.hk
ac_ywyac@stu.ust.hk
ac_hkt@stu.ust.hk

CEO

Ext :
Ext :
Ext :
Ext :

From: "Sharon Wong" <ac_wysab@stu.ust.hk>
Date: 22/11/2009 11:50 PM

Subject: Proposal to enhance protection for the investing public

Dear Sir/Madam,

We are a group of accounting students from the Hong Kong University of Science and Technology. We learnt that the SFC has begun a three-month consultation on proposals to enhance protection for the investing public. So, we would like to voice our opinions regarding the matter in terms of the Law of insider dealing. Attached please find our research paper on insider dealing. We hope that our recommendations would be valued.

Thank you for your time and consideration.

Yours faithfully,



Sharon Wong [Research paper on insider dealings.doc](#)

Research Paper on

Insider Dealings

By :

**Chan Ying Tung, Kelly
Lam Wing Man, Winnie
Hui Ka Tsun, Eric
Yip Wing Yi, Shirley
Wong Yee Suen, Sharon**

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Introduction

In this research paper, our group is going to focus on the Law of insider dealing and its enforcement in Hong Kong.

Insider dealing is not only a civil wrong; it was made a criminal offence in 2003 under section 291 of the Securities and Futures Ordinance (SFO). It imposes severe penalties including fines of up to HK\$ 10 million and imprisonment of up to 10 years. The first jail sentence of insider dealing took place in 2008. Ma Hon Yeung, former investment banker was jailed for 26 months and fined \$230,000 for insider dealing in shares of Egana Jewellery & Pearls Ltd.¹ The most recent jail took place in September 2009. Former managing director of Morgan Stanley, Mr. Du Jun, was sentenced to seven years' imprisonment and fined \$23,324,117 for insider dealing in shares of CITIC Resources Holdings Ltd.² The jail sentences indicate that insider dealing is an intolerable crime and the law of insider dealing is used to serve as a deterrence to prevent this unfair, unacceptable and unethical crime from being committed.

From individual investors' perspective, insider dealing is a totally unfair practice. Information is a critical criterion for investors to make investment decision. Insiders possess confidential, price sensitive information which is not open to the market such that they can make better decision in advance than anyone else. The outsiders have to wait for the announcement of news and information then make the decision afterwards. The time gap between insiders and outsiders to make decisions could constitute huge price difference and thus the profit. Moreover, insiders' gain might be derived from all the investors in the market.

From society's point of view, insider dealing weakens the society's reputation. Hong Kong is a free market where everyone has equal footing to trade with the others. The unfairness resulted from insider dealing undermines fair competition in Hong Kong and hence the incentive to invest in Hong Kong.

Insider dealing not only does harm to individual investors, but also the company itself. When directors, management, and or staff of the company are involved in insider dealing, it signifies that some of the officials of the company might not possess integrity and the internal control and codes

¹ SEC Enforcement News 1 April 2009
<http://www.sfc.hk/sfcPressRelease/EN/sfcOpenDocServlet?docno=09PR37>

² SEC enforcement News 18 September 2009
<http://www.sfc.hk/sfcPressRelease/EN/sfcOpenDocServlet?docno=09PR134>

of ethics in the company is not effective enough. Investors' trust towards the company might collapse.

In short, the Law of insider dealing is very significant to protect the interests of all the parties concerned. Since the first conviction in July 2008, six people were jailed for insider dealing and in the past 14 months, the SFC has secured ten convictions.³ Now, we are going to investigate how comprehensive the law is to protect the interests of the society.

³ SEC enforcement News 18 September 2009
<http://www.sfc.hk/sfcPressRelease/EN/sfcOpenDocServlet?docno=09PR134>

Analysis of Law

The ordinance provides for six possible forms of insider dealing. The most straight-forward one is:

A person connected with a listed company who has relevant information in relation to that company deals or counsels or procures another to deal in the listed securities or derivatives of that company or any related company. ⁴

There are three key elements:

Connected person⁵ can be anyone who is likely to get access to the relevant information of a company. A person is connected with a corporation if he is, or has within the previous six months been:

- 1) Company's director;
- 2) Employee;
- 3) Substantial shareholder with five or more of the total shares of that company or
- 4) Public officer who is in a capacity receives relevant information in relation to a corporation.

Relevant information⁶ is precise information which is not yet generally known to the public and if generally known would be likely to materially affect the price of the listed securities. Thus, relevant information is both confidential and price-sensitive information.

For **dealing, counseling and procuring**⁷, note that it is an offence for a tipper, who has relevant information, to give the tip with the intention that the tippee should deal in the related securities. At the same time, it is also an offence for the tippee to deal if he has knowingly obtained from a person connected to unpublished information which should not be disclosed yet.

The rationale behind the prohibition of insider dealing is to ensure information symmetry, fair play among investors and to protect the companies' ownership of privileged information. As the ordinance defines insider dealing by listing numerous possible situations in which insider dealing occurs, Judges, Tribunal and legal personnel can easily apply the legal principles by referring to these examples.

However, one of the weaknesses of the law is that the law is ambiguous in classifying a insider dealing offence as civil or criminal offence. This becomes an issue when determining the standard of

⁴ SECURITIES AND FUTURES ORDINANCE Division 4 Section 270 – (1)

⁵ SECURITIES AND FUTURES ORDINANCE Division 4 Section 287-288

⁶ SECURITIES AND FUTURES ORDINANCE Division 4 Section 245

⁷ SECURITIES AND FUTURES ORDINANCE Division 4 Section 291-(3)

proof and imposing charges.⁸ This ambiguity is understandable because such classification is a matter of substance rather than form, so judges should make the judgments based on the nature of cases and their legal knowledge.

Exceptions & defense

Even when a person's action is identified as insider dealing, he may not be subject to sanctions, if he falls within any of the exceptions in Sections 271 or 292.

An important rationale behind these exceptions is intention. The insider dealer is not subject to sanctions, if he has no intention to benefit, either through gaining or preventing loss, from the use of relevant information. These include off-market transactions between insiders, the connected persons acting as trustees, personal representatives or agents and etc⁹. Such exceptions are reasonable because fair play is not affected. However, the burden of proof to establish that an exception applies falls on the alleged insider dealer within criminal regime.

Separate entity vs breach of duty

As a separate entity, a company can be insider dealer if its action falls into the definition of insider dealing. However, if the insider dealing is directly/indirectly attributable to a breach of the duty by any officer of the company, then although he have been identified as an insider dealer, an order may be made against him. This is reasonable as employees should be responsible for safeguarding information that belongs to the company¹⁰

Yet, such circumstance can be avoided if Chinese wall¹¹ is set up properly, a company is not regarded as insider dealer, even its employees possess relevant information. Essentially, Chinese wall is separation of duties inside a company, in which employees who possess relevant information do not participate in transactions regarding related securities or communicate the information to the employees who make decisions on the related transactions.

Sanctions

Under the dual civil and criminal regime, the Court or Tribunal can enforce injunctions, fines or imprisonment¹²(exhibit 1) on insider dealers. So far, the sanctions has a deterrent effect, which is incidental to the purpose of protecting shareholders, investors and the public from corporate officers who are unfit to hold the office.

From social perspective, injunctions¹³ can prevent more companies from being harmed by insider

⁸ KOON WING YEE v. INSIDER DEALING TRIBUNAL AND ANOTHER [2008] 3 HKLRD 372; [2008] 11 HKCFAR 170

⁹ SECURITIES AND FUTURES ORDINANCE Division 4 Sections 271 and 292

¹⁰ Insider Dealing in the City(2007). Financial Services Authority. Retrieved 28/03/07 from http://www.fsa.gov.uk/pages/Library/Communication/Speeches/2007/0317_mc.shtml

¹¹ William Mackesy(2009). Insider Dealing in Hong Kong. Retrieved 2009 from http://www.deaconslaw.com/eng/knowledge/knowledge_25.htm#2

¹² Exhibit 1

¹³ Exhibit 1 – (a)

dealers and further exploitation of the relevant information he possesses.

From financial perspective, financial orders¹⁴ attempts to restore stakeholders' positions as if the insider dealing has not occurred. Hence, the disturbance to the market can be minimized.

Under the criminal regime, the heavy fine and imprisonment¹⁵ have deferent effect to prevent future crimes and punish the offenders so far. But with the ever increasing complexity and size of business activities, the maximum amount of fine of S1,000,000 may not be enough to punish offenders for large-scale insider dealing in the future.

Securities Future Ordinance regarding insider dealing is comprehensive, as what actions and motives constitute insider dealing are explained clearly with various situations and exceptions. The sanctions have sufficiently deferent effect. Despite the ordinance's comprehensiveness, prosecution remains difficult for the various reasons.

¹⁴ Exhibit 1 – (b)

¹⁵ Exhibit 1 – (c)

Difficulties in Enforcing Insider Dealings

Difficulties in enforcing insider dealings

Insider dealing is both the civil and criminal offenses. Verification of intention (mens reas) and act of insider dealing (actus reas) are necessary for the criminal proceeding. However, there are, of course, inherent difficulties that are involved in prosecuting insider dealing cases and the challenges in presenting a case of insider dealing before a jury are vast. The challenges include difficult to prove the intention and act of insider dealing and time lag between the investigation and the suspected insider dealing. The standard of proof of criminal offense is stricter than that of civil offense which the former requires beyond reasonable doubt of the guilt while the latter requires balance of probability. However, in respect of the following reasons, prosecution is difficult to be success.

Difficult to prove the intention and act of insider dealing

The supporting evidence which involve possession and transfer of price-sensitive information and the details of relevant transactions can hardly be gathered.

In most of the cases, insider dealings are accompanied by abnormal share price performance and abnormal daily turnover. However, studies find that (i) the abnormal price performance is observed mostly for small firms and for directors' sales (rather than director's purchases); (ii) the abnormal price performance is observed even for sales occurring within 3-4 months before the results announcement and also for sales not preceding the results announcement¹⁶. This indicates merely referring to abnormal share price performance cannot comprehensively reveal all the transactions that involve insider dealing.

Besides, a study of the 103 countries that have stock markets reveals that insider trading exists in 87 of them, but enforcement -- as evidenced by prosecutions -- has taken place in only 38 of them¹⁷. Omission of small-sized insider dealing could be one of the explanations. Only those insider dealings involved large sum which is material enough to be revealed by the stock price are investigated.

¹⁶ A Study on the Stock Price Performance Subsequent to Directors' Dealings

In Hong Kong (March,2009) The Hong Kong Institute of Chartered Secretaries. Retrieved October 27 2009 from http://www.hkics.org.hk/media/publication/attachment/PUBLICATION_A_2309_Stock_price_performance_subsequent_to_directors'_dealing.pdf

¹⁷ A Study on the Stock Price Performance Subsequent to Directors' Dealings

In Hong Kong (March,2009) The Hong Kong Institute of Chartered Secretaries. Retrieved October 27 2009 from http://www.hkics.org.hk/media/publication/attachment/PUBLICATION_A_2309_Stock_price_performance_subsequent_to_directors'_dealing.pdf

Some informed price movements are just a proxy for insider dealing, but they may be resulted either by correct guesses by media and analysts or by a deliberate strategic leak. In addition to the increasing sophistication in financial markets and extensive and continuous fluctuation in stock price, it becomes more difficult to infer from the environment. In short, there is barely one-to-one relationship or causation between stock price and involvement of insider dealing. Even if so, the prosecutors are exposed to a great extent of difficulty to gather evidence.

Furthermore, the insider dealers and related parties are extremely cautious about being investigated. They must try to keep the information as confidential as possible. Insider dealers seldom have direct contact. Scope of investigation only limits to their meeting place, relationship, their time and nature of securities transactions. In the case of Galleon Group ¹⁸(the largest insider dealing prosecution relating the hedge fund industry in the U.S, 2009), it was the wiretap that accelerated the prosecution since the related parties only dealt face to face or on phone. In the case of Zvi Goffer(2009), wiretap and secret recording were used to collect evidence since the insider dealers used disposable mobiles and broke the SIM cards. The evidential difficulties are particularly acute when the prosecutors face organised and sophisticated criminals who are careful to take steps to cover their tracks.

Besides, although there is sufficient and extensive stated criteria defining insider information, insider dealing may also be difficult to enforce in family businesses. Since not all the business traders are familiar with the technical definition of insider dealing, to a certain extent, they may not even know they themselves are insider dealers and obtain insider information. This particularly acute for family businesses that they do not treat the information flow as inside.

Time lag between the investigation and the suspected insider dealing

Confidentiality obligations in law and cross-border investigation

In the case of Crownhampton International Limited(1994)¹⁹, the investigation was carried out in both Hong Kong and Singapore because the company was a Hong Kong listed company with its principal business in Singapore. The other two related companies also based their business in Singapore. When the Securities and Future Commission launched extensive examination, the OCBC Bank Singapore declined to disclose the details of its clients (suspected insider dealers) on the grounds of

¹⁸ New York agog at Galleon insider dealing allegations. (2009, October). *The OnlineTimes*. Retrieved November 5 2009, from http://business.timesonline.co.uk/tol/business/industry_sectors/banking_and_finance/article6897548.ece#cid=OTC-RSS&attr=1185799

¹⁹ Report on an Investigation into Possible Contraventions of Securities (Insider Dealing) Ordinance and Securities (Disclosure of Interests) Ordinance in relation to the Trading of Shares in Crownhampton International Limited (1998, February) The Securities and Futures Commission. Retrieved November 1 2009, from <http://www.sfc.hk/sfc/html/EN/speeches/public/consult/consultation/creph16.html>

commercial morality and its basic duty of confidentiality to its clients prior to the authorization obtained, otherwise, OUB would, under Singapore law, be exposed to the risk of legal action by its clients if it complied with the SFCO order without client permission. Also, sometimes the insider dealers would remit the profit and assets gained to overseas to avoid them from congealing. This prolonged the time needed for investigation. It is also possible that the longer the time needed, the higher degree of co-operation from witnesses and persons involved.

The confidentiality obligation in law adds difficulty to investigation.

In many markets the statutory exceptions to the contractual duty will permit disclosure to a domestic court or tribunal, a domestic police force or other domestic regulator undertaking a proper enquiry. In many developed markets, the statutory exceptions will also allow the domestic regulator to require the provision of information that would assist a foreign regulator undertaking an inquiry into a suspected breach of the law in the foreign jurisdiction. The circumstances in which assistance may be provided to a foreign regulator vary between jurisdictions but generally these statutory exceptions overcome problems that would otherwise arise when it becomes necessary to conduct part of an investigation in another country.

Although we have extensive investigatory powers under the SFCO, these powers do not extend beyond Hong Kong borders to require overseas brokers dealing in the Hong Kong market to provide the necessary information to facilitate enquiries into possible breaches of Hong Kong's securities laws. Equally, we have no powers to require their clients, particularly if these are non Hong Kong residents, to provide information or to answer the questions.

Analysis of foreign action

Although US is not the first country to enact laws against insider trading, its enforcement record has been satisfactory compared to other developed economies. Our group has concluded the following three reasons after detail analysis.

1. Effective civil approach and proceedings

Normally, in criminal insider trading cases, the US court holds that the government must prove actual usage of information by defendant when making trading decisions.

However in the civil case of SEC v. Adler²⁰, the court held that although "use" is a required element of insider trading violation, it can be inferred that the material nonpublic information possessed by an insider was used in trading under civil context. Therefore it becomes the responsibility of the trader to rebut the inference by providing evidence that there was no causal relationship between the transaction and the knowledge.

The above case illustrates that due to lower level of standard of proof, the effective civil approaches used by US authorities can lead to higher conviction rate.

Other usual civil proceedings taken by the SEC includes temporary restraining orders, freeze orders and civil penalties. For example, in the 2007 Dow Jones case²¹, the SEC filed civil fraud charges against several well-known figures in Hong Kong. The federal court judge granted the SEC's request to freeze the original defendant's Merrill Lynch account for over three months.

Our group thinks that successful prosecutions rely heavily on these active civil actions. For example, Freeze orders help prevents illegal profits from disappearing pending the investigation and enforcement effort. Moreover, restraining orders may lead to significant losses to companies or defendant. Therefore SEC receives higher degree of cooperation from defendants and witnesses.

2. Cooperation among authorities and effective new offensives

The SEC has broad authority in investigating potential insider trading cases. Its staff can carry out informal investigations without authorization and request voluntary information support. In its formal investigations, the SEC may use subpoena power to order witnesses to testify or to provide records and other evidence. These powers can greatly reduce the obstacles faced by investigators in collecting data and evidence.

Another reason for successful prosecutions is the high degree of cooperation among US authorities.

²⁰ 137 F3d 1325 Securities and Exchange Commission v. F Adler L L L, March 27, 1998, from <http://openjurist.org/137/f3d/1325/securities-and-exchange-commission-v-f-adler-l-l-l>

²¹ Kara Scannell, June 29 2007, <http://online.wsj.com/article/SB118308488686052563.html>

Most cases are found to be joint efforts among the SEC and U.S. Attorney office which brings civil and criminal charges respectively. This can be illustrated by the 2009 Galleon case²² During the collection of evidence, the investigators relied on wiretaps, informants and intricate software tools by making use of the resources of the U.S. Attorney's Office in New York. The close ties allow efficient share of information and prompt investigations.

In addition, the SEC is constantly looking for new tactics against insider trading. The conventional action taken by the SEC was to cold-call insiders about recent trades. However, the above example reveals that the SEC has introduced new offensives and sophisticated technology for investigations.

3. Cooperation among International Enforcement Authorities

The SEC has entered into arrangements, known as Memoranda of Understanding (MOUs)²³, with foreign countries for information sharing and cooperation in violations of securities laws. The signatories agree to provide critical information, for instance documents regarding trading transactions in bank and information about beneficial owners.

The following case demonstrates a remarkable success in this aspect. In 1998, after the SEC has filed an emergent complaint against two Singapore residents²⁴. Its request for a temporary asset freeze was granted by the US court. The SEC then applied to the High Court of the Republic of Singapore. Despite the opposition by the Singaporean defendants, the Singapore court held that the decision by the US court is applicable on the defendants. It is shown that cross-border information-gathering increases the SEC's ability to obtain information and enhances its enforcement process.

Moreover, the MOUs motivate other countries to enact legislations which facilitate effective information sharing. Therefore our group thinks the active participation of U.S. authorities in establishing such clear mechanisms has an effect of catalyzing the world's combined efforts against insider trading.

²² Roben Farzad and Theo Francis, October 21, 2009, http://www.businessweek.com/magazine/content/09_44/b4153000978323.htm

²³ U.S. Securities and Exchange Commission http://www.sec.gov/about/offices/oia/oia_coopfactsheet.htm

²⁴ Speech by Chairman Christopher Cox, U.S. Securities & Exchange Commission, July 31, 2007
<http://www.sec.gov/news/testimony/2006/ts120506lct.pdf>

Proposed Ways

Nowadays, people can hardly be stopped from doing and be charged because of their violence of the insider dealings.²⁵ Solving the insider dealings problem is hard, but is necessary. As insider dealings are difficult in collecting evidence and being spotted, prevention is important. Here are two proposed ways for prevention.

1) Extend the prohibited selling period

The existing black out period, which directors are prohibited from dealing with company shares, is one month for both the year-end and half-year results announcement. The latest proposal made by the Hong Kong Exchanges and Clearing Ltd (HKEx) is to extend the blackout period become 60 days for year-end results and 30 days for the half-year results.²⁶

There are evidences showing the efficiency of this extension is not enough to tackle the insider dealings. According to the HKUST,²⁷ a lot of directors' transactions are after the results announcements. The abnormal price movement subsequent to directors' purchases cannot be prohibited either. Meanwhile, this extension receives a lot of objections from the financial sector. As the longer black out period may probably reduce the total transaction in the market, it will become a great loss of business opportunity to all the investment agencies.

However, the extension is a cut off method to stop trades based on insider information effectively. There are indicators showing the biggest party who committee the insider trading is the directors and at least 30 % of directors' transaction¹ is carried out before the announcement.

This extension should be implemented. As the prohibited selling period can at least stop the people who have an access to the most price sensitive information, financial reports, to make use of the information directly.

²⁵ Utpal Bhattacharya and Hazem Daouk: *The World Price of Insider Trading*, 2002, scholar from the Kelley School of Business, Retrieved Feb2002, from <http://cei.ier.hit-u.ac.jp/activities/seminars/papers/Utpal3.pdf>

²⁶ Cheng and Leung, 2008, "Is there information content from insider trading activities preceding earnings and dividend announcements in Hong Kong?" Professors from School of Accounting and Finance, Hong Kong Polytechnic University, Kowloon, Department of Accountancy, City University of Hong Kong, Kowloon, Hong Kong, Blackwell Publishing

²⁷ Centre for Fund Management of the HKUST And The Hong Kong Institute of Chartered Secretaries(2009). *A Study on the Stock Price Performance Subsequent to Directors' Dealings In Hong Kong*, Retrieved 27 March 2009

2) Increase the maximum penalty

Recently, the maximum penalty for insider dealing in Hong Kong is 10 years in jail and a fine of \$10 million, which can only be imposed upon conviction by indictment.

For the imprisonment penalty, 10 years in jail is nearly the highest penalty among the world. However, for the monetary punishment, the cancellation of 3 times profit in 2004 was unwise²⁸. In Britain, the fine for information abuse is unlimited; in Italy, it is 75 million Euros or 10 times the profit. As insider dealings can have an enormous unethical profit by misusing the insider information, it is more appropriate to account for fine based on each case. In Shell's case, 70 million US dollars are fined by the SEC.²⁹

It is suggested that the recent rule applied to the licensed people on insider dealings should apply to everyone. The SFC should have power to impose a penalty up to 3 times of the profits made or loss avoided or HK\$10 million (whichever is greater).

According to the speech made by Director of Enforcement of FSA³⁰, increase people's fears of being caught is important in stopping people from committing the insider dealings.

It is hard enough in collecting evidence to accuse and even harder when we take time lag into consideration. To learn from the well-performed US, there are three proposed ways to help the Securities And Futures Commission (SFC) to compete with time and stamp out the obstacles for prosecution.

3) Have special allowance to compel the suspects to answer

At present, SFC is empowered to conduct further inquiries to supplement the evidence presented. For illustration, refers to the case HCAL 103/2007, the SFC used its power to audio record an interview with a person under an insider dealing investigation and to look into the suspects' Email account. However, it still highly relies on the people's willingness to tell and their honesty to allege a person as committing insider dealings.

In US, the Securities and Exchange Commission (SEC) has subpoena power to compel witnesses to testify or to produce books, records, and other evidence. In Hong Kong, although CFA³¹ did not

²⁸ 證券及期貨事務監察委員會程序覆檢委員會呈交財政司司長的二零零五年周年報表

²⁹ Europe Firms Its Hand Against Insider Trading, By Neil Baker — July 1, 2008

³⁰ Speech by Margaret Cole, Director of Enforcement, FSA, topic "The FSA's approach to insider dealing" 4th October 2007,

³¹ 前主席官永義內幕交易案件獲終審法院撤銷罰款, Tuesday, March 18, 2008, JOVAIN COMMUNICATION from http://www.joviancomm.com/tc/press_content.asp?id=483

mutually agree with the use of evidence collected under forcing Koon answering the questions but still kept the original guilty judgment for the case of Koon. The Court Of Appeal dismissed the appeal from Mr. Koon as violating Article 10 of the Bill of Rights.³²

If this special allowance to compel is permitted, it will be a direct method to gather evidences from the tippees and tippers.

4) Request for injunction orders more frequently

In US, the commission has the power to request preliminary injunctions like HK. And the US frequently takes advantages on the injunction, especially the freeze order, to address ongoing violations.

As US is the most successful country in convicting insider dealings, their approach should be learnt by Hong Kong. During the case of Former Morgan Stanley Banker in HK³³, the SFC was granted an injunction order from the High Court freezing \$46.5 million of Du's liquid assets.

The detective in charge also claimed that the freeze in assets was helpful in capturing the evidence at the time being suspected.

5) Pool more resources for data collection and analysis

Facing the fast moving market, it is critical to keep on looking for more sophisticated data analysis. The SEC places a lot of resources on informants and intricate software tools for monitoring and analyzing the market each year.

More cooperation with the other department is a suggested way to increase the common resources. SFC should make use of its surplus³⁴ of in the reserve to install more advanced data analysis. HK is left behind using the 2002 version detective software when compared with the 2009 version adopted by the other countries, like the US and the UK. The upgrade of data analysis will provide a lot of valuable information to spot or to charge the insider dealers.

In short, either one of the five proposals is comprehensive enough to alleviate the problems. Each of them has its loop-hole, but they can complement each other and to alleviate the seriousness of the insider dealings problem.

³² Press release of the SFC, 24, October, 2008 Court upholds SFC's investigation powers.

³³ SFC press release dated 2 November 2007, 18 December 2007 and 18 January 2008 for details on former Morgan Stanley

Investment banker case held under section 183(1)(c) of the Securities and Futures Ordinance

³⁴ ENFORCEMENT REPORTER MAY 2008 Securities and Futures Commission

From: <http://www.sfc.hk/sfcPressRelease/TC/sfcOpenDocServlet?save=1&docno=07PR220>

Conclusion

This research paper has identified how important and comprehensive the law of insider dealing is and proposed some recommendations to upgrade the existing law with reference to overseas jurisdiction for better enforcement. Recently, a three-month consultation on proposals to enhance protection for the investing public was started by the SFC. It is hoped that our recommendations would be taken into consideration. Through contributing to the consultation, we hope to participate in the concerted effort to progress the existing law.

Exhibit 1

SANCTIONS FOR INSIDER DEALERS³⁵

Where a person has been identified by the Tribunal as an insider dealer, the Tribunal may prescribe one or more of the following sanctions in respect of that person.

(a) Prohibition on taking part in the management of a listed company; preclusion orders; desist orders

The Tribunal can order that a person cannot, without the leave of the court, be a director, liquidator, receiver or manager of a listed company or any other specified company, or in any way, whether directly or indirectly, be concerned or take part in the management of a listed company or any other specified company for a period not exceeding five years.

The Tribunal can also order that a person shall not, without the leave of the court, directly or indirectly, acquire, dispose of or otherwise deal in any securities for a period not exceeding five years.

The Tribunal can also order that a person shall not again perpetrate any specified market misconduct. Any contravention of any of such orders may result on conviction in a maximum fine of HK\$1,000,000 and imprisonment for up to two years.

(b) Financial orders

The Tribunal can order that a person pay to the Government an amount not exceeding the amount of any profit gained or loss avoided by that person as a result of the insider dealing, and can also order that the person pay to the Government or the SFC (as the case may be) an amount in respect of the costs and expenses incurred by the Government in relation to the proceedings of the Tribunal or any investigation carried out for the purposes of the proceedings, and/or an amount in respect of any costs and expenses incurred by the SFC in relation to any preceding investigation.

(c) Other sanctions

Other consequences can follow from insider dealing. For instance, the Tribunal can order that any body can take disciplinary action against the insider dealer as one of its members, and the SFC can (separately) seek injunctions and discipline licensed intermediaries.

Under the criminal regime, a convicted insider dealer is liable to a fine of up to HK\$10m and imprisonment for up to 10 years.

³⁵ William Mackesy(2009). Insider Dealing in Hong Kong.
Retrieved 2009 from http://www.deaconsllaw.com/eng/knowledge/knowledge_25.htm#2