

REGULATORY NEWSLETTER

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Enforcement News

Market Misconduct Tribunal finds China AU's former CEO and related persons culpable of market manipulation

7 Aug 2018

<https://www.sfc.hk/edistributionWeb/gateway/EN/news-and-announcements/news/doc?refNo=18PR93>

The Market Misconduct Tribunal (MMT) has found that Ms Samantha Keung Wai Fun, former CEO of China AU Group Holdings Limited (China AU), her friend Ms Wu Hsiu Jung and a business partner Mr Chen Kuo Chen, engaged in market misconduct by false trading in the shares of China AU.

The SFC alleged that when China AU carried out its fundraising between August 2009 and April 2010, Wu and Chen used a total of 14 securities trading accounts, opened in their respective names and other related persons' names, to buy and sell a substantial amount of shares in China AU in order to make the fundraising exercise more attractive to investors.

The SFC also alleged that Keung funded the trading in China AU shares by Wu and Chen. The MMT was satisfied that Wu and Chen must have known that it was a virtual certainty that the manner in which they traded would have the effect of creating a false and misleading active trading in the shares of China AU, and thereby creating a false or misleading appearance of the market for the shares and their price.



Regulatory Updates

Margin Financing Activities Disguised as Investments

3 Aug 2018

<https://www.sfc.hk/edistributionWeb/gateway/EN/circular/doc?refNo=18EC58>

The Securities and Futures Commission (SFC) has observed that some LCs carrying on asset management activities may have aided and abetted unlicensed affiliates or third parties to provide securities margin financing in the guise of investments. The SFC warns that the provision of margin financing in the guise of investments under such an arrangement is **illegal**. Parties involved in the illicit activities may have avoided certain capital, conduct or disclosure requirements aimed at protecting investors and market integrity. The fitness and properness of LCs may be called into question when they aid and abet the conduct of illegal activities. Anyone involved in these arrangements may be liable to prosecution and should cease such arrangements immediately.

The SFC noted the suspected margin financing arrangements may operate through discretionary accounts or private funds with the following features:

- jointly with an LC's clients, the unlicensed affiliates or third parties appear to fund the acquisition and holding of sizeable, concentrated positions in one or more securities;

SFC reprimands and fines HPI Forex Limited \$2 million for regulatory breaches

22 Aug 2018

<https://www.sfc.hk/edistributionWeb/gateway/EN/news-and-announcements/news/doc?refNo=18PR98>

The SFC has reprimanded and fined HPI Forex Limited (HPI) \$2 million for mis-handling client money. HPI admitted it had transferred client money up to \$8 million to the accounts of its overseas brokers between March 2013 and April 2014. The SFC found that HPI:

- transferred client money from its segregated client account maintained at a bank in Hong Kong to its accounts with two overseas brokers on six occasions;
- used the client money transferred to one of the two overseas brokers to conduct proprietary transactions; and
- remitted all client money from its overseas brokers' accounts back to the segregated client account in Hong Kong after discovering that the conduct might constitute a breach of the Client Money Rules (CMR).

HPI breached the Code of Conduct and the CMR by failing to maintain client money in a segregated client account in Hong Kong with an authorized financial institution. HPI's use of the client money to conduct proprietary transactions also constitutes a breach of its fundamental duty as a licensed intermediary to ensure that client assets are promptly and properly accounted for and adequately safeguarded.

- the clients are required to provide additional capital or collateral when the value of these investments falls below a pre-determined level, similar to a margin call;
- the unlicensed affiliates or third parties are entitled to receive a guaranteed or pre-determined yield from these investments, similar to margin interest; and
- the LC does not have actual investment discretion as the listed securities to be acquired were previously agreed between its clients and the unlicensed affiliates or third parties.

Arrangements which involve the provision of financial accommodations to facilitate the acquisition and holding of listed securities may constitute "securities margin financing" (ie, Type 8 regulated activity) as defined under the SFO. As such, if parties are not licensed by the SFC for carrying out Type 8 regulated activity they may be in breach of the SFO.

Securities margin financing review and consultation on related guidelines

17 Aug 2018

<https://www.sfc.hk/edistributionWeb/gateway/EN/circular/doc?refNo=18EC62>

The Securities and Futures Commission (SFC) published a report on securities margin financing activities and a related consultation paper on its Proposed Guidelines for Securities Margin Financing Activities on 17 Aug 2018. The report summarises the findings of the SFC's recent review of brokers' securities margin financing activities. The two-month consultation on proposed guidelines is proposed to clarify, codify and standardise risk management practices for securities margin financing. The proposed guidelines cover the following key areas:

1. Total margin loans controls
2. Margin client credit limit controls
3. Securities collateral concentration controls
4. Margin client concentration controls
5. Haircuts for securities collateral
6. Margin calls, stopping further advances and forced liquidation
7. Stress testing

Comments on the proposed guidelines may be submitted to the SFC on or before 18 October 2018. The links for downloading the English versions of the documents are as follows:

[Consultation Paper on the Proposed Guidelines for Securities Margin Financing Activities](#)

[Report on Review of Securities Margin Financing Activities](#)