

Enforcement Actions

30 July 2003

SFC Reprimands Get Nice Investment Limited and its Management for Breaching the Rules of the Exchange and Lack of Audit Trails

The SFC has reprimanded Get Nice Investment Limited and its directors, Mr Hung Hon Man and Mr Shum Kin Wai Frankie.

Get Nice

The reprimand follows an inquiry in which the SFC found that through Get Nice's arrangement, five million shares of Cheung Wah Development Company Ltd (now known as Softbank Investment International (Strategic) Ltd) were transferred from a third party to one of Get Nice's clients on 17 January 2000 when trading in Cheung Wah shares was suspended. By this transaction, Get Nice breached Rule 539 of the Rules of the Exchange, which prohibits a member of the Stock Exchange of Hong Kong Limited from dealing in suspended securities.

The SFC further found that Get Nice had failed to ensure that its margin finance business conducted via Get Nice Finance Company Limited (GNF) was conducted properly. The SFC found that Get Nice did not have proper credit controls in relation to the transactions of the client involved in the above transaction. Despite little knowledge of the client's background and financial status, and a large debit balance in the client account in GNF, Get Nice allowed large purchase transactions in the account.

Lastly, the SFC found that there was no proper audit trail when the client withdrew the proceeds of the subsequent sale of the above shares from the client account between January and March 2000. The SFC found that of the three cheque withdrawals recorded at GNF as being payable to the client, one cheque had been altered to cash, another had been altered to be payable to a third party, and the remaining cheque had been paid to a company controlled by Hung. There was no clear audit trail as to the change of the original cheque payee to cash or to a third party. There were also inadequate controls in place to ensure that the relevant cheques were collected by authorised parties or delivered to the client.

These inadequacies posed risks to the client and Get Nice should the client dispute the validity of the transactions in question. That one of the above cheques (for an amount of \$12 million) was deposited to a company controlled by Hung illustrates the dangers securities brokerage firms expose themselves to if clients dispute the disposal of cheques when cheques handling audit trails are incomplete.(Note 1)

The incidents detailed above indicated that Get Nice did not have proper procedures or guidelines to:

- prevent dealing in suspended stocks ; and
- ensure that its margin finance business was being conducted properly by ensuring that proper audit trails for the issuance, alteration and delivery of cheques were

instituted and followed.

As a result of the above findings the SFC concludes that the fitness and properness of Get Nice as a licensed corporation has been called into question and decides to reprimand it.

Get Nice's management

Hung, who knew the shares of the stock were suspended at the time, directed staff of Get Nice to arrange for the off-market transfer of five million Cheung Wah shares on 17 January 2000. Despite having over 10 years' experience in the securities industry and his senior position in Get Nice, Hung failed to realise that dealing in suspended shares was prohibited and caused Get Nice to breach Rule 539 of the Rules of the Exchange. Hung's act posed regulatory risk to himself, Get Nice and the market.

Hung also participated in the handling of the client's account including approving margin finance to the client and settlement-related matters. The SFC found that he was also responsible for Get Nice's failures in lacking proper credit controls and a proper audit trail of fund withdrawals. Therefore, the SFC concludes that the fitness and properness of Hung has been called into question and decides to reprimand him. Hung is not licensed by the SFC, and a reprimand is the maximum penalty that the SFC can impose on him. Had Hung been licensed by the SFC, the SFC would have imposed a more severe penalty on him.

Shum was a director at Get Nice responsible for supervision of its regulated business at the time (Note 2). The SFC found that Shum was also responsible for Get Nice's failures and concludes that his fitness and properness has been called into question and decides to reprimand him.

Mr Alan Linning, SFC's Executive Director of Enforcement, said: "Listed shares are often suspended because of a disorderly or unequally informed market. During such suspension, there is a high likelihood that material information relating to the shares will be issued to the market in the form of an announcement before the suspension ends. Therefore, dealing in suspended securities poses a serious regulatory risk to a broker firm and market integrity, for example, by possibly facilitating insider dealing. A broker firm should prohibit it except for circumstances specified in the Rules of the Exchange."

"In addition, broker firms should keep a proper audit trail of fund withdrawals to protect their clients and the integrity of their dealing practices. Broker firms should also adhere to *Know Your Client Rule* and establish proper credit controls based on clients' background and financial status. These are important matters for the integrity of the market and we expect them to be addressed adequately by all brokers. Alas, in this case, Get Nice and its management failed to do so, hence the need for us to take disciplinary action against them," Mr Linning added.

Ends

Notes:

1. The SFC noted that in this case, the client did not dispute the handling of this cheque.
2. Sum is currently a licensed representative and approved responsible officer of Get Nice.

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