

# SFC Severely Reprimands Selina & Co Limited and Reprimands Ko Tze Ha, Salina for Internal Control Failings

20 May 2004

The SFC has severely reprimanded Selina & Co Limited (S&C) and has reprimanded Ms Ko Tze Ha Salina, a director of S&C, for internal control failings.

The actions stem from an inquiry into the firm's conduct under section 56 of the Securities Ordinance (SO).

In 2002, the SFC investigated a case of alleged misappropriation of clients' assets and deception by a former settlement clerk of S&C (Note 1).

The SFC's investigation found that S&C had seriously inadequate internal controls and had almost no supervision. The dealing director, who is meant to take responsibility for supervision and regulatory compliance, was an appointee in name only and spent almost all her time on the Stock Exchange trading floor. She felt that, as all the staff had been with S&C for a long time, they were all trustworthy and did not need supervision. Ko, the owner and a director of S&C, appointed this dealing director not for carrying out supervisory functions but merely to fulfill the SFC's licensing requirements that each brokerage must appoint a dealing director.

Ko and other directors played almost no supervisory role in S&C. She felt that all employees had been with S&C for a long time and were familiar with S&C's operation and did not need supervision. Even worse, almost all S&C staff knew or should have known the settlement clerk was dealing while unlicensed. It was the ability of the settlement clerk to both deal and settle trades, together with the lack of supervision, that allowed the settlement clerk to engage in her conduct.

At the SFC's request, S&C engaged an independent accountant firm to comprehensively review its internal control procedures. The independent accountant identified a number of serious weaknesses in S&C, which facilitated that settlement clerk's dishonest act. These included:

- failure to segregate settlement and operation of second terminal functions;
- failure to implement effective internal and compliance systems;
- failure to maintain comprehensive audit trails of trading orders;
- failure to deliver trading documents to clients;
- inadequate account opening controls;
- inadequate clearing and settlement procedures; and
- inadequate control procedures on access to internal computer system, second terminals and CCASS terminals.

The SFC found that S&C and Ko had failed to discharge their functions properly in managing and supervising the operations of S&C.

In deciding to severely reprimand S&C and reprimand Ko, the SFC has taken into account that S&C has implemented fully the accountant's recommendations, appointed a responsible officer to be responsible for compliance matters and has purchased replacement stocks to compensate clients who suffered loss.

Mr Alan Linning, SFC's Executive Director of Enforcement, said: "This is one of the worse cases that we have seen of poor internal controls and inadequate supervision in a brokerage permitting staff misconduct. It is disheartening that we continue to encounter cases of such poor controls that permit staff to cheat clients. Elementary failures such as not segregating incompatible duties like trading and settlement and excessive trust of staff continue to occur with unacceptable frequency."

"For a long time the SFC reprimanded brokerages for such failings. Reprimands are obviously proving to be an inadequate deterrent. Under the SFO, the SFC may fine and partially suspend or revoke licences. In future, in cases of internal control supervision failings facilitating serious misconduct harming clients, the SFC will consider imposing heavier sanctions. In the most severe cases, we will

consider suspending a brokerage's licence for a long period or even revoking it. Investor protection demands this. This is the last case in which the SFC will merely reprimand brokerages for such failings. Brokerages should take this as a last opportunity to implement the most essential internal controls that the law and investor protection require," Mr Linning said.

Ends

Notes to Editor:

1. The alleged misappropriation by the settlement clerk is under Police investigation.

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## 證監會因永高證券有限公司的內部監控缺失而 嚴重譴責該公司及譴責高紫霞

2004年5月20日

證監會因永高證券有限公司的內部監控缺失而嚴重譴責該公司及譴責該公司董事高紫霞。

有關行動源自證監會根據《證券條例》第56條而對該商號的操守進行的查訊。

在2002年，證監會就永高一名前交收員被指挪用客戶資產及進行詐騙的個案展開調查(註1)。

證監會的調查發現永高的內部監控措施嚴重不足，而且幾乎全無監督。永高的交易董事理應負責監督及監管規定的合規事宜，但卻只是名義上的獲委任人，並且差不多全時間在交易所的交易大堂工作。該名交易董事認為，由於所有職員已在永高任職了一段長時間，他們全部都是可以信賴及毋須監督的。高氏是永高的東主及董事。她委任這名交易董事並非是要其負責履行監督的職能，而只是用以符合證監會的發牌條件，即每家經紀行必須委任一名交易董事的規定。

高氏及其他董事在永高幾乎完全沒有履行監督的角色。高氏認為所有職員都已在永高工作了一段長時間，而且熟悉永高的運作，因此毋須監督。更甚的是，全體永高職員幾乎都知道或理應知道有關的交收員進行無牌交易。該名交收員可以同時負責進行交易及為買賣結算，再加上永高缺乏監督，都容許了該名交收員得以作出有關行為。

永高其後應證監會要求，聘請獨立的會計師事務所全面檢討其內部監控程序。該獨立的會計師事務所識別出永高若干利便了該名交收員作出有關失實行為的嚴重缺點，包括：

- 未有將交收與操作第二終端機的職能分隔；
- 未有落實有效的內部及合規制度；
- 未有為交易指示備存全面的審計線索；
- 未有向客戶提供交易文件；
- 對開立帳戶的監控不足；
- 結算及交收程序有所不足；及
- 對進入公司內部的電腦系統、第二終端機及中央結算系統終端機的監控程序有所不足。

證監會認為永高及高氏在管理及監督永高的運作方面，並未有適當地履行其職能。

證監會在作出嚴重譴責永高及譴責高氏的決定時，考慮到永高已全面落實有關會計師行的建議，並已委任負責人員負責處理合規事宜，以及已重新購置有關股份，向受損失的客戶作出賠償。

證監會法規執行部執行董事李顯能先生表示：“在我們遇過的經紀行由於內部監控差劣及監督不足，以致職員有機會進行不當行為的個案中，這是其中一宗較為嚴重的個案。對於仍然發生經紀行由於內部監控這樣差劣，以致職員可以欺騙客戶的個案，我們感到相當失望。一些基本的缺失，例如未有將交易和交收等互有抵觸的職能分隔以及對職員過份信任等，仍然持續地時有發生，而其出現的頻密程度更是我們不能接受的。”

李氏指出：“長期以來，證監會都對出現這些缺失的經紀行作出譴責。有關情況證明，作出譴責顯然並未具有足夠的阻嚇作用。根據《證券及期貨條例》，證監會可以對持牌人施加罰款，以及暫時吊銷持牌人的部分牌照或撤銷持牌人的牌照。日後，在內部監控及監督出現缺失，以致利便了嚴重不當行為的發生，從而對客戶構成損害的個案中，證監會將會考慮施加更嚴厲的制裁。在最嚴重的個案中，我們會考慮將有關經紀的牌照暫時吊銷一段長時間或甚至撤銷其牌照。為了保障投資者，我們必須這樣做。本個案是證監會最後一次對發生有關缺失的經紀行只作出譴責的處分。經紀行應視這次為落實法律和保障投資者所需的最基本內部監控措施的最後機會。”

完

編輯備註：

1. 該名交收員被指挪用客戶資產一事已交由警方調查。

最後更新日期：2012年8月1日