

SFC Settles Disciplinary Action with Berich Brokerage Limited, Chung Tin Ming, Sun Tak Sing and Luk King Cheong

18 Apr 2005

The SFC instituted disciplinary proceedings in April 2004 against Berich Brokerage Limited, its general manager and licensed representative, Mr Chung Tin Ming, and its responsible officers, Mr Sun Tak Sing and Mr Luk King Cheong (Note 1). These proceedings followed an investigation in which the SFC found that Berich had window-dressed two Financial Resources Rules (FRR) returns (Note 2), failed to comply with certain terms of its formal undertakings to the SFC and had a number of other internal control failures.

Following an offer made by Berich, Chung, Sun and Luk to enter into a settlement, the disciplinary actions have been settled. Under the terms of the settlement:

- Berich has made a settlement payment of \$1,400,000 and reimbursed the SFC's legal costs and expenses incurred in the disciplinary proceedings;
- the SFC publicly reprimands Berich;
- Chung's licence is suspended for 2 years from 18 April 2005 to 17 April 2007;
- Sun's licence is suspended for 3 months from 18 May 2005 to 17 August 2005;
- Luk's licence is suspended for 1 month from 18 April 2005 to 17 May 2005;
- the applications for review to the Securities and Futures Appeals Tribunal (SFAT) by Berich, Chung, Sun and Luk have been withdrawn (Note 3); and
- Berich has agreed to commission an independent review of its operations during the second half of 2005.

Window-dressing of FRR returns

The SFC found that in February and March 2002, Chung effected some fund transfers between margin client accounts to understate a particular client's margin shortfall. In the SFC's view, these fund transfers were deceptive devices designed to mislead the SFC into believing that the shortfalls in the relevant margin client's account and thus the liquid capital position of Berich had improved.

The SFC found that Sun signed cheques and approved the transfers of funds without making appropriate inquiries or exercising prudent judgment.

Other misconduct

In addition, the SFC found that Berich had:

- failed to comply with certain terms of the undertakings it gave to the SFC relating to its margin financing activities;
- failed to implement a prudent margin financing policy during the period October 2001 to January 2004;
- failed to take effective action to stop a dealer's representative from operating nominee accounts after it had been notified of this by the SFC in January 2003 (Note 4); and
- acquiesced in or failed to detect the unregistered dealing activities of an employee during the period May 2000 to September 2002 (Note 5).

The SFC noted that Luk was a dealing director of Berich when it was publicly reprimanded for internal control deficiencies in July 2000 (Note 6). Following the public reprimand, Luk, as a member of Berich's senior management, failed to make extra efforts to improve Berich's internal control procedures.

The SFC therefore concludes that the fitness and properness of Berich, Chung, Sun and Luk has been impugned. In October 2004, the SFC decided to suspend Berich for four months, to revoke the licence of Chung, and to suspend Sun and Luk for four months and one month respectively. Berich, Chung, Sun and Luk appealed these decisions to the SFAT.

Settlement with Berich

In February 2005, Berich, Chung, Sun and Luk offered to enter into a settlement negotiations with the SFC. The SFC has taken into account the following factors:

- since February 2004, Berich's margin financing business has been conducted within the terms of undertakings given to the SFC and no longer poses any regulatory concerns;
- at no time during the period in question did Berich breach the SFC's liquid capital adequacy requirement;
- Berich appointed a compliance manager in July 2003; and
- Berich has agreed to commission an independent review of its operations during the second half of 2005.

The SFC no longer considers there is a need to suspend Berich's licence and further considers that the settlement is in the interest of the investing public or in the public interest. The settlement payment of \$1,400,000 will be paid to government revenue.

Mr Alan Linning, SFC's Executive Director of Enforcement, said: "The SFC regards window-dressing of FRR returns as a serious matter. We will take severe action against firms and staff who engage in window-dressing."

"Had Berich's misconduct occurred after the commencement of the SFO, in view of the improvements made by Berich subsequent to the misconduct, a monetary fine would have been a more proportionate penalty. Settlement by payment of money provides a bridge between the old and the new disciplinary regimes in appropriate cases where the subject of the decision agrees, so that the same outcomes may be achieved regardless of when the misconduct occurred," Mr Linning added.

Ends

Notes:

1. Berich Brokerage Limited is a licensed corporation in Type 1 (dealing in securities) regulated activity. Chung, Sun and Luk are licensed to carry on Type 1 (dealing in securities) regulated activity.
2. Window-dressing in this context means the misleading presentation of information to give a deceptively favourable impression of a firm's financial position. It often includes unusual fund transfers with related parties, understatement of liabilities and fictitious transactions, etc. Please refer to SFC circular dated 1 April 2003 for details.
3. SFAT Applications Nos. 15, 17, 18 & 19 of 2004.
4. The dealer's representative has left the industry after he was dismissed by Berich in March 2003 and the SFC lost jurisdiction to discipline him. However, he will have to satisfy the SFC that he is fit and proper considering his apparent conduct if he re-applies for a licence.
5. Please refer to [the SFC press release dated 31 January 2005 regarding the suspension of Lau Yin Ying Bonnie](#).
6. Please refer to [the SFC press release dated 20 July 2000](#).

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