
Enforcement News

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28 April 2009

SFC freezes hedge fund assets

The Securities and Futures Commission (SFC) has commenced proceedings against 11 defendants seeking the appointment of administrators and injunction orders over a group of companies and individuals related to a private hedge fund, namely Descartes Athena Fund SPC (the Athena Fund) (Note 1).

Following an urgent application in the High Court by the SFC yesterday, the court appointed Mr John Robert Lees and Mr Colum Sebastian Joseph Bancroft (Note 2) as joint and several interim administrators of four companies -- Descartes Investment Management Ltd (DIM), Descartes Global Asset Management Ltd (DGAM) (Note 3), Descartes Finance Ltd (DFL) and Descartes Athena Fund SPC.

The court also granted an injunction order to freeze assets of up to US\$90.6 million in relation to two individuals and companies related to and/or operated by them. In the case of one of these defendants, the injunction extends to his assets worldwide. The SFC is conducting further inquiries to identify these assets.

The SFC is not naming the individual defendants at this stage because they have not been served with the court orders. They are currently not in Hong Kong.

The court also granted an order to freeze up to HK\$160.89 million which was transferred from DGAM to a third party company. Most of these assets have been identified and located in Hong Kong and are now held under the terms of the orders obtained by the SFC yesterday.

The SFC's urgent action was prompted by concerns that client monies were at risk of dissipation.

The SFC alleges that the Athena Fund is a segregated portfolio company incorporated in the Cayman Islands and that DIM had been appointed to act as its investment manager. DIM, in turn, delegated all functions and powers to DGAM, which was the investment adviser of the Athena Fund.

At this stage, the SFC suspects the Athena Fund had raised approximately USD\$104.9 million from 313 investors in subscriptions. Most of the clients are based in Taiwan. Specifically, the SFC is concerned because it appears:

- the operators of the Athena Fund purported to liquidate the Athena Fund in July 2008 when pressed by clients for redemptions and used what appear to be false documents from a major accounting firm; and
- false statements of account and subscription contracts purportedly issued by the fund administrators were sent to investors.

The interim administrators will take possession of the companies' records and bank accounts, account for and segregate the assets of each of the companies, recover money illegally transferred from the Athena

Fund and report, as required, to the court.

The SFC's investigation is continuing. The case will return to court on 19 May 2009.

The SFC will continue to take appropriate action to ensure the investing public is appropriately protected and to minimise the impact of crime and misconduct on Hong Kong's markets.

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Notes:

1. The proceedings were commenced under Section 213 of the Securities and Futures Ordinance (SFO).
2. The joint and several interim administrators can be contacted on their hotline: (852) 2842 5007 or (852) 2084 5011 during office hours (9:00am to 1:00pm and 2:00pm to 6:00pm, Monday to Friday).
3. DGAM is licensed under the SFO to carry on Type 9 (asset management) regulated activity with the conditions that at all times it shall not hold client assets and cannot extend its services to the retail level. On 10 March 2009, DGAM applied to the SFC to cease carrying on business.

Page last updated: 28 April 2009