

SFC and Oasis resolve on disciplinary action

15 Sep 2011

The Securities and Futures Commission (SFC) has publicly reprimanded Oasis Management (Hong Kong) LLC (Oasis) and its Chief Investment Officer, Mr Seth Hillel Fischer, and fined each of them \$7,500,000 for their trading in the shares of Japan Airlines Corporation (JAL) on the Tokyo Stock Exchange (TSE) in 2006 (Note 1).

The SFC's disciplinary action relates to trading by Oasis in JAL shares on the TSE on 19 July 2006 on behalf of two investment funds (the Funds) after JAL announced a plan to issue new shares via a public offer.

Under JAL's plan, the offering price for the new shares would be priced between 90%-100% of the closing price of JAL's shares on one of the days from 19 July 2006 to 21 July 2006. This type of pricing mechanism is common in the Japanese market and usually the offering price determination day is the first day of the selected range which was 19 July 2006 in this case.

The SFC alleged that Oasis entered a series of orders for JAL shares in the last 15 minutes before the market closed on 19 July 2006, including:

- market-on-close buy orders and cancelling them subsequently; and
- a large volume of short sell orders during the last five minutes before market closed on the TSE. Some of the short sell orders were incorrectly labelled as short sell exempt orders, such that the Funds were able to enter sell orders at prices lower than the latest executed prices (Note 2 & 3).

On the settlement day for the short sell orders, Oasis failed to deliver shares in nearly 70% of the shares they had short sold with approximately 50% of these transactions having to be covered by new shares issued by JAL in the public offer.

The SFC alleged that Oasis' trading strategy, which originated in Hong Kong and was executed by Fischer, appeared to have been designed to drive down the closing price of JAL on 19 July 2006 to the detriment of the market for JAL shares. The SFC also alleged a lower closing price would benefit the Funds as subscribers for the new shares. In light of these matters, the SFC held concerns as to the fitness and properness of Oasis and Fischer.

Oasis and Fischer do not admit their strategy was designed to mislead the market for JAL shares. However, they have agreed to accept these sanctions which the SFC regards as a sufficient expiation for the SFC's concerns about their conduct on 19 July 2006.

The SFC has taken into account that Oasis and Fischer have clean disciplinary records and have co-operated with the SFC. The SFC has also taken into account that Oasis and Fischer voluntarily took steps, in 2007, not required by law or regulation, to reduce any similar concerns arising again from their trading by imposing internal guidelines in relation to all secondary offerings on the TSE against entering any sell order for a stock in the afternoon session that is lower than the morning closing price for any day of the publicly disclosed pricing period and against any sell orders in the last 15 minutes of trading for any day of the publicly disclosed pricing period.

The SFC's Executive Director of Enforcement, Mr Mark Steward said, "The high fines underscore the SFC's determination to ensure Hong Kong's market remains an international and regional hub for high standards. These sanctions together with the voluntary steps undertaken by Oasis and Mr Fischer are an appropriate expiation for the SFC's concerns as to fitness and properness."

The SFC wishes to acknowledge the assistance of the Japanese Securities and Exchange Surveillance Commission which referred the matter to the SFC.

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Notes:

1. Oasis is licensed under the Securities and Futures Ordinance (SFO) to carry on Type 4 (advising on securities), Type 5 (advising on futures contracts) and Type 9 (asset management) regulated

activities. Fischer is licensed under the SFO to carry on Type 4 (advising on securities), Type 5 (advising on futures contracts) and Type 9 (asset management) regulated activities and is accredited to Oasis. Fischer is a responsible officer of Oasis.

2. On the TSE, a market-on-close order is an order that is to be executed during the closing auction at the closing price.

3. As a matter of Japanese law at the relevant time, short selling by a person who has a convertible bond position is exempt from the price regulation on short selling (i.e. the uptick rule – investors are prohibited from short selling at prices below the latest executed price) if (i) the quantity of short sold shares was not more than the number of shares that can be acquired by exercising the conversion right, and (ii) the purpose of short selling is to reduce the risk which could arise from the fluctuation in the price of the outstanding balance of the convertible bond owned by that person.

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