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Pacific Sun Advisors Limited and its director acquitted of issuing advertisements without SFC authorization

21 Mar 2013

The Eastern Magistracy has acquitted Pacific Sun Advisors Limited (Pacific Sun) and its director Mr Andrew Pieter Mantel for four counts of issuing advertisements to promote a collective investment scheme without the authorization of the Securities and Futures Commission (SFC) in contravention of section 103 of the Securities and Futures Ordinance (SFO) (Note 1).

The SFC alleged that between November and December 2011, the defendants issued an advertisement on the corporate website of Pacific Sun promoting a collective investment scheme called "Pacific Sun Greater China Equities Fund" (the Fund) without the authorization of the SFC.

It was also alleged that on or around 2 and 3 November 2011, the defendants issued an advertisement regarding the launch of the Fund to the public by email without the authorization of the SFC.

During three days of evidence, the defendants submitted that they intended to sell interests in the units of the Fund only to professional investors and so the advertisements did not require authorization by the SFC under a statutory exemption. The SFC, on the other hand, submitted that the exemption did not permit advertisements that had not been authorized by the SFC to be issued to the public and that in this case there was no evidence that the interests in the Fund had only been sold to professional investors (Note 2).

The Magistrate accepted the defendants' argument and ruled also that the advertisements did not constitute invitations to the public to invest in the fund.

The SFC will consider an appeal of the decision.

End

Notes:

1. Pacific Sun is licensed by the SFC to carry on Type 4 (advising on securities) and Type 9 (asset management) regulated activities. Mantel, who is licensed by the SFC to carry on Type 4 (advising on securities) and Type 9 (asset management) regulated activities accredited to Pacific Sun, is a responsible officer of Pacific Sun.
2. Under section 103(3)(k) of the SFO, an advertisement does not need SFC authorization where the advertisement is in respect of securities, structured products or interests in a collective investment scheme that are or are intended to be disposed of only to professional investors.

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