

## SFC Takes Action Against Tse's Forex Investment Company Limited (Tse's Forex) and Tse's Securities Limited (Tse's Securities) (Collectively referred to as the Tse's Group)

28 Sep 1999

The Securities and Futures Commission (SFC) today successfully prosecuted Tse's Forex. Tse's Forex pleaded guilty before Ms Polly Lo at Western Magistracy to three summonses for breaches of section 5 of the Leveraged Foreign Exchange Trading Ordinance (LFETO), in that during the period 22 November 1996 to 25 November 1998 Tse's Forex permitted four of its employees to actively engage in leveraged foreign exchange trading without them being licensed as representatives under section 6(2) of the LFETO. Tse's Forex was fined \$90,000 and ordered to pay the SFC's costs of \$81,000.

The SFC also announced the conclusion of its inquiries into Tse's Forex covering the period from September 1995 to January 1999 and Tse's Securities covering the period from April 1997 to January 1999 (the relevant periods). The SFC found that during the relevant periods there were deficiencies in Tse's Group's internal control systems and procedures resulting in numerous breaches of the SFC's Conduct of Business Guidelines For Licence Holders under the LFETO and the Code of Conduct For Persons Registered with the SFC. The internal controls and procedures in place at Tse's Group were inadequate to ensure the proper operation of its securities and leveraged foreign exchange businesses and the compliance by it with all applicable laws, codes and regulations. In particular Tse's Group had:

- failed to ensure that certain employees of Tse's Group were properly licensed and/or registered before undertaking securities and leveraged foreign exchange trading; and
- facilitated the opening and operation of leveraged foreign exchange trading accounts by clients with a related Macau company.

These matters occurred primarily because of the failure of management to adequately carry out their supervisory roles by implementing and maintaining appropriate measures to ensure compliance with the law. Senior management had therefore failed to fully discharge its management responsibilities.

The SFC found that Mr Tse Shiu Hoi (formerly known as Tse Tak Ching (Tse)), a director and shareholder of Tse's Forex, was concerned in the management of Tse's Forex and is partly responsible for the failings identified.

The SFC found that Mr Leung Ting Wai (Leung), a responsible director of Tse's Forex, failed to adequately carry out his duties with regard to the day to day operations of Tse's Forex and was negligent in this regard. In addition Leung assumed responsibilities for certain day to day operations of Tse's Securities although he was only registered as a dealer's representative. In failing to adequately carry out those responsibilities he had been negligent.

The SFC also found that Mr Kan Cheuk Wah (Kan), a dealing director of Tse's Securities since 1997, with sole responsibility for the dealing room, was directly responsible for the inadequacies in the dealing procedures identified at Tse's Securities.

In view of the findings the SFC has:

1. reprimanded Tse's Forex and Tse's Securities. In deciding on this action the SFC took into account that:

- both Tse's Forex and Tse's Securities had already taken remedial steps to improve their internal controls;
- both Tse's Forex and Tse's Securities had undertaken to appoint a person at management level to be responsible for compliance in each company;
- Tse's Forex has undertaken to engage a firm of accountants to conduct a review of its management systems and procedures and agreed to implement all recommendations made to the satisfaction of the SFC; and
- Tse's Securities has reviewed and strengthened its Compliance Manual and Operational

#### Procedures Manual.

2. reprimanded Tse.
3. reprimanded Kan.
4. reprimanded Leung. In deciding on this action the SFC took into account that Leung had:
  - voluntarily surrendered all his registrations/licences under the SO and LFETO and agreed not to re-apply for any registration/licence for a period of 3 years; and
  - resigned as a director of Tse's Forex.

#### Notes to Editor/Advice to Industry

There have been a number of cases in recent times of registered/licensed entities failing to pay proper regard to the applicable registration/licensing provisions in relation to their staff. The establishment, maintenance and enforcement of effective compliance procedures covering legal and regulatory requirements is a fundamental control in the effective management and supervision of a registered/licensed entity's business. Management must assume full responsibility for the entity's operations including the development, implementation and ongoing effectiveness of the internal controls and adherence thereto by its directors and employees. A failure in this regard reflects badly on the way an entity is structured and operated and calls into question the continuing fitness and properness of both the entity and its directors.

Page last updated : 1 Aug 2012

## 證券及期貨事務監察委員會對謝氏外匯投資有限公司（謝氏外匯）及謝氏證券有限公司（謝氏證券）（統稱謝氏集團）採取行動

1999年9月28日

證券及期貨事務監察委員會（證監會）今天成功檢控謝氏外匯。謝氏外匯在西區裁判法院向盧恆福裁判官承認三項違反《槓桿式外匯買賣條例》（《槓桿外匯條例》）第5條的控罪。有關控罪指在1996年11月22日至1998年11月25日的期間，謝氏外匯允許其4名僱員，在未有根據《槓桿外匯條例》第6(2)條獲發牌為代表的情況下，積極參與槓桿式外匯買賣。謝氏外匯被判罰款90,000元及被下令須向證監會支付81,000元調查費用。

證監會亦公布本會已完成對謝氏外匯在1995年9月至1999年1月期間及對謝氏證券在1997年4月至1999年1月期間（有關期間）的活動的調查。證監會發現在有關期間，謝氏集團的內部監控系統及程序有其不足之處，結果導致該集團違反多項《適用於根據〈槓桿式外匯買賣條例〉獲發給牌照的人士的操守指引》及《證監會註冊人操守準則》的規定。謝氏集團當時的內部監控制度及程序未足以確保其證券及槓桿式外匯業務妥善運作及所有適用的法例、守則及規例均獲得遵守。尤其是謝氏集團：

- 未有確保其若干僱員在進行證券交易及槓桿式外匯買賣之前已取得適當的牌照及／或註冊；及
- 曾經利便其客戶與一家相關的澳門公司開立及操作槓桿式外匯買賣帳戶。

上述情況的出現，主要是由於該集團的管理層未有充分執行及維持適當的措施來確保有關法例獲得遵守以妥善履行其監督職能所致。因此，該集團的高層管理人士未有充分履行其管理職責。

證監會發現謝氏外匯的其中一名董事及股東謝兆凱（前稱謝德清（謝氏））當時涉及謝氏外匯的管理，並且須對上述證監會所識別的缺失負上部分責任。

證監會發現謝氏外匯的責任董事梁定威（梁氏）未有就謝氏外匯的日常運作充分履行其職責，因此屬於疏忽職守。此外，雖然梁氏只註冊為證券交易商代表，但梁氏卻負責謝氏證券的若干日常運作職責。由於梁氏未有充分履行該等職責，因此亦屬於疏忽職守。

證監會亦發現，自1997年起便作為謝氏證券盤房唯一的主管的該公司交易董事簡卓華（簡氏），須就證監會在謝氏證券所識別的交易程序缺失負上直接責任。

基於上述調查結果，證監會：

1. 公開譴責謝氏外匯及謝氏證券。在決定採取這項行動時，證監會已顧及：

- 謝氏外匯及謝氏證券已採取補救行動以改善其內部監控制度；
- 謝氏外匯及謝氏證券已承諾委任一名人士加入管理層專責每家公司的監察工作；
- 謝氏外匯已承諾聘請會計師事務所檢討其管理系統及程序，並同意落實其作出的一切建議，以符合證監會的要求；及
- 謝氏證券已檢討及改善其監察手冊及運作程序手冊的內容。

2. 譴責謝氏。

3. 譴責簡氏。

4. 譴責梁氏。在決定採取這項行動時，證監會已顧及梁氏：

- 自願退回其根據《證券條例》及《槓桿式外匯買賣條例》取得的所有註冊／牌照，並同意在三年內不會再向證監會申請任何註冊／牌照；及
- 已辭退謝氏外匯的董事職位。

編輯備註／致業界忠告

在近期若干註冊／持牌機構均未有妥善顧及其職員須遵守的註冊／發牌條文。在有效管理及監督註冊／持牌機構的業務方面，建立、維持及落實有效的監察程序以符合法例和監管規定，是根本的監控元素。管理層必須對機構的運作負上全責，當中包括制訂、落實內部監控制度及確保其持續發揮效用，以及其董事及職員須嚴格遵守有關要求。如果在這方面有任何缺失，將會對該機構的組織架構和運作產生負面的影響，並且會使人質疑該機構及其董事是否適宜繼續獲准註冊。

最後更新日期：2012年8月1日