
Enforcement News

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Securities and Futures Appeals Tribunal Upholds the SFC's Decision to Suspend the Financial Controller and Two Directors of Upbest Securities Company Limited and Upbest Investment Company Limited

The Securities and Futures Appeals Tribunal (SFAT) (Note 1) has upheld the SFC's decision to suspend Mr Choy Ye King, Mr Cheng Kai Ming Charles and Mr Li Kwok Cheung George (Note 2) for window dressing the financial position of Upbest Securities Company Limited and Upbest Investment Company Limited.

The suspensions follow an SFC investigation into a window dressing arrangement of the financial position of Upbest Securities and Upbest Investment from April 2001 to June 2002 (Note 3).

Meanwhile, the SFC has reprimanded Upbest Securities and Upbest Investment for providing misleading information to the SFC and window dressing their financial position by artificial inter-company loans (Note 4). The SFC has also reprimanded Upbest Investment for failing to maintain the required level of liquid capital and failing to notify the SFC of its liquid capital deficiencies. The reprimand was withheld until today as the SFC awaited the determination of the SFAT.

The SFC found that Choy, the financial controller of the Upbest Group, Cheng, a director of the Upbest Group and Upbest Investment and Li, also a director of Upbest Group and Upbest Securities were all involved in a scheme to inflate the liquidity position of Upbest Securities and Upbest Investments by using inter-company cheques. Unpresented cheques were treated as cash when calculating the required liquidity level. This scheme had the consequence that the SFC was misled as to the real state of liquidity of those firms.

The suspensions were reviewed by the SFAT which rejected an argument that these defaults were merely technical. The SFAT was satisfied that this was "...a

thoroughly disingenuous and commercially self-serving scheme which had the practical effect of positively misleading the regulator..." (Note 5).

Although the SFAT upheld the SFC's reasoning, the SFAT varied the periods of suspension reducing Choy's suspension from nine months to six months; Cheng's suspension from six months to four months and Li's suspension from four months to three months (Note 6).

Mr Mark Steward, SFC's Executive Director of Enforcement, said: "Intermediaries must be wholly accurate in the financial returns filed with the SFC. The SFAT's decision confirms the importance of the Financial Resource Rules as an important regulatory safeguard protecting the interests of clients."

Ends

Notes:

1. The SFAT issued the determination on 7 September 2007. The SFAT was chaired by the Honourable Mr Justice Stone and included two lay members, Mr Richard John Thornhill and Mr Tse Kam Keung. The determination followed contested hearing on 29 August 2006. The determination will be available on the SFAT's website at www.sfat.gov.hk.

2. Choy is a representative licensed under the Securities and Futures Ordinance for Type 6 (advising on corporate finance) regulated activity but is not accredited to any principal and is not permitted to carry on any regulated activity.

Cheng holds a deemed licence in Type 1 (dealing in securities), Type 2 (dealing in futures contracts), Type 4 (advising on securities), Type 5 (advising on futures contracts), Type 6, Type 8 (securities margin financing), and Type 9 (asset management) regulated activities, and is a responsible officer of Upbest Securities, Upbest Investment, Upbest Assets Management Limited and Upbest Commodities Limited.

Li holds a deemed licence in Type 1, Type 2, Type 4, Type 6 and Type 9 regulated activities and is a responsible officer of Upbest Securities and Upbest Assets Management.

3. Prior to deciding to suspend Choy, Cheng and Li, the SFC also prosecuted Upbest Investment and Choy who were convicted in June 2004 of providing misleading information to the SFC and breaches of the Financial Resources Rules (FRR). Please see SFC press release dated 14 June 2004.

4. Upbest Securities is licensed under the Securities and Futures Ordinance to carry on business in Type 1, Type 4, Type 6 and Type 9 regulated activities. Upbest Investment is licensed under the SFO to carry on business in Type 8 regulated activity. Upbest Securities and Upbest Investment are subsidiaries of Upbest Group Limited.

5. Choy, Cheng and Li lodged applications to the SFAT on 22 March 2006 to review the SFC's decision against them. The quoted passage is taken from the SFAT's decision at paragraph 89.

6. The suspensions will commence on 11 September 2007. Choy will be suspended until 10 March 2008; Cheng will be suspended until 10 January 2008 and Li will be suspended until 10 December 2007.

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