

Court clarifies grey market dealing

26 May 2009

The Court of First Instance today issued a declaration that Mr Alex Chow Ngai Keung and Mr Christopher Siu Sum Fung contravened the Securities and Futures Ordinance (SFO) by carrying on business in dealing in H shares of Bank of China Ltd between March and June 2006 before those shares were issued and listed on the Stock Exchange of Hong Kong (SEHK) (Note 1).

These proceedings followed concerns that it was not clear whether grey market trading would in fact constitute dealing in securities (Note 2).

The court today confirms that carrying on a business of dealing in securities in a grey market without a licence granted by the Securities and Futures Commission (SFC), whether or not those securities have been issued or listed, constitutes a contravention of the SFO.

In this case, the SFC alleged that Chow and Siu carried on a business of offering H shares of Bank of China to investors before those shares were either issued or listed on the SEHK using a British Virgin Islands company called Mega Dragon Group Ltd (now deregistered). Neither Chow nor Siu had an SFC licence permitting them to carry on business dealing in securities (Note 3).

The purpose of the proceedings was to clarify the law.

“This decision confirms that carrying on a grey market trading business is illegal unless the operator is licensed as a securities dealer by the SFC. There is no loophole in the law. This decision should serve as a warning that the SFC will prosecute unlicensed grey market trading cases as criminal offences,” said Mr Mark Steward, the SFC’s Executive Director of Enforcement.

End

Notes:

1 See SFC [press release](#) dated 31 March 2008 for details.

2 The regulatory issues surrounding grey markets were raised in a Court of Appeal case, *Woo Hing Keung Lawrence v CEF Brokerage Limited* (CACV 148/2007) in a judgment published on 19 March 2008. This decision did not deal with the issue of unlicensed persons engaging in grey market activity.

3 The scheme was not successful and no-one who signed up to receive H shares of Bank of China from Mega Dragon obtained any shares.

Page last updated : 1 Aug 2012

法院就暗市交易作出澄清

2009年5月26日

高等法院原訟法庭今天發表聲明，指周毅強（男）及蕭森峰（男）由於在中國銀行有限公司的H股尚未發行及在香港聯合交易所（聯交所）上市前，曾於2006年3月至6月期間經營該等股份交易的業務，因此違反了《證券及期貨條例》（註1）。

證監會展開這項法律程序，是因為關注到暗市交易實際上會否構成證券交易這個問題未獲釐清（註2）。

法院今天確認，任何人未獲證券及期貨事務監察委員會（證監會）發牌而在暗市經營證券交易業務，不論該等證券是否已經發行或上市，即屬違反《證券及期貨條例》。

在本案中，證監會指稱周及蕭在中國銀行H股尚未發行或在聯交所上市前，曾利用一家名為Mega Dragon Group Ltd的英屬處女群島公司（現已撤銷註冊）經營向投資者要約該等股份的業務，但兩人均未領有證監會准許其經營證券交易業務的牌照（註3）。

進行這項法律程序是為了澄清有關法例。

證監會法規執行部執行董事施衛民先生（Mr Mark Steward）表示：“法院是次裁決確認，經營暗市交易業務的人士除非獲證監會發牌為證券交易商，否則即屬違法。有關法例並無漏洞。這項裁決應可作為警告，說明證監會會就無牌暗市交易個案提出刑事檢控。”

完

備註：

- 1 詳情請參閱證監會2008年3月31日的[新聞稿](#)。
- 2 一宗上訴法庭的個案（Woo Hing Keung Lawrence訴CEF Brokerage Limited (CACV 148/2007)）在2008年3月19日的判決書內提出了有關暗市活動的規管事宜，該判決並沒有處理有關未領有牌照人士從事暗市活動的問題。
- 3 由於計劃未能成功推出，藉參與計劃而向Mega Dragon收取中國銀行H股的人士無一能取得任何股份。

最後更新日期：2012年8月1日