

21 June 2011

SFC to appeal Court's ruling on Tiger Asia

The Court of First Instance today handed down reasons for its decision that the court has no jurisdiction to determine whether or not New York-based asset management company, Tiger Asia Management LLC (Tiger Asia) and three of its officers, Mr Bill Sung Kook Hwang, Mr Raymond Park and Mr William Tomita (collectively the Tiger Asia parties), have contravened Hong Kong's insider dealing and market manipulation laws (Note 1).

In today's ruling, the Court of First Instance has ruled that only a court exercising criminal jurisdiction or the Market Misconduct Tribunal (MMT) has jurisdiction to determine whether a contravention of Hong Kong's insider dealing laws and market manipulation laws has occurred, with the result that the Securities and Futures Commission (SFC) cannot seek final orders under section 213 without such a prior determination (Note 2).

The SFC challenges the correctness of this court decision and intends to appeal today's ruling.

The SFC alleges the Tiger Asia parties contravened Hong Kong's laws prohibiting insider dealing and market manipulation. The allegations relate to trading by Tiger Asia in shares of China Construction Bank Corporation (CCB) and Bank of China Limited (BOC) (Note 3).

The case against the Tiger Asia parties was commenced by the SFC under section 213 of the Securities and Futures Ordinance (SFO) (Note 4). The SFC is seeking remedial orders against the Tiger Asia parties and injunctions to protect the Hong Kong market.

The Tiger Asia parties are not within the jurisdiction of Hong Kong's criminal courts nor, in the SFC's view, should they be entitled to receive immunity from prosecution which would be the result if proceedings were commenced before the MMT.

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Notes:

1. Tiger Asia was founded in 2001 and is a New York-based asset management company that specialises in equity investments in China, Japan and Korea. All of its employees are located in New York. Tiger Asia has no physical presence in Hong Kong.
2. The Court's decision will be available on the Judiciary's website at www.judiciary.gov.hk.
3. In respect of trading in CCB shares, the SFC alleges that: (a) on 6 January 2009, before the market opened, a placing agent in Hong Kong invited Tiger Asia to participate in a proposed placement of CCB shares in Hong Kong by the Bank of America Corporation; (b) the placing agent told Tiger Asia about the size and the discount range of the proposed placement; (c) this information was confidential and price sensitive and Tiger Asia and the three senior officers knew this; (d) Tiger Asia then short-sold a total of 93 million CCB shares on 6 January 2009 ahead of the public announcement of the CCB placement; (e) Tiger Asia covered its short sales out of the placement shares that it bought on 7 January 2009 at a discount to the prevailing market price; and (f) Tiger Asia made a substantial notional profit of \$29.9 million. In respect to trading in BOC shares, the SFC alleges that: (a) Tiger Asia was given advance notice and was invited to participate in two placements of BOC shares by UBS AG and Royal Bank of Scotland on 31 December 2008 and 13 January 2009 respectively; (b) Tiger Asia was provided with details of both placements after being told and agreeing the information was confidential and price sensitive; (c) Tiger Asia also agreed not to deal in BOC shares after receiving the information; (d) Tiger Asia short sold 104 million BOC shares before the placement by UBS AG on 31 December 2008 making a notional profit of \$8.6 million; and Tiger Asia sold 256 million BOC shares before the placement by Royal Bank of Scotland on 13 January 2009 (of which 251 million shares were short sales) making a notional loss of around \$10 million. The SFC also alleges downward manipulation of CCB share price by

Tiger Asia at the time of the short sales.

4. Section 213 provides that where a person has contravened any relevant provision of the SFO, the Court of First Instance has power to make a number of orders, including injunctions and orders requiring the person to take such steps as the Court directs to restore the parties to any transaction to the position in which they were before the transaction was entered into. This provision gives the Court jurisdiction to make remedial orders, amongst other orders, where contraventions have been committed. In the SFC's view there is nothing in the legislation that requires any pre-existing determination or finding by a criminal court or the MMT to be in place before the Court can be asked to make remedial orders under section 213. Please see SFC's press releases dated [20 August 2009](#) and [26 April 2010](#).

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