

Enforcement Actions

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30 October 2003

SFC Suspends Chan Nap Kee, Joseph For Four Month

The SFC has suspended Mr Chan Nap Kee, Joseph's licence for four months from 30 October 2003 to 29 February 2004.

The suspension stems from Chan's failings when acting as a sponsor to the listing of a company on the Growth Enterprise Market (GEM) Board.

In April 2001, the company paid HK\$2.8 million into the bank account of a company controlled by Chan who was accredited to Oriental Patron Asia Limited at the time. Chan accepted this money on the basis that in fact it came from a substantial shareholder of the company who did not have a bank account in Hong Kong. Chan agreed to return the money to the shareholder's representatives when they visited Hong Kong to enable them to settle expenses incurred in connection with the company's listing.

Chan also received HK\$3 million cash from a friend for safekeeping. Chan then transferred the money received from the company to his friend's bank account and gave his friend's cash to the shareholder's representatives. Chan had no authority from either party to make these transfers.

The SFC found that Chan should not have accepted payment of HK\$2.8 million from the company into a personal bank account. If he was satisfied that it was appropriate for him to accept the money, it should have been paid into the client's account at Oriental. Chan should not have transferred the HK\$2.8 million received from the company to his friend's bank account without authority (notwithstanding that the transfer was subsequently authorised).

Further, Chan failed to have regard to the Guidance Note issued by the SFC on the Prevention of Money Laundering then in force. In particular Chan failed:

- (i) to make adequate enquiries about the source and origin of both the HK\$2.8 million and the HK\$3 million.
- (ii) to question whether it was in fact appropriate for him to accept and hold such funds at all.
- (iii) to consider whether the transactions involving the HK\$2.8 million and HK\$3 million were suspicious and required him to consider filing a Suspicious Transaction Report with the Joint Financial Intelligence Unit.

The SFC also found that Chan had failed to conduct sufficient due diligence into one of the placees in the listing. Chan knew that shares had been allotted to a placee who had received money from a director of the company. Chan should have considered the issues raised by GEM Rule 11 which requires a certain percentage of shares to be in public hands. A person whose shares have been financed directly or indirectly by a director is not recognised as a member of the public for these purposes. In failing to consider these issues, Chan was negligent.

Mr Alan Linning, SFC's Executive Director of Enforcement, said: "This case is a timely reminder to all those licensed by the SFC that they must adopt an effective and systematic approach when handling money. It is important for licensees to identify potentially suspicious

financial activity and where appropriate, to report the activity in order to fulfil their obligations under Hong Kong law and the SFC's Guidance concerning money laundering."

Ends

Notes:

1. During the relevant period, the Money Laundering Revised Guidance Notes (July 1997 edition) were in force. In April 2003, the SFC issued a new Guidance Note under section 399 of the Securities and Futures Ordinance entitled Prevention of Money Laundering and Terrorist Financing.

Page last updated: 4 November 2004