

SFAT Upholds SFC's Decision

16 Apr 2007

The Securities and Futures Appeals Tribunal (SFAT) (Note 1) today dismissed appeals made by Christfund Securities Limited and one of its responsible officers, Mr Cheung Wah Fung Christopher (Note 2), against decisions by the SFC to issue public reprimands and to fine them \$450,000 and \$50,000 respectively.

The SFC found that both Christfund and Cheung were guilty of misconduct in failing:

- to maintain Christfund's liquid capital at the required level for four days from 8 to 11 December 2003. The SFC found that the deficit was material and ranged between \$9.098 million to \$22.022 million, in breach of the Financial Resources Rules (FRR) (Note 3).
- to supervise adequately staff members responsible for monitoring the required level of liquid capital (Note 4).

These breaches occurred when Christfund took out substantial short term loans to finance its clients at a time of huge market turnover due to three successive IPOs with overlapping periods and that Christfund and Cheung knew that the required liquid capital limit would increase in approximate proportion to their borrowings.

The SFC had issued two previous warnings to Christfund about earlier FRR breaches. The warning letters related to breaches that occurred in May 2003 and in November 2003, one month prior to the breaches in this case.

In dismissing the application by Christfund and Cheung, the SFAT said "this Tribunal takes the view that the FRR represent significant statutory safeguards for the interests of investors in the market, and it should not be thought that any argument mounted along the lines of mere "technical" default is in principle likely to be sympathetically received. In short, the FRR are in position for very good reason and their requirements are flouted or ignored or overlooked at the peril of the defaulter, who should be in no doubt but that in the view of this Tribunal the regulator rightly regards, and rightly chooses to enforce, such Rules as embodying important safeguards within the proper functioning of the Hong Kong market".

Mr Mark Steward, SFC's Executive Director of Enforcement, said: "The Financial Resources Rules are an important prudential safeguard protecting the interests of the investing public. The SFC welcomes this decision which reinforces the approach the SFC has taken in this case."

Ends

Notes:

1. The SFAT was chaired by the Honourable Mr Justice Stone and included two lay members, Dr Bill Kwok Chi Piu and Mr Vernon Francis Moore. The decision followed a contested hearing on 19 and 20 December 2006. A copy of the SFAT's determination is available at <http://www.sfat.gov.hk/english/determination/index.htm>.

2. Christfund is licensed under the Securities and Futures Ordinance to carry on Type 1 (dealing in securities) regulated activity. Cheung is accredited to Christfund and is licensed to carry on Type 1 (dealing in securities) regulated activity and approved as a responsible officer of Christfund.

3. Under the FRR, firms are required to maintain a liquid capital level of the higher of \$3 million or 5% of the total adjusted liabilities including bank loans. In December 2003, Christfund drew down loans, totalling between \$370 million and \$739 million, from three banks to facilitate financing for IPOs by Chia Hsin Cement, Great Wall Auto and China Life Insurance.

4. The SFC also found Christfund and Cheung were in breach of General Principle 7 and paragraph 12.1 of the Code of Conduct with respect to the FRR breaches and paragraph 4.2 of the Code of Conduct in respect to the failure to adequately supervise staff. General Principle 7 requires a licensed

person to comply with all regulatory requirements to promote the best interests of clients and market integrity. Paragraph 12.1 of the Code of Conduct requires licensed persons to maintain appropriate measures to ensure compliance with relevant rules and requirements. Paragraph 4.2 of the Code of Conduct requires firms to have adequate resources to supervise employees diligently.

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