

## SFC wins appeal against Tiger Asia

23 Feb 2012

The Court of Appeal today overturned the decision of the Court of First Instance to strike out the proceedings of the Securities and Futures Commission (SFC) against 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) (Note 1).

The SFC commenced proceedings under section 213 of the Securities & Futures Ordinance (SFO) against the Tiger Asia parties in August 2009 seeking remedial orders and injunctions in relation to allegations that the Tiger Asia parties had contravened Hong Kong's insider dealing and market manipulation laws in dealing in shares of Bank of China Limited (BOC) and China Construction Bank Corporation Limited (CCB) during 2009 (Note 2).

The Tiger Asia parties argued that the Court had no jurisdiction under section 213 of the SFO to make findings there had been a contravention of these laws without a pre-existing criminal conviction or a determination by the Market Misconduct Tribunal.

The SFC, however, argued that section 213 is a free-standing remedy. The Court of First Instance ruled in favour of the Tiger Asia parties (Note 3). Today's ruling by the Court of Appeal overturns that decision.

In overturning the decision of the Court of First Instance, The Hon Mr Justice Tang VP said section 213 "...provides valuable tools to the Commission to protect the investing public which is an important objective of the SFO..." and "...much needed ammunition to the Commission to protect investors." (Note 4)

As a result of today's decision, the SFC's case against the Tiger Asia parties in relation to its allegations of insider dealing and market manipulation will proceed.

The SFC's Executive Director of Enforcement, Mr Mark Steward said: "The SFC welcomes today's ruling which vindicates the position we have taken in relation to section 213 proceedings. The SFC will continue to prosecute these cases fairly and vigorously."

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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. 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 of 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.
3. Please see SFC's [press release](#) dated 21 June 2011.
4. Please see page 15-16 of the decision which is available on the Judiciary's website

([www.judiciary.gov.hk](http://www.judiciary.gov.hk)).

5. Section 213 of the SFO 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. Please see SFC's press releases dated [20 August 2009](#) and [26 April 2010](#).

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