

April 2017 Legal and Regulatory Update

Top stories

New ruling for “disclosure of inside information”

Market Misconduct Tribunal (“MMT”) delivered penalty orders for the Mayer case ([SFC press release](#); [full MMT report](#))

What you should know:

- Nature: **issues relating to auditor**
- Items of “**inside information**”: “potential qualified audit report” given “outstanding audit issues”; resignation of auditor; significant prepayment (totaling US\$14m) underlying auditor concerns
- **Delay** of 23 days in disclosing resignation of auditor
- **Company** and nine “**officers**” found guilty— chairman and executive director, executive director (“ED”), company secretary and financial controller (“FCCS”), and non-executive directors at the relevant time
- The company had **no system of compliance** regarding disclosure of inside information
- **ED and FCCS “seemed to run the show”** in Hong Kong , and acted in concert
- FCCS was aware of the disclosure requirements; hence “**intentional**” in his breach
- **Fine**: \$1.5 m against each of ED and FCCS; \$900k against the company and the other persons
- **Disqualification orders** (ED and FCCS: 20 months; others: 12 months); as a director or take part in the management of a listed company or specified corporation
- **HKICPA recommended to make a disciplinary action** against FCCS (a CPA)
- Company to appoint **independent advisor** for relevant compliance systems review, **training orders** imposed on these officers

What you should do/watch out for:

- This case reinforces the **significance of having adequate internal controls systems** regarding disclosure of side information
- Comparison with other recent cases (read our updates: [AcrossAsia case](#); [Yorkey case](#))
- A wider group of officers found liable (including non-executive directors)
- “Aggravating factors” found for ED and FCCS; “intentional” in making breaches

Regulators

Market Misconduct Tribunal (“MMT”) found no market misconduct in CITIC’s publication of a circular in 2008 ([SFC press release](#); [full MMT report](#))

What you should know/watch out for:

- Issue: published a circular in 2008-- whether disclosed information was “false or misleading to a material extent”; “likely to maintain, increase, reduce or stabilize the price” of CITIC shares
(s. 277(1) Securities and Futures Ordinance)
- This is **not** a case of “**disclosure of inside information**” under the Ordinance (relevant part only came into effect later)
- MMT ruled that the concept of “non-disclosure of price sensitive information” is different
- Facts:
 - (i) CITIC entered into leveraged foreign exchange contracts (“accumulators”)
 - (ii) Circular dated Sept 2008 contained a “**no material change statement**” (“the directors are not aware of any adverse material change in the financial or trading position of the Group since ...”)
- Whether before such publication, CITIC and 5 former executive directors were aware of huge unrealized “mark-to-market losses” under the contracts
- Evidence failed to prove:
 - (i) the “no material change” statement had stabilized share prices (the “likely” test not satisfied)
 - (ii) the material adverse change was of an “enduring” (ie not temporary) nature. (It had not been proved that CITIC was unable to meet its obligations under the contracts. It could choose not to terminate the contracts, and such “mark-to-market” losses might change in light of future currency fluctuations)