

7 September 2004

SFC Severely Reprimands EAA Securities Ltd for Internal Control Failures and Reprimands Robert Fuyuan Wu for Inadequate Supervision

The SFC has severely reprimanded EAA Securities Ltd and reprimanded its managing director, Mr Robert Fuyuan Wu, under the Securities Ordinance.

The reprimands stem from an investigation in which the SFC found that Wu had failed to ensure adequate internal controls at EAA, in particular segregation of duties and credit controls between 2000 and 2001, which facilitated misdeeds by a former dealing director, Ms Anita So Tai Fai. The misdeeds included the conduct of unauthorised trades in clients' accounts and the dispatch of forged statements to clients. (Note 1)

Independent auditors appointed to investigate EAA found that EAA had made bad debt provisions for long outstanding receivables from clients' accounts for about \$27.3 million at the year-end of 2001. Similar bad debt provisions for 32 clients' accounts handled by So amounting to \$15.6 million were made at the year-end of 2002. The lack of adequate control at EAA over the credit limits in clients' accounts resulted in the bad debts.

Wu failed to keep himself informed of EAA's affairs, in particular the internal control system and its associated problems. He left EAA's operation almost entirely to the dealing directors and the staff, without exercising sufficient reasonable supervision over them. When he became aware of large receivables in the clients' accounts in the third quarter of 2000, he accepted advice from So and another dealing director to stall collection pending a market recovery. He submitted to So's refusal for EAA to directly collect debts from her clients. In the process, Wu failed to exercise objective judgment and failed to adequately inquire into the situation or take appropriate action. He failed to discharge his duties with due care and diligence and put EAA and its clients at financial risk. In the end, EAA had to write off bad debts of about \$27.3 million.

The SFC found that EAA and Wu had failed to carry out their functions to the standard expected of them. As a result, the SFC concludes that the fitness and properness of EAA and Wu has been called into question.

Mr Alan Linning, SFC's Executive Director of Enforcement, said: "Brokers must ensure that internal controls are in place to safeguard clients' assets and to protect shareholders' interests. Though directors are entitled to discharge their functions through a proper degree of delegation and division of responsibility, the duty to supervise the functions delegated cannot be abrogated. The statutory and fiduciary obligations of directors are inescapable personal responsibilities and directors who fail in their duties may be held personally liable for losses and damages."

"The law allows the SFC to discipline and reprimand directors, secretaries or persons concerned in the management of a licensed corporation if they are not fit and proper or are guilty of misconduct, just as any licensed persons. If Wu had been a licensed person, we would have suspended his licence for a reasonable period for his failures," Mr Linning said.

Ends

Note:

1. So left the industry and her licence was revoked on 1 April 2003.

證監會嚴厲譴責東美證券有限公司犯有內部監控缺失及 譴責Robert Fuyuan Wu未有充分地作出監察

2004年9月7日

證監會已根據《證券條例》嚴厲譴責東美證券有限公司（東美證券）及其董事總經理Robert Fuyuan Wu（男）。

上述譴責源自證監會的一項調查。證監會在調查過程中發現Wu未有確保東美證券有足夠的內部監控，尤其是在2000年至2001年期間在職責劃分及信貸監控方面而言，因而助長了東美證券的前交易董事蘇黛暉（女）（註1）的違規行為。上述的違規行為包括利用客戶的帳戶進行未經授權的交易及向客戶發送偽造的帳戶結單。

受委託調查東美證券的獨立核數師發現，東美證券在2001年底為客戶帳戶中大約2,730萬元長期未能收回的應收帳款作出壞帳準備。在2002年底，蘇氏亦就其所處理的32個客戶帳戶作出高達1,560萬元的類似壞帳準備。由於東美證券對客戶帳戶的信貸限額欠缺足夠的監控，因而造成壞帳。

Wu未有時刻掌握東美證券的業務狀況，尤其是未有對該公司的內部監控系統及其相關的問題保持注意。他將東美證券的業務幾乎全權交由交易董事及職員處理，但未有對他們作出充分而合理的監督。當他在2000年第3季度察覺客戶帳戶中存在的大筆應收帳款後，竟接納了蘇氏及另一名交易董事的建議，押後收款時間以等待市場復甦。他更容許蘇氏拒絕讓東美證券直接向其客戶收回債項。在上述過程中，Wu未有對事件作出客觀的判斷，亦未有就有關情況作出充分的調查或採取適當的行動。他未有謹慎及勤勉地履行其職責，因而導致東美證券及其客戶承擔財務風險。結果，東美證券須撇除約2,730萬元的壞帳。

證監會發現，東美證券及Wu在履行其職責時，未能達到對其所要求的標準。因此，證監會認為東美證券及Wu的適當人選資格受到質疑。

證監會法規執行部執行董事李顯能先生表示：“經紀行必須確保公司有足以保障客戶資產及股東權益的內部監控措施。雖然董事有權透過適度的權力轉授及職責劃分來履行其職能，但其在監督已轉授的職能方面，責無旁貸。董事的法定及受信義務是無可推卸的個人責任。董事如未有履行其職責，便可能須以個人身分就有關的損失及損害負上法律責任。”

李氏表示：“法例允許證監會對並非適當人選或犯有失當行為的持牌法團的董事、秘書或涉及持牌法團的管理的人士作出紀律處分及譴責，情況與持牌人士相同。假如Wu是持牌人的話，我們便會就其所犯的缺失而暫時吊銷其牌照一段合理的期間。”

完

備註：

1. 蘇氏在2003年4月1日離開證券界，而其牌照亦於當日被撤銷。

最後更新日期：2012年8月1日