

SFC commences Market Misconduct Tribunal proceedings against Tiger Asia

15 Jul 2013

The Securities and Futures Commission (SFC) has instituted proceedings in the Market Misconduct Tribunal (MMT) against 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) in relation to dealings in the securities of Bank of China (BOC) and China Construction Bank Corporation (CCB) during 2008 and 2009 (Note 1).

This is the first time the SFC has instituted proceedings in the MMT directly (Note 2).

The SFC has prepared a statement for the institution of proceedings which the MMT has published on its website. The statement sets out the grounds on which the SFC has initiated these proceedings (Note 3).

The MMT's statutory functions are:

- to determine whether any market misconduct has taken place,
- to identify any person who has engaged in the market misconduct; and
- to determine the amount of profit gained or loss avoided as a result of any market misconduct that may have taken place.

If the MMT finds there has been market misconduct, it is empowered to make a range of orders, including orders prohibiting a person from acquiring or disposing of or otherwise dealing in securities, futures contracts or leveraged foreign exchange contracts in Hong Kong without leave of the Court for a period of up to five years.

The SFC is not pursuing criminal charges against the Tiger Asia parties given the significant risk that criminal charges in Hong Kong are barred on the ground of double jeopardy because Tiger Asia, Hwang and Park have already been prosecuted in relation to the same conduct in the United States in proceedings that were criminal or would be viewed as criminal proceedings under Hong Kong law (Note 4).

The SFC's proceedings under section 213 of the Securities and Futures Ordinance (SFO) against the Tiger Asia parties are continuing (Note 5).

End

Notes:

1. Tiger Asia was founded in 2001 and is a New York-based asset management company that specializes 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.

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 the Tiger Asia parties knew this; (d) Tiger Asia then short-sold a total of 93 million CCB shares on 6 January 2009 before the news of the CCB placement was made public; (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 around \$32 million. The SFC also alleges manipulation of the CCB share price by Tiger Asia during the closing auction session on 6 January 2009.

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 around \$9 million; and Tiger Asia short sold 256 million BOC shares before the placement by Royal Bank of Scotland on 13 January 2009 making a notional loss of around \$10 million.

2. Under section 252A of the SFO, which was introduced in 2012, the SFC was given direct access to the MMT. Formerly only the Financial Secretary could initiate proceedings in the MMT.
3. The Notice to the MMT which contains the statement setting out the grounds for commencing the MMT proceedings is available in the MMT website (www.mmt.gov.hk).
4. On 12 December 2012, the US Securities and Exchange Commission (SEC) and the US Attorney's Office for the District of New Jersey announced that proceedings had been initiated against Tiger Asia in which Tiger Asia pleaded guilty to criminal offences under US law and Hwang and Park were charged with civil offences by the SEC. The SFC has received advice that it is likely both the US Attorney's Office proceedings and the SEC's proceedings would be classified as criminal proceedings under Hong Kong law which could bar criminal proceedings in Hong Kong for the same conduct on the basis of double jeopardy. Double jeopardy is a legal principle that protects a person from being criminally prosecuted twice for the same conduct.
5. On 30 April 2013, The Court of Final Appeal dismissed the appeal of the Tiger Asia parties against legal proceedings brought by the SFC under section 213 of the SFO. Please see SFC's press releases dated [30 April 2013](#) and [10 May 2013](#).