

SFC Takes Action Against Cargary Securities Limited and Its Directors for Exercising Clients' Rights to Shares Without Clients' Consent

15 May 2003

The SFC has reprimanded Cargary Securities Limited (now known as CITIC Capital Securities Limited), a licensed corporation under the Securities and Futures Ordinance.

The reprimand stems from an inquiry which revealed that, in December 2001, Cargary had, as the custodian of its clients' stocks, exercised their rights to acquire shares in relation to the rights issues of two stocks without the clients' consent. The affected clients, totalling about 300, had indicated that they would not exercise their rights or could not be contacted before the rights issue lapsed. Cargary exercised the rights of these clients by paying the consideration to acquire the shares, sold them subsequently, and initially retained the profits amounting to about \$340,000 in its own account.

The SFC found that the directors and staff of Cargary responsible for the matter had all mistakenly thought that exercising its clients' rights in this manner was acceptable until Cargary's auditors and legal advisers pointed out that it was improper.

By exercising clients' rights without their consent, Cargary was in breach of the trust the clients had placed in it and placed itself in a position where it had conflicts of interests with its clients. In addition, as the rights belonged to Cargary's clients, profits generated from the exercising of the rights should, from the outset, have been held on trust for clients but were not. By retaining the profits in its own account, Cargary was in breach of section 84 of the Securities Ordinance which requires brokers to put all amounts which are received for or on account of any person into a trust account kept in a licensed bank. Cargary subsequently transferred this sum to a trust account where it is held for the benefit of the clients concerned and the profits will be distributed to these clients.

The SFC also found that, at the relevant time, Cargary did not apply adequate resources to ensure the compliance of its business activities with the relevant law and its internal control procedures in respect of proprietary trading were inadequate.

The SFC concludes that the fitness and properness of Cargary has been called into question and decides to reprimand it. In deciding on this course, the SFC has taken into account that:

- Cargary took the initiative to report the matter to the SFC;
- all the profits have already been put in a trust account and will be distributed to the clients concerned; and
- it has significantly improved its internal control procedures.

The SFC acknowledges that Cargary has since undergone a substantial reform and has significantly improved relevant procedures. It has appointed more experienced persons as its directors to strengthen its management. It has also appointed a new compliance officer, established a new Legal and Compliance Department, revamped its operations manual, and conducted regular compliance training for its staff to ensure continual compliance with all regulatory requirements. In connection with its restructuring, since September 2002, Cargary has been renamed as CITIC Capital Securities Limited.

Wong Cheuk Ming, Cargary's former managing director, bears primary responsibility for Cargary's failures and his licence has been suspended for four months. Hung Chi Ming, Cargary's responsible officer, bears partial responsibility for Cargary's failures. Hung's licence has also been suspended for two months.

Mr Alan Linning, SFC's Executive Director of Enforcement, said: "Under no circumstances should a licensee exercise clients' rights without their express consent and put itself in a position where it has conflicts of interest with its clients. Cargary's actions were totally unacceptable. Cargary's failures were, to a large extent, due to its directors and staff not having sufficient knowledge to conduct its business operations properly. Brokers are reminded to ensure that adequate resources, including properly trained and skilled staff, are devoted to their business activities so as to ensure compliance with all the regulatory requirements and the protection of clients' interests."

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證監會對嘉佳證券有限公司及其董事採取行動，指他們在未取得客戶同意的情况下行使屬於客戶的供股權利

2003年5月15日

證監會譴責嘉佳證券有限公司(現稱為中信資本證券有限公司)。該公司是《證券及期貨條例》之下的持牌法團。

有關譴責源自證監會的一宗查訊，當中發現嘉佳在2001年12月作為其客戶的股票的保管人時，曾未經客戶同意而行使客戶在兩隻股份的供股行動中取得股份的權利。受影響的客戶共有約300名。該等客戶曾表示不會行使其權利，或該公司在有關的供股行動失效前無法與他們取得聯絡。嘉佳遂行使這些客戶的權利，並支付代價以取得有關的股份，然後更將股份出售，並初步將高達約340,000元的利潤保留在該公司的帳戶內。

證監會發現嘉佳負責今次事件的董事及職員，在嘉佳的核數師及法律顧問指出其行為不當之前，均誤以為以這個方式行使客戶的供股權利是可以接受的行為。

嘉佳在未經客戶同意而行使客戶的權利，違反了客戶對其給予的信託，以及使該公司與客戶產生利益衝突。此外，由於有關權利屬於嘉佳的客戶，所以透過行使有關權利而獲得的利潤一開始便應以信託形式代客戶持有，但嘉佳並沒有這樣做。嘉佳將有關利潤保留在其帳戶內，違反了《證券條例》第84條的規定。該條例規定經紀要將所有代任何人或為任何人收取的款項存入在持牌銀行所開立的信託帳戶內。嘉佳事後已將這筆款項轉為存放於一個信託帳戶內。有關款項是為有關客戶的利益而持有的，而涉及的利潤將會分發給有關客戶。

證監會亦發現在有關時間內，嘉佳並沒有投放足夠的資源以確保其業務活動遵從有關的法律規定，而該公司在自營交易方面的內部監控程序亦有欠妥善。

證監會的總結認為嘉佳的適當人選資格受到質疑，及決定對其加以譴責。在決定這樣做時，證監會已考慮到以下各點：

- 嘉佳主動就有關事件向證監會作出報告；
- 所有利潤已存入信託帳戶內，及將會分發予有關的客戶；及
- 該公司已顯著地改善了其內部監控程序。

證監會認同嘉佳自從上述事件發生後，已作出了重大的改革，及已顯著地改善了有關的程序。該公司不單委任了更多經驗豐富的人士擔任董事以加強其管理，同時亦委任了一名新的合規主任、設立了全新的法律及合規部門、重新編寫其《營運手冊》，以及定期為職員舉行合規培訓，確保能持續地符合所有的監管規定。為配合重組工作，嘉佳自2002年9月起已改名為中信資本證券有限公司。

嘉佳的前董事總經理王卓明對於嘉佳的缺失負上最大責任，其牌照已被暫時吊銷，為期4個月。嘉佳的負責人員熊志明對於嘉佳的缺失亦須負上部分責任。熊氏的牌照亦被暫時吊銷，為期2個月。

證監會法規執行部執行董事李顯能表示：“無論在任何情況下，持牌人都不可以在未取得客戶的明確同意之前，行使本來屬於客戶的權利，從而使其本身與客戶產生利益衝突。嘉佳的行為完全不能接受。嘉佳的缺失很大程度上是因為其董事及職員欠缺足夠的知識，因而未能妥善地處理該公司的業務運作。證監會提醒經紀行要在業務活動上投放足夠的資源，包括受過適當培訓及具熟練技巧的人員，以確保其遵守所有的監管規定及保障客戶的權益。”

完

最後更新日期：2012年8月1日