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SFC Suspends and Fines Pacific Sun Investment Management (Hong Kong) Limited and Andrew Pieter Mantel

2 Aug 2004

The SFC will suspend the licences of Pacific Sun Investment Management (Hong Kong) Limited and its responsible officer, Mr Andrew Pieter Mantel for one month and fine each of them \$50,000 for breaching the liquid capital requirements (Note 1).

Background

The action is the result of Pacific Sun's failure to maintain the required level of liquid capital in breach of section 6 of the Securities and Futures (Financial Resources) Rules (FRR) (Note 2). The weekly financial reports submitted to the SFC showed that Pacific Sun's liquid capital was in deficit throughout the month of October 2003. Pacific Sun was forewarned of its inability to maintain the required liquid capital before the requirement came into effect on 1 October 2003. It was given the opportunity to rectify its liquid capital deficiency, but failed to do so until the SFC threatened to shut down its business immediately by imposing a restriction notice.

The SFC decided to revoke the licences of Pacific Sun and Mantel for the FRR breaches. They applied to the Securities and Futures Appeals Tribunal (SFAT) for a review of the SFC decision.

Review by the SFAT

Following the review hearing, the SFAT varied the SFC's decision by suspending the licences of Pacific Sun and Mantel for one month and fining each of them \$50,000. The suspension will take effect from 14 August 2004 until 13 September 2004 (both days inclusive).

The SFAT's Determination were issued on 31 July 2004. The SFAT rejected submissions that the infraction should be disregarded and accorded minimal regulatory attention. It noted that this was a repeat offence (Note 3). Little effort appeared to have been made to avoid the liquid capital deficiency, notwithstanding repeated warnings. The SFAT considered that "the impression that the infraction evinced little concern on behalf of Mantel and Pacific Sun was difficult to avoid". In light of the previous infraction, the SFAT was surprised that Mantel and Pacific Sun did not see fit to take every possible step to ensure that the relatively modest liquidity requirement was met after the SFC's repeated warnings.

Nevertheless, the SFAT took the view that revocation was a penalty too far and considered the penalty ought not to be permitted to stand. In reaching the decision, the SFAT noted the liquid capital requirement for entities which do not hold client funds, and "apprehended that its reaction would have been very different if the position had been otherwise".

An SFC spokesman said: "The SFC respects the decision of the SFAT. The decision shows the checks and balances in the Securities and Futures Ordinance at work. The SFC is studying the decision carefully for future reference in making decisions on FRR breaches by licensees which don't hold client assets. However, we reiterate the importance of compliance with the FRR. The adequacy of the liquid capital requirement is under constant review so that the required level is commensurate with the risk undertaken by licensees. Other measures, such as requiring licensees who don't handle client assets to take out fidelity insurance, may be explored to further ensure the protection of investors and market integrity."

"We note that the SFAT has little sympathy with the high-profile attack made against the SFC, in particular what it regarded as the unwarranted imputation of lack of good faith on the SFC's part," the spokesman added.

A copy of the [SFAT's Determination](#) is posted on the [SFC's website](#).

Ends

Notes to Editor:

1. Pacific Sun Investment Management (Hong Kong) Limited is a corporation licensed under Securities and Futures Ordinance to carry on business in Type 4 (advising in securities) and Type 9 (asset management) regulated activities. Mantel is a licensed representative accredited to and the sole responsible officer of Pacific

Sun.

2. Effective from 1 October 2003, a corporation licensed to carry on business in Type 4 or Type 9 regulated activity and that does not receive or hold client assets must maintain a liquid capital of not less than \$100,000 or 5% of its liabilities, whichever is higher, at all times.

3. In December 2002, Pacific Sun and Mantel were publicly reprimanded for FRR failures. The firm was required to have enough capital within eight weeks to avoid a revocation of registrations. Please refer to the [press release issued on 12 December 2002](#).

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