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Pacific Sun Advisors Limited and its director convicted of issuing advertisements without SFC authorization

10 Jun 2014

Pacific Sun Advisors Limited (Pacific Sun) and its director Mr Andrew Pieter Mantel were convicted today at the Tsuen Wan Magistrates' Court on four charges of issuing advertisements to promote a collective investment scheme without the authorization of the Securities and Futures Commission (SFC) (Note 1).

Pacific Sun was fined \$20,000 and Mantel was sentenced to four weeks' imprisonment suspended for 12 months.

Pacific Sun and Mantel were charged with issuing advertisements, between November and December 2011, promoting a collective investment scheme called "Pacific Sun Greater China Equities Fund" (the Fund) without first obtaining the SFC's authorization for the advertisements. They were also charged with issuing an advertisement regarding the launch of the Fund to the public by email on or around 2 and 3 November 2011 without the authorization of the SFC.

Pacific Sun and Mantel were initially acquitted in March 2013 after arguing that the advertisements fell within an exemption that applied to sales limited to professional investors. The SFC, on the other hand, submitted that the exemption did not permit advertisements that had not been authorized by the SFC to be issued to the public and that in this case there was no evidence that the interests in the Fund were only intended or had only been sold to professional investors (Note 2).

Today's verdict followed an SFC appeal concerning the acquittal in which the Court of First Instance in January 2014 issued a ruling clarifying that the advertisements in question did not fall within the exemption and ordered the case to be returned to the Magistrates' Court for reconsideration (Note 3).

The Court of First Instance has made it clear that the exemption only applies where the advertisement states on its face that the terms of the offer are limited to professional investors. The SFC considers this ruling protects retail investors from the risks of direct marketing of inappropriate or risky investment products.

End

Notes:

1. Pacific Sun is licensed by the SFC to carry on Type 4 (advising on securities) and Type 9 (asset management) regulated activities. Mantel, who is licensed by the SFC to carry on Type 4 (advising on securities) and Type 9 (asset management) regulated activities accredited to Pacific Sun, is a responsible officer of Pacific Sun.
2. Under section 103(3)(k) of the Securities and Futures Ordinance, an advertisement does not need SFC authorization when the advertisement is in respect of securities, structured products or interests in a collective investment scheme that are or are intended to be disposed of only to professional investors. Please see the SFC's press release dated [21 March 2013](#).
3. Please see the judgment (HCMA490/2013) which is available on the Judiciary's website (www.judiciary.gov.hk). Please also see the SFC's press release dated [27 January 2014](#).

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