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Court orders re-trial after allowing SFC's appeal in illegal short selling case

27 Dec 2017

The Court of First Instance has allowed the Securities and Futures Commission's (SFC) appeal against the acquittal of Mr Wong Hung of illegal short selling and ordered that the case be remitted back to the Magistrates' Court for a re-trial.

In May 2014, the Eastern Magistrates' Court acquitted Wong on charges of illegal short selling in shares of five listed companies. The Magistrate found that because Wong placed a lot of orders each day, the possibility of Wong being careless about whether he was selling or attempting to sell more shares than he held could not be excluded, and therefore the prosecution had not proved its case beyond reasonable doubt (Note 1).

The SFC subsequently lodged an appeal to the Court of First Instance against the Magistrate's decision.

The Court of First Instance ruled in favour of the SFC, stating in a judgment that the Magistrate's decision was perverse in that no reasonable magistrate, applying his mind to the proper considerations and giving himself the proper directions, would have reached the same conclusion.

The Court also ordered that Wong's case be remitted back to the Magistrates' Court to be tried by a different magistrate. No date has been set for the hearing at the Magistrates' Court (Note 2).

The SFC is studying the Court's judgment.

End

Notes:

1. Please see the SFC's press release dated [4 June 2014](#).
2. The Court of First Instance's judgment (Court Reference: HCMA 664/2016) will be available on the Judiciary's website (www.judiciary.gov.hk).

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法庭在判決證監會上訴得直後下令重審非法賣空案

2017年12月27日

原訟法庭已判決證券及期貨事務監察委員會（證監會）早前就黃鴻（男）獲判非法賣空罪名不成立所提出的上訴得直，並下令將該個案發回裁判法院重審。

東區裁判法院於2014年5月裁定黃非法賣空五家上市公司的股份的罪名不成立。裁判官裁定，由於黃每天都發出大量買賣盤，故不能排除黃沒有注意到沽出或試圖沽出的股數是否多於其持有的股數這個可能性；因此，控方未能在無合理疑點的情況下證明控罪（註1）。

證監會其後就裁判官的裁決向原訟法庭提出上訴。

原訟法庭裁定證監會勝訴，在判案書中表示裁判官的裁斷有悖常情，任何明理、妥為顧及考慮因素並向自己發出適當指示的裁判官，均不會達致同樣的結論。

法庭亦下令將黃的個案發回裁判法院並交由另一名裁判官重審。裁判法院進行聆訊的日期待定（註2）。

證監會正研究法庭的判案書。

完

備註：

1. 請參閱證監會2014年6月4日的新聞稿。
2. 原訟法庭的判案書將載於司法機構網站（www.judiciary.gov.hk）（法院參考編號：HCMA 664/2016）。

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