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ABSTRACT:

A notable change in the enforcement strategy of the Securities and Futures Commission (SFC) of Hong Kong during the last decade involves the increasing use of civil actions to provide compensation to victims of wrongdoing. This paper is based on an empirical study of these civil actions brought by the SFC since the Securities and Futures Ordinance came into force in 2003. It concludes that the SFC has made valuable contributions to maintaining market integrity by intervening (through these civil actions) to make up for the lack of private enforcement in cases of market misconduct. However, conflicts of interests invariably exist between the SFC, the general public and victims of market misconduct. US commentators suggested that similar conflicts of interests have led public agents to enter into small settlement offers when they act on behalf of the public. This does not appear to be the case in Hong Kong. Civil actions brought by the SFC have often obtained near full compensation for the investors they act for. It is argued that this apparent investor-friendly approach was adopted due to the fact that Hong Kong, as a small jurisdiction which is heavily reliant on foreign investment, has a natural and rational tendency to favour investors over large corporations. Nevertheless, the above-mentioned conflicts of interests manifest in other ways. For example, they partially explain why the SFC may have sometimes obtained compensation for a small group of investors at the expense of other equally deserving investors.

PUBLIC ENFORCEMENT FOR PRIVATE GAINS: THE SFC'S ROLE IN INVESTOR COMPENSATION

INTRODUCTION

The Securities and Futures Commission of Hong Kong (SFC) is an independent statutory body established in May 1989 to regulate Hong Kong's securities and futures markets. The SFC derives its power from the Securities and Futures Ordinance (SFO)[1] and strives to protect Hong Kong's capital market for the benefit of the investors and the industry. Its main responsibilities include setting and enforcing market regulations, supervising market operators and financial intermediaries, and authorising investment products.[2]

A notable change in the SFC's enforcement strategy during the last decade involves the increasing use of civil actions to provide compensation to victims of wrongdoing. As recently as 2001, the SFC acknowledged that, although it was required to act in the public interest, it could not seek compensation for victims who suffered loss as a result of wrongdoing.[3] Until 2006, the SFC's enforcement efforts were measured mainly by the number of criminal prosecutions and disciplinary actions it brought.[4] Its enforcement when the SFC began to make more diversified use of civil actions in response to various types of misconduct. In this respect, the SFC has mainly relied on sections 213 and 214 of the Securities and Futures Ordinance (SFO), which empower the court to make a wide range of orders upon the SFC's application. In May 2007, the SFC obtained the first director disqualification order for misconduct against Yick Chong San, a former listed company director, under section 214 of the SFO.[5] Later that year, the SFC unprecedentedly invoked its power under section 213 of the SFO to obtain a Mareva injunction in a suspected insider dealing case.[6] The SFC soon started to institute proceedings under sections 213 and 214 to achieve what it said it could not do back in 2001, i.e., seek compensation for victims of wrongdoing. In October 2008, the SFC for the first time asked the court to order the directors to pay compensation to their companies for the losses they caused in section 214 proceedings.[7] In recent years, the SFC has also frequently sought

[1] Cap.571 of the Laws of Hong Kong.
[2] About the SFC at http://www.sfc.hk/web/EN/about-the-sfc/our-role/. Unless otherwise stated, all URLs were last accessed [30 June 2015].
[3] P. Bailey, 'Enforcement Philosophy of the Securities and Futures Commission' in Securities regulation in Hong Kong (Hong Kong: Securities and Futures Commission 2002), 355-356.
[4] See the Securities and Futures Commission (SFC) Enforcement Reporter, 2002-2006 at http://www.sfc.hk/web/EN/regulatory-functions/enforcement/enforcement-actions/enforcement-reporter-(publication).html. Unless otherwise stated, all SEC Enforcement Reporter can be accessed through this web link.
[5] *Re Riverhill Holdings Ltd* [2007] 4 HKLRD 46; SFC Enforcement News, "SFC Secures First Disqualification of Director for Misconduct", 30 May 2007 available at http://www.sfc.hk/edistributionWeb/gateway/EN/news-and-announcements/news/enforcement-news/. Unless otherwise stated, all SEC Enforcement News can be accessed through this web link.
[6] *Re A*, Unreported 29 November 2007, Court of First Instance, HCMP 1407/2007.
[7] SFC Enforcement Reporter, Issue No. 60, October 2008, p.3.

restoration orders in section 213 proceedings to unwind transactions affected by misconduct such as prospectus misstatements, insider dealing, and price rigging.

Since 2004, the SFC has brought an increasing number of civil actions under sections 213 and 214 to seek compensation for investors who have suffered harm as a result of financial misconduct.[8] An empirical analysis of these actions is useful in several respects. Firstly, existing UK literature has largely overlooked the role of public enforcement in obtaining compensation for victims of corporate and securities law breaches.[9] UK commentators have noted in passing the regulator's power to seek or grant restitution orders under the Financial Services and Markets Act (FSMA) 2000, but have not analysed the theoretical issues associated with actions brought by public agents for the benefit of a class of victims (referred to as "representative actions" in this paper) or how these issues have impacted enforcement actions by the Financial Conduct Authority (FCA) (previously the Financial Services Authority). This lackluster interest in FCA's efforts to compensate investors is probably due to the fact the FCA has sought and granted restitution orders only sparingly.[10] By contrast, the more proactive SFC has generated a greater body of enforcement actions, which serves as a useful reference that sheds light on the potential advantages and pitfalls of representative actions. Secondly, as an international financial centre, Hong Kong has attracted a significant amount of foreign direct investment (FDI) and ranked fourth in terms of global FDI inflows in 2013.[11] It is estimated that about 81% of Hong Kong's direct investment assets was related to equity; moreover, the British Virgin Islands, as well as the UK, was a major source and destination of Hong Kong's FDI.[12] As a result, shifts in the SFC's enforcement strategy, which has a direct bearing on Hong Kong's capital market, should be of interest to investors and regulators worldwide, particularly those from the UK.

This paper seeks to evaluate the SFC's recent approach in seeking investor compensation under sections 213 and 214 of the SFO since the ordinance came into effect in 2003. It concludes that the SFC has made valuable contributions to maintaining market integrity by intervening (through these civil actions) to make up for the lack of private enforcement in cases of market misconduct. However, conflicts of interests invariably exist between the SFC, the general public and victims of market

[8] Though the SFC started to make occasional use of sections 213 and 214 as early as 2004 and 2005 respectively.

[9] With the exception of A. Keay, 'The Public Enforcement of Directors' Duties: A Normative Inquiry' 43 Comm. L. World Rev. 89, which highlights the need for public enforcement of duties owed by directors to enhance corporate governance.

[10] Searches at Westlaw and Lexis have only revealed [10] instances where the FCA (or FSA) has sought restitution orders on behalf of investors.

[11] United Nations Conference On Trade And Development, 'World Investment Report 2014: Investing in the SDGs: An Action Plan', United Nations: 2014, 4.

[12] Census and Statistics Department, 'External Direct Investment Statistics of Hong Kong 2013', available at http://www.statistics.gov.hk/pub/B10400032013AN13B0100.pdf, [4.3], [4.9], 19 and 22.

misconduct. US commentators suggested that similar conflicts of interests have led public agents to enter into small settlement offers when they act on behalf of the public. This does not appear to be the case in Hong Kong. Civil actions brought by the SFC have often obtained near full compensation for the investors they act for. It is argued that this apparent investor-friendly approach was adopted due to the fact that Hong Kong, as a small jurisdiction that is heavily reliant on foreign investment, has a natural and rational tendency to create the impression that it favours investors over large corporations. Nevertheless, the above-mentioned conflicts of interests manifest in other ways. For example, they partially explain why the SFC may have sometimes obtained compensation for a small group of investors at the expense of other equally deserving investors.

LITERATURE REVIEW

One of the few studies on the SFC's efforts to compensate investors for breaches of corporate and securities law can be found in Professor Donald's book, *A Financial Centre for Two Empires: Hong Kong's Corporate, Securities and Tax Laws in its Transition from Britain to China*, which contains an overview of the SFC's enforcement activities since 1997 and its powers to bring civil actions under sections 213 and 214 of the SFO.[13] Professor Donald suggests that actions brought under section 213 are a belated way to remedy the lack of a class action regime in Hong Kong,[14] and actions under section 214 are a possible solution to address a collective action problem in policing abusive behaviour of majority shareholders of listed companies, i.e., minority shareholders, whose shares are liquid, have little incentive to take judicial actions for majority shareholders' misconduct.[15] Consequently, he appears to unreservedly welcome the rise in the number of actions by the SFC under these sections and recommend that the SFC take actions at an earlier stage in the future.[16]

This article contributes to existing literature in two ways. First, it is the first empirical study on the SFC's growing role in compensating victims for breaches of corporate and securities law. Second, drawing on a burgeoning literature on representative actions brought by public agents, it critically evaluates the SFC's success in sections 213 and 214 proceedings and argues that procedural deficiencies have resulted in certain groups of investors being treated more favourably than others in these proceedings.

[13] D.C. Donald, A Financial Centre for Two Empires: Hong Kong's Corporate, Securities and Tax laws in its Transition from Britain to China, esp Chapters 3 and 5 (Cambridge University Press, 2014).
[14] [ibid 213.]
[15] [n8 above 217.]
[16] [n8 above, [169].]

ARGUMENTS AGAINST PUBLIC ENFORCEMENT FOR PRIVATE GAINS

Public agents' efforts in compensating victims of corporate and securities law violations have been criticised on various grounds.

The first set of arguments point to the different roles and strengths of public and private enforcement. To begin with, some argue that the goal of public enforcement of corporate and securities law is to deter future wrongdoing and to benefit the society as a whole.[17] Hence, it is inappropriate to use public funds to obtain private gains for investors harmed by breaches of corporate and securities law, especially where these investors have a private cause of action. Moreover, private enforcement has a number of advantages over public enforcement in seeking compensation for harmed investors. Victims of wrongdoing are more incentivised than public agents to invest time and resources to recover the losses they have suffered.[18] By contrast, public agents often do not have access to adequate resources to act against a highly motivated defendant.[19] Harmed investors are also likely to be more familiar with the events leading to their losses and hence better able to prove them in courts. A related argument contends that public enforcement is counter-productive as it discourages plaintiffs from bringing private actions.[20]

The second set of arguments highlight procedural deficiencies in representative actions brought by public agents. These actions mimic private class actions in many respects. However, various safeguards that are present in private class actions to avoid potential conflicts of interests are not present in representative actions. Professor Lemos has argued that conflicts invariably exist between the general public and the victims for whose benefit representative actions are brought. For example, the victims' interest in seeking the maximum amount of compensation conflicts with the general public's interest in ensuring that defendants are not put out of business by a large recovery, resulting in loss of jobs and a slowdown in the local economy.[21] Conflicts of interests may also arise between different classes of victims and between the public agents and the victims they act for.[22] Public agents may rationally decide, either out of concern for the public interest or out of self-interest, to pursue more defendants rather than spending all their time on one case to maximise the

[17] See A. Keay, [n10 above], 99-100; SFC, 'Consultation Paper on the Proposal to Empower the Securities and Futures Commission to Initiate a Derivative Action on Behalf of a Company' (Financial Services and the Treasury Bureau & SFC, May 2003), 11.
[18] M.H. Lemos, 'Aggregate Litigation Goes Public: Representative Suits by State Attorneys General' 126 Harv. L. Rev. 486 (2012), 522-523.
[19] [ibid 523-524.]
[20] SFC, 'Consultation Paper on the Proposal to Empower the Securities and Futures Commission to Initiate a Derivative Action on Behalf of a Company: Consultation Conclusions' (Financial Services and the Treasury Bureau & SFC, November 2003), 3-4.
[21] Lemos, [n13 above], 514.
[22] Lemos, [n13 above], 512-518.

amount of recovery in that case. Hence, commentators maintain that judges are too ready to assume that public agencies can fairly and competently represent the victims (while risks of conflicts of interests are as real as that in private class actions) and too deferential when reviewing compensation plans proposed by public agents.[23] The conflicts of interest problem is exacerbated by the fact that victims have little means to monitor and control the public agent who conducts the case on their behalf.[24] As a result, representative actions often result in settlement offers that are not in the victims' best financial interests.[25]

The third set of arguments criticise the practice of imposing financial penalties on listed companies for breaches of corporate and securities law.[26] It is argued that such penalties are often not born by the persons who are responsible for the wrongdoing, but distributed among the company's shareholders. For shareholders who are also victims, the compensation they receive as victims is merely a circular payment from themselves as shareholders obtained at high transaction costs. Worse still, there is usually a gap between the time when shareholders benefit from a company's wrongdoing and the time when the company is penalised for that wrong, during which shares of the company can still be bought and sold. Those who sold shares during this period are able to keep their gains received as a result of the wrongdoing while those who bought shares and continue to hold them would be penalised for wrongs which they did not personally benefit from.

This article will discuss whether any of these criticisms against public compensation actions hold true in light of the SFC's recent actions after examining cases brought by the SFC under sections 213 and 214 of the SFO.

SFC'S POWER TO OBTAIN COMPENSATION FOR INVESTORS

Unlike the FCA or the Securities and Exchange Commission (SEC) in the US, though the SFC has power to impose financial penalties on licensed persons and institutions, it is required to pay those penalties to the general revenue and cannot distribute them to the investing public.[27] The SFC also has power under section 201 of the SFO to resolve its disciplinary proceedings against regulated persons by way of a settlement agreement where it is in the public interest to do so.[28] After the collapse of the Lehman Brothers, the SFC used its power under section 201 to reach agreements

[23] A.S. Zimmerman, 'Distributing Justice' 86 N.Y.U. L. Rev. 500 (2011), 549-551.
[24] Lemos, [n13 above], 518-522.
[25] Lemos, [n13 above], 525-526.
[26] See J.C. Coffee, 'Reforming the Securities Class Action: An Essay on Deterrence and Its Implementation' 106 Colum. L. Rev. 1534 (2006).
[27] Securities and Futures Ordinance (SFO), ss 194(2), (6) and 196(2), (6).
[28] SFO, s 201(3).

with major financial institutions which sold structured products to retail investors to repurchase those products.[29] While the SFC has occasionally used its power under section 201 to provide investor compensation, this paper will focus on the two provisions most commonly relied on by the SFC to seek financial redress for investors in relation to breaches of corporate and securities law – sections 213 and 214 of the SFO.

Section 213 of the SFO

Section 213 of the SFO bears some similarity to sections 380 to 383 of the Financial Services and Markets Act (FSMA) 2000, but it is considerably wider in scope than these provisions. Sections 380 and 381 of FSMA 2000 provide that the court, upon application of an appropriate regulator or the Secretary of State, may make an order:

(a) restraining the contravention of a relevant requirement[30] or market abuse if such contravention/market abuse is likely to occur, continue or be repeated;[31]

(b) requiring steps to be taken to remedy the contravention of a relevant requirement/market abuse;[32] and

(c) freezing the assets of someone who has contravened a relevant requirement/been knowingly concerned in such contravention as well as someone who has engaged in market abuse/may engage in market abuse.[33]

Sections 382 of FSMA 2000 provides that the court may make restitution orders against certain persons who has received profits or caused other person to suffer loss as a result of the contravention of a relevant requirement. [34] The payment will be made to a relevant regulator, which is then required to distribute the amounts received to such qualifying persons as the court may direct.[35] The phrase "restitution orders" is used loosely in the section title as the type of payment that may be ordered under this section goes beyond the type that may be awarded in court pursuant to restitutionary principles. The law of restitution only requires a defendant to restore benefits received at the expense of the claimant while section 382 allows the court to take into account not only profits accrued to the defendant, but also the extent of the loss caused by the

[29] See, e.g., SFC Enforcement News, "SFC, HKMA and 16 banks reach agreement on Minibonds" 22 Jul 2009.
[30] Relevant requirement is defined in s 380(6) to include requirements imposed by or under FSMA 2000 and other legislation.
[31] FSMA 2000, ss 380(1) & 381(1).
[32] FSMA 2000, ss 380(2) & 381(2).
[33] FSMA 2000, ss 380(3) & 381(3).
[34] FSMA 2000, ss 382(1)&(2). "Relevant requirement" is defined in s s382(9).
[35] FSMA 2000, s 382(3).

defendant's misconduct.[36] In a similar vein, section 383 empowers the court to make "restitution orders" in cases of market abuse.

Similar to sections 380 to 383 of FSMA 2000, section 213 of the SFO also empowers the Hong Kong Court of First Instance, upon application of the SFC, to grant orders:

(a) restraining the occurrence of a wide range of misconduct specified in section 213(1)(a);[37]
(b) requiring a person involved in the above-mentioned misconduct to take any steps, including steps to restore the parties to any transaction to the position in which they were before the transaction was entered into;[38] and
(c) restraining a person from acquiring, disposing of, or otherwise dealing in any property.[39]

However, the scope of section 213 is arguably wider than sections 380 to 383 of FSMA 2000 in two respects. Firstly, more types of orders may be made under section 213 than that under sections 380 to 383. In addition to injunctions and restitution orders, section 213 also empowers the court to make orders appointing a person to administer the property of another person and declaring a specified contract to be void or voidable.[40] Secondly, orders specified in section 213(2) may be made against a larger class of persons than that under sections 380 to 383. For example, restitution orders may only be granted under sections 382 and 383 against persons who, in the court's opinion:

(a) has contravened or been knowingly concerned in the contravention of a relevant requirement; or
(b) has engaged in market abuse or has required/encouraged another person to engage in behavior which, if engaged by the person concerned, would amount to market abuse.

By contrast, section 213(1) prima facie allows the court to grant any order specified in section 213(2) against any person who:

(a) has contravened any of the provisions, notices or requirements specified in section 213(1)(a)(i);
(b) aided, abetted or otherwise, assisted, counselled or procured a person to commit any such contravention;
(c) induced a person to commit any such contravention;
(d) directly or indirectly been in any way knowingly involved in, or a party to, any such contravention;

[36] FSMA 2000, s382(2)(b)&(c).
[37] SFO, s 213(2)(a).
[38] SFO, s 213(2)(b).
[39] SFO, s 213(2)(c).
[40] SFO, s 213(d) and (e).

(e) attempted, or conspired with others, to commit any such contraventions;

or where it appears to the SFC that any of the matters referred to in subsections (a) to (e) above has occurred, is occurring or may occur.[41] It should be noted, however, that the Hong Kong Court of Final Appeal has declined to accept that the court has power to make substantive orders affecting legal and equitable rights – as opposed to interim relief – merely on the basis that the SFC is satisfied that there has been a contravention.[42]

The court enjoys broad discretion in granting orders under section 213. The only express conditions that it must satisfy are that (1) it is desirable to make an order and (2) the order will not unfairly prejudice any person.[43] The court may also grant damages in addition to or in lieu of any order specified in section 213(2).[44]

The breadth and flexibility of section 213 makes it a useful tool for the SFC to secure compensation for victims of financial misconduct. As Mark Steward, the SFC's Head of Enforcement, observed in November 2012, section 213 is "a little used provision which [the SFC has] made a significant part of [its] strategy."[45] This provision enables the SFC to seek a Mareva type injunction against potential wrongdoers at a relatively early stage of its investigation to prevent dissipation of assets and then a restoration/compensation order to distribute those assets to victims upon proof of wrongdoing. This two-stage process, however, has been challenged on several fronts. On each occasion, the court refused to curtail the scope of section 213.

The first attempt challenged the court's power to grant a Mareva injunction under section 213. In *SFC v C*,[46] the defendants argued that, as a matter of statutory construction, section 213(2)(c) did not empower the court to make such order. It was said that while Mareva injunctions restrain a person from "disposing of or dealing with" his property, section 213(2)(c) used the phrase "dealing in", which necessarily involved some kind of commercial transaction.[47] This distinction between "dealing with" and "dealing in" was endorsed in cases in the context of the Dangerous Drugs Ordinance.[48] The court in *SFC v C* refused to make such distinction. It held that the Dangerous Drugs Ordinance and the SFO directed at very different mischiefs; moreover, since the SFC had power to seek Mareva injunctions under previous legislation which the SFO was intended to replace, there

[41] SFO, s213(1)(a).
[42] *Kayden Ltd v Securities and Futures Commission* (2010) 13 HKCFAR 696, [49].
[43] SFO, s 213(4).
[44] SFO, s 213(8).
[45] Mark Steward, speech at the Compliance and Corruption across Asia Compliance Summit Asia, 8 November 2012, 3 at http://www.sfc.hk/web/EN/files/ER/PDF/Mark_20121108.pdf.
[46] [2009] 4 HKLRD 315.
[47] [ibid [20]-[21].]
[48] See, e.g., *The Queen v Hui Shu-Tan* [1965] HKLRD 341.

was no basis for adopting the narrower construction of section 213(2)(c) advanced by the defendant.[49] Accordingly, the court confirmed that it had power to grant a Mareva injunction under section 213.[50]

The second and more ambitious challenge questioned whether the SFC could obtain a final order under section 213, e.g., a restoration or compensation order, in the absence of a finding of market misconduct by the Market Misconduct Tribunal (MMT) or the criminal court. In *SFC v Tiger Asia Management LLC & Others*,[51] the defendants, citing legislative history, claimed that Parts XIII and XIV of the SFO were intended to introduce a dual civil and criminal regime (consisting of proceedings before the MMT and criminal courts respectively) which was not only mutually exclusive but also jointly exhaustive. Consequently, the SFC could not use section 213 as a third route to establish misconduct which is addressed in both Parts XIII and XIV, and to attain court orders on that basis.[52] The argument found favour with the Court of First Instance, but was rejected by both the Court of Appeal and the Court of Final Appeal.[53] The appellate courts found no convincing reason for departing from the natural and ordinary meaning of section 213, i.e., by conferring power on the court to make orders upon a contravention of the SFO, it denoted that the court had jurisdiction to determine whether such contravention had occurred.[54] Furthermore, the fact that the nature and purpose of section 213 proceedings differed significantly from MMT or criminal proceedings lends further support for the courts' construction. In particular, orders that may be granted under section 213 provide remedies for parties involved in the impugned transactions. By contrast, orders that can be imposed by the MMT or criminal courts in market misconduct proceedings are punitive in nature and are imposed in the general public interest.[55]

Finally, the court clarified in *SFC v Tsoi Bun*[56] that, given the breath of the language in section 213(2)(b), restoration orders under section 213 are not limited to orders which "direct steps resulting in full restitution in specie".[57]

[49] *SFC v C*, [n32 above, [22]-[27].]
[50] This point was not reversed on appeal. See *Kayden* [(n43 above)], [74].
[51] [2012] 2 HKLRD 281.
[52] Ibid [12].
[53] See *Securities and Futures Commission v Tiger Asia Management LLC & Others* [2012] 2 HKLRD 281 (CA); *Securities and Futures Commission v Tiger Asia Management LLC & Others* (2013) 16 HKCFAR 324 (CFA).
[54] *Tiger Asia* (CFA), n39 above, [8].
[55] *Tiger Asia* (CFA), n39 above, [16].
[56] [2014] 2 HKLRD 1.
[57] ibid [8]-[9].

Section 214 of the SFO

Section 214 empowers the SFC to seek court orders to combat unfair prejudice and other misconduct involving listed companies. The SFC may apply to the Court of First Instance where the business or affairs of a corporation, which is or was listed, have been conducted in a manner-

(a) oppressive to any part of its members;
(b) involving defalcation, fraud, misfeasance or other misconduct towards it or any part of its members;
(c) resulting in any part of its members not having been given all the information with respect to its business or affairs that they might reasonably expect; or
(d) unfairly prejudicial to any part of its members.[58]

Similar to section 213, this section empowers the court to make a wide range of remedial orders, including an order:

(a) restraining or requiring the carrying out, of any acts;
(b) that the corporation shall bring in its name proceedings against any persons;
(c) appointing a receiver or manager;
(d) disqualifying a director, liquidator, or receiver or manager;

and any other order it considers appropriate.[59]

DATA AND METHODOLOGY

The dataset of this empirical study comprises all actions brought by the SFC under sections 213 and 214 of the SFO since the SFO came into force in 2003. The information is drawn mainly from two sources: the SFC and the court. The SFC has made available information about its enforcement activities on its website. In particular, I reviewed all enforcement news, enforcement reporters and annual reports published by the SFC since 2003. I also searched for judicial decisions involving these two sections using search terms "section 213" and "section 214" on the Hong Kong Judiciary's website, Westlaw, and LexisNexis.

The goal of the study is to examine the SFC's use of civil actions as a new enforcement tool to obtain compensation for harmed investors.

ANALYSIS

The aim of SFC civil actions

The court has made clear that the aim of section 213 proceedings is to remedy the consequences of wrongdoing.

[58] SFO, s 214(1).
[59] SFO, s 214(2).

The Court of Appeal in *Tiger Asia* repeatedly affirmed that section 213 proceedings are "remedial in nature" whereas MMT and criminal proceedings are "essentially punitive in nature".[60] Section 213 was considered complementary to sections 281 and 305, both of which provide statutory causes of actions for investors to seek civil remedies for various market misconduct.[61] Section 213 enables the SFC to protect the investing public in situations where it would be impractical for harmed investors to take proceedings to enforce their rights.[62] As the Court of Final Appeal observed, the SFC acts "not as a prosecutor in the general public interest" in section 213 proceedings but "as protector of the collective interests of the persons … who have been injured by market misconduct."[63]

Section 214 has been regularly invoked to obtain disqualification orders against directors of public companies, the aim of which is "not so much to punish errant directors, as to protect the public from companies being run by persons who are not fit to do so" and to deter directors of other companies from engaging in similar conduct.[64] Since 2010, the court has also used section 214 to order restoration of benefits that wrongdoer directors have received at the expense of their companies and to order the relevant companies to bring actions to seek compensation from such directors.

Number and type of civil actions

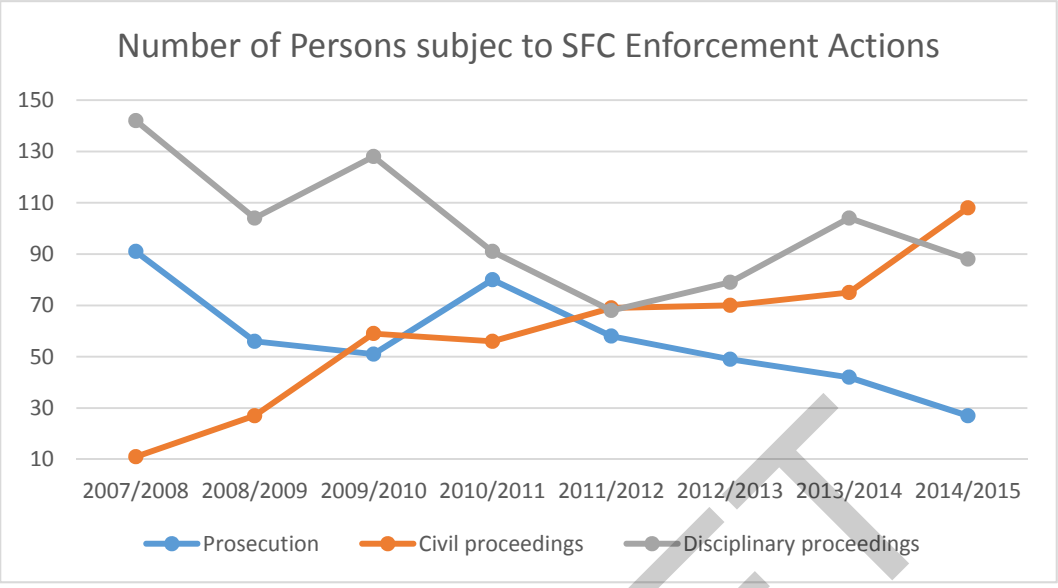
Since 2004, the SFC has brought a steady stream of section 213 cases before the court. As of [30 June 2015], [13] of the [22] section 213 cases initiated by the SFC have been resolved, often in the form of a court-sanctioned settlement reached between the SFC and the relevant defendants.[65]

Since 2005, the SFC has brought section 214 actions against directors in 17 listed companies (see Annex B). [In majority of those cases], one or more of the defendant directors are also substantial shareholders of the company in question, supporting Professor Donald's observation that market misconduct cases in Hong Kong, unlike that in the US or UK, are often caused by abuse of powers by majority shareholders.[66]

Interestingly, an increase in the number of civil actions brought by the SFC (mainly under sections 213 and 214) coincided with a gradual decrease in the number of criminal and disciplinary actions brought by the SFC. In the last seven years, the number of persons subject to civil proceedings rose almost ten times from 11 in the financial year 2007/2008 to 108 in the year 2014/2015. In the

[60] *Tiger Asia* (CA), [n39 above], [20], [22], [34], [35]; *Tiger Asia* (CFA), [16].
[61] *Tiger Asia* (CA), [35]
[62] *Tiger Asia* (CA), [24]
[63] *Tiger Asia* (CFA), [16].
[64] Re Styland Holdings Ltd (No 2) [2012] 2 HKLRD 325, [129].
[65] See Annex A.
[66] Donald (2014), [n8 above], 126-127.

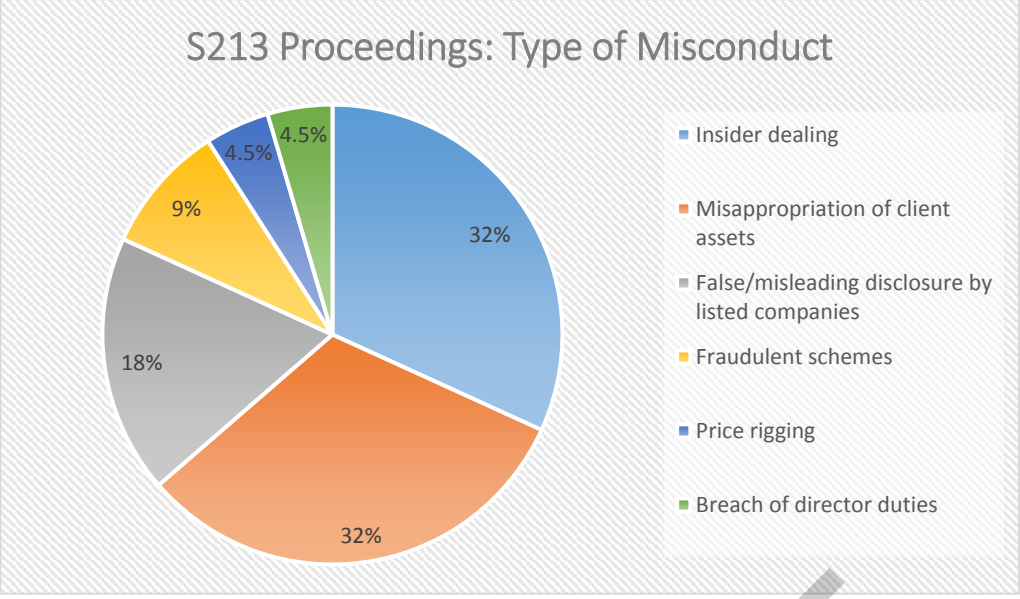
meantime, the number of persons subject to prosecutions and disciplinary proceedings decreased from 91 to 27 and from 142 to 88 respectively. Civil actions have clearly gained increasing



prominence in the SFC enforcement strategy.

Furthermore, the SFC has brought section 213 actions against various types of misconduct. In the first few years, section 213 was mainly used to prevent dissipation of property in cases involving misappropriation of client assets.[67] It was soon found to be useful in a wider variety of cases, including insider dealing, fraud, price rigging, breach of director duties, and more recently, cases concerning false/misleading statements made by listed companies to the public. Insider dealing and misappropriation of client assets remain two of the most frequent type of misconduct against which section 213 actions have been brought against, each accounting for about 32% of the actions brought to date.

[67] See Annex A below.



Amount and calculation method of compensation

All but one of the resolved sections 213 actions have resulted in the court granting orders sought by the SFC to award significant amounts of compensation to harmed investors. A summary of the amount of compensation awarded in respect of each type of misconduct and the method for calculating such amount are set out below.

Insider dealing

Three of the [seven] insider dealing cases have been resolved. One claim was struck out.[68] The SFC prevailed in the other two, *HKSAR v Du Jun*[69] ("*Du Jun*") and *Tiger Asia*, both of which were heavily contested and appealed to the Court of Appeal and the Court of Final Appeal respectively.

In *Du Jun*, the defendant Du Jun was a banker at Morgan Stanley. In 2007, Du purchased 26.7 million shares of CITIC Resources at a cost of HK$87,109, 693 million when he was part of the Morgan Stanley team advising CITIC Resources on a proposed acquisition and possessed insider information. He sold a block of shares at a profit of approximately HK$33.43 million and the remaining shares at a loss of approximately HK$31.34 million.[70] Hence, Du's actual profits were about HK$1,688,000.[71] Du was prosecuted for insider dealing and was originally both sentenced to seven years' imprisonment and fined HK$23,324,117 (representing the notional profits made by him as an insider dealer).[72] In

[68] *Securities and Futures Commission v Lee Sung Ho & Others*, Unreported, 27 April 2012, Court of First Instance, HCA 2177/2011.
[69] See *HKSAR v Du Jun* Unreported, 18 September 2009, District Court, DCCC787/2008; *HKSAR v Du Jun* [2012] 6 HKC 119.
[70] *Du Jun* (DC), ibid [17]-[18].
[71] *Du Jun* (CA), [174].
[72] *Du Jun* (DC), [45].

calculating the fine, the court followed the approach annunciated by Lord Nicholls of Birkenhead in *The Insider Dealing Tribunal v Shek Mei Ling*[73] in treating the relevant profit of an insider dealer "as that gained by the insider dealer when the [insider] information was made public and the market had had a reasonable opportunity to digest the [insider] information;"[74] the gain was to be measured by reference to "the market value of the shares at that date."[75] On appeal, the Court of Appeal questioned (without deciding) the appropriateness of imposing a fine to disgorge notional profits as opposed to actual profits.[76] The court lowered the fine to HK$1,688,000 to avoid defeating the "laudable objective of the s213 proceedings" to compensate Du's counterparties for their losses.[77] Subsequently, the court ordered Du to pay HK$23.9 million to 297 investors in the concurrent section 213 proceeding. The payment represented "the difference between the actual price at which the affected investors sold the CITIC Resources shares to Du and the price at which the investors could have sold the shares had the [insider information] been made known to the market at the time (as assessed by expert evidence)."[78]

In *Tiger Asia*, the defendants were Tiger Asia Management LLC, a New York based asset management company, and three of its senior officers. The SFC brought a section 213 action against the defendants to seek, amongst others, declarations that the defendants contravened the insider dealing law[79] and orders that the defendants restore their counterparties to their pre-transaction positions.[80] The SFC alleged that, on three occasions, Tiger Asia possessed insider information about the shares that it shortsold; it in turn made a notional profit of HK$9 million, a notional loss of HK$10 million, and a notional profit of HK$32 million respectively.[81] As discussed more fully above, the defendants sought unsuccessfully to strike out the SFC's claim on the ground that the court did not have jurisdiction to make the orders sought by the SFC. Tiger Asia and two of its senior officers later admitted that they contravened Hong Kong law on insider dealing and market manipulation.[82] They were ordered to return HK$45,266,610 to around 1,800 investors in Hong Kong and overseas who

[73] [1999] 2 HKCFAR 205.
[74] *Shek Mei Ling*, ibid, 211.
[75] [ibid.]
[76] *Du Jun* (CA), [166].
[77] *Du Jun* (CA), [169]-[174].
[78] SFC Enforcement News, "Court orders insider dealer Du Jun to pay $23.9 million to investors", 12 December 2013.
[79] SFO, s 291(5).
[80] SFC Enforcement News, "SFC seeks court orders to freeze assets of Tiger Asia Management LLC", 20 August 2009
[81] SFC Enforcement News, "Tiger Asia admits insider dealing and ordered to pay investors $45 million", 20 December 2013.
[82] ibid.

traded with Tiger Asia in the insider dealing transactions. The same method for calculating the amount of repayment adopted in *Du Jun* was followed in *Tiger Asia*.[83]

Misappropriation of client assets

Six out of the [seven] cases concerning misappropriation of client assets have been resolved. In majority of these cases, the SFC used section 213 proceedings to obtain Mareva injunctions to prevent wrongdoers from dissipating client assets and, on all occasions, appointed administrators for the relevant company to facilitate the return of the remaining client assets.[84] In the case of *Whole Win Securities Limited*, the administrator managed to obtain a restructuring agreement to fully compensate clients and other creditors of Whole Win.[85] The clients whose assets were misappropriated were less lucky in other cases.[86] On at least two occasions where there was a shortfall of assets, the administrators applied for court directions as to the appropriate method for allocating property among defrauded clients. The assets were distributed on a pari pasu basis in *Re Tiffit Securities (Hong Kong) Limited*.[87] In *SFC v Great Honest Investment Company Limited & Others*, since it was possible to identify the time at which the securities were misappropriated, the assets were allocated in accordance with the company's records, leaving the loss to lie where it fell.[88]

False/misleading disclosure by listed companies

The SFC did not begin to use section 213 actions to combat false/misleading disclosures made by listed companies until the landmark case of *Securities and Futures Commission v Hontex International Holdings Company Limited & Others*[89] which was commenced in 2010 and resolved in 2012. In *Hontex*, the defendants were Hontex International Holdings Company Limited (Hontex Holdings), a company incorporated in the Cayman Islands and listed on 24 December 2009 on the Hong Kong Stock Exchange, and four of its subsidiaries. The listing price of Hontex Holdings was HK$2.15 per share; its closing price on 30 March 2010 when trading was suspended at SFC's request was HK$2.06. The SFC alleged that much of the financial information contained in the prospectus for

[83] ibid.
[84] See, e.g., SFC Enforcement News, "Administrator Appointed for Whole Win Securities Limited", 31 May 2006; "Administrator Appointed for Tiffit Securities (Hong Kong) Limited", 24 Jul 2006; "Restriction Notice on Great Honest Investment Company Ltd", 12 November 2007.
[85] SFC Enforcement News, "Restriction Notice Varied to Enable Orderly Return of Assets to Whole Win Securities Limited Clients", 1 December 2006.
[86] The defrauded investors were able to get some compensation from the Investor Compensation Fund.
[87] [2007] 1 HKLRD 267.
[88] [2008] 5 HKLRD 73.
[89] See, e.g., *Securities and Futures Commission v Hontex International Holdings Company Limited & Others* Unreported, 2 August 2011, Court of First Instance, HCMP 630/2010.

Hontex Holdings' initial public offering was false and misleading.[90] On 20 June 2012 and after 12 days at trial, the SFC and Hontex Holdings agreed on a set of facts whereby Hontex Holdings admitted that "it was reckless in allowing materially false and misleading information to be included in its prospectus which induced investors to subscribe and purchase its shares".[91] Based on these admitted facts, the court ordered Hontex Holdings to hold a meeting for independent shareholders to vote on whether to make a repurchase offer at HK$2.06 per share to about 7700 qualifying shareholders (i.e., investors who were registered shareholders of Hontex Holdings or whose shares were held in the name of CCASS/HKSCC Nominees Limited on 20 June 2012).[92] The repurchase offer was later approved and accepted by 98.73% of the qualifying shareholders, resulting in a repayment of over HK$ 1.03 billion.[93]

Since the new statutory price-sensitive information disclosure regime came into effect on 1 January 2013,[94] the SFC has used its powers under section 213 predominantly in response to false/misleading disclosures of financial information by listed companies. Between 2013 and 2014, the SFC has commenced proceedings in respect of Qunxing Paper Holdings Company (alleging that it exaggerated its turnover before and after the initial public offering in 2007),[95] Greencool Technology Holdings Limited (alleging misconduct that grossly overstated the company's financial accounts from 2000 to 2004),[96] as well as CITIC Limited (alleging disclosure of false or misleading information on CITIC's financial position in 2008).[97] In each case, the SFC obtained Mareva injunctions against the defendants and sought restoration orders under section 213 to compensate investors who purchased shares of the relevant company.

Fraudulent investment schemes

Sections 213 actions have also been used to protect investors from outright frauds. One of the two cases has been recently resolved. In *SFC v Descartes Investment Management Limited & Others*

[90] *Hontex*, ibid, [5].
[91] SFC Enforcement News, "Hontex ordered to make $1.03 billion buy-back offer over untrue IPO prospectus" 20 Jun 2012.
[92] Hontex International Holdings Company Limited, Notice of EGM dated 27 July 2012 at http://ir.hontex.cn/attachment/20120727061701001470481_en.pdf.
[93] SFC Annual Report 2012/2013, 44.
[94] See the Securities and Futures (Amendment) Ordinance 2012 (Amendment Ordinance).
[95] *SFC v Qunxing Paper Holdings Co Ltd & Another*, Unreported 20 December 2013, Court of First Instance, HCA 2428/2013, [3].
[96] SFC Enforcement News, 'SFC commences proceedings against Greencool's former chairman and seeks to freeze $1.59 billion of his assets to compensate investors' 23 Jun 2014.
[97] SFC Enforcement News, 'SFC commences proceedings against CITIC, its former chairman and executive directors' 11 Sep 2014.

("*Athena Funds*")[98] the defendants were operators and related companies of a collapsed private hedge fund which issued false accounting documents and subscription contracts to defraud investors. The SFC traced the dissipated funds to NBS Limited which claimed to be a nominee for Bestmega Limited, an investor in the collapsed hedge fund. The SFC subsequently reached an agreement with NBS/Bestmega, under which funds in the amount of HK$191,360,215 would be paid to the hedge fund for distribution by court-appointed liquidators to all investors.[99] The whereabouts of the fraudulent fund managers remain unknown.

Price rigging

The SFC has eercised its powers under section 213 in one price rigging case, *SFC v Tsoi Bun*. The defendant Tsoi was a futures trader who manipulated the final Calculated Opening Price (COP) of two futures contracts during the Pre-Market Opening Period (PMO Period). The PMO Period is designed to achieve an orderly price discovery process: during the PMO Period, indicative COPs would be calculated by an algorithm which takes account of the overall supply and demand in respect of each type of futures contract as reflected by the prices, sizes and distribution of the orders placed during this Period;[100] at the end of the PMO Period, a final COP would be determined. Tsoi's manipulative trades were made as follows: he first placed orders in a particular direction (buy or sell). He then, within a few seconds before the end of the PMO Period when investors were allowed to place orders, placed a series of large size orders (but significantly smaller in quantity than his previous orders) in the opposite direction to either shore up or depress the final COP and hence ensure that the final COP went in a direction that was beneficial to him.[101] Tsoi was convicted of false trading and price rigging.[102] He was subsequently ordered to pay a total of HK$13,688,950 to compensate his counterparties in the trades in question. The amount of compensation represented the notional profits made by Tsoi, i.e., the difference between the contract value of each futures contract calculated by reference to the indicative COPs before Tsoi's artificial orders and the final COPs created as a result of those artificial orders.[103] For example, if Tsoi first placed 100 buy orders when the indicative COP was at 1,000, and subsequently 20 sell orders to depress the final COP to 9,950, he would be left with 80 buy orders at the more favourable COP of 9,950 when the market

[98] *SFC v Descartes Investment Management Ltd & Others*, Unreported, 23 March 2010, Court of First Instance, HCMP 796/2009.
[99] SFC Enforcement News, 'SFC recovers $190 million for investors of collapsed hedge fund' 6 May 2015.
[100] *Tsoi Bun*, [n41 above], [20]-[24].
[101] *Tsoi Bun*, [n41 above], [34].
[102] In contravention of sections 295 and 296 of the SFO. *Tsoi Bun*, [n41 above], [3].
[103] *Tsoi Bun*, [n41 above], [4] and Sched 1.

opens. The amount of notional profit that he would make is HK$200,000 (HK$50[104] x 80 x (10,000-9950)). Notably, the total amount of Tsoi's notional profits calculated through this method was more than ten times higher than his actual profits of $949,350.[105]

Breach of director duties

Interestingly, the SFC has also initiated section 213 proceeding in one case, *SFC v Wong Kwong Yu & Others*,[106] to rectify breaches of duties by directors of a listed company. The 1st and 2nd defendants were Wong Kwong Yu, former chairman of GOME Electrical Appliances Holding Limited (GOME), his wife, Du Juan, a director of GOME, and two companies wholly owned by Wong.[107] The SFC alleged that Wong and Du organised a share purchase by GOME to raise cash to repay their personal loan. Among the shares repurchased by GOME, approximately 70% were originally held by Wong.[108] In an agreement reached between the SFC and the defendants, Wong and Du accepted that the share repurchase was not properly authorised by GOME's board and that Wong should not have participated in the repurchase as he failed to make full disclosure of his personal interest.[109] The defendants agreed to pay HK$420,608,765.75 to GOME, representing the gains received by them through the repurchase. The amount of their gains was assessed by an expert witness appointed by the SFC and comprise three components: (1) the discount which would have applied had Wong sold his shares by way of private placement; (2) the benefit caused by the increase in GOME's share price due to the heavy demand for GOME shares created by the share repurchase; and (3) the profits received from the sale of an additional 7,137,000 shares by Wong to other purchasers during the repurchase period.[110] After GOME's independent shareholders passed a resolution ratifying the share repurchase as well as Wong and Du's breach of duties, the court granted the orders sought by the SFC, including repayment of about HK$420 million by the defendants to GOME.[111]

[104] "The contract value of each […] futures contracts is equal to the contract price of the futures contract multiplied by the contract multiplier of $50 per index point. " *Tsoi Bun*, [n41 above], [18].
[105] SFC Enforcement News, 'Futures trader Tsoi Bun convicted of price rigging after retrial' 30 Jan 2012.
[106] See, e.g., *SFC v Wong Kwong Yu & Others* Unreported, 8 September 2009, Court of First Instance, HCMP 1496.
[107] [ibid, [3].]
[108] SFC Enforcement News, "SFC obtains $420 million compensation for GOME over breaches of directors' duties by former chairman and wife in share repurchase" 11 Mar 2014.
[109] [ibid].
[110] [ibid].
[111] SFC Enforcement News, "SFC obtains court orders for GOME to receive $420 million compensation from founder and wife over breaches in share repurchase" 7 May 2014.

Section 214 actions

In at least three instances, the court has ordered defendant directors to make repayments to the listed companies they have served. In *Re Styland Holdings Ltd (No 2)*, the court held that an order for the payment of compensation pursuant to section 214 (2)(e) of the SFO is only appropriate where the amount of loss suffered by the listed company as a result of the relevant breaches is "readily ascertainable", e.g., where the a director has received sums from his company in breach of his duties.[112] Where the amount of the company's loss is not readily ascertainable, the court would prefer to make use of the power to order the company to bring proceedings to seek compensation under section 214(2)(b). In deciding whether to make such an order, the court would take into account various factor, including the likelihood of the success and the level of damages/compensation that might be recoverable.[113]

COMMENTS

The role of public and private enforcement

As noted above, the SFC has brought actions to recover losses for victims of six types of misconduct: insider dealing, price rigging, false/misleading disclosure by listed companies, breach of duties by directors of listed companies, misappropriation of client assets, and fraudulent investment schemes.

In each case, the victims have private causes of actions to seek compensation from the relevant wrongdoers. For example, insider dealing, price rigging, and disclosure of false/misleading information[114] all amount to market misconduct as defined in section 245 of the SFO. Hence, any person who suffered loss as a result has statutory causes of actions under sections 281 and 305 of the SFO to seek compensation. Shareholders of listed companies can bring derivative actions on behalf of the company against wrongdoer directors or, in appropriate cases, unfair prejudice actions against majority shareholders.[115] Clients whose assets have been misappropriated by wrongdoers can sue the latter for money had and received or for breach of contract. Victims of fraudulent investment schemes can also bring claims under multiple grounds, e.g., misrepresentation, fraud or breach of contract.

The arguments against using public funds to obtain compensation for private investors is more convincing when investors can be reasonably expected to bring private actions to vindicate their

[112] Re Styland Holdings Ltd (No 2), [n53], [139]-[141].
[113] Re Styland Holdings Ltd (No 2), [n53], [143]-[147].
[114] SFO, s 277.
[115] See Part 14 of the Companies Ordinance (Cap.622).

rights. However, it is not always practicable for investors to do so. Three pre-requisites must be satisfied before a person can be reasonably expected to seek compensation through private actions. First, he believes that he has suffered unjustifiable loss; second, he believes that he is able to identify and prove wrongful acts which are causally linked to his loss; third, the cost of pursuing the wrongdoer is not disproportionately high as compared to the amount that he is likely able to recover from the wrongdoer. Where one or more of these pre-requisites are not satisfied, it is up to public enforcement to remediate the consequences of the relevant wrongdoing.[116] In those cases, public intervention makes up for the lack of private enforcement. Using public funds in such cases promotes a sense of fairness and justice and helps inject (or maintain) confidence in the market, which is justified and should be encouraged. As Justice Tang pointed out in *Tiger Asia* (CA), where it is unreasonable to expect investors to take proceedings to enforce their rights, it may be "eminently reasonable for proceedings to be taken by the [SFC] under section 213 for the investors' benefit."[117]

As explained more fully below, the SFC has mainly used its powers under sections 213 and 214 to seek compensation in cases where private enforcement is either impracticable or ineffective.

Misappropriation of client assets

The three pre-requisites for private enforcement are generally satisfied in misappropriation of client assets cases. A client would soon realise that he has suffered unjustifiable loss when his agent fails to deliver the securities that he has purchased. It should be relatively easy for that client to prove that his agent failed to do so and the cost for proving such wrongdoing is likely to be low. As a result, it is highly likely that investors harmed by this type of misconduct would pursue private actions.

It is notable that though the SFC began by pursuing section 213 actions in misappropriation of asset cases, it has rarely done so recently. Even back in the early years, the SFC primarily used its powers to obtain Mareva injunctions to preserve client assets and to appoint administrators to facilitate the distribution of those assets. Taking steps to preserve client assets facilitates private enforcement as it helps prevent the problem that it may be too late for investors to take legal actions by the time they are aware that their assets have been misappropriated – by that time, the assets may have been largely dissipated by the wrongdoer, who either cannot be found or has declared bankrupt/insolvent, rendering it futile to attempt to recover them through legal actions.

[116] Investors may also get compensation from the Investor Compensation Fund. But the amount of compensation is often insufficient as the amount recoverable per person is only HK$150,000.
[117] *Tiger Asia* (CA), [24].

Fraudulent investment schemes

The first two pre-requites for private enforcement may not be satisfied in certain cases of fraudulent investment schemes, providing reasons for public intervention: persons who lost money in a well-executed fraudulent scheme may not know that they have fallen victim to a fraud. Other times, they may lack access to the relevant information and documents to prove that they were subject to fraud.

Moreover, cases involving fraudulent investment schemes also face the problem that it might be too late when investors realise that they need to take legal actions. By that time, investors may not be able to locate the fraudsters or to trace the money they have lost. This is evidenced by the two fraud cases pursued by the SFC. In the first case, *Athena Funds*, by the time most investors realised that the hedge fund was a fraud, the fund managers could not be found and the assets held by the fund had been dissipated. Similarly, the second case involves a boiler room fraud where fraudsters transfer money received from investors to another place almost as soon as it has been received. As a result, by the time a boiler room fraud is discovered, the money often has disappeared or transferred out of reach.[118] These are prime examples of circumstances where the SFC should intervene early to preserve investors' assets and to use its more extensive investigative powers to recover dissipated property.

False/misleading disclosure by listed companies

Sometimes, even if an investor is reasonably confident that he has suffered loss as a result of misconduct, the costs of pursuing the wrongdoer may outweigh any benefits the investor may receive in return. This is likely to be the case where a minority shareholder of a listed company suffers loss due to false/misleading disclosures made by the company. Even where it is relatively easy to prove that the company has made a false/misleading statement (e.g., where the regulator has made a finding to that effect), proving that the misstatement has adversely affected the company's share price and quantifying the amount of loss suffered by each shareholder would be an expensive exercise. The costs involved, including engaging expert witness to estimate the likely harm attributable to the misstatement, are likely to be prohibitively high for any minority shareholder (but perhaps not all affected investors collectively) to sue the company. In such cases, an effective class action regime helps overcome the collective action problem by distributing the costs of pursuing the wrongdoer among a class of shareholders so that such costs would not be prohibitively high for each victim. Hong Kong does not yet have a class action regime. Hence, public enforcement actions by the SFC are arguably substitutes for such a regime, as Professor Donald has suggested. In countries such

[118] SFC Enforcement News, "Court freezes bank accounts of suspected boiler rooms" 19 Dec 2014.

as the US where class action procedures are more well developed, public compensation efforts are likely to duplicate the role of shareholder class actions. As Professor Velikonia has observed in her study on the SEC's distribution of collected civil fines (for breaches of securities laws) to defrauded investors, distribution cases involving issuer reporting and disclosure are almost always accompanied by class actions.[119]

Breach of duties by directors of listed companies

Minority shareholders of listed companies are unlikely to sue directors of those companies even if they suspect that they have suffered loss as a result of the directors' failure to comply with their duties. First of all, minority shareholders often do not have adequate access to the company's books and records to substantiate their claims for misconduct. Moreover, if a shareholder's loss is limited to the diminution in value of his shareholding, he is not allowed to recover such loss other than by way of a derivative action on behalf of the company.[120] However, the shareholder would have little incentive to bring a derivative action. Not only is there likely a mismatch of resources (since the directors would be able to use the company's funds to defend their action), the shareholder would have to bear all the costs of initiating a derivative action while the benefits of such action would be shared among all shareholders. The strong disincentive for shareholders to bring derivative actions constitutes a key reason why the SFC proposed legal amendments to enhance the power of the SFC to bring derivative actions on behalf of companies.[121] While the problem identified by the SFC was widely acknowledged, its proposal was subsequently put on hold for various reasons.[122] To the extent that the SFC's civil proceedings make up for the lack of derivative actions, they should be welcomed.

Insider trading

Moreover, it is often impractical for investors to bring private actions against certain types of misconduct, despite the existence of a class action regime. Insider trading serves as a good example.

First of all, contravention of insider trading laws are invariably pursued by the regulators, notably the SFC, given the difficulty for investors to detect and/or prove acts of insider trading. The results of those enforcement actions are reported in the SFC's website and often in various media outlets as

[119] U. Velikonja, 'Public Compensation for Private Harm: Evidence from the SEC's Fair Fund Distributions' 67 Stan. L. Rev. 331, 373.
[120] Because his loss is caused by the breach of a duty owed both to him and the company. Johnson v Gore Wood & Co (No.1), [2001] B.C.C. 820, 859.
[121] See the HK Consultation Paper, [n12 above].
[122] See Consultation Conclusions, [n15 above].

well. These reports generally contain a brief description of when and how the insider trading took place, which can be easily missed by investors who only glance through headlines. This is compounded by the fact that such reports are often made a few years after the wrongful trading took place. Those who purchased shares around the same period as the insider may not be able to recall having traded on a particular share a few years back. As a result, many investors are likely unaware that they suffered loss associated with the insider trading (the "identification problem").

For investors who suspect that they have been harmed by insider trading, they have to overcome almost insurmountable obstacles to seek compensation in the court (the "proof problem"). Firstly, investors face difficulty proving that they have standing to sue the insider trader. Sections 281 and 305 are, as commentators have pointed out, vague about who can bring a civil action.[123] Both sections provide that the wrongdoer is liable to pay damages to "any other person for any pecuniary loss sustained by the other person as a result of the [insider trading], whether or not the loss arises from the other person having entered into a transaction or dealing at a price affected by the [insider trading]".[124] The wording may be interpreted narrowly to include only persons who traded with the wrongdoer (the "privity approach"),[125] or widely to cover other persons who traded around the same time as the insider trader (commonly referred to as the "contemporaneous trader" approach). There is no judicial guidance on point in Hong Kong. If the privity approach is adopted, persons who have standing to sue the wrongdoers are highly unlikely to sue the latter for the simple reason that they would have "no means to detect they were dealing with" the insider.[126] Even if the contemporaneous trader approach is adopted, the meaning of "contemporaneity" is unhelpfully vague. Courts in other common law jurisdictions diverge on the meaning of contemporaneity: some have held that purchase of securities within five days of insider trading fulfills the contemporaneous requirement;[127] others maintain that trades conducted only two trading days after the insider trading were not sufficiently contemporaneous.[128] Accordingly, potential plaintiffs who did not trade on the same day as the insider trader may be discouraged by the substantial initial costs they need to incur to prove the preliminary point that they have standing to sue. Secondly, investors face difficulty proving that they suffered loss "as a result of" the insider trading. The courts are likely to look to principles of causation established in other private law cases for guidance. Whichever of the existing tests of causation is employed by the court, plaintiffs need to prove, at least, either that,

[123] R. Cheung, 'Insider Trading: A Critical Assessment of the Private Right of Action' Comp. Law. 2013 34(2) 56, 58-61.
[124] SFO, ss 281(1) and 305(1).
[125] The privity approach is expressly adopted in Australia.
[126] As acknowledged by the SFC in SFC Enforcement News, "Court orders insider dealer Du Jun to pay $23.9 million to investors" 12 Dec 2013.
[127] *In re Cypress Semiconductor Securities Litigation* 836 F.Supp. 711, 714.
[128] *Backman v. Polaroid Corp*. 540 F.Supp. 667, 671.

"but for" the insider trading, they would not have entered into their trades/entered into their trades at the price they did, or that the insider trading was "a material cause" upon which they relied on in entering into their trades. As many commentators have argued, both tests of causation would be difficult to satisfy.[129] The "but for" test requires us to imagine what would have happened in a world exactly the same as ours, apart from one counterfactual difference singled out by the test, i.e., the insider trading. As the investors had no means of knowing that they were dealing with an insider trader, they have arguably made decisions to trade at a particular price based on their own investment experience, understanding of the market, and/or personal needs.[130] Moreover, fluctuation of share prices can be caused by a number of factors independent of the insider trading, and since insider traders would invariably act discreetly so as to avoid attention caused by significant shifts in market price, it is hard to argue that the relevant shares would not have traded at the same price but for the orders placed by the insider trader. As a result, investors would likely have executed the same trades in any event and hence have not suffered any loss caused by the insider trading. The reliance-based test, on the other hand, requires investors to prove that they were induced by the insider trading to make disadvantageous trades. This would require proof that the investors were aware of the insider's trading activities and that those activities were a material reason why they traded, which is both difficult and costly to prove.

It is no coincidence that Professor Velikonia's study also revealed that SEC distributions of civil fines in respect of insider trading are rarely accompanied by parallel private litigation: only two of the insider trading cases were accompanied by class actions, both of which were unsuccessful.[131]

Price-rigging

It is equally difficult for investors who suffered loss as a result of price-rigging to sue the wrongdoer. However, the reasons are slightly different from that for insider trading. The identification problem applies with the same force to price-rigging. The proof problem, however, is easier to overcome. Take the case of *Tsoi Bun* as an example, since Tsoi's artificial trades had the effect of tilting the final COP upwards or downwards, anyone who placed an order at the opposite side of Tsoi would be harmed by his artificial trades since his order would be executed at a less advantageous price than what would have been without Tsoi's artificial trades. These investors should be able to prove fairly easily both that they have standing to sue Tsoi and that they suffered loss due to Tsoi's misconduct.

[129] See, e.g., R. Cheung [n115 above], 61-62; H. Huang, 'Compensation for Insider Trading: Who Should be Eligible Claimants?' (2006) 20 Aust Jnl of Corp Law 84, Part III; A.F.H. Loke, 'The Protected Interests in the Private Right of Action for Insider Trading: A Comparative Perspective' JCLS Vol.7, Part 2, 307, 316-317.
[130] See, e.g., M.P. Dooley, 'Enforcement of Insider Trading Restrictions' (1980) Va. L. Rev. 1, 33.
[131] Velikonia, (n111 above), 372-373.

In light of the above, it appears that the SFC has generally exercised its powers under sections 213 and 214 of the SFO in a way that makes up for the lack of private enforcement in response to certain types of misconduct.

Incentive to obtain compensation for investors

Commentators have also argued that public agents are not as incentivised as harmed investors to seek compensation from wrongdoers. The reasons are multifold. Public agents are not financially interested in the outcome of the actions, may rationally decide to spend less time on each action to pursue more actions, or prefer to impose non-financial sanctions on wrongdoers, e.g., corporate reform plans, to achieve other regulatory objectives. As a result, they are more likely to accept settlement offers which are not in the best financial interests of the persons for whose benefit they act for.[132]

This does not appear to be the case in Hong Kong. The resolved cases show that, except for a few instances where the defendants became bankrupt/insolvent,[133] the SFC managed to obtain almost full compensation/rescission for the investors they acted for. For example, in *Du Jun* and *Tiger Asia*, the insider traders were ordered to pay HK$23.9 million and HK$45,266,610 respectively to restore (to the extent possible) their investors to the position that they were in prior to the illegal trades. In *Hontex*, the defendant company which grossly inflated its financial conditions in the prospectus was required to make a HK$1.03 billion buy back offers at a price of HK$2.06 (where the original subscription price for shares in the company was HK$2.15) to around 7700 of its qualifying shareholders. In *Tsoi Bun*, the defendant was ordered to pay HK$13,688,950 to around 500 counterparties to Tsoi's manipulative trades. In each case, both the total amount of repayment and the sum received by each investor was substantial. The payments ordered by the court helped remove a substantial part or not all of the adverse consequences of the relevant misconduct. By contrast, studies in the US suggest that damages recoverable in securities class actions are usually small compared to investor losses.[134] It appears that, while Hong Kong does not have a class action regime, investors who benefit from SFC compensation actions in Hong Kong are much better off than investors who initiate class actions in the US.

[132] Lemos, [n13 above], 525-526.

[133] In *Athena Fund*, although the Athena fund was insolvent, the SFC managed to trace the money to an investor and eventually reached an agreement the investor would pay HK$191,360,215 to be distributed to all investors in the fund.

[134] Coffee, [n21 above].

The result may sound surprising at first. However, as will be argued below, a track record of large restoration/compensation orders do not mean that representative actions in Hong Kong are free from the problems that affect representative actions in the US. These problems include, in particular, conflicts of interest between public agents, harmed investors and the general public, lack of effective client monitoring of public agents' actions, and asymmetric stakes and resources between public agents and their private opponents. The apparent investor friendly decisions have been reached in Hong Kong because, I submit, small jurisdictions like Hong Kong have a natural and rational tendency to create the impression that they favour investors over large corporations and to achieve that by way of large compensation awards. As Professor Donald aptly observed in response to the different approaches taken by regulators in Hong Kong and the US in the aftermath of the 2008 financial crisis, it is good to be big banks in the US, but small investors in Hong Kong.[135]

Hong Kong differs from financial centres such as New York or London in one key respect. It has a tiny domestic market. A large percentage of the entities that seek to raise funds in Hong Kong and the funds to be raised in Hong Kong are from overseas.[136] It is estimated that only about 15 per cent of the companies listed on the Hong Kong Stock Exchange were incorporated in Hong Kong as of 2012.[137] This has several implications.

Firstly, these overseas fund-raisers can easily move to other jurisdictions, but will not do so as long as Hong Kong provides a cost-efficient platform for fund-raising. Hence, Hong Kong's ability to attract a large and diverse group of investors is arguably a pre-condition for a vibrant finance industry.

Secondly, these overseas fund-raisers tend to have a small presence in Hong Kong, and hence make limited contributions, in terms of jobs and capital investment, to the local economy. As a result, the regulator would be less hesitant to seek large amounts of compensation from these corporations. The monetary awards may not cripple these local branches as the loss is likely born by their parent companies overseas; even if they do, the failure of small representative offices has limited impact on the local economy.

Thirdly, the Hong Kong regulators have few regulatory means at its disposal to deal with the ultimate cause of various misconduct, e.g., corporate governance problems at the overseas parent company. It is difficult, for example, for the regulator to impose comprehensive corporate structural plans on those parent companies overseas or to monitor the implementation of such plans. Furthermore, it is

[135] Donald (2014), [n8 above], 219.
[136] Donald (2014), [n8 above], 57-59.
[137] Donald (2014), [n8 above], 58.

difficult for the Hong Kong regulator to pursue criminal prosecutions in Hong Kong against wrongdoers which are predominantly based overseas (a possible reason why the SFC did not pursue criminal prosecution against Tiger Asia).[138]

Fourthly, the fact that many investors come from overseas imply that Hong Kong need to compete with other financial centres in attracting their funds. In addition to offering a wide variety of products and easy access to Hong Kong's capital market, an important way to attract and maintain investors is to ensure the integrity of the market. Market misconduct harms investor confidence. While criminal and administrative sanctions punish wrongdoers and indicate that similar misconduct is less unlikely to recur, they provide cold comfort to investors who suffered financial loss. Such sanctions are not as effective as direct compensation in restoring investor confidence in the market. This is especially the case where, in addition to the above-mentioned difficulties associated with private enforcement, overseas investors have to overcome extra hurdles to enforce their rights in Hong Kong: the difficulty of initiating proceedings in a foreign jurisdiction and enforcing judgments against defendants that often have limited illiquid assets in Hong Kong should not be underestimated.

As a result, regulators in Hong Kong, and indeed in any small jurisdiction financial centres, would have strong incentive to demonstrate its commitment to protect investor interests by way of securing substantial compensation payments for investors from perpetrators of market misconduct. It is unsurprising that while the main enforcement objective of financial regulators in many jurisdictions is deterrence, the SFC maintains that one of its three enforcement objectives is remediation of consequences of wrongdoing.[139]

Conflicts of interests

Although conflicts of interests between public agents, harmed investors, and the general public have not caused the SFC to accept small settlement offers (as discussed above), it is submitted that these conflicts of interests partially explain why the SFC has sometimes obtained compensation for a small group of investors at the expense of other equally deserving ones.

The price-rigging case of *SFC v Tsoi Bun* serves as a good example. As noted earlier, Tsoi's manipulative trades tilted the final COP either upwards or downwards. As a result, any person who traded at the opposite side of Tsoi would have been adversely affected by those trades. However,

[138] Tiger Asia (CA), [36] (recognising that criminal prosecution may be difficult or impossible where alleged contraveners are outside the jurisdiction).

[139] SFC Enforcement Philosophy at http://www.sfc.hk/web/EN/regulatory-functions/enforcement/enforcement-philosophy.html.

the SFC only sought compensation for persons who traded with Tsoi. This approach is flawed in one important respect – there is no rational reason why compensation should be limited to Tsoi's counterparties. Unlike face-to-face transactions, orders in securities market are anonymously matched by machines. Tsoi's orders and that of his counterparties' were matched by chance. The position of these counterparties was no different from any other investor who traded at the opposite of the insider trader. Hence, it is unfair to single them out as the only investors deserving of compensation.

If the privity approach unfairly discriminates one group of investors over the others, why has it been applied in compensation cases brought by the SFC?

To begin with, the process for determining the amount and method of investor compensation is largely dominated by the SFC. The amount of compensation might sometimes be challenged by the wrongdoer, as in *Du Jun*, but not the decision to on who should receive such compensation. If the orders sought by the SFC are unopposed, despite that the court has power to decline to make such orders on the basis that "it is [not] desirable that the order be made" or that "the order will […] unfairly prejudice any person",[140] it is unlikely to do so, especially when the court does not have the benefit of hearing opposing arguments challenging the fairness of such orders. The court is generally inclined to trust the competence and expertise of the SFC as an experienced regulator. This is evidenced by its comments in section 214 proceedings where the court is asked to sanction agreements reached between the SFC and the wrongdoers, the court has repeatedly opined that it is "likely to be guided by the agreement that the SFC, as the responsible regulator, has reached as to the appropriate sanction to be imposed."[141]

The SFC may have taken the view that Tsoi should only be responsible for losses suffered by their counterparties because those are the losses that he has directly caused. The losses suffered by other investors were caused by their counterparties, who did not commit any legal wrong. Mark Steward, the SFC's Executive Director of Enforcement, was reported commending the results in *Tsoi Bun*, saying "[i]t is only by understanding the actual consequences of misconduct that victims can properly be vindicated. The SFC will continue to ensure price riggers are caught and made to account wherever possible." This favourable response suggests the SFC may have truly believed that they have properly understood the "actual consequences" of Tsoi's misconduct and properly vindicated all victims. However, as discussed earlier, the privity approach adopted by the SFC draws an unjustifiable distinction between Tsoi's counterparties and other investors who suffered loss.

[140] SFO, s 213(4).
[141] *Re Medical China Ltd*, Unreported 26 September 2012 Court of First Instance, HCMP 1023/2011, [5].

Alternatively, the SFC may have intentionally chosen to seek restoration/compensation orders on behalf of a specific group of investors, i.e., the wrongdoer's counterparties, rather than compensating all affected investors. The court has power to grant both restoration and compensation orders under section 213. Its power to grant restoration orders is set out in section 213(2)(d), which provides that the court may order the wrongdoer to "restore the parties to any transaction to the position in which they were before the transaction was entered into". The word "parties" suggests that restorations granted under section 213 would only apply to the wrongdoer and their counterparties since there are no justifiable grounds for reversing trades executed by persons who committed no legal wrong. By contrast, section 213(8) provides that the court may "make an order requiring the person to pay damages to any other person", which arguably empower the court to order wrongdoers to compensate losses suffered by any person, whether or not s/he traded with the wrongdoer.

However, a claim to seek restoration orders for counterparties is clearly easier to prove and administer. The identities of a wrongdoer's counterparties are easier to ascertain than that of all investors who traded on or about the same time as the wrongdoer. Moreover, section 213(2)(d) provides that a restoration order would restore the parties to the position they were before the illegal transactions were executed. Hence, the restoration amount would not exceed the amount of benefits the wrongdoer has received from his misconduct. Accordingly, the SFC would not have to address difficult questions of whether an order to compensate all investors who have suffered loss as a result of the wrongdoing would unduly punish the wrongdoer and to what extent compensation should be capped to avoid over-punishment.

A variety of reasons may have caused the SFC to choose the easier route. The SFC only has resources to bring a limited number of claims and hence may rationally decide that the easier route would allow them to maximise public interests by pursuing more cases. A more sinister view may be that the SFC is motivated by self-interest, i.e., the reputation and publicity it receives from each victorious lawsuit.[142] Therefore, it is more concerned with the number of successful claims and the total amount of compensation awarded rather than whether compensation is fairly distributed among harmed investors. Irrespective of which is the more dominant cause of the decision to prefer the easier route, it is likely that conflicts of interests between the SFC, the general public, and the harmed investors have adversely affected SFC's enforcement actions.

Having criticised the SFC's approach, it is not suggested that Tsoi should have been required to fully compensate all investors who suffered loss as a result of his misconduct. This is likely to over-punish

[142] M.H. Lemos & M Minzer, 'For-Profit Public Enforcement' 127 Harv. L. Rev. 853.

him since the amount of loss he has caused far exceeds the benefits received by him. The real difficulty lies in how to devise principles of compensation that both fairly compensate harmed investors and avoid over-punishing the wrongdoer. Some commentators have suggested putting a cap on the amount which investors may recover from wrongdoers so that each victim may recover only a proportion of his loss.[143] It is submitted that this approach, which allows more harmed investors to recover a smaller sum, is fairer than the privity approach currently adopted by the SFC, which allows only a small group of randomly selected investors to be fully compensated.

The circularity problem

As discussed above, commentators have noted that the amount received by plaintiffs in securities class actions are sometimes merely a circular payment from themselves as shareholders of the relevant defendant companies. The only type of SFC enforcement actions in which the circularity problem might arise are those involving false/misleading disclosures by listed companies. The SFC did not begin to bring actions against this type of misconduct until 2010 and circularity does not appear to be a major concern in the only resolved case of *Hontex*. The circularity argument rests on the presumption that the costs of the financial penalties imposed on corporate defendants are not born by the wrongdoers, but by its innocent shareholders. This is not the case in *Hontex* where Hontex Holdings was required to buy back its shares from all except disqualified shareholders (i.e., controlling shareholders who likely caused or condoned disclosures of false financial statements in Hontex Holding's prospectus in the first place). This essentially forced the controlling shareholders to bear the loss caused by their failure to prevent false/misleading disclosures. While the buy-back offer might be considered circular in the narrow sense that minority shareholders merely received back what they paid Hontex Holdings for its shares in the first place, it is significant for two reasons. Firstly, the price of the buy-back offer, i.e., HK$2.06, was only slightly lower than the original subscription price for Hontex Holdings, i.e., HK$2.15. So the buy-back offer almost had the effect of rescinding the initial share subscription agreement. Secondly, these minority shareholders would unlikely be able to sell their shares at such a favourable price but for the SFC's intervention. As noted earlier, in the absence of an effective class action regime, it would be difficult for these shareholders to bring private actions against the wrongdoers.

[143] Corporations and Markets Advisory Committee, 'Insider Trading Report' (November 2003), Recommendation 9.

CONCLUSION

The SFC's recent approach to bring more civil actions to seek compensation for the investing public should be supported as it makes up for the lack of private enforcement of corporate and securities laws against certain misconduct.

However, the new approach is not without its problems. Recent cases have highlighted potential problems caused by conflicts of interests between the SFC, the general public and harmed investors as well as the need for procedural safeguards to address them. It is submitted that the court should be more vigilant in scrutinising sanctions proposed by the SFC. Where appropriate, the court may invite submissions to be made on behalf of potential victims from other sources, e.g., academics and think tanks, to ensure that is has the benefit of alternative views. At the same time, the SFC should be required to take into account the interests of all potential victims when they bring representative actions. If it takes the view that identifying and distributing assets to all potential victims in a particular instance would be too costly, it should explain that to the court as a basis for proposing orders which do not seek to directly compensate each affected investor. For example, rough justice may be achieved by compensating some investors who can be easily identified while transferring the remaining sum to a fund which would be used for the benefit of market participants as a whole, e.g., the Investor Compensation Fund.

Annex A: Section 213 Proceedings

	Proceedings commenced	Defendants	Allegations	Result of s.213 proceedings
1.	June 2004	Charles Schmitt & Another	Misappropriation of client assets	Mareva type injunctions; Appointment of administrator
2.	May 2006	Whole Win Securities Limited		Appointment of administrator
3.	July 2006	Tiffit Securities (Hong Kong) Limited & Two Others		Appointment of administrator; Mareva type injunctions
4.	August 2006	Wing Yip Company Limited & Another		Appointment of administrator
5.	July 2007	Du Jun	Insider dealing	Mareva type injunctions; Court ordered Du Jun to pay HK$23.9 million to 297 investors
6.	September 2007	Man Lung Hong Securities Limited & Two Others	Misappropriation of client assets	Mareva type injunctions; Appointment of administrator
7.	November 2007	Great Honest Investment Company Limited & Two Others		Appointment of administrator; Court order prohibiting the majority shareholder from leaving Hong Kong
8.	April 2008	Kayden Limited & Three Others	Insider dealing	Mareva type injunctions
9.	April 2009	Descartes Investment Management Limited & Ten Others	Fraud	Mareva type injunctions; Appointment of administrators; SFC reached agreement with [two defendants] which will pay HK$191,360,215 for distribution by court-appointed liquidators to all investors
10.	July 2009	Tsoi Bun	Price rigging	Declaration that Tsoi engaged in false trading and/or price rigging; Injunction prohibiting Tsoi from trading; Court ordered Tsoi Bun to pay HK$13,688,950 to around 500

				investors
11.	August 2009	Wong Kwong Yu & Three Others	Breach of director duties	Mareva type injunctions; Defendant directors agreed to compensate their company HK$420 million
12.	August 2009	Tiger Asia Management LLC & Three Others	Insider dealing	Mareva type injunctions; Court ordered defendants to pay HK$45,266,610 to around 1800 investors
13.	March 2010	Hontex International Holdings Company Limited & Four Others	False/misleading disclosure by listed companies	Mareva type injunctions; Court ordered Hontex to make a HK$1.03 billion buy back offers to around 7700 shareholders
14.	December 2010	Young Bik Fung & Three Others	Insider dealing	N/A
15.	February 2011	Top Wisdom Overseas Holdings Limited & Another		Mareva type injunctions
16.	December 2011	Lee Sung Ho & Five Others		Mareva type injunctions; SFC's claim was subsequently struck out
17.	December 2012	Cheong Kai Tjieh Augustine		Mareva type injunctions
18.	March 2013	Mo Shau Wah & Another	Misappropriation of client assets	Mareva type injunctions
19.	December 2013	Qunxing Paper Holdings Company Limited & Another	False/misleading disclosure by listed companies	Mareva type injunctions; Appointment of interim receivers and managers
20.	June 2014	Gu Chu Jun & Eight Others		Mareva type injunctions
21.	September 2014	CITIC Limited & Five Others		N/A
22.	December 2014	Broadspan Securities & Two Others	Fraud (boiler rooms)	Mareva type injunctions

Annex B: Section 214 Proceedings

	Proceedings commenced	Company	Compensation[144]
1.	Dec 2005	Riverhill Holdings Limited	No
2.	2006	Guang Ping NanoTechnology Group Limited	[No]
3.	May 2008	Wah Sang Gas Holdings Limited	No
4.	Sep 2008	Rontex International Holdings Limited	The company was ordered to commence civil proceedings against three directors.
5.	Sep 2008	Styland Holdings Limited	Directors were ordered to repay Styland HK$79 million and HK$6.95 million respectively. Declined to order Styland to sue the first two defendants
6.	Sep 2009	Warderly International Holdings Ltd	[No]
7.	Sep 2009	Pearl Oriental Innovation Limited	[No]
8.	Jan 2011	Sunlink International Holdings Limited	No
9.	Aug 2011	EganaGoldpfeil (Holdings) Ltd	Seeking compensation orders
10.	Jun 2012	China Asean Resources Limited	A director agreed to repay HK$10,712,605.26 to the company
11.	Nov 2012	First China Financial Network Holdings Limited	Ordered the defendants to pay RMB18,692,000 to First China
12.	Apr 2013	First Natural Foods Holdings Limited	[TBC]
13.	Jul 2013	China Best Group Holding Limited	Seeking orders that China Best commence civil proceedings
14.	Dec 2013	Tack Fat Group International Limited	[TBC]
15.	Apr 2014	Minth Group Limited	Seeking compensation orders
16.	Oct 2014	Sinogreen Energy International Group Limited	Seeking compensation orders
17.	Mar 2015	Inno-Tech Holdings Limited	[TBC]

[144] It does not include the relevant SFC costs that the defendants are ordered to pay.