

G.N. 3789

NOTICE UNDER SECTION 204 AND 205 OF THE SECURITIES AND  
FUTURES ORDINANCE (Chapter 571) ('the Ordinance')

It appears to the Securities and Futures Commission ('the Commission') that it should exercise its powers conferred by sections 204 and 205 of the Ordinance.

**The Commission therefore gives Notice that:—**

Except with the prior written consent of the Commission, such consent to be granted by the Chairman or Executive Director of Intermediaries and Investment Products of the Commission:—

1. Pursuant to section 204 of the Ordinance, Charles Schmitt & Associates Limited ('the Specified Corporation') is prohibited from carrying on, whether directly or through agents, any of the activities for which it is regulated.
2. Pursuant to section 205 of the Ordinance, the Specified Corporation is:—
  - (a) prohibited from disposing of any relevant property or dealing with any relevant property; and
  - (b) prohibited from assisting, counselling or procuring another person to dispose of any relevant property or deal with any relevant property.

Relevant property means:—

- (a) any property held by the Specified Corporation, acting within the capacity for which the Specified Corporation is licensed, on behalf of any of the clients of the Specified Corporation, or held by any other person on behalf, or to the order of, the Specified Corporation acting within such capacity;
- (b) any other property which the Commission reasonably believes to be owned or controlled by the Specified Corporation. This includes:—
  - assets held by any fund, portfolio, account or other investment vehicle advised or managed by the Specified Corporation including any of its officers;
  - client assets held by third parties, such as trustees and custodians, in respect of which the Specified Corporation or any of its officers has given or may give investment/allocation instructions.
3. Pursuant to the provisions of section 217 of the Ordinance, an appeal may be made to the Securities and Futures Appeals Tribunal against the prohibitions or requirements imposed by this Notice within twenty-one days commencing on the day on which this Notice is served on you. Further, by section 208 of the Ordinance you may apply to the Commission for the prohibitions or requirements imposed by the Notice to be withdrawn, substituted or varied.

This notice takes effect at the time of service upon the Specified Corporation.

Dated this 15th day of June 2004

For and on behalf of  
Securities and Futures Commission  
Andrew SHENG  
*Chairman*

STATEMENT OF REASONS  
PURSUANT TO SECTION 209(2) OF THE SECURITIES AND  
FUTURES ORDINANCE (Chapter 571) ('the Ordinance')

1. Charles Schmitt & Associates Limited ('the Specified Corporation') is a licensed corporation licensed under the Ordinance to which section 207 of the Ordinance applies; and
2. It appears to the Securities and Futures Commission ('the Commission') that:—
  - (a) The property of the Specified Corporation's clients has been dissipated, transferred or dealt with in a manner prejudicial to the interest of its clients;
  - (b) The Specified Corporation in purported compliance with a requirement specified in section 180(2) of the Ordinance has, through its Responsible Officer Charles Schmitt, furnished the Commission with information which was at the time when it was furnished false or misleading in a material particular; and
  - (c) The imposition of the prohibition or requirement by the Securities and Futures Commission ('the Commission') under sections 204 and 205 is desirable in the interest of the investing public or in the public interest.
3. The Commission has reason to believe that:—
  - (a) Charles Schmitt, one of the Responsible Officers of the Specified Corporation, has misappropriated client assets of at least US\$30 million. The Specified Corporation is investment adviser in respect of CSA Absolute Return Fund ('ARF'). The Specified Corporation has, through Charles Schmitt, given instructions to ARF's Custodian to invest clients' money in a number of sub-funds.
  - (b) The bank accounts into which subscription monies have been paid in respect of some sub-funds, are or were in the names of companies associated with Charles Schmitt and Charles Schmitt is or has been an authorised signatory for these accounts.
  - (c) In response to a question he was required to answer on 15 June 2004 pursuant to section 180(4) of the Ordinance, Charles Schmitt denied being related to or having any role in relation to these sub-funds or the companies in whose names the subscription accounts are held and he also denied being the authorised signatory for the bank accounts. Charles Schmitt subsequently admitted to Commission staff on 15 June 2004 that he was involved in setting up the subscription bank accounts and that since 2003 monies from these accounts had been paid into an account which was used, at least in part, for his own options trading. Accordingly, through Charles Schmitt, the Specified Corporation has furnished false and misleading information in purported compliance with a requirement specified in section 180(2), namely a requirement to answer questions under section 180(4) of the Ordinance.
  - (d) In light of all the matters set out above, the Commission believes that clients' property has been dissipated, transferred or otherwise dealt with in a manner prejudicial to the interests of the clients.
  - (e) Charles Schmitt is the Managing Director and owner of the Specified Corporation. In addition to ARF, he personally gives instructions in relation to a number of other funds that are advised or managed by the Specified Corporation. It is not yet known whether any of these funds are affected in a similar manner. In light of the above matters and in order to preserve the integrity of clients' assets, it is considered desirable in the interest of the investing public and in the public interest that the prohibitions and requirements herein be imposed on the Specified Corporation.

Dated this 15th day of June 2004

For and on behalf of  
Securities and Futures Commission  
Andrew SHENG  
*Chairman*