

Share Financing Scam Targeting Shareholders

股東慎防股票融資陷阱

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There is an unusual market phenomenon in the recent years, seeing some listed companies' share price falling up to over 50% in value within days and without any apparent reasons. Subsequent announcements and media reports revealed that the sudden decline were driven by pledged shares being dumped to the market.

Since a few years ago, alternative lenders, who sometimes called themselves hedge funds, have emerged to provide share financing service in Hong Kong, specifically targeting major shareholders of second or third tiers listed companies. These lenders usually have registered offices in the Bahamas, Marshall Islands or the British Virgin Islands. They are neither registered financial institutions nor licensed corporations under the Securities & Futures Ordinance (SFO), and certainly not regulated by the Securities & Futures Commission (SFC) as a Type 8 Regulated Activity (Margin Financing).

Under the SFO Schedule 5 Part 2, margin financing is defined as the provision of financial accommodation under an arrangement and that securities are pledged as security for such accommodation. Therefore, any provision of a loan using securities as collateral should be licensed by the SFC. There is certainly a demand for these unlicensed lenders, as large shareholders of these second or third listed companies often find it difficult to

obtain desirable financing for their shares from banks or licensed brokers who are tied down by the Securities & Futures (Financial Resources) Rules.

The marketing strategy of these lenders usually revolves around:

- High loan-to-value ratio (around 60-70%);
- Low-interest rate (around 5-6% per annum);
- Payment of loan interest in quarterly or half-yearly amounts;
- Non-recourse loan (meaning if in default the borrower loses all the pledged shares with no liability to the borrower);
- Definition of a default usually entails, among other terms, share price falling more than 30% within five consecutive days, non-payment of interest, the borrower reducing its overall shareholdings by more than 5%, etc;
- The loan period must be at least two years with no option for early repayment;
- There will be a written agreement between the lender and borrower purporting that the pledged shares will not be sold off unless in default;
- The lender would claim that the ownership of the pledge shares will not be changed (unless the borrower is in default) therefore no disclosure of interest is required;
- The lender would claim that certain hedging techniques will be used to move the shares between financial institutions;
- The pledged shares are always less than 5% of the total issued shares;
- The borrower's shares must initially be deposited with an SFC licensed broker appointed by the lender;
- There will be a "Control Account Agreement" signed between the lender and the borrower so that the lender shall have full authority to access the borrower's account including the relocation of the shares.
- The borrower will be informed that the pledged shares, due to hedging techniques, may be moved to safe locations held at recognised and licensed financial institutions.
- The borrower, unless in default, shall receive statements from the lender stating that the borrower continues to hold the title of such pledged shares.
- Loan drawdown by the borrower is usually by tranches and/or by Delivery vs Payment ("DVP") using the CCASS system between licensed brokers.

Unfortunately, in practice after the drawdown by the borrower, the lender would use the Control Account Agreement and transfer all the pledged shares from the initial broker to a licensed investment bank (usually the big names), and uses the bank's prime-brokerage service e.g.

rehypothecation, and starts liquidating the pledged shares for cash. The consequence of this action usually causes the overall share price of the underlying stock to fall dramatically, which may even create a cascading effect and collapses the share value. The borrower may then be in default, permitting the lender to take possession of all the pledge shares, or allowing the lender to buy back shares at a lower price than when they were sold off thus making a profit. Either way, the borrower loses.

The borrower will most likely seek legal advice and instigate legal action against the lender (who is based overseas) and the relevant parties involved, which are both time consuming and costly. The lender may have already taken massive profits and is now in a much better financial position than the borrower to fight any legal battles.



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港股票市場近年出現異象，有的上市公司在數天內股價跌逾50%，卻未見任何清晰原因。隨後的訊息公佈和媒體報導揭示，股價突然下跌是有人在市場拋售相關公司的被質押股票。

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數年前起，香港出現了一種另類貸款公司，他們有時候自稱對沖基金，專為二三線上市公司的主要股東提供融資服務。這些貸款商通常在巴哈馬、馬紹爾群島或英屬維爾京群島註冊，並非「證券及期貨條例」下的註冊財務機構或持牌法團，更不受證券及期貨事務監察委員會(證監會)轄下的第8類提供證券保證金融資項目所規管。

根據「證券及期貨條例」附表5第2部，(證券)保證金融資的定義是通過某項安排提供財務通融，而有關證券則被質押，以作為該項通融的抵押。因此，任何以證券作抵押的貸款都應由證監會發牌規管。這些沒有持牌的貸款商肯定有一定的市場需求，因為銀行或持牌經紀商受《證券及期貨(財政資源)規則》所規管，二、三線上市公司的主要股東難以通過質押股票的方式從他們手上獲得理想融資。

這類貸款公司的營銷策略通常圍繞：

- 高按揭成數（約60-70%）；
- 低利率（每年約5-6%）；
- 按季度或半年度支付貸款利息；
- 無追索權貸款違約（即在違約情況下，借款方將損失所有被質押的股票，不用向借款方承擔任何法律責任）；
- 違約的定義通常包括連續五天內股價下跌超過30%、不支付利息、借款人整體持股減少超過5%等。
- 貸款期限不得少於兩年，不得提前還款；
- 貸款人和借款人之間達成書面協議，協定除非出現違約，否則質押的股票不會被出售；
- 貸款人聲明被質押股票的所有權不會改變（除非借款人違約），因此不需披露權益；
- 貸款人聲明將採用對沖技術，把股票在金融機構之間作轉移；
- 抵押股份的總數少於已發行股份總數的5%；
- 借款人的股份必須首先存入由貸款人指定的證監會持牌經紀；
- 貸款人和借款人將簽訂「控制賬戶協議」

，貸款人能全權操作借款人的賬戶，包括股份遷移。

- 借款人將獲通知，由於涉及對沖技術，被抵押的股票可能被轉移到獲認可和持牌金融機構，以策安全。
- 除非違約，否則借款人應收到貸款人的聲明，肯定借款人繼續持有相關質押股份的所有權。
- 借款人通常透過持牌經紀商在中央結算系統，以分期和 / 或貨銀對付 (Delivery vs Payment) 方式提取貸款。

可惜，現實是當借款人提取了貸款，貸款人便運用控制賬戶協議，把被抵押的股票由最初的經紀商轉到另一家持牌投資銀行，並借助該等銀行的經紀服務(例如「再抵押(rehypothecation)」服務，開始被質押的股票轉換成現金。上述行為經常造成有關上市公司股價急挫的後果，甚至可能造成連鎖效應，損害股票價值。借款人可能因而陷入違約，令貸款人可乘機把所有抵押股票據為己有，或是以更低價格回購從前所出售的股份，從中圖利。無論是哪一種模式，受損的都是借款一方。

借款人很可能會尋求法律意見，並向貸款人(通常於海外註冊)和其他涉事團體展開法律行動。然而法律程序漫長，所費不菲。貸款人或已從中賺得大額利潤，比借款人有更充裕的財力去面對法律訴訟。

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