

**PROCEEDINGS BEFORE THE MARKET MISCONDUCT TRIBUNAL**  
**IN THE MATTER OF THE LISTED SECURITIES OF**  
**BANK OF CHINA LIMITED (STOCK CODE 3988) AND**  
**CHINA CONSTRUCTION BANK CORPORATION (STOCK CODE 939)**

**STATEMENT OF AGREED AND ADMITTED FACTS**

The contents of this Statement of Agreed and Admitted Facts are solely for the purpose of a full and final resolution of the proceedings instituted by the Securities and Futures Commission (“the Commission”) before the Hong Kong Market Misconduct Tribunal under section 252(2) of the Securities & Futures Ordinance, Cap. 571 (“SFO”) by way of notice dated 11 July 2013 and do not constitute any admission by the specified persons herein for any other purpose(s) whatsoever.

1. During the period from 19 December 2008 to 13 January 2009, Tiger Asia Management LLC (“Tiger Asia”), Mr Bill Hwang Sung Kook (“Hwang”) and Mr Raymond Park (“Park”) engaged in market misconduct in the securities of China Construction Bank Corporation (“CCB”) and Bank of China Limited (“BOC”) within the meaning set out in sections 270(1)(e) and 274(1)(b) of the SFO. Details of the market misconduct are set out in paragraphs 13 to 41 below. Details of the notional profit made by Tiger Asia is set out in paragraphs 42 to 45 below.
2. For the purposes of this Statement of Agreed and Admitted Facts, the Commission accepts that Mr William Tomita (“Tomita”) did not engage in market misconduct as described in Part XIII of the SFO and that at the material time he was a junior member of staff, consistently acting on the instructions of Hwang and Park.

**Background to the relevant parties**

3. At all material times, Tiger Asia was a limited liability company incorporated in Delaware, United States of America with its principal place of business situate at 101 Park Avenue, New York, New York 10178. Tiger Asia is the management company responsible for administrative matters of Tiger Asia Fund LP, a Delaware limited partnership, specializing in equity investments in China, Japan and Korea. Tiger Asia is the investment manager of Tiger Asia Overseas Fund Limited, a corporation organized under the laws of the Cayman Islands, a parallel fund for non-United States and certain US tax-exempt persons. Tiger Asia Fund LP and Tiger Asia Overseas Fund Limited are herein after collectively referred to as the 2 Funds. All of Tiger Asia's employees are located in New York and it has no place of business or presence in Hong Kong.
4. Hwang was at all material times the principal and sole managing member of Tiger Asia and was directly responsible for all investment decisions for the 2 Funds. He was directly responsible for all investment decisions for Tiger Asia Fund LP under the terms of Tiger Asia Fund LP's Confidential Private Offering Memorandum dated December 2008, and for Tiger Asia Overseas Fund Limited, under the terms of Confidential Explanatory Memorandum dated December 2008. Further, Hwang was the principal and sole managing member of the General Partner in Tiger Asia Fund LP, namely Tiger Asia Partners LLC, a limited liability company incorporated in Delaware, USA, which had responsibility for managing the investments of Tiger Asia Fund LP.
5. Park was at all material times a director or employee of Tiger Asia. Park joined Tiger Asia in April 2006. At all times since April 2006, Park's job title at Tiger Asia has

been Managing Director, Head of Trading, and he has had responsibility under Hwang for, inter alia, managing the Tiger Asia's trading desk, supervising its orders and managing its broker relationships. Park was the head trader for the 2 Funds managed by Tiger Asia.

6. Tomita was at all material times an employee of Tiger Asia. He was a junior member of staff responsible for supporting Tiger Asia's trading activities, under the instructions of Hwang and Park.
7. At all material times, Park and Tomita were authorised by Tiger Asia to place orders for securities trading on its behalf with CLSA Singapore Pte ("CLSA") (Tiger Asia maintained an account with Calyon Securities (USA) Inc and CLSA handled Calyon Securities (USA) Inc's orders for trading stocks in Hong Kong and other Asian countries), Nomura International (Hong Kong) Ltd ("Nomura") (as agent for Nomura Securities International Inc), Fox-Pitt Kelton (Asia) Ltd ("Fox Pitt") (as agent for Fox-Pitt New York or Fox-Pitt London), Daiwa Securities SMBC Hong Kong Ltd ("Daiwa") (on behalf of Daiwa Securities America Inc), BNP Paribas Securities (Asia) Ltd ("BNP"), China International Capital Corporation Hong Kong Securities Ltd ("CICC"), and Hongkong and Shanghai Banking Corporation Ltd ("HSBC") (on behalf of HSBC Securities (USA) Inc).

**The listed corporations**

8. CCB is a joint stock company with limited liability incorporated in the People's Republic of China. CCB's H-shares have been listed on the Stock Exchange of Hong Kong Limited with stock code 939 since 27 October 2005. Bank of America Corporation ("BOA") was a pre-IPO strategic investor and a substantial shareholder in CCB who had agreed to hold its shares until 27 October 2008.

9. BOC is a joint stock commercial bank with limited liability incorporated in the People's Republic of China. BOC's H-shares have been listed on the Stock Exchange of Hong Kong Limited with stock code 3988 since June 2006. UBS AG and RBS China Investments Sarl ("RBS China") were pre-IPO strategic investors, and RBS China was a substantial shareholder, in BOC who had agreed to hold their shares until 30 and 31 December 2008 respectively.
10. On 31 December 2008, UBS AG on its own behalf placed 3,377,860,684 H-shares in BOC at HK\$1.93 per share ("**31 December Placement**").
11. On 7 January 2009, UBS AG, on behalf of BOA, placed 5,623,655,000 H-shares in CCB at HK\$3.92 per share ("**7 January Placement**").
12. On 13 January 2009 after market close, Morgan Stanley & Co International PLC and ABN AMRO Bank N.V. Hong Kong Branch and BOCI Asia Limited, on behalf of The Royal Bank of Scotland Group PLC ("**RBS**"), placed 10,809,154,259 H-shares in BOC at HK\$1.71 per share ("**13 January Placement**").

**31 December Placement - Market Misconduct - Insider Dealing (section 270(1)(e) of the SFO)**

13. From about 19 December 2008, UBS AG sounded out potential placees for the 31 December Placement, securing an undertaking from them that they would not trade in the shares after they had heard the sales promotion.
14. On 19 December 2008, Park, after giving an undertaking that Tiger Asia would not thereafter trade BOC shares, received the following information from Mr Peter Guenthardt of UBS AG, who was connected with BOC within the meaning of section 247 of the SFO:

- a. UBS AG wished to sell its entire shareholding in BOC of 3,378 million shares worth approximately US\$1 billion via a club deal after the expiry of the lock-up period (i.e. 31 December 2008).
- b. The trade date and value date would be 31 December 2008 so settlement would be on a T+0 basis (i.e. trade date).
- c. The price would be at a discount to the closing price on 30 December 2008 and the discount would be between 8% - 10%.

(together the “**UBS Placing Information**”)

15. The UBS Placing Information was relevant information as defined in section 245 of the SFO in that it was specific information about BOC, a shareholder of BOC, namely UBS AG, and/or the listed securities of BOC, which information was not generally known to the persons who are accustomed or would be likely to deal in the listed securities of the corporation but which would, if it were generally known to them, be likely to materially affect the price of the listed securities.
16. Park relayed the UBS Placing Information to Hwang who (1) decided on behalf of Tiger Asia to subscribe to the 31 December Placement and (2) procured Park and/or Tomita to place short selling orders of BOC shares ahead of 31 December 2008, thereby engaging in insider dealing within the meaning set out in section 270(1)(e) of the SFO.
17. Between 19 to 30 December 2008, Tiger Asia and Park being in possession of the relevant information (i.e. the UBS Placing Information) which they received from a person (Mr Guenthardt) whom they knew was connected with BOC, dealt in the listed securities of BOC by short selling 104 million BOC shares through Daiwa, BNP, HSBC and CICC at the average price of HK\$2.2359 per share and engaged in insider dealing within the meaning set out in section 270(1)(e) of the SFO.

18. Acting on instructions, Tomita assisted Park by placing orders with various brokers.
19. In summary, the orders placed by Park and/or Tomita and executed by the various brokers are as follows:

<u>Date</u>	<u>Brokers</u>	<u>Short Sell BOC Shares</u>
19 Dec 2008	Daiwa	17,000,000
22 Dec 2008	BNP	17,000,000
23 Dec 2008	HSBC	17,000,000
24 Dec 2008	CICC	17,000,000
29 Dec 2008	HSBC	18,000,000
30 Dec 2008	Daiwa	18,000,000

20. On 31 December 2008, the 2 Funds managed by Tiger Asia were allocated a total of 199 million BOC shares at the price of HK\$1.93 per share. On 31 December 2008 and 2 January 2009, the average traded price of BOC shares was HK\$2.1478. By short selling the shares ahead of the placing news being publicly known to the market after it closed on 31 December 2008 at an average price of HK\$2.2359 per share, Tiger Asia was able to sell the 104 million shares at HK\$0.0881 per share higher than the average traded price on 31 December 2008 and 2 January 2009 and Tiger Asia, Hwang and Park thereby engaged in insider dealing within the meaning of section 270(1)(e) of the SFO. This resulted in a profit of HK\$9,126,116 after taking into account the transaction costs.

**7 January Placement - Market Misconduct - Insider Dealing and False Trading (sections 270(1)(e) and 274(1)(b) of the SFO)**

21. On 6 January 2009, UBS AG sounded out potential placees for the 7 January Placement, securing an undertaking from them that they would not trade in the shares after they had heard the sales promotion.
22. On 6 January 2009, Park, after giving an undertaking that Tiger Asia would not thereafter trade CCB shares, received information from Mr Samuel James Kendall of UBS AG, who was connected with CCB within the meaning of section 247 of the SFO that BOA wished to sell its 5.6 billion shares in CCB on similar terms to a previous proposal in mid-December 2008, which was at a discount of about 15% to the closing price (the “**BOA Placing Information**”).
23. The BOA Placing Information was relevant information as defined in section 245 of the SFO in that it was specific information about CCB, a shareholder of CCB, namely BOA, and/or the listed securities of CCB, which information was not generally known to the persons who are accustomed or would be likely to deal in the listed securities of the corporation but which would, if it were generally known to them, be likely to materially affect the price of the listed securities.
24. Park relayed the BOA Placing Information to Hwang who (1) decided on behalf of Tiger Asia to subscribe to the 7 January Placement and (2) procured Park and/or Tomita to place long, short selling and long selling orders of CCB shares ahead of 7 January 2009 thereby engaging in insider dealing within the meaning set out in section 270(1)(e) of the SFO.
25. On 6 January 2009, Tiger Asia and Park being in possession of the relevant information (ie the BOA Placing Information) which they received from a person (Mr Kendall) whom they knew was connected with CCB dealt in the listed securities of CCB by buying 17 million CCB shares through CLSA throughout the day at an

average price of HK\$4.5912 per share and then sold these 17 million shares during the closing auction session on the same day at HK\$4.45 per share through Daiwa and engaged in insider dealing within the meaning set out in section 270(1)(e) of the SFO, which resulted in a trading loss of HK\$2,952,385.

26. Acting on instructions, Tomita assisted Park by placing orders with various brokers.
27. In summary, the orders placed by Park and/or Tomita and executed by the brokers are as follows:

<u>Date</u>	<u>Brokers</u>	<u>CCB Shares</u>
6 Jan 2009	CLSA	Buy 17,000,000
6 Jan 2009	Daiwa	Sell 17,000,000

28. In addition, Tiger Asia short sold 93 million shares of CCB on 6 January 2009 (50 million through Nomura and 43 million through Fox Pitt) at an average price of HK\$4.5263 per share and Tiger Asia, Hwang and Park engaged in insider dealing within the meaning set out in section 270(1)(e) of the SFO.

29. In summary, the orders placed by Park/Tomita and executed by the brokers are as follows:

<u>Date</u>	<u>Brokers</u>	<u>Short Sell CCB Shares</u>
6 Jan 2009	Nomura	50,000,000
6 Jan 2009	Fox Pitt	43,000,000

30. On 7 January 2009, Tiger Asia was allocated a total of 1,977 million CCB shares at the price of HK\$3.92 per share. On 7 January 2009, excluding the placing shares, the



average traded price of CCB shares was HK\$4.1788. By short selling the 93 million shares ahead of the placing news being publicly known on 7 January 2009 at an average price of HK\$4.5263, Tiger Asia was able to sell the 93 million shares at HK\$0.3475 per share higher and Tiger Asia, Hwang and Park thereby engaged in insider dealing within the meaning of section 270(1)(e) of the SFO. This resulted in a profit of HK\$32,067,618 after taking into account the transaction costs.

31. Further, the placing of some of the buy and short sell orders by Park (assisted by Tomita), on 6 January 2009 resulted in transactions of a total of 2,017,000 CCB shares that did not involve a change in the beneficial ownership of them.
32. The purpose and effect of the buy order of 17 million shares was to acquire shares so that a sell order of 17 million shares (placed through Daiwa) could be inputted during the closing auction session on 6 January 2009. No new short sell order was allowed to be inputted during the closing auction session. As Tiger Asia had no holding of CCB shares at the market open on 6 January 2009, if it wanted to sell shares during the closing auction session, it had to buy the shares first from the market. The purpose of the sell order was to stop the closing price of CCB shares from rising. Accordingly, so long as the share price reacted as intended, Tiger Asia would be able to receive the CCB placing shares on 7 January 2009 at a lower price than if Tiger Asia had not placed the sell order.
33. Park carried out and instructed Tomita to assist him to carry out the buy and sell orders of 17 million CCB shares on 6 January 2009 with the intention of creating a false or misleading appearance with respect to the market for, or the price for dealings in, CCB securities traded on the Stock Exchange of Hong Kong and Tiger

Asia, Hwang and Park thereby engaged in false trading within the meaning set out in section 274(1)(b) of the SFO.

**13 January Placement - Market Misconduct - Insider Dealing (sections 270(1)(e) of the SFO)**

34. On 12 January 2009, Morgan Stanley sounded out potential placees for the 13 January Placement, securing an undertaking from them that they would not trade in the shares after they had heard the sales promotion.
35. On 12 January 2009, Park, after giving an undertaking that Tiger Asia would not thereafter trade BOC shares, received information from Mr Justin Haik of Morgan Stanley, who was connected with BOC within the meaning of section 247 of the SFO, that RBS intended to sell its entire holding of 10.8 billion shares in BOC if there was such demand from investors; the timing to launch the BOC block sale was expected to be within the next 24 to 48 hours and the indicative discount would be within the range of 7 to 11% to the closing price on that day (“RBS Placing Information”).
36. The RBS Placing Information was relevant information as defined in section 245 of the SFO in that it was specific information about BOC, a shareholder of BOC, namely RBS, and/or the listed securities of BOC, which information was not generally known to the persons who are accustomed or would be likely to deal in the listed securities of the corporation but which would, if it were generally known to them, be likely to materially affect the price of the listed securities.
37. Park relayed the RBS Placing Information to Hwang who (1) decided on behalf of Tiger Asia to subscribe to the 13 January Placement and (2) procured Park and/or Tomita to place short selling orders of BOC shares ahead of 14 January 2009 thereby

engaging in insider dealing within the meaning set out in section 270(1)(e) of the SFO.

38. On 12 and 13 January 2009, Tiger Asia and Park being in possession of the relevant information (i.e. the RBS Placing Information) which they received from a person (Mr Haik) whom they knew or had reasonable cause to believe was connected with BOC dealt in the listed securities of BOC by short selling 256,432,000 BOC shares (through short selling shares directly onto the market and by entering into an equity swap) through CLSA and BNP at the average price of HK\$1.8718 per share and Tiger Asia, Hwang and Park thereby engaged in insider dealing within the meaning set out in section 270(1)(e) of the SFO.
39. Acting on instructions, Tomita assisted Park by placing orders with various brokers.
40. In summary, the orders placed by Tomita and executed by the brokers are as follows:

<u>Date</u>	<u>Brokers</u>	<u>Short Sell BOC Shares</u>
12 Jan 2009	CLSA	82,733,000 <sup>1</sup>
13 Jan 2009	BNP	173,699,000 <sup>2</sup>

41. On 13 January 2009 after the market closed, Tiger Asia was allocated 450 million BOC shares at the price of HK\$1.71 per share. On 13 January 2009, the closing price of BOC shares was HK\$1.85. On 14 January 2009, the share price closed at HK\$1.90. By short selling the shares ahead of the placing news being publicly known after the market closed on 13 January 2009, Tiger Asia was able to sell 256,432,000 shares at HK\$1.8718 per share. However, this turned out to be lower than the average

<sup>1</sup> The total short sell order placed and executed was in fact 142,733,000 but part of this comprised of a short sell order placed at 10:06:23 which was before the wall crossing at 11:58:06 and therefore does not form part of the current insider dealing allegations. "Wall crossing" here refers to Tiger Asia's undertaking not to trade BOC securities after receiving the Placing Information.

<sup>2</sup> The short sell position was due to the entering of an equity swap.

traded price of the BOC shares on 14 January 2009 of HK\$1.9121, which translated into a loss of HK\$10,307,816 after taking into account the transaction costs.

**Amount of profit gained**

42. In the 31 December Placement, Tiger Asia made a profit of some HK\$9,126,116 by short selling the BOC shares after it was wall crossed but before the placement news was made public.
43. In the 7 January Placement, Tiger Asia made a profit of some HK\$32,067,618 by short selling the CCB shares after it was wall crossed but before the placement news was in public domain. This profit figure did not take into account the trading loss of HK\$2,952,385 incurred by Tiger Asia from buying and selling the 17 million CCB shares on 6 January 2009.
44. In the 13 January Placement, Tiger Asia made a loss of HK\$10,307,816 by short selling the shares after it was wall-crossed but before the placement news was made public.
45. The total notional profit made by Tiger Asia as a result of Hwang, Park and Tiger Asia engaging in Market Misconduct in the 31 December and the 7 January Placements was HK\$41,193,734.

Signed by the Plaintiff:

Signed by: Mark Stewart  
Name: MARK STEWART  
Date: 17/12/13  
Witnessed by: Maureen Garrett  
Name: MAUREEN GARRETT  
Date: 17/12/13

For and on behalf of the 1<sup>st</sup> Defendant

Signed by: A.H. Linninger  
Name: A.H. Linninger  
Date: 16 DECEMBER 2013  
Witnessed by: [Signature]  
Name: LEE SIWANG SHAN  
Date: 16 DECEMBER 2013

For and on behalf of the 2<sup>nd</sup> Defendant

Signed by: [Signature]  
Name: Alexander David Morrison  
Date: 16 DEC 2013  
Witnessed by: [Signature]  
Name: VERONICA SIWANG TO  
Date: 16TH DECEMBER 2013

**Solicitor  
Reed Smith  
Richards Butler  
20/F Alexandra House  
Hong Kong SAR**

**Solicitor  
Reed Smith  
Richards Butler  
20/F Alexandra House  
Hong Kong SAR**

For and on behalf of the 3<sup>rd</sup> Defendant

Signed by: [Signature]  
Name: BENJAMIN DOMINIC CHAN  
Date: 16/12/2013  
Witnessed by: [Signature]  
Name: YEUNG TAK YI STEPHANIE  
Date: 16/12/2013

**Solicitor, Hong Kong SAR  
Robertsons**

**Solicitor, Hong Kong SAR  
Robertsons**