

The report of the Market Misconduct Tribunal into dealings
in the shares of China Overseas Land and Investment Limited
on and between 7 January 2004 to 26 January 2004

Parts I & II : A report pursuant to section 252(3)(a), (b) and (c) of the Securities and Futures Ordinance, Cap 571.

INDEX

(Volume I & II)

(Volume I)

		PAGE
	Abbreviations.	ix-x
Chapter 1	Introduction.	1-2
Chapter 2	The Financial Secretary's Notice.	3-5
Chapter 3	The Course of the Proceedings.	6-8
Chapter 4	The Law.	9-20
Chapter 5	The Material Received by the Tribunal.	21-268
	(I) Witness statement of a witness not give oral evidence.	21
	(II) Correspondence and documentary records provided to the Securities and Futures Commission on request before proceedings.	21-22
	(III) Documents received by the Tribunal pursuant to notices issued under section 254(2) of the Ordinance.	22-23
	(IV) Oral testimony of witnesses, together with their records of interview and/or witness statements.	23-268
	(i) Ms Chan Ho Yun, Winnie	28-29
	(ii) Mr Long Tien Ian	29-48

(iii)	Mr Nip Yun Wing, Horace	48-70
(iv)	Mr Wu Jianbin	70-74
(v)	Mr Kong Qingping	74-78
(vi)	Mr Rupert Fane	78-83
(vii)	Mr Stefan Weiner	84-89
(viii)	Mr Fang Fang	89-94
(ix)	Ms Sung Yerk Kwan, Muriel	94-95
(x)	Mr Lee Ho Leung, Raymond	95-96
(xi)	Ms Fung Sau Hong, Stella	96-97
(xii)	Mr Clive Rigby	97-114
(xiii)	Mr Tsien Pak cheong, David	114-182
(xiv)	Mr Leung Chi Keung, Edmond	182-211
(xv)	Mr Luk Ka Cheung, Steve	211-256
(xvi)	Mr Richard Witts	256-268

(Volume II)

Chapter 6	A Consideration of the Evidence. Character.	269-372
	<i>Was Mr David Tsien a person “connected with” COLI?</i>	269-274
	Conclusion.	274
	Relevant Information : the FS’s Notice.	275
	<i>Did Mr David Tsien disclose information to Mr Edmond Leung and/or Mr Steve Luk knowing that it was “relevant information”?</i>	275-319
	The ambit of the information disclosed by Mr David Tsien to Mr Edmond Leung.	279-284
	The ambit of the information disclosed by Mr David Tsien to Mr Steve Luk.	284-298
	“Specific information”.	298-302
	Conclusion.	302

“Not generally known”.	302-303
Conclusion.	303
“Likely to materially affect the price of COLI shares”.	303-311
Conclusion.	311
<i>Did Mr David Tsien know that the information he disclosed to Mr Edmond Leung and/or Mr Steve Luk was “relevant information”?</i>	312-319
Conclusion.	319-320
<i>“Knowing or having reasonable cause to believe that the other person will make use of the information for the purpose of dealing” in COLI shares.</i>	320
(i) Mr Edmond Leung.	320-325
Conclusion.	325
(ii) Mr Steve Luk.	325-328
Conclusion.	329
<i>Section 271(3) of the Ordinance : Mr David Tsien</i>	329-338
(i) Mr Steve Luk.	334-336
Conclusion.	336
(ii) Mr Edmond Leung.	337-338
Conclusion.	338
<i>Did Mr Edmond Leung know that the information of which he was possessed in respect of the COLI placement was “relevant information”?</i>	338-343
Conclusion.	343
<i>Did Mr Edmond Leung receive the relevant information directly or indirectly from Mr David Tsien?</i>	343

	PAGE
Conclusion.	343
<i>Did Mr Edmond Leung know that Mr David Tsien was a person “connected with” COLI?</i>	343-347
Conclusion.	347
<i>Did Mr Edmond Leung “know or have reasonable cause to believe” that the information he received from Mr David Tsien was held by the latter as a result of his being “connected with” COLI?</i>	347
Conclusion.	347
<i>Section 271(3) of the Ordinance : Mr Edmond Leung.</i>	348-353
Conclusion.	353-354
<i>Is the case against Mr Steve Luk “legally flawed”?</i>	354-356
Conclusion.	356-357
<i>Did Mr Steve Luk know that the information of which he was possessed in respect of the COLI placement was relevant information?</i>	357-361
Conclusion.	361
<i>Did Mr Steve Luk receive “relevant information” in respect of the COLI placement directly or indirectly from Mr David Tsien?</i>	361-362
Conclusion	361-362
<i>Did Mr Steve Luk know that Mr David Tsien was a person “connected with” COLI?</i>	362
Conclusion.	362-363
<i>Did Mr Steve Luk “know or have reasonable cause to believe” that the information that he received from Mr</i>	363

	PAGE
	<i>David Tsien was held by the latter as a result of being connected with COLI?</i>
	Conclusion. 363
	<i>Section 271(3) of the Ordinance.</i> 363-372
	Conclusion. 372
Chapter 7	CONCLUSION.
	Determinations. 373
	Attestation to Part I of the Report. 374
Chapter 8	A determination of the amount of the losses avoided in the sale of COLI shares. 375-383
Chapter 9	Submissions : orders that the Tribunal may make pursuant to section 257(1) of the Ordinance. 384-411
	(i) the Presenting Officer; 384-387
	(ii) Mr David Tsien; 387-395
	(iii) Mr Edmond Leung; 395-402
	(iv) Mr Steve Luk; 402-405
	<u>Reply</u>
	(v) DoJ/Government; 405-406
	(vi) SFC; 407-409
	(vii) the Presenting Officer. 409-411
Chapter 10	ORDERS 412-439
	<u>A consideration of the submissions</u>
	(i) s257(1)(d). 414
	(ii) Character. 414
	(iii) Delay. 415-420

(iv)	“Victims” of the loss avoided.	420	
(v)	A recommendation to take disciplinary action.	420-421	
(vi)	Costs and Expenses of the Government - s257(1)(e).	421-424	
(vii)	Costs and Expenses of the SFC.	<i>424-431</i>	
	(a) General.	424-425	
	(b) PII and LPP.	425-431	
(viii)	Costs and Expenses of the challenge to the jurisdiction of the Tribunal.	431	
(ix)	Witness Expenses.	432	
(x)	the Costs and Expenses of the Tribunal.	432-433	
(xi)	The culpability of the Specified Persons.	<i>433-437</i>	
	A. Mr. David Tsien	433-435	
	B. Mr Edmond Leung	435-436	
	C. Mr Steve Luk	436-437	
	<u>Orders.</u>	437-439	
Chapter 11	Miscellaneous Matters.		440-441
	Attestation to Part II of the Report.		442

INDEX - APPENDICES

		PAGE
Appendix I	Judgment of Hartmann, JA and A Cheung J on application for judicial review by Mr Steve Luk.	A1-A38
Appendix II	Stock Historical Data of COLI and HSI 26.11.2003 – 30.1.2004.	A39
Appendix III	“Summary Assessment of Costs” of the Government as of 3 June 2009.	A40
Appendix IV	“Summary Assessment of Costs” of the Government as of 3 June 2009 - Particulars.	A41-A42
Appendix V	Revised and amended particulars of “Summary Assessment of Costs” of the Government as of 3 June 2009.	A43-A44
Appendix VI	“Summary Assessment of Costs” of the Government from 4 June to 4 August 2009.	A45
Appendix VII	SFC’s “Statement of Costs/Overhead Costs” as of 3 July 2009.	A46-A48
Appendix VIII	SFC’s “Costs and Expenses” in relation to the proceedings before the Tribunal arising from issues of public interest immunity and legal professional privilege.	A49
Appendix IX	SFC’s “Costs and Expenses” in relation to the proceedings before the Tribunal on 3 and 4 August 2009.	A50
Appendix X	Witness expenses :	A51-A55
	(i) Mr Clive Rigby;	A51-A52
	(ii) Mr Alex Pang; and	A53
	(iii) other witnesses.	A54-A55
Appendix XI	DoJ/Government’s “Chronology” of events (27.7.2006 - 12.9.2007).	A56-A57
Appendix XII	SFC’s “Chronology” of events (22.9.2004 - 12.9.2007).	A58

Appendix XIII	Composite “Chronology” of events (January 2004 - January 2009).	A59-A62
Appendix XIV	Tribunal’s “Costs and Expenses” in relation to the proceedings before the Tribunal arising from issues of public interest immunity and legal professional privilege.	A63
Appendix XV	Tribunal’s “Costs and Expenses” in respect of and incidental to the hearings related to the challenge to the Tribunal’s jurisdiction.	A64
Appendix XVI	Tribunal’s “Costs and Expenses” in respect of and incidental to the proceedings before the Tribunal (excluding those related to the issues of public interest immunity and legal professional privilege, and the challenge to the Tribunal’s jurisdiction).	A65
Appendix XVII	The basis of the calculation of the monetary orders made pursuant to section 257(1)(e) and (f) of the Ordinance.	A66

Abbreviations

ABN AMRO	ABN AMRO Asset Management (Asia) Limited
AMS	Automatic Matching System
COLI	China Overseas Land and Investment Limited
ECDM	Equity Capital and Derivatives Markets Department
ECM	Equity Capital Markets Department
FS	Financial Secretary
HSI	Hang Seng Index
JFAM	JF Asset Management Limited
JP Morgan	JP Morgan Securities (Asia Pacific) Limited
LPP	Legal Professional Privilege
Mr Alex Pang	Mr Pang Cheung Hing, Alex
Mr Andrew Lau	Mr Lau Kin Wai, Andrew
Mr Chang	Mr Jonathan Chang
Mr David Tsien	Mr Tsien Pak Cheong, David
Mr Edmond Leung	Mr Leung Chi Keung, Edmond
Mr Horace Nip	Mr Nip Yun Wing, Horace
Mr Ian Long	Mr Long Tien Ian
Mr Kong	Mr Kong Qingping
Mr Kwan	Mr Jonathan Kwan
Mr Micky Lai	Mr Lai Wai Kei, Mickey
Mr Raymond Lee	Mr Lee Ho Leung, Raymond
Mr Rigby	Mr Rigby, Clive Derek Conway Louis
Mr Rupert Fane	Mr Fane, Rupert John Alexander
Mr Steve Luk	Mr Luk Ka Cheung, Steve
Mr Sussex	Mr Charles Sussex, SC
Mr Witts	Mr Witts, Richard Arthur

Abbreviations

Mr Wu	Mr Wu Jianbin
Ms Ismail	Ms Roxanne Ismail
Ms Muriel Sung	Ms Sung Yerk Kwan, Muriel
Ms Stella Fung	Ms Fung Sau Hong, Stella
Ms Winnie Chan	Ms Chan Ho Yun, Winnie
NAV	Net Asset Value
PII	Public Interest Immunity
SEHK	Stock Exchange of Hong Kong Limited
SFC	Securities and Futures Commission
SforJ	Secretary for Justice
the Ordinance	Securities and Futures Ordinance

CHAPTER 1

INTRODUCTION

1. The Financial Secretary's ("FS's") Notice directs the Tribunal's attention to the conduct of the Specified Persons in the period 7 to 26 January 2004, in particular to the sales by Mr Leung Chi Keung, Edmond ("Mr Edmond Leung"), on 21 and 26 January 2004, and by Mr Luk Ka Cheung, Steve ("Mr Steve Luk"), on 26 January 2004, of the shares of China Overseas Land and Investment Limited ("COLI"), which shares were held in funds that they managed in ABN AMRO Asset Management (Asia) Limited ("ABN AMRO") and JF Asset Management Limited ("JFAM") respectively, following their receipt of certain information from Mr Tsien Pak Cheong, David ("Mr David Tsien"), an employee of JP Morgan Securities (Asia Pacific) Limited ("JP Morgan").

2. Of very considerable importance in the material received by the Tribunal has been the recordings, translations and transcripts of telephone conversations held between Mr David Tsien on the one hand with Mr Steve Luk and on the other hand with Mr Edmond Leung, together with various conversations between Mr David Tsien and others in the period 2 to 26 January 2004 inclusive. Various witnesses, including all the Specified Persons, spent considerable time in their evidence explaining and giving context to the interchanges in those conversations, in particular those to which they were a party.

3. In order for the case in respect of each Specified Person to be better understood references to and extracts of some of the conversations in which they were one of the parties is set out separately for each Specified Person. Given

that Mr David Tsien was a party to all of the recorded telephone conversations it follows that there is some duplication in references to what was actually said in the particular conversations. Nevertheless, setting the material out in this way serves to highlight the separate explanations given in their written statements and in their oral testimony.

CHAPTER 2

THE FINANCIAL SECRETARY'S NOTICE

4. This Tribunal was constituted in consequence of the FS's Notice of 12 September 2007.

“IN THE MATTER OF THE
SECURITIES AND FUTURES ORDINANCE (CAP 571)
AND
IN THE MATTER OF THE LISTED SECURITIES
OF CHINA OVERSEAS LAND AND INVESTMENT LIMITED
(Stock Code: 688)

NOTICE

to the Market Misconduct Tribunal pursuant to Section 252(2)
and Schedule 9 of the Securities and Futures Ordinance (Cap 571)

WHEREAS it appears to me that market misconduct within the meaning of Section 270 (“insider dealing”) of Part XIII of the Securities and Futures Ordinance (Cap 571)(“the Ordinance”) has or may have taken place arising out of dealings in the securities of China Overseas Land and Investment Limited (Stock Code: 688) (“the Company”), I hereby, pursuant to Section 252(2) and Schedule 9 of the Ordinance, require the Market Misconduct Tribunal to institute and conduct proceedings and determine -

- (1) whether any market misconduct in the nature of insider dealing or otherwise has taken place;
- (2) the identity of every person who has engaged in the market misconduct found to have been perpetrated; and
- (3) the amount of any profit gained or loss avoided, if any, as a result of the market misconduct found to have been perpetrated.

Persons suspected to have engaged in market misconduct activities

- (i) Mr. David TSIEN Pak Cheong, an equity salesman of JP Morgan Securities (Asia Pacific) Limited at the material time;
- (ii) Mr. LEUNG Chi Keung also known as Edmond Leung Chi Keung, Head of Asian Equities of ABN AMRO Asset Management (Asia) Limited at the material time; and
- (iii) Mr. LUK Ka Cheung also known as Steve Luk Ka Cheung, Vice-President of JF Asset Management Limited at the material time.

Particulars of suspected market misconduct activities

1. During the period from 7th January 2004 to 26th January 2004 (“the Relevant Period”), Mr. David Tsien Pak Cheong, Mr. Edmond Leung Chi Keung and/or Mr. Steve Luk Ka Cheung had come into possession, directly or indirectly, of specific non-public price sensitive information that the Company would announce and carry out a top-up placement of 850,000,000 shares at a price of HK\$1.8 per share on or about 26th January 2004 (“the Relevant Information”).
2. During the Relevant Period :-
 - 2.1 Mr. David Tsien Pak Cheong had on various occasions directly or indirectly disclosed the Relevant Information to Mr. Edmond Leung Chi Keung and/or Mr. Steve Luk Ka Cheung.
 - 2.2 Mr. Edmond Leung Chi Keung had sold 4,392,000 shares of the Company and thereby obtained a profit of about HK\$915,173.60 based on the placement price of HK\$1.80 for the funds he managed;
 - 2.3 Mr. Steve Luk Ka Cheung had sold 9,109,000 shares of the Company and thereby obtained a profit of about HK\$1,945,104.50 based on the placement price of HK\$1.80 for the funds he managed.
3. Mr. David Tsien Pak Cheong was at all material times during the Relevant Period a person connected with the Company by virtue of his occupation of a position which might reasonably be expected to give him access to the Relevant Information.
4. Mr. David Tsien Pak Cheong, Mr. Edmond Leung Chi Keung and/or Mr. Steve Luk Ka Cheung at all material times during the Relevant Period knew and/or had reasonable cause to believe that the Relevant Information was material, non-public, price sensitive and would have a depressing effect on the price of the Company’s shares traded on the Hong Kong Stock Exchange.
5. In directly or indirectly disclosing the Relevant Information to Mr. Edmond Leung Chi Keung and/or Mr. Steve Luk Ka Cheung, Mr. David Tsien Pak Cheong had reasonable cause to believe that either or both of them would make use of the Relevant Information to deal in the Company’s shares and had thereby acted in contravention of Section 270(1)(c) of the Ordinance.
6. Mr. Edmond Leung Chi Keung and/or Mr. Steve Luk Ka Cheung at all material times during the Relevant Period knew and/or had reasonable cause to believe that :-
 - 6.1 Mr. David Tsien Pak Cheong was a person connected with the Company; and
 - 6.2 Mr. David Tsien Pak Cheong had obtained the Relevant Information by reason of his aforesaid connection with the Company.

7. Accordingly, in selling the shares of the Company as described in paragraphs 2.2 and 2.3 above, Mr. Edmond Leung Chi Keung and/or Mr. Steve Luk Ka Cheung had acted in contravention of Section 270(1)(e)(i) of the Ordinance.

Dated this 12th day of September 2007.

[Signature]
(John C. Tsang)
Financial Secretary”.

CHAPTER 3

THE COURSE OF THE PROCEEDINGS

5. Set out below is a chronology of relevant events.

7 - 26 January 2004 inclusive - the events the subject of the FS's Notice and these proceedings;

12 September 2007 - the FS's Notice to the Tribunal;

23 October 2007 - the appointment by the Secretary for Justice ("SforJ") of Mr Ip Tak Keung, Peter as the Presenting Officer and Ms Winnie Ho as the Assistant Presenting Officer;

25 October 2007 - the appointment on the delegated authority of the Chief Executive of the ordinary members of the Tribunal;

26 October 2007 - by letter of that day the Presenting Officer informed the Specified Persons of the FS's Notice and the prospective hearing of the Tribunal on the 31 October 2007;

31 October 2007 - Initial hearing, substantive hearing fixed for 18 February 2008 with 20 days reserved;

9 November 2007 - Directions hearing, at which a timetable was set out for the serving of submissions in respect of preliminary issues;

7 December 2007 - written submission filed on behalf of Mr Steve Luk challenging the jurisdiction of the Tribunal to conduct the proceedings and inviting the Tribunal to either stay or dismiss the proceedings;

25 February 2008 - hearing of the submissions on behalf of Mr Steve Luk challenging the jurisdiction of the Tribunal;

28 February 2008 - ruling by the Chairman dismissing the challenge to the jurisdiction of the Tribunal and determination of the Tribunal declining to stay the proceedings;

13 March 2008 - hearing at which counsel for Mr Edmond Leung detailed contentious issues with the SFC in respect of disclosure/legal professional privilege and public interest immunity;

20 March 2008 - revised dates fixed for the substantive hearing, 14 July-15 August 2008;

20 May 2008 - solicitors for Mr Steve Luk informed the Tribunal that judicial review proceedings had been commenced on the basis of the challenge to the jurisdiction of the Tribunal;

25 April 2008 – the appointment by the SforJ of Mr Jonathan Kwan (“Mr Kwan”) to replace Mr Peter Ip Tak Keung as the Presenting Officer;

29 May 2008 - Hartmann J granted leave to Mr Steve Luk to apply for judicial review in HCAL 49/2008;

5 June 2008 - on the application of solicitors acting for Mr Steve Luk the dates re-fixed for the substantive hearing were vacated;

3 and 4 November 2008 - hearing of HCAL 49/2008;

18 November 2008 - judgment of Hartmann, JA and A Cheung J in HCAL 49/2008 dismissing the application for judicial review [**Appendix I**];

19 November 2008 - the parties were advised of a Directions hearing to be held on 21 November 2008;

21 November 2008 - revised dates fixed for the substantive hearing, 5 January 2009 with 20 days reserved; 18 December 2008 fixed for the hearing of the issues relating to disclosure/public interest immunity and legal professional privilege;

18 December 2008 - hearing, during which counsel for Mr Edmond Leung informed the Tribunal that, following discussions with counsel for the SFC, the ruling of the Tribunal was no longer required;

5 January 2009 - commencement of the substantive hearing;

Substantive hearing dates :

January 2009	5-9; 12-16; 19 and 20
February 2009	9 and 10; 16-20; 23-26;
March 2009	9-13; 16-19; and 31;
April 2009	1 and 3; 6 and 7; 28;
May 2009	26 and 29

CHAPTER 4

THE LAW

6. The Chairman has given the Tribunal the directions in law contained in this Chapter. All references elsewhere in the Report to statements of law are directions given by the Chairman to the Tribunal as a whole.

Insider dealing.

7. Section 270(1) of the Securities and Futures Ordinance (“the Ordinance”) provides that :

“Insider dealing in relation to a listed corporation takes place -

...

(c) when a person connected with the corporation and knowing that any information is relevant information in relation to the corporation, discloses the information, directly or indirectly, to another person, knowing or having reasonable cause to believe that the other person will make use of the information for the purpose of dealing ... in the listed securities of the corporation ... ;

...

(e) ... when a person who has information which he knows is relevant information in relation to the corporation and which he received, directly or indirectly, from a person whom he knows is connected with the corporation and whom he knows or has reasonable cause to believe held the information as a result of being connected with the corporation -

(i) deals in the listed securities of the corporation ... ”.

The FS’s Notice.

8. The Chairman has directed the Tribunal that the mental ingredient in respect of possession of relevant information in section 270(1)(c) and (e) is that of subjective knowledge and accordingly, to ignore the assertion in paragraphs 4 and 6(1) of the “Particulars” in the FS’s Notice that it is satisfied by “and/or reasonable cause to believe”.

“Connected with the corporation”.

9. Section 247 of the Ordinance provides that :

“(1) For the purposes of Division 4, a person shall be regarded as connected with a corporation if, being an individual -

...

- (c) he occupies a position which may reasonably be expected to give him access to relevant information in relation to the corporation by reason of -
 - (i) a professional or business relationship existing between -
 - (A) himself, or his employer ... ; and
 - (B) the corporation ... ;
- (d) he has access to relevant information in relation to the corporation and -
 - (i) he has such access by reason of his being in such a position that he would be regarded as connected with another corporation by virtue of paragraph (a), (b) or (c); and
 - (ii) the relevant information relates to a transaction (actual or contemplated) involving both those corporations or involving one of them and the listed securities of the other ... ”.

“ ... which he knows is relevant information”.

10. Clearly, the test for knowledge is a subjective one.

Relevant information.

11. Section 245(2) of the Ordinance provides that :

“ ‘relevant information’ in relation to a corporation, mean specific information about -

- (a) the corporation;
- ...
- (c) the listed securities of the corporation ... ,

which is 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;”.

Miscellaneous.

12. Section 245(2) of the Ordinance provides that :

“ ‘listed’ means listed on a recognized stock market ... ;

‘securities’ means -

- (a) Shares ... issued by, a body, ... ;”.

Dealing in listed securities.

13. Section 249 provides that :

“For the purposes of section 245(2) and Division 4, a person shall be regarded as dealing in listed securities if, whether as agent or principal, he sells ... any listed securities.”.

“Specific information”.

14. The Chairman acknowledges that in directing the Tribunal in respect of the term “specific information” he has adopted and amplified the direction given to a differently constituted Tribunal in *Sunny Global Holdings Limited*.

15. The term “specific information”, is not defined in the legislation. However, the same term has been considered on a number of occasions by the Insider Dealing Tribunal in the context of an identically worded provision in section 8 of the Securities (Insider Dealing) Ordinance, Cap 395. In *Chinese Estates Holdings Limited*, a report dated 6 May 1999, the Tribunal said :

“Specific information is information which possesses sufficient particularity to be capable of being identified, defined and unequivocally expressed.”.

16. A related footnote states : “See the *dicta* of the Singapore High Court in *Public Prosecutor v GCK Choudrie* (1981) 2 Co. Law 141”. That decision of the Court of Criminal Appeal of the High Court of Singapore is also reported in [1981] 1 MLR 76, albeit that the appellant’s name is spelled Choudhury. He had been convicted by a District Court judge of six charges, contrary to section 132A of the Companies Act, Cap 185. The particulars alleged that on six separate occasions between 13 January and 3 February 1976 he, being the chairman of the board of directors of a company, made use to gain an advantage for himself of “specific confidential information”, namely that the company was “facing a financial crisis”, in selling shares in that company. The crisis arose

from sustained heavy losses for the financial year ended 29 February 1976. The Court of Criminal Appeal held that the District Court judge was correct in ruling that knowledge of a financial crisis in a company is (page 78E) :

“Specific information as it is capable of being pointed to, identified and unequivocally expressed.”.

17. That description resonated with the observations made in the judgment of a judge of the Supreme Court of New South Wales in *Ryan v Trigguboff* (1976) 1 NSWLR 588 at 596, to which the Court of Criminal Appeal referred, in which it was said of “specific information” that :

“ ... it must be capable of being pointed to and identified and must be capable of being expressed unequivocally.”.

18. That court was construing the expression “specific information” in the context of legislation in Australia dealing with insider dealing in section 75A of the Securities Industry Act, 1970. Of the nature of the information, the Court of Criminal Appeal said :

“It is the kind of specific information anyone familiar with the market knows that can markedly affect the prices of the particular shares and can result in the suspension of the trading of the shares on the Stock Exchange.”.

19. In *Chinney Alliance Group Limited*, a report of the Insider Dealing Tribunal dated 24 December 2004, reference was made with approval to both *Ryan v Trigguboff* and Choudhury and it was asserted of “specific information” that (page 36) :

“It is not necessary that all particulars or details of the transaction, event or matter be precisely known.”.

20. In *Firststone International Holdings Limited*, a report of the Insider Dealing Tribunal dated 2 April 2004, it was asserted of “specific information” that :

“ ... the fact that a transaction is merely contemplated or at a preliminary stage of negotiation does not mean information concerning those negotiations cannot be specific.”.

21. That Tribunal went on to note that :

“ ... vague hopes or wishful thinking that a transaction will occur or come to fruition does not amount to sufficient ‘contemplation’ or preliminary negotiation of that transaction ...”.

22. Having regard to the particular issue the subject of its enquiry, the Tribunal went on to state :

“ ... the proposed placement whether described as under contemplation or at a preliminary stage of negotiation must, in our view, have more substance than merely being at the stage of a vague exchange of ideas or a ‘fishing expedition’. Where negotiations or contacts have occurred, as in the present case, there must be a substantial commercial reality to such negotiations which goes beyond a merely exploratory testing of the waters and which is at a more concrete stage where the parties have an intent to negotiate with a realistic view to achieving an identifiable goal.”.

Information which would be “likely to materially affect the price” of the shares.

23. In the report of the Insider Dealing Tribunal in *Public International Investments Limited*, dated 5 August 1995, in addressing the issue of whether or not information was “likely to affect the price” of the shares of a company (if known to those accustomed or likely to deal in those shares) the nature of the test was described as being (paragraph 19.4.2) :

“The test is hypothetical in that on the date that the insider acts on inside information, he acts when the investing public, not in possession of the inside information, either does not act, or acts in response to other information or advice. The exercise in determining how the general investor would have behaved on that day, had he been in possession of that information, has necessarily to be an assessment. It is true that an examination of how those investors react once the information is stripped of its confidentiality and becomes public knowledge, will often provide the answer, although care must be taken to ascertain whether the investors’ response is indeed attributable to the information released, or whether it is wholly or in part attributable to other events, or considerations.”.

24. The report goes on to quote a passage of the judgment of Senior District Judge Foeanender, a judge of the Subordinate Court of Singapore, in *Public Prosecutor v Allan Ng Poh Meng* [1990] 1MLJ v in which he was concerned

with the construction of the same phrase in the context of the Securities Industry Act 1985 (at page x) :

“It may be that what is a material price increase in one case may not necessarily be a material price increase in another case. It all depends on the share and the circumstances obtaining at the time.

However, the standard by which materiality is to be judged is whether the information on a particular share is such as would influence the ordinary reasonable investor in deciding whether or not to buy or whether or not to sell that share. A movement in price which would not influence such an investor, may be termed immaterial. Prices, after all, to a large extent determined by what investors do. If generally available, it is the impact of the information on the ordinary reasonable investor, and thus on price, which has to be judged in an insider dealing case.”.

25. Of the term “materially” the report concluded (paragraph 19.4.5) :

“We think that the word ‘materially’ speaks for itself - it is to be contrasted with ‘slight’, ‘insignificant’ and ‘immaterial’.”.

26. In the report of the Insider Dealing Tribunal in *The International City Holdings Limited*, dated 27 March 1986, the Tribunal observed of the requirement of materiality that the information (paragraph 2.6) :

“ ... be likely to bring about a material change in the price of those securities. Thus information that would be likely to cause a mere fluctuation or a slight change in price would not be sufficient; there must be the likelihood of change of sufficient degree in any given circumstances to amount to a material change.”.

Determinations of questions of law and fact.

27. Section 24(c) of Schedule 9 of the Ordinance provides that :

“every question before the Tribunal shall be determined by the opinion of the majority of the members except a question of law which shall be determined by the Chairman alone.”.

The Standard of Proof.

28. Section 252(7) of Ordinance provides that :

“ ... the standard of proof required to determine any question or issue before the Tribunal shall be the standard of proof applicable to civil proceedings in a court of law.”.

29. That standard is the “balance of probabilities”. In *Solicitor (24/7) v The Law Society of Hong Kong* [2008] 2 HKLRD 576 the Court of Final Appeal accepted, the correctness of the approach to the civil standard of proof expressed by Lord Nicholls of Birkenhead in *Re H & Others (Minors) (Sexual Abuse : Standard of Proof)* [1996] AC 563 at p 586 D-G :

“ The balance of probability standard means that a court is satisfied an event occurred if the court considers that, on the evidence, the occurrence of the event was more likely than not. When assessing the probabilities the court will have in mind as a factor, to whatever extent is appropriate in the particular case, that the more serious the allegation the less likely it is that the event occurred and, hence, the stronger should be the evidence before the court concludes that the allegation is established on the balance of probability.”.

30. In his judgment in the Court of Final Appeal in *Koon Wing Yee and Insider Dealing Tribunal* (unreported) FACV No 19 of 2007 Sir Anthony Mason NPJ cited that acceptance with approval (see paragraph 89). That is the approach to the standard of proof that has been adopted by this Tribunal.

Circumstantial evidence and inferences.

31. In his judgment in the Court of Final Appeal, with which all the other judges agreed, in *HKSAR v Lee Ming Tee* (2003) 6 HKCFAR 336 Sir Anthony Mason NPJ, having cited with approval the passage from the speech of Lord Nicholls quoted above, went on to address the proper approach to the drawing of inferences in circumstances of allegations of gross misconduct by senior officers of the SFC. Sir Anthony said :

“ ... that conclusion was not to be reached by conjecture nor, as the respondent submitted, on a mere balance of probabilities. It was to be plainly established as a matter of inference from proved facts. It is not possible to state in definitive terms the nature of the evidence which the court will require in order to be satisfied, in a civil proceeding, that a serious allegation of this kind, is made out. It would not be right to say that the requisite standard prescribes that the inference of wrongdoing is the only inference that can be drawn (cf *Sweeney v Coote* [1907] AC 221 at 222, per Lord Loreburn) for that is the standard which applies according to the criminal standard of proof. In the particular circumstances, it was for the respondent to establish as a compelling inference that very senior

officers of the SFC had deliberately and improperly terminated the investigation into Meocre Li's conduct for the ulterior purpose alleged, sufficient to overcome the inherent improbability that they would have done so (see *Aktieselskabet Dansk Skibsfinansiering v Brothers & Others* (2000) 3 HKCFAR 70 at pp. 91H, 96 G-I, per Lord Hoffmann).”.

32. Excerpts from the passage quoted above in the judgment of Sir Anthony Mason NPJ were cited with approval in the judgment of Mr Justice Ribeiro PJ (see paragraph 187) in the Court of Final Appeal in *Nina Kung alias Nina TH Wang and Wang Din Shin* (2005) 8 HKCFAR 387. In his judgment, Lord Scott of Foscote NPJ observed, in the context of allegations that Mrs Wang had procured the forgery and, in a conspiracy with another, was attempting to obtain probate as the will of a document she knew to have been forged, at paragraph 626 :

“The probability of these allegations being true must be judged on the evidence adduced in the case. But it must also take account of propensity. If such an allegation is made against a person with a record of involvement in forgery or fraud, the strength of the other evidence necessary to satisfy the balance of probability test is obviously less than would otherwise be required. Evidence of propensity must go into the balance ... Evidence to a very high standard of cogency indeed is necessary before the court can be justified in finding either to be dishonestly involved in a conspiracy to promote a forged will.”.

33. The Tribunal approached the drawing of inferences adverse to the Specified Persons with those considerations in mind. Mindful of the fact that the conduct alleged against all of the Specified Persons is of a nature that could have resulted in the bringing of serious criminal charges the Tribunal did not draw inferences from proved primary facts that any one of the Specified Persons was culpable of the alleged misconduct unless to do so was very compelling and the evidence was of a very high standard of cogency indeed.

Lies.

34. Of the approach to the evidence of the respective Specified Persons in the Tribunal and their statements outwith the Tribunal, the Tribunal has been

directed that a lie in itself does not prove that the maker of the lie is culpable of the misconduct alleged against that person. People innocent of wrongdoing sometimes tell lies : perhaps, as a misguided reaction to a problem, or to postpone facing up to it or to attempt to deflect ill-founded suspicion, or to fortify their defence. Nevertheless, it may be a matter relevant to credibility.

Good character.

35. The Chairman directed the Tribunal that a person of good character is less likely than otherwise might be the case to have committed the alleged misconduct and that good character supports his credibility in respect of both his evidence in the Tribunal and statements made outwith the Tribunal, in his records of interview conducted by officers of the Securities and Futures Commission (“SFC”) and statements made on his behalf in correspondence by his solicitors to the SFC.

Separate consideration.

36. The Chairman directed the Tribunal to consider the case for and against each of the Specified Persons separately.

Statements made outwith the Tribunal inconsistent with oral testimony.

37. Statements made outwith the Tribunal, inconsistent with the oral testimony of the maker in the proceedings before the Tribunal, are not evidence of the truth of the matters there asserted. Having had regard to whether or not, in true context, the assertion outwith the Tribunal is inconsistent in a material particular with oral testimony and to any explanations proffered for that inconsistency the Tribunal may have regard to the inconsistency in respect of the credibility of the witness.

Expert evidence.

38. The Tribunal has received evidence from two witnesses as experts in respect of the matters identified in paragraph 1 of the FS's Notice, in particular as to whether or not if that information was generally not known to persons who were accustomed or would be likely to deal in the listed securities of COLI but which, if generally known to them, would be likely to materially affect the price of those listed securities. The Tribunal has received that evidence, both information and the expression of opinions, because it was likely to be outside the experience and knowledge of the Tribunal. Nevertheless, the Tribunal is entitled to accept or reject all or part of that evidence. It may come to its own conclusions on these matters based on all the evidence.

Delay.

39. The Chairman directed the Tribunal to bear in mind in favour of the Specified Persons the fact that the events the subject of the proceedings occurred almost exactly five years prior to the commencement of the substantive hearing. Inevitably, with the passage of time memories dim or fade and relevant documents may be lost or destroyed. Of the consequences in delay in commencing these proceedings, the Tribunal notes and takes cognizance of the assertions made by the Specified Persons :

- (i) by Mr Edmond Leung in his statement of 19 February 2009,
“ ... with the passage of time I do not have much recollection of the events in January 2004.”.
- (ii) by Mr David Tsien in his statement of 18 February 2009,
“I can no longer recall most of the events independently.”.

40. All three Specified Persons asserted that they relied upon the tape recordings of their respective telephone conversations to refresh their memories as to the timing of those events and the contents of the conversations.

41. On the other hand, the Tribunal bore in mind that the Specified Persons were informed in notices served on them, pursuant to section 183(1) of the Ordinance, that they were “Persons under investigation” in respect of offences/misconduct of the insider dealing the subject of these proceedings. In the case of Mr Edmond Leung, the notice was dated 18 October 2004, whereas the notice to Mr David Tsien was dated for 4 February 2005 and that sent to Mr Steve Luk dated 8 March 2005. Records of interview were conducted of the respective Specified Persons by officers of the SFC soon after the service of those notices. Also, the Tribunal has borne in mind the assertion in Mr Steve Luk’s statement of 19 February 2009 that he was subject of an internal enquiry by JFAM in respect of the matters the subject of these proceedings and that in consequence in July/August 2004 he had listened to tape recordings of his telephone conversations made by JFAM.

42. Finally, the Tribunal has borne in mind in respect of Mr Steve Luk only that the delay in these proceedings for many months in 2008 was caused by his unsuccessful challenge to the jurisdiction of this Tribunal both before the Tribunal and in the High Court on judicial review.

Certain persons not to be regarded as having engaged in market misconduct.

43. Section 271(3) of the Ordinance provides that :

“A person shall not be regarded as having engaged in market misconduct by reason of an insider dealing taking place through his dealing in ... listed securities ... or his disclosure of information if he establishes that the purpose for which he dealt in ... listed securities ... or disclosed the information in question (as the case may be) was not, or, where there was more than one purpose, the purposes for which he dealt in ... the listed securities ... in question or disclosed the information in question (as the case may be) did not include, the purpose of securing or increasing a profit or avoiding or reducing a loss, whether for himself or another, by using relevant information.”.

Standard of Proof

44. In contrast to the standard of proof required to establish the ingredients of insider dealing set out in paragraphs 28 - 30 the standard of proof is satisfied on the mere balance of probabilities on a consideration of all the evidence and not only that of the Specified Persons whose case is being considered.

CHAPTER 5

THE MATERIAL RECEIVED BY THE TRIBUNAL

(I) Witness statement of a witness who was not required to give oral evidence.

45. Ms Wong Siu Wa - an Assistant Vice-President of Hong Kong Exchanges and Clearing Limited.

(II) Correspondence and documentary records in reply to SFC demands prior to the proceedings

46.

Date of SFC Letter/Notice	Parties of whom a request was made for the provision of information and/or documents	Date of Reply from the relevant parties
20 July 2004	ABN AMRO	2 August 2004
20 July 2004	COLI	22 July 2004
20 July 2004	JFAM	30 July 2004
20 July 2004	JP Morgan	6 August 2004
-	Macquarie Securities Limited	28 September 2004
-	JP Morgan	28 September 2004
23 September 2004	Messrs Clifford Chance acting on behalf of ABN AMRO	30 September 2004
23 September 2004	Messrs Deacons acting on behalf of COLI	30 September 2004
23 September 2004	JFAM	6 October 2004
23 September 2004	JP Morgan	8 October 2004
		15 October 2004
		9 November 2004

Date of SFC Letter/Notice	Parties of whom a request was made for the provision of information and/or documents	Date of Reply from the relevant parties
27 October 2004	JFAM	2 November 2004
1 December 2004	Messrs Deacons	31 December 2004
7 June 2005	JP Morgan	17 June 2005
-	Messrs Deacons acting on behalf of Mr Nip Yun Wing, Horace (“Mr Horace Nip”)	22 July 2005
30 November 2005	JFAM	7 December 2005
30 November 2005	Messrs Clifford Chance	8 December 2005

(III) Documentary records received by the Tribunal pursuant to Notices issued under section 254(2) of the Ordinance.

47.

Date of Notice	Parties of whom a request was made for the provision of information and/or documents
5 January 2009	COLI
5 January 2009	Stock Exchange of Hong Kong Limited (“SEHK”)
5 January 2009	JP Morgan
5 January 2009	JP Morgan and JFAM
6 January 2009	An appropriate department within SFC
6 January 2009	JP Morgan and JFAM
8 January 2009	JFAM
9 January 2009	JP Morgan
9 January 2009	JFAM
15 January 2009	An appropriate department within SFC
15 January 2009	(a) JP Morgan; (b) JP Morgan Chase; and (c) JFAM
15 January 2009	(a) JP Morgan; (b) JP Morgan Chase; and (c) JFAM

Date of Notice	Parties of whom a request was made for the provision of information and/or documents
20 January 2009	ABN AMRO
20 January 2009	JFAM
21 January 2009	JP Morgan
23 January 2009	JFAM
4 February 2009	JFAM
10 February 2009	JP Morgan and SEHK
26 February 2009	JP Morgan
12 March 2009	ABN AMRO
18 March 2009	JFAM
2 April 2009	An appropriate department within SFC

(IV) Oral testimony.

The Tribunal received records of interview and/or witness statements from witnesses who also gave oral testimony.

48.

Tribunal Witness Number	Name	General Relevance to the Proceedings
TW 1	Ms Sung Yerk Kwan, Muriel (“Ms Muriel Sung”)	Head of Compliance of JFAM in October 2004
TW 2	Mr Lau Kin Wai, Andrew (“Mr Andrew Lau”)	Head of Hong Kong Compliance of JP Morgan in January 2004
TW 3	Mr Long Tien Ian (“Mr Ian Long”)	An Associate in JP Morgan’s Equity Capital Markets Department (“ECM”) in January 2004
TW 4	Mr Fane, Rupert John Alexander (“Mr Rupert Fane”)	A Vice-President of JP Morgan’s Equity Capital and Derivative Markets Asia Ex-Japan and Australia in January 2004

Tribunal Witness Number	Name	General Relevance to the Proceedings
TW 5	Mr Stefan Weiner	Head of Equity Syndicate of JP Morgan in January 2004
TW 6	Mr Chak Kwok Fai, Alan	A propriety trader in JP Morgan Ex-Japan Department responsible for client facilitation in JP Morgan in January 2004
TW 10	Mr Tong Hon Fai	An SFC investigator in September 2004. Dealt with issues relating to the interview with Mr Ian Long, the Stock Historical Data, MSS Stock Activities report and a report entitled "Information relating to Placees - COLI
TW 11	Mr Horace Nip	An Executive Director and Deputy Financial Controller of COLI in January 2004
TW 12	Mr Wu Jianbin ("Mr Wu")	Financial Controller and Director of COLI in January 2004
TW 13	Mr Kong Qingping ("Mr Kong")	Vice Chairman and Chief Executive of COLI in January 2004
TW 14	Ms Chan Ho Yun, Winnie ("Ms Winnie Chan")	A member of the Compliance team of JFAM in January 2004. Dealt with time discrepancy between the IB and AM telephone recording servers
TW 17	Ms Fung Sau Hong, Stella ("Ms Stella Fung")	An Associate Director of SFC; identified the transactions in the COLI shares by Messrs Edmond Leung and Steve Luk on 21 and 24 January 2004 respectively, and who spoke to the absence of any media reports or market rumours in

Tribunal Witness Number	Name	General Relevance to the Proceedings
		relation to a possible placing of shares in COLI before the market closed on 26 January 2004
TW 18	Mr Rigby, Clive Derek Conway Louis (“Mr Rigby”)	Expert witness called by the Presenting Officer
TW 19	Mr David Tsien	Specified Person
TW 20	Mr Edmond Leung	Specified Person
TW 21	Mr Steve Luk	Specified Person
TW 22	Mr Witts, Richard Arthur (“Mr Witts”)	Expert witness called by counsel for Mr Steve Luk

The Tribunal received oral evidence from witnesses who had neither been interviewed by the SFC nor had given any witness statements.

49.

Tribunal Witness Number	Name	General Relevance to the Proceedings
TW 7	Mr Lai Wai Kei, Mickey (“Mr Mickey Lai”)	IT Manager of JP Morgan. Dealt with the telephone recording system within JP Morgan in January 2004
TW 8	Mr Wong Wah Kai, Alex	Working in the Voice Team of JP Morgan in January 2004. Compiled JP Morgan’s compact disk of various telephone conversations recorded (“CD”)
TW 9	Mr Share Koon Wah, Stephenson	Working in the Data Centre Operations of the IT Department of JP Morgan. Dealt with the CD
TW 15	Mr Lee Ho Leung, Raymond (“Mr Raymond Lee”)	A Senior Compliance Manager, ABN AMRO. Dealt with the information provided by ABN

Tribunal Witness Number	Name	General Relevance to the Proceedings
		AMRO in relation to the trades by Mr Edmond Leung in January 2004
TW 16	Mr Fang Fang	Managing Director of Equity Sales of JP Morgan in January 2004

ORAL EVIDENCE.

Tape recordings and transcripts of telephone conversations.

50. During the course of the hearing the Tribunal received CD recordings of tape recordings made on selected telephone lines at both JP Morgan and JFAM in the month of January 2004. In the first instance, the recordings were made on to a computer hard disk and then onto a tape where it was stored for at least 12 months. When and as required the IT Department retrieved the data from the tape by use of a machine from which a “Wave” file was generated. By notices pursuant to section 183(1) of the Ordinance, dated 23 September 2004, the SFC required JFAM and JP Morgan to provide tape recordings of all telephone conversations in respect of COLI, in respect of the former, between Mr Steve Luk and others from 5 to 26 January 2004 and in respect of the latter between Mr David Tsien and others from 2 to 26 January 2004. In the event, by replies dated 6 and 8 October 2004 JFAM and JP Morgan respectively provided not only recordings of the conversations but also transcripts of English translations of the telephone conversation, many of which were held in Cantonese. Those transcripts bore times ascribed to the starting point of the relevant recorded telephone conversations.

51. From the outset, it was apparent that two issues arose : firstly, the accuracy of the times ascribed to those conversations and, secondly the accuracy

of the transcriptions and translations. As a result, the Tribunal received evidence in respect of the issue of the times from a number of witnesses and on an ongoing basis multiple versions of amendments of transcriptions and translations.

The issue of the accuracy of the Time ascribed to the recorded telephone conversations.

52. Although the notices issued by the SFC to JFAM and JP Morgan in respect of the tape-recorded telephone conversations were not issued until 23 September 2004, it is apparent that both companies had begun retrieving that data as early as July 2004. The transcripts provided in response to the SFC's notice by the letter of JFAM, dated 6 October 2004, contained a note in the heading :

“The original telephone conversations are in Cantonese and the telephone transcripts are translated into English.

There is a 10 minute time discrepancy between the AM telephone system and IB telephone system. ETS has confirmed that the time on AM system is correct.”.

53. The term “AM” referred to JFAM and “IB” to the Investment Banking Department of JP Morgan.

54. The transcripts provided under cover of the letter of JP Morgan, dated 8 October 2004, stated in the heading :

“Most of the original conversations are in Cantonese. Although we believe that the attached translation into English is accurate, there may be occasional translation errors.

Time shown on the IB telephone playback machine (‘IB time’) is approximately 11 minutes behind actual Hong Kong time.”.

55. The issue of how it was that it had been determined that the times on the JFAM telephone recordings were accurate actual times and those on the JP

Morgan tape recordings slow by 11 minutes was resolved, finally, in the evidence of Ms Winnie Chan.

Ms Winnie Chan.

56. Ms Winnie Chan is and has been the Compliance Manager of JFAM since February 2004. She joined the company in 1997. She confirmed as true and correct to the best of her knowledge and belief a statement dated 6 February 2009.

57. Ms Winnie Chan said that she had assisted in compiling the transcripts that had been provided to the SFC under cover of the letter of JFAM dated 6 October 2004. She and two colleagues had listened to tape recordings retrieved by the IT Department in order to identify conversations involving Mr Steve Luk relating to COLI. An index file enabled them to attribute a time to the commencement of each of the recorded telephone conversations. When the telephone conversations were other than in English they produced a transcript in English only, doing their best to translate.

58. In pursuing the IT Department for the urgent supply of the tape recording material requested, she said that she learnt that the IT Department had already supplied JP Morgan with such tape-recordings for 26 January 2004. Earlier, the Tribunal had received evidence from Mr Mickey Lai, employed in the IT Department of JP Morgan at all material times, that the Department was responsible for the recording of telephone conversations in both JFAM and JP Morgan. Ms Winnie Chan said that as a result she had listened to tape recordings provided to JP Morgan, compiling a transcript and making a note of the time of the conversations. Subsequently, when she came to perform the same task in respect of tape recordings provided through the JFAM system for 26 January 2004 she came to realise that there was a discrepancy between the

times recorded on the two systems, namely AM and IB. As a result, and on her instructions by e-mails dated 27 and 28 July 2004 the IT Department were requested to confirm, and did so, that :

- (i) at that date in July 2004, the timing mechanism on the IB telephone recording system was 25 minutes behind the times recorded on the AM recording system;
- (ii) in January 2004, the difference was less, namely 11 to 12 minutes; and
- (iii) the time recorded on the AM system was an accurate reflection of actual time.

59. Ms Winnie Chan accepted that the point was made good by reference to a telephone conversation between Mr Steve Luk and Mr David Tsien on 26 January 2004 recorded as having occurred at 2:33 pm in the AM system but at 2:22:31 pm in the IB system. However, when she was taken to a conversation on 5 January 2004 between the same persons she accepted that it was recorded as having occurred at 3:32:57 pm in the AM system but at 3:26:48 pm in the IB system, namely a discrepancy of about six minutes only. Nevertheless, she accepted that by a comparison of conversations between the same persons recorded on the AM and IB systems on 19 January 2004, namely one where the time was recorded as being 11:01 am on the AM system and 10:50:49 am in the IB system, it was clear that the discrepancy had extended by that date to about nine minutes.

Mr Ian Long.

Background.

60. Mr Ian Long is now a director of Credit Suisse in the ECM in Singapore. In January 2004, he was an associate in the ECM of JP Morgan Securities (Far East) Limited, of which Mr Rupert Fane was co-head together with Mr Jonathan

Back. Mr Andrew Cooper was the head of the overall department, namely Equity Capital and Derivatives Markets (“ECDM”). He was so employed from April 2002 until he left that employment in mid-2004.

61. In cross-examination by Ms Roxanne Ismail (“Ms Ismail”), Mr Ian Long explained that from 1997, until he joined JP Morgan in 2002, he had been employed at Goldman Sachs where he had worked in a number of departments : M&A, Corporate Finance and ECM.

Records of interview and statement.

62. He identified the transcripts of two records of interview conducted of him by an officer of the SFC on 17 March and 9 June 2005 as being accurate and his answers true to the best of his knowledge and belief. Similarly, he confirmed an assertion to the same effect in respect of a statement he had signed dated 19 January 2007.

The COLI top-up placement.

63. Mr Ian Long said that he became involved in the negotiations with COLI at the request of Mr Rupert Fane following the introduction of the client, as he understood it, by Mr David Tsien. He was told to arrange a meeting with COLI’s Finance Director, Mr Horace Nip. He agreed that in his record of interview of 17 March 2005 he had said that around the end of 2003/early January 2004 Mr David Tsien had introduced him, Mr Rupert Fane and Mr Edmund Ho to Mr Horace Nip, the Finance Director of COLI. In his oral testimony, he said that prior to the meeting Mr David Tsien had told him that COLI wished to raise money by a placement. Mr David Tsien had told him the time and place arranged for the meeting. At the meeting he had explained the process of a placement, including the necessity for due diligence. He had not introduced the possibility of using other fund raising procedures. From the

questions asked of him by Mr Horace Nip and his body language he judged him to be interested in a placement.

“Chinese Wall”.

64. Mr Ian Long said that he had become aware of his firm's Rules of Conduct in respect of “Chinese Wall” at the time of his employment. His attention having been drawn to paragraph 4.2 of the “*Worldwide Rules of Conduct : Chinese Wall*”, he said that the information passing in his meeting with COLI placed him in an insider's area. By contrast, Mr David Tsien as an equity salesman was in the public area. Nevertheless, Mr Ian Long accepted that he had kept Mr David Tsien involved and informed as to the negotiations with COLI. He had done so as a result of instructions from Mr Rupert Fane. He was aware that the information in respect of the negotiations with COLI was “non-public price sensitive information” namely, in respect of the price, size and timing of the placement, and that disseminating it to Mr David Tsien violated the Chinese Wall policy. He had not told Mr David Tsien not to disclose this information to investors, it being something that he concluded every salesman would know he should not do. For his part, he regarded Mr David Tsien as the employee of his firm that had the “main relationship” with the client, he having introduced Mr Horace Nip to the firm.

Issue : breach of the “Chinese Wall” policy.

65. In cross-examination by Mr Jonathan Chang (“Mr Chang”), Mr Ian Long agreed that in his record of interview of 17 March 2005 he had said of his dissemination of information to Mr David Tsien :

“Actually I did know that this would violate JP Morgan's Chinese Wall policy, but in respect of my mentioning to David Tsien about the details of the top-up placement discussed between China Overseas and JP Morgan's Equity Capital Markets (Department), it with my then supervisor Rupert Fane who instructed me to do that because at the time he wanted to learn from David Tsien the feedback from the market and China Overseas.”.

66. When it was suggested to him that it would appear that he had knowingly acted in breach of JP Morgan's Chinese Wall Policy Mr Ian Long said that in the circumstances that had obtained :

“ ... a salesperson could be taken over the wall so that ... he will not be violating the Chinese wall policy if that happened.”.

67. Mr Ian Long had not done that and had had no authority to do so. When asked if he had authority to instigate such a move, he said that typically that was done by a senior member of the team or by Compliance. As he recalled, Mr David Tsien had not been taken over the wall. He did not recall having raised any concerns with Mr Rupert Fane about a possible violation of the rules of conduct or having discussed the matter with him nor having notified Compliance of the issue.

68. In further cross-examination by Mr Chang, Mr Ian Long agreed that paragraph 4.2 of JP Morgan *Rules of Conduct* provided that :

“If you have any questions regarding whether information is ‘public’ or ‘material’, or whether it is permissible to use such information, contact the Legal and Compliance Department.”.

69. Mr Ian Long accepted that it followed that he had a duty to raise the matter with the Compliance Department but had not done so. He denied the suggestion put to him that he had not notified the Compliance Department because he did not understand the information that he passed to Mr David Tsien to be non-public price sensitive information.

70. Of his assertion in his record of interview of 17 March 2005 :

“In fact at that time David Tsien also contacted me all the time to ask me about the details of the top-up placement discussed between us, Equity Capital Markets (Department), and China Overseas.”.

Mr Ian Long said in answer to questions posed of him in cross-examination by Mr Chang that he could not recall how regular the contact had been but it

concerned “ ... basically along the lines of pricing and also in terms of number of shares they want to sell.” He rejected the suggestion that the enquiries made by Mr David Tsien were in general terms only rather than asking for specifics of the discussions with China Overseas :

“As I said he’s the one who has the relationship with the company, so he is the one that would need that information.”.

7 January 2004.

11:53 am (IL : DT).

71. Mr Ian Long identified Mr David Tsien’s and his voice in an audio recording of a telephone conversation that began at 11:53 am on 7 January 2004. In the course of the conversation, he had told Mr David Tsien :

“I want to give you an update actually on the meeting I had with him.”.

72. He said that that was a reference to the meeting that he had had with Mr Horace Nip of COLI in respect of the placement. In cross-examination, he agreed that he was the party initiating the contact and explained that he had an understanding with Mr David Tsien that he would give him an “update” of developments. At first, he said that he could not recall if that was at Mr David Tsien’s request. However, later he said that it was probable that when Mr David Tsien had set up the meeting for him to attend he had said :

“Let me know how it happened, how it goes, at the meeting.”.

73. Mr Ian Long explained that his reference to the fact that he had been told at the meeting that they wanted “180”, was a reference to COLI’s target price of \$1.80 for replacement. He agreed that he understood from Mr David Tsien’s reference “He mentioned something like 170” that Mr David Tsien was also talking to Mr Horace Nip. He said that he did not know the person Mr Steve Luk, that Mr Tsien had referred to as being at JFAM, but assumed him to be a portfolio manager at the company.

12:42 pm (DT : IL - voicemail).

74. Mr Ian Long identified Mr David Tsien's voice on a voicemail made at 12:42 pm on 7 January 2004 in which he was told :

“The major institutional shareholder has absolutely no interest in China Overseas at 170 or 180 but that they would be interested at 160 if the share price was \$2.00.”.

E-mail 4:03 pm (IL : HN).

75. Mr Ian Long confirmed that he had sent an e-mail at 4:03 pm on 7 January 2007 to Mr Horace Nip in which he had made reference to their having met the previous day. Attached to the e-mail was a document entitled “Sample Placing Agreement” and a document entitled “Announcement-top up”. He said that the hardcopy documents supplied to the SFC by solicitors acting for COLI entitled “Placing, Underwriting and Subscription Agreement” bearing the handwritten date 7/1/2004 was probably a copy of the document that had been attached to the e-mail. The text of the e-mail concluded :

“We will send you a specific Placement/Underwriting agreement tailor made for this block by lunchtime tomorrow.”.

8 January 2004.

e-mail (IL : HN).

76. In an e-mail dated 8 January 2004 from Mr Ian Long to Mr Horace Nip and was attached a file entitled “*JBM-Placing 8 January 2004*”. Mr Ian Long said that that was the document referred to in the e-mail of the previous day.

9 January 2004.

E-mails.

11:46 am (IL : HN).

77. In an e-mail he sent to Mr Horace Nip at 11:46 am Mr Ian Long attached a file entitled : “*Announcement January 9*”. The e-mail included the text :

“Looking forward to seeing you later at 5 p.m. for a due diligence session.”.

However, Mr Horace Nip had responded at 1:19 pm :

“ ... it may be better if we get ur indicative price before going for a dd ...”.

78. Mr Ian Long explained that it he had thought it better to have the due diligence done earlier in the proceedings. He said that he was still unsure about what “pricing” to show. Pricing was an issue for Mr Rupert Fane to determine. As a result, he kept him updated throughout the negotiations.

8:33 pm (IL : HN).

79. Mr Ian Long thought that the e-mail he had sent to Mr Horace Nip at 8:33 pm on 9 January 2004, in which the subject of a Convertible Bond was addressed, had been sent at the request of Mr Horace Nip who was looking for alternative ways of raising money.

15 January 2004 (IL : DT).

80. In cross-examination, Mr Ian Long agreed that he had had a telephone conversation with Mr David Tsien on 15 January 2004 in which the latter had told him:

“JFAM suggest you raise the bid to one sixty. Ask them to get it done quickly.”.

81. He agreed that in making that communication Mr David Tsien was assisting him with feedback from an anchor of the placement. He explained that Mr David Tsien had the best “relationship” at JP Morgan with Mr Horace Nip.

19 January 2004.

13:07 (IL : DT).

82. Mr Ian Long agreed that he had initiated the telephone conversation he had with Mr David Tsien that began at 13:07 on 19 January in order to discuss

with him the jump in the price of COLI shares on the stock market, noting that it was “going up to \$1.80” per share. Mr David Tsien responded by informing him that CL, BOCI and Morgan Stanley had all upgraded their Net Asset Value (“NAV”) of COLI to \$2.50 and that the former two companies had been buying its shares all morning. In response to Mr Ian Long’s observation that COLI had made no announcement, Mr David Tsien said :

“So the insider -- so the insiders’ got to get their last chance.”.

83. Mr Ian Long said that he did not understand the meaning of the observation. In cross-examination, he said that he thought his reference to the absence of an announcement was to the announcement that was published by COLI at 20 January 2004 in respect of the possible re-organisation of the construction related business. He said of Mr David Tsien’s reference to “insiders”, that it had not occurred to him that Mr David Tsien was referring to the fact that if anyone wished to ride the rising share price, to sell COLI shares and receive the proceeds before the Lunar New Year 19 January 2004 was the last chance to do so.

84. Mr David Tsien went on to comment in the telephone conversation :

“But I think what they trying to do is to run the share price up to \$2.00 and then come back to hit us at \$1.80”,

adding that :

“ ... it didn’t work in that way because ... our NAV forecast is at \$1.99”.

He went on to say :

“My (anchor?) client is still interested ... at around \$1.60 ... but not more than \$1.60, or more, based on today’s price.”.

The conversation concluded with Mr David Tsien saying :

“Have a check with Horace and I will -- I will also call him today. And if there is anything new, then we should swap information, okay?”.

14:21 (IL : DT).

85. Mr Ian Long identified his voice in a short conversation with Mr David Tsien at 14:21 on 19 January 2004 in which he had enquired of Mr David Tsien :

“Are you on the recorded line?”.

86. In response to an affirmative answer, Mr David Tsien agreed to his suggestion that he called him on his mobile telephone. Mr Ian Long testified that he could not remember why he had raised the issue of whether or not Mr David Tsien’s line was recorded or why he had invited him to call him on his mobile telephone. He agreed that the matter had been canvassed with him by an officer of the SFC in his record of interview of 9 June 2005. In response, he had given the same answer. Moreover, in his testimony he said that he could not remember whether or not Mr David Tsien had subsequently called him on his mobile telephone.

87. In his record of interview, he explained that at the time of the telephone call he wanted to tell Mr David Tsien the latest feedback from the management of COLI on the top-up placement deal and that it was his impression that he had mentioned to him that COLI would like to set the placing price at \$1.80, whilst the placing quantity would remain at 800 million shares. Whilst he could no longer remember today, based on the record of interview, he said that he thought that is what he had told Mr David Tsien. He added that price, quantity and the use of the proceeds of the placement were important considerations in a placement. He accepted that passing on information in respect of the placing price, namely \$1.80, and the volume of the placement, 800 million shares, he was passing to Mr David Tsien “non-public price sensitive information”. He repeated that he had done so because he was acting under the instructions of Mr Rupert Fane so to do.

20 January 2004.

14:48 (IL : DT).

88. Mr Ian Long confirmed that the telephone conversation that began at 14:48 on 20 January 2004 was one he initiated with Mr David Tsien :

“I just want to let you know the price.”

The latter told him :

“Now, I ... twist Raymond’s arm to raise our target price to 2.35, because I think we might have to offer them 1.80.”

89. Mr Ian Long explained that he understood that the reference to Raymond was to a research analyst of that name and that the meaning of what Mr David Tsien had said was that the “target price” had been raised as a result to \$2.35. Mr David Tsien went on to observe that at 1.80 the anchor’s demand was in question, because the maximum they would pay was 1.60. However, he concluded :

“If I don’t have an anchor, I won’t say anything. It’s really up to you, but, er, I think the deal is doable at 1.80.”

Mr Ian Long said :

“Okay the question is : do we want to show them a price tomorrow?”

Mr David Tsien responded :

“ ... if you could clinch your deal, by all means, but ... I had a chat with Horace ... I think we won’t be able to talk until next week.”

90. In response to Mr Ian Long telling him that he proposed to call him anyway, “ ... just to keep him warm” Mr Tsien said :

“Well, you should tell him that with upgrade our target price is 2.35, alright.”

91. In cross-examination by Mr Chang, Mr Ian Long agreed that the fact that he had raised the question of whether or not to show COLI a price indicated that JP Morgan was undecided as to whether to show COLI a price for the placement deal.

15:50 (IL : DT).

92. A further conversation between the two of them occurred at 15:50 on 20 January 2004. Mr Ian Long explained that his statement to Mr David Tsien that he had spoken to his “friend” was probably a reference to Mr Horace Nip. He explained that his assertion that “ ... he has not changed” was a reference to Mr Horace Nip not having changed his expectation of the price range of \$1.70-\$1.80 for the placement shares. Nevertheless, in the telephone conversation he went on to say that Mr Horace Nip had said that the feedback he had got from Mr Wu Jong was that a deal could be done at about 170. Mr Ian Long explained that his assertion “ ... they are very interested” was his understanding that COLI would be very interested in a deal if it can be done at that target price. Mr David Tsien responded in the telephone conversation by saying “I think we should take it” and went on to enquire whether he could now call Mr Steve Luk, whom he said would take about one third of the deal.

93. Mr Ian Long confirmed in his testimony that at the time he knew Mr Steve Luk to be a portfolio manager of JFAM and explained that his request of Mr David Tsien “ ... just indication, but you don’t have to tell him too much” was a request of Mr David Tsien that he not give too much information to Mr Steve Luk, it being “non-public price sensitive information”. The conversation ended with Mr David Tsien saying that he would have to check, if JFAM were interested at 170, after which he would call him back adding :

“170 would be okay. Because I think stock is going up to 2.10.”.

94. In cross-examination, Mr Ian Long explained the purpose of his having given Mr David Tsien information and having received advice in return :

“As I mentioned, the relationship with COLI, it is with David. So in order to manage the client David would need to know what is happening so that we can strategise internally in terms of what we can and cannot say we should or should not do in order not to jeopardise our chances of doing a deal.”.

15:54 (IL : DT).

95. Mr David Tsien did call Mr Ian Long back at 15:54 on 20 January 2004, telling him that JFAM were quite sure there would be a strong response at 170, adding that the stock was at a price of roughly \$2.00. Having agreed that a placement price of \$1.70 represented a discount of 15% from the share price Mr David Tsien said :

“Yeah, 15%, I think is okay. Especially if we just upgrade the target price to 235. Put it this way, we start recommending the stock from -- all the way from \$0.60, alright? It will be a pity if the deal goes to Morgan Stanley or C.L.”.

He added that both of those firms had upgraded NAV to “250”.

96. In cross-examination by Mr Chang, he accepted that it was possible that both those firms were competitors for the placement deal but that he thought that the reference was to a research report in which they had upgraded NAV.

97. In response to Mr Ian Long’s observation, that it was still necessary to do the due diligence on COLI and his enquiry as to whether it should be done that day or the next day Mr David Tsien said “Next week”, explaining that the following day was a half day and that many fund managers would not be coming back until the 29th or 30th of the month. Nevertheless, having urged him “So, 170, go for it”, he told Mr Ian Long that if he could do the deal today or tomorrow “I can get you -- I will get an anchor”. Of his concluding remark, namely that he would speak to Rupert, Mr Ian Long explained that was a reference to Mr Rupert Fane whom he had most likely spoken to passing on to him the information he had received from Mr David Tsien that there was interest in the market to do the proposal at \$1.70 after the Chinese New Year.

98. In cross-examination, Mr Ian Long agreed that in this conversation Mr David Tsien had been giving him information rather than the other way around.

4:24 pm (IL : DT).

99. In a further telephone conversation between Mr Ian Long and Mr David Tsien at 4:24 pm on 20 January 2004, Mr David Tsien informed him that he had just checked with Mr Wu. In fact he had spoken to him in a telephone conversation at 4:05 pm. He said that Mr Wu was happy at 1.70, but that Mr Kong wanted 1.80, adding :

“So I am asking for a compromise at 1.75 on the basis that the stock price should be above \$2.00.”.

100. Mr David Tsien said that of the total \$150 million deal he would :

“ ...put my neck on the line for at least one third of the deal”,

adding that the anchor was JFAM.

101. In his testimony, Mr Ian Long agreed that it was obvious that Mr David Tsien was talking to potential institutional investors and that given his reference in the telephone conversation, “after I’ve finished speaking to Rupert”, he had probably spoken to Mr Rupert Fane to update him.

Mr Ian Long’s statement of 19 January 2007.

102. In cross-examination by Mr Chang, Mr Ian Long agreed that he had signed his statement of 19 January 2007 at the offices of the SFC. As he recalled, the statement was prepared from his earlier two records of interview and there had not been a separate interview for the purposes of preparing a draft of what became this statement. Mr Tong Hon Fai, a senior manager of the SFC, who had prepared the statement and who had interviewed Mr Ian Long in the two records of interview testified that the statement dated 19 January 2007 had

been prepared on the basis of a draft following an interview of Mr Ian Long on 11 December 2006.

103. Mr Ian Long agreed that paragraphs 9 and 10 of the statement of 19 January 2007 stated :

“9. On 20 January 2004, I called Mr Nip informing him that the share price of China Overseas reached a record high of \$2 level and told him that it was a good time to do a placement. Mr Nip also agreed that it was a good time to do a placement and he reported to senior management in this regard. Later on the same day, Mr Nip told me that Mr Qin Hing Ping (Vice Chairman of China Overseas) ... had given a green light to do a placement because the share price reached their target level and a placement price of about HK\$1.80 seem to be acceptable to Mr Qing.

10. Soon after my conversation with Mr Nip, I prepared another draft placement agreement ... to Mr Nip for his review because the possibility of doing a placement was very high. On that occasion, Mr Nip verbally agreed that the placing price was HK\$1.8 per share and the size of the placement was 850 million shares. However, the draft agreement was just a standard agreement and it was a market practice that detailed terms of the proposed placement would not be stated on the draft placing agreement because the proposed placing price was still subject to the change of the prevailing market price of China Overseas.”.

104. He went on to say that the description given in a letter to the SFC by Deacons, COLI’s solicitors, dated 30 September 2004, of his having suggested that to Mr Horace Nip at 5:00 pm on 20 January 2004 was reasonable as to the attribution of the time. However, he said that he could not exactly recall if Mr Horace Nip had called him back, although he said it most likely. Nevertheless, he agreed he was informed by Mr Horace Nip that Mr Kong had given a “green light” to doing the placement deal, meaning that if a price of \$1.80 per share was achievable the deal could be done.

105. In cross-examination by Mr Chang, Mr Ian Long said that the conversation which he had described as being a “green light” from Mr Kong to do a placement at \$1.80 was the conversation at 16:24 on 20 January 2004 in

which Mr David Tsien had told him that, whereas Mr Wu was happy at \$1.70, Mr Kong wanted \$1.80 per share in the placement.

106. In cross-examination by Ms Ismail, Mr Ian Long explained his use of the term “green light” for the placement as being based on the telephone conversation that he had had with Mr David Tsien from which he understood that if the price could be reached the deal most likely could be consummated, namely at \$1.80 per share.

20 January 2004 : e-mails.

6:17 pm.

107. Mr Ian Long confirmed that he had received an e-mail from Mr Horace Nip bearing the time 6:17 pm on 20 January 2004, in which he had said that he was still awaiting delivery of documents.

6:25 pm.

108. In his testimony Mr Ian Long explained that those documents were the placement and announcement documents that he had attached to an e-mail that he had sent in reply at 6:25 pm that day. He confirmed that those documents were the ones bearing the handwritten date 20/1/04. In the text of the e-mail, he had suggested that due diligence be done at COLI’s offices at 10:00 am on 26 January 2004.

7:15 pm.

109. In an e-mail sent to him from Mr Horace Nip at 7:15 pm Mr Horace Nip confirmed the proposed due diligence meeting.

9:43 pm.

110. In the final e-mail of that date, at 9:43 pm, he raised with Mr Horace Nip the issue of the fact of physical deposit of COLI share certificates with CCASS.

22-25 January 2004.

111. Mr Ian Long confirmed the accuracy of the assertion he had made in his statement of 19 January 2007 that on and between 22 and 25 January 2004 he was on holiday for the Lunar New Year in Singapore. In the statement, he said that he had not had contact with any staff of COLI during that period. In his evidence, he said that he was probably not in contact with Mr David Tsien either in that period.

26 January 2004.

9:05 am (IL's secretary : DT).

112. Mr Ian Long said that he had returned to work at the offices of JP Morgan on 26 January 2004. He identified his secretary's voice on a telephone recording of a conversation she had with Mr David Tsien at 9:05 am on 26 January 2004 in which she informed Mr David Tsien that Mr Ian Long was on the telephone, but that she had left a message asking him to call him back. In his testimony, Mr Ian Long said that he had probably called Mr David Tsien in which case they had probably discussed the COLI placement.

Due diligence : conducted at the offices of COLI in the morning of 26 January 2004.

113. Mr Ian Long said that he believed that he attended the due diligence conducted at the offices of COLI on the morning of 26 January 2004. He thought that the attendees were Mr Edmund Ho and Mr Rupert Fane of JP Morgan and Mr Horace Nip and Mr Kong of COLI, perhaps with Mr Wu as well.

He thought that he had left the meeting earlier than the others and had returned to the JP Morgan offices so that he could prepare other documentation that was required in the procedures for a placement. At that time he thought that if the share price of COLI was not too volatile the placement deal could be done.

E-mails : 9:13 am and 11:24 am.

114. Mr Long confirmed that he had been copied with the e-mails from Mr Fang Fang to Mr Horace Nip at 9:13 am and 11:24 am on 26 January 2004 in which the issue of previous breaches of regulatory requirements by COLI was addressed. In the latter e-mail, Mr Fang Fang had resolved the question of earlier breaches : “Let’s move on.” He understood that to mean that the due diligence exercise was fine. He agreed that subsequently he had received an e-mail sent at 11:46 am from Mr Horace Nip addressing changes to documentation, he thought to the placing agreement.

115. Mr Ian Long agreed that in his record of interview of 9 June 2005 he had said that on 26 January 2004 he had had a face-to-face talk with Mr David Tsien about the details of the COLI placement whilst they were in the office :

“At that time I told David Tsien that Horace Nip (from China Overseas-it should be him) indicated to me that morning (around 11:00 a.m. to 12:00 p.m.) that China Overseas would like to do a placement but do not know the exact time, I also told David Tsien that Rupert Fane and colleagues of the Corporate Finance Department would conduct due diligence exercise in respect of the deal on that day.”.

116. In his testimony, Mr Ian Long said that he thought that he had spoken to Mr David Tsien after he had left the due diligence exercise at COLI while it was in progress and agreed that it was a safe assumption to make that this conversation with Mr David Tsien has taken place prior to noon that day. He had told him that the price range was \$1.60 to \$1.80 and that the size of the deal could be 800 million shares. He agreed that this was a conversation that could have taken place at the pantry between the secure area of ECM and the public

area, including Sales. He agreed that there was a second occasion on which he had conveyed the same information to Mr David Tsien and accepted that probably happened as described in his record of interview, namely that he had walked over to Mr David Tsien's seat in order to give him that information.

E-mails :

2:33 pm.

117. Mr Ian Long confirmed that he had sent an e-mail to Mr Horace Nip, copied to Ms Connie Chiang, whom he thought was a COLI lawyer, at 2:33 pm in the text of which is said :

“Currently drafting in the greenshoe language.”.

118. He explained that meant an option for the underwriter to sell more COLI shares if there was demand.

3:11 pm.

119. He said that a response received by e-mail from Mr Horace Nip at 3:11 pm merely clarified that provision. He agreed that by this stage the agreement with COLI was being discussed in a lot of detail.

The COLI/JP Morgan meeting at JP Morgan offices - 4:00 pm

120. Mr Ian Long said that he was probably present for part of the meeting held with Mr Horace Nip and Mr Kong of COLI at JP Morgan offices at 4:00 pm on 26 January 2004. He thought Mr Rupert Fane, Mr Fang Fang and Mr Edmund Ho were present on the JP Morgan side. He understood that JP Morgan were trying to agree to the target price of \$1.80 per share set by COLI.

The signing of the agreement : 6:00 pm

121. Mr Ian Long said that he was aware that the agreement itself between COLI and JP Morgan was signed at 6:00 pm. He said that he was aware that there was a high likelihood of that happening when the deal was launched.

Faxed drafts of the announcements sent to the SEHK : 17:05; 17:38 and 6:42.

17:05.

122. Mr Ian Long said that he had not previously seen the draft of the proposed announcement in respect of the placement that bearing the fax transmission date/time of 17:05 hours on 26 January 2004. However, he confirmed that it was blank as to the price per share and referred to a placement of 900 million shares. He agreed with the suggestion that it followed that the agreement was still a “work in progress”.

17:38.

123. Similarly, he confirmed that whilst a further draft of the announcement bearing the fax transmission date and time of 17:38 hrs on that date remained blank as to the price per share and referred to 850 million placement shares.

18:42.

124. It was not until the draft bearing the fax data transmission time of 18:42 on that date that price and volume had crystallized, namely \$1.80 per share for a placement of 850 million placement shares.

125. Mr Ian Long agreed with the suggestion put to him by Mr Chang that before 4:00 pm on 26 January 2004, in particular before the “book building exercise” began there was no degree of certainty that the placement would go ahead. Similarly, he agreed that it was not until 4:00 pm, that the closing price of COLI shares was established. That was relevant to the discount offered in

the placement shares. Finally, he agreed that even if COLI had determined to proceed with the placement there was no certainty that it would proceed because that required agreement in addition from JP Morgan. Relevant to that issue was that JP Morgan underwrote the placement.

Allotment of shares in the placement.

18:09.

126. Mr Ian Long said that he was not involved in the allotment of shares in the placement, that was a matter for Mr Rupert Fane and Mr Stefan Weiner. However, in cross-examination by Ms Ismail in respect of his conversation with Mr David Tsien at 6:09 pm on 26 January 2004 he agreed that they had discussed the issue of the size of the allotment to JFAM. The issue discussed arose from the fact that JFAM was already a substantial shareholder of COLI, with the result that in the allotment they could only be allocated a certain amount of COLI shares. For his part, he was offering to assist Mr David Tsien in calculating the maximum permissible size of the allotment of shares to JFAM.

Mr Horace Nip Yung Wing.

Background.

127. Mr Horace Nip is currently the General Manager of the Finance and Treasury Department of COLI, which company he joined in early 2002 leaving in October 2004 before he rejoined in August 2006. In January 2004, he was an executive director and deputy financial controller of COLI.

Records of interview and a statement.

128. He identified as true and correct to the best of his knowledge and belief a statement that he had signed to that effect, dated 10 May 2005, and two transcripts of records of interview conducted of them dated 27 June and 15 July 2005. He confirmed the truth of his assertion in his statement that in January

2004 he reported to the company's then Financial Controller, Mr Wu, and to the Vice-Chairman, Mr Kong his reports to the former were in relation to matters related to accounts and to the latter in respect of banking and funding. At that time, Mr Sun Man Kit was the Chairman.

Mr Horace Nip's relationship with Mr David Tsien.

129. Mr Horace Nip testified that he had come to know Mr David Tsien as an employee of JP Morgan about a year before January 2004 when he met him together with analysts from JP Morgan. He agreed that in his statement he had said that Mr David Tsien had first contacted him in April 2003.

Mr Horace Nip's relationship with Mr Raymond Ngai.

130. Mr Horace Nip said that the employee of JP Morgan with whom he was most familiar with was Mr Raymond Ngai, whom he had met in mid-2002, and with whom thereafter he had an ongoing relationship as a result of Mr Raymond Ngai's role as an analyst of JP Morgan, in particular preparing reports on COLI.

Mr Horace Nip's relationship with Mr Steve Luk of JFAM.

131. Mr Horace Nip said that he had known Mr Steve Luk of JFAM for about a year prior to January 2004. He was not sure if he had been introduced to him by Mr David Tsien or whether or not they had all had a meal together. He knew JFAM to be a shareholder of COLI but he was unable to recall the circumstances in which they had become shareholders. As he recalled, at some stage either JP Morgan or JFAM or a combination of the two had disclosed that they held more than 5% of the shares of COLI.

Mr Horace Nip's relationship with Mr Edmond Leung of ABN AMRO.

132. Mr Horace Nip said that he was not sure if he knew Mr Edmond Leung in January 2004.

Capital fundraising.

133. Mr Horace Nip agreed that in his statement he had said that at the end of 2003 COLI had been approached by several investment banks who proposed that the company should raise capital by placing shares were at issuing convertible bonds. He agreed that he had reported those approaches to Mr Kong who declined to consider the proposals.

5 January 2004

09:15 (HN : DT - voice message).

134. Mr Horace Nip identified Mr David Tsien's voice on his mobile telephone voice-mail system in which Mr David Tsien left a message reminding him that they were having lunch that day, confirming that he together with Steve Luk, Ernest and Raymond would attend that lunch at the Golden Leaf restaurant. Mr Horace Nip confirmed that was a restaurant he knew to be in the Conrad hotel. Even having been reminded that, in a letter of 6 October 2004 to the SFC, JFAM had confirmed the attendance at that lunch meeting of those persons, save for "Ernest", Mr Horace Nip said that he could not remember if such a lunch meeting had taken place.

15:35 (HN : DT).

135. Mr Horace Nip identified his voice and that of David Tsien on a recorded telephone conversation at 15:35. In the telephone conversation, Mr Horace Nip enquired of Mr David Tsien :

"Is there any chance to have a drink with you in these 1 or 2 days to have a chat, about what was discussed earlier."

Mr Horace Nip went on to add :

"I said that we would discuss that first internally, then (we would see) how we would discuss with you."

136. Mr Horace Nip said that it might have been the case that was a reference to discussion about whether COLI would have a placement. In his oral testimony, he explained that the company was not then in need of money, although after the placement it would be in a position of “net cash”, so the issue of the pricing of the placement was “ ... a very important factor for us to consider”. In cross-examination by Mr Chang, he explained that even before the placement COLI’s net gearing was also very low. Of the timing of the placement he explained that, whilst there might be no urgency for a company to make a placement, if a company waited until it needed to do a placement it might not get the money that it wanted. As a result, if the price was “Okay” it would be a chance to consider a placing. The telephone conversation ended with Mr Horace Nip agreeing to Mr David Tsien’s suggestion that they meet at 5:00 pm that day at the Hong Kong Club.

Meeting at the Hong Kong Club.

137. Mr Horace Nip said that he had met Mr David Tsien at the Hong Kong Club, at which meeting he thought, although he was not sure, that Mr Raymond Ngai was present. The terms of a potential placement were discussed, although he could not remember the details of that discussion.

6 January 2004.

(i) 10:10 am (HN : DT).

138. Mr Horace Nip identified his voice and that of Mr David Tsien in a recording of a telephone conversation that he had initiated at 10:10 am on 6 January 2004. He explained that his references in the telephone conversation to “Chief Ng” and “Hung Hing” were references, respectively, to Mr Wu and Mr Kong and the fact of his report to them of his discussions with Mr David Tsien on the previous day. Mr Horace Nip said to Mr David Tsien :

“Regarding this, David, when I come back, I have to think it over again. Basically, I’ve reported to Chief Ng (Wu), but have not reported to Chief Kong, so basically Chief Kong would follow that up.”.

139. He agreed that in the course of the conversation he had said :

“... I have to talk with Chief Kong before there can be a very firm decision for you, but that should not be any problem, but, at the same time, before that I would ask Raymond to do something.”.

140. In his testimony, Mr Horace Nip said that that was a reference to Mr Raymond Ngai, the analyst at JP Morgan, to whom he wished to give updated information about COLI and its future development. In the telephone conversation Mr David Tsien responded by saying :

“ ... What is most important is the NAV, if it can be upgraded (interjection by Mr Nip) ... then, that is, it can be done far more effectively with less effort.”.

141. Mr Horace Nip went on to enquire of Mr David Tsien whether or not, if he had a meeting with the latter’s colleague, he would be required “.. to talk about the price in the meeting” or whether the meeting was “purely for an indicative purpose”. Mr Horace Nip explained in his evidence that at this stage :

“ ... we are bargaining with each other. I just want to have a clear indication from the other side whether it can be done and what would be the price, so that I can report to my boss and see if he is interested and whether he has a firm decision. In these conversations I felt that it was not firm yet.”.

(ii) 12:28 (HN : DT).

142. Mr Horace Nip identified his voice and that of Mr David Tsien in a recording of their telephone conversation of 12:28 on 6 January 2004. In the conversation Mr David Tsien indicated that he wished to re-introduce him to Mr Ian Long, a colleague at Goldman, whom he described as very experienced in working mainly on share placements and CBs. Mr Horace Nip informed Mr David Tsien that he had met Mr Ian Long previously in Shanghai. Mr David

Tsien went on to state that the Chalco placement of that day had been at a discount of 8%, observing :

“You may have to go for a bit higher discount”,

but adding :

“this can be discussed when it is actually started off.”.

143. Mr Horace Nip agreed with Mr David Tsien’s suggestion that he give Mr Horace Nip’s mobile telephone number to Mr Ian Long and invite him to contact him. He was not sure if Mr Ian Long had telephoned him after that conversation with Mr David Tsien but went on to say that Mr Ian Long had sent him an e-mail with placement documents and asked him to ask his lawyers to look at them. In response to counsel’s enquiry as to whether or not he gathered that Mr Wu and Mr Kong wished to do the placement quickly once the price was agreed Mr Horace Nip said : “ ... we were still talking about price. There was quite a difference from the target of the boss.” Mr Horace Nip explained that his affirmative response to Mr David Tsien’s enquiry as to whether COLI was serious about doing the placement was merely part of bargaining on his part.

(iii) 15:14 (HN : DT).

144. Mr Horace Nip identified his voice and that of Mr David Tsien in the recording of the telephone conversation that he had initiated with Mr David Tsien at 15:14 on 6 January 2004. He agreed that at the outset of the conversation they had discussed the market reaction to a placement by Chalco that morning. Mr Horace Nip told Mr David Tsien :

“ ... well, David, that is, I have basically mentioned that, that is, Chief Ng, Chief Kong basically felt that if it was like those, there would not be any problem, but I have also asked Ian to have a drink with me later at 5:30 to have a chat.”.

He went on to say :

“ ... I want to emphasise one thing and that is to say, all of us have some targets, but when can they be hit? All of us do not know. Yea, we, that is,

have to see how the market will go, right? It would be best for the preceding ground work to be done as soon as possible ... ”.

145. He explained that was a reference to the “target price” set by COLI for the placement shares. Of the speed at which JP Morgan were addressing matters, he went on to tell Mr David Tsien that Mr Ian Long had said “... see you next week” and, in the context of writing an updated report, Mr Raymond Ngai had indicated that he wished to visit one of COLI’s property sites. In the context of whether or not JP Morgan was sincere in wishing to do a placement for COLI, Mr Horace Nip observed :

“ ... you said that you would only go to look at property site after the New Year and then issue the report, while Ian talked about meeting us next week.”.

(iv) 17:21 (HN : DT).

146. Mr Horace Nip identified his voice and that of Mr David Tsien in a recorded telephone call initiated by the latter at 17:21 on 6 January 2004. At the outset, Mr David Tsien told him : “Ian has told me the whole story.” He went on to say, in the context of orders : “... I told them and they’re very interested in doing it.” Mr Horace Nip said in his testimony that he understood that to be a reference to potential investors. Mr David Tsien went on to recommend :

“But I want to suggest that we go for the equity issue first. For the CB issue, if you want to do it, it can be done very quickly ... ”.

147. In his testimony, Mr Horace Nip said that he presumed the reference to an “equity issue” was a reference to a placement. Mr Horace Nip said that he understood from several of his closing remarks that Mr David Tsien was indicating that he would rather do the deal in January. The telephone conversation concluded with Mr Horace Nip asserting and Mr David Tsien agreeing that what was most important was the price.

7 January 2004.

(i) 11:33 am (HN : DT).

148. Mr Horace Nip identified his voice and that of Mr David Tsien in a recording of a telephone conversation that he had initiated at 11:33 am on 7 January 2004. At the outset, Mr David Tsien enquired about “the talks yesterday”, which he took to be a reference to his conversation with Mr Ian Long. Mr Horace Nip replied : “Quite good, mainly talking about the details.” However, Mr Horace Nip said that he could not recall whether he had indicated to Mr Ian Long that COLI wanted a placement price of \$1.80 for a placement of between 800 and 850 million shares.

Issue : Disclosure by COLI by an Announcement.

149. Mr Norace Nip went on to tell Mr David Tsien that he had attended a meeting that day with HSBC about undertaking restructuring, in which HSBC would act as COLI’s financial adviser. Mr Horace Nip agreed that an announcement of COLI dated 19 January 2004 and published on 20 January 2004 addressed the issue of “Possible re-organisation of construction related business.” Mr Horace Nip confirmed in cross-examination by Ms Ismail, that was the matter that he had revealed to Mr David Tsien in referring to a meeting with HSBC and explained a subsequent interchange in the telephone conversation, in which he had told Mr David Tsien :

“I feel that there is a need for, may be a need for disclosure first because those agreements which you people have signed have to be disclosed by us”.

Mr David Tsien agreed with his assertion “... I cannot disclose them to you unilaterally.”.

150. Mr Nip said that in making the disclosure to Mr David Tsien he might have been disclosing public price sensitive information and that in so doing he accepted to some extent he trusted him not to disseminate the information. He explained that his lawyers had advised that it would not be appropriate, if the

placement went ahead, to disclose this matter in due diligence if it was not disclosed to the public.

Issue : price of the placement shares - market price.

151. Later in the conversation, Mr Horace Nip told Mr David Tsien :

“... but the biggest problem is the price. Now that the price has not come to our target level ...”.

Mr David Tsien responded : “The most important thing is the price ...”. Later,

Mr David Tsien added :

“Yeah, but the price -- even at your price, we are also interested, but if the price -- i.e. if talking about the price, it has got to go to about \$1.90 to \$2.0.”.

Mr Horace Nip responded :

“Yeah, this has to be, it has to be”

adding :

“ ... understood absolutely. But the problem is my boss has his own way of thinking; ... ”.

He added :

“Because to him, the most important thing is you have to respect your feeling about the market, and whether you have confidence. If the deal falls through just because a difference of five cents, I don’t think so ... ”.

152. Of his agreement as to the price level to which it was necessary that the shares of COLI reach, Mr Horace Nip explained in evidence :

“As I have said, Mr Kong indicated he is not interested if the price is lower than HK\$1.80. At that time the market situation, there would be about 8% to 10% discounts for doing placement. So we are doing some calculations. When the price go up to about 1.9 to 2, then we work out the discount and then the actual price would be not less than 1.8.”.

153. The conversation ended with Mr Horace Nip repeating his initial statement that his discussions with Mr Ian Long had gone very well, that he would contact him and with him saying :

“Now, I know how to talk to Kong about it.”.

154. In cross-examination by Mr Chang, Mr Horace Nip agreed that the reference in the text to his having talked to Mr Ian Long about convertible bonds accurately reflected that fact. He said that he had provided the SFC with some e-mails in which Mr Ian Long had sent him documents related to convertible bonds. He believed the JP Morgan had recommended convertible bonds when the level of the placement price for COLI shares did not satisfy his bosses target price. However, he said that they had not gone into detail with JP Morgan about the issue of convertible bonds.

(ii) 11:53 am (IL : DT).

155. Mr Horace Nip identified Mr David Tsien's voice in a recorded telephone conversation at 11:53 am on 7 January 2004 but said that he was not sure if the other speaker was Mr Ian Long. That speaker said : "He was telling me 180". For his part, Mr Horace Nip said that he could not recall if he met Mr Ian Long and therefore was unable to say whether or not he had told Mr Long that COLI's price for placement was \$1.80 per share.

(iii) 15:13 (HN : DT).

156. Mr Horace Nip identified his voice and that of Mr David Tsien in the recording of a telephone conversation that he had initiated at 15:13 on 7 January 2004. At the outset Mr Horace Nip informed Mr David Tsien :

" ... I made a report to "Chief Hung" just now ... basically he is pretty supportive."

Mr Horace Nip explained that was a reference to having reported to Mr Kong, who was supportive of continued negotiations in respect of the placement.

157. In response to Mr Horace Nip's enquiry as to when it would be more appropriate to meet the staff at JP Morgan, Mr David Tsien responded by suggesting : "After Chinese New Year", explaining that before that time there

would be no time to do a “Roadshow”. Having said that he had spoken to some clients, Mr David Tsien said of the issue of price of the placement shares :

“... in the case of the price you people mentioned ... it can’t be done at that price at the moment.”.

In particular he said :

“I have checked with JFAM ... as far as JFAM is concerned, it consider only if it is below a dollar sixty.”.

Mr Horace Nip responded :

“ ... at the end of the day, I don’t think my bosses will stop doing the stuff just because of a few cents.”.

158. Nevertheless, Mr Horace Nip answered in the affirmative Mr David Tsien’s enquiry : “ ... he is still talking about \$1.80?” Mr Horace Nip reaffirmed his negative view about the placement proceeding at that price :

“At this price, I think the possibility of getting it done is very small.”, explaining that at the current share price that was no discount for the placement price of \$1.80.

159. Of Mr David Tsien’s observation, “If it’s all made public, it will be troublesome”. Mr Horace Nip said that he understood that if people in the market were canvassed for their views as to price but the placement did not take place it might cause an adverse effect in the future when the company sought financing. Of the issue of the timing of the placement of shares, Mr David Tsien noted :

“Well, on the 26th day -- this year most people would be here, most clients will be here, because there are many, many ... new issues to handle.”.

160. In his testimony, Mr Horace Nip agreed that he understood Mr David Tsien to be saying that 26 January 2004 was the best time to do the deal.

Issue : the placement and market prices.

161. Of the issue of the placement price, Mr David Tsien suggested :

“So a good price will be near two dollars, between a \$1.90 and two dollars.”.

Of the prospects in that event, Mr David Tsien added :

“If it reaches two dollars, the possibility of a \$1.70 or a \$1.80 will be higher than now.”.

By way of contrast, Mr David Tsien suggested :

“If the share price is around a \$1.80, it will probably be \$1.60 only.”.

In conclusion, Mr David Tsien observed that if the share price reached two dollars : “Raymond should really update its price.”.

7 January 2004 : e-mail.

162. Mr Horace Nip confirmed that he had received an e-mail bearing the time and date 4:03 pm on 7 January 2004 from Mr Ian Long. Mr Ian Long referred to having met Mr Horace Nip the previous day and attached a sample of the general form of a Placing/Underwriting Agreement and an Announcement, stating that he would send a specific placement/underwriting agreement the next day. Mr Horace Nip identified those documents as bearing the handwritten date 7 January 2004 and agreed that the reason the document was blank in this respect including as to placing price was that the parties were still in the “bargaining stage”.

8 January 2004 : e-mail.

163. Mr Horace Nip confirmed having received an e-mail from Mr Ian Long bearing the time and date 1:55 pm 8 January 2004 to which was attached and “Updated Placing Agreement”. That document had not been provided to the SFC and Mr Horace Nip was unsure of whether a copy still existed. He was unable to assist as to any difference between it and the earlier version of the document. In the text of the e-mail, Mr Ian Long suggested that it would be helpful, “for lawyers to look at the document, so that we can get to an agreed form of the placing agreement”. However, Mr Horace Nip said that the

document had not been passed to COLI's lawyers because negotiations were only at the "bargaining stage".

9 January 2004.

(i) 10:18 am (HN : DT).

164. Mr Horace Nip recognized his voice and that of Mr David Tsien in a recording of a telephone conversation begun at 10:18 am, 9 January 2004. Mr David Tsien informed him that he had spoken to senior management in his company and that a colleague of his would be giving him a price for the placement shares directly that day. In response to Mr Horace Nip's observation, that the share price then was "a low price at 168 now" it was agreed between the two of them at such a price was "indicative" only, namely one at which JP Morgan was "comfortable". For his part, Mr Horace Nip informed Mr David Tsien :

"... I am still looking at the materials Ian gave me ... He has also sent them to be read by my lawyer, and he is yet to revert. Well, of course the contents are standard, and I'm not too worried."

He went on to say :

"I am always saying that, that is, it seems that were not totally ready yet, including me, thinking next -- the announcement will only be published next Monday at the earliest ...".

(ii) 10:24 am (HN : DT).

165. Mr Horace Nip identified his voice and that of Mr David Tsien in a recording of a telephone conversation at 10:24 am on 9 January 2004, which call had been initiated by Mr David Tsien. Having told Mr David Tsien that he had just missed his call, Mr Horace Nip went on to say :

"I just talked to Chief Ng, it seems that you contacted him too ...".

In fact, Mr David Tsien had spoken to Mr Wu in a telephone conversation at 10:13 am. He explained to Mr Horace Nip that he had been unable to find him, but confirmed "Yep, I told him". Having remind Mr Horace Nip that he would send a colleague over to COLI, he went on to say :

“Today -- look, I’m not supposed to know this, why? A deal done by the big firm, we are being considered as the public side ... (Nip : OK, yes). We are not supposed to know anything (Nip : yep, yep,yep). You just treat me as not knowing anything, okay? (Nip : Yep, yep, yep) Look, let me tell you, I would like to tell you that, we will get the price today.”.

166. The conversation concluded with Mr David Tsien agreeing to Mr Horace Nip’s suggestion that at this stage these matters ought not to be put down in “black and white”.

E-mails.

(i) 11:46 am.

167. Mr Horace Nip confirmed that he had received an e-mail bearing the time and date 11:46 am, 9 January 2004 from Mr Ian Long to which was attached a sample Announcement, in the text of which e-mail Mr Ian Long had said :

“Look forward to see you later at 5:00 p.m. for a due diligence session.”.

(ii) 1:19 pm.

168. In Mr Horace Nip’s reply by e-mail to Mr Ian Long at 1:19 pm on 9 January 2004 Mr Nip said :

“As said, it may be better if we get ur indicative price before going for a dd or not this afternoon though in fact 5 is ok to me.”.

169. In his testimony, Mr Horace Nip confirmed that no “due diligence” exercise had taken place that day.

(iii) 8:23 pm.

170. Mr Horace Nip confirmed having received an e-mail later that same day, bearing the time 8:23 pm, from Mr Ian Long in which the latter had provided an attachment addressing the issue of convertible bond pricing, stating in the text that there was an indicative pricing sheet for his reference. Mr Horace Nip said

that he could not recall now why it was that Mr Ian Long had provided this information and confirmed that the COLI's interest was in a placement of shares. He said that he did not believe that Mr Ian Long had provided an "indicative pricing sheet" for placement shares.

15 January 2004.

10:42 (DT : HN).

(i) price of placement shares.

171. Although Mr Horace Nip was not questioned in respect of a telephone conversation that he had with Mr David Tsien at 10:42 on 15 January 2004, the latter confirmed that he had initiated the conversation between the two of them.

Mr David Tsien said :

" ... if you are not satisfied with the price indicated by me to you, we can discuss the price because my client is willing to pay a bit more."

In response to Mr David Tsien's express concern, "If you really do that I hope you would consider appointing us". Mr Horace Nip reassured him :

"Yes, definitely, definitely."

He went on to say:

"Don't say ' ... I won't talk to you guys', simply because of the price."

(ii) timing of the placement.

172. Of the timing of a prospective placement, having pointed out to Mr Horace Nip that in Hong Kong a top-up placement was done on the basis of "T plus 2" Mr David Tsien said :

"So, no matter what, it cannot be done on the 21st. You know there will be a three-day holiday. Then it will take a long time to settle."

173. Having indicated that he understood what he was being told and that he agreed to Mr David Tsien taking leave on the 21st, Mr Horace Nip said :

"I think for this matter, we, tentatively, if the market is okay eventually, then actually we will definitely (sic) after the New Year ... since it turns out that we have to clear those matters in the market, we strive to do it on Monday."

For his part, Mr David Tsien said :

“That’s right, that’s ... yep, that’s good.”.

20 January 2004.

(i) 15:50 (DT : IL).

174. Mr Horace Nip identified the voices of Mr David Tsien and Mr Ian Long in a recording of a telephone conversation at 15:50 on 20 January 2004. At the outset of the conversation Mr Ian Long had informed Mr David Tsien that he had spoken to “your friend” and had been told that he had spoken to Mr Wu, from whom he had obtained feedback that :

“ ... We think we can do a deal about 170.”.

175. In his testimony, Mr Horace Nip said that that was “probably” the situation at that time. Of Mr Ian Long’s subsequent statement, “... Wu Jian is only interested in recommending to Kong if we can do a deal above 170”, Mr Horace Nip said that he believed that to be Mr Wu’s position.

Events at 5:00 pm

176. Mr Horace Nip agreed with the description of events, described in a letter from COLI’s solicitors, Deacons, to the SFC of 30 September 2004 of events that had occurred at around 5:00 pm on 20 January 2004. Firstly, that COLI had not responded to an offer made by Hong Kong Bank to do a placement of COLI shares at \$1.60 per share. In his testimony, Mr Horace Nip agreed that the main reason for failing to reply was because of the proposed price. Secondly, he agreed that at 5:00 pm Mr Ian Long had suggested to him that :

“ ... there should be a good chance of doing a placing of shares in COLI at a much higher price than before since the shares of COLI closed at \$1.97.”.

177. In his testimony, Mr Horace Nip said that he had reported that to Mr Kong, but he believed not to Mr Wu. He said that Mr Kong agreed to the proposal and, for his part, he transferred the documentation about the placing to COLI's solicitors, JSM. He could not recall if he had told Mr Ian Long that Mr Kong had given the "green light" to doing a placement, but he believed that he had done so.

178. In cross examination by Mr Chang, Mr Horace Nip said that it was impossible for him to remember now whether at this time he had agreed with Mr Ian Long a placement price of \$1.80 and the volume of shares to be available. He emphasised that he was not the one to make the final decision, that was Mr Kong. However, he understood Mr Ian Long to be saying that now he believed it was possible to reach the placing price, namely \$1.80, that COLI wanted.

E-mails.

6:17 pm (HN : IL).

179. Mr Horace Nip confirmed that he had sent an e-mail at 6:17 pm on 20 January 2004 to Mr Ian Long in which he had informed him that he was waiting for material from Mr Long, explaining the accompanying text as meaning that he wished his secretary to pass that material to COLI solicitors upon receipt.

6:25 pm (IL : HN).

180. Mr Horace Nip identified an e-mail to him from Mr Ian Long bearing the time 6:25 pm on the 20 January 2004, to which Mr Ian Long attached a draft Placing Agreement and a draft Announcement. In the text, Mr Ian Long stated :

"As per conversation, I have attached the new documents for your review. If it is okay with you, I would like to set up a due diligence meeting with you on the 26 January at 10 am at your office?"

181. Mr Horace Nip agreed with the description in the chronology provided by Deacons to the SFC that at 6:25 pm, on receipt of the Placing document and the Announcement from Mr Ian Long those documents had been passed to JSM right away. In his testimony, Mr Nip agreed that he had instructed JSM to respond by 26 January 2004. Also, he confirmed that Mr Kong had agreed to the proposed due diligence meeting.

7:15 pm (HN : IL).

182. Mr Horace Nip confirmed that he had responded to Mr Ian Long by an e-mail of 7:15 pm on 20 January 2004 confirming the proposed meeting.

9:43 pm (IL : HN).

183. In an e-mail bearing the time 21:43 from Mr Ian Long to Mr Horace Nip the former addressed the fact that the COLI shares were held in script form and needed to be deposited with Hong Kong CCASS for settlement purposes. Mr Horace Nip said that he thought that this time of the evening he would no longer be in his office, but he confirmed that he had received the e-mail because he had provided copies to the SFC.

9:45 pm (Raymond Ngai : HN).

184. In an e-mail of 9:45 pm on 20 January 2004 from Mr Raymond Ngai and Mr Douglas Sung to Mr Horace Nip the fact of COLI's announcement of a "Proposed Re-organisation of its Construction Business" and the consequences were addressed and a file attached. Of COLI, the writers noted :

"We believe re-rating will continue to about 20x PE, at par of its earnings growth rate. Hence, we raised our target price by 42% to HK\$2.35. Upside is 30% from the current level. We maintain overweight and expect re-rating to continue."

185. When asked, firstly in evidence in chief and secondly in cross-examination by Ms Ismail, if he was able to identify an expression of a “target price” of \$2.35, in two differently worded reports of JP Morgan COLI dated 20 January 2004 Mr Horace Nip indicated that he was unable to do so, although he accepted that in both of those reports the NAV was stated to be \$2.06.

21 January 2004.

186. In his testimony, Mr Horace Nip agreed with the description made in the letter by Deacons to the SFC that on the afternoon of 21 January 2004 Mr Fang Fang had told him that Mr Kong had agreed to proceed with due diligence on 26 January 2004. He said that he knew Mr Fang Fang to be Managing Director of Corporate Finance of JP Morgan and said that he had lunched with him and Mr Kong on an earlier occasion. As he understood it, this was Mr Fang Fang’s first involvement in the placement negotiations between JP Morgan and COLI, although he did not know if there had been any direct communication by him with Mr Kong or Mr Wu. Mr Fang Fang had called his mobile telephone whilst he was playing golf and informed him of his conversation with Mr Kong. Because he was playing golf, the conversation was short. He thought that the call had been initiated in order that Mr Fang Fang could let Mr Horace Nip know that he was in direct contact with Mr Kong.

22 to 25 January 2004.

187. Mr Horace Nip confirmed that the Lunar New Year holidays occurred on 22-25 January 2004. As he recalled he had no communications with the staff of JP Morgan during that period. Also, Mr Kong and Mr Wu were on leave.

26 January 2004.

E-mails.

(i) 8:48 am.

188. Mr Horace Nip confirmed that he received an e-mail from a solicitor at JSM dated 8:48 am 26 January 2004 addressing the draft Placing Agreement and draft Announcement provided to them on 20 January 2004. The text stated that a copy of the draft Agreement marked with preliminary comments was attached for discussion prior to a meeting with representatives of the prospective placing agent.

(ii) and (iii) 9:13 am and 10:41 am.

189. Mr Horace Nip confirmed that he had received e-mails from Mr Fang Fang bearing the times 9:13 am and 10:41 am, which e-mails were copied to Mr Ian Long, in which Mr Fang Fang addressed the issue of technical breaches of stock exchange rules by COLI.

10:00 am - Due diligence.

190. Mr Horace Nip confirmed that the due diligence meeting, arranged on the evening of 20 January 2004 by him with Mr Ian Long, had taken place at 10:00 am on 26 January 2004 in the offices of COLI. He agreed with the description of that meeting in the letter of Deacons to the SFC, namely that the meeting had lasted about one hour and that he had been present together with Edmund Ho, Ian Long and Ben Koay of JP Morgan. He could not remember if Mr Ian Long had left during the meeting. Of his view, at the end of the due diligence meeting, of the prospect of the placement taking place Mr Horace Nip said :

“I thought that it would have a good chance but I understand the situation that we cannot tell until the document is signed.”.

191. In answer to a question from the Chairman, Mr Horace Nip said of the mood of the parties at the due diligence exercise that there was “nothing special”. No difficulties were encountered in giving JP Morgan information about the company’s business and financial position. Mr Horace Nip said that he could not recall telling Mr Ian Long at about 11:00 am on 26 January 2004 that COLI would like to do a placement deal.

11:30 am - 3:30 pm.

192. Mr Horace Nip agreed with the description made by Deacons of the discussions between COLI, JP Morgan and their lawyers between 11:30 am and 3:30 pm as merely addressing minor drafting issues in the agreement.

2:30 pm - 3:30 pm : COLI board meeting.

193. In his testimony, Mr Horace Nip said that he and Mr Kong were present at a board meeting of COLI held by telephone on the afternoon of 26 January 2004 at which it was resolved to approve the placing, underwriting and subscription agreement for 850 million shares at \$1.80 per share. The minutes of that board meeting confirmed the attendance of Mr Horace Nip and Mr Kong at the meeting, which Mr Kong is described as having chaired. He said that he had notified the company secretary to prepare the minutes for the board meeting because, “we have a good chance to proceed with the placing”. In response to the suggestion that prior to the meeting Mr Kong had accepted a placement of 850 million shares at \$1.80 per share Mr Horace Nip said :

“I believe he has agreed in principle.”.

4:00 pm onwards.

194. Mr Horace Nip agreed with the description in the Deacons letter to the SFC that negotiations had taken place between Mr Kong and Mr Horace Nip on the COLI side with representatives of JP Morgan in respect of the terms of the

placement beginning at 4:00 pm on 26 January 2004. In his testimony, he said that he believed Mr Edmund Ho and Mr Fang Fang of JP Morgan were present. He was not sure if Mr Rupert Fane or Mr Ian Long attended those negotiations. JP Morgan was not in agreement with a placement price for the shares of \$1.80. As he recalled, JP Morgan suggested a placement price of \$1.70. The issue of demand from potential institutional investors was not, as he recalled, a problem. Mr Horace Nip said that during the negotiations at the invitation of the representatives of JP Morgan he left the room and discussed the matter further. JP Morgan tried to persuade him to persuade Mr Kong “ ... that HK\$1.70 was the best price.” As agreed prior to the meeting, Mr Kong did not participate in the negotiations and COLI adhered firmly to their position, insisting on a price of \$1.80. Mr Horace Nip said that around 5:00 pm representatives of JP Morgan indicated that they accepted the price of \$1.80. The number of shares available for subscription was fixed at 850 million.

195. Mr Horace Nip said that he had seen Mr David Tsien at the JP Morgan offices during the course of their meeting with COLI, but he could not recall at which point in the meeting that occurred. As he recalled, he did not disclose the progress of the negotiations between JP Morgan and COLI to Mr David Tsien on 26 January 2004.

Draft COLI Announcements faxed to the SEHK.

(i) 5:04 pm.

196. Mr Horace Nip acknowledged that the first draft of an announcement of COLI’s Placing of existing shares and Subscription for new shares sent on the letterhead of JSM to the SEHK bore the fax data transmission time of 5:04 pm, 26 January 2004. He agreed that he and Mr Kong, together with Mr Edmund Ho of JP Morgan, had signed the Agreement itself at about 6:00 pm that day. He explained that it was well known that if the draft announcement was not

submitted to the SEHK before 5:00 pm it could not be cleared before 7:00 pm, with the result that it was likely that dealings in the company shares would be suspended. His boss emphasised that he did not want dealings in COLI shares suspended. He accepted that the draft was blank as to the price of the placing shares and described the volume of shares on offer as being 900 million shares.

(ii) 5:38 pm.

197. A further draft of the announcement from JSM to the SEHK, bearing the fax data transmission time of 5:38 pm, described the number of available shares in the placement as being 850 million, but remained blank as to the placing price.

(iii) 6:45 pm.

198. Finally, in a draft announcement bearing the fax data transmission time of 6:45 pm on 26 January 2004 the price of the placing shares was stipulated to be \$1.80.

Mr Wu Jianbin.

Statement.

199. In his testimony, Mr Wu confirmed as true and correct to the best of his recollection a written statement that he had made dated 13 June 2005.

Background.

200. Since 2001 Mr Wu has been an executive director and Financial Controller of COLI, for whom he began working in 1987. In 2003/4 Mr Kong was the Chairman of the board of directors of COLI and Mr Horace Nip the deputy Financial Controller reporting to both Mr Kong and himself. Mr Wu said that part of his duties involved fundraising for COLI. In that capacity he received approaches from various parties with fundraising proposals, including

JP Morgan. For its part, COLI respected the research reports written by this kind of investor but made its own decisions, its own judgments.

Fund raising.

201. At the end of 2003, the real estate property market in Mainland China was a booming market. However, the financial people within the company did not want to see COLI take on too much liability, so he was alive to an appropriate opportunity to seek fundraising related to shares. That was an ongoing policy of the company. As a result, at the end of 2003 raising funds by the placement of shares was an option that COLI was considering at a target level of over \$1.70 or \$1.80.

202. In answer to the question being posed for the third time, as to whether or not in January 2004 he was aware that Mr Horace Nip was involved in discussions with JP Morgan about a possible placement by COLI, Mr Wu said :

“I should not be aware. I did not have the authorization.”.

203. Of the nature of that authorization, he said :

“It should be after the decision of the board of directors that we can officially enter into the negotiation of terms.”.

Factors relevant to proceeding with a placement.

204. Mr Wu said that there were a number of critical factors to which regard had to be had in determining whether to proceed with a placement :

- (i) the price;
- (ii) the level of discount; and
- (iii) whether success of the placement is secured.

205. Mr Wu said that he believed that he had read the draft “Placing, Underwriting and Subscription Agreement” which bore the handwritten date

“7/1/2004”, which had been attached to an e-mail from Mr Ian Long to Mr Horace Nip. Although he could not recall in this particular case why the documents had not been passed to COLI’s lawyers he said that it might have been the case that one of the factors critical to determining to continue with a placement was not in place.

9 January 2004.

(i) 10:13 am (Wu : DT).

206. Mr Wu testified that whilst he recognized his voice in the recording of a telephone conversation made at 10:13 am on 9 January 2004 he could not recognize the voice of the other person. In the recording, the other person introduced himself as Mr David Tsien from JP Morgan and informed him :

“Today we will have a colleague ... coming to provide a ... provide ... provide you with a price, a price we think it can be done... can can we. We can do very well.”.

207. The caller observed that the timing was in fact very tight and went on to say :

“Instead of dragging on like this, ... How about I putting a price on the desk for ... to have a look?”.

208. The caller went on to tell Mr Wu that he was unable to find Horace and, having asserted that he had “ ... talked with the ... most senior people here” observed :

“That is, because it will become too troublesome after January.”.

20 January 2004.

209. Mr Wu said that he thought he was aware of the fact of the proposal from Hongkong Bank, described in the chronology set out in Deacons letter of 30 September 2004 as a proposal made at about 5:00 pm on 20 January 2004 to do a placing of shares for COLI at about \$1.60. However, he could not recall if

he was aware that on the same day JP Morgan had informed Mr Horace Nip that there was a good chance to do a placement, as COLI shares had closed in the market at \$1.97 that day. Nevertheless, he said that if that was the closing price at that time, “that would be an attractive condition.” He went on to explain :

“According to the price level in our mind we expected the placement can be done at a range of from 1.7 to 1.8. If we do some calculation based on this, closing at 1.97 would be an attractive price level.”.

210. Mr Wu concluded these observations by saying :

“I only mentioned that this would be an attractive price level. Whether this can be done or not we have to go through an internal due diligence exercise.”.

211. Of the issue of whether or not, when informed of this information, Mr Kong had given a “green light” to Mr Horace Nip to proceed with the placement Mr Wu said that for his part he had not been informed of that. He did not recall if he had become aware on the evening of 20 January 2004 that arrangements had been made for due diligence to be conducted at COLI’s offices by JP Morgan on 26 January 2004.

22-26 January 2004.

212. Mr Wu confirmed the account that he had given in his statement of 13 June 2005 that he was on holiday for the Lunar New Year on and between 22 and 26 January 2004, returning to work on the morning of 27 January 2004.

26 January 2004.

213. Mr Wu said that he had participated in a telephone conference conducted by the board of COLI’s holding company around 2:00 pm - 3:00 pm on 26 January 2004. He thought it was then, rather than earlier, that he had learned of the fact of due diligence having been conducted of COLI. He agreed with the determination that was made that the share price of COLI had

reached a level at which it was appropriate to do a placement of its shares. However, the decision to make the placement was one that had to be reached by the boards of both COLI and its holding company.

Mr Kong Qingping.

214. Mr Kong Qingping said that the statement he had made dated 9 May 2005 was true and correct.

Background.

215. He testified that he was now the Chairman of COLI, having being appointed to that position in March 2005. He had been appointed an Executive Director and General Manager of the company in 1997. In 2001, he was appointed its Chief Executive and Vice Chairman.

216. In January 2004, Mr Horace Nip was the Deputy Financial Controller and a director of COLI, reporting to him about financing. Mr Wu was the financial controller and a director. He said that it would be quite normal for COLI to be approached by different investment bankers with various proposals for fundraising.

5 January 2004.

217. Mr Kong said that he did not recall the lunch meeting of 5 January 2004, described in the letter of JFAM to the SFC dated 6 October 2004, in which Mr Steve Luk of JFAM, Mr David Tsien and Mr Raymond Ngai of JP Morgan and Mr Kong and Mr Horace Nip of COLI were described as being present. He had known Mr Steve Luk for about two years prior to that date. He knew Mr David Tsien but said it was difficult to say for how long prior to that date he had known him. He knew Mr Raymond Ngai to be an analyst who wrote reports on companies.

Recordings of telephone conversations between Mr Horace Nip and Mr David Tsien on 5, 6 and 7 January 2004.

218. Mr Kong identified Mr Horace Nip's voice in recordings of telephone conversations with Mr David Tsien on 5, 6 and 7 January 2004. He was not sure if the other voice was that of Mr David Tsien. He could not recall if he had instructed Mr Horace Nip to contact Mr David Tsien to arrange a meeting to discuss placement procedures nor if Mr Horace Nip reported the results of a subsequent meeting at the Hong Kong Club. He said that he could not recall, but that it was possible, that he told Mr Horace Nip the COLI was looking to do a placement of shares in a range of \$1.70-\$1.80 per share. Of Mr Horace Nip's references in some of those conversations to having reported or not to "Chief Kong" he said that he was known by that appellation. In that context, he said that his approval was normally needed for a placement of shares by COLI, although final approval lay with the board of directors of COLI.

Placement price : discount from market price.

219. Of Mr Horace Nip's assertion in the telephone conversation at 15:14 on 6 January 2004 that he and Mr Wu were of the view that if COLI's placement was done in the same way as that of Chalco there would not be any problems, in particular to the fact that Chalco's placement had been done at an 8% discount from the then market price, Mr Kong said that normally the discount was about or within 10% of the then market price.

220. Mr Kong agreed that the discussions in which Mr Horace Nip was involved in the telephone conversations were about the procedures of a placement and should have been done on his instructions. Of Mr Horace Nip's assertion in a telephone conversation at 17:21 on 6 January 2004 that price was the most important factor, Mr Kong said that was "one of the major

considerations”. He agreed with Mr Horace Nip’s description in a telephone conversation of 7 January 2004 of him as being “pretty supportive” of the placement and that the price at which he wanted the placement was \$1.80 per share. He could not recall if Mr Horace Nip had reported to him Mr David Tsien’s assertion in that conversation that if the market price of COLI shares reached two dollars per share then the possibility of a placement in the range of \$1.70-\$1.80 was higher.

20 January 2004.

221. Of the assertion made in Deacon’s letter dated 30 September 2004 to the SFC, that COLI had received a proposal for a placement from Hongkong Bank at \$1.60 per share on 20 January 2004, Mr Kong said that it seemed that such a proposal had been received. Of the assertion that COLI had not responded to the proposal, Mr Kong said that whilst price was one reason for non-response, others included the services of the bank and its knowledge of COLI. At first, Mr Kong said that he did not recall that he had been told that Mr Ian Long of JP Morgan had suggested to Mr Horace Nip that since the closing price of COLI on 20 January 2004 had reached \$1.97 per share, there was a good chance of doing the placement at a much higher price than hitherto. He was probably out of Hong Kong. However, he went on to agree that it was possible that he had received that information and said it was possible that he had given him the “green light” for the placement. He did not recall being aware on 20 January 2004 that arrangements had been made for due diligence to be conducted by JP Morgan at COLI’s offices on 26 January 2004.

21 January 2004.

222. Mr Kong confirmed his description in his statement to the SFC that on 21 January 2004 he had received a telephone call from Mr Fang Fang of JP Morgan, in which the latter enquired if COLI were interested in placing shares

since the market conditions were good, COLI's share price having risen to a high of about two dollars per share. He agreed that the reason that he had referred Mr Fang Fang to Mr Horace Nip to pursue matters was because Mr Horace Nip had been involved in negotiations in respect of the placement from the start.

22-25 January 2004.

223. Mr Kong said that he was on holiday in the Mainland for the Lunar New Year holidays on between 22 and 25 January 2004, returning to work in Hong Kong on 26 January 2004.

26 January 2004.

224. Mr Kong said that he did not attend any due diligence conducted by JP Morgan of COLI on 26 January 2004. Normally that was a matter to be done by Mr Horace Nip. He participated in a telephone board meeting of COLI's holding company in which approval was made for proceeding with the placement. He did not agree that that was merely a formality.

Meeting at JP Morgan's offices.

225. Mr Kong said that he had attended a meeting at JP Morgan's offices on the afternoon of 26 January 2004. It was fixed for 4:00 pm, because the market closed at that time. When it was suggested to him in cross-examination by Mr Chang that that negotiations could only take place after the market closed Mr Kong agreed, in particular that it was only at that stage that the closing price of COLI shares could be fixed. However when it was suggested that without the closing price no agreement could be reached about the placing price Mr Kong said that it was only one of the parameters.

Negotiations.

226. On arrival at the offices he had been greeted by a lot of people, one of whom was a foreigner and others included a Mr Ho, Mr Fang Fang and Mr David Tsien. He said that negotiations had ensued between him, on behalf of COLI and a foreigner and Mr Ho. Translation was made from English to Putonghua and vice versa. Of the suggestion that JP Morgan had indicated that they wanted the placement shares to be offered at \$1.70, he said that was possible because if the price was lower the better the chance to do a deal.

Placement agreement : 6:00 pm.

227. Mr Kong agreed that the placement agreement had been signed between COLI on the one hand and JP Morgan on the other at 6:00 pm on 26 January 2004.

Mr Rupert Fane.

228. Mr Rupert Fane testified that the transcript of a record of interview conducted of him on 20 April 2005 by an officer of the SFC was true to the best of his knowledge and belief.

Background.

229. He now worked in the ECM of JP Morgan in London. In January 2004, he worked in the ECM of JP Morgan in Hong Kong and had worked in the financial services industry since 1994, first as an analyst with Jardine Fleming, then with that entity when it was acquired by Chase and in due course with its merged form with JP Morgan.

230. Mr Rupert Fane said that he knew Mr David Tsien, first at Jardine Fleming and later at JP Morgan, where he was a salesman in the Equity Sales Department. Mr Fang Fang was an investment banker with JP Morgan. Mr

Ian Long worked in the Equity Capital Department of JP Morgan, although he said he could not remember if Mr Ian Long reported to him. Mr Stefan Weiner was head of the Syndicate Department at JP Morgan. Mr Rupert Fane said that he did not know Mr Horace Nip, the finance director of COLI in January 2004, although he said that he had been introduced to the management of COLI during the placement process but he would not have remembered the names of the people he met.

COLI placement.

231. Mr Rupert Fane said that he did not remember who it was at JP Morgan that had the “relationship” with COLI that had led to their contact with JP Morgan in the context of capital fund raising. It was either Mr Fang Fang or Mr David Tsien who had the “relationship”. He said that although he did not remember specifically what his role was in the placing on behalf of JP Morgan, it would have involved “... determining whether or not a deal was possible”. He did not recall receiving feedback from Mr Ian Long about negotiations between JP Morgan and COLI. However, when asked on what information he was able to perform his role in deciding whether or not a deal was possible he said :

“I guess Ian speaking to COLI or Fang Fang speaking to COLI.”.

JP Morgan’s “Chinese Wall” policy.

232. Mr Rupert Fane said that he was sure that in January 2004 there was a “Chinese Wall” policy within JP Morgan Securities which limited the flow of “non-public price sensitive” information between persons working at JP Morgan. However, when asked to look at a document entitled “*Worldwide Rules of Conduct*” provided by JP Morgan he denied having seen it before. Nevertheless, he accepted from the description of the separation between “insider areas” and “public areas” described in paragraph 4.2 of that document

under the title “The Chinese Wall Policy and other information barriers” that the Equity and Capital Markets Department was in the “insider area” and that Mr David Tsien, as a salesman, in the Sales Department ordinarily fell to be considered in the “public area” of JP Morgan. He explained that qualification by saying :

“There are occasions when a person in the public area can be taken over this wall into an insider area.”.

Mr David Tsien’s position.

233. When asked if Mr David Tsien would be considered as being in the “insider area” if he had a relationship with COLI in January 2004 and was informed of negotiations about the placement between COLI and JP Morgan’s ECM Mr Rupert Fane replied :

“Possibly. I guess that would depend on you know, what was the state of negotiations and I guess what was known about them.”.

234. When invited to consider that issue for an employee of JP Morgan, if Mr David Tsien had been informed of the “target placement price” that COLI sought, Mr Fane replied :

“To be honest with you, I do not know the rules well enough to say yes or no. I suppose once the deal is signed and the company has made an absolute determination to go ahead, I guess so, yes.”.

26 January 2004.

E-mail.

235. Although he was named as one of the persons, together with Mr Ian Long, copied in the e-mail from Mr Fang Fang of 11:24 am on 26 January 2004, in which the issue of prior technical breaches of stock exchange rules by COLI had been addressed and of which Mr Fang Fang had concluded “Let’s move on”, Mr Rupert Fane said he had no recollection of the e-mail.

Due diligence : COLI/JP Morgan.

236. Mr Rupert Fane said that he had no memory of being involved in a due diligence exercise conducted by JP Morgan at COLI's offices. He would not normally attend due diligence exercises.

4:00 pm - the meeting between COLI and JP Morgan.

237. Mr Rupert Fane said that although he had a memory of the meeting at JP Morgan's offices with the client, which he thought was in connection with the COLI placement deal, he could remember no specifics of such a meeting.

Signing of the agreement between COLI and JP Morgan.

238. Mr Rupert Fane said that he did not recall the signing of the agreement between COLI and JP Morgan and it was possible that he was not present. Of the issue of whether or not he was the person who determined to accept the placement price to be offered to COLI he said that he could not remember but that he did not have the authority to take an underwriting risk or a risk on a trade like this. At least, he thought that to be the case. He agreed that he would have needed to consult other colleagues.

Allocation of shares in the subscription.

239. Mr Rupert Fane said that he did not recall the specifics of the allocation, which would have been done by the Syndicate desk although he would probably have reviewed it once it had been done. He confirmed that Mr Stefan Weiner was head of the Syndicate desk. He said that amongst the criteria considered in a review of subscriptions were the prior conduct of the applicant, ongoing market interest, whether or not the applicant was likely to be a long-term holder of the stock and whether the application was out of proportion to the orders normally placed by that Fund.

240. In cross-examination by Mr Chang, Mr Rupert Fane said that he did not recall that a draft placing agreement had been sent to COLI by JP Morgan on 7 January 2004. Similarly, he was not aware that about 5:00 pm on 20 January 2004 Hongkong Bank had proposed to COLI doing a placement for COLI of their shares at about HK\$1.60. However, he said that he was aware of talk in the market place that various banks were interested in a placement deal for COLI.

The issue of the likelihood of the placement taking place.

241. Mr Rupert Fane said that he did not recall receiving any “green light signal” from COLI in relation to proceeding with the placement deal with JP Morgan on about 20 January 2004 nor of JP Morgan for its part agreeing a price for the placement of COLI shares on that date. Furthermore, he did not recall Mr Ian Long reporting to him at that time. Mr Rupert Fane agreed with the suggestion put to him by Mr Chang that the mere fact that COLI had agreed to allow JP Morgan to conduct a due diligence exercise did not signify that COLI would proceed with the placement. He said that even after the completion of the due diligence exercise it did not signify that COLI would proceed with the placement deal or with JP Morgan as “Placing agent”. In answer to Mr Chang’s question as to whether it was even possible to start discussing the placing price before the market closed Mr Rupert Fane said :

“I suppose you can discuss anything any time but you are not going to have, I suppose, a substantive conversation about a placement price if the market is still trading. So normally once the market is closed and the closing price is set then you can try to figure out where the seller is prepared to sell.”.

242. Of the stage at which it was likely that the placement price would be agreed between JP Morgan and COLI, Mr Fane said :

“Nothing is likely until -- it sounds ridiculous but I do not think it is likely until they agree. In my experience of these types of deals are that people can walk out at a moments notices when you think you have a deal and they say, ‘You know what, no deal.’ ”.

Mr David Tsien's role in the placement.

243. Mr Rupert Fane testified that he was aware that Mr David Tsien had spoken to market participants about the stock and their appetite for it. However, he could not remember if he had ever considered taking Mr David Tsien “over the wall” for the purpose of a “sounding out” exercise of the market for the placement of COLI shares.

244. He did not recall discussing the issue of taking Mr David Tsien “over the wall” with Mr Ian Long nor did he recall telling Mr Ian Long to keep Mr David Tsien updated on the progress of negotiations between JP Morgan and COLI because Mr David Tsien and Mr Horace Nip of COLI were very familiar with each other in private. He did not recall instructing Mr David Tsien to do anything like that. In re-examination, he answered in the negative when asked whether he would expect equity salesmen to pass on to potential institutional investors how negotiations were going between ECDM and a company. He explained that there was because from what he had been told earlier in his testimony that might constitute “non-public information” and “therefore would not be part of the overall sounding exercise.”.

Mr David Tsien's character.

245. Mr Rupert Fane said that he had known Mr David Tsien for about 10 to 12 years, first at Jardine Fleming and subsequently at JP Morgan. He said that Mr David Tsien enjoyed a “good reputation within the firm” and “worked extremely hard and had a possibly unrivalled understanding of the marketplace”. There was no reason to doubt his integrity.

Mr Stefan Weiner.

246. Mr Stefan Weiner identified as accurate a transcript of a record of interview conducted of him by an officer of the SFC on 5 July 2005 and testified that what he had said in that interview was true and correct to the best of his knowledge and belief.

Background.

247. Mr Stefan Weiner is an investment banker with JP Morgan in London. He joined JP Morgan in 1998 and worked in Frankfurt. Thereafter, he worked with the firm in London from 1999 to 2002 when he came to Hong Kong. He returned to London from Hong Kong in May 2007. In January 2004 he was head of the Equity Syndicate Department of the ECDM of JP Morgan. He was responsible for execution of equity raising, namely the collecting of orders and the allocation of those orders in the process of a placement of shares to potential investors. Mr Rupert Fane was his immediate supervisor with whom he worked quite closely.

JP Morgan's "Chinese Wall" policy.

248. Mr Stefan Weiner said that in January 2004 he would have been aware of all the relevant Chinese Wall policies of JP Morgan. However, when shown JP Morgan's "*Worldwide Rules of Conduct*" he said that he did not recognize that specific document. Having been taken to paragraph 4.2, namely "The Chinese Wall Policy and other information barriers" he agreed that the ECM was regarded as an "insider area". The Equity Sales Department was described as a "public area". He agreed that he understood in January 2004 that the Chinese Wall policy was as described in the *Rules of Conduct*.

Recorded telephone conversations and other events.

9 January 2004.

(i) 9:32 am (SW : DT).

249. Mr Stefan Wiener identified his voice in a recording of a telephone conversation commencing on 9:32 am, 9 January 2004. He presumed that he was talking to Mr David Tsien. Mr Stefan Wiener raised the subject of COLI with Mr David Tsien : “What’s your guess?” In response, Mr David Tsien asserted that JP Morgan was the only House that had done any work for them :

“So, on the back of Raymond Ngai’s report last year we started pushing this stock to \$0.60 ... within a year, it has gone to -- actually the high, it was \$1.80. Okay? December, we did another report. About end of last year, I did two placements for them. This is extension to JFAM. ... JFAM bought 5% of the company by via two crossings and picked up another 2% in the open market ... Now, at the end of December, Raymond Ngai revised upward the NAV forecast to \$1.99 ...”.

Placement of COLI shares.

(a) Price.

250. Mr David Tsien went on to describe having had a lunch with representatives of COLI in which he had responded to their suggestion affirmatively, indicating that JP Morgan would like to do a placement for them. He said that the representatives of COLI had indicated that they wished to do the placement at \$1.80, asserting that was the price at which the share was trading. Of that suggested price, he said :

“So, at \$1.80, basically there’s almost no discount to NAV ... so after lunch time I rang them back. I said, Horace, why don’t I take you to Hong Kong Club, have tea and let me -- so after lunch, I took this guy to tea with Raymond Ngai. I said, look, you guys want to issue 15%, well -- effectively it is new shares, alright.”.

251. Mr David Tsien said that he had gone on to say :

“Let me do it for you because, we -- I am the one that put JFAM on the shareholders’ list. Finally, you’ve got a decent institutional fund manager as a long-time holder.”.

In response to Mr Stefan Weiner's observation : "I mean, my feel is, a trade needs to be done somewhere between \$1.50, \$1.60", Mr David Tsien said :

"That is right. Actually, what I did was, although I was quite adamant that \$1.80 was not doable, I actually approached JFAM, having spoken with Ian ... and we looked at the valuation and basically JFAM bought -- the highest price they paid was \$1.60 ... if you look into it now, if it was done at \$1.80 they definitely don't want it."

Later, he added:

"Basically, what I have done is I approached JFAM all right -- you cannot say this to anybody because I did a placement for them. So, if we are issuing 800 million shares, would you be happy to take up some? They said yes, but at a substantial discount to the market or somewhere below \$1.60 ...".

252. Mr Stefan Weiner enquired of Mr David Tsien :

"What do you feel about -- I like \$1.55. It is 8% discount to the close yesterday and I think, you know, if the NAV is \$1.90, at \$2.20 I think it still leaves some upside ...".

253. Having expressed some agreement to the suggestion of that price, Mr David Tsien responded to Mr Stefan Weiner's suggestion of \$1.50 :

"\$1.50, I don't think they will say yes, because I know the company's Chairman wants \$1.80. The financial advisor said to them, may be \$1.70. If you come to something closer to \$1.60, I think, I think, I'll be happy."

(b) Size.

254. In response to Mr Stefan Weiner's enquiry as to how many such shares JFAM wanted at that price, Mr David Tsien informed him that COLI wished to issue 800 million shares, the equivalent of 15% of the existing issued share capital.

255. Of Mr David Tsien's statement in the course of the telephone conversations that "JFAM bought 5% of the company via two crossings" Mr Stefan Weiner said in evidence :

" ... Effectively what that means is you line up an investor who wants to sell the stock, on the other hand you line up an investor who wants to buy the

stock -- it looks like in this case possibly JFAM -- and effectively place the stock with JFAM.”.

Of the term “crossing” he said :

“That is what you would refer to as a ‘cross’ because you own both sides of the trade.”.

(ii) 9:46 am (SW : DT).

256. Mr Stefan Weiner recognized his voice and that of Mr David Tsien in the recording of a conversation they had at 9:46 am on 9 January 2004. Mr David Tsien informed him that he had just spoken with Mr Steve Luk of JFAM :

“ ... basically, Steve, ... said that at 155 they are very, very interested ... based on yesterday’s closing price.”.

257. He went on to explain that JFAM owned 7% of COLI through a Hong Kong fund, adding :

“Steve said he alone will take at least US\$ 20 million.”.

When asked to repeat Mr Steve Luk’s name, Mr David Tsien responded :

“It’s better if you don’t mention names. As I say, JFAM will at least take 20.”.

He added :

“At the back of my mind, if we do it at 155, I think it’s doable.”.

However, he went on to say :

“But I don’t think they will take 155, but you can give it a try ... then maybe eventually offer them 160, but I think just stay firm at 155 for a while.”.

258. Of Mr David Tsien’s request, to which he agreed, towards the end of the conversation :

“ ... let me know if you are doing it, alright?”.

Mr Stefan Weiner said it was possible that referred to the placement deal between JP Morgan and COLI. In his testimony, he said that if that was the case he did not know why Mr David Tsien requested to be informed.

Placement subscriptions and allocation of shares.

259. Mr Stefan Weiner confirmed his account to the SFC in his record of interview that he had been involved in putting together the first draft of the possible allocations of COLI shares from the list of subscriptions. Although he said that he had no specific recollection of this placement, in general terms he would discuss the matter with others including Mr Rupert Fane, Mr Jonathan Back or Mr Andrew Cooper and the ultimate decision could best be described as a “Group decision”.

Subscribers for the placement.

260. A list of the subscribers to the placement was attached to the statement dated 13 February 2009 of Mr Andrew Lau of JP Morgan. ABN AMRO Asset Management HK are described as having applied for 9 million COLI shares and Jardine Fleming Investment Management 182 million COLI shares. The subscription was oversubscribed, applications having been made for over 1.4 billion COLI shares.

Placees.

261. A letter on the letterhead of JP Morgan to SEHK dated 30 January 2004, bearing the fax data transmission date of 30 January 2004, describes the “List of Placees” of COLI shares. In cross-examination by Ms Ismail, Mr Stefan Weiner confirmed that the sender of the letter, Mr Louis Lee, was a person who worked in the ECM of JP Morgan. The list describes ABN AMRO as having been allotted 4.5 million COLI shares, whilst JFAM were allotted 182 million COLI shares. In his record of interview, he had described the criteria used in the decision of allocation of placing shares to those who had subscribed as being :

“Amongst other factors, it would have been based on the perceived quality of investors, the estimated holding period of the shares and other investments in the same sector.”.

262. In answer to questions in cross-examination by Ms Ismail, he said that he did not recall how those criteria were applied to ABN AMRO in the COLI placement. Nevertheless, he said that ABN AMRO is on the higher quality end of the investor spectrum.

26 January 2004.

6:46 pm (SW : DT).

263. In neither his record of interview by the SFC nor in his oral testimony was Mr Stefan Weiner's attention drawn to the tape-recording of the conversation he initiated with Mr David Tsien at 6:46 pm on 26 January 2004, in which he raised the subject of the allocation of placement shares to subscribers to the placement. At the outset, Mr David Tsien informed him :

“ ... I have given you an order from ABN Amro, an order from Atlantis, an order from Pacific Capital Management. ... Okay? And JFAM is a real pity because eventually the demand will swell to 400 million shares ... But we did a calculation. We think they can only get about 187 million.”.

264. In response, Mr Stefan Weiner indicated that he was aware of the size of JFAM's demand and said : “We are going to give them whatever we can.” Of the allocation to ABN AMRO, he said : “ ... what about ABN AMRO, we can really fill them?” Mr David Tsien responded : “Half.” He went on to agree with Mr Stefan Weiner's suggestion that its subscription was inflated, saying :

“The genuine demand are all about half.”.

Mr Fang Fang.

Background.

265. Mr Fang Fang has worked for the Investment Banking Division of JP Morgan since August 2001. In January 2004, he was the Managing Director of Investment Banking Division in Hong Kong. COLI was one of the companies on the list of companies for which he was responsible.

The placement of COLI shares.

266. Mr Fang Fang said that immediately before the Lunar New Year in 2004 he had made a telephone call to Mr Kong, the Chairman and Chief Executive Officer of COLI, to extend to him New Year greetings. He recalled that Mr Kong had already embarked on his travels and was on the way to either an airport or a ferry. He informed him of the strength of the stock market and indicated that COLI could raise money if it wished to do so. For his part, Mr Kong said : “We probably need to do so.” He agreed that this was the event described in the letter of 22 July 2004 by Mr Kong to the SFC. There, Mr Kong said that Mr Fang Fang had :

“ ... indicated to me on the 21st of January that the then market conditions might permit a successful placement after Lunar New Year holidays and Fang Fang was asked to follow up on the details of the exercise with Mr Horace Nip, executive director and deputy financial controller of the Company.”.

267. Mr Fang Fang said that as a result of that telephone conversation with Mr Kong he had informed colleagues in ECDM of JP Morgan that COLI might be interested in raising money by way of a placement, asking that they get ready for that eventuality. Although he remembered Mr Ian Long as a colleague from ECDM in JP Morgan, he did not recall if he had discussed the COLI deal with him. In view of the fact that he worked in that Department he said that he may have done so.

268. He said that he was not aware of earlier negotiations between colleagues at JP Morgan and COLI about a placement being made by COLI. In particular, he did not recall being aware that on 20 January 2004 Mr Horace Nip of COLI had told Mr Ian Long that Mr Kong had given a “green light” for a placement by COLI now that the market price of its shares had reached the target price, nor than prior to 21 January 2004 Mr Horace Nip had told both Mr Ian Long and Mr David Tsien that COLI were looking to do a placement of its shares at \$1.80 per share. Although he had known Mr David Tsien since he had joined JP Morgan

in August 2001, he was not aware that he was in contact with Mr Horace Nip in respect of a placement deal by COLI.

269. In re-examination, Mr Fang Fang was taken to a timetable attached to a letter from JP Morgan to the SFC dated 9 November 2004. The timetable described a series of events in which the possibility of a placement of COLI shares was described as having been discussed on 5 January 2004 between representatives of JP Morgan and COLI. It went on to state of 12 January 2004 :

“internal approval was sought to enable JP Morgan Securities (Asia Pacific) Limited to pitch for the possible transaction.”.

Mr Fang Fang said that he thought that he would have known of this development, it being a necessary procedure before JP Morgan could solicit a plan for business. However, he said that prior to his phone call of 21 January 2004 to Mr Kong not only was he not aware of any discussions or negotiations between JP Morgan and COLI about a placement but that he would have been surprised if there were such negotiations because he was in charge of COLI as a client.

270. Initially, Mr Fang Fang said that he could not recall if he contacted Mr Horace Nip after his telephone conversation with Mr Kong on 21 January 2004. He said that he could have asked Mr Ian Long to deal with the execution of the matter. However, having been taken to a Chronology attached to the letter to the SFC of 30 September 2004 by Deacons, on behalf of COLI, Mr Fang Fang agreed that the events ascribed to the afternoon of 21 January 2004 could very well have occurred, namely :

“Fang Fang of JP Morgan told Horace Nip that Kong Qing Ping had agreed to proceed with the due diligence on 26 January 2004 and they would start the legal due diligence first.”.

E-mails.

(i) 23 January 2004.

271. Mr Fang Fang agreed that he was the author of an e-mail dated 23 January 2004 sent to Mr Tim Cen, a subordinate in the Investment Banking Department, and copied to Mr Edmund Ho, Mr Rupert Fane and Mr Ian Long, in which the subject addressed was a “security check” of COLI. The text addressed breaches of regulations by COLI.

(ii) 26 January 2004 : 9:13 am; 10:41 am; and 11:24 am.

272. Mr Fang Fang said that although he did not attend the due diligence session conducted by JP Morgan at the offices of COLI on the morning of 26 January 2004 he had sent e-mails bearing the times 9:13 am and 10:41 am to Mr Horace Nip and Mr Ian Long addressing : “our conversation this morning”, in which he addressed what he described as technical breaches by COLI. Although he could not remember to whom he had spoken he said that the subject matter spoke for itself and must be related to JP Morgan’s due diligence of COLI. Subsequently, he received an e-mail bearing the time 11:24 am on 26 January 2004 from Mr Tim Cen and copied to Mr Ian Long and Mr Rupert Fane amongst others, in which he was provided with details of earlier regulatory breaches by COLI. In his e-mail reply of 11:49 am he said:

“Based (sic) the information below and the DD session Edmund Ho and Ian Long had this morning with the Company’s management, it is confirmed that those were all small technical breaches happened several years ago. None of them was severe at all -- got ‘a slap on the wrist’ from Stock Exchange already. Let’s move on.”.

273. He agreed that the meaning he intended to convey was that they should get on with the placement deal.

The meeting at JP Morgan offices of representatives of COLI and JP Morgan.

274. Mr Fang Fang said that at or after lunch on 26 January 2004 he received notice that COLI had convened a board meeting and wished to proceed with the finance arrangements. In particular, they wished JP Morgan to “bid” for a price. He was not in the office at that time and to his embarrassment when he returned to the office the representatives of COLI were there already in a conference room. He remembered that Mr Edmund Ho, a Vice President of JP Morgan, who had conducted the due diligence at COLI, was present. From time to time Mr Rupert Fane joined the meeting. On other occasions Mr Fang Fang, stepped out of the room to have conversations with his colleagues from the ECDM Department. He said that he dealt primarily with Mr Kong and that they spoke to each other in Putonghua, although Mr Horace Nip may have participated. Mr Rupert Fane spoke in English, which he or one of his colleagues translated.

275. The discussions concerned the transaction details a “key part” of which, as he described it, was the placement price. Mr Kong told him that COLI would accept a placement price of \$1.80 per share, but no lower. In cross-examination by Ms Ismail, he said that Mr Kong had explained that at a price below \$1.80 he did not have an authorisation from COLI’s board with which to proceed. For his part, he passed on the message to ECDM Department. He was adamant that he had no knowledge that COLI’s “target price” for the placement was \$1.80 per share. In answer to the question as to whether and not he would have expected his colleagues to mention such information to him as they were possessed of, he said that it certainly would have made his life easier because it was not a “slam dunk” deal. He was not aware that \$1.80 was a price acceptable to COLI. He only found that out in the negotiations with Mr Kong.

276. Mr Fang Fang said that in the negotiations he had worked on the assumption that COLI had a general mandate to issue new shares up to 20% of its issued capital and that is what it wished to do. The “sticky” matter was that of price. Ultimately, the ECDM Department had agreed to the price requested by Mr Kong, Mr Rupert Fane saying :

“It is not easy, but we can do it at \$1.80.”.

277. In the result, agreement was reached about the price and size of the placement issue together with JP Morgan’s underwriting fees. For his part, he had to leave to keep a pre-existing dinner engagement.

Ms Muriel Sung.

JFAM’s dealings in COLI shares.

278. Ms Muriel Sung testified that she was the head of the Compliance Department of JFAM, for whom she had worked since 1996. In 2004, she was a Vice President in that department. She identified as true and correct two statements that she had signed and provided to the SFC dated 23 April 2007 and 5 February 2009. Having given evidence earlier she was recalled to testify in respect of the matters addressed in the second statement, namely the circumstances in which on occasions prior to January 2004 when funds within JFAM had acquired COLI shares.

279. Ms Muriel Sung produced a “Disclosure of Interest” form in which JFAM disclose the acquisition of 60 million COLI shares on 3 December 2003. That disclosure was necessitated by the fact that its existing holding of about 240 million COLI shares was increased by the addition of the 60 million shares to 5.5% of the issued share capital of COLI. By letter dated 20 January 2009, Ms Muriel Sung provided the Tribunal with information from the trading system of JFAM in relation to the purchase of parcels of 10 million or more shares of

COLI for or on behalf of clients managed by JFAM. It is apparent from those records that in the period on and between 3 and 5 September 2003 Mr Steve Luk bought 40 million COLI shares and sold a like amount on behalf of clients. On 26 November 2003, he brought over 16 million and sold over 14 million COLI shares. On 3 December 2003 he bought 9.85 million COLI shares.

Mr Lee Ho Leung, Raymond.

The sale of COLI shares by Mr Edmond Leung on 21 and 26 January 2004.

280. Mr Raymond Lee is a senior compliance manager at ABN AMRO having joined the company August 2008. In his evidence he addressed ABN AMRO records, attached to a letter from the company dated 23 January 2009, in respect of the sale of COLI shares by Mr Edmond Leung on 21 and 26 January 2004. On each of those days Mr Edmond Leung had signed “Order” forms for the sale of parcels of COLI shares held in the China Equity Fund of which he was fund manager. The time and date stamped on each of those forms, namely 10:12 am on 21 January and 10:38 am on 26 January 2004, reflected the time at which the order form reached the central dealer.

281. The electronic order management system records indicated that the dealer had input the order on 21 January 2004 at 10:14 am. He explained that the reference “CD, Day only” reflected Mr Edmond Leung’s instructions that the shares be sold at careful discretion and that the instructions were good for that day only. The “Client allocation form” was an internal check to ensure that those shares were held by the fund. By his initials he said Mr Edmond Leung was identified as having initiated the order. The broker was described as being UBS Warburg Asia Ltd HK. The time on the “deal sheet” of 3:21 pm on 21 January 2004 merely indicated the time at which the central dealer had allocated the sale of shares internally to a particular fund, the shares having been sold earlier. All of the 2.392 million shares had been sold at executed net price

of \$1.9683 per share. The Bloomberg screen printout indicated that the input of the sale order into the system occurred at 10:16 am and had been “filled”, or executed, by the time of the printout at 12:32 pm at an average price of \$1.9683 per share.

282. The electronic order management system records indicated that the dealer had input the order to sell 2 million COLI shares at 10:50 am on 26 January 2004. Again, the instruction was to sell at careful discretion good for the day only. The time of the input of the order on the “deal sheet” was stated to be 10:48 am. The Bloomberg screen printout stated that the order to sell had been input into the system at 10:55 am and had been executed by the time the printout was made at 4:04 pm.

Ms Fung Sau Hong, Stella.

283. Ms Stella Fung is an associate director of the SFC, having joined the Enforcement Division of the SFC in April 2000. She identified a statement dated the 13 February 2009, which she had signed, as being true and correct to the best of her knowledge and belief. In that statement she had sought to assist the Tribunal identify the transactions in COLI shares conducted by Mr Edmond Leung and Mr Steve Luk on 21 and 26 January 2004.

Trading by ABN AMRO through UBS Securities.

284. Ms Stella Fung noted that UBS Warburg Asia Ltd was renamed UBS Securities Asia Limited in June 2003. Accordingly, she treated references in the documentation provided by ABN AMRO in its letter to the SFC dated 23 January 2009 to trading having been done through the former named entity as in fact having been done by UBS Securities Asia Limited.

21 January 2004.

285. She noted that the quantity of COLI shares said to have been sold by the China Equity Fund of ABN AMRO on 21 January 2004, namely 2.392 million matched exactly the number of shares described as sold in the MSS Broker Trade Details Report for the same date, “ ... suggesting that the only client selling COLI shares via UBS Sec on that day was ABN AMRO.” Those shares were sold between 10:20 am and 12:14 pm on 21 January 2004 in the price range \$1.99-\$1.93 per share.

26 January 2004.

286. Ms Stella Fung noted that of the 8,958,000 COLI shares sold by ING Securities on 26 January 2004, 2 million of those shares were sold on behalf of ABN AMRO. She identified the latter sales by underlining them in the MSS Broker Trade Details Report for 26 January 2004, save for a “cross trade”, that is where the broker acts for both buyer and seller, which transaction was recorded in the records for 27 January 2004 prior to the opening of the market.

Mr Rigby.

287. There was no issue that Mr Rigby is an expert in the securities industry. He has over 40 years experience in futures broking and around 22 years in the securities industry. He has been permitted to give evidence as an expert before the Insider Dealing Tribunal on a number of occasions. Also, he has given evidence as an expert witness in cases of market manipulation and conspiracy to defraud in the criminal courts.

288. Issue was taken as to the ambit of the opinion evidence that Mr Rigby might express as an expert witness in these proceedings. As a result, the Tribunal ruled that :

“Mr Rigby may express his opinion in respect of the matters set out in paragraph 1 of the Financial Secretary’s Notice of 12 September 2007. In particular, as to whether if that information was not generally known to persons who were accustomed or would be likely to deal in the listed securities of COLI but which, if generally known to them, would be likely to materially affect the price of COLI shares.”.

289. Three statements of Mr Rigby were received by the Tribunal. They were dated :

- (i) 10 February 2006;
- (ii) 21 March 2007; and
- (iii) 12 February 2009.

290. In the last statement Mr Rigby addressed and responded to material relied upon and opinions expressed by Mr Witts in his two statements of 19 December 2008 and 4 February 2009.

Background.

(i) The Hang Seng Index (“HSI”) (31 December 2003 – 26 January 2004).

291. As Mr Witts noted, in paragraph 15 of his statement of 19 December 2008, the Hang Seng Index closed on 31 December 2003 at 12,576 [**Appendix II**]. At the close of the market on 26 January 2004 the HSI stood at 13,727. Between the two days the HSI had risen 1,151 points, or 9.15%.

(ii) The price of COLI shares.

292. In the same period, the closing price of COLI had risen from \$1.42 on the earlier date to \$2.00 on the latter day. On 26 January 2004, the price of COLI shares reached an intra day “High” of \$2.125.

The issue.

293. At issue, is whether or not information that COLI would announce and carry out a top-up placement of 850 million shares at a price of \$1.80 per share on or about 26 January 2004 was specific non-public price sensitive information.

294. It was Mr Rigby's opinion, that the information was both material and price sensitive and that it was (paragraph 6 of the statement of 10 February 2006) :

“ ... bearish and would have been expected to have a depressing effect on the share price.”.

295. Of the bearish nature of that information he said (paragraph 7) :

“ In Hong Kong a share placement is often regarded as being bearish, particularly if the funds being raised are for 'general capital' rather than any specific project. The reason for this is that any existing shareholder faces the unattractive choice of either putting up extra cash, with no obvious need for it or else facing dilution. It would appear that this case falls into this category.”.

296. Of the circumstances in which a placement is not regarded as bearish by the market Mr Rigby gave as examples, first a placement where the use of the proceeds of the placement was regarded as “ ... being particularly exciting by the market” and, secondly where a long rumoured placement finally took place. In his opinion, COLI fell into neither category. Of the latter matter, Mr Rigby said in his oral testimony that he was unaware of any such rumour and had received a negative response from the SFC when he made enquiries in that respect.

297. Mr Rigby acknowledged that on the first page of the Announcement made by COLI on 27 January 2004, it was stated that the net proceeds would be approximately HK\$1.5 billion and that the company intended to apply such

proceeds “for land acquisition in China and investment into the Shanghai property market.” Later in the announcement more particulars were provided :

“Reasons for the placing and the subscription

China property development has been the core business of the Company since 1997 when the Company shifted its business focus from Hong Kong to China. Since then, the Company’s strategy has been focusing on property development business in the major cities in China, namely Beijing, Shanghai, Guangzhou and Shenzhen. At the same time, the Company has also been expanding selectively into secondary cities that have strong growth prospect. The cities include Chang Chun, Chengdu, Zhongzhan, Xian and Nanjing. The Company will continue with this strategy in the next few years and will aim to replenish around 15 million square feet of land bank per annum through private negotiation with landowners or participate in tendering of properties by the government.

Out of the major cities that the Company is focusing on, Shanghai property market has boomed in past years and the Directors expect the trend to continue in the coming years. As such, the Company plans to accelerate its investment into the property market in Shanghai so that it can complete more projects earlier. The Company currently intends to speed up its 210,000 square meter property redevelopment project in the Luwan district in Shanghai. The total investment of the Luwan project over the next few years amounts to around RMB \$6,000 million and the Company expects to invest RMB\$1,000 million in 2004 from the initial phase of the redevelopment. It is expected that the first phase of the project will reach pre-sale stage by 2006 and be completed by 2007.

The Company is still considering various projects relating to the land acquisitions in China. Out of the net proceeds to the company of the placing and subscription of approximately HK\$1.5 billion, RMB\$1 billion will be used in the initial phase of the redevelopment in Luwan district in Shanghai and the balance will be used for financing land acquisitions in China after the Company has finalised its plans for the same.”.

298. Of the issue of whether or not the announced proposed use of the proceeds might be considered “exciting” to the market Mr Rigby answered in the negative, explaining that it appeared to have been “opportunistic, by which he meant that if the market were prepared to provide the monies COLI was prepared to accept the funds. In his opinion, there was nothing new or exciting about what was announced. As examples of “exciting” uses of monies to be raised in a placement Mr Rigby referred, as examples, to placements in the

“high-tech boom” and to money being raised for a joint-venture where a new major shareholder was to be a contributor, for example Mr Li Ka Shing.

299. Of his opinion of the generally bearish market reaction to placements, Mr Rigby said in his third statement :

“I believe that placements resulting in a share price drop after the placement announcement, outnumber those where the price rises in such situations by considerable margin whether they are for general capital or for specific purposes. If one excludes placements for specific purposes the ratio is even more pronounced.”.

A comparison of the market price of the shares of companies the day after their respective placements.

300. Mr Rigby said that, in order to demonstrate and support that proposition, he put forward a table, CR-1, in which he had asked the SFC to set out all top-up placements in the period 3 October 2003 to 27 February 2004 detailing, amongst other matters :

- the premium or (discount) of the placement to the closing price immediately before placement;
- the closing price and percentage change one day after the placement; and
- a description of the purpose of the use to which the funds were to be put, in particular a distinction between “general working capital” and “special-purpose”.

301. In consequence of Mr Rigby’s acceptance in the course of cross-examination by Mr Charles Sussex (“Mr Sussex”) of obvious misdescriptions in CR-1, under the column “Purpose”, of the reasons stated by companies for which funds were raised in the announcements of their placements a revised version of CR-1, together with a whole box file of supporting primary documents, was received by the Tribunal.

The relevance of liquidity of a stock to the impact of the announcement of a placement of its shares.

302. In addressing the issue of the relevance of liquidity of a particular stock to the performance of that stock after the placement of shares, Mr Rigby produced various charts.

- CR-3, is a set of charts describing the 81 companies by which placements had been made, as described in table CR-1, which was material obtained from Bloomberg. The lower half of the charts reflect the daily turnover by dollar value and the 30 day moving average of the turnover. Each chart stopped the trading day immediately prior to the respective placements.
- In charts CR-2(A-D) Mr Rigby extracted data in respect of liquidity, contained in CR-3, and made comparisons between the liquidity of a particular stock and its performance after the placement of its shares. Of the market price of the shares of the 81 companies the day after their respective placement of shares he noted : in CR-2A, that 44 went down in price; in CR-2B that 27 went up in price and in CR-2C that 7 remained unchanged. In CR-2D he set out the 81 companies in descending order of average liquidity, defined by dollar turnover. Of the top 20 companies so grouped, he noted that the share price of only one company rose on the day after its placement. It was his opinion, that more liquid shares are more likely to demonstrate pricing efficiency than smaller less liquid companies.

303. When he was recalled to give further evidence, Mr Rigby produced further tables addressing the issue of liquidity.

(i) Average dollar value of turnover.

304. In CR-2D1, he set out in descending order stocks by their average dollar value of turnover. COLI was one of those companies. He noted that the share price of only one of the top 20 companies, Titan (Holdings) Limited, rose after their respective placements, two remained unchanged and 17 fell.

(ii) Dollar value of the placements.

305. In another chart (page 297) he sorted out the 81 companies in descending order in respect of the dollar value of their respective placements. He noted that the market share price of only one of the top 20 companies so sorted rose the day after their respective placements, one was unchanged and 18 fell. Mr Rigby explained that his purpose in constructing this chart was based on the assumption that the larger the size of the placement the more likely it was to attract trading attention on the market and therefore be price efficient. However, he agreed that could not be demonstrated as an absolute fact.

(iii) Dollar value of market capitalization.

306. In yet another chart (page 298) Mr Rigby set out the 81 companies in descending order of market capitalization. He said that he did so because there was a general tendency for the size of market capitalisation to be correlated to market share price efficiency. He noted that the market share price of only two of the top 20 companies so sorted rose the day after their respective placements, one remained unchanged and 17 fell in price.

307. Mr Rigby said that the results of this analysis supported his view that in general placements were generally “bearish” in relation to the market share price of other companies whose shares were placed.

308. In cross-examination of Mr Rigby by Mr Sussex, the Tribunal received 2 box files of material relating to the 19 companies, other than COLI, set out in CR-2D1. The Tribunal received a third box file of such material from the Presenting Officer. The material addressed a range of issues :

- the stock historical data of each company;
- the announcement of the placement by each company;
- earlier and subsequent announcements of other information relating to each company; and
- media reports and those of analysts at various brokers both in prospect of and retrospectively in relation to the placements.

309. It was the thrust of Mr Sussex's cross-examination that the bare assertion that, save in exceptional circumstances, the market reacts in a bearish way to a top-up placement was insufficient and too simplistic an analysis. He suggested that there were myriad factors that were relevant to each of the various top-up placements. In order to do so, Mr Sussex referred Mr Rigby to documents relevant to no less than nine of the 19 placements. In October 2003, large dollar value placements were made by Henderson Land Development Company Limited, New World Development Company Limited and the Hong Kong and Shanghai Hotels, Limited. Those placements were all at a discount to the closing price of the respective shares on the day prior to the announcement of the placement, namely 7%, 7.41% and approximately 10%. On the first day of trading after the announcement of the placement, the shares of each of the companies closed at a lower price, namely -8.02%, -5.56% and -11.01%.

310. Mr Rigby accepted that the analysis of brokers and in the media reports of why the market had reacted negatively to particular share placement varied according to the circumstances of the particular company. For example, in the

case of Henderson Land Development Company Limited in the announcement of which placement the proposed use of the proceeds had been described as :

“one third for hotel development projects targeted at mainland tourists and approximately two thirds for acquisition of new sites and payment of land conversion premium to the Government and for general working capital purposes.”.

311. Mr Rigby accepted the observation in the media that Henderson Land Development Company Limited did not need the cash and that the placement could be seen as a signal that the management of the company thought that its share price had reached a peak. However, he said that these were the very principles that gave rise to his opinion that the market reaction to top up placements was generally bearish.

312. In the context of the 11.01% fall in the share price of the Hong Kong and Shanghai Hotels, Limited on the first day of trading after its placement Mr Rigby was referred to an article dated 31 October 2003 in the South China Morning Post by Mr Craig Stephen. The article noted that recent placements by companies had seen their share prices “dive”. Of the prospective impact of a placement, the writer observed :

“Trying to forecast the impact of a placement on share prices is never easy, but it is possible to use a few rules of thumb to see if it is time to head for the exits. The first question to ask is why are companies selling shares now? Is it just to take advantage of a sharp run up in their share prices or do they have real uses for the money raised?

Next is, who is selling and what kind of price discount is being offered on new shares? And finally, is the transaction good for all shareholders and does it improve the balance sheet?”.

313. Mr Rigby said that, although determining the prospective impact of a share placement was necessarily subjective, he did not think it was too difficult to assess whether or not it was possible to “get the placement away”. He explained his reasons for regarding the market’s response to share placements as

being generally bearish by noting that it resulted in an increase in the supply of the stock, which of itself was depressing in respect of share price, and secondly noted market cynicism to such placements.

314. The writer went on to express the opinion that the discount in the placement share price of The Hong Kong and Shanghai Hotels, Limited was too great and that, “Even for the most outstanding fund managers, the temptation to arbitrage new shares for old is hard to resist.” Mr Rigby said that, in his opinion, the logic was very compelling and that was exactly the issue that the Tribunal in these proceedings had to consider.

315. The writer went on to suggest :

“Placements can also be dispassionately assessed on their impact on a company’s funding profile and earnings per share (EPS). Ideally, companies are meant to assess whether share or debt financing is the best way forward and minimise their cost of capital.”.

316. Mr Rigby said that that was exactly the analysis that he had tried to suggest was apposite in determining the prospective impact of a placement on the price of the shares of the company.

317. Mr Rigby agreed that, on one view, the placements in October 2003 had been placed in a bear market rally, that is placed whilst the respective shares were priced at their peak. He agreed that within the period from the end of December 2003 to 27 January 2004 the market had behaved strongly and that there had been a significant surge in market price. He accepted that the placements in mid-January 2004 by Titan (Holdings) Limited and Silver Grant International Industries Limited, which had been at discounts of 14.02% and 7%, relative to the closing price of their shares on the day before the placement, and which had raised respectively \$390 million and \$316 million, had resulted in the

share prices closing on the first day of trading after the announcement up 0.93% and flat respectively.

318. Mr Rigby accepted that the share placement of Kowloon Development Company Limited and Sinotronics Holdings Limited in the same time period, at discounts respectively of 9.9% and 7.3%, had resulted in their shares closing on the first day of trading after the announcement of the placement of -7.89% and -7.95%. He agreed that the proposed use of the monies described by Kowloon Development Company Limited, namely half for the repayment of short-term revolving loans and half as general working capital was not an exciting purpose. Similarly, he agreed that there was nothing terribly exciting about the announcement of the placement by Sinotronics.

The Hang Seng Properties Sub-Index.

319. Of the reliance placed by Mr Witts, in his statement of 5 March 2009, upon movements in the Hang Seng Properties Sub-Index (whose constituent companies were Cheung Kong, Henderson Land, SHK Properties, Wheelock, Henderson Investment and Hang Lung Property), Mr Rigby observed that there were differences between those companies and COLI, in particular the large property portfolios those companies held in Hong Kong. He agreed that he regarded COLI as a company that mainly held Mainland property. In his opinion, they were not directly comparable.

320. In his statement 5 March 2009, Mr Witts asserted :

“It will be seen that the Hang Seng Property Index rose from 15,130.61 on 2 January 2004 to 18,353.19 on 26 January 2004, and then fell back to 18,055.76 on 27 January 2004. This illustrates my point that the market for property stocks was strong in January 2004, and that there was a broad decline in property stocks generally on the 27 January 2004 (notwithstanding that the broader Hang Seng Index itself actually rose on 27th of January 2004).”.

321. Mr Rigby noted that the fall in the Hang Seng Properties Sub-Index on 27 January 2004 was 1.62%. By contrast, the share price of COLI had fallen 5.5% that day, which he noted was the third largest drop in the share price of COLI in the approximately 2 year period up until 27 January 2004. Furthermore, he noted of the fall on 27 January 2004 in the share price of :

- (i) Beijing Capital Land of 1.75% was its 31st largest drop, albeit in a shorter period of trading;
- (ii) China Resources Land of 1.25% was its 138th largest drop in the same to two year period as taken in respect of COLI; and
- (iii) Beijing North Star of 2.54% was its 60th largest drop in the same two year period as taken in respect of COLI.

The relevance of share price volatility.

322. In his statement of 25 February 2009, Mr Witts addressed the issue of share price volatility, in particular that of COLI in relation to Beijing Capital Land, China Resources Land and Beijing North Star. He noted that there were seven trading days in January 2004 when the difference between the high and low share price intra-day of COLI was greater than the fall of 5.5% in the share price on 27 January 2004. It is to be noted that on all of those other days the difference was an increase not a fall increases in COLI's share price. Mr Witts went on to note volatility in the share price of the other three companies over the same period. Of the fact that the net cumulative change in the share price of COLI shares on the three-day period 27, 28 and 29 January 2004 was 9.2%, compared with 4.5% for Beijing North Star and 8.2% for China Resources Land, Mr Witts was of the opinion that it “ ... may well be as a result of its higher beta”. He noted that the Sixth Edition of the “Dictionary of Finance and Investment Terms” states :

“Beta coefficient measures a stock's relative volatility. The beta is the covariance of the stock in relation to the rest of the stock market Any stock with a higher beta is more volatile than the market, and with any lower beta can be expected to rise and fall more slowly than the market.”.

323. Of the relative Beta coefficients of the four companies, Mr Witts noted, from data obtained from Bloomberg, that they were :

- COLI 1.798
- Beijing North Star 1.125
- China Resources Land 1.544
- Beijing Capital Land 0.814

324. In explaining the use of such a calculation, Mr Witts said in his statement of 29 February 2009 that if the benchmark HSI had risen 1% he would, in consequence of its beta coefficient, have expected COLI's share price to have risen 1.798%.

325. Mr Rigby agreed that compared with the 2.5% fall in the share price of Beijing North Star on 27 January 2004 the fall in its share price of 6.1% on 6 January 2009 was much larger. Similarly, the fall in the share price of China Resources Land on 27 January 2004 of 1.3% was smaller than no less than 12 falls in its share price in the previous three months. Finally, the fall of 1.8% in the share price of Beijing Capital Land was less than it had fallen on seven occasions in the previous three months.

The fall in COLI's share price on 6 January 2004.

326. Mr Rigby agreed that the fall of 4% in the share price of COLI on 6 January 2004 was its largest fall in the same three-month period, prior to 27 January 2004, and its ninth largest fall in a two-year period. He noted that on that day COLI had announced that one of its directors had sold 5 million of its shares on the 5 January 2004, which information he said would have contributed to the drop in its share price that day. In cross-examination, he accepted that

the fact of an increase in its share price of 19.05% on 5 January 2004 was also likely to have contributed to that drop in the share price. Information that a director of a company was selling its shares, without other explanation, “ ... generally tends to have a depressing effect on the share price.”.

327. Mr Rigby said that in his opinion one had to be careful with the use of Beta. It was an art and not a science. It contained a subjective element and considerable variation could be achieved by selecting different time periods on which to make the calculation. He said that the dictionary definition of Beta was nonsense :

“A stock price could be stable, hardly fluctuate for a long period of time. Its Beta would then be low. One would expect the stock, according to this, to rise and fall more slowly than the market. But we all know perfectly well, that dormant stocks suddenly burst into activity. It applies to stock prices, it applies to commodity prices. I repeat, I believe this is nonsense.”.

328. In the event, Mr Rigby re-asserted his opinion that the fall in the share price of COLI on 27 January 2004 was related to the placement and not to the volatility in COLI’s share price.

The performance of COLI shares : HSI 27-30 January 2004.

COLI						HSI
<u>Date</u>	<u>Volume</u>	<u>High</u>	<u>Low</u>	<u>Closing</u>	<u>% change</u>	
27	994,762,000	1.91	1.81	1.89	-5.50	13,761.88
28	61,324,000	1.88	1.83	1.84	-2.65	13,431.78
29	53,948,000	1.83	1.77	1.82	-1.09	13,334.01
30	46,541,099	1.82	1.72	1.75	-3.85	13,289.37

27 January 2004.

329. Of the performance of COLI shares as against that of the HSI on 27 January 2004, Mr Rigby noted, at page 4 of his report of 12 February 2009, that

at the close of the market on that day COLI's shares had dropped 5.5% from the previous close, whereas the HSI had risen 0.25%. Moreover, he noted that on that day COLI shares had traded as low as \$ 1.81 for a maximum drop of 9.5%, whereas the HSI had traded as low as 13,550 for a maximum drop of 1.29%.

330. Mr Rigby noted that Bloomberg carried the following story at 11:08:45 on 27 January 2004 under the heading "*China Overseas Land Shares Drop After New Stock Sale*" :

"Shares of China Overseas Land and Investment Ltd, the Hong Kong arm of China's construction ministry, plunged after the company raised HK\$1.53 billion (\$197 million) selling stock at a discount to the market price. The stock dropped 7.5% to HK\$1.85 at 10:51 a.m. in Hong Kong."

He agreed that the article appeared to be attributing the drop in its share price to the placement of shares by COLI.

331. Mr Rigby noted that Bloomberg published an update of the article at 12:57:39, under the heading "*Hong Kong Stock Fall; China Overseas Land Slumps on Share Sale*" :

"Hong Kong stocks fell as China Overseas Land & Investment Ltd had its biggest slump in 11 months. The property arm of China's construction ministry sold HK\$1.53 billion (\$197 million) of shares, raising concern future earnings per share may be diluted."

The effect of general market weakness on the price of COLI shares after the announcement of the placement.

332. Of Mr Witts's opinion, (paragraph 20 of his statement of 19 December 2008) that "general market weakness was the reason for the weakness in COLI's share price in the last few days of January" Mr Rigby said that he did not agree. Mr Witts had pointed out that the HSI had dropped 330 and 97 points respectively on 28 and 29 January 2004.

333. In support of his opinion of the bearish nature of the announcement of the placement of its shares by COLI on its market share price, at page 13 of his statement of 12 February 2009, Mr Rigby drew the Tribunal's attention to some opinions expressed in two of the analysts reports exhibited to the statement of Mr Witts, dated 4 February 2009. Both of those reports are dated 27 January 2004. Of the COLI placement, the Deutsche Bank report described it under the heading, "A Positive HK\$1.53 bn share placement; Buy maintained". However, in the text the placement was described as "opportunistic" and the NAV as diluted by 3%. Of the "Outlook", the opinion was expressed :

"COLI's share price may be negatively effected by the share placement in the very near term, but we still see upside potential for the stock."

Of that opinion, Mr Rigby said that he took it as Deutsche Bank's view that :

"... placements generally are regarded as being short-term bearish for the stock market which, as I said, is a very widely held view."

334. Also, Mr Rigby pointed to the article about COLI from ING dated 28 January 2004 which, while stating that it remained positive on COLI's growth strategy said:

"COLI's share price could have some short-term weakness after the share placement but anticipation of Rmb appreciation and inflation in China should support its valuation."

The dilution effect of a placement.

335. Of the opinion expressed by Mr Witts at paragraph 19 of his statement of 4 February 2009, namely that :

"... It is difficult to predict the impact of any possible dilution of shareholders' interests upon a company's share price."

Mr Rigby said that the difficulty did not prevent attempts being made to do just that. At page 9 of his statement of 12 February 2009, Mr Rigby pointed to the unanimity of opinion as to dilution of both NAV and EPS in the four analysts reports, of 27 and 28 January 2004, referred to by Mr Witts. Mr Rigby explained in his oral testimony :

“ ... for it to be dilutive the placement price has to be under the net asset value as generally accepted and to the extent that it is dilutive any existing shareholder’s pre-existing ownership, fractional ownership of the company is diluted, he owns a bit less of the pie.”.

336. Of the impact on the market share and price of a placement by that company Mr Rigby said :

“All things being equal it has a negative effect.”.

The effect of the publication of the Shanghai Forte Prospectus on 27 January 2004 on the market price of COLI shares.

337. In his statement of 4 February 2009 (paragraph 32), Mr Witts had expressed the opinion that it was very likely :

“ ... that investors were induced to sell COLI shares on 27 January 2004 to raise funds to subscribe to its competitor, Shanghai Forte Land, in his upcoming share offer. This would undoubtedly have had a depressive effect on the share prices of COLI and other property development companies on 27 January 2004 and may explain the drop in COLI’s share price on 27 January 2004.”.

338. In his statement of 12 February 2009, Mr Rigby said that he agreed that it was possible but that he suspected it would likely have been of limited effect.

In his oral testimony, he explained :

“To the extent that someone is going to liquidate shares in their portfolio to subscribe to an IPO, they do not all hold just COLI, they hold a variety of shares i.e. they would have to choose which share they would liquidate. If they were excited by their property sector I would be a little bit surprised at them liquidating all the COLI shares to go and subscribe to a new issue when typically new issues, particularly exciting ones, one only gets a fraction of what one applies for in any event.”.

He went on to observe that Shanghai Forte was oversubscribed by 480 times.

339. At paragraph 33 of his report of 4 February 2009, Mr Witts noted that on 27 January 2004 the Hong Kong Property Index fell by 1.6% in contrast to a rise in the HSI of 0.25%. At paragraph 34, he noted that the share prices of several Mainland property companies traded in Hong Kong, namely Beijing

Capital Land, China Resources Land and Beijing North Star also came down in share price on 27 January 2004. In common with COLI all three of those companies had closed at a four-month high on 26 January 2004. In the result, it was Mr Witts's opinion that :

“ ... the probable catalyst for this profit-taking of the shares of Mainland real estate companies, all on the same day, was the publication of the Shanghai Forte Land prospectus.”.

340. At page 12 of his report of 12 February 2009, Mr Rigby pointed out that whilst the timing of those events may have been exactly similar the extent to which the other three company's share price dropped in contrast to that of COLI was not.

Movement of the shares on a closing basis

Date	COLI	Beijing North Star	China Resources	Beijing Capital
27	-5.5%	-2.5%	-1.3%	-1.8%

Movement of the shares on an intra day low basis

27	-9.5%	-4.56%	-4.37%	-3.53%
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THE SPECIFIED PERSONS

341. The Tribunal received witness statements and oral testimony from all three Specified Persons in the order in which they had been named in the FS's Notice, namely Mr David Tsien Pak Cheong, Mr Edmond Leung Chi Keung and Mr Steve Luk Ka Cheung.

Mr David Tsien Pak Cheong.

342. The Tribunal received from Mr David Tsien a witness statement, dated 18 February 2009, comprising 126 pages, which he testified was true to the best of his knowledge.

343. In cross-examination by Mr Kwan, he accepted that he had participated in a record of interview conducted of him on 17 February 2005 by 2 SFC officers, Mr Tong Hon Fai and Ms Agnes Man . Beneath the assertion :

“that :

- the record is an accurate record of what was said in your interview; and
- that your answers are true and correct to the best of your knowledge and belief.”.

344. Mr David Tsien had signed his name next to the time 5:50 pm. The record stated that he and his lawyer had read the record of interview from 4:55 pm to 5:45 pm.

345. In his testimony, Mr David Tsien said that at the time he had believed that the record of interview was true and accurate, but at that time he did not have access to tape recordings of telephone conversations that he had with others in January 2004. In his evidence, he said that he had answered truthfully and the contents were by and large correct. He said that in the course of the record of interview he had been shown a part of a transcript produced by JP Morgan of those telephone conversations. He identified the transcript attached to JP Morgan’s letter of 8 October 2004 to the SFC as encompassing the part of the transcript that he was shown in the record of interview. Of the circumstances in which he was shown that transcript, Mr David Tsien said that as best he could recall a single page of the transcript was projected onto a screen on the wall in the room in which the interview was conducted. He had read the projected script.

346. Of the issue of whether what he had said in the record of interview was correct, Mr David Tsien said that having had access to the tape recordings of the telephone conversations that were now before the Tribunal he realised that :

“Some of the things I said in the record of interview was not 100% correct, and I tried to address those in my statement.”.

Background.

347. Mr David Tsien said that after having received his education in primary and secondary schools in Hong Kong he had taken his O-levels and A-level examinations in the United Kingdom. In 1985, he graduated from the University of Lancaster with the degree of Bachelor of Science in Management Science. After working for a short time with Peat Marwick and Mitchell in the United Kingdom in 1987 he joined County NatWest Securities (Asia) Ltd as an analyst, writing research reports on companies listed in Hong Kong, Singapore and Malaysia. In 1988, he joined Jardine Fleming Unit Trust Ltd as a marketing executive, promoting investment funds to high net worth individuals and institutional clients. In 1990, he transferred to the stock broking division of Jardine Fleming, becoming head of the China broking operation in 1994. In 2000 and 2001 Chase acquired Jardine Fleming and JP Morgan and merged all their Hong Kong operations under JP Morgan.

JP Morgan

348. Mr David Tsien was employed by JP Morgan until his resignation in April 2006. During that time Mr Xen Gladstone was the Head of Sales, and his immediate supervisor, whilst Mr Mark Bamber was the Co-head of Sales. Two months after his resignation, he became managing director of Value Partners Private Equity.

Qualifications and membership of professional bodies.

349. In the period in and between 1995 and 1997, he passed examinations set by the SEHK for an Options Trading Officer and Representative, a Broker's Representative and a Securities Broker. He has been an ordinary member of the Hong Kong Securities Institute since 1998.

Character.

350. Mr David Tsien stated in his witness statement that he had never been the subject of an investigation or disciplinary action by any regulatory body. Furthermore, he had not been charged with any criminal offence let alone convicted of such an offence anywhere.

The role of an equity salesman in a placement.

Testing demand.

351. Mr David Tsien said that it was his role in a proposed or potential placement, as an equity salesman, acting on the instructions of ECDM and/or the heads of Sales, Mr Xen Gladstone and Mr Mark Bamber, to :

- test market appetite/demand;
- “anchor” interests of institutional clients; and
- invite other institutional clients to place orders.

352. Mr David Tsien said that in making those approaches to institutional clients he would disclose not only the name of the company proposing to make the placement, but also the size and price of the placement together with the proposed use of proceeds.

353. Mr David Tsien said that at no time at or before the placement of COLI shares did he know, nor had he been told, that there were any restrictions within JP Morgan as to what information about the potential placement could be disclosed to those clients approached as described above. It was not until he was involved in a placement at the end of 2004 that he was told by a colleague from ECDM of such restrictions, in particular that the institutional client approached in those circumstances was to be advised on a contingent basis and in advance of disclosure of information that the information was confidential

and could not be used in any way. Mr David Tsien pointed out that the procedures of the “*Market Sounding Policy*” of JP Morgan came into effect on 20 December 2004.

354. It is to be noted that the “*Market Sounding Policy*” states that the procedures set out the “minimum compliance obligations” of employees and asserts that the principles that underlie the procedures that are contained in the *JP Morgan Chinese Wall policies* and include :

- “• material non-public information concerning a security or an issuer, generally, only be held by employees on the private side of the Chinese Wall;
- public side employees should not be in possession of material non-public information unless there is a Formal Wall Crossing or, if the information has been disclosed inadvertently or through another source, the public-sider immediately contacts the Asia Control Room to quarantine the relevant information.”

355. Of the resolution of the issue of whether information is material non-public information, the “*Market Sounding Policy*” states that is a question of fact in each circumstance, but goes on to state :

“ ... for the purposes of these procedures the following information may be considered material non-public information :

- (a) the amount of capital to be raised or shares to be transacted;
- (b) the price or price range of the transaction;
- (c) the timing of the transaction;
- (d) the intended use of the proceeds;
- (e) the identity of the selling shareholder;
- (f) ...
- (g) the likelihood of a transaction even where the above details are not finalized.

A transaction need not be certain for the information to be material. The tests for material non-public information are based on the likely effect on price or a person’s decision to invest or not. Even though a placement at a discount may only be 50% likely, if known publicly, that information may be relevant to the investment decision of a potential investor. The less likely or the more remote a transaction is, the less likely it will have an impact upon the decision making of an investor and the less likely it will be considered material non-public information. The more imminent a transaction is the

more material it becomes. If any doubt, you must contact Legal and Compliance.”.

356. In cross-examination by Mr Kwan, Mr David Tsien accepted that in January 2004 he was familiar with the JP Morgan “*Worldwide Rules of Conduct*”. He said that once a year employees of JP Morgan had to affirm that they were familiar with that policy. He agreed that ECDM was an “insider” area, whereas the “public areas” included “Sales”. He acknowledged that a physical manifestation of that policy was the fact that there were glass walls and a glass door that separated ECDM from the Equity Sales Department, although they occupied the same floor of a building. He acknowledged that the “*Worldwide Rules of Conduct*” provided that (4.2.2) :

“In order to avoid the inadvertent receipt of ‘inside information’, employees in public areas should clearly identify their roles when meeting with a client or potential client.

If you are a public area employee and receive inside information from an external source, including but not limited to a client, third party or outside paid consultant, or internally from an investment banking employee or from any other inside area personnel, contact your Compliance unit immediately. If you have a question whether information constitutes inside information, contact your Compliance unit to discuss it.”.

357. Mr David Tsien said that he was familiar with the provisions in the Guidelines for “Straddling the wall” or “Coming across the wall”. Moreover, although he had not seen the Compliance Guidelines “*Equities Trading Guidelines-Hong Kong*” in January 2004, he was familiar with the provisions. In particular, that there was a prohibition against any person who was aware of material price sensitive non-public information affecting the price of particular securities from trading in those securities or disclosing that information to any person likely to trade in the securities.

358. Of the statement, in respect of the ambit of “Non-Public Information”, namely that :

“Non-public information is information which is not readily available to the public and it includes facts, rumours, opinions and matters of supposition.”.

Mr David Tsien said that he was not aware of that information in that format. Normally, when he came into contact with non-public material information he would discuss the issue with his senior, Mr Xen Gladstone, rather than going to the Compliance Department. If the information was considered non-public material information he would get a telephone call and an e-mail from the Control Room. He agreed, that by contrast the “Guidelines” directed employees that if they came across information that they believed might be material non-public information they should contact the Control Room immediately to ensure that information was quarantined immediately.

Delay : the effect on the ability to recall events.

359. At the outset of his statement of 18 February 2009, Mr David Tsien said that the COLI placement transaction was one of many such transactions that he had been engaged in whilst he was employed by JP Morgan. Given that fact, together with the passage of some five years since the events themselves, he said that he could no longer recall most of the events independently and that the account he gave was largely reconstructed from the tape recordings and transcripts of telephone conversations together with documentary evidence.

Denial of market misconduct or other impropriety.

360. Mr David Tsien denied that he had disseminated any non-public, material price sensitive information about COLI. He had never been told by colleagues at JP Morgan, in particular Mr Ian Long, Mr Rupert Fane, Mr Stefan Weiner, Mr Xen Gladstone or Mr Mark Bamber that the information of which he learned was “relevant information”. If it had been relevant information he said that he expected that he would have been brought “Over the Wall”, as had been his previous experience. That had not happened. He pointed out that in its reply to the SFC dated 9 November 2004 JP Morgan “ ... had not even named

me as a person which they believed to be in possession of non-public, material price sensitive information relating to the COLI placement.” In fact, the issue identified by the SFC there addressed was “ ... who might have been involved in or aware of the placement prior to the announcement?” He denied that in doing what he had done in relation to the placement he had acted in breach of JP Morgan’s “*Chinese Wall*” policy.

361. Mr David Tsien denied that the information that he had passed to Mr Edmond Leung and Mr Steve Luk relevant to the COLI placement was for the purpose of “tipping” them off. His only purpose was to test their interest in taking up placement shares. Certainly, he did not tell them, or anyone else, to sell COLI shares and then obtain replacement COLI shares at a cheaper price in the placement. Of the latter matter, he said that he did not have the authority to decide the final allocation of placement shares.

362. Mr David Tsien said that if he had any doubt that any one of the fund managers he approached in “sounding out the market” in respect of the COLI placement, in which exercise various details of the potential placement were disclosed, would sell COLI shares as a result he would not have divulged that information. His objective was to enable JP Morgan to participate in a successful placement of COLI shares. Sales of COLI shares by fund managers in advance of the placement would be self-defeating to the potential placement. Also, the persons he approached were employees of major institutional clients, such as JFAM, Value Partners, ABN AMRO, Citigroup, HSBC, Manulife, AIG, Franklin Templeton and First State. Those persons were highly experienced qualified professionals. He expected that those entities would have stringent internal compliance policies. Furthermore they were funds much more likely to have a long-term interest in COLI shares rather than short-term profit trading.

Knowledge of and relationship with Mr Edmond Leung and Mr Steve Luk.

363. Mr David Tsien said that by January 2004 he had known Mr Edmond Leung and Mr Steve Luk for a long time. Each of them was a country specialist in China amongst other countries at their respective companies, namely JFAM and ABN AMRO. He regarded both of them as diligent professionals, clients and friends. On occasions they dined together, but neither of them was the kind of fund manager that required him, as a salesman, to entertain them. They met on a professional basis at meetings with JP Morgan analysts, the management of listed companies and on site visits.

JFAM.

364. JFAM was an affiliate company of JP Morgan whose offices were in the same building. Mr David Tsien said that prior to the COLI placement he had a lot of dealings with Mr Steve Luk : on 26 November and 3 December 2003 they had both been involved in two “block crossings” from the JP Morgan to JFAM of COLI shares. He believed that each transaction had involved 60 million COLI shares and that both transactions had involved input from Mr Horace Nip, Mr Steve Luk and Mr David Tsien. The latter transaction had taken their shareholding beyond the disclosable 5% of issued capital limit. He concluded that they had a long-term bullish view of COLI, such that they would be the first institutional investor to be approached about a placement of COLI shares.

ABN AMRO.

365. Mr David Tsien said that ABN AMRO was a major account of JP Morgan, of which account he was manager. Mr Edmond Leung was his counterparty. He said that he did not know if Mr Edmond Leung’s fund at ABN AMRO had any COLI shares nor had Mr Edmond Leung shown any interest in the placement of COLI shares until after the market closed on 26 January 2004.

Economic benefit to JP Morgan from the COLI placement.

366. Mr David Tsien acknowledged that JP Morgan derived direct economic benefit from the successful placement of COLI shares in January 2004. The Investment Banking division had charged COLI a commission of 2% on the total value of the placement shares, some \$33 million, whereas the Equity Sales Department of JP Morgan charged the placees 1% commission of the value of their respective placements. Mr David Tsien said that following notification of his bonus payment in February 2004 from JP Morgan and, in response to his tender of his resignation, he had been paid an extra bonus of US\$25,000.00, in part a reflection of his contribution in bringing the COLI placement to JP Morgan. For his own part, he did not deal in COLI shares at all material times.

Telephone conversations between Mr David Tsien and others.

2 January 2004 (DT : EL).

367. Mr David Tsien agreed that he and Mr Edmond Leung were recorded as having a telephone conversation on 2 January 2004 during which he had informed the latter that he was to meet “Mr Kong Qingping and Horace ... ” on Monday. He said that on an earlier occasion, after JP Morgan began to cover COLI in mid-2003, he might have arranged a meeting between Mr Edmond Leung and the two men as part of introducing the management of COLI.

(DT : Ernest Liu)

368. On the same day, in a telephone conversation he reminded Mr Ernest Liu of JFAM that they were to meet the Chairman of COLI at the Conrad Hotel on Monday.

5 January 2004.

08:17 (DT : SL).

369. Mr David Tsien agreed that in a telephone recording of a conversation he had initiated at 08:17 on 5 January 2004 with Mr Steve Luk he had reminded the latter of their prospective lunch that day with Mr Kong and Mr Horace Nip at the Golden Leaf restaurant, to which lunch Mr Ernest Liu and Mr Raymond Ngai had been invited.

(DT : HN).

370. An hour later he had left a message with Mr Horace Nip reminding him of that engagement.

Lunch : Conrad Hotel.

371. Mr David Tsien said that the lunch planned for 5 January 2005 had taken place. Those that attended were :

- COLI - Mr Kong, Mr Wu and Mr Horace Nip;
- JFAM - Mr Ernest Liu and Mr Steve Luk, both of whom were fund managers; and
- JP Morgan - Mr David Tsien and Mr Raymond Ngai.

372. He did not think that the subject of a placement of COLI shares had been discussed. However, reconstructing his memory of events from subsequent telephone conversations, first at 15:00 with Mr Norman Ho of Value Partners and, second with Mr Edmond Leung at 15:52 he gathered that they had discussed the fact that Morgan Stanley had issued a report in which the net asset value (“NAV”) of COLI was estimated to be \$2.50, whereas that of JP Morgan was \$2.00. Also, the possibility of a backdoor listing of COLI in the Mainland had been discussed.

15:35 (DT : HN).

373. Mr David Tsien said that he had received a telephone call from Mr Horace Nip at 15:35 in which Mr Horace Nip requested that they meet “ ... to have a chat, about what was discussed earlier.” Mr David Tsien said that he did not think that was a reference to a placement of shares by COLI, rather he thought it related to the issue of available staff options for shares that might be sold. It was arranged that they meet at 5:00 pm in the Hong Kong Club.

15:37 (DT : SL).

374. Immediately after his telephone conversation with Mr Horace Nip ended Mr David Tsien called Mr Steve Luk at 15:37 and informed him of Mr Horace Nip’s request that they meet. Between them they speculated as to whether it was about the purchase of a shell company or convertible bonds. Of his statement, “ ... its trend today looks exactly like it wants to conduct a share placement today. Look at it”, Mr David Tsien said that, by reference to the sharp increase in the price of COLI shares that day, he was speculating about the possibility of a placement of shares by COLI.

15:40 (DT : RN) and 15:43 (DT : HN).

375. Mr David Tsien said that, first in a telephone conversation at 15:40 he had secured Mr Raymond Ngai’s agreement to attend the Hong Kong Club meeting and, second in a telephone conversation at 15:43 he had secured Mr Horace Nip’s agreement to Mr Raymond Ngai’s presence at the meeting. Mr David Tsien said that he wished Mr Raymond Ngai to attend because he was the research analysis who had introduced him to Mr Horace Nip after he had written a research paper about COLI in May 2003.

15:52 (DT : EL).

376. Mr David Tsien initiated the telephone conversation he had with Mr Edmond Leung at 15:52, informing the latter of a meeting he had just had with “the whole board of China Overseas”, referring to “AH Sing of finance, Horace, Hung Hing Ping”, namely Mr Horace Nip and Mr Kong. He advised him that COLI would not be floated on the Mainland until the end of next year. In particular, he drew attention to the discrepancy between the estimated NAV of COLI, on the one hand by JP Morgan at \$2.00 and on the other hand by Morgan Stanley at \$2.50.

Hong Kong Club meeting.

377. Mr David Tsien said that Mr Raymond Ngai and he met Mr Horace Nip in the Hong Kong Club at about 5:00 pm. In his statement of 18 February 2009, he said that he had reconstructed the contents of their discussions from observations that he had made in recorded telephone conversations in which he had participated on 6 January 2004. In the result, he said that Mr Horace Nip had said : COLI had staff option shares available for sale, but Horace Nip would have checked how many could be offered; COLI was considering doing a top-up placement of 15% of their existing shares (5.4 billion), ie 800 million shares, at a price of about \$ 1.70 which was just above their book NAV; and COLI had appointed HSBC to help them distribute their construction arm to existing shareholders.

6 January 2004.

Report to Mr Xen Gladstone on 6 January 2004.

378. Mr David Tsien said that, after he had been told by Mr Horace Nip at their meeting in the Hong Kong Club in the late afternoon of 5 January 2004 that COLI was interested in placing shares, he had informed ECDM and Mr Xen Gladstone of that information. He said that he did not believe that he had used

words to the effect that he had thereby come into contact with non-public material information. It was up to Mr Xen Gladstone to decide if he, Mr David Tsien, should be “quarantined”. He went on to say that if the information was indeed “ ... non-public material information, ECDM would have told him so”. He agreed that at no stage had he asked anyone if he should be “taken over the Wall”.

379. He said he suggested to Mr Xen Gladstone that someone in ECDM who spoke Mandarin should be assigned to follow up the issue of the COLI placement. Mr Ian Long was the only person with those linguistic abilities in ECDM. Subsequently, he did speak to Mr Ian Long.

08:47 (DT : Ernest Liu).

380. It is to be noted that in a telephone conversation with Mr Ernest Liu of JFAM at 8:47 on 6 January 2004 Mr David Tsien informed him of his meeting with COLI on the previous day. Of the issue of a placement by COLI, Mr David Tsien informed him :

“ ... but within a short time it may -- it will conduct a placement ...”.

Furthermore, he told him that it was a “top up” placement of about 800 million shares, that being about 10 to 15% of its existing issue. Of the “target price” he said that it was changing a lot “ ... sometimes it was said to be \$1.80, sometimes \$1.70.”.

09:03 (DT : SL - voice message).

381. Mr David Tsien said that having initiated a telephone call to Mr Steve Luk he had left a message in which he had described having met Mr Horace Nip at 5:00 pm the previous day. Of the issue of COLI staff option shares, he informed him that COLI would check to see how many could be offered. Of

the issue of a placement of COLI shares, he informed Mr Steve Luk the COLI were :

“talking about -- issuing new shares to place, ... as a top up placing.”.

Of the size, he told him that it was 15% of the issued capital of 5.4 billion, namely almost 800 million shares. Of the price, he said that he

“ ... wants to have it done around \$1.70, just above its book NAV.”.

382. In cross-examination by Mr Kwan, Mr David Tsien said that it had not occurred to him when he had given this information to Mr Steve Luk that the information might be “price sensitive”. If it had been “price sensitive” information, Mr Xen Gladstone would have told him. He accepted that through the two block crossings of COLI shares in which he and Mr Steve Luk had been involved he knew that JFAM held a substantial parcel of COLI shares. However, he believed JFAM to be holding those shares for the long term and it did not occur to him that they might trade on this information. Mr David Tsien disagreed that in giving him and the details of the size and price of the proposed placement of COLI shares Mr Horace Nip was providing Mr Steve Luk with “specific information”. However, he did agree that the proposed size and price of the placement was not known to the public.

09:37 (DT : CCH).

383. In a telephone call that Mr David Tsien initiated to Mr Cheah Ching Hye of Value Partners at 09:37, Mr David Tsien repeated the detail of the information that he had given a little earlier to Mr Steve Luk in respect of the placement of COLI shares, namely that COLI was planning to issue up to 800 million shares at around \$1.70 per share.

384. In cross-examination by Mr Kwan, Mr David Tsien confirmed the assertion in his statement of 18 February 2009 that it was his belief that it was

likely that he had told Mr Horace Nip at the Hong Kong Club meeting that he should talk to the ECDM of JP Morgan, rather than to himself, to explore further the issue of doing a top up placement. He denied that he did so because he realised that he was being provided with non-public material information, rather it was because it was his duty to point a client in the direction of the “right people”, in this case the ECDM. He said that he believed that he would have told Mr Horace Nip that as a salesman he worked on the “public side” and that is why he should speak to ECDM.

385. In subsequent cross-examination by Mr Kwan, in respect of further details provided by Mr Horace Nip in telephone conversations on 7 January 2004 in respect of the terms sought by COLI for the placement of its shares, which detail he had provided to Mr Steve Luk, Mr David Tsien said that he believed that at the Hong Kong Club he had told Mr Horace Nip not to release information to him if it was “price sensitive”. That was his usual style. However, he agreed that although the matter was dealt with in some detail in his statement of 18 February 2009 at paragraphs 79-87 he had made no mention of having said that to Mr Horace Nip.

10:10 (DT : HN).

386. Mr David Tsien agreed that he had initiated the telephone conversation with Mr Horace Nip at 10:10. He had done so in order to inform him of the fact of a placement by Chalco. However, Mr Horace Nip took the opportunity to raise the issue of the placement of shares by COLI telling him that he had reported to Mr Wu but not to Mr Kong and that the latter would follow up the matter. He agreed that he had said to Mr Horace Nip “ ... whatever decision you have let me know.” He accepted that he had not suggested anywhere in the conversation to Mr Horace Nip that he contact the ECDM. He explained that he thought Mr Horace Nip to be quite comfortable with him.

12:28 (DT : HN).

387. Mr David Tsien agreed that he had initiated the telephone conversation with Mr Horace Nip at 12:28 and had done so in order to advise Mr Horace Nip that it was proposed that arrangements be made for him to meet Mr Ian Long of JP Morgan, whom he described as very experienced on share placements. Also, he told Mr Horace Nip that the Chalco placement had been announced at an 8% discount to the share price, but advised him that, in contrast to such a big market Cap share, COLI might have to offer a higher discount. Mr David Tsien concluded the conversation by telling Mr Horace Nip :

“However, if you are really serious ... I will call off the trip.”.

15:14 (DT: HN).

388. In a telephone conversation initiated by Mr Horace Nip at 15:14 Mr David Tsien and Mr Horace Nip discussed the Chalco placement, including its 8% discount to share price, after which Mr Horace Nip stated :

“ ... Chief Ng (Mr Wu) and Chief Hung (Mr Kong) basically felt that if it was like those, there would not be any problem, but I have also asked Ian to have a drink with me later at 5:30 to have a chat.”.

389. At first, Mr David Tsien agreed that on reflection he understood that to be a reference by Mr Horace Nip of the fact that the Chalco placement had been done at an 8% discount to the share price. However, later he said that had not occurred to him. He said that he had repeatedly told Mr Horace Nip in earlier conversations that he was not the person to discuss the issue of discount for the share placement. He said that he took Mr Horace Nip’s references to the fact that Mr Raymond Ngai had asked to visit a COLI site and Mr Ian Long had suggested meeting only the following week to be criticisms of their approach to the placement. He sought to allay Mr Horace Nip’s concerns.

17:21 (DT : HN).

390. At the outset of the telephone conversation that Mr David Tsien had initiated with Mr Horace Nip at 17:21, he informed him that he had cancelled his holiday. He went on to say : “ ... I want to suggest that we go for the equity issue first.” Having told Mr Horace Nip that he had many things, a few big deals, to do next month Mr David Tsien said :

“So, if you’re talking about January, I rather sit here to wait for you.”.

391. However, Mr David Tsien denied that he was telling Mr Horace Nip that the placement had to be done in January, rather he was telling him that at a later date JP Morgan might not have time for COLI. He accepted that in the conversation he was in no way distancing himself from Mr Horace Nip, that is by suggesting that further contact be with ECDM. He explained that it was because of Mr Horace Nip’s expressions of dissatisfaction with Mr Raymond Ngai and Mr Ian Long.

7 January 2004

11:33 (DT : HN).

392. At the outset of the telephone conversation with Mr Horace Nip initiated by Mr David Tsien at 11:33 the latter enquired of the progress of the meeting on the previous day that Mr Horace Nip had with Mr Ian Long. He did so to make sure that that meeting had gone well. Given what he had taken to be expressions of dissatisfaction by Mr Horace Nip in their telephone conversation of the previous afternoon, of the lack of attention given to the COLI placement project by Mr Raymond Ngai and Mr Ian Long, Mr David Tsien said that he was anxious to pacify Mr Horace Nip. He was interested in business for JP Morgan. Mr Horace Nip went on to note that the biggest problem was because the price of COLI shares had not reached the “target level”. He went on to express

concern about “sounding out the market”. In those circumstances, Mr David Tsien said :

“ ... at your price, we are also interested, but if the price -- ie if talking about the price, ie he wants it to be about \$1.90 to \$2.00.”.

393. In cross-examination by Mr Kwan, Mr David Tsien accepted that his reference to “your price” was a reference to \$1.70 per share. Mr Horace Nip responded by stating :

“If the deal falls through just because of a difference of five cents, I don’t think so ... ”.

Mr David Tsien agreed that yet again he had made no attempt in this telephone conversation to distance himself in any way from Mr Horace Nip.

11:53 (DT : IL).

394. In the telephone conversation initiated by Mr Ian Long at 11:53, Mr Ian Long told Mr David Tsien that he wanted to give him an “update” on the meeting that he had had with Mr Horace Nip. Mr Ian Long responded to Mr David Tsien’s observation that he understood Mr Horace Nip to be “pretty stiff with the price” by saying :

“He was telling me 180.”.

In response, Mr David Tsien said :

“Then we have to wait (for) the share price to go to \$2.00.”.

However, Mr Ian Long indicated that Mr Horace Nip was still “flexible” having responded in the affirmative when asked if he wanted to be shown a price, even if it was not 180.

395. In cross-examination by Mr Kwan, Mr David Tsien said that he was surprised that Mr Ian Long had given him the price let alone that he had told him that it was \$1.80 per share. However, he denied a suggestion that information was “price sensitive”, saying that if it was in that category Mr Ian Long would not have given him the information.

396. Of his response to Mr Ian Long that an anchor was needed and that he would chat to Mr Steve Luk, who had said that there was demand below 160, Mr David Tsien denied behaving inappropriately. If that had not been appropriate, Mr Ian Long would have told him so. Nevertheless, he accepted that it was his initiative to contact Mr Steve Luk. He understood that Mr Ian Long wished him to find out a price that he could show to COLI.

11:54 (DT : SL - voice message).

397. Immediately after the conclusion of his telephone conversation with Mr Ian Long, at 11:54 Mr David Tsien telephoned Mr Steve Luk and left a voice message indicating that he wished to talk to him about COLI. He said that he wished to tell him that :

“ they are generally interested in doing placement (sic), but I want to discuss the price with you. Call me when you are available.”.

12:34 (DT : SL).

398. Mr David Tsien received a telephone call from Mr Steve Luk, apparently in response to the voice message, at 11:54. At the outset, Mr David Tsien informed him that :

“He wants -- \$1.80, Horace said that their bottom line is \$1.70.”.

399. When it was suggested to Mr David Tsien that there was no reason for him to inform an institutional investor like Mr Steve Luk of the price at which a client wished to place shares Mr David Tsien said that he did not know why he had given that information, but that as a salesman he always quoted a price. When he was asked why he could not have simply asked Mr Steve Luk if he was interested in a placement of COLI shares in the range \$1.70-\$1.80, Mr David Tsien said that he could not speak to an investor like that.

400. Mr David Tsien informed Mr Steve Luk :

“Well, he wants us to raise the NAV. I said, ‘look are you crazy?’ As to the reason why, our report was updated on 19 December.”.

He added that CL had upgraded the NAV to \$2.20 and that the following week Goldman Sachs will announce it to be \$2.50. He concluded by saying that it was his inclination that, having looked at “earnings, 20 times PE, 2% yield” that “the price should be lowered further.”.

401. Having been reminded by Mr David Tsien and that his fund held a 7% shareholding in COLI, Mr Steve Luk said that, although they were “cheerleading”, nevertheless we are absolutely “price sensitive”. Of the issue of price, Mr Steve Luk said :

“ ... if you do it today, it has to be \$1.60.”.

Mr David Tsien responded by saying :

“If that is the case, I would for the time being indicate to him that there was interest only at prices below \$1.60.”.

Mr Steve Luk concluded by saying :

“I don’t mind \$1.60 or below. I think we have brought the shares before at \$1.60 or below so I don’t mind.”.

12:42 (DT : IL - voice message).

402. At 12:42 Mr David Tsien telephoned Mr Ian Long’s office telephone number and, having been informed that he was in Singapore and having been made an offer to have his call forwarded to him, left a voice message :

“ ... the major institutional shareholder has absolutely no interest in China Overseas at 170 or 180. They will think if the share price is at two dollars, they will be interested in the placement, only if it is at 160 or below ...”.

Mr David Tsien explained that in providing this information to Mr Ian Long he was assisting a colleague in the way in which he had promised in the telephone conversation they had earlier.

15:13 (DT : HN).

403. At the outset of the telephone conversation initiated by Mr Horace Nip at 15:13, Mr David Tsien was told that Mr Horace Nip had reported to Mr Kong whom he described as “pretty supportive”. He agreed that he took that to be a reference to the COLI placement. Mr David Tsien accepted that his statement : “ ... just make it before the Chinese New Year then ... ” was advice that the COLI placement be done before Chinese New Year. He went on to tell Mr Horace Nip that he had chatted with some clients and that :

“ ... in the case of the price you people mentioned, ... it can't be done at this price at the moment.”.

Later, he explained :

“ ... based on the performance today, neither a \$1.70 nor \$1.80 is possible.”.

Mr David Tsien added that he had checked with JFAM and that :

“ ... it will consider only if it is below \$1.60.”.

404. In cross-examination by Mr Kwan, Mr David Tsien explained of his subsequent identification in the conversation of Mr Steve Luk as the person with whom he was dealing at JFAM, had been done because Mr Steve Luk had been involved in two “block crossings” of COLI shares. For his part, Mr Horace Nip responded by saying :

“At the end of the day I don't think my bosses will stop doing the stuff just because of a few cents.”.

405. Mr David Tsien confirmed that his enquiry, to which he received an affirmative answer from Mr Horace Nip, namely “ ... is he still talking about \$1.80?” was a reference to the price sought by Mr Kong for COLI shares in the placement. In cross-examination by Mr Kwan, Mr David Tsien accepted that Mr Kong's price of \$1.80 was not “public information”, but he denied that it was “price sensitive” information. He did not know if Mr Horace Nip had spoken to Mr Kong.

406. Of his reference to the 26th, and the fact that at that date most people and clients would be here, Mr David Tsien explained that he was conveying to Mr Horace Nip that the placement by COLI could be done in the week beginning 26 January 2004. Having told Mr Horace Nip that he thought COLI share price would rise higher, Mr David Tsien advised him :

“I think you’d better wait for your share price to get above \$1.90 ... before going ahead.”

Later, he added :

“So a good price would be near \$2.00, between \$1.90 and \$2.00.”.

For his part, Mr Horace Nip asked :

“ ... if it reaches \$2.00, are you confident that he can be done? (Laughter) I mean according to your experience and in the absence of any commitment?”.

Mr David Tsien responded :

“If it reaches \$2.00, the possibility of \$1.70 or \$1.80 will be higher than now.”

Finally, Mr David Tsien said :

“ ... I mean, if the share price is around \$1.80, it will probably be \$1.60 only.”.

407. In cross-examination by Mr Kwan, Mr David Tsien agreed that nowhere in this telephone conversation had Mr Horace Nip made any complaint about Mr Ian Long or Mr Raymond Ngai or, for that matter, had he attempted to divert Mr Nip’s attention towards Mr Ian Long. Mr David Tsien explained that Mr Ian Long was apparently in Singapore and he could not find him. However, he accepted that in a telephone conversation held earlier that day he had declined the invitation of Mr Ian Long’s secretary to connect his call to Mr Ian Long’s telephone, choosing to leave a voice message instead. He said that Mr Ian Long might be on an aeroplane and he didn’t want to “hassle” him.

15:35 (DT : SL).

408. Mr David Tsien accepted that he had initiated the telephone conversation that he had with Mr Steve Luk at 15:35. Of COLI, Mr David Tsien informed Mr Steve Luk :

“It said to push the price up to \$2.00 by speculation, and then they would be given to us for allocation.”

Mr David Tsien explained that by that statement he meant that they were thinking of “ramping up” the share to \$2.00 before giving JP Morgan the placement. Of the size and price sought, Mr David Tsien told Mr Steve Luk :

“For 800 million shares, he -- this Kong Qing Ping said he wanted \$1.8 per share.”.

409. In cross-examination by Mr Kwan, Mr David Tsien agreed that this was not “public information”. Mr David Tsien disagreed with the suggestion made to him that in informing Mr Steve Luk that Mr Kong wanted a share placement price for COLI of \$1.80 he was disclosing “price sensitive” information. In the first place, Mr Horace Nip was an experienced executive and if this information was “price sensitive” he would not have released it to him. Secondly, he believed that at their meeting in the Hong Kong Club on 5 January 2004 he had told Mr Horace Nip not to release “price sensitive” information to him. However, he agreed that there was no reference to that event in his statement of 18 February 2009. Mr David Tsien disagreed with the suggestion that there was no valid reason for him disclosing to Mr Steve Luk that Mr Kong wanted a placement price of \$1.80 per COLI share. He said that since Mr Steve Luk had indicated an interest at \$1.60 this was a way of telling him that there was no “deal”.

9 January 2004.

09:32 (DT : SW).

410. Mr David Tsien said that Mr Stefan Weiner called him “out of nowhere” and 09:32 on 9 January 2004 and asked him, “ ... on China Overseas Land, what’s your guess?” In giving him a short description of COLI, Mr David Tsien said that the shares had gone from \$0.60 to \$1.00 within a year. He added :

“About end of last year, I did two placements for them. This is extension to JFAM ... JFAM bought 5% of the company via two crossings and picked up another 2% in the open market.”

Mr David Tsien went on to explain :

“The stock is \$1.80. They gave us a lunch and said to me, that they would like to do a placement ... at \$1.80.”

411. Mr David Tsien added that he had had a meeting with Mr Horace Nip and Mr Raymond Ngai at the Hong Kong Club, at which he had said :

”Let me do it for you because, we -- I am the one that put JFAM on the shareholders’ list. Finally, you’ve got a decent institutional fund manager as a long-time holder.”

However, he had said to them that : “ \$1.80 is not doable.”

412. Mr David Tsien informed him he had approached JFAM and learned that the highest price that they had paid for COLI shares was \$1.60. Of his approach to JFAM, he said :

“So if we are issuing 800 million shares, would you be happy to take up some? They said ‘Yes’ but at a substantial discount to market or well, or somewhere below \$1.60.”

413. Mr Stefan Weiner responded by suggesting a price of \$1.55, describing that as being an 8% discount to the closing price of COLI shares the previous day. Mr David Tsien responded :

“\$1.50, I don’t think they will say yes. Because I know the company’s chairman wants \$1.80. The financial adviser said to them, may be \$1.70. If you come to something closer to \$1.60 I think (they) will be happy.”

The conversation concluded with Mr David Tsien suggesting that he would check with “the fund manager” at JFAM and let Mr Stefan Weiner know.

(DT : SL).

414. Immediately after his conversation with Mr Stefan Weiner, Mr David Tsien initiated the telephone conversation that ensued with Mr Steve Luk informing him that JP Morgan’s price for placement of COLI shares was \$1.55,

adding : “ ... anyway we will not make it higher than \$1.60 per share.” Mr Steve Luk indicated that in those circumstances he could take US\$20 million of COLI shares, agreeing that together with other fund managers JFAM could take between US\$20-50 million of COLI shares.

9:46 (DT : SW).

415. At 9:46 Mr David Tsien reported the results of his conversation with Mr Steve Luk to Mr Stefan Weiner. However, when asked to confirm Mr Steve Luk’s name Mr David Tsien said : “ It’s better if you don’t mention names.” Having told Mr Stefan Weiner that he did not think that COLI would accept a placement at \$1.55 per share Mr David Tsien said :

“ ... then maybe eventually offer them 160, but I think just stay firm at 155 for a while.”.

9:57 (DT : HN - voice message).

416. At 9:57 Mr David Tsien left a voice message for Mr Horace Nip, telling him :

“I will have a colleague coming back today, who will provide you with the offer price.”.

He went on to add :

“ ... if the price is not right, there is still slightly more leeway for negotiations.”.

10:13 (DT : Wu).

417. At 10:13 Mr David Tsien initiated a conversation with Mr Wu of COLI, informing him that on that day a colleague from JP Morgan would provide a price at which COLI’s shares could be placed. He went on to observe that he was doing so : “ ... because I have noticed the timing, in fact is very tight.” and concluded by saying : “ ... it will become too troublesome after January.”.

10:18 (DT : HN).

418. At 10:18 Mr David Tsien initiated a telephone conversation with Mr Horace Nip in which informed him that he had a colleague who was getting back today and who would give Mr Horace Nip directly a price at which JP Morgan considered the COLI shares could be placed. That price was “indicative” and subject to discussion. Mr Horace Nip observed that COLI shares were then trading “at such a low price at 168 now.” Also, he added that he was “still looking at the materials Ian gave me ... He has also sent them to be read by my lawyer, and he is yet to revert.”.

10:24 (DT : HN).

419. At sometime after 10:24 Mr David Tsien initiated another telephone conversation with Mr Horace Nip. The latter informed him that he was aware of Mr David Tsien’s earlier contact with Mr Wu. Mr David Tsien corrected Mr Horace Nip’s statement that he was expecting that “ ... you would send something over”, informing him again that a colleague of his would provide a price that day for the placement of COLI shares, adding :

“ ... look I’m not supposed to know this. Why? A deal done by the big firm, we are being considered as the public side. We are not supposed to know anything. You just treat me as not knowing anything, okay?”.

For his part, Mr Horace Nip interjected affirmatively on occasions in the course of those statements.

420. In cross-examination by Mr Kwan, Mr David Tsien accepted that as an equity salesman he was on the “public side” of JP Morgan. Mr David Tsien agreed that in stating “We are not supposed to know anything”, he was acknowledging that he was not supposed to know anything about the COLI placement deal. He disagreed with the assertion that he was not supposed to know about COLI’s intentions in respect of the size and price of the placement. However, he did agree with the assertion that he was not supposed to know that

JP Morgan was to make an offer to COLI in respect of the placement price let alone the price itself. Mr David Tsien disagreed with the suggestion that, in what he did, he was by-passing the ECDM team in JP Morgan :

“Stefan Weiner does not speak Mandarin, he does not speak Chinese and, from my conversation with him he doesn’t seem to know a lot about this company either. Ian Long was nowhere to be found and I did not know why Stefan made that call to me. The sole purpose of making the call was to help ECDM. I did this because I remember there was an incident involving Ian Long and Horace Nip.”.

421. Mr David Tsien’s reference to “an incident” was to Mr Horace Nip’s observations in respect of not only Mr Ian Long but also Mr Raymond Ngai in a telephone conversation between the two of them on 6 January 2004. In the earlier conversation Mr Horace Nip expressed what Mr David Tsien took to be ‘unhappiness’ about the fact that Mr Raymond Ngai wished to visit a COLI site and that Mr Ian Long proposed meeting Mr Horace Nip but only in the following week, namely a sluggish response to COLI’s interests. However, Mr David Tsien agreed that in two telephone conversations earlier on 7 January 2004 Mr Horace Nip did not express any further concerns about either of those persons.

422. In his statement of 18 February 2009, Mr David Tsien said that whilst, on the one hand, he was anxious to help ECDM achieve smoother communication with COLI, on the other hand, he wanted to avoid any impression or misunderstanding in ECDM that he was by-passing them to talk to COLI directly :

“For this reason, I did not want Horace Nip to inadvertently tell Stefan Weiner or the ECDM through any slip of (sic) tongue that he already knew that an offer from the ECDM was forthcoming that day.”.

16:44 (DT : SL - voice message).

423. At 16:44 on 9 January 2004 Mr David Tsien left a voice message on Mr Steve Luk’s telephone informing him that :

“Li Hui of CL will issue a report regarding China Overseas on Monday, stating that its NAV is \$2.50 per share. It is because she feels that only if the NAV is at \$2.50 would it be possible for the placement to be conducted at \$1.80. But anyway we have decided to bid the whole block today at \$1.55 per share ...”.

12 January 2004.

08:29 (DT : EL).

424. In a telephone conversation that Mr David Tsien had with Mr Raymond Ngai at 08:29 on 12 January 2004 Mr David Tsien informed him of what he said was COLI’s response in respect of the issue of price of its placement shares :

“It goes straight to Ian Long and says to him that if they want to do the share placement, to what extent the share price should go. Okay. It said that we had misinterpreted it.”.

Placing the matter in context, he explained :

“It asked me, ‘at what price you guys can do it?’ We have put down here \$1.55 if it wants to reverse the question saying -- if they want to do the share placement at \$1.80 to what extent the share price would go.”

In further discussions with Mr Raymond Ngai, Mr David Tsien arrived at an answer to the question :

“\$2.10, about 15% discount.”.

12:00 (SL : DT).

425. In a conversation at noon on 12 January 2004 initiated by Mr Steve Luk, Mr David Tsien confirmed that JP Morgan had made an offer to COLI in respect of a proposed placement price of its shares at \$1.55, but had been met with an immediate response :

“You seem to have mistaken my meaning. What I wanted to ask you was that ‘if we want to place the shares at \$1.80 what do you want the share price to be?’ ”.

Mr David Tsien went on to tell Mr Steve Luk of his response :

“I said ‘\$2.00 is -- since its -- it’s a barrier’. I said (what about) \$2.10, ... you can make \$1.80 for sure because there is a discount of over 10%.”.

426. In questions asked of Mr David Tsien by the Chairman at the end of re-examination by Mr Chang, Mr David Tsien explained that the person to whom he referred as having said, “You seem to have mistaken my meaning” was Mr Horace Nip. However, he said that he did not have this conversation with Mr Horace Nip, rather he said :

“I think I got this from -- I can’t recall the exact conversation, but I think I got this from Ian.”.

He agreed that this is what Mr Ian Long had reported to him as a conversation that had taken place between Mr Ian Long and Mr Horace Nip. Similarly, he said that he believed that his purported response to Mr Horace Nip :

“\$2.00 is -- since its -- it barrier. I said (what about) \$2.10, (if it’s) \$2.10, you can make it at \$1.80 for sure because there is a discount of over 10%”

was in fact part of a conversation that he had with Mr Ian Long. He had not said that to Mr Horace Nip, nor did he have the subsequent conversation with Mr Horace Nip, as he claimed in the conversation with Mr Steve Luk.

427. Mr David Tsien went on to tell Mr Steve Luk :

“BOCI was making a big purchase in these few days, it seems that it has probably obtained financing from BOCI and then used the financing to push up the share price, thinking that it could place shares at \$1.80 if the price has gone up.”.

15:20 (DT : EL).

428. At 15:20 Mr David Tsien initiated a telephone conversation with Mr Edmond Leung in which he told him that at COLI’s request JP Morgan had made a bid for a share placement of 800 million COLI shares at \$1.55 per share, which bid COLI had turned down because it wished the shares to be priced at \$1.80. Mr Edmond Leung observed that the price of COLI shares was then \$1.69. Of the issue of NAV, Mr David Tsien went on to tell him :

“ ... on 29 December we revised up the NAV to \$1.99 ... It asked CL to issue a -- CL and Morgan Stanley issue a report saying that its NAV is \$2.50 ... It wants us to follow suit, I said ‘look’. I said we only put down \$1.99 on 29 December, how could it be possible for it to be changed to \$2.50 in mid-January.”.

429. After Mr David Tsien had provided him with more details about COLI, Mr Edmond Leung said :

“I think this price does not offer enough (profit margin), to be frank, this is the worst part of it. You -- it would be okay if it is at \$1.60.”

Mr David Tsien concluded the conversation by saying “if they want \$1.80, I would not do it for them.”

13 January 2004.

10:59 (DT : SL).

430. At 10:59 Mr David Tsien received a telephone call from Mr Steve Luk in which the latter noted that the share price of COLI was \$1.65 and asserted that in consequence it could not be placed at \$1.55 per share. Of COLI’s continued insistence on a placement price of \$1.80, Mr David Tsien repeated the account that he given earlier, to both Mr Steve Luk and Mr Raymond Ngai, of the position COLI had stated to JP Morgan, namely :

“I think you have misunderstood what I mean. What I mean is, if we want to have them placed at 180 to what-what level do you want the share price to reach?”

Mr David Tsien said that he had responded by quoting a price of \$2.10.

11:44 (DT : SL).

431. In a short conversation subsequently at 11:44 Mr David Tsien confirmed COLI’s position to Mr Steve Luk, namely “It wanted it to be \$1.80 before it would do it.”

11:51 (DT : EL).

432. Mr David Tsien initiated the telephone conversation with Mr Edmond Leung at 11:51, at the outset of which he informed him of the COLI share placement :

“ ... if it is going to be placed the shares will be placed at 180 and will not will not be under 180 ... CL and Morgan Stanley have published a report saying that NAV is 250.”.

433. In the course of the conversation, Mr David Tsien asked Mr Edmond Leung if he had obtained a copy of the “Red Herring”, namely a draft of the Shanghai Forte prospectus. He explained that he wished to compare the land valuation in the prospectus as against the valuation upon which JP Morgan’s NAV for COLI had been calculated. In cross-examination by Mr Kwan, Mr David Tsien asserted that was the reason he had made this telephone call. Also, whilst he agreed that he was not “sounding out” Mr Edmond Leung’s interest in the proposed placement, he said that regarded this as an “update” call from a salesman.

434. Whilst Mr David Tsien agreed that the information that the placement would be at \$1.80 and not below that price was not “public information” and that he did not have any legitimate reason for so informing Mr Edmond Leung, he disagreed that it was “price sensitive” information. He said that typically a salesman would inform his client of “market intelligence” to keep them interested in a potential deal. He was doing no more than that. At that time he said that he felt that the possibility of the COLI placement deal taking place through JP Morgan was very remote.

14 January 2004 (DT : various fund managers).

435. On 14 January 2004 Mr David Tsien had telephone conversations with fund managers of Value Partners, Templeton and First State in which he informed them that COLI wished to do a placement of its shares. Of COLI’s plan he told Mr Cheah Ching Hye :

“ ... they plan to issue 800 million shares at \$1.80. We told them to -- perish the thought, there is no way we could do it at a premium. In any case we have already upgraded our NAV forecast to 1.99 at the end of December, so whatever they said, or whatever they done to prompt Morgan Stanley and CL

to upgrade the NAV forecast of 2.50, we're not going to follow suit because I can't change our NAV forecast from December and then by mid-January it becomes 2.50 ... We like China Overseas, but not at 1.80, maybe 1.55."

436. Mr David Tsien told Mr Martin Lau at First State :

"At 180, I'm not interested. If it is 155, I'll have some interest."

15 January 2004.

08:47 (DT : EL).

437. Mr David Tsien initiated the telephone conversation that he had with Mr Edmond Leung at 08:47 on 15 January 2004. After discussing various other matters, Mr David Tsien referred to the COLI placement indicating that JP Morgan and COLI could not agree on the price, the latter asking for \$1.80 per share. Mr Edmond Leung responded : "Should kick it back up first, Big Brother." Mr David Tsien said that he had responded to COLI by saying :

"If you ask for \$1.80, then it has to be \$2.10."

438. Of the issue of the timing of the placement, Mr David Tsien said :

"I guess the deal will close by the end of the month. It will definitely not be next week. There isn't much time left today."

439. Mr David Tsien agreed with Mr Edmond Leung's assertion that the placement price would have to be at a discount to the share price. Mr Edmond Leung responded :

"I know, if -- if it can be kicked up, let us hope that it can be kicked up first at least it can disperse/reduce (dispose of) some first."

440. In cross-examination by Mr Kwan, Mr David Tsien said that notwithstanding his reference to negotiations continuing between JP Morgan and COLI about the share price for the placement at that time he thought the chance of the "deal" taking place was very remote. He had mentioned it to Mr Edmond Leung in the hope that he might show some interest in the placement.

Of his assertion to Mr Edmond Leung that he guessed that the deal would take place by the end of the month, he said that he thought that someone other than JP Morgan would complete the deal. Mr David Tsien said that he did not take seriously Mr Edmond Leung's statement that if COLI shares were "kicked up" he could dispose of some shares first. He thought him to be unhappy about the number of shares allocated to him by JP Morgan in the Asia Aluminium placement and, as a result, he was unhappy with Mr David Tsien and was "taking the Mickey".

09:23 (DT : SL).

441. Mr David Tsien said that Mr Steve Luk had initiated the telephone conversation that they had at 09:23. In the course of the conversation he told Mr Steve Luk that JP Morgan would inform COLI that day that its bid for the placement was \$1.55 per share, adding :

“ ... It wants it to be \$1.80. I said no discussion until it reaches \$ 2.10.”.

In his oral testimony Mr David Tsien said that in fact he had not made that statement to anyone at COLI. This was "salesman's talk". He added : "yes, because by then I have (sic) no conversation with the company at all.”.

442. Later in the conversation Mr Steve Luk said:

“ ... I suspect that it is possible that people may be buying China Overseas shares today ... so you may not be able to do the deal at \$1.55 ... go up to \$1.60.”.

For his part, Mr David Tsien responded by stating that they were talking about a discount for the placement shares of 8.5%, adding that if the placement could not be done by the end of January it would have to wait until April.

09:36 (DT : IL).

443. Mr David Tsien said that Mr Ian Long initiated the telephone conversation that they had at 09:36. He informed Mr Ian Long :

“JFAM suggests that you raise the bid to 160 ...”.

In answer to Mr Long’s enquiry as to how much he thought JFAM was “good for”, Mr David Tsien said :

“They’ve given you an indication of between at least US \$20 million to US \$50 million-could take up the entire deal, which has about 150, because once it is announced, Steve will have to show it to everyone within JFAM ... he himself has indicated, ‘Confirm 20.’ but he could go up to 50 because he’s got a lot of funds coming in.”.

444. Mr David Tsien accepted in his oral testimony that at this stage Mr Steve Luk was the person within JFAM who had information about the placement, but that once the “term sheet” was issued with details of the placement, when JP Morgan embarked upon its “book build”, it would be distributed within JFAM.

445. Of the discount for the placement shares Mr Ian Long observed :

“ ... but today stock is still at 170, right?”.

Mr David Tsien observed : “That’s right. So it’s a very, very small discount.”

Mr Long queried : “You think you can do it as a tighter discount? It’s quite aggressive, is it?”.

10:04 (DT : SL - voice message).

446. At 10:04 Mr David Tsien left a voice message on Mr Steve Luk’s telephone informing him that COLI’s shares would be suspended within one or two days, advising him that they were still in discussions with HSBC about how much information about COLI to disclose. He concluded by saying :

“According to Florence they will only start negotiating with us on Monday at the earliest, at the earliest, and it will be even better in the week of the 26th. Well ... if anything needs to be done it will not be done within these two days.”.

447. In cross-examination by Mr Kwan, Mr David Tsien said at first that he could not recall the subject matter of the negotiations although he did recall that

they were between COLI and JP Morgan. However, having been reminded of the reference to the date, namely 26th, he said that he thought it was a reference to the placement of shares by COLI. He agreed that there was no reason for him to have told Mr Steve Luk of the likely date of the placement.

10:42 (DT : HN).

448. Mr David Tsien said that he had initiated the telephone conversation that he had with Mr Horace Nip at 10:42. Having told Mr Horace Nip that the Asia Aluminium placement had gone well and that foreign capital was still flowing into Hong Kong he said :

“If you are not satisfied with the price indicated by me to you, we can discuss a price, because my client is willing to pay a bit more.”.

449. In his oral testimony, he said that whilst he had not mentioned the price to COLI personally that was a reference to the price given to COLI by ECDM. Having informed Mr Horace Nip that he had cancelled all of his leave at Chinese New Year Mr David Tsien went on to remind him :

“ ... in Hong Kong top up placing ... is conducted on T plus two ... so no matter what, it cannot be done on the 21st ... you know there will be a three-day holiday ... then it will take a long time to settle.”.

450. Having indicated that he understood what he was being told, Mr Horace Nip went on to say :

“I think for this matter, we, tentatively, if the market is okay eventually, then actually we will definitely after the New Year ... since it turns out that we had to clear those matters in the market, we strive to do it on Monday.”.

451. In his oral testimony Mr David Tsien accepted that he understood Mr Horace Nip to be informing him that, if the market price of COLI shares was okay and if the placement price was acceptable to them the placement would be done after the Chinese New Year.

16:30 (DT : SL - voice message).

452. At 16:30 Mr David Tsien left a voice message on Mr Steve Luk's telephone :

“China Overseas, because officially I'm supposed to know nothing at all, well, so wonder if you can ask ECM -- you ask for the Singapore guy named Ian Long or the guy named Rupert Fane ... to come and see you next week to have a look at the price in the number of shares.”.

He went on to repeat his assertion :

“Since officially I'm supposed to know nothing at all, so is necessary to ask them to come, that is to confirm with you ... well, then I can concentrate on dealing with Horace.”.

453. Mr David Tsien denied the suggestion put to him that he had told Mr Steve Luk that “officially he was supposed to know nothing” because he knew that he was in possession of “non-public”, “price sensitive” information. In particular, he denied that he was not supposed to know that COLI wished to place 800 million shares at \$1.80 and that ECDM had bid at \$1.55 per share. He said that if the information was of that kind ECDM would not have released it to him. He made the suggestion that he did to Mr Steve Luk because he thought that the “ball” should be passed back to ECDM.

454. He went on to say that Mr Ian Long had asked him to request JFAM to contact ECDM directly. He agreed that request was not to be found in any of the recorded telephone conversations with Mr Ian Long but suggested that it might have been requested in a personal meeting, given that they shared the same floor of the building. He went on to say that he thought that he had mentioned the fact of the request to his senior, Mr Xen Gladstone. However, he accepted that there was no mention of that in his statement. He agreed that his reference to “ ... dealing with Horace” was in respect of the placement.

16:52 (DT : SL).

455. Mr David Tsien said that Mr Steve Luk responded to his voice message, in the telephone conversation initiated by Mr Steve Luk at 16:52, telling him that he would not meet people from ECDM and explaining :

“ ... look, the things that you’ve told me are all rumours ... the things that I’ve told you are based on your rumour, I will think in this way ... If I talk with him, and he told me right away that it would probably be done, then I be damned ... Yours are rumours ... His are not rumours, he really goes to make a bid ...”.

456. Mr David Tsien denied the suggestion that what he had told Mr Steve Luk was not a “rumour”. However, having agreed that in telling Mr Steve Luk that COLI was interested in doing a placement at \$1.70, but that Mr Kong wanted to do the placement at \$1.80 what he was doing was passing on what Mr Horace Nip had told him and that in telling Mr Steve Luk that ECDM had bid for the placement at \$1.55 he was passing on information obtained from them he accepted that was not “rumour”. Nevertheless, he said there was always the chance that the deal would not take place. He agreed that information that COLI wanted to place 800 million shares at \$1.80 per share and that JP Morgan had bid \$1.55 was not “public information” but he disputed that it was “price sensitive” because the parties were still bargaining over the price.

457. Having told Mr Steve Luk that he had cancelled all his days off next week Mr David Tsien went on to say :

“Horace told me ‘It doesn’t matter if you take days off next week.’ He said it would probably be the week after next.”.

19 January 2004.

11:01 (DT : SL).

458. Mr David Tsien said that he initiated a telephone conversation he had with Mr Steve Luk at 11:01 on 19 January 2004. He said that his observation, “You were right, China Overseas keeps being traded” was a reference to the

huge volume of shares being traded and to the fact that the price of the shares was doing well. On 19 January 2004, 58.9 million COLI shares were traded from a “Low” of \$1.70 to a “High” of \$1.86 “Closing” at \$1.81, a rise of 6.47% over the day.

459. Of Mr Steve Luk’s statement :

“With it, there is a chance of any time today, but if I were to sell it, I would wait until 3:45.”.

Mr David Tsien said in his statement of 18 February 2009, that he understood Mr Steve Luk to be joking that he could sell COLI shares shortly before the market closed to make any placement more difficult. He did not understand him to be joking, as Mr Steve Luk contended at paragraph 45.1 of his statement, that he would place a sell order at 3:45 every day in order to obtain more shares in the COLI placement.

12:04 (DT : EL - voice message).

460. Mr David Tsien said that he had left a voice message on Mr Edmond Leung’s telephone at 12:04 in which he told him to look at COLI :

“It rose by a maximum of nearly 6% today, and it’s now up 4, close to 5%. You take a look. Probably -- I tell you that they have to place by the end of the month, or else they will have to wait until April. Perhaps you could take note of that.”.

When asked why it was that he had given Mr Edmond Leung that information, Mr David Tsien gave a wholly unresponsive answer.

13:07 (DT : IL).

461. Mr David Tsien said in his statement on the 18th of February 2009, that Mr Ian Long had initiated a telephone conversation he had with him at 13:07. He answered Mr Ian Long’s enquiry as to why the stock price had risen that morning against a background of “ ... a market that was not that great” by informing him that CL and Morgan Stanley had upgraded NAV to \$2.50 and

that the former, together with BOCI, had been buying COLI shares all morning. In answer to Mr Ian Long's enquiry as to whether he thought that COLI shares were ... "going up to \$1.80" and his observation that COLI had not "made the announcement", Mr David Tsien said :

"So the insider -- so the insiders got to get their last chance."

462. In his statement of 18 February 2009, Mr David Tsien said that he could not now recall what he meant by that statement. It was possible that he was referring to the directors of COLI having their last chance to sell their staff option shares before Chinese New Year. On 7 January 2004, he and Mr Horace Nip had discussed the fact of an announcement by COLI on 5 January 2004 in respect of "the recent increase in the share price and trading volume of the shares" of COLI and the fact that on that day a director of COLI had sold 5 million COLI shares in the price range of \$1.58-\$1.74. On 5 January 2004, the price of COLI shares had risen from a "Low" of \$1.45 to a "High" of \$1.78 and closed at \$1.75, a rise of 19.05% on the day on a turnover of over 75 million shares.

463. Mr David Tsien went on to say to Mr Ian Long :

" ... I think what they're trying to do is to run the share price up to \$2.00 and then come back to hit us at \$1.80 ... it doesn't work that way. It doesn't work that way ... because our NAV forecast is \$1.99."

464. Mr David Tsien responded to Mr Ian Long's statement, that he was in a quandary as to whether or not to call Mr Horace Nip that day by advising him to do so, suggesting that he tell him that JP Morgan was interested in the deal. He informed him :

" ... my anchor client is still interested at around \$1.60. Yeh, but not more than \$1.60, or more, based on today's price."

He agreed that was a discount of 9%. Mr David Tsien said that he too would call Mr Horace Nip that day and concluded by saying :

“And if there is anything new, then we should swap information, okay?”.

14:21 (DT : IL).

465. Mr David Tsien said that at 14:21 Mr Ian Long had initiated the short telephone conversation that ensued between them in which he had enquired : “Are you on the recorded line?” After Mr David Tsien had answered in the affirmative and enquired whether he should return the call he agreed to Mr Ian Long’s suggestion that he called his mobile telephone number. In cross-examination by Mr Kwan, Mr David Tsien confirmed his account in his statement of 18 February 2009, namely that he could not recall if he had made a telephone call to Mr Ian Long’s mobile phone as he had promised in the recorded telephone conversation. However, he did say that he did not recall anyone else from ECDM making that enquiry of him, namely whether he was on a recorded line, in January 2004.

14:28 (DT : SL - voice message).

466. Mr David Tsien said that at 14:28 he left a voice message on Mr Steve Luk’s telephone. Of COLI, he said :

“CL asked Horace, who said, ‘no shares to be placed’. So, today rebounded.”.

467. Having told him that after the close of the market that day COLI would file an announcement with the SEHK stating that it was spinning off China Overseas Construction, Mr David Tsien went on to say of the placement :

“ ... it said it won’t be discussed until, until after the 26th -- not until the week after the 26th, that is ... next week ... and early February, after seeing what the price is like.”.

468. Mr David Tsien explained that he had given Mr Steve Luk that information in respect of the timing of the placement because all along he had shown an interest in the placement and he was concerned lest, given the

approaching Chinese New Year holidays, and he might be going away on holiday.

15:03 (DT : SL).

469. Mr David Tsien said that he had initiated the telephone conversation he had with Mr Steve Luk at 15:03. Of COLI, he said that :

“Today CL told people outside that no shares will be placed ...”.

In response to Mr Steve Luk’s apparent acceptance at face value of that information, Mr David Tsien said :

“You actually believe what CL said? ... maybe not for this week.”.

470. In his oral testimony, Mr David Tsien explained that he was suggesting to Mr Steve Luk that CL could not be trusted or believed. CL was a major competitor. The conversation concluded with Mr David Tsien telling Mr Steve Luk :

“Well if there’s something to be done, it will be in the week of the 26th or in early February, that is next week.”.

471. Mr David Tsien agreed in cross-examination by Mr Kwan that, in giving Mr Steve Luk this information, he was suggesting that if the placement was to take place it would be after the Chinese New Year holiday. He did so to make sure that he would be around at that time.

15:56 (DT : EL - voice message).

472. At 15:56 Mr David Tsien left a voice message for Mr Edmond Leung :

“Edmond, if you have time to read the Asia Aluminium and China Overseas call me back when you want, thanks. Bye.”.

16:25 (DT : EL).

473. Mr David Tsien said that he thought that the telephone conversation that he had at 16:25 with Mr Edmond Leung was initiated by the latter. In response

to the twice repeated enquiry, “Time to place?” Mr David Tsien said, “Not yet ...” Of Mr Edmond Leung’s statement, “Ask them to kick it up to \$2.2 first” he agreed that he understood that to mean to increase the market share price of COLI to \$2.20 before doing the placement. Of his reply, “He wants it to be \$1.80”, Mr David Tsien explained that he was referring to COLI and in particular, he thought, to Mr Horace Nip. He said that he understood Mr Edmond Leung’s statement, “Then ask it to ‘kick up’ the price to \$2.20 before placing the shares at \$2.00”, to be a request that he ask COLI to push the share price up to \$2.20. He explained that his response, “ ... if it is \$2 it will not be done by me ... ”, was based on the JP Morgan valuation of NAV at \$1.99 and a concern that the share price would drop in the market after a placement at that price.

20 January 2004.

08:38 (DT : RN).

474. Mr David Tsien confirmed that he initiated the telephone conversation he had with Mr Raymond Ngai at 08:38. Of COLI, he asked him :

“ ... would you really officially issue a recommendation that the target prices 235? ... because of why? ... actually your hand is forced ... if the two Morgan Stanley and CL now go up to fleece -- fleece people of their money, saying the stock is 250 ... ”.

Mr Raymond Ngai agreed with Mr David Tsien’s suggestion, “You may have to do something against your wishes” and said that he would think about it. Mr David Tsien responded by informing Mr Raymond Ngai that it was a matter to him to decide. The conversation ended with Mr David Tsien saying :

“If the stock really goes to -- that is, the price is like that, of course it will have to go to more than \$2, it’ll be okay even if it asks for 180. I would still ... I would still do it for it.”.

475. In his oral testimony, Mr David Tsien explained that in the usual meeting held at JP Morgan at the start of the working day he thought that Mr Raymond Ngai had distributed to those presents a draft JP Morgan report on

COLI in which he had referred to a revised target price for COLI at \$2.35. On 20 January 2004, JP Morgan published a report on COLI in which the NAV was revised from \$1.99 to \$2.06, but it contained no mention of any target price for COLI shares of \$2.35. Mr David Tsien explained that his enquiry was directed to finding out if in the future Mr Raymond Ngai would publish a revised target price of \$2.35.

476. Of his assertion that he would do the placement even at \$1.80 if the stock went up to more than \$2.00, Mr David Tsien explained that if the COLI shares were placed at \$1.80 but there was a target price of \$2.35 for the shares, that meant there was an upside and the issue was unlikely to fail in the aftermarket. In those circumstances, “It should be okay”.

09:08 (DT : RN).

477. Mr David Tsien said that Mr Raymond Ngai had initiated the conversation that they had a little later that morning at 09:08. In response to Mr David Tsien’s observation that he thought that he might have to raise the target price for COLI shares a bit higher, Mr Raymond Ngai asked Mr David Tsien what he thought of a price of \$2.35. For his part, Mr David Tsien said he thought that price was “Okay”.

478. In his statement of 18 February 2009, Mr David Tsien said that he was unaware that at 09:45 Mr Raymond Ngai had e-mailed Mr Horace Nip a JP Morgan report headed :

“COLI : Spin-off construction business (maintained overweight) 688 \$1.81.”.

In the text, it was asserted:

“ ... we raised our target price by 42% to HK\$2.35.”.

09:13 (DT : SL/EL - voice messages).

479. Immediately after his conversation with Mr Raymond Ngai, Mr David Tsien left voice messages on the telephones of Mr Steve Luk and Mr Edmond Leung informing them that JP Morgan was going to change its target price on COLI shares to \$2.35 per share. He concluded his message to Mr Edmond Leung by saying :

“If it is based on the book NAV, China Overseas can probably in the short run trade above two dollars. If you are interested give me a call tomorrow.”.

09:26 - 10:27 (DT : various fund managers).

480. In the hour from 09:26 Mr David Tsien initiated five telephone conversations with employees of Manulife, AIG, Prudential Asset Management, Atlantis and JFAM informing all of them that JP Morgan had changed its “target price” for COLI shares to \$2.35 per share.

10:53 (DT : EL).

481. Mr David Tsien confirmed that he had initiated the telephone conversation with Mr Edmond Leung at 10:53. Of the market price of COLI shares, Mr David Tsien informed Mr Edmond Leung :

“Everyone is now seeking after that stock, which has now reached \$2 per share, it has already done so.”.

Later, in the conversation Mr David Tsien said :

“ ... this China Overseas now really looks like it’s really going to be \$1.8 each. If that’s the case, if I really help them do it, I will let you know.”.

Mr Edmond Leung responded :

“Let us know earlier. If that’s going to be done, I’d ... so that I may throw some back to the market ‘Big Brother’.”.

482. In his oral testimony, Mr David Tsien said that of the latter response of Mr Edmond Leung that he was requesting to be informed of the placement and by the concluding remarks he was referring to COLI shares. However, he said that it had not occurred to him that Mr Edmond Leung might be trading off the

information being supplied to him. He denied that he knew that Mr Edmond Leung had been dealing in COLI shares prior to the placement.

483. There ensued a discussion following Mr Edmond Leung's enquiry :

“ ... at which price would it decide to conduct the placing?”.

Mr David Tsien's immediate response was to say :

“Somewhere above \$2.1 would be better.”.

He went on to add that COLI wanted a placement at \$1.8 per share. Of JP Morgan's position, he said :

“Now, I'm still offering them just \$1.6 each. Therefore, there is no agreement as a result of the talks, in respect of the price.”.

484. Having informed him that it may be scheduled around the end of the month, Mr David Tsien interrupted Mr Edmond Leung's statement, “ In this case, if it will be placed at \$1.80”, by advising him :

“You had better wait until it reaches \$2.1.”.

For his part, Mr Edmond Leung said, “\$2 will just be about right.” A short while later, he went on to say :

“In that case ... at two ... and above two dollars, it is a suitable price for disposal, frankly speaking.”.

Mr David Tsien responded by re-asserting his earlier advice, namely \$2.1.

485. In his oral testimony, Mr David Tsien said that in advising Mr Edmond Leung that he had better wait until \$2.10 he was referring to the placement. He went on to say that he understood Mr Edmond Leung's reference to a suitable price for disposal to being a disposal of COLI shares. In particular, in advising him to wait for a price of \$2.10 he was referring to selling the placement shares :

“ ... if he got the shares at \$1.80, he was asking me what price he should sell the shares, and I was specifically referring to the placement, that if he got the shares at \$1.80 he can think about selling them at \$2.10.”.

486. Of the coincidence, that the price of \$2.10 per COLI share had been Mr David Tsien's advice as to the appropriate market price for COLI shares to have reached for the placement to take place at \$1.80 and that that very same price was the one suggested by Mr David Tsien as being the price shares obtained in the placement should be sold by Mr Edmond Leung, Mr David Tsien said that was for Mr Edmond Leung to consider. Mr David Tsien denied that the information of which he was possessed about the COLI at the placement was "non-public", "price sensitive" information and that he knew or had reasonable cause to believe that Mr Edmond Leung would use information to trade in COLI shares.

11:01 (DT : RN).

487. Mr David Tsien said that he had initiated the telephone conversation that he had with Mr Raymond Ngai at 11:01. Mr David Tsien informed him that the market price of COLI shares had reached \$1.96, adding that he guessed it could go to two dollars. He explained that Morgan Stanley, CL, Goldman Sachs and BOCI itself were buyers of the shares. He went on to say :

"Well, in that case, I'll ask other people to sell first and wait for its placement."

488. In his statement of 18 February 2009 and in his oral testimony Mr David Tsien was adamant that there was nothing sinister in his latter remarks. He said that he meant to communicate that if he persuaded others to sell COLI shares, the market price would drop and the placement could not take place. He said that this had occurred on the day before JP Morgan employees receive notification of their bonuses on the one hand or, on the other hand, letters laying them off, and he and other staff of JP Morgan were grumpy.

14:48 (DT : IL).

489. Mr David Tsien said that Mr Ian Long had initiated the telephone conversation between them at 14:48. At the outset, Mr David Tsien told him that there was no point in talking about COLI until next week. Although Mr Ian Long said in reply that, "I just want to let you know the price." he did not do so in the remaining conversation. Mr David Tsien said :

"Now, I, I twist Raymond's arm to raise our target price to 2.35, because I think we might have to offer them 1.80 ... Yeh, but if it is 1.80 er, the anchor's demand is in question ... because the maximum they will pay is 1.60 ... but ... at the back of my mind I think it's doable at 1.80 without an anchor -- even without an anchor."

490. Having repeated his opinion that the deal was "doable" at 1.80 Mr David Tsien went on to say :

"I think if the stock price is, is around 2.10, ... if its over 8% discount I honestly don't think it will go down because, basically the earnings upgrade is pretty unanimous ...".

In response to Mr Ian Long's statement that he would call Mr Horace Nip, Mr David Tsien said that he should tell him that the JP Morgan "target price" was 2.35. The conversation concluded with Mr Ian Long saying :

" ... I will let you know if anything comes of the conversation."

15:50.

(i) (DT : IL).

491. Mr David Tsien said that Mr Ian Long initiated the telephone conversation between them at 15:50, telling him that he had spoken to Mr Horace Nip who had told him that the feedback he had got from Mr Wu was that the placement could be done at about 170. Mr Ian Long expressed the opinion, " ... they are very interested". For his part, Mr David Tsien said, "I think we should take it." Mr Ian Long confirmed that he was doing so and, in response to Mr David Tsien's enquiry as to whether he could call Mr Steve Luk now, added :

"Okay ... but just indication, but you don't have to tell him too much."

In response to Mr Ian Long's statement that :

“ ... Wu Jong is only interested in recommending to Kong if we can do a deal about 170.”.

Mr David Tsien said :

“170 would be okay because I think the stock is going to 210.”.

(ii) (DT : SL).

492. Immediately after that conversation, Mr David Tsien initiated a telephone conversation he had with Mr Steve Luk in which he asked him of the placement price of COLI, “Is it okay for you if it's 170?” Mr Steve Luk responded :

“There will be buyers at 170. Will be buyers. I dont know how many -- I am not sure how many there will be.”.

The conversation concluded with Mr David Tsien saying :

“I would indicate to them to get the deal first.”.

15:54.

(i) (IL : DT).

493. Mr David Tsien said that Mr Ian Long initiated the telephone conversation that they had at 15:54. Mr David Tsien informed him that JFAM were quite sure that there would be “ ... a strong response” to the placement at 170.

494. In his oral testimony, Mr David Tsien agreed that Mr Steve Luk had not used precisely those words, but went on to explain that Mr Steve Luk would not have told him what he had said if he had no interest. However, he accepted that what he had said Mr Ian Long was “a bit of an exaggeration”.

495. Having informed Mr Ian Long that the COLI share price had risen to a “High” of \$2.025, Mr David Tsien said of the discount from that price to a placement price of \$1.70 :

“Yeh, 15%, I think is okay. Especially if we just upgrade the target price to 235.”.

496. In response to Mr Ian Long’s reminder that JP Morgan, “ ... still need to do the due diligence”, Mr David Tsien said that could be done “next week”. Having pointed out the fact that the following day, namely 21 January 2004, was a half-day for a lot of people Mr David Tsien said :

“But if we do it next week. I think the timing will be perfect ... So 170, go for it.”.

497. Of that final piece of advice, Mr David Tsien said in his oral testimony that he was trying to encourage Mr Ian Long because he seemed to lack confidence in what he did. The conversation ended with Mr Ian Long indicating that he would speak to Mr Rupert Fane.

(ii) (RN : DT).

498. Mr David Tsien said that shortly thereafter he received a telephone call from Mr Raymond Ngai, whom he told JP Morgan was bidding at 170, Mr Steve Luk having indicated a willingness to take up part of the placement at that price. Mr David Tsien went on to say of the 15% discount for the placement price, if the shares of COLI closed at \$2.00 : “I think it is high.” In his oral testimony, he explained that he meant that there was a high chance that the placement would go ahead. He went on to say :

“ ... we may be doing it tomorrow, otherwise it will be next Monday. It should be next week.”.

Of the prospect of arranging the placement of the shares, he said of JFAM :

“ ... this deal is about 150 million US dollars, but they probably will take about one third.”.

499. Of his concluding admonition, “But keep quiet don’t say anything ...” Mr David Tsien denied that he had said that because he was not supposed to know of the ongoing negotiations between COLI and ECDM.

16:05 (DT : Wu).

500. Mr David Tsien said that he had initiated the telephone conversation he had with Mr Wu in Putonghua at 16:05. The telephone recording contains a second simultaneous conversation being conducted in English. As a result, the audibility of Mr David Tsien's conversation was limited. In his statement of 18 February 2009, Mr David Tsien said that he had initiated this telephone call because of his concerns, arising from his earlier telephone conversation with Mr Ian Long, as to whether or not Mr Ian Long had understood accurately what it was that Mr Horace Nip had said about what Mr Wu had said about the price at which COLI wanted the shares to be placed. However, in cross-examination he accepted that the effect of what it was that Mr Ian Long reported to him was what he had been told by Mr Horace Nip, not that there had been any direct contact between Mr Ian Long and Mr Wu or Mr Kong.

501. In his oral testimony, Mr David Tsien confirmed that he had told Mr Wu that the placement could definitely be done at \$1.70 per share and that in response he had been told that Mr Kong would insist on \$1.80. He agreed that his reply had been that \$1.80 might be "doable" if the market share price of COLI went up to \$2.10. In the tape-recording Mr David Tsien repeatedly said of the issue of price, that :

“ ... it would be best if everyone can give a bit.”.

502. In his testimony, he said that he could hear his own voice on the tape suggesting a price to Mr Wu of \$1.75. Of Mr Wu's suggestion to him on the tape-recording, "So, you can come tomorrow to do it, okay", Mr David Tsien said that he understood that was an invitation to come to do the placement tomorrow. He denied that he had been negotiating with Mr Wu about the

terms of the placement. He was merely putting forward his personal suggestions.

16:06 (DT : SL).

503. Mr David Tsien agreed that immediately after he had spoken to Mr Wu he initiated the telephone conversation he had with Mr Steve Luk at 16:06 in which he informed him of the positions taken by the various parties in respect of the proposed placement price :

“Mr Wu wants \$1.70, Kong Qing Ping wants it to be \$1.80 I said to him, ‘It is best if you can make some concession to us’ For this, it will be done tomorrow the earliest, next week the latest.”.

504. He agreed with Mr Steve Luk that the placement would not take place that day, adding that was because JP Morgan still had to do due diligence. Mr David Tsien told Mr Steve Luk that he had told Mr Wu that if the placement price was to be \$1.75 :

“ ... it is best that the share price is over \$2.1.”.

For his part, Mr Steve Luk said :

“ ... \$2, 10% discount ... that’s about right ...”.

16:24 (DT : IL).

505. In a telephone conversation with Mr Ian Long at 16:24, Mr David Tsien told him of his earlier discussion with Mr Wu in respect of the issue of the placement price of COLI shares, in particular that he had offered a compromise price of \$1.75, namely between Mr Wu’s price of \$1.70 and Mr Kong’s price of \$1.80, on the basis that the COLI share price was above \$2.00. In those circumstances, he advised Mr Ian Long:

“ ... so at \$2.00, if they offer you \$1.75, just sign it.”.

506. He went on to re-assure Mr Ian Long that JFAM was an anchor for one third of the whole placement. In response to Mr Ian Long’s question as to

whether JP Morgan were to be asked to “back the stock” or “book build” Mr David Tsien said :

“ ... Which ever way I think this issue will go.”.

16:27 (DT : SL).

507. Mr David Tsien said that he initiated the telephone conversation that he had with Mr Steve Luk at 16:27. At first, he left a voice message enquiring if Mr Steve Luk was going to be in the office the following day, explaining “ ... it’s because if we can agree on the price, we may act quickly”. However, when Mr Steve Luk came on the line, Mr David Tsien told him of the timing of the placement :

“ ... it will be tomorrow at the earliest and next week the latest.”.

508. At the conclusion of that telephone conversation, Mr David Tsien was to be heard on the tape informing his secretary that he was leaving the office but inviting her to suggest to Mr Ian Long or Mr Rupert Fane, if they were to call, that they should call his mobile telephone number.

17:33 (DT : SL).

509. Mr David Tsien said that at 17:33 he initiated the telephone conversation that ensued with Mr Steve Luk telling him that the placement would not now be done, “until next week”. In his statement of 18 February 2009, he explained that his reference in the tape-recording, “ ... they have already called back asking me to get everything ready next week” was probably a reference to the ECDM having called his mobile telephone after he had left the office with that request. He reassured Mr Steve Luk that the placement would not now take place until after the Chinese New Year holiday. Of the issue of the price of the placement shares, he said :

“Definitely \$1.75 or better.”.

He confirmed in the telephone conversation that by that he meant a price of \$1.75 or lower, adding “ ... see how the price performs.” The conversation concluded with Mr Steve Luk saying :

“Yeh, because this is a matter on thin air, it’s very difficult to tell, tomorrow you can send out some ...”.

510. In cross-examination by Mr Kwan, Mr David Tsien agreed that information about the timing of the placement was not “public information”, but he disagreed that it was “price sensitive” information. He denied that he was aware that on the evening of 20 January 2004 an agreement had been reached for due diligence to be performed on COLI on the morning of 26 January 2004.

21 January 2004.

12:01 (DT : RN).

511. Mr David Tsien said that he believed that the telephone conversation recorded at 12:01 between him and Mr Raymond Ngai was initiated by the latter. He explained that his observation to Mr Raymond Ngai in respect of COLI share price, that it had “ ... really turned around so swiftly. Don’t confirm so fast -- that is, confirm their price, okay?” was a reference to a drop in COLI share price that day and the statement that the placement price should not be confirmed then. Having closed at \$1.97 on 20 January COLI shares reached a “High” of \$2.05, a “Low” of \$1.91 and closed at \$1.92 on 21 January 2004.

26 January 2004.

08:52 (DT : EL).

512. Mr David Tsien said that he initiated the telephone conversation he had with Mr Edmond Leung at 08:52, describing it as an “update” call from a salesman to a fund manager. Of COLI, he told him :

“We guess that China Overseas will go ahead this week. The price range is from \$1.70 to \$1.80 ... 800 million shares.”.

513. In cross-examination by Mr Kwan, he agreed that the information was “non-public”, but disagreed that it was “price sensitive”. Of his use of the term “price range”, he said that although he could not recall by whom the figures were provided, there being no tape-recording available, it could only have come from ECDM. He could not simply invent the figures. He agreed that information as to the timing of the placement was not “public information”, but disagreed that it was “price sensitive”. There was no agreement on price, hence there was no transaction.

514. He agreed that nowhere in the conversation had he canvassed Mr Edmond Leung’s interest in the placement or asked him to give an indication of his demand. He denied that he knew or had reasonable cause to believe that Mr Edmond Leung would use that information to trade in COLI shares. Mr Edmond Leung was a very professional fund manager and, for its part, ABN AMRO was a reputable firm. He denied being aware that at 10:38 Mr Edmond Leung had sold 2 million COLI shares in the fund that he managed.

08:57 (DT : SL).

515. Mr David Tsien said that he initiated the telephone conversation he had with Mr Steve Luk at 08:57 in which he informed him :

“China Overseas may open the offer with a price range, for 800 million shares, at 170 to 180.”.

Having reminded Mr Steve Luk of the positions taken on price, namely the COLI wanted \$1.80 but that Mr Wu had indicated a price of \$1.70 as acceptable Mr David Tsien said :

“Maybe he has compromised so that it is 175.”.

Mr David Tsien went on to say :

“ ... we will do it this week. As soon as we see Forte Land.”.

In response, Mr Steve Luk informed him:

“Forte Land has raised its price, now, today.”.

516. In cross-examination by Mr Kwan, Mr David Tsien agreed that he had obtained the information as to the size, price and timing of the placement from ECDM, but denied obtaining it from COLI. He did not speak to anyone at COLI that day. He agreed that the information was not available to the public and thought that he may have been asked to find out what demand there was for the placement. If he was not supposed to discuss the details of the placement with a client, ECDM would have told him so. He denied that he knew that he was in possession of “non-public” “price sensitive” information and that he knew or had reasonable cause to believe that Mr Steve Luk would use the information he provided to him to trade in COLI shares.

517. In re-examination, Mr David Tsien invited the Tribunal to note that after his conversation with Mr Steve Luk he had asked his secretary both for Mr Ian Long’s telephone number and that she should call him on his behalf. He pointed to this as supporting his assertion that he did not know that due diligence was to be performed that morning in respect of the COLI placement.

09:53-11:43 (DT : various fund managers).

518. In his statement of 18 February 2009, Mr David Tsien described having initiated telephone contact with various fund managers in the period of about two hours beginning at 09:53. He provided the other parties with information about the COLI placement, sometimes in conversations and on other occasions by leaving voice messages.

(i) Mr Karl Lung, a colleague of Mr Edmond Leung at ABN AMRO was told :

“Our price range should be around 170 to 180, 800 million shares.”.

(ii) Mr Chung Man Wing, Mr Steve Luk's boss at JFAM, was informed in a voice message :

“ ... it should be in this week that it will go ahead. Because the competition now is too keen, so we would suggest 170 to 180, that is to say the highest and lowest price. It will be an accelerated book deal. So, if people are interested, they would indicate the price. ... Most ideally is of course around 175, because the 175, the discount will still be quite reasonable.”.

(iii) Mr Norman Ho, of Value Partners, was told :

“ ... we will try doing this China Overseas this week. It wants to be 180. We told it, I (suggest) 170 to 180. It is hoped that the price fixed is 175.”.

(iv) Mr Sam Lau, of Barings Asset Management, was left the message that :

“We plan to issue about 800 million shares ... the price we're talking about is 170 to 180. When I will go ahead with it, I'll give you a call.”.

(v) Mr Eddie Chau, of Templeton, was told :

“ ... the price range it indicated is 170 to 180 and our NAV is 205. We have already revised upwards recently. Well we hope that it will not be more than 180, because if it was over 180, there will not be ... any upside for the clients.”.

(vi) Mr John Foo, of the Guoco Group, was given similar information.

Finally, Ms Lena Tan, of Ward Ferry, was told :

“So I'm going to do China Overseas, 800 million shares, about 15% existing issue and hopefully 180 or better ... the stock is at 210, if I do it at 180 which is the maximum price.”.

12:30 (DT : EL).

519. Mr David Tsien initiated the conversation he had with Mr Edmond Leung at 12:30 in which he informed him of COLI :

“ ... probably going to be placed this week”.

Mr Edmond Leung responded :

“pushed up enough yet (the price)? Why don't I sell it all.”. (Chuckle)

Mr David Tsien said :

“well -- if we do go ahead, it will be priced at \$1.8, the -- I -- the price should be \$2 and above. You may consider.”.

Of his reference to a price of \$2.00, he said :

“For prices above \$2, you can consider taking profit.”.

520. Having informed him that the price of COLI shares had risen above \$2.10 that day and that it was then that \$2.075, Mr David Tsien concluded by saying :

“But if we go ahead, we won’t pay more than \$1.8. So, it’s either 1.8 or better.”.

521. In cross-examination by Mr Kwan, Mr David Tsien said that it had not occurred to him that Mr Edmond Leung was trading on the information that he had given him about COLI. Mr Edmond Leung had never indicated any interest in COLI. He took his remark about selling his COLI shares as a joke. He did not understand Mr Edmond Leung’s reference to COLI shares being “pushed up enough yet” to be a reference to a price level of the shares at which the placement could be done. It was simply a general remark.

522. Of his reference, on the one hand to, “it will be priced at \$1.8” and, on the other hand to, “for prices above \$2 you can consider taking profit” he denied that he was suggesting to him that he could make a profit if he sold at about \$2.00 per share because he could obtain placement shares at \$1.80 per share. He said that he was merely explaining to Mr Edmond Leung that if he obtained placement shares at \$1.80, then he could consider taking some profit if the share price rose above \$2.00-\$2.10, that being in the range of the updated NAV of COLI by JP Morgan. He did not even know if the funds managed by Mr Edmond Leung held COLI shares.

523. Mr David Tsien agreed that, although he had addressed this particular conversation with Mr Edmond Leung in his statement of 18 February 2009,

there was no mention of this explanation for his mentioning the two prices and the taking of a profit. However, he pointed out that there was nothing secretive about the tones of voices used and that the purpose of making a phone call was to deal with another and separate matter, namely whom to contact in respect of the Japanese market. Finally, he said that Mr Edmond Leung had asked him at what price he should sell COLI shares after the placement and he had given him an answer. There is no such dialogue on the transcript of the recorded conversation.

14:33 (DT : SL).

524. Mr David Tsien said that he initiated the telephone conversation with Mr Steve Luk that began at 14:33. At the outset, he informed Mr Steve Luk of the placement price of COLI shares :

“It should be doing at 175.”.

Later, he added :

“ ... not more than 180 ... they really keep their word, that is, the price it wants to do.”.

525. In face of Mr Steve Luk’s urging that they hurry up and his question, “Okay today?” Mr David Tsien said, “Even -- Mark Bamber has asked me.”

The conversation concluded with Mr David Tsien saying :

“ ... I’ll tell you when it’s okay, okay. I’m telling you that it should be doing at 175.”.

526. In cross-examination by Mr Kwan, Mr David Tsien explained that his reference to Mr Mark Bamber was indication that he had been asked to find out demand for COLI placement shares. However, he agreed that he had not elicited that information from Mr Edmond Leung. He had not done so because there was no term sheet. He was not aware that three minutes after this telephone conversation Mr Steve Luk had sold 8 million COLI shares. He denied that he was in possession of “non-public price sensitive” information or

that he knew or had reasonable cause to believe that Mr Steve Luk would use that information to trade in COLI shares.

15:06 (DT : IL's secretary).

527. Mr David Tsien initiated the telephone conversation received by Mr Ian Long's secretary at 15:06 in which he asked for Mr Ian Long and was told : "Oh, he's coming out". Then, the conversation was terminated. In his statement of 18 February 2009, Mr David Tsien said that the probability was that Mr Ian Long came out and spoke to him directly.

15:18 (DT : SL - voice message).

528. Mr David Tsien initiated the telephone call to Mr Steve Luk at 15:18 in which he left a voice message :

"The issue would be priced by a price range, 175 to 185. Well, we want to check out which price you ... the demand would be the largest. Call me back ...".

529. In cross-examination by Mr Kwan, Mr David Tsien said that the "price range" that he had stipulated had come from either ECDM or the Head of Sales. He agreed that was the first time he had asked Mr Steve Luk the price at which the demand would be largest.

15:27 (DT : SL).

530. Mr David Tsien said that he initiated the telephone conversation with Mr Steve Luk at 15:27. He repeated the information that he had left in the voicemail, namely that the price range for the placement was 175 to 185 adding :

" ... it should start at 4 p.m. That the indicated price, that he would be very happy if it is 180 (sic). We will try to price it at 180 ...".

The conversation concluded with Mr David Tsien saying :

"It would probably be done today after the market closes."

531. In his statement of 18 February 2009, Mr David Tsien said that he thought it possible that he had been informed by Mr Ian Long that JP Morgan intended to approach COLI after 4:00 pm to offer a price range of \$1.75 to \$1.85, but that JP Morgan would try to price the placement at \$1.80.

532. In cross-examination by Mr Kwan, Mr David Tsien said that he did not know that six minutes after this telephone conversation Mr Steve Luk had sold 188,000 COLI shares in one of the funds of JFAM. He denied that he knew that he was in possession of “non-public price sensitive” information and that he knew or had reasonable cause to believe that Mr Steve Luk would use that information to trade in COLI shares.

15:35 (DT : NH).

533. Mr David Tsien said that at 15:35 he had spoken to Mr Norman Ho of Value Partners and, of the COLI placement, told him :

“We may perhaps do it today after the market closes.”.

He went on to say :

“We are talking about 782 million shares plus 117 million ... that is to say 900 million shares.”.

534. In his statement of 18 February 2009, Mr David Tsien said that he thought the reference to 117 million shares was to a “Green shoe” provision and that this information had come from Mr Ian Long after his conversation with Mr Steve Luk at 15:27, but before his conversation with Mr Norman Ho. He pointed out that there was an interchange of e-mails between Mr Horace Nip and Mr Ian Long between 15:11 and 15:18 in which the subject of a “Green shoe” clause was addressed. Although he was unaware of the e-mails contemporaneously, he thought it likely that he had been asked to “sound out” the market.

15:51 (DT : RN).

535. Mr David Tsien said that he initiated the telephone conversation with Mr Raymond Ngai that began at 15:51. Of his assertion :

“They are willing to sign only if we cover half of it. This group of bastards. Fuck it!”

he confirmed, as he had stated in the conversation, that was a requirement introduced by ECDM. In particular, he was required by Mr Mark Bamber at a meeting between 3:00 pm and 4:00 pm, at which he thought Mr Ian Long was present, to secure an anchor for one half of the placement shares. In his oral testimony, he confirmed the assertion made in his statement of 18 February 2009 that Mr Mark Bamber had in effect threatened him that, if he failed to secure that anchor, JP Morgan would “walk away” from the placement.

15:54 (DT : SL).

536. Mr David Tsien said that he initiated the telephone conversation with Mr Steve Luk at 15:54 in which he asked for confirmation that Mr Steve Luk would participate in the placement at a price of \$1.80 per share. He said that his enquiry, made prior to the commencement of the conversation with Mr Steve Luk, “Can I say 180?”, was probably an enquiry made of Mr Ian Long as to the placement price. He went on to tell Mr Steve Luk of the addition of a “green shoe” provision, with the result that 900 million shares were now available. For his part, Mr Steve Luk said :

“No, I will take it at 180. I will take it ... I’m afraid that you will only give me a very small amount of shares.”.

537. Of the issue of the size of demand at JFAM, Mr Steve Luk agreed to Mr David Tsien’s suggestion that first the placement had to be offered to other fund managers, but reminded him that he had said that he would take 20 million US

dollars of the placement shares “for sure”. The conversation concluded with Mr David Tsien informing Mr Steve Luk that he would await his call.

The negotiations at the offices of JP Morgan between the representatives of COLI and JP Morgan from 4:00 pm on 26 January 2004.

538. In cross-examination by Mr Kwan, Mr David Tsien said that he was not aware that representatives of COLI, including Mr Kong, Mr Horace Nip or Mr Wu were in the JP Morgan offices from about 4:00 pm on 26 January 2004 engaged in negotiations of the terms of the placement of COLI shares. He did not leave his desk, where he was busily engaged in telephone conversations.

16:30 and 16:45 (DT : SL).

539. First, in a message left on Mr Steve Luk’s voice mail at 16:30 and then in a short conversation initiated by Mr David Tsien at 16:45 Mr David Tsien pursued the issue of a stipulation of the size of the subscription for the placement shares to be made by JFAM advising him in the latter conversation :

“ ... give me a rough range, because they have to get your okay before they are willing to sign.”.

16:33 (DT : EL).

540. Mr David Tsien said that he initiated the telephone conversation he had with Mr Edmond Leung at 16:33. In response to Mr Edmond Leung’s enquiry, as to whether the placement was going ahead, he confirmed that it was going ahead at 180 for 900 million shares, adding, “ ... they have not signed it yet.” At the end of the conversation, Mr Edmond Leung told him :

“ ... I want -- because I’ve sold 4, 5 million. I can’t chase it back.”.

In response, Mr David Tsien said :

“I’ll take care of it, don’t worry.”.

541. Mr David Tsien accepted that he understood that Mr Edmond Leung to be saying that he wished to buy COLI shares back and that he was indicating he could help them do so in the placement.

16:52 and between 16:57-17:06 (DT : EL).

542. At 16:52 Mr David Tsien left a voice message on Mr Edmond Leung's telephone informing him that he had secured all the anchor clients and inviting him to indicate his order. Between 16:57 and 17:06 Mr David Tsien initiated another telephone conversation with Mr Edmond Leung in the course of which Mr Edmond Leung indicated his demand for shares :

“4 and a half million, real demand, you handle it for me. 4 and a half million, 180.”.

For his part, Mr David Tsien acknowledged the order and said :

“ ... ask Lethie not to place any order ... that is, let me -- let me handle it ... If she is to place any order, place it with me, okay?”.

Mr Edmond Leung responded affirmatively to the various suggestions.

543. Mr David Tsien denied that it had occurred to him that Mr Edmond Leung was replacing the COLI shares that he had sold with shares to be obtained in the placement at \$1.80 per share. He went on to explain that he had handled the matter by doubling Mr Edmond Leung's order of 4.5 million COLI placement shares. He did so in order to obtain a better allocation of the COLI shares. Of the mechanics of placing Mr Edmond Leung's order, he said that it was placed with the central dealer of JP Morgan either by shouting or e-mail. He thought he had done so at the end of the conversation with Mr Edmond Leung, indicating an order for 9 million COLI shares at \$1.80. He behaved in a similar way for other small clients seeking placement shares. He claimed that before he had left the office that day he had explained to Mr Stefan Weiner that is what he had done.

18:46 (DT : SW).

544. Mr Stefan Weiner initiated the telephone conversation that began at 18:46 with Mr David Tsien. Mr David Tsien informed him of the COLI placement orders :

“I’ve given you an order from ABN Amro, and from Atlantis and from Pacific Capital Management.”.

He went on to indicate that there were no orders from Value Partners or Templeton. In response to Mr Stefan Weiner’s enquiry, as to what allocation he thought ought to be made for those orders, he indicated :

“Half the order.”.

545. When Mr Stefan Weiner indicated that he could “fill” the ABN AMRO order, which he understood to mean allocate the whole amount subscribed for, Mr David Tsien indicated again that half the order was the appropriate allocation saying :

“The genuine demand are (sic) all about half.”.

Allocation.

546. In the event, ABN AMRO were allocated 4.5 million COLI shares whereas JFAM was allocated 182 million shares.

16:57-17:06 (DT : SL).

547. Between 16:57 and 17:06 Mr David Tsien spoke again to Mr Steve Luk confirming to him that the placement was going ahead and that COLI would have to suspend trading the following day, informing him :

“It will be launched once it has been signed.”.

548. The conversation concluded with Mr David Tsien reminding him that he required an indication of the final amount of the subscription before allocation could be done.

17:19 (DT : SL - voice message).

549. Mr David Tsien left a voice message on Mr Steve Luk's telephone at 17:19 indicating that :

“ ... deal structure would be from \$1.78 to \$1.83.”.

550. He added that he would indicate that the price would be \$1.80. Once again, he sought an indication of the size of the subscription by JFAM.

551. In cross-examination by Mr Kwan, Mr David Tsien agreed that he was informing Mr Steve Luk of a change in the price range, which information he said would have been given to him by Mr Ian Long. He said that by this stage Mr Ian Long was coming over to his desk and constantly pressing him to get an order from JFAM. He agreed that he had not given a “price range” to either JFAM or ABN AMRO before 26 January 2004.

Post 17:23 (DT : SL - voice message).

552. In a voice message that he left on Mr Steve Luk's telephone at some time shortly after 17:23 Mr David Tsien informed him :

“We told the outside that the price range is 178 to 183, but for you the price of the deal is 180.”.

He agreed that the reference to “outside” was to other institutional investors.

17:39 (DT : SL).

553. Mr David Tsien initiated the telephone conversation he had with Mr Steve Luk beginning at 17:39 in which he had informed him at the outset that the response to the proposed placement was “very good”. Once again, he urged Mr Steve Luk to ensure that he was told what the final subscription by JFAM was to be.

17:58 (DT : SL).

554. In a telephone conversation initiated by Mr Steve Luk at 17:58, Mr David Tsien was informed about difficulties in calculating the number of COLI placement shares that could be taken up by JFAM within a 10% risk management limit. Mr Steve Luk said that within JFAM demand was up to 400 million COLI shares. Mr David Tsien suggested that Mr Steve Luk contact Mr Ian Long directly to resolve the issue. However, in response Mr Steve Luk said :

“It’s not okay. I cannot say this. I cannot talk to him.”.

In response, Mr David Tsien said that he would talk to Mr Ian Long.

555. In cross-examination by Mr Kwan, Mr David Tsien said that he did not then know why Mr Steve Luk would not speak to Mr Ian Long. He thought they had a departmental policy not to talk to ECDM. Now, it was common in many organisations for them to specify certain people permitted to talk to ECDM. Mr David Tsien denied that in January 2004 he thought it was permissible for a potential investor in a placement to talk to a member of the ECDM who was negotiating a placement deal. All he was doing was helping a client who had a problem.

The signing of the placement agreement.

556. Mr David Tsien said that he was not aware when the placement agreement was signed. Mr Ian Long made no mention of that. He did not know the representatives of COLI were at the offices of JP Morgan.

18:09

(i) (DL : IL).

557. Mr David Tsien said that at 18:09 he had initiated the conversation he had with Mr Ian Long in which he had informed him of the problem arising in

the calculation of the shares already held by JFAM, relevant to the issue of what shares in the placement could be taken up by them.

(ii) (DL : SL).

558. In response to Mr Ian Long's request for information, as to the exact number of shares held by JFAM, Mr David Tsien initiated a call immediately after that conversation to Mr Steve Luk. There ensued further discussion about the issue.

18:17 (DL : SL).

559. Mr Steve Luk initiated the telephone conversation with Mr David Tsien at 18:17 in which they again addressed the issue of how many placement shares JFAM was permitted to take up within the 10% limit. In the result, Mr Steve Luk suggested that the safer course was to take up 240 million COLI shares.

18:38 (DL : SL).

560. Mr David Tsien initiated the telephone conversation with Mr Steve Luk at 18:38 in which informed him that the maximum number of placement shares that JFAM could take up was 187,432,918.

18:46 (DT : SW).

561. Mr Stefan Weiner initiated the telephone conversation he had with Mr David Tsien at 18:38 in which they discussed the subscriptions for the COLI placement shares, including the fact that for JFAM was limited to about 187 million.

Mr David Tsien's bonus for his services in respect of the COLI placement.

562. In re-examination, of Mr David Tsien the Tribunal to receive a letter dated 8 March 2004 from JP Morgan informing him that he would receive

US\$25,000.00 in recognition of his services to JP Morgan in the first Quarter of 2004. He confirmed that he had received the equivalent of that amount in Hong Kong dollars and that it was in acknowledgement of his role in the COLI placement.

Mr Edmond Leung.

Statements and records of interview.

563. The Tribunal received two written statements of Mr Edmond Leung, dated 19 February and 9 March 2009 respectively. Also, it received the transcripts and translations of two records of interview conducted of him by an officer of the SFC on 18 November 2004 and 6 May 2005.

Background.

564. Mr Edmond Leung holds the degree of Bachelor of Science, awarded by the University of Hong Kong in 1982, and a degree in Business Administration awarded by the Chinese University of Hong Kong in 1988. He is a Chartered Financial Analyst and a Certified Public Accountant in both Hong Kong and Australia. He is a member of the Hong Kong Securities Institute and the Hong Kong Institute of Directors.

565. For two years, from 1988 to 1990, he was a securities analyst with Nomura Research Institute Limited. In the following two years, he was a portfolio manager, managing funds and dealing in securities in Hong Kong and Southeast Asia. From 1992 to 1995, he was an investment manager with Ivory & Sime Asia Limited, again managing funds and dealing in securities in those regions together with the Mainland and Taiwan. In 1995, he joined ABN AMRO. For the six years from January 1995, he was a senior portfolio manager with the company for the Asia ex-Japan region. From 2001 until September 2005, he was director of Asian Equities, a position re-named in 2002

as “Head of Asian Equities”. Since September 2005, he has been a portfolio manager, managing funds for Asia ex-Japan, with Cheetah.

January 2004.

566. In January 2004, Mr Edmond Leung managed nine funds, one of which was China Equity Fund (“CEF”). In total the monies managed in the funds was about one billion US dollars. Investments were made in approximately 100-120 companies. In the 10 years from 1995, he was the only person managing CEF, whose assets he estimated to be US\$220 million in January 2004. CEF invested in about 70 companies in the Greater China Region and charged annual management fees of 1.5% related to the assets under management, rather than a performance fee.

The performance of the CEF : CLSA Benchmark.

567. In his witness statement of 19 February 2009, Mr Edmond Leung explained how the performance of the NAV per share of the CEF was measured against the CLSA China World Benchmark. In the fourth quarter of 2003 and January 2004, CEF did not beat the benchmark but it was close to it. The holding of 9,392,000 COLI shares on 19 January 2004, after the purchase of the fifth tranche of those shares, represented approximately 1% of the total size of the CEF. Mr Edmond Leung pointed out that only 1.5% of the profit, allegedly made in his insider dealing, of US \$117,330.00 would have been reflected in the annual management fee.

Mr Edmond Leung’s salary, bonuses and share options.

568. Mr Edmond Leung explained in his witness statement that in addition to his salary he was awarded cash bonuses and share options in the February of the year after the award. In 2004, he was awarded a cash bonus of HK\$960,000.00 and share options of over Euro 66,000.00. He was unaware of the exact

criteria by which his bonus was calculated, but the performance of the portfolios was only one of a number of factors.

Investment strategy.

(i) Information.

569. Mr Edmond Leung said that investment ideas were derived from speaking with analysts, whom he met by arrangement with equity sales brokers, and reading their research reports. Also, he liked to visit company sites to view their projects. In 2003-2004 he had probably met 2-3 analysts per week and visited or spoken with 100 companies a year.

(ii) Investment restrictions.

570. Mr Edmond Leung said that CEF had an investment restriction in that no single stock could exceed 10% of the value of the entire portfolio. Because share price increases might take the value over the 10% limit he said that he seldom held positions close to that 10% limit in a particular share.

(iii) Buy/Sell strategy.

571. His personal preference was to buy or sell stocks in several parcels, in contrast to those fund managers who liked to make block purchases and sales. Of property companies, Mr Edmond Leung said in his statement of 19 February 2009 :

“ ... I tend to regard the NAV as a stronger determinant for buying or selling a particular stock (as opposed to the P/E ratio). Normally, I would be inclined to sell a particular stock if the share price is close to the NAV. For a property company, the stock would normally trade at a discount to its NAV obviously because there is no profit to be made if the share price traded at the same level as the NAV or the share price was very close to the NAV. For property stocks, a 10% discount to the NAV even for a large listed property company is not particularly abnormal.”

Trading in COLI shares by CEF in January 2004.

572. In his oral testimony, Mr Edmond Leung said that his first purchase ever of COLI shares had occurred on 2 January 2004 and was a purchase made on behalf of CEF. He said that the following trading occurred in the CEF in January 2004 :

Date	Buy/Sell	Unit price	Number of shares	Balance held
2	Buy	1.4602	2 million	2 million
6	Buy	1.6905	2 million	4 million
7	Buy	1.7699	2 million	6 million
13	Buy	1.6575	2 million	8 million
19	Buy	1.7961	1,392,000	9,392,000
21	<i>Sell</i>	1.9683	2,392,000	7 million
26	<i>Sell</i>	2.0563	2 million	5 million
27	Placement	1.8000	4.5 million	9.5 million
29	Buy	1.8050	1.5 million	11 million

The decision to buy and sell COLI shares in January 2004.

573. In his statement of 19 February 2009, Mr Edmond Leung produced three analyst reports reporting on COLI, in particular estimating its NAV :

- Deutsche Bank-3 December 2003, estimated NAV \$2.30;
- JP Morgan-20 January 2004, estimated NAV \$2.06; and
- Merrill Lynch-20 January 2004, estimated NAV \$2.06.

He said that he could no longer recall which reports he had copied or read nor to which analysts he had spoken before he bought COLI shares. He did recall that the reports were generally favourable to COLI. However, in cross-examination by Mr Kwan, Mr Edmond Leung said that he recognized his markings on the reports, including his handwriting on the Merrill Lynch report. In his evidence he was referred to a fourth analyst's report, that of JP Morgan of

29 December 2003, in which the NAV was estimated to be \$1.99. In re-examination, he said that he had marked those reports about the time of the dates that the reports bore on their face.

The decision to buy COLI shares.

574. Mr Edmond Leung said in his statement of 19 February 2009, that he could no longer recollect the exact thinking behind the purchase of COLI shares. Following SARS, earlier in 2003, there had been a “China property fever” in the fourth quarter of 2003. He had visited the Shanghai property division of COLI in December 2003. He remembered that the NAV for COLI estimated by analysts was in the range of \$2.00-\$2.30.

The decision to sell COLI shares on 21 and 26 January 2006.

575. Mr Edmond Leung accepted that the ABN AMRO documentary records stipulated that the time at which he had given the central dealer instructions to sell COLI shares on 21 January 2004 was 10:12, whereas on 26 January 2004 the instructions were given at 10:38. On each occasion his instructions were valid for the “Day only” for sales at “Careful Discretion” of the dealer. On the order form for 21 January 2004 he had typed in the price shown on the Bloomberg screen for COLI shares at the time he filled in that form, namely \$2.025. He accepted that his motive and selling on both occasions was to make a short-term profit.

(i) 21 January 2004.

576. In cross-examination by Mr Kwan, he explained the reasons for his sale of COLI shares on 21 January 2004 :

“I saw the price had been rising. As I looked at the Bloomberg screen on the 21st, when compared to the 19th, the share price has risen more than 10%. I have looked at the research reports provided by different brokers. The NAV, the estimated net asset value per share of COLI is very close, around \$2 to \$2.30 something. From my own investment experience, any property

company should be measured for “buy” or “sell” using the net asset value. At that price, around \$2, which actually was very close to the estimated net asset value per share of COLI at that time by different brokers, so I decided to sell.”.

577. Mr Edmond Leung went on to explain :

”On the 19th I bought the shares. On the 20th the share price did rise, on the 20th, the whole day of January 20, the share price keeps on rising. In the morning of the 21st before I placed the order the share price also rises. I believe I sell the shares based on the price rise in January 20, plus the rise in the early morning of January 21.”.

578. Of the significance of the share price of COLI with reference to its estimated NAV, Mr Edmond Leung explained that even for large property companies in Hong Kong the discount between NAV and the market price of its shares was “sometimes quite huge” and said :

“I would say 10% discount is the signal for me to watch closely to sell.”.

A 10% rise in the price of COLI shares.

579. In cross-examination by Mr Kwan, Mr Edmond Leung accepted that the share price rise from \$1.97 to \$2.05 for COLI on 21 January 2004 in the 12 minutes prior to his order being placed at 10:12 was not 10%, but 4.06%. Relevant to Mr Edmond Leung’s evidence that he had taken a 10% price rise from the closing price on 19 January to the morning of 21 January Mr Kwan pointed out, and Mr Edmond Leung accepted, that there was a 9.4% increase from the closing price of COLI shares on 16 January 2004, namely \$1.70 and the high on the next trading day of 19 January 2004 of \$1.86. Similarly, he accepted that there was a 12.04% rise in the share price of COLI shares from the close of 15 January 2004, \$1.66, and the high on 19 January 2004, in other words a two-day spread. He agreed that on neither day had he sold COLI shares.

A 10% discount from the estimated NAV of COLI shares.

580. In cross-examination by Mr Kwan, Mr Edmond Leung agreed that a 10% discount from the estimated NAV contained in various analyst reports from brokers produced the following results :

Date	Broker	NAV	10% discount from NAV
3.12.03	Deutsche Bank	\$2.30	\$2.07
29.12.03	JP Morgan	\$1.99	\$1.791
20.1.04	JP Morgan	\$2.06	\$1.854
20.1.04	Merrill Lynch	\$2.06	\$1.854

581. Mr Edmond Leung agreed that, based on a 10% discount from estimated NAV, he would have considered seriously consider selling COLI shares. He accepted that although the “High” price for COLI shares on 20 January 2004, namely \$2.025, was “pretty close to the estimated NAV”, even by Deutsche bank, he had not sold COLI shares on that day. He explained :

“I think you’re assuming that I am watching the Bloomberg screen all the day and can capture the high. My job is not to watch the Bloomberg screen all the time.”.

582. In re-examination, trading data was received by the Tribunal that indicated that the “High” of \$2.025 for COLI shares on 20 January 2004 lasted from 15:17:44 to 15:24:21.

(ii) 26 January 2004.

583. In his statement of 19 February 2009 Mr Edmond Leung said that on the morning of 26 January 2004 he noticed that the price of COLI shares had gone up approximately 10% relative to the closing price of those shares on 21 January 2004. Also, Mr Edmond Leung said :

“The prices that COLI share traded at on 20-26 January (between \$1.85-\$2.125) was very close to the lower \$2 NAV range. I might not have sold on 21 and 26 January for price increase reasons alone. However, I

would and did so when I considered the combined effect of the price increase over a short period of time) and the share price trading close to its NAV.”.

584. In cross-examination by Mr Kwan, Mr Edmond Leung accepted that at the time that he had placed the order to sell COLI shares on 26 January 2004, namely 10:38, the share price was \$2.05 and that was a price increase from the closing price on 20 January 2004 of only 6.77%. He accepted that the highest price that COLI shares had reached that morning prior to 10:38, namely \$2.075 was only an increase from the closing price of the previous day of 8.10%.

Relationship with Mr David Tsien.

585. Mr Edmond Leung came to know Mr David Tsien in 1992 or 1993 when the latter worked at Jardine Fleming and he worked as an investment manager at Ivory & Sime Asia Limited. He said that of all the brokers with whom he worked he probably knew Mr David Tsien best. Each of them was appointed, respectively by ABN AMRO and JP Morgan, as their company’s points of contact on the “buy/sell” side of the business. He described Mr David Tsien as being :

“sometimes analytical, sometime speculative, sometimes factual. His market knowledge was vast, which is a testament to his diligence.”.

586. Their relationship was one of business, although four or five times a year and they would have lunch together. A meeting at Mr David Tsien’s invitation at his home in Lantau on 3 January 2004 was the only occasion that the two respective families had met together with the two men. It was an invitation for the children to ride bicycles.

587. Mr Edmond Leung said that in January 2004 JP Morgan was one of ABN AMRO’s main brokerage firms. Mr David Tsien called him at least once or twice a week to discuss topical events that were considered to be affecting the

market. They discussed activities in the markets, including which shares were being traded, by whom and market expectations. Often Mr David Tsien informed him of what JP Morgan analysts had to say on a subject and on occasions arranged meetings with those analysts.

Recorded telephone conversations (DT : EL) and other events.

588. Mr Edmond Leung identified his voice and that of Mr David Tsien on a number of recorded telephone conversations between the two of them in the month of January 2004. He said that he had been unable to recall the conversations from his memory but he said that, having listened to the tape recordings, his memory had been jogged a little and that he had been “ ... able to deduce the thought processes that I would have had at that time.”

2 January 2004

09:59 (DT : EL).

589. Mr Edmond Leung said that he was unable to confirm who had initiated a conversation that had begun between him and Mr David Tsien at 09:59 on 2 January 2004. In the course of the conversation, Mr David Tsien said, “On Monday I would meet China Overseas.” That statement prompted Mr Edmond Leung to enquire what he was talking about. Then, Mr David Tsien went on to say :

“This Monday, I would meet Kong Qing Ping and Horace ...”.

In response Mr Edmond Leung said, “Oh, you’re talking about construction.” In cross-examination by Mr Kwan, Mr Edmond Leung said that he did not know the persons named by Mr David Tsien.

Later, in the conversation Mr Edmond Leung directed the conversation back to the topic of COLI by quoting its stock number, “688”, reminding Mr David Tsien that he had spoken of the company. He went on to ask :

“If at this price, is it recommendable? ... it has not gone up in price whatsoever.”.

590. In his statement of 19 February 2009, Mr Edmond Leung explained that by “recommendable” he meant to “buy the shares slowly”. In response, Mr David Tsien went on to say that Mr Kong was the new Mainland “boss” of COLI. Subsequently in the conversation, Mr Edmond Leung repeated his enquiry as to whether the share was “recommendable”. In response, Mr David Tsien said :

“ ... in fact I have bought a lot for JFAM at this price level ... for our fund management arm ... if you go to Stock Exchange’s website it has something called SDI Disclosure ... that is to say go ... to see the major shareholder, then you can check ... the price. At around this price level, they will buy the shares again ... this company is one of the companies ... this year would become very big.”.

591. In cross-examination by Mr Kwan, Mr Edmond Leung said that he had some doubts about Mr David Tsien’s assertions in this respect in light of his previous experience of his exaggeration. He thought that the purpose of these assertions was to encourage him to have confidence in the outlook for COLI shares.

2 January 2004.

10:12 - the purchase of 2 million COLI shares for the CEF.

592. The records of ABN AMRO indicate that an order was given to the Central Dealer at 10:12 on 2 January 2004 to purchase 2 million COLI shares for CEF at the dealers “Careful Discretion”, the order being valid for that day only. The order was executed at an average price of \$1.4602 per share. That was Mr Edmond Leung’s first purchase ever of COLI shares.

Mr Edmond Leung’s reasons to buy COLI shares.

593. On 9 December 2003, whilst he was accompanying visits organised by Morgan Stanley of different property companies in the Mainland, he had met

staff members of the Chinese property arm of COLI in Shanghai and discussed the Shanghai property market and COLI's projects, costs and selling prices. Of the reasons for his purchase of COLI shares for the first time on 2 January 2004, Mr Edmond Leung said in his statement of 19 February 2009 that he could no longer recall "the exact thinking". However, in his oral testimony he confirmed the references he had made in that statement of the relevance of COLI's NAV having been estimated in December 2003 by brokerage firms as being in the range \$2.00 to \$2.30 also, he referred to the Chinese property market as being "quite strong".

5 January 2004.

15:52 (DT : EL).

594. Mr Edmond Leung said that he thought that Mr David Tsien had initiated the telephone conversation between the two of them that began at 15:52, in the course of which Mr David Tsien said :

"But, just now I met with the whole board of China Overseas -- Ah Sing of Finance, Horace, Hung Hing Ping. They are not going to be floated on the Mainland so soon."

595. Mr Edmond Leung said that he had never heard of the concept in the subsequent reference that Mr David Tsien made, namely that COLI planned to buy an " 'A' stock shell in China". The conversation closed with Mr David Tsien informing him :

"For NAV, we say \$2, but Morgan Stanley has issued a report which says 250."

6 January 2004.

15:17 - the purchase of 2 million COLI shares for CEF.

596. The records of ABN AMRO stipulate that an order was given to the Central Dealer to purchase 2 million COLI shares at 15:17 on 6 January 2004 at

“Careful Discretion”, the order being valid for the day only. The order was executed at an average price of \$1.6905 per share.

7 January 2004.

12:02 - the purchase of 2 million COLI shares for CEF.

597. The records of ABN AMRO stipulate that an order was given to the Central Dealer to purchase 2 million COLI shares at 12:02 on 7 January 2004 at “Careful Discretion”, the order being valid from the day only. The order was executed at an average price of \$1.7699 per share. In his statement of 24 March 2009, Mr Edmond Leung said that he had placed this order by telephone from Beijing.

12 January 2004.

15:20 (DT : EL).

598. Mr Edmond Leung said that he believed that it was Mr David Tsien who had instigated the telephone conversation between the two of them that began at 15:20 on 12 January 2004 in which Mr David Tsien told him :

“China Overseas is now pitching us to do placement ... but I turned it down because it wants to do it at \$1.8 ... now it is only \$1.69 ... on 29 December we revised up the NAV to \$1.99 ... it asked ... CL and Morgan Stanley to issue a report saying that its NAV is \$2.5.”.

599. In cross-examination by Mr Kwan, Mr Edmond Leung denied that the information that COLI wanted to place its shares at \$1.80 was not public information :

“ ... if it is not public information it will not be cleared by the Chinese Wall policy in JP Morgan ... they should have a very good Chinese Wall policy and standard. In fact, in our conversation I believe that the “Chinese Wall” policy in JP Morgan is actually well intact. That is why the information we believe that we have been discussing is allowable by JP Morgan, especially as Mr David Tsien works on the ‘public side’.”.

600. Later in the conversation, Mr David Tsien went on to say, “We have bid for it at \$1.55 ... this China Overseas.” Mr Edmond Leung denied the suggestion, put to him by Mr Kwan, that this information could only have come from people within JP Mogan who were discussing the placement with COLI and repeated his assertion that he believed that it had been cleared by the “Chinese Wall” policy of JP Morgan and, having described Mr David Tsien as “diligent”, he said, “ ... so I assumed that he got the information from the market or indirectly.” Also, Mr Edmond Leung invited the Tribunal to have regard to the fact that this was a fast moving conversation in which he had “no time to think”. Mr David Tsien went on to say :

“But at \$1.80 I asked them to do it themselves. This week it would announce a spin-off of its construction arm.”.

601. Later in the conversation, Mr Edmond Leung returned to the issue of the COLI placement price and said :

“I think that this price does not offer enough profit margin, to be frank this is the worst part of it. You, ... it would be okay if it is at \$1.60.”.

Mr David Tsien said :

“If they want \$1.80, I would not do it for them. Huh, it’s a waste of time. But you have to expect that it would issue 800 million shares. If 800 million, i.e. equivalent to 15% of existing issue.”.

602. Mr Edmond Leung agreed that in the course of the conversation Mr David Tsien had communicated to him the price at which COLI wished to place its shares, namely \$1.80, the price of the JP Morgan bid, namely \$1.55 and the size of the placement, namely 800 million shares. In response to the enquiry as to whether or not at that time, in light of all that detailed information, he had not thought that was something wrong in Mr David Tsien giving him that information Mr Edmond Leung said, “At that point of time I can’t remember what I think.” When asked to consider that enquiry in the context of the fact that Mr David Tsien had told him that he had a meeting with the senior management of COLI Mr Edmond Leung said :

“But there was five days ago, sorry. Mr Tsien met management on January 5 and is telling me this on January 12. I have no idea in between what does Mr Tsien do.”.

603. Having reasserted his reliance on the “Chinese Wall” policy of JP Morgan he concluded by saying :

“He has never talked to me, even up to this point of time or actually until the end of the placement, that he has spoken to the management after January 5 even during our conversation he didn’t refer to any name of the management he spoke to after 5 January.”.

604. Of Mr David Tsien’s assertion that JP Morgan had bid a price of \$1.55 for the placement of the COLI shares, Mr Edmond Leung agreed that it was unusual for a salesman to have passed on that information. In his statement of 19 February 2009, he explained that normally only someone from the investment banking side would have this type of information not an equity salesman. He did not know why it was Mr David Tsien was passing on to him these various pieces of information :

“I thought he was just reporting to me some other market rumours that have been circulating that he came into ... public information ... being allowed or cleared by his company’s ‘Chinese Wall’ policy.”

605. Mr Edmond Leung agreed that ABN AMRO had its own “Chinese Wall” policy and accepted that as a fund manager he had a positive duty not to deal in the shares of a company whilst in possession of non-public price sensitive information about that company.

606. Mr Edmond Leung denied the suggestion that at the time of the telephone conversation he knew that the information given to him by Mr David Tsien had been obtained by him from senior management of COLI and/or those in JP Morgan negotiating with COLI, explaining :

“I think the company management at the time of meeting, the broker or the analyst they will also exercise care in terms of disseminating the information because they owe a liability to disclose information to the public.”.

Of the corporate finance activities of JP Morgan, he said that he assumed they had a “Chinese Wall” policy to restrict information reaching the public side.

607. Mr Edmond Leung agreed that with the benefit of hindsight, and with all the information now available to him, that “ ... there may be some problem” in his receiving that information from Mr David Tsien. If he had realised that in January 2004, he would have reported to the Compliance Department of ABN AMRO or to his boss.

13 January 2004.

11:51 (DT : EL).

608. Mr Edmond Leung said that he believed that Mr David Tsien had initiated the telephone conversation between them that began at 11:51 on 13 January 2004. Of the issue of the placement of COLI shares, Mr David Tsien said :

“if it is going to be placed, (the shares) will be placed at 180, and will not, will not be under 180. Well it has asked ... CL and Morgan Stanley have published a report saying that NAV is 250. Regarding those like Chaoda, (they are) not ready to place shares.”.

609. Mr Edmond Leung agreed that he understood the COLI wished to place the shares at \$1.80. From the tape recording he could not tell if he was interested in the information about COLI. However, he agreed that on 13 January 2004 he had ordered the purchase of a further parcel of 2 million COLI shares for the CEF fund, which balance then stood at 8 million COLI shares.

610. Of the issue of whether or not he believed at the time that in providing him with information about the price at which COLI wished to place the shares, namely \$1.80, Mr David Tsien was providing him “non-public” information, Mr Edmond Leung repeated his assertion that he relied upon the efficacy of

compliance in ensuring that only “public information” was disseminated. Also, he said that not all information provided by Mr David Tsien was true, pointing to the assertion that Chaoda were not ready to place shares, when in fact they placed shares on 16 January 2004.

611. In cross-examination, Mr Edmond Leung said that he now did not regard it as unusual to be provided by a salesman with information of the price at which COLI wished to place its shares. However, he said that in January 2004 it was “a bit unusual” to be provided by a salesman with updated information on ongoing negotiations between the company and a financial institution about a potential placement of the company’s shares.

14:54 - the purchase of 2 million COLI shares for CEF.

612. The records of ABN AMRO stipulate that an order was given to the Central Dealer at 14:54 on 13 January 2004 to purchase COLI shares at “Careful Discretion”, the order being valid for the day only. The order was executed at an average price of \$1.6575 per share.

15 January 2004.

08:47 (DT : EL).

613. Mr Edmond Leung said that he may have initiated the telephone conversation that he had with Mr David Tsien that began at 08:47 on 15 January 2004 in order to update him of the result of the placement of Asia Aluminium shares. In the course of the conversation, Mr David Tsien said :

“ ... we are having negotiations on China Overseas ... on its 800 million shares, but it cannot agree on the price because it asks for \$1.80.”.

614. Mr Edmond Leung agreed that he realised the reference to 800 million shares was to the proposed size of the COLI placement and that the price of \$1.80 was the price at which COLI wished to place it shares. Of the issue of

whether or not this was “non-public” information, Mr Edmond Leung noted that this was repetition of information with which he had been provided earlier. Also, he asserted :

“I did not know that he was sort of negotiating with the management and negotiating with ECDM. Mr Tsien also did not mention that he came back to talk to management, or with who.”.

615. In response to having been told that there was no agreement on the issue of the price of the placement shares the following interchange occurred :

“EL. Should kick it back up first, Big Brother.

DT. I said, you -- I said, ‘If you ask for \$1.80, then it has to be \$2.10’.

EL. Yes, ‘you -- you kick it back up first’.”.

Later, the conversation continued :

“EL. But your question now is that now you do not know -- do not know what the price is, whether it can be kicked up now. How about if it cannot be kicked up it will have to give a discount, right? If it is \$1.80.

DT. It will surely have to have a discount, I will not do it on premium, you may put your heart at ease.

EL. I know, if -- if it can be kicked up, let’s hope that it can be kicked up first, at least he can/disperse/reduce [dispose of] some first. (Chuckle)

DT. Yes. Well, it -- it wants to do it at \$1.80, okay.

EL. Yeap, that means it has to be kicked up to \$2.00, right?

DT. It now insists on \$1.80, if it asks for \$1.80, I would tell it that it would have to be \$2.00 to \$2.10.

EL. That is -- that is, kick it up to \$2.00 first, kicking it up to \$2.00 first, would you please? Yeap.

DT. Yes, yes, I’ve told that already.”.

616. Of the issue of why it was that he had responded, to being told that the negotiations between JP Morgan and COLI in respect of the issue of the placement of COLI shares were stuck on the issue of price, by saying repeatedly, “kick it up” Mr Edmond Leung said :

“As I said, to ‘kick up’ is just a jargon for our business. It doesn’t imply anything, you know, it doesn’t have a very special meaning. If I ask him to kick up, do I have money to give him to kick up? It is also illegal, in a sense. It is also saying that the share price has to go up for a placement, but this is a jargon of our industry.”.

617. In response to the suggestion that in the course of the conversation Mr David Tsien was saying that he had spoken to staff of COLI, in particular in saying :

“I said, you -- I said, If you ask for \$1.80, then it has to be \$2.10.”

at first, Mr Edmond Leung disagreed, saying there was no specific reference to talking to COLI, in particular the names of the management. However, he said that if that was the meaning of what Mr David Tsien said he had not understood that at the time.

618. Mr Edmond Leung denied the suggestion that he found it “unusual” that Mr David Tsien was informing him of ongoing negotiations between JP Morgan and COLI, in particular that COLI wanted a placement price of \$1.80.

619. In the course of the conversation Mr David Tsien asserted

“ ... I guess the deal will close by the end of the month ... it will definitely not be next week. There isn't much time left today.”.

Of the issue as to whether or not he found it unusual that a salesman would tell him the timing of a prospective placement, Mr Edmond Leung said that he did not take the assertion seriously. On that day COLI shares were trading below \$1.80 and the projected timescale was two weeks away. Of the latter issue, he said, “ ... in our industry everything can change overnight.”.

620. Of his statement to Mr David Tsien :

“ ... if it can be kicked up, let's hope that it can be kicked up first, at least he can/disperse/reduce [dispose of] some first. (Chuckle)”

it was suggested to Mr Edmond Leung that he was telling Mr David Tsien to let him know if the market share price rose to a point at which the placement could take place at \$1.80, so that he could dispose of COLI shares. In his statement

of 19 February 2009, Mr Edmond Leung described that assertion as being a “joke”. In his oral testimony, he went on to explain :

“First of all, I think it was a joke in the sense that I kept on buying shares on January 19, so maybe this is a comment saying that if the share price will go up in the short term I will take some profit at that time, at January 15, I continue to buy shares on January 19, so that comment is more or less, I would say, like a joke ... Meaning if the share price goes up I can take some short-term profit.”.

621. Mr Edmond Leung agreed with the suggestion that if a placement was to take place at \$1.80, the share price of COLI had to rise above that price. Of the suggestion that he knew that if a placement took place of COLI shares at \$1.80 he would be allotted shares in the placement and that he would be guaranteed a profit if he sold his COLI shares prior to the placement he said :

“No. First of all, I think at this point of time the probability of the deal is quite remote. As I said, the share price is still below \$1.80 at this moment and there is actually no guarantee that I will be allocated the shares I want.”.

19 January 2004.

11:28 - the purchase of 2 million COLI shares.

622. In his statement of 24 March 2009, Mr Edmond Leung accepted that he gave instructions at 11:28 to the Central Dealer to buy 2 million COLI shares at “Careful Discretion”, the order being valid for the day only. On the instruction ticket he marked a reference price of “\$1.74”. However, he drew the Tribunal’s attention to the fact that COLI shares were not trading at that price at 11:28 on 19 January 2004. However, they had been trading at that price at different times about half an hour earlier. He thought that he had filled out the ticket at that earlier time.

12:04 (DT : EL - voice message).

623. Mr David Tsien left a voice message on Mr Edmond Leung’s voice-mail service at 12:04 on 19 January 2004, informing Mr Edmond Leung that COLI’s

share price had risen by a maximum of 6% that day and was then trading at close to a 5% gain in the share price, adding :

“You, you take a look. Probably, I tell you that they have to place by the end of the month or else they’ll have to wait until April. Okay, perhaps you could take note of that.”.

14:56 - amendment of the instruction to purchase COLI shares by the addition of a price limit.

624. The instructions to purchase were amended by a limit that was set at 2:56 pm of “\$1.8 per OB.” share, namely at \$1.80 or lower per share. In his statement of 24 March 2009, Mr Edmond Leung said that he had given oral instructions to that effect and identified a note of those instructions in the handwriting of the Central Dealer, Lethe, together with his own signature on ABN AMRO records. He went on to say that he was not sure if the amendment to the buy instructions had been prompted by his having listened to Mr David Tsien’s voice-mail of 12:04 or by the fact that in the course of checking COLI share prices he had noticed that in the 10 minutes prior to 14:56 COLI shares had traded in the range of \$1.80-\$1.81. He thought it likely that he had listened to the voice message. If he had not noticed the price level by his regular checking of COLI’s share price he said that the voice-mail would have caused him to check COLI’s share price.

625. Of his reasons for amending the purchase instructions to introduce a price limit, Mr Edmond Leung explained in his statement of 24 March 2009 that there were three possibilities :

- “A. The proximity of the share price to the NAV.
- B. A concern about a possible correction in the share price.
- C. Mr Tsien’s information about the placement.”.

As to A.

626. Mr Edmond Leung said that a possible explanation for his amendment to the purchase instructions was that he realised “ ... how high the share price had got and that it was approaching the limits of acceptable purchase prices.” Of that : he repeated his stated position that the shares of a property company should trade at about a 10% discount to estimated NAV, and that he would not normally buy those shares at the 10% discount level and that he would sell as the shares came close to the level of NAV. Since NAV levels were in the range of \$2.00-\$2.30, the 10% discount range lay between \$1.80-\$2.07. Accordingly, he thought it likely that he would impose a “buy” limit of \$1.80.

As to B.

627. Mr Edmond Leung said that he would have regarded the rise in the share price of COLI on 19 January 2004 prior to 14:46 from a low of \$1.72 to an earlier high of \$1.82, namely 7%, as significant. He would have noted that the highest intra-day “High” of COLI shares from 2 January 2004, namely from the time that he had first bought COLI shares, was \$1.83 per share. Accordingly, he would have noted that the share price was close to an historical high and that there was no news to support that high share price. As a result, he said that setting a limit of \$1.80 per share would enable him to take advantage of any downward trend and keep the average acquisition cost of those shares below a level of a 10% discount to NAV.

As to C.

628. Mr Edmond Leung said that he did not believe that he took into account information from Mr David Tsien of a possible placement of COLI shares at \$1.80 per share. On 19 January 2004 the price of COLI shares had not risen to a level at which a placement could take place at \$1.80 per share, namely about

\$2.00 per share which would allow a discount of about 10% from the market price.

15:56 (DT : EL - voice message).

629. At 15:56 Mr David Tsien left a voice message on Mr Edmond Leung's telephone in which, having referred to Asia Aluminium, he made reference to COLI and invited Mr Edmond Leung to return his call. He could not recall if he had listened to the voice message, but noted that he had not returned the call to Mr David Tsien. In cross-examination by Mr Kwan, he agreed that with a "High" price of \$1.86 and a "Closing" price of \$1.81 that day COLI was moving in the right direction in which a placement could be achieved.

16:25 (DT : EL).

630. Mr Edmond Leung said that he believed that Mr David Tsien had initiated the telephone conversation between the two of them which began at 16:25. He said that his enquiry at the outset of their conversation, namely "Time to place?" was a reference to the COLI placement. In response to Mr David Tsien's reply, "Not yet, ..." Mr Edmond Leung said : "Ask them to 'kick it up' to \$2.2 first." Once again Mr David Tsien asserted that COLI wanted the placement price to be \$1.80 per share.

631. Mr Edmond Leung explained that having bought COLI shares that day at an average of \$1.79 per share he hoped that the share price would go up so that he could make a short-term profit. In his oral testimony, Mr Edmond Leung said that he could not remember to whom he was referring when he had used the phrase "ask them", but he did not think that Mr David Tsien was talking to the COLI management. He went on to explain that in suggesting to Mr David Tsien, "Then ask it to 'kick up' the price to \$2.20 before placing the

shares at \$2” was a response to having been told that COLI had become very bullish. Mr David Tsien replied :

“ ... if it’s \$2 it will not be done by me. I will let someone else do it ... ”.

20 January 2004.

09:13 (DT : EL - voice message).

632. At 09:13 Mr David Tsien left a voice message on Mr Edmond Leung’s telephone in which he advised him that JP Morgan had upgraded its target price and NAV of COLI to \$2.35 and \$2.06 respectively, it having closed the previous day at \$1.81 per share. He concluded :

“If it’s based on the book NAV China Overseas can probably in the short run trade above \$2. If you are interested give me a call tomorrow.”.

633. In his statement of 19 February 2009 Mr Edmond Leung explained that he had no recollection of having received that voicemail but, in any event, he doubted that the target price could be achieved because it was higher than NAV and the share price should trade at a discount to NAV.

10:53 (DT : EL).

634. Mr Edmond Leung said that he supposed that Mr David Tsien had initiated the telephone conversation that they had which had begun at 10:53 on 20 January 2004. Of COLI, Mr David Tsien informed him :

“Everyone is now seeking after that stock, which has now reached \$2 per share.”.

He went on to say :

“Now really looks like it’s going to be 1.8 (each). If that is the case, (if) I really help them do it, I will let you know.”.

Mr Edmond Leung responded:

“Let us know earlier. If it’s going to be done, so that I may throw some back to the market ‘Big Brother’. (chuckle).”.

635. In cross-examination by Mr Kwan, Mr Edmond Leung agreed that he understood Mr David Tsien to be saying that if there was a placement it looked likely that the placement would be done at \$1.80. Of his response, that in making reference to throwing “some back to the market”, he said in his oral testimony that he was referring to COLI shares. In his statement of 19 February 2009, Mr Edmond Leung explained that it was a cheeky request :

“If there was public information available to Mr Tsien that there would be a placement, I was asking Mr Tsien to let me know as early as possible. The request was cheeky because I would expect JP Morgan to contact his top clients first. I guess now I said it thinking it I did not ask would not get (sic).”.

636. In cross-examination, Mr Edmond Leung went on to explain that although ABN AMRO was not a first-tier client of JP Morgan he hoped that the public information of the placement would be given to him, “so if there is profit to be made I can sell first.”.

637. Mr Edmond Leung denied the suggestion that from the information he was receiving from Mr David Tsien that he knew that he was in direct contact with COLI. He accepted that he knew that on 5 January 2004 Mr David Tsien had had a meeting with the management of COLI, but thereafter Mr David Tsien had made no mention of conversations with the staff of COLI, let alone naming such persons in those conversations.

638. In answer to Mr Edmond Leung’s enquiry as to the price at which COLI would decide to conduct the placement Mr David Tsien said :

“Somewhere above \$2.1 would be better.”.

He went on to say :

“It wants \$1.8. It offers \$1.8.”.

Of JP Morgan’s position, he said:

“Now, I’m still offering them just \$1.6 in each ... therefore, there was no agreement as a result of the talks, in respect of the price.”.

639. Of the issue of the market price of COLI shares that it was necessary to achieve for a placement to be successful at \$1.80, Mr David Tsien suggested :

“You had better wait until it reaches \$2.1.”.

Mr Edmond Leung said that he did not know to what Mr David Tsien was referring when he suggested that it be better that he wait. Mr Edmond Leung responded by saying :

“\$2 will just be about right.”.

640. Of the issue of the likely timing of a placement, Mr David Tsien said:

“ ... if the parties get together to talk, it will be at least next week before they talk.”.

The conversation concluded with Mr Edmond Leung saying :

“In that case ... at two ... as above \$2, it is a suitable price for disposal, frankly speaking.”.

Mr David Tsien repeated his price of \$2.10. In his statement of 19 February 2009, Mr Edmond Leung confirmed that he was asking Mr David Tsien’s opinion of the price at which to sell COLI shares.

641. Mr Edmond Leung denied the suggestions put to him that he knew that Mr David Tsien was passing on to him information that he had gained from direct contact with senior management of COLI and those involved in the negotiations at JP Morgan. In particular, he denied that he knew that the information he received from Mr David Tsien was “non-public price sensitive” information about COLI shares. Furthermore, he denied that in placing an order to sell 2.392 million COLI shares on 21 January 2004 he did so as a result of receiving that information from Mr David Tsien. He made the decision to sell based on the sharp increase in the share price of COLI shares on 20 January 2004 and in the early minutes of trading on 21 January 2004 together with the fact that the share price was close to the NAV estimated by brokers.

642. Mr Edmond Leung agreed that in the first telephone conversation the degree of seriousness with which he had treated the information that he received from Mr David Tsien had increased from that which he accorded the information provided in earlier telephone conversations. He accepted that in his record of interview he had responded to the suggestion that he had decided to sell COLI share on 21 January 2004 only after learning from Mr David Tsien in this telephone conversation that COLI might conduct a placement by saying that he couldn't recall the telephone conversation but that even if he did :

“I would only think that he was kidding because I would regard what he said was a rumour, and this is also the market practice is everybody just passes market news around.”.

643. In his testimony, he explained that at the time of the record of interview he had available only the transcript relating to the conversation at 10:53 on 20 January 2004 but none of the other telephone conversations. To that extent he was handicapped by the passage of time, loss of memory and incomplete available information. He did not mean to lie to the SFC.

Lunar New Year holidays - 22 to 25 January 2004.

644. Mr Edmond Leung said that he did not believe that he had any contact with Mr David Tsien during the New Year holidays, on and between 22 and 25 January 2004.

26 January 2004.

08:52 (DT : EL).

645. Mr Edmond Leung said that Mr David Tsien initiated the telephone conversation between the two of them at 08:52 on 26 January 2004, in which he informed him :

“We guess that China Overseas will go ahead this week. The price range is from \$1.70 to \$1.80 ... 800 million shares.”.

646. Mr Edmond Leung agreed in cross-examination by Mr Kwan that the information provided addressed three separate factors of the placement, namely : size, price and timing. However, he pointed out that Mr David Tsien had qualified what he said by saying that it was a guess. Also, now a price “range”, rather than the price of \$1.80, was stipulated. In the result, he said that :

“ ... I felt some doubt whether the deal is actually not very serious ... ”.

10:38 EL placed an order to sell 2 million COLI shares.

647. Mr Edmond Leung agreed that at 10:38 on 26 January he had placed an order on behalf of one of his funds to sell 2 million COLI shares. He did so on a “Careful Discretion” basis. He agreed that the order was executed during the day. He denied that he sold those COLI shares as a result of the information that he had received from Mr David Tsien and that he knew that Mr David Tsien was in contact with the senior management of COLI and those persons within JP Morgan who were negotiating with COLI in respect of the placement. Furthermore, he denied that he knew that information to be “non-public price sensitive” information. Finally, he denied that he knew that he would be allotted COLI shares in the prospective placement. He said that he had determined to sell that parcel of COLI shares because on 26 January 2004 the price of COLI shares continued to rise and having regard to the relationship between the price and the NAV of COLI discounted by about 10%. Also, he pointed out that he had not sold all of the COLI shares in his two funds.

12:30 (DT : EL).

648. Mr Edmond Leung said that Mr David Tsien had initiated the telephone conversation between the two of them that began at 12:30. He said that he understood Mr David Tsien’s statement, “ ... it is probably going to be placed this week ...” to be a reference to the COLI placement. Mr Edmond Leung responded :

“Pushed up enough yet (the price)? Why don’t I sell all. (chuckle).”.

649. In cross-examination, he agreed that was a reference to the price of COLI shares. He said that in the saying, “why don’t I sell all” he was speaking to himself not Mr David Tsien. It was a joke. He was in a good mood because the share price had been rising.

650. Mr David Tsien told him that the placement would be priced at \$1.80, adding :

“but if we go ahead, we won’t pay more than \$1.80. So it’s either \$1.80 or better ...”.

Mr David Tsien went on to say :

“For prices above \$2, you can consider taking profits ... it rose above \$2.1 today. Did you know that? ... now, it’s already \$2.075.”.

651. Mr Edmond Leung agreed with the suggestion that he understood Mr David Tsien to be advising him that at a market share price of above two dollars per share he could consider selling his COLI shares at a profit. He agreed that at the time of the conversation he thought that there was a better chance, than he had thought earlier, of the placement taking place because the share price of COLI shares had gone up. However, he was not sure that it would take place.

15:52 (EL : DT).

652. Mr Edmond Leung said that it was probable that he had initiated the telephone conversation that he had with Mr David Tsien beginning at 15:52. Mr David Tsien told him :

“ ... China Overseas, I may do it after the market close.”.

Of the price of the placement shares, Mr David Tsien added :

“ ... this China Overseas is around 180 ... 180 or better.”.

In answer to Mr Edmond Leung’s enquiry he confirmed the JP Morgan would do the placement.

653. In his oral testimony, Mr Edmond Leung confirmed his assertion in his statement of 19 February 2009 :

“I believe this would have been the first time it had seriously crossed my mind that there might be a placement and there was a good chance that it would be done through JP Morgan.”.

16:33 (EL : DT).

654. Mr Edmond Leung said that he supposed that he was the person who initiated the telephone conversation he held with Mr David Tsien at 16:33. He said that in enquiring of Mr David Tsien, “ ... has it been issued yet?” He was referring to the COLI placement. Mr David Tsien responded by saying:

“it will go ahead well ... 180 ... altogether there is -- but the size has been enlarged, amounts to 900 million shares.”.

He went on to say, “ ... they have not signed it yet. I have to wait for them to sign before I can ...”.

For his part, Mr Edmond Leung told Mr David Tsien :

“ ... I want -- because I’ve sold -- sold 4, 5 million ... I can’t chase it back.”.

655. He agreed that by this statement he was informing Mr David Tsien that he had sold that amount of COLI shares. Of his purpose in stipulating the quantity of COLI shares he had sold, he said :

“I can’t think of an answer to that. I just want to show him if I can participate in the placement at a cheaper price to the market, to show my sincerity. I explained before that sometimes when you come to an opportunity of this kind, the salesman will have a role in influencing, not exactly on the ability to allocate, but maybe in influencing, you know, how much can be allocated to us. But, he does not have the actual power of allocation, I believe.”.

656. Subsequently, he denied that he was informing Mr David Tsien that in the placement he wished to acquire the same number of shares as he had sold. He was just indicating that he wished to participate in the placement. However,

having been shown his statement of 19 February 2009, he agreed that his purpose was as stated there, namely:

“I had sold some of the shares and wanting (sic) to get some back”

In response, Mr David Tsien said :

“I’ll take care of it, don’t worry.”.

Post 16:57 (DT : EL).

657. Mr Edmond Leung said that he supposed that Mr David Tsien initiated the telephone conversation between the two of them that had occurred a few minutes after 16:57. Of his statement to Mr David Tsien :

“4 million - 4½ million ... Real demand, you handle it for me ... 4½ million, 180.”.

658. Mr Edmond Leung agreed that he was informing Mr David Tsien that he wished to acquire 4½ million COLI shares in the placement at \$1.80 per share. He explained that by referring to “real demand” he was informing Mr David Tsien the actual number of shares he wished to acquire in the placement. He said that it was very dangerous to inflate the amount subscribed for “on his side”, lest the market turn over night. He agreed that salesman, like Mr David Tsien, would inflate the quantity subscribed for by the client. He accepted that the figure of 4.5 million shares was only slightly more than the total number of COLI shares that he had sold on 21 and 26 January 2004 and that in effect he was replacing those shares with placement shares at \$1.80 per share. Finally, he agreed that in the event he was allotted the amount of shares that he had indicated was his “real demand”.

Mr Steve Luk.

Statement and records of interview.

659. The Tribunal received from Mr Steve Luk a statement dated 19 February 2009, which he said in his testimony was true. Also, the Tribunal

received the transcript of a record of interview conducted of Mr Steve Luk on 22 March 2005 by an officer of the SFC.

Background.

660. Mr Steve Luk was awarded the degree of Bachelor of Social Sciences by Hong Kong University in 1985 and in 1990 he obtained an MBA from Columbia University, New York. From 1985 to 1988, he worked in the accountants firm, then called Ernst & Whinney. In 1990, he joined JFAM. He is a Chartered Financial Analyst and an Associate member of the Hong Kong Society of Accountants. The latter organisation is now called the Hong Kong Institute of Certified Public Accountants.

2003/2004.

661. In his witness statement of 19 February 2009, Mr Steve Luk said that in late 2003 and early 2004 he was a Vice-President of JFAM, employed as a fund manager managing the JPM China Fund and the JF Greater China Open Fund. He was the person responsible for making investment decisions for those funds. His performance was measured against the Morgan Stanley Capital International Index, rather than against absolute profits.

662. In January 2004, he was a member of the Pacific Region Group's Greater China team. As such, he conducted extensive research on listed companies operating in China, not only reviewing information released by companies and analysts research reports but also meeting regularly with the management of companies. He estimated that he had approximately 200 such meetings with the management of companies during the course of 2004.

Relationship with Mr David Tsien.

663. In addition to receiving information from the sources described above, in January 2004 he had regular contact with more than 10 brokers, one of whom was Mr David Tsien of JP Morgan. Although he said that he had a good working relationship with Mr David Tsien, nevertheless he said :

“I would not accept any rumour or information he passed on at face value, as David was a broker who I considered overrepresented his responsibilities and who exaggerated the situation. He was known as a broker who spread rumours on a regular basis.”.

Registration with the SFC.

664. Mr Steve Luk said that as required under the Ordinance both he, as a fund manager, and JFAM were registered with the SFC, in consequence of which he was required to comply with the “Fund Manager Code of Conduct” issued by the SFC. He said that in January 2004 he was aware of the requirement set out in the Code :

“1.3 Where a Fund Manager is part of a group of companies which undertake other financial activities such as advising on corporate finance, banking or broking, it should ensure there is an effective system of functional barriers (Chinese Wall) in place to prevent the flow of information that may be confidential and/or price sensitive between the different areas of operations.”.

Similarly, he was aware of the provision :

“Prohibition on Insider Dealing

3.3 A fund manager *should* not affect or cause to be affected any transaction based on confidential price sensitive information or when otherwise prohibited from dealing by statutory restrictions on insider dealing, and should have procedures in place to ensure that staff are aware of such restrictions.”.

665. Mr Steve Luk said that he was familiar with the various information sharing policies issued by JFAM. He agreed that a fund manager and an equity salesman were on the “public side” of a “Chinese Wall”. Of the policy published under the heading “Inside Information” and the “Chinese Wall” policy he said that he was definitely aware of the stipulation that if an employee in the public area :

“ ... receive(s) inside information from an external source, including but not limited to a client, third-party or outside paid consultant, or internally from an investment banking employee or from any other inside area personnel, contact your compliance unit immediately.”.

666. He agreed that in January 2004 he had not sought such assistance from the Compliance unit.

Mr Steve Luk's purchase of COLI shares.

667. In his statement of 19 February 2009, Mr Steve Luk said that he began to accumulate COLI shares from September 2003. It is apparent from the chart attached to that statement that on 3 September 2003 the JF Greater China Open Fund and the JP Morgan China Fund bought over 20 million and over 30 million COLI shares respectively within a few cents of a \$1.00 per share. In the following two to three months, further acquisitions of COLI shares was made in each of the funds, the much larger acquisition of COLI shares being made in the JP Morgan China Fund. In his statement, Mr Steve Luk said that other fund managers in JFAM also began to purchase COLI shares. The chart confirms Mr Steve Luk's testimony that those purchases did not begin until late November 2003.

Two “block trades” of 60 million COLI shares each : 26 November and 3 December 2003.

668. In his statement, Mr Steve Luk said that Mr David Tsien had assisted in the acquisitions, in particular in two “block trades” that had occurred on 29 November and 3 December 2003. In his oral testimony, he agreed that the two blocks of shares were of 60 million COLI shares each and said that Mr David Tsien had “sourced” those COLI shares for JFAM. At the end of his evidence, in answer to questions from the Chairman, he said that the first of the “block trades” had occurred on 26 November 2003 and that each of the two funds that he managed had brought COLI shares at \$1.20 per share. JF Greater China

Open Fund bought 2,716,000 COLI shares, whilst JPM China Fund bought 11,528,000 COLI shares. He said that neither of those two funds bought COLI shares in the second “block trade” of 3 December 2003.

669. The records of JFAM indicate that the shares acquired on 3 December 2003 were acquired at \$1.26 per share and that 9,858,000 of those shares were bought on the order of Mr Steve Luk, but allotted to JF China Mother Fund.

The circumstances in which Mr Steve Luk bought COLI shares.

670. In his statement of 19 February 2009, Mr Steve Luk said that in late 2003 the property market in China and particularly in Shanghai was strong. He drew the attention of the Tribunal to the JP Morgan analyst’s report of 8 December 2003, of which Mr Raymond Ngai was a co-author, which asserted :

“We are positive on the Shanghai housing market, which we believe is heading into a harvest time in the coming 12-18 months.”.

The report went on to contend :

“Although the property market in Shanghai and China are strong, property stocks have generally underperformed the broader market due to policy concerns. In our view, the key to re-rating of the property sector will be accelerating profit growth in the coming 1-2 years.”.

671. The report concluded with the claim that COLI was one of several companies who were to be, “beneficiaries of the booming Shanghai market”.

Mr Steve Luk’s meeting with the management of COLI : 18 November 2003.

672. In cross-examination by Mr Kwan, Mr Steve Luk said that he had met Mr Horace Nip, whom he described as an investor relations personnel of COLI but not a member of its senior management, at a meeting on 18 November 2003. It was possible, although he could not remember, that Mr Kong was present at the meeting. That meeting was one of his normal meetings with the management of companies that he conducted on a regular basis.

Rise in the market price of COLI shares.

673. In his statement of 19 February 2009, Mr Steve Luk observed that the market price of COLI shares had risen sharply from the time of his purchases in early September at about \$1.00 per share to a closing price of \$1.44 on 29 December 2003. Of that rise, he noted that the minutes of JFAM's Pacific Region Group meeting of 5 January 2004 stated under the heading "Model Portfolios" :

"China Overseas Land had risen too much to include in the MP."

"Loose target price" for COLI shares.

674. In his statement of 19 February 2009, Mr Steve Luk said that, notwithstanding the fact that COLI was not included in the Model Portfolio, he continued to favour the stock and believed that it would outperform the market. He said that he had identified a "loose target price", for selling COLI shares of \$1.80 to \$2.00, calculated on the upgraded NAV for COLI in the reports of analysts. He pointed to the report of Mr Raymond Ngai of JP Morgan dated 29 December 2003 in which the NAV for COLI was identified as being \$1.99. It was his view that ultimately the shares of COLI would trade at or only slightly below its NAV. In his statement 19 February 2009, he said that in light of the surge in the share price of COLI, the upwardly revised estimates of its NAV from some analysts and the marketing of the prospective Shanghai Forte IPO he increased his short-term "target price" from a range of \$1.80-\$2.00, to \$2.00. In cross-examination by Mr Kwan, he said that it was :

"Very difficult to pinpoint a date on the 20th or the 19th or the 16th (January 2004) that I raised the target price."

Recorded telephone conversations with Mr David Tsien and other events.

675. In his statement of 19 February 2009, Mr Steve Luk asserted :

"Throughout my discussions with David during January 2004, I was aware of that our telephone conversations were being recorded by both JP Morgan

Securities (Asia-Pacific) Limited and JFAM. I made no attempt to hide my discussions and I make no secret of the fact that I sold shares on 26 January 2004.”.

5 January 2004.

(i) 08:17 (DT : SL).

676. Mr David Tsien initiated the telephone call to Mr Steve Luk in which he reminded him of their lunch appointment that day with Mr Kong and Mr Horace Nip of COLI. In response to Mr Steve Luk’s query as to whether he was required attend the lunch, Mr David Tsien told him that if he was unable to come the meeting would be re-arranged for another date. Mr Steve Luk said that he thought that degree of “face” simply reflected the fact that the JP Morgan Group held about 7% of COLI shares at that stage and COLI would require the approval of shareholders at an EGM for the prospective re-structuring arrangements.

Lunch meeting : 5 January 2004.

677. Mr Steve Luk confirmed that together with Mr Ernest Liu, his colleague from JFAM, he had attended a lunch meeting at the Conrad Hotel on 5 January 2004 at which Mr Kong and Mr Horace Nip of COLI and Mr David Tsien and Mr Raymond Ngai of JP Morgan were present. He could not recall if Mr Wu of COLI was also present. He knew Mr Kong to be the Vice-Chairman of COLI and agreed that he had a major role to play in the operational and management side of COLI. He understood Mr Horace Nip to have no decision-making role to play in COLI. Mr Kong answered in the negative his questions as to whether or not COLI had the need to or intention of fundraising by issuing equity.

(ii) 15:37 (DT : SL).

678. Mr Steve Luk said that Mr David Tsien had initiated a telephone conversation between the two of them that began at 15:37 on 5 January 2004 in which he informed him that he had accepted an invitation from Mr Horace Nip to meet later that day. He understood Mr David Tsien's statement :

“ ... its trend today looks exactly like it wants to conduct a share placement today. Look at it.”.

to be a reference to the sharp rise in COLI share price that day and speculation as to the issue of a placement of its shares. In fact, COLI's shares closed that day at \$1.75 per share a rise of 19.05% on the previous day, having reached a “High” of \$1.78 per share. Turnover rose to over \$125 million, about the aggregate of the previous 10 days trading. In responding by saying, “It has nothing to do with it ...” Mr Steve Luk said that he was challenging that speculation of Mr David Tsien. He explained that his statement, “ ... there may be a chance if it is 160 below, right?” was a reference to his willingness to buy COLI shares at \$1.60 or below.

6 January 2004.

09:03 (DT : SL - voice message).

679. Mr Steve Luk identified Mr David Tsien's voice in a voice message left at 09:03 on 6 January on his telephone. He said that he could not now remember having received the message, but that the contents were repeated in a conversation between the two of them later. Mr David Tsien informed him that he had met Mr Horace Nip with Mr Raymond Ngai the previous day and went on to inform him that COLI was considering a placement of 800 million of its shares saying that it :

“ ... wants to have it done around \$1.70, just above its book NAV.”.

He agreed that, given that COLI's shares closed that day at \$1.68 per share, it would have been impossible that day to place them at \$1.70 per share.

680. Of his understanding of the provenance of Mr David Tsien's factual assertions, Mr Steve Luk said :

“How much of that would be of his own idea and how much of that is information from Mr Nip is difficult to tell.”.

7 January 2004.

(i) 11:54 (DT : SL - voice message).

681. Mr Steve Luk said that he must have received the voice message left on his telephone by Mr David Tsien at 11:54 on 7 January 2004 because he returned that call as requested. In the message, he had been told of COLI :

“ ... they are generally interested in doing placement, but I want to discuss the price with you.”.

Mr Steve Luk agreed that he understood Mr David Tsien to be asking him at what price he and JFAM would be interested in taking part in a placement of COLI shares.

(ii) 12:34 (SL : DT).

682. Mr Steve Luk agreed that he had initiated the telephone conversation that he had with Mr David Tsien at 12:34. Whilst he agreed that he had returned the call out of an interest to know of the placement, he did so in part out of courtesy. At the outset, Mr David Tsien said :

“He wants \$1.8. Horace said that their bottom line is \$1.7.”.

683. Mr Steve Luk said that he did not know if that was a reference to Mr Kong, the phrase used could be singular or plural. Mr David Tsien went on to say :

“Well, he asked to raise the NAV. I said: ‘Look are you crazy?’ ”

Mr David Tsien went on to give Mr Steve Luk his view :

“ ... my inclination is that the price should be lowered further ... because he's talking about 8% discount.”.

Mr Steve Luk responded subsequently :

“ ... if you do it today, it has to be \$1.60.”.

He explained that he meant, given the stock price that day, that was the maximum price at which a placement could take place. He told Mr David Tsien that he could not be relied upon for buying too many COLI shares.

684. Mr Steve Luk agreed that he understood from the subsequent references by Mr David Tsien that, firstly he would indicate “interest only at (prices) below \$1.60” and, secondly, that he had been asked by ECM if JFAM would come in as an “anchor” that Mr David Tsien was saying that he had already been in contact with ECM about a potential COLI placement. Mr Steve Luk said that his statement, “I don’t mind at \$1.60 or below” was an indication that he was prepared to buy COLI shares for his funds at JFAM at \$1.60 or below.

(iii) 15:35 (DT : SL).

685. Mr Steve Luk said that Mr David Tsien initiated the telephone conversation between the two of them that began at 15:35. He agreed that after Mr David Tsien had raised the subject matter of COLI, his response :

“What happened? Turned out to be like this today?”

was a reference to the rise in the COLI share price that day to an intra day “High” of \$1.83. On the previous day, it had closed at \$1.68 per share. He said that he understood Mr David Tsien’s statement :

“It said to push the price up to \$2 by speculation and then they would be given to us for placement.”

to be a reference to the COLI Group and to the assertion that at that price the placement would be made. He said that he had doubts in his own mind about the latter assertion.

686. After Mr David Tsien had confirmed COLI would not issue a Convertible Bond now but would do so only later, Mr Steve Luk asked him :

“But how many shares are to be placed this time, 10%?”.

In reply, Mr David Tsien informed him :

“ ... at 15% it would be 800 million shares. For 800 million shares he, this Kong Qing Ping said that he wanted \$1.8 per share ...”.

687. Mr Steve Luk said that he had doubts about the truth of the assertion by Mr David Tsien that Mr Kong was the provenance of this stated price. In support, he pointed to his questions at the end of the conversation in which he had said :

“So he/they wanted it to be \$1.8? ... That is what he/they said?”.

He said that he had posed those questions expressing surprise and scepticism. He had serious doubts that COLI had stipulated the price of \$1.80 per share.

688. In cross-examination by Mr Kwan, Mr Steve Luk agreed that if the information supplied to him by Mr David Tsien about COLI’s intended price and size of the placement was true it was “non-public information”. However, if it was invented by Mr David Tsien, it was not “price sensitive”. Having accepted that in the conversation he had “engaged” Mr David Tsien about the subject of the COLI placement, Mr Steve Luk explained that he did so because he was a “very polite person”. This was a normal conversation that he had with brokers. He agreed that “on the surface” Mr David Tsien was updating him about the progress of negotiations between COLI and JP Morgan.

9 January 2004.

(i) Post 09:32 (DT : SL).

689. Mr Steve Luk said that Mr David Tsien initiated the telephone conversation between them a short time after 09:32 on 19 January 2004. In fact, Mr David Tsien had just finished a telephone conversation with Mr Stefan Weiner in which the latter had suggested a price of \$1.55 for COLI placement shares. At the outset Mr David Tsien said of the COLI placement that JP Morgan was prepared to pay only \$1.55 per share, that being an 8% discount on

the previous day's closing price of COLI shares. In response, Mr Steve Luk said :

“If it is \$1.50 odd we will be interested ...”.

He explained that, notwithstanding his doubts about the veracity of the information provided to him by Mr David Tsien about COLI, the price now quoted was below the price of \$1.60 at which he had told his colleagues at JFAM not to buy COLI shares.

690. Of Mr David Tsien's assertion :

“ ... he wanted to make it \$1.80 per share and Horace said there would be room for negotiation at \$1.70 ...”.

Mr Steve Luk said that he did not understand that to be a reference to Mr Kong, rather he thought it to be a reference to a “decision maker” at COLI such as Mr Kong, the Chairman or the Board of Directors. In any event, he said that he had doubts about the assertion :

“There are two doubts actually. One is whether the information that he received came directly from COLI and, secondly, whether COLI really said \$1.70, \$1.80 because at that time the share price is still not at that range.”.

JP Morgan's offer price of \$1.55 per COLI placement share.

691. Mr David Tsien went on to say :

“It may be bargained to around \$1.60 per share at the end ... but anyway we will not make it higher than \$1.60 ... we will give him an offer at \$1.55 per share.”.

Of the information in respect of the “offer price”, Mr Steve Luk agreed that it was strange that he was possessed of that information and unusual to be told that information by an equity salesman. In response to the suggestion that he realised at the time that Mr David Tsien was talking to ECDM and COLI in relation to the potential placement, Mr Steve Luk said :

“ ... if you assume that I believe in everything that he said, then, yes, it does look like on the surface that he is getting all sorts of information from all sorts of sources.”.

692. He said that he had doubts in respect of the assertion that JP Morgan would offer \$1.55 per share in a COLI placement. For his part, he did not know from whom Mr David Tsien had obtained that information. Mr David Tsien said that it was JP Morgan, not COLI, who were impatient that the deal take place.

693. Mr Steve Luk said that he understood Mr David Tsien's statement, "We only want to find one or two anchors" to be an enquiry as to whether or not JFAM would be one of the anchors in the COLI placement. In response, he had said that there would be "absolutely no problem" for demand of US\$20 million and, if his colleagues were aggressive, US\$50 million.

Issue : misrepresentation/exaggeration by Mr David Tsien.

694. At the time that he was cross-examined about this conversation, Mr Steve Luk indicated that he wished to draw the Tribunal's attention to the nature of the conversation held immediately afterwards by Mr David Tsien with Mr Stefan Weiner. In the event, the matter was dealt with in re-examination. At the outset, Mr David Tsien told Mr Stefan Weiner :

" ... Steve said that at 155 they are very, very interested ... based on yesterday's closing price ...".

He went on to say :

" ... if you look at the entire deal, it's about 150 million ... they can take the whole thing themselves, but, ... once we commit to the deal they will have to ask all the fund managers whether they are interested, okay ... for a deal that is about 150 million they, alone, can take it up, but they said that ... you cannot take that as a promise because it really depends on the price and how the fund managers react. Steve said he alone, will take at least 20."

695. Having confirmed that the reference to "20" was to that number of millions in US dollars, Mr David Tsien added :

" ... he said, based ...on his portfolio, he said least he can take 20 with a maximum up to 50 ...".

Finally, Mr David Tsien confirmed affirmatively Mr Stefan Weiner's enquiry, " ... He could take 20 to 50, with a lot of upside from other fund managers?".

(ii) 16:44 (DT : SL - voice message).

696. Mr Steve Luk identified Mr David Tsien's voice on the recording of a voice message left on his telephone at 16:44 on 9 January 2004. He did not remember if he had listened to the message. Of the assertion that :

"CL will issue a report regarding China Overseas on Monday, stating that its NAV is \$2.50 ...".

Mr Steve Luk said that that did not eventuate on Monday. CL did not issue a report until 20 January 2004.

697. Of Mr David Tsien's statement, " ... we have decided to bid the whole block today, at \$1.55" Mr Steve Luk said that it was strange that he was told that information. More particularly, the phraseology used left him wondering whether JP Morgan intended to offer to buy the shares at \$1.55 and then place them later themselves to others at a higher price.

12 January 2004.

12:00 (SL : DT).

698. Mr Steve Luk said that he initiated the telephone conversation with Mr David Tsien that began at 12:00 on 12 January 2004. At the outset, he had asked Mr David Tsien whether or not COLI were going to do a placement of its shares. In response to Mr David Tsien's affirmative reply Mr Steve Luk said, "Is it necessary to draw the money in advance?" He explained that he was enquiring whether or not he should ensure that he had sufficient liquidity to participate in the placement. He said that it was "possible" that at that time he was treating the possibility of a placement of COLI shares more seriously.

JP Morgan's offer of \$1.55 per placement share rejected by COLI.

699. Mr David Tsien informed him that JP Morgan had offered COLI the price of \$1.55 per placement share. Later in the conversation, he confirmed in terms that COLI had rejected that offer. He agreed that in "hindsight" Mr David Tsien was keeping him informed about the negotiations between JP Morgan and COLI about the placement.

"To place the shares at \$1.80 what would you want the share price to be?"

700. Mr David Tsien went on to say :

"Then he said immediately, he said, 'You seem to have mistaken my meaning.' What I, I wanted to ask you was that 'if we want to place the shares at \$1.80 what would you want the share price to be?' ... Then I said okay. I said then, I said, '\$2 is -- it is -- since its -- it is a barrier, I said what about \$2.10. If it is \$2.10, you can make it at \$1.80 for sure because there is a discount of over 10%.' "

701. Mr Steve Luk agreed that Mr David Tsien was recounting to him a conversation that he claimed that he had with someone at COLI. He did not know if Mr David Tsien had spoken directly to either Mr Kong or Mr Horace Nip and he remained sceptical of that issue.

702. Of Mr David Tsien's assertion :

"BOCI was making a big purchase in these few days, it seems that it has probably obtained financing from BOCI and then used the financing to push up the share price, thinking that it could place shares at \$1.80 if the price has gone up."

Mr Steve Luk said that he understood that it was being asserted that someone was, " ... using BOCI to buy up the shares of COLI to push it up to whatever price that they wanted to place the shares."

703. Mr Steve Luk said that the message he had obtained from that part of the conversation was that the placement would not go ahead at \$1.55 per share. He did not pay attention to the claim that COLI had been told the market price level

at which a placement at \$1.80 could take place. Similarly, he did not pay attention to Mr David Tsien's claim to have had a conversation with Mr Horace Nip in which he had rejected the latter's request that JP Morgan change their estimate of COLI's NAV.

Timing of the placement.

704. Mr Steve Luk agreed that he had understood Mr David Tsien's statement :

“ ... but he said if he is to do it, it would be – it's either this week or next week”

to be a reference to an assertion about the placement by someone from COLI. He said that he considered that assertion in the context of the fact that he had been told that COLI had refused the offer of \$1.55 per share for the placement. In response to Mr David Tsien's comments on the issue of the timing of a COLI placement, namely that by elimination there were two dates Wednesday of that week or that of the week of the 26th Mr Steve Luk said :

“Right, towards the end of this week, speculate, speculate, speculate.”.

He could not explain why he had used that language, literally “fly”, in respect of the shares but if the placement was to take place that week, “the share price may go up”.

705. Of Mr David Tsien's statement in respect of COLI, “ ... this week, first, its trading would probably be suspended for issuing an announcement ... ” Mr Steve Luk agreed that it was strange to have received that information from Mr David Tsien in advance of the actual announcement. He denied that it had occurred to him that the provenance of information was COLI itself. He said that there were various sources of such information and in any event it had proved to be only half correct, in that there was no suspension of COLI shares.

13 January 2004.

09:46 - Mr Steve Luk's order for the sale of COLI shares.

706. At 09:46 on 13 January 2004 Mr Steve Luk gave an order to the Central Dealer at JFAM to sell 3,850,000 COLI shares without stipulating a price limit. That order was executed that day at an average price of \$1.648 per share. In his statement of 19 February 2004, Mr Steve Luk said that he believed that the surge in the market price of COLI shares in early January 2004 was likely to be temporary and he decided to :

“ ... lock-in some of my profits relative to the MSCI China Index, by selling a small proportion of my funds' holdings.”.

707. As evidencing that opinion, he pointed to an e-mail of that day of which he was author and which was circulated within his firm in which he said, in a review of China shares, in particular of China property stocks, “large Cap prefer China Overseas Land (around HKD 1.60)”.

708. In support of the assertion made in his statement of 19 February 2009, that information communicated to him by Mr David Tsien had not prompted the sale of the shares, he invited the Tribunal to note that on that date Mr David Tsien had indicated that he did not think that the proposed placement of COLI shares would go ahead.

(i) 10:59 (SL : DT).

709. Mr Steve Luk said that he had initiated the telephone conversation he had with Mr David Tsien that began at 10:59 on 13 January 2004. At the outset he raised the issue of a placement of COLI shares. In asking him :

“165, 165, still can't be placed at 155?”

he explained that he was referring to the drop in COLI share price that day to that level and teasing him that there would be no placement at \$1.55. Of his statement, “I'll sell even more if I can” Mr Steve Luk confirmed that he did sell

3.85 million COLI shares that day. He said that he understood Mr David Tsien's statement, "He was still insisting on \$1.80" to be an assertion that COLI insisted on placing its shares at that price. Mr David Tsien went on to repeat the account he had given on an earlier occasion of a conversation with an unidentified person at COLI who had responded to the JP Morgan offer of \$1.55 per placement share by enquiring what the market price of COLI shares would have to reach for a placement to take place at \$1.80 per share and of his response that could be done at a market price of \$2.10 per share. Mr Steve Luk repeated his earlier expressions of doubt about the veracity of these assertions.

(ii) 11:44 (DT : SL).

710. Mr Steve Luk said that Mr David Tsien initiated the telephone conversation between them that began at 11:44. Having discussed the weakness of the stock market that day Mr David Tsien told him that COLI had said that its placement price was not okay and that it wanted \$1.80 per share.

15 January 2004.

(i) 09:23 (SL : DT).

711. Mr Steve Luk said that he had initiated the telephone conversation he had with Mr David Tsien that began at 09:23 on 15 January 2004. He did so as requested in a voice message left by Mr David Tsien on his telephone at 09:03 in which he had been informed that Asia Aluminium had been oversubscribed five folds. After they had discussed that issue, Mr David Tsien informed him :

"Today, we would go back and bid for that China Overseas, the price is \$1.55 ... it wants it to be \$1.8. I said no discussion until it reaches \$2.1."

Mr Steve Luk agreed that it was strange for Mr David Tsien as an equity salesman to inform him of JP Morgan's second bid at \$1.55 for the COLI placement.

712. Later in the conversation Mr Steve Luk said :

“ ... give it a push, because I suspect that it’s possible that people may be buying China Overseas shares today ... so you may not be able to do the deal at \$1.55 again (interjection by Mr David Tsien) ... go up to \$1.6.”.

In his oral testimony, Mr Steve Luk explained that he meant that JP Morgan should work harder to secure the deal and bid \$1.60.

713. Of the discount to the market price at which JP Morgan envisaged the COLI shares being placed, Mr David Tsien said :

“We are talking about 8, around 8 ... talking about 8.5.”.

714. Of the timing of the potential placement, Mr David Tsien said :

“Probably it cannot be done next week, because some people will be on leave (interchange between the parties) ... if it cannot be done before end of January then it can only be done after it has released its final result.”.

715. Mr Steve Luk said that he understood Mr David Tsien to be saying that, “ ... if they are going to do a placement it is either now or after the result, because of the blackout.”.

(ii) 10:04 (DT : SL - voice message).

716. Mr Steve Luk identified Mr David Tsien’s voice on a voice message left on his telephone at 10:04 in which he advised him that COLI would be suspended from trading in the next one or two days. He went on to add :

“According to Horace they will only start negotiating with us on Monday at the earliest, at the earliest, and it will be even better in the week of the 26th. Well, ... if anything needs to be done will not be done within those two days.”.

717. Mr Steve Luk said that he could not recall listening to the voice message, but accepted that he may have done so. He pointed out that COLI shares were not suspended from trading. He accepted that Mr David Tsien was providing him with information of developments in the negotiations between JP Morgan

and COLI in respect of the potential placement, correcting earlier estimates of the timing of the placement. He agreed that the reference to “Monday” was to Monday 19 January 2004.

(iii) 16:30 (DT : SL - voice message).

718. Mr Steve Luk accepted that he had listened to the voice message left by Mr David Tsien on his telephone at 16:30, saying that he had returned the telephone call as requested. In the message Mr David Tsien said :

“Steve, sorry, excuse me, on this ... China Overseas, because officially I am supposed to know nothing at all. Well, so wonder if you can ask ECM ... either you ask for the Singapore guy named Ian Long or the guy named Rupert Fane ... to come and see you next week ... to have a look at the price and the number of shares.”.

Having repeated the assertion that officially he was supposed to know nothing at all Mr David Tsien concluded by saying :

“Well, then I can concentrate on dealing with Horace.”.

719. Mr Steve Luk said that he understood that he was being asked to contact ECM directly to express JFAM’s demand for COLI shares if there was a placement. In January 2004, he did not know either Mr Ian Long or Mr Rupert Fane. He agreed that he understood Mr David Tsien to be saying that officially he was not supposed to know anything at all in relation to the potential placement of COLI shares.

720. Of his understanding of Mr David Tsien’s contact with ECM he said :

“I am sure he had contacted the ECM Department because I told him my demand. He must have told the ECM Department JFAM’s demand. Whether the ECM Department on the opposite told him information in terms of timing, in terms of negotiation, I cannot confirm and I did not confirm that, did not verify.”.

721. Notwithstanding that response, Mr Steve Luk agreed that it had occurred to him that Mr David Tsien obtained information about JP Morgan’s bid at

\$1.55, its rejection and the re-bid from ECM. He agreed that it was unusual for Mr David Tsien, as an equity salesman, to be able to obtain that information from ECM. He agreed that Mr David Tsien had been telling him in their telephone conversations that he had been talking to the management of COLI.

(iii) 16:52 (SL : DT).

722. Mr Steve Luk said that in response to the voice message he had initiated the telephone conversation that he had with Mr David Tsien that began at 16:52.

At the outset, he told Mr David Tsien :

“ ... very difficult, I ... we will not meet those people from ECM, why? Doing ... we are doing ... look, the things that you’ve told me all rumours ... the things that I have told you are based on your rumour, I will think in this way ... if I talk with him and he tells me right away that it would probably be done, then I will be dammed.”.

723. After Mr David Tsien’s response by saying that he understood, Mr Steve Luk went on to say :

“His are not rumours, he really goes to make a bid ... Yep, well, we are very, ... that is, being in the same company, it is even more outrageous, even more dangerous.”.

Mr David Tsien responded by saying :

“I know, I know, right, correct, right, I know.”.

724. In his oral testimony, Mr Steve Luk agreed that he was referring to talking with ECM and that in saying that he would be “dammed” he meant that he would be “breaking the rules and regulations” if he was told by ECM of the fact of a deal and of the timing of the placement for COLI shares.

725. In his statement of 19 February 2009, Mr Steve Luk asserted :

“It was my understanding that, provided I did not have direct dealings with JP Morgan’s ECDM department or COLI in connection with the placement and provided I did not have any definite confirmation from the persons involved in negotiating any placement agreement that the placement would proceed, I was entitled to discuss matters with David and I was entitled to continue trading in

COLI shares. If at any point of time there was likely to be a possible regulatory issue, I thought that I would be warned and told not to trade.”.

726. Of his refusal to contact the ECDM on 15 January 2004 to discuss the possible placement of COLI shares, Mr Steve Luk explained in his statement of 19 February 2009 :

“I refused because I did not want to learn information that would prevent me from trading in COLI shares.”.

727. In the telephone conversation, having been informed by Mr David Tsien, that the size of the potential placement was 800 million shares, Mr Steve Luk said that at a placement price of \$1.55 he thought JFAM’s demand “ ... will be ranging from US\$20 million to US\$50 million.” In response to Mr David Tsien’s enquiry of demand, if the placement price was \$1.60, Mr Steve Luk said :

“If it is \$1.60, it will depend on the market. Of course, it will be okay when the market is crazy.”.

728. Of the issue of the timing of the potential placement, Mr David Tsien said :

“ ... Horace told me that, he said, ‘it doesn’t matter if you take days off next week.’ He said it will probably be the week after next week. Yep, after January.”.

Of his response :

“Next week -- just do it next week.”.

Mr Steve Luk said that not only was he very positive about COLI but also JFAM owned lots of its shares and he was worried about an increase in its market share price, so that :

“From a logical point of view, better do it before the share price continues to fly.”.

729. Mr Steve Luk disagreed with the suggestion that from his conversations with Mr David Tsien he knew that there were genuine negotiations between JP

Morgan and COLI about a placement of the latter's shares. He explained, " ... I don't think I believed a lot of the information Mr David Tsien told me." Similarly, he disagreed that he knew that the information Mr David Tsien passed on to him about the placement of COLI shares was not merely "rumour".

16 January 2004 [Sale of 6.846 million COLI shares by SL].

730. Mr Steve Luk agreed that on 16 January 2004 on his instructions 6,846,000 COLI shares had been sold from the two funds he managed. In re-examination, Mr Steve Luk agreed that the records of JFAM indicate that he gave the order to sell those shares at 3:12 pm, at a price limit of \$1.70. In the event, the shares were sold at an average price of \$1.7027 per share. In his statement of 19 February 2009, Mr Steve Luk said that the "sole reason" for that trading was to " ... lock-in some of my profits relative to the MSCI China Index". He invited the Tribunal to note that he did not have a conversation with Mr David Tsien on that day.

19 January 2004.

(i) 11:01 am (DT : SL).

731. Mr Steve Luk said that Mr David Tsien initiated the telephone conversation between them that began at 11:01 am on 19 January 2004. At the outset, Mr David Tsien informed him that COLI shares were "flying". Of his response, "They can't wait" Mr Steve Luk explained that was a reference to COLI and to the fact of a sharp rise in its share price from the close on the previous day of trading of \$1.70 to an intra day "High" of \$1.86 on 19 January 2004. He added that he had previous experience of sharp price increases in shares prior to their placement. In the telephone conversation, he went on to say :

"Those buggers, indeed, obviously marking up ...".

Of that assertion, Mr Steve Luk said that it was consistent with what Mr David Tsien had said earlier, namely that BOCI was providing finance to COLI to mark up the share price.

732. Of his assertion :

“With it, there’s a chance any time today, but if I were to sell at, I would wait until 3:45.”.

Mr Steve Luk said that he was referring to a placement of its shares by COLI that day, but that his reference to selling COLI shares was a joke. In his statement of 19 February 2009, he explained it as meaning “so that I could buy more shares in the placement”. In his oral testimony, he said that he meant that :

“If they ramp up the share price at 3:45, I would try to place an order to sell every day at 3:45.”.

He was being sarcastic.

(ii) 14:28 (DT : SL - voice message).

733. Mr Steve Luk identified Mr David Tsien’s voice on a voice message left on his telephone at 14:28 on 19 January 2004. He did not recall now if he had listened to the message, but its references to COLI were largely repeated in a subsequent telephone conversation between them that day. At the outset, Mr David Tsien said :

“CL asked Horace, who said ‘No shares to be placed.’ So, today it rebounded.”.

734. Mr Steve Luk said that he understood that to be an explanation for the strength of COLI shares that day. The message continued with information that COLI was to make an announcement after the close of the market in respect of its “spin-off”. That announcement was made prior to the market opening on 20 January 2004.

735. Of the COLI placement the message continued :

“it said it won’t be discussed until, until after the 26th -- not until the week after the 26, that is ... next week and early February after seeing what the price is like.”.

736. In his testimony, Mr Steve Luk said that he did not know if the information came from COLI or elsewhere, although he did understand that Mr David Tsien was trying to update him on the negotiations between COLI and JP Morgan about the placement together with expressions of his personal opinion.

(iii) 2:54 pm (JFAM telephone records).

737. In re-examination, Mr Steve Luk confirmed from the telephone recordings maintained by JFAM that he had replayed part of the voice message delivered at 2:28 pm by Mr David Tsien. He said that he had listened to the voice message up until the part in which Mr David Tsien spoke of the subject of the filing of an announcement with the SEHK in respect of China Overseas Construction.

(iv) 3:03 pm (DT : SL).

738. Mr Steve Luk said that Mr David Tsien initiated the telephone conversation between the two of them that began at 3:03 pm. Having referred to other matters Mr David Tsien said of COLI :

“Today CL told people outside that no shares would be placed, the NAV is 250.”.

However, Mr Steve Luk described Mr David Tsien’s subsequent remark :

“You actually believe what CL said?”

as being an invitation not to accept that information, but rather to accept his statement, “maybe not for this week.”.

739. Mr David Tsien repeated the information that he had left in the earlier voice message that after the close of the market COLI would make an

announcement of its “spin-off”. The conversation concluded with Mr David Tsien asserting :

“Well, if something to be done, it will be in the week of the 26th or in early February, that is next week.”.

740. Of his response, “Oh, good job, that means they are smart, they’re confident, smart boy” Mr Steve Luk explained that he meant that COLI was confident that its share price would continue to go up, noting that it had gone up 6.47% that day.

20 January 2004.

(i) 9:13 am (DT : SL - voice message).

741. Mr Steve Luk identified Mr David Tsien’s voice in a voice message left on his telephone at 09:13 am on 20 January 2004. At the outset Mr David Tsien said that JP Morgan were going to change its “target price” for COLI to \$2.35, adding that it had increased its estimated NAV to \$2.06 per share and that its “Closing” price the previous day was \$1.81. The message concluded with Mr David Tsien saying :

“If it’s based on the book NAV, China Overseas can probably in the short run trade above two dollars. If you are interested, give me a call tomorrow.”.

(ii) 3:50 pm (DT : SL).

742. Mr Steve Luk said that Mr David Tsien initiated the telephone conversation between the two of them that began at 3:50 pm on 20 January 2004. At the outset, Mr David Tsien asked if JFAM had any interest in a COLI placement at \$1.70 per share, informing him that JP Morgan had already changed the “target price” of COLI to \$2.35. Mr Steve Luk responded :

“There will be buyers at 170. There will be buyers. I don’t know how many -- I’m not sure how many there will be.”.

743. In his oral testimony, by reference to the trading records Mr Steve Luk agreed that at 3:50 pm on 20 January 2004 COLI shares were trading in the range of \$1.98-\$1.99 per share. When asked to calculate the discount from a market price of \$1.98 to a placement price of \$1.70 Mr Steve Luk said in his evidence, “ ... Wow, 14.1%.” Of that discount, he said :

“It is very tempting because the discount is very big.”.

(iii) 4:06 pm (DT : SL).

744. Mr Steve Luk said that Mr David Tsien initiated the telephone conversation between the two of them that began at 4:06 pm on 20 January 2004. In fact, Mr David Tsien had just concluded a telephone conversation with Mr Wu. At the outset, Mr David Tsien said :

“They want \$1.75. Why is that the case? Director Wu wants \$1.7, Kong Qing Ping wants it to be \$1.8. I said to him, ‘It’s best if you can make some concession to us’. For this, it will be done tomorrow at the earliest, next week the latest.”.

745. In his oral testimony, Mr Steve Luk agreed that Mr David Tsien was describing having had contact with the senior management of COLI and that he was informing him of the ongoing negotiations with COLI about the placement. Once again, he repeated his position that he did not know if Mr David Tsien really had discussions with Mr Wu. He agreed that Mr David Tsien was informing him of the timing of the potential placement by COLI. Nevertheless, he still regarded it as “rumour”, noting that there was no placement that day.

746. Of his response :

“\$1.75, if it is done tomorrow, so if the price goes up like this, this is possible.”.

Mr Steve Luk accepted that he must have been monitoring the market and have known that COLI shares closed at \$1.97 on 20 January 2004. Of the 8.84% increase in its share price that day, he said in evidence, “It’s a big move.”.

747. In the telephone conversation, Mr David Tsien went on to say :

“I said to him, ‘If at \$1.75, it is best that the share price is over \$2.1.’ ”.

Mr Steve Luk responded :

“No way, it’s so big, no way, \$2, over \$2 ... around \$2 ... aim for \$2.”.

In his testimony, Mr Steve Luk explained that he thought Mr David Tsien was referring to a conversation with COLI’s management and explained his response by noting that if COLI’s share price was \$2.10 and the placement was at \$1.75 the discount was 16.66%, which he described as being “too much”.

748. Of Mr Wu’s role in COLI Mr David Tsien said, “ ... he is the real boss.” He added, “When we came together to negotiate the price, it was he whom we were negotiating with.” In cross-examination by Mr Kwan, Mr Steve Luk accepted that in this telephone conversation Mr David Tsien was feeding him information in respect of the negotiation process on the COLI placement and not asking for his demand for that placement. The telephone conversation ended with Mr David Tsien stating, “begin to do due diligence.”.

(iv) 4:27 pm (DT : SL - voice message and conversation).

749. Mr Steve Luk identified the voice of Mr David Tsien in a voice message left on his telephone at 4:27 pm on 20 January 2004. Mr David Tsien explained his enquiry of Mr Steve Luk as to whether or not he would be in the office the following day in saying :

“ ... because if we can agree on a price, we may act quickly.”.

Immediately thereafter, there ensued a conversation between the two of them in which Mr David Tsien said of the COLI placement :

“It will be tomorrow at the earliest and next week the latest.”.

750. In cross-examination by Mr Kwan, Mr Steve Luk denied that Mr David Tsien was providing him with information in respect of the timing of the COLI placement, noting that he had provided various dates and times previously and

adding that he did not know how much of what he said was simply Mr David Tsien's own opinion.

751. In the telephone conversation Mr David Tsien said :

“I told ECM, that JFAM would be a, would be the anchor client. But, this was based on the hypothetical deal, hypothetical price, no problem.”.

Of that he added :

“ ... officially JFAM's name is not in there, but when it comes to the time of allocation it will make a great difference.”.

752. In his oral testimony, Mr Steve Luk said that he understood Mr David Tsien to mean that JFAM would get a greater allocation of shares in the placement as an anchor, rather than if it were not an anchor. He agreed that Mr David Tsien did not seek to elicit the level of demand for shares in the placement by JFAM in that conversation.

(v) 5:33 pm (DT : SL).

753. Mr Steve Luk said that Mr David Tsien initiated the conversation between them that began at 5:33 pm on 20 January 2004. At the outset Mr David Tsien said, “Will not do it until next week”. He went on to add :

“The deal will be confirmed next week. They have already called back asking me to get everything ready next week.”.

In cross-examination by Mr Kwan, Mr Steve Luk agreed that Mr David Tsien was updating him about the timing of the COLI placement.

754. Of the price of the placement shares, Mr Steve Luk enquired, “Sure that it is \$1.75 or would it not be fixed until then?” Mr David Tsien replied that the placement shares would be at \$1.75 or better, by which he explained he meant lower than \$1.75 per share.

26 January 2004.

(i) 08:57 am (DT : SL)

755. Mr Steve Luk said that Mr David Tsien initiated the telephone conversation between them that began at 08:57 am on 26 January 2004. When the conversation turned to the subject of COLI, Mr David Tsien said :

“China Overseas may open the offer with a price range, for 800 million shares, at 170 to 180.”.

He went on to assert that, at \$1.80, the discount was less than 7%, of which he said, “I feel is not worth doing it.” Having noted that Mr Wu said that \$1.70 was a better price, Mr David Tsien went on to say :

“So ... maybe he has compromised, so that it is 175.”.

Mr Steve Luk responded :

“But if it is so, then go ahead quickly, be it 170 or 180.”.

756. In cross-examination by Mr Kwan, Mr Steve Luk agreed that, in answering as he did, he was indicating that he had an interest in the COLI placement in the price range of \$1.70-\$1.80. He said that he continued to regard the information that he was provided by Mr David Tsien as a “rumour” : Mr David Tsien had said that Mr Wu wanted \$1.70, Mr Kong \$1.80 and now he was offering his own opinion in respect of \$1.75 as the placement price. In response to the suggestion that the only source of information that COLI wished to place its shares in the price range of \$1.70-\$1.80 was Mr David Tsien, Mr Steve Luk disagreed. He pointed to his answers in his record of interview conducted by the SFC on 22 March 2005 in which he had asserted :

“As far as I can remember, there were some rumours from the market about a possible placement by China Overseas during January 2004, but I cannot remember the sources.”.

Mr Steve Luk was unable to provide any particulars whatsoever of the circumstances in which he had come to learn of these “rumours”.

757. Mr Steve Luk denied that he knew or believed that the provenance of the information that he was given by Mr David Tsien about the COLI placement

was COLI management and JP Morgan's ECDM and that the information was both "non-public" and "price sensitive". He said :

"At that time I didn't believe what Mr Tsien told me. I have doubt in my mind. I didn't expect what he was telling me was directly from the sources which he mentioned."

758. Mr Steve Luk denied the suggestion, made to him by Mr Kwan, that he knew that the funds that he managed in JFAM would be allocated placement shares in a placement of COLI shares :

"... as I mentioned to you, many of my colleagues could be very aggressive. There is no guarantee that my fund would be allocated shares and there is no guarantee that this deal is going ahead."

759. Mr Steve Luk denied the suggestion that it was as a result of this particular telephone conversation that he had ordered the sale of COLI shares in the JFAM funds that he managed that day, and said :

"I sold my COLI shares based on the fact that the share price had actually surpassed my then target price of \$2 at that time. I did not take into consideration what Mr Tsien told me on that day or even the previous days. I have all along considered what Mr Tsien told me in terms of a placement are rumours, information that is unreliable and he put in a lot of his own personal opinions in that information."

Occasions when COLI share price were at or above \$2.00.

760. Mr Steve Luk said in his oral testimony that he had a Bloomberg screen on his desk from which he could check the price of any particular share during the trading day. In cross-examination by Mr Kwan, he agreed that on occasions on both 20 and 21 January 2004 the price of COLI shares was at or above \$2.00, but that he had not sold any COLI shares on those days in the funds that he managed.

(a) 20 January 2004.

761. On 20 January 2004 the price of COLI shares had first reached \$2.00 per share at 15:14:09 and had dropped from and then returned to that level for short periods of time until the close of the market. Of that, Mr Steve Luk said :

“The window of opportunity for me to sell my COLI shares at or above \$2 on that day, at best, is half an hour.”.

762. He pointed out that at the time of his telephone conversation with Mr David Tsien at 3:50 pm on 20 January 2004, the price of COLI shares in the market was around \$1.97-\$1.98. On that occasion he was asked to give his “indicative demand” after which Mr David Tsien had said, “I will indicate to them to get the deal first”. Of that he said :

“That obviously, is very specific information, if you believe in what Mr Tsien told me. At that time, the share price was \$1.97, \$1.98. If what Mr Tsien told me is reliable, that is a discount of 27 cents out of \$1.97, 13.7% discount. If I follow your logic, then I should have sold my shares at that moment, which I did not do.”.

(b) 21 January 2004.

763. Mr Steve Luk agreed that on 21 January 2004 the price of COLI shares was at or above \$2.00 per share for 19 minutes of the first 20 minutes of trading that day. Initially, in refuting any suggestion that he had relied on Mr David Tsien’s information about the COLI placement Mr Steve Luk reminded the Tribunal that he had a conversation with Mr David Tsien at about 4:00 pm on 20 January 2004 in which he was told that the placement, “ ... will be tomorrow at the earliest and next week the latest”. Of that he asserted :

“If I am really utilising this information given by Mr Tsien, I should have placed the order on the 21st, no matter whether the share price was \$2 or \$1.97. He was very specific on the afternoon of the 20th.”.

764. When reminded of the evidence that there was a conversation subsequent to the one to which he referred, namely at 5:33 pm, in which he had

been told that the placement would not be done the following day, Mr Steve Luk had nothing to add to his testimony.

765. In responding to the question from Mr Kwan as to why it was, if his target price was then \$2.00 for COLI shares, he had not put in a standing order to sell COLI shares held in the funds that he managed at that price, Mr Steve Luk said that JFAM was not a retail investor and did not invest for trading purposes, rather it did so for the long-term. Also, the target price was something that was continually re-assessed on new information.

Mr Steve Luk's activities on the morning/lunchtime of 26 January 2004.

766. In his oral testimony, Mr Steve Luk confirmed his statement of 19 February 2009 in which he said that he had been involved in meetings that morning. He corrected the assertion in his statement that one of those meetings have been with the management of a company, rather it had been with analysts reporting on that company, namely Jianxi Steel. Thereafter, he had gone for a run as part of his preparation to taking part in the Standard Chartered Marathon race to be held on 8 February 2004. Then, he had returned to his desk, where he ate his lunch.

(ii) 2:33 pm (DT : SL).

767. Mr Steve Luk said that Mr David Tsien had initiated the telephone conversation between them that began at 2:33 pm on 26 January 2004. At the outset, Mr David Tsien informed him :

“It should be done at 175”.

He understood that to be a reference to the placement price of COLI shares. He agreed that his enquiry, “Still talking about 175?” was made because he was aware that the share price of COLI was rising quite sharply that day.

768. In his statement of 19 February 2009, he said that he had checked the current share price of COLI shares, in response to what Mr David Tsien had told him at the outset of the conversation. Of the consequences, he asserted in his statement that :

“I realised the share price had risen and as a consequence, the shares were now trading at a level which was over my target price of \$2.00. I also realised that the movement in COLI shares was in contrast to the movement in the Hang Seng China Enterprises Index the Hang Seng China Enterprises Index fell 3.2% on 26 January 2004. I therefore decided to begin selling my COLI shares, and placed an order at about 2:36 pm with Central Dealing to sell ...”.

769. In response to his enquiry if the placement price was still \$1.75, Mr David Tsien responded :

“Not more than 180 ... (if) they really keep their word, that is, the price it wants to do ... ”.

In reply, Mr Steve Luk said :

“Hurry up then. Is it okay yet? Now it can be okay -- okay today?”.

770. In cross-examination by Mr Kwan, Mr Steve Luk agreed that he was eager for the COLI placement to be done.

2:36 pm - Mr Steve Luk's orders for the sale of COLI shares.

771. Mr Steve Luk agreed that at 2:36 pm on 26 January 2004 he had placed an electronic order for the sale of 8,744,000 COLI shares in the JPM FF-China Fund and 1,656,000 COLI shares in the JF Greater China Open Fund. In each case, the price limit was \$2.05 with the order “good” until 30 January 2004.

772. In his statement of 19 February 2009, Mr Steve Luk said that the sale orders represented 7.7% and 6.4% of the COLI shares held in the two respective funds. Of his reason for selling those COLI shares, he said in his statement :

“The only reason that I disposed of shares in COLI on 26 January 2004 was because the share price went up by more than 10% and had reached my short-term target price of \$2.00, and there had been a dramatic rise in the

share price against the background of falls in the Hang Seng China Enterprises Index generally. As far as I could remember, the share price of COLI went up more than 10% before I placed the sell orders and the whole market was falling by 1-3% for China H shares and China Red Chips. The rumours David conveyed to me about a possible placement did not play any part in my decision to sell COLI shares.”.

773. In support of those assertions, in his statement Mr Steve Luk pointed to the fact that, firstly he had sold the shares earlier, namely on 13 and 16 January 2004, at a lower level in the range of \$1.60-\$1.70 and, secondly he had placed a price limit of \$2.05 on his orders.

774. In cross-examination by Mr Kwan, Mr Steve Luk denied the suggestion that he knew that the information given to him by Mr David Tsien in the telephone conversation of 2:33 pm had been obtained directly from the senior management of COLI and/or JP Morgan’s ECDM. Similarly, he denied that he knew it to be “price sensitive” information. Finally, he denied that he had given the order to sell the shares as a result of receiving that information from Mr David Tsien. He said that he had sold those COLI shares because the market price of COLI shares had reached his “target price” of \$2.00, noting of trading in COLI shares on 26 January 2004 :

“ ... most of the morning except in the very beginning trading minutes the stock was significantly above \$2. It trades to as high as \$2.125. Even when I was placing my sell order at 2:36 p.m., the share price was 2.075. The difference between the 26th and the 20th and 21st was that the stock actually continued to trade at that price for a long period of time.”.

775. In cross-examination by Mr Kwan, Mr Steve Luk denied that at the time that he had placed the orders to sell COLI shares at 2:36 pm on 26 January 2004 he recalled his conversation with Mr David Tsien in which the latter had said that he had suggested to the management of COLI that the share price of COLI shares rise to \$2.10 before a placement could take place at \$1.80. He agreed that the trading records showed that the price of COLI shares first reached the daytime high of \$2.125 at 10:57 am that day.

776. In denying the suggestion that he knew that the funds that he managed at JFAM would be allotted placement shares at \$1.80 per share, Mr Steve Luk said of the uncertainty as to what would be allotted to the funds under his management :

“ ... I have no idea how many shares would be allocated to me because internally we have to be pro rata and our regional fund size is much bigger than my fund. If they are aggressive, my fund may not be able to get a lot of shares, as suggested by you.”.

(iii) 3:18 pm (DT : SL - voice message).

777. Mr Steve Luk identified the voice of Mr David Tsien on a voice message left on his telephone at 3:18 pm on 26 January 2004. In the message Mr David Tsien said :

“ ... the issue would be priced by a price range, 175-185. Well we want to check ... at which price the demand would be the largest.”.

778. In his statement of 19 February 2009, Mr Steve Luk said of 26 January 2004:

“David left a few messages on my voice mail in relation to COLI shares that day. However, I did not check any of the messages and none of them were brought to my attention.”.

779. In his testimony, Mr Steve Luk explained that he had listened to tape recordings made by JFAM of his conversations in August 2004, but that this voice message from the recordings made by JP Morgan was not amongst that material.

(iv) 3:27 pm (DT : SL).

780. Mr Steve Luk said that Mr David Tsien initiated the telephone conversation between the two of them that began at 3:27 pm on 26 January 2004. Mr David Tsien repeated the information that he had left in the voice message,

namely that there was a price range for the COLI placement of 175-185. Of his response, “Of course, I knew that from its awkward look.” Mr Steve Luk explained that he had checked the current market price for COLI shares and thought it was still quite high, so that the placement probably would not be in the range and, secondly he thought that the management of COLI could be quite greedy.

781. Mr David Tsien went on to say :

“ ... it should start at 4 p.m. That the indicated price, that he would be happy if it is at 180 (sic). We will try to price it at 180. We feel that the price today is a bit high ... It will probably be done after the market closes.”.

In his oral testimony, Mr Steve Luk said that he understood that to mean that the COLI placement would be launched after the market closed that day at 4:00 pm. He understood that the reference to persons being “happy with a price of \$1.80” was a reference to the COLI management. Mr Steve Luk said that he did not believe the information given to him by Mr David Tsien. He definitely had doubts.

3:30 pm (SL : Ms Jessica Wong) - Change of price limit in “sell” order to \$2.00 per share.

782. In his statement of 19 February 2009, Mr Steve Luk said that he had been prompted to think about COLI shares by the telephone conversation with Mr David Tsien at 15:27. As a result, he initiated the telephone conversation that he had with Ms Jessica Wong of the Central Dealing Department at 15:30 on 26 January 2004, in which he changed the price limit applied to his orders to sell COLI shares, given at 14:36, from \$2.05 to \$2.00. He did so because he had noticed that although the market price of COLI shares was above his “target price” of \$2.00 per share it was lower than his price limit of \$2.05. In fact, the stock exchange records of trading in COLI shares indicate that the last trade at or above \$2.05 that day was at 15:14:11, when shares were traded at \$2.05.

3:33 pm - Mr Steve Luk's order for the sale of COLI shares in the Alger China Fund.

783. Mr Steve Luk accepted that at 3:33 pm he had placed an order for the sale of 188,000 COLI shares in the Alger China Fund at JFAM on behalf of his absent colleague, Mr Ernest Liu. He did so without stipulating a price limit. He agreed that the order was executed at an average price of about \$1.99 per share. He denied that at the time he gave the order to sell he knew that the information he had received from Mr David Tsien was price sensitive and had been obtained directly from the COLI management and/or JP Morgan's ECDM. Further, he denied that he had given the order to sell as a result of the receipt of the information. Finally, he denied that at that time he knew that such shares as were sold would be replaced in the subscription for the placement shares. He pointed out that the Alger China Fund had not subscribed for placement shares.

(v) 3:54 pm (DT : SL).

784. Mr Steve Luk said that Mr David Tsien initiated the telephone conversation between them that began at 3:54 pm on 26 January 2004. At the outset, Mr David Tsien said :

“If 180 ... they need you to give them an indication ... because if your order does not come in, they may not be willing to sign this deal.”.

Later in the conversation he said that the placement was now of 900 million shares, explaining “117 million is green shoe”. Also, he said that, “ ... JFAM is an anchor client.” Eventually, Mr Steve Luk responded :

“180? 180, no problem. 175 would be the best, but no -- forget it, ay, don't ask too much.”.

785. In face of Mr David Tsien's repeated requests for an indication of the size of JFAM's demand for the placement shares, Mr Steve Luk said :

“I really don’t know, that is, because ... some people are crazy.”.

Mr Steve Luk agreed to Mr David Tsien’s request that he ask other fund managers at JFAM of their demand for the placement shares. However, he did repeat his earlier indication of demand :

“ ...I did tell you last time that 20 is for sure, US \$20 million ... ”.

786. In his oral testimony, Mr Steve Luk said that this was the first time that Mr David Tsien had requested that he check demand for the COLI placement shares with his fellow fund managers at JFAM. He had not spoken to them about the matter before.

787. In his statement of 19 February 2009, Mr Steve Luk said that immediately after this telephone conversation he had attended a regular strategy meeting of the Pacific Region Group, which meeting he did not leave until about 4:45 pm.

(vi) 4:30 pm (DT : SL - voice message).

788. At 4:30 pm on 26 January 2004 Mr David Tsien left a voice message on Mr Steve Luk’s telephone :

“Steve, they want to know what your demand is going to be roughly, because they have to make a decision if this should go ahead. If possible call me back as soon as possible ... ”.

789. As noted earlier, Mr Steve Luk asserted in his statement of 19 February 2009 that he did not check any of the voice messages left on his telephone on 26 January 2004.

(vii) 4:45 pm (DT : SL).

790. Mr Steve Luk said that Mr David Tsien initiated the telephone conversation between them that began at 4:45 pm on 26 January 2004. In his statement of 19 February 2009, Mr Steve Luk said that he had just returned to

his desk from the strategy meeting when he received the call. Mr David Tsien explained :

“But, all of them want -- that is, if you give an anchor order, it would be easier for them to do it.”.

791. Mr Steve Luk indicated that he needed time in order to speak to his colleagues, who had just walked out of a meeting. Mr David Tsien repeated that the placement was of 900 million shares at \$1.80, that being a discount of 10% and concluded with the request :

“ ... Give me a rough range, because they have to get your okay before they are willing to sign.”.

Mr Steve Luk’s conversations with fellow fund managers.

792. In his statement of 19 February 2009, Mr Steve Luk said that he had then spoken to his fellow fund managers in JFAM about their interest in participating in a possible placement of COLI shares at \$1.80 per share. He said that he had been surprised by their strong demand to participate.

(viii) 4:50 pm (SL : DT).

793. Mr Steve Luk said that he had initiated the telephone conversation he had with Mr David Tsien that began at 4:50 pm. He did so in response to Mr David Tsien’s earlier request that he indicate JFAM’s demand for COLI placement shares. In the very brief conversation between them, Mr Steve Luk said, “Over 50 million ... ”. In response, Mr David Tsien said, “So, I would sign first.” In his oral testimony, Mr Steve Luk confirmed that he was indicating demand of US\$50 million.

(ix) 4:50 pm (Ms Jessica Wong : SL).

794. Mr Steve Luk said that Ms Jessica Wong, the Central Dealer at JFAM, initiated the telephone conversation between them that began at 4:50 pm on 26

January 2004. She told him that 1.48 million of the COLI shares in his orders to her that day had not been sold. He confirmed in the affirmative her enquiry as to whether or not there was to be a placement of shares by COLI.

(x) Post 4:57 pm (DT : SL).

795. Mr Steve Luk said that Mr David Tsien initiated the conversation between them that began at some minutes after 4:57 pm on 26 January 2004. Although Mr Steve Luk was unable to provide Mr David Tsien with exact figures he indicated that the demand from JFAM was big. In response to Mr Steve Luk's enquiry, Mr David Tsien confirmed that the placement of COLI shares was going ahead and that trading in its shares would be suspended the following day :

“It will be launched once it has been signed.”.

796. Of the size of this subscription to be stipulated by Mr Steve Luk, Mr David Tsien said :

“ ... you had better state the truth. When you say 50, I will say 50. I would suggest that you let me at least indicate a larger amount because when it comes to allocation, yet -- I can protect you.”.

797. In his oral testimony, Mr Steve Luk said that he understood that Mr David Tsien was suggesting, “that we should indicate a bigger demand so that he can indicate to his colleagues that there is a bigger demand and, therefore, in terms of when the allocation time comes, he can give me more shares because we indicate more than we actually wanted.”.

798. For his part, Mr Steve Luk reminded him that his funds could hold no more than 10% of COLI's issued share capital. He went on to say that what was being sought from him in this telephone conversation was the “indicative demand” of JFAM, the actual orders would be placed through Central Dealing.

(xi) 5:19 pm (DT : SL - voice message).

799. Mr David Tsien left a voice message on Mr Steve Luk's telephone at 5:19 pm on 26 January 2004 informing him that the COLI placement would be in the range \$1.78-\$1.83, but that he would try to secure the placement at \$1.80. In his oral testimony, Mr Steve Luk said that he had probably not retrieved the message.

(xii) 5:23 pm (DT : SL - voice message).

800. Mr David Tsien left a voice message on Mr Steve Luk's telephone some minutes after 5:23 pm on 26 January 2004, recorded by JP Morgan but not available on the JFAM records :

“We told outside that the price range is 178 to 183, but for you ... the price of the deal is 180.”.

In his oral testimony, Mr Steve Luk confirmed the assertion in his statement of 19 February 2009 that he had not retrieved this message.

(xiii) 5:39 pm (DT : SL).

801. Mr Steve Luk said that Mr David Tsien initiated the telephone conversation between them that began at 5:39 pm on 26 January 2004. At the outset, he informed Mr Steve Luk that the response to the COLI placement was very good and he sought confirmation of the final demand from JFAM. Mr David Tsien went on to say :

“State a large amount ... (inaudible) because I guarantee that they will look after you.”.

802. In his oral testimony, Mr Steve Luk said that he understood Mr David Tsien to be saying that in the allocation of the placement shares :

“ ... JFAM will be given a favourable allocation.”.

Mr David Tsien went on to say :

“ ... it also okay to you to ask Jessica to tell me that or no matter who it is, just tell our section dealer and tell me. The most important thing is to tell me, okay.”.

(xiv)-(xvii) 5:43 pm; 5:58 pm; 6:09 pm & 6:17 pm. (Issue : identifying the maximum number of COLI shares for which JFAM could subscribe).

803. Mr David Tsien initiated four separate telephone conversations with Mr Steve Luk in the period of about half an hour beginning at 5:43 pm on 26 January 2004. Each of the conversations concerned the issue of how many COLI shares JFAM was permitted to acquire in the placement in compliance within its limit of a holding of a maximum of 10% of the shares of a particular company.

5:58 pm.

804. In the second conversation, at 5:58 pm, Mr Steve Luk indicated that demand at JFAM was already 400 million odd COLI shares. In response to Mr David Tsien’s suggestion that he deal directly with Mr Ian Long, Mr Steve Luk said :

“I don’t think it’s okay, cannot talk. I can’t talk with him.”.

In cross-examination by Mr Kwan, Mr Steve Luk explained that his concern was that JP Morgan’s ECM might tell him things that he should not know and that therefore there was “ ... a risk that I may be getting insider information”.

805. The issue was resolved on Mr Steve Luk agreeing to Mr David Tsien’s suggestion that he would ask Mr Ian Long to talk with him. Mr Steve Luk agreed that it would not be permissible to receive “inside” information if it was passed indirectly rather than directly. The issue was the nature of the information.

6:17 pm.

806. In the fourth conversation, at 6:17 pm, Mr Steve Luk informed Mr David Tsien, as part of the process of calculating the current holding of COLI shares, that 24 million COLI shares had been sold that day by JFAM.

(xviii) 6:38 pm.

807. Mr Steve Luk said that Mr David Tsien initiated the telephone conversation between them that began at 6:38 pm on 26 January 2004. Mr David Tsien informed him that JFAM could acquire 187,432,918 COLI shares in the placement. In response, Mr Steve Luk said :

“ ... whatever you say give them all to me, don't argue ... oh my gosh 187, we are already 400 something right? We are so pathetic.”.

808. In response to Mr David Tsien's observation, “the benefit ... will be taken by other people. Damn it!” Mr Steve Luk said twice, “Should have sold more.” In his statement of 19 February 2009, Mr Steve Luk explained that comment :

“I said to David that I should have sold more shares (meaning so that I could buy more).”.

However, in his oral testimony he said :

“On that day, JF Asset Management altogether sold 24 million shares, and the previous day and the day before there had been a number of sale transactions conducted by JF Asset Management. If we, as a house, actually had sold more, then we can take more placement shares.”.

Subscription for placement shares.

809. In his statement of 19 February 2009, Mr Steve Luk said that after it was confirmed, after the market closed on 26 January 2004, that the COLI placement would proceed at a placement price of \$1.80 he decided to subscribe for placement shares for the two funds that he managed. The reason that he did so was that he :

“ ... considered COLI shares were an attractive investment at the price of \$1.80, and believed that in future the shares would continue to trade at a price of \$2.00 or more.”.

His orders were placed through JFAM Central Dealing Department.

810. In a letter to the SFC dated 30 July 2004, JFAM asserted of its subscription for COLI placement shares of that :

“Ms Jessica Wong, our Central Dealer, placed orders with JP Morgan Securities (Asia-Pacific) Ltd from 17:28 to 18:50 on 26 January 2004 via telephone.”.

811. Mr Steve Luk said that he could not remember when it was that he had placed his order with Ms Jessica Wong, the Central Dealer.

812. The records of JP Morgan for the COLI subscription state that of the total application of 1,421,989,108 shares, an entity described as “Jardine Fleming Investment Management” subscribed for 182 million COLI placement shares. Mr Steve Luk accepted that in addition to subscribing for the two funds that he managed he also subscribed for shares for JF China Active Open Fund, managed by his colleague Mr Ernest Liu who was on holiday that day. Whilst unable to recall the exact size of his subscriptions for COLI shares he explained that within JFAM there would have been a pro rata allocation of shares based on the ratio of demand for the subscription in relation to the allotment. Since he had indicated in the telephone conversations with Mr David Tsien that the demand was in excess of 400 million COLI shares, he accepted that, given an allotment of less than half that amount to JFAM, he must have subscribed for more than double the amount that he was allotted.

Allotment of COLI shares.

813. A schedule provided by JFAM to the SFC, in their letter dated 6 October 2004, stipulates the subsequent allotment of COLI shares to individual funds and

identifies the respective fund managers of JFAM. Mr Steve Luk is identified as the fund manager of three funds allotted shares in the COLI placement, namely :

<u>Portfolio</u>	<u>Quantity</u>
JPM FF-China fund - 619051	38,382,000
JF Greater China Open	6,870,000
JF China active Open MOT Fd - 622405	2,054,000

814. In aggregate, the amount allotted to the three funds that he managed was 47,306,000 COLI shares. He agreed that that was the greatest number of shares allotted to any fund manager at JFAM in the COLI placement.

Subsequent conduct.

815. In his statement of 19 February 2009, Mr Steve Luk said that in the trading days following COLI's placement, namely 27-30 January, 2 and 3 February he did not sell any COLI shares because, " ... I believed that in the future the shares would continue to trade at a price of \$2.00 or more." However, on 4 February 2004 he sold 7.964 million and 3.722 million COLI shares in the JPM China Fund at average prices respectively of \$1.7754 and \$1.797.

Mr Witts.

Expertise.

816. There was no issue that Mr Witts is an expert in the securities industry. He qualified as an accountant in 1968 and is a fellow of the Institute of Chartered Accountants of England and Wales. He was the secretary and general manager of the SEHK from 1972 to 1981. From 1982 to 1987, he was a director of Jardine Fleming Securities, following which he was the managing director of Schroder Securities until 1991. Then, he was the managing director

of United Mok Ying Kie until 2000, after which he was the director of equity sales of CLSA until his retirement from full-time employment in 2008. He has given evidence as an expert witness before the Insider Dealing Tribunal on many occasions and in the courts of Hong Kong. He was permitted to give evidence as an expert witness before the Tribunal in respect of the same matters about which the Tribunal received evidence from Mr Rigby.

Statements.

817. Four statements of Mr Witts were received by the Tribunal. They were dated :

- (i) 19 December 2008;
- (ii) 4 February 2009;
- (iii) 25 February 2009; and
- (iv) 5 March 2009.

Anticipating the impact of the announcement of a placement on the price of the company's shares in the market.

818. In his oral testimony, Mr Witts said that he had personal experience in “putting together top-up placements” whilst he was employed by Jardine Fleming and to a lesser extent whilst employed at Schrodgers Securities. At United Mok Ying Kie he had been involved in only one placement, whereas at CLSA he had been involved in several placements. It was his opinion that :

“ ... only in exceptional circumstances, which may be good or which may be bad, that would enable one to forecast with any degree of certainty the reaction when trading resumes after a placement announcement.”.

Impact : the “myriad factors”.

819. In his statements of 19 December 2008 and 4 February 2009, Mr Witts set out what he described as the “multitude” or “myriad” factors which may impact upon the price of the shares of a company after its announcement of a

placement of its shares. Of the “company specific” factors, he identified as relevant a number of factors, including :

- the price of the placing shares, and its discount to the then market price;
- the quantity of shares to be placed;
- the proposed use of the funds so raised;
- the identity of the placees;
- rumours in the market of the prospect of the placement of shares;
- whether or not the placement was underwritten; and
- the financial circumstances of the company.

820. Of other factors, he said that the prevailing market sentiment at the time was relevant.

Use of the proceeds.

821. Of the stipulated use of the proceeds to be raised by the placement of COLI shares, Mr Witts contended that, in a bullish property market, property developers have an almost insatiable desire for capital, rarely stating a specific use of the proceeds. In his opinion, the COLI placement did not fall into the “bearish” category of raising money for general working capital. He pointed to the fact that the announcement asserted that COLI proposed “ ... to accelerate its investment into the property market in Shanghai so that it can complete more projects earlier.”, and that “RMB 1 million will be used in the initial phase of the redevelopment in Luwan district in Shanghai and the balance will be used for financing land acquisitions.”.

822. In cross-examination by Mr Kwan, Mr Witts pointed out that the COLI announcement asserted that two thirds of the proceeds would be used on a specific project but accepted that, “other than that, I suppose you would call it

routine”. Also, he accepted that COLI certainly did not fall into the category of companies who were in dire financial straits and for whom raising capital was a benefit per se. Further, he accepted that in its Analyst’s Report dated 27 January 2004 Merrill Lynch had asserted of COLI’s placement :

“With gearing set to reduce further from 13% to some 6% post placement, the cash call was not necessary, in our view.”.

Discount to the market price.

823. In cross-examination by Mr Kwan, Mr Witts accepted that the 10% discount between the placement price and the closing price of COLI shares on 26 January 2004 gave rise to a danger that some placees would attempt to profit from the difference between the two prices.

Rumours in the market of the prospect of the placement of shares.

824. In cross-examination by Mr Kwan, Mr Witts said that he was unaware of any suggestion that there were rumours in the market of the prospect of the placement by COLI ahead of the announcement of the placement.

825. It is to be noted that evidence accords with the box file of media reports, covering the period 2 December 2003 to 26 January 2004 inclusive, received by the Tribunal as an attachment to the statement of Ms Stella Fung of the SFC, dated 18 February 2009. However, it is in contrast to the assertion, repeated in his evidence, made by Mr Steve Luk to the SFC in his record of interview of 22 March 2005, namely :

“As far as I can remember there were some rumours from the market about a possible placement by China Overseas during January 2004, but I cannot remember the sources.”.

The reaction of Analysts to the placement.

826. In his statement of 4 February 2009, Mr Witts produced four reports of Analysts, dated either 27 or 28 January 2004, of which he asserted :

“ ... the general reaction of research analysts on 27 and 28 January 2004 to the COLI placement was upbeat.”.

827. He went on to note that three of the reports gave a “Buy” recommendation in respect of COLI shares and that the fourth analyst maintained a “Neutral” recommendation. None recommended investors to sell COLI shares. Of this material, Mr Witts asserted :

“Mr Rigby’s views do not reflect analysts view at the time of the placement.”.

828. In cross-examination by Mr Kwan, Mr Witts accepted that, together with his own judgment, he had relied on these analyst reports as supporting his opinion that the announcement of the COLI placement was “upbeat”. Nevertheless, Mr Witts accepted that in the Deutsche Bank report dated 27 January 2004 the opinion was expressed by the analyst that :

“COLI’s share price may be negatively affected by the share placement in the very near term but we still see upside potential for the stock.”.

829. Of the ING report, dated 28 January 2004, Mr Witts agreed that the analyst had expressed the opinion that :

“COLI’s share price is likely to see some short-term weakness after its recent placement of 850 million new shares.”.

830. Furthermore, Mr Witts agreed that neither analyst attributed any weakness in COLI share price to “a general market weakness”.

831. Mr Witts accepted that in the Bloomberg article published at 11:08 am on 27 January 2004 it was said of the fall in the price of COLI shares, of 7.5% to \$1.85 per share at 10:51 that they had :

“ ... plunged after the company raised HK\$1.53 billion(\$197 million) selling stock at a discount to the market price.”.

832. Whilst he took issue with the use of the graphic term “plunged” he accepted that the article did not attribute the fall in COLI’s share price either to “general market weakness” or to the publication of the Shanghai Land prospectus. He accepted that the same observation was true of the subsequent publication by Bloomberg at 12:57 pm that day, in which the banner heading was :

“China Overseas Land Slumps on Share Sale.”.

The text asserted:

“The property arm of China’s construction ministry sold HK\$1.53 billion ... of shares, raising concern future earnings per share may be diluted.”.

However, Mr Witts pointed out that the text went on to read :

“Other property stocks fell on concern a six-month rally more than reflected earnings prospects.”.

833. It is to be noted that, in contrast to the fall in the price of COLI shares at the close of the morning session of 6.5%, the text went on to say :

“The Hang Seng Property Index, which measures six stocks, fell 2.1%. It had risen almost two thirds in the past six months.”.

Market sentiment.

834. In his statement of 19 December 2008, Mr Witts noted that the Hang Seng Index had closed 2003 at 12,576 points. On 26 January 2004 the Index closed at 13,727 points, a rise of 1,151 points or 9.15%. Of that, he asserted :

“This evidences that general market sentiment was very strong from 31 December 2003 until 26 January 2004.”.

835. He went on to note that on the four trading days, 27 to 30 January 2004, the share price of COLI shares had fallen from \$1.89 on 27 January to \$1.75 on 30 January 2004 during which period the Hang Seng Index had fallen from 13,761.88 to 13,289.37. It was his opinion that :

“ ... general market weakness was the reason for the weakness in COLI shares in the last few days of January.”.

836. In cross-examination by Mr Kwan, Mr Witts accepted that in his statements of 19 December 2008 and 4 February 2009 he had attributed the fall in COLI share price on 27 January 2004 to “general market weakness” and that he had not attributed the fall to a decline in the Hang Seng Properties Sub-Index until his third statement.

837. In his statement of 5 March 2009, Mr Witts attached charts for selected dates in January 2004 in which the performance of the Hang Seng Properties Sub-Index was described. He noted that on 2 January 2004 that Index closed at 15,130.62, whereas on 26 January 2004 it closed at 18,353.19. On 27 January 2004, that Index fell back to 18,055.76 at the close. He asserted that the performance of this Sub-Index supported his opinion that the market for property stocks was strong in January 2004 and that there was :

“ ... a broad decline in property stocks generally on 27 January 2004 (notwithstanding that the broader Hang Seng Index itself likely rose on 27 January 2004).”.

838. In cross-examination by Mr Kwan, Mr Witts accepted that the six constituent companies in the Hang Seng Property Sub-Index were very different from COLI in that their main business was in Hong Kong, whereas COLI’s primary focus was on the Mainland. Helpfully, Mr Witts calculated for the Tribunal that only 16% of COLI’s business was in Hong Kong, whereas 72% was in the Mainland.

839. In his statement of 19 December 2008, and Mr Witts expressed the opinion that :

“ ... in January 2004, the information that COLI would undertake an equity placement ... was not information that would be “*likely to materially affect the price of the listed securities*”, because it was impossible to predict whether the information would have any effect on COLI’s share price, and if it were to have an effect, what the effect would be (in terms of the share price going up or down). It follows that given such uncertainty it would not be possible to

determine whether or not information would likely to materially affect COLI's share price.”.

Dilution.

840. In his statement of 4 February 2009, Mr Witts expressed the view that it was :

“ ... difficult to predict the impact of any possible dilution of shareholders' interests upon a company share price.”.

841. In his oral testimony, he said that the ambit of dilution of shareholders interests encompassed voting rights, earnings per share and estimated NAV and that the announcement of the fact of a placement gave rise to the “spectre of dilution”.

842. In cross-examination by Mr Kwan, Mr Witts noted that in the analyst reports of 27 and 28 January 2004 there was a range of estimates of the effects of dilution on earnings per share. For FY 04F Deutsche Bank estimated the dilution to be 14%, CLSA 11% and Merrill Lynch 1%. Mr Witts pointed out that ING had raised their profits forecast for 2003-2004 and estimated an increase in earnings per share in the range 19%-57% for 2003F and 2004F. Of Deutsche Bank's and Merrill Lynch's estimated dilution of NAV of 3% and 5% respectively, he said it was “insignificant”.

Valuation by the market.

843. In his statement of 4 February 2009, Mr Witts asserted that :

“A further complicating factor in predicting the impact on COLI's share price of the news of the placement was the fact that shortly prior to the placement taking place COLI's estimated net asset value had been upgraded by analysts.”.

844. Mr Witts noted that the estimated NAV ascribed to COLI shares by JP Morgan on 29 December 2003 was \$1.99 and \$2.10 by Morgan Stanley on 10

January 2004. He calculated that the range of the closing price of COLI shares on and between 12 and 16 January 2004, namely \$1.66 to \$1.74, was at a discount to the JP Morgan's NAV estimate of 12.5% to 16.6%.

845. Mr Witts went on to assert :

“Between 16 January 2004 and 20 January 2004, analysts from CLSA, Deutsche Bank and Morgan Stanley all apparently upgraded their estimates of COLI's net asset value to \$2.50.”.

846. Mr Witts's reliance on that information appears to have been based on an assertion by Mr David Tsien in a telephone conversation of 20 January 2004. Certainly, there is such an assertion in a telephone conversation between Mr David Tsien and Mr Ian Long of that date. However, in response to the Tribunal's request to be provided with such reports, by letter of 31 March 2009 Simmons and Simmons explained that the only report available to them was that of CLSA dated 21 January 2004. In that report, reference is made to COLI's NAV and the “current estimate of HK\$2.5-HK\$2.7 range.” The Deutsche Bank report, dated 27 January 2004, refers to a dilution of COLI's NAV “from HK\$2.30”. There is no report available for Morgan Stanley in the period 16-20 January 2004.

847. Having applied the prevailing discount to NAV, in the closing price of COLI shares in the period on and between 12 and 16 January 2004, namely 12.5% to 16.6%, to a revised NAV of \$2.50 per share Mr Witts expressed the opinion that that would imply a target price for COLI shares of \$2.08 to \$2.19. In the result, he expressed the opinion :

“To the extent that these upgrades continue to influence sentiment amongst investors, it was possible that there would be upward pressure on COLI's share price on 27 January 2004 that would cause the share price to rise above the 26 January 2004 closing price of a \$2.00 (sic) share.”.

The publication of the Shanghai Forte Land prospectus on 27 January 2004.

848. Mr Witts noted that before the market opened on 27 January 2004 the prospectus of Shanghai Forte Land was published. Its shares were offered to the public at a price to be set within the range of \$2.06 and \$2.35, whereas its estimated NAV was in the range \$2.06 to \$2.22 per share. Of the announcement by Shanghai Forte Land of the IPO allotment results, Mr Witts noted that the shares had been allotted at \$2.35 per share, namely at a premium to its NAV, and that the offer had been oversubscribed 481 times.

849. Of the relevance of the publication of the Shanghai Forte Land prospectus, Mr Witts expressed the opinion :

“I consider it very likely that investors were induced to sell COLI shares on 27 January 2004 to raise funds to subscribe to its competitor, Shanghai Forte Land, in its upcoming share offer. This would undoubtedly have had a depressive effect on the share prices of COLI and other property development companies on 27 January 2004 and may explain the drop in COLI’s share price on 27 January 2004.”.

850. In the result, Mr Witts went on to express the opinion that :

“ ... the probable catalyst for this profit-taking of the shares of Mainland real estate companies, all on the same day, was the publication of the Shanghai Forte Land prospectus.”.

851. In cross-examination by Mr Kwan, Mr Witts accepted that none of the media or Analysts’ reports made after the announcement of the COLI placement suggested that the publication of the Shanghai Forte Land’s prospectus might have or had an impact on the price of COLI shares.

A comparison between the performance of COLI shares : the Hang Seng Property Sub-Index.

852. Of the fact that on 27 January 2004 COLI shares had closed down 5.5% from its previous close, whereas the Hang Seng Property Sub-Index had fallen only 1.6%, Mr Witts went on to note, in his statement of 4 February 2009, that

in the period 1 December 2003 to 26 January 2004, COLI's share price had risen 61% in comparison to the Hong Kong Property Index's rise of 24.4%. Of that he said, "... so it is natural to expect COLI to fall more than the Hong Kong Property Index on 27 January 2004 when the market moved lower." Mr Witts went on to observe that the share price of three other Mainland property companies, namely Beijing Capital Land, Beijing North Star and China Resources Land, all fell on 27 January 2004, having reached their respective four-month highs on the previous day.

Volatility.

853. In his statement of 25 February 2004 Mr Witts went on to address the relevance of "volatility" in more detail. In doing so he set out in charts a comparison between the performance of COLI and the three other Mainland property companies in the period 3 November 2003 to 30 April 2004. Of COLI, he noted that in January 2004 there had been several occasions prior to 27 January 2004, on which date the price of COLI shares had closed down 5.52%, that there had been a difference between the intraday high and low of COLI shares of a greater margin. Mr Witts expressed the opinion that :

"The figure of 5.52% recorded on 27 January 2004 does not in any way seem remarkable when compared with the volatility being experienced by the COLI share price at around that time."

854. Of Mr Rigby's observation that the intraday low of the price of COLI shares on 27 January 2004 represented a fall of 9.5%, Mr Witts noted that there were four occasions earlier in January 2004 and the difference between the closing price on the previous day and the high/low of COLI share price the next day was greater than 9.5%.

The relative volatility of the three other Mainland property companies.

(i) Prior to 27 January 2004.

855. Mr Witts calculated that each of the three other Mainland property companies that he was comparing and contrasting with COLI's performance had experienced price movements of greater than 5.5% on earlier days in January 2004 : Beijing North Star on three occasions, China Resources Land on four occasions and Beijing Capital Land on eight occasions.

(ii) On and after 27 January 2004.

856. Mr Witts noted that on 27 January 2004 the share price of COLI had fallen 5.5%, that of Beijing North Star 2.5%, that of China Resources Land 1.3% and that of Beijing Capital Land 1.8%. However, he went on to note that the cumulative fall in the price of the four shares over the three-day period, namely 27 to 29 January 2004, was 9.2%, 4.5%, 8.2% and 10 percent respectively.

857. Mr Witts went on to express the opinion that :

“The greater decline by COLI than two of the three other companies may well be as a result of its higher beta.”.

Beta.

858. Of the term “Beta” Mr Witts noted that it was described in the Six Edition of the “Dictionary of Finance and Investment Terms” as being a measure of a stock's relative volatility. In particular, it stated that “ ... beta is the covariance of the stock in relation to the rest of the stock market.” He explained that the benchmark, in Hong Kong the Hang Seng Index, is ascribed the coefficient 1 and noted the primary propositions, namely that :

“Any stock with a higher beta is more volatile than the market, and any with a lower beta can be expected to rise and fall more slowly than the market.”.

859. Attached to Mr Witts’s statement of 25 February 2009 is material obtained from Bloomberg in which the “Raw Beta” value of COLI and the three Mainland property companies was calculated as being :

COLI	1.798
Beijing North Star	1.125
China Resources Land	1.544
Beijing Capital Land	0.814.

860. He expressed the opinion that the coefficient for COLI was “a fairly high beta” and that historically its share price movements had been more extreme in percentage terms than the other three companies.

861. In cross-examination by Mr Kwan, Mr Witts accepted that Beijing Capital Land had the lowest Beta coefficient of the three Mainland property companies that he had compared with COLI. It was the least volatile of those stocks. Nevertheless, he accepted that it had the greatest cumulative fall in its share price in the three-day period commencing 27 January 2004. He accepted that the fall in COLI share price on 27 January 2004, namely of 5.5%, was its largest fall in the period from 3 November 2003. By contrast, he accepted that on earlier dates in January 2004 each of the three Mainland companies had sustained larger falls than their shares fell on 27 January 2004. However, when it was suggested to him that something out of the ordinary had happened to COLI to cause the fall in its share price on 27 January 2004, Mr Witts said “It’s very difficult to say”. He said that it was “impossible to say” whether or not the fall had been caused by the announcement of the placement of COLI shares.