

**Supplemental statement of Cheng Kai Sum**  
**in the calculation of profit made in the shares of China Huiyuan Juice**  
**on 7, 8, 12 and 29 August 2008**

I, Cheng Kai Sum, of [REDACTED]  
[REDACTED] wish to say as follows:-

**MMT's Findings**

1. On 5 March 2013, Market Misconduct Tribunal ("MMT") released Part 1 of the report regarding its inquiry into dealings in the shares of China Huiyuan Juice Group Ltd ("Huiyuan") between 30 July 2008 and 4 September 2008 ("Inquiry Period").
2. MMT concluded that Ms SUN Min ("Min") is culpable of insider dealing. The culpability relates to her purchase of Huiyuan shares on 7, 8, 12 and 29 August 2008 ("Insider Dealing Period"). Min purchased a total of 3,131,500 Huiyuan shares during the Insider Dealing Period ("Insider Dealing Purchases") through four corporate entities owned and controlled by her and her husband.

**Instructions**

3. Back in 2012, at the request of the Presenting Officers, I submitted an expert statement to assist the MMT's Huiyuan inquiry.
4. Following the release of Part I of the MMT's Huiyuan Report, I have now been asked to calculate the insider dealing profit made by Min in the Huiyuan shares she purchased based on principles established in previous insider dealing cases, particularly with reference to the Court of Appeal and Court of Final Appeal's judgements related to the insider dealing case of Hong Kong Worsted Mills Limited.
5. I wish to state that:
  - a. I have read the Code of Conduct set out in Appendix D of the Rules of the High Court and agree to be bound by it;
  - b. I understand my duty to the Court; and
  - c. I have complied with and will continue to comply with that duty.

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**Information provided to me**

6. I have been provided with a schedule showing all dealings by Min in Huiyuan shares through four corporate entities during the Inquiry Period. This schedule is now attached at **Exhibit SUP-001**. The same schedule was originally attached at Exhibit CKS-003 of my previous expert statement.

7. Exhibit SUP-001 identified the trade date ("**Trade Date**"), the trader ("**Trader**"), execution price ("**Price**"), shares bought ("**Buy**"), shares sold ("**Sell**") and the settlement amount ("**Settlement Amount**") which are relevant to my calculation in this report. It appears to me that execution price (Price) shown in this schedule is the average gross execution price transacted on the Stock Exchange of Hong Kong exclusive of transaction costs including stamp duty, levies and brokers' commission. Meanwhile Settlement Amount represents total considerations after deducting all relevant transaction costs.

8. In aggregate, Min purchased 8,613,500 Huiyuan shares during the Inquiry Period. Apart from those 3,131,500 shares Insider Dealing Purchases identified in paragraph 2, Min purchased another 5,482,000 Huiyuan shares on 30 July 2008 and 31 July 2008.

9. All 8,613,500 Huiyuan shares purchased were sold on 3 September 2008 and 4 September 2008, the first two trading days after trading resumption. Three of the corporate entities used by Min, namely Perth Asset Management Ltd, Bombetta Development Ltd and Bartlock Investment Ltd sold all their Huiyuan shares on 3 September 2008. These amounted to a total of 5,588,500 shares. Transfield Asset Management Ltd, the remaining corporate account, sold its entire holdings of 3,025,000 Huiyuan shares on 4 September 2008.

10. To assist my calculation, I have been provided with detail execution reports for all Huiyuan shares sold by each corporate account on 3 and 4 September 2008 with trade time, sale price and trade volume of each trade individually identified. This schedule is now attached at **Exhibit SUP-002**.

11. Attached at **Exhibit SUP-003** is the daily trading summary of Huiyuan shares between 2 July 2008 and 31 March 2009 retrieved from records (Stock Historical Data)

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maintained by Securities and Futures Commission (“SFC”). The same schedule was attached at Exhibit CKS-007 of my previous expert statement.

### Guiding Principles

12. Profit made calculation for insider dealing purpose should be made after deduction of relevant transaction costs incidental to the purchases and the sales of the insider dealing shares.

13. It has been established in the Court of Appeal judgment which was further upheld in the Court of Final Appeal judgement in the case related to Hong Kong Worsted Mills Ltd that,

- a. If the insider dealing shares were sold before the price sensitive information was made public and the market had had a reasonable opportunity to digest the information, the profit made should be the difference between the actual sale proceeds and the purchase cost after allowing for deduction of all relevant transaction costs (the “**Realised Profit**” approach). The reasonable time required for the market to absorb the insider information and reacted to it is referred as the **Rerating Period** which is usually a matter of days; and
- b. If the insider chose to retain all or some of the insider dealing shares after the expiry of the Rerating Period, the profit made for those retained shares is to be determined by reference to a notional price (the “**Rerated Price**”) representing the market value of the shares during the Rerating Period against the purchase price.(the “**Notional Profit**” approach).

14. The Rerating Period in each insider dealing case varies but should be short so as to minimise the risk that supervening events might distort the true effect of the relevant information. It is generally accepted that the length of Rerating Period should be assessed based on the price and volume changes after the price sensitive information is made public.

15. In the insider dealing cases related to Success Holdings and Ngai Hing Hong, it has been established that where there is existing shareholding by the insider before the commencement of his / her insider dealing, the Last-In-First-Out (“**LIFO**”) principle should apply. That is to say those shares first sold after the publication of relevant

information are deemed to be shares purchased by the insider while in possession of relevant information.

**Applicable Approach**

16. The following table was extracted from Exhibit SUP-003 for the five trading days prior to the suspension of trading on 1 September 2008 and five trading days after the resumption of trading with the announcement of the Coca-Cola Offer on 3 September 2008 (inclusive),

Date	Volume	Turnover (HK\$)	High	Low	Close
25/08/2008	4,833,000	19,557,945	4.090	3.950	4.050
26/08/2008	1,834,000	7,408,440	4.060	4.000	4.050
27/08/2008	1,361,000	5,475,205	4.100	3.960	4.020
28/08/2008	2,212,000	8,724,575	4.010	3.860	3.930
29/08/2008	9,737,500	40,098,625	4.200	4.000	4.140
01/09/2008	TRADING SUSPENSION				
02/09/2008	TRADING SUSPENSION				
03/09/2008	224,717,856	2,480,375,424	11.280	10.500	10.940
04/09/2008	54,328,970	565,240,668	10.920	9.950	10.100
05/09/2008	31,229,500	300,691,061	9.800	9.300	9.600
08/09/2008	19,622,500	195,112,805	10.420	9.610	9.940
09/09/2008	9,063,000	90,642,585	10.120	9.780	9.900

17. The above table shows prior to trading suspension, daily volume varied between 1,361,000 and 9,737,500 with a daily average around 4 million shares over this 5 days period.

18. On the day of resumption, market volume shot up to 224.7 million shares, 55 times more than the pre-suspension average daily volume. While daily volume started to retreat on the following day, they remained high albeit by a smaller extent of 1.3 times to 12.5 times more than the pre-suspension average daily volume.

19. There was also noticeable increase in the daily price range during the 5 days post resumption period when compared to the pre-suspension period. The post resumption market prices were also some 20% below Coca-Cola's Offer price at HK\$12.20. The big discount of market price relative to an offer price was atypical in a general offer scenario which usually would be within 5% of the offer price. In my opinion this reflected the market has a genuine concern that the Offer might collapse because of possible intervention by the Ministry of Commerce of the People's Republic of China, a risk factor disclosed in Huiyuan's resumption announcement.

20. In my opinion, the long period of daily volume spike and price volatility after trading resumption suggests the rerating process would take longer to complete when compared to a typical General Offer situation. Worries over the applicability of anti-trust law overhang the market. I am therefore of the opinion that the Rerating Period should be at least 3 trading days. In this respect, Min's shares disposal on the first two trading days after resumption was conducted within the Rerating Period and the Realised Profit approach should be adopted accordingly.

21. As the Huiyuan shares sold by Min on 3 and 4 September 2008 included shares that she bought on 30 and 31 July 2008 (non Insider Dealing Period), the LIFO principle will kick in with shares first sold during the day be regarded as disposal for insider dealing shares.

#### **Identifying relevant Insider Dealing Trades**

22. I have summarised from Exhibit SUP-001 Min's insider dealing trading by aggregating separately for individual accounts the shares purchased and the purchase settlement amount (Settlement Amount) between 7 August 2008 and 29 August 2008 (the insider dealing purchases).

23. For the shares sold, the quantity of Huiyuan shares sold and the sale settlement amount (Settlement Amount) for the commingled insider dealing shares' disposal and non insider dealing shares' disposal is copied from Exhibit SUP-001

24. The following table summarised the insider dealing purchases and disposals for individual accounts,

Trader	Shares purchased / (sold)	Settlement Amount
Perth Asset Mgt Ltd	865,500	(3,513,526.54) <sup>1</sup>
	(2,999,500)	33,253,630.87
Bombetta Development Ltd	1,066,000	(4,426,104.15)
	(2,089,000)	23,071,675.44
Bartlock Investment Ltd	500,000	(2,072,373.17)
	(500,000)	5,488,505.00
Transfield Asset Mgt Ltd	700,000	(2,954,412.38)
	(3,025,000)	30,888,228.68

25. The table above shows with the exception of Bartlock Investment Ltd, Huiyuan shares sold by the other three accounts were bigger than the insider dealing shares purchased by Min as the disposal included non Insider Dealing Purchases on 30 and 31 July 2008.

#### Applying the LIFO principle

26. With the exception of Bartlock Investment Ltd, the LIFO principle is applicable with the shares sold earliest during the day deemed to be disposal of Insider Dealing Purchases. Attached at **Exhibit SUP-005** is a new schedule that I created based on Exhibit SUP-002 with four additional columns appended namely Cumulative Volume, Cut-Off Point, Insider Dealing Sale Consideration and Non Insider Dealing Sale Consideration. The Cut-off Point represents the quantity of Insider Dealing Purchases for that account. I have highlighted the particular trade which represented the dividing line between Insider Dealing disposal and non Insider Dealing disposal. Sale consideration was determined by multiplying Price by the No. of Shares for each trade. The Insider Dealing Sale Consideration and the Non Insider Dealing Sale Consideration were then calculated in accordance to the LIFO principle.

<sup>1</sup> Attached at Exhibit SUP-004 is a trading statement provided by DBS Vickers for the account of Perth Asset Mgt Ltd. While preparing this supplemental statement, SFC's investigators brought to my attention a typo in the trading schedule that they have prepared (Exhibit SUP-001) in which Settlement Amount on 8 August 2008 should have been 665,297.93 instead of 655,297.93.

27. The following table separated Insider Dealing disposals from non Insider Dealing disposals during the day using the LIFO principle,

<b>Trader</b>	<b>Insider Dealing Sale Consideration</b>	<b>Non Insider Dealing Sale Consideration</b>	<b>Total Sale Consideration</b>
Perth Asset Mgt Ltd	9,674,910	23,673,530	33,348,440
Bombetta Development Ltd	11,775,970	11,349,820	23,125,790
Bartlock Investment Ltd	5,500,000	0	5,500,000
Transfield Asset Mgt Ltd	7,252,610	23,715,915	30,968,525

#### **Profit Made Calculations**

28. As explained previously, Realised Profit approach should be adopted for all four accounts.

29. For Bartlock Investment Ltd, profit made can easily be determined by deducting from the sale settlement amount the purchase settlement amount in Exhibit SUP-001 as they are already inclusive of all applicable transaction costs.

30. For the other three accounts, while the gross sale consideration has been determined, there is still a need to work out the applicable sale transaction cost which is by and large expressed as a percentage of the consideration involved. This percentage transaction cost can be estimated by comparing daily net sale consideration (sale settlement amount) with daily gross total sale consideration using the following formula

$$\text{Sale Settlement Amount} / \text{Gross total sale consideration} - 1$$

31. The following table summarised the percentage transaction cost estimated for each of the other three accounts,

Trader	Net Settlement Amount	Gross Total Sale Consideration	Transaction cost as % of Sale Consideration
Perth Asset Mgt Ltd	33,253,630.87	33,348,440.00	0.28430%
Bombetta Development Ltd	23,071,675.44	23,125,790.00	0.23400%
Transfield Asset Mgt Ltd	30,888,228.68	30,968,525.00	0.25928%

32. Based on the Transaction costs estimated above, the net sale proceeds from the disposal of insider dealing purchases can be estimated using the following formula,

$$\text{Insider Dealing Sale Consideration} \times (1 - \% \text{ Transaction cost})$$

33. The following table summarised the net sale proceeds estimated for each account,

Trader	Insider Dealing Sale Consideration	Transaction cost as % of Sale Consideration	Net Sale Proceeds
Perth Asset Mgt Ltd	9,674,910.00	0.28430%	9,647,404.23
Bombetta Development Ltd	11,775,970.00	0.23400%	11,748,414.23
Transfield Asset Mgt Ltd	7,252,610.00	0.25928%	7,233,805.43


34. Having worked out the net sale proceeds for the three accounts, profit made by the four accounts (including Bartlock Investment Ltd) are determined as follows,

Trader	Net Sale Proceeds	Net Purchase Cost	Profit Made
Perth Asset Mgt Ltd	9,647,404.23	(3,513,526.54)	6,133,877.69
Bombetta Development Ltd	11,748,414.23	(4,426,104.15)	7,322,310.08
Bartlock Investment Ltd	5,488,505.00	(2,072,373.17)	3,416,131.83
Transfield Asset Mgt Ltd	7,233,805.43	(2,954,412.38)	4,279,393.05
		<b>Total Profit Made</b>	<b>21,151,712.65</b>



35. The above calculation schedules show the insider dealing profit made by Min amounted to HK\$21,151,712.65.

36. This statement, consisting of 9 pages together with its exhibits each signed by me, has been read by me. It is true to the best of my knowledge and belief.



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Cheng Kai Sum

Date: 26 MARCH 2013



SFC Staff Costs – China Huiyuan Juice Group Limited

Description	Amount (HK\$)
Staff Costs	602,838
Overhead Costs	170,795
Expert costs for preparation of statement for the calculation of the profit gained by Ms. Sun Min as a result of insider dealing	15,200
<b>Total</b>	<b>788,833</b>

**Market Misconduct Tribunal Proceedings  
China Huiyuan Juice Group Limited**

**Summary of the Costs and Expenses -  
Tribunal and Department of Justice**

<b>Item</b>	<b>Costs and Expenses (\$)</b>
<b>Market Misconduct Tribunal</b>	
Chairman, Members, Secretariat, Court Interpreter, Court Reporter, Expert Witness	1,215,941.38
<b>Department of Justice</b>	
Manual Work, Communications, Professional Work, Assessment, Disbursements including Presenting Officer's fee	1,518,294.00
<b>Total for Government</b>	<b>2,734,235.38</b>