

The report of the Market Misconduct Tribunal into dealings
in the shares of Mirabell International Holdings Limited on and between
18 February 2008 and 22 February 2008

**Part I :A report pursuant to section 252(3)(a) and (b) of the Securities and
Futures Ordinance, Cap 571.**

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Chapter 1

THE FINANCIAL SECRETARY'S NOTICE

1. The Tribunal was constituted in consequence of the Financial Secretary's Notice dated 25 February 2010. That Notice was amended by order of the Tribunal dated 25 June 2010 .

[AMENDED NOTICE]

**“IN THE MATTER OF THE
SECURITIES AND FUTURES ORDINANCE (CAP. 571)
AND
IN THE MATTER OF THE LISTED SECURITIES OF
MIRABELL INTERNATIONAL HOLDINGS LIMITED
(Stock Code : 1179)**

NOTICE

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

**AMENDED PURSUANT TO SECTION 15 OF
SCHEDULE 9 OF THE ORDINANCE BY ORDER OF
THE MARKET MISCONDUCT TRIBUNAL**

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 Mirabell International Holdings Limited (Stock Code : 1179) (“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. ZHANG Bi Jia, an employee of Access Capital Limited at the material time and holding SFC securities dealing and corporate finance advisory licences; and
- (ii) Ms. LIU Yan Yan, a trainee solicitor of Norton Rose, Hong Kong (“Norton Rose”) who was at the material time advising Belle International Holdings Limited (“Belle”) on a general offer to acquire all the shares of the Company (“the General Offer”).

Particulars of suspected market misconduct

1. During the period *on and* between 18 February 2008 and 22 February 2008 (“the Relevant Period”), Ms. Liu Yan Yan, as a result of her employment with Norton Rose, came into possession, directly or indirectly, of specific non-public price sensitive information that Belle and the Company would jointly announce the General Offer on or about 28 February 2008, which constituted a connected transaction (“the Relevant Information”). During the Relevant Period Ms. Liu Yan Yan disclosed the Relevant Information directly or indirectly to Mr. Zhang Bi Jia.
2. During the Relevant Period, Mr. Zhang Bi Jia bought (on behalf of Ms. Liu Yan Yan and/or on his own account) a total of 182 000 shares of the Company on 21 February (Thursday) and 22 February (Friday) 2008, being the last two trading days before the suspension of the share trading of the Company on 25 February 2008. After the Relevant Period, Zhang sold the shares of the Company and thereby obtained a profit of about HK\$80,300.
3. Ms. Liu Yan Yan was at all material times during the Relevant Period a person connected with the Company who had access to the Relevant Information by virtue of her occupation of a position which might reasonably be expected to give her access to the Relevant Information by reason of the professional relationship existing between Norton Rose and Belle.
4. Ms. Liu Yan Yan and Mr. Zhang Bi Jia, 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 an upward surging effect on the price of the Company’s shares traded on the Hong Kong Stock Exchange.

5. Ms. Liu Yan Yan dealt in shares of the Company through Mr. Zhang Bi Jia as aforesaid in contravention of Section 270(1)(a)(i) of the Ordinance.
6. Alternatively, Ms. Liu Yan Yan counseled or procured Mr. Zhang Bi Jia to deal in shares of the Company as aforesaid knowing or having reasonable cause to believe that Mr. Zhang Bi Jia would deal in the Company's shares and thereby acted in contravention of Section 270(1)(a)(ii) of the Ordinance.
7. Alternatively, in disclosing the Relevant Information directly or indirectly to Mr. Zhang Bi Jia, Ms. Liu Yan Yan knew or had reasonable cause to believe that Mr. Zhang Bi Jia would make use of the Relevant Information to deal in the Company's shares and thereby acted in contravention of Section 270(1)(c) of the Ordinance.
8. Mr. Zhang Bi Jia at all material times during the Relevant Period knew and/or had reasonable cause to believe that :-
 - 8.1 Ms. Liu Yan Yan was a person connected with the Company; and
 - 8.2 Ms. Liu Yan Yan had obtained the Relevant Information by reason of her aforesaid connection with the Company
9. Accordingly, in buying the shares of the Company as described in paragraph 2 above, Mr. Zhang Bi Jia acted in contravention of Section 270(1)(e)(i) of the Ordinance.

[Original Notice:
Dated this 25th day of February, 2010
(signed)
(John C. Tsang)
Financial Secretary]
Dated this 25th day of June 2010

(signed)
The Hon. Mr. Justice Lunn
(Chairman)

(signed)
Mrs. Grace Chow
Member

(signed)
Ms. Stephanie Wong
Member".

[Note : amendments in italics.]

Chapter 2

THE LAW

2. The Chairman has given the Tribunal the directions in law contained in this Chapter.

Determinations of questions of law and fact.

3. Section 24(c) of Schedule 9 of the Securities and Futures Ordinance (“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.”.

Insider dealing.

4. Section 270(1) of 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 ... ”.

“Connected with a corporation”.

5. 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 ... ”.

“Relevant information”.

6. 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;”.

“Specific information”.

7. 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 of the Insider Dealing Tribunal 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.”.

8. In *Chinney Alliance Group Limited*, a report of the Insider Dealing Tribunal dated 24 December 2004, 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.”.

9. In *Firstone 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.”.

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 ...”.

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.

10. 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.”.

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’.”.

11. 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.”.

The Standard of Proof.

12. 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.”.

That standard is the “balance of probabilities”.

13. 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

“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.”.

14. In his judgment in the Court of Final Appeal in *Koon Wing Yee and Insider Dealing Tribunal* (Reference) 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.

15. 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).”.

16. In his judgment in *Nina Kung alias Nina TH Wang and Wang Din Shin* (2005) 8 HKCFAR 387, 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.”.

The Tribunal approached the drawing of inferences adverse to the Specified Persons with those considerations in mind.

Lies.

17. 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.

18. 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 her/his credibility in respect of both her/his

statements made outwith the Tribunal, including in records of interview conducted by officers of the Securities and Futures Commission (“SFC”) and Ms Liu Yan Yan’s evidence in the Tribunal.

Separate consideration.

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

Expert evidence.

20. The Tribunal has received evidence from Mr Karl Lung as an expert, in particular as to whether or not, if certain information was generally not known to persons who were accustomed or would be likely to deal in the listed securities of Mirabell International Holdings Limited (“Mirabell”) but which, if generally known to them, it would be likely to materially affect the price of those listed securities. 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.

A Specified Person : a reasonable opportunity of being heard by the Tribunal.

21. Section 252(5) of the Ordinance provides that:

“The Tribunal shall not identify a person as having engaged in market misconduct pursuant to subsection (3)(b) without first giving the person a reasonable opportunity of being heard.”.

Service : any written notice or direction or other document on any person.

22. Section 400 of the Ordinance provides that :

“Subject to sections ... any written notice or direction or other document (however described) to be, or required to be, issued or served (however described) to or on any person ... for the purposes of this Ordinance shall for all purposes be regarded as duly issued or served if -

- (a) in the case of an individual, it is -
 - (i) ...
 - (ii) left at, or sent by post to, his last known business or residential address;
 - (iii) ...
 - (iv) sent by electronic mail transmission to his last known electronic mail address.”.

Chapter 3

THE MATERIAL RECEIVED BY THE TRIBUNAL

- (I) Correspondence and documentary records received in reply/response to SFC demands made prior to the proceedings.

23.

Parties of whom a request was made for the provision of information and/or documents	Date of Reply from the relevant parties
PCCW Mobile HK Ltd	14 April 2008 & 3 June 2008
HSBC	14 & 23 April 2008, 22 September 2008 & 9, 21 & 23 October 2008,
DBS Asia Capital Limited	17 April 2008
Mirabell	24 April 2008
Messrs Norton Rose	30 April 2008, 6, 10 & 23 June 2008, 24 September 2008, 30 October 2008, 9 November 2009, 18 December 2009 & 4 June 2010
Mr Zhang Bi Jia (“Mr Zhang”)	3 June 2008
Bank of China (Hong Kong) Limited	26 August 2008, 23 September 2008 & 9 & 14 October 2008
Immigration Department of HKSAR	22 September 2008
Messrs Deacons acting on behalf of Ms Liu Yan Yan	9 September 2008
Kelvin Leung Yiu Fai	18 & 23 September 2008

Parties of whom a request was made for the provision of information and/or documents	Date of Reply from the relevant parties
Messrs Herbert Smith acting on behalf of Ms Liza Lee Suk Yee (“Ms Liza Lee”)	30 September 2008
Access Capital Limited	9 & 30 October 2008 & 11 June 2010
PCCW IMS Limited	24 October 2008

(II) Correspondence and documentary records received by the Tribunal pursuant to Notices issued by the Tribunal pursuant to section 254(2) of the Ordinance.

24.

Parties of whom a request was made for the provision of information and/or documents	Date of Response from the relevant parties
Messrs Norton Rose	22 July 2010 (Twice) & 30 July 2010

(III) Witness statements and/or records of interview from persons who also gave oral testimony.

25.

Name	General Relevance to the Proceedings	Date of Record of Interview / Statement
Ms Liza Lee	Partner of Norton Rose	25 September 2008 (Record of Interview)
Ms Ng Yat Fan, Doris (“Ms Doris Ng”)	Associate Solicitor of Norton Rose	9 September 2008 (Record of Interview)
Mr Lau Ping Yiu, Teddy	Manager of IT Department of Securities and Futures Commission	5 January 2010 & 16 July 2010 (Statements)

Name	General Relevance to the Proceedings	Date of Record of Interview / Statement
Mr Karl Lung	Expert witness	9 July 2010 (Statement)
Ms Liu Yan Yan	Specified Person	14 August 2008, 28 August 2008 & 21 October 2008 (Records of Interview) 26 July 2010 (Statement)

(VI) Witness statements and/or records of interview from persons who did not give oral testimony.

26.

Name	General Relevance to the Proceedings	Date of Record of Interview / Statement
Mr Zhang Bi Jia	Specified Person	23 May 2008 (Record of Interview)
Mr Justin Liu Miao	Analyst of Credit Suisse (Hong Kong) Limited	27 October 2008 (Record of Interview)
Mr Leung Kam Kwan	Chief Financial Officer and Company Secretary of Belle International Holdings Limited	24 September 2008 (Record of Interview)
Mr Yen Chang Chi, George	Assistant Vice President of DBS Asia Capital Limited	29 September 2008 (Record of Interview)
Mr Leung Yiu Fai, Kelvin	Executive Director, Company Secretary and Qualified Accountant of Mirabell International Holdings Limited	18 September 2008 (Record of Interview)
Mr Sheng Bai Jiao	Chief Executive Officer of Belle International Holdings Limited	23 September 2008 (Record of Interview)

Name	General Relevance to the Proceedings	Date of Record of Interview / Statement
Mr Hongchoy Kwok Lung, George	Managing Director of DBS Asia Capital Limited	29 September 2008 (Record of Interview)
Mr Chan Ho Yin	Manager of the Enforcement Department of the Securities and Futures Commission	19 July 2010 & 16 August 2010 (Statements)

Chapter 4

THE EVIDENCE

Mr Zhang's trading in the shares of Mirabell.

27. On 21 and 22 February 2008, Mr Zhang bought respectively 82,000 and 100,000 Mirabell shares in his account with HSBC in the range of \$5.30 to \$5.45 per share. The aggregate turnover in Mirabell shares on those two days was 566,000 shares. At the time Mr Zhang was a newly employed analyst at Access Capital Limited cohabiting with Ms Liu Yan Yan at premises in Third Street, Sai Ying Pun. She was a trainee solicitor at Messrs Norton Rose. On 18 February 2008, she had begun working on a project for Norton Rose's client, Belle International Holdings Limited ("Belle"), which led to the acquisition of Mirabell and the suspension of trading in the shares of those companies after close of trading on Friday 22 February and before the commencement of trading on Monday 25 February 2008.

28. On 28 February 2008, Belle and Mirabell announced a possible voluntary conditional cash offer by a wholly-owned subsidiary of Belle to acquire, inter alia, all the shares of Mirabell for an offer price of \$6.00 in cash per share. Trading in the shares of Mirabell resumed on 29 February 2008. On 10 March 2008, Mr Zhang sold 50,000 Mirabell shares from his HSBC account at \$5.80 per share. On 21 April 2008, Mr Zhang sold the balance of 132,000 Mirabell shares at \$5.83 per share.

The role of Norton Rose.

29. Ms Liza Lee and Ms Doris Ng, respectively a partner with more than 20 years post qualification experience and the latter an associate of Norton Rose of some four years post qualification experience at the time, testified of their involvement in February 2008 in project “Miracle”, namely the offer by a wholly owned subsidiary of Belle, inter alia, for all the shares of Mirabell at the cash price of \$6.00 per share. A team was formed to work on the project at Norton Rose and it consisted of Ms Liza Lee, Ms Doris Ng together with Ms Liza Lee’s secretary, Ms Alice Lee, and Ms Liu Yan Yan. Ms Liu Yan Yan commenced a solicitor traineeship with Norton Rose on 3 September 2007.

Background.

30. Belle was an existing client of Norton Rose. Ms Doris Ng testified of having been involved in its IPO from 2006. The IPO occurred in May 2007. Thereafter, Norton Rose, in particular Ms Doris Ng, was involved in assisting Belle in ensuring that it complied with the various requirements made of publicly listed companies. For their part, both Ms Liza Lee and Ms Ng testified that they were aware of the relationship of cousins between the controlling shareholders of Belle and Mirabell. It is to be noted that in Belle’s “Global Offering”, issued in respect of its IPO, Mirabell Footwear Limited, a wholly owned subsidiary of Mirabell, was described as a customer who bought certain footwear products from Belle and that a relationship existed between Mr Y Tang, the Chairman, controlling shareholder and executive director of Belle and the controlling shareholders of Mirabell, namely that the shares of Mirabell are :

“... held as to more than 50% by Mr Tang Keung Lam and Mr Tang Wai Lam (collectively “ **Mr Y Tang’s Cousins**”) collectively, both cousins of Mr Y Tang.”.

31. Ms Doris Ng testified that in late December she had been asked to find some precedents for documents that would be required for a prospective project. She had done so. On 18 February 2008, she began to use the documents that she had prepared in project “Miracle”.

18 February 2008.

32. At 2 p.m. on 18 February 2008 a meeting was held at Norton Rose attended on the one hand by Mr Sheng Bai Jiao and Mr Leung Kam Kwan of Belle and on the other hand by Ms Liza Lee, Ms Doris Ng and Mr Freeman Chan of Norton Rose. Norton Rose were informed by the representatives of Belle that Belle proposed an acquisition of Mirabell, although no price per share was mentioned at that stage. The project was urgent. Ms Liza Lee said that at the meeting the probable “timeline” discussed was that February 22nd would be the last trading day and that trading in the shares would be suspended at the opening of trading on the following Monday.

E-mail : 18 February 2008, 18:39.

33. Ms Doris Ng testified that after the meeting had ended she recommenced work on the draft of the announcement document which, in prospect of a project, she had been working on earlier. In fact, at 18:39 on 18 February 2008 she sent Ms Liza Lee an e-mail, in which the subject was described as “GO-timetable and GO announcement”. The attachments were described as “Belle-timetable.DOC; Belle-GO and CT Announcement (draft 1).DOC”. The acronym GO referred to a “General Offer”, whereas the acronym CT referred to a “Connected Transaction”. In the text of the accompanying message, Ms Doris Ng said simply, “Hi Liza - attached the latest version for your reference.” Both of the attached documents contain document reference numbers with the suffix “v-1”. Ms Liza Lee explained

that Norton Rose's "I-manage" computer system ascribed different numeral designations for the different versions of a draft document. Although the computer file title referred to the name Belle neither of the documents mentioned that nor that it was planning to take over Mirabell, rather where appropriate reference was made to "offeror" and "offeree". Ms Liza Lee explained and justified the use of the name of Belle in the e-mail to which the documents were attached on the basis that the circulation of the e-mail was within a tight circle, namely between Ms Doris Ng and herself.

34. Ms Liza Lee said Ms Liu Yan Yan's role was to put in margin notes in the draft announcement. Those were notes that, on eventual submission to the regulators, assisted them in ensuring that the announcement complied with the regulatory requirements. Also, she said that Ms Liu Yan Yan might have been involved in locating a precedent for the draft offer letter, but that she was the one who had done the drafting work in that respect. However, Ms Liu Yan Yan was assigned the duties concerned with the "Checklist", work that was done to ensure that the announcement complied with the regulations. Drafting of the Board minutes to be approved by Belle was a job that she and Ms Doris Ng did, although she said that Ms Liu Yan Yan might have been involved.

35. Of the identity of the target of the acquisition, Mirabell, and of the family relationships between the controlling shareholders Ms Liza Lee said that Ms Liu Yan Yan would not have been told because she was a person not regarded as someone who needed to know. "Only Doris and I knew about this information". Furthermore, she never told Ms Liu Yan Yan that the "timeline" called for the last day of trading to be 22 February 2008.

E-mail : 20 February 2008, 18:04.

36. Ms Doris Ng testified that she had copied an e-mail that she sent to Ms Liza Lee at 18:04 on 20 February 2008 to Ms Liu Yan Yan. The attachment was described as “Board Minutes (GO and disclosable & connected transaction).DOC”. In the accompanying message she had said, “Liza-attached the draft board minutes for your review”. In the draft minutes, under the heading “Declaration of Interests”, it was asserted,

“[B] is a cousin of [A], who has a controlling shareholder and a director of [Mary]. [C] is a daughter of [B] and therefore a nephew of [A].”.

Under the heading “Disclosable and Connected Transaction” it was stated :

“[B] ... is a controlling shareholder and an executive director of the Company and is accordingly a connected person of the Company. [B]’s cousin [T] is interested in [*] % interest in [A], being the controlling shareholder of [Mary], which, as at the latest Practicable Date, held [*] offer shares, representing [*]% of the issued share capital of [Mary]. Hence, [A] is an associate of a connected person of the company;”.

37. Ms Doris Ng said that the first draft of the document had been prepared by Ms Liza Lee and, having made some revisions, she sent the document to Ms Liza Lee for her consideration. She could not recall what revisions had been made. She had copied Ms Liu Yan Yan in the circulation of the e-mail as a team member, it being the practice to do that.

E-mail : 20 February 2008, 17:47.

38. In an e-mail dated 17:47, 20 February 2008 Ms Alice Lee sent an e-mail to Ms Liza Lee, Ms Doris Ng and Ms Liu Yan Yan with an attachment described as “Irrevocable undertaking”. Although Ms Liza Lee said that she and Ms Doris Ng worked on the draft “Irrevocable undertaking”, it was circulated to Ms Liu Yan Yan because she was part of the team and in order to “keep everyone on the same page”.

Meeting : Norton Rose/Belle - 21 February 2008.

39. Ms Liza Lee agreed that, at a meeting with representatives of Belle in the morning of 21 February 2008, only she and Ms Doris Ng of Norton Rose had been present at discussions of the joint announcement and terms of the irrevocable undertaking. Ms Liu Yan Yan had not attended because drafting of the irrevocable undertaking involved complicated legal drafting.

40. Ms Liza Lee said that she had assigned Ms Liu Yan Yan to translate from Chinese into English an e-mail she had received from Belle setting out the reasons for the acquisition by Belle. She thought she had assigned that work between Wednesday and Friday of that week, namely 20-22 February 2008. In due course, Ms Liu Yan Yan provided her with an English translation on which she made comments.

Suspension of trading in the shares of Belle.

41. At around 6:20 p.m. on 22 February 2008, Ms Liza Lee made an application on behalf of Belle to the Stock Exchange of Hong Kong for a temporary suspension of trading in the shares of Belle, effective from Monday 9:30 a.m. of 25 February 2008. A similar application was made on behalf of Mirabell. In the event, trading in the shares of the two companies was suspended from 9:30 a.m. on 25 February 2008 until 09:30 a.m. on 29 February 2008.

42. Ms Liza Lee said that after the trading day had ended on 22 February 2008 and the application was made for suspension of the shares the drafts of the documentation were amended with the addition of the name of Mirabell and the offer price. She said that Ms Liu Yan Yan continued her work on documents

related to the project, in particular updating the checklist required in respect of the announcement.

6 June 2008 : the execution of search warrants by officers of the SFC.

43. At 06:30 a.m. on 6 June 2008 Mr Lawrence Chan Ho Yin and three other SFC officers executed a search warrant at the premises in Sai Ying Pun at which Ms Liu Yan Yan and Mr Zhang cohabited. Mr Lawrence Chan Ho Yin, noted in the record of the execution of the search warrant that both Ms Liu Yan Yan and Mr Zhang had confirmed that they were “girlfriend and boyfriend living together”. In the hard disk of Mr Zhang’s personal computer three documents relating to Belle were found. They were the subject of a claim of legal professional privilege asserted by Norton Rose, on the basis that they did not relate to work conducted on project “Miracle” in February 2008. Later that day, search warrants were executed on the office premises of both Ms Liu Yan Yan and Mr Zhang Bi Jia and the hard disks of their office computers seized.

Examination of data found on the computers of Ms Liu Yan Yan and Mr Zhang.

44. Mr Chan Ho Yin and Mr Lau Ping Yiu Teddy, the latter also an officer of the SFC, described their examination of material found in the home and work computers of Ms Liu Yan Yan and Mr Zhang. Also, they received limited material from staff of Norton Rose found in Mr Zhang’s personal computer in relation to Belle, in respect of which a claim of legal professional privilege was made.

SFC : records of interview of the Specified Persons.

45. Officers of the SFC conducted a video recorded interview of Mr Zhang Bi Jia on 23 May 2008 under the provisions of section 183(1)(c)(3) of the SFO.

Subsequently, officers of the SFC conducted three video recorded interviews of Ms Liu Yan Yan, namely 14 and 28 August and 21 October 2008.

Expert evidence: Mr Karl Lung.

Curriculum vitae.

46. Mr Karl Lung gave evidence as an expert witness¹. He holds a Bachelor degree in Commerce and a Master degree in Business Administration awarded respectively by McMaster University and the University of Toronto in 1986 and 1987. In the period 1988-1995, he worked as an analyst in Hong Kong for various firms and companies : Nomura Research Institute, Sun Hung Kai Properties, Schroders Securities and W. I. Carr (Far East). From 1995 to 2004, he worked for ABN AMRO Asset Management (Asia) Ltd as a portfolio manager, finally as a senior portfolio manager. The stress and pressure of the demands of being a portfolio manager led him to leave that occupation to pursue a range of other activities : teaching at the Hong Kong University of Science and Technology and the Chinese University of Hong Kong; and being an independent non-executive director of a publicly listed company and the president of the Hong Kong Society of Financial Analysts from 2005-2010.

47. He has provided seven statements to the SFC of his opinion in respect of alleged market misconduct and on one occasion, in 2009, he was permitted to give expert evidence in a criminal trial in the District Court in respect of an offence of conspiracy to carry out false trading in the shares of a publicly listed company.

¹ Appendix 1- Ruling, dated 23 July 2010.

Opinion.

48. In his oral testimony, Mr Karl Lung confirmed that his statement of 9 July 2010 was true to the best of his knowledge and belief. In his opinion, prior to the suspension of trading in the shares of the two companies information that Belle was to make a voluntary general offer in cash for the shares of Mirabell was non-public specific information, public knowledge of which would likely materially and positively affect the share price of Mirabell.

Specific information which would likely materially and positively affect the share price of Mirabell.

(i) Voluntary General Offer in cash.

49. Mr Karl Lung said that had it was his opinion that voluntary general offers to acquire all the outstanding shares of a listed company “typically represent a genuine interest from the offeror to acquire all or a significant interest in a listed company.” Such voluntary general offers :

“... will need to be made at an attractive premium to the prevailing share price in order to attract shareholders of the target company to accept the offer.”.

In his opinion,

“...a genuine cash offer being made on Mirabell at an attractive premium to the prevailing price, it is highly likely that it will have a positive impact on share price.”.

50. In support of that opinion, Mr Karl Lung relied upon information supplied to him by the SFC in respect of twelve voluntary “General Offers” made in the period ended 2005 up and until that the offer made by Belle. In each case, he made a comparison with the share closing price of those twelve companies on the resumption of trading in those shares following upon a voluntary General Offer with the closing price on the last date of trading before trading the shares were suspended. In eleven of the instances, the share price on resumption was higher

than that at the close on the date immediately prior to suspension of trading in the shares. In only one case, Shun Cheong Holdings Ltd was the closing price lower than the trading price at the date of suspension of trading. However, in that case he noted that the offer price was at a discount of 18.92% to the closing price at the last date of trading prior to suspension of trading in shares. Also, he noted that some two months before the announcement of the general offer there had been rumours in the market and also reports in the media that ownership of the company was likely to change hands, in response to which the share price has surged 50% on a single day of trading.

(ii) the offer price for Mirabell shares.

51. Of the issue of the price per share of the offer, Mr Karl Lung pointed out that the text of both the draft announcement (version 1), attached to the e-mail sent from Ms Doris Ng to Ms Liza Lee at 18:39 on 18 February 2008, and the announcement (version 2) under the title “Benefits of the Offer for Company Shareholders” contained the assertion that the offer gave shareholders the opportunity to realise their investment :

“... at a price which is above the market price of Offer Shares on the Last Trading Date ...”.

(iii) The ambit of public knowledge.

52. Mr Karl Lung said that he had been provided by the SFC with media and analyst’s reports relating to Belle and Mirabell for the three-month period beginning 1 December 2007. He identified three articles in which mention was made of the likelihood of Belle making further acquisitions of companies. The “i-Money” publication of 7 February 2007 noted that Belle had made three such acquisitions in the second half of 2007, namely Fila, Millie and Jiangsu Senda. It noted that the Chairman of Belle, Tang Yiu, was a cousin of the Chairman of

Mirabell. However, in Mr Karl Lung's opinion, there was no hint in the article that Mirabell was a target for acquisition by Belle.

53. The Sing Tao Daily published on 25 February 2008 made a similar reference to the acquisitions of Belle in 2007 and noted :

“It is estimated that the group would have a chance to continue making acquisitions or conducting project restructuring so as to expand its business and fight for a higher market share.”.

However, again Mr Karl Lung said that there was no mention of Mirabell as a target of acquisition by Belle.

54. Finally, the author of a report published by Credit Suisse on 18 February 2008 described her opinion as to the likely growth in the “store tally” of Belle's existing brands under the title, “An added boost from acquisitions” and said : “M&A are part of a longer-term strategic plan for Belle.”.

Later, in the report the author went on to say :

“We believe that the M&A activities Belle undertook in 2007 mark only the beginning. In fact, potential adversities from a potential slowdown in the specialty retailing sector in China could lead to acquisition opportunities for leading companies like Belle, which other financial and distribution capacities to digest weaker peers.”.

Having expressed an opinion that growth would come from the existing brand portfolio she went on to say,

“In addition we have also factored in some 150 stores that could be acquired each year over the three years of 2008-2010.”.

55. In cross-examination, Mr Karl Lung agreed that the acquisition of brands for the distribution of shoes in the PRC was part of the business model of Belle. Also, he agreed that Mirabell could be regarded as a “weaker peer” of Belle in the Mainland. Further, he agreed that it was known to the public that Belle was likely

to continue making acquisitions and that Mirabell was to be regarded as a potential target.

56. Mr Karl Lung agreed in cross-examination that in the “Briefing notes for your expert opinions”, dated 4 March 2009, provided to him by the SFC he had been asked to comment whether or not information, contained in e-mails and their attachments was materially price sensitive and “specific enough to be constituted as relevant information”, namely :

- dated 18 February 2008 from Ms Doris Ng to Ms Liza Lee, with two attachments - “Belle-Timetable.doc” and “Belle-Go and CT Announcement (draft 1).DOC”;
- a draft announcement dated 20 February 2008; and
- dated 20 February 2008 from Ms Doris Ng to Ms Liza Lee and the attached file “Board Minutes (GO and disclosable & connected transaction).DOC”.

57. Mr Karl Lung accepted that Mirabell was not named in any of those documents, in particular as the target of the acquisition by Belle. However, he said that he had interpreted the question posed in respect of whether the information was specific as meaning whether or not :

“... there (is) enough information there that someone with the intention to find out the identity of the target company, there will be enough clues...guess the company that is with high probability to be the target.”.

THE SPECIFIED PERSONS

(I) Ms Liu Yan Yan.

58. Ms Liu Yan Yan gave oral testimony before the Tribunal during which she adopted as being true to the best of her knowledge and belief a written statement dated 26 July 2010.

Academic qualifications.

59. Ms Liu Yan Yan said that she was born in 1977 in JiangXi Province of the PRC. At the age of 17 she commenced her studies in Beijing. She holds a Bachelor of Laws awarded by the China Youth University for Political Science and a Master of Laws awarded by Renmin University of China. Next, as the recipient of a scholarship she commenced her studies in September 2001 for and was awarded subsequently a Postgraduate Diploma in Common Law from the University of Hong Kong in which course she was first in the class. Following that, in 2004 she obtained a Master of Laws degree from University of British Columbia. Then, on a part-time basis she completed the two-year CPE program successfully at HKU SPACE in one year. Finally, she graduated from the PCLL programme of Hong Kong University in the summer of 2007.

Relationship with Mr Zhang.

60. Ms Liu Yan Yan said that she first met Mr Zhang in the spring of 2003 when they were both studying in Canada. He was studying at a language school in Vancouver. She was studying for a Master of Laws degree at the University of British Columbia. She helped him in his studies and they became very good friends. In the summer of 2004, Ms Liu Yan Yan was awarded her masters degree and came to Hong Kong to work. Mr Zhang began his studies for a Bachelor of Commerce degree at the University of Toronto, which he obtained in the summer of 2007. However, they remained in contact and Mr Zhang visited her in Hong Kong twice in the university summer holidays. In the middle of 2007, their relationship progressed from close friends to lovers. Having graduated Mr Zhang began to look for employment in Hong Kong. When he was in Hong Kong he cohabited with Ms Liu Yan Yan at a premises she rented in Sai Ying Pun.

However, Mr Zhang did not always stay with her at those premises when he was in Hong Kong. On some occasions he stayed in a hotel. She estimated that he spent two thirds of the time staying with her.

Financial relations.

(i) Loans.

61. Ms Liu Yan Yan said that in the summer of 2005 Mr Zhang had lent her money to assist her meet expenses as she studied in Hong Kong. On 2 August 2005 she deposited \$50,000.00, which he had lent her, into her HSBC account. Also, he lent her RMB \$100,000.00 in cash. She used some of those monies to pay her fees for her attendance at the part-time PCLL course provided by the University of Hong Kong. In all, she paid the University of Hong Kong \$111,400.00 in fees, primarily by way of four instalments of payments of \$27,500.00. The first of those payments was on 16 August 2005 and the last payment on 8 January 2007.

(ii) Repayments.

62. Ms Liu Yan Yan said that she repaid Mr Zhang the money that he had lent her by making payments into her own Bank of China account, which she permitted him to use by giving him the password details. She did so because of her understanding of difficulties Mr Zhang had encountered in opening a bank account in Hong Kong, given an inability to provide proof of a residential address. She intended to make over to him use of the savings account so that he could access monies more easily. She had opened that account on 6 January 2007. In addition to a deposit and savings account, a securities account was opened.

63. On 4 September 2007, she withdrew \$74,000.00 from her account with HSBC and deposited the money in that Bank of China account, in which there was

an outstanding balance of \$26,779.00. Following her employment at Norton Rose on 3 September 2007 and after she had been paid her salary she made three further payments in cash into the Bank of China account of money that she had withdrawn in cash from her HSBC account in the period 8-16 October 2007, to a total of \$50,000.00. In all, those repayments, together with the outstanding balance in her Bank of China account on for September 2007, amounted to \$150,779.00. Ms Liu Yan Yan said that following the repayment of the monies that she owed to Mr Zhang she told him that there would be no more borrowing or lending between them.

Mr Zhang's trading in shares.

64. Ms Liu Yan Yan said that at some time in the first or second week of October 2007, on receipt of a monthly statement in respect of her Bank of China account, she discovered that Mr Zhang had been trading in shares in the securities account and that he had begun to do so almost immediately after he had been given control of the account. The monthly statement was for the period ended 29 September 2007 and was addressed to Ms Liu Yan Yan at her home address. She said that she was upset that he had traded in shares in the securities account because she had intended that he used only the deposit account and not that he trade shares in the account. He agreed to her demand that he would not make further purchases of shares, but explained that he was not in a position to sell all the shares from the account immediately.

65. It is to be noted that the last purchase of shares in that account was on 12 October 2007. Thereafter, all the holding of shares was sold in the second half of October and on 1 November 2007 and the proceeds transferred out of the account,

leaving a small balance of a few hundred dollars that remained untouched in the account until June 2008.

BOC Joint account : Mr Zhang/Ms Liu Yan Yan.

66. On the 20 October 2007, at the request of Mr Zhang, a joint account in both their names was opened with the Bank of China. She acceded to that request because it would be easier to send him money if he was out of Hong Kong. She did not notice, and nor does she know how it came about, that the account opening documentation described them as married and she as a housewife. She was neither.

67. At Mr Zhang's request she transferred monies from the Bank of China account in her sole name to the joint bank account on 31 October and 3 November 2007 in the sums of \$83,000.00 and \$72,000.00 respectively. As noted earlier, those monies were the proceeds of sale of shares in that account. She was unaware that Mr Zhang had opened an account in his own name with HSBC on 14 September 2007. Mr Zhang told her of the existence of that account in December 2007. Had she known of the existence of that account she would not have agreed to open the joint account.

Intimate relationship.

68. Ms Liu Yan Yan said that her intimate relationship with Mr Zhang came to an end in December 2007 when she discovered that he had contracted the disease he called "NHIV" following having had sexual relations with a girl in Thailand. He informed her that for a period of 6 months there was a danger that he might contract AIDS. It is to be noted that the calendar found on Mr Zhang's office computer contained an entry for 25 May 2008 "NHIV 6 months". As a result, she felt that she had to stand by him and give him support at that critical time, so that

she permitted him to remain at her home. Mr Zhang slept in the only bed in the premises and she slept on a folding mattress or on the sofa. In May 2008, Mr Zhang agreed to her request that he moved out of her premises after he had taken his Chartered Financial Analysts examination, scheduled for 8 June 2008.

Ms Liu Yan Yan : professional experience.

69. From November 2004 to March 2006, Ms Liu Yan Yan was employed as a “China legal adviser” by Messrs PC Woo & Co. From March 2006 to July 2007, she was employed by Sullivan & Cromwell LPP as a paralegal. On 16 June 2007, she accepted a training contract with Norton Rose to commence employment on 3 September 2007. On that date she commenced her traineeship with Mr David Stannard as her principal. However, principally she worked for Ms Liza Lee, in whose office she occupied a desk, in the Corporate Finance Department.

70. In the more than five months of her employment prior to the events the subject of these proceedings, she worked with different degrees of involvement on a number of projects in the Department. The acquisition by Belle of Ossia Marketing (HK) Ltd and Ossia International (HK) Ltd (project Olivia) was a project on which she first worked at the end of September 2007. However, she described her involvement in the project as “peripheral”. At the invitation of Ms Liza Lee, and at short notice, she attended the signing of the “Sale and Purchase” agreement for that acquisition in Shenzhen on 27 October 2007. In all, she booked about 40 hours of work expended on that project up and until 26 October 2007. Most of that work was confined to trademark/patent due diligence.

February 2008.

71. Ms Liu Yan Yan said that in February 2008 she was actively involved as a member of a team led by Ms Liza Lee in a project which involved the acquisition by a private company of a subsidiary of a listed company. The agreement for the acquisition was signed on 18 February 2008 and the “closing date” was 28 February 2008. 107 hours of the total of 201.52 hours of her work timesheet for February was attributed to that work.

18-22 February 2008.

72. Ms Liu Yan Yan said that in the week 18-22 February 2008 she became involved in work, which later she came to know by the name project “Miracle”, namely the acquisition of Mirabell by Belle. She was not told the project name or the “matter number”, by which Norton Rose referred to particular work performed for a client, by either Ms Liza Lee or Ms Doris Ng. She obtained the matter number HK00379 from Ms Liza Lee’s secretary and filled in time entries. She accepted that she had entered 18.6 hours in her timesheet for work expended on that project in respect of that period. She said that, to the best of her memory, she entered that information into the computer at the end of that week, namely on 22 or 23 February 2008. She did not make an entry in her timesheet under the codename project “Miracle” with the matter number HK00731 until 28 February 2008.

Timesheet.

73. The timesheet itself provides some details of the specific tasks involved :

“18 February - 3:30 hours

‘Precedent research re those similar to voluntary condition offer involving offeror’s VSD/CT/major transaction announcement/circular’;

19 February - 5:00 hours

‘Work on GO, prepare for offer letter, review the translation (sic) docs; draft board minutes; team discussion re working steps’;

20 February - 4:00 hours

'Work on the checklist re CT announcement; prepare for the memo to directors and the directors' responsibility letters, statement of interest and POA';

21 February - 2:30 hours

'Check the composite docs against the takeover code Sch 1; brief Liza re checkin results'; and

22 February - 4:00 hours

'Re voluntary GO, check the offer doc, announcement against the Code and the Listing rules; update the notes; translate a certain paragraph and revise'."

74. In cross-examination, Ms Liu Yan Yan confirmed that the acronyms "GO" and "CT" referred to General Offer and Connected Transactions respectively. She thought that the reference to "composite docs" was to the circular.

Documentation within Norton Rose : Ms Liu Yan Yan's role.

(i) E-mail: 18 February 2008, 18:39 from Ms Doris Ng to Ms Liza Lee.

"Subject : GO-timetable and GO announcement

Attachment : Belle-Timetable DOC; Belle- GO and CT
Announcement (Draft 1). DOC".

75. Ms Liu Yan Yan said that on either 18 or 19 February 2008 from the Norton Rose "Document Management System" she had accessed the attachment, containing the announcement, to the e-mail sent at 18:39 on 18 February 2008 from Ms Doris Ng to Ms Liza Lee. She might have done so after she had received instructions to start marking the margins of the document. She believed that she had saved the document onto her own office computer to facilitate that work or as a precedent for future use. Although both of the documents attached to the e-mail contained the file name "Belle" as the first word of the title to those documents, because of her knowledge of the confidentiality rules of Norton Rose as to disclosure of non-public price sensitive information, she did not assume that the documents were to be used in a project of the company Belle. Further, no one told her nor had she "... overheard, guessed or figured out" that project "Miracle" was a

project in respect of Belle or that the names of Billy and Mary were codenamed respectively for Belle and Mirabell. It was only on 25 February 2008 that she found out the identity of the parties and the offer price when she worked on a draft of the Board minutes (version 4) in which the names of the parties and the price of the offer for the shares were included.

76. She said that in the period 18-22 February 2008, she was not familiar with Belle, never having researched the company nor having studied its Global Offering documents. Although she could have checked the identity of Norton Rose's client in project "Miracle", she did not do so. It was none of her business and she had no interest to do so. Similarly, she had done no research on Mirabell. She had no interest in acquiring information beyond what was necessary to perform tasks assigned to her at work.

(ii) E-mail dated 18:05 19 February 2008 from Alice Li to Liza Lee/Doris Ng/Liu Yan Yan.

"Subject : offer letter
Attachment : offer letter DOC."

77. Ms Liu Yan Yan said that she had accessed the attached document which was entitled "Possible voluntary conditional offer" (version 1) and saved it on her own office computer to facilitate her work. She said that the document was a template and did not contain the names of the parties or the price of the offer.

(iii) E-mail dated 18:04, 20 February 2008 from Doris Ng to Liza Lee, cc Liu Yan Yan.

"Subject : GO board minutes
Attachments : Board Minutes (GO and disclosable & connected transactions).DOC".

78. Ms Liu Yan Yan accepted that the company was described by the codename Billy in its minutes and made reference to a Mr [X]. However, she said that she did not recall opening the document and thought it unlikely that she would have done so as there was nothing in it which she needed to follow up.

79. It is to be noted that the document makes references to a draft Joint Announcement be made by the company “ ... and [Mary]” and goes on to describe a relationship :

“[B] is a cousin of [A] who is a controlling shareholder and a director of [Mary]. [C] is a daughter of [B] and therefore a nephew of [A].”.

Furthermore, under the heading “Disclosable and Connected Transaction” it goes on to state:

“[B] is a controlling shareholder and an executive director of the Company and is accordingly a connected person of the Company. [B]’s cousin [T] is interested in [*] % interest in [A], being the controlling shareholder of [Mary], which, as at the Latest Practicable Date, held [*] offers shares, representing [*] % of the issued capital of [Mary].”.

(iv) GO and CT announcement (draft 1) (20/2/2008) [version 2].

80. Ms Liu Yan Yan said that on 20 February 2008 she had accessed the document entitled “GO and CT announcement (draft 1)”. She acknowledged that it contained the codenames Billy and Mary for the offeror and offeree.

However, it is to be noted that in the text of the announcement it was stated in the “Introduction” :

“As at the date of this announcement, [Mr T] is one of the controlling shareholders ... of Billy. Mr X is a cousin of Mr T and is interested in [*] % of the controlling shareholder ...”.

Also, under the title “BENEFITS OF THE OFFER FOR MARY SHAREHOLDERS” it was asserted :

“Billy believes that the Offers gives Mary shareholders an opportunity to realise their investment in the Mary Group at a price which is above the market price of Offer shares on the Last Trading Date...”.

(v) “Announcement checklist re disclosable and connected.Doc”.

81. Ms Liu Yan Yan said that on 20, 21, 22 and 25 February 2008, she had accessed version 1 of the document “Announcement checklist re disclosable and connected.doc”.

(vi) e-mail dated 17:47, 20 February 2008 from Alice Li to Liza Lee/Doris Ng/Liu Yan Yan

“Subject : Irrevocable Undertaking
Attachment : Irrevocable Undertaking.DOC”.

82. Ms Liu Yan Yan said that, having reviewed the Norton Rose computer records, she viewed the document on 21 February 2008. It contained neither names nor codenames.

(vii) “GO and CT Announcement (Draft 2).doc”.

83. Ms Liu Yan Yan said that at 9:59 (GMT), or 17:59 Hong Kong time, on 22 February 2008 she viewed the document entitled “GO and CT Announcement (Draft 2).doc”. It was version 4 and included the names of Belle and Mirabell in the Joint Announcement but not the cash price of the offer for the shares.

(viii) E-mail dated 12:36, 22 February 2008 from Phyllis Yuen to Liu Yan Yan.

“Subject : translation”.

84. Ms Liu Yan Yan said that at 12:36 on 22 February 2008 she had received the translation of a document that she had passed about an hour earlier to Ms Phyllis Yuen for translation from Chinese on the instructions of Ms Liza Lee. The text describes the reasons for the acquisition of the target company described as

“XX” by Belle International. The former company was described as having “footwear products” with a “price range between USD60 and USD100, which is a market segment with huge growth potential in the PRC”. Ms Liu Yan Yan said that the document entitled “Reasons.Doc” that she viewed at 17:58 on 22 February 2008 was the final version of that translation.

6 June 2008.

85. In the morning of 6 June 2008, officers of the SFC executed a search warrant at the premises occupied by Ms Liu Yan Yan and Mr Zhang. In the course of the search of the premises, Mr Zhang told her that he had traded in the shares of Mirabell a few months earlier and that he had been interviewed by the SFC in respect of that trading. She knew nothing of that trading or of the fact that he was under investigation by the SFC.

Mr Zhang’s office computer : the Calendar.

86. The assertion in the calendar found on Mr Zhang’s office computer in respect of 23 May 2008, namely :

“SFC ID Inv (1179 & 1880) informed Yanyan at night”

was false in so far as it implied that she had been informed of the investigation by the SFC of Mr Zhang on that date.

Mr Zhang’s office computer : spreadsheet “Investment portfolio 23 November 2007.xls”.

87. A spreadsheet entitled “Investment portfolio 23 November 2007.xls” was found by officers of the SFC on Mr Zhang’s computer at the premises of his place of work on 6 June 2008. The name “Yan Yan” appeared as one of four contributors to an investment portfolio, the others being “Aunt”, “Dad” and Bi Jia.

It asserted that, at 31 October 2007, “Yan Yan” had made a contribution of \$210,000.00. In her evidence-in-chief, Ms Liu Yan Yan said that there was no truth in the assertion in the document that she had contributed to an investment portfolio. She had never invested any money with Mr Zhang for investment in stocks. She knew nothing of the spreadsheet. She did not know if he had invested money, on behalf of his relatives. In cross-examination, she denied the suggestion that she had invested in such a portfolio with Mr Zhang and that he had reported to her regularly.

Mr Zhang’s personal computer : Belle files.

88. Of the discovery on Mr Zhang’s personal computer, found in the premises on which they cohabited, of files related to Belle, Ms Liu Yan Yan said that she had never provided any confidential client documents of Norton Rose to Mr Zhang. However, she recalled having e-mailed to her personal e-mail address three documents related to project Olivia after the signing ceremony of 27 October 2007. She had done so in order to better understand the documentation. Although she was confident that she had deleted documents from her own computer after she had used them she thought it possible that they had been backed up in her computer, perhaps in a “trash” folder. She recalled that in October 2007 and April 2008, her computer had broken down and at her request Mr Zhang had assisted her in having it repaired in a computer shop but before he had done so he had backed up her files onto his computer. Perhaps, that explained how the documents were to be found on his computer.

The failure of Ms Liu Yan Yan to report trading in shares in her Bank of China account by Mr Zhang to Norton Rose.

89. In cross-examination, Ms Liu Yan Yan accepted that, in October 2007, she had come to know of trading in shares in her account with the Bank of China by Mr

Zhang and that at that time she understood that Norton Rose imposed a blanket prohibition on the dealing in shares by its employees, other than with prior written permission from the group head of the Compliance Department. She accepted that the prohibition extended to “immediate family”, including a common-law spouse living with the ... employee”. She agreed that she had never made a report of that trading to Norton Rose. She explained, “...that is because I did not regard that as behaviour conducted by myself.” She added :

“ ... also I was quite conscious that it was just the beginning of my traineeship and I don’t want to upset my employer at the beginning of my traineeship. Since Mr Zhang already promised that he will not do any more tradings through his accounts, I think that this can pass.”.

90. Although she conceded that in September and October 2007, she and Mr Zhang were lovers she said, “I’m not quite sure ... it can be characterised as a common-law spouse.” She said that she had considered inquiring of the compliance officer as to whether her relationship with Mr Zhang was encompassed by the phrase “common-law spouse” but said :

“ ... I then persuaded myself perhaps not to do that because I was just starting my traineeship in Norton Rose and I was quite concerned it would like bring up some negative impact on my work.”.

Ms Liu Yan Yan’s work in respect of projects of Belle.

Project Olivia.

91. In cross-examination, Ms Liu Yan Yan agreed that on 27 September 2007 she had begun to work on project Olivia for the client Belle, which resulted in its acquisition of Ossia and which was announced on 28 October 2007. In the three days up to 29 September 2007 she entered 18 hours work on that project in her timesheet. She accepted that the records demonstrated that Mr Zhang had bought 35,000 Belle shares in his HSBC account on 2 October 2007 in the range of

\$10.70-10.78 per share. She knew nothing of that. She did not even know that he was trading in shares.

92. She accepted that in the period that followed that date, up until 18 October 2007, she entered about a further 50 hours of work on that project in her timesheet. Again, she accepted that the record showed that on 22, 24 and 25 October 2007 Mr Zhang bought a further 108,000 Belle shares in the same account. He did so at an increasing price range, making some purchases of Belle shares on the last day at \$11.20 per share. Ms Liu Yan Yan said that none of these purchases had anything to do with her. She did not know that he was trading in any stocks. Further, at the time of these later purchases she had not worked out at all the nature of project Olivia :

“I did not work it out because all the work I have been doing it is like very trivial, due diligence, trademark, patent work.”.

93. Ms Liu Yan Yan agreed that she had continued to work on project Olivia after 18 October 2007 and had entered 14 hours in her timesheet in respect of her attendance at the signing of the agreement between Belle and Ossia in Shenzhen. She accepted that, following the announcement on 28 October 2007 by Belle of that acquisition, on 5, 6 and 7 November 2007 all of the 138,000 Belle shares that had been bought in Mr Zhang’s account were sold at a profit in the range of \$12.30 to \$12.50 per share.

94. It is to be noted that the sums of \$83,000.00 and \$72,000.00 that Ms Liu Yan Yan transferred on 31 October and 3 November 2007 from the Bank of China account in her sole name to the joint account were apparently withdrawn in cash and re-deposited in cash into Mr Zhang’s HSBC account on 1 and 6 November

2007, at which time the account was overdrawn, prior to the receipt of payments for the sale of the Belle shares.

Ms Liu Yan Yan's record of interview.

95. In a record of interview conducted of Ms Liu Yan Yan on 21 October 2008, in the context of being shown the statement of the account that evidenced Mr Zhang's purchase of Belle shares in October 2007 including the several days prior to the announcement of Belle of 28 October 2007 of its acquisition of Ossia, she was asked and answered :

“Q. : Had you known about the acquisition to be made by Belle before Mr Zhang bought the shares of Belle?

A. : ... I did not work on the project in October. I have no idea.”.

Ms Liu Yan Yan's testimony.

96. When it was suggested to Ms Liu Yan Yan that her reply was false, she said in evidence :

“...during the interview I did think that my last-minute involvement in the Ossia signing session that Friday evening, but I deemed my prior involvement in the due diligence pattern work was too trivial to mention. And, most importantly, I myself never contributed to any essential transaction document in that project. Every document had been already done before I was brought to the signing session.”.

She denied that she had answered in that way to deflect the SFC officer in his inquiries. Also, she pointed out that immediately after that answer her legal adviser had interrupted and objected to that line of questioning.

97. Ms Liu Yan Yan accepted that in her statement tendered as her evidence-in-chief she had added an additional reason, namely :

“I also felt they would not believe me if I told them the whole story.”.

In her evidence, she explained that by the phrase “the whole story” she meant “my last-minute involvement to the signing session and my prior involvement in the boring ground nature due diligence work.”.

Ms Liu Yan Yan’s understanding of the nature of the proposed offer and knowledge of the identity of Norton Rose’s client, Belle, in project “Miracle” in the period 18-22 February 2008.

(i) Belle : the offeror?

98. In her evidence-in-chief, Ms Liu Yan Yan accepted that the name Belle appeared in the file title of the documentary attachments to the e-mail that passed between Ms Doris Ng and Ms Liza Lee at 18:39 on 18 February 2008. There was no dispute that she had saved the draft announcement to the hard drive of her own office computer. She might have done so on instructions to begin marking up the margins of the announcement and might have done so from the e-mail itself. In cross-examination, she repeatedly denied that she knew that the project concerned Norton Rose’s client Belle. She accepted that the description of the file as saved in her office computer was “Belle - GO and CT Announcement (draft 1).doc”. While she accepted that she might have noticed the name “Belle” in the filename, she said :

“I did not take it for granted it must be a transaction to be carried out by the client Belle. I actually even think that it might be some precedent developed from the previous Belle transaction. Plus, I always keep in mind senior lawyers like Ms Liza Lee and Ms Doris Ng would not put the client name in confidential documents.”.

Since the document was in Norton Rose’s document management system (DMS) she could access it without the need to use passwords or codes.

Ms Liu Yan Yan's record of interview : "GO" and "CT".

99. In her record of interview dated 28 August 2008, Ms Liu Yan Yan had been asked of her knowledge and understanding, at the time that she dealt with the documents, of the acronyms "GO" and "CT" used in the file title of the attachment to the mail. She replied :

"... based on my own background knowledge at that time, I did not quite understand what GO represented, nor did I know much about CT, at that time."

Ms Liu Yan Yan's testimony.

100. In cross-examination, having been reminded that she had used those acronyms in her timesheet entries on 18, 19 and 20 February 2008 Ms Liu Yan Yan refuted the suggestion that her answer to the SFC officer was false, saying :

"...by the time when I did the work, how could I tell whether I understand the transaction nature or not, and "GO" stands for what kind of things or not..."

Later, she added :

"By that time when I was asked questions by the SFC officers, I was not quite sure. I was like a few months later this whole SFC incident and that broke out and I have been stopped from my office work for a few months. I have left my work environment for some time I was not certain of my knowledge. I just get the answer out of my caution."

(ii) Offer price greater than the last trading price.

101. In cross-examination, Ms Liu Yan Yan accepted that the document described the price to be offered for shares :

"BENEFITS OF THE OFFER FOR COMPANY SHAREHOLDERS"

"[Offeror believes that the offers gives Company shareholders an opportunity to realize their investment in the Group at a price which is above the market price of Offer Shares on the Last Trading date...]"

Whilst she agreed that in marking the margins of the document she would have read all of its contents and Ms Liu Yan Yan denied that she had absorbed its significance :

"... At that time, when I worked on this kind of document, I personally did not know that much for the takeover mechanisms, the legal principles, the legal

mechanisms. I would not get sensitive to that, although I probably read through this paragraph.”.

Later, she added:

“I do not know or I do not realise the meaning of the price ... Even if at the time of my reading that paragraph, well, the price is higher, lower, why should I care on that? It’s not something which is of substance which can attract my attention. It is for proof reading work or margin marking work. Why would I pay attention to that paragraph? There is no margin marking to do for that paragraph.”.

(iii) Cash offer.

102. Ms Liu Yan Yan accepted that the draft of a letter on which she had worked in the afternoon of 19 February 2008 entitled “Possible voluntary conditional offer” stated :

“ ... the consideration for each ordinary share of HK\$[*] in TargetCo shall comprise HK\$[*] in cash.”.

Of the issue of what significance was to be attached to the fact that the offer was in cash, she said :

“I know it is for offer, but at that time I really had no idea or knowledge what is the difference between cash offer or non-cash offer, what is the significance of that ... I worked before a few years, but I had no chance or have no exposure to take over transactions before I joined Norton Rose ...”.

Ms Liu Yan Yan’s denial of knowledge that the target of the acquisition was Mirabell.

103. Ms Liu Yan Yan accepted that at 21:53 on 19 February 2008 she had sent an e-mail to Ms Doris Ng, copied to Ms Liza Lee with the attachment : “Board minutes (GO and disclosable & connected transaction).doc”. The text of the message read, “attached for your review please find the draft minutes ...”. She accepted that under the heading “Disclosable and Connected Transaction the text stated :

“[B] ... is a controlling shareholder and an executive director of the company and is accordingly a connected person of the company. [B]’s cousin [*] is interested in [*]% in [A], being the controlling shareholder of TargetCo ...”.

104. Ms Liu Yan Yan accepted that the computer records stated that she had created and checked out the document at 21:48 on that day. When it was suggested to her that she had inserted the paragraph in my document she said :

“It looks like it should be me myself putting this paragraph, but I have not had any impression. As I said, I only work on precedent document. My preliminary drafting is only limited to like taking out some specific information and then replacing with code. So I have no impression.”.

She agreed that her timesheet entry for that date included the description of work done as “draft board minutes”, but said that she was not sure that she had drafted this paragraph.

105. When it was suggested to her that in light of her previous work in respect of the client Belle she knew at the time that she sent out this e-mail that Mirabell was the target company of the proposed acquisition she denied that to be the case and said :

“I did not deny I worked for Belle previously, and I told you the work I previously did for Belle is all a peripheral work. No chance or no time or no necessity for me to dig out any more or further information about Belle. I worked that day till 10 p.m. or something. Do you think I should have spent additional time or effort to find out better information about the target company?”

106. Ms Liu Yan Yan accepted that on 20 February 2008 she had accessed an updated version of the Joint Announcement, described as “Draft: 20/2/2008”. Her job was to mark the margins of the document. It contained the codenames for the offeror and offeree as respectively, Billy and Mary. In the “INTRODUCTION” it asserted :

“As at the date of this announcement, [Mr T] is one of the controlling shareholders ... of Billy. Mr X is the cousin of Mr T and is interested in [*]% of the controlling shareholder ...”.

When it was suggested to Ms Liu Yan Yan that from working on this document she knew that a relationship of cousins existed between the controlling shareholders of the offeror and offeree she said that she was not quite sure whether she had understood that, noting that there were no marginal notes next to that paragraph.

107. Ms Liu Yan Yan accepted that around the time that she had worked on the acquisition of Ossia by Belle, in the course of which she had attended the signing ceremony of the sale and purchase agreement in Shenzhen, she had become aware that Norton Rose had acted earlier for Belle in the “Global Offering” of its shares. The document identified Mr Tang Yiu as the Chairman and executive director of Belle and Mirabell Footwear as a purchaser of footwear products manufactured by Belle. She accepted that the document described the relationship between shareholders having a controlling interest in Mirabell and Mr Tang Yiu :

“Mirabell Footwear is, a limited liability company established in Hong Kong, is a wholly-owned subsidiary of Mirabell. Mirabell is a company listed on the Hong Kong Stock Exchange and is held as to more than 50% by Mr Tang Keung Lam and Mr Tang Wai Lam (collectively ‘Mr Y Tang’s cousins’) collectively, who are both cousins of Mr Y Tang.

Pursuant to the Listing Rules, Mr Y Tang, being our Executive Director, our chairman and a controlling shareholder, is a connected person of our company.”.

Ms Liu Yan Yan denied the suggestion that her knowledge of that relationship enabled her to identify Mirabell as the target of Belle’s acquisition.

January-June 2008 : relationship between Ms Liu Yan Yan and Mr Zhang.

108. In cross-examination, Ms Liu Yan Yan denied that in the period January to June 2008 she and Mr Zhang were boyfriend and girlfriend. She accepted that in a record of interview conducted of her by officers of SFC on 14 August 2008 she had responded to being asked what was the relationship between her and Mr Zhang by saying :

“Zhang Bijia and I are boyfriend and girlfriend ...”.

She accepted that she had made that assertion repeatedly in the answers that followed. In her evidence, she explained that she had not given the complete answer in the interview because :

“ ... I was so stressful, I could not think through the questions so deeply. And always I think that the relationship between Mr Zhang and me, it has no essential relation with this case.”.

109. Ms Liu Yan Yan accepted that, in an e-mail dated 17 March 2008, she had sent to Ms Alice Li, a secretary at Norton Rose, she asked her to arrange a booking for lunch at a restaurant that day and described the lunch as being an :

“important farewell lunch today for my BF’s family.”.

She agreed that was a reference to “boyfriend”, by whom she meant Mr Zhang. She explained that she maintained that appearance for the outside world only.

Ms Liu Yan Yan and Mr Zhang : travel to and from Hong Kong.

110. Ms Liu Yan Yan agreed, as the Immigration Department travel records indicated, that she and Mr Zhang had left Hong Kong on both 27 January and 22 March 2008 to travel to the Mainland returning in the early hours of the following morning. Similarly, she agreed that they had travelled to Macau from Hong Kong on the morning of 29 June 2008 returning the following afternoon. Finally, she agreed that on 5 July 2008 of they had travelled to the Mainland before returning a few hours later. Of their journey to Macau, she explained that Mr Zhang had merely “accompanied” her. He was worried that she would do something to hurt herself and he insisted on following her. She denied the suggestion that throughout that period she and Mr Zhang had remained boyfriend and girlfriend.

E-mail dated 20 February 2008 from Mr Zhang : confidential material.

111. Ms Liu Yan Yan agreed that Mr Zhang had sent her an e-mail on 20 February 2008 in which he had sought her assistance in reviewing a draft document to be sent out on behalf of a client of his employer, Access Capital. She agreed that the information contained in the draft was information that Mr Zhang ought to have kept confidential and accepted that in the e-mail traffic that ensued between them on the subject she had not warned him of the need for confidentiality.

Mr Zhang's purchase of Mirabell shares (21 and 22 February 2008).

112. Ms Liu Yan Yan denied that she was in any way connected with the purchase of Mirabell shares by Mr Zhang on 21 and 22 February 2008 :

“His stock purchase of Mirabell is definitely, totally a shock to me. Definitely it has nothing to do with me. I even had no idea he was doing like any stock investment at that time.”.

She denied that she had information of the contemplated takeover of Mirabell by Belle prior to his purchases of Mirabell shares and went on to say :

“Even if I do have the information at that period of time, I would not pass it to anybody, including Mr Zhang. Why he bought these stocks I don't know. That is nothing to do with me.”.

(II) Mr Zhang Bi Jia.

The service of documents related to these proceedings on Mr Zhang.

113. Mr Chan Ho Yin made statements dated 19 July and 16 August 2010 in which he described the service of documents related to these proceedings on Mr Zhang.² Mr Zhang's last known permanent address in Beijing, its landline telephone number, his mobile telephone number and his e-mail address were provided to the SFC by his former employer, Access Capital Limited on 16 December 2009.

² Appendix 2.

Record of interview : 23 May 2008.

114. A record of interview of Mr Zhang was conducted by officers of the SFC on 23 May 2008 in consequence of a notice to him, dated 16 May 2008, from the SFC requiring him to attend to answer questions. He said that he was an employee of Access Capital Limited, for whom he had worked since 3 January 2008. Access Capital Limited was engaged in corporate finance work. He said that he had studied accounting at Beijing Aeronautical University. Then, he studied first economics and then commerce at university in Canada.

115. In a reply, dated 9 October 2009, to a notice of the SFC, Access Capital Limited confirmed that Mr Zhang had been employed as an analyst from 3 January to 11 June 2008 and that his primary duties included the provision of clerical assistance and support to senior executives in the execution of corporate finance transactions undertaken by his employers.

Relationship with Ms Liu Yan Yan.

116. Mr Zhang said that he was cohabiting with Ms Liu Yan Yan, whom he had known for five or six years after they had met in Canada. They were boyfriend and girlfriend and had a very intimate relationship for one year. However, he said that in light of the difference in age between the two of them their relationship was not certain and a marriage between them would not necessarily occur. In response to questions of whether or not he or Ms Liu Yan Yan had any other address in Hong Kong he said :

“I have looked for a flat but I haven’t moved out yet.”.

117. Mr Zhang said that whilst he was in the Mainland he had bought shares and that when he came to Hong Kong he transferred money to Hong Kong from the

Mainland in order to speculate in Hong Kong shares. He opened an account in Hong Kong with HSBC and identified documentation shown to him by the SFC, namely the account opening documentation and the statement for the period 14 February-13 March 2008 as related to that account. Whilst he and Ms Liu Yan Yan never talked about the subject of shares, he said that “ ... she knew all along that he bought shares”. Sometimes, he told her of particular purchases.

Purchase of Mirabell shares 21 and 22 February 2008.

118. Mr Zhang confirmed that on 21 and 22 February 2008 he had made purchases online of the Mirabell shares described in the HSBC monthly statement. He denied that he knew of the information contained in the joint announcement of Belle and Mirabell dated 28 February 2008 before his purchase of Mirabell shares and that was the reason for his purchase of those shares. Ms Liu Yan Yan had not mentioned to him that she was engaged on a project for Norton Rose that involved the acquisition of Mirabell by Belle. His purchase of Mirabell shares had nothing to do with Ms Liu Yan Yan. Most of the monies available to him to buy shares had been provided by his family, in part monies given to him to buy a flat and also monies given to him by his paternal aunt to buy shares. In previous purchases of shares he had lost money, in particular as a result of his purchases of shares in Nine Dragons Paper and Belle. Those were losses incurred in shares with a high PE ratio.

119. Mr Zhang said that one reason he had bought shares of Mirabell was that its PE ratio was low. He started to pay attention to the performance of the shares of Mirabell after Belle was listed. They were interrelated and when the shares of Belle rose, so did those of Mirabell. However, they had very different PE ratios, Belle’s PE was around 60 something whereas that of Mirabell around 10 something.

Also, he had regard to the fact that the share price of Mirabell had fallen from \$11.00 per share, at the end of 2007 and at the beginning of 2008, to about \$5.00 per share. As a result, he judged it safe to buy.

Reports and Analyses.

120. Before he purchased Mirabell shares he had read investment reports on not only Belle but also the industry as a whole. They included reports from Citigroup, Goldman Sachs, UBS and Credit Suisse. He did so on the Internet, accessing their websites. He downloaded the Annual Report of Mirabell and analysed its financial statements before buying Mirabell shares. Also, he conducted a similar analysis on Belle. He did so mostly on his own computer but also on his computer at work. He agreed to provide to the SFC officers copies of such analyses conducted before his purchase of Mirabell shares, if they were still available on his computer. Similarly, he agreed to provide copies of the reports of analysts that he had read if they too were available to him. At the requests of him for the provision of that information the SFC officers made it clear to Mr Zhang that they were only interested in material that was available to and used by Mr Zhang before his purchase of Mirabell shares.

121. Mr Zhang described his knowledge of the businesses of both Belle and Mirabell. Mirabell had approximately 400 odd retail outlets in Mainland China whereas in Hong Kong it had 120 odd outlets, one of which was at IFC which he had visited before buying it shares. Belle was the largest ladies footwear manufacturer in China and sold Adidas and other brands. The two companies had family connections: Tang Yiu and Tang Wai Lam were family members. Of that, he said :

“Belle is a related party of Mirabell.”.

122. Mr Zhang said that he and Ms Liu Yan Yan observed their respective duties of confidentiality in respect of work-related matters and did not discuss their respective confidential work projects. As a result, he did not know that she had been working on a project related to Belle or Mirabell. He did not discuss the subject of company shares with her because she :

“ ... from my viewpoint, she’s really an idiot in stock investment. She was just so investment illiterate. She understands nothing.”.

He said that Ms Liu Yan Yan never bought shares for herself.

Mr Zhang’s failure to report his dealings in shares to Access Capital Limited.

123. In a reply to the SFC, dated 11 June 2010, Access Capital Limited said that Mr Zhang had not reported his dealings in securities, as required by the company in its ‘Operating Manual and Staff Handbook’ until after the SFC had executed a search of Access Capital Limited including Mr Zhang’s computer. In a letter dated 7 January 2008, Mr Zhang had acknowledged to his employer that he had read the ‘Operating Manual and Staff Handbook’.

Material supplied to the SFC by Mr Zhang.

124. Attached to a letter received by the SFC on 3 June 2008 from Mr Zhang, were research reports by Credit Suisse and JP Morgan dated 18 February 2008 and one by UBS in which Belle was mentioned, together with a newspaper article dated 11 May 2007 which referred to the IPO of Belle and asserted that Mirabell had good prospects. None of the analyst’s report referred to Mirabell at all. Also, attached was a spreadsheet headed :

“Belle (1880) Analysis” “Financial analysis”.

It contained a review of actual results together with forecast results for 2008 and 2009. The forecast results for 2008 and 2009 in respect of “Gross profit” and “Net

profit” called for significant increases over actual results for the immediate previous years.

125. The hard disk of Mr Zhang’s office computer was found to contain the same spreadsheet named “belle peers (1).xls”. An examination of the hard disk by Mr Teddy Lau, of the SFC, revealed that it had been created on 2 June 2008, namely after Mr Zhang’s interview by officers of the SFC on the 23 May 2008.

126. Mr Liu Miao, an analyst at Credit Suisse in Hong Kong said in a record of interview with the SFC, dated 27 October 2008, that at the request of Mr Zhang in a telephone conversation he had e-mailed him on the evening of 26 May 2008 a copy of the Credit Suisse report dated 18 February 2008.

Chapter 5

SUBMISSIONS ON BEHALF OF MS LIU YAN YAN

127. Mr Kenny submitted full written submissions and made oral submissions in closing.

128. It was submitted on behalf of Ms Liu Yan Yan that she was not a person who fell within the phrase “connected with the corporation” for the purposes of section 247(1)(c) and (d) of the SFO. She did not occupy a position “...which may reasonably be expected to give [her] access to relevant information in relation to the corporation ...” by reason of Norton Rose’s professional relationship with the corporation. In support of the submission, reliance was placed on the evidence of Ms Liza Lee that information as to the identity of the offeror and offeree had been deliberately kept from Ms Liu Yan Yan and to the evidence of what it was asserted was her “peripheral” involvement with project “Miracle” until the evening of 22 February 2008.

“Special knowledge”.

129. It was submitted on behalf of Ms Liu Yan Yan that there was no evidence that she was possessed of “special knowledge” that would enable her to identify Belle as the offeror and Mirabell as the offeree in the transaction on which she and others at Norton Rose were working.

Ms Liu Yan Yan's evidence : inherent improbabilities, the standard of proof and the drawing of adverse inferences.

130. Mr Kenny submitted that the allegations against Ms Liu Yan Yan were “at the upper end of seriousness that can be inquired into by a Tribunal”. The conduct could have been the subject of criminal proceedings. The consequences of being found to be culpable of insider dealing were “typically of grave severity”. The evidence must be sufficiently compelling to overcome the improbability of the serious allegation being true. In particular :

“to overcome the inherent unlikelihood of her conducting herself in such a way as to imperil the progress of her fledgeling career as a solicitor, for which she has strived over many years of excellent academic achievement and determined work as a paralegal, by embarking on a course of flagrant breaches of client confidentiality for the sake of some relatively trifling profit resulting from unconcealed trading in stocks.”.

131. The Tribunal was invited to take into account in its assessment of the credibility of Ms Liu Yan Yan that, although she was ordinarily resident in the Mainland, she had returned to Hong Kong and made herself available to give oral testimony. Also, she had revealed her role in project Olivia and had been active in seeking timesheets which evidenced that role.

Expert evidence.

132. In his closing oral submissions Mr Kenny made it clear that he took no issue with Mr Karl Lung's opinion that information of a general cash offer at a premium over the traded market price by Belle for the shares of Mirabell was “relevant information”. Rather, he took issue with “ ... whether relevant information was apparent from the transaction or documentation”. He submitted that it was not.

Chapter 6

A CONSIDERATION OF THE EVIDENCE

133. The Tribunal has approached its consideration of the evidence in accordance with the directions in law given to it by the Chairman.

“Relevant information”

134. We accept that Mr Karl Lung’s opinion, that on 21 and 22 February 2008 information of a general cash offer at a premium over the traded market price by Belle for the shares of the Mirabell was “relevant information”. Mr Kenny’s acceptance that was the case was appropriately made. That information was “specific”, in accordance with the directions of the Chairman. We accept Mr Karl Lung’s opinion that it was not generally known to those accustomed to or likely to deal in the shares of Mirabell but which if it was generally known to them would be likely to materially affect the price of Mirabell shares.

The Tribunal’s approach to Ms Liu Yan Yan’s case: Mr Zhang’s record of interview.

135. In its separate consideration of the case in respect of Ms Liu Yan Yan, the Tribunal has had regard to the statements made by her, in records of interview conducted of her by officers of the SFC, for all purposes, in particular both in respect of truth and inconsistency with her oral testimony given under affirmation in the Tribunal. It has taken account in her favour statements made outwith the Tribunal by Mr Zhang that are to her benefit but, in so far as there might be statements adverse to her interests made by him, the Tribunal has had no regard to such statements in its consideration of her case.

The Tribunal's approach to Mr Zhang's case.

136. In its separate consideration of the case in respect of Mr Zhang, the Tribunal has had regard to the statements made by him in records of interview conducted of him by officers of the SFC for all purposes. Also, it has taken into account in such consideration the oral testimony of Ms Liu Yan Yan, having regard to her statements made outwith the Tribunal only in respect of their inconsistency for purposes of determining the credibility of her testimony.

Was Ms Liu Yan Yan a "connected person" for purposes of section 247(1)(c) and (d) of the SFO?

137. By 18 February 2008, Ms Liu Yan Yan had been employed in the Corporate Finance Department of Norton Rose for over five months. There is no dispute that the partner who assigned her work was Ms Liza Lee. She herself described her work as being within a team and her role as varying depending on the distribution of work within the team. Of her role, it is to be noted that having worked on project Olivia, resulting in the acquisition of Ossia by Belle, at Ms Liza Lee's invitation she attended the signing ceremony in Shenzhen on 27 October 2007. Similarly, she said that in February 2008 as project Harvard came to fruition she had been assigned to take charge of the closing part. She took that as evidencing the responsibility and trust reposed in her.

138. The difficulties of constructing and maintaining a "Chinese wall" generally, but more particularly within a team working on a project, were illustrated by evidence the Tribunal received. Although Ms Liza Lee said that neither she nor Ms Doris Ng had told Ms Liu Yan Yan that Mirabell was the target of the acquisition or of the relationship of cousin between offeror and offeree, and had not done so

because there was no “need to know” basis for so doing, she also testified that she had been circulated with the drafts of the irrevocable undertaking not because she was involved in that work but :

“ ... because she’s in the team and also she helped in the preparation of the announcement, so we also include her, to keep everyone on the same page.”.

Similarly, the name “Belle” was part of the file title of the attachment to the e-mail sent by Ms Doris Ng to Ms Liza Lee at 18:39 on 18 February 2008, which Ms Liu Yan Yan accepted that she had not only accessed but also saved to her own computer

139. We are satisfied that on and between 18 and 22 February 2008 Ms Liu Yan Yan occupied a position, as a member of a small team of four persons in the Corporate Finance Department of Norton Rose working on the proposed project for the acquisition of Mirabell by Belle, which may reasonably be expected to give her access to that relevant information. She was a “connected person” in respect of Mirabell.

The issues.

140. A number of issues that are relevant to the considerations of the Tribunal can be identified by way of rhetorical questions :

- Did Ms Liu Yan Yan possess “relevant information” in relation to Mirabell?
- If so, did Ms Liu Yan Yan, knowing that the information was relevant information in relation to Mirabell, disclose the information to Mr Zhang?
- If so, did she do so knowing or having reasonable cause to believe that Mr Zhang would make use of the information for the purpose of dealing in the shares of Mirabell?

- Did Mr Zhang deal in the shares of Mirabell possessed of information which he knew to be “relevant information” in relation to Mirabell?
- If so, did Mr Zhang receive that information from Ms Liu Yan Yan knowing her to be connected with Mirabell?
- If so did he know or have reasonable cause to believe that she held that information as a result of being connected with Mirabell?

Credibility : Ms Liu Yan Yan.

141. In approaching a consideration of the credibility of Ms Liu Yan Yan and mindful of the Chairman’s directions in law, in particular in respect of good character and the drawing of adverse inferences, at the outset the Tribunal acknowledges the improbability of Ms Liu Yan Yan having committed the impugned conduct.

142. Nevertheless, we are satisfied that in her video recorded records of interview Ms Liu Yan Yan gave answers to specific inquiries of the SFC officers that were false and misleading. We have had regard to that finding, in respect of her credibility. Further, when confronted in cross-examination with the obvious falsehood of those assertions outwith the Tribunal, Ms Liu Yan Yan was not frank with the Tribunal, rather she resorted to obfuscation and prevarication.

Ms Liu Yan Yan’s involvement with project “Olivia”.

143. As noted earlier, when asked by the SFC officers outwith the Tribunal, in the context of Mr Zhang’s purchase of Belle’s shares in the several days before the announcement of the proposed acquisition of Ossia on 28 October 2007, if she had had known about the prospective acquisition before Mr Zhang bought the shares she asserted falsely :

“I did not work on the project in October.”.

Ms Liu Yan Yan’s timesheets speak eloquently to that falsehood, recording that she had worked just less than 60 hours in total on project Olivia in late September and October 2007.

144. In her testimony in the Tribunal, she sought to explain and justify her falsehood on the basis that such work that she had done on the project was “too trivial to mention”. Her assertion in her written statement dated 26 July 2010, and presented to the Tribunal as her evidence-in-chief of an additional reason, namely that she felt that the SFC officers would not believe her if she told them the “whole story” of her participation in the project, is a clear admission that she knowingly misled the SFC officers.

145. The context in which Ms Liu Yan Yan’s false account to the SFC officers and her justification and explanation to the Tribunal is to be viewed is that the SFC’s inquiry was in respect of purchases of Belle shares that were made in the account of Mr Zhang with HSBC into which were deposited the proceeds of the sale of shares in Ms Liu Yan Yan’s Bank of China account. The Belle shares were sold in Mr Zhang’s account in early November at a significant profit. Relevant to inquiries being made by the SFC officers was Ms Liu Yan Yan’s familiarity with and knowledge of corporate information relating to Belle for purposes of their investigation into the purchase of Mirabell shares by Mr Zhang in February 2008.

Ms Liu Yan Yan’s understanding of the terms “GO” and “CT”.

146. Ms Liu Yan Yan’s assertion in her interview of 28 August 2008 of her understanding in February 2008 of the terms “GO” and “CT” used in the file title of a version of the joint announcement, namely that :

“I did not quite understand what GO represented, nor did I know much about CT, at that time”

was clearly false, as is evidenced by her contemporaneous entries in her timesheet and the work that she was contributing to the team in project “Miracle”. Similarly, we reject her explanations to the Tribunal in her testimony of a lack of understanding of those terms at the time that she did the work and at the time at which she gave the answers to the SFC.

147. In her testimony before the Tribunal, Ms Liu Yan Yan sought to present a picture of someone not only occupying a peripheral role in the work of the team on project “Miracle” but also unable to recognise the significance of various features of the documentation on which she was working. It is to be acknowledged that her role was that of a trainee solicitor working with an experienced partner and an associate solicitor, helped by the partner’s secretary. On the other hand, Ms Liu Yan Yan was not a neophyte in the commercial legal world having worked for about 18 months at each of PC Woo & Co, and Sullivan & Cromwell LPP. For the former, she worked from November 2004 to March 2006 as a “China legal advisor” “researching on China regulatory compliance issues, conducting due diligence, performing verification”.

148. In a letter of reference provided by a partner of P.C. Woo & Co, Ms Emily Lam, she was described as a good employee :

“(with) strong work ethic, the ability to solve problems sensibly even under pressure, reliable, a good team player and eagerness to learn new things and face new challenges.”.

That identification of her qualities resonated with her excellent academic qualifications and the assertive manner in which she gave evidence in the Tribunal.

Ms Liu Yan Yan's evidence of her understanding of the significance of terms used in the draft Belle documentation : offer "above the market price"; "cash".

149. We reject her testimony in cross-examination that she did not realise the significance of the references in the documentation that she viewed in the course of her work on project "Miracle" of the fact that it was asserted that the offer was to be at a price "which is above the market price of offer shares on the Last Trading Date" and that the offer was to be a "cash" offer. Of the former, she testified that she did not "... realise the meaning of the price". Of the latter, she testified "... I really had no idea or knowledge what is the difference between cash offer or non-cash offer".

150. The significance of the subject matter of that testimony is that they were matters that go to the nub of the issue of relevant information. A cash offer at a price above the market price of the shares on the last day of trading is a matter relevant generally and, in particular, to the issue of price sensitivity.

Ms Liu Yan Yan's understanding and compliance with her duties to Norton Rose.

151. Although Ms Liu Yan Yan was at pains to stress in her statement, dated 26 July 2010, that she was not only acquainted but also compliant with her duties as a trainee solicitor at Norton Rose, in particular in respect of confidentiality, in face of the discovery of files bearing the title "Belle", albeit not related to project "Miracle" she conceded that in e-mailing that material and accessing it on her personal computer at home she had breached Norton Rose's rules of confidentiality. She sought to explain her assertion at her home on 6 June 2008 to the SFC officers searching her home "that she never brought office work back home" as being a reference to hardcopy documents only. Obviously, that is not what she said nor, in an age of prevalent use of electronic documentation, is it the meaning conveyed.

152. Ms Liu Yan Yan's answers in cross-examination as to why it was that, on her account on her discovery in the first or second week of October 2007 that Mr Zhang was trading in shares in her Bank of China account, she had not reported the matter to Norton Rose are not only further illustrations of prevarication but also of her conduct based on self-interest. We are satisfied that she knew that her relationship with Mr Zhang placed him within the ambit of the phrase used in the Norton Rose Compliance documentation of "common-law spouse". Her suggestions to the contrary in evidence were disingenuous. She knew that the trading in her account ought to have been reported in Norton Rose. However, to have done so would, as she acknowledged in cross-examination, expose her to "... some negative impact on my work."

Did Ms Liu Yan Yan possess "relevant information"?

The identity of Belle as the offeror.

153. We reject Ms Liu Yan Yan's testimony that she did not identify Belle as the offeror in project "Miracle" until after close of trading on 22 February 2008. As Ms Liu Yan Yan conceded, the name Belle appeared in the title of the file of the two attachments to the e-mail sent by Ms Doris Ng to Ms Liza Lee at 18:39 on 18 February 2008. She accepted that not only had she accessed those files, between 13:38 and 22:12 on 19 February 2008, but also that she had saved them to her own office computer. Accordingly, the issue is not that Ms Liu Yan Yan had no information about the identity of the offeror but whether or not her evidence is or might be true that she treated the document on the basis that it might simply be a precedent developed from a previous Belle transaction. We reject that assertion and are satisfied that, from her reading of this material, Ms Liu Yan Yan knew on 19 February 2008 that Belle was the offeror in the contemplated project. It is to be

remembered that Belle had become a publicly listed company in only May 2007 and that Ms Liu Yan Yan had worked on Belle's project Olivia from 27 September 2007. Clearly, the joint announcement involved publicly listed companies.

The nature of the offer "Cash" and "above the market price of offer shares on the Last Trading Date".

154. As noted earlier, in cross-examination Ms Liu Yan Yan accepted that she had information from the draft document that she accessed in project "Miracle" that stated in terms that the offer was to be by way of "cash" and to be at a price "above the market price of offer shares on the Last Trading Date". The offer letter sent by e-mail at 18:05 on 19 February 2008 by Ms Alice Lee, inter alia, to Ms Liu Yan Yan identified the offer as being in "cash". Ms Liu Yan Yan accepted that between 14:56 and 16:32 on 19 February 2008 she had worked on a draft of that letter. As determined earlier, we reject Ms Liu Yan Yan's testimony that she did not understand the significance to be attached to the fact that it was a cash offer.

155. The draft of the joint announcement attached to the e-mail of 18:39, 18 February 2008, accessed on the afternoon and evening of 19 February 2008 by Ms Liu Yan Yan, stated in terms that the offer was "at a price which is above the market price of Offer Shares on the Last Trading Date". As determined earlier, we reject Ms Liu Yan Yan's testimony that she did not understand the significance to be attached to that statement.

156. In combination, the two statements identified an obvious benefit, namely that the holders of Mirabell shares would be offered a price in cash greater than that at the last date of trading of those shares.

The identity of the offeree.

157. There was no dispute that at 21:53 on 19 February 2008 Ms Liu Yan Yan had sent an e-mail to Ms Doris Ng to which was attached “Board minutes ...” in which the text stated :

“[B] ... is a controlling shareholder and an executive director of the company and is accordingly a connected person of the company. [B]’s cousin [*] is interested in [*]% in [A], being the controlling shareholder of TargetCo ...”

She had created, checked out and e-mailed the document. We accept the Presenting Officer Mr Choy’s submission that it would be extraordinary if a template condescended to specific detail of connected persons being in a relationship of cousins. We are satisfied that Ms Liu Yan Yan drafted the paragraph, although there is no evidence of the circumstances in which she did so. Nevertheless, the act of drafting itself focused Ms Liu Yan Yan’s attention on the nature of the relationship.

158. Again, there was no dispute that the updated version of the joint announcement, accessed by Ms Liu Yan Yan between 10:26 and 17:05 on 20 February 2008, contained a description of the relationship of cousins between the parties, now identifying the controlling shareholder of the offeror by the title Mr and a different alphabetic designation [T] :

“As at the date of this announcement, [Mr T] is one of the controlling shareholders (which has the meaning as defined in the Listing Rules) of Billy. Mr X is the cousin of Mr T and is interested in [*] of the Controlling Shareholder which has, by an Irrevocable Undertaking dated [*], irrevocably undertaken to accept the offer (as and when it is made) in respect of all offer shares held by it.”.

159. Ms Liu Yan Yan accepted that the “Global Offering” document issued by Belle in its IPO in May 2007 identified the relationship between the shareholders having controlling interest in Mirabell and Mr Tang Yiu of Belle :

“Mirabell Footwear is, a limited liability company established in Hong Kong, is a wholly-owned subsidiary of Mirabell. Mirabell is a company listed on the Hong Kong stock exchange and is held as to more than 50% by Mr Tang Keung Lam and Mr Tang Wai Lam (collectively ‘Mr Y Tang’s cousins’) collectively, who are both cousins of Mr Y Tang.

Pursuant to the Listing Rules, Mr Y Tang, being our Executive Director, our chairman and a controlling shareholder, is a connected person of our company.”.

Also, immediately prior to that paragraph the nature of Mirabell’s relationship with Belle was described :

“ ... the Group sold certain footwear products which were manufactured by the Group to Mirabell Footwear Limited ... which were then on sold by Mirabell Footwear as part of their retail sales in the PRC and Hong Kong.”.

160. Clearly, by 20 February 2008 Ms Liu Yan Yan had available to her abundant information upon which she could identify Mirabell as the target of Belle’s proposed acquisition : it was a footwear retailer, and therefore a prospective target of Belle, and a relationship of cousins existed between the controlling shareholder of Belle, Mr Y Tang, and two of the shareholders of Mirabell.

161. We are satisfied that as intelligent and hard-working trainee, described in the PC Woo letter of reference as having an “eagerness to learn new things and face new challenges”, in the many hours that Ms Liu Yan Yan had spent in working on projects of Belle she acquainted herself with the information in respect of Belle’s relationship with Mirabell and that by 20 February 2008 she had readily identified Mirabell as the target of Belle’s acquisition.

Did Ms Liu Yan Yan, knowing that the information was relevant information in relation to Mirabell, disclose that information to Mr Zhang?

Ms Liu Yan Yan’s relationship with Mr Zhang in February 2008.

162. There is no dispute that in the second half of 2007 Ms Liu Yan Yan and Mr Zhang enjoyed an intimate relationship which extended to their financial affairs.

They cohabited at Ms Liu Yan Yan's home. She permitted him to use her Bank of China account, into which she deposited over \$150,000.00. At his request she opened a joint bank account into which she deposited a total of \$155,000.00 from her Bank of China account on 31 October and 3 November 2007. In the account opening documents they were described as being "married". All of that money was removed immediately to Mr Zhang's HSBC account, without demur from Ms Liu Yan Yan.

163. Although the computer file "Investment Portfolio 23 November 2007.xls", found on Mr Zhang's personal laptop, attributes a contribution of \$210,000.00 to the portfolio from Ms Liu Yan Yan by reference to the name "Yan Yan", that sum of money is not matched with the identified transfers of money from Ms Liu Yan Yan for the use of Mr Zhang. Given that the computer file was created in November 2007 and is in the nature of a contemporaneous business record the Tribunal has had regard to the document in its consideration of Ms Liu Yan Yan's case. However, in face of her denial of any knowledge whatsoever of such a portfolio and in the absence of oral testimony from Mr Zhang in respect of the issue, the Tribunal places no weight at all on that evidence.

164. It was Ms Liu Yan Yan's evidence that their relationship of boyfriend/girlfriend came to an end in December 2007 on her discovery that Mr Zhang had been unfaithful with a girl in Thailand and contracted "NHIV". However, there is no dispute that they continued to cohabit and travel to and from Hong Kong together on occasions. Ms Liu Yan Yan accepted that on Valentine's Day Mr Zhang had sent her flowers. On each of 18 and 19 February 2008, Ms Liu Yan Yan sent Mr Zhang e-mail's inquiring whether he was free to join her for lunch. In multiple e-mails that passed between them on 20 February 2008, he

sought her assistance in respect of a draft document upon which he was working at Access Capital Limited. In her replies, Ms Liu Yan Yan offered fulsome encouragement to Mr Zhang. Further, she accepted that in her e-mail of 17 March 2008 to Ms Alice Lee she referred to Mr Zhang as her boyfriend. Similarly, on 6 June 2008, when officers of the SFC executed a search warrant on the premises in which she and Mr Zhang cohabited, she described their relationship as boyfriend and girlfriend. She gave the same answer repeatedly in her record of interview of 14 August 2008.

165. Although Ms Liu Yan Yan accepted that many of the references in the “Calendar” found on Mr Zhang’s work computer accurately reflected events she took issue with the suggestion that the entry for 23 May 2008, namely “SFC ID (1179 & 1880) informed Yanyan at night”, recorded the fact that she had been informed by Mr Zhang of inquiries made of him by the SFC into his dealings in Mirabell shares. Given that the computer file was created on 3 June 2008, after Mr Zhang's interview by the SFC, and in the absence of oral testimony by him the Tribunal places no weight at all on the material contained in the calendar disputed by Ms Liu Yan Yan.

166. We are satisfied that in the first half of 2008, in particular in the period 18-22 February, Ms Liu Yan Yan and Mr Zhang continued to enjoy an intimate close relationship. Notwithstanding that obvious close relationship, we are satisfied that Ms Liu Yan Yan deliberately sought to present a contrary picture to the Tribunal and that she did so in order to distance herself from the allegation that she was the source of relevant information supplied to Mr Zhang on which he dealt in the shares of Mirabell on 21 and 22 February 2008.

Mr Zhang's assertions as to the reasons for his purchases of Mirabell shares.

167. As noted earlier, in his record of interview Mr Zhang asserted to the SFC officers that his purchase of Mirabell was the result of his own investment decision based on a number of factors, including information contained in reports of analysts and his own analysis of both Belle and Mirabell. Clearly, if that account was or might be true it would be favourable to the case in respect of Ms Liu Yan Yan and, as noted earlier, a matter to which the Tribunal would have regard in its considerations. Of course, it is a matter to which the Tribunal will have regard in its separate consideration of the case against Mr Zhang.

168. We reject Mr Zhang's assertion to the SFC officers, outwith the Tribunal, that his purchase of Mirabell shares had been based on a careful and calculated investment decision reached after consideration of the report of analysts and his own financial analyses of both Belle and Mirabell. The undisputed evidence is that the analysis of Belle, provided to the SFC by Mr Zhang in his letter of 3 June 2008, was created on his work computer at Access Capital Limited on 2 June 2008. Accordingly, it was not an analysis to which he had regard prior to his purchases of Mirabell shares on 21 and 22 February 2008. Furthermore, the Credit Suisse report dated 18 February 2008 and provided to the SFC in the same letter from Mr Zhang was not a report obtained from his own records. We accept that it was obtained on 26 May 2008, after his record of interview with the SFC, from a colleague at Credit Suisse. In any event, it contained no information directly relevant to Mirabell. Finally, Mr Zhang's assertion that the price of Mirabell shares at the end of 2007 on the beginning of 2008 was \$11.00 is simply not borne out by the "Stock Historical Data" records available to the Tribunal. In the six-month period ended

29 February 2008, the highest price at which they had traded was \$6.29 on 6 November 2007.

169. In considering what role, if any, Ms Liu Yan Yan played in the purchase of Mirabell shares on 21 and 22 February 2008 by Mr Zhang it is to be noted that this was the second occasion on which Mr Zhang had bought a very substantial money amount of shares in a particular company for the very first time at the very same time that Ms Liu Yan Yan was engaged in a project on behalf of Norton Rose which involved a transaction concerning the company whose shares were acquired by Mr Zhang. In October 2007, Mr Zhang had purchased shares in Belle, commencing 2 October 2007, shortly after Ms Liu Yan Yan began working on 27 September 2007 on project “Olivia”, namely the acquisition of Ossia by Belle. Most of the Belle shares acquired by Mr Zhang were acquired in the several days immediately before the announcement of the acquisition on 28 October 2007 to a total cost of \$1,556,750.57. In consequence of those purchases of Mirabell shares, Mr Zhang’s account with HSBC was overdrawn to the extent of \$646,550.08 on 29 October 2007. On 31 October and 3 November 2007, Ms Liu Yan Yan transferred \$83,000.00 and \$72,000.00 respectively from the Bank of China account to the joint account she held with Mr Zhang with the same bank. Those monies were withdrawn immediately in cash. Deposits in cash of matching amounts were made to Mr Zhang’s account with HSBC on the same date as the withdrawals, contributing thereby to a reduction in the overdraft.

170. One consequence of the method by which the monies moved from the account of Ms Liu Yan Yan with the Bank of China, ultimately to the account of Mr Zhang with HSBC, was that there was no immediately discoverable direct link between monies used to pay for the purchase of Belle shares and Ms Liu Yan Yan.

Given the undisputed intimate relationship enjoyed by Ms Liu Yan Yan and Mr Zhang at the time, the fact that she was the source of all the monies transferred to the joint account in which account opening documentation they were described as “married” we do not accept her assertion in her witness statement that she did not know until investigations by the SFC that the monies had been withdrawn in cash immediately by Mr Zhang. Not only was the account a joint account in which Ms Liu Yan Yan was a named party but also the address provided to the bank in the account opening documentation was the domestic address at which they cohabited. It is to be noted that the monies so withdrawn represented about four months salary for Ms Liu Yan Yan. On 5, 6 and 7 November all those Belle shares in Mr Zhang’s account were sold at a considerable profit, namely \$212,374.88.

171. Mr Zhang’s acquisition of Mirabell shares for the very first time on 21 and 22 February 2008 costed \$982,763.30 and resulted in an overdraft of over \$65,000.00 in his HSBC account. In March and April 2008, Mr Zhang sold those Mirabell shares for a total profit of \$72,979.44. As we determined earlier, by 20 February 2008 Ms Liu Yan Yan had available to her information from which she had identified Mirabell as the target of Belle’s acquisition. Equally, as a member of a team of four busily working at Norton Rose on the project we are sure that she was aware that the timeline for completion of the project was very limited and that an announcement was imminent. We are satisfied that Ms Liu Yan Yan knew that the information that she possessed, namely that a general offer in cash was to be made by Belle for the shares of Mirabell at a price greater than the last traded market price was relevant information. In all the circumstances, in particular having regard to their intimate relationship, we are sure that the only and irresistible inference to draw is that, knowing that she was possessed of relevant

information in respect of Mirabell, Ms Liu Yan Yan disclosed that information to Mr Zhang prior to his purchase of Mirabell shares.

Did Ms Liu Yan Yan know or have reasonable cause to believe that Mr Zhang would make use of the relevant information for the purpose of dealing the shares of Mirabell?

172. We have no hesitation whatsoever in finding that in disclosing relevant information in respect of Mirabell to Mr Zhang, Ms Liu Yan Yan did so in the knowledge that he would make use of that information for the purpose of dealing the shares of Mirabell. We are satisfied that not only did she know that Mr Zhang had traded in shares in September and early October 2007, she having provided the funds for him to do so, but also that he continued to trade in shares thereafter.

Mr Zhang : a reasonable opportunity of being heard by the Tribunal.

173. As noted earlier, the Chairman directed the Tribunal that section 252(5) of the Ordinance provided that the Tribunal should not identify a person as having engaged in market misconduct without first giving the person a reasonable opportunity of being heard. Mr Zhang has not participated in any way in these proceedings; he has not been represented nor has he given oral evidence or invited the Tribunal to receive any material or submissions.

174. We accept the evidence of Ms Liu Yan Yan, confirmed by the Immigration Department's travel movement records of Mr Zhang, that having ceased employment with Access Capital Limited on 11 June 2008, he left Hong Kong on 3 August 2008.

175. Notwithstanding Mr Zhang's failure to participate in these proceedings the Tribunal accepts the evidence of Mr Chan Ho Yin, set out in his statements of 19 July and 16 August 2010³, of the continuous service of material on Mr Zhang, including by delivery and post, at his last known residential address in Beijing and by electronic mail transmission to his last known electronic mail address in the Mainland. The material served on Mr Zhang commenced with the Notice of the Financial Secretary, dated 25 February 2010, instituting these proceedings and included all the material received by the Tribunal, notices of prospective hearings and the transcript of all those hearings. In the result, the Tribunal is satisfied that Mr Zhang has been afforded a reasonable opportunity of being heard in these proceedings.

Did Mr Zhang deal in the shares of Mirabell possessed of information which he knew to be relevant information in relation to Mirabell.

176. There is no issue that Mr Zhang bought a total of 143,000 Mirabell shares on 21 and 22 February 2008 in his account with HSBC. At issue, is what information was available to him when he made those purchases. As noted earlier, we reject Mr Zhang's assertion in his record of interview that he made his purchases of Mirabell shares as a result of an investment decision, in part based on his analysis of both Belle and Mirabell and on reading the reports of analysts. We are satisfied that in providing the SFC on 3 June 2008 with a copy of an analysis of Belle created on 2 June 2008 Mr Zhang was seeking to mislead the SFC. We have no doubt at all that he knew, as he had been told repeatedly in the record of interview, that the SFC invited him to provide them with material that he had used prior to his purchase of Mirabell shares not material created subsequently. Similarly, he sought to mislead the SFC in providing them with a copy of the

³ Appendix 2

Credit Suisse report dated 18 February 2008, which report he had obtained not only after the purchase of Mirabell shares on 21 and 22 February 2008 but also after his record of interview. We are satisfied that these are matters that are relevant to his credibility in respect of matters asserted in his record of interview.

177. It is to be noted that, although Mr Zhang repeatedly informed the SFC in his record of interview that he had sustained a loss in his purchase of Belle shares, that being a reference to his purchase of Belle shares in November 2007, he made no mention to them of the profit of over \$200,000.00 that he made in consequence of his purchase of Belle shares in October 2007 prior to the announcement of Belle's acquisition of Ossia. The context in which we have regard to that obvious omission is that in October 2007 Ms Liu Yan Yan worked about 50 hours on the project that led to the acquisition of Ossia by Belle.

178. We accept Mr Zhang's statements in his record of interview that he and Ms Liu Yan Yan enjoyed a "very intimate" relationship, qualified as it was by the observation that he had made no proposal of marriage and there remained the issue of a disparity in their ages. Clearly, that intimate relationship extended to their financial affairs as evidenced by the movement of monies between their respective bank accounts and the fact that a joint bank account was opened in their names in October 2007. We do not accept his assertion that he never discussed purchases of shares with Ms Liu Yan Yan nor that she was "an idiot-illiterate", that she understood "nothing at all" and that she was "stupid" in respect of her knowledge of investment in shares. From September 2007, Ms Liu Yan Yan was a trainee solicitor in the Corporate Finance Department of a world-renown firm of solicitors, having worked previously for several years with two other commercial firms of solicitors.

179. We reject Mr Zhang's assertion in his record of interview, that he did not know of the material contents of the joint announcement of Belle and Mirabell of 28 February 2008 prior to that announcement. In light of our rejection of Mr Zhang's assertion that he had purchased Mirabell shares as a considered and calculated business investment decision, in part based on investment analysts' reports and his own analyses of both Belle and Mirabell, it remains to be considered why it was that he bought over \$900,000.00 of Mirabell shares for the very first time on 21 and 22 February 2008. We are satisfied that the only and irresistible inference to be drawn is that he did so because he was possessed of relevant information in respect of Mirabell, received from Ms Liu Yan Yan, in particular that preparations were at an advanced stage for the making imminently of a joint announcement by Belle and Mirabell of an offer to acquire the shares of the latter by the former for a cash price above the then traded market price, which information was not known to those accustomed to or likely to trade in the shares of Mirabell but which if known would be likely to materially affect the price of Mirabell shares.

Did Mr Zhang receive that information from Ms Liu Yan Yan knowing her to be connected with Mirabell?

180. We are satisfied that Mr Zhang knew that Ms Liu Yan Yan was working on a project at Norton Rose for the acquisition by its client Belle of Mirabell shares and that she was thereby connected with Mirabell.

Did Mr Zhang know or have reasonable cause to believe that she held that information as a result of being connected with Mirabell?

181. In all circumstances, we are satisfied that Mr Zhang knew that Ms Liu Yan Yan held that the relevant information disclosed to him in respect of Mirabell as a result of her connection with Mirabell in her work for Norton Rose’s client, namely Belle.

CONCLUSION

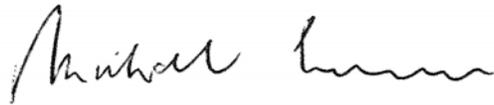
182. Accordingly, pursuant to section 252(3) of the Ordinance, the Tribunal determines that Ms Liu Yan Yan engaged in insider dealing in that she, being a person connected with Mirabell, and knowing it to be relevant information disclosed to Mr Zhang information, prior to his purchases of Mirabell shares commencing on 21 February 2008, that Belle was to make a general cash offer for the shares of Mirabell above the last traded market price knowing that he would make use of the information for the purpose of dealing in Mirabell shares, contrary to section 270(1)(c) of the Ordinance. Secondly, the Tribunal determines that Mr Zhang engaged in insider dealing in that he dealt in the shares of Mirabell on 21 and 22 February 2008 knowing that he had relevant information in relation to Mirabell, which he had received from Ms Liu Yan Yan, whom he knew to be connected with Mirabell and whom he knew to hold that information by reason of being so connected, contrary to section 270(1)(e) of the Ordinance.

The amount of any profit gained.

183. The Tribunal proposes to determine the matter identified in the section 252(3)(c), namely:

“the amount of any profit gained...as a result of the market misconduct”

at a future hearing of the Tribunal, at which the Tribunal will receive and consider such material and submissions as are appropriate to the resolution of that issue.



The Hon Mr Justice Lunn
(Chairman)



Mrs Grace Chow
(Member)



Ms Stephanie Wong
(Member)

Dated 9 September 2010

REASONS FOR THE RULING OF THE MARKET MISCONDUCT TRIBUNAL

These are the reasons for the ruling that the Tribunal would receive an edited statement of Mr Karl Lung dated 9 July 2010 and his oral testimony in respect of those matters.

1. On 23 July 2010, having conducted a *voire dire* on the issue, the Tribunal ruled that it would received an edited version of the statement of Mr Karl Lung dated 9 July 2010 and his oral testimony in respect of the matters addressed in that edited statement. In giving that ruling the Chairman of the Tribunal said :

“Mr Kenny said that the Tribunal ought not to permit Mr Karl Lung to give evidence as an expert in these proceedings. Originally, he questioned his expertise. However, when Mr Lung was called to give evidence on the issues raised by the challenge, no questions were put to him by Mr Kenny in respect of his expertise. Subsequently, Mr Kenny informed Tribunal that the challenge to expertise fell away. Similarly the challenge to competence fell away.

Outstanding is a challenge on the basis of bias. Mr Kenny submits that Mr Lung has evidenced bias by acting improperly as an advocate for the Securities and Futures Commission in his two statements that are before the Tribunal.

We reject that submission and are satisfied that Mr Lung has not evidenced bias as alleged, namely, through in proper advocacy for the Securities and Futures Commission, or at all. We rule that he may give evidence as an expert witness. We will give more detailed reasons in due course.

We will receive and consider Mr Lung’s statement of 9 July 2010, save that the following paragraph or sentences are to be excised: paragraph 17, the first two sentences; paragraph 25 to 32; paragraph 33, or the paragraph, save the first sentence; paragraph 42, the first sentence to be excised.”.

2. In the material served upon the Tribunal and the parties by the Presenting Officer on 14 April 2010 there was a document described as a statement of Mr Karl Lung dated 12 March 2009. At a conference conducted by the Chairman on 20

May 2010, pursuant to a section 30 of Schedule 9 of the Securities and Futures Ordinance, Cap 571 Mr Kenny indicated that if the Tribunal determined that the receipt of expert testimony was required he wished to cross-examine Mr Karl Lung. In a written submission, dated 21 June 2010, Mr Kenny outlined objections to the receipt of expert evidence from Mr Karl Lung including the assertion that he had acted as an advocate :

“ ... for the suspicions, or assumptions or views of the SFC, seeking to persuade the Tribunal as to the state of knowledge of Ms Liu - an issue for the Tribunal alone to decide and the matter outside the claimed area of Mr Lung’s expertise.”.

3. At the first hearing of the Tribunal, as fully constituted, on 25 June 2010 the Chairman stated that the Tribunal proposed delaying a ruling on the receipt of expert evidence from Mr Karl Lung “...until we have a, let me call it proper statement from expert.” It was noted that the statement, dated 12 March 2009, pre-dated the appointment of the then Presenting Officer and did not contain any reference to a *curriculum vitae* upon which an application that Mr Karl Lung be treated as an expert might be made nor did it contain a declaration that he believed the opinions that he expressed were true. No doubt, in consequence a further statement of Mr Karl Lung dated 9 July 2010 were served on the Tribunal and the parties.

4. On 23 July 2010, the Tribunal conducted a *voire dire* in respect of the issue are of whether or not it ought to receive as expert evidence the statement dated 9 July 2010 and the oral testimony of Mr Karl Lung. He gave oral evidence in the *voire dire* and was cross-examined by Mr Kenny.

5. The nub of the objection made by Mr Kenny to the receipt of Mr Karl Lung’s statement and oral testimony was that in his two statements he had gone

outside the ambit of his expertise and trespassed on areas of finding of facts that well for the Tribunal and not an expert to determine. In particular, he had embarked upon an examination of how a person, possessed of the information contained in some of the documents identifying Belle as the offeror in the contemplated acquisition, could use that information to identify the offeree, namely Mirabell, from other of the documents provided to him. To do so, so it was submitted, was advocacy on behalf of the SFC and indicative of bias, contrary to the duties of an expert to be independent and impartial.

6. In the statement dated 9 July 2010 Mr Karl Lung had said:

“A person in possession of the document seen by the trainee could find out the identity of the target.

25. Assuming that the person was in possession of the Feb 18 Draft...the Feb 20 Draft...and the e-mail printout...and that the person intended to find out the identity of the target company, it will not be difficult for him/her to find that out/it only requires basic acknowledge and simply (sic) research and analysis work to identify that Mirabell is the target of the general offer.
26. As the contents of the Feb 18 Draft..... and Feb 20 Draft...were very similar, especially that both were related to a voluntary cash offer which is also a connected transaction, and both had the code “HOK#629969-v1” and“HOK#629969-v2” respectively on the bottom left corner of every pages should be obvious that both documents referred to the same transaction.
27. As the name “ Belle” was mentioned on the subject line of the e-mail, and also used as the filename of the attachment, it will be obvious the belle would be involved in this transaction. The only remaining tasks will be to find out the other company that was involved in the general offer.
28. It was mentioned on page 2 of Feb 18 Draft..... that there is a cousin relationship between the controlling shareholders of the offeror and offeree in the general offer, which was a very useful hint to find out the identity of the other company involved.
29. A person who had basic knowledge and corporate finance, whether working in the field or as an investor, should know that official documents issued by the company would have been the best starting point to look for such connection. As Belle was listed in May 2007, the public documents relating to the listing, which would be one of the most comprehensive

official document from a listed company, was still relatively up-to-date and it could be easily found in February 2008. This should be available to the public on the website of the Hong Kong Stock Exchange on the website of Belle. As a matter of fact, these documents are currently available in the two web sites of the date of the statement.

30. Such a relationship between the controlling shareholders of Belle and Mirabell was clearly disclosed on page 94 of Belle's Global Offering document...dated May 9, 2000 clear main heading 'CONNECTED TRANSACTION' and subheading 'Connected person of the Company'.
31. This relationship could be reconfirmed by looking at Mirabell's 2007 annual report (the latest available as of February 2008)...which made reference to the relationship between the controlling shareholders of the two companies on page 9 under the main heading 'MANAGEMENT DISCUSSION AND ANALYSIS' and subheading 'Associate of the Group'.
32. Finally, the business between Belle and Mirabell was similar and related. This provided further evidence to support that that (sic) Mirabell is most likely to be the other companies (sic) involved in the general offer.".

7. Mr Karl Lung's statement of 12 March 2009 (paragraphs 14-17) contained a similar, albeit less detail, analysis and conclusion.

8. Clearly, the matters there addressed by Mr Karl Lung were outwith the province of an expert and fell squarely within the determinations of fact to be made by the Tribunal itself. Accordingly, the Tribunal ordered those and similar passages excised from the statement it did receive from Mr Karl Lung dated 9 July 2010. The related issue was whether in including those impugned observations in his two statements Mr Karl Lung had evidenced advocacy and therefore bias on behalf of the SFC, such that he was not an independent and impartial expert witness.

9. The circumstances in which Mr Karl Lung had come to make the observations that he did in the passages quoted earlier in his statement of 9 July 2010 were that he had been sent an e-mail from Mr Lawrence Chan, a Manager in

the Enforcement Division of the Securities and Futures Commission dated 17 June 2010 in which he had been asked, inter alia, :

“4. Please illustrate how a person in possession of the documents seen by the trainee solicitor could find out the identity of the target.”.

10. Clearly, that request was wholly inappropriate, since it trespassed on the province of factual findings to be made by the Tribunal. It invited him to compound the error that he had made in intruding into that area of factual findings in his statement of 12 March 2009. We categorise that as an error on the basis that it was intended from inception that the report be presented to this Tribunal, rather than being used for some other purpose. The same qualification applies in respect of the request made in the letter of 14 October 2008 referred to below. In making that statement Mr Karl Lung said that he had been addressing the issue of whether or not certain information was “specific enough to be constituted as a relevant information”. Unfortunately, in the Briefing Note dated 4 March 2009 provided to Mr Karl Lung by Mr Lawrence Chan of the SFC, Mr Karl Lung had been pointed in a the wrong direction in that the question was posed in the context of whether certain information “possessed by the trainee solicitor” was specific. Similarly, in the “Agreement for Engagement” letter dated 14 October 2008 signed on behalf of the SFC and by Mr Karl Lung his attention was directed to “the information possessed by certain persons”. Obviously, the determination of whether or not information was possessed by a person is a factual finding to be made by the Tribunal. The real issue in this case for an expert was to give that opinion in respect of information contained in various documents.

11. Although we are satisfied that Mr Karl Lung ought not to have responded in his statement of 9 July 2010 to the direct question posed of him by Mr Lawrence

Chan as to how a person “could find out the identity of the target”, we have no hesitation whatsoever in rejecting the submission that in doing so he evidenced advocacy and bias on behalf of the SFC. We are satisfied that he is possessed of the requisite qualities of independence and impartiality such that he can give evidence as an expert witness.



The Hon Mr Justice Lunn
(Chairman)



Mrs Grace Chow
(Member)



Ms Stephanie Wong
(Member)

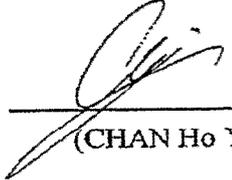
23 July 2010.

Statement of CHAN Ho Yin

1. I, CHAN Ho Yin, am a Manager with the Enforcement Division of the Securities and Futures Commission ("the Commission") at 8/F., Chater House, 8 Connaught Road Central, Hong Kong, wish to say as follows:

2. I have conducted the investigation in relation to the Market Misconduct Tribunal's inquiry into the shares of Mirabell International Holdings Limited ("Mirabell"). The attached Appendix A (Total: 6 pages) truly reflects the results of the efforts made by me and the colleagues of the Commission in serving the relevant notices and documents to ZHANG Bi Jia.

3. This statement consisting of 1 page in the English language has been read by and signed by me. It is true and correct to the best of my knowledge and belief.

Signature : 
(CHAN Ho Yin)

Date : 19 July 2010

**Appendix A: Services to Zhang Bi Jia ("Zhang") by the Securities and
Futures Commission in relation to the MMT's proceedings of
Mirabell International Holdings Limited**

<u>Service</u>	<u>Documents / Notices / Bundles</u>	<u>Date of Service</u>	<u>Mean of Service</u>	<u>Outcome of the Service</u>
1	<ul style="list-style-type: none"> • Notification letter dated 7 April 2010 • Letter of appointment of presenting officer dated 30 March 2010 • s252(2) Notice dated 25 February 2010 	12 April 2010	DHL	<p>DHL claimed that the delivery was made on 13, 14 and 16 April 2010 to Zhang's Beijing address¹ but in vain. DHL called Zhang but Zhang refused to accept the delivery of the mail (Zhang's mobile phone number² and Beijing home number³ were provided to DHL). Zhang also told DHL staff that he would call DHL if he decided to receive these documents.</p> <p>On 30 April 2010, DHL contacted Zhang again and attempted to serve him the documents but once again Zhang refused to accept the documents.</p> <p>Returned mail.</p>
	Synopsis dated 7 April 2010 (By preceding Presenting Officer – Peter Ip)	12 April 2010	DHL	Ditto
	Hearing Bundles (1 to 5) (By preceding Presenting Officer – Peter Ip)	12 April 2010	DHL	Ditto
	<ul style="list-style-type: none"> • Notification letter dated 7 April 2010 	15 April 2010	e-mail	e-mail to his last known private e-mail address ⁴ and sought confirmation whether Zhang had

¹ Zhang's last known permanent address was provided by his former employer – Access Capital Limited and Ms. Liu Yan Yan on 16 December 2009 and 9 September 2008 respectively

² Zhang's last known mobile phone number was provided by his former employer – Access Capital Limited on 16 December 2009

³ Zhang's Beijing home number was provided by his former employer – Access Capital Limited on 16 December 2009

⁴ Zhang's last known private e-mail address was provided by his former employer – Access Capital Limited on 16 December 2009. E-mail records of Zhang's office e-mail account also showed Zhang made use of this private e-mail address.

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<u>Service</u>	<u>Documents / Notices / Bundles</u>	<u>Date of Service</u>	<u>Mean of Service</u>	<u>Outcome of the Service</u>
	<ul style="list-style-type: none"> Letter of appointment of presenting officer dated 30 March 2010 s252(2) Notice dated 25 February 2010 			<p>any alternative correspondence address. However, no returned e-mail was received.</p> <p>Phone call by the SFC: On 15 April 2010, SFC's staff called Zhang's last known mobile phone number. Zhang answered the call. However, once SFC's staff informed Zhang of his identity, he hung up.</p> <p>Then SFC's staff called Zhang's number again, a gentleman answered the call. When he was told that it was a call from SFC in Hong Kong and SFC had documents to deliver to Zhang's home address in relation to Zhang's proceedings to be held in Hong Kong, this gentleman said that he would not accept the documents on behalf of Zhang and hung up.</p>
		19 April 2010	Airmail	Done without returned mail.
2	Letter from MMT dated 28 April 2010 to direct an MMT conference	28 April 2010	e-mail	e-mail to his last known private e-mail and sought confirmation whether Zhang had any alternative correspondence address. However, no returned e-mail was received.
		29 April 2010	Airmail	Done without returned mail.
		29 April 2010	Speedpost	Successfully delivered on 3 May 2010. However, returned mail back to SFC.
3	Transcript of 1 st MMT Conference on 5 May 2010	6 May 2010	e-mail	e-mail to his last known private e-mail and sought confirmation whether Zhang had any alternative correspondence

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<u>Service</u>	<u>Documents / Notices / Bundles</u>	<u>Date of Service</u>	<u>Mean of Service</u>	<u>Outcome of the Service</u>
				address. However, no returned e-mail was received.
		6 May 2010	Airmail	Done without returned mail.
		7 May 2010	Speedpost	Returned mail.
4	Letter dated 12 May 2010 informing Zhang of the hearing dates of 31 May 2010 – 2 June 2010 (attached with Transcript of 1 st MMT Conference on 5 May 2010)	12 May 2010	e-mail	e-mail to his last known private e-mail and sought confirmation whether Zhang had any alternative correspondence address. However, no returned e-mail was received.
		13 May 2010	Airmail	Done without returned mail.
		13 May 2010	Speedpost	Returned mail.
		13 May 2010	DHL	DHL claimed that the recipient had been removed from his address. DHL also called Zhang's mobile and home numbers but nobody answered the calls.
	Amended Synopsis dated 12 May 2010 (By preceding Presenting Officer – Peter Ip)	12 May 2010	e-mail	e-mail to his last known private e-mail and sought confirmation whether Zhang had any alternative correspondence address. However, no returned e-mail was received.
		13 May 2010	Airmail	Done without returned mail.
		13 May 2010	Speedpost	Returned mail.
		13 May 2010	DHL	DHL claimed that the recipient had been removed from his address. DHL also called Zhang's mobile and home numbers but nobody answered the calls.
	Paginated Hearing Bundles (1 to 5)	13 May 2010	DHL	Ditto

<u>Service</u>	<u>Documents / Notices / Bundles</u>	<u>Date of Service</u>	<u>Mean of Service</u>	<u>Outcome of the Service</u>
	(By preceding Presenting Officer – Peter Ip)			
5	Transcript of 2 nd MMT Conference on 20 May 2010	26 May 2010	e-mail	e-mail to his last known private e-mail and sought confirmation whether Zhang had any alternative correspondence address. However, no returned e-mail was received.
		27 May 2010	Airmail	Done without returned e-mail.
		27 May 2010	DHL	DHL claimed that no person at Zhang's address and DHL called Zhang's numbers but the line could not be connected. Returned mail.
		1 June 2010	Speedpost	Returned mail.
6	Amended Synopsis dated 16 June 2010 (By present Presenting Officer – Edwin Choy)	17 June 2010	e-mail	e-mail to his last known private e-mail and sought confirmation whether Zhang had any alternative correspondence address. However, no returned e-mail was received.
		18 June 2010	Airmail	Done without returned mail.
		18 June 2010	Speedpost	Returned mail.
		17 June 2010	DHL	DHL claimed that the recipient refused to accept the delivery of the mail. Returned mail.
	Paginated Hearing Bundles (Files 1 to 5 and Core Bundles A to E) (By present Presenting Officer – Edwin Choy)	17 June 2010	DHL	Ditto

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<u>Service</u>	<u>Documents / Notices / Bundles</u>	<u>Date of Service</u>	<u>Mean of Service</u>	<u>Outcome of the Service</u>
7	s253(1)(b) Notice dated 25 June 2010	28 June 2010	e-mail	e-mail to his last known private e-mail and sought confirmation whether Zhang had any alternative correspondence address. However, no returned e-mail was received.
		28 June 2010	Airmail	Done without returned mail.
		28 June 2010	Speedpost	Returned mail.
		28 June 2010	DHL	DHL claimed that no person at the recipient's address. At the 2 nd attempt, DHL called Zhang's numbers but the person answering the call told DHL that DHL got wrong numbers. Returned mail.
8	Transcript of the Preliminary Hearing on 25 June 2010	2 July 2010	e-mail	e-mail to his last known private e-mail and sought confirmation whether Zhang had any alternative correspondence address. However, no returned e-mail was received.
		2 July 2010	Airmail	Done without return mail.
		2 July 2010	Speedpost	Returned mail.
		2 July 2010	DHL	DHL claimed that no person at the recipient's address. At the 2 nd attempt, DHL called Zhang's numbers but the person answering the call told DHL that DHL got wrong numbers.
9	Statement of Lung Hak Kau, Karl dated 9 July 2010	15 July 2010	e-mail	e-mail to his last known private e-mail and sought confirmation whether Zhang had any alternative correspondence address. However, no returned e-

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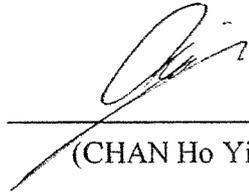
<u>Service</u>	<u>Documents / Notices / Bundles</u>	<u>Date of Service</u>	<u>Mean of Service</u>	<u>Outcome of the Service</u>
				mail was received.
		16 July 2010	Airmail	Done without returned mail.
		16 July 2010	Speedpost	The post arrived in Beijing. To be delivered to Zhang's address.
	Exhibits to Statement of Lung Hak Kau, Karl dated 9 July 2010	15 July 2010	DHL	DHL claimed that no person at the recipient's address.
	Translation of pages 929-930 and 959-960 of Exhibits 10 to Statement of Lung Hak Kau, Karl	16 July 2010	e-mail	e-mail to his last known private e-mail and sought confirmation whether Zhang had any alternative correspondence address. However, no returned e-mail was received.
		16 July 2010	Airmail	Done without returned mail
		16 July 2010	Speedpost	The post arrived in Beijing. To be delivered to Zhang's address.
		16 July 2010	DHL	DHL claimed that no person at the recipient's address.
10	2 nd Statement of Teddy Lau Ping Yiu	15 July 2010	e-mail	e-mail to his last known private e-mail and sought confirmation whether Zhang had any alternative correspondence address. However, no returned e-mail was received.
		15 July 2010	DHL	DHL claimed that no person at the recipient's address.
		16 July 2010	Airmail	Done without returned mail.
		16 July 2010	Speedpost	The post arrived in Beijing. To be delivered to Zhang's address.

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Statement of CHAN Ho Yin

1. I, CHAN Ho Yin, am a Manager with the Enforcement Division of the Securities and Futures Commission ("the Commission") at 8/F., Chater House, 8 Connaught Road Central, Hong Kong, wish to say as follows:
2. I have conducted the investigation in relation to the inquiry of Market Misconduct Tribunal (the "MMT") into the shares of Mirabell International Holdings Limited ("Mirabell"). The attached Annex A (Total: 5 pages) truly reflects the results of the efforts made by me and the colleagues of the Commission in serving the relevant notices and documents to ZHANG Bi Jia since the start of the MMT's proceedings in relation to the shares of Mirabell on 20 July 2010.
3. This statement consisting of 1 page in the English language has been read by and signed by me. It is true and correct to the best of my knowledge and belief.

Signature :



(CHAN Ho Yin)

Date :

16 August 2010

Annex A: Services to Zhang Bi Jia (“Zhang”) by the Securities and Futures Commission since the MMT’s proceedings of Mirabell International Holdings Limited on 20 July 2010

<u>Service</u>	<u>Documents / Notices / Bundles</u>	<u>Date of Service</u>	<u>Mean of Service</u>	<u>Outcome of the Service</u>
1	<ul style="list-style-type: none"> Transcript of the MMT proceedings on 20 July 2010 	21 July 2010	e-mail	e-mail to his last known private e-mail ¹ and sought confirmation whether Zhang had any alternative correspondence address. However, no returned e-mail was received.
		22 July 2010	Airmail	Mailed to his last-known permanent address ² without returned mail.
2	<ul style="list-style-type: none"> Transcript of the MMT proceedings on 21 July 2010 	22 July 2010	e-mail	e-mail to his last known private e-mail and sought confirmation whether Zhang had any alternative correspondence address. However, no returned e-mail was received.
		22 July 2010	Airmail	Mailed to his last-known permanent address without returned mail.
3	<ul style="list-style-type: none"> Transcript of the MMT proceedings on 22 July 2010 	23 July 2010	e-mail	e-mail to his last known private e-mail and sought confirmation whether Zhang had any alternative correspondence address. However, no returned e-mail was received.
		23 July 2010	Airmail	Mailed to his last-known permanent address without returned mail.

¹ Zhang’s last known private e-mail address was provided by his former employer – Access Capital Limited on 16 December 2009. E-mail records of Zhang’s office e-mail account also showed Zhang made use of this private e-mail address.

² Zhang’s last known permanent address was provided by his former employer – Access Capital Limited and Ms. Liu Yan Yan on 16 December 2009 and 9 September 2008 respectively.

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<u>Service</u>	<u>Documents / Notices / Bundles</u>	<u>Date of Service</u>	<u>Mean of Service</u>	<u>Outcome of the Service</u>
4	<ul style="list-style-type: none"> Statement of Karl Lung Hak Kau dated 9 July 2010 (as redacted on 23 July 2010) 	23 July 2010	e-mail	e-mail to his last known private e-mail and sought confirmation whether Zhang had any alternative correspondence address. However, no returned e-mail was received.
		23 July 2010	Airmail	Mailed to his last-known permanent address without returned mail.
5	<ul style="list-style-type: none"> Transcript of the MMT proceedings on 23 July 2010 	26 July 2010	e-mail	e-mail to his last known private e-mail and sought confirmation whether Zhang had any alternative correspondence address. However, no returned e-mail was received.
		26 July 2010	Airmail	Mailed to his last-known permanent address without returned mail.
6	<ul style="list-style-type: none"> s254 notices to Norton Rose ("NR") dated 20 July 2010 and 21 July 2010 (via DHL only) Two Reply letters from NR dated 22 July 2010 with enclosures Two bundles with documents from NR filed in Tab A to D ("NR Bundle") 	26 July 2010	e-mail	e-mail to his last known private e-mail and sought confirmation whether Zhang had any alternative correspondence address. However, no returned e-mail was received.
		26 July 2010	DHL	DHL claimed no person at the recipient's address. DHL called Zhang's mobile number ³ but out of service, and called Zhang's home number ⁴ but nobody answered.

³ Zhang's last known mobile phone number was provided by his former employer – Access Capital Limited on 16 December 2009

⁴ Zhang's Beijing home number was provided by his former employer – Access Capital Limited on 16 December 2009

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<u>Service</u>	<u>Documents / Notices / Bundles</u>	<u>Date of Service</u>	<u>Mean of Service</u>	<u>Outcome of the Service</u>
7	<ul style="list-style-type: none"> Pages 1600-1 to 1600-7 in Core Bundle D (i.e. s183(1) notice to HSBC dated 14 October 2008 concerning Mr. Zhang Bi Jia, originally categorized as unused materials) 	26 July 2010	e-mail	e-mail to his last known private e-mail and sought confirmation whether Zhang had any alternative correspondence address. However, no returned e-mail was received.
		27 July 2010	Airmail	Mailed to his last-known permanent address without returned mail.
8	<ul style="list-style-type: none"> Transcript of the MMT proceedings on 26 July 2010 	27 July 2010	e-mail	e-mail to his last known private e-mail and sought confirmation whether Zhang had any alternative correspondence address. However, no returned e-mail was received.
		27 July 2010	Airmail	Mailed to his last-known permanent address without returned mail.
9	<ul style="list-style-type: none"> Witness Statement of Liu Yan Yan ("Liu") dated 26 July 2010 and the Annexure 	27 July 2010	e-mail	e-mail to his last known private e-mail and sought confirmation whether Zhang had any alternative correspondence address. However, no returned e-mail was received.
		28 July 2010	Airmail	Mailed to his last-known permanent address without returned mail.
10	<ul style="list-style-type: none"> Documents filed in Tab E of NR Bundle 	28 July 2010	e-mail	e-mail to his last known private e-mail and sought confirmation whether Zhang had any alternative correspondence address. However, no returned e-mail was received.
		29 July 2010	Airmail	Mailed to his last-known permanent address without returned mail.

<u>Service</u>	<u>Documents / Notices / Bundles</u>	<u>Date of Service</u>	<u>Mean of Service</u>	<u>Outcome of the Service</u>
11	<ul style="list-style-type: none"> Transcript of the MMT proceedings on 27 July 2010 	28 July 2010	e-mail	e-mail to his last known private e-mail and sought confirmation whether Zhang had any alternative correspondence address. However, no returned e-mail was received.
		29 July 2010	Airmail	Mailed to his last-known permanent address without returned mail.
12	<ul style="list-style-type: none"> Documents from NR filed in Tab F of NR Bundle 	28 July 2010	e-mail	e-mail to his last known private e-mail and sought confirmation whether Zhang had any alternative correspondence address. However, no returned e-mail was received.
		29 July 2010	Airmail	Mailed to his last-known permanent address without returned mail.
13	<ul style="list-style-type: none"> Transcript of the MMT proceedings on 28 July 2010 	29 July 2010	e-mail	e-mail to his last known private e-mail and sought confirmation whether Zhang had any alternative correspondence address. However, no returned e-mail was received.
		29 July 2010	Airmail	Mailed to his last-known permanent address without returned mail.
14	<ul style="list-style-type: none"> Transcript of the MMT proceedings on 29 July 2010 	2 August 2010	e-mail	e-mail to his last known private e-mail and sought confirmation whether Zhang had any alternative correspondence address. Also reminded Zhang of the hearing of oral closing submissions on 11 August 2010. However, no returned e-mail was received.
		2 August 2010	Airmail	Mailed to his last-known permanent address without



<u>Service</u>	<u>Documents / Notices / Bundles</u>	<u>Date of Service</u>	<u>Mean of Service</u>	<u>Outcome of the Service</u>
				returned mail.
15	<ul style="list-style-type: none"> • s254 notice to NR dated 28 July 2010 filed in Tab G of NR Bundle • Documents from NR filed in Tab H of NR Bundle 	2 August 2010	e-mail	e-mail to his last known private e-mail and sought confirmation whether Zhang had any alternative correspondence address. However, no returned e-mail was received.
		2 August 2010	Airmail	Mailed to his last-known permanent address without returned mail.
16	<ul style="list-style-type: none"> • Written closing submission by Edwin Choy (the Presenting Officer) dated 6 August 2010 and the Annexure • Written closing submission by Joe Kenny (Counsel for Liu) dated 6 August 2010 	6 August 2010	e-mail	e-mail to his last known private e-mail and sought confirmation whether Zhang had any alternative correspondence address. However, no returned e-mail was received.
		9 August 2010	Airmail	Mailed to his last-known permanent address without returned mail.
17	<ul style="list-style-type: none"> • Transcript of the MMT proceedings on 11 August 2010 (Oral closing Submission) 	12 August 2010	e-mail	e-mail to his last known private e-mail and sought confirmation whether Zhang had any alternative correspondence address. However, no returned e-mail was received.
		12 August 2010	Airmail	Mailed to his last-known permanent address without returned mail.