

The Report of the Market Misconduct Tribunal into dealings
in the shares of SkyNet Group Limited
(formerly known as China AU Group Holdings Limited)
on and between 25 August 2009 and 21 April 2010

**Part II : A report pursuant to section 257(1) of the Securities and Futures
Ordinance, Cap. 571**

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Attestation to the Report

CHAPTER EIGHT

SANCTIONS IMPOSED

Introduction

219. In its report of 3 August 2018 ('the Report'), the Tribunal determined that between August 2009 and April 2010 market misconduct under Part XIII of the Ordinance had taken place, that misconduct arising out of a series of dealings in the shares of China AU Group Holdings Limited. The misconduct in question constituted 'false trading' within the meaning of section 274 of the Ordinance. The Tribunal further determined that each of the three persons specified in the SFC Notice dated 17 June 2016; namely, Ms. Wu Hsiu Jung ('Wu'), Mr. Chen Kuo-chen ('Chen') and Ms. Keung Wai Fun, Samantha ('Keung'), had engaged together in effecting the scheme of false trading in the shares. More particularly, the Tribunal determined that Keung had been the person with overall direction of the scheme of misconduct and that the other two specified persons – Wu and Chen – had actively and knowingly assisted her in the scheme.

220. Consequent upon the issue of the Tribunal's Report, it was reconvened on 16 January 2019 in order to consider the matter of appropriate sanctions and other consequential orders.

221. At this hearing, the SFC was represented by Mr. Westbrook SC, the Presenting Officer, assisted by Mr. D'Almada Remedios, the Assistant Presenting Officer. Only one implicated person was represented, namely, Wu, she being represented by Mr Tsang of H.M. Tsang & Co., solicitors.

The Tribunal's general findings as to culpability

222. The nature and extent of the false trading is fully described in the Report and, to the degree necessary, those findings are included herein. For purposes of considering appropriate sanctions, however, what must be emphasised is the following, namely, that –

- a) Keung, who sought to hide her own involvement in the illicit trading, including the fact that she was funding that trading, must have known that, in directing Wu and Chen as to the manner of trading in the shares of China AU, it was a virtual certainty that her entirely tactical trading would have the effect of creating a false or misleading appearance of active trading in the shares of the company and that this appearance would in its turn have the effect of creating a false or misleading appearance of there being a market for the shares at the prices traded. As such, Keung was manifestly the driving force behind the entire scheme.
- b) While Wu and Chen took their instructions from Keung, they too must have known, by reason of the manner in which they were directed to conduct their trading, that it was a virtual certainty that they were assisting in creating a false or misleading appearance of active trading in the shares at specific prices.
- c) When viewed as a whole, the actions of the three implicated persons constituted a complex (indeed sophisticated) scheme to undermine the integrity of the market, it being remembered that it was a scheme extending over several months. That the three were

prepared to play their roles in this premeditated, complex and extended scheme of deceit indicates their contempt for the integrity of the market.

- d) Sanctions under the Ordinance are civil in nature. They exist in order to protect the integrity of the market. That said, the general principle is now well set that the greater the threat indicated by the evidence the more potent must be the protective measures. In this regard, in an earlier ruling³⁸, the Tribunal has said:

“One of the relevant circumstances in determining the length of an order will relate to the nature of the market misconduct that has been proved. The more systematic that conduct, the clearer the intent to disregard the statutory provisions, regulations and codes of conduct governing the principled participation in the market, the greater the damage actually occasioned or intended, then, absent other compelling factors, the longer the life of the order is likely to be. This is not because the order is imposed as a punishment. It is because the greater the threat to the integrity of the market exhibited by proven conduct the more extensive the need for protective measures.”

The nature and purpose of this written ruling

223. Having heard submissions from Mr Westbrook and from Mr Tsang, and after retiring to consider the nature and extent of any orders to be made, the Tribunal reconvened to announce its orders, giving brief oral reasons that same day.

224. In so doing, however, the Tribunal said that it would - in so far as necessary - supplement its determinations by way of expanded written reasons.

³⁸ See Report of the MMT re *Bank of China Limited and China Construction Bank Corporation*

This was subject of course to the condition that any expanded reasons (if given) would not alter what had been said orally so as to change their essential meaning.

225. Having read the transcript of its oral reasons, the Chairman of the Tribunal has determined that, if only for the integrity of the record, those reasons should be contained in an enhanced written ruling. This is the ruling.

Have Keung and Chen been given a reasonable opportunity to make submissions in respect of sanctions and consequential orders?

226. Keung and Chen played no active role in the substantive proceedings nor did they seek to make representations in the consequential proceedings, that is, the proceedings to determine sanctions and other consequential orders. The Tribunal is satisfied, however, that, just as both parties were made aware of the substantive proceedings³⁹, they were also made aware of the consequential proceedings.

227. The SFC sought to inform Keung of the consequential proceedings by mail and also by newspaper publication. On 30 November 2018, a letter was posted by the SFC to the last known address of Keung in the Kai Tak Commercial Building, Des Voeux Road, Central, informing her of the Tribunal's findings as to culpability and giving to her the date and location for the consequential hearing together with relevant directions made by the Chairman of the Tribunal. The letter was not returned to the SFC as undelivered. In addition, on 12 December 2018 a notice to the same effect was published in two widely circulated daily newspapers, one in the Chinese language the other in the English language.

³⁹ In this regard, see Chapter Three of the Report.

228. The SFC also sought to inform Chen of the consequential proceedings doing so, first, by posting a letter on 3 December 2018 to Chen's last known address informing him of the Tribunal's findings as to culpability and giving to him the date and location for the consequential hearing together with relevant directions made by the Chairman of the Tribunal. In addition, on the same date, the SFC sent a copy of the letter to Chen's last known email address. The letter was not returned nor was the email marked as being addressed to an unknown address.

229. In all the circumstances, as earlier indicated, the Tribunal is satisfied that both Keung and Chen were notified of the scheduled consequential hearing and were given a reasonable opportunity of being heard. The fact that neither of them chose to seize that opportunity is a matter entirely for them.

230. Wu, of course, was legally represented in the proceedings.

The sanctions orders imposed

231. The sanctions orders made by the Tribunal, together with a brief description of their nature and purpose, were as follows.

Section 257(1)(a): 'disqualification from being a director of a listed corporation or being concerned in the management of such a corporation'

232. An order under section 257(1)(a) directs that a person shall not, without leave of the Court of First Instance, be a director of a listed corporation or any other specified corporation or in any way, directly or indirectly, be concerned or take part in the management of any such body for a period not exceeding five years.

233. A disqualification order was sought against Keung only. It was submitted that not only had she been the central driving force of the scheme of false trading, she had been the CEO of China AU and had played a leading role in seeking to raise substantial sums of money for the company through the market. Having regard to the calculated nature of the false trading, the fact that other parties were brought into the scheme and also having regard to the extended nature of the scheme, the Tribunal was satisfied in all the circumstances that Keung was unfit to act as a director or to participate in the management of a listed corporation for a period of four years.

234. Accordingly, it was ordered that Keung be prohibited, unless she received the leave of the Court of First Instance, from being a director of a listed corporation and be further prohibited from being concerned, directly or indirectly, in the management of a listed corporation for a period of four years commencing from the date she received notice of the order.

Section 257(1)(b): ‘cold shoulder’ orders

235. This section gives the power to the Tribunal to impose what are commonly called ‘cold shoulder’ orders. Unless the leave of the Court of First Instance is obtained, a cold shoulder order has the effect of prohibiting a person who is the subject of the order from any dealings, direct or indirect, in the Hong Kong financial market for the life of the order. If a person aids or abets the avoidance of a cold shoulder order that person commits an offence. Even though such an order may result in financial loss, it is well settled that this effect is incidental to the primary intention of the order namely, the protection of the market. The Ordinance provides the cold shoulder order shall not be imposed for a period of time exceeding five years.

236. The Tribunal was satisfied that, in order to protect the integrity of the market, Keung should be the subject of a cold shoulder order, that order having a duration of four years. Accordingly, it was ordered that she should not, without the leave of the Court of First Instance, directly or indirectly, in any way acquire, dispose of or otherwise deal in any securities, futures contract, leveraged foreign exchange contract, or an interest in any such instruments for a period of four years.

237. Turning to Wu, it was submitted by her counsel that the imposition upon her of a cold shoulder order would not meet the justice of her particular position. It was emphasised that her long-standing diagnosis of depression had prevented her from engaging in the market for an extended period of time and that sensibly, in light of her medical condition, she would only be able to invest in the future on the basis of independent advice. Her circumstances, therefore, showed that she was no threat to the integrity of the market. It was submitted that a general cease-and-desist order would constitute an adequate protective measure.

238. The Tribunal did not agree. While, regrettably, Wu has suffered from depression for an extended period of time, having heard expert medical evidence, the Tribunal was satisfied that it was not of such severity as to prevent her from making her own decisions and, in doing so, exercising both discretion and skill. As such, Wu remained a threat to the integrity of the market and protective measures were required. The Tribunal considered that a cold shoulder order of three years would be appropriate.

239. In respect of Chen, while, by way of an overview, the Tribunal is satisfied that in many respects he involved himself more peripherally than the other two, he nevertheless willingly involved himself in an extended and sophisticated scheme and thereby indicated his own contempt for the principled

operation of the Market. The Tribunal has therefore resolved that he should be made subject to a cold shoulder order of two years.

Section 257(1)(c): 'cease and desist' orders

240. This section gives power to the Tribunal to order that a person identified as having engaged in market misconduct shall not again perpetrate conduct which constitutes that form of market misconduct specified in the order. Cease and desist orders permit trading but seek, on pain of criminal punishment, to ensure that all future dealings will not constitute market misconduct. Such orders are made in perpetuity. Our courts have held that cease-and-desist orders are preventative, that is, they are protective in nature and not penal.

241. Having regard to the sophisticated and extended nature of the scheme in which the three parties were involved, the Tribunal was satisfied that the three should each be subject to a cease and desist order, more specifically that they should not again perpetrate any conduct constituting market misconduct within the meaning of section 274 (false trading) of the Ordinance.

Legal costs

242. As a discrete matter, the SFC sought an order for costs against Wu in relation to her application to stay the proceedings against her arising out of her diagnosis of depression. She was unsuccessful in that application. No specific argument was advanced on behalf of Wu to oppose the application for costs and in the opinion of the Tribunal the order requested by the SFC (in respect of its costs and costs incurred by the Government) should be granted, the amount to be taxed if not agreed.

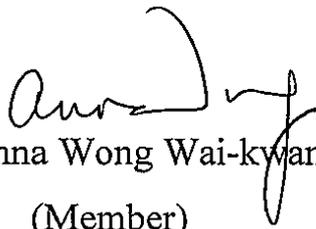
243. As to costs generally, that is costs pursuant to section 257(1)(e) and (f), the Tribunal determined that Keung should pay 50% of the total costs and expenses reasonably incurred with Wu and Chen each paying 25% of such costs. In respect of costs, which are to be viewed broadly, the Tribunal has not seen fit to discriminate as to quantum between Wu and Chen.

Registration of the orders in the Court of First Instance

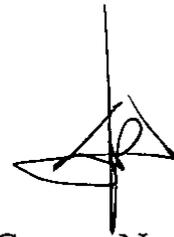
244. Pursuant to section 264(1) of the Ordinance, these orders had been registered in the Court of First Instance.



Mr. Michael John Hartmann
(Chairman)



Ms. Anna Wong Wai-kwan
(Member)



Mr. George Ng Siu-ping
(Member)

Dated 11 September 2020