

The report of the Market Misconduct Tribunal into dealings  
in the shares of Sunny Global Holdings Limited in and  
between June and August 2003 and related disclosures of information .

**Part I & II: 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 by the Notice of the Financial Secretary dated 27 August 2007.

**“IN THE MATTER OF THE LISTED SECURITIES  
OF SUNNY GLOBAL HOLDINGS LIMITED  
(STOCK CODE 1094)**

**NOTICE TO THE MARKET MISCONDUCT TRIBUNAL  
PURSUANT TO SECTION 252 (2) AND SCHEDULE 9 OF  
THE SECURITIES AND FUTURES ORDINANCE, CAP 571  
 (“THE ORDINANCE”)**

WHEREAS it appears to me that market misconduct, within the meaning of sections 270 (*“Insider Dealing”*) and/or 277 (*“Disclosure of False or Misleading Information”*) of Part XIII of the Ordinance, has or may have taken place in relation to the securities of Sunny Global Holdings Limited (Stock Code 1094) (*“the Company”*), the Market Misconduct Tribunal is hereby required to conduct proceedings and determine -

- (a) whether any market misconduct has taken place;
- (b) the identity of any person who has engaged in the market misconduct;  
and
- (c) the amount of any profit gained or lost avoided as a result of the market misconduct.

**Persons Specified**

Mr Lee Man Fa (*“Lee”*), Ms Yu Kin Ling Katherine (*“Yu”*), Info Fortune Holdings Limited (*“Info Fortune”*), Ms Tsoi Yung Yung (*“Tsoi”*), Mr Hung Fan Wai Wilfred (*“Hung”*) and Mr Chan Cheung (*“Chan”*).

### **Statement for institution of proceedings.**

1. At all material times, Tsoi, Hung and Chan were employees of the Company. On 5 May 2003, each of them was granted share options for 4 million shares of the Company (at an exercise price of \$0.435 per share). During the three weeks before the announcement of the Company's interim results (which showed a drop of 71.8% in profit) on 23 June 2003, Hung and Chan exercised all their share options (for 4 million shares) and then sold all their shares, while Tsoi also exercised all her share options (for 4 million shares) and then sold 3.56 million shares. The closing share price of the Company on 23 June 2003 was \$0.455. The announcement of interim results was made after the market had closed. The share price dropped 33% to \$0.305 on 24 June 2003. Hung, Chan and Tsoi knew about the poor interim results before the announcement. They expected the share price would drop after the announcement of the results. By exercising their share options and then disposing (of) their shares before the announcement of interim results, they were able to make a profit.
2. Hung, Chan and Tsoi were connected with the Company within the meaning of section 247 of the Ordinance. They had information which they knew was relevant information in relation to the Company, and they dealt in the shares of the Company with that knowledge.
3. Accordingly, Hung, Chan and Tsoi engaged or may have engaged in market misconduct contrary to section 270 of the Ordinance.
4. During the period between 21 July 2003 and 25 August 2003, Lee and Yu caused various announcements to be made by the Company in which disclosure was made suggesting that various parties were interested in placement of the Company's shares and negotiations were being made which

might result in a change of control of the Company, and addition of a substantial shareholder, or an injection of assets into the Company.

5. Info Fortune, which was wholly owned and controlled by Lee, sold 179,000,000 shares of the Company, directly to various parties or through the open market between 1 August 2003 and 28 August 2003. The disposals reduced Info Fortune's (or alternatively, Lee's) majority shareholding in the Company from 72.82% to 29.37%.
6. The information in the said announcements was false or misleading as to a material fact, or was false or misleading through the omission of a material fact, namely as to the state of the said negotiations. Lee and Yu knew that, or were reckless or negligent as to whether, the information was false and misleading as to a material fact, or was false and misleading through the omission of a material fact. The disclosure was made with a view to facilitating the dispose of a large portion of Info Fortune's (or alternatively, Lee's) majority shareholding in the Company.
7. Accordingly, Info Fortune, Lee and Yu engaged or may have engaged in market misconduct contrary to section 277 of the Ordinance.

Dated this 27 day of August 2007.

(John C. Tsang)  
Financial Secretary”

## CHAPTER 2

### PROLOGUE

2. At the outset the Tribunal would like to express its disquiet about the considerable delay which has occurred in bringing this case to a hearing. The events the subject of these proceedings happened in mid-2003. With commendable speed the Securities and Futures Commission (“SFC”) began to investigate these matters on 2 September 2003. After the SFC had received written responses to its initial inquiries various interviews were then conducted of witnesses to the relevant events, including the persons who have become the “Specified Persons” in these proceedings. Unfortunately, the momentum of the investigation appears to have been lost and the last interview of one of the Specified Persons was not completed until April 2005. Thereafter, well over 2 years elapsed before the proceedings before this Tribunal were formally initiated by the Financial Secretary’s Notice, dated 27 August 2007. Inevitably, memories have dimmed and some of the witnesses testified of difficulty in recalling events that occurred almost 5 years earlier. No doubt, any such difficulties would have been lessened if these proceedings had been commenced within months rather than years of the events.

## CHAPTER 3

### THE LAW

3. The Chairman has given the Tribunal the following directions in law :

#### Insider dealing.

4. Section 270(1) of the Securities and Futures Ordinance, Cap. 571 (“the Ordinance”) provides that :

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

- (a) when a person connected with the corporation and having information which he knows is relevant information in relation to the corporation -
  - (i) deals in the listed securities of the corporation....”.

#### *Connected person.*

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 -

- (ii) he is a director or employee of the corporation.....”.

#### *Relevant information.*

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

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

- (a) 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;

‘securities’ means -

- (a) shares.... issued by...a body”.

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 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.”.

A related footnote said: “See the *dicta* of the Singapore High Court in *Public Prosecutor v GCK Choudrie* (1981) 2 Co. Law 141”. That decision of the Court of Criminal Appeal of the High Court of Singapore is also reported in [1981] 1 MLR 76, albeit that the appellant’s name is spelled Choudhury. He had been convicted by a District Court judge of six charges, contrary to section 132 A of the Companies Act, Cap. 185. The particulars alleged that on six separate occasions between 13 January and 3 February 1976 he, being the chairman of the board of directors of a company, made use to gain an advantage for himself of “specific confidential information”, namely that the company was “facing a financial crisis”, in selling shares in that company. The crisis arose from sustained heavy losses for the financial year ended 29 February 1976. The Court of Criminal Appeal held that the District Court judge was correct in ruling that knowledge of a financial crisis in a company is : (page 78E)

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

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

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

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



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

8. In *Chinney Alliance Group Limited*, in a report dated 24 December 2004, a differently constituted Tribunal referred with approval to both *Ryan v Trigguboff* and Choudhury and concluded of “specific information” that : (page 36)

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

#### Disclosure of false or misleading information inducing transactions.

9. Section 277 of the Ordinance provides that :

“(1) Disclosure of false or misleading information inducing transactions takes place when, in Hong Kong or elsewhere, a person discloses, circulates or disseminates, or authorizes or is concerned in the disclosure, circulation or dissemination of, information that is likely -

- (b) to induce the...purchase in Hong Kong of securities by another person;
- (c) to maintain, increase, reduce or stabilize the price of securities... in Hong Kong -,

if -

- (i) the information is false or misleading as to a material fact, or is false or misleading through the omission of a material fact; and
- (ii) the person knows that, or is reckless or negligent as to whether, the information is false or misleading as to a material fact, or is false and misleading through the omission of a material fact.”.

“Reckless”.

10. The Chairman has directed the Tribunal in respect of the ingredient of recklessness in accordance with the judgment of Sir Anthony Mason NPJ, with whose judgment all the other judges agreed, in the Court of Final Appeal in *Sin Kam Wah v HKSAR* [2005] HKCFAR 192 at paragraph 44, page 210 D-G. A person acts recklessly in respect of a circumstance if he/she was aware of a risk which did or would exist, or in respect of a result if he was aware of a risk that it would occur, and it was, in the circumstances known to him unreasonable to

take the risk. If, due to his/her age or personal characteristics, he genuinely did not appreciate or foresee the risks involved in his actions he/she is not reckless.

#### The Standard of Proof.

11. 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.”.

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

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

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

#### Circumstantial evidence and Inferences.

14. 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 Skibfinansiering v Brothers & Others* (2000) 3 HKCFAR 70 at pp. 91H, 96 G-I, per Lord Hoffmann).”.

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

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

16. The Tribunal approached the drawing of inferences adverse to the Specified Parties with those considerations in mind. Mindful of the fact that the conduct alleged against all of the specified parties is of a nature that could have resulted in the bringing of serious criminal charges the Tribunal did not draw inferences from proved primary facts that any one of the specified persons was

culpable of the alleged misconduct unless to do so was very compelling and the evidence was of a very high standard of cogency indeed.

Good character.

17. The Tribunal bore in mind that a person of good character is less likely than otherwise might be the case to have committed the alleged misconduct and that good character supports his/her credibility in respect of both his/her evidence in the Tribunal and outwith the Tribunal in his/her records of interview, statements or statements made on his/her behalf, for example in letters by solicitors to the SFC.

Lies.

18. The Tribunal has reminded itself in its approach to the evidence of the respective Specified Persons in the Tribunal and his/her statement outwith the Tribunal that a lie in itself does not prove that the maker of the lie is culpable of the misconduct alleged against that person. In particular, the Tribunal acknowledges and has taken into account that 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 by telling lies. Nevertheless, it may be a matter relevant to credibility.

Separate consideration of the cases of the respective Specified Persons.

19. The Tribunal has considered the case against and for each of the Specified Persons separately.

Delay.

20. The Tribunal has borne in mind in favour of the Specified Parties that the events the subject of these proceedings occurred almost 5 years prior to the commencement of the substantive hearing. Inevitably, with the passage of time

memories dim or fade and relevant documents may be lost or destroyed. On the other hand, the Specified Parties were alerted to the fact of enquiries being made by the SFC into those events at a much earlier stage. On 2 September 2003 and 22 September 2003 the SFC wrote to Ms Katherine Yu Kin Ling (“Ms Katherine Yu”) and Mr Lee Man Fa (“Mr Lee”) respectively informing them separately, she as Company Secretary of Sunny Global, that it was making enquiries into dealings in the shares of the company following announcements by the company made in late August 2003 and asking them for information. All the other Specified Parties were interviewed as “Persons under investigation” by the SFC first of all in 2004.

#### Attribution of liability to Info Fortune.

21. The Tribunal has been directed by the Chairman as to its approach to the issue of the attribution of liability to Info Fortune in respect of the disclosure of information, false or misleading as to a material fact or false or misleading through the omission of a material fact, likely to induce another to buy the shares of Sunny Global Holdings Limited (“Sunny Global”) where the person making the disclosure knows, or is reckless or negligent as to whether the information is false or misleading as to a material fact. Whilst a company has a separate legal personality it has no ability to think or act itself. In order to enter into any transaction or to be held liable for its conduct in both the common law and statutory law it is necessary to determine which actions of its directors, employees and other agents may be attributed to it. Of that issue, in *Lennard’s Carrying Company v Asiatic Petroleum Ltd* [1915] AC 705 Viscount Haldane observed famously, at 715 :

*“.. a corporation is an abstraction. It has no mind of its own any more than a body of its own; its active and directing will must consequently be sought in the person of somebody who for some purposes may be called an agent, but who is really the directing mind and will of the corporation, the very ego and centre of the personality of the corporation.”*

22. In *Meridian Global Funds Management Asia Limited and Securities Commission* [1995] 2 AC 500, in the judgment of the Privy Council, Lord Hoffmann observed : (page 506 B-G)

“Any proposition about a company necessarily involves a reference to a set of rules. A company exists because there is a rule (usually in a statute) which says that a *persona ficta* shall be deemed to exist and to have certain of the powers, rights and duties of a natural person. But there would be little sense in deeming such a *persona ficta* to exist unless there were also rules to tell one what acts were to count as acts of the company. It is therefore a necessary part of corporate personality that there should be rules by which acts are attributed to the company. These may be called ‘the rules of attribution’.

The company’s primary rules of attribution will generally be found in its constitution, typically the articles of association, and will say things such as ‘for the purpose of appointing members of the board, a majority vote of the shareholders shall be a decision of the company’ or ‘the decisions of the board in managing the company’s business shall be the decisions of the company’. There are also primary rules of attribution which are not expressly stated in the articles but implied by company law, such as :

*‘the unanimous decision of all the shareholders in a solvent company about anything which the company under its memorandum of association has power to do shall be the decision of the company.’* see [\*Multinational Gas and Petrochemical Co. v. Multinational Gas and Petrochemical Services Ltd.\* \[1983\] Ch. 258.](#)

These primary rules of attribution are obviously not enough to enable a company to go out into the world and do business. Not every act on behalf of the company could be expected to be the subject of a resolution of the board or a unanimous decision of the shareholders. The company therefore builds upon the primary rules of attribution by using general rules of attribution which are equally available to natural persons, namely, the principles of agency. It will appoint servants and agents whose acts, by a combination of the general principles of agency and the company’s primary rules of attribution, count as the acts of the company, and having done so, it will also make itself subject to the general rules by which liability for the acts of others can be attributed to natural persons, such as estoppel or ostensible authority in contract and vicarious liability in tort.”.

23. Later in his judgment Lord Hoffmann went on to note : (page 507 B-F)

“ The company’s primary rules of attribution together with the general principles of agency, vicarious liability and so forth are usually sufficient to enable one to determine its rights and obligations. In exceptional cases, however, they will not provide an answer. This will be the case when a rule of law, either expressly or by implication, excludes attribution on the basis of the general principles of agency or vicarious liability. For example, a rule

may be stated in language primarily applicable to a natural person and require some act or state of mind on the part of that person ‘himself’, as opposed to his servants or agents. This is generally true of rules of the criminal law, which ordinarily impose liability only for the actus reus and mens rea of the defendant himself. How is such a rule to be applied to a company?

One possibility is that the court may come to the conclusion that the rule was not intended to apply to companies at all; for example, a law which created an offence for which the only penalty was community service. Another possibility is that the court might interpret the law as meaning that it could apply to a company only on the basis of its primary rules of attribution, i.e. if the act giving rise to liability was specifically authorised by a resolution of the board or an unanimous agreement of the shareholders. But there will be many cases in which neither of these solutions is satisfactory; in which the court considers that the law was intended to apply to companies and that, although it excludes ordinary vicarious liability, insistence on the primary rules of attribution would in practice defeat that intention. In such a case, the court must fashion a special rule of attribution for the particular substantive rule. This is always a matter of interpretation : given that it was intended to apply to a company, how was it intended to apply? Whose act (or knowledge, or state of mind) was *for this purpose* intended to count as the act etc. of the company? One finds the answer to this question by applying the usual canons of interpretation, taking into account the language of the rule (if it is a statute) and its content and policy.”.

#### Statements and records of interviews of the Specified Persons and others.

24. The Tribunal has received and considered prior witness statements (and records of interviews) of :

- (i) witnesses who, in oral testimony adopted those prior statements or records of interview as being accurate records in which they answered truthfully;
- (ii) persons who did not testify orally;
- (iii) Specified Parties, of whom
  - (a) Mr Wilfred Hung Fan Wai (“Mr Wilfred Hung”), Mr Joe Chan Cheung (“Mr Joe Chan”), Ms Tsoi Yung Yung (“Ms Tsoi”) and Ms Katherine Yu testified orally and adopted witness statements that they produced and records of interview conducted of them by the SFC as being true and accurate; and

- (b) records of interview only of Mr Lee, who did not attend to give evidence.

25. The weight that we attach to those statements varied according to the relevant circumstances. In respect of those witnesses, including Specified Persons, who adopted the prior statement or record of interview as accurate and true we regarded it as part of the evidence of the witness. In respect of statements or records of interview that the Tribunal received from persons who did not give oral testimony we took into account in our consideration of them that the assertions that contained were not tested by cross-examination. In addition, we had regard to the fact that many of the statements were made in time, 2004 and 2005, much closer to the events in issue, May to August 2003 than the oral testimony received in May and June 2008.



## CHAPTER 4

### THE COURSE OF THE PROCEEDINGS

#### Chronology

26. **May-August 2003** - the events giving rise to the allegations of misconduct;

**27 August 2007** - the notice to the Market Misconduct Tribunal pursuant to Section 252(2) of the Ordinance from the Financial Secretary;

**16 October 2007** - the appointment of the Presenting Officer Ms Juliana Chow and Assistant Presenting Officer Mr Johnny Chan by the Secretary for Justice;

**25 October 2007** - the appointment of the two ordinary members of the Tribunal by the Financial Secretary on the delegated authority of the Chief Executive;

**29 October 2007** - Presenting Officer's letter to five of the six Specified Parties advising them of the prospective hearing;

**5 November 2007** - preliminary hearing of the Tribunal at which the substantive hearing was fixed for 14 April 2008 with 20 days reserved;

Mr Bernard Mak ("Mr Mak") (instructed by Tung, Ng, Tse & Heung), appeared for Mr Joe Chan, Mr Wilfred Hung and Ms Tsoi and has done so at all subsequent hearings.

Mr Henry Wong (“Mr Wong”) (Michael Li & Co.) appeared for Mr. Lee, Ms Katherine Yu and Info Fortune Holdings Limited (“Info Fortune”).

**17 January 2008** - hearing of the Tribunal to consider an application to “stay the proceedings” by counsel on behalf of three Specified Persons, namely Mr Joe Chan, Mr Wilfred Hung and Ms Tsoi. On the application of counsel for those parties for an “adjournment” only, supported by the Presenting Officer, proceedings were adjourned to a date to be fixed;

**18 March 2008** - Judgment handed down by the Court of Final Appeal in *Koon Wing Yee and The Insider Dealing Tribunal* FACV No. 19 of 2007;

**19 March 2008** - the Tribunal directed the substantive hearing be fixed for 15 May to 12 June 2008 inclusive;

**13 May 2008** -Directions hearing. In addition to appearing for Ms Tsoi, Mr Wilfred Hung and Mr Joe Chan, Mr Mak appeared on behalf of Ms Katherine Yu on the instructions of Michael Li & Co. and has done so ever since. Mr Wong confirmed his letter to the Tribunal dated 2 May 2008 that by a fax dated 30 April 2008 his instructions to act for Mr Lee had been withdrawn. Also, he indicated that he would submit to the Tribunal a notice of cessation to act for Info Fortune.

**15 May 2008 to 19 June 2008** the Tribunal sat for a total of 14 days and received evidence and submissions.

Notice to Info Fortune of the fact of the proceedings.

27. During the course of the proceedings the Tribunal became aware on 10 June 2008, from the evidence of Mr Vincent Eng (Mr Vincent Eng”), that he had acquired all the shares of Info Fortune from Mr Lee Man Fa on 20 October 2007

on which date the latter resigned as a Director of Info Fortune, that is prior to the service of the Financial Secretary's Notice on any of the Specified Persons. It followed that the Tribunal had been misinformed that service of the notice, witness statements, records of interview and exhibits had been made to Info Fortune on 5 November 2007 by service upon Michael Li & Co, said to be solicitors acting for Info Fortune. They were acting on instructions given to them by Mr Lee, who had no authority or power at that date to act on behalf of Info Fortune. Accordingly, on 10 June 2008 the Financial Secretary's Notice, witness statements, records of interview, exhibits and transcripts of all testimony received by the Tribunal were served on Info Fortune. Subsequently, on 16 June 2008 Mr Hylas Chung, counsel appearing for Info Fortune, informed the Tribunal that the company did not wish to avail itself of the offer by the Tribunal to have witnesses recalled to be subject to cross-examination on behalf of the company. At the hearing on 18 June 2008 he indicated that Info Fortune did not wish the Tribunal to receive and consider any further evidence, other than that of Mr Vincent Eng given on 10 June 2008.

The material received and considered by the Tribunal.

28. The Tribunal received and considered oral testimony from 15 witnesses, including four of the Specified Persons. Although Mr Lee had been represented in preliminary hearings of the Tribunal having been served with a copy of the Financial Secretary's Notice dated 27 August 2007, at the substantive hearing he did not appear nor was he represented.

29. The following witnesses gave oral testimony :

- (1) Mr Lawrence Chan Chung Yuen ("Mr Lawrence Chan"), at all material times a Research Analyst employed by UOB Kay Hian (Hong Kong) Limited ("UOB"), who produced a written statement he had signed on 16 November 2004 of an oral interview conducted of him by an officer of the

SFC on 19 May 2004 and the record of oral interview conducted by the same officer on 16 November 2004;

- (2) Mr Charles Wong Man Hin (“Mr Charles Wong”), at all material times an Account Executive of Kim Eng Securities (Hong Kong) Limited (“Kim Eng”) who produced the transcripts of five records of interview conducted of him, namely on 5 and 13 July 2004; 6 December 2004; 7 February 2005 and 13 April 2005;
- (3) Mr Tony Sze Sun Sun (“Mr Tony Sze”), the Deputy-chairman of Symphony Holdings Limited (“Symphony”) at the material time, who produced the transcripts of records of interview conducted of him on 2 August and 25 November 2004;
- (4) Mr Jimmy Chan Yuen Tung (“Mr Jimmy Chan”), a Director and shareholder of Global Wisdom Investment Company Limited (“Global Wisdom”) at all material times, who produced the transcripts of the three records of interview conducted of him on 15 and 25 November 2004 and 9 December 2004;
- (5) Ms Charlotte Kong (“Ms Charlotte Kong”), who testified by video link from Shanghai, was qualified as a solicitor and admitted to practice in Hong Kong in 2001 and was at all material times the Company Secretary and Legal Adviser of Symphony Holdings Limited (“Symphony”), who produced a statement dated 1 June 2004;
- (6) Mr Rabo Leung Chin Sing (“Mr Rabo Leung”) at all material times a Director of Oriental Patron and Oriental Patron Asia Limited, the sponsor

of the Sunny Global IPO in 2002, who produced records of his interviews of 16 November 2004 and 4 February 2005;

- (7) Mr Fraser Glasgow (“Mr Glasgow”), at all material times a Director of UOB, who produced his letter of reply dated 18 September 2003 to a letter of enquiry from the SFC;
- (8) Ms Stella Fung (“Ms Stella Fung”), an Associate Director of the SFC who gave evidence as an expert and who produced a report dated 10 October 2007;
- (9) Mr Vincent Eng (“Mr Vincent Eng”), a Director and sole shareholder of Info Fortune, which company he acquired on 20 October 2007, who produced a statement dated 10 June 2008;
- (10) Mr Gary Wong (“Mr Gary Wong”), an Accountant, of Lafon Secretarial and Consultant Limited; and
- (11) Mr Kenneth Chan Siu Kwan (“Mr Kenneth Chan”), a Vice-President of the Listing Division of The Stock Exchange of Hong Kong Limited (“SEHK”) who produced a witness statement dated 16 June 2008.

#### Specified Persons

30. Mr Wilfred Hung Fan Wai, an Accountant qualified in both Australia and Hong Kong, was the Business Development Manager of Daily Development Company Limited (“Daily Development”), ultimately a wholly owned subsidiary of Sunny Global Holdings Limited (“Sunny Global”), at all material times produced to the Tribunal a witness statement dated 27 May 2008, which he adopted as his evidence and which he said was true.

31. Mr Joe Chan Cheung, qualified as an accountant in Hong Kong in about 2001, and was the Assistant Business Development Manager of Daily Development at all material times produced to the Tribunal a statement dated 27 May 2008, which he adopted as his evidence asserting that the contents were true.

32. Ms Tsoi Yung Yung, Mr Lee's secretary at Sunny Global at all material times, produced to the Tribunal a statement dated 26 May 2008, which she adopted as her evidence asserting that the contents were true.

33. Ms Katherine Yu Kin Ling, a Director and Company Secretary of Sunny Global at all material times, testified by video link from Toronto and produced to the Tribunal a statement dated 2 June 2008, which she adopted as her evidence asserting that the contents were true.

34. The records of interview conducted of five Specified Persons were produced by the respective SFC officers who conducted those interviews, namely :

- (1) records of interview conducted of Mr Wilfred Hung on 14 July 2004 and 18 January 2005;
- (2) a record of interview conducted of Mr Joe Chan on 26 February 2004;
- (3) records of interview conducted of Ms Tsoi on 24 February 2004 and 22 April 2005;
- (4) records of interview conducted of Ms Katherine Yu on whose a witness statement of 15 June and 3 December 2004, 17 January and 15 April 2005;
- (5) records of interview conducted of Mr Lee Man Fa on 24 June and 21 July 2004 and 14 April 2005.

Witness statements.

35. The Tribunal received and considered statements and records of interview from persons who were not called to give oral testimony, namely :

- a witness statement of 30 May 2005 Mr Chan Kin Kee, a Non-executive Director of Sunny Global;
- a record of interview dated 24 May 2005 of Mr Kan Siu Lun, a Non-executive Director of Sunny Global;
- a record of interview dated 9 November 2004 of Mr Yuen Fat Ching;
- witness statements dated 23, 27 and 29 May and 17 June 2008 of Mr Cheng Tak Ka, a Senior Manager of the Enforcement Division of the SFC;
- witness statements dated 26 May and 4 June 2008 of Mr Lynn Kwok Hung George, a Director and responsible officer of Kim Eng; and
- a witness statement dated 27 May 2008 of Miss Nancy Tong Siu Man, an Associate Director of the Enforcement Division of the SFC.

Documentary exhibits.

36. The Tribunal received and considered a wide range of documentary exhibits, including :

- (a) correspondence between the SFC, Specified Persons and their solicitors;
- (b) records of The Stock Exchange of Hong Kong Limited (“SEHK”);
- (c) records of the SFC of trading in the shares of Sunny Global;

- (d) records relating to the operation of trading accounts of four of the Specified Persons with Kim Eng Securities (“Kim Eng”);
- (e) various telephone records; and in
- (f) announcements and articles published in newspapers.



## CHAPTER 5

### INSIDER DEALING IN THE SHARES OF SUNNY GLOBAL

#### Chronology

37. **January 2002** - Ms Tsoi became the secretary of Mr Lee and an employee, first of Sunny Global and later its wholly-owned subsidiary Daily Development.

**12 June 2002** - Sunny Global adopted a “Share Option Scheme” and rules related thereto.

**3 July 2002** - Sunny Global was listed on the SEHK, having stated in its Prospectus that for the year ended 30 September 2001 its turnover was just over HK\$310 million and its net profit HK\$26.891 million.

**21 January 2003** - Sunny Global published an “Announcement Of Final Results For The Year Ended 30 September 2002” in which it stated :

“During the year under review, the Group recorded a turnover of approximately HK\$433.5 million, representing an increase of approximately 40% as compared to the previous year. The Group’s profit attributable to shareholders amounted to approximately HK\$34.3 million, representing approximately 28% increase over the corresponding period of the previous year.”.

**1 May 2003** - Daily Development employed Mr Wilfred Hung as Business Development Manager at a nil salary, together with a discretionary bonus, and Mr Joe Chan as an Assistant Business Development Manager at a salary of \$27,000 per month, together with a discretionary bonus.

**5 May 2003** - the Board of Directors of Sunny Global approved the grant of an option, valid for three years from that date, to acquire up to 4 million shares of Sunny Global at HK\$0.435 to each of Mr Wilfred Hung, Mr Joe Chan and Ms Tsoi.

**20 and 21 May 2003** - Sunny Global teletext announcements, in the name of Mr Lee, disclaiming any knowledge of the reason for the recent increase in the trading volume of Sunny Global shares.

**30 May 2003** - Sunny Global published an announcement that :

“Recently it had been approached by an investor for placing of shares in the company.”.

Mr Wilfred Hung exercised his option to buy 4 million shares of Sunny Global at HK\$0.435 per share and was allotted those shares on the resolution of the Board of Directors.

**2 June 2003** - Mr Wilfred Hung sold 500,000 Sunny Global shares at HK\$0.45 per share through his account at Kim Eng.

**3 June 2003** - Mr Wilfred Hung sold 400,000 Sunny Global shares in the range of HK\$0.420 to HK\$0.445 per share and deposited with Kim Eng share certificates in respect of 4 million shares of Sunny Global.

Ms Tsoi Yung Yung and Mr Joe Chan each opened “Securities” trading accounts with Kim Eng.

**5 June 2003** - Mr Wilfred Hung sold 596,000 Sunny Global shares in the range HK\$0.44 to HK\$0.45 per share.

**9 June 2003** - Mr Wilfred Hung sold 1.5 million Sunny Global shares in the range HK\$0.445 to HK\$0.48 per share;

Yue Yuen Industrial (Holdings) Limited (“Yue Yuen”), a manufacturer and seller of shoes, sole and components and footwear related material, listed on the SEHK published an ‘Interim Announcement For The Six Months Ended 31st March 2003’ reporting a 37.1% increase in net profit to US\$151.6 million for that period and stating of its turnover in the same period :

“The increase in turnover reflected the strong growth in the shoe manufacturing business as well as the maiden contribution from the upstream business acquired in October 2002. Excluding newly acquired upstream business, the Group recorded a turnover of US\$1,124.7 million in this period. This is a 23.7% increase from the US\$909.2 million recorded in the corresponding period last year.”.

**10 June 2003** - Mr Wilfred Hung sold 400,000 Sunny Global shares in the range HK\$0.50 to HK\$0.53 per share;

Ms Tsoi and Mr Joe Chan each exercised an option to buy and were allotted one million Sunny Global shares at HK\$ 0.435 per share.

**11 June 2003** - Mr Wilfred Hung sold 100,000 Sunny Global shares at HK\$0.54 per share;

Ms Tsoi and Mr Joe Chan each deposited share certificates in respect to one million shares of Sunny Global with Kim Eng Securities;

Ms Tsoi sold one million shares in the range HK\$0.54 to HK\$ 0.56 per share;

Mr Chan sold 312,000 Sunny Global shares at HK\$0.54 per share and exercised an option to buy and was allotted 2 million Sunny Global shares at HK\$0.435 per share.

**12 June 2003** - Mr Joe Chan sold 800,000 Sunny Global shares in the range HK\$0.495 to HK\$0.55 per share.

**13 June 2003** -Ms Tsoi exercised an option to buy and was allotted one million Sunny Global shares at HK\$0.435 per share;

Mr Joe Chan deposited share certificates in respect of 2 million Sunny Global shares with Kim Eng Securities and sold 400,000 Sunny Global shares in the range HK\$0.50 to HK\$0.52 per share.

**16 June 2003** - Mr Joe Chan sold 200,000 Sunny Global shares in the range of HK\$0.50 to HK\$0.52 per share.

**17 June 2003** - Mr Joe Chan sold 688,000 Sunny Global shares in the range HK\$0.51 to HK\$0.52 per share;

Ms Tsoi deposited share certificates in respect of one million Sunny Global shares with Kim Eng.

**18 June 2003** - Mr Joe Chan exercised an option to buy and was allotted one million Sunny Global shares at HK\$0.435 per share and sold 600,000 Sunny Global shares in the range HK\$0.50 to HK\$0.52 per share;

Ms Tsoi sold 300,000 Sunny Global shares at HK\$0.50 per share.

**19 June 2003** - Ms Tsoi exercised an option to buy was allotted one million Sunny Global shares at HK\$0.435 per share and sold 700,000 Sunny Global shares in the range HK\$0.485 to HK\$0.50;

Mr Chan Joe sold 400,000 Sunny Global shares at HK\$0.495 per share.

**20 June 2003** - Mr Joe Chan sold 600,000 Sunny Global shares in the range HK\$0.485 to HK\$0.49 per share, made a “CHATS” withdrawal from his Kim Eng account of the sum of HK\$960,000 and deposited share certificates with Kim Eng in respect one million Sunny Global shares;

Ms Tsoi sold 500,000 Sunny Global shares at HK\$0.48 per share.

**23 June 2003** - Ms Tsoi exercised her option to buy and was allotted one million Sunny Global shares at HK\$0.435 per share and sold 1,060,000 Sunny Global shares in the range of HK\$0.455 to HK\$0.48;

Sunny Global published an “Announcement of Interim Results For The Six Months Ended 31 March 2003” stating :

“During the period under review, the Group recorded a turnover of approximately HK\$177.8 million, representing a decrease of approximately 15% as compared to the previous period. The Group’s profit attributable to shareholders amounted to approximately HK\$5.2 million, representing approximately 72% decrease over the corresponding period of the previous year.”.

**24 June 2003** - Ms Tsoi sold 440,000 Sunny Global shares in the range HK\$0.315 to HK\$0.325.

## CHAPTER 6

### EXPERT EVIDENCE

38. Ms Stella Fung, an Associate Director of the SFC, was permitted to give expert evidence in respect of two matters, namely;

- (i) whether or not the Interim Results of Sunny Global for the six-month period ended 31 March 2003 and announced on 23 June 2003 constituted “relevant information”, as defined in section 245(2) of the Ordinance;
- (ii) whether or not the announcements published by Sunny Global on and between 21 July and 19 August 2003 contained information likely to induce the purchase in Hong Kong of Sunny Global shares by another person (section 277(1)(b) of the Ordinance) or to maintain, increase or stabilise the price of those shares (section 277(1)(c) of the Ordinance).

39. Ms Stella Fung is a Chartered Financial Analyst, a member of the Association for Investment Management and Research and of the Hong Kong Securities Institute and has been since 1998 and 1999 respectively. In 2002 she became a Certified International Investment Analyst. For five years she worked as an Economic/Equity research analyst for various brokerage firms in Hong Kong, following which she was a fund manager for four years in Chase Manhattan Bank in Hong Kong. Since 2000 she has been employed in the Enforcement Division of the SFC. In and between 2004 and 2007 she testified as an expert witness in the separate enquiries made by the Insider Dealing Tribunal into Vanda Systems and Communications Holdings Limited, Harbour Ring International Holdings Limited, Gilbert Holdings Limited and Hong Kong

“Relevant information”

40. In her report dated 10 October 2007, confirmed in her oral testimony, Ms Stella Fung expressed the opinion that the Interim Results for the six months ended 31 March 2003 of Sunny Global, contained in the announcement published by the company on 23 June 2003, constituted “relevant information”, it not being generally known by the investing public before its publication and it being “price sensitive”, in particular that on the information becoming known it would lead to a substantial decline in the share price of Sunny Global.

41. The announcement disclosed that the net profit of the company for that six-month period had declined from HK\$18.3 million to HK\$5.2 million, a decrease of 71.8% over the corresponding period in the previous year. Also, it was reported that turnover had decreased from over HK\$209 million to HK\$177.842 million, a decrease of about 15% over the corresponding period in the previous year. Ms Stella Fung observed that the company attributed the poor results to : “... the lower sales in the European and US markets, and the keen competition in the industry that pressurized on the prices of products.” In the announcement of the Interim Results it had been asserted :

“The overall business climate remained difficult during the financial period under review. The reduction in turnover within the European and the US market was mainly attributable to the aggressive promotions by competitors, the overall weakness in the US retail climate and the broke out of war in Iraq.

Gross profit to the Group dropped from about 12% to 9% as a result of the keen competition within the industry that pressurized on the prices of products.”.

42. Ms Stella Fung noted that on 24 June 2003, the first day of trading after the publication of those results, the price of Sunny Global shares on the Stock Exchange of Hong Kong dropped 33%, closing at HK\$0.305 on a “.. heavy

turnover of 34 million shares.” Indeed, the “intra day” low of Sunny Global shares was HK\$0.28. Ms Stella Fung noted that the closing price of Sunny Global shares on 25 and 26 June 2003 respectively was HK\$0.31 and HK\$0.29. The average traded price of Sunny Global shares on the three days 24 to 26 June 2003 was HK\$0.311, a decline of 31.7% over the closing price of HK\$0.455 on 23 June 2003. Of that performance, Ms Stella Fung expressed the opinion that :

“... the market reacted very negatively to the announcement of the Interim Results.”.

43. Ms Stella Fung noted that in the announcement published by Sunny Global on 21 January 2003 of its results for the year ended the 30 September 2002 it was stated that there had been an increase of 27.7% in net profit to HK\$34.3 million. Ms Fung pointed out that the company asserted that it remained optimistic for the future stating :

“It is expected that the worldwide demand for leisure and athletic footwear will continue to grow, which could offer substantial potential foot group’s products.”.

44. Ms Stella Fung pointed out that in the month or so prior to the announcement of the interim results by Sunny Global newspaper articles and market commentaries had :

“..promoted Sunny Global shares...due to the strong Euro (as about 80% of Sunny Global sales went to Europe) and the inspiring share performance of its peers such as Yue Yuen Holdings Ltd...Symphony Holdings Ltd...and Kingmaker. In fact, on 9 June 2003 (i.e. about two weeks before Sunny Global announced its interim results Yue Yuen had reported a promising 37.1% increase in net profit of \$151.6 million for the six months ended 31 March 2003. It was generally expected that Sunny Global should report a similar growth in earnings as it was engaged in the same industry as Yue Yuen.”.

45. Of the articles enclosed together with Ms Stella Fung’s report is an extract from Sing Pao dated 29 May 2003. Having detailed the very significant increase in the share prices of two other “footwear” stocks, namely Yue Yuen and Symphony, the article noted particular advantages available to Sunny Global :



“80% of Sunny Global footwear products are exported to Europe (its turnover in Europe increased substantially by 41% last year). The conversion rate of Euros against (the) US dollar keeps making record high and is approaching US\$1.20. Sunny Global captures the right time to take advantage of the appreciation of Euros. The reason is easily understandable.”

46. The article concluded :

“With the strong support of fund managers, Sunny Global can rise to as high as \$0.70 ....”

47. An article in the Hong Kong Economic Times dated 30 May 2003 made similar points in favour of Sunny Global :

“Euro has remained strong since the beginning of the year. It is anticipated that this would bring benefits to the group’s business.”

48. An article in the Apple Daily dated 9 June 2003 made reference to the rapidly rising share prices of other ‘footwear’ stocks in putting forward a bullish prospect for Sunny Global shares :

“Yue Yuen Holding (551) recorded a nearly 100% increase in half a year while it only took three months for Symphony Holdings (1223) to double its share price. Kingmaker Holdings (1170) showed a 30% increase in one month. Footwear stocks of a long-standing brand name are hot for speculation and are expected to give momentum to Sunny Global (1094).”

49. Of the prospects for the share price of Sunny Global the article concluded :

“Its share price is expected to go beyond its offer price of \$0.50. Even if it goes up to the high level of \$0.66 a month ago in the middle term its P.E. is only 5.9 times. It is still the best bargain among footwear stocks.”

50. At the outset of his succinct cross-examination of Ms Stella Fung, on behalf of the four Specified Persons whom he represented, Mr Mak made it clear immediately that he took no issue whatsoever with that opinion.

## CHAPTER 7

### A CONSIDERATION OF THE EVIDENCE AS TO WHETHER OR NOT THERE WAS “INSIDER DEALING” IN SHARES OF SUNNY GLOBAL IN JUNE 2003

#### Overview of the Operations Sunny Global.

51. At the material time Sunny Global operated its production line in a factory in Jinjiang, Fujian in the PRC. In Hong Kong, it maintained office premises of about 203 sq ft at unit B 3, 8/F Loyong Court, 212-221 Lockhart Road, Wanchai. The staff of Sunny Global in Hong Kong comprised Mr Lee Man Fa, the Chairman, Ms Tsoi Yung Yung, his secretary, Ms Katherine Yu, Mr Wilfred Hung and Mr Joe Chan.

#### Ms Katherine Yu.

52. In 2003, Ms Katherine Yu was the Finance Director and Company Secretary of Sunny Global. She graduated with a BA degree in accountancy from the City Polytechnic of Hong Kong in 1992, in which year she began working as a trainee in the Audit Department for Messrs Kwan Wong Tan and Fong, at which firm Mr Wilfred Hung was a colleague. She left that firm in 1993 but they remained in contact. In and between 1994 and 1996 she worked in the Audit Department of Coopers & Lybrand. From 1996 until 2001 she worked as the senior accountant in the accounts department of Swire Duro Ltd, a subsidiary of a publicly listed company. It was her duty to prepare accounts, which in turn were consolidated into the accounts published for the publicly listed company. In 1997, she qualified as a member of the Hong Kong Society of Accountants and the Association of Certified Chartered Accountants.

53. In late 2001, at the invitation of Mr Lee she joined Sunny Global as the Financial Controller and was one of two executive directors. In June 2002, immediately before the listing of Sunny Global her position changed to that of Finance Director and Company Secretary. She was described in the Prospectus as being a director of the company and having held a managerial position in a subsidiary of the Swire Group for the four years prior to the joining Sunny Global. In the period of her employment at Sunny Global prior to the listing in July 2002, it had been her responsibility to gather information for the sponsor, Oriental Patron, to draft the Prospectus and to co-ordinate activities between the various parties, including lawyers and accountants. After listing, it was her responsibility to deal with enquiries by the SEHK, to consolidate the accounts of Sunny Global's subsidiaries for preparation of the results, both interim and annual, and to discharge other duties of a Company Secretary. She agreed that she spoke to Mr Lee regularly and that he gave her instructions directly.

#### The recruitment of Mr Wilfred Hung and Mr Joe Chan

54. In about April 2003, in addressing Mr Lee's search for someone to assist the company in seeking investment opportunities in the Mainland, Ms Katherine Yu introduced him to Mr Wilfred Hung, who was employed by Mr Lee as Business Development Manager of Daily Development Company Limited, an indirectly wholly-owned subsidiary of Sunny Global. She was aware that he had been granted share options. In his turn, Mr Wilfred Hung introduced Mr Joe Chan, who was employed on salary terms as his assistant. In addition, he too was granted share options.

55. Mr Wilfred Hung confirmed that Ms Katherine Yu introduced him to Mr Lee and Sunny Global, telling him that Mr Lee was looking to invest in new investment projects. At first, he sought a salary in the range of \$1 million per year but, this being the time of SARS and a time at which there was no business

for Briggate, his own company, he entered into an agreement dated 28 April 2003 with Daily Development to become its Business Development Manager that provided for 'nil' salary. However, it was agreed before he began work that he would be granted a share option permitting him to buy 4 million Sunny Global shares at \$0.435 per share and that he could continue his business through Briggate. Before he accepted the position he had studied the performance of Sunny Global shares and observed that the daily turnover of shares was minimal. He judged there to be an upside for the performance of those shares. He estimated that he could make a profit of \$200,000-\$300,000. He had not asked either Ms Katherine Yu or Mr Lee of the financial or business condition of Sunny Global before becoming its Business Development Manager.

56. Mr Wilfred Hung agreed that he introduced his friend Mr Joe Chan to Mr Lee, with the result that he was employed as Assistant Business Development Manager. He was aware that Mr Joe Chan earned a salary and that he was granted the same share option, namely the right to buy 4 million Sunny Global shares.

#### The role of Mr Wilfred Hung.

57. As Business Development Manager Mr Wilfred Hung was responsible for locating investment opportunities in the Mainland. He understood that if there was great potential in a particular investment that there would be available "...several tens of millions of dollars" to invest. The investment could be in any industry. He said that there had been no need for him to go through the financial statements of Sunny Global or its published reports, but he had taken a glance at the latter. He had not visited the company's production facilities in the Mainland because of the prevalence of SARS at that time. As a result, in May 2003 there had been not much for him to do.

58. Ms Katherine Yu said that Mr Wilfred Hung visited the Sunny Global office only rarely, rather he stayed in his own office, located within the EVI offices in Causeway Bay. She agreed that she was a regular visitor to Mr Wilfred Hung's office and occupied a table immediately outside the office and that frequently she forwarded her mobile telephone calls to a telephone at that place. Sometimes she spent the whole morning or afternoon there or even longer. Whilst there she had conversations with Mr Wilfred Hung, mostly about matters other than business. As far as business was concerned, they did discuss the type of business in which Sunny Global was engaged but she did not disclose to him any financial figures other than those that had been published. That limited range of discussion about business applied to her conversations with Mr Joe Chan as well. She did not talk to Ms Tsoi about business.

59. In cross-examination, Ms Katherine Yu accepted that in the record of interview of 15 June 2004 she had said of Mr Wilfred Hung :

“...he did not sit at the Wan Chai office. Normally, I only made contact with Wilfred Hung by phone. I do not know where he sat.”.

60. When it was suggested to her that was a lie, Ms Katherine Yu said that it was the fact that he did not sit at the Wan Chai office and she did contact him by phone. She had said that she did not know where he sat because she did not know the whereabouts of his permanent office. That was an explanation she had given in a subsequent record of interview.

61. Mr Wilfred Hung confirmed that he rarely visited the Sunny Global office. Rather, he operated from a room that Briggate occupied in EVI offices in Causeway Bay. In cross-examination, he accepted that Ms Katherine Yu visited those offices. She made use of a table outside his room in what could be described as a corridor. He could not say how often she came to the office or how long she stayed. They chatted to one another, but not very often about

work. He had no idea that she arranged for calls made to her mobile telephone number to be forwarded to his telephone line.

The grant of the option to buy Sunny Global shares.

62. On 12 June 2002 Sunny Global adopted a share option scheme. By a resolution of the Board of Directors of Sunny Global dated 5 May 2003 it was resolved that each of Mr Wilfred Hung, Mr Joe Chan and Ms Tsoi would be granted an option to buy up to 4 million Sunny Global shares at \$0.435 per share, that being the maximum number of shares that could be allotted to an employee under the scheme. Ms Katherine Yu said that she understood that, in the case of the two men, the share option was granted by Mr Lee in order to encourage them in their duties of seeking business development opportunities for the company and for Ms Tsoi as an acknowledgement of her performance as his secretary.

63. Mr Lee said in a record of interview that the grant of an option to purchase up to 4 million Sunny Global shares to each of its employees Mr Wilfred Hung, Mr Joe Chang and Ms Tsoi, had been his suggestion :

“...to acknowledge the work of the three persons in the company and give them encouragement.”.

64. Of the former two employees, he said that the purpose was to encourage them in finding new development projects for the company. Mr Lee confirmed that he had signed resolutions of the Board of Directors of Sunny Global allotting tranches of shares to each one of those three employees on 30 May and 10 June 2003.

65. Ms Katherine Yu said that she typed and signed the minutes related to the grant of the share option, as she did all the other minutes relating to the exercise of those options by all three employees. She gave each of them a “pro forma”, with which they could exercise their share option. In due course, each of them

exercised those options by giving a “pro forma” to her directly, so that she was aware at the time of the execution of those option rights. However, none of the three of them discussed the fact of the exercise of their options with her either before or after they handed her the “pro forma”. At the time that the three of them sold their Sunny Global shares she was unaware of that fact.

Knowledge of the deterioration of Sunny Global’s performance.

66. Ms Katherine Yu said that prior to the receipt, on about 7 June 2003, of the financial reports of the subsidiaries of Sunny Global from Mr Ho Chuen Jip (“Mr. Ho”), the Accounts Manager of the company on the Mainland, she knew that the business of the subsidiaries was declining and that the performance of Sunny Global was not satisfactory. In her record of interview dated 15 June 2004, Ms Katherine Yu had explained that in the period October 2002 to June 2003 she had visited the Mainland subsidiary companies to look at their accounts on at least five occasions. In her oral testimony, she said that because of rumours of infectious diseases on the Mainland, in advance of SARS, she had not travelled to the Mainland. Nevertheless, she said that she was satisfied that she was acquainted with what was going on in the Mainland subsidiary companies. In her record of interview of 17 January 2005, she said :

“From my daily contact with Ho Chuen Jip, I knew that the business of the company had deteriorated.”.

67. In her oral testimony, she denied that she had had regular contact with Mr Ho, saying that contact was only about once a month. He would send information by facsimile if she so requested, but even that was not regularly nor did it amount to much.

68. She said that she was not aware of the exact figures prior to the receipt of those reports. Having completed the necessary consolidation and adjustment work for the accounts of the Group on about 19 to 20 June 2003 she came to

realise that the net profit of Sunny Global for the six months ended 31 March 2003 had dropped 72% as compared with the six months ended 31 March 2002. She drafted the un-audited Consolidated Income Statement, draft Interim Report, draft press announcement and the SEHK's announcement form in respect of the Interim Results released on 23 June 2003. She did that work by herself and did not tell her colleagues Mr Wilfred Hung, Mr Joe Chan and Ms Tsoi of the results. Moreover, she took steps to maintain confidentiality by ensuring that information provided by the Mainland subsidiaries were sent directly to her computer, that hard copies were kept in a locked drawer and by avoiding discussions on the telephone with Mr Ho, lest they be overheard by those colleagues.

69. Mr Lee Man Fa acknowledged in a record of interview that he had known that the business of Sunny Global had not been good in around April 2003, but said that he had not known then of the exact detail of what was announced on 23 June 2003 in the Interim Results of that company until he received a draft of that announcement. Mr Lee said that he had been informed of the downturn by Mr Ho Chuen Jip, who was responsible for finance on the Mainland. He had not informed Mr Wilfred Hung, Mr Joe Chan or Ms Tsoi of the downturn of the company's performance.

#### 30 May 2003 Announcement.

70. Ms Yu explained that the announcement of 30 May 2003 made by Sunny Global that :

“Recently it had been approached by an investor for placing of shares in the company.”

followed contact with her by the SEHK arising from a possible “price/volume alert” in respect of Sunny Global's shares. As a result, she approached the directors of the company and on being informed by Mr Lam Wai San (“Mr.



Lam”), the Deputy-Chairman and a director of the company based in the Mainland, that he had been approached by a Mainland investor she judged the matter to be “price sensitive”. Then, she contacted the company’s solicitors, Jennifer Cheung and Co and caused disclosure to be made by way of that announcement. She said that she had not been involved previously in making such an announcement for Sunny Global or any other company.

71. In cross-examination, she accepted that she was unable to remember the name of the investor, the industry from which he came or the size of the potential placement. Although she said that she thought she had received his telephone number, at her request of Mr Lam, she had never contacted that person. She had passed on the information of that approach by an investor in respect of a placement to Mr Lee Man Fa but he had not responded in any way. As a result, she had not followed up the matter in any way at all. She concluded that he was independent of the company its directors or substantial shareholders, as stated in the announcement, because none of the directors had told her that he was so connected.

#### The opening and operation of accounts at Kim Eng.

72. At all material times in 2003 Mr Charles Wong was an Account Executive of Kim Eng. Mr Wilfred Hung was a client of his who had an account with Kim Eng in 2003. On 3 June 2003 share certificates in respect of 4 million shares and Sunny Global were deposited into Mr Wilfred Hung’s account with Kim Eng. Commencing on 2 and concluding on 11 June 2003 all those shares were sold on the instructions of Mr Wilfred Hung. Mr Charles Wong identified an audio-tape from the records of Kim Eng of a conversation on 9 June 2003 that he had with Mr Wilfred Hung about the sale of some of those shares on that date. In the course of the conversation, Mr Charles Wong told Mr Wilfred Hung that he had sold 200,000 shares at \$0.445. The account statement of the latter with

Kim Eng describes such a sale, as part of the sale of 1.5 million shares, on that day.

73. Securities trading accounts in the name of Ms Tsoi and Mr Joe Chan were opened with Kim Eng, witnessed by Mr Charles Wong, on 3 June 2003. Mr Charles Wong said that Ms Tsoi and Mr Joe Chan had come together to the offices of Kim Eng to open those accounts (record of interview of 13 April 2005; Q7), having been introduced as customers of Kim Eng by either Mr Wilfred Hung or Ms Katherine Yu (record of interview 5 July 2004 Q 42). In June 2003, each of them deposited share certificates in respect of 4 million shares of Sunny Global which shares they sold in that month.

74. Mr Charles Wong said that a “securities” trading account in the name of Info Fortune was opened with Kim Eng on 12 June 2003 after he had been introduced to Mr Lee by Ms Katherine Yu. On 10 July 2003, share certificates in respect of 300 million shares of Sunny Global were deposited into that account. On 1 August 2003, he sold 52 million Sunny Global shares from that account. That was the first tranche of a total of 179 million Sunny Global shares sold from the account in August 2003.

75. Mr Lee said in a record of interview that he signed the account opening documentation, dated 12 June 2003, of an account in the name of Info Fortune with Kim Eng after Mr Wilfred Hung had introduced him to Mr Charles Wong of Kim Eng. However, it was Ms Katherine Yu who accompanied him to deal with the actual procedures of opening the account. He said that Info Fortune was wholly-owned by him. He deposited 300 million Sunny Global shares in that account on 10 July 2003 and had done so.

“In order to get cash because at that time I wanted to make some personal investments.”.

Mr Lee's agreement of 5 June 2003 to buy shares in a hotel in Fujian for RMB 65 million.

76. Mr Lee accepted that he was a party to an agreement with Mr Xu Beifang, dated 5 June 2003, on the letterhead of the Homey Hotel in Shishi city, Fujian in the PRC, in which he had agreed to pay RMB 65,000,000 in return for a shareholding of that hotel. He had been introduced to Mr Xu indirectly through Mr Tsai Hung Ching, his former schoolmate and father of his secretary Ms Tsoi. Discussions about his purchase had taken place after the Lunar New Year of 2003. Mr Lee acknowledged that at the time he had deposited the 300 million shares into Info Fortune's account with Kim Eng he was aware that he needed to raise a large sum of money to make the payments due under the Homey Hotel Acquisition agreement.

Evidence of the Specified Parties.

Mr Wilfred Hung.

77. Mr Wilfred Hung said that he is and was an accountant qualified in both Australia and Hong Kong. He is and was a member of the Society of Accountants in Hong Kong and of the Australian Society of Certified Public Accountants. He was unable to inform the Tribunal when it was that he had obtained those qualifications, but it was more than 10 years earlier. He had never faced any disciplinary or criminal charges. He was not a "responsible person" under the Ordinance but, in any event, no disciplinary proceedings of any kind had been brought against him by the SFC. He had graduated from Monash University in Australia in Business and Economics in 1991. Through his own company, Briggate Capital, he had been doing business by introducing Hong Kong investors to or making equity investment in Mainland companies.

78. He and Ms Katherine Yu had been colleagues together at the accounting firm of Kwan Wong Tan and Fong for about three years beginning in about

1995. After he left the firm they kept in touch with one another. Of their relationship he said that they were “ordinary friends”. At about the time Sunny Global was listed, in July 2002, following her request for a recommendation of a person for the post of non-executive director of the company he had introduced Mr Kan Siu Lun, who had been appointed a Non-executive Director of Sunny Global and described as such in the Prospectus for the IPO. Mr Chan Kin Kee, Chief Technical Officer of EVI Education Asia Limited, said in a witness statement received by the Tribunal that he had become a Non-executive Director of Sunny Global at the same time and in the same circumstances, in particular on the referral of Mr Wilfred Hung.

79. Mr Wilfred Hung said that Ms Tsoi, the secretary of Mr Lee, was the daughter of his former employer at Wah Yick Company Limited (“Wah Yick”), Mr Tsai Hung Ching. He had been Financial Controller of that company in 1999 to 2000. Of his relationship with Ms Tsoi, he said that they were simply colleagues. He did not know that Mr Lee had entered into an agreement on 5 June 2003 to acquire an interest in an hotel in the Mainland which required that Mr Lee make a payment of RMB 65 million.

80. He had travelled to various places in the Mainland in his pursuit of investment projects for Sunny Global including, Beijing, Shanghai, Shenzhen, Zhejiang and Guangzhou. Sometimes, he was accompanied by Mr Joe Chan. However, none of the projects materialized. He said that his responsibility was new projects in “other industries”, some manufacturing and some trading but he could not remember any details. The only information that he presented to these potential investment targets was that Sunny Global was a listed company. He could not remember even if he told them that it manufactured shoes. In his oral evidence, he said that the businesses in which these companies were involved included trading, and the manufacture of sewing machines and Christmas tree

81. Whilst in Hong Kong he rarely visited the Sunny Global office. Rather, he operated from a room that Briggate occupied in EVI offices in Causeway Bay. In cross-examination, he accepted that Ms Katherine Yu visited those office. She made use of a table outside his room in what could be described as a corridor. He could not say how often she came to the office or how long she stayed. They chatted to one another, but not very often about work. He had no idea that she arranged for calls made to her mobile telephone number to be forwarded to his telephone line.

The exercise of the option and the sale of the shares.

82. Mr Wilfred Hung said that he was prompted to exercise his option to buy Sunny Global shares on 30 May 2003 when he noticed an increase at the end of May 2003 in the “transaction volume” in Sunny Global shares on the stock market. Of the announcement by Sunny Global on the same date in which it was asserted that :

“Recently the company has been approached by an investor for placing of shares in the company.”.

he said that he could not remember if he read the announcement or was aware of it. He did not think he discussed it with Ms Katherine Yu.

83. No one ever told him nor discussed with him any information ultimately published in the Interim Results nor did he come across or have access to any documents containing such information. In particular, he denied that he had been given such information by either Ms Katherine Yu or Mr Lee. He agreed that on 30 May 2003 he had exercised the option to buy all 4 million shares at the same time, for which he paid \$1.7 million. On the next trading day, 2 June

2003, he began to sell those shares. On 3 June 2003 he deposited certificates in respect of the 4 million Sunny Global shares to be deposited to the credit of his account with Kim Eng.

84. In cross-examination, Mr Wilfred Hung said that the \$1.7 million had come from his own available cash savings, of which they represented 20 to 30%. He agreed that he had sold Sunny Global shares on each succeeding trading day from 2 to 11 June 2003, with the result that all the shares were sold by the latter date. He accepted that some of the individual lots were sold at less than the price at which he had exercised the share option. That was true of 100,000 shares sold at \$0.42 on 3 June 2003 and 300,000 shares sold on 6 June 2003. However, he said that the loss was not great and his plan was to sell shares continually, but at an overall average price which gave him a profit. He was not in a rush or hurry to sell. He agreed that he had withdrawn the proceeds of the sale of the shares by three separate cheque payments which monies he had deposited in his own bank account and that the overall profit that he had made was about \$85,000.

85. In cross-examination, Mr Wilfred Hung agreed that he was aware in May and June 2003 that the financial year for Sunny Global ended on 30th of September of a particular year and that Interim Results for the six-month period ended 31 March 2003 had to be issued within three months of that date. Although he said that he had no memory of having read those Interim Results, he said that he should have done so. He accepted that there was a connection with the disappointing results that were announced and his job as Business Development Management : monies were required for any investment. If cash reserves were not used, the ability of the company to raise funds was relevant. One possible source was a placement. There was a “small connection” between the results of the company and the ability of the company to raise funds.

86. In his record of interview of 18 June 2005, a tape recording of a telephone conversation at about 10 p.m. on 9 June 2003 between Mr Charles Wong and another man recorded by Kim Eng was played to Mr Wilfred Hung. First, a copy was played to him and then the original of that recording. In response to the first tape Mr Wilfred Hung said that he could not hear anything at all. Having heard the original recording he said that he could not recognize the two voices and that as far as he recalled he was not either of them nor had he said those things. However, in the Tribunal, after the original tape had been played once, Mr Wilfred Hung immediately identified his voice in the tape-recording and that of Mr Charles Wong and accepted that in the transcript Mr Charles Wong was ascribed the letter 'A' whereas he was ascribed the letter 'B'. In doing so, Mr Wilfred Hung was accepting that he had enquired of Mr Charles Wong how many shares he had sold (#5) and that at (#7) he had said :

*"...I think he may buy (the shares) while lifting the price."*

At (# 11) Wilfred Hung said :

*"I think he wants to push up (the price) at one gulp."*

At (#19) Wilfred Hung said :

*"It is said that the results would be announced soon, so don't want to waste the efforts."*

87. In cross-examination, Mr Wilfred Hung claimed that in the conversation he had not understood what the other party, Mr Charles Wong, was talking about and, as a result, some of his replies were meaningless. His reference to the third person was to buyers in general. He had seen the share price rising and he guessed that someone was trying to buy up shares. He accepted that his

reference to “results” was to the interim results, which would “..*come out soon*”. He denied that he had sold the 4 million Sunny Global shares because he knew of what the Interim Results would contain, in particular a great drop in profits.

Mr Joe Chan Cheung.

88. Mr Joe Chan qualified as an accountant in Hong Kong in about 2001. Also, he is a member of the Association of Certified Chartered Accountants of the United Kingdom. At present, he is employed as an accountant in a publicly listed company in Hong Kong. On 1 May 2003, he began his employment as an Assistant Business Development Manager of Daily Development, a subsidiary of Sunny Global. Mr Wilfred Hung had introduced him to the job and he was to be his assistant. Mr Wilfred Hung told him roughly what the salary was to be and that he was to have share options, but that the details were to be discussed with Ms Katherine Yu. The written employment agreement provided for a salary of \$27,000 a month on a 12 months basis. In his previous employment, he earned \$28,000 on a 13 months basis. Although the agreement made no provision for share options, it had been agreed orally that he would be granted the option to buy 4 million Sunny Global shares. That option was reflected in a resolution of the Board of Directors of Sunny Global dated 5 May 2003 at a price fixed of \$0.435 and was valid for three years.

89. When he joined Sunny Global he had not read either the Prospectus or the Annual Report nor did he know the size of the company or its ability to invest. Ms Katherine Yu had told him that the company manufactured shoes on the Mainland. In cross-examination, he said that in May and June 2003 he did not think that was a need for him to understand or know more about Sunny Global. He did not spend any time on research on the company.



90. In the period May to September 2003, he had followed up various projects identified for him by Mr Wilfred Hung by checking relevant financial data. The companies involved were in the pharmaceutical and IT fields. Nothing came of any of these projects. He did not know the size of any of these potential investments. That was not a matter for him. Since Mr Wilfred Hung was not in the Sunny Global office regularly there was no need for him to return in order to report to Mr Wilfred Hung. As a result, he was not required to go to the office every day, rather only when there was a need. He was unable to remember how often he had attended the office in May and June 2003. He agreed that the office was approximately 200 square feet in area and that there were desks and individual telephone for Ms Katherine Yu, Ms Tsoi and himself. Whilst he was able to hear a speaker using the telephone in that office he did not pay attention to such conversations.

91. On 3 June 2003, on the recommendation, referral and introduction of Mr Wilfred Hung he had opened a securities trading account with Kim Eng, notwithstanding the fact that he had two existing accounts with other stockbrokers, namely Ricofull and Sun Hung Kai Securities. He said that the former account was not convenient to use and the latter account was one he used mainly for Internet trading. In any event, it did not cost him any money to open a new account. That conversation had occurred between them several days prior to the account being opened. At that time, he had in mind exercising his share options, but was not 100% sure of doing so. As a result, he paid attention to the share price of Sunny Global shares. That was a matter he discussed with Mr Wilfred Hung, whom he knew had an account with Kim Eng. Of the fact that an account was opened in the name of Ms Tsoi on the same day at Kim Eng, Mr Joe Chan said that he may have seen Ms Tsoi at the offices of Kim Eng that day but that he had not gone there with her nor did he expect to see her there.

The exercise of the option and the sale of the shares.

92. On 10 June 2003, Mr Joe Chan exercised his option to purchase Sunny Global shares and bought one million shares. He did so a few days after having asked Mr Wilfred Hung if he could exercise his option to buy shares and being told that Mr Wilfred Hung had already done so and that there was no harm in him doing likewise. He had asked Mr Wilfred Hung because he had come to regard him as someone more experienced than he was in dealing in shares. However, Mr Wilfred Hung did not tell him that he had sold the shares. For his part, he did not tell Ms Tsoi that he had exercised his option to buy shares or that he had sold them.

93. On 11 June 2003, Mr Joe Chan deposited share certificates in respect of one million Sunny Global shares in his Kim Eng account of which that day he sold 312,000 shares at \$0.54 per share and exercised his option to buy a further 2 million Sunny Global shares, which he deposited with Kim Eng on 13 June 2003. He was not aware that on the same date Ms Tsoi began to sell Sunny Global shares that she had acquired through the exercise of her option or that on that day Mr Wilfred Hung sold the last of his 4 million shares. There was never any discussion between the three of them about the sale of their Sunny Global shares. On every succeeding trading day after 11 June 2003, until 20 June 2003, except 19 June 2003, he sold Sunny Global shares from that account. On 18 June 2003, he exercised his option to buy the remaining one million shares, which he deposited into his account at Kim Eng on 20 June 2003, on which day he sold the last of the 4 million shares.

94. Of the mechanics of the sale of the shares, Mr Joe Chan said that he had instructed his agent, Mr Charles Wong, at Kim Eng to follow the market price and, if the price was good, to sell the shares. For his part, from time to time he

95. Mr Joe Chan said that he had borrowed \$1.3 million in order to purchase the shares under the share option agreement. Although he agreed that with \$1.3 million he could have bought about 3 million shares in one purchase, it did not occur to him to do so. Mr Yuen Fat Ching confirmed that, following a request from his daughter that he lend money to her sometime tutor Mr Joe Chan, he had given her about \$1.2 million in cash. In due course, and at his request for repayment, she returned that amount of money to him in cash. Mr Joe Chan sold the shares allotted to him under the option agreement within a short time of each allotment and explained that he had done so because he had to repay the loan. He explained that the withdrawal \$960,000 by way of “CHATS” on 20 June 2003 was merely to effect rapid transfer of the money so that he could repay the loan earlier. However, Mr Charles Wong said that Mr Joe Chan had told him that after the proceeds of the sale of his shares were received they would be used to issue a cheque to Sunny Global so that he could exercise his share options. It was in those circumstances that the “CHATS” transfer had taken place.

96. The final proceeds of the sale of the shares were withdrawn by cheque on 24 June 2003. Thereafter, the account was never used again. The only shares sold in the account were the shares that Mr Joe Chan had acquired through the exercise of his option. He agreed that he had made a profit of about \$287,000.

97. Of the fact that the Interim Results were published on 23 June 2003, the second trading day after he had completed his sale of Sunny Global shares, and in particular, if he was aware of the prospective announcement of the Interim Results Mr Joe Chan said, “I did not pay any attention to that”. He said that

there was no talk subsequently amongst his colleagues about the disappointing nature of those results. He might have read the interim results, he thought within a month of their publication. Prior to both his exercise of the option to buy and his subsequent sale of the shares he did not know anything about the nature of the prospective Interim Results. No one instructed or advised him to exercise the option to buy the shares or indeed to sell them.

98. Mr Joe Chan agreed that he had joined the Sunny Global Group in order to get exposure in Mainland projects and that in doing so he had enhanced his prospects compared with his previous employer. However, when asked why it was that he had exercised his option to purchase Sunny Global shares, which were valid for three years, within six weeks of joining the company, rather than waiting to see if the company prospered in particular in relation to prospective investment projects Mr Joe Chan said that he had done so because he saw that he could exercise the options and make a profit. Also, Mr Wilfred Hung had told him that even if he exercised the options he could negotiate with the company for the grant of future options.

Ms Tsoi Yung Yung.

99. Ms Tsoi said that she was 31 years of age and had been educated to Form V level. She became Mr Lee's secretary in January 2002 through the introduction of her father, whom she knew to know Mr Lee. She resigned from that position in Sunny Global in April 2004. It was her duty to work in the company's office in Wanchai, where she answered the telephone, typed and delivered documents.

100. In May 2003, Mr Wilfred Hung and Mr Joe Chan were employed by Sunny Global. She had known the former from the time when both of them were employed by her father in Wah Yick. Even after he had joined Sunny

Global he maintained an office elsewhere at EVI, to which she used to deliver documents. Mr Joe Chan had a desk in the office, but more often than not he was absent from the office. In the period June to August 2003, she said that Ms Katherine Yu was usually in the office and was in contact by telephone with the factory in the Mainland at least on alternate days. For his part, Mr Lee was in the office a few days a week.

101. In May 2003, she was told by Mr that an option to buy Sunny Global shares had been granted to her for her good performance at work. At that time she did not know what that meant and she asked Ms Katherine Yu for an explanation. Having been given to understand that it was connected with shares she began to pay attention to the share price of Sunny Global. She did not know then that a similar share option had been granted to both Mr Wilfred Hung and Mr Joe Chan.

102. On 3 June 2003, she attended Kim Eng's office to open an account with Mr Charles Wong as her broker. She did so on the reference of her father. At that time she did not know that Mr Joe Chan had opened an account with Kim Eng on the same day.

The exercise of the option and the sale of the shares.

103. On 10 June 2003 Ms Tsoi exercised her option and was allotted one million Sunny Global shares. She did so because she had noticed that the price of Sunny Global shares was higher than the exercise price and realised that a profit could be made. In order to do so she had borrowed \$800,000 or more from her father. At that time she had no knowledge that the Interim Results of Sunny Global were unsatisfactory. No one had told her to exercise her share option or to sell the shares. She deposited the shares into her account on 11 June 2003 and proceeded to sell them immediately. She acknowledged that she made a profit of over \$100,000 from the sale of those one million shares. She

exercised her option again on 13 June 2003 in respect of another one million shares. However, she did not deposit those shares into her account until 17 June 2003, but having done so she sold them on 18 and 19 June 2003. On the latter date, she exercised an option to buy a further one million shares and continued selling shares on 20 June 2003. Finally, on the 23 June 2003 she exercised her final option in respect of one million shares on which day she sold over one million shares.

104. In cross-examination, she said that there was no necessity or reason that she had exercised all her options to buy shares by 23 June 2003. She was unaware that the Interim Results for Sunny Global, for the six months ended 31 March 2003, had been announced on the evening of 23 June 2003. She explained that she had sold some of the Sunny Global shares at a loss on 24 June 2003 because overall she had made a profit and she did not want to keep the shares. It was too troublesome to keep monitoring the share price. She knew of no event connected with the sharp drop in the share price overnight from 23 to 24 June 2004. She agreed that there after the sale of 24 June 2003 she had never traded in this account again and that the total profit of about \$170,000, together with the original loan, had been returned to her father, where she had left it for investment. At all times whilst she was selling the shares to knew nothing of the prospective results disclosed in the Interim Results released on 23 June 2003.

105. Ms Tsoi acknowledged that her signature appeared on the Letter of Authorisation, dated 30 July 2003, in which she was appointed to act on behalf of Info Fortune in its account with Kim Eng. When asked by one of the members of the Tribunal why it was that the signature was completely different from the signature she had appended on the account opening documents in her own account with Kim Eng Ms Tsoi said that she had chosen to use a different signature for Mr Lee's company business. Acting on Mr Lee's instructions as to

price and volume she had placed orders with Mr Charles Wong of Kim Eng to sell shares. When the tape recording made by Kim Eng of two telephone conversations on 1 August 2003 were played to Ms Tsoi in her record of interview of 22 April 2005 she was unable to recognize the voices. However, when the same tapes were played to her in the Tribunal she immediately recognized Ms Katherine Yu's voice on the first tape and her own voice and that of Mr Charles Wong in the second tape. Both conversations dealt with the sale of 52 million shares in the account of Info Fortune on 1 August 2003.

## CHAPTER 8

### INSIDER DEALING - FINDINGS

106. In reaching our “Findings” we have had regard not only to all the material received by the Tribunal in these proceedings but also to the submissions of counsel.

107. We determine that each of the “Specified Persons” is a person entitled to and benefits from the direction of the Chairman in respect of “good character” articulated in Chapter 3.

#### “Relevant information”

108. We accept the opinion of Ms Stella Fung that knowledge of the prospective Interim Results contained in the announcement of Sunny Global of 23 June 2003 was “relevant information”, it not being known generally by the investing public before the publication of those Interim Results and it being “price sensitive”, in particular because on it becoming known it would lead to a substantial decline in the price of the shares of Sunny Global. The essence of the “price sensitive” nature information was the announcement of a very substantial decline in the profits of Sunny Global for the six months ended 31 March 2003 as compared with the period ending 31 March 2002. The announcement revealed that the decline was from a profit in 2002 of \$18,363,000 to one in 2003 of \$5,169, 000, that being a 72% decrease in profit. We find that knowledge of the fact of a substantial decline in profits, not necessarily the exact figure itself, was nevertheless “specific information” and constituted the “relevant information”.



“Persons connected with Sunny Global”.

109. At all material times Mr Wilfred Hung and Mr Joe Chan were employees of Daily Development, which company was ultimately a 100% owned subsidiary of Sunny Global. In 2001, Ms Tsoi became an employee of Sunny Global and later of its wholly owned-subsubsidiary Daily Development, a company that provided management services to the Group. Throughout her employment she worked as the secretary of Mr Lee. It was in their capacity as employees of the Sunny Global Group that all three of them were eligible to receive the grant of share options made to them on 5 May 2003. We find that each one of the three of them was a “person connected” with Sunny Global as provided for by section 247(1)(a) and section 270(1)(a) of the Ordinance.

“Deals in the securities” of Sunny Global.

110. There is no dispute, and we so find, that in selling their shares in Sunny Global in June 2003 all three of them dealt in the securities of that company.

Possession of “relevant information”.

Mr Lee Man Fa and Ms Katherine Yu.

111. There is no doubt, and we so find, that it was known to both Mr Lee and Ms Katherine Yu well before the exercise of the first share option by Mr Wilfred Hung, on 30 May 2003, that the performance of Sunny Global in the six months ended 31 March 2003 had deteriorated substantially from the similar period ending 31 March 2002 and in respect of the performance of the year ended 30 September 2002, in particular that there was a significant decrease in profits. Mr Lee was the founder of the Sunny Global Group of companies and its Chairman. Ms Katherine Yu was the Finance Director and Company Secretary. It was their business and duty to be acquainted with the performance of the company. Ms Katherine Yu had the duty of preparing and presenting the Interim Results within three months of 31 March 2003. Both of them received

reports of the significant deterioration of the performance of Sunny Global from Mr Ho Chuen Jip, who was responsible for the accounts of the Mainland companies of the Sunny Global Group. No doubt, it was the case, as Ms Katherine Yu testified, that the exact figures were only identified in early June 2003, but the substantial deterioration was known well before that date.

Mr Wilfred Hung, Mr Joe Chan and Ms Tsoi Yung Yung.

112. The issue of controversy is whether or not any or all of Mr Wilfred Hung, Mr Joe Chan and Ms Tsoi were knowingly in possession of relevant information at the time that they dealt in Sunny Global shares in June 2003. All three of them deny, and always have denied, being possessed of such knowledge. Each one of them asserts that that he or she exercised the option and commenced selling the shares in order to make a profit from the difference between the price at which they could exercise their option to be allotted those shares and the price they could, and on all but a few occasions did, obtain in the market on sale.

113. At the outset it is to be noted that there is no direct evidence, either from a witness or from documentary exhibits, that knowledge of the relevant information came into the possession of any or all of Mr Wilfred Hung, Mr Joe Chan and Ms Tsoi at the material time.

Circumstantial evidence.

114. The options to purchase Sunny Global shares granted to Mr Wilfred Hung, Mr Joe Chan and Ms Tsoi on 5 May 2003 were for a maximum of 4 million shares at an exercise price of \$0.435 per share and were valid for three years. Yet, all three of them had not only exercised those options but also had sold all the total of 12 million shares in the period of about 3½ weeks from 30 May to 24 June 2003. They all did so through accounts at Kim Eng, at which brokerage their account executive was the same person, namely Mr Charles Wong. In the

case of Mr Joe Chan and Ms Tsoi the accounts were new, having been opened on the same day, 3 June 2003. Yet, each of them accepted that they had existing accounts with different brokerage firms at that time. Having sold all their Sunny Global shares neither of them used their accounts at Kim Eng ever again. Mr Joe Chan said that he had opened his account with Kim Eng on the referral of the Mr Wilfred Hung. Ms Tsoi said that she had opened the account on the referral of her father. Nevertheless, all three of them denied being aware of the fact of the sale of those shares by the others. On 12 June 2003, Mr Lee opened an account with Kim Eng in the name of Info Fortune. Once again, Mr Charles Wong was the account executive.

Evidence of the relationships between the staff members of Sunny of Gobal.

115. In May and June 2003 Ms Katherine Yu and Mr Wilfred Hung had known each other for over 10 years. They accepted that they were friends. They had been junior employees in the firm of accountants Kwan Wong Tan and Fong. It was accepted that, thereafter, they had kept in contact with one another. In about July 2002, in the process of the IPO of Sunny Global, Ms Katherine Yu had contacted Mr Wilfred Hung for his assistance in finding appropriate persons to become Non-executive Directors of Sunny Global. With his assistance Mr Chan Kim Kee and Mr Kan Siu Lun had been recruited as Non-executive Directors of Sunny Global. For her part, in about April 2003 Ms Katherine Yu had referred Mr Wilfred Hung to Mr Lee, as a result of which the former had been employed on 1 May 2003 as Business Development Manager of Daily Development. Thereafter, although Mr Wilfred Hung did not visit the office of Sunny Global in Lockhart Road often, we find that Ms Katherine Yu spent considerable periods of time at his “de facto” office in the office of EVI. Not only did she regularly occupy a desk outside Mr Hung’s offices at EVI but, as evidenced by her telephone records, she regularly caused her mobile phone to be forwarded to a telephone at that place.

116. Prior to May and June 2003, Ms Katherine Yu and Ms Tsoi had been working together in the Lockhart Road office of Sunny Global for about 18 months. Although Mr Wilfred Hung joined Sunny Global only on 1 May 2003 he knew her to be the daughter of Mr Tsai Hung Ching who had been his boss at Wah Yick, where he had worked as Financial Controller in 1999 and 2000. Finally, Mr Wilfred Hung had been instrumental in the employment of his fellow accountant Mr Joe Chan, whom he described as a friend, as his Assistant Business Development Manager at Sunny Global.

The roles of Mr Wilfred Hung and Mr Joe Chan in Sunny Global.

117. Both Mr Wilfred Hung and Mr Joe Chan were at pains to disclaim almost all interest in let alone knowledge of the performance of Sunny Global either in the period leading to their employment or after that employment had begun. In this context, we note that both of them were qualified accountants. We find their evidence of that disinterest not only perplexing but also bizarre. On their accounts it was their duty to locate potential investments in the Mainland other than in the shoe manufacturing business. Yet, it was their testimony that the performance and therefore profitability of Sunny Global was not a matter that was of interest to them, although Mr Wilfred Hung did concede that the profitable performance of Sunny Global had a “small connection” to its ability to raise funds for potential investments. Neither of them appeared to be in a position to indicate what size of investment might be made by Sunny Global. If true, such a state of knowledge of the performance of Sunny Global would make it very difficult indeed to make any meaningful presentation to a potential investor in the Mainland of the attributes of Sunny Global as an investor.

Mr Wilfred Hung.

118. Mr Wilfred Hung testified that he had to determine to exercise his option to have all 4 million Sunny Global shares allotted to him on 30 May 2003, when

he noted an increase in the turnover of those shares on the stock market. Also, the price in the market was above the share option exercise price. In order to do so, he drew upon about \$1.7 million in his cash reserves, that being 20 to 30% of his available cash. Turnover on 29 and 30 May was 20.7 million and 21.7 million shares, with “Highs” of price of \$0.45 and \$0.48 respectively. We note, however, that on 20 and 21 May 2003 the volume of Sunny Global shares traded on the market was 14.9 and 18.3 million shares, with “Highs” of price of \$0.45 and \$0.46 respectively. On each of those days Sunny Global issued teletext announcements disclaiming knowledge of the reasons for the increase in trading volumes of its shares.

119. The Tribunal notes with considerable surprise that it was Mr Wilfred Hung’s evidence that he could not remember whether or not he had read or was aware of the announcement, on the day that he exercised his option to buy all 4 million Sunny Global shares, 30 May 2003, that the company had recently been approached by an investor for a placing in the shares of the company. Given the total absence whatsoever of the supporting evidence to be expected of Ms Katherine Yu’s evidence in respect of the event said to have justified the announcement we are most sceptical as to its truth.

120. Another aspect of Mr Wilfred Hung’s explanation for the exercise of his option and the sale of all his 4 million Sunny Global shares that gives rise to concerns, is the fact that his contract of employment provided for no monetary compensation at all. The only monetary benefit granted to him by Sunny Global, some days after his employment began, was the option to purchase 4 million of its shares. Clearly, his duties and responsibility in identifying potential investments for the company and even the announcement of the making of such investments would inevitably take time before they could possibly be reflected in the share price of Sunny Global shares. In selling his shares within six weeks

of his employment Mr Wilfred Hung had “cashed in” any monetary benefit available to him from employment with Sunny Global for the modest total of \$85,000 profit.

Sequence of the sale of shares.

121. It is to be noted that by the time that Mr Joe Chan and Ms Tsoi exercised the first of their options to be allotted Sunny Global shares on 10 June 2003 Mr Wilfred Hung had that day reduced the balance of shares left in his account to 100,000, which shares he sold the next day. As a consequence, Mr Wilfred Hung was not competing for buyers of his shares with shares being sold by Mr Joe Chan and Ms Tsoi. We note that it was the evidence of Mr Joe Chan that it was only following a conversation with Mr Wilfred Hung that he exercised his rights under the share option, albeit a conversation initiated by Mr Joe Chan.

The tape recording of a conversation between Mr Wilfred Hung and Mr Charles Wong on 9 June 2003.

122. We reject Mr Wilfred Hung’s explanation that in the course of this conversation he was unable to follow what Mr Charles Wong was saying and that his answers were not related to what Mr Charles Wong had said. Certainly, at least for the Tribunal, there are some difficulties in following all the conversation. It was a conversation between an employee of a company, who was selling shares in that company, and his broker and it appears to have been conducted deliberately in language more readily understood by the participants than others. However, it is of significance that it was Mr Wilfred Hung who said :

*“It is said that the results would be announced soon, so don’t want to waste the efforts.”*

123. We find, as Mr Wilfred Hung admitted in his testimony, that to be a reference to the prospective Interim Results of Sunny Global, mentioned in the context of the sale of his Sunny Global shares. In context that followed his expressed belief (#11) that someone was trying to push up the price of the shares but his repeated assertion that he was disregarding that and proceeding to sell his shares, mindful of the impending Interim Results. Clearly, results that were going to be negative. We find, from a consideration of all the evidence, that Mr Wilfred Hung's expressed concern arose because he had come to know that the Interim Results would reflect a substantial decline in the profits of the company, which in turn would be reflected by a reduction in the share price of Sunny Global shares in the market and thereby render valueless his share option, that being his only monetary reward for his employment.

Mr Joe Chan and Ms Tsoi Yung Yung.

124. We accept the evidence of Mr Charles Wong that Mr Joe Chan and Ms Tsoi had come together to the office of Kim Eng on 3 June 2003 to open their respective accounts and had done so on the recommendation of either or both Mr Wilfred Hung and Ms Katherine Yu. In so finding, we reject the evidence of Ms Tsoi that she had not gone to the offices with Mr Joe Chan and that she had opened the account by way of referral by her father. We find that in giving that evidence Ms Tsoi was deliberately and falsely seeking to distance herself from evidence that the opening of her account was intimately connected with the persons with whom she worked at Sunny Global, in particular that it was organised and orchestrated.

125. It was the evidence of Mr Joe Chan and Ms Tsoi Yung Yung that, unlike Mr Wilfred Hung, they had borrowed money in order to enable them to exercise their share options. Each of them exercised their options in respect of part only of the total of 4 million shares, sold some of those shares and exercised a further

part of the option whilst at the same time withdrawing the proceeds of the sale. Notwithstanding that, it was Ms Tsoi's evidence that she had found it necessary to seek an explanation from Ms Katherine Yu as to what a share option was it was her evidence that she had followed the share price and made the decision to exercise the option and sell the shares all by herself. Neither one knew of the fact of the others exercise of the share option or the sale of shares.

126. The observation made by the Tribunal of Mr Wilfred Hung in respect of his exercise of his share options and his sale of all 4 million shares within six weeks of commencing employment with Sunny Global applies to Mr Joe Chan. The identification of potential investments for Sunny Global, the negotiations leading to agreements and even the mere announcement of the fact of the prospective agreement would inevitably take time before it could be reflected in a rise in the share price of Sunny Global shares. He agreed that he had joined Sunny Global because he thought that it offered him good prospects. In selling his 4 million Sunny Global shares when he did, he rendered worthless any added value to the shares that might be attributable to successful potential investments by Sunny Global. We do not find any substance in his explanation that he was consoled by the assurance by Mr Wilfred Hung that he could negotiate with the company for further share options. In the first place, the grant of options in respect of 4 million shares was the maximum that could be allotted to an employee under the "Share Option Scheme". In the second place, the issue of the grant of any share options had been a matter that he had discussed with Ms Katherine Yu, not Mr Wilfred Hung.

127. We reject as utterly implausible the denials of Mr Joe Chan and Ms Tsoi that they were not even aware of the mere fact of the imminent announcement of the Interim Results by Sunny Global, let alone its contents. For his part, Mr Joe Chan was an accountant and Ms Tsoi was the Chairman's secretary, both



working with Ms Katherine Yu, who was responsible for the production of Interim Results, in the same small office in Lockhart Road.

128. We note that in the days following the first exercise of their option to buy shares of Sunny Global, 10 June 2003, there followed sustained and continuous selling of those shares. In each of the accounts of Mr Joe Chan and Ms Tsoi monies were withdrawn from the accounts in Kim Eng following the receipt of proceeds. We accept the evidence of Mr Charles Wong that Mr Joe Chan had told him that was necessary in order that he could exercise his share options. In particular, we note that the “CHATS” payment \$960,000 made from his account on 20 June 2003, leaving a small credit balance only, followed the exercise of an option by Mr Joe Chan on 18 June 2003 for one million shares, which at the exercise price would have required a payment of \$435,000. In the result, Mr Joe Chan was able to complete the sale of all his shares on 20 June 2003. For her part, Ms Tsoi Yung Yung completed the exercise of her share options by requesting the allotment one million shares on 23 June 2003. Notwithstanding, the fact that those shares were not deposited physically with Kim Eng until 25 June 2003 she sold 560,000 of those shares on 23 June 2003.

129. We are satisfied that it was no coincidence that Mr Joe Chan and Ms Tsoi opened accounts with Kim Eng, with Mr Charles Wong as the account executive, the day after their colleague Mr Wilfred Hung began selling shares in an account he had with that broker; that they began to exercise their share options are on the same day, 10 June 2003; that all three of them had exercised all their share options and, save for 440,000 shares in the account of Ms Tsoi, had sold all of those shares prior to the announcement on 23 June 2003 of the interim results. We find that there was a clear and obvious urgency to the sales of Sunny Global shares by both Mr Joe Chan and Ms Tsoi and reject their explanations that there was no necessity or urgency in the sales and that they were selling the shares at a

profit. We find that urgency to be their knowledge, acquired in the course of their employment, of the nature of the impending Interim Results, which they knew to be “relevant information” which would inform the market of the substantial decline in the performance of Sunny Global, in particular in its profits for the half-year ended 31 March 2003, probably rendering their share options worthless.

## CONCLUSION

130. In the result, we determine that in selling four million Sunny Global shares each in June 2003 Mr Wilfred Hung, Mr Joe Chan and Ms Tsoi were culpable of insider dealing, contrary to section 270(1)(a)(i) of the Ordinance.

## CHAPTER 9

### THE DISCLOSURE OF INFORMATION FALSE OR MISLEADING AS TO A MATERIAL FACT BY SUNNY GLOBAL – 21 JULY TO 22 AUGUST 2003.

#### Chronology.

#### Background.

131. **30 May 2003** - Sunny Global published an announcement :

“ We have noted the recent increase in the trading volume of the shares of the company and wish to state that we are not aware of any reasons that such increase. Recently the company has been approached by an investor for placing of shares in the company. The investor is an independent third party.....”.

132. **5 June 2003** - Mr Lee signed an agreement to buy shares in the Homey hotel in Shishi, Fujian for RMB 65 million.

133. **12 June 2003** - Info Fortune Holdings Limited opened a “Securities” trading account with Kim Eng.

134. **23 June 2003** - Sunny Global published an “Announcement of Interim Results for the Six Months Ended 31 March 2003” :

“During the period under review, the Group recorded a turnover of approximately Hong Kong \$177.8 million, representing a decrease of approximately 15% as compared to the previous period. The Group’s profit attributable to shareholders amounted to approximately Hong Kong \$5.2 million, representing approximately 72% decrease over the corresponding period of the previous year.”

135. **10 July 2003** - share certificates in respect of 300 million shares of Sunny Global Holdings were deposited with the account of Info Fortune at Kim Eng.

136. **3 July 2003** - expiry of the prohibition imposed upon Mr Lee, the beneficial owner of Info Fortune, provided for by the Listing Rules from disposing of the shares of Sunny Global “.. such that they would cease to be a controlling shareholder of the Company”.

21 July to 25 August 2003.

137. **21 July 2003** - Sunny Global published an announcement :

“The Company and its controlling shareholder, Info Fortune Holdings Limited have been approached by various investors for placing of shares in the Company. As no term of the proposed placing has been agreed by either the Company or Info Fortune Holdings Limited and any of the investors, neither the Company nor Info Fortune Holdings Limited has decided whether to explore the proposal further with any of the investor was on the proposed placing may or may not proceed. If the proposed placing is proceeded, it may or may not result in any change and/or addition of a substantial shareholder in the Company.”

138. **31 July 2003** - Ritz Carlton meeting.

139. **1 August 2003** - Sunny Global published an announcement of the sale by Info Fortune of 52 million shares of the company to independent purchasers on 1 August 2003 at Hong Kong \$0.30 per share, adding :

“Recently the Company and the Major shareholder had been approached by various independent investors for placing of shares in the Company.”.

Later, the announcement went on to explain :

“As mentioned in the announcement of the company dated 21st of July, 2003, recently the company and the Major Shareholder have been approached by various investors for placing shares in the Company. The investors are independent third parties.... Neither the company nor the Major Shareholder has decided whether to explore the proposal further with any of the investors and the proposed placing may or may not proceed.”.

140. **5 August 2003** - Sunny Global published an announcement of the suspension of trading in the shares of the company at 2:45 p.m. that day, pending the announcement, with trading to resume the following day :

“Recently the Company and Info Fortune Holdings Limited have been approached by various independent third parties in respect of proposals which may result in a change of control of the Company and/or injection of assets into the group. **No agreement has been made and the proposals may or may not proceed.**”.

Later, in the announcement it was asserted:

“The negotiations are at a preliminary stage and no agreement has been made. **The proposals may or may not proceed. Further announcement will be made as and when appropriate.**”.

141. **11 August 2003** - Sunny Global published an announcement that :

- (i) it was unaware of the reason for the recent increase in the trading volume of the shares of the company; and
- (ii) the fact of the sale by Info Fortune of 40 million shares of the Company to independent investors at Hong Kong \$0.35 a share, resulting in a reduction of its shareholding in the Company from 60.19% to about 50.49% of the issued share capital.

“...save as mentioned above and as disclosed in the announcements of the Company dated 1st August, 2003 and 5th August, 2003 respectively, there are no negotiations or agreements relating to intended acquisitions or realisations which are disclosable...”.

142. **14 August 2003** - the meeting at the offices of Symphony.

143. **15 August 2003 (2:30 p.m.) to 20 August 2003 (9:30 a.m.)** - suspension in trading in the shares of Sunny Global on the SEHK.

144. **19 August 2003** - Sunny Global published an announcement :

“Reference is made to the announcements of the Company respectively dated 1st August, 2003, 5th August, 2003 and 11<sup>th</sup> August, 2003.....

The negotiations between the Major Shareholder and an investor have reached an advanced stage. The Major Shareholder proposed to sell its entire 50.49% interest in the Company at HK\$35 million (equivalent to approximately HK\$0.17 per share) to the Investor. The Investor is engaged in a similar line of business to the Group. The Proposal, if materialized, will result in a change of control of the Company.”.

145. **22 August 2003** - Sunny Global published an announcement of the sale that day of 41.2 million shares by Info Fortune to independent investors at prices ranging from HK\$0.42 to HK\$0.47, thereby reducing its shareholding in the shares of the company from 50.49% to 40.49% of the issued share capital :

“Reference is made to the announcement of the Company dated 19th August, 2003 in which the Proposal made by the Major Shareholder to the Investor is announced. The Company has been informed by the Major Shareholder that there has been no further negotiation on the Proposal. **The Proposal cannot proceed further as the major shareholder no longer has 50.49% interest in the Company.**”.

146. **25 August 2003** - Sunny Global published an announcement of the sale that day of 23 million shares of the company by the “Major Shareholder” to independent parties at an average price of HK\$0.38 per share, thereby reducing its shareholding of the shares of the company from 40.49% to 34.9% of the issued share capital.

Subsequent events.

147. **27 August 2003** - Sunny Global published an announcement that all negotiations between the Major Shareholder and the Investor had ceased. Of the disposal of shares in the company by the major shareholder announced on 22 and 25 August 2003 it was asserted :

“According to the Major Shareholder, it effected such disposals as the dealt prices were substantially higher than that under the Proposal but then intended to sell the remaining shares to the Investor. The Major Shareholder was informed by the Investor on 26 August, 2003 that it was no longer interested in acquiring shares of the company from the Major Shareholder. All negotiations between the Major Shareholder and the Investor has ceased.”.

148. **28 August 2003** - Sunny Global published an announcement of the sale that day by the Major Shareholder, Info Fortune Holdings, of 22.8 million shares of the company at prices from HK\$0.305 to HK\$0.335, thereby reducing its shareholding of shares in the company to 29.37% of the issued share capital.

## CHAPTER 10

### EXPERT EVIDENCE

Announcements : disclosure of information likely to induce another person to buy the shares of Sunny Global or likely to maintain, increase, or stabilise the price of those shares.

149. In her consideration of whether or not the series of announcements published by Sunny Global beginning on 21 July and concluding on 19 August 2003 was likely to induce investors to buy those shares Ms Stella Fung noted firstly, that the announcement of 21 July 2003, reiterated in that of 1 August 2003, stated that Sunny Global had been :

“..approached by various independent investors for placing of shares in the Company.”.

150. Of that assertion, she noted that it :

“23..... indicated that Sunny Global shares were generally in favour by investors, and these ‘various independent investors’ might compete with each other for acquiring the shares. Moreover, instead of buying the shares directly from the market, these investors approached the company and Info Fortune for a placing of shares, implying that the quantities of shares that they wanted to acquire would be quite large so that buying from the market might be time consuming and might bid up the share price. As Sunny Global had disclosed that if the placing was to proceed, it might lead to a change and/or addition of a substantial shareholder, it implied that the quantities of shares involved might exceed 5% of the issued share capital of the company (or 20.6 million shares).”.

151. In her testimony, Ms Stella Fung explained that the obligation of disclosure imposed upon a person who acquired 5% or more of the shares of a company was imposed by the Ordinance. Division 2 of Part XV of the Ordinance, in particular sections 310 to 315, impose such a duty in respect of a “notifiable transaction”.

152. In cross-examination, Ms Stella Fung agreed that the reference in the announcement that:

“...there is no plan by either the company or Info Fortune Holdings Limited to place more than 30% of the existing issued share capital of the company to any of these investors whereby it would result in any of such investor together with parties acting in concert with any of them, be required, to make a mandatory general offer..”

indicated clearly that any such placement did not involve a change of control of the company.

153. Of the fact that the approaches by “various independent investors” continued as at 1 August 2003, in the context of a rise in the share price of Sunny Global shares of 14.9% from 21 July to 1 August 2003 from \$0.335 to \$0.385 Ms Stella Fung said that it suggested to the market that those investors were still eager to buy large quantities of Sunny Global shares. It was her opinion, that such information would :

“..likely underpin investors’ sentiment towards Sunny Global shares and might induce investors to buy the shares ahead of the occurrence of a share placing.”.

154. The announcement made by Sunny Global on 5 August 2003 asserted that it had requested the suspension of trading in the shares of the company, pending its announcement that :

“Recently the Company and Info Fortune Holdings Limited have been approached by various independent third parties in respect of proposals which may result in a change of control of the company and/or injection of assets into the Company.”.

155. Elsewhere in the announcement the matter was described thus :

“Recently the company and Info Fortune Holdings Limited, a substantial shareholder of the company, had been approached by various investors in respect of proposals which may result in a change of control of the company and/or injection into the company and its subsidiaries (“the group”) of assets engaged in a similar line of business to the group.”.



156. Of that statement, Ms Stella Fung noted that although it was clear that the negotiations were at a preliminary stage and no agreement had been made and, although there were similarities to the announcements of 21 July and 1 August 2003, now it was asserted not only that the acquisition of shares by the “various independent investors” might lead to a change of control of the company but also that it might lead to an injection of assets. Furthermore, it was her opinion that the latter assertion implied that the “various independent investors” “..should also be engaged in the footwear manufacturing industry”.

157. She noted that was the conclusion drawn in an article in the Oriental Daily News published on 7 August 2003 in which Symphony was identified as a likely buyer of Sunny Global :

“In view of the realisation of cash amounting to \$200 million after Symphony’s disposal of Converse shares, market rumours had it that Symphony is looking for suitable targets for acquisition. It so happened that the shares of a fellow shoemaker, Sunny Global (1094), was suspended from trading midway yesterday. The company announced a possible change of control of the company possibly resulting in turbulent changes in the company. This has led to the speculation that the buyer is very likely to be Symphony Holdings.”.

158. The writer went on to point out that Yue Yuen, a shareholder of Symphony, might also acquire Sunny Global, noting that in the last week Mr Lee had sold 12% of the shares at \$0.30 a share to an independent undisclosed buyer, from which it was inferred that Mr Lee was “letting go of his control and quitting”.

159. In cross-examination, Ms Stella Fung agreed that the combination of the reference in the announcement of 5 August 2003 :

“.. which may result in a change of control of the company and/or injection into the Company and its subsidiaries (the “group”) of assets engaged in a similar line of business to the group.”

and

“The stock exchange has stated that, if the Company remains listed on the Stock Exchange, any asset disposal or acquisition by the Group will be subject to the provisions of the Listing Rules..... The Stock Exchange also has the power to aggregate a series of transactions and any such transactions may result in the Company being treated as if it were a new applicants for listing...”

gave the message that if a “Reverse Takeover” was proposed that the approval of the SEHK would be required and might not be forthcoming.

160. In cross-examination Ms Stella Fung agreed that the effect of the announcement of Sunny Global dated 11 August 2003, in which the disposal of 40 million shares of the company by Info Fortune at HK\$0.35 per share was disclosed, together with the disclaimer that there were negotiations or agreements relating to intended acquisitions or realisations that were disclosable, clearly inferred that the previously announced approaches in respect of placements were still under way.

161. Ms Stella Fung noted that the announcement of Sunny Global dated 19 August 2003 was made during a time when its shares had been suspended at the company’s request, from 2:30 p.m. on 15 August 2003 with trading to resume on the morning of 20 August 2003. She suggested that the announcement is to be viewed against that context, it being asserted :

“The negotiations between the Major Shareholder and an Investor have reached an advanced stage. The Major Shareholder proposed to sell its entire 50.49% interest in the company at HK\$35 million (equivalent to approximately HK\$0.17 per share) to the investor. The Investor is engaged in a similar line of business to the Group. The Proposal, if materialised will result in a change of control of the Company.”.

162. Later in the announcement it was asserted that :

“ The Major Shareholder understands that the investor is considering the proposal.”

163. It was Ms Stella Fung's opinion that it was to be inferred, from the juxtaposition of those circumstances and the assertions in the announcement, that :

“.. in-depth negotiations had been carried out between Info Fortune and the Investor. As the negotiations involve a possible change in controlling shareholder and/or injection of assets into Sunny Global, it is generally believed that by progressing into the “advanced stage”, the Investor might have examined the books and records of Sunny Global, or at least visited the manufacturing facilities of Sunny Global.”.

164. Ms Stella Fung pointed out that the price at which it was stated in the announcement that the major shareholder was proposing to sell its 50.49% shareholding of Sunny Global, namely \$0.17 per share was :

“...substantially below the prevailing market price of around \$0.41 per share or Sunny Global's unaudited NAV of \$0.19 per share as at 31 March 2003.”

Of that, she observed that since the investor had approached Info Fortune to acquire the controlling interest it was to be inferred by an observer of the market that Info Fortune “..should not accept an offer that was not beneficial to it” and, therefore, might have taken the view that the offer price was only part of the deal between Info Fortune and the investor or that Info Fortune needed to raise cash urgently through a disposal of the shares. The Tribunal would add that the former position would be buttressed by the continued use of the phrase “... or injection of assets” into Sunny Global.

165. In the result, it was Ms Stella Fung's opinion that :

“29.... the investing public remained optimistic on the prospects of Sunny Global as it would benefit from strong shareholder backing if the investor was a prominent player in the footwear manufacturing industry. By stating that the negotiations between Info Fortune and the Investor had been in the “advance stage” and that the Investor was “considering” the proposal the announcement published by Sunny Global implied that the deal would likely to be concluded very soon. Investors who were optimistic on the prospects of Sunny Global after the proposed deal would likely be induced by this announcement by into the shares ahead of the conclusion of the deal.

30. Overall, I am of the opinion that the announcement published by Sunny Global during 21 July 2003 to 19 August 2003 might have induced investing public to buy into the shares.”.

## CHAPTER 11

### A CONSIDERATION OF THE EVIDENCE

166. Mr Lawrence Chan was a Research Analyst employed by UOB. He produced a research report dated 19 May 2003 on the casual footwear manufacturer Symphony. It described the 16 production lines operated by Symphony as “.. *running at full capacity*”.

167. Mr Tony Sze, the Deputy-Chairman of Symphony, said that, whilst he had not been directly involved in the arrangements by which Mr Lawrence Chan had obtained information from Symphony, he confirmed that the assertion in the report that Symphony’s production lines were running at “full capacity” was appropriate. Symphony had too many orders and usually had to subcontract some out for the making of spare parts and semi-finished products.

168. Mr Rabo Leung was a Director of Oriental Patron and Oriental Patron Asia Ltd, the former having been the sponsor of Sunny Global’s IPO in 2002 whereas the latter had been one of the underwriters. He had been a licensed dealer and adviser on corporate finance since 1993. In the course of performing his duties in respect of the IPO he had come into contact with Ms Katherine Yu, whom he described as being in charge of finance of Sunny Global. Also, he had met Mr Lee.

169. In mid-2003, he had telephoned Ms Katherine Yu and asked her if Sunny Global was interested in a placement of its shares. Mr Rabo Leung was unable to recall the date of this contact, even whether or not it was before or after the announcement of the Interim Results on 23 June 2003. He said that Ms

Katherine Yu had responded by saying that Sunny Global did not have any intention or plan to place shares, but that it was interested in such a placement.

170. In his record of interview of 16 November 2004 (A 16), Mr Rabo Leung said that he had told Ms Katherine Yu that he would contact people in securities companies and ask whether they were interested in a placement. He did not represent any investors at that time and he did not tell Ms Katherine Yu that he was representing a client. He confirmed as true the description that he had given in his record of interview (16 November 2004, A 10) that after the conversation he had contacted various persons in the trade to see if they were interested in such a placement. They included, Mr Henry Chan of Sanfull, which company had been one of the underwriters of Sunny Global's IPO, Mr Charles Wong whom he had known when Mr Charles Wong worked at Tai Fook Securities, and Cynthia Fu. None of the persons he contacted expressed any interest at all in a placement. However, he did not convey the result of his enquiries to Ms Katherine Yu.

21 July 2003 announcement of Sunny Global.

171. Ms Katherine Yu said that, in light of her experience in respect of the announcement made on 30 May 2003, she set about making the public announcement dated 21 July 2003. First, she contacted the company's solicitors, Jennifer Cheung and Co, and gave them the relevant information of which she was aware. Then, following an interchange of correspondence of draft announcements between the SEHK and those solicitors, an announcement dated 21 July 2003 was made.

172. Of the assertion that the company and Info Fortune :

“...have been approached by various investors for placing of shares in the company.”.

Ms Katherine Yu said that the plural, namely investors, had been used because that is what Mr Rabo Leung had told her :

“he had clients who were interested in placing of shares.”.

173. Of the assertion that the placement proceeded :

“...it may or may not result in any change and/or addition of a substantial shareholders to the company”

she said that she did not have any impression of Mr Rabo Leung having told her of the size of such a placement and thought that this text had been added following a discussion between the company’s lawyers and the SEHK.

174. Of the assertion that :

“there is no plan by either the company or Info Fortune Holdings Limited to place more than 30% of the Company..”

which matched a handwritten addition to the text added by the SEHK in correspondence with the company’s solicitors she said that she had first confirmed the accuracy of that assertion with Mr Lee before it was included in the announcement. She could not remember if she had followed up the approach that had been made by Mr Rabo Leung.

175. Mr Charles Wong confirmed that he had learned from what Mr Rabo Leung that Sunny Global would like to do a placement of its shares. In June and July 2003, he had spoken to various brokers about the possible placement, perhaps including Mr Jimmy Chan. In July 2003, he had discussed the matter with Ms Katherine Yu (record of interview 13 April 2005 A 32) and arranged for Ms Katherine Yu to give a presentation of Sunny Global to an analyst of Kim Eng. Also, Mr Jimmy Chan approached him and asked to be introduced to people at Sunny Global, telling him that he had clients interested in acquiring a substantial number of shares of Sunny Global. By reference to a schedule of the

176. Mr Fraser Glasgow, a Director of UOB, said that in about the last week of July 2003 he had asked Mr Lawrence Chan to have a look at Sunny Global, in particular to take a close look at the accounts. He did so with many possibilities in mind : marketing, writing a report on the company and potential fundraising, in particular introducing the company to institutional clients in Singapore. Mr Lawrence Chan reported of Sunny Global that, on the one hand, not much was going on and earnings were weak, on the other hand the business required funding and an increase in orders. At present, the business was not very profitable.

177. Mr Glasgow said that, from that information, he concluded that the business was not suitable for his institutional clients, but remembered that he had clients who had been very interested in this particular sector, namely the manufacture of footwear, including Symphony and Yue Yuen. He had met the management of both those companies with his European clients, whom he knew liked the companies. As a result, he determined that it would be worth asking Symphony if they might need extra production capacity or to investigate if Sunny Global and Symphony might work together in some other way. At his request Mr Lawrence Chan, whom he knew was known to the management of Symphony, arranged a meeting that he attended with Mr Tony Sze. The discussion encompassed the suggestion that if Symphony was not to take over



178. Mr Lawrence Chan agreed that Mr Glasgow had asked him first, to meet Sunny Global's management to analyse the company and, thereafter, had told him that he would like to meet the management of Symphony to discuss whether or not there were any synergies that might be established between the two companies.

179. Mr Tony Sze said that he was told by Jeff, a fellow employee in Symphony, that someone at UOB had said Sunny Global was for sale. He agreed to a meeting between the parties, but said that his interest was in the production facilities. As a result, he confirmed that he had met Mr Lawrence Chan and a man he called Fraser. He was told that the company was a listed company but, as he recalled, not its name. Following that meeting, a meeting was arranged between those who wished to sell the shareholding of the company and Mr Tony Sze.

180. Mr Glasgow said that, knowing that he was to travel to Europe on business a short time later, he asked Mr Jimmy Chan of Global Wisdom if he would be interested in approaching the management of Sunny Global, persons he understood Mr Jimmy Chan knew, about the same subject matter. He asked him not to reveal the identity of Symphony.

181. Mr Jimmy Chan was a Director and shareholder of Global Wisdom. Since 1995 he had been involved in the business of the acquisition of listed companies. He estimated that he had been involved in successful acquisitions of about 10 companies but had also been involved in negotiations with the

acquisitions of companies on a regular basis, at about two months intervals, over that period.

182. Although, in his first record of interview, he had said that it was about a month before the meeting at the Ritz Carlton of 31 July 2003 that he had been told over the telephone by Mr Charles Wong that the owner of a controlling stake of shares in Sunny Global wanted to sell the stake, he confirmed in his oral testimony that the revised account that he had given in the second record of interview (A 8) was what had happened in fact. First, he had been told by Mr Charles Wong and a person he described as 'Fraser' that Sunny Global intended to conduct a placement of shares. However, later having been told by Fraser that the results of Sunny Global were so poor that it was difficult to place the shares he was asked to find out from Sunny Global whether the company itself might be put up for sale. He did so by asking Mr Charles Wong whether or not the shareholder holding the controlling stake might sell the stake. He had known Charles Wong since 1995 and had an account at Mr Charles Wong's employer Kim Eng. In response, Mr Charles Wong told him that there was "room for discussion".

183. As a result, he approached Mr Lawrence Chan, a person he knew to be a colleague of Fraser, and conveyed the message given to him by Mr Charles Wong. In response, he was informed by Mr Lawrence Chan that Mr Tony Sze of Symphony expressed interest in the matter. Mr Jimmy Chan agreed with Mr Mak that the discussions he had had with Fraser, Mr Lawrence Chan and Mr Charles Wong had taken place in the two-week period prior to his drafting the proposed commission agreement dated 25 July 2003.

184. Mr Jimmy Chan set about trying to obtain a commission agreement for the prospective role that he might play in bringing buyer and seller of the shares

together by drafting the original of the letter dated 25 July 2003 on the letterhead of Global Wisdom addressed to Mr Lee at Sunny Global. He had sent the letter either directly or through Mr Charles Wong. In return, he received a facsimile copy of their letter, to which handwritten amendments had been made, and subsequently a fair copy of the letter bearing the signature of Mr Lee on behalf of Info Fortune. He agreed that he had received the fair copy on about the date of the facsimile transmission data on the top of the document, namely 29 July 2003. At all events, he was sure it was before the meeting of 31 July 2003.

185. Mr Charles Wong confirmed that he had played a role in passing those documents between Mr Jimmy Chan and Ms Katherine Yu. For her part, Ms Katherine Yu said that Mr Charles Wong had told her that he knew an agent who wished to act as the sole agent for the sale of Mr Lee's shares and wished to obtain a mandate to that effect signed by Mr Lee. As a result, she received the draft dated 25 July 2003, on which she had made the handwritten amendments. On 29 July 2003, she received a revised version of the letter, reflecting her amendments which, after Mr Lee had signed, she returned by facsimile to Mr Charles Wong. Mr Lee had told her that he was prepared to sell his controlling shareholding stake in Sunny Global. She confirmed that the telephone calls made from Mr Charles Wong's mobile telephone to her own mobile telephone in the period 23 to 31 July 2003 were conversations concerned with those events.

186. Mr Charles Wong said that, in answer to Mr Jimmy Chan's request, a meeting was arranged for Mr Jimmy Chan to meet Ms Katherine Yu at the Ritz Carlton hotel on 31 July 2003. He thought that that was the same day that she had made her presentation of Sunny Global at the Kim Eng offices, after which he had accompanied her and Mr Wilfred Hung to the lobby of the Ritz Carlton hotel. There, he had introduced them to Mr Jimmy Chan. Then, Mr Charles

Wong left. He had not been told that Symphony was a party interested in acquiring shares of Sunny Global.

31 July 2003 meeting at the Ritz Carlton.

187. There is no dispute that on 31 July 2003 a meeting took place in the coffee shop at the Ritz Carlton hotel attended by Mr Tony Sze, Mr Jimmy Chan, Mr Lawrence Chan, Mr Wilfred Wong and Ms Katherine Yu.

188. Mr Jimmy Chan said that, as arranged, he met Mr Charles Wong and was introduced to Ms Katherine Yu and Mr Wilfred Hung of Sunny Global in the lobby of the Ritz Carlton hotel. Having made introductions Mr Charles Wong left. In cross-examination, he agreed with the suggestions put to him by Mr Mak that thereafter the three of them had joined Mr Tony Sze and Mr Lawrence Chan at a table in the coffee shop and that, given the brief period of time involved, he had not any time to brief Ms Katherine Yu. However, in re-examination, having been taken to his first record of interview at A 12 and 22 he agreed that what was stated there was what had happened, namely that he had arranged to meet Mr Charles Wong and Ms Katherine Yu at 1:30 p.m. in the lobby of the Ritz Carlton and that they had then waited at a table in the coffee shop for the arrival of Mr Tony Sze, as arranged, at 2:30 p.m.

189. In the same record of interview, Mr Jimmy Chan said that he had definitely told Ms Katherine Yu that the counterparty was Symphony. In due course, Mr Tony Sze and Mr Lawrence Chan arrived and the party moved to a larger table to accommodate the enlarged group. In his first record of interview, Mr Jimmy Chan said that Mr Tony Sze introduced himself and gave all of them his business card. That assertion was not challenged in cross-examination.

190. Mr Jimmy Chan said that the discussion that ensued was mainly between Mr Tony Sze and Ms Katherine Yu. Mr Tony Sze explained that Symphony manufactured over 10 million pairs of athletic shoes year, but had excess orders and wanted other factors to take up the excess production. That was a matter he emphasised. Then he questioned Ms Katherine Yu about the production capacity of Sunny Global asking her technical questions about the production process. Ms Katherine Yu responded by saying that she would arrange a visit to the Sunny Global factory. The topic of the sale of the ‘controlling shareholding stake’ of the company was never mentioned. In his second record of interview (A 21 and 22), Mr Tony Sze said that there was no mention in the meeting of the topics of a proposal that might lead to a “*change of control*” or of “*injecting assets*” into Sunny Global.

191. In cross-examination Mr Jimmy Chan disagreed with the suggestion put to him by Mr Mak that the topic of the sale of a controlling stake to shareholding in the company was mentioned in this meeting, although he did agree that the meeting had been set up on the premise that negotiations might ensue about this very topic. He agreed that on the surface Mr Tony Sze appeared not to be interested in acquiring the listed company, rather his interest was only its production facilities. He said repeatedly that he wanted to visit the factory.

192. Mr Lawrence Chan said that he introduced Mr Tony Sze to the others. In his record of interview, he confirmed that he did so on the basis that he came from Symphony. When it was suggested to him in cross-examination that it was possible that he had not done so, he replied : “*Impossible!*”. It was his evidence that the meeting lasted around one hour, he rejecting the suggestion that it took less than 15 minutes. In his witness statement, he said that after the introductions Ms Katherine Yu was the one who had spoken for most of the time, introducing her company. She asserted that Sunny Global had a number of

potential investors. For his part, he agreed that Mr Tony Sze introduced Symphony and asked number of questions about the operations of Sunny Global factory on the mainland. There was no mention of the sale of a controlling stake of shares of Sunny Global (A 19).

193. Mr Tony Sze said that Mr Lawrence Chan introduced him as someone from Symphony, using the English name of the company. He was told that the controlling shareholder of the company wished to sell his stake. For his part, he said that he was not interested in the listed vehicle but only the production facilities. However, when he asked questions of Ms Katherine Yu she was unable to assist with details of the production operation. He said that, as a result, he left and that the meeting had lasted only 10 minutes so.

194. Mr Wilfred Hung said that he and Ms Katherine Yu had been introduced by Mr Charles Wong to Mr Jimmy Chan in the lobby of the Ritz Carlton on 31 July 2003. Prior to that meeting, he had been told by Ms Katherine Yu that Mr Lee had signed a letter agreeing to pay commission if Mr Jimmy Chan's company introduced an investor who would acquire the controlling stake of Sunny Global shares. They met Mr Lawrence Chan and another unidentified man at a table in the coffee shop. The latter did not produce his business card. He could not recall if that man was introduced to the others, but said that if he had been he had no impression about his identity. He thought him to be a representative of a potential investor. In cross-examination, Mr Wilfred Hung said that he understood that Mr Jimmy Chan and the unidentified man represented at least two and separate potential investors.

195. Mr Wilfred Hung said that Ms Katherine Yu had told those present that the majority shareholder of Sunny Global was interested in either a placement of shares or selling his controlling shareholding stake, after which she made a short

presentation of the business and operations of Sunny Global. He said that she was able to make only limited responses to some of the detailed questions asked about the operations of the company by the unidentified man. As a result, the meeting was short, lasting about 15 minutes. Then, he and Ms Katherine Yu left.

196. Mr Wilfred Hung said that he regarded this meeting as a preliminary one, after which both sides would consider how to structure the “deal”. He explained that he meant thereby that there having been discussion about the placement or purchase of a controlling stake it was for the parties to work out a way to achieve a deal. For their part, he and Ms Katherine Yu reported the results of the meeting to Mr Lee, who asked Ms Katherine Yu to follow up the matter.

197. Ms Katherine Yu confirmed that after Mr Charles Wong had introduced her to Mr Jimmy Chan in the lobby of the Ritz Carlton the former had left, after which they had joined two men sitting at a table in the coffee shop. Mr Lawrence Chan was one of the two men and he identified himself by a name card as a research analyst of UOB. She believed that he might represent more than one investor. With the benefit of hindsight she realised now that the other man was Mr Tony Sze. However at the time all she could remember of any introduction to him was that he was described as a fellow shoe manufacturer.

198. At the outset, she told those present that the majority shareholder of Sunny Global was interested in selling his controlling stake, after which she went on to make a presentation of some basic information about its business nature and operation. In response, Mr Tony Sze said that he was only interested in the production facilities of Sunny Global because he had excess orders. For her part, she was unable to answer his questions about the operation of the factory. As a result, the meeting ended shortly thereafter. Subsequently, she and Mr Wilfred Hung reported those discussions to Mr Lee. In a record of

interview 3 December 2004, Ms Katherine Yu said that the topic of “*injection of assets*” had been mentioned at the meeting, but definitely not by either she or Mr Wilfred Hung. In her oral testimony, she said that she could not remember whether or not it was mentioned nor could she remember if such assets were identified.

1 August 2003 announcement by Sunny Global.

199. On 1 August 2003, Ms Katherine Yu was contacted by a representative of the SEHK following a “volume alert”. In her record of interview 15 June 2004 (A 12) she said that, following enquiries by the SEHK, she called the directors of the company to find out if any of them had sold Sunny Global shares. She explained :

“Mr Lee told me that he had sold the Sunny Global shares through a Mr Wong in Kim Eng. He gave me the number of Mr Wong. I then called Mr Wong (whom I later learned to be Charles Wong) to ask him how many shares of Sunny Global Lee Man Fa had sold and the price. I therefore came to know Charles Wong. I then reported information to the stock exchange.”.

200. In her oral testimony, Ms Katherine Yu accepted that account was incorrect. She had known Mr Charles Wong since Mr Lee had opened an account with Kim Eng on 12 June 2003. At first, she maintained her account that it was only after the SEHK “volume alert” that she learned of the sale of the shares. However, when the telephone records of telephone connections between Mr Charles Wong’s mobile phone on her mobile phone were shown to her, evidencing a call at 09:37 hrs of 1 August 2003, she said that she thought that contact had been in connection with the sale of Mr Lee’s shares. Also, she accepted that she had written the handwritten instructions on the typed “pro forma” dated 1 August 2003 and faxed it to Mr Charles Wong giving him instructions to sell up to 60 million Sunny Global shares for Mr Lee. It bore the facsimile data transmission time of 10:03 a.m. Furthermore, she agreed that a tape recording of 1 August 2003 was of a conversation between her and Mr



Charles Wong, in which he reported the sale of 52 million shares. That conversation was at 15:13 p.m. on 1 August 2003. The SEHK's form 'Action Taken', generated as a result of the "volume alert", states that the alert occurred at 15:05 p.m. and that, in consequence, Ms Katherine Yu was spoken to by a member of the staff of the SEHK.

Written instructions in respect of sales of shares by Mr Lee.

201. Ms Katherine Yu said that she had prepared typed instructions that she received from Mr Lee in respect of the various sales in August 2003 made by Info fortune through Kim Eng. To those "pro forma" documents she added handwritten words reflecting the information given to her by one or more of Mr Lee, Mr Charles Wong and Ms Tsoi. When she made out the written instructions she was not sure whether not the particular sale had been executed already.

202. Ms Katherine Yu said in response to the SEHK enquiry and information that she received from Mr Lee of the sale by Info Fortune of 52 million shares on 1 August 2003 she had contacted the company's solicitors and given them that information. She had not mentioned to the solicitors the meeting of 31 July 2003 because at the conclusion of that meeting there was no clear direction for matters to proceed and she judged it not necessary to pass them that information. The reference in the announcement to the earlier announcement of 21 July 2003, in particular the reference to approaches by :

“.. various independent investors for placing of shares in the company”

was included by the lawyers. There had been no change in the accuracy of that assertion.

5 August 2003 announcement.

203. Ms Katherine Yu said that there had been a “trading volume alert” by the SEHK in the morning of 5 August 2003. For her part, she contacted the directors of the company. Mr Lee instructed her to request a suspension of dealing in the shares, because he said that he thought that the increased trading might relate to the meeting of 31 July 2003, so that the fact of the meeting might have to be disclosed. For her part, she contacted Jennifer Cheung and Co and told them that at a meeting on 31 July 2003 it had been proposed on behalf of Mr Lee that he sell his controlling stake of shares in Sunny Global to unknown parties, adding that it had been claimed in that meeting that the investor or investors were also in the shoemaking business. A suspension of trading was sought from the SEHK and granted.

204. Of the assertion in the announcement of 5 August 2003 that :

“Recently the company and Info Fortune Holdings Ltd have been approached by various independent third parties.”.

Ms Katherine Yu said she judged that to be a correct description of the meeting of 31 July 2003 : Mr Jimmy Chan said that he could introduce many people to the company and Mr Lawrence Chan represented a bank, UOB, which might represent other investors as well.

205. Of the following assertion in the announcement that :

“...in respect of proposals which may result in a change of control of the company and/or injection of assets into the Group.”.

Ms Katherine Yu said that the assertion in respect of change of control was accurate, since Mr Lee had said that he was interested in selling his controlling stake. However, she said that she had not mentioned to the lawyers an “*injection of assets into the company*”. She said that she believed this to be a lawyer’s way of expressing matters and did not object.

11 August 2003 announcement.

206. Ms Katherine Yu said that the announcement of 11 August 2003, of the disposal of 40 million Sunny Global shares by Mr Lee was made following yet another “volume alert” by the SEHK, and after Mr Lee had informed her that he had sold that number of shares that day. Although she accepted that the telephone records indicated that Mr Charles Wong had called her eight times on his mobile phone that day she had no impression of what those conversations were about. In re-examination, she said that she thought that the telephone calls were in response to Mr Lee’s request that she enquire about the market sale price of Sunny Global shares and that Mr Charles Wong was contacting her with that information which she then relayed to Mr Lee.

The follow-up of the meeting of 31 July 2003.

207. Mr Lawrence Chan said that a few days after the meeting of 31 July 2003 Jimmy Chan had told him that Mr Lee was willing to sell 51% of the shares of Sunny Global for \$50 million. He passed on that offer to Mr Tony Sze who told him that he would consider it. However, when he gave that reply to Mr Jimmy Chan the latter gave him a revised and lower offer of \$35 million, which he passed on to Mr Tony Sze who expressed surprise at the cheap price. He agreed that he played a part in arranging the meeting that then followed on 14 August 2003.

208. Mr Jimmy Chan said that both Ms Katherine Yu and Mr Charles Wong had telephoned him separately to inform him of offers made for the sale of the controlling shareholder’s stake of the Sunny Global shares (second record of interview Q 24). However, in his third record of interview (Q. 12), having been told that Mr Charles Wong denied communicating such offers, Mr Jimmy Chan accepted that the communication of the offers came from only Ms Katherine Yu.

In his oral evidence, Mr Jimmy Chan reaffirmed his original assertion that he had received telephone calls communicating offers from both Mr Charles Wong and Ms Katherine Yu. He judged the offers to be on attractive terms. The first offer was the sale of 51% of the shares of Sunny Global at HK\$50 million, the company being debt free and possessed of HK\$30 million in cash. He passed on that offer to Mr Lawrence Chan for him to communicate to Mr Tony Sze. In due course, Mr Lawrence Chan told him that Symphony would consider the offer. For his part, he communicated that reply to Miss Katherine Yu.

209. The second offer, communicated one or two days later by Ms Katherine Yu, was at the reduced price of HK\$35 million. Once again he informed Mr Lawrence Chan of the revised offer for him to pass on to Symphony. In answer to a question by a member of the Tribunal, Mr Jimmy Chan explained that he had described this offer in that record of interview as “very unreasonable” because he considered the offer “ridiculous” : the listed company being offered for sale at HK\$35 million had no liabilities, HK\$30 million in cash in the bank and the potential value of its available assets.

210. Mr Tony Sze said that following the meeting of 31 July 2003 he was told that the controlling shareholder was offering to sell 51% of the shares of the company for \$50 million. For his part, he made no response. Subsequently, he was told, he thought by Mr Lawrence Chan, of a revised offer of sale for \$35 million. In his second record of interview [Q 15] he said that he had no response to this offer because :

“I did not have any information at all, so the price was not the most crucial thing at that time.”.

211. In his oral testimony, Mr Wilfred Hung said that after the meeting of 31 July and before the meeting of 14 August 2003 he learned, he thought from both Mr Lee and Ms Katherine Yu, that two separate offers had been made to the

other party. In his witness statement he said that Mr Lee had asked Ms Katherine Yu to communicate an offer through Mr Jimmy Chan. The first offer was to sell a controlling stakeholder of the shares in Sunny Global for \$50 million. He understood that there was not much response from the other party to that offer and that a revised offer of \$35 million had been made. In his record of interview of 18 January 2005, Mr Wilfred Hung had described these offers as having been made during the process of negotiations at the meeting of 14 August 2003.

212. Ms Katherine Yu said that prior to the meeting of 14 August 2003 with representatives of Symphony at their offices she had passed on offers on behalf of Mr Lee to sell 50.49% of the shares of Sunny Global, firstly \$50 million and then at the revised figure of \$35 million. Given that Mr Lee's shareholding of 50.49% of the shares of Sunny Global had come about only after his sale of shares on 11 August 2003 she thought that the offers were calculated after that date.

213. Mr Lee said that at some time after the meeting of 31 July 2003 and before a second meeting Ms Katherine Yu had identified to him a "bottom-line" price of \$35 million for 50% of the shares of Sunny Global, namely a price of about HK\$0.17 per share. For his part, he had said that they could have discussions on that basis.

The meeting of 14 August 2003 at Symphony's offices.

214. There is no dispute that those present at the meeting of 14 August 2003 at the offices of Symphony included : Mr Lawrence Chan, Mr Jimmy Chan, Mr Tony Sze, Ms Charlotte Kong, Mr Wilfred Hung and Ms Katherine Yu.

215. Ms Charlotte Kong was at the material time the Company Secretary and Legal Adviser of Symphony. She graduated with a degree in law from Brunel

University in the United Kingdom in 1994. In 1997, she passed the Law Society examinations for qualification as a solicitor of England and Wales. She qualified as a solicitor and was admitted to practice in Hong Kong in 2001, after traineeship with Deacons by whom she was employed for a year or so thereafter.

216. Mr Lawrence Chan said that Ms Katherine Yu attended the meeting together with a Mainland employee of Sunny Global. He agreed that there was a presentation made at the Holdings level of Sunny Global and some operational figures were provided. Then, a presentation was made by Symphony of their business. There was discussion that in the future Symphony would ask Sunny Global to handle some of its excess orders. Mr Lawrence Chan agreed that Mr Sze had said that he wanted to look at the Sunny Global factory. He could not remember if Ms Katherine Yu asked for a “Memorandum of Understanding” (“MOU”) or whether Ms Charlotte Kong had said that one could be drafted the following day. In his record of interview, Mr Chan said that Mr Sze had insisted not only on viewing the factory but on going through it with “due diligence”. That was a matter that he had emphasized. He had raised with Mr Tony Sze the question of a commission for UOB for its role in bringing together Sunny Global and Symphony at the meeting of 14 August 2003. He agreed that it was impolite to do so at that meeting and explained that he had done so because he was inexperienced. He said that it was possible that he had asked for the commission there and then because he formed the view that a deal could be done between the two parties in a very short period of time.

217. Mr Jimmy Chan said of the meeting of 14 August 2003 that Mr Tony Sze had brought a lawyer to attend the meeting and that Symphony had requested the performance of “due diligence” and a factory visit (third record of interview Q 17). Of the issue of whether or not and, if so, when it was that a request was made on behalf of Sunny Global of Symphony for the issue of a “MOU” in

respect of the proposed sale Mr Jimmy Chan said that after what he called the North Point meeting between the parties Ms Katherine Yu made the request of both him and Symphony. The offices of Symphony were at 510 King's Road, North Point. He said that he did not think that such a request was made at the meeting itself, in particular he had no impression of such a request being made at the meeting by Ms Katherine Yu or that Ms Charlotte Kong had said that she could begin drafting a "MOU" the following day. However, it is to be noted that in his third record of interview (Q 18) when he was asked specifically whether or not, during that second meeting between the parties, Symphony had agreed to prepare a "MOU" Mr Jimmy Chan replied :

"I recall that Katherine Yu requested Symphony to prepare an MOU but Symphony did not promise."

218. In his second record of interview (Q 18), Mr Jimmy Chan said of Sunny Global :

"...during the negotiation process, they had always requested for a MOU/letter of intent from Symphony. In contrast they made no negotiation on commercial terms."

219. In cross-examination, Mr Jimmy Chan confirmed that evidence in general terms saying that Symphony did not promise to prepare either a "MOU" or a letter of intent.

220. Mr Jimmy Chan accepted that towards the end of the meeting of 14 August 2003 Mr Lawrence Chan had raised the issue of payment of a commission to UOB with Mr Tony Sze. He said that the conversation had been very short but the matter was discussed in front of all present.

221. Mr Sze said that the Mr Lawrence Chan had arranged the second meeting at the offices of Symphony [Q11 first record of interview]. Present together with him were Mr David Chan, the Managing Director of Symphony and

Charlotte Kong, whilst the other party was represented by Ms Katherine Yu, Mr Wilfred Hung and a Mr Lam. Ms Yu proposed a sale of a controlling stake of Sunny Global for \$35 million. For his part, he said that :

“The most important thing was to have a look at the factory. It would be pointless for us to buy a listed company. What was most important was how much the factory was worth and how much the raw materials were worth..... we tell them that we had to look at the receivable accounts, payable accounts and inventory or stock of Sunny Global. We also mention that the due diligence list had to be prepared and a factory visit arranged.”. [Q11 first record of interview]

222. He told the other party that Symphony had excess orders that they could place with them. He did mention that they could be assigned the production of the “Converse” footwear orders. When it was suggested to him by Mr Mak that once it was confirmed that the production facilities were operating properly and that there were no problems with the accounts the acquisition could go ahead Mr Tony Sze said that it could not happen as quickly as that. There were many things to do: a period of time was needed for performing “due diligence”; it was necessary to visit the factory and to ensure that factory complied with labour laws; customers, such as Converse, had to be satisfied that the factory was “compliant”.

223. Mr Sze said that he could not recall if Ms Katherine Yu had asked for a “MOU” at that meeting. However he said that he did not think that such a request had been made of Charlotte Kong. When it was suggested to Mr Tony Sze that in face of a request from Ms Katherine Yu for a “MOU” Ms Charlotte Kong had said “We can start the drafting tomorrow” he said :

“I don’t think I would agree to that because we don’t have any information at all. How could we draft an MOU? Buying a company like this is not like buying a flat or buying a piece of gold. I don’t know if a barrister has the experience of the factory? There are inventories in a factory and also work in progress and also spare parts. How can you work out an MOU without all those details?”.



224. Mr Tony Sze said that Mr Lawrence Chan had raised with him at the meeting the question of a commission payable to UOB for their role in matters if they proceeded to a successful conclusion. He had responded by saying that was not appropriate because matters were at such a preliminary stage. He did not accept the description of the interchange as being an “argument”.

225. Ms Charlotte Kong said that she had been asked to attend the meeting between Symphony and Sunny Global at Symphony’s offices at short notice by Mr Tony Sze. The representatives of Sunny Global were already waiting in the conference room at the time of that invitation. There was no agenda for the meeting and she was totally unprepared. She knew nothing about what was to be discussed. She simply listened and learned. Sunny Global were represented by Ms Katherine Yu, Mr Wilfred Hung and someone she understood to be a manager of their factory. Symphony was represented by Mr Chan, the Managing Director, Mr Tony Sze and herself. Mr Jimmy Chan represented Global Wisdom Investment Company and Mr Lawrence Chan was present on behalf of UOB. She had met Mr Lawrence Chan when he came to perform the tasks of a research analyst enquiring into Symphony prior to the meeting of 14 August 2003. Because she regarded it as a preliminary meeting she took no notes.

226. Ms Katherine Yu did most of the talking informing those present of Sunny Global’s levels of inventory, accounts receivables, cash at the bank and its Net Asset Value (“NAV”). She did not remember a price for sale being mentioned or of any negotiations in respect of price. Since Sunny Global’s core business was the same as Symphony, namely footwear, the quality of their production line was very important. As a result, a request was made to visit the factory or factories of Sunny Global. In addition, she informed Sunny Global that Symphony would prepare and send to Sunny Global a questionnaire relating

to “due diligence”. Ms Charlotte Kong said that her subsequent duties included liaising with Ms Katherine Yu in respect of both those matters. There was no mention of a “MOU”.

227. In cross-examination, Ms Charlotte Kong said that she did not recall Ms Katherine Yu asking her to prepare any documents for Sunny Gobal, in particular she did not recall Ms Katherine Yu asking her to prepare a “MOU”.

In cross-examination, Mr Mak suggested :

“ Q. I would simply suggest to you that she has asked for a memorandum of understanding to be generated or a draft memorandum of understanding to be generated from Symphony, do you recall that?

A. I don’t recall that. If I were instructed to do that, I would have done so, but then it would have been difficult for me to do so because I didn’t pick up any points as to an agreed price or any conditions or anything like that during the meeting. As far as I was concerned, we couldn’t proceed further without us finding out more information and this would have been done by the due diligence questionnaire and the factory visit. Any formal preparation of documents, such as a memorandum of understanding, would be premature.”.

228. She said that she did not recall Mr Tony Sze saying that “due diligence” could be done in a short time, observing that her “due diligence” questionnaire was really extensive.

229. In the statement Mr Wilfred Hung produced to the Tribunal he said that at the meeting of 14 August 2003 at the offices of Symphony Ms Katherine Yu had first indicated that the majority shareholder of Sunny Global was prepared to sell that controlling interest for \$50 million. Mr Tony Sze responded by questioning that price and stating that a price of \$35 million had already been offered earlier. Ms Katherine Yu indicated that that was accepted as being the price. He did not recognize Mr Tony Sze as being the unidentified person present at the meeting of 31 July 2003 in the Ritz Carlton hotel.

230. In his oral testimony, Mr Wilfred Hung claimed that of the offer price Mr Tony Sze had said during the meeting, “*OK! Accept!*” Mr Sze went on to say that the staff of Sunny Global would be retained and that Sunny Global would be asked to manufacture the orders placed by the “Converse” brand. Mr Tony Sze agreed to Ms Katherine Yu’s request to be provided with a “MOU” and instructed Ms Charlotte Kong to start drafting that document.

231. He accepted that issues of “due diligence” and a visit by Symphony to the factory of Sunny Global on the Mainland were raised by Mr Tony Sze. However, it was clearly his view that they presented no impediment whatsoever : Sunny Global had been listed as a public company in the recent past and, “due diligence” having been performed in that exercise, there would not be too much trouble in performing “due diligence” again. It was agreed that a factory visit would be made by the parties in the week following 14 August 2003 in arrangement with the schedules of Mr Tony Sze, Mr Lee and Mr Jimmy Chan.

232. In cross-examination, he said that no one had informed him and he thought that he was not aware of the fact that in the period between the meeting of 31 July and that of 14 August 2003 Mr Lee had sold tranches of his Sunny Global shareholding. In that period Mr Lee had sold two tranches of Sunny Global shares, 52 million on 1 August 2003 and 40 million on 11 August 2003, which sales had been the subject of announcements by Sunny Global. He could not remember if he had read either of those announcements or even if he was aware of the fact of the announcements. Notwithstanding the fact that he and Ms Katherine Yu attended the meetings of 31 July 2003 and 14 August 2003, he did not think he had a discussion with her in respect of the fact of those disposals by Mr Lee.

233. Ms Katherine Yu said that, first she had proposed the sale at the higher price of \$50 million, to which Mr Tony Sze's responded by quoting the revised and lower offer. She confirmed that was Mr Lee's "bottom line". She stated that Sunny Global had \$30 million cash in the bank, was without any long-term liability and that the NAV should be around HK\$0.17 per share. Mr Tony Sze raised questions of the production capacity of the factory, its employees, the source of raw materials and quality control, following which he made a presentation on the operations of Symphony. He said that Symphony had excess orders and could give some of them, for example for the manufacture of the "Converse" brand, to Sunny Global and stated that the employees of Sunny Global could remain in employment after Symphony had gained control.

234. In the result, she agreed to Mr Tony Sze's request to visit the Sunny Global factory in Fujian. Although he had suggested that the visit take place the following week the matter was left to be determined by consultation with the schedules of both Mr Tony Sze and Mr Lee. Next, Mr Tony Sze requested to conduct "due diligence" on Sunny Global, he observing that since it had only one factory that exercise ought to be "... a relatively short and simple one". Finally, he instructed Ms Charlotte Kong to prepare a "due diligence" checklist.

235. For her part, Ms Katherine Yu said that she asked for a draft "MOU" from Symphony to capture the principal terms that had been discussed and indicated by both parties during the meeting. Ms Charlotte Kong replied by saying that she would start drafting that document the following day. The meeting ended with a discussion between Mr Tony Tse and Mr Lawrence Chan on the issue of a commission payable to UOB.

236. In cross-examination, Ms Katherine Yu explained that she understood that the price of \$35 million was an "agreed price" because Symphony had not

disputed that the price. When asked what it was that she wanted included in an “MOU” on Mr Lee’s behalf she said Mr Lee had given her no other instructions or terms other than price.

237. Of his non-attendance at the meeting between the parties of 14 August 2003, Mr Lee explained : (record of interview 14 April 2005; Q. 41)

“It was under the stage of discussion. As the major shareholder I thought I should not attend the meeting when there was a negotiation and the final decision had not been made yet.”.

Events subsequent to the meeting of 14 August 2003.

238. Ms Katherine Yu said that on 15 August 2003 she contacted Mr Tony Sze’s secretary and arranged a visit to the Sunny Global factory for 28 or 29 August 2003. In the afternoon of that day, Mr Lee told her that he had noticed a significant increase in the trading volume of Sunny Global shares in the morning and instructed her to contact the company’s solicitors to apply to suspend trading in the shares in the afternoon and to prepare an announcement disclosing the details of the meeting on 14 August 2003. A letter dated 15 August 2003, on the letterhead of Jennifer Cheung and Co, requesting that suspension in trading, bears the fax transmission date and time “15 August 2003, 12:29”.

239. The first draft of the announcement, which was made ultimately on 19 August 2003, was sent by fax by Jennifer Cheung and Co to the SEHK and bears the date 15 August 2003. In the body of the text it asserts :

“The negotiations between the Major Shareholder and an Investor have reached an advanced stage.”.

240. Ms Katherine Yu said that, while she did not draft or propose that the latter phrase, she did not object to its use. For her part, she had informed Jennifer Cheung and Co of what had happened at the meeting of 14 August 2003 and that description was apposite. The price of \$35 million had been mentioned

241. Ms Charlotte Kong testified, by reference to a Schedule attached to her letter of 9 September 2003 to the SFC, that she caused the original and a facsimile copy of the “due diligence” materials to be delivered to Ms Katherine Yu on 19 August 2003. On 20 August 2003, she circulated the same document to colleagues in Symphony, including Mr Tony Sze. The “due diligence” checklist is a 20 pages document, in which very considerable detailed information and material was requested under a dozen headings. Ms Charlotte Kong said that she received no response whatsoever from Ms Katherine Yu. She failed in her attempts to contact her by telephone and Ms Yu did not respond to the messages that she left. For her part, she thought that the delay in responding in respect of both the factory visit and the “due diligence” questionnaire was perhaps caused by the latter being so extensive. She was patient and waited.

242. On the morning of 25 August 2003 she received a faxed letter on the letterhead of Sunny Global advising her of the sale by Info Fortune of 41.2 million shares of Sunny Global on 22 August 2003. Attached to the letter was an announcement in English of that occurrence. For her part, she appears to have been astonished, saying that her reaction was :

“Oh God, look at this! Why have they sold to another party?”

She communicated this surprising development to Mr Tony Sze as soon as possible.

243. Mr Sze identified the documentation addressed to him and dated 20 August 2003 as being a checklist for “due diligence”. Ms Charlotte Kong had mentioned the document to him and it bore her handwriting and a distribution list that included his initials, but he had not read it thoroughly. She was very experienced in the acquisition of companies. He came to know of the fact that the controlling shareholders stake of Sunny Global had been reduced below 50% when Ms Charlotte Kong showed a fax to him. He identified the document as being on the letterhead of Sunny Global and dated 25 August 2003. Enclosed with the letter was an announcement of the sale by Info Fortune Holdings Limited of 41.2 million shares in the Sunny Global on 22 August 2003. The announcement stated that in consequence the majority shareholder no longer had a controlling interest in the company with the result that the “Proposal” could not proceed.

244. Mr Lawrence Chan said that he came to learn that the discussions had ceased between the two companies when Mr Tony Sze had telephoned him asserting that Sunny Global had made use of the name of Symphony to sell its shares. For his part, Mr Chan checked the SEHK website from which he learned of an announcement in which it was stated that the major shareholder of Sunny Global shares had reduced his stockholding to below 50%.

245. Ms Katherine Yu said that she received the “due diligence” list, but not a draft “MOU”. She could not remember if she received it on 19 August 2003, as described in the “Chronology of Events” in Ms Charlotte Kong’s letter to the SEHK dated 9 September 2003, or 20 August 2003 which date is to be found on the copy of the “due diligence” document circulated amongst Symphony staff by

Ms Charlotte Kong. However, it is to be noted that the letter from a Jennifer Cheung and Co dated 8 September 2003, on behalf of Sunny Global and in reply to a letter from the SFC of 2 September 2003 addressed for the attention of Ms Katherine Yu as Company Secretary, states in both the body of the letter and the attached “Timetable” that the “due diligence” material was received by Info Fortune 19 August 2003.

246. Ms Katherine Yu said that since the “due diligence” list was “rather extensive”, she focused her attention on addressing that document, rather than the outstanding draft of the “MOU”. She said that although certain requests in the “due diligence list” were clear, and she knew what information was sought and what steps were required of her to be taken at the factory, elsewhere in the list matters were not so clear. As a result, she contacted Ms Charlotte Kong once or twice for further details. However, she was unable to remember what matters it was that she had raised with Ms Charlotte Kong. She could not remember if she had been provided with answers to her questions. In addition, she contacted both Ms Charlotte Kong and Tony Sze’s secretary in respect of the forthcoming visit to the factory.

#### 19 August 2003 announcement.

247. The announcement of 19 August 2003 by Sunny Global contained the assertion, stated in the first draft of that announcement :

“The negotiations between the Major Shareholder and an investor have reached an advanced stage.”.

248. Mr Jimmy Chan said in his third record of interview (Q 23) that he disagreed. He said :

“I have participated in the trading of companies. I think it was only the second meeting at that time and the matters discussed were very preliminary.”.



He went on to elaborate criteria indicative of such negotiations that had reached an advanced stage :

“At least due diligence should have been performed and there should be a sale and purchase agreement draft, a signed letter of intent or MOU, or earnest money. However, none of these could be found in this deal. Therefore, I am of the view that the negotiation was at a preliminary stage.”.

249. Ms Charlotte Kong said that she strongly disagreed with that assertion. She explained :

“A. Well, because the meeting was very informal and nothing concrete had been agreed upon and we hadn’t seen the factory, which is the core business, the main thing that we would be acquiring, and we didn’t know anything about the company structure or whether the assets and the accounts receivables that Katherine Yu was quoting to us were true or not and we didn’t know anything about hidden liabilities. From my experience, you can’t just go buy a company without knowing anything as important as that.”.

250. She said that she had experience of participating in “due diligence” while she had worked at Deacons. The process takes weeks and generates volumes of box files of documents. That is what happens when you buy a company.

251. Mr Wilfred Hung said that he agreed with that description, in particular that “...negotiations between the Major Shareholder and an investor had reached an advanced stage”. The most important thing was that price had been agreed. But, in addition, Symphony had agreed to draft a “MOU”, a factory visit had been arranged and the process of “due diligence” presented no difficulty. Moreover, at the end of the meeting of 14 August 2003 the Chairman of Symphony had been brought into the conference.

252. Ms Katherine Yu accepted that, in her record of interview of 15 June 2003, she had said of the meeting of 14 August 2003 :

“...we introduced the operation of our company and also mentioned about the price, and the other party also said that the draft memorandum of understanding would be prepared and that they were also interested in looking

at our factory and performing due diligence. I felt that this project really seemed to 'be coming true', so I put down 'an advanced stage'.”.

253. Notwithstanding that clear assertion, Ms Katherine Yu said in her oral testimony that what she had meant to say was that she had no dispute with what the lawyer had drafted. However, when asked repeatedly why she had not simply stated that Ms Katherine Yu had no explanation.

254. Of the briefing he received from Ms Katherine Yu and Mr Wilfred Hung of the second meeting between the parties, Mr Lee said : (record of interview of 14 April 2005; Q 12)

“ the other party was a relatively large listed company. It had a lot of orders. It could consider giving some orders for our factory to manufacture the products or treat it as investments. If our factory could have more orders for large quantities, we could lower the cost and increase the benefit. The other company also would have benefits. If the cooperation was successful, I also have to take concerted action. We could explore the possibility of exchanging shares or giving better remuneration. After a negotiation, it was finally decided that the \$35 million for 50% of the shares was a reference. The other party said we had to provide a list of the operations and equipment of the factory's concerned and a memo had to be drafted and signed by both parties. Arrangements had been made for their representatives to have a visit at our factories.”.

255. Of the assertion, in the announcement of Sunny Global dated 19 August 2003, that negotiations had reached an “advanced stage” Mr Lee said that he thought it had reached such a stage : (record of interview of 14 April 2005 Q 15). Ms Katherine Yu confirmed that she had explained the contents of the announcement to Mr Lee prior to its publication. She did so by reference to the Chinese text of the announcement. Mr Lee confirmed that before this announcement and those of 21 July and 5 August 2003 were been made he had seen Chinese versions of the announcements. [record of interview of 14 April 2005; Q 38]

256. The concluding assertion in the announcement of 19 August 2003, states that :

“The directors of the Company jointly and severally accept full responsibility for the accuracy of the information contained in this announcement...”

Notwithstanding assertions made in similar terms in all the other announcements of Sunny Global save for that of 21 July 2003, it was the evidence of the two Non-executive Directors, Mr Kan Siu Lun and Mr Chan Kin Kee, in their respective witness statements that they had neither read nor been informed of the contents of the announcements made on 21 July, 1, 5 and 19 August 2003 before those announcements were made.

22 August 2003 announcement by Sunny Global.

257. Ms Katherine Yu said that the announcement of 22 August 2003 by Sunny Global was made at the request of the SEHK following another “volume alert”. For her part, Ms Katherine Yu said that she had received a negative response to her enquiry of Ms Charlotte Kong as to whether or not Symphony had any dealings in the shares of Sunny Global. In the event, the announcement disclosed that Mr Lee had sold 41.2 million Sunny Global shares on 22 August 2003 and it was stated, in the context of the announcement of 19 August 2003, that :

“... the Proposal cannot proceed further as the Major Shareholder no longer has 50.49% interest in the Company.”.

Elsewhere in the announcement, it was asserted that :

“... The company has been also informed by the Major Shareholder that there has been no further negotiation with the Investor on the Proposal since the Announcement was made.”.

258. Ms Katherine Yu said that she did not know why Mr Lee had sold his shares during the period of negotiation with Symphony. Nevertheless, she believed that so long as Mr Lee held more than 30% of the shares of Sunny

Global he could still sell a “controlling stake” in the company. Since Mr Lee had not instructed her to discontinue the steps taken to follow up the meeting of 14 August 2003 she continued to contact both Ms Charlotte Kong, in respect of the “due diligence” list, and Mr Tony Sze’s secretary in respect of the visit to the factory.

25 August 2003 announcement by Sunny Global.

259. Ms Katherine Yu said that on 25 August 2003 she sent a fax to Symphony to which she attached the announcement of 22 August 2003 concerning the disposal of 41.2 million shares of Sunny Global by Mr Lee. On that same day, an announcement was made by Sunny Global of the disposal of a further 23 million shares of Sunny Global by Mr Lee. Also, she contacted Mr Tony Sze’s secretary, who confirmed that five representatives of Symphony would visit the Sunny Global factory on 29 August 2003. She was not sure if she had contacted Ms Charlotte Kong after 25 August 2003.

260. On 26 August 2003 Ms Katherine Yu notified Symphony of the disposal the previous day by Mr Lee of 23 million shares of Sunny Global. Also, she said that when she contacted Mr Tony Sze directly, in order to confirm the factory visit of 29 August 2003. She was told by him that Symphony was no longer interested in the proposed deal. As a result, she instructed Jennifer Cheung and Co to draft an announcement disclosing the cessation of those negotiations. On 27 August 2003 an announcement was made by Sunny Global to that effect.

## CHAPTER 12

### FINDINGS

261. In reaching our “Findings” we have had regard not only to all the materials received by the Tribunal but also to the submissions of counsel.

262. We determine that both Ms Katherine Yu and Mr Lee to be persons entitled to and who benefit from the directions of the Chairman in respect of “good character” articulated in Chapter 3.

#### 21 July 2003 announcement of Sunny Global.

263. We accept the evidence of Mr Rabo Leung that at the time when he approached Ms Katherine Yu to enquire of her whether or not Sunny Global was interested in making a placement of its shares he did not represent any investors and that he did not state otherwise to Ms Katherine Yu. We do not accept Ms Katherine Yu’s evidence that he had told her that he had clients interested in a placing of shares. He was doing no more than testing the waters to see if those who controlled Sunny Global were interested in such a project, after which he made unsuccessful enquiries of various persons who might be interested in such a share placement.

#### “False or misleading as to a material fact”.

264. In addressing the issue, raised by section 277(1)(i) of the Ordinance, of whether the false assertion related to a material fact we have had regard to the evidence of Ms Stella Fung. We note that at paragraph 23 of her report she noted that the announcement asserted that the approach had been made by various investors for the placing of shares in the company. Of that she said that :

“23..... indicated that Sunny Global shares were generally in favour by investors, and these “various independent investors” might compete with each other for acquiring the shares. Moreover, instead of buying the shares directly from the market, these investors approached the company and Info Fortune for a placing of shares, implying that the quantities of shares that they wanted to acquire would be quite large so that buying from the market might be time-consuming and might bid up the share price. As Sunny Global had disclosed that if the placing was to proceed, it might lead to a change and/or addition of a substantial shareholder, it implied that the quantities of shares involved might exceed 5% of the issued share capital of the company (or 20.6 million shares).”.

265. We accept that opinion and find the falsehood to be in respect of a material fact, in particular that it would have the effect of encouraging potential buyers to believe that there was greater demand for the purchase of Sunny Global shares that in truth existed.

266. We find to be false or misleading the assertion in the announcement of 21 July 2003 by Sunny Global that :

“The Company and its controlling shareholder, Info Fortune Holdings Ltd have been approached by various investors for placing of shares in the company.”.

Furthermore, we find that Ms Katherine Yu knew, or was reckless, that the disclosure was false or misleading in a material particular

Likely to induce another to buy Sunny Global shares or to “maintain, increase...or stabilize” the price of those shares.

267. In addressing the issues raised by section 277(1)(a) and (c) of the Ordinance, namely whether the disclosure of the information, which we have determined to be false, was likely to -

- “(a) induce another person in Hong Kong to purchase Sunny Global shares;  
or
- (c) maintain, increase... or stabilize the price in Hong Kong of Sunny Global shares.”

we have had regard to the opinion of Ms Stella Fung set out above. We find, as Ms Stella Fung expressed as her opinion in regard to the combined effect of the announcement of 21 July and 1 August 2003, that this false information :

“...would likely underpin investors sentiment towards Sunny Global shares and might induce investors to buy the shares ahead of the occurrence of the share placing.”

Also, we find that it was likely to operate to “maintain, increase.... or stabilize” the price of those shares.

#### 1 August 2003 announcement of Sunny Global.

268. We find that in reiterating the information contained in the announcement of 21 July 2003 in the announcement of 1 August 2003, namely that :

“Recently the Company and the Major Shareholder had been approached by various independent investors for placing of shares in the Company.”

Ms Katherine Yu was to her knowledge continuing to disclose information that she knew to be false or misleading in a material fact, or was reckless as to that, which was likely to induce a buyer to purchase Sunny Global shares or to have the effect of maintaining, increasing or stabilizing the price of the shares.

#### 5 August 2003 announcement of Sunny Global.

269. It was Ms Katherine Yu’s evidence that the assertion in the announcement of 5 August 2003 that :

“Recently the Company and Info Fortune Holdings Limited have been approached by various independent third parties”

was a correct description of fact arising from the meeting of 31 July 2003. In support of that contention, she testified that Mr Jimmy Chan said that he could introduce many people to the company and to her belief that Mr Lawrence Chan, a representative of the bank UOB, might represent other investors as well. It is clear from all the evidence that Symphony was the only potential investor

participating in the meeting of 31 July 2003. We accept the evidence of Mr Lawrence Chan and Mr Tony Sze that the latter was introduced as representing Symphony at that meeting. He was the person who questioned Ms Katherine Yu about the production line of Sunny Global. We are sure that it was perfectly clear to Ms Katherine Yu that he was the only potentially interested investor at that meeting. We reject Ms Katherine Yu's evidence that there was an approach to the company and Info Fortune by more than one investor interested in acquiring Sunny Global shares.

270. In her evidence, Ms Katherine Yu accepted that there was no mention in the meeting of 31 July 2003 of an "*injection of assets*" into the Sunny Global Group. Clearly, that evidence is wholly consistent with the evidence of all the other witnesses present at the meeting. We accept that to be true. She testified that she did not suggest otherwise to the company solicitors in her instructions to them in preparation for the making of the announcement. We have not received any evidence from those solicitors. For her part, she testified that she believed that the reference in the announcement to this matter was merely a lawyer's way of expressing matters. We reject that assertion. It is to be noted that, in her record of interview of 3 December 2004 (A 77 and 78) Ms Katherine Yu said that the topic of "*injection of assets*" had been mentioned at the meeting of 31 July 2003, but not by she or Mr Wilfred Hung. In any event, it is clear that the announcement made in her name was factually incorrect in this respect. We are sure that that the inclusion of this phrase in the announcement came about as a result of her instructions to the company solicitors.

"False or misleading in a material fact".

271. We note that in her consideration of this announcement Ms Stella Fung observed that not only once again was it contended that the company and Info



Fortune had been approached by multiple investors but that now it was asserted that the proposals might result in a :

“..change of control and/or injection of assets engaged in a similar line of business to the Group.”.

We find those assertions to be false or misleading as to material facts.

272. Accordingly, we find that that to the knowledge of Ms Katherine Yu the announcement disclosed information that was false or misleading in these two respects.

“Likely to induce another to buy Sunny Global shares or to “maintain, increase...or stabilize” the price of those shares.

273. Of the effect of the false assertions at paragraph 25 of her report Ms Stella Fung expressed the opinion :

“Since the assets to be injected into Sunny Global were in the similar line of business to the group, is quite obvious that these ‘various independent investors’ should also be engaged in the footwear manufacturing industry.....If that were the case, the prospects of Sunny Global could be greatly enhanced due to the strong backing from the new controlling shareholder and the possible synergy effect arising from the injection of assets in the similar line of business. Moreover, as ... more than one investor approached Info Fortune for acquiring a controlling interest in Sunny Global, these investors might compete with each other by offering an attractive price to Info Fortune for the shares. Therefore, the information disclosed in this announcement would likely enhance the investing public’s interest in Sunny Global shares and might have encouraged them to buy into the shares ahead of the conclusion of the deal between Info Fortune and the various independent investors.”.

274. We accept that opinion and find that the disclosure of the false information described earlier was likely to induce a person in Hong Kong to buy Sunny Global shares or to “maintain, increase...or stabilize” the price of the shares.

19 August 2003 announcement of Sunny Global.

275. We have no hesitation whatsoever in rejecting the evidence of Ms Katherine Yu, Mr Lee and Mr Wilfred Hung that the negotiations between the parties, namely Info Fortune and Symphony, at the meeting of 14 August 2003 were accurately described as being at an “*advanced stage*”, as asserted in the announcement of 19 August 2003. That assertion was false or misleading. We find that it was known to be false or misleading by both Mr Lee and Ms Katherine Yu.

276. First of all, it is to be noted that the meeting of 14 August 2003 was the second only meeting between Symphony and representatives of Info Fortune. The earlier meeting of 31 July 2003 was clearly of short duration, apparently brought to a close by Ms Katherine Yu’s inability to answer technical questions posed of her by Mr Tony Sze in respect of Sunny Global’s production line in its factory. In the time period between the two meetings two offers had been communicated to Mr Tony Sze from Mr Lee on behalf of Info Fortune for the sale of just over 50% of the shares of Sunny Global, respectively for \$50 million and \$35 million. In light of the fact that Sunny Global was a publicly listed company and had \$30 million in cash in the bank, without any consideration of the value of Accounts Receivable, machinery and inventory the categorisation that Mr Jimmy Chan ascribed to this offer, namely “ridiculous” is perfectly understandable.

277. Overall Mr Wilfred Hung was an unsatisfactory witness and we reject his oral evidence in respect of the issue of agreement on the price, namely \$35 million, and that Mr Tony Sze had proclaimed “*OK. Accept*” as a wholly fanciful invention. Even Ms Katherine Yu did not suggest that there was any direct acceptance of the issue of price by Symphony, rather she suggested that was to be inferred by the fact that the representatives of Symphony did not

dispute the offer that she made. In his final submission on behalf of Ms Katherine Yu Mr Mak disclaimed reliance on this testimony of Mr Wilfred Hung. [p 55 Day 16]

278. Eloquent testimony of the lack of information possessed by Symphony of Sunny Global is to be found in the very detailed “due diligence” checklist delivered via Ms Charlotte Kong to Ms Katherine Yu on 19 August 2003. We accept the evidence of Ms Charlotte Kong that she had gone into the meeting of 14 August 2003 at short notice without any information as to the discussions that were about to begin. It is significant that she took no notes of the meeting. We have no doubt that was because the meeting was at most a preliminary meeting. We have no hesitation in accepting her evidence that if she had been asked to prepare a “MOU” that she would have done so. She did not do so. Equally, we accept her obvious disbelief that she was in a position to produce such a document after the conclusion of that meeting. Similarly, we accept the evidence of Mr Tony Sze that at the conclusion of the meeting 14 August 2003 it was wholly premature for a “MOU” to be drafted.

279. We accept Ms Charlotte Kong’s evidence that after the “due diligence” material was sent to Sunny Global on 19 August 2003, notwithstanding her efforts to contact Ms Katherine Yu, no further contact or communication occurred between them until she received Ms Katherine Yu’s facsimile of 25 August 2003, to which the announcement of 22 August 2003 was attached. We reject Ms Katherine Yu’s evidence to the contrary.

280. We find it to be unlikely but possible that a request was made by Ms Katherine Yu of Ms Charlotte Kong and/or Mr Tony Sze at the meeting of 14 August 2003 that Symphony draft a “MOU”. We are sure that neither Ms Charlotte Kong nor Mr Tony Sze agreed with Ms Katherine Yu at the meeting to

prepare a “MOU”. In so finding, we accept the evidence of Mr Jimmy Chan that Symphony did not make any promises or undertaking to prepare a “MOU”.

281. It is to be noted that at the time of the meeting of 14 August 2003 no one from Symphony had ever visited Sunny Global production lines in their factory on the Mainland. A visit to the factory by representatives of Symphony was one of the matters agreed upon at the meeting. Furthermore, as both Ms Charlotte Kong and Mr Tony Sze testified Symphony had no information whatsoever about the current state of the accounts of Sunny Global, its account receivables and payables, its inventory and work-in-progress.

282. It beggars belief that, in the circumstances obtaining at the end of the meeting of 14 August 2003, the negotiations between the parties were described in the announcement of 19 August 2003 as at an “advanced stage”. Clearly, they were not. We have no hesitation in accepting the evidence to the contrary articulated by Ms Charlotte Kong, Mr Tony Sze and Mr Jimmy Chan.

“False or misleading in a material fact”.

283. In her report Ms Stella Fung observes that the announcement of 19 August 2003 by Sunny Global in which it was asserted that negotiations between the parties had reached an “advanced stage” is to be judged in the context of the earlier announcements of the company and the fact that, as the announcement stated, the shares of Sunny Global had been suspended at the request of the company pending the announcement from 2:30 p.m. on 15 August 2003 and that trading was to resume on 20 August 2003. Of that, she said that it was to be inferred that :

“28..... As the negotiations involved a possible change in controlling shareholder and/or injection of assets into Sunny Global, it is generally believed that by progressing into the “advanced stage”, the investor might have examined the books and records of Sunny Global, or a least visited the manufacturing facilities of Sunny Global.”.

We accept that opinion and find that the assertion that negotiations had reached an “advanced stage” was a statement that was false or misleading in a material fact.

Likely to induce another to buy Sunny Global shares or to “maintain, increase...or stabilize” the price of those shares.

284. In her report Ms Stella Fung noted that the proposed offer price of \$0.17 per share was substantially below the prevailing market price of around \$0.41 per share. Nevertheless, of that she said (paragraph 29) :

“However, as it was the Investor who wanted to acquire the controlling interest and approached Info Fortune, Info Fortune should not have accepted any proposal if it was not beneficial to it. Therefore, the investing public might have taken the view that the offer price proposed by Info Fortune was only part of the deal between Info Fortune and the investor, or that Info Fortune had urgent need to raise cash through share disposal.”.

She went on to conclude that:

“...the investing public remained optimistic on the prospects of Sunny Global as it would benefit from the strong shareholder backing if the investor was a prominent player in the footwear manufacturing industry. By stating that the negotiations between Info Fortune and the investor had been in the “advanced stage” and that the investor was “considering” the proposal, the announcement published by Sunny Global implied that the deal would be likely to be concluded very soon. Investors who were optimistic on the prospects of Sunny Global after the proposed deal would likely be induced by this announcement to buy into the shares ahead of the conclusion of the deal.”.

285. We noted that on the resumption of trading in the shares of Sunny Global on 20 August 2003 they were traded in the range of \$0.30 to \$0.37 and closed at \$0.35. However, on the following two trading days, 22 and 25 August 2003, the shares closed at \$0.45 and \$0.425. That increase in the price of Sunny Global shares was accompanied by a huge increase in the volume of shares traded on those two days.

286. We accept Ms Stella Fung’s opinion quoted earlier and find that the false information disclosed in the announcement of 19 August 2003, namely the assertion that negotiations between the parties were at an “advanced stage”, was likely to induce a purchaser to buy shares in Sunny Global or to “maintain, increase...or stabilize” the price of those shares.

An overview of the sale of Sunny Global shares by Info Fortune and the announcements by Sunny Global.

287. It is clear on an examination of all of the evidence that the sale of Sunny Global shares by Info Fortune ran in parallel to the false announcements made by Sunny Global. Equally clearly, both Ms Katherine Yu and Mr Lee were involved in both aspects. We find that Ms Katherine Yu was involved in assisting Mr Lee to open his account with Kim Eng on 12 June 2003 and that she was aware of the deposit of the share certificates in respect of 300 million Sunny Global shares by Info Fortune on 10 July 2003 with that broker. Both she and Mr Lee were aware that Info Fortune was free to sell its shares of Sunny Global from 3 July 2003 onwards. Clearly, Ms Katherine Yu played a significant role in the sale of Sunny Global shares by Info Fortune liaising on issues of the price and volume of the sale of those shares between Mr Lee and Mr Charles Wong. In addition, she made “disclosure of interest” reports of those disposals.

The role of Mr Lee Man Fa.

288. Although the announcements of Sunny Global on and between 21 July and 22 August 2003 were published in the name of Ms Katherine Yu, as Company Secretary, the announcements of 1, 5, 11, 19 and 22 August 2003 asserted that all of the directors of the company jointly and severally accepted responsibility for the accuracy of what was asserted in the announcements. More particularly, Mr Lee accepted that he had seen Chinese language versions

of the announcements of 21 July, 1, 5 and 19 August 2003 before they were published. In her oral evidence and in the other material emanating from Ms Katherine Yu it is made abundantly clear, and we so find, that contemporaneously she kept Mr Lee informed of all developments relating to both the possible placement of Sunny Global shares and the sale of his controlling interest held through Info Fortune.

289. We find that Mr Lee authorized, or was concerned in, the disclosure of information that was false or misleading as to material facts contained in the announcements, which information he knew to be false or misleading in that respect. Alternatively, he was reckless as to whether or not it was false or misleading.

The attribution of Mr Lee's conduct to Info Fortune.

Submissions on behalf of Info Fortune.

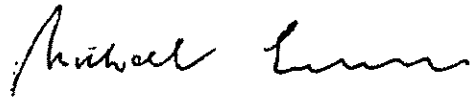
290. In both his written and oral submissions Mr Hylas Chung submitted that Mr Lee's conduct was not attributable to Info Fortune. The nub of his submission was that if the Tribunal was to determine that Mr Lee had disclosed, authorized or otherwise had been concerned in the disclosure of misleading information he had done so only in his capacity as a Director of Sunny Global. The conduct was in no way attributable to Info Fortune. Mr. Lee's duty and authority to disclose information on behalf of Sunny Global arose from his position as Chairman of the Board of Directors of the company. Although it was through his ownership of the majority shares of Sunny Global held by Info Fortune that he controlled Sunny Global and was its Chairman that was not the "hat that he was wearing" when the Sunny Global announcements were disclosed or authorized by him. The hat that he was wearing was only that of Director of Sunny Global.

291. At all material times Mr Lee was the only shareholder and sole director of Info Fortune. There was no evidence that it had any employees. We note that in the documentation furnished to Kim Eng on 12 June 2003, to open the account of Info Fortune, he signed a written resolution of the company authorising that to be done and did so as the “*Sole director*”. There is no doubt, and we so find that he was its “controlling brain”. At the time of the first disposal of shares on 1 August 2003 that company owned over 70% of the shares of Sunny Global of which company Mr Lee was Chairman of the board of directors. In parallel to authorising, or concurring in, the publication of false announcements by Sunny Global he caused the sale of shares by Info Fortune through Kim Eng and signed the related written authorizations. In all Info Fortune disposed of 179 million shares in Sunny Global in the period commencing 1 August and concluding 28 August 2003 for which it received over \$63 million, of which 133.2 million shares were sold up to and including 22 August 2003. We find that his conduct in authorizing, or being concerned in, the disclosure of information that was false in a material fact is attributable to Info Fortune. In particular, we find that in so doing it was Mr Lee’s purpose to induce persons to buy Sunny Global shares and thereby to enable Info Fortune to sell the Sunny Global shares it held.

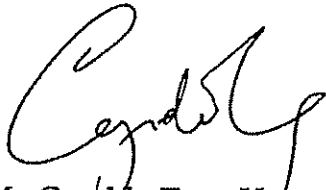
## CONCLUSION

292. In the result, we find that Ms Katherine Yu, Mr Lee Man Fa and Info Fortune are culpable of knowingly or recklessly, in the case of Ms Katherine Yu, disclosing information and, in the cases of Mr Lee Man Fa and Info Fortune, authorizing or being concerned in the disclosure, of information false or misleading as to a material fact, which information was likely to induce another person or persons to buy Sunny Global shares in Hong Kong or to maintain, increase or stabilize the price of those shares in Hong Kong, contrary to section 277(1)(a) and (c) of the Ordinance.

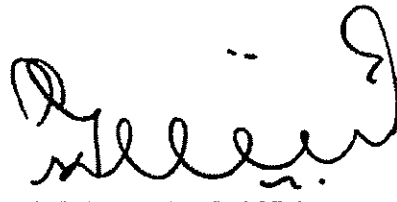




The Hon Mr Justice Lunn  
(Chairman)



Ms Cynthia Tang Yuen Shun  
(Member)



Mr Peter R Griffiths  
(Member)

21<sup>st</sup>, July 2008.