REPORT OF THE MARKET MISCONDUCT TRIBUNAL OF HONG KONG

on whether a breach of the disclosure requirements has taken place

in relation to the listed securities of

CMBC Capital Holdings Limited
(formerly known as Mission Capital Holdings Limited)

(Stock Code 1141)

and other related questions

The Report of the Market Misconduct Tribunal on whether a breach of the disclosure requirements has taken place in relation to the listed securities of

CMBC Capital Holdings Limited
(formerly known as Mission Capital Holdings Limited)

A report pursuant to section 307(J)1(a) and (b) of the Securities and Futures Ordinance, Cap. 571

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CHAPTER 1

OVERVIEW

The issue of the SFC Notice

1. On 26 November 2018, the Market Misconduct Tribunal ("the Tribunal") received a Notice from the Securities and Futures Commission ("the SFC") requiring the Tribunal to conduct proceedings in order to determine whether there had been a breach of the disclosure requirements within the meaning of sections 307B and 307G of Part XIVA of the Securities and Futures Ordinance, Cap 571 ('the Ordinance"). The Notice issued by the SFC is attached to this report marked Annexure "A".

The Specified Persons

2. One limited company and six individuals were specified by the SFC in the Notice as being subject to the inquiry. They were:

(a) CMBC Capital Holdings Limited (formerly known as Mission Capital Holdings Limited, a company listed on the Main Board of the Stock Exchange of Hong Kong which, together with its subsidiaries was principally engaged in securities investment, short-term loan financing and trading in tangible assets such as metals, timber and recyclable materials ('the Company').

(b) The six individuals were each "officers" of the Company as defined in section 1, Part 1 of Schedule 1 to the Ordinance[1]. They were –

(i) Suen Yick Lun Philip ('Philip Suen'), the 2nd Specified Person, who in July 2014 was appointed an executive director and the Company Secretary and who from 31 October 2014 was appointed Chief Executive Officer ('CEO').

(ii) Suen Cho Hung Paul ('Paul Suen'), the 3rd Specified Person, was the Chairman and an executive director of the Company.

(iii) Lau King Hang, the 4th Specified Person, was an Executive Director of the Company.

(iv) Huang Zhencheng, Weng Yixiang and Wong Kwok Tai, the 5th, 6th and 7th Specified Persons, were each independent non-executive directors of the Company.

The principal business of the Company

3. At all times relevant to this Report, the financial performance of the Company was principally driven by its securities investment business. By way of illustration, out of a total net profit before taxation of HK$417,153,000 recorded

[1] An "officer" is defined in the following terms:
(a) in relation to a corporation, means a director, manager or secretary of, or any other person involved in the management of, the corporation; or
(b) in relation to an unincorporated body, means any member of the governing body of the unincorporated body.

in the 2013/2014 Annual Report, the securities investment business had secured a profit in excess of HK$417,000,000.

4. Philip Suen, an executive director, was the person principally responsible for the Company's securities investment business.

5. The Company's securities portfolio was held through a wholly-owned subsidiary, the Xin Corporation (HK) Limited ('the Xin Corporation'). Philip Suen, as an executive director of the Company, would receive daily statements from the Company's brokers. According to the Operational Manual of the Company, Philip Suen was the one responsible for keeping track of economic conditions generally and fluctuating share prices in particular in order to guide the investment strategies of the Company. Put in plain language, he was the one with 'his hands on the wheel'.

Relevant provisions of the Ordinance

6. Section 307B of the Ordinance lays down a listed corporation's disclosure requirements, namely, as soon as reasonably practicable after any 'inside information' has come to its knowledge, to disclose that information to the market. The subsection reads:

> "(1) A listed corporation must, as soon as reasonably practicable after any inside information has come to its knowledge, disclose the information to the public.
>
> (2) For the purposes of subsection (1), inside information has come to the knowledge of a listed corporation if–
>
> (a) information has, or ought reasonably to have, come to the knowledge of an officer of the corporation in

the course of performing functions as an officer of the corporation; and

(b) a reasonable person, acting as an officer of the corporation, would consider that the information is inside information in relation to the corporation."

7. The concept of 'inside information' is well established. In the present context, it is specific information about a listed corporation that is not generally known to the persons accustomed to, or likely to, deal in the listed securities of the corporation but would, if generally known to them, be likely to materially affect the price of those securities. Section 307A(1) defines 'inside information' as follows:

> "Inside information, in relation to a listed corporation, means specific information that–
>
> (a) is about–
>
> (i) the corporation;
>
> (ii) a shareholder or officer of the corporation; or
>
> (iii) the listed securities of the corporation or their derivatives; and
>
> (b) is not generally known to the persons who are accustomed or would be likely to deal in the listed securities of the corporation but would if generally known to them be likely to materially affect the price of the listed securities".

8. Section 307C prescribes the manner in which inside information must be disclosed, namely, that it must be made in a manner that enables the market to

have equal, timely and effective access to that inside information. The subsection reads:

> "(1) A disclosure under section 307B must be made in a manner that can provide for equal, timely and effective access by the public to the inside information disclosed.
>
> (2) Without limiting the manner of disclosure permitted under subsection (1), a listed corporation complies with that subsection if it has disseminated the inside information required to be disclosed under section 307B through an electronic publication system operated by a recognized exchange company for disseminating information to the public."

9. Section 307G lays down the circumstances in which an officer of a listed corporation – an officer including a director or manager – will be held to be in breach of the disclosure requirements. This includes a failure generally to take reasonable measures to ensure that effective safeguards exist. The subsection reads:

> "(1) Every officer of a listed corporation must take all reasonable measures from time to time to ensure that proper safeguards exist to prevent a breach of a disclosure requirement in relation to the corporation.
>
> (2) If a listed corporation is in breach of a disclosure requirement, an officer of the corporation–
>
> (a) whose intentional, reckless or negligent conduct has resulted in the breach; or

(b) who has not taken all reasonable measures from time to time to ensure that proper safeguards exist to prevent the breach,

is also in breach of the disclosure requirement."

The mandate given to the Tribunal

10. The Tribunal was required by the Notice to conduct proceedings in order to determine the following, namely –

(a) whether, in respect of inside information coming into possession of the Company, a breach of the disclosure requirements had taken place; and, if so,

(b) the identity of any person found to be in breach of those requirements.

The factual background

11. The asserted factual basis upon which the SFC directed that an inquiry should take place is set out in detail in the Notice itself. In addition, and of central importance to this Report, during the course of the proceedings the SFC was able to reach agreement with the Specified Persons as to the relevant facts. This was evidenced in two statements of agreed facts, first, with the Company itself in March 2020 and, second, with the officers of the Company, that is, the 2nd through to the 7th Specified Persons, in September 2020. The statement of agreed facts signed by the SFC and the Company is attached to this report marked Annexure "B". The statement of agreed facts signed by the SFC and the 2nd to 7th Specified Persons is attached to this report marked Annexure "C".

12. In both statements of agreed facts it was accepted that, in respect of certain internal management accounts, known as the 'August Management Accounts', the Company had come into possession of inside information.

13. The following constitutes a broad overview of the uncontested facts drawn from the Notice and the two statements of agreed facts –

(i) Towards the end of 2013, the Company announced its interim results for the six months ended 30 September 2013. These interim results recorded an overall loss (before taxation) of HK$12,030,000. Significantly, the results also recorded a loss in the Company's securities investment segment of HK$14,347,000.

(ii) On 26 June 2014 – some seven months later – the Company announced its annual results for the year ended 31 March 2014. These results, however, instead of recording a loss, recorded a profit for the year, before taxation, of HK$417,153,000 including an annual profit of HK$417,282,000 in its securities investment segment.

(iii) On 23 September 2014, the Secretarial Department of the Company sent an email to all board members of the Company (including the 2nd to 7th Specified Persons) attaching the unaudited consolidated management accounts of the Company for the four months ended 31 July 2014, that is, for the months of April, May, June and July 2014. The management accounts revealed that there had been a further increase in profits, more specifically –

(a) The Company had made a profit of HK$345,772,000 in the month of July 2014.

(b) The Company's cumulative profit for the four months had amounted to HK$372,952,000, and

(c) The cumulative profit for the securities investment segment of the business had amounted to HK$379,600,000 for the same four month period.

(iv) Less than a month after these management accounts had been made known to the board members – on 13 October 2014 – the Secretarial Department of the Company sent an email to board members (including the 2nd to 7th Specified Persons) attaching the unaudited consolidated management accounts of the Company for the five-month period from 1 April 2014 to 31 August 2014 – the August Management Accounts.

(v) The information contained in the August Management Accounts ought reasonably have come to the knowledge of the board members on or about the day the email was sent, that is, on or about 13 October 2014.

(vi) The August Management Accounts revealed that –

(a) In the month of August 2014 alone, the Company had made a profit of HK$464,909,000, some HK$119,000,000 greater than in July.

(b) Cumulative profit for the five months had amounted to HK$837,861,000.

(c) In respect of the main profit driver of the business, the securities investment segment, cumulative profit over the five-month period had amounted to HK$847,743,000.

(vii) In the two statements of agreed facts signed by the Company and the 2nd to 7th Specified Persons, it was agreed that the August Management Accounts contained information that constituted inside information. In this regard, the statement of agreed facts, Annexure "C", said that the information –

(a) was specific to the Company as it included key financial information of the Company such as turnover and profit of the Company in the relevant period;

(b) was not generally known to those people who were accustomed to or would be likely to deal in the shares of the Company, which included individual investors and speculators who had previously traded or had an interest in carrying out trading in the shares of the Company; and

(c) would, if made known to that group of persons, *be likely to have a material positive effect on the company's share price as it indicated significant increase in profits by the Company."* [emphasis added]

(viii) Despite possession of this inside information, on 17 October 2014, some four days after the board members had received the August Management Accounts, the Company issued an announcement in answer to an enquiry from the Stock Exchange concerning the recent decrease in the Company's share price and increase in its trading volume. The announcement said that the board of the company was not aware of any reasons for these price and volume fluctuations *nor was it aware of any information which should be announced in order to avoid a false market in the securities of the company*. [emphasis added]

(ix) The announcement of 17 October 2014 was made pursuant to a written resolution approved by all board members which stated that they all jointly and severally accepted full responsibility for the accuracy of the information contained in the announcement and confirmed, having made all reasonable enquiries, that to the best of their knowledge and belief the information was accurate and complete in all respects and was not misleading or deceptive and that there were no other matters which, if omitted, may make the statement misleading.

(x) A few days later, on 22 October 2014, Philip Suen (the 2nd Specified Person), the director responsible for 'keeping track' of the security investments of the company (in accordance with the Company's Operational Manual) obtained an investment schedule from the Secretarial

Department of the Company. The schedule confirmed the following –

(a) The Company had achieved a total unrealised gain of over HK$958,000,000 for the six months ended 30 September 2014 from its securities portfolio (held through the Xin Corporation).

(b) The profits were contributed in the main by holdings in three companies[2] which together contributed unrealised profits of $337,533,380, $329,398,333 and $154,440,000.

(xi) Sometime before 7 November 2014, the unaudited consolidated management accounts of the Company for the period ended 30 September 2014 were prepared and were circulated to board members. These accounts revealed the following, namely –

(a) That the company had made a profit of HK$815,259,000 for the six months ended 30 September 2014, and

(b) The profit for the securities investment segment of the business had amounted to HK$945,938,000 for the same period.

[2] The companies were *ICube Technology Holdings Limited* (stock code: 139); *Heritage International Holdings Limited* (stock code: 412) and *Rising Development Holdings Limited* (stock code: 1004).

(xii) On that day, that is, on 7 November 2014, there was a meeting of the board at which consideration was given to the issue of a positive profit alert in relation to the Company's financial performance for the six-month period ended 30 September 2014. Following that meeting, after trading hours, the Company issued a profit alert. In part, the alert read as follows:

> "… based on a preliminary review of the Group's unaudited management accounts, the Group is expected (sic) a sharp turnaround of its results by recording a profit of (sic) the six months ended 30th of September 2014 as compared to the loss for the same corresponding period in 2013. The sharp turnaround of the Group's results is mainly attributable to the estimated substantial net gains on investments … measured at fair value through profit or loss of over HK$900 million recorded by the Group for the six months ended 30 September 2014 as compared to the net losses on investments measured at fair value through profit or loss of HK$20,492,000 as stated in the interim results of the Group for the six months ended 30 September 2013."

(xiii) Following the publication of the profit alert, the share price of the Company (on the next trading day) closed at a price which represented an increase of 24.84% on the previous trading day. Trading volume, when compared with the previous trading day, increased from 105,340,000 shares to 249,873,000 shares.

The Role of the 2nd to 7th Specified Persons

14. In the statement of agreed facts signed by the SFC and the Specified Persons in September 2020, the Specified Persons spoke of their involvement, or lack of it, in the matter –

(a) Philip Suen, the 2nd Specified Person, made the following admissions. First, that he was the person responsible for complying with disclosure requirements, second, that he did not discuss with the other members of the board whether a positive profit alert should be announced in respect of the information contained in the August Management Accounts but in or about late September 2014 he had initiated broad discussions with the company's auditors in respect of relevant accounting measures.

(b) Paul Suen, the 3rd Specified Person, who was the Chairman of the Company, said that he was the person responsible for the external affairs of the company, exploring new investment opportunities and the like. As concerns matters of compliance, he said that these had been largely delegated to Philip Suen who was a member of the Hong Kong Institute of Certified Public Accountants and also a certified public accountant in Australia. In light of this, he said, he did not know why a profit alert had only been issued in November 2014 and not at an earlier stage.

(c) Lau King Hang, an executive director, said that he relied on reports from Philip Suen concerning investment gains and losses. Concerning the August Management Accounts, he

did not recall any discussion by board members as to whether a positive profit alert should be published. He did not himself consider the issue because he was not aware of the amount of any gain that would first be necessary to make an announcement necessary.

(d) Huang Zhencheng, an independent non-executive director, said that he did not know that there was any disclosure requirement under the Ordinance nor was he aware of any internal procedures related to the matter.

(e) Weng Yixiang, also an independent non-executive director, said that he (and the other non-executive directors) relied in particular on Philip Suen in respect of compliance matters. He too said that he was not aware of any internal procedures related to the matter.

(f) Wong Kwok Tai, the third independent non-executive director, said that he relied on Philip Suen to consider issues of disclosure. He was not aware of any internal Company guidelines concerning disclosure and he did not know why there had been a failure to make disclosure.

The SFC case

15. In its Notice, the SFC asserted that the financial information contained in the August Management Accounts (that is, the information for the period from 1 April to 31 August 2014) constituted inside information in that, first, it was specific information about the Company and, second, it was not generally known to those who were accustomed to or would be likely to deal in the securities of

the Company but would if generally known to them have been likely to materially affect the price of the securities.

16. The financial information contained in the August Management Accounts was therefore information that the Company was obliged to disclose to the public as soon reasonably practicable after those accounts came to be known by the officers of the Company. That did not happen. To the contrary, on 17 October 2014, in answer to an enquiry from the Stock Exchange, the Company had made a public announcement that it was not aware of any information which should be made public in order to avoid a false market in its securities.

17. It was only on 7 November 2014 that a positive profit alert was published.

18. There had therefore been a delay of more than three weeks in complying with the disclosure requirements. Put more plainly, for that period of time key information as to the finances of the Company – information that would likely have had a material positive effect on the share price of the Company – was withheld from the market.

19. That failure, it was asserted, constituted a breach of the disclosure requirements provided for in section 307B of the Ordinance.

20. It was also the SFC case, one that was not denied by the Specified Persons, that at all material times there were no proper safeguards existing in the Company to guard against, and prevent, a failure of the disclosure requirements.

21. In respect of Philip Suen and Paul Suen, the 2nd and 3rd Specified Persons, it was asserted, and not denied, that, pursuant to the provisions of section

307G(2)(a) of the Ordinance, it was their negligent conduct which resulted in the breach of the disclosure requirements.

22. In respect of *all* of the Specified Persons, it was asserted, and not denied, that, pursuant to the provisions of section 307G(2)(b) of the Ordinance, they had failed to take all reasonable measures to ensure that proper safeguards existed to prevent a breach of the disclosure requirements.

CHAPTER 2

PROCEEDINGS LEADING TO AGREEMENT AS TO CULPABILITY AND SANCTIONS

Delay to the proceedings brought about by the Covid-19 pandemic

23. Although the initial preliminary conferences took place before Mr. Michael Hartmann as Chairman, it was determined that the substantive hearing, set to commence on 1 April 2020 (with five days reserved), would be under the chairmanship of Mr Garry Tallentire.

24. Regrettably on 16 March 2020, shortly before the substantive inquiry was due to commence, Mr Tallentire, who was now residing permanently in England, informed the parties that it would not be possible for him to be in Hong Kong to preside over the hearing on 1 April 2020.

25. At that time, the Covid-19 pandemic had forced the Hong Kong authorities to introduce 14-day quarantine periods for all persons flying into Hong Kong from the United Kingdom. Generally, international travel was becoming more problematic. In light of this, Mr Tallentire informed the legal representatives of the parties that it was no longer feasible for him to come to Hong Kong.

26. In the circumstances, in the hope that the pandemic conditions may improve and with the other chairmen committed to other matters, it was agreed that Mr Tallentire would sit as Chairman at an adjourned hearing some six months later on 12 October 2020 with five days reserved.

27. By August 2020, however, it was apparent that the restrictions on travel and social movement made necessary by the pandemic would, to a greater or lesser degree, still be in force in October 2020. In the result, the parties were informed that Mr Hartmann, the original Chairman (who was residing in Hong Kong) would assume the chairmanship of the inquiry.

28. As to the change of chairman, it is to be emphasised that Mr Tallentire, during the period of time in which he held the chairmanship, was not required to determine any matters going to the merits of the inquiry. All directions given by him were purely administrative.

Agreement as to culpability and appropriate sanctions

29. The substantive inquiry commenced on 12 October 2020, the Tribunal consisting of the Chairman and two members.

30. At the commencement of the hearing, counsel for the parties confirmed that, in accordance with the two statements of agreed facts – Annexures B and C – the Company and all the Specified Persons had accepted their culpability.

31. In addition, counsel for the parties, having agreed the nature and extent of what they considered to be appropriate sanctions, had filed a statement with the Tribunal, that statement – attached to this Report as Annexure "D" – being entitled 'Agreed Proposed Orders by the Securities and Futures Commission and the Specified Persons'.

32. This was not the first time that an agreement between the parties as to appropriate sanctions had been put before the Tribunal for endorsement: see, for example, the report in respect of *Fujikon Industrial Holdings Limited* dated 22 May 2019.

33. In terms of the statement, Annexure D, it was agreed by the parties that the following sanctions would be appropriate –

(a) An order of disqualification pursuant to section 307N(1)(a) of the Ordinance against Philip Suen, the 2nd Specified Person, for a period of 15 months.

(b) Regulatory fines to be imposed pursuant to section 307N(1)(d), first, on Philip Suen, the 2nd Specified Person, in the sum of HK$1,200,000 and, second, on Paul Suen, the 3rd Specified Person, in the sum of HK$900,000.

(c) An order made pursuant to section 307N(1)(i) that all the Specified Persons undergo a training programme approved by the SFC on matters of compliance with Part XIVA of the Ordinance.

(d) Appropriate orders as to costs pursuant to sections 307N(1)(e) and (f); namely, first, an order that the Specified Persons pay the costs and expenses reasonably incurred by the Government in relation or incidental to the Tribunal proceedings, to be taxed if not agreed, and, second, an order that they pay to the SFC both the costs and expenses incurred in relation or incidental to the Tribunal proceedings and the investigation carried out for the purpose of those proceedings.

34. As to culpability, it was of course for the Tribunal to satisfy itself that the relevant statutory elements of culpability had been proved in respect of each

of the Specified Persons and in respect of each to be satisfied as to the nature and extent of that culpability.

35. Equally, the Tribunal was not bound to except any set of proposals concerning appropriate sanctions. In the exercise of its supervisory jurisdiction, it was for the Tribunal, looking to all the facts and circumstances, such circumstances to include aggravating and mitigating factors, to be satisfied that the agreed sanctions fell within an ambit of discretion that the Tribunal itself would consider appropriate to impose.

36. That said, in order to assist the Tribunal, counsel for the parties submitted substantial written argument and at the hearing itself assisted the Tribunal with oral submissions. In doing so, counsel made reference to a number of earlier reports of the Tribunal concerning breaches of the statutory requirements to make timely disclosure of inside information[3].

37. The Tribunal's findings in respect of both culpability and sanctions are set out in the following chapter.

[3] The reports included the following: first, *AcrossAsia Limited* dated 29 November 2016; second, *Yorkey Optical International (Cayman) Limited* dated 27 February 2017; third, *Mayer Holdings Limited* dated 5 April 2017 and *Fujikon Industrial Holdings Limited* dated 22 May 2019.

CHAPTER 3

CONFIRMATION OF CULPABILITY AND APPROPRIATE SANCTIONS

The issue of culpability

38. In terms of the two statements of agreed facts, all the Specified Persons (the Company and the 2nd to 7th Specified Persons) agreed that the August Management Accounts – received on 13 October 2014 – contained information about the Company that, if known to the market at the time, would have been likely to materially affect the share price. The information showed a significant improvement in the Company's investments in securities, this being a principal indicator of financial performance.

39. The Tribunal accepts that the information contained in the August Management Accounts, if known to the market, would clearly have had a material effect on the Company's share price. The fact that the day after the Company eventually published a profit warning on 7 November 2014 the share price of the Company closed at an increased value of nearly 25% (on more than double the volume of trading) is compelling evidence in itself.

40. It is also to be noted that, having recorded a profit in excess of HK$417 million in the year ended 31 March 2014, the August Management Accounts revealed that in the following year, in just its first five months of trading, profits had more than doubled to over HK$837 million.

41. The Tribunal is satisfied therefore that the August Management Accounts clearly contained inside information, that is, information about the

Company that was not generally known to the market but, if known, would likely have had a material effect on the price of the Company's shares.

42. The statements of agreed facts also accepted that the August Management Accounts containing the inside information were circulated to all members of the board of directors by way of email and that all of the Specified Persons ought reasonably to have had knowledge of the contents of the accounts by about 13 October 2014.

43. It was further accepted that the Company failed to disclose the inside information as soon as reasonably practicable and that it was some 25 days before the market was informed of the Company's increasingly buoyant position in respect of its securities investments.

44. Concerning the 2nd to 7th Specified Persons, all of whom were directors – and therefore officers of the Company – when the August Management Accounts were circulated, it was accepted that, as such, they were persons liable for the failure.

45. On the basis of all the evidence before it, including the admissions contained in the two statements of agreed facts, the Tribunal has therefore found, first, that there had been a breach of the disclosure requirements contained in section 307B of the Ordinance and that, second, pursuant to the provisions of section 307G, the Specified Persons were culpable.

Considering the proposed sanctions

46. At the outset, when considering the issue of sanctions, the Tribunal considers it important to recognise that the requirement to disclose inside information in a timely and effective manner is essential to maintaining the

integrity of the market. In this regard, the "Guidelines on Disclosure of Inside Information" published by the SFC state that –

> "8. The statutory requirements to disclose inside information are central to the orderly operation and integrity of the market and underpin the maintenance of a fair and informed market.
>
> 9. To comply with the obligations, corporations should consider their own circumstances when deciding whether any inside information arises and how it should be disclosed properly to the public. Disclosure should be made in a manner that provides for equal, timely and effective access by the public to the information disclosed." [emphasis added]

47. When, concerning a failure to meet the disclosure requirements, findings of culpability have been made by the Tribunal, a range of sanctions are open to it. In this regard, section 307N(1) of the Ordinance makes provision for the following –

(1) Disqualification orders as a director, liquidator, receiver or manager for a period not exceeding five years;

(2) 'Cold shoulder' orders for a period not exceeding five years;

(3) 'Cease and desist' orders;

(4) regulatory fines, not exceeding HK$8 million;

(5) payment of costs and expenses reasonably incurred by the Government;

(6) payment of costs and expenses reasonably incurred by the SFC, including investigation costs;

(7) recommendations made to any organisation having disciplinary powers over a person, to exercise such powers;

(8) orders against the company to ensure future compliance, for example, by way of appointment of independent professional advisers approved by the SFC; and

(9) orders against individual persons to ensure future compliance, for example, by undergoing a programme of training approved by the SFC.

Imposition of a disqualification order

48. The SFC recommended that the Tribunal impose a disqualification order pursuant to section 307N(1)(a) of the Ordinance on one of the Specified Persons only, namely, Philip Suen, the 2nd Specified Person. The length of the recommended disqualification was 15 months. At all material times, Philp Suen was the director given immediate supervision of the securities investment segment of the Company's business as well as matters of regulatory compliance.

49. No disqualification order was sought against Paul Suen, the 3rd Specified Person. In this respect, counsel for the SFC said that, on the evidence, it was apparent that Paul Suen, even though Chairman of the Company, acted primarily in a supervisory role. He was at the same time a director of various other listed companies in Hong Kong. As such, Paul Suen and the other board members relied upon Philip Suen to report back concerning fluctuations in the securities investments portfolio and also in respect of matters related to regulatory

compliance. In this regard, the Tribunal has recognised that directors are entitled to delegate functions, placing reasonable trust in the competence and integrity of those to whom the delegation is made.

50. In the circumstances, the Tribunal is satisfied that, in all the circumstances, a disqualification order against Philip Suen only is appropriate.

51. In mitigation of Philip Suen's culpability, it was emphasised by his counsel that he had only joined the Company on 2 July 2014 and had only been in position, therefore, for some three months, giving him little time to "get himself up to speed". This, as the Tribunal accepts, would have been of particular significance in respect of his general obligation to investigate what regulatory structures were in place within the Company and, in light of that, to take reasonable steps to ensure that proper safeguards existed to prevent disclosure failures.

52. In addition, it was said on his behalf that the shares which had increased in value so markedly were inherently volatile which demanded a level of caution on his part. The value of such shares were prone to substantial variation every day and accordingly 'paper profits' had to be viewed with care. That, of course, is understood but in the present case the Tribunal has taken note of the fact that the increase in the value of the securities portfolio was not a 'one or two day' aberration, considered in context it constituted an extended increase in value.

53. On behalf of Philip Suen, it was further said that, as an accountant, he had been of the view that the figures shown to him in the August Management Accounts were "rough figures" in that the accounting classification and treatment of certain investments were yet to be clarified or confirmed by the Company's auditors. In addition, April to August financial performance had not taken into

account tax provisions (which as finally determined and shown in the September Management Accounts amounted to HK$120 million).

54. It was further emphasised that Philip Suen had not merely ‘sat on his hands’ during the relevant period. From about late September, when he noted that there could be a significant improvement in the Company's financial performance, he had initiated discussions with the Company's auditors in respect of a number of accounting matters including, first, how to account for the costs of bonus shares, and second, whether to reclassify some of the securities held by the company as long-term investments.

55. It was also emphasised to the Tribunal that, as the records show, the Company had a practice of making regular and timely disclosure related to its financial performance and it was therefore unsurprising that Philip Suen, a new member of the board, believed that it was not the Company's practice to issue profit alerts in respect of financial performance before the end of each relevant financial period.

56. On behalf of Philip Suen, it was accepted by his counsel that he should have been more vigilant as to his duty of disclosure, particularly as he was the officer given charge of the securities segment of the business. Nevertheless, it was said that his conduct did not warrant finding that he had acted recklessly.

57. As it was, it was not suggested by the SFC that Philip Suen had acted recklessly. It was agreed that he had acted negligently in that he had failed to exercise such care, skill and foresight as a reasonable man in his situation would have exercised in the circumstances.

58. While counsel for the SFC accepted that Philip Suen’s conduct had been negligent and not reckless, and accepted fully that there was no evidence of

personal gain being sought or loss avoided, counsel emphasised that at the relevant time he had been the director given the specific duty of monitoring securities investments and had also been the director charged with ensuring that all necessary compliance matters were undertaken. The information which was not disclosed related to a very substantial increase in profit. It was a serious matter which the investing public were entitled to be made aware of as soon as reasonably practicable.

59. It was further submitted that the failure to ensure disclosure was exacerbated by the fact that on 17 October 2014, several days after the receipt of the August Management Accounts, in response to an enquiry from the Stock Exchange, Philip Suen would have played a role in issuing an announcement that the board of the Company was not aware of any reason for fluctuations in its share price or the volume of trading in its shares – or of any inside information that needed to be disclosed.

60. On a consideration of all relevant evidence, the Tribunal is satisfied that the conduct of Philip Suen constituted negligent conduct. He was not only negligent – in terms of section 307G(2)(a) – in failing to ensure that the inside information contained in the August Management Accounts was released to the market in a timely fashion, there was, on a more general basis, and even accepting that he was a relative newcomer to his position of responsibility, a negligent failure on his part – in terms of section 307G(2)(b) – to ensure that all reasonable measures were taken from time to time to ensure that proper safeguards existed to prevent such failures.

61. In light of all relevant matters, therefore, the Tribunal considered it appropriate to impose upon Philip Suen a period of disqualification, it being remembered that disqualification acts essentially as a protective measure, removing an individual from day-to-day involvement in the management of a

listed corporation and thereby from further risk of undermining the integrity of the market. In the present case, sensibly, the sanction of disqualification was complemented by an order that Philip Suen undergo a programme of training on disclosure obligations, directors' duties and corporate governance.

62. As to the period of disqualification, having looked to earlier reports of the Tribunal for guidance, but recognising that each case must be judged according to its own facts, the Tribunal was satisfied that a disqualification period of 15 months as recommended by the parties was appropriate.

Imposition of regulatory fines

63. The Tribunal has the jurisdiction to impose regulatory fines on corporations, chief executive officers and directors subject to a maximum fine in each instance of HK$8 million. As to the appropriate amount of a fine, it must in all the circumstances of the case be proportionate and reasonable in relation to the breach of the disclosure requirements that have been proved. In assessing what is proportionate and reasonable, the Tribunal may take a range of factors into account: in this regard, see section 307N(3). These factors include the seriousness of the conduct, particularly the degree to which it may have damaged the integrity of the market; whether it was intentional, reckless or negligent; whether any personal benefit was intended (by way of profit gained or loss avoided) and the financial resources of the person subject to the fine.

64. In the present case, of course, the conduct of both Philip Suen, the 2nd Specified Person, and Paul Suen, the 3rd Specified Person, was agreed to be negligent only and nor was any issue of personal benefit of relevance. As to the financial resources of these two persons, the fact that they have agreed to the quantum of their regulatory fines without raising any issue of affordability is an indication that the level of the agreed fines is not beyond their means.

65. On the broader basis of assessing the consequences, actual and potential, of their negligent conduct, the Tribunal must exercise a broad discretion, taking all relevant factors into account. In doing so, in so far as it is appropriate, while recognising that the facts of each case are the paramount consideration, the Tribunal may make reference to its findings in earlier reports.

66. In the present case, it was agreed between the parties that the imposition of a regulatory fine on Philip Suen of HK$1,200,000 and on Paul Suen of HK$900,000 were both appropriate. The Tribunal is of the view that, having regard to the nature and extent of the culpability of each of these two persons, the fines fall well within the ambit of what it may well have independently imposed. Accordingly, it orders that regulatory fines in those sums be imposed.

The order that the 2nd to 7th Specified Persons attend a programme of training

67. On the basis of the evidence put before the Tribunal, it was apparent that the 2nd to 7th Specified Persons, whatever the level of their involvement in the management of the Company, did not have sufficient understanding of their responsibilities to ensure that the Company met its regulatory disclosure obligations.

68. In the opinion of the Tribunal, there was force in the submission made on behalf of the SFC that a constructive – and necessary – means of reducing the risk of further breaches of the Company's disclosure obligations was to ensure that all the Specified Persons received training.

69. The Tribunal, therefore, agreed fully with the submission that the Specified Persons each undergo a course of appropriate training pursuant to the provisions of section 307N(1)(i).

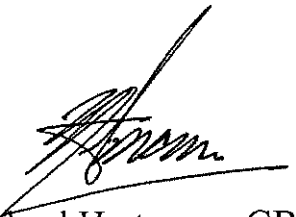
Legal costs

70. There can be no dispute that costs must follow the event and be ordered as agreed.

The Order made

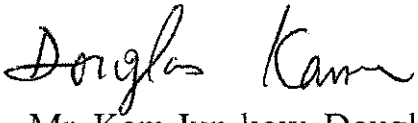
71. For the reasons given in this Report, the Tribunal has made the Order attached as Annexure “E”.

72. In light of the fact that at the end of the hearing on 12 October 2020 the Tribunal orally confirmed its agreement with the proposed orders, the Order, Annexure E, was filed with the Court of First Instance on 16 October 2020.



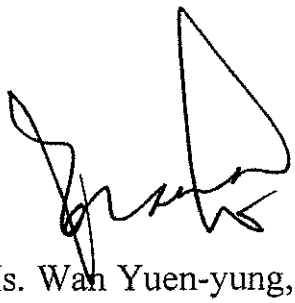
Mr. Michael Hartmann, GBS

(Chairman)



Mr. Kam Jun-kow, Douglas

(Member)



Ms. Wan Yuen-yung, Eleanor

(Member)

Dated 19 February 2021