

REPORT OF THE MARKET MISCONDUCT TRIBUNAL OF HONG KONG

on whether any market misconduct has taken place
in relation to the listed securities of

Meadville Holdings Limited

on and between 14 September and 17 November 2009

and on other related questions

Part II

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CHAPTER 6

CONSEQUENTIAL ORDERS

403. On 14 December 2020, following delivery to the parties of the first part of the Report of the Tribunal, the Chairman gave directions to the parties for the filing of written submissions to the Tribunal in respect of such consequential orders that the parties invited the Tribunal to make.

The SFC: the 2nd Specified Person

404. Having noted that the Tribunal had found the 2nd Specified Person to be culpable of having engaged in market misconduct, in the written submissions of the SFC, dated 21 December 2020, Mr Duncan drew the attention of the Tribunal to the provisions of section 257 (1) of the Ordinance which he suggested were relevant to the making of orders by the Tribunal in respect of the 2nd Specified Person, namely:

“...

- (b) an order that the person shall not, without the leave of the Court of First Instance, in Hong Kong, directly or indirectly, in any way acquire, dispose of or otherwise deal in any securities, futures contract or leveraged foreign exchange contract, or an interest in any securities, futures contract, leveraged foreign exchange contract or collective investment scheme for the period (not exceeding 5 years) specified in the order;
- (c) an order that the person shall not again perpetrate any conduct which constitutes such market misconduct as is specified in the order (whether the same as the market misconduct in question or not);
- (d) an order that the person pay to the Government an amount not exceeding the amount of any profit gained or loss avoided by the person as a result of the market misconduct in question;
- (e) without prejudice to any power of the Tribunal under section 260, an order that the person pay to the Government the sum the Tribunal considers appropriate for the costs and expenses reasonably incurred by the Government in relation or incidental to the proceedings;

- (f) without prejudice to any power of the Tribunal under section 260, an order that the person pay to the Commission the sum the Tribunal considers appropriate for the costs and expenses reasonably incurred by the Commission, whether in relation or incidental to
 - (i) the proceedings;
 - (ii) any investigation of the person's conduct or affairs carried out before the proceedings were instituted; or
 - (iii) any investigation of the person's conduct or affairs carried out for the purposes of the proceedings;
- ...

Section 257(1)(b): 'cold shoulder order'

405. In inviting the Tribunal to make a 'cold shoulder order' against Ms Li, pursuant to section 257(1)(b), Mr Duncan reminded the Tribunal of the nature of such an order, namely that:⁴⁹³

"It is not penal in character. It is protective. The integrity of the financial markets must be safeguarded and, if it has been demonstrated that a person cannot be trusted to operate in the market in accordance with the requirements of the Ordinance, then he can be prevented from doing so for such period of time as the Tribunal considers appropriate. A cold shoulder order served to protect financial institutions as well as the investing public."

406. Of the appropriate length of such an order, Mr Duncan submitted that was a matter for the discretion of the Tribunal to be exercised having regard to all the relevant circumstances, one such circumstances being the nature of the market misconduct. In that regard, he reminded the Tribunal that this Tribunal had determined:⁴⁹⁴

"The more systematic that conduct, the clearer the intent to disregard the statutory provisions, regulations and codes of conduct governing the principled participation in

⁴⁹³ *Chau Chin Hung & Cheung Sau Lin* (HCAL 123/2007; unreported, 22 September 2008) at paragraphs 34-35.

⁴⁹⁴ *Report of the Market Misconduct Tribunal into dealings in the shares of Bank of China Ltd and China Construction Bank Corporation* (7 October 2014) at paragraph 73.

the market, the greater the damage actually occasioned or intended, then, absent other compelling factors, the longer the life of the order is likely to be.”

407. Of the application of those considerations to the circumstances in which Ms Li had engaged in market misconduct, Mr Duncan submitted that it was relevant to note that she had done so knowingly over the course of three separate days, namely 23, 27 and 28 October 2009. In the result, he submitted that Ms Li “poses a threat” to the integrity of Hong Kong’s financial markets and that, in order to protect those markets, it was necessary to impose an order pursuant to section 257(1)(b) of the Ordinance.

Section 257(1)(c): ‘cease and desist’

408. In inviting the Tribunal to impose a ‘cease and desist’ order pursuant to section 257(1)(c), Mr Duncan submitted that the effect of such an order was not to shut out the person from the market. Rather, on pain of criminal punishment, it seeks to ensure that in his future conduct the person avoids the market misconduct stipulated in the order.

409. Mr Duncan submitted that relevant to the determination of whether or not such an order was appropriate was the fact that Ms Li had traded in the listed securities of Alibaba and the Kaisa group in the period 24 June 2020 to 23 November 2020 and, on the latter date, held shares in the listed security of Digital Domain.

Section 257(1)(d): ‘disgorgement of profits’

410. In inviting the Tribunal to impose a ‘disgorgement of profits’ order of \$546,817.43, pursuant to section 257(1)(d), Mr Duncan submitted that the purpose of such an order was to require Ms Li to disgorge the amount of the profit that she had gained as a result of her market misconduct. Such an order was appropriate, absent “exceptional circumstances”.⁴⁹⁵ There were no such circumstances.

Section 259: ‘compound interest’

411. On the other hand, Mr Duncan said that, having regard to the delay in the commencement of these proceedings, which delay he acknowledged was not caused or

⁴⁹⁵ *Report of the Market Misconduct Tribunal into dealings in the shares of China Huiyuan Juice Group Limited* (10 May 2013), at paragraphs 284-288.

contributed to by Ms Li, the Tribunal was not invited to make an order that the disgorgement order carry compound interest, pursuant to section 259.

Section 257(1)(e) and (f): costs and/or expenses

412. Mr Duncan invited the Tribunal to make orders in favour of:

- (i) the Government in respect of 50% of the costs and expenses, the Tribunal considers appropriate, incurred by the Government in relation or incidental to the proceedings, pursuant to section 257(1)(e);
- (ii) the SFC in respect of 50% of the costs and expenses of its investigation, pursuant to section 257(1)(f)⁴⁹⁶; and
- (iii) the SFC in respect of 50% of the costs and expenses incurred by the Commission in relation or incidental to these proceedings, such costs to be taxed if not agreed, with a certificate for two counsel, pursuant to section 257(1)(f).

Mr Duncan submitted that, whilst orders in respect of costs were always a matter of discretion, such orders would normally follow the event.

Section 264

413. Finally, Mr Duncan invited the Tribunal to give notice in writing to the Court of First Instance to register the orders of the Tribunal in the Court of First Instance, pursuant to section 264.

The 2nd Specified Person

414. In his submissions in reply, dated 30 December 2020, on behalf of the 2nd Specified Person, Mr Mak conceded that the various orders sought by the SFC ought to be made by the Tribunal, save that he took issue with the making of a ‘cold shoulder’ order, as being unnecessary, and as to the quantum of the investigation costs sought on behalf of the SFC.

⁴⁹⁶ Appendix 6.

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

415. Mr Mak submitted that the imposition of a ‘cold shoulder’ order was protective in nature and was not to be imposed as a form of penalty.⁴⁹⁷ He took issue with the submission of the SFC that the Tribunal ought to have regard to the fact that Ms Li’s market misconduct took place over three separate days and was not to be regarded as a “one-off” trade. He submitted in effect that, having regard to her pattern and scale of buying Meadville shares, her market misconduct was to be regarded as one course of conduct, albeit committed on three separate days. Mr Mak reminded the Tribunal that Ms Li was not a professional investor and that she obtained the relevant information in consequence of her personal, not professional, relationship with the 1st Specified Person. In 2009, Ms Li had a limited history of purchasing the shares of listed companies. Although she had bought the shares of listed companies subsequently there was no complaint of any misconduct in the ensuing 10 years before these proceedings were commenced. In those circumstances, there was no purpose in imposing a ‘cold shoulder’ order. The imposition of a ‘cease and desist’ order was more than sufficient to protect the public interest.

416. In the alternative, Mr Mak submitted that if the Tribunal determined that it was appropriate to impose a ‘cold shoulder’ order together with a ‘cease and desist’ order, such orders ought to be limited to a duration of 24 months.

Section 257(1)(f): the SFC’s investigation costs and expenses

417. Whilst Mr Mak said that no objection was taken on behalf of the 2nd Specified Person to the “broad brush approach” of the SFC in attributing 50% of the SFC’s investigation costs and expenses to the 2nd Specified Person, he invited the Tribunal to note that in providing its calculation of those costs and expenses the SFC had not confirmed that the calculations were based on the formula identified by this Tribunal in *Fujikon Industrial Holdings Limited*, in particular in respect of the emolument rates of staff of different grades and whether such staff were hourly rated employees.⁴⁹⁸

418. Mr Mak took issue with the attribution by the SFC of 20.33 hours, to a total of \$26,252, in 2013 as representing the SFC’s investigation costs and expenses. He suggested that from the

⁴⁹⁷ *Report of the Market Misconduct Tribunal into dealings in the securities of Water Oasis Group Limited*, at paragraph 48. (5 February 2015).

⁴⁹⁸ Costs Order Absolute on Costs and Expenses of Investigation, 26 August 2019.

chronology of events provided by the SFC to the Tribunal, it appeared that the work done by the SFC in 2013 “was mainly” the referral of evidence to the Commercial Crime Bureau in respect of possible money-laundering. That work was no part of the investigation of the SFC. Mr Mak invited the Tribunal to reduce the SFC’s claim for those costs and expenses to 25% of the amount claimed, namely 5.08 hours and \$6,563. In the result, Mr Mak said that no objection was taken by the 2nd Specified Person for an order in favour of the SFC and against the 2nd Specified Person for its investigation costs and expenses in the sum of \$184,777.

419. Mr Mak submitted that the SFC’s claim in respect of disbursements arising from Mr Karl Lung’s preparation of expert statements and attendance at the Tribunal to give evidence fell to be regarded as a claim for costs and expenses in relation to or incidental to the proceeding, pursuant to section 257(f)(i).

The SFC: reply

(i) ‘Cold shoulder’ order

420. In reply to the submissions of the 2nd Specified Person, dated 8 January 2021, Mr Duncan submitted that reliance by Mr Mak on the statements made by this Tribunal in respect of its report in *Water Oasis Group Limited* was misplaced. There, this Tribunal accepted that the culpable party, who had traded on one isolated occasion, was labouring under severe psychiatric illnesses, of which she was unaware. Having become aware of her illnesses she had “stepped away from the markets” and was receiving psychiatric care, which factors the Tribunal accepted indicated a genuine desire to avoid future infraction of market regulations. By contrast, it was submitted that Ms Li’s conduct was calculated: she had caused over \$5 million be transferred from Mainland China to her bank account in Hong Kong in order to take maximum advantage of the relevant information that she had received from Mr Tang. Further, she had contested the proceedings and given evidence, which evidence the Tribunal had dismissed as being “wholly fanciful”. In the result, it was submitted that Ms Li posed a threat to the integrity of Hong Kong’s financial markets, so that the imposition of a ‘cold shoulder’ order, pursuant to section 257(1)(b), was necessary to protect the market and the investing public.

(ii) The SFC's investigation costs and expenses

421. Mr Duncan indicated that the SFC was prepared to accept Mr Mak's invitation to impose an order of \$184,777 in favour of the SFC against the 2nd Specified Person as being the costs and expenses of the SFC in its investigation in relation to Ms Li, and invited the Tribunal to make such an order, pursuant to section 257(1)(f).

422. Mr Duncan indicated that, for the avoidance of doubt, the costs incurred by the SFC in respect of Mr Karl Lung would be included in the SFC's claim for costs and expenses incurred by the Commission in relation or incidental to the proceedings, pursuant to section 257(1)(f) (ii). The Tribunal was invited to order Ms Li to pay those costs, with a certificate for two counsel, to be taxed if not agreed.

The submissions of the 1st Specified Person: Costs

423. Having reminded the Tribunal that it had determined that the 1st Specified Person was not guilty of market misconduct, contrary to section 270(1)(a)(ii) and/or section 270(1)(c) and, in particular, that the Tribunal had determined that there was no evidence that the 1st Specified Person had counselled or procured Ms Li to deal in Meadville shares, Mr Benjamin Yu invited the Tribunal to make a costs order to follow the event, pursuant to section 260(3) and Order 62, rule (3)(2) of the Rules of the High Court.

424. In addition, Mr Yu invited the Tribunal to make a costs order in favour of the 1st Specified Person against the SFC in relation to the costs reasonably incurred or incidental to the proceedings, to be taxed if not agreed, with a certificate for two counsel.

The SFC

425. In his submissions in response, Mr Duncan drew the attention of the Tribunal to what he suggested were the relevant provisions of section 260, namely:

“(1) Subject to subsection (4), at the conclusion of any proceedings instituted under section 252 or as soon as reasonably practicable after the conclusion of the proceedings, the Tribunal may by order award to—

- (a) any person whose attendance, whether as a witness or otherwise, has been necessary or required for the purposes of the proceedings;

- (b) any person whose conduct is the subject, whether wholly or in part, of the proceedings, such sum as it considers appropriate in respect of the costs reasonably incurred by the person in relation to the proceedings.
- (2) Any costs awarded under this section are a charge on the general revenue.
- (3) Subject to any rules made by the Chief Justice under section 269, Order 62 of the Rules of the High Court (Cap. 4 sub. leg. A) applies to the award of costs, and to the taxation of any costs awarded, by the Tribunal under this section.
- (4) Subsection (1)(a) and (b) does not apply to—
 - (a) a person who has by virtue of section 252(4)(a), (b) or (c) been identified as having engaged in market misconduct pursuant to section 252(3)(b);
 - (b) a person whose conduct the Tribunal considers has caused, whether wholly or in part, the Tribunal to investigate or consider his conduct during the course of the proceedings in question;
 - (c) a person whom the Tribunal considers has by his conduct caused, whether wholly or in part, the institution of the proceedings.”

The Tribunal’s findings

426. Mr Duncan submitted that relevant to the application of those provisions were the findings of the Tribunal of the respective conduct of Mr Tang and Ms Li. In particular, he invited the Tribunal to note that it had found:

“399. We are satisfied that the relevant information received by Ms Li was disclosed to her by Mr Tang. We are satisfied that it is appropriate to draw the compelling inference that, in his conversations with Ms Li about his work, Mr Tang provided a series of pieces of information which, when collated by Ms Li, constituted the relevant information. We are not satisfied that Mr Tang set out to provide Ms Li with relevant information, but nevertheless we are satisfied that is the effect of what he did.”

427. Moreover, Mr Duncan reminded the Tribunal that it had found that Ms Li had engaged in insider dealing whilst in possession of relevant information that she had received from Mr

Tang. Further, that had occurred whilst they were engaged in a long-standing intimate relationship, which Mr Tang had not disclosed to the SFC until his second record of interview.

428. In those circumstances, Mr Duncan invited the Tribunal to determine that Mr Tang's conduct "had caused, at least in part, the Tribunal to investigate or consider his conduct during the course of these proceedings", as per section 260(4)(b), and/or Mr Tang's conduct "caused, at least in part, the institution of these proceedings", as per section 260(4)(c).

The 1st Specified Person: reply

429. In his submissions in reply, dated 8 January 2021, Mr Yu submitted that in exercising its general discretion to make an order for costs, pursuant to section 260(3) and Order 62 of the Rules of the High Court, this Tribunal shall order costs to follow the event, except where it appears to the Tribunal that, in the circumstances of the case, some other order should be made.⁴⁹⁹ Such circumstances included evidence that: (i) the defendant brought about the litigation; or (ii) had done something connected with the institution or the conduct of the suit calculated to occasion unnecessary litigation and expense; or (iii) had done some wrongful act in the course of the transaction of which the plaintiff complains.⁵⁰⁰

430. Having noted that section 260(4) provided that the discretion to award costs, pursuant to section 260(1)(a) and (b), did not apply to the circumstances set out in section 260(4)(a)-(c), Mr Yu submitted that it was "reasonable and proper" to construe the requirement of causation stipulated in those provisions more restrictively. He contended that, to be regarded as the "cause" of the investigation or the proceedings, it was necessary that Mr Tang's conduct be "culpable". On the contrary, the Tribunal had determined that Mr Tang did not counsel or procure Ms Li to deal in Meadville shares and that, in disclosing the information to Ms Li, Mr Tang did not do so knowing or having reasonable grounds to believe that Ms Li would use the information to deal in Meadville shares.⁵⁰¹ The SFC did not point to any misconduct on the part of Mr Tang "in the proceedings, or at all." In those circumstances, Mr Yu submitted that Mr Tang was not culpable of any conduct such that the Tribunal could properly consider "has caused, wholly or in part," the Tribunal to "investigate or consider" his conduct during the

⁴⁹⁹ *Hong Kong Civil Procedure*, 2021 62/3/3.

⁵⁰⁰ *Ritter v Godfrey* [1920] 2 KB 47, per Atkin LJ at page 60.

⁵⁰¹ Report, paragraphs 398 and 400.

course of the proceedings; or “by his conduct caused, whether wholly or in part, the institution of the proceedings.”

Discussion

The 2nd Specified Person: Orders

431. In light of the written submissions of the parties, the only matter at issue in respect of the orders to be made by the Tribunal against the 2nd Specified Person is the imposition of a ‘cold shoulder’ order, pursuant to section 257(1)(b) and, if the Tribunal was minded to make such an order, the duration of that order and that of the ‘cease and desist’ order, pursuant to section 257(1)(c), to which no objection is made.

432. There is no dispute that in determining whether or not it is appropriate to impose a ‘cold shoulder’ order against the 2nd Specified Person the Tribunal is to have regard to the nature of Ms Li’s insider dealing. Clearly, it is highly relevant that Ms Li received over \$5 million into her bank account to enable her to buy Meadville shares over a period of no less than three days during which time she caused multiple buy orders to be made. The objective throughout the sustained enterprise was to achieve personal gain. She succeeded in making a net profit of \$546,817.43. Her misconduct was a sustained egregious breach of the legislation. On the other hand, Ms Li was neither an officer or employee of Meadville. In that respect, she was not culpable of any related breach of trust. Nevertheless, it is relevant to note that the Tribunal found that Ms Li lied in aspects of her account of events to the SFC during its investigation. Further, having denied the alleged insider dealing, the Tribunal found aspects of Ms Li’s evidence to the Tribunal in 2020 of the circumstances in which she came to buy Meadville shares to be “wholly fanciful”.

433. Whilst it is to be acknowledged that many years have elapsed since Ms Li’s misconduct in 2009, none of which delay in bringing these proceedings is attributable to Ms Li, nevertheless we are satisfied that she poses a threat to the integrity of Hong Kong’s financial markets, so that it is appropriate to make a ‘cold shoulder’ order against Ms Li.

The 1st Specified Person: costs

434. There is no dispute that normally a wholly successful defendant is entitled to an order of costs in his favour, unless there are circumstances that some other order should be made. The Tribunal was satisfied that there was no evidence that Mr Tang had counselled or procured

Ms Li to deal in Meadville shares. Further, the Tribunal was satisfied that, although Mr Tang provided information to Ms Li, “which, when collated by Ms Li, constituted the relevant information”, Mr Tang “did not do so knowing or having reasonable grounds to believe that Ms Li would use the information to deal in Meadville shares.” Accordingly, subject to section 260(4)(b) and (c), the Tribunal would make an order of costs in favour of the 1st Specified Person, pursuant to section 260(1)(b).

Section 260(4)(b) and (c)

435. Section 260(4)(b) and (c) provide that the Tribunal’s discretion to order an award of the costs reasonably incurred by a person in relation to the proceedings, whose conduct is the subject of the proceedings, does not apply where the Tribunal considers that the conduct of the person, whether wholly or in part, has “caused... the institution of the proceedings” or has “caused...the Tribunal to investigate or consider his conduct during the course of the proceedings in question”.

The Tribunal’s findings

436. Having noted that there was no dispute that Mr Tang was in possession of relevant information at the time that Ms Li dealt in Meadville shares, at which time the two of them enjoyed a long-standing intimate relationship, the Tribunal determined that Ms Li was in possession of the relevant information when she bought Meadville shares and that she received that relevant information from Mr Tang. Having noted that in his witness statement Mr Tang acknowledged that in conversations with Ms Li he might have mentioned to her “that I was busy at work, that many foreigners had flown over to have meetings with me, and that I had to go to the factory in Dongguan and the United States for more meetings”, the Tribunal determined that those were the circumstances in which Ms Li received the relevant information from Mr Tang, in particular “as a result of a series of pieces of information... which, when collated by Ms Li, constituted the relevant information.”

437. The Tribunal made the same finding in respect of Mr Tang, albeit that it found specifically that it was not satisfied that in doing so “Mr Tang set out to provide Ms Li with relevant information, but nevertheless we are satisfied that is the effect of what he did.” As noted earlier, the Tribunal found that, in doing so, there was no evidence to Mr Tang had counselled or procured Ms Li to deal in Meadville shares. Further, the Tribunal found that it

was satisfied that Mr Tang did not do so knowing or having reasonable grounds to believe that Ms Li would use information to deal in Meadville shares.

Mr Tang's conduct

(i) Records of interview

438. In his first record of interview, dated 18 May 2010, Mr Tang was asked in terms if he knew a Ms Li Yik Shuen. He denied knowing her.⁵⁰² In his second record of interview, dated 20 July 2010, Mr Tang identified three telephone numbers, to which he was referred, as being the telephone numbers of a friend of long-standing whom he knew as Ms Miao Jing. Two of the telephone numbers were Hong Kong telephone numbers, one a landline and the other a mobile telephone number, whilst the third telephone number was Mainland mobile telephone number.⁵⁰³ Mr Tang said that the two of them were “rather intimate friends”, which relationship began “10 odd years ago”. They were still in contact.⁵⁰⁴ In face of being told that Ms Miao Jing was in fact Ms Li Yik Shuen, and being asked if he had heard of that name, Mr Tang merely said that he had heard of the name Ms Li Yik Shuen, “when you mentioned about it last time.” However, when asked if, before the first record of interview, Ms Miao Jing had revealed to him that she used the name Ms Li Yik Shuen,⁵⁰⁵ Mr Tang said that she had not disclosed that to him. Then, the following exchange ensued:⁵⁰⁶

“Q ... Did that Miss Miao whom you mentioned know your occupation in Hong Kong, know what business you were engaged in? Did you tell her that?

A. I only-- let me tell you also. I have not told her anything about my occupation, which field I am in, who I am. All of these have never been mentioned...

...

Q. You did not disclose to her your occupation, what business (you) did?

A. (This was) not mentioned.”

439. Subsequently, the dialogue between them returned to the same issue:⁵⁰⁷

“Q. But I want to ask Mr Tang...you said just now that she did not know your occupation, but you said to her, for example, may be during some casual conversations, that you were very busy...

⁵⁰² HB-6; page 2912, counter #s 423-424.

⁵⁰³ HB-6; pages 2998-2999, counter #s 29-42.

⁵⁰⁴ HB-6; page 3001, counter #s 80-85.

⁵⁰⁵ HB-6; page 3002, counter #s 88-91.

⁵⁰⁶ HB-6; page 3003, counter #s 102-113.

⁵⁰⁷ HB-6; page 3012, counter #s 221-224.

A. Yeah.

Q. That is, she did not know what trade you were in, neither did she know your real name.

A. Yeah, this was never mentioned, yeah.”

(ii) Witness statement

440. In his witness statement, dated 21 April 2020, Mr Tang said of his relationship with Ms Li:⁵⁰⁸

“I made a personal effort not to discuss work matters. Therefore, I purposefully did not disclose my real name, details of my family, the name of our company, details of my work, nor even my work or home address to Miao Jing.”

However, he went on to explain:⁵⁰⁹

“Since I often had to attend business trips too, I explained to Miao Jing that I was in the manufacturing business concerning electronic components and had to visit my factories in Dongguan and Shanghai.”

441. Subsequently, in describing the context of his telephone conversations with Ms Li “around the middle to the end of year 2009”, Mr Tang said “I was busy with the MHL/TTM negotiations and had to leave Hong Kong frequently to attend meetings”. Of those telephone conversations, he said:⁵¹⁰

“I may have mentioned that I was busy at work, that many foreigners had flown over to have meetings with me, and that I had to go to the factory in Dongguan and the United States for more meetings.”

Having denied that he had mentioned to Ms Li the MHL/TTM negotiations or the PCB Sale and Laminate Sale, Mr Tang said:⁵¹¹

“As mentioned before, apart from the type of business industry I was in, I never mentioned any details about my business to her. While she knew that I had a factory in Dongguan, I have not told her anything apart from that.”

⁵⁰⁸ Mr Tang's witness statement, paragraph 25.

⁵⁰⁹ Mr Tang's witness statement, paragraph 25.

⁵¹⁰ Mr Tang's witness statement, paragraph 34.

⁵¹¹ Mr Tang's witness statement, paragraph 35.

(iii) Oral testimony

442. Mr Tang's denial in his first record of interview that he knew Ms Li Yik Shuen was contradicted by his acceptance in his oral testimony in cross-examination that he made transfers of monies at the request of Ms Miao Jing to the same bank account, in which Ms Li Yik Shuen was named as the bank account holder recipient, first in the Deposit Form dated 6 August 2009, in the sum of \$900,000⁵¹² and, secondly in the Deposit Form dated 12 November 2009⁵¹³, in the sum of \$50,000. Not surprisingly, Mr Tang acknowledged that he was "pretty sure" that he had received copies of the Deposit Forms when he undertook those transfers, from which he accepted that it was obvious that the recipient of the monies was Ms Li Yik Shuen.⁵¹⁴ The bank account number of Ms Li to which the monies were transferred was the same bank account number that Mr Tang testified he had made multiple and regular ATM transfers of money to help to support Ms Miao Jing throughout 2009.⁵¹⁵

443. Mr Tang's denial in his first record of interview that he knew Ms Li Yik Shuen, together with his assertion in his second record of interview that he had not told Ms Miao Jing, "anything about my occupation, which field I am in" or what "business he did", begged the question of the nature of their intimate relationship, which had existed for over 10 years. It also begged the question of why Ms Li had traded in Meadville shares in the extraordinary manner in which she had bought those shares over three days. Relevant to that question was Ms Li's denials in her own record of interview that "she knew any persons related to Meadville... she had any friend who had a business contact with Meadville... knowing the chairman of Meadville, Mr Tom Tang... knowing the surname of the person she described as Stephen and his relationship with Mr Henry Tang" which were "all admittedly untrue".⁵¹⁶

444. As noted earlier, Mr Tang's twice repeated denial in his second record of interview of providing information to Ms Li of his occupation, the field in which he operated and the business he did was contradicted by the account set out in his witness statement and confirmed in his oral testimony. Far from not telling Ms Li "anything" about his occupation or the business, eventually at the hearing Mr Tang conceded that he had provided a considerable amount of information to Ms Li: he was in the manufacturing business concerning electronic components

⁵¹² HB-5, page 2156.

⁵¹³ HB-5, page 2163.

⁵¹⁴ Transcript; Day 3, pages 5-8.

⁵¹⁵ Ms Wong's witness statement; WMM-2, **Appendix 4**.

⁵¹⁶ Report, paragraph 373.

and he visited his factories in Dongguan and Shanghai. As Mr Tang acknowledged in his second record of interview the significance of the fact that he had told Ms Li that he visited his factory in Dongguan lay in his acknowledgement that he knew Ms Li to have lived in Dongguan “a few years ago”.⁵¹⁷ It is to be noted that Ms Li testified that in 2005/2006 she had seen a television report of the Meadville factory in Dongguan in which Mr Tang was depicted, as a result of which she had conducted research and established that Mr Tang was a member of the senior personnel of Meadville and that he enjoyed a fraternal relationship with Mr Henry Tang. Ms Li testified that she lived in Dongguan in 2005-2006.⁵¹⁸

445. Most significantly, it was only in his witness statement that Mr Tang acknowledged for the first time that in his telephone conversations with Ms Li in the “middle to the end” of 2009 he might have explained to Ms Li his frequent attendance at meetings on the basis that “I was busy at work, that many foreigners had flown over to have meetings with me, and that I had to go to the factory in Dongguan and the United States for more meetings.” It is to be noted that the Tribunal determined that it was satisfied that “those were the circumstances in which Ms Li received the relevant information from Mr Tang” and, having found that in receiving the relevant information from Mr Tang, Ms Li, knowing him to be connected to Meadville and knowing that he held that information as a result of being so connected, the Tribunal determined that Ms Li was culpable of insider dealing in buying Meadville shares on 23, 27 and 28 October 2009.

Conclusion

446. We are satisfied that, having regard to Mr Tang’s conduct in responding in the manner set out earlier to the SFC in his records of interview, the SFC were justified in pursuing their enquiries in respect of Mr Tang. In particular, we are satisfied that Mr Tang’s conduct, in whole or in part, caused the institution of the proceedings against Mr Tang. As noted earlier, it was only in face of the fact of the institution of proceedings that Mr Tang resiled from the position that he had taken in the records of interview that he had not told Ms Li “anything” about his occupation, the field that he was in and what business he did. Given that, notwithstanding the limited concessions that Mr Tang made in his witness statement about the ambit of his conversations with Ms Li in the period mid-to the end of 2009 about events in his working life, Mr Tang nevertheless denied that he had mentioned to Ms Li, “expressly or impliedly about

⁵¹⁷ HB-6; page 3017, counter #s 321-326.

⁵¹⁸ Transcript; Day 3, pages 40-43.

the MHL/TTM negotiations or the PCB Sale and Laminate Sale”, the Tribunal is satisfied that Mr Tang’s conduct overall, in whole or in part, caused the Tribunal “to investigate or consider his conduct” during the proceedings.

447. In the result, for the reasons that we have given, we decline to make an order in favour of the 1st Specified Person in respect of the costs that he reasonably incurred in relation to the proceedings.

Orders

The 2nd Specified Person

448. We make the following orders in respect of Ms Li Yik Shuen, namely that:

- (i) pursuant to section 257(1)(b), without the leave of the Court of First Instance, in Hong Kong, she shall not directly or indirectly, in any way acquire, dispose of or otherwise deal in any securities or an interest in any securities for two years;
- (ii) pursuant to section 257(1)(c), she shall not again perpetrate insider dealing, contrary to section 270(1)(e) of the Ordinance;
- (iii) pursuant to section 257(1)(d), she shall pay to the Government \$546,817.43, being the profit gained as a result of her market misconduct;
- (iv) pursuant to section 257(1)(e), she shall pay to the Government \$572,407, being 50% of the sum that the Tribunal considers appropriate for the costs and expenses incurred by the Government in relation or incidental to these proceedings;⁵¹⁹
- (v) pursuant to section 257(1)(f)(ii) and (iii) \$184,777, being the sum the Tribunal considers appropriate for the costs and expenses reasonably incurred by the Commission in relation or incidental to the investigation of Ms Li Yik Shuen’s conduct;
- (vi) pursuant to section 257(1)(f), 50% of the costs and expenses reasonably incurred by the Commission in relation to the proceedings, to be taxed if not agreed, with a certificate for two counsel.

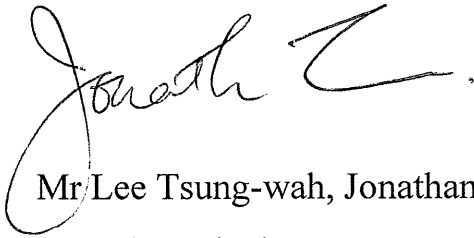
⁵¹⁹ Appendix 7.

449. Finally, the Tribunal has determined that, pursuant to section 264(1), to give notice in writing to the Court of First Instance to register the orders of the Tribunal in the Court of First Instance.

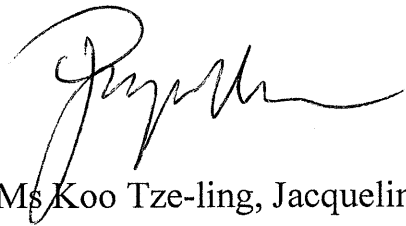


Mr Michael Lunn, GBS

(Chairman)



Mr Lee Tsung-wah, Jonathan
(Member)



Ms Koo Tze-ling, Jacqueline
(Member)

Dated 2 February 2021

APPENDIX 6

SFC's Statement of Investigation Costs and Expenses

**MARKET MISCONDUCT TRIBUNAL
IN THE MATTER OF THE LISTED SECURITIES OF MEADVILLE HOLDINGS
LIMITED (Stock Code:3313)**

Statement of Investigation Costs and Expenses

A. General Information

A1	Type of Proceedings: Costs and expenses incurred in relation or incidental to the Market Misconduct Tribunal proceedings
A2	Receiving Party: SFC
A3	Details of the officers of the Enforcement Department (“ENF”) of the Commission between 2010 and 2020: (1) Jimmy Tong Hon Fai (JT), Associate Director of ENF (2) Angela Wong Mei Mei (AW), Senior Manager of ENF (3) Polly Tse (PT), Manager of ENF

B. Costs and Expenses in relation or incidental to investigation carried out before the MMT proceedings were instituted

	Description of work	Time spent on this matter (rounded to the nearest decimal)	Staff Costs ¹ (rounded to the nearest HK\$)
B1	<u>2010</u> <ul style="list-style-type: none"> Liaison with the Legal Services Division of SFC and internal discussions (AW only) Interview and related preparation (all officers on the right hand column) Preparing / reviewing/ analysing case materials, reports, legal advices and/or other documents (AW only) 	AW – 124 hours JT – 13 hours PT – 3.5 hours	110,997 12,670 3,178
B2	<u>2011</u> <ul style="list-style-type: none"> Liaison with the Legal Services Division of SFC and internal discussions 	AW – 37.33 hours	36,449

¹ Staff Costs are computed based on the formula suggested by the MMT in the matter of Fujikon Industrial Holdings Limited (see paragraph 24 of the Costs Order Absolute on Costs and Expenses of Investigation dated 26.8.2019), being: Time spent on investigation in this case ÷ Time spent on investigation and other matters x Total staff costs (being the fixed emolument of the relevant staff in the relevant year)

	<ul style="list-style-type: none"> Preparing / reviewing/ analysing case materials, reports, legal advices and/or other documents 		
B3	<u>2012</u> <ul style="list-style-type: none"> Liaison with the Legal Services Division of SFC and internal discussions Preparing / reviewing case materials, reports, legal advices and/or other documents 	AW – 5.75 hours	7,863
B4	<u>2013</u> <ul style="list-style-type: none"> Liaison with the Legal Services Division of SFC and internal discussions Preparing / reviewing case materials, reports, legal advices and/or other documents 	AW – 20.33 hours	26,252
B5	<u>2014</u> <ul style="list-style-type: none"> Liaison with the Legal Services Division of SFC Preparing / reviewing case materials and reports 	AW – 3 hours	3,075
B6	<u>2015</u> <ul style="list-style-type: none"> Liaison with the Legal Services Division of SFC and internal discussions Preparing / reviewing case materials and/or other documents 	AW – 1.67 hours	1,819
B7	<u>2016</u> <ul style="list-style-type: none"> Liaison with the Legal Services Division of SFC and internal discussions Preparing / reviewing case materials, reports, legal advices and/or other documents 	AW – 0.58 hours	646
B8	<u>2017</u> <ul style="list-style-type: none"> Liaison with the Legal Services Division of SFC and internal discussions 	AW – 0.50 hours	645
B9	<u>2018</u> <ul style="list-style-type: none"> Discussion with market expert 	AW – 31.25 hours	44,798

	<ul style="list-style-type: none"> • Liaison with the Legal Services Division of SFC and internal discussions • Preparing / reviewing case materials, reports, legal advices and/or other documents 		
B10	<u>2019 (until 9 September 2019)</u> <ul style="list-style-type: none"> • Discussion with market expert • Liaison with the Legal Services Division of SFC and internal discussions • Preparing / reviewing case materials, reports, legal advices and/or other documents 	AW – 59.50 hours	116,338
Sub-total of Section B			364,730

C. Costs and Expenses in relation or incidental to investigation carried out for the purposes of the MMT proceedings

	Description of work	Time spent	Staff Costs (HK\$)
C1	<u>2019 (from 10 September 2019)</u> <ul style="list-style-type: none"> • Discussion with market expert • Liaison with Legal Services Division of SFC and internal discussions • All other related preparation 	AW – 1 hour	4,848
C2	<u>2020</u> <ul style="list-style-type: none"> • Discussion with market expert • Liaison with LSD of SFC and internal discussions • All other related preparation 	AW- 13 hours	19,665
Sub-total of Section C			24,513

D. Disbursements in respect of the Commission's external expert. Karl Lung

D1	Preparation of expert statement; supplemental expert statement ; and attendance of the MMT proceedings to give evidence for the Commission (inclusive of all discussions and correspondence with the Commission) <ul style="list-style-type: none"> • Karl Lung (HK\$5000 x 100 hours) 	HK\$500,000
Sub-Total of Section D		\$500,000

E. Costs and expenses claimed against each Specified Person

Total of investigation costs (Sub-total of Sections B to C)	HK\$389,243
Total of investigation costs and expenses (Sub-total of Sections B to D)	HK\$889,243
Against Li Yik Shuen (\$889,243 ÷ 2 specified persons)	444,621

Dated the 18th day of December 2020

Securities and Futures Commission

APPENDIX 7

Costs and Expenses incurred by the Government

Market Misconduct Tribunal Proceedings
Meadville Holdings Limited

**Summary of Costs and Expenses incurred by the Government
in relation or incidental to the Tribunal Proceedings**

	Item	Costs and Expenses (\$)
1	Tribunal Chairman and Members	976,910
2	Tribunal Secretariat	140,184
3	Court Reporter & Court Interpreter	27,720
Total:		1,144,814