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

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

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INDEX – ANNEXURES

CHAPTER ONE

THE ISSUE OF THE NOTICE TO THE TRIBUNAL AND ENSUING EVENTS

The Notice

1. The Tribunal was constituted pursuant to a Notice issued by the Securities and Futures Commission ('the SFC') dated 17 June 2016. It was accompanied by a synopsis which is annexed to this report as Annexure A.

2. The SFC Notice itself was set out as follows –

IN THE MATTER OF THE LISTED SECURITIES OF SKYNET GROUP LIMITED (FORMERLY KNOWN AS CHINA AU GROUP HOLDINGS LIMITED) (STOCK CODE 8176)

NOTICE TO THE MARKET MISCONDUCT TRIBUNAL PURSUANT TO SECTION 252(2) OF AND SCHEDULE 9 TO THE SECURITIES AND FUTURES ORDINANCE CAP. 571 ("THE ORDINANCE")

Whereas it appears to the Securities and Futures Commission ("**the Commission**") that market misconduct within the meaning of section 274 ("**False Trading**") of Part XIII of the Ordinance has or may have taken place in relation to the securities of SkyNet Group Limited (known as China AU Group Holdings Limited at the material time ("**China AU**")) listed on the Stock Exchange of Hong Kong Limited (stock code 8176), the Market Misconduct Tribunal is hereby required to conduct proceedings and determine:

(a) whether any market misconduct has taken place; and

(b) the identity of any person who has engaged in the market misconduct.

Persons suspected to have engaged in market misconduct

(1) Ms WU Hsiu Jung

(2) Mr CHEN Kuo-chen ("**Chen**")

(3) Ms KEUNG Wai Fun, Samantha ("**Keung**")

Statement for Institution of Proceedings

1. At all material times, China AU was a company listed on the Growth Enterprise Market of the Stock Exchange of Hong Kong Limited (China AU was known as Blu Spa Holdings Limited prior to 2010).

2. At all material times:

   (a) Ms Chan Choi Har Ivy ("**Ivy Chan**") was an Executive Director and Vice-chairwoman of China AU and held directly and indirectly a small shareholding in China AU amounting to approximately 2% to 3% of China AU's total issued shares.

   (b) Keung was the Chief Executive Officer of China AU but was not a member of the China AU board of directors. Keung indirectly held a substantial shareholding in China AU amounting to approximately 40% to 50% of China AU's total issued shares.

   (c) Keung's son, Mr Cheung Tsun Hin, Samson ("**Samson Cheung**"), was an Executive Director of China AU.

3. On 19 August 2009, China AU announced that it intended to place a maximum of 175,000,000 shares at a price of HK$0.80 per share (maximum placement proceeds of HK$140,000,000). Approximately HK$135,500,000 was intended to be used to finance the possible acquisition of a property for setting up a

beauty professional training institute in the Mainland and/or for general working capital purposes.

4. On 28 October 2009, China AU announced that the placement period would be extended from 31 October 2009 to 30 November 2009. On 2 December 2009, China AU announced that only 49,800,000 shares were successfully placed, raising proceeds of approximately HK$38,300,000 ("**the Share Placement**").

5. On 16 December 2009, China AU signed a letter of intent to acquire a 70% interest in another corporate entity for HK$80,000,000 which held a piece of land in Guangzhou ("**Acquisition**"). On 24 February 2010, China AU announced that it had entered into a supplementary letter of intent to extend the deadline for the execution of the sale and purchase agreement for the Acquisition to 31 March 2010.

6. On 8 March 2010, China AU announced that it intended to issue convertible bonds to independent placees worth up to HK$114,000,000, with a conversion price of HK$0.19 per share ("**the CB Placement**"). The proceeds from the CB Placement would be used to finance the Acquisition, the development of new products and/for general working capital purposes.

7. On 30 March 2010, China AU announced that it had entered into a "Heads of Agreement" in respect of the Acquisition, extending the deadline for the signing of the sale and purchase agreement to 28 April 2010. The CB Placement was completed in April 2010.

Relevant trading in China AU shares

8. In between the two fundraising exercises conducted by China AU mentioned in paragraphs 3 to 7 above, substantial amounts of China AU shares were traded by two people, Wu Hsiu Jung and Chen, using a number of different securities accounts.

The Jung Group

9. Between 25 August 2009 and 21 April 2010 ("**Relevant Period**"), Wu Hsiu Jung used a total of 12 securities accounts opened in the names of herself and others ("**Jung Group**") to

buy approximately 49,890,000[1] China AU shares and to sell approximately 42,325,000 China AU shares. The funds to finance almost all of the trading of China AU shares within the Jung Group originated from Wu Hsiu Jung's bank accounts. Between 3 December 2009 and 5 March 2010, a total of around HK$12,000,000 was withdrawn from Wu Hsiu Jung's bank accounts and was deposited into the securities accounts within the Jung Group. Wu Hsiu Jung was, in turn, funded by money deposited into her various bank accounts from bank accounts held by Keung, Ivy Chan and Ivy Chan/Keung jointly. Between 24 August 2009 and 25 February 2010, a total of around HK$11,600,000 was deposited into Wu Hsiu Jung's bank accounts from bank accounts held by Keung, Ivy Chan and Ivy Chan/Keung jointly.

10. During the Relevant Period, there were 28 transactions of China AU shares conducted through the securities accounts of the Jung Group totalling 8,090,000 shares. As the trading in China AU shares was financed from the same source, such trading did not involve any change in beneficial ownership of the shares and did not have any rational economic justification. Further or alternatively, the manner in which the trade orders were placed and executed, required coordination between the counterparties involved in the trades.

The Chen Group

11. During the Relevant Period, Chen used two securities accounts opened in his name and in the name of another ("**Chen Group**") to buy approximately 19,305,000 China AU shares and to sell approximately 17,710,000 China AU shares. Between 24 November 2009 and 12 March 2010, a total of approximately HK$3,600,000 was withdrawn from the bank accounts of Keung and Samson Cheung and was paid into the two securities accounts within the Chen Group. Those funds were then used to finance the trading in China AU shares in the two accounts.

Trading patterns of the Jung/Chen Groups

12. The trading patterns of the Jung/Chen Groups can be separated into three phases:

[1] The number of shares was incorrectly cited in the original notice and has been corrected.

(a) The first phase, from around the end of November to the end of December 2009, in which China AU shares were accumulated through the securities accounts of the Jung/Chen Groups ("**First Phase**").

(b) The second phase, from around the end of December to 2 March 2010, in which a significant number of transactions (buying and selling of China AU shares) were conducted through the securities accounts of the Jung/Chen Groups in which the total balance of China AU shares held remained largely constant ("**Second Phase**").

(c) The third phase, between 3 and 5 March 2010 (i.e. the last 3 trading days prior to China AU's announcement of the CB Placement), in which the securities accounts of the Jung/Chen Groups aggressively sold China AU shares ("**Third Phase**").

13. The First Phase of trading coincided with the aftermath of a weak market response to the Share Placement. The combined trading conducted through the securities accounts of the Jung/Chen Groups or, alternatively, the trading of at least the Jung Group during the First Phase had, or was likely to have, the effect of creating a false or misleading appearance with respect to the market for, or the price for dealings in China AU shares. A positive performance in the share price of China AU (or at least a lesser decline) supported or benefited further fundraising attempts by China AU during this period of time.

14. The combined trading conducted through the securities accounts of the Jung/Chen Groups or, alternatively, the trading of the two Groups analysed separately, during the Second Phase had, or was likely to have, the effect of creating a false or misleading appearance of active trading in China AU shares. The increased liquidity in China AU shares in the market supported and/or benefited further fundraising attempts by China AU during this period of time.

15. The combined trading conducted through the securities accounts of the Jung/Chen Groups or, alternatively, the trading of the two Groups analysed separately, during the Third Phase had, or was likely to have, the effect of creating a false or misleading appearance with respect to the market for, or price

for dealings in China AU shares. A lower price for China AU shares prior to the issue of convertible bonds (the subject of the CB Placement), was beneficial to the CB Placement as it could have the effect of lowering the conversion price and making it appear more attractive to potential investors, thereby increasing the likelihood of a successful placement.

16. Furthermore, during the Relevant Period, there were a total of 92 transactions conducted between the securities accounts within the Jung/Chen Groups for a total of 20,800,000 China AU shares. As the trading in China AU shares was financed by the same source, that trading did not involve any change in beneficial ownership of the shares and did not have any rational economic justification. Further or alternatively, the manner in which the trade orders were placed and executed, required coordination between the counterparties involved in the trades.

17. As the trading of the China AU shares through the securities accounts within the Jung/Chen Groups and/or through the securities accounts within the Jung Group separately analysed (described in paragraphs 10 & 16 above) did not result in a change in beneficial ownership and/or the manner in which the trade orders were placed and executed required coordination between the counterparties involved in the trades, further or alternatively, under section 274(5) of the Ordinance, such transactions are regarded as having been conducted with the intention that, or being reckless as to whether, they had, or were likely to have, the effect of creating a false or misleading appearance of active trading or with respect to the market for, or the price for dealings in, China AU shares.

18. By reason of this, the Specified Persons engaged or may have engaged in market misconduct, contrary to section 274(1) of the Ordinance.

19. Further or alternatively, Keung assisted or connived with Wu Hsiu Jung and/or Chen in the perpetration of market misconduct with the knowledge that such conduct constituted or might have constituted market misconduct, contrary to section 252(4)(c) of the Ordinance.

Dated this 17th day of June 2016

Securities and Futures Commission

The course of the proceedings

3. A preliminary conference was held on 20 October 2016, three months after the issue of the SFC Notice. The delay in conducting that first preliminary conference was occasioned essentially by the difficulty in serving the relevant papers on one of the three persons specified in the SFC Notice.

4. The SFC encountered no difficulty in serving papers on the first specified person, Ms. Wu Hsiu Jung ('Ms. Wu'), who at the time was represented by Hong Kong solicitors.

5. It appears that it was also relatively easy to serve papers on the second specified person, Mr. Chen Kuo-chen ('Mr. Chen') whose last known address was in Taiwan. Delivery was effected by a courier service employee, the papers being accepted on behalf of Mr. Chen by a Ms. Lee. On 1 August 2016, the SFC received a letter from a firm of lawyers in the city of Taipei making detailed representations on behalf of Mr. Chen, those representations clearly being in answer to assertions made in the SFC Notice and the accompanying synopsis.

6. It was, however, a more lengthy process to try and effect service of the papers on the third specified person, Ms. Keung Wai Fun, Samantha ('Ms. Samantha Keung'). The SFC did not have her address and in the result consent had to be obtained from the Tribunal to approach two Hong Kong banks with whom Ms. Samantha Keung was known to have banked. Addresses were obtained from one of the banks and service of the papers was effected on 5 September 2016, the papers being accepted not by Ms. Samantha Keung personally but on her behalf by the receptionist of a commercial organization in

Hong Kong where, it was confirmed by the receptionist, Ms. Samantha Keung worked. Ms. Samantha Keung herself, however, did not in any way or at any time acknowledge receipt.

7. None of the three specified persons attended the preliminary conference held on 20 October 2016 nor were they legally represented at the hearing. The presiding Chairman of that hearing was Mr. Garry Tallentire who was not required to make any determinations as to the merits and was asked only to set the matter down for hearing in February 2017. Mr. Tallentire stated at the hearing that, by reason of future commitments, he would not be able to preside at any further hearings and that he would be replaced by the present Chairman, Mr. Michael Hartmann.

8. The matter next came before the Tribunal on 16 January 2017, that hearing – and all further hearings – being before the present Chairman.

9. At that hearing, counsel for Ms. Wu informed the Tribunal that Ms. Wu had been suffering from depression for a number of years and it may be the case that her condition was now so profound that she would be incapable rationally and fully of putting her case to the Tribunal or of giving adequate instructions to her legal representatives. Having heard argument, it was ordered that Ms. Wu should be examined by two psychiatrists, the one chosen by Ms. Wu herself and the other by the SFC.

10. In the circumstances, as it was agreed that the joint examination could not take place before the substantive hearing was set to take place, that hearing was adjourned *sine die*, new dates to be set when the Tribunal was informed of the results of the joint examination.

11. The matter was only able to come back before the Tribunal on 17 October 2017 when the joint psychiatric report was presented. The two psychiatrists who had compiled the report were not in agreement as to the severity of Ms. Wu's medical condition, the one saying that her condition was so severe that she would not reasonably be able to represent her interests before the Tribunal, the other saying that her condition, while constituting a major depressive disorder, would not prevent her from doing so. Having heard argument, the Tribunal (fully constituted) ruled that Ms. Wu was capable reasonably of being heard in her own interests and refused any form of permanent stay. The Tribunal recognised, however, that, due to the nature of her condition, Ms. Wu may require longer than usual to be able adequately to instruct her solicitors and should be given that time[2].

12. In the circumstances, the substantive enquiry hearing – the trial – was set down for the beginning of February 2018. That hearing took place over three days : 2, 5 and 6 February 2018.

13. While Ms. Wu was represented at the hearing, neither Mr. Chen nor Ms. Samantha Keung chose to be represented or to appear in person.

[2] The Tribunal's determination in respect of Ms. Wu's application is dealt with in greater detail later in this report and includes, as an annexure, an edited copy of the Tribunal's ruling.

CHAPTER TWO

DIRECTIONS AS TO LAW

14. It was the SFC case that, at about the time when the company, China AU, was seeking to raise a large amount of capital by way, first, of a share placement and, when that was not fully successful, by way of a placement of convertible bonds, that the three specified persons worked together, buying and selling China AU shares - on numerous occasions to each other for no economic advantage - in order to create a false or misleading appearance of active trading in the shares. The purpose of this trading was to seek to manipulate the share price (either supporting it or seeking to push it down) and to demonstrate liquidity in the market for the shares. This was done in order to make the fund raising exercises more attractive to potential investors. Put bluntly, to make the fund raising exercises more attractive by deceiving those potential investors as to the genuine value of the shares and the true liquidity of the market for those shares. In short, it was the SFC case that the three specified persons were culpable of that form of market misconduct defined in section 274(1) of the Ordinance as 'false trading'[3].

15. The underlying purpose of the legislation concerning 'false trading' is to ensure that the market reflects the forces of genuine supply and demand, the principle being that, in the general interests of the market, trading in securities should be real and genuine, free from dishonest manipulation.

[3] See paragraph 18 of the SFC Notice.

Market misconduct generally

16. The definition section of the Ordinance, section 245(1), states that :

> "Market misconduct means –
>
> (a) insider dealing;
> (b) false trading within the meanings of section 274;
> …
> …
> (f) stock market manipulation within the meaning of section 278,
>
> and includes attempting to engage in, or assisting, counselling or procuring another person to engage in, any of the conduct referred to in paragraphs (a) to (f)."

17. The Ordinance goes further to include those persons who have connived with a perpetrator of market misconduct as also having engaged in market misconduct. In this regard, section 252 of the Ordinance provides that :

> "(4) Subject to subsections (5) and (6), the Tribunal may identify a person as having engaged in market misconduct pursuant to subsection 3(b) if –
>
> (a) …
> (b) …
> (c) notwithstanding that he has not perpetrated any conduct which constitutes the market misconduct –

(i) the Tribunal identifies any other person as having engaged in market misconduct… and

(ii) he assisted or connived with that other person in the perpetration of any conduct which constitutes the market misconduct, with the knowledge that such conduct constitutes or might constitute market misconduct."

18. The expressions "assisted" and "connived with" as they arise in section 252(4)(c)(ii) are to be given their ordinary English meaning. The expression "assisted" requires no explanation. It is well used and well understood. As for the expression "connived with", in its active sense it means to secretly cooperate with another in a wrongful act; in its passive sense, it means to feign ignorance or to fail to take measures to prevent the improper conduct thereby implying tacit encouragement or consent to the conduct[4].

19. In respect of Ms. Samantha Keung, the SFC Notice[5] specifically asserted that, if there was any doubt as to her participation in the false trading as a principal, then, further or alternatively, she assisted or connived with Ms. Wu and Mr. Chen in executing the false trading with the knowledge that her conduct constituted market misconduct or being reckless as to that fact.

False trading as a specific form of market misconduct

20. As for 'false trading' itself, section 274(1) of the Ordinance provides that, in respect of securities –

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4 This is a citation of paragraph 120 of the Tribunal report in the matter of *Yue Da Mining Holdings Limited*.

5 See paragraph 19 of the SFC Notice.

"False trading takes place when, in Hong Kong or elsewhere, a person does anything or causes anything to be done, with the intention that, or being reckless as to whether, it has, or is likely to have, the effect of creating a false or misleading appearance –

(a) of active trading in securities … traded on a relevant recognised market or by means of the authorised automated trading services; or

(b) with respect to the market for, or the price for dealings in, securities … traded on a relevant recognised market or by means of authorised automated trading services."

21. The phrase 'active trading' is not a term of art. The two words that make up the phrase are well understood as ordinary English words. Certainly, on the evidence, there was trading, that is, buying and selling of China AU shares. Equally certainly, whether it had any effect on the market or not, that buying and selling of the shares was 'active' in the sense that it occurred on many occasions and in volume.

22. In *Fu Kor Kuen Patrick and Another v HKSAR*[6], Gleeson NPJ, giving the full judgment of the Court of Final Appeal, said that in Hong Kong the offence is expressed as –

> "…doing anything with the intention that, or being reckless as to whether it has, or is likely to have, the effect of creating a false or misleading appearance of active trading or with respect to the market for or price of securities. It is the state of mind (intention or recklessness as to the creation of a certain appearance) with which anything is done that gives rise to the contravention."

[6] FACC 4 of 2011, the judgment being dated 24 May 2012.

23. The difficulty, as the Court of Final Appeal recognised, is to translate the generality of this language into a specific prohibition against injurious activity while at the same time leaving people free to engage in legitimate commercial activity which may have an effect on the market.

24. Subsection (5) of section 274 contains certain deeming provisions, that is, provisions that state that certain explicit conduct – provided it does not take place "off-market" – is to be treated as a form of 'false trading'. In this regard, three forms of conduct are defined; more particularly where a person –

a) enters into or carries out, directly or indirectly, any transaction of sale or purchase … of securities that does not involve a change in the beneficial ownership of them;

b) offers to sell securities at a price that is substantially the same as the price at which he has made or proposes to make, or knows that an associate[7] of his has made or proposes to make, an offer to purchase the same or substantially the same number of them; or

c) offers to purchase securities at a price that is substantially the same as the price at which he has made or proposes to make, or knows that an associate of his has made or proposes to make, an offer to sell the same or substantially the same number of them –"

[7] An 'associate' is defined in broad terms in section 245 of the Ordinance and includes a family member of the person (such as a spouse or child), an employee or partner of the person, a co-director and, in respect of the trading in shares, any other person with whom the person has an arrangement with respect to the acquisition, holding or disposal of those shares.

then the person shall, for the purposes of section 274(1), be regarded as carrying out false trading, that is, of creating a false or misleading appearance of active trading in the shares or creating a false or misleading appearance with respect to the market for those shares or the price for dealing in them.

25. The conduct made culpable in section 274(5)(a), (b) and (c) above describes two forms of market manipulation :

i. The conduct described in subsection (a) is commonly called 'wash trading'. A 'wash trade' may be described as a form of market manipulation in which an investor simultaneously sells and buys the same share in order to create misleading, artificial activity in the market. Mr. Tobias Benjamin Hekster, the expert witness called by the SFC, said that, in his opinion, a key feature of a wash trade is the fact that, as a result of a wash trade, excluding transaction costs, there is no change in the economic exposure of the participants.

ii. The conduct described in subsections (b) and (c) is commonly called 'matched trading'. It has been succinctly described by a United States court in the following terms :

> "A matched trade takes place when a person buys or sells a stock, with knowledge that a substantially offsetting transaction is going to be entered into by someone, in order to mislead others about the extent of the activity in, or the market for, a given stock.[8]"

[8] SEC v Kwak, 2008 U.S. Dist. LEXIS 10201 (D. Conn. Feb.12.2008).

26. A defence is provided under subsection (6) of section 274. The subsection provides that a person shall not be regarded as having engaged in 'false trading' if he –

> "… establishes that the purpose for which he committed the act was not, or, where there was more than one purpose, the purposes for which he committed the act did not include, the purpose of creating a false or misleading appearance of active trading in securities, or with respect to the market for, or the price for dealings in securities …"

27. Gleeson NPJ illustrated the reach of the defence in *Fu Kor Kuen Patrick and Another v HKSAR*[9] when he said (paragraph 86) –

> "To take as an example conduct of the kind covered by para (a), there could be a number of reasons why parties might enter into a sale of securities that does not involve a change of beneficial ownership. They may include fiscal reasons, or reasons related to rearrangement of corporate structures or family relationships. In some cases, however, the advancement of an innocent purpose (that is, a purpose of a kind unconnected with the creation of a false appearance with respect to the market) could be achieved, without any effect on the market, by an off-market transaction. The legislative approach is that, if such a transaction is entered into on the market, it is prohibited unless the parties can show that they had no purpose of creating a false or misleading market appearance."

28. As to the burden of proof placed on a person raising the defence under section 274(6), it is a persuasive burden which is to be discharged on a balance of probabilities.

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[9] Citation given in footnote 6.

29. There can be occasions when a purpose that establishes a defence under section 274(6) is obvious once the primary facts are established. However, in many, perhaps most, cases – when an innocent purpose remains speculative – a person seeking to rely on the defence will need to put forward a positive case, often by giving evidence.

30. In respect of the word 'purpose' as it appears in section 274(6), it may be defined as "a thing to be done; an object to be attained, an intention, an aim …"[10] The word 'purpose' in subsection (6) encompasses 'intent' in the sense that a result is intended when it is the person's purpose to cause it. In the context of this inquiry, a finding of the requisite intention (or purpose) may be made when it is demonstrated to the required standard that a person appreciated that the results of his act were virtually certain[11].

31. As to the issue of "recklessness", in *Sin Kam Wah & Another v HKSAR* (per Sir Anthony Mason NPJ)[12] the Court of Final Appeal directed that :

> "… juries should be instructed that … it has to be shown that the defendant's state of mind was culpable in that he acted recklessly in respect of a circumstance if he was aware of a risk which did or would exist, or in respect of a result, if he was aware of the risk that would occur, and it was, in the circumstances known to him, unreasonable to take the risk."

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10 The definition is taken from The New Shorter Oxfiord English Dictionary, 4th Edition.

11 In this regard, see *Fu Kor Kuen, Patrick and Another v HKSAR* (*supra*).

12 (2005) 8 HKCFAR 192, at 210.

80. On 16 December 2009, despite the fact that the placing exercise had fallen some HK$97.2 million short of the maximum net proceeds that would have been secured if the full number of 175 million shares had been placed, the Company announced that one of its wholly owned subsidiaries had signed a letter of intent to acquire a property in Guangdong Province in order to establish a beauty training institute.

81. By way of an outline, the structure of the acquisition was as follows. The intention was to acquire 70% of the issued share capital of a company, the principal asset of that company being a piece of land with some 8,000 square metres of buildings on it. The agreed price was HK$80 million, a figure well in excess of the HK$38.3 million raised in the share placing exercise. The announcement said that an initial (refundable) deposit of HK$10 million had already been paid with a further deposit of HK$20 million to be paid before the end of January 2010. As for the balance of HK$50 million, a sum of HK$20 million was to be paid in cash and the remainder either in cash or a short-term promissory note or, if agreement could be reached, by the issue of new shares or similar.

82. Two months after this announcement, on 24 February 2010, the Company (now called China AU) announced that it had entered into a supplementary letter of intent to extend the deadline for the execution of the sale and purchase agreement to 31 March 2010.

b. The convertible bonds exercise

83. Further funds were required and in early 2010 the Company began working with Yardley Securities Limited to find a new means of raising those

The fundamental issue of the burden and standard of proof

32. The SFC bore the burden of proof. For the avoidance of any possible ambiguity, the Tribunal directed itself that the fact that none of the specified persons chose to give evidence before the Tribunal did not in any way, direct or indirect, shift the burden of proof.

33. In respect of the standard of proof, section 252 (7) of the 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."

34. The standard is the balance of probabilities, which has been expressed as follows –

> "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."

Separate consideration of the case against each specified person

35. The Tribunal has considered the case against and for each of the specified persons separately.

Good character

36. The Chairman has directed the Tribunal that the three specified persons are to be treated as persons of good character. The consequences of this are important. A person of good character must be considered as less likely than otherwise might be the case to have committed the misconduct alleged, in addition to which good character supports his or her credibility in respect of anything said in records of interview or other documentary material placed before the Tribunal (none of the specified persons having given evidence before the Tribunal).

Drawing inferences

37. Inferences are not to be drawn by way of conjecture nor on a balance of probabilities. In so far as it has been necessary to draw inferences in this enquiry, the Tribunal has directed itself that any conclusions reached must be plainly established as a matter of inference from proved facts. The proceedings being civil in nature, it would not be right to say that the requisite standard prescribes that the inference is to be the only inference that can be drawn, that being the standard which applies to criminal matters. However, an inference must be established as a compelling inference.

Expert evidence

38. In the presentation of its case, the SFC relied upon the expert evidence of one witness, Mr. Tobias Benjamin Hekster. The Tribunal received his evidence as being 'expert evidence' as it was likely to be outside the

experience and knowledge of the Tribunal members. In this regard, in *Barings PLC v Coopers & Lybrand (No 2)*[13], at para 45, it was observed that :

> "Expert evidence is admissible … in any case where court accepts there exists a recognised expertise governed by recognised standards and rules of conduct capable of influencing the court's decision on any of the issues which has to decide and the witness to be called satisfies the court that he has a sufficient familiarity with and knowledge of the expertise in question to render his opinion potentially of value in resolving any of those issues."

39. As to the scope of expert evidence, the Tribunal has borne in mind that the culpability of false trading is to be judged according to the state of mind of the specified persons - intention, recklessness, purpose - all of which, considered in context, are subjective. Forming a judgment as to the state of mind of the specified persons was a task for the Tribunal. Mr. Hekster did not possess expertise to express an opinion as to the state of mind of the specified persons and nor did he attempt to do so.

The scope of the evidence considered by the Tribunal

40. In addition to hearing witnesses give oral evidence, the Tribunal has had to consider a large number of statements, records of interview (and the like) of persons who, for a variety of reasons, were not available to give testimony before the Tribunal. In this regard, pursuant to section 253(1)(a) of the Ordinance, the Tribunal does have the power to receive and consider written statements and documents even though they may not be admissible in civil or criminal proceedings in a court of law. That said, the Tribunal directed itself

[13] [2001] Lloyds Report.

that care must be exercised when considering what weight, if any, is to be given to such evidential material.

CHAPTER THREE

WERE THE THREE SPECIFIED PERSONS MADE AWARE OF THE PROCEEDINGS AND GIVEN A REASONABLE OPPORTUNITY TO BE HEARD?

Was the first specified person, Ms. Wu, given a reasonable opportunity to be heard?

41. Section 252(6) of the Ordinance directs that the Tribunal shall not identify a person as having engaged in market misconduct without first giving that person a "reasonable opportunity of being heard".

42. While the first specified person, Ms. Wu, was at all material times legally represented and therefore had full knowledge of the proceedings, the Tribunal was required to determine whether, because of her medical condition, a major depressive disorder, she was nevertheless prevented from giving full and coherent instructions to her legal representatives and was therefore denied a reasonable opportunity of putting her case to the Tribunal.

43. As mentioned earlier in this report, the issue of Ms. Wu's health first came before the Tribunal some three weeks before the original trial dates when, on 16 January 2017, an application was made on her behalf for an adjournment of the proceedings. It was on that occasion that her counsel, Mr. Paul Wu, informed the Tribunal that his client had been suffering from depression for an extended period of time and there were concerns that it was of such seriousness that it may prevent her from articulating the position that she wished to take in respect of the proceedings. An adjournment was required so that the true nature and extent of Ms. Wu's depressive disorder could be

diagnosed. If it proved to be the case that Ms. Wu's condition was so bad that she was unable coherently to participate in the proceedings, then an application for a permanent stay would be made on her behalf. Mr. Wu sought an adjournment so that his client could be examined by a psychiatrist and a report made to the Tribunal.

44. Counsel appearing for the SFC, Mr. Jose Remedios, submitted that, if Ms. Wu was to be examined by a psychiatrist of her choosing, to ensure objectivity she should also be examined by a psychiatrist chosen by the SFC.

45. In light of these submissions, and bearing in mind that neither of the other two specified persons had informed the Tribunal of an intention to be represented at the substantive hearing, that hearing was adjourned *sine die*, giving time for the joint psychiatric report to be prepared.

46. In the result, the matter came back before the Tribunal (fully constituted) on 17 October 2017 to determine the issue of whether, by reason of her medical condition, Ms. Wu was, in terms of section 252(6) of the Ordinance, denied a reasonable opportunity of being heard.

47. The Tribunal had before it the joint psychiatric report and had the benefit of hearing submissions from Ms. Wu's counsel, Mr. Paul Wu, and from leading counsel for the SFC, Mr. Simon Westbrook SC. At the end of submissions, the Chairman of the Tribunal gave reasons for the Tribunal's determination, it being held that, on a consideration of the evidence, despite the burden of her depressive disorder, Ms. Wu was able to give coherent

instructions to her legal advisers and therefore had a reasonable opportunity to be heard. A copy of the oral ruling is attached to this report as Annexure B[14].

48. Recognising, however, that Ms. Wu's medical condition made it more difficult for her to give full and considered instructions to her legal representatives, the Tribunal allowed more time for preparation, directing that the trial of the matter would be held over until the new year. In the result, the matter was set down to commence on 2 February 2018.

49. By way of a postscript, it should be said that Ms. Wu was represented at the substantive hearing in the sense that her solicitor was present although he played no active role. As he put it at the beginning of the hearing, as his client did not intend to contest any of the evidence, he was present essentially to hold a "watching brief". That Ms. Wu did not wish to challenge any of the evidence had been confirmed in a letter from her solicitors dated 21 December 2017 which, in part, read :

> "We are instructed to inform the Tribunal that our client, Ms. Wu Hsiu Jung, being one of the specified persons in the proceedings, has decided not to contest the proceedings. We are further instructed that Ms. Wu will not contest or challenge any allegation made against her as set out in the Notice to the Market Misconduct Tribunal … dated 17 June 2016."

[14] As indicated at the time the oral ruling was given, the written version has been edited for the purpose solely of doing away with bad grammar, tautology and the like without changing the reasoning.

Was the second specified person, Mr. Chen given a reasonable opportunity to be heard?

50. On 28 June 2016, under cover of an explanatory letter, an envelope containing the following documents was given to DHL by staff of the SFC, the documents being -

i. a copy of the SFC Notice dated 17 June 2016;
ii. a copy of the accompanying synopsis (together with Chinese translation) dated 17 June 2016;
iii. a copy of a list of unused materials, and
iv. a copy of a list of witnesses.

51. The envelope containing the documents was addressed to Mr. Chen at an address in Taipei. It was the home address of Mr. Chen as it appeared in certain account opening documents at Get Nice Securities Limited dated 1 September 2009. The standard DHL documentation showed that delivery had been made.

52. At the beginning of August 2016, the SFC received a letter dated 28 July 2016 from a firm of lawyers in Taipei under the name of Pontis Law. The author of the letter described himself as 'Lawyer LIU Anhuan'.

53. The letter commenced with an explanatory statement to the effect that the lawyer had been entrusted by Mr. Chen to write the letter in accordance with Mr. Chen's wishes. It then went on in some detail to set out Mr. Chen's answer to the allegations made in the SFC Notice as read with its accompanying synopsis. The letter, in English translation, ended with the following statement :

> "In view of the above, I hereby appoint a barrister to inform the SFC by letter [presumably that being Lawyer LIU Anhuan himself] that I was not involved in the market misconduct of false trading as stated in section 274 of the Securities and Futures Ordinance of Hong Kong. I plead that the SFC could distinguish the right and the wrong with acuity [that is, with speed and sharpness] to do me justice."

54. The Tribunal will look to the contents of this letter later in this report. At this juncture, it suffices to say that, when Mr. Chen first received notice of the proceedings, not only was he presented with an opportunity to be heard but he chose effectively - on the turn - to take up that opportunity.

55. On the basis that Mr. Chen was now legally represented, the SFC informed Mr. Liu of Pontis Law of the date and time of the preliminary conference which was set to take place on 20 October 2016. Mr. Liu replied on 19 October 2016, the day before the preliminary conference, saying that he had received no further instructions from Mr. Chen since 13 September 2016 and that no further documents should be sent to his firm. He had no authority, he said, to accept service on behalf of Mr. Chen.

56. Thereafter, the SFC sent relevant documentation to Mr. Chen's home address, the same address at which the original DHL package had been successfully delivered. More particularly, notice of the substantive hearing set to commence on 2 February 2018 was sent to that home address. There was no response of any kind from Mr. Chen nor from any agent acting on his behalf. But that said, the communications sent by the SFC were not returned nor was any formal documentation received from the postal authorities to the effect that it had not been possible to make delivery.

57. In addition, an email was sent to Mr. Chen at his last known email address. The email appeared to go through without incident; there was, for example, no report to the effect that there was no longer such an address.

58. On balance, therefore, the Tribunal is satisfied that Mr. Chen not only received the detailed documentation setting out the case against him but was also made aware of the date (and venue) of the substantive hearing.

59. Having given instructions to his lawyer in Taipei to make representations on his behalf, and those representations having been made in some detail, the clear inference to be drawn from Mr. Chen's later silence is that it was, on his part, a conscious decision to play no further part in the proceedings. That was his decision, no doubt a tactical decision, and cannot in any way undermine the finding made by this Tribunal that he was given a reasonable opportunity to be heard.

Was the third specified person, Ms. Samantha Keung, given a reasonable opportunity to be heard?

60. In June 2016, the SFC also sought to serve an envelope of relevant documents on Ms. Samantha Keung. However, it appears that she was no longer resident at the address contained in the SFC files. It was known, however, that she banked with HSBC and a notice was served on the bank requiring it to divulge her contact addresses. Two addresses were divulged, an apparent home address and a different correspondence address.

61. On 5 September 2016, the SFC attempted to serve an envelope of relevant documents (the Notice, accompanying synopsis, list of witnesses and list of unused materials) at Ms. Samantha Keung's home address. That address,

however, was in a commercial building, the office being occupied by a commercial organisation. Ms. Samantha Keung was not known at that address.

62. On the morning of that same day, the SFC attempted to serve the envelope of relevant documents at Ms. Samantha Keung's correspondence address. This was again an office premises. It was occupied by a commercial organization called Brilliant Business Centre Limited. The SFC employee responsible for delivering the envelope, a senior administrator, went up to the office premises, informing the receptionist that he had documents to deliver to Ms. Samantha Keung. The receptionist confirmed that Ms. Samantha Keung was employed there as a 'manager' but was presently out of the office on a job. The receptionist did not know when she would return. The receptionist said, however, that the documents could be left with her so that they could be passed on. The receptionist acknowledged receipt of the documents (the Notice, the synopsis, the list of witnesses and list of unused materials) by placing the company chop on a copy of the SFC covering letter.

63. On that same day, in the afternoon, the SFC employee returned to the office of Brilliant Business Centre Limited to serve further documents, these further documents consisting of 14 bundles of materials including witness statements and an expert report. The same receptionist was on duty. She said that Ms. Samantha Keung had not yet returned to the office. She again acknowledged receipt of the material by putting a company chop on a copy of the covering letter.

64. Ms. Samantha Keung did not in any way, either directly or through agents, acknowledge receipt of the documents. On a consideration of the evidence, however, the Tribunal is satisfied that she must have received them in the sense that she would (at the very least) have been informed of their presence

in the office of Brilliant Business Centre Limited. Ms. Samantha Keung had given the address of the office premises as her correspondence address to her personal bank; the receptionist at the office premises confirmed that she was employed there, and agreed to accept receipt of the documents on her behalf. The evidence very clearly points to the fact that Ms. Samantha Keung was known at the office premises and spent time there. If the material that was delivered consisted of one standard sized envelope only, the possibility may be argued that it was mislaid and never given to Ms. Samantha Keung. In the present case, however, the material that was delivered was large and bulky. It is not feasible that it would have been mislaid, put into a corner and simply forgotten about without ever being brought to Ms. Samantha Keung's attention.

65. It should further be noted that on 30 January 2018, a few days before the commencement of the substantive hearing, the same SFC employee personally delivered a letter addressed to Ms. Samantha Keung from the SFC making reference to the commencement of the hearing on 2 February 2018 and attaching the submissions of counsel for the SFC to be made to the Tribunal. The letter and attached documents, clearly addressed to Ms. Samantha Keung, were received by the receptionist without any objection. Receipt was acknowledged in the normal way by putting a company chop on a copy of the letter. The evidence, therefore, clearly pointed to the fact that Ms. Samantha Keung could still be contacted at those premises shortly before the commencement of the substantive hearing.

66. Ms. Samantha Keung played no part in the proceedings before the Tribunal; no representations of any kind were made. The matter to be determined, however, is whether she was given reasonable opportunity to participate. The question to be answered, therefore, is whether, in delivering documents to the office of Brilliant Business Centre Limited, a set of

circumstances was created which made it possible for Ms. Samantha Keung, if she wished, to make an answer to the allegations contained in the documents, that is, to participate in the proceedings. In the judgment of the Tribunal, it is clear that Ms. Samantha Keung must have come to know of the documents that were intended for her attention. Whether she wished to read those documents or take advice in respect of them was absolutely a matter for her. Was she given the opportunity to read them or to take advice in respect of them? Clearly, on the available circumstantial evidence, she was given that opportunity.

Summary

67. For the reasons set out above, the Tribunal is satisfied that each of the three specified persons was given reasonable opportunity to be heard in this matter.

CHAPTER FOUR

LOOKING MORE FULLY AT THE SFC CASE

China AU and its senior management

68. At all times material to this report, China AU was listed on the Growth Enterprise Market – the GEM market – of the Stock Exchange of Hong Kong (stock code 8176). The Company, which had been incorporated in the Cayman Islands in 2001, had been called originally Blu Spa Holdings Limited ('Blu Spa' apparently being one of the beauty products that it distributed) but has since twice changed its name; first, in early 2010 to China AU Group Holdings Limited and later, after the period of time relevant to this report, to SkyNet Group Limited.

69. China AU was principally engaged in the development and sale of personal care beauty treatments and the operation of beauty treatment centres in Hong Kong and the Mainland.

70. As to the senior management of China AU, Ms. Samantha Keung – one of the three specified persons -was at all material times the Chief Executive Officer. It would appear that, indirectly, through various shareholdings, she was also at the time the single largest shareholder; certainly a substantial shareholder.

71. Ms. Samantha Keung, however, was not a member of the Board of Directors. That being said, her son, Mr. Cheung Tsun Hin, Samson

('Mr. Samson Cheung') held the position of Chairman of the Company and was also one of the two executive directors.

72. The second executive director was, it seems, one of the founders of the Company, a woman by the name of Ms. Chan Choi Har, Ivy ('Ms. Ivy Chan'), who also held the position of Vice Chairman. As to her shareholding in the Company, it appears that she held some 2 – 3%.

The need to raise funds

73. In the second half of 2009, in the wake of the global financial crisis, China AU sought to expand the scope of its operations by setting up an institute to train beauticians. In order to do so, it needed to purchase a property in Guangdong Province to convert into a training institute. Substantial funds were required. The Company sought to raise the funds, first, by the placing of new shares and, when that exercise was not fully successful, by the placing of convertible bonds.

74. So that the assertions of false trading may be considered in context, it is necessary to give a summary of the fund raising exercises and their outcomes.

Fund raising

a. The share placement exercise

75. On 19 August 2009 (when the Company was still called Blu Spa Holdings Limited) it announced that it intended to place a maximum of 175,000,000 shares at a price of 80 cents per share. The placement would

constitute approximately 37% of the Company's existing issued share capital (of 472,000,000 shares) and, if all the shares were placed, it would net a sum of approximately HK$135.5 million. The placing price of 80 cents constituted a discount of some 15.8% to the current price of the shares on the market.

76. The announcement gave three reasons for the placement exercise; first, and principally, to obtain funds that were still required to acquire a property for setting up a beauty professional training institute and thereafter to furnish it and provide it with the necessary equipment; second, to develop Blu Spa products and, third, for general working capital purposes.

77. The announcement said that the Company had identified a property in Guangdong Province and was negotiating the terms of acquisition. The warning was given, however, that, as the acquisition remained subject to negotiation, shareholders and potential investors should exercise caution when dealing in the shares of the company[15].

78. The placing exercise met difficulties. In the result, on 28 October 2009, a further announcement was made. This announcement stated that the placing period would be extended from 31 October 2009 to 30 November 2009.

79. On 2 December 2009, it was announced that the placing of new shares had been completed in that a total of 49,800,000 new shares had been placed to not less than six parties who were independent of and not connected to the Company. The net proceeds raised amounted to approximately HK$38.3 million and would be used towards the "possible acquisition of a property in the PRC for setting up a beauty professional training institute".

[15] The placing agent was Partners Capital Securities Limited which agreed on a best effort basis to place the 175 million shares to not less than six placees who would be institutional, professional or private investors independent from and not connected with the Company.

80. On 16 December 2009, despite the fact that the placing exercise had fallen some HK$97.2 million short of the maximum net proceeds that would have been secured if the full number of 175 million shares had been placed, the Company announced that one of its wholly owned subsidiaries had signed a letter of intent to acquire a property in Guangdong Province in order to establish a beauty training institute.

81. By way of an outline, the structure of the acquisition was as follows. The intention was to acquire 70% of the issued share capital of a company, the principal asset of that company being a piece of land with some 8,000 square metres of buildings on it. The agreed price was HK$80 million, a figure well in excess of the HK$38.3 million raised in the share placing exercise. The announcement said that an initial (refundable) deposit of HK$10 million had already been paid with a further deposit of HK$20 million to be paid before the end of January 2010. As for the balance of HK$50 million, a sum of HK$20 million was to be paid in cash and the remainder either in cash or a short-term promissory note or, if agreement could be reached, by the issue of new shares or similar.

82. Two months after this announcement, on 24 February 2010, the Company (now called China AU) announced that it had entered into a supplementary letter of intent to extend the deadline for the execution of the sale and purchase agreement to 31 March 2010.

b. The convertible bonds exercise

83. Further funds were required and in early 2010 the Company began working with Yardley Securities Limited to find a new means of raising those

funds. On 8 March 2010, the Company announced the proposed placing of convertible bonds. Assuming that the bonds were placed in full, it was anticipated that the net proceeds would amount to approximately HK$110 million. In order to facilitate the conversion of these bonds into shares, the announcement said that the authorised share capital of the Company would be raised from HK$100 million to HK$500 million.

84. The announcement of 8 March 2010, said the following in respect of the convertible bonds that were being placed –

> "The initial conversion price is HK$0.19 per conversion share (subject to adjustment in accordance with the terms and conditions of the bonds). Assuming the bonds in an aggregate principal amount of HK$114 million are placed in full, upon full conversion of the bonds, a maximum of 600,000,000 conversion shares will be issued, representing (i) approximately 114.9% of the existing issued share capital of the Company of 522,200,000 shares and (ii) approximately 53.5% of the Company's issued share capital as enlarged by the issue of the conversion shares."

85. Some six months earlier (in August 2009), the Company had sought to place shares at a price of 80 cents per share. It was now, for all practical purposes, seeking to place shares at 19 cents per share, the price being less than a quarter of what had previously been asked.

86. As to why the conversion price was so low, the announcement said :

> "The conversion price was determined after arm's-length negotiations between the Company and the placing agent, after considering the Group's existing financial position, liquidity of the shares in the market, the intended amount of funds to be raised and number of conversion shares."

87. The SFC itself was seemingly concerned at the low conversion price and in a letter of 15 March 2010 required the Company to give details of the basis for determining that price. In answer, in a letter dated 26 March 2010 signed on behalf of China AU by Ms. Ivy Chan, the following was said :

> "The conversion price of HK$0.19 per share was first proposed by Yardley and was determined after arm's length negotiations between [China AU] and Yardley and with reference to various factors, including :
>
> i. the share price of [China AU] in the past one year;
> ii. the decline in the share prices of [China AU] since completion of the share placing, in particular since February 2010;
> iii. the then prevailing market conditions and projected market conditions in the near future, and
> iv. in contemplation of the possible acquisition in the near future, the availability of other means of financing, such as a rights issue, obtaining banking facilities or loans from banks and financial institutions."

88. As to who had played an active managerial role in the proposed placing of convertible bonds, the letter to the SFC said that Ms. Samantha Keung (the Chief Executive Officer); her son, Mr. Samson Cheung (the Chairman and an executive director) and Ms. Ivy Chan (the other executive director) had been involved in the exercise together with a number of other directors and senior management. The proposed placing exercise had been approved by the Company's Board on 8 March 2010.

89. As to the continuing exercise to acquire the Guangzhou property, on 30 March 2010, the Company announced that it had agreed 'heads of agreement' in respect of the purchase.

90. A month later, on 29 April 2010, the Company announced that the placing of convertible bonds had been successfully achieved; the net proceeds amounted to approximately HK$110 million. The funds, it was announced, would be used to pay the remaining cash payment due in respect of the acquisition of the Guangzhou property.

91. The period over which the fund raising exercise had taken place, therefore – the period of fundraising – was from about mid-August 2009 until the end of April 2010, a period of just over eight months.

The trading in China AU shares

92. It was fundamental to the SFC case that in the period between 25 August 2009 and 21 April 2010 – the 'Relevant Period' – the three specified persons actively traded in China AU shares. They did this in a coordinated manner, employing a number of securities accounts held with a number of brokerages. The manner of the trading revealed patterns of coordination and, on a consideration of all the evidence, it was the SFC case that these patterns could only have been for one reason, that is, to provide support for the fund raising exercises.

93. More particularly, it was the SFC case that the trading during the Relevant Period was conducted through two 'groups' of investment accounts.

94. The first group, it was said, was controlled by Ms. Wu ('the Wu Group'[16]) and consisted of 12 securities accounts. She personally operated five

[16] "Wu Group" is the same as "Jung Group" as described in the SFC Notice dated 17 June 2016 as set out in paragraph 2 of this report.

accounts with a number of different brokerage houses. In addition, she controlled a further seven accounts held in the names of family members and friends. In respect of these latter accounts, it was the SFC case that Ms. Wu had introduced the account holders to the relevant brokerages and had been given authority to operate each of the accounts.

95. The second group was controlled by Mr. Chen ('the Chen Group') and consisted of just two accounts. Mr. Chen personally operated a securities account and in addition had the full use of a second securities account in the name of a Mr. Szeto Kit. In respect of this second account, it was the SFC case that Mr. Chen had been given the ability to 'borrow' the account.

96. It was the SFC case that, although there was no evidence that they were known to each other, both Ms. Wu and Mr. Chen were, in their different ways, closely connected to Ms. Samantha Keung, the CEO of China AU and open to her influence. In this regard, the evidence revealed the following :

a) During the Relevant Period, Ms. Wu was employed in a senior position in a bullion trading company and, according to the literature of that company, was said to have had some 20 years' experience in the field. She was therefore no novice in the field of investment trading. Ms. Wu was a long-standing friend of Ms. Samantha Keung. In this regard, in an interview with the SFC conducted on 19 May 2011, Ms. Samantha Keung herself accepted that she had known Ms. Wu "for such a long time" and that they were "good friends"[17] .

[17] See marker 1058 of the English translation of the interview.

b) The evidence pointed clearly to a relationship between Mr. Chen and Ms. Samantha Keung although the exact nature of that relationship was not clearly established. Ms. Samantha Keung, when interviewed by the SFC, suggested that Mr. Chen had at the relevant time acted as an independent agent for China AU on the Mainland. Mr. Chen, in the letter written on his behalf by the Taipei law firm of Pontis Law, was described much more as a management level employee of Ms. Samantha Keung. In this regard (in English translation) the following was said in the letter :

> "I was working at Blu Spa Holdings Limited as its Director of China Operations in 2008. At that time, its Chairwoman was Ms. KEUNG Wai Fun Samantha. In 2009, at the instruction of Ms. KEUNG Wai Fun Samantha, I left Blu Spa Holdings Limited … and was transferred to Shenzhen Shidai Meihua Trading Limited[18], another company chaired by Ms. Ms. KEUNG Wai Fun Samantha, as General Manager."

In the same letter, it was said that –

> "In respect of the securities account established with Get Nice Securities Limited, as Ms KEUNG Wai Fun Samantha claimed in 2008 that it would be inconvenient for her to use her own funds to purchase shares of Blu Spa Holdings Limited [Chian AU], she requested me to establish a securities account with Get Nice Securities …"

97. The relevant documentation obtained from Get Nice Securities Limited revealed that Mr. Chen maintained one securities account in his own name with that brokerage comprising a cash account and a margin account, the first being opened on 1 September 2009 and the second on 3 December 2009 :

[18] This is a transliterated name.

both being activated therefore during the Relevant Period. The account executive responsible for the securities account[19] confirmed in an interview with the SFC that he had been responsible for opening the account and that it was Mr. Chen who would place orders personally by telephone, trading in China AU shares and no other stock.

98. However, on the evidence available, Mr. Chen has denied trading for his own benefit, it being his assertion that all the trading in the account was funded by Ms. Samantha Keung and/or her son and that he gained no profit from the trading. In short, even if he gave the trading instructions, he did so at the behest of Ms. Samantha Keung. In the letter sent to the SFC on his behalf by Pontis Law, the following factual assertion was made on behalf of Mr. Chen :

> "… all (the funds) for trading in China AU shares were provided by Ms. KEUNG Wai Fun Samantha and Mr. CHEUNG Tsun Hin Samson, son of Ms. KEUNG Wai Fun Samantha. Therefore, the trading in the shares of China AU allegedly conducted by me was actually not done by me … nor did I gain any profit from those trades."

99. This is an initial piece of supporting evidence for one of the SFC's primary allegations, namely, that, for all effective purposes, all of the trading in the Wu Group and the Chen Group of accounts was ultimately funded by Ms. Samantha Keung.

100. As indicated earlier, it was the SFC case that, from an examination of the relevant evidence, the compelling inference to be drawn was that the accounts in the Wu Group and the Chen Group (whether at different times the two groups worked singularly or in unison) were used for a clear purpose,

[19] The name of the account executive is Leung Chee Keung.

namely, to support China AU's fund raising attempts. In this regard, it was the SFC case that three particular phases of trading revealed themselves.

101. At this juncture, before considering the three 'phases', it should be said that much of the SFC case was based on the detailed analysis of relevant trading in China AU shares conducted by Mr. Hekster who, on the basis of extensive data supplied to him by the SFC, prepared an expert report for the Tribunal dated 2 June 2016 ('the expert report'). Mr. Hekster testified before the Tribunal and, although not subject to cross-examination, there being no counsel briefed to appear and actively represent the specified persons[20], he was taken through his report by Mr. Westbrook and was questioned by the Tribunal members. Mr. Hekster was accepted as an expert by the Tribunal. As an expert witness, Mr. Hekster was cautious, careful, impressively analytical. In the view of the Tribunal, his detailed analysis of the various stages of trading contained in his 34-page report was entirely reliable and his opinion evidence drawn from his analysis was, in the unanimous view of the Tribunal members, to be given considerable weight. Because of the importance of Mr. Hekster's evidence, in this particular report the Tribunal considers it appropriate to take the perhaps unusual step of setting out his stated qualifications and professional experience in Annexure C to this report[21].

102. Concerning the trading in China AU shares, by way of background, Mr. Hekster in the expert report drew up two tables. The first set out the trading activity over the Relevant Period (from 25 August 2009 to 21 April 2010) conducted through the Wu Group accounts; the second set out the trading activity conducted through the Chen Group accounts. They are set out below as follows –

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[20] Ms. Wu was represented but only on the basis that her solicitor held a form of 'watching brief'.

[21] The material contained in Annexure C repeats what is contained on page 2 of Mr. Hekster's expert report.

i) The Wu group

Name	Bought	Sold	Net
Ms. Wu	12,090,000	16,655,000	- 4,565,000
Ms. Yip Man	11,030,000	10,585,000	445,000
Ms. Wu Ching Hung	3,440,000	1,240,000	2,200,000
Ms. Wu Ching Chieh	3,020,000	1,220,000	1,800,000
Ms. Jiang Li	7,615,000	4,690,000	2,925,000
Mr. Wu Mingsheng	1,160,000	360,000	800,000
Joint account of Ms. Jiang Li and Mr. Wu Mingsheng	11,535,000	7,575,000	3,960,000
Total	49,890,000	42,325,000	7,565,000

ii) The Chen group

Name	Bought	Sold	Net
Mr. Chen	15,205,000	14,625,000	580,000
Mr. Szeto Kit	4,100,000	3,085,000	1,015,000
Total	19,305,000	17,710,000	1,595,000

103. These statistics show that over the span of the Relevant Period 49.89 million China AU shares were purchased through the Wu Group accounts and 19.305 million through the Chen Group accounts, a total of 69.195 million shares. During the same period 42.325 million were sold through the Wu Group and 17.710 million through the Chen Group, a total of 60.035 million. As to the net position at the end of the Relevant Period, the Wu Group had

accumulated 7.565 million shares while the Chen Group had accumulated 1.595 million shares, a total joint accumulation of 9.160 million.

104. An analysis of the gross trading results[22] of the two groups over the Relevant Period revealed that the trading through the accounts in the Wu Group generated a loss of HK$6,875,000 while the trading through the two accounts in the Chen Group generated a loss of HK$869,800 : this is valued at a closing price of HK$0.56 on the last day of the Relevant Period, 21 April 2010.

105. In respect of the SFC assertion that there were three particular 'phases' of trading, the following constitutes an overview.

Phase One

106. On 2 December 2009, it was announced by China AU that the exercise of placing 175,000,000 shares at a price of 80 cents per share had been concluded. A total of just 49.8 million shares had been placed, the net funds raised being some HK$38.3 million. The exercise had fallen short of the maximum anticipated by some HK$97.2 million. Despite this, however, China AU was pressing ahead in negotiating the purchase of a property in which to house a training institute. More funds were needed and the senior management of the Company (including Ms. Samantha Keung) began to work with Yardley Securities Limited to identify the best way to do so.

107. As Mr. Simon Westbrook SC, leading counsel for the SFC, put it : a positive performance in the share price (or at least a lesser decline) at this time would support further fundraising attempts.

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22 'Gross' in the sense that transaction costs and stamp duty are excluded.

108. As it was, said Mr. Westbrook, between 30 November and 22 December 2009 – this period of time coinciding with the aftermath of the weak market response to the share placement exercise – the accounts in the Wu Group were used to accumulate approximately 21 million China AU shares. This, it was calculated, amounted to 22% of the total traded volume in the shares between 30 November and 22 December 2009[23]. The Chen Group's accounts also accumulated China AU shares but to a far more modest degree, only some 1.7 million. If the accounts in the two groups are taken together, however, it would constitute just over 23 million shares purchased in this period.

109. It was the SFC assertion that this substantial purchase of China AU shares had, or was likely to have had, the effect of creating a false or misleading appearance of positive interest in the share at a time when further fund raising was necessary.

Phase Two

110. Between about 23 December 2009 and 2 March 2010 – a time when the market knew that the Company was pursuing its purchase of a suitable property in the Mainland and with further fund raising imminent – it was the SFC case that all the accounts controlled by Ms. Wu and Mr. Chen were employed to both purchase and sell China AU shares.

111. It was the SFC assertion that this active trading had, or was likely to have had, the effect of increasing the liquidity, or appearance of liquidity, in China AU shares and in that way had, or was likely to have had, the effect of creating a false or misleading appearance of active trading.

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[23] See page 12 of the expert report : "Overall, during the period from 30 November to 22 December, members of the [Wu Group] purchased in total 22% of the overall traded volume in shares of China AU."

Phase Three

112. At the beginning of March 2010, that is, in the last three trading days prior to the announcement of the successful placing of the convertible bonds, the evidence shows that "aggressive"[24] selling of China AU shares took place in *all* the accounts controlled by Ms. Wu and Mr. Chen. In this regard, the evidence revealed, by way of an overview, that on the first day - 3 March 2010 - 5 million shares (amounting to some 45.5% of the total turnover that day) were sold, some 2.9 million shares being sold in the last 13 minutes of trading, the effect being a decrease in the share price of almost 9%. On the second day – 4 March 2010 - some 2.4 million shares (amounting to just over 25% of the total turnover that day) were sold, over a million shares being sold in the last four minutes of trading, the effect being a decrease in the share price of almost 3%. On the third day – 5 March 2010 – a total of 7.1 million shares were sold, the effect being a decrease in the share price of some 7%.

113. It was the SFC case that the high volume of sales in such a short period of time was almost inevitably going to have a negative impact on the price of the China AU shares still held in the securities accounts controlled by Ms. Wu and Mr. Chen. However, a lower price for the shares could have the effect of making the convertible bond placing exercise more attractive to potential investors by lowering the conversion price. It was the SFC case that this form of trading had, or was likely to have had, the effect of creating a false or misleading appearance with respect to the market for, or price for dealing in, China AU shares.

[24] A description employed by Mr. Simon Westbrook SC, leading counsel for the SFC.

Wash trades and matched orders

114. Arising from his analysis of the trading that took place during the Relevant Period, Mr. Hekster noted that there was trading in China AU shares *between* the accounts in the Wu Group. On the basis that Ms. Wu controlled all the accounts in the group (so that she was effectively buying and selling to herself), Mr. Hekster identified 28 trades, involving more than 8 million China AU shares, as constituting 'wash trades'. As set out earlier, pursuant to the provisions of section 274(5) of the Ordinance, unless it is established to the contrary, wash trades are deemed to be a form of false trading.

115. In respect of the Chen Group, consisting of just two accounts, Mr. Hekster was unable to identify any trading between those accounts which constituted wash trades.

116. However, if it was demonstrated that the accounts in the Wu Group and the accounts in the Chen Group were controlled by the same person; namely, Ms. Samantha Keung, or group of persons; namely, the three specified persons (so that trading between the two groups effectively amounted to buying and selling to herself or themselves) then, said Mr. Hekster, on his analysis, the wash trades increased from 28 in number - by well over double - to 92. These 92 trades, he said, were in respect of some 20.8 million China AU shares.

117. It was further the SFC case that, in the alternative, as the manner in which the trading between the two groups, or within the Wu Group itself, had required close coordination, the transactions had constituted 'matched orders': another form of prohibited market manipulation.

CHAPTER FIVE

WERE THE SECURITIES ACCOUNTS CONTROLLED AND FINANCED IN THE MANNER ALLEGED?

118. It was of course fundamental to the SFC case that at all material times Ms. Wu used 12 securities accounts – the Wu Group of accounts – to trade solely in China AU shares while at or about the same time Mr. Chen used two securities accounts – the Chen Group of accounts – to carry on exactly the same activity, that is, to trade solely in China AU shares. Both accounts were ultimately funded by Ms. Samantha Keung[25], the CEO and substantial shareholder of China AU. The share trading took place when, under the direction of Ms. Samantha Keung, China AU was seeking to raise capital through the market and at a time, therefore, when it was especially important that there should be a perceived liquidity in the market for the shares.

119. During the course of the enquiry, no evidence was placed before the Tribunal to suggest that Ms. Wu and Mr. Chen were known to each other; to the contrary, the evidence suggested that they were strangers to each other. But there was one common link : both had relationships with Ms. Samantha Keung and it was the SFC case that she was the driving force behind all the accounts in the two groups of accounts.

120. In respect of the securities accounts controlled by Ms. Wu – the Wu Group – the SFC Notice (paragraph 9) stated that between 25 August 2009 and 21 April 2010 – the Relevant Period – Ms. Wu used 12 securities accounts opened in the name of herself and others to purchase 49,890,000 China AU

[25] The evidence obtained by the SFC suggests that, to a limited degree, Ms. Samantha Keung was assisted in her funding exercise by one or more close associates, one being her son, Chairman of China AU.

shares and to sell 42,325,000 of the shares, trading only in those shares. The funds that were paid into the trading accounts came from Ms. Wu. It was, however, the SFC case that Ms. Wu was herself funded by her old friend, Ms. Samantha Keung, the CEO and substantial shareholder of China AU, who at the time had a strong motive to promote the appearance of active trading in the shares of her company.

121. In respect of the securities accounts controlled by Mr. Chen - the Chen Group - the SFC Notice (paragraph 11) stated that during the Relevant Period Mr. Chen used just two securities accounts to buy 19,305,000 shares in China AU and to sell 17,710,000 shares in that company, trading only in those shares. The funds that were paid into the two securities accounts in order to finance the trading - an amount of about HK$3.6 million - came from Ms. Samantha Keung and/or her son, Mr. Samson Cheung.

A. The Wu Group of accounts

122. As set out earlier in this report, the 12 accounts said to have been controlled by Ms. Wu consisted of five accounts in her own name held with different brokerage houses and seven accounts held in the name of family and friends, those persons being :

i. Ms. Yip Man, Ms. Wu's daughter (who held two accounts);
ii. Ms. Wu Ching Chieh, Ms. Wu's one sister (who held one account);
iii. Ms. Wu Ching Hung, Ms. Wu's other sister (who held one account);
iv. Mr. Wu Mingsheng, a friend, and Ms. Jiang Li, the wife of Mr. Wu Mingsheng (who between them held three accounts).

123. As to the five securities accounts that she operated in her own name, the evidence showed that these accounts were used to conduct 149 transactions in China AU shares during the Relevant Period. The five accounts were held with the following brokerage houses :

i. Celestial Securities Limited;
ii. Success Securities Limited;
iii. United Simsen Securities Limited;
iv. Taifook Securities Company Limited, and
v. Glory Sky Global Markets Limited.

124. The evidence showed that Ms. Wu operated these accounts herself; in short, that she had full control of them. In this regard, by way of illustration, Mr. Hou Shiu Chit, a securities broker at Celestial Securities Limited, testified that he dealt directly with Ms. Wu from late 2009 into 2010, taking orders over the telephone and on occasions dealing face-to-face with Ms. Wu when she came up to the office to carry out her trading. According to Mr. Hou, Ms. Wu traded only in China AU shares. It was also his evidence that, if funds were needed, he would contact Ms. Wu who would make payment.

Ms. Yip Man

125. Concerning Ms. Wu's daughter, Ms. Yip Man, the evidence showed that she maintained two securities accounts in her own name; one with Celestial Securities Limited and one with Taifook Securities Company Limited. Both accounts were opened on 7 December 2009 : within that period of trading in China AU shares described by the SFC as the 'first phase'. From their opening until the end of the Relevant Period, these two accounts were used to

trade solely in China AU shares, a total of 85 transactions taking place. On the evidence, it is clear that Ms. Wu controlled the trading in both these accounts –

i. When considered in its entirety, it is clear from a reading of Ms. Yip Man's interview with the SFC conducted on 7 October 2010 that, according to her, she had never traded in shares, had no interest in doing so and simply signed the relevant forms to enable her mother to open trading accounts in her name. She said that she had no idea what shares her mother traded in. As to the funding of these two accounts, Ms. Yip Man said in her interview that she had never put any money into the accounts and had never received any money from them. Ms. Yip Man summed up the position as she remembered it by saying : "I haven't received any money. I only authorised my mom to manage the account and all along everything was done by her … I have never received anything from it."

ii. In respect of the account held with Celestial Securities Limited, Mr. Hou Shiu Chit, the securities broker who dealt with Ms. Yip Man's account, told the SFC (in an interview dated 14 December 2010) that Ms. Wu had opened the account for her daughter; Ms. Wu had placed all the trading orders and she had been the one who had funded the account.

iii. In respect of the account held with Taifook Securities Company Limited, Mr. Hu Zeming, the securities broker who dealt with Ms. Yip Man's account, told the SFC (in an interview dated 15 October 2010) that Ms. Wu had told him she wished to open an account for her daughter and had taken away the necessary forms

for signature. He said that Ms. Yip Man's account had only traded in China AU shares, those trades being executed pursuant to orders placed by Ms. Wu who traded in China AU shares both through her own account and her daughter's account. He said that he would confirm the execution of orders direct with Ms. Wu.

Ms. Wu Ching Chieh

126. Concerning Ms. Wu's first sister, Ms. Wu Ching Chieh, during the Relevant Period she maintained one securities (margin) account at Celestial Securities Limited which traded solely in China AU shares. During the Relevant Period a total of 30 China AU transactions were conducted through this account. It is of note that this account was opened on 3 December 2009 during the 'first phase' of trading. On a consideration of the relevant evidence, the Tribunal is satisfied that Ms. Wu controlled the trading in this account. The supporting evidence may be summarised as follows :

i. The account opening documents state that the account had been opened on the introduction of Ms. Wu who was authorised to operate the account by trading in securities.

ii. Ms. Wu Ching Chieh, when interviewed by the SFC on 29 August 2010 and again on 24 January 2011, said that it had been Ms. Wu who had asked that she open a margin trading account at Celestial Securities Limited and who had brought her the papers for signature. It was further said that Ms. Wu who decided what investments should be channelled through the account. As to the trading in the shares of China AU, Ms. Wu Ching Chieh said that

she had never been asked for money to trade in these shares and received no benefit from any such trading.

iii. Mr. Hou Shiu Chit, the securities broker, told the SFC that it had been Ms. Wu who placed all the orders to deal in China AU shares. He also said that it had been Ms. Wu who had deposited funds into the account.

Ms. Wu Ching Hung

127. Concerning Ms. Wu Ching Hung, Ms. Wu's second sister, the evidence showed that during the Relevant Period she maintained one securities account with Celestial Securities Limited. During the Relevant Period this account also traded solely in China AU shares, there being a total of 25 transactions. The Tribunal is satisfied that Ms. Wu controlled the trading in this account. Evidence supporting this finding may be summarised as follows :

i. Ms. Wu was authorised to operate the account and to trade in shares.

ii. Ms. Wu Ching Hung, when interviewed by the SFC on 15 April 2011, said that she had never traded in China AU shares and at the relevant time had no idea that shares of any kind had been purchased through the account, certainly not for her benefit as she had not been asked for funds to pay for shares.

iii. Mr. Hou Shiu Chit, the securities broker at Celestial Securities Limited, in his interview with the SFC, said that, to his knowledge, Ms. Wu had handled Ms. Wu Ching Hung's account; Ms. Wu

placed all the orders and she was the one who would deposit the necessary funds into the account.

128. A telling piece of evidence that connects the trading in China AU shares through Ms. Wu Ching Hung's securities account to Ms. Samantha Keung, the third specified person, is to be found in a 'bought and sold' note for 2.2 million China AU shares found by the SFC in Ms. Samantha Keung's home. The name of the transferor in the note is given as Ms. Wu Ching Hung who, when interviewed by the SFC admitted, that she had signed the document at the request of her sister, Ms. Wu. What purpose would that have served? The note contains no details of the transferee, those details being left blank. As the bearer of the note, therefore, Ms. Samantha Keung possessed a valuable security, needing to do no more than fill in the details of the transferee as herself or a nominee in order to have the shares transferred to her.

Mr. Wu Mingsheng and Ms. Jiang Li : husband and wife

129. Concerning, Mr. Wu Mingsheng and Ms. Jiang Li, a husband and wife who were friends of Ms. Wu, they maintained a joint trading account at Celestial Securities Limited which, during the Relevant Period, was used for the sole purpose of trading in China AU shares, there being a total of 55 recorded transactions.

130. When separately questioned by the China Securities Regulatory Commission on 20 December 2011, it was effectively the joint response of Mr. Wu Mingsheng and Ms. Jiang Li that nobody had introduced them to open a trading account with Celestial Securities Limited and at no time had that account been 'lent out' to any third party.

131. As to the decision to trade solely in China AU shares, Mr. Wu Mingsheng said that it had been his decision independently reached because he had heard news that China AU intended to expand into the business of medical insurance and that the outlook for its earnings was therefore positive. As to the funding of the account, all the funds belonged to the two of them and, as such, they were the ultimate beneficiaries of any profits made.

132. The preponderance of the evidence, however, paints a different picture :

i. The assertion made by the couple that they had not been introduced by anyone to Celestial Securities Limited for the purpose of opening an account is contradicted by the contents of the account opening documents themselves which showed that a person named 'Helen Wu' introduced them. The evidence revealed that Ms. Wu had used the first name 'Helen'. More than that, Ms. Wu herself, who was an admitted old friend of the couple, had been specifically authorised to operate the account. This, said Mr. Wu Mingsheng, had been for "convenience in shares trading"[26].

ii. When interviewed, Mr. Wu Mingsheng insisted that his decisions to trade in China AU shares were entirely independent decisions; in short, that they were *his* decisions alone and that his trading was not directed by Ms. Samantha Keung. It was, however, the assertion of Mr. Hou Shiu Chit, the securities broker at Celestial Securities Limited, that between December 2009 and March 2010 it had been Ms. Wu who had given instructions to deal in China

[26] This assertion was made by Mr. Wu Mingsheng in his interview of 20 December 2011.

AU shares using the joint account of Mr. Wu Mingsheng and Ms. Jiang Li; she had been the one to telephone him. In addition, it was his assertion that Ms. Wu had been the one to deposit large sums of money into the joint account. In response, Mr. Wu Mingsheng accepted that he had "commissioned" Ms. Wu to conduct the trades on his behalf.

iii. As for the funding of the account, it was put to Mr. Wu Mingsheng that substantial sums of money had been withdrawn either from Ms. Wu's HSBC account or her own Celestial Securities account and paid into the account held jointly with his wife, Ms. Jiang Li. These various payments, made between the end of January and early March 2010, had totalled HK$2,640,000. Mr. Wu Mingsheng denied that these payments had in any way been related to trading in the shares of China AU. The six separate payments made over a short period of time, he suggested, *may* have been a share of profits due to him and his wife arising out of property speculation conducted by himself and his wife and Ms. Wu, profits that had nevertheless been paid into the securities trading account[27].

iv. As already stated, Mr. Wu Mingsheng asserted that he had made the decision to invest in China AU shares because he had heard that it was expanding into the business of medical insurance and its prospects were good. This would suggest a desire to accumulate China AU shares. Yet, after an initial period of buying, in early March 2010 – in what the SFC called the 'third phase' – there was substantial selling of the shares, a matter apparently which Mr. Wu

[27] It was accepted by Mr. Westbrook on behalf of the SFC that the three of them did in fact have a history of investing together in property.

> Mingsheng knew nothing about. In this regard, in his interview with the China Securities Regulatory Commission on 20 December 2011, when asked if he knew about the sale of 995,000 shares at HK$0.34 per share through the joint account on 5 March 2010 and, later that same day, the sale of a further 1,050,000 shares at HK$0.345 per share, and, if he did know something, *why* had the decision to sell been made, he replied : "I don't know". He gave the same answer in respect of the sale through the joint account of a further 250,000 shares at HK$0.56 per share on 9 March 2010.

133. In the judgment of the Tribunal the evidence given by Mr. Wu Mingsheng and his wife in the course of their interviews was almost entirely undermined by the objective facts of the matter. But, in the opinion of the Tribunal, even if Mr. Wu Mingsheng and his wife never intended that their account should be used for anything other than their own *bona fide* dealings, that is, their own share trading independently decided upon and funded by them, the Tribunal is satisfied that, having given Ms. Wu authority to operate their account as she saw fit and clearly being content for her to pay funds into the account which were in the event used to finance trading, they gave to her, if only by way of default, the ability to use the account for her own purposes. And clearly this is what she did.

134. On his own admission, Mr. Wu Mingsheng exercised little, if any oversight. He stated on a number of occasions during the course of his interview that he was not literate. When further asked if he received regular bank statements so that he could check activity in his securities account, he replied that the accounts had been sent to him but he had not read them.

135. In plain terms, therefore, Ms. Wu had been given free rein to trade in the account as she wished.

136. Both Mr. Wu Mingsheng and his wife, Ms. Jiang Li, also held securities accounts in their individual names with Bank of China. During the Relevant Period, a total of 13 China AU transactions were conducted through the husband's account and a total of 65 China AU transactions were conducted through the account of the wife.

137. Again – importantly – the evidence shows that Ms. Wu was permitted to trade as she wished in both accounts. It was conceded by both Mr. Wu Mingsheng and Ms. Jiang Li that, when it was more convenient to do so, Ms. Wu would be 'commissioned' to execute trades in both accounts. In short, Ms. Wu had the ability to trade in China AU shares through these accounts as well as the joint account held with Celestial Securities Limited and clearly did so.

138. By way of illustration, in the course of her interview with the China Securities Regulatory Commission on 20 December 2011, Ms. Jiang Li was played an audio recording of her broker at Bank of China receiving an order to trade in China AU shares through her personal account. Ms. Jiang Li confirmed that the person giving the trading instruction was not herself. Although she could not be sure that it was Ms. Wu, she spoke of no other woman having the authority to operate the account.

139. Again, the evidence shows that it was Ms. Wu who paid funds into both accounts.

140. On a consideration of all the relevant evidence, the Tribunal is satisfied that during the Relevant Period, when she wished, Ms. Wu was able to operate both accounts at Bank of China in order to trade in China AU shares and that she did so for her own purposes – as Mr. Westbrook put it, using (or abusing) the discretion that had been vested in her – rather than any disinterested purpose of benefitting Mr. Wu Mingsheng and his wife, Ms. Jiang Li.

Financing of the 12 accounts

141. Integral to Ms. Wu's control of the 12 securities trading accounts making up the Wu Group was her funding of those accounts.

142. Annexure D to this report is a table detailing 44 payments made by cheque and one payment made by cash transfer – a total of 45 payments – made between 3 December 2009 and 10 March 2010. All of these payments were made from two HSBC bank accounts held by Ms. Wu in her name to various accounts in the Wu Group.

143. The chain of evidence is not complete in respect of certain payments. They are the payments highlighted in yellow. The total payments reflected in the table amount to a sum of HK$12,462,000. Of that sum, the chain of evidence is complete in respect of payments totaling HK$7,932,000; it is not complete in respect of payments totaling HK$4,530,000.

144. In the judgment of the Tribunal, however, where the chain of evidence is not complete, there is nevertheless sufficient evidence to enable the compelling inference to be drawn that the payments were intended for and were received by the identified recipients. In this regard, the identity of the recipients

has been primarily inferred from the fact that in each case the amount reflected on the cheque has – on the date of the cheque itself – been deposited into that recipient's account. In addition, of course, there is the broader evidence that Ms. Wu was at the time actively trading in the accounts of those recipients.

B. The Chen Group of accounts

145. The Chen Group of accounts comprised just two accounts, both maintained at Get Nice Securities Limited. Mr. Chen himself maintained one securities account in his own name which had been opened on 1 September 2009; it comprised a cash account and a margin account. A total of 120 China AU transactions were conducted in the account during the Relevant Period. A person named Szeto Kit maintained the other securities account which had been opened on 15 December 2005. A total of 47 China AU transactions were conducted through this account during the Relevant Period.

Mr. Chen's account

146. Concerning the account in Mr. Chen's name, the evidence is clear that Mr. Chen himself controlled that account in the sense that he was ostensibly the person operating the account. Mr. Leung Chee Keung, the account manager at Get Nice Securities Limited, when interviewed by the SFC[28], said that he had assisted Mr. Chen to open the account and that it was Mr. Chen who would telephone him to place trading orders. According to the account manager, Mr. Chen only traded in China AU shares.

147. In the letter received by the SFC on 1 August 2016, written on behalf of Mr. Chen by Pontis Law, it was asserted that, for all practical purposes,

[28] The interview took place on 13 January 2011.

the account in Mr. Chen's name with Get Nice Securities Limited, was a trading vehicle for Ms. Samantha Keung, the CEO of China AU. In that letter, the following was said :

> "In respect of the securities account established with Get Nice Securities Limited, as Ms. KEUNG Wai Fun Samantha claimed in 2008 that it would be inconvenient for her to use her own funds to purchase the shares of Blu Spa Holdings Limited [China AU], she requested me to establish a securities account with Get Nice Securities Limited for Ms. KEUNG Wai Fun Samantha's use …"

He continued :

> "I was just a humble staff member and since this task was assigned to me for handling by the Chairwoman, Ms. KEUNG Wai Fun Samantha, I had no alternative but to act in accordance with her order."

As to trading in China AU shares during the Relevant Period, the following was said :

> "In addition, all the funds for trading China AU shares were provided by Ms. KEUNG Wai Fun Samantha and Mr. CHEUNG Tsun Hin Samson, son of Ms. KEUNG Wai Fun Samantha. Therefore, the trading in the shares of China AU allegedly conducted by me was actually not done by me."

148. In summary, therefore, it was asserted on behalf of Mr. Chen that, while he had opened the securities account and had operated it to trade in China AU shares, he had only done so as a cover for Ms. Samantha Keung who funded the account and who dictated the manner of the trading in China AU shares.

149. Clearly, in giving instructions to Pontis Law to write the letter on his behalf, Mr. Chen had been looking very much to protect his own interests, that is, to distance himself from any culpability. Caution must therefore be adopted when considering the assertions made in the letter. However, when the assertions are considered in the context of all relevant evidence, that evidence being set out later in the report, the Tribunal has concluded that the trading in the two accounts operated by Mr. Chen was at all material times operated under the overall direction of Ms. Samantha Keung.

Mr. Szeto Kit's account

150. Mr. Leung Chee Keung, the account manager, who worked with Mr. Chen at Get Nice Securities Limited, informed the SFC in his interview held on 13 January 2011 that he had a sister and that Mr. Szeto Kit was his sister's husband. He said that he was asked by Mr. Chen to find him an account that he could use to trade and, although he knew that it was a prohibited practice, he obtained his brother-in-law's permission to lend his account to Mr. Chen. He said that Mr. Chen confirmed in writing that he would be responsible for ensuring the viability of his brother-in-law's account. In the result, he said, Mr. Chen was able to use the account to trade in China AU shares and all the trading in those shares recorded in the account was carried out by him.

151. Mr. Szeto Kit himself confirmed that, although he had opened the account, he had never placed any funds into it and, when approached by Mr. Leung Chee Keung to 'lend' it to a man named Chen, he agreed.

152. The evidence of both Mr. Leung Chee Keung and Mr. Szeto Kit has documentary support in the form of a power of attorney dated 15 July 2008

issued by Get Nice Securities Limited and apparently signed by both Mr. Szeto Kit and Mr. Chen.

153. On the evidence, the Tribunal is satisfied therefore that during the Relevant Period Mr. Chen was able to exert control over the two accounts constituting the Chen Group and that he did exercise that control by trading extensively in China AU shares.

The financing of the two accounts

154. It was the SFC case that the two accounts in the Chen Group were financed by Ms. Samantha Keung (at the time the CEO and substantial shareholder of China AU) and her son, Mr. Samson Cheung (at the time the Chairman of China AU).

155. Annexure E to this report is a table detailing the transfer of funds from Ms. Samantha Keung and Mr. Samson Cheung to Get Nice Securities Limited for the credit of Mr. Chen and/or Mr. Szeto Kit, the transfers being made between 24 November 2009 and 16 March 2010. The table shows that Ms. Samantha Keung and Mr. Samson Cheung, between them, transferred a total sum of HK$3,549,983 to the Get Nice Securities Limited for the credit of Mr. Chen and Mr. Szeto Kit. The Tribunal is satisfied that the chain of evidence is complete in respect of transfers totalling HK$3,408,073, leaving a sum of just HK$141,910 in which the chain is not complete[29]. Even if this latter sum is discounted, it still shows that the overwhelming funding came from Mr. Samantha Keung and her son.

[29] There was also a sum of approximately HK$200,410 received into the accounts, the source of funding being unknown.

156. As it was, Ms. Samantha Keung did not dispute the fact that she had made payments to Mr. Chen, the payments being made to Get Nice Securities Limited. In her SFC interview of 19 May 2011, she said that, although she did not know whether Mr. Chen had a securities account at the brokerage house, she presumed that the transfers must have been made because Mr. Chen wished to deal in shares. As to why she had made transfers of "slightly over three million to four million", she said that in 2009 – probably in the beginning and middle of that year – Mr. Chen, who worked out of Taiwan and the Mainland and was, according to her, an important agent for China AU, had asked if he could deposit money into her bank account so that, when needed, she could issue cheques on his behalf. She had agreed. In respect of this unlikely arrangement, Ms. Samantha Keung said in her interview :

> "Well, he is indeed travelling to and fro the Mainland and Taiwan, these two places, you see. Well, it's because he's also my major client, well, he just asked me to do him a favour, saying 'er, how about me putting some money in your account, well, because I might need to issue some cheques and you just issue the cheques for me', like that."

157. In the course of the interview, Ms. Samantha Keung denied that she knew what shares were being purchased by Mr. Chen. She just acted in accordance with the instructions given to her by Mr. Chen, she said, because she did not wish to offend an important client, that is, an important agent of the company. When it was put to her that she had dealings with the account executive at Get Nice Securities Limited in respect of Mr. Chen's share dealings and also the dealings of Mr. Szeto Kit, she denied this had ever been the case.

158. As set out above, Ms. Samantha Keung's assertions were, of course, denied by Mr. Chen who, in the letter written on his behalf by Pontis Law, said

that it had been Ms. Samantha Keung who had asked him to open an account at Get Nice Securities as it would be more "convenient' this way for *her* to deal in shares in China AU. As a "humble staff member" – not an important independent agent – he said that he had had no alternative but to comply.

159. There was a further witness of relevance, namely, Mr. Leung Chee Keung, who testified before the Tribunal. Mr. Leung Chee Keung was the account executive at Get Nice Securities who processed the setting up of Mr. Chen's account and the 'lending' to him of Mr. Szeto Kit's account. During the course of his testimony, Mr. Leung Chee Keung was able to expand upon the matters set out in his original SFC interview. By way of summary, he said :

i. It had been Ms. Samantha Keung, an old colleague from their banking days, who had introduced Mr. Chen to Get Nice Securities Limited for the purpose of setting up a trading account and he (Mr. Leung Chee Keung) had been the one to process the necessary account opening documents.

ii. He had only agreed to let Mr. Chen operate the account of his brother-in-law, Mr. Szeto Kit, because of his old friendship with Ms. Samantha Keung and because she had agreed to guarantee any payments that may be required.

iii. If Mr. Chen could not be contacted, he would contact Ms. Samantha Keung direct concerning any payments due and she would attend to matters.

iv. The only shares traded in the accounts of Mr. Chen and Mr. Szeto Kit were shares in China AU.

v. When contacted for payment, Ms. Samantha Keung would be told specifically that China AU shares had been traded and given details of price and quantity.

160. In the judgment of the Tribunal, Mr. Leung Chee Keung had no reason to fabricate his evidence, certainly not in respect of such mundane matters as the fact that Ms. Samantha Keung had introduced Mr. Chen to his company, or that, if Mr. Chen could not be contacted, he would go direct to Ms. Samantha Keung to obtain payments due on the two accounts. The Tribunal is satisfied that in her SFC interview Ms. Samantha Keung had sought to distance herself from the truth.

161. In the course of his final submissions to the Tribunal, Mr. Westbrook submitted that, when the evidence of Mr. Leung Chee Keung and the assertions made on behalf of Mr. Chen in the Pontis Law letter are considered in the light of all the evidence and considered also in the light of the demonstrably untrue version of events put forward by Ms. Samantha Keung, the inference that she funded the two accounts in the Chen Group and that she was, for all practical purposes, the one who directed Mr. Chen in respect of the purchase and sale of China AU shares in those accounts became virtually irresistible. In the judgment of the Tribunal, that submission must be correct.

Was Ms. Samantha Keung also the person who ultimately funded the Wu Group?

162. While it has been shown that Ms. Wu was the one who *directly* ensured that the accounts in the Wu Group were kept in funds to enable the

trading in China AU shares to take place, the Tribunal is further satisfied on a consideration of all the evidence that it was Ms. Samantha Keung who ensured that Ms. Wu, her old friend, was herself sufficiently funded. Put in plain terms, the compelling inference to be drawn from the evidence is that Ms. Wu was for all practical purposes, in her funding and control of the accounts in the Wu Group, acting as an agent for Ms. Samantha Keung, the latter being the ultimate financier of the trading and the nature of that trading being pursuant to her ultimate direction.

163. With what appears to be the exception of just two payments, the exercise of keeping Ms. Wu in funds was conducted through Ms. Samantha Keung's personal bank account with HSBC. It was never disputed by Ms. Samantha Keung that she had made these payments.

164. As to the two payments, a sum of HK$78,000 was transferred from a Bank of China joint account of Ms. Samantha Keung and Ms. Ivy Chan on 25 November 2009 and a sum of HK$300,000 was transferred from a Bank of China account in the sole name of Ms. Ivy Chan on 17 December 2009.

165. As set out earlier in this report – see Chapter 4, paragraph 72 – Ms. Ivy Chan was at the time an executive director and Vice Chairman of China AU.

166. In respect of the transfer of HK$78,000 from the joint account held with Bank of China, during her SFC interview (held on 23 December 2010) Ms. Samantha Keung recognised the signature on the cheque as being her signature. As to why she had signed the cheque, she said that she could not remember but it would have been a loan to Ms. Wu. In removing funds from

the account, she said, she would have told Ms. Ivy Chan that she had made a loan to Ms. Wu.

167. In respect of the transfer of HK$300,000 from Ms. Ivy Chan's account with Bank of China, Ms. Samantha Keung, during her SFC interview, confirmed that that the cheque stub in the bank book showing the date and the name of the Payee : (Ms. Wu) was in her handwriting. She had therefore, on her own admission, played a role in making out the cheque.

168. When Ms. Ivy Chan gave evidence before the Tribunal, adopting the contents of her statement given to the SFC on 3 May 2011, she accepted that she had signed the cheque and written the amount. She said, however, that she had no recollection of giving any cheque to Ms. Wu. As she put it in her interview –

> "I really … don't have recollection that I have issued this to this woman. Really I don't know her."

169. In respect of both of these payments, therefore, the Tribunal is satisfied that Ms. Samantha Keung was, either alone or jointly with Ms. Ivy Chan, the person who made the payments.

170. As to the mechanics of the transfer of funds, the evidence showed that it was by way of interbank transfer, cheque or cash desposits, the cash deposits being made by Ms. Samantha Keung's secretary, Ms. Chan Yee To.

171. In her record of interview with the SFC (the interview taking place on 23 December 2010), Ms. Chan Yee To confirmed that, as Ms. Samantha Keung's secretary, she would take cash cheques issued by Ms. Samantha Keung,

cash those cheques and then deposit the cash into the account of Ms. Wu. She said that she remembered that on just one occasion Ms. Wu had been with her.

172. Why this convoluted way of making a simple transfer? It is important to recognise that Ms. Samantha Keung never denied transferring funds in excess of HK$10,000,000 to Ms. Wu but insisted that they simply constituted loans from one old friend to another. But when asked why, if the money transfers were simple loans, she would on occasions issue cash cheques, have those cheques cashed by her secretary and then get her secretary to pay the cash into Ms. Wu's account, she was unable to give an specific explanation. In her SFC interview held on19 May 2011, she could only say that Ms. Wu would call her and ask if she could deposit cash into her account and so that is what she would do. As to why Ms. Wu would want cash, she could only say : "Well, ah, Ms. Wu said that she's in dire need of it, so I got the cash for her."

173. As to the full amount that had been lent to Ms. Wu, Ms. Samantha Keung said that she did not have a record and could not remember exactly how much had been lent or indeed repaid. As it was submitted by Mr. Westbrook : it was inherently improbable that a person would extend personal loans, the total exceeding HK$10 million without a single record or document evidencing the amount of the loans and the amount of any repayments.

174. As to the fact that Ms. Wu used the loans always to settle amounts due on her trading accounts or to meet margin calls, and always in respect of trading in China AU shares, Ms. Samantha Keung answered simply that she knew nothing about that. Again, her evidence was improbable. If Ms. Wu was such a close friend, surely something would have been said as to why she needed such extensive loans, more especially when the loans were being used

for the sole purpose of trading in China AU shares, shares of the company of which Ms. Samantha Keung was CEO and substantial shareholder.

175. Annexure F to this report is a table which shows – with a complete chain of evidence – that, between 24 August 2009 and 25 February 2010, a sum of HK$11,628,000 was transferred to Ms. Wu. The evidence suggests that a further sum of HK$1,150,000 was transferred - making for a total sum transferred of HK$12,778,000 - but in respect of this latter sum of HK$1,150,000 the chain of evidence was not complete.

176. Two other pieces of evidence – connecting her to account holders in the Wu Group – support the SFC's case that Ms. Samantha Keung funded the Wu Group of accounts :

i. A cheque stub evidencing payment of a sum of HK$4,800,000 by Ms. Samantha Kung to Ms. Jiang Li was recovered by the SFC from Ms. Samantha Keung's home. During the course of her interview, prior to the matter of this cheque stub being raised, Ms. Samantha Keung had denied knowing Ms. Jiang Li or her husband, Mr. Wu Mingsheng.

ii. In addition to the cheque stub, two 'bought and sold' notes were recovered from Ms. Samantha Keung's home (both contained in a single envelope). The names of the transferors were given on the notes Ms. Wu Ching Chieh and Ms. Wu Ching Hung. As indicated earlier in this report – see paragraph 128 – the notes, which did not contain details of the transferees, constituted valuable security as 'bearer documents'. Again, Ms. Samantha Keung denied knowledge of the persons who had signed the notes and, as to why the notes should be in her own home, she could only give the

implausible explanation that perhaps some friends had come to her home and had left the envelope behind by mistake.

Evidence that Ms. Samantha Keung directed the trading in the two accounts

177. The direct evidence made available to the Tribunal, coming largely through brokers, was to the effect that it was Ms. Wu and Mr. Chen, either in person or over the telephone, who placed the specific orders to buy and sell China AU shares through the various accounts held either in their name's personally or in respect of which they had some form of authority to operate. There was no direct evidence of Ms. Samantha Keung herself placing orders to buy or sell or of giving any specific instruction to Ms. Wu or Mr. Chen to do so.

178. That said, the Tribunal has concluded that Ms. Samantha Keung must have played some form of directing role in the manner in which Ms. Wu and Mr. Chen bought and sold China AU shares through the various securities accounts, that role, at the very least, being one in which she marshalled the overall strategies of trade even if, on a day-to-day basis it was Ms. Wu and Mr. Chen who executed the details of the strategies. That conclusion, in the judgment of the Tribunal, has been plainly established as a matter of inference from the proved facts.

179. As to the proved facts, the following - while not exhaustive - dominate. Ms. Samantha Keung was the CEO and substantial shareholder of China AU and played a leading role in seeking to raise substantial sums of money for the company through the market. She was experienced in business and finance and at all material times was aware that the initial attempt to raise capital by way of a share placement had failed or, at its most optimistic, had had only very limited success. Despite this, China AU was proceeding with its

plans to acquire a property in the Mainland in order to set up a training institute, committing itself financially. It was particularly important therefore that further fund raising succeed. As a person experienced in financial matters, and working with Yardley Securities[30], it would highly implausible to think that she did not fully appreciate that potential investors in the issue of convertible bonds – the new scheme put forward by China AU – needed to be assured that there was liquidity in the market for China AU shares and that the price would be right. Against this background, Ms. Samantha Keung (ultimately) funded *all* the trading conducted by Ms. Wu and Mr. Chen. Ms. Samantha Keung's assertions that she was advancing funds without any knowledge of the fact that they were being used to trade in China AU shares is rejected as untrue. She knew that she was funding all the trading and that trading was solely in the shares of her own company (of which she was the majority shareholder). As to the nature of that trading, when viewed objectively, it was more in the interests of China AU than those buying and selling the shares. In this regard, both the Wu Group and the Chen Group, in the few days of the trading in the third phase aggressively sold China AU shares even though they would have seen the value of their remaining share portfolio decreased as would Ms. Samantha Keung.

180. Ms. Samantha Keung declined to play any part in the proceedings before the Tribunal, declining therefore the opportunity to put her own case. However, in her interview with the SFC, her position – in broad terms – appeared to be that, yes, she did advance large sums of money to both Ms. Wu and Mr. Chen, paying those moneys into various accounts, but this was only done, first, by way of a series of loans to her old friend, Ms. Wu, and, second,

[30] As Mr. Westbrook, counsel for the SFC, said in his final submissions, Mr. Leung Tak Shing of Yardley Securities testified that he was informed that China AU was in urgent need of capital. In respect of the convertible bond issue, the conversion price of HK$0.19 was predicated on a number of factors including, first, the share price in the month leading up to 5 March and the liquidity of the market for China AU shares leading up to 5 March. Mr. Leung indicated in his testimony that, without sufficient liquidity, Yardley may have declined to involve itself in the fund raising exercise at any price.

by way of channelling funds entrusted to her by Mr. Chen, an important client, in accordance with Mr. Chen's directions. Even though she was at the time the CEO of China AU and seemingly its major shareholder, she had no idea that Ms. Wu was using those funds for the sole purpose of trading in China AU shares and no idea that Mr. Chen was doing exactly the same thing.

181. As already indicated above, the Tribunal has had no difficulty in rejecting, that version of events. It should also be said that, on a consideration of all the evidence, the assertion by Ms. Samantha Keung that she had no idea that her 'loans' to Ms. Wu totalling more than HK$10 million and her channelling of funds to Mr. Chen were being used solely to trade in China AU shares defies the probabilities –

i. Ms. Wu was herself very experienced in the business of bullion trading; she must therefore have had an understanding of financial markets. She was, on the evidence, an old friend of Ms. Samantha Keung who was herself at the time the CEO and substantial shareholder of China AU. Yet, if Ms. Samantha Keung is to be believed, Ms. Wu borrowed millions of dollars from her over a number of months to trade solely in China AU shares without telling her why she was borrowing money or asking for any form of advice as to the wisdom of her trading. Here were two mature persons, both experienced in matters of finance[31], and yet there was no discussion concerning the purpose of the constant loans : no questions asked by Ms. Samantha Keung and, even more implausible, no advice sought by Ms. Wu even though she was

[31] The 2009 annual report of China AU recorded that Ms. Samantha Keung had extensive experience in corporate management in the field of banking and finance, having (among other things) served as vice president of Chase Manhattan Bank from 1984 to 1990.

committing millions of dollars to trading in shares of her friend's company.

ii. The loan payments that were advanced by Ms. Samantha Keung to Ms. Wu were, in most instances, made to brokerage houses, indeed on occasions the brokerage houses would contact her direct to ask for payment. This must have been a clear indication that Ms. Wu was trading extensively on borrowed money. And yet, according to Ms. Samantha Keung, she was told nothing of the nature of the trading and made no enquiries herself.

iii. If Ms. Samantha Keung is to be believed, not only did she fail to seek any information as to the purpose of the constant loans being advanced to Ms. Wu, she failed, it appears, to keep any form of comprehensive record of the loans, indeed, any form of record at all that sets out a schedule of loans given : no record of what was leant and no record of what, if anything, was repaid. That again, having regard to the amounts involved and the number of payments advanced, is entirely implausible.

iv. If Ms. Wu had at all times been trading in China AU shares for her own benefit only and not in any way as part of a broader strategy that needed to be hidden, why did she not trade through her own accounts only? Why was it necessary for her to extend that trading through five more accounts in the names of third parties? The same may be said of Mr. Chen's trading. If he was trading in China AU shares solely for his own benefit, why was it necessary for him to extend that trading to a second account, using what he must have understood to be questionable procedures in order to do

so? On the probabilities, the use of so many accounts – so many of them being in the name of third parties – could only have had one purpose and that was to disguise the limited number of people conducting the trading in China AU shares or, put another way, to make it appear that the trading was more general when it was, in fact, effectively the trading of just one person : the CEO of China AU itself.

182. As the Tribunal has already found, it is satisfied on the evidence that Mr. Chen's two accounts were set up by him at the behest of Ms. Samantha Keung so that – through him – she could trade in China AU shares. As it was put in the Pontis Law letter :

> "In respect of the securities account established with Get Nice Securities Limited, as Ms. KEUNG Wai Fun Samantha claimed … that it would be inconvenient for her to use her own funds to purchase shares of [China AU], she requested me to establish a securities account … for [her] use …"

183. The Tribunal is further satisfied on the evidence that Ms. Wu both used existing accounts and set up new ones at the behest of her old friend, Ms. Samantha Keung, so that in the same way – through Ms. Wu – Ms. Samantha Keung could trade in China AU shares.

184. As to the operation of the two groups of securities accounts, nothing was placed before the Tribunal to suggest that they were, in respect of their ultimate control by Ms. Samantha Keung, operated as entirely distinct units independent of each other. To the contrary, the broad patterns of trading – solely in the shares of China AU – through the three phases identified by the SFC very much indicated co-ordinated trading.

Conclusion

185. For the reasons given, the Tribunal has had no difficulty in coming to the following determinations, namely –

i. That at or about the same period in time, Ms. Wu and Mr. Chen, who, on the evidence were strangers to each other, set up securities accounts in their own names and the names of others and traded in very substantial amounts of a single share only : China AU.

ii. That, although strangers to each other, Ms. Wu and Mr. Chen were at the time close associates of Ms. Samantha Keung, the CEO of China AU.

iii. That, it was Ms. Samantha Keung who ultimately financed all (or, insofar as the evidence may not be complete in this regard, almost all) of the trading in China AU shares carried out by Ms. Wu and Mr. Chen.

iv. That at the time, having effectively failed in an attempt to raise funds in the market by way of the placement of shares, China AU was seeking to raise further funds by way of the placement of convertible bonds. Control on the share price of China AU shares and liquidity in the market in respect of those shares was therefore of importance.

v. That it was Ms. Samantha Keung who no doubt devised but certainly directed, that is, marshalled, the overall scheme of trading

conducted through the Wu Group and the Chen Group of accounts and that Ms. Wu and Mr. Chen, even if not known to each other, knowingly and actively assisted Ms. Samantha Keung in her scheme of false trading.

What remains to be determined is whether, on the evidence, it has been demonstrated that the trading, or any part of it, constituted false trading.

CHAPTER SIX

DID THE TRADING IN CHINA AU SHARES CONSTITUTE 'FALSE TRADING'?

186. The nature and extent of the trading in China AU shares over the Relevant Period by the Wu Group and the Chen Group, and both groups jointly, was the subject of analysis by the expert witness, Mr. Tobias Benjamin Hekster, his analysis being based on data supplied to him. As the Tribunal has earlier noted, Mr. Hekster's 34-page report was an impressive document and the Tribunal is satisfied that it can be given due weight.

The evidence of 'wash trades'

187. In considering whether the trading, or a material part of it, constituted 'false trading', the most direct (and forceful) evidence is to be found in Mr. Hekster's opinion that, in the course of his analysis of the mechanics of that trading, he identified a large number of 'wash trades'.

188. In respect of the trading *between* the 12 accounts in the WU Group, Mr. Hekster identified 28 trades involving more than 8 million China AU shares. The largest number of wash trades took place in the period between 23 December 2009 and 2 March 2010 (the second phase). The following table is illustrative –

i) The Wu Group alone

Period	Total Volume	Wash Trades	Percentage
25 August – 27 November	7,340,000	0	0.0%
30 November – 22 December	22,660,000	360,000	1.6%
23 December – 2 March	33,010,000	6,980,000	21.1%
3 March – 5 March	18,090,000	600,000	3.3%
9 March – 21 April	11,015,000	150,000	1.40%

189. Mr. Hekster did not identify any trading between the two accounts in the much smaller Chen Group that, in his opinion, constituted wash trades.

190. However, on the basis that both the Wu Group and the Chen Group were controlled by the three specified persons – Ms. Samantha Keung, Ms. Wu and Mr. Chen – Mr. Hekster identified a total of 92 wash trades involving some 20.8 million China AU shares. Again, the largest number of wash trades took place in the second phase. The following table is illustrative –

ii) The Wu Group and the Chen Group together

Period	Total Volume	Wash Trades	Percentage
25 August – 27 November	7,880,000	100,000	1.3%
30 November – 22 December	30,140,000	2,540,000	8.4%
23 December – 2 March	59,850,000	17,210,000	28.8%
3 March – 5 March	18,710,000	800,000	4.3%
9 March – 21 April	12,650,000	150,000	1.2%

191. In order to illustrate the nature of the wash trading that he had identified, Mr. Hekster took, as a sample, trading that took place during the second phase between the account of Ms. Yip Man, Ms. Wu's daughter (in the Wu Group), and Mr. Chen himself (in the Chen Group), this trading taking place between 8 January and 3 February 2010 as follows –

Date	Nature of the trading
8 January 2010	Mr. Chen purchases 580,000 shares from Ms. Yip Man at HKD 0.71 • 20,000 shares at 11:06:30 • 280,000 shares at 11:06:53 • 280,000 shares at 11:08:34
12 January 2010	Ms. Yip Man purchases 220,000 shares from Mr. Chen at HKD 0.73 • 100,000 shares at 15:21:43 • 120,000 shares at 15:27:31
13 January 2010	Mr. Chen purchases 400,000 shares from Ms. Yip Man at HKD 0.735 • 100,000 shares at 10:39:40 • 100,000 shares at 10:40:48 • 100,000 shares at 11:00:44 • 100,000 shares at 11:02:21
15 January 2010	Ms. Yip Man purchases 400,000 shares from Mr. Chen at HKD 0.71 • 400,000 shares at 10:56:26
25 January 2010	Ms. Yip Man purchases 500,000 shares from Mr. Chen at HKD 0.62 • 500,000 shares at 10:43:16
26 January 2010	Mr. Chen purchases 500,000 shares from Ms. Yip Man at HKD 0.63 • 250,000 shares at 11:47:31 • 250,000 shares at 11:47:38

Date	Nature of the trading
28 January 2010	Ms. Yip Man purchases 600,000 shares from Mr. Chen at HKD 0.66 • 300,000 shares at 10:09:58 • 300,000 shares at 10:11:14
29 January 2010	Mr. Chen purchases 600,000 shares from Ms. Yip Man at HKD 0.65 • 200,000 shares at 10:40:37 • 200,000 shares at 10:41:56 • 200,000 shares at 10:43:20
2 February 2010	Ms. Yip Man purchases 600,000 shares from Mr. Chen at HKD 0.63 • 600,000 shares at 14:54:26
3 February 2010	Mr. Chen purchases 600,000 shares from Ms. Yip Man at HKD 0.64 • 300,000 shares at 10:00:13 • 300,000 shares at 10:01:35

192. In respect of the sample period of trading set out in the table directly above, Mr. Hekster had a number of observations which, in the opinion of the Tribunal, are enlightening, more especially his finding that a number of the trades would have required coordination between the counter-parties, evidence of pre-arrangement. His observations are set out below as follows[32] :

> "e) Trading does not result in overall changes in position for the individuals involved as purchases are followed by sales on the subsequent day (and vice versa).
>
> f) Furthermore, either trades are inserted in one large block or in a sequence of trades in quick succession. As no other market participants are involved in the executions, this implies that both orders have to be entered

[32] Mr. Hekster supported his observations with a detailed annexure. This annexure provided an analysis based on Hong Kong Stock Exchange trading data (stock activity reports) as well as 'order insertion and execution' data provided by the executing brokers.

at a new price level : given the time-price priority, should one of the sides of these trades be joining an existing bid or offer in the market, the existing bid or offer would be executed first. In that case, the traded size of both participants in the 'wash trade' would not be equal.

g) Not only does such manner of insertion and execution of orders require coordination between the two traders involved, it also differs markedly from the vast majority of trades members of the team execute against other market participants (i.e. non wash trades).

h) Based on these characteristics, I am of the opinion that the trades would require coordination between counterparties ('pre-arranged'). Therefore, as the trades do not change the economic exposure of the participating traders, I do not see any economic justification for the trades. Furthermore, these trades appear to be inserted in a manner that makes it unlikely for other market participants to engage in the transacted volume. Should other market participants have engaged in the transacted volume, economic change in position would have resulted from the trades.

i) Concluding, in my opinion the trades did not have an economic justification and had the effect of increasing the traded volume of shares in China AU without resulting in a change of economic exposure for the members of the Groups.

j) However, as the trades did occur within the prevailing bid-ask spread of the shares of China AU I do not see an effect of the trades on the price for dealing in and/or market of the shares."

193. The Tribunal is satisfied that Mr. Hekster's identification of the wash trades was correct and that the table set out above (headed 'The Wu Group and the Chen Group together') accurately sets out the extent of those trades in the Relevant Period, that is, between 25 August 2009 and 21 April 2010. In

short, the Tribunal is satisfied that, under Ms. Samantha Keung's overall marshalling, the three specified persons undertook extensive wash trading.

194. At this juncture it should be said that, although the Tribunal is satisfied that the overall direction of trading in all the accounts was at all material times in the hands of Ms. Samantha Keung, it is also satisfied that Ms. Wu and Mr. Chen knowingly and actively worked with her in executing a scheme of buying and selling China AU shares that they must have known was extensive, tactical and artificial. The 'aggressive' selling in the third phase by both of them is a sure illustration of the fact that they were working as part of a team, following a tactical approach that did not necessarily coincide with what was economically advantageous. Neither Ms. Wu nor Mr. Chen were neophytes in matters of business. Ms. Wu had extensive experience in trading bullion. Mr. Chen was a member of senior management in China AU itself or held a senior position in working with or for China AU. Both had close relationships with Ms. Samantha Keung, both knew that all their trading was funded by her.

195. In respect of the culpability of the three specified persons for the wash trades found (on an objective analysis of all the data) to have taken place, section 274(5) of the Ordinance holds that wash trades are deemed to be no more than a particular form of false trading; that is, a particular way of creating a false or misleading appearance of active trading in shares or creating a false or misleading appearance with respect to the market for those shares or the price for dealing in them. Any finding of culpability is therefore culpability for false trading.

196. As stated earlier in this report, despite the existence of the deeming provisions, a defence to allegations of false trading is provided, the burden

being on a specified person to establish that there was no purpose, that is, no intention, on his or her part to create a false or misleading appearance.

197. In *Fu Kor Kuen Patrick and Another v HKSAR,* Gleeson NPJ observed :

> "The legislative approach is that, if such a transaction is entered into on the market, it is prohibited unless the parties can show that they had no purpose of creating a false or misleading market appearance.[33]"

198. In these proceedings, however, no defence to this issue, that is, the true purpose of the extensive trading in both the Wu Group and the Chen Group, was put forward by any of the specified parties.

199. The Tribunal is satisfied that, on the basis of the primary facts that it has found proved, no innocent purpose for the trading in either group, or both, is shown.

200. In the circumstances, the Tribunal is satisfied that, by reason of the identified wash trading, the three specified persons are culpable of false trading[34].

Looking more broadly to the trading

201. The findings already made are of themselves sufficient to determine that market misconduct in the form of false trading did take place

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[33] The full citation appears earlier in this report, paragraph 27.

[34] The Tribunal accepts the possibility that certain of the trades identified by Mr. Hekster as 'wash trades' may technically be better described as 'matched trades'. It is, however, if shown, a difference of no consequence: both being deemed to be prohibited forms of market misconduct.

during the Relevant Period and to identify the three specified persons as having engaged in that form of market misconduct. In the judgment of the Tribunal, however, a broader consideration of all the evidence reveals a broader culpability, one that does not rest solely on findings that the three specified persons participated knowingly or recklessly in wash trades.

202. In this regard, the Tribunal refers again to Mr. Hekster's identification of three phases of trading during which both the Wu Group and the Chen Group adopted the same (or very similar) patterns of trading. Of course, consistent patterns of trading are common in the market. They are invariably determined by unsurprising market influences: announcements made by companies, commentary in the press, rumours and the like. In his analysis, however, Mr. Hekster said that he had been unable to find any such factors that would "validate" the patterns of trading that were adopted during the three phases. Put simply, he could find no economic rationale.

203. In respect of the trading conducted by the Wu Group, Mr. Hekster said :

> "From the perspective of applying a trading strategy, I cannot see an economic rationale for the trades conducted by the members of the [Wu Group]. Over the period investigated, I have not been able to find any news or rumour that would have explained the purchasing or unwinding of shares by members of [the group]".

204. In respect of the trading conducted by the Chen Group, Mr. Hekster said :

> "From a trading perspective, I cannot see an economic rationale for the trades conducted by members of the [Chen Group]."

205. In respect of the trading conducted by the two groups, seen together, Mr. Hekster remained of the view that there was no trading strategy that would validate the patterns of trade. It was only within the initial failed offering of shares and the ultimate successful offering of convertible bonds that a relevant context could be found to explain the patterns of trading.

206. Although the nature and extent of the three phases have been broadly described earlier in this report, some detail needs to be repeated in order to give context to Mr. Hekster's opinion evidence. Mr. Hekster's description of the three phases may be summarised as follows –

a) *A first phase (between 30 November and 22 December 2009)* during which both the Wu Group and the Chen Group actively accumulated in excess of 23 million China AU shares, this corresponding with 24% of overall traded volume in China AU shares[35]. This period of time coincided with the aftermath of the weak market response to the share placement exercise, a time when active consideration was being given to raising further funds in the market. It was Mr. Hekster's opinion that this accumulation of shares would have had the effect of supporting the share price and thereby supporting China AU's continued attempts to raise capital.

b) *A second phase (between 23 December 2009 and 2 March 2010)* in which a significant volume of shares was both bought and sold by the two groups. It was Mr. Hekster's opinion that this active trading would have had the effect of creating the image of ample

[35] The Wu Group, as stated earlier in this report, acquired the great majority of the shares in this Phase One : over 21 million.

liquidity in the shares of China AU which would also have supported the continued attempts to raise capital in the market, more especially if a placing of convertible bonds was one of the options being considered. In this regard, the importance of "liquidity" was emphasised by Mr. Leung Tak Shing of Yardley Securities Limited who dealt with Ms. Samantha Keung (and other senior members of China AU) in arranging the placing of convertible bonds, Yardley being appointed in the first days of March 2010[36].

c) *A third phase (spanning just a few days between 3 March and 5 March 2010)* in which there was – on the part of both groups – aggressive selling at the end of each trading day, the effect being to generate a lower closing price for China AU shares. In this regard, Mr. Hekster commented in his report :

> "The aggressive sales (over the last minutes of the trading day) on 3, 4 and 5 March 2010 had the effect of lowering the exchange closing price for the shares of China AU. The reduced closing price would allow for a lower conversion price of the convertible bonds issued by China AU and made the conversion price look more interesting compared to, for, example, a longer dated-average of closing prices."

207. Mr. Hekster's analysis revealed the following concerning the trading that took place on 3, 4 and 5 March 2010 –

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[36] As Mr. Leung explained to the Tribunal in the course of his testimony, no interest was payable on the convertible bonds. In the result, the only way of making a profit was to convert the bonds into shares and then sell the shares. But to do that an investor had to be able to sell the shares on the market, the profit being generated by the fact that the convertible bonds had been purchased at such a heavy discount. However, if there was no buying and selling of the shares on the market, it would not be a welcome proposition.

a) On 3 March 2010, the two groups jointly sold 5 million shares, this being 45.5% of the daily volume. In the last 13 minutes of trading, the accounts of Ms. Wu Hsiu Jung and Ms. Yip Man (both in the Wu Group) sold a total of 2,910,000 shares "with aggressively placed orders", pushing down the share price almost 9% from HK$0.40 to HK$0.365.

b) On 4 March 2010, the two groups jointly sold 2,405,000 shares, this being 25.4% of the daily volume. Again, there was very late selling[37], the share price declining by almost 3%.

c) On 5 March 2010, the two groups sold of 11.3 million shares, this being 47.8% of the daily volume. Again, in the last ten minutes there was aggressive selling, again through the accounts of Mr. Wu Mingsheng and Ms. Jiang Li. As Mr. Hekster described it :

> "Over this ten minute period, the aggressive sell orders have pushed the share price down from the level of HK$0.37 to HK$0.345 (so down 9.3%)."

208. Returning to the definition of 'false trading' in the Ordinance, the language employed is general in its ambit : false trading takes place when a person 'does anything' or 'causes anything to be done' with the intention that, or being reckless as to whether, it has, or is likely to have, the effect of creating a false or misleading appearance as to active trading in securities or as to market for securities or price for dealing in those securities.

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[37] In his analysis, Mr. Hekster showed that in the last five minutes of trading, three sell orders were entered by Mr. Wu Mingsheng and Ms. Jiang Li (in the Wu Group) – 375,000 shares at HK$0.34, 200,000 at HK$0.335 and 100,000 at HK$0.335 – with the final sell order being entered at 15.58 by Mr. Chen : 395,000 shares at HK$0.335, this final order being immediately executed against bids resting in the order book.

209. The conduct itself is not constrained. The legislation recognises that the conduct may cover a broad range of activities. Those activities may be permissible or impermissible. It is the state of mind of the persons carrying out the activities – their intention – that determines whether false trading has taken place or not.

210. As the person who marshalled the scheme of trading, attention must first be given to Ms. Samantha Keung's state of mind. In looking to her state of mind, it must be borne in mind that she did not give evidence before the Tribunal, indeed she did not avail herself of the opportunity of putting her case to the Tribunal in any way. It appears that she chose to distance herself entirely from the enquiry. In respect of the assertions that she made when she was interviewed by the SFC, these have been rejected by the Tribunal as being untrue. Therefore, her state of mind can only be inferred on the basis of primary facts proved, any such inference to be a compelling one.

211. That said, the Tribunal is satisfied that it has been plainly established as a matter of inference that Ms. Samantha Keung's intention was in essence simple enough. It was to trade in the shares of her company in a manner that best ensured the success of her company's attempts to raise urgently needed capital. As Mr. Hekster's analysis revealed, considered over the span of the Relevant Period, there was little or no economic advantage to be gained from the trading. Again, the aggressive selling in the short span of the third phase is illustrative. Indeed, trading through Ms. Wu's accounts ended in a net loss as did trading through Mr. Chen's accounts. But the much needed capital (by way of the placement of convertible bonds) was successfully raised. The trading may not have had an economic rationale but it was not irrational. Again, as Mr. Hekster's analysis has shown, there was a broad purpose which, whether successful or not, was rationally connected to the capital raising

exercise. The Tribunal is satisfied that, through the patterns of trading, Ms. Samantha Keung's intentions are made clear. If an appearance of liquidity was required for a period of time then shares would be bought and sold to give that appearance (active trading); if support for the share price was required (the rising price of dealing) then trading would be adjusted accordingly and, most tellingly, if the share price needed to be driven down, even aggressively driven down, then attempts would be made to do that too (the falling price of dealing).

212. As to Ms. Samantha Keung's state of mind, it is to be remembered that she purposefully distanced herself from the trading and that she sought to keep secret her funding of that trading.

213. The Tribunal has had no difficulty in determining that Ms. Samantha Keung must have known that it was a virtual certainty that her entirely tactical trading would have the effect of creating a false or misleading appearance of active trading in the shares of China AU; that it would have the effect also of creating a false or misleading appearance of the market for the shares and their price. As such, her intention has been proved.

214. Concerning Ms. Wu and Mr. Chen, the Tribunal is satisfied that they too must have known, in the manner in which they were directed to trade, that it was a virtual certainty that they were assisting in creating a false or misleading appearance of active trading in the shares and that the manner of their trading will also have the effect of creating a false or misleading appearance of the market for the shares and their price. As such, their intention too has been proved.

215. Should the Tribunal be in error in finding actual intention on the part of Ms. Wu and Mr. Chen, it is sure that both, in knowingly and actively

assisting Ms. Samantha Keung, were reckless as to whether their extensive, tactical and artificial trading constituted false trading.

216. In summary, in considering the broader evidence, and not relying simply on proof of the wash trades, the Tribunal has further determined that all three specified persons were culpable of false trading.

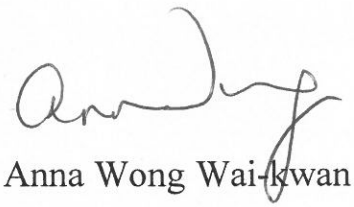
CHAPTER SEVEN

A SUMMARY OF THE TRIBUNAL'S FINDINGS

217. For the reasons given in the body of this report, the Tribunal has determined that market misconduct within the meaning of section 274 ('false trading') of Part XIII of the Ordinance has taken place, this conduct arising out of dealings in the shares of China AU Group Holdings Limited.

218. The Tribunal has determined that each of the three persons specified in the SFC Notice dated 17 June 2016; namely, Ms. Wu Hsiu Jung, Mr. Chen Kuo-chen and Ms. Keung Wai Fun Samantha, engaged in such market misconduct. In this regard, the Tribunal has determined that Ms. Keung Wai Fun Samantha was the person who had overall direction of the scheme giving rise to the market misconduct and that the other two specified persons actively and knowingly assisted her in that culpable enterprise.

Mr. Michael John Hartmann
(Chairman)



Ms. Anna Wong Wai-kwan
(Member)

Mr. George Ng Siu-ping
(Member)

Dated 3 August 2018