

Supplemental statement of Cheng Kai Sum

**on the matter of profit gained or loss avoided, if any,
by persons engaged in market misconduct arising out of their dealings in
the shares of Yue Da Mining Holdings Limited
on and between 3 December 2007 and 12 September 2008**

I, Cheng Kai Sum, [REDACTED]

[REDACTED] wish to say as follows:-

1. I was the Tribunal's expert witness in the substantive hearing of the Market Misconduct Tribunal proceedings in relation to the securities of Yue Da Mining Holdings Limited ("YDM") in 2013.
2. On 9 May 2014, the Tribunal released Part I of its report (the "**Report**") which determines that market misconduct has taken place out of the dealings in YDM shares. The Tribunal determined that ,
 - (a) market misconduct by way of false trading and stock market manipulation was perpetrated by Mr Li Libin and YDM, with the assistance or connivance of Mr Qian Jinbiao, dealt in YDM shares (net purchases) through three nominee accounts namely Zhang Hongyan, Su Linian and Zhang Qing with HSBC; and
 - (b) market misconduct by way of false trading and stock market manipulation was perpetrated by Mr Li Libin and Yue Da Group (HK), with the assistance or connivance of Mr Qian Jinbiao, dealt in YDM shares (net purchases) for the account of Yue Da Group (HK).
3. The following table summarises details of the relevant market misconduct transactions identified in the Report,

Account Name	Purchase Period	Net Purchase Quantity	Net Purchase Consideration
Zhang Hongyan	3 Dec 2007 – 13 Feb 2008	708,000	HK\$5,576,976.00
Su Linian	2 Jan 2008 – 22 Apr 2008	994,000	HK\$4,992,631.06
Zhang Qing	15 Apr 2008 – 12 Sep 2008	1,606,000	HK\$5,143,277.11
Yue Da Group (HK)	27 Dec 2007 – 26 Feb 2008	3,325,000	HK\$18,379,522.26

4. The Tribunal noted that the pattern of trading in YDM shares was one of relentless acquisition, dominating the market more often than not in so doing. There appears to have been no attempt to buy and sell in order to make short-term profits or minimise losses.

5. In the judgement of the Tribunal, Mr Li's primary purpose for dealing through the "nominee" accounts was to drive up or at least maintain the price of YDM shares in order to facilitate YDM's fund raising exercise to repay large debts. It was done primarily to benefit YDM when the company was attempting to transform itself into a major player in the Mainland mining sector through acquisitions.

6. The Tribunal also found as an experienced businessman Mr Li Libin must have appreciated that it was virtually certain that the sizeable acquisitions by Yue Da Group (HK) and the "nominee" accounts taken together would create a false or misleading appearance as to price and market activity than was in fact the case. Despite such a risk, Mr Li Libin did not choose to abandon the acquisition of YDM shares through the "nominee" accounts or delay the commencement of the acquisition exercise on behalf of Yue Da Group (HK). The Tribunal therefore formed the view that Mr Li's primary purpose in acquiring YDM shares between 27 December 2007 and 26 February 2008 was not just to increase the company's shareholding in YDM but rather to help boost YDM's share price that could induce investors to enter the market buying YDM shares or would, at the least, lull them into believing that shares already purchased could safely be left.

Instructions

7. I have been asked by the Presenting Officer, Mr Jonathan Kwan, to give my opinion in respect of any profit gained or loss avoided as a result of the market misconduct found by the Tribunal.

8. I am given to understand that in past proceedings before the Market Misconduct Tribunal, there had been no finding of any profit gained or loss avoided in cases where there were findings of false trading, price rigging and stock market manipulation based on the facts of those cases.

9. I have also been advised that there is no evidence before the Tribunal that Mr Li Libin and Mr Qian Jinbao has made any personal gain in perpetuating the market misconduct.

10. I wish to state that :

- (a) I have read the Code of Conduct set out in Appendix D of the Rules of the High Court and agree to be bound by it;
- (b) I understand my duty to the Court; and
- (c) I have complied with and will continue to comply with that duty.

Profit gained or loss avoided in the present case

11. In an insider dealing case (one form of market misconduct), the market misconduct transactions identified are primarily motivated by an intention to make a profit or to avoid a loss. Therefore profit gained or loss avoided calculation has always been against the market misconduct transactions identified. Profit gained can be realized gain or notional gain while loss avoided has to be notional.

12. In the present case, the market misconduct transactions via the nominee accounts were not motivated for making a trading profit or avoiding a trading loss but for an ulterior motive of driving up YDM's share price to facilitate YDM's fund raising exercise. Therefore, the profit gained or loss avoided calculation will have to

go beyond the market misconduct transactions themselves into assessing if any benefit could be made by the perpetrators of the market misconduct.

13. For the market misconduct transactions via Yue Da Group (HK), the Tribunal has found Yue Da Group (HK)'s purchase would likely have created a false or misleading effect on the level of activities and price of YDM shares at the relevant time. However no specific motive has been identified in the Report. In the circumstances, the calculation of profit gained or loss avoided will be limited to the market misconduct transactions identified.

No profit gained or loss avoided for the market misconduct transactions themselves

14. The market misconduct transactions in this case involved the acquisition of YDM shares. There is however no information to show these market misconduct purchases have been disposed of. Consequently no realized gain could have been established for the market misconduct transactions.

15. Given the dominant nature of the purchases and the generally weak market tone prevailing then, there is no reasonable basis for any investor to believe the sizeable quantity of YDM shares acquired could be sold at a higher price shortly after their purchases. I therefore believe no notional profit could be established for the market misconduct purchases in this case.

16. This opinion of no profit gained or loss avoided is applicable to the market misconduct purchases for the nominee accounts and for Yue Da Group (HK).

Profit gained or loss avoided in relation to the placement of shares by YDM cannot be quantified objectively

17. A share placement is an off-exchange¹ transaction between the issuer (where new shares are issued) / vendor (where existing shares are placed) and the placees at an agreed placement price. If the placement price is set at a higher level, the issuer / vendor will benefit as it can raise more money with the issuance of the same quantity of shares. In that respect, if the market misconduct purchases had enabled YDM to issue new shares² and/or Yue Da Group (HK) to sell its existing shares³ at a higher placement price, it can then be argued that YDM / Yue Da Group (HK) had gained profit as a result of the market misconduct purchases. The amount of profit gained will be the increase in the placement price, if any, due to the market misconduct purchases multiplied by the quantity of shares placed in the placement. This provides a theoretical framework for computing profit gained by YDM as a result of the market misconduct purchases by Mr Li Libin through the nominee accounts.

18. Obviously, the usefulness of the above theoretical framework depends on whether the increase in the placement price can be ascertained precisely and objectively.

19. The placement price fixing mechanism is dynamic and complex. It has to strike a balance between raising the most money for the issuer / vendor (with a higher placement price) and making it most attractive to potential placees (with a lower placement price). However it is very difficult to gauge with any degree of accuracy how investors' appetite might change as prevailing market price changes. In actual practice, the final placement price is often fixed by the placing agent through a trial and error process commonly referred to as book building⁴. It is almost impossible to estimate objectively what the placement price might be upon changes in the relevant market price post event.

¹ A transaction which is not transacted via the auto-matching mechanism of the Stock Exchange of Hong Kong

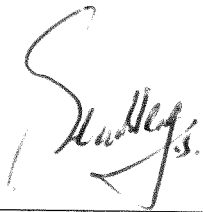
² In the case of the first placement announced on 7 December 2007 and the third placement announced on 19 March 2008

³ The second placement announced on 29 January 2008

⁴ During the book building process, the placing agent will ascertain demand (quantity of shares) from potential placees at various price levels. The demand will be aggregated at various price levels. The highest price level that will enable all shares be placed will be the placement price.

20. Transpiring from the above, it is my opinion that while in theory YDM / Yue Da Group (HK) might have gained profit as a result of the market misconduct purchases committed by Mr Li Libin through the nominee accounts, the amount of profit gained, if any, cannot be quantified objectively.

21. This statement, consisting of 6 pages each signed by me, has been read by me. It is true to the best of my knowledge and belief.



CHENG Kai-sum

Date : 27/6/2014