

Court orders insider dealer Du Jun to pay \$23.9 million to investors

12 Dec 2013

The Honourable Mr Justice Ng in the Court of First Instance today ordered Mr Du Jun, a former managing director of Morgan Stanley Asia Limited, to pay \$23.9 million to 297 investors as a result of his insider dealing in shares of CITIC Resources Holdings Limited (CITIC Resources) between 15 February and 30 April 2007.

These restoration orders – the first made by the court in a case of insider dealing – complete the civil proceedings commenced by the Securities and Futures Commission (SFC) against Du in July 2007 under section 213 of the Securities and Futures Ordinance (SFO) (Note 1).

The civil proceedings were delayed pending the completion of parallel criminal proceedings against Du which ended when Du withdrew an application seeking to appeal his convictions and sentence for insider dealing in the Court of Final Appeal (Note 2).

The SFC's Executive Director of Enforcement, Mr Mark Steward, said: "The effect of today's orders will be to restore investors who transacted with Du to their pre-transaction positions, resolving issues first raised by the SFC in July 2007. The 297 investors had no means to detect they were dealing with Du, who was engaged in illegal insider dealing. If they had known, they would not have sold their shares to him and certainly not at the same price."

"Above all, this case sends a clear message that the consequences of wrongdoing, including the costs of restoration or remediation, should be met by wrongdoers and not be borne by innocent investors or the market," he added.

Under the restoration orders made by the court today, the SFC will notify CITIC Resources, Morgan Stanley Asia Limited and all 297 investors of the orders and unless there is any valid objection, Du will be required to pay the investors a total amount of \$23,964,440 which will be administered by a court appointed administrator, Mr John Lees of JLA Asia.

The payment to be made by Du under the restoration orders represents the difference between the actual price at which the affected investors sold the CITIC Resources shares to Du and the price at which the investors could have sold the shares had the price sensitive information concerning CITIC Resources been made known to the market at the time (as assessed by expert evidence) (Note 3).

Du will also pay the SFC's legal costs and the fees of the court appointed administrators.

End

Notes:

1. The SFC commenced these proceedings under section 213 of the SFO on 27 July 2007 and obtained interim orders freezing the profits of Du's insider dealing. Please see the SFC's press releases dated [18 December 2007](#) and [5 October 2012](#).
2. On 18 September 2009, Du was jailed for seven years and fined \$23,324,117 after being convicted on ten counts of insider dealing following a trial in the District Court. Du appealed both his convictions and the sentence to the Court of Appeal.

On 20 September 2012, the Court of Appeal upheld all insider dealing convictions against Du but reduced his term of imprisonment from seven years to six years and lowered the fine to \$1.688 million. In reducing the fine, the Court of Appeal held that the effect of the fine was to deprive Du's trading counterparties of the amounts which might be available to them in the proceedings under section 213 of the SFO and thus to defeat the "laudable objectives" of those proceedings.

Please see the SFC's press releases dated [10 September 2009](#), [18 September 2009](#), [20 September 2012](#) and [2 January 2013](#).

3. Given the counterparties would not have sold the shares if they knew their sell orders might be matched with an illegal insider, they are entitled to be restored to their pre-transaction positions under section

213(2)(b) of the SFO. As Du has already sold the CITIC Resources shares, he is unable to return them to his trading counterparties. However, Du is able to restore the trading counterparties to their pre-transaction positions through monetary payment equivalent to the difference between the value of the CITIC Resources shares on the day of the transaction, taking into account all relevant information, including Du's inside information, and the price of the transactions. The total amount of the payment to the affected investors is \$23,964,440.

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