

Market Misconduct Tribunal sanctions Greencool's former chairman and senior executives for disclosure of false or misleading information

26 Jun 2017

The Market Misconduct Tribunal (MMT) today ordered the former chairman and chief executive officer of Greencool Technology Holdings Limited (Greencool), Mr Gu Chujun, to disgorge \$481,969,785 of profit from his market misconduct (Note 1).

This is the largest disgorgement order amount ever imposed by the MMT to date.

On 29 December 2016, the MMT found Gu, three former directors, namely Mr Zhang Xihan, Mr Hu Xiaohui, Mr Xu Wanping, and former financial controller Mr Henry Mok Wing Kai, had been involved in disclosing false or misleading information inducing transactions under the Securities and Futures Ordinance by grossly overstating Greencool's sales, profit, trade receivables, bank deposits and the company's net asset value for the financial years ended 31 December 2000 to 2004 by approximately RMB487 million, RMB653 million, RMB982 million, RMB1,062 million and RMB904 million respectively which represents 43 per cent to 80 per cent of Greencool's total net assets in these years (Notes 2 & 3).

The MMT also imposed:

- disqualification orders against Gu, Zhang, Hu and Xu from being or continuing to be a director or taking part in the management of a listed corporation, or any company in which a listed company directly or indirectly has a shareholding, for five years from 1 October 2017;
- a disqualification order against Mok from being a director of a listed company for three years from 1 October 2017;
- a cold shoulder order against Gu for five years, to prevent him from directly or indirectly, dealing in any securities, futures contracts or leveraged foreign exchange contracts, or any interest in these products from 1 October 2017.
- cease and desist orders against Gu, Zhang, Hu and Xu, to prohibit them from engaging in any market misconduct. Future acts of market misconduct by them will be a criminal offence.

The MMT further ordered:

- Gu, Zhang, Hu and Xu each pay \$5,130,000 for the SFC's legal and investigation costs and the costs of the MMT proceedings, while Mok was ordered to pay \$1,080,000; and
- the MMT's findings against Mok be referred to the Hong Kong Institute of Certified Public Accountants for disciplinary proceedings.

The SFC would like to thank the enforcement agencies in Mainland China that have provided continuous assistance in this matter.

End

Notes:

1. Gu was ordered to disgorge \$481,969,785 to the Government, which is the profit that he made from his market misconduct, together with interest.
2. For further details of the MMT proceedings, please see the SFC's press releases dated [23 June 2014](#), [18 July 2014](#), [8 August 2014](#), [30 October 2014](#), [14 November 2014](#) and [30 December 2016](#).
3. The MMT's reports are available on its website (www.mmt.gov.hk)

The report of the Market Misconduct Tribunal into dealings
in the shares of Greencool Technology Holdings Limited
between 2001 and 2005

**A report pursuant to section 252(3)(c) of
the Securities and Futures Ordinance, Cap. 571**

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Attestation to the Report

CHAPTER 9

ORDERS

403. On 29 December 2016, the Tribunal published Part One of its Report. On 2 February 2017, the Tribunal issued a direction that all consequential matters arising out of its findings should be determined at a hearing to be held on 29 April 2017.

Service of the Direction

404. Ms Margaret Man (the eighth Specified Person) and Mr Henry Mok (the ninth Specified Person), both of whom reside in Hong Kong, were served with the Tribunal's direction and were represented and/or appeared at the hearing on 29 April 2017.

405. Mr Gu (the first Specified Person) was not represented at the hearing but clearly had notice of it. In a letter dated 18 April 2017, he requested the Tribunal to adjourn the hearing on an indefinite basis. His written application was based on the contention that a false case had been manufactured against him by certain persons of influence in the Mainland. He believed these persons would shortly be brought to justice and thereafter, he suggested, evidence exonerating him would emerge. The Tribunal was not prepared to adjourn the hearing. There was no evidence other than Mr Gu's bare assertion (which had been made much earlier in the proceedings) that a false case had been manufactured against him. There was no basis to doubt the integrity of the findings made in Part One of the report.

406. Concerning Mr Zhang (the second Specified Person) and Mr Hu (the third Specified Person), both of whom had been found culpable of market misconduct, notice was served upon them by way of email (to two addresses) and by ordinary post at their last known place of business, a company in Beijing called Super Genius where documents had previously been accepted on their behalf. No evidence emerged that the email addresses were no longer in existence. Nor were the letters sent by ordinary post returned undelivered.

407. Concerning Mr Xu (the fifth Specified Person), who had also been found culpable of market misconduct, notice was served by ordinary post at his three last known addresses in the Mainland. None of these letters were returned undelivered.

408. Concerning Mr Chen (the sixth Specified Person), who had not been found culpable of market misconduct, he was served by ordinary post and acknowledged service by means of an email dated 11 April 2017.

409. Concerning Mr Fan (the seventh Specified Person), who had not been found culpable, he was served by ordinary post at his last known address in the Mainland. The letter was not returned.

410. Concerning Mr Liu (the fourth Specified Person), the tribunal had determined that he had not been given a reasonable opportunity to be heard, there being no proof of service of documents upon him, and he was not, therefore, identified as a person having engaged in market misconduct. In order to seek to bring this to his attention, notice was served in two newspapers circulating in the Mainland, the Securities Times and Ta Kung Pao. The notices were published on 9 February and 16 February 2017.

411. It should be said that the same published notices were addressed also to the first, second, third, fifth, sixth and seventh Specified Persons.

412. In light of the evidence, the Tribunal is satisfied that all of the Specified Persons, whether found culpable of market misconduct or not, were given a reasonable opportunity of being heard in respect of the Part Two hearing which took place on 29 April 2017.

Application for a Disgorgement Order

413. Section 257(1)(d) of the Ordinance empowers the Tribunal to order that a person found culpable of market misconduct must pay to the Government an amount not exceeding the amount of any profit gained or loss avoided by that person. Such an order was sought against Mr Gu only.

414. As to the amount of any profit gained or loss avoided, the SFC relied on the expert report of Mr John Lees dated 27 March 2017. Mr Lees calculated that disposals made by Mr Gu in 2001 (in the placement of 80 million Greencool shares and the subsequent disposal of 15 million of those shares) gave to Mr Gu a profit of HK\$208,905,000. With accrued interest (calculated at the judgment rate) of HK\$273,064,785, this made for a total profit of HK\$481,969,785. The SFC sought a disgorgement order against Mr Gu in this sum. On a consideration of all the evidence, the Tribunal is satisfied that it would be proper to make such an order and that order is made.

Application for Disqualification Orders

415. Section 257(1)(a) of the Ordinance empowers the Tribunal to order that a person found culpable of market misconduct shall not, without the leave of the Court of First Instance, be or continue to be a director of a listed corporation or in any way, whether directly or indirectly, be concerned or take part in the management of a listed corporation for a period not exceeding five years.

416. The SFC sought orders of disqualification against Mr Gu (the first Specified Person), Mr Zhang (the second Specified Person), Mr Hu (the third Specified Person) and Mr Xu (the fifth Specified Person) on the basis that each of them - each being executive directors of Greencool - had been found not only to have known of the fraudulent activities taking place within the Greencool Group but played an active role in furthering those activities.

417. As Part One of the Report makes clear, over a period of several years a carefully calculated fraud was perpetrated in the Greencool Group; it was a fraud spread across a number of subsidiaries of the Group, a fraud which required dedicated teams for its continued manufacture of false documentation and which required the corruption of senior bank officials in the Mainland. In the opinion of the Tribunal, it would not be an exaggeration to say that it was a fraud of such magnitude that it effectively maintained the charade that Greencool was a vibrant, profitable commercial concern over several years.

418. In the result, in seeking to protect the integrity of the market, the Tribunal has had no difficulty in coming to the conclusion that each of those specified persons - the first, second, third and fifth Specified Persons - should each be prohibited from acting as a director or taking part in the management,

directly or indirectly, of any listed corporation (or subsidiary) for the maximum period of five years.

419. It should be said that an order of disqualification was also sought in respect of Mr Henry Mok. Mr Mok appeared at the hearing on 29 April 2017, acting in person and made representations in respect of a number of matters. All of those matters, including the application for a disqualification order, are dealt with below.

Application for a ‘Cold Shoulder’ Order

420. Section 257(1)(b) of the Ordinance empowers the Tribunal to make an order that a person found culpable of market misconduct shall not, without the leave of the Court of First Instance, in Hong Kong, directly or indirectly, in any way, deal in any securities, futures contracts or similar for a period not exceeding five years.

421. A ‘cold shoulder’ order, as it is called, is also protective in nature. It is not to be imposed simply as a form of penalty. It is to be imposed when the Tribunal is satisfied that the person made the subject of the order poses a threat to the integrity of Hong Kong’s financial markets.

422. In the present case, the SFC seeks such an order in respect of Mr Gu only. The Tribunal is satisfied that Mr Gu, as Chairman of Greencool, must have been the major, or at least one of the major, driving forces behind the fraud. The purpose of that fraud was to artificially and dishonestly maintain the price of Greencool shares. In his placement and disposal of shares, Mr Gu was prepared to undermine the integrity of the market. As such, he constituted a very real

threat to the integrity of the market and, in the opinion of the Tribunal, there must be a real risk that he still constitutes such a threat. Having regard to the nature of his involvement in the fraud and the level of threat that it presented, the Tribunal is of the view that it is entirely appropriate that a ‘cold shoulder’ order be imposed on Mr Gu for the maximum period of five years.

Application for ‘Cease and Desist’ Orders

423. Section 257(1)(c) of the Ordinance empowers the Tribunal to order that a person found culpable of market misconduct shall not again perpetrate any conduct which constitutes market misconduct. ‘Cease and desist’ orders, as they are commonly called, do not shut out the person who is the subject of the order from the Hong Kong financial markets. Instead, on pain of criminal punishment, they seek to ensure that all future dealings by that person avoid the market misconduct detailed in the order. ‘Cease and desist’ orders may be made without a time limit.

424. In the present case, the SFC seeks such orders against Mr Gu (the first Specified Person), Mr Zhang (the second Specified Person), Mr Hu (the third Specified Person) and Mr Xu (the fifth Specified Person). For the reasons set out fully in Part One of the Report, the Tribunal is satisfied that each of these persons played an active role in the fraud and, having regard to the calculated dishonesty of their actions, must continue to pose a threat to the market. In the result, the Tribunal is satisfied that ‘cease and desist’ orders should be made against those four persons.

425. As to the scope of the orders, the Tribunal is of the view that the misconduct of the specified persons was so egregious, so calculated and all-

encompassing that in this particular case, the scope should be broad. Accordingly, the Tribunal will order that they shall not again perpetrate any conduct which constitutes market misconduct under section 270 of the Ordinance (insider dealing), section 274 (false trading), section 275 (price rigging), section 276 (disclosure of information about prohibited transactions), section 277 (disclosure of false or misleading information inducing transactions) and section 278 (stock market manipulation).

The Application for Various Orders against Mr Henry Mok

426. The SFC sought two protective orders pursuant to the provisions of section 257(1) of the Ordinance against Mr Henry Mok. They consisted, first, of a disqualification order under section 257(1)(a) of the Ordinance and, second, under section 257(1)(g) of the Ordinance, an order to refer the findings of the Tribunal in respect of Mr Henry Mok to the Hong Kong Institute of Certified Public Accountants with a recommendation that it take disciplinary action against him. The SFC also sought costs orders against him.

427. In respect of the application for a disqualification order, Mr Henry Mok submitted that such orders are normally imposed on persons who have acted in a calculated and knowing manner. In his case, he said, he was found not to be an active and calculating participant in the fraud in any way; to the contrary, in certain respects he too was a victim of the fraud perpetrated by “his superiors” in the Group. The culpability that had been found against him was that of negligence, of a failure to act when the circumstances required that he should do so.

428. While the Tribunal accepts that Mr Henry Mok played no knowing role in the fraud, nevertheless, he held a position of high seniority as the financial controller and company secretary, it being his obligation to protect, promote and act in the best interests of the Greencool Group as a whole. He failed to do so. He was prepared to take a very diminished role, one that effectively kept him away from any real possibility of discovering the fraud. By his passivity, he was prepared to undermine his professional obligations. As the Tribunal noted in Part One of the Report (paragraph 390):

“This is not to suggest that Mr Henry Mok knew of any fraudulent activities within any of the subsidiaries. This has never been part of the SFC case. But it does mean that he was prepared to enter into an arrangement of compromise, one that, on any objective assessment, not only reduced his ability to fulfil his own duties but potentially compromised the financial integrity of the Group.”

429. This was the basis of his culpability but, having regard to his professional status and the duties that flowed from it, it was a culpability of very real significance. It also called into question his fitness – even though he was not a director of Greencool - to take on the decision-making role of a director of a listed company.

430. The Tribunal is aware that Mr Henry Mok has worked in listed companies for much of his career, that is where his expertise lies. It does not wish to prevent him from earning his living by disqualifying him from playing any role in the management of a listed company. It is firmly of the view, however, that an order disqualifying him from taking on the role of a director of a listed company must be imposed. His past conduct has shown that, until he has a full understanding of his own professional obligations, he simply lacks the

strength of character and/or understanding of a director's duties to take on the more onerous duties of a director. Accordingly, the Tribunal is satisfied that he should be disqualified pursuant to section 257(1)(a) of the Ordinance from being or becoming a director of a listed company for a period of three years.

431. The second order sought by the SFC was one in terms of which the Tribunal's findings in respect of Mr Henry Mok be referred to the Hong Kong Institute of Certified Public Accountants with a recommendation that it take disciplinary action against him. During the course of the hearing, Mr Henry Mok said that he had no objection to this order being made. In this regard, he said the following:

“Actually, I think the HKICPA has the professional knowledge about what a financial controller should do in a listed company, so I think there will be justice and I believe in justice in the Hong Kong legal system. So I have no objection.”

432. The Tribunal is satisfied that an order should be made referring its findings in respect of Mr Henry Mok. Increasingly in this globalised, cross-border world, there must be cases in which a hostile body of directors seeks to diminish the professional responsibilities of a senior financial officer, the implied threat being ‘look only where we tell you to look if you wish to keep your position’. Whether compliance with such a threat amounts to unprofessional conduct is not a matter for the Tribunal but, in the opinion of the Tribunal, it is a matter that, potentially at least, could undermine the integrity of the profession and should be considered by the appropriate body.

Application for Costs Orders

433. Section 257(1) of the Ordinance gives the discretionary power to the Tribunal to make orders as to costs in respect of persons identified as having engaged in market misconduct. In terms of the section, costs orders falling into three categories have been sought:

- (i) Pursuant to subsection (e), an identified person may be ordered to pay to the Government such sum as the Tribunal considers appropriate for the costs and expenses reasonably incurred by the Government in relation to, or incidental to, the proceedings. These, it appears, are essentially the Tribunal's own costs. In this regard, having considered the detailed schedule drawn up by its staff, the Tribunal is satisfied that a sum of HK\$2 million is appropriate to reflect the overall costs and expenses reasonably incurred.
- (ii) Pursuant to subsection (f)(i), an identified person may be ordered to pay to the SFC such sum as the Tribunal considers appropriate for the costs and expenses reasonably incurred by the SFC in relation to, or incidental to, the proceedings. In this regard, having considered the detailed schedule presented by the SFC, the Tribunal is satisfied that a sum of HK\$10,700,000 is appropriate to reflect the overall costs and expenses reasonably incurred.
- (iii) Pursuant to subsection (f)(ii), an identified person may be ordered to pay to the SFC, such sum as the Tribunal considers appropriate for the costs and expenses reasonably incurred by the SFC arising out of the investigation into the person's conduct prior to the institution of

proceedings. In this regard, having considered the detailed schedule presented by the SFC, the Tribunal is satisfied that a sum of HK\$8,900,000 is appropriate to reflect the overall costs and expenses reasonably incurred.

434. The full costs that are sought amount to a figure of HK\$21,600,000, a figure that reflects the length and complexity of the SFC investigation, that investigation leading to lengthy and complex proceedings before the Tribunal itself. On behalf of the SFC, it was submitted that, in respect of each of the three categories of costs, Mr Gu (the first Specified Person), Mr Zhang (the second Specified Person), Mr Hu (the third Specified Person), Mr Xu (the fifth Specified Person) and Mr Henry Mok (the ninth Specified Person) should each be ordered to pay 20% of those costs.

435. While the Tribunal is satisfied that costs orders should be made against each of the five Specified Persons, it is firmly of the view that to order Mr Henry Mok to pay 20% of all the costs, a sum of HK\$4,320,000, would visit an injustice upon him. In this regard, the Tribunal has taken into account the following matters.

436. As with courts of the classic kind, in determining orders for costs the Tribunal is vested with a wide discretion, not only as to whether an order for costs should be made but, when several persons are found to be liable, as to the apportionment of costs between those persons. Although the discretion in both respects is wide, it is well settled that it is a judicial discretion and must be exercised according to fixed principles; primarily, according to rules of reason and justice and not according to private opinion. It is not a discretion to be exercised on the basis of simple benevolence.

437. In the present case, the Tribunal found that Mr Gu, Mr Zhang, Mr Hu and Mr Xu, all executive directors, not only knew of the fraud taking place within the Group, but each in their own way, played an important role in managing the successful continuance of that fraud. For the SFC to unravel the edifice of dishonesty built by them required extensive and prolonged cross-border investigations, investigations that they called upon their own heads. Whatever the hierarchy of seniority within that small group, in the opinion of the Tribunal, bearing in mind the extent of the fraud and its prolonged nature, it cannot change the fact that their culpability was an equally shared culpability.

438. By contrast, Mr Henry Mok was not a director. He was in no way part of that small group; indeed, he was purposefully excluded. It was never part of the SFC case that Mr Henry Mok knew of any fraudulent activities within any of the subsidiaries of the Group. His culpability was of a different order entirely. It was a culpability based on his preparedness to enter into an arrangement of compromise that, as it turned out, reduced his ability to fulfil his professional duties and thereby, when viewed objectively, potentially compromised the financial integrity of the Group.

439. In such circumstances, the Tribunal is satisfied that, while Mr Henry Mok should not escape responsibility for payment of a proportion of the costs, it should be a far smaller proportion than that of the four executive directors who were at the heart of the fraud.

440. While awards of costs in these matters are not to be seen as a punishment, when viewing the overall severity of the consequential orders affecting Mr Henry Mok, the hurt that a costs order may cause cannot be entirely ignored.

441. It was not an easy task for the Tribunal deciding upon the proportion of costs that should be met by Mr Henry Mok. In the final analysis, however, looking to all matters including the size of the costs, it was determined that Mr Henry Mok should be ordered to pay 5% of each category of costs.

442. It was further determined that Mr Gu, Mr Zhang, Mr Hu and Mr Xu should each be ordered to pay 23.75% of each category of costs.

Ms Margaret Man's Application for Costs

443. Ms Margaret Man (the eighth Specified Person) was found not culpable of market misconduct. Pursuant to the provisions of section 260(1)(b) of the Ordinance, she sought an order for her costs.

444. The SFC objected. It did so on two bases, first, on the basis that the provisions of section 260(4) of the Ordinance applied in the present case, barring her from being awarded her costs and, second, that in any event the Tribunal should, in the light of all relevant matters, exercise its discretion against an award of costs.

445. Looking first to the provisions of section 260(4) of the Ordinance, they contain certain exceptions to the Tribunal's power to award costs to a specified person who has been found not culpable of market misconduct. Costs may not be granted to a person whose conduct, the Tribunal considers, has caused, whether wholly or in part, the investigation or whose conduct, the Tribunal considers, has caused, whether wholly in part, the institution of the proceedings. In short, costs may not be awarded if the Tribunal is satisfied that, even though cleared of

culpability, the specified person brought suspicion upon himself. What must be considered, therefore, is the conduct of the person seeking an order for costs.

446. Similar provisions exist in Hong Kong criminal law. In *Hui Yui Sang v HKSAR* (2006) 9 HKCFAR 308, Chan PJ, in giving the judgment of the Court of Final Appeal, said that in criminal matters, as a general rule, the court should normally award costs to an acquitted defendant unless there are positive reasons to deprive him of such costs. One of the positive reasons would be that the defendant has brought suspicion upon himself. In determining that issue, Chan PJ commented:

“It is not disputed that in exercising his discretion, the judge must consider the conduct of the appellant generally and that the most relevant conduct must be his conduct during the investigation and at the trial, including how he responded upon enquiry, the answers he gave when confronted with the accusations, the consistency of those answers with his subsequent defence, the strength of the case against him and the circumstances under which he came to be acquitted.”

447. Although matters before the Tribunal are civil in nature, it is satisfied that the approach laid down in *Hui Yui Sang* is the proper approach to be adopted when considering objections to the award of costs under section 260(4)(b) and (c) of the Ordinance.

448. On behalf of the SFC, Mr Duncan SC said that, although Ms Margaret Man had been interviewed on more than one occasion by the SFC in the early stages of its investigation, a good many matters relevant to the issue of whether she had been reckless or negligent in her capacity as an Independent Non-

Executive Director only emerged after the commencement of the Tribunal's enquiry.

449. By way of example, Mr Duncan said that, in respect of negative media reports concerning Greencool that arose when Ms Margaret Man was a Non-Executive Director - reports that would have caused some considerable alarm - she only informed the SFC in her interviews of the fact that she discussed the matter with the Chairman of the Greencool Audit Committee, Mr Fan, and with the Chairman of the Group itself, Mr Gu. She recalled that she had also requested an independent enquiry into the effectiveness of the refrigerants marketed by Greencool, that issue being at the core of the negative media reports. It was only after the commencement of the Tribunal's enquiry, said Mr Duncan, that Ms Margaret Man recalled that she had additionally taken a number of other important steps. Had she informed the SFC of these alleged additional steps when she had been interviewed (or indeed thereafter by way of assisting the SFC), said Mr Duncan, the SFC would have had the opportunity at least of assessing the case against her in full context.¹ It was, however, denied that opportunity.

450. Mr Duncan expanded on his submissions by saying that the fact that Ms Margaret Man had not been named as a person under investigation during the course of the SFC investigation was neither here nor there. Persons required by the SFC to produce records or documents which are likely to contain information

¹ Matters which Ms Margaret Man did not mention when interviewed by the SFC but which arose during the course of the enquiry before the Tribunal included the following: that she had discussed the negative media reports and the impact of those reports on Greencool with a leading analyst and with a financier; second, that she had discussed the matter with certain clients of Greencool (e.g Mission Hills) and received positive responses; third, that she discovered that five major clients of Greencool had participated in a press conference in Beijing in which they had confirmed that they were satisfied with the products that they had purchased from the Group; fourth, that she had made enquiries with Ping An Insurance regarding the insurance placed by Greencool with Ping An to cover customer claims and had been told that no claims had been received, that itself being a firm indication that customers were generally satisfied with the quality of product they had purchased from Greencool.

relevant to its investigations may subsequently be suspected of being complicit in the misconduct under investigation. In the present case, said Mr Duncan, it was the nature of Ms Margaret Man's answers to the SFC that prompted the institution of proceedings against her.

451. In response to these submissions, Mr Laurence Li, on behalf of Ms Margaret Man, placed considerable reliance on the accepted fact that, when the SFC originally interviewed Ms Margaret Man, doing so on two occasions, she was not at that time under any suspicion. She was there to assist the SFC as to the investigation generally and not, for example, in respect only of what steps were taken by her in reaction to the negative media reports. She was not, therefore, being examined as to the nature and extent of steps taken by her in particular in her capacity as a Non-Executive Director.

452. Putting matters into context, Mr Li said that the SFC investigation had commenced in 2006, taking seven years to complete. The SFC spoke with Ms Margaret Man in a telephone interview in October 2006, the record of that interview being only some nine pages in length. It was only five years later, in February 2012 that the SFC interviewed her again. This interview was longer but still took less than three hours. On neither occasion did the SFC investigator treat Ms Margaret Man as a person under investigation. No allegations were made against her. Nor was any sort of case put to her. As to the negative media reports, Mr Li emphasised that, while the SFC placed considerable emphasis on these reports in the course of the enquiry, neither of those media reports had been shown to Ms Margaret Man during her two interviews.

453. In such circumstances, it was argued, it was entirely unsurprising that Ms Margaret Man - in two interviews separated by several years - did not think it

necessary to concentrate solely on protecting her own interests by seeking to recall from her memory specific details of her own actions and how those actions were evidence of her own professional conduct: conduct that, at that stage, appears not to have been in question. At that stage, Ms Margaret Man was seeking to assist the SFC investigations generally and, understandably, would not have been seeking simply to protect her own reputation.

454. In order to assist the Tribunal in determining whether Ms Margaret Man did bring suspicion upon herself, Mr Duncan set out a detailed table comparing what Ms Margaret Man had said to the SFC during the investigation and what she put before the Tribunal during the subsequent enquiry. It was of considerable assistance to the Tribunal.

455. While the comparison table revealed perhaps some questionable shifts in emphasis and while undoubtably matters were raised during the course of the enquiry before the Tribunal which had not been raised earlier in the course of the SFC investigation, when these matters are considered in context, the Tribunal is satisfied that they do not demonstrate that in some culpable manner Ms Margaret Man had brought suspicion upon herself in the manner alleged. In this regard, the following background matters must be taken into consideration. First, in respect of the negative media articles, these came into being in late 2001, some five years before Ms Margaret Man's first SFC interview and a decade or so before her second interview. Second, Ms Margaret Man had not been informed during either interview that she was a person under investigation. Nor, in the opinion of the Tribunal, had the questioning manifestly taken on a form which suggested that her own conduct was under critical review. In such circumstances, in the judgment of the Tribunal, it is understandable that she should not at the time of her two interviews have dredged her memory to try and recall every event from

several years earlier which demonstrated her own particular professionalism, - to repeat, a professionalism which did not appear at that time to be in any serious doubt. As Mr Li said that during the course of his submissions, at no time during the interviews did the SFC question the extent of the actions taken by Ms Margaret Man, there was no suggestion that perhaps she had not done sufficient thereby inviting Ms Margaret Man to consider in detail what actions she had in fact taken. To employ the words used by Mr Li: when she gave her two interviews (separated by several years) Ms Margaret Man had no duty to anticipate all possible cases against her.²

456. In such circumstances, in the opinion of the Tribunal, it was entirely understandable that, when her own culpability was put in issue, and when she testified as to that culpability, the matters that Ms Margaret Man raised, when compared with the matters raised in the course of her interviews, showed a good number of additions and differences of emphasis. The Tribunal also took into account as an important factor that Ms Margaret Man was being asked to remember matters that had taken place more than a decade earlier. In such circumstances, there were bound to be gaps in the memory, vacillation as to the true nature of otherwise long-forgotten conversations and the like.

457. The Tribunal should also make clear that, whatever its comments concerning Ms Margaret Man's credibility - a matter to which the Tribunal will turn in a moment - it did not come to the determination that she was not culpable of market misconduct on some 'technical' basis. As Part One of the Report

² It should also be borne in mind that the SFC, when it presented its opening submissions in the enquiry, placed reliance on an expert report that set out what she should have done at the relevant time. That report, however, was dated March 2014, a long-time after the two SFC interviews. Ms Margaret Man was never asked to answer the assertions set out in the expert report in any later interview during the SFC investigation: there was no later interview. In this regard, it should also be borne in mind that the expert report itself was ruled inadmissible by the Tribunal.

makes clear, the Tribunal came to its determination on a consideration of substantive issues of fact.

458. In its findings, the Tribunal commented that Ms Margaret Man had attempted assiduously to distance herself from any accusation of recklessness or negligence in the discharge of her duties. Clearly, she was seeking over eagerly to defend her reputation and that raised question marks as to her own sense of objectivity. It does not follow, however, that the Tribunal disbelieved the substance of her evidence. To the contrary, it found the substance of her evidence to be persuasive.

459. On a consideration of all relevant matters that were debated before the Tribunal during the costs hearing, it is satisfied that there is no basis for denying Ms Margaret Man her entitlement to costs.

Application for the Registration of the Tribunal's Orders Pursuant to Section 264(1)

460. The Tribunal is satisfied that its orders should be registered by the Court of First Instance so that they become for all purposes orders of that court.

Summary of the Orders Made

461. In respect of Mr Gu (the first Specified Person):

- (i) pursuant to section 257(1)(a) of the Ordinance, he shall not, without the leave of the Court of First Instance, be or continue to be a director, or take part, directly or indirectly, in the management of a listed company

or any company in which a listed company, directly or indirectly, has a shareholding, for a period of five years calculated from 1 October 2017;

- (ii) pursuant to section 257(1)(d) of the Ordinance, he shall pay to the Government the amount of HK\$481,969,785, this being the profit gained by him, together with interest thereon;
- (iii) pursuant to section 257(1)(b) of the Ordinance, he shall not, without the leave of the Court of First Instance, in Hong Kong, directly or indirectly, in any way deal in any securities, futures contract or leveraged foreign exchange contract, or any interest therein, for a period of five years calculated from 1 October 2017; and
- (iv) pursuant to section 257(1)(c) of the Ordinance, he shall not again perpetrate any conduct which constitutes misconduct under section 270 of the Ordinance (insider dealing), section 274 (false trading), section 275 (price rigging), section 276 (disclosure of information about prohibited transactions), section 277 (disclosure of false or misleading information inducing transactions), and section 278 (stock market manipulation) of the Ordinance.
- (v) pursuant to section 257(1)(e), section 257(1)(f)(i) and section 257(1)(f)(ii) he shall pay 23.75% of each category of costs, this being assessed at an overall figure of \$5,130,000.

462. In respect of Mr Zhang (the Second Specified Person):

- (i) pursuant to section 257(1)(a) of the Ordinance, he shall not, without the leave of the Court of First Instance, be or continue to be a director, or take part, directly or indirectly, in the management of a listed company, or any company in which a listed company, directly or indirectly, has a shareholding, for a period of five years calculated from 1 October 2017;
- (ii) pursuant to section 257(1)(c) of the Ordinance, he shall not again perpetrate any conduct which constitute misconduct under section 270 of the Ordinance (insider dealing), section 274 (false trading), section 275 (price rigging), section 276 (disclosure of information about prohibited transactions), section 277 (disclosure of false or misleading information in juicing transactions, and section 278 (stock market manipulation); and
- (iii) pursuant to section 257(1)(e), section 257(1)(f)(i) and section 257(1)(f)(ii) he shall pay 23.75% of each category of costs, this being assessed at \$5,130,000.

463. In respect of Mr Hu (the third Specified Person):

- (i) pursuant to section 257(1)(a) of the Ordinance, he shall not, without the leave of the Court of First Instance, be or continue to be a director, or take part, directly or indirectly, in the management of a listed company, or any company in which a listed company, directly or indirectly, has a shareholding, for a period of five years calculated from 1 October 2017;
- (ii) pursuant to section 257(1)(c) of the Ordinance, he shall not again perpetrate any conduct which constitute misconduct under section 270 of the Ordinance (insider dealing), section 274 (false trading), section 275

(price rigging), section 276 (disclosure of information about prohibited transactions), section 277 (disclosure of false or misleading information in juicing transactions, and section 278 (stock market manipulation); and

- (iii) pursuant to section 257(1)(e), section 257(1)(f)(i) and section 257(1)(f)(ii) he shall pay 23.75% of each category of costs, this being assessed at \$5,130,000.

464. In respect of Mr Xu (the fourth Specified Person):

- (i) pursuant to section 257(1)(a) of the Ordinance, he shall not, without the leave of the Court of First Instance, be or continue to be a director, or take part, directly or indirectly, in the management of a listed company, or any company in which a listed company, directly or indirectly, has a shareholding, for a period of five years calculated from 1 October 2017;
- (ii) pursuant to section 257(1)(c) of the Ordinance, he shall not again perpetrate any conduct which constitute misconduct under section 270 of the Ordinance (insider dealing), section 274 (false trading), section 275 (price rigging), section 276 (disclosure of information about prohibited transactions), section 277 (disclosure of false or misleading information in juicing transactions, and section 278 (stock market manipulation); and
- (iii) pursuant to section 257(1)(e), section 257(1)(f)(i) and section 257(1)(f)(ii) he shall pay 23.75% of each category of costs, this being assessed at \$5,130,000.

465. In respect of Mr Henry Mok (the ninth Specified Person):

- (i) pursuant to section 257(1)(a) of the Ordinance, he shall not, without the leave of the Court of First Instance, be or continue to be a director in the management of a listed company, or any company in which a listed company, directly or indirectly, has a shareholding, for a period of three years calculated from 1 October 2017;
- (ii) pursuant to 257(1)(g) of the Ordinance, that the Hong Kong Institute of Certified Public Accountants be informed of the findings of the Tribunal. Concerning Mr Henry Mok and be recommended to take disciplinary action against him; and
- (iii) pursuant to section 257(1)(e), section 257(1)(f)(i) and section 257(1)(f)(ii) he shall pay 5% of each category of costs, this being assessed at \$1,080,000.

466. In respect of Ms Margaret Man (the eighth Specified Person):

- (i) pursuant to section 260(1)(b), Ms Margaret Man be awarded her costs; if not agreed, such costs to be taxed; and
- (ii) pursuant to section 264(1) of the Ordinance, the Tribunal directs that notice be given to the Court of First Instance to register its orders.



Mr. Michael Hartmann, GBS
(Chairman)



Dr. Ngai Wai Yiu, Norman
(Member)



Mr. Hui Sik Wing, Joseph
(Member)

Dated 23 June 2017