

**REPORT OF THE
INSIDER DEALING TRIBUNAL
OF HONG KONG**

**on whether insider dealing took place
in relation to the listed securities of**

**CHEONG MING INVESTMENTS LIMITED
(FORMERLY CHEONG MING
HOLDINGS LIMITED)**

on

31st January 2000

and on other related questions

Introduction

By a notice pursuant to section 16 of the Securities (Insider Dealing) Ordinance Cap. 395 dated 25 September 2003, The Hon. Henry Tang, the Financial Secretary of the Hong Kong Special Administrative Region, requested the Insider Dealing Tribunal to conduct an inquiry. The notice reads as follows:

***“Notice under Section 16(2) of the
Securities (Insider Dealing) Ordinance, Cap. 395***

Whereas it appears to me that insider dealing (as that term is defined in the Ordinance) in relation to the listed securities of a corporation, namely, Cheong Ming Investments Limited (formerly Cheong Ming Holdings Limited), (“the company”), has taken place, or may have taken place, the Insider Dealing Tribunal is hereby required to inquire into and to determine:

(a) whether there has been insider dealing in relation to the company connected with or arising out of the dealings in the listed securities of the company by or on behalf of –

*Gwennie Chen Kwon Yin and Tse Chi Wai on 31 January
2000;*

(b) in the event of there having been insider dealing as described in paragraph (a) above, the identity of each and every insider dealer; and

(c) the amount of any profit gained or loss avoided as a result of such insider dealing.”

In compliance with the notice, the Insider Dealing Tribunal, comprising of Deputy High Court Judge John Saunders as Chairman and Mr. Jeremy Nigel Gadbury and Mr. Lincoln Soo Hung Leung, JP as members, heard evidence and submissions from counsel for a total of 12 days, between 8 May 2006 and 1 June 2006.

We now have pleasure in submitting the report on our findings in relation to questions (a) and (b) of that notice. Our report in relation to any costs awarded will be submitted at a later date.



The Chairman of a division of the
Insider Dealing Tribunal
Established under section 15 of the
Securities (Insider Dealing) Ordinance
Cap. 395 of the Laws of Hong Kong

**Section 16(2) of the
Securities (Insider Dealing) Ordinance Cap. 395**

Whereas it appears to me that insider dealing (as that term is defined in the Ordinance) in relation to the listed securities of a corporation, namely, Cheong Ming Investments Limited (formerly Cheong Ming Holdings Limited), ("the company"), has taken place or may have taken place, the Tribunal is hereby required to inquire into and determine -

- (a) whether there has been insider dealing in relation to the company connected with or arising out of the dealings in the listed securities of the company by or on behalf of -

Gwennie Chen Kwon Yin and Tse Chi Wai on 31st January 2000;

- (b) in the event of there having been insider dealing as described in paragraph (a) above, the identity of each and every insider dealer; and
- (c) the amount of any profit gained or loss avoided as a result of such insider dealing.

Dated this 25th day of September 2003.

(Henry Tang)
Financial Secretary

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Chapter 1

Background¹

1. Cheong Ming Investments Limited, (Cheong Ming), was formerly known as Cheong Ming Holdings Limited. Cheong Ming is a listed company in Hong Kong, (stock code 1196), and was listed on the Stock Exchange of Hong Kong, (SEHK), on 20 January 1997. The principal business of Cheong Ming is as a holding company for subsidiary companies principally involved in packaging.
2. Sega.com Inc, (Sega), is a 52% owned subsidiary of Sega Enterprises Limited. Sega Enterprises Limited was, in January 2000, a well known name in electronic software and hardware manufacturing. Sega was listed on the Tokyo Stock Exchange, and since 1995 had developed an internet online computer game business in the USA. In late 1999 Sega was interested in establishing a further presence in Asian markets.
3. In early January 2000, as a result of informal personal discussions, Mr Kelvin Wu King Shiu, (Kelvin Wu), a senior manager at BNP Prime Peregrine Capital Limited, (Peregrine), learned from Mr Brad Huang Zhonghe, CEO of Sega, (Brad Huang) of Sega's interest in establishing an expanded Asian presence. Sega sought to identify a suitable Hong Kong partner for immediate access to, and expansion in, Asian markets. Consequent upon these discussions Kelvin Wu began looking for a possible target for Sega's investment.
4. In the months before and after January 2000, many stock markets throughout the world were characterised by what became known as the "dot com boom", a period of stock market euphoria in which the shares of almost every company involved in internet activity gained a considerable following. Sega's involvement in such internet related businesses was well-known, and any interest by Sega in a listed company in Hong Kong would be likely to be seen as a positive indicator for the share price of such a company.
5. Kelvin Wu made contact with Mr Gary Cheng Sek Wu, (Gary Cheng), then a private consultant, in an effort to find a suitable company with which Sega might become involved. Kelvin Wu did not disclose to

¹ Throughout this Report, the expression "TB" will be used to refer to the bundles of statements and documents produced to the Tribunal by the Securities and Futures Commission, and supplied to all parties.

Gary Cheng the identity of Sega. Gary Cheng approached Mr Brian Lui Shing Ming, (Brian Lui), Deputy Chairman and Managing Director of Cheong Ming. As a result of that meeting, on the afternoon of 28 January 2000, Brian Lui agreed to meet with Kelvin Wu.

6. Between 11:00 a.m. and 1:00 p.m. on Saturday 29 January 2000, a meeting was held, at Peregrine's board room at which Gary Cheng introduced Brian Lui to Kelvin Wu. After Brian Lui signed a confidentiality agreement, the identity of Sega was revealed to him and a proposed structure and terms of a possible investment were outlined. Arrangements were made for a meeting with Sega, the next day, Sunday. After the meeting Kelvin Wu called Brad Huang, who was based in Japan, and gave him brief information about Cheong Ming, and outlined the preliminary structure and terms of a transaction as it had been discussed with Brian Lui. Arrangements were made for Brad Huang to come to Hong Kong the next day.

7. At around 5:00 p.m. on Sunday 30 January 2000, Brad Huang came to Peregrine's board room where he met with Kelvin Wu, and Brian Lui. Also in attendance was Leung Mei Han, (Mei Leung), who was Brian Lui's wife. Mei Leung is a person registered with the SFC as a financial consultant, and was at that time the Managing Director of Somerley Limited, (Somerley), a firm of SFC registered financial consultants. Discussions took place in which each side set out the principles they sought to achieve. A basic understanding was reached upon terms which might be agreed. It was agreed that both parties would meet next morning to further discuss the terms of the transaction and draft a preliminary agreement. Brian Lui and Brad Huang were scheduled to meet at Sega's Solicitor's office at 11:00 a.m. on 31 January 2000.

8. Trading in Cheong Ming shares was brisk immediately upon the market opening at 10:00 a.m. on 31 January 2000. The share price rose from a close of \$0.73 on Friday 28 January, to reach \$0.97². Shortly after the opening of trading, Brad Huang alerted Kelvin Wu to the sudden increase in the share price. As financial advisers to Sega, Peregrine were not themselves in a position to take any active steps in relation to the trading that was taking place in the shares in Cheong Ming. Kelvin Wu contacted Mei Leung at Somerley, believing her to be the financial advisers to Cheong Ming.

9. Upon learning of the increase in trading volume and share

² Except where indicated, all references are to Hong Kong dollars.

price, Mei Leung obtained instructions from the board of Cheong Ming, and at 10:23 a.m. trading in Cheong Ming shares were suspended.

10. By that time 5,194,000 shares had been traded with the share price closing at \$0.97, an increase of 32.88% from Friday's close. On that day the Hang Seng Index, (HSI), closed down 653.6 points from Friday's close.

11. The 11:00 a.m. meeting between Brian Lui and Brad Huang at the offices of lawyers Deacons Graham and James resulted in heads of agreement being signed later in the day. Over subsequent days further discussions were held, leading to a joint press conference of the two companies on Thursday 10 February 2000, at which an announcement was made that the two companies had entered into a share swap agreement.

12. Trading in Cheong Ming shares resumed at 10:00 a.m. on Friday 11 February 2000. Turnover in the shares surged to 52,640,000 shares and the share price rocketed by 724% to close the day at a high of \$8.00.

13. Felix Yau Wing Yiu, (Felix Yau), was an Assistant Director of Peregrine from 3 February 1997 to 19 February 2000, and a registered investment adviser representative of Peregrine. Felix Yau worked in the same department as Kelvin Wu, that of corporate finance, albeit in a different team. He sat at a cubicle separated from Kelvin Wu only by a passageway. Felix Yau had, over a period of time, utilised an account at Core Pacific Securities International Limited, in the name of his wife, Gwennie Chen Kwon Yin, (Gwennie Chen), and an account at CEF CG Brokerage Limited, (CEF), in the name of a friend Gabriel Tse Chi Wai, (Gabriel Tse) to deal in various securities and on 31 January in the shares of Cheong Ming.

14. On the morning of Monday 31 January 2000, Brian Lui and Brad Huang were due to meet with their respective financial advisors, Somerly and Peregrine, and their solicitors, to settle heads of agreement. On that day, at 9:51:18 a.m., before the market opened at its customary 10:00 a.m., Felix Yau called Kenneth Luk Kam Kwong, (Kenneth Luk), a dealer's representative at Core Pacific, and, using Gwennie Chen's sharetrading account, placed an order for the purchase of Cheong Ming shares. 230,000 shares were purchased before the suspension of trading, 100,000 at \$0.81, 30,000 at \$0.85, and 100,000 at \$0.86. His total outlay, (including brokerage), for that purchase was \$193,254.06.

15. On the same morning, at 9:53:28 a.m., Felix Yau called Kate Liu Kit Yee, (Kate Liu), a dealer's representative at CEF, and placed an order, using Gabriel Tse's sharetrading account, to buy 300,000 to 400,000 Cheong Ming shares at below \$0.90. The 300,000 shares were duly purchased, 100,000 at \$0.75, 100,000 at \$0.79, and 100,000 at \$0.89. His total outlay, (including brokerage), for that purchase was \$243,939.23.

16. When trading resumed on 11 February 2000, Felix Yau placed a further order for the purchase of Cheong Ming shares with Kenneth Luk at Core Pacific, again using Gwennie Chen's account. 170,000 shares were purchased at prices ranging between \$4.50, \$4.80, and \$5.00. He then held 400,000 shares in that sharetrading account. Prior to the 11 of February 2000, Felix Yau had made an arrangement with Kenneth Luk, that Kenneth Luk would share in the cost of the additional 170,000 shares. Kenneth Luk contributed \$340,000 to that purchase. Felix Yau's share of that purchase was \$493,245.80.

17. On the same day as the further purchase was made, 11 February 2000, Felix Yau instructed Kenneth Luk to sell all 400,000 shares. The shares were sold at \$6.00 each, a total sale price, (after brokerage), of \$2,390,616.00. Although Kenneth Luk had shared in the cost of the acquisition of an additional 170,000 shares, Felix Yau received the whole of the profit on the sale of those shares. Felix Yau's profit was accordingly \$1,704,116.14.

18. On the same day, 11 February 2000, Felix Yau instructed Kate Liu at CEF to purchase further Cheong Ming shares, again using Gabriel Tse's account. A further 100,000 shares were purchased at \$4.90 bringing his holding in that sharetrading account to 400,000 shares. The cost, (with brokerage), for those shares was \$491,891.90. Again all 400,000 shares were sold on the same day, 200,000 at \$6.00, and 200,000 at \$6.20, giving a total sale price, (after brokerage), of \$2,430,581.60. Felix Yau's profit was accordingly \$1,694,750.47.

19. Felix Yau had accordingly acquired a total of 800,000 Cheong Ming shares, (400,000 through each of the two brokerages), at a total cost, (including brokerage), of \$1,422,330.99, which he had sold for a total profit of \$3,398,866.61.

20. The transactions in Cheong Ming shares over the months of January and February 2000, attracted the attention of the Securities and Futures Commission, (SFC). Following an investigation by the SFC and a

report to the Financial Secretary, on 25 September 2003, a Notice was issued to a Chairman of the Insider Dealing Tribunal pursuant to s 16(2) Securities (Insider Dealing) Ordinance Cap 395, (the Ordinance). That notice appears at (iii) to this Report. Gwennie Chen and Gabriel Tse, being the persons in whose names trading in Cheong Ming shares was undertaken by Felix Yau, were named in the notice.

Chapter 2

Procedure

21. In this Chapter we set out, in brief, the history of this Tribunal's establishment following its receipt of the s 16(2) notice from the Financial Secretary, (the Notice), and the steps taken by the Tribunal for the purposes of its conduct of the inquiry undertaken by it into the matters required by its terms of reference.

The Tribunal's Terms of Reference:

22. The Tribunal's Terms of Reference are governed by the Notice, dated 25 September 2003, sent to the then Chairman, Mr Justice Lugar-Mawson, by the Financial Secretary pursuant to the provisions of s 16(2) of the Ordinance. The Notice instituted the present inquiry and required the Tribunal to inquire into suspected insider dealing by the persons named in the Notice.

The appointment of members and counsel assisting:

23. In October 2004, in view of his impending retirement, Mr Justice Lugar-Mawson, the then Chairman of the Tribunal, notified the Chief Executive of the Hong Kong Special Administrative Region, that it was undesirable that he should continue to exercise his functions in relation to the Inquiry. On 30 October 2004, acting pursuant to s 15(2) of the Ordinance, the Chief Executive duly appointed His Honour Judge John Saunders, a Deputy Judge of the Court of First Instance of the High Court, to be Chairman of the Tribunal.

24. The Chairman of the Tribunal subsequently received a synopsis of the background facts and evidence which were relevant to the subject matter of the Inquiry, and a list of companies and persons who are also connected with the subject matter of the inquiry.

25. Following that, on 24 January 2005, two lay members were appointed by the Financial Secretary to the Tribunal. Those members are Mr Jeremy Nigel Gadbury, a Certified Corporate Accountant and Managing Director of the Gadbury Group Limited, Consultants, of Hong Kong, and Mr Lincoln Soo Hung Leung, JP, a member of the Stock Exchange of Hong Kong, and Chairman of Soo Pei Shao & Company Limited, Stockbrokers.

26. On 7 March 2005, the Tribunal appointed Mr Peter Ip Tak Keung, Barrister-at-Law, of the Hong Kong Bar, and Mr Dick Ho Chin Pang, Government Counsel of the Department of Justice, as counsel assisting in the Tribunal. On 8 March 2006, the Tribunal appointed Ms Sally Ng Chi Hin, Government Counsel of the Department of Justice, as Counsel assisting the Tribunal in the place of Mr Ho.

The service of Salmon letters:

27. Following the appointment of counsel, the Tribunal was provided with the various witness statements, the documentary evidence, exhibits and records of interviews prepared by the SFC which were to form part of the evidence before the Tribunal. From that material, and following meetings with counsel assisting, the Tribunal determined that the two persons named in the Notice, should be treated as persons concerned in the Inquiry, and that one other person should be treated as an implicated person in the Inquiry, namely Felix Yau.

28. Each of the three persons then implicated or concerned in the subject matter of the Inquiry were served with Salmon letters³ informing them that they were to be regarded as implicated parties in the Inquiry. Felix Yau was served with what has become known as a Salmon "A" letter, informing him that he was considered an implicated person in the Inquiry. Gwennie Chen and Gabriel Tse were served with Salmon "B" letters informing them that they were persons who may be concerned in the subject matter of the Inquiry. Shortly thereafter all statements, documentary evidence, exhibits and records of interviews which had earlier been served on the Tribunal were served on the implicated parties, together with other documents such as the synopsis of the case which had earlier been provided to the Tribunal.

29. The Salmon letters specified a date for a preliminary hearing of matters germane to the Inquiry. That preliminary hearing took place on Tuesday 24 May 2005.

The preliminary hearing and appointment of legal representatives for the implicated parties:

30. At the preliminary hearing Gabriel Tse appeared in person, and did not seek leave to be represented by counsel for the purposes of the

³ Salmon letters are so named after Lord Salmon who first suggested this procedure as being appropriate for the notification of persons whose interests may be affected by the findings of a Tribunal of Inquiry.

Inquiry. Ms Gwennie Chen was absent and did not seek to be represented. Mr David Morrison, solicitor of Messers Richards Butler, was given leave to represent Felix Yau.

31. At the preliminary hearing on 24 May 2005, the procedures of the Tribunal were explained to the implicated persons, together with its powers and, in brief form, the more fundamental aspects of the law which would be applied, such as the standard of proof. In particular, the Chairman, confirmed the Terms of Reference of the Tribunal in open court, and detailed the steps that had been undertaken in the constitution of the Tribunal up to that point in time. At the preliminary hearing the commencement of the substantive hearing was set for Monday 3 October 2005.

32. Subsequent to the preliminary hearing, but before the commencement of the substantive hearing, in other proceedings before the 2nd and 3rd Divisions of the Insider Dealing Tribunal, the Tribunal was informed that the parties involved in those other proceedings intended to challenge certain jurisdictional matters in relation to the proceedings of the Tribunal. As the result of those challenges would impact upon the proceedings of this Tribunal, on Monday 26 September 2005, a further preliminary hearing was held. At that hearing Mr Tommy Tam of Messers Sit Fung Kwong & Shum, solicitors, and Mr Kevin Patterson, barrister, were given leave to represent Felix Yau. Gwennie Chen and Gabriel Tse did not appear, save as witnesses, and were not represented. At the request of counsel for Felix Yau, the Tribunal agreed to adjourn the proceedings pending the outcome of the jurisdictional challenges.

33. Those challenges duly proceeded before the 2nd and 3rd Divisions of the Insider Dealing Tribunal and were dismissed. A subsequent application to the Court of First Instance of the High Court of Hong Kong for Judicial Review of the decisions of dismissing those challenges was itself dismissed. Although a Notice of Appeal was lodged against the decision of the Court of First instance to the Court of Appeal, that Notice was subsequently withdrawn. The way was consequently clear for this Tribunal to proceed with the Inquiry.

34. At a further preliminary hearing held on Friday 10 February 2006, the Tribunal fixed Monday 8 May 2006, as the date for the commencement of the substantive hearing.

The substantive hearing:

35. The substantive hearing duly began on Monday 8 May 2006. On that day Felix Yau appeared by his counsel Mr Patterson and Ms Kirsteen Lau. Felix Yau was present in person. Gwennie Chen and Gabriel Tse did not appear before the Tribunal, except as witnesses, nor were any solicitors or counsel present to represent them. As it is not necessary for implicated parties to be present on every day upon which an Insider Dealing Tribunal conducts its Inquiry, there was nothing to prevent the Tribunal from proceeding in their absence. Both subsequently appeared before the Tribunal as witnesses called by Mr Ip. Neither sought to take any other part in the proceedings.

36. Over 12 days of sitting a total of 16 oral witnesses, including the three implicated parties served with the Salmon letters, were called by Counsel to the Tribunal. Felix Yau sought leave to call an expert witness, Clive Derek Conway Louis Rigby, Managing Director of Lippo Securities Limited and Lippo Futures Limited. Mr Rigby has extensive experience as a futures broker, a commodity broker, and generally in the financial industry. He has acted as an adviser to the Commercial Crime Bureau of the Hong Kong Police Force, and the SFC. His duties have included active involvement in the compliance aspects of the financial industry. The Tribunal was satisfied as to his expertise, and gave leave for him to be called.

37. The witnesses called were (TW – Tribunal Witness):

Name		Present Occupation	General relevance to the inquiry
TW 1 (Day 2 & 3)	Mr Wu King Shiu, Kelvin ("Kelvin Wu")	Employed by Investec Asia Limited	Senior Manager and investment adviser representative of Peregrine. In January 2000, Peregrine acted as the financial adviser to Sega.com Inc. in the share swap deal between Cheong Ming and Sega.com. Gave evidence as to the meeting with Mr Brian Lui on 29 January 2000 morning and two meetings with Sega.com

Name		Present Occupation	General relevance to the inquiry
			Inc. and Cheong Ming on 30 January 2000 afternoon and 31 January 2000 morning.
TW 2 (Day 3 & 4)	Mr Cheng Sek Wu, Gary ("Gary Cheng")	Unemployed	Manager of Geoffrey Cheng & Co. in January 2000. A Private Consultant who introduced Mr Kelvin Wu to Mr Brian Lui and attended the meeting on 29 January 2000 morning.
TW 3 (Day 4)	Ms Lo Sin King, Salina ("Ms Lo")	Secretary	Secretary of Mr Kelvin Wu and Mr Stacey Wong at Peregrine in January 2000. Gave evidence as to the internal operation of Peregrine.
TW 4 (Day 5)	Ms Chen Kwon Yin, Gwennie ("Ms Chen")	Tax Accountant of PricewaterhouseCoopers' Beijing Office	Mr Yau's wife, in whose name Mr Yau established a share dealing account. Gave evidence as to the operation of that account and her own share dealings.
TW 5 (Day 5)	Ms Leung Mei Han ("Mei Leung")	Deputy Chairman of Somerley Limited	Managing Director of Somerley in January 2000. Mr Brian Lui's wife and acted as the financial adviser to Cheong Ming in the share swap deal between Cheong Ming and Sega.com. Gave evidence as to meetings with Sega.com Inc. on 30 January 2000

Name		Present Occupation	General relevance to the inquiry
			afternoon and 31 January 2000 morning. Involved in the suspension of trading in Cheong Ming shares on 31 January 2000.
TW 6 (Day 6)	Mr Wong Stacey Martin ("Mr Wong")	Head of Corporate Finance of Goldbond Capital (Asia) Limited	Deputy Managing Director of Peregrine in January 2000. Supervisor of Mr Kelvin Wu and led the team handling the share swap deal.
TW 7 (Day 6)	Mr Lui Shing Ming, Brian ("Brian Lui")	Managing Director of Cheong Ming Investments Ltd.	Gave evidence as to the meeting with Mr Kelvin Wu on 29 January 2000 morning and two meetings with Sega.com Inc. on 30 January 2000 afternoon and 31 January 2000 morning.
TW 8 (Day 6)	Ms Liu Kit Yee, Kate ("Kate Liu")	Sales Manager of Lehman Brothers	Sales Manager of CEF in January 2000. Gave evidence as to the operation of share trading accounts in respect of Mr Tse Chi Wai at CEF. She took orders from Mr Felix Yau to purchase 300,000 Cheong Ming shares on 31 January 2000.
TW 9 (Day 7)	Ms Leung So Ching, Patricia ("Ms Leung")	Associate Director, Enforcement Division, SFC	Gave evidence of formal investigated matters.
TW 10 (Day 8)	Mr Tse Chi Wai, Gabriel ("Gabriel Tse")	Accounting Adviser	Mr Yau's friend, and in whose name Mr Yau opened a share trading

Name		Present Occupation	General relevance to the inquiry
			account. Gave evidence as to the establishment of the account and his own share dealings.
TW 11 (Day 8)	Mr Luk Kam Kwong, Kenneth ("Kenneth Luk")	Dealer's representative of Core Pacific - Yamaichi Securities (H.K.) Limited	Gave evidence as to the operation of share trading accounts in respect of Ms Gwennie Chen at Core Pacific. He took orders from Mr Felix Yau to purchase 230,000 Cheong Ming shares on 31 January 2000. He deposited two cheques amounting to \$340,000 to Ms Chen's account.
TW 12 (Day 9, 10 & 11)	Mr Yau Wing Yiu, Felix ("Felix Yau")	Unemployed	Implicated party. Assistant Director and investment adviser representative in Peregrine in January 2000.
TW 13 (Day 11)	Mr Clive Derek Conway Louis Rigby ("Mr Rigby")	Managing Director, Lippo Securities Ltd. and Lippo Futures Ltd.	Expert Witness called by Mr Yau.
TW 14 (Day 11)	Mr Shek Kam Por, Stephen ("Mr Shek")	Director, Enforcement Division, SFC.	Tribunal's expert witness.
TW 15 (Day 8)	Ms Tsoi So Fan, Maria ("Ms Tsoi")	Manager of Translation of the SFC.	Gave evidence concerning the translation of documents from Chinese to English.
TW 16 (Day 12)	Mr Leung Wai Hong ("Mr Leung")	Investigation Supervisor, Hutchison Telecommunications (HK) Ltd.	Gave evidence concerning the accuracy of the computer produced document on telephone

Name		Present Occupation	General relevance to the inquiry
			calls made on mobile telephones.

In addition to giving oral evidence, the statements, and all records of interview of each of the witness, taken by the SFC during the investigative procedure were produced to the Tribunal and formed part of the evidence considered by the Tribunal.

38. Each of the oral witnesses, including each implicated party, was open to questioning by counsel assisting, and by counsel for Felix Yau. The evidence of Ms Tsoi, and Mr Leung, both as to formal matters, were given wholly by statement read to the Tribunal.

Tribunal procedure:

39. Prior to the issue of Salmon letters the Tribunal had consulted its counsel privately, in the absence of the parties, in order to determine to whom Salmon letters should be issued, and as to procedural matters. Once the substantive hearing commenced there were no further private meetings between counsel assisting and the Tribunal. All matters of a "housekeeping" nature were dealt with in open court so far as possible, or by way of correspondence, (copied to all parties), if that was more convenient.

40. The substantive hearing was conducted on an inquisitorial basis. That meant the Tribunal was itself responsible for the evidence that was called before it, though in this regard it sought the advice of counsel assisting and duly considered any application for the calling of a witness by counsel for the implicated party.

41. At the conclusion of the evidence submissions were made by counsel assisting the Tribunal and by counsel representing Felix Yau. Neither Gwennie Chen nor Gabriel Tse elected to make submissions, either orally or in writing.

42. Following submissions the Tribunal retired to consider its findings in respect of paragraphs (a) and (b) of the Terms of Reference as contained in the s 16(2) Notice, with a view to preparing this Report.

Chapter 3

The law

43. The law applied by the Tribunal is set out hereunder so far as the general statutory provisions and fundamental principles of law which related to the Inquiry are concerned. More particular and specific aspects of law applied by the Tribunal will be dealt with, where appropriate, in the context in which they arise in later chapters.

44. Under the provisions s 9 of the Ordinance, there are a number of different circumstances in which insider dealing can take place. In the context of this Inquiry the Tribunal has had regard following provisions of s 9, (words irrelevant to the present Inquiry had been omitted):

“(1) Insider dealing in relation to a listed corporation takes place-

- (a) when a person connected with that corporation who is in possession of information which he knows is relevant information in relation to that corporation deals in any listed securities of that corporation.... or counsels or procures another person to deal in such listed securities knowing or having reasonable cause to believe that such person would deal in them;

.....

- (c) when relevant information in relation to that corporation is disclosed directly or indirectly, by a person connected with that corporation, to another person and the first-mentioned person knows that the information is relevant information in relation to the corporation and knows or has reasonable cause for believing that the other person will make use of the information for the purpose of dealing, or counselling or procuring another to deal, in listed securities of that corporation....;

.....

- (e) when a person who has information which he knows is relevant information in relation to that corporation which he received (directly or indirectly) from a person-

- (i) whom he knows is connected with that corporation; and

- (ii) whom he knows or has reasonable cause to believe held that information by virtue of being so connected,

deals in the listed securities of that corporation...or counsels or procures another person to deal in those listed securities”

45. When considering the liability of Felix Yau under s 9 of the Ordinance, we were required to determine whether he was a person “connected” with Cheong Ming. Section 4 provides as follows:

“4. “Connected with a corporation”

(1) A person is connected with a corporation for the purposes of section 9 if, being an individual-

- (a) he is a director or employee of that corporation or a related corporation; or
- (b) he is a substantial shareholder in the corporation or a related corporation; or
- (c) he occupies a position which may reasonably be expected to give him access to relevant information concerning the corporation by virtue of -
 - (i) any professional or business relationship existing between himself (or his employer or a corporation of which he is a director or a firm of which he is a partner) and that corporation, a related corporation or an officer or substantial shareholder in either of such corporations; or
 - (ii) his being a director, employee or partner of a substantial shareholder in the corporation or a related corporation; or
- (d) he has access to relevant information in relation to the corporation by virtue of his being connected (within the meaning of paragraph (a), (b) or (c) with another corporation, being information which relates to any transaction (actual or contemplated) involving both those corporations or involving one of them and the listed securities of the other or

their derivatives or to the fact that such transaction is no longer contemplated; or

- (e) he was at any time within the 6 months preceding any insider dealing in relation to the corporation a person connected with the corporation within the meaning of paragraph (a), (b), (c) or (d).

(2) A corporation is a person connected with a corporation for the purposes of section 9 so long as any of its directors or employees is a person connected with that other corporation within the meaning of subsection (1).

(3) In subsection (1), “substantial shareholder” in relation to a corporation means a person who has an interest in the relevant share capital of that corporation which has a nominal value equal to or more than 10% of the nominal value of the relevant share capital of that corporation.”

46. There is no doubt that Felix Yau, in his capacity as an Assistant Director and investment adviser in Peregrine, constituted a person “connected with a corporation” in relation to Cheong Ming. In that capacity in Peregrine, he fell within the terms of s 4(1)(c)(i), of the definition of the expression “connected with a corporation”.

47. Further, as an employee of Peregrine, with that company’s professional relationship with Sega.com, he occupied a position which may reasonably be expected to give him access to relevant information concerning Sega.com. The nature of that access will be discussed in detail in Chapter 8. That situation brought Felix Yau within the terms of the definition in s 4(1)(d), he having potential access to relevant information in relation to the contemplated transaction between Cheong Ming and Sega.com. Mr Patterson did not seek to argue otherwise.

48. What is “dealing in listed securities” is defined by s 6 of the Ordinance as follows:

“For the purposes of this Ordinance, a person deals in securities if (whether as principal or agent) he buys, sells,..... any securities...”

It was not suggested by any counsel, or by any unrepresented party, that the transactions scrutinised by the Tribunal did not constitute “dealing in listed securities” as defined by the Ordinance.

49. What is “relevant information” is defined by s 8 of the Ordinance. It was argued by Mr Patterson, on behalf of Felix Yau, that the evidence did not establish that at any of the relevant points in time, Felix Yau was in possession of relevant information. Central to Mr Patterson’s argument was an argument that no relevant information existed that could have been available to Felix Yau. What constitutes “relevant information”, and whether or not it existed in this case, will be considered in Chapters 4 and 8 of this Report.

General Principles of Law:

Standard of Proof:

50. A submission was made to the Tribunal by Mr Patterson that the standard of proof to be adopted by the Tribunal ought to be the criminal standard of proof, namely proof beyond reasonable doubt. The basis of the submission was that insider dealing inquiries were criminal proceedings, and consequently that standard should be adopted. The issue being a question of law, it was a matter for decision by the Chairman alone: see Securities (Insider Dealing) Ordinance, Schedule 1, Clause 13, Cap 395.

51. Primary reliance was made by Mr Patterson on the decision in *Han & Anor v Customs & Excise Commissioners* [2001] 1 WLR 2253. Mr Patterson relied upon the fact that since 1 April 2003, and the commencement of the Securities and Futures Ordinance, Cap 571, on that date, provision is made to establish insider dealing as a criminal offence in Hong Kong law: see s 291.

52. Having given the matter due consideration, the Chairman directed the Tribunal that the appropriate standard of proof was not the criminal standard, but the civil standard, as adopted by tribunals in the past.

53. The Chairman took the view that the law must be considered as at the date of the alleged insider dealing, namely 31 January 2000, and consequently the criminalisation of insider dealing since 1 April 2003 was irrelevant. The decision in *Han* was distinguishable because in that case, a taxation case, there was a dual regime in relation to the non-payment of tax, enabling the authorities to treat non-payment of tax either as a civil matter or as a criminal matter. That duality was a significant factor in persuading the court that whichever way the Customs and Excise Commissioners chose to deal with the matter, the criminal standard of proof ought to be adopted. No similar duality existed in Hong Kong as at 31 January 2000,

in relation to insider dealing.

54. In two decisions in Hong Kong, one from the Court of First Instance, and one from the Court of Appeal, both dealing with circumstances prior to 1 April 2003, the courts have ruled that the appropriate standard of proof is the civil standard as previously adopted by the Insider Dealing Tribunal. Those decisions are *R v Securities and Futures Commission, ex parte Lee Kwok-hung* (1993) 3 HKPLR 1, and *Ex parte Lee Kwok-hung* [1993] 2 HKLR 51. Like McMahon J. in the Report of the Insider Dealing Tribunal in the *Easy Concepts International Holdings Limited Inquiry*⁴, the Chairman considered that the Tribunal is bound by those decisions.

55. The Chairman accordingly directed the Tribunal as to the standard of proof in his view properly applicable to findings of insider dealing under the Ordinance. That standard of proof is proof to a high degree of probability. It is a genuinely high standard of proof and reflects the serious nature of a finding of insider dealing made against an implicated person. It is the standard appropriate to the matters at issue in this Inquiry. It is the same standard which has been adopted in previous inquiries.

56. It is appropriate that we should record the comments of the Tribunal in the *Hong Kong Parkview Group Limited Inquiry*⁵, to remind ourselves of that standard. There the Tribunal said:

“The standard of proof should be simply stated and remains the same throughout. It is a high standard of proof - not the highest reserved for criminal allegations - but nonetheless high. It is not appropriate to say that within a given inquiry the more serious the allegation the higher the standard should be. The standard is at all times high. ‘A high degree of probability’ refers to the top end of the civil standard. It is set high because the issues are serious. A finding of insider dealing against an individual is a finding of wrongdoing which will adversely affect his or her reputation. It carries with it penal sanctions and public obloquy”

⁴ Report of the Insider Dealing Tribunal of Hong Kong on whether insider dealing took place in relation to the listed securities of Easy Concepts International Holdings Limited, dated 19 January 2006, pp 185-191.

⁵ Report of the Insider Dealing Tribunal of Hong Kong concerning dealings in the listed securities of Hong Kong Parkview Group Limited, dated 5 March 1997, p 19.

Inferences:

57. All findings of fact were based upon the evidence presented before the Tribunal. The Tribunal warned itself not to base any part of its findings on speculation or guesswork.

58. Following the completion of the evidence, in the course of considering that evidence, it was necessary from time to time, for the Tribunal, when determining an issue, to consider whether it was appropriate to draw an inference against an implicated party. The Tribunal warned itself that it may not base its findings on conjecture or speculation, no matter how 'educated' or 'informed' that conjecture or speculation may be.

59. An inference may, of course, be drawn from evidence provided that the evidence consists of primary facts which have been admitted or proved to a high degree of probability and the inference is a compelling one and is the only reasonable inference which can be drawn from those primary facts.

Good character:

60. As in past inquiries, the Tribunal took into account good character. None of the implicated parties had any criminal conviction recorded against their names. There was no evidence of any of them being condemned by any professional or disciplinary body. Due weight was given to these facts, i.e. that good character enhanced their credibility as witnesses and rendered them of a lesser propensity to commit unlawful acts.

61. Having regard to certain circumstances admitted to us by Felix Yau, the weight to be placed on good character was, in this case, substantially lessened. We shall deal with that aspect of the matter when assessing the evidence.

Considerations of Fact & Law:

62. So far as all questions of law which arose during the course of the Inquiry were concerned, the members were directed by and complied with the directions given by the Chairman. Statements within this Report that the Tribunal took a particular view of the law should be read in that light.

63. So far as the Tribunal's findings of fact were concerned, the Tribunal proceeded on the basis that it should strive to be unanimous in such findings, but that otherwise a finding of fact could be on the basis of a decision of a majority of the members. As it transpired, in this Inquiry, the decision made in relation to Felix Yau was a majority decision of two of the members of the Tribunal, the third member dissenting from that decision. The decisions made in relation to Gwennie Chen and Gabriel Tse were decisions made unanimously.

64. The two lay members of the Tribunal had considerable experience in the operation of listed companies and of the Hong Kong financial markets. The Chairman directed the lay members in terms of the comments of Lord Widgery CJ in *Wetherall v Harrison* [1976] QB 773 at :

“So I start with the proposition that it is not improper for a justice who has special knowledge of the circumstances forming the background to a particular case to draw on that special knowledge in interpretation of the evidence which he has heard. I stress that last sentence, because it would be quite wrong if the magistrate went on, as it were, to give evidence to himself in contradiction of that which has been heard in court. He is not there to give evidence to himself, still more is he not there to give evidence to other justices; but that he can employ his basic knowledge in considering, weighing up and assessing the evidence given before the court is I think beyond doubt.”

65. Accordingly, the lay members were aware that they should not provide themselves or the Tribunal with “evidence” from their own knowledge of the defence, procedures, or other matters germane to these proceedings, but that they were to restrict the use of their professional experience and knowledge only to assessing the evidence actually presented to the Tribunal.

The statements and records of interview of the implicated parties and other witnesses:

66. The previous statements of witnesses and implicated parties made to SFC investigators in the form of records of interview, as well as any written statements produced to the Tribunal, were accepted as evidence by us in addition to any oral evidence given by the witnesses and implicated parties. What weight we attached to the contents of the previous statement or record of interview varied in the circumstances of the particular statement. How soon after the event it was made and whether it was an admission against interest or exculpatory were matters we took into

account.

67. In admitting such evidence before us we were doing so in accordance with the provisions of s 17(a) of the Ordinance which, where relevant, are as follows:

“The Tribunal may, for the purpose of an inquiry under this Ordinance –

- (a) receive and consider any material whether by way of oral evidence, written statements, documents or otherwise, notwithstanding that such material would not be admissible in evidence in civil or criminal proceedings in a court of law;”

68. In dealing with the evidence of the expert witness called by counsel for the Tribunal, Stephen Shek Kam Por, we bore in mind his expertise, but reminded ourselves that, as with any other witness, we could accept or reject all or part of his evidence. His evidence was considered by us in the context of the other evidence in the case. Further, in assessing Mr Shek’s evidence we bore in mind that while he held appropriate qualifications to enable him to express an opinion, he was an employee of the SFC, the body that was instrumental in bringing the proceedings before us. In relation to Mr Rigby, we noted that while an independent expert, he appeared as an expert witness on behalf of Felix Yau.

Chapter 4

Relevant information

69. Insider dealing can only take place on the basis of relevant information as defined by s 8 of the Ordinance. If the subject information falls short of being relevant information is then there has been no insider dealing. The case advanced by counsel assisting was, put either at its lowest, that information that Cheong Ming was in discussion with Sega, or put at its highest, that information that a basic understanding had been reached between Brian Lui and Brad Huang upon terms which might be agreed between Cheong Ming and Sega, was “relevant information”, as defined by the Ordinance. Before we consider the factual circumstances as to these submissions, we consider the law as to “relevant information”.

70. Section 8 of the Ordinance defines “relevant information” as follows:

“In this Ordinance “relevant information” in relation to a corporation means specific information about that corporation which is not generally known to those persons who are accustomed or would be likely to deal in the listed securities of that corporation but which would if it were generally known to them be likely materially to affect the price of those securities.”

71. There are therefore three elements comprised in the concept of “relevant information” as that expression is used in the Ordinance. They are:

First, the information about the particular corporation must be specific.

Second, the information must not be generally known to that segment of the market which does or which would likely deal in Cheong Ming’s shares; and

Third, the information would, if so known be likely to have a material effect on the price of Cheong Ming’s shares. Information of this type has been described as “price sensitive” information.

Specific Information:

72. What may or may not amount to specific information will depend always on the particular factual circumstances of a case. We will consider the particular factual circumstances of this case in Chapter 6. There have been a number of approaches to, and attempts at, determining what is required of information before it is “specific” for the purposes of s 8 of the Ordinance. For the purpose of this Inquiry we adopt the test used by the Tribunal in *Firststone International Holdings Limited Inquiry*⁶, and adopted by the Tribunal in both the *Chinese Estates Holdings Limited Inquiry*⁷, and the *Chinney Alliance Group Limited Inquiry*⁸. That test is in the following terms:

“We have directed ourselves that information concerning a company’s affairs is sufficiently specific if it carries with it such particulars as to a transaction, the event or matter or proposed transaction, event or matter, so as to allow that transaction, event or matter to be identified and its nature to be coherently described and understood.”

73. We accept that specific information is to be contrasted with mere rumour, vague hopes and worries, and with unsubstantiated conjecture.⁹

74. For information to be characterised as “specific information”, there is no requirement that the information should be precise¹⁰. As was said by an earlier Tribunal¹¹

“Information is not rendered general, as opposed to specific, merely because the information is broad and allows room, even substantial room, for particulars.”

75. The distinction between specific information on the one hand, and precise information on the other, is well illustrated by the following statement made in the course of the House of Commons debates on the equivalent English legislation:

⁶ Report of the Insider Dealing Tribunal of Hong Kong on whether insider dealing took place in relation to listed securities in *Firststone International Holdings Limited Inquiry* dated 8 July 2004, p 58.

⁷ Report of the Insider Dealing Tribunal of Hong Kong on whether insider dealing took place in relation to the listed securities of *Chinese Estates Holdings Limited* dated 25 June 1999, p 39.

⁸ Report of the Insider Dealing Tribunal of Hong Kong on whether insider dealing took place in relation to the listed securities of *Chinney Alliance Group Ltd* dated 24 December 2004, p 35.

⁹ See *Chinese Estates*, (supra fn 7), at p 39.

¹⁰ Supra at pp 39-40. See also the Report of the Insider Dealing Tribunal of Hong Kong on whether insider dealing took place in relation to the listed securities of *Stime Watch International Holdings Limited*, dated 14 February 2003, at p 83.

¹¹ See the Report of the Insider Dealing Tribunal of Hong Kong on whether insider dealing took place in the listed securities of *Public International Investments*, dated 5 August 1995, at p 236.

“In general, specific information might typically be that a bid was going to be made. Precise information would be the price at which that it was going to be made. On that basis, precise information would be narrow, exact and definitive.”¹²

It will always be the case that specific information need not be precise, but precise information will necessarily be specific. In determining whether information is specific it will be necessary for the court to look objectively at the information and ask where it should be placed on a scale rising from rumour, innuendo, hint, general information up to specific or precise information¹³. Whether information may be characterised as specific may be resolved, in part, by the Court assessing whether that information would be likely materially to affect the price of shares. The more likely it is that the information would affect a share price, then the more likely it is that that information will be found to be specific. Thus, where the evidence in a particular case demonstrates that upon the information becoming public the share price was affected, then it is more likely that that information will be found to be sufficiently specific to fall within terms of s 8.

76. In “*Insider Dealing*”¹⁴, Ms Hannigan gives a number of examples of specific or precise information. The clearest example of specific or precise information, and one which has featured in the great majority of prosecutions under the English insider dealing legislation¹⁵, is a knowledge of an impending takeover bid. Equally clear is knowledge of a forthcoming share placing, even if the details of the placement are not known: see *R v Cross* [1991] BCLC 125 at 132 CA.

77. The Tribunal had no difficulty at all in concluding that knowledge of a potential or intended share swap between two companies was specific or precise information. That would be so even if the person who obtained the knowledge did not know the names of both companies involved in the intended share swap. It would be all the more so specific or precise information if the names of both companies were known.

Information not generally known:

78. By its very nature, inside information is information which is known only to a few and is not generally known to the market, the market

¹² HC Debs, Session 1992-93, Standing Committee B, 10 June 1993 Col 174, cited in “*Insider Dealing*”, 2nd Ed, Longman, Brenda Hannigan, P 63.

¹³ See “*Insider Dealing*” (supra fin 12), at p 64-5.

¹⁴ Op cite 12, at p 63.

¹⁵ The Company Securities (Insider Dealing) Act 1985.

being defined in s 8 as “those persons who are accustomed or would be likely to deal in the listed securities of that corporation”.

79. In the context of the present case there was no issue as to this definition. The Tribunal is satisfied that at the material time those persons accustomed to dealing in securities of Cheong Ming or likely to deal in those securities are constituted by the wider investing public.

Price sensitive information:

80. The third requirement of “relevant information” is that it must be information:

“which would if it were generally known to [the wider investing public] be likely materially to affect the price of those securities”¹⁶.

In simple terms, the information must be price sensitive. It is not sufficient that the information should simply affect the price of the securities. The effect must be material. We are satisfied that the definition of “material”, adopted by the Tribunal in *Chinese Estates*¹⁷, in the following terms, is correct:

“Thus information that would be likely to cause a mere fluctuation or a slight change in price would not be sufficient; there must be the likelihood of change of significant degree in any given the circumstances that amount to a material change.”

81. In principle, all information that is sufficiently price sensitive will be important information concerning a company’s affairs. But the converse is not necessarily true. Not all important information concerning a company’s affairs will be price sensitive. Important information or information of great interest concerning a company may excite comment, but may nevertheless be information of the kind that would not be likely to have a material impact on the price of that company’s securities.

82. It was not disputed that in this case that the actual impact of information becoming generally available was likely to be determinative of the impact on price, and thus whether the information was material.

¹⁶ S 8 S(ID)O.

¹⁷ *Supra* fn 7 at p 45-6.

Chapter 5

The background to the companies and personalities involved

The Companies involved:

83. Cheong Ming had begun public life as Cheong Ming Holdings Limited, upon listing on the SEHK on 20 January 1997. The Cheong Ming Group had been established in 1962 by its founder Mr Lui Chi, who, prior to that, had been the manager of a long established paper trading company for 14 years. Cheong Ming was primarily engaged in the printing and manufacture of packaging boxes, including accompanying brochures manuals and catalogues. The Group was also engaged in the printing and manufacture of hangtags, labels, shirt paperboards, plastic bags, children's novelty books, and commercial printing. These various businesses continued to form the basis of the Group's operations, following public listing.

84. The 1999 Annual Report of Cheong Ming, for the year ended 31 March 1999, issued on 9 August 1999, recorded a turnover of HK\$268,270,000, and a pre-tax profit attributable to shareholders of \$39,194,000. That turnover was 5.87% lower than the previous year, and the net profit was 26.9% lower than the previous year. The Annual Report described the year under review as having "been difficult"¹⁸.

85. Mr Lui Chi was the Chairman of the Group, and Brian Lui was Deputy Chairman and Managing Director. Brian Lui's two brothers were also Executive Directors of the Group, and Mr Lung Wai Kee was Finance Director. In addition there were two Independent Non-executive Directors.

86. The most substantial shareholder of Cheong Ming was Harmony Link Corporation, essentially a corporation operated for the benefit of the Lui family.

Sega:

87. Sega was incorporated in Delaware, USA. Sega Enterprises Limited was listed on the Tokyo Stock Exchange, and since 1995, the Sega Group had developed an internet online computer game business in the USA¹⁹.

¹⁸ See 1999 Annual Report of Cheong Ming, TB, Vol 6 p 27.

¹⁹ See Statement of Undisputed Facts para 9.

Felix Yau:

88. Felix Yau is now aged 40. He is married to Gwennie Chen. He now lives in Beijing, with his wife. He is presently unemployed. She works as a tax accountant in PricewaterhouseCoopers' Beijing office.

89. Felix Yau holds a Bachelor of Arts degree, with Honours, in Business Studies from the City University of Hong Kong. He also holds a Master of Business Administration degree from the Hong Kong University of Science and Technology. In 1992 he qualified as a Certified Public Accountant in the United States and, with experience from working with Arthur Andersen in the State of Illinois, USA, was admitted to practise accountancy in the United States. He became a member of the Hong Kong Society of Accountants in 1993.

90. From 1995 to 1996, he worked as a manager at Crosby Capital Limited, (Crosby), where he came to know Kenneth Luk who was then a salesman for Crosby, dealing with retail investors. Crosby was subsequently taken over by Societe Generale, and was renamed SocGen Crosby Group, (SocGen Crosby).

91. In February 1997, Felix Yau joined Peregrine Capital Limited, subsequently known as BNP Prime Peregrine Company Limited. Initially he was a senior manager in the Corporate Finance Department, that department being headed by Mr Francis Leung Pak To. He was employed with Peregrine until 19 February 2000.

The "dot com boom":

92. Evidence as to the so-called "dot com boom", or high-tech euphoria was given by Mr Shek, a Director of the Enforcement Division of the SFC and essentially confirmed by Mr Rigby. The emergence of this kind of market sentiment began in the late 1990's, first in the United States of America, extending to Hong Kong with the backdoor listing of Pacific Century CyberWorks Limited, (PCCW), in May 1999, and the endorsement given by the Hong Kong Government to develop property in Pokfulam in Hong Kong later known as the Cyberport as a high-tech centre.

93. Felix Yau did not dispute the factual circumstances of that phenomenon, namely that it involved a period of stock market euphoria in which the involvement of a company in virtually any aspect of internet, technology, or media activity, including involvement in another company

engaged in such activity, might well cause that first company's shares to rise in value sharply.

94. An example of the effect of this market sentiment on a company may be seen in the circumstances of Cheung Wah Development Company Limited, (Cheung Wah). In December 1999, the share price of Cheung Wah fluctuated between \$0.20 and \$0.30 on average daily turnover of 1.6 million shares. On 30 December 1999, the share price closed at \$0.305. In the first three days of trading following the New Year holidays, the share price doubled from \$0.305 to reach \$0.61 on 5 January 2000. Turnover increased to an average of 41.8 million shares a day. Cheung Wah issued two negative announcements in that period, and again on 6 January 2000. Despite those announcements the share price surged 118.03% to close the morning session on that day at \$1.33, on a turnover of 71.3 million shares. Trading was then suspended.

95. Trading resumed on 20 January 2000, after a joint announcement with Softbank Investment (International) Holdings Limited, (Softbank), and Cheung Wah, stating that Softbank had agreed to subscribe for 1.15 billion new shares in Cheung Wah at \$0.18 per share. The announcement stated that Softbank was an indirect wholly-owned subsidiary of Softbank Corp, a Japanese conglomerate which had invested in more than 120 Internet and computer-related companies in the USA, Europe and Asia. The announcement also stated that Cheung Wah would diversify its investments into companies conducting Internet related activities.

96. The market response to the news was immediate and spectacular. The share price of Cheung Wah rose by 636.84% to close at \$9.80 on a turnover of 207 million shares, on a day when the Hang Seng Index rose by 62 points, from a close of 15,153 on the day on which Cheung Wah had been suspended, a rise of 0.4%. Another example of such market response may be found in the case of Golden Power International Holdings Limited, and its involvement with PCCW.

97. The market response to the announcement of the involvement of Sega in Cheong Ming was similarly spectacular. Upon the announcement and resumption of trading in Cheong Ming on Friday 11 February 2000, turnover in the shares surged from a volume of 6,400,000 shares, and a closing price of \$0.73, on the last full day of trading, (28 January 2000), to a turnover of 52,640,000 shares at a closing price of \$8.00, a price increase of 995.89% from that day. The price increase was 724.74% higher than the closing upon suspension at 10:23 a.m. on 31

January 2000.

The structure at Peregrine:

98. Peregrine, was a well-known investment bank in Hong Kong in the year 2000. The Corporate Finance Department of Peregrine occupied the 23rd and 24th floors of the New World Tower, 16-18 Queen's Road, Central, Hong Kong. The room on the 24th floor comprised 36 small cubicles and a number of other larger offices occupied by senior Peregrine staff. Access to the 24th floor was restricted to Peregrine staff, and it was rarely if ever that clients or members of the public came to that floor. The conference room, where Peregrine staff met clients, or members of the public, was on the 23rd floor of the same building. Annexed hereto, marked "A", is a schematic diagram, not to scale, showing the approximate layout of the 24th floor, occupied by the Corporate Finance Department.

99. At the relevant time, Kelvin Wu was a Senior Manager at Peregrine, under the immediate supervision of Stacey Martin Wong, (Stacey Wong), who was a Director at Peregrine. Stacey Wong in turn, reported to Mr Frank Slevin. Kelvin Wu had been working for Peregrine since early 1996. Salina Lo Sin King, (Ms Lo), was secretary to Kelvin Wu and Stacey Wong. Kelvin Wu sat at a cubicle at the rear of a dual row of cubicles in a large room occupied by the Corporate Finance Department of Peregrine. Ms Lo occupied a cubicle at the front of the row. Both Mr Frank Slevin and Stacey Wong occupied offices facing the rows of cubicles.

100. Felix Yau, held the title of Assistant Director. He too worked in a team headed by Mr Frank Slevin, although a different team to that of Kelvin Wu. Felix Yau reported directly to Mr Frank Slevin. Both Felix Yau and Kelvin Wu were engaged in the execution of financial transactions including Initial Public Offerings, (IPO's), takeovers, and generally providing financial advisory services to clients. Both were registered persons with the SFC.

101. Felix Yau, like Kelvin Wu, sat at a cubicle at the rear of a dual row of cubicles. Felix Yau's cubicle was separated from that of Kelvin Wu by a passageway. Felix Yau's secretary, Stella Chan, occupied a cubicle adjacent to that of Ms Lo, to her right. The printers, networked to the computers used by both secretaries and other staff, were positioned behind the secretaries, who occupied the cubicles at the front row. Both Felix Yau and Kelvin Wu had computer terminals on their desks which were networked to the printers positioned behind the two secretaries. Each was

able to prepare documents at their own terminals and have them printed at the printers.

Chapter 6

The circumstances leading to the transaction between Cheong Ming and Sega

The introduction of Sega to Peregrine and Cheong Ming:

102. Kelvin Wu had known Brad Huang, CEO of Sega, for some time. Through a telephone conversation initiated by Kelvin Wu, with Brad Huang in mid-January 2000, Kelvin Wu learned that Sega wished to develop further its business in Asia. He volunteered to assist and suggested to Brad Huang that the business might be more effectively developed if a listed company could be introduced to work together with Sega. The discussion was preliminary and no concrete decisions had been arrived at, but Brad Huang told Kelvin Wu that he was scheduled to fly to Hong Kong on 30 January 2000. Kelvin Wu then set about finding an appropriate corporate vehicle to be introduced to Brad Huang.

103. Kelvin Wu approached a number of people in his efforts to find an appropriate target. One of the persons he approached was Cheng Shek Wu, Gary, (Gary Cheng), then a private consultant. Gary Cheng had previously worked for Barings Securities, but at the relevant time was not registered with the SFC as an investment advisor. He had previously introduced business to Kelvin Wu at Peregrine. Kelvin Wu told Gary Cheng that he had a client who wanted to acquire shares in a listed company in Hong Kong and sought recommendations. At a meeting between the two at Peregrine's office Kelvin Wu told Gary Cheng that his client was Sega. We are unable to determine precisely when this approach was made, but nothing turns on the precise time. The approach was probably during the week commencing 17 January 2000.

104. Gary Cheng's memory of events was not particularly good, he having subsequently suffered a period of ill health. We have no reason to doubt, that his statements to the SFC, made on 19 July 2000, and 4 May 2001, accurately reflected his recollection, at those times, of the past events. Gary Cheng knew Brian Lui of Cheong Ming and, in addition to people at two other companies, approached him with the proposition, keeping the identity of Sega confidential to himself. Initially Brian Lui was not interested in the matter, but after further conversations between Gary Cheng and Brian Lui, Brian Lui became interested.

Saturday 29 January 2000:

105. As a result of the discussions between Gary Cheng and Brian Lui, late on the afternoon of Friday 28 January 2000, Brian Lui decided that he wished to meet the prospective suitor. He informed Gary Cheng. Gary Cheng then telephoned Kelvin Wu and disclosed to him that Cheong Ming were interested in discussing the matter further. A meeting was arranged between Brian Lui of Cheong Ming and Kelvin Wu of Peregrine for 11:00 a.m. on Saturday 29 January 2000.

106. At that time, in conference room of Peregrine, Kelvin Wu, Gary Cheng, and Brian Lui met together. Brian Lui was then informed that the Peregrine client was Sega, and was asked, and agreed, to sign a confidentiality agreement²⁰ in which he agreed to keep confidential all information that was given to him in relation to Sega. That was a perfectly normal and proper step.

107. Kelvin Wu introduced the nature of the business of Sega to Brian Lui, and outlined their wish to develop Asian markets, and the desire to buy into a listed company quickly. He explained that Sega would make use of an asset as the consideration for the transaction. Brian Lui, for his part, outlined the business operation of Cheong Ming, giving Kelvin Wu a copy of the latest annual report. Brian Lui was shown a PowerPoint presentation in relation to Sega, and the asset to be injected, and the internet gaming entity called "heat.com". They then discussed the possible structure and terms of the investment that may be made by Sega in Cheong Ming. Brian Lui was sufficiently interested in the proposal that it was agreed that Kelvin Wu should arrange a meeting with Brad Huang for the next day, Sunday 30 January 2000.

108. After the meeting Kelvin Wu called Brad Huang in Japan, and gave him brief information in relation to Cheong Ming and outlined the preliminary structure and terms of the transaction that had been discussed with Brian Lui. A meeting was arranged between Brian Lui and Brad Huang, to be held at 4:00 p.m. on Sunday 30 January 2000, at Peregrine's conference room.

Sunday 30 January 2000:

109. Brad Huang duly came to Hong Kong and, slightly delayed, at 5:00 p.m. on 30 January 2000, he met with Kelvin Wu, Brian Lui and Mei Leung at the conference room at Peregrine's offices.

²⁰ TB 4 p 205.

110. In the course of her evidence Mei Leung endeavoured to portray herself as being present at the meeting purely as Brian Lui's wife, and not in any formal capacity as a financial advisor. We are however, quite satisfied that Mei Leung attended the meeting in a dual capacity, first as a financial advisor to Cheong Ming, and, second, as Brian Lui's wife. Brian Lui, when describing the meeting to the SFC in his statement made on 7 July 2000, was asked who attended that meeting. In response Brian Lui referred to Brad Huang, Kelvin Wu, himself, and "Mei Leung of Somerly Limited". Had Mei Leung been present not in the capacity of the financial advisor, but solely as Brian Lui's wife, we have no doubt that he would have referred to her in that latter capacity.

111. At the meeting Brad Huang introduced Sega and described the nature of the company's business and the expansion they sought in Asia. Brian Lui described the nature, background and performance of Cheong Ming. They discussed a format for a share swap and the basis upon which valuation would be undertaken. Brian Lui was interested, indicating that in principle the arrangement was feasible, but that he would have to discuss the matter with the Board of Directors of Cheong Ming.

112. The meeting had lasted for some 3 hours, and it is clear, although Kelvin Wu, Brian Lui and Mei Leung were all keen to play the result down to the level of a mere discussion, that significant progress was made towards an agreement. We are satisfied that at the end of the meeting the situation that had been reached between the parties was one that was accurately described in a letter from Peregrine²¹ in response to inquiries made by the SFC, in the following terms:

"Basic understanding of entering into a cooperation agreement was reached. Both parties agreed to meet in the next morning to finalise the terms of the transaction and draft a preliminary agreement." (sic)

113. Arrangements were made to meet again the next day, Monday 31 January 2000 at 11:00 a.m.. Both parties agreed that they would arrange to have their respective lawyers standing by, leaving primarily, the price to be negotiated. The meeting was to be at the offices of Sega's solicitors, Messrs Deacons Graham & James.

Monday 31 January 2000:

²¹ TB 2 p 112.

Trading in Cheong Ming shares:

114. On Friday 28 January 2000, trading in Cheong Ming shares had closed at \$0.73, a fall of 9.88% from the previous day. On that day the turnover was 6,400,000 shares. When trading began at 10:00 a.m. on Monday 31 January 2000, trading opened at \$0.73 but rose rapidly in relatively heavy trading to peak at \$0.99. At 10:15 a.m. Brad Huang alerted Kelvin Wu to the sharp rise in the price of Cheong Ming shares. At that delicate stage of the negotiations a rise in the price of Cheong Ming shares was greatly to the advantage of Cheong Ming, and to the disadvantage of Sega.

115. Kelvin Wu, acting for Sega, was unable to take any steps personally. He contacted Mei Leung at Somerly, there now being no doubt in his mind that Somerly were Cheong Ming's financial advisors. Mei Leung immediately sought instructions from Brian Lui, who consulted the executive directors of Cheong Ming. The directors decided to request the SEHK to suspend trading. They did so, and trading was suspended at 10:23 a.m.

116. In the 23 minutes in which Cheong Ming shares had traded there had been a turnover of 5,194,000 shares and an increase in price of 32.88% from the closing on Friday 28 January 2000. This occurred on a day when the Hang Seng Index fell by the end of trading by some 600 points.

The negotiations between Sega and Cheong Ming:

117. Immediately after the shares were suspended, the meeting that had been arranged between Sega, Cheong Ming, and their financial advisors and lawyers, was held. Prior to this meeting, and following the Sunday evening meeting, Brian Lui had presented the proposal to the Board of Directors of Cheong Ming who had authorised him to proceed with negotiations and enter into the transaction if appropriate terms could be reached.

118. The discussions between Sega, represented by Brad Huang and Peregrine, and Cheong Ming represented by Brian Lui and Somerly, continued throughout the day. Late in the afternoon Brad Huang left the meeting to go to the airport to depart for Japan, leaving the lawyers and financial advisors to settle terms of Heads of Agreement. The document was completed, signed by Brian Lui, and rushed to the airport by Kelvin

Wu, where it was signed by Brad Huang.

119. Further discussions took place between the parties in subsequent days, particularly as a result of advice from Sega's tax lawyers in California, which required a restructuring of the proposal from the format settled in the Heads of Agreement. The essential nature of the transaction remained, namely a share swap transaction. Throughout this time trading in Cheong Ming shares remained suspended.

10 February 2000; the transaction is announced:

120. A joint press conference was held by Sega and Cheong Ming on 10 February 2000, announcing that the two companies had entered into a share swap agreement. The announcement contained details as to the background of Sega, and in particular its technology involvement and Internet involvement. The transaction involved Cheong Ming acquiring from Sega.com, 6.8% of the then issued share capital in its wholly owned subsidiary, Sega.com PC, which company owned Heat.com, which shares were valued at \$137 million. In return, Cheong Ming were to issue 160 million new shares at a price of \$0.8566 per share, representing 32.97% of the enlarged issued capital of Cheong Ming, a total value of \$137 million. All of these details were duly published by way of a formal announcement in the press on the morning of Friday 11 February 2000.

11 February 2000; trading resumes:

121. At 10:00 a.m. that morning trading in Cheong Ming shares resumed. The turnover increased to 52,640,000 shares, and the price, having opened at \$4.225, closed at \$8.00, an increase of 724% from the close on suspension at 10:23 a.m. on 31 January 2000.

122. Over the next two days the share price stabilised, closing at \$7.30 on 15 February 2000, the turnover on each of Monday 14 February 2000, and Tuesday 15 February 2000, being a little in excess of 25.9 million shares. The turnover on these two days reduced to a daily average of around 26 million shares.

123. Annexed hereto as Annex "B" is a chart setting out the trading statistics for Cheong Ming shares on the Stock Exchange of Hong Kong for the period from 1 January 2000 to 29 February 2000. Annexed hereto as Annex "C" is a graph showing the movement of the share price in Cheong Ming shares against the Hang Seng Index for the period from 3 January

2000 to 29 February 2000.

Chapter 7

Felix Yau's trading in Cheong Ming shares

The staff share trading policy at Peregrine:

124. The policy at both Crosby and SocGen Crosby, while Felix Yau was employed there, was that employees were not permitted to conduct securities trading with brokerages other than the company itself. Further, management approval was required for any trading. Felix Yau was fully aware of that policy. When he joined Peregrine, he was made aware of Peregrine's policy, again that staff should not trade via brokerages other than Peregrine. Again, management approval was required of any trading.

125. That is an entirely sensible policy. Peregrine operated a confidential watch list of company names with whom Peregrine were involved at any given time. The maintenance of the watch list, and a requirement that staff should undertake trading only through Peregrine, and with management approval, enabled Peregrine to take steps to police potential insider dealing. When he joined Peregrine Felix Yau was given the staff manual to read, which contained these policies. He chose not to read the manual, although he acknowledged that he was fully aware of the policies, and the reasons for them.

Felix Yau's trading activities:

126. Notwithstanding his knowledge of those policies, Felix Yau decided to trade in securities at other brokerages. His explanation for doing so was first, that he considered that it was "inconvenient" to seek management approval each time he undertook a trade, second that he did not wish his employers to have a bad impression that instead of spending time on his work he was spending his office hours on personal securities trading. He was also of the view that his personal investments were private matters that he did not wish to disclose to anyone, including his wife.

127. Felix Yau did not confine himself merely to trading in securities through accounts at other brokerages. He did so using accounts nominally held by other persons. This not only enabled him to trade without management approval, but to conceal the fact that he was the person conducting trades.

The Gabriel Tse account:

128. In July 1997, Felix Yau made an arrangement with Gabriel Tse, a former colleague at Arthur Andersen to open a bank account, in the name of Gabriel Tse, at the Yien Yieh Commercial Bank. They went together to the bank and the account was opened. Gabriel Tse was the sole signatory on the account. A cheque-book was obtained, and Gabriel Tse signed a number of blank cheques, and gave them to Felix Yau in order that he may operate the account. Gabriel Tse himself never operated the account. He neither paid money into, nor withdrew money from the account. All transactions undertaken through the account were undertaken by Felix Yau.

129. Also in July 1997, Felix Yau went to CEF where he obtained account opening forms, to enable the opening of an individual share trading account with CEF. He obtained these forms from Kate Liu Kit Yee, (Kate Liu). Felix Yau then completed the forms, giving the details of Gabriel Tse, and the address of a property, that had previously been occupied by Gabriel Tse, but which was owned by Gwennie Chen. Felix Yau forged a signature purporting to be the signature of Gabriel Tse, and returned the forms to Kate Liu.

130. Kate Liu ultimately acknowledged that she had never met or spoken to Gabriel Tse. She initially asserted that she had telephoned Gabriel Tse and that he had informed her that Felix Yau could give instructions on the account. The mobile phone number recorded on the account opening forms was not Gabriel Tse's phone number, but that of Felix Yau. The fax number given on the form was not that of Gabriel Tse but that of Felix Yau. There was no evidence at all to indicate that any record had been made by Kate Liu of any telephone number for Gabriel Tse.

131. Felix Yau admitted to us that he had opened the account, and that Gabriel Tse had no involvement in the account. Strictly, it was not part of our inquiry to determine Kate Liu's state of knowledge in relation to this account. There are very strong grounds upon which the inference may be drawn that on no occasion did Kate Liu ever speak to Gabriel Tse, and that she very well knew, throughout the whole of the relevant period, that the account had in fact been established by Felix Yau to enable him to trade securities and conceal his identity in the course of that trading. That is a matter however which is appropriately explored, in so far as Kate Liu is concerned, elsewhere, and we do not reach any formal conclusion on the matter.

132. Felix Yau used the account to conduct sharetrading. We noted that there were no trading activities in the account, (apart from dividend payments), between November 1997 and April 1999. There was activity between May 1999 and September 1999, but the account was dormant between October 1999 and January 2000, other than the purchase of Cheong Ming shares. Trading in other stocks resumed in February 2000, and continued, including subsequent purchases of Cheong Ming shares, at least until March 2000.

The Gwennie Chen account:

133. In August 1999, Kenneth Luk was employed by Core-Pacific Securities International Ltd, (Core-Pacific) as a securities trader. Felix Yau's evidence was that Kenneth Luk contacted him and asked him to give business to Kenneth Luk at Core-Pacific. Felix Yau said that at the same time Kenneth Luk suggested that an account to be opened in the name of Felix Yau's wife, Gwennie Chen, in order that Felix Yau may conduct sharetrading without the knowledge of his employer. Kenneth Luk, for his part, asserted that the stimulus of the opening of the account came from Felix Yau.

134. Again, as Felix Yau has admitted to us that he opened the account and that his wife was not involved at all in trading in the account, and that all trading was undertaken by him, it is not strictly necessary for us to reach any conclusion as to Kenneth Luk's knowledge in relation to the account. Again however, there are very strong grounds upon which the inference may be drawn that Kenneth Luk well knew that the orders placed through the account were Felix Yau's personal share dealing, and not that of his wife. Again, that is a matter, insofar as Kenneth Luk is concerned, which is appropriately explored elsewhere, and we do not reach any formal conclusion on the matter.

135. Again, Felix Yau completed the documents, this time using his wife's personal particulars, although she knew nothing of the account. Again, Felix Yau forged a signature purporting to be his wife's signature. The account opening documents purport to record that Gwennie Chen had been employed for 10 years as general manager for a company known as Evergreen Industrial Limited of Chaiwan. That information was quite false. Felix Yau asserted that the information was inserted in the form by Kenneth Luk, without his knowledge. Kenneth Luk for his part asserted that Felix Yau gave him that information. It matters not which is right. What is not in dispute is that the Gwennie Chen had no knowledge of the account, and Felix Yau used it to undertake share trading in contravention

to the established policies at his places of employment.

136. The account was established with the purchase and sale of shares in China Telecom, (941), and Tricom Holdings, (1186), in August 1999. Thereafter, a number of transactions occurred from time to time through the latter half of 1999, and into the year 2000.

Felix Yau's Cheong Ming purchases:

The Core Pacific account:

137. Mobile phone records establish that at 9:51:18 a.m. on the morning of 31 January 2000, Felix Yau telephoned Kenneth Luk, a call lasting 1.4 minutes. The evidence of Felix Yau, which we accept, is that he placed an order for 500,000 Cheong Ming shares at a price below \$0.90. The mobile phone records describe the call through which this call was made as "00000245 Central 1".

138. The evidence establishes, and it is not in dispute, that the first order for Cheong Ming shares, was for 50,000 shares and was placed by Kenneth Luk at 10:03:09 a.m., at \$0.73. That order was matched immediately. Prior to the suspension of Cheong Ming shares from trading, further orders were placed by Kenneth Luk, and matched, as follows: 20,000 shares at \$0.76, 220,000 shares at \$0.80, 100,000 shares at \$0.81, 100,000 shares at \$0.86, and 30,000 shares at \$0.85. Consequently a total of 520,000 shares were purchased, all below the upper limit are given by Felix Yau.

139. Core Pacific did not however allocate the whole of the purchases to Felix Yau's account in the name of Gwennie Chen. The most expensive shares, those purchased at \$0.81 or above, a total of 230,000 shares were allocated to that account. The remaining 290,000 shares, all purchased at \$0.80 or below, were allocated to an account in the name of Sino Far Investment Limited, (Sino Far Investment).

140. Kenneth Luk was cross examined as to that account. He attempted to say that the company had no relationship whatsoever to him or to any person who was associated with him, other than that the company was a client of Core Pacific upon whose instructions he acted. It subsequently transpired that a shareholder in Sino Far Investment was the sister of a woman with whom Kenneth Luk was cohabiting at the time, and who lived in the same property, a property owned by Kenneth Luk and his

cohabitee, as Kenneth Luk. Further that property was given as the registered office of Sino Far Investment.

141. It was abundantly plain to the Tribunal that Kenneth Luk was “front-running” or “rat trading” in shares upon the instruction he received from Felix Yau. He chose to allocate to Felix Yau the most expensive of the shares acquired, allocating the cheapest shares to the client with whom he was plainly associated. On the same day, through the Sino Far Investment account, Kenneth Luk sold 70,000 Cheong Ming shares at \$0.90, and 50,000 shares at \$0.97. Sino Far Investment made an immediate profit of \$19,800.00 and still held 170,000 Cheong Ming shares that had been purchased at \$0.80.

142. Mobile phone records show that there was a further telephone conversation in which Felix Yau called Kenneth Luk at 10:19:53 a.m., a call lasting 0.4 minutes. The mobile phone records describe the cell through which this call was made as “00003151 Queen’s Rd B”. It is likely that in the course of that telephone conversation Kenneth Luk informed Felix Yau that he had been able to purchase only 230,000 Cheong Ming shares. It is clear from the evidence however, that was not the only conversation between them following the suspension of the Cheong Ming shares from trading.

143. It is plain that Felix Yau was suspicious of the steps taken by Kenneth Luk. There was a dispute between them, the precise terms of which we do not need to resolve. When interviewed by the SFC Kenneth Luk explained the matter by saying that he had “forgotten” to execute some of the orders made by Felix Yau was the consequence that only 230,000 shares had been acquired. He said that Felix Yau was very upset and scolded him, but that a compensation agreement was reached, in which, when trading resumed, a further 170,000 shares would be purchased to bring the total acquired by Felix Yau to 400,000 shares, and that Kenneth Luk would meet the price differential between the price level at which Felix Yau had been buying Cheong Ming shares on 31 January 2000, (around \$0.80) and the lowest price at which Cheong Ming resumed trading.

144. Felix Yau was obliged to admit in his statement to the SFC that in the course of the dispute he lied to Kenneth Luk as to the reason why he was upset. In the course of the dispute Felix Yau asserted to Kenneth Luk that other persons were involved in the transaction with him and that he would have to account to those other persons. Felix Yau’s evidence to us was that that was a lie, and that in fact no other persons were

involved. He said that he lied to Kenneth Luk in order to increase pressure on Kenneth Luk to make compensation for failing to achieve the requested number of share purchases.

145. Ultimately when trading of the company's shares resumed on 11 February 2000, Kenneth Luk purchased a further 170,000 shares which were allocated to the Gwennie Chen account. These shares were purchased at prices ranging from \$4.50 to \$5.00, a total consideration of \$833,245.80. Kenneth Luk contributed a sum of \$340,000.00, (by way of two cheques), to the account by way of compensation to Felix Yau.

146. The net result was that on 31 January 2000, Felix Yau had purchased 230,000 shares in Cheong Ming at a total consideration of \$193,254.06. His further purchase of 170,000 shares on 11 February 2000, after allowing for the contribution by Kenneth Luk, had cost a further \$493,245.80. Thus, Felix Yau had acquired 400,000 shares in Cheong Ming through Core Pacific at a total cost of \$686,499.86.

147. We did not find Kenneth Luk to be an honest witness. There are very strong grounds upon which the inference may be drawn that Kenneth Luk knew that the purpose of the account in the name of Gwennie Chen was to enable Felix Yau to trade shares without the knowledge of his employer. Kenneth Luk would have known that that would not have been permitted by Peregrine. On any interpretation of the expression "associated" Kenneth Luk could not have failed to appreciate his association with the Sino Far Investment account, yet he consistently sought to assert no knowledge of those who were behind the account. His assertion to the SFC that he had "forgotten" to execute trades for Felix Yau was patently false. Fortunately, in the whole of the circumstances, nothing turns on Kenneth Luk's dishonesty in the witness box or with the SFC.

The CEF account:

148. Mobile phone records establish that at 9:53:28 a.m. on the morning of 31 January 2000, two minutes after speaking to Kenneth Luk, Felix Yau telephoned Kate Liu, a call lasting 0.5 minutes. It was not in dispute that Felix Yau, in that telephone conversation, instructed Kate Liu to purchase 300,000 to 400,000 Cheong Ming shares at a price below \$0.90. The mobile phone records describe the cell through which this call was made as "00004600 Wyndham Street".

149. Kate Liu placed the orders in blocks of 100,000 shares. She

did so, rather than placing a single order for 300,000 shares, in order to avoid pushing up the price. That was a normal, and is an unobjectionable, practice. The first order was executed by the matching system immediately, upon entry, at 10:07:27, at \$0.75. The next order, again matched immediately, was at 10:11:36, and was at \$0.79. The third order, placed at 10:14:08, at \$0.89 was executed by the matching system at 10:15:30. No further orders were matched before the shares were suspended at 10:23 a.m.

150. Mobile phone records establish that at 10:19:01, 52 seconds before calling Kenneth Luk, Felix Yau called Kate Liu again, a call lasting 0.2 minutes. The mobile phone records describe the cell through which this call was made as "00012132". It was not in dispute that in the course of that telephone conversation Kate Liu confirmed the purchases to Felix Yau. Felix Yau had purchased 300,000 shares in Cheong Ming at a total cost of \$243,939.23.

151. When trading of Cheong Ming shares resumed on 11 February 2000, on the opening of the market, Felix Yau instructed Kate Liu to purchase a further 100,000 shares which were acquired at \$4.90, a total sum of \$491,891.90.

152. Felix Yau had accordingly acquired, through CEF, a total of 400,000 Cheong Ming shares, at a total consideration of \$735,831.13.

153. In all, shortly after trading resumed on 11 February 2000, Felix Yau held a total of 800,000 Cheong Ming shares, at a total cost of \$1,422,330.99.

Felix Yau's sale of the Cheong Ming shares:

154. Felix Yau's instructions to both Kate Liu and Kenneth Luk on 11 February 2000, were to sell the whole of the 800,000 Cheong Ming shares. Kate Liu sold 200,000 shares at \$6.00, and 200,000 at \$6.20, a total of \$2,430,581.60. Kenneth Luk sold all 400,000 shares at \$6.00, the sum of \$2,390,616.00. The total yield was \$4,821,197.60. By selling all of the shares that had been purchased settlement for the additional 270,000 shares purchased on 11 February 2000, required no cash outlay from Felix Yau, and was met from the proceeds of sale.

155. Felix Yau had, over a period of 11 days, made a profit of \$3,398,866.61, on a cash outlay of \$437,193.29.

Chapter 8

The available “Relevant Information”

156. In Chapter 4 we considered the law as to relevant information. In this chapter we apply that law to the available facts.

157. The assessment of what constituted relevant information in the circumstances of this particular case can only be undertaken with a view to the particular market circumstances prevailing at the time, particularly the “dot com boom”, as set out in paragraphs 92-97 above.

158. It was the opinion of both experts²² that information that Cheong Ming was about to team up with Sega was relevant information. Having regard to the state of the market and the way in which investors were responding to any information in relation to the involvement of listed companies in technology related activities, we are satisfied that mere information that Cheong Ming was a possible target of Sega would constitute relevant information, if not available to the wider investing public.

159. Early in January 2000, Kelvin Wu had discussed the prospect of Sega seeking a quick way to develop Asian markets with Brad Huang. However it was not until the week commencing 24 January 2000, that Gary Cheng first suggested Cheong Ming to Kelvin Wu as a potential target. We are satisfied that from the moment the Gary Cheng made that suggestion to Kelvin Wu, the fact that Cheong Ming was a potential target became relevant information.

160. The information was specific. It identified both the investing company, and the potential target. It was information which was plainly not generally known to the wider investing public. It was information which, having regard to market sentiment at the time, was likely to have a material effect on the price of Cheong Ming’s shares. We are satisfied that although, at that time the information merely identified Cheong Ming as a potential target it was nevertheless sufficiently price sensitive to constitute relevant information.

161. Late on the afternoon on Friday 28 January 2000, Brian Lui, although not at that time knowing the identity of the possible suitor to his

²² See Stephen Shek at TB 5 p 16 paras 52-54 and Clive Rigby TB 5 p 318 para. I.

company, told Gary Cheng that he wished to meet the suitor. We are satisfied that the fact that Brian Lui of Cheong Ming wished to meet the potential suitor was itself relevant information.

162. If we are wrong in those conclusions, we are satisfied that there can be no doubt whatsoever that following the meeting between Brian Lui of Cheong Ming and Kelvin Wu of Peregrine at 11:00 a.m. on Saturday 29 January 2000, when the identity of Sega was disclosed, in confidence, to Brian Lui, Sega's intentions in relation to investment in Asia, and the outline of the possible structure and terms of investment that might be made were given to Brian Lui, relevant information existed. By that time specific information identifying both companies involved, and the potential structure of a proposed transaction existed and there was no doubt that the matter could be properly identified and its inherent nature described and understood.

163. Felix Yau was an experienced financial advisor. We are in no doubt whatsoever that had Felix Yau been in possession of any of the information that we have described above he would have fully appreciated the price sensitive nature of the information. He would have known that such information, if in his possession, constituted relevant information. In particular, from his background in the industry, he would have known that the information was confidential to Sega and Cheong Ming, and that it would not be information that was available to those likely or accustomed to trade in Cheong Ming shares. Further, from his background in the industry, and his knowledge of prevailing market sentiment in relation to technology related investments, he would have known that the information was price sensitive.

164. It necessarily follows that the information that at the meeting on Sunday 30 January 2000, Cheong Ming and Sega had reached a basic understanding of the terms upon which they could enter into an agreement for cooperation, and that they would meet the next morning to finalise the terms of the transaction and draft a preliminary agreement, was also relevant information.

Chapter 9

The sources of information available to Felix Yau

Brian Lui & Gary Cheng

165. Gary Cheng was first told of Sega's interest in acquiring a position in Hong Kong in the week commencing 24 January 2000. We have found that Gary Cheng's advice to Kelvin Wu that Cheong Ming was a possible target for Sega was relevant information.

166. There is no evidence at all that Gary Cheng and Felix Yau knew each other or that they had ever communicated with each other. While Gary Cheng was a potential source of the relevant information, we are satisfied that Felix Yau did not receive relevant information from Gary Cheng.

167. Equally, there is no evidence at all that Brian Lui and Felix Yau knew each other, or that they had ever communicated with each other. Again, while Brian Lui was a potential source of the relevant information, we are satisfied that Felix Yau did not receive relevant information from Brian Lui.

Sources at Peregrine:

Documentary information:

168. When Kelvin Wu was contacted by Gary Cheng on the afternoon of Friday 28 January 2000, and informed that Brian Lui wished to meet with Sega, he first prepared a confidentiality letter²³. Following acceptance by Brian Lui of the terms of that letter, Kelvin Wu could disclose to Brian Lui information regarding Sega, with an assurance that that information would be kept confidential. That was a perfectly normal and proper procedure. Such confidentiality letters are relatively standard documents, and we are satisfied that they are in common use in such circumstances.

169. Kelvin Wu does not now recall whether he prepared the confidentiality letter himself or whether he had that document prepared by his secretary, Ms Lo. An endorsement at the foot of the second, third, and

²³ TB 4 p 205.

fourth pages of the confidentiality letter suggests that a precedent from a former transaction was used, with appropriate changes being made in relation to the identity of the parties concerned.

170. An endorsement at the foot of the first page indicates that the amended document was then saved on the hard drive designated the "s:" drive in Peregrine's networked computer system. Although from time to time passwords were used to ensure confidentiality of documents in the computer system, no password was established to protect the folder "sega", in a subfolder marked "salina" on the computer hard drive. We are satisfied that, in the absence of password protection, anyone networked to the relevant computer hard drive, including Felix Yau, could have accessed and opened documents saved in the computer system.

171. The word "sega", whether beginning with a lower or uppercase letter, was, we are satisfied, a plainly identifiable term, and anyone accessing the computer hard drive, and opening the secretary's folder marked "salina" would have immediately related the contents of the folder to Sega. We are satisfied that Felix Yau was a person at Peregrine who could have accessed the confidentiality letter on the computer system, after its creation on 29 January 2000.

172. As we have recorded, documents, whether prepared by a secretary or a more senior Peregrine employee such as Kelvin Wu or Felix Yau, were printed on network printers located behind the secretaries. A document such as the confidentiality letter, so printed, would, unless immediately removed from the printer by the maker of the document, be available for inspection by anyone who passed by the printer.

173. Following signature of the confidentiality letter, and after the meeting, Kelvin Wu retained the letter. There was no evidence at all as to any particular security steps taken by Kelvin Wu to ensure that the information contained in the letter remained confidential. It is possible that the letter remained on his desk, in his cubicle, on the afternoon of Saturday 29 January 2000 or Sunday 30 January 2000, where it might be available for inspection by anyone with access to the 24th floor. Such persons included Felix Yau.

Personal sources:

174. The location of Felix Yau's cubicle, directly adjacent to that of Kelvin Wu, separated only by an aisle, meant that unless particular care

was taken it would be entirely possible that a telephone conversation had by one in his cubicle, might be overheard by the other.

175. Kelvin Wu and Felix Yau were colleagues, and to some degree personal friends. We note that mobile phone records show that at 16:58:55 on 31 January 2000, Kelvin Wu called Felix Yau's office telephone. At about that time Kelvin Wu would have either been with the solicitors while the final terms of the Heads of Agreement were being settled, or on his way into Hong Kong International Airport to secure Brad Huang's signature to that document. Kelvin Wu explained that the telephone call by saying that he sought to set up a mah-jong game with Felix Yau that evening, a matter that Felix Yau could not verify or recall.

176. We have no doubt that from time to time between the week of 17 January 2000, when Gary Cheng first informed Kelvin Wu that Cheong Ming was a potential target for Sega, and Monday 31 January 2000, when Felix Yau made his share purchases in Cheong Ming, there were numerous occasions when Kelvin Wu and Felix Yau were together. It would have been open to Kelvin Wu at any time during those occasions to have told Felix Yau of the interest being expressed by Sega in concluding a deal in principle, and that the deal may include Cheong Ming. However it is apparent that nothing on Sega's progress towards a deal was documented prior to 29 January 2000.

177. Had Ms Lo prepared the confidentiality document, or any other relevant documents leading up to the transaction she would have been in possession of the relevant information. There is nothing in any of the evidence to indicate that Ms Lo might have conveyed that information, either to any secretary, or to anyone else at Peregrine.

Conclusion as to sources:

178. We accordingly conclude that there were numerous sources from which Felix Yau might have learned of the relevant information as to Sega's interest in Cheong Ming. He may have chosen to surreptitiously explore the computer system and discovered the confidentiality agreement. He may have inadvertently seen the confidentiality agreement signed on 29 January 2000, either at the printer or on Kelvin Wu's desk. He may have overheard Kelvin Wu in the course of a telephone conversation with Gary Cheng or Brad Huang. He may have been told of the potential developments by Kelvin Wu.

179. We are satisfied that this is not a situation where it is open to Felix Yau to say that he could not possibly have learned of the relevant information.

Chapter 10

Cheong Ming: a share “in play”

The trading history of Cheong Ming:

180. When considering Felix Yau’s share purchases, in relation to allegations of insider dealing, it is appropriate to examine the particular circumstances of trading in Cheong Ming shares at the relevant time.

181. The evidence of Mr Rigby was that the stock price and volume of trading in Cheong Ming shares over the period July 1998 until January 2000 demonstrated a share that was in the doldrums, meandering sideways at a relatively low price and on very small trading volume until January 2000. Throughout the whole of that period share price barely reached to \$0.40, with volume consistently below one million shares²⁴. We are satisfied that the counter was one which was properly described as a third liner.

January 2000:

182. Trading for the year 2000, opened on Monday 3 January 2000. Cheong Ming, which had closed on 31 December 1999 at \$0.29 did not trade at all. Trading on Tuesday 4 January, and Wednesday 5 January 2000, was consistent with the previous year’s trading pattern, with turnovers of 560,000 shares and 100,000 shares respectively, with the share price ranging from \$0.29 to \$0.30.

183. On Thursday 6 January 2000, the pattern changed. Turnover increased substantially to 1,676,000 shares of the price closing 10% higher at \$0.33, having reached an intraday high of \$0.36. Upon that increase in price and turnover the SEHK asked Cheong Ming to explain the matter. An announcement was made, given to the SEHK on 6 January 2000, and published in newspapers on 7 January 2000²⁵.

184. The announcement recorded that the directors were not aware of the reason for the increase, but that they had commenced informal and preliminary discussions in August 1999, with a third party relating to a possible investment in a company engaged in the development of telecommunication related products. The announcement recorded that

²⁴ See chart attached as CR 2 to the evidence of Mr Rigby TB 5 p 329.

²⁵ TB 4 pp 3-4.

there was no timetable in relation to negotiations. The response of the market to that announcement was subdued on Friday 7 January 2000, with the share price remaining stable, closing at \$0.33, (with an intraday high of \$0.35), on turnover of 692,000 shares. That is not at all surprised, bearing in mind that the notice was disclosing, in January 2000, discussions which had been going on for at least five months with no apparent progress.

185. On Monday 10 January 2000, with no obvious new news, the turnover jumped again to 1,240,000 shares, with the share price closing 13.64% higher at \$0.375, with an intraday high of \$0.38. The next day, Tuesday 11 January 2000, turnover was at 810,000 shares, closing 9.33% higher at \$0.41, the intraday high.

186. A more significant increase in both turnover and share price occurred on Wednesday 12 January 2000. The turnover reached 2,848,000 shares and the share price closed at \$0.50, an increase of 21.95%. The intraday high was \$0.54. Again the SEHK asked for an explanation.

187. On that day an announcement was made by Cheong Ming²⁶, published in newspapers on 13 January 2000, to the simple effect that the directors had no knowledge at all of the reasons for the increases. The response of the market on Thursday 13 January 2000, was to maintain the turnover at 1,856,000 shares but with the share price reducing 11% to close at \$0.445, after an intraday high of \$0.48.

188. The next development fell in the category of a spectacular adjustment. On Friday 14 January 2000, the turnover soared to 15,324,000 shares with the price closing at \$0.75, an increase of 68.54%, after an intraday high of \$0.79. Again the SEHK asked for an explanation. At 11:53 a.m. on that day the board of Cheong Ming announced²⁷, yet again, that they were not aware of the reasons for the increase.

189. The response of the market on Monday 17 January 2000, was similar to that on Thursday 13 January 2000. Turnover dropped, although it was still relatively high at 5,856,000 shares. The closing price fell by 25.33% to \$0.56 after an intraday high of \$0.80. Again the SEHK asked for an explanation. Again the board of Cheong Ming announced²⁸ that they were not aware of the reasons for the movement in the share price.

²⁶ TB 4 p 5.

²⁷ TB 4 p 6.

²⁸ TB 4 p 7.

190. Over the next three days the turnover dropped to a mere 980,000 shares by 20 January 2000, with the price declining marginally to \$0.52. However interest in the counter resumed on 21 January 2000, on a turnover of 6,422,000 shares, with the closing price reaching \$0.67, an increase of 28.85%, and an intraday high of \$0.71.

191. The SEHK asked for an explanation, given on the afternoon of 21 January 2000 and published in Hong Kong newspapers on 24 January 2000²⁹. Although the board of Cheong Ming again asserted they had no knowledge of the reasons for the price movements, they disclosed that they had been approached by a securities firm in respect of an idea of a possible placement of shares in the company. They said that negotiations had not yet commenced up the matter would be considered in the following week. The announcement apparently excited the market with the turnover increasing to 11,068,000 shares closing at \$0.76, 13.43% higher, after an intraday high of \$0.81.

192. For the remainder of that week, until 28 January 2000, the turnover remained high, ranging from 4,348,000 on 25 January 2000 to 9,278,000 on 27 January 2000, with the closing price fluctuating, ultimately to close on Thursday 27 January at \$0.81.

193. On Thursday 27 January 2000, the board of Cheong Ming delivered to the SEHK an announcement³⁰, published in newspapers on 28 January 2000 that it had discontinued discussions with a securities company over a possible placement, (see para 191 above), and that no progress had been made in the possible technology investment signalled by the announcement on 6 January 2000, (see para 183 above). The response of the market on 28 January 2000, was to maintain a relatively high turnover at 6,400,000 shares but with the share price dropping 9.88% to close at \$0.73.

Summary:

194. Over the course of a little under a month, interest in the shares in this previously relatively modestly traded company had changed significantly. From a counter that traded on the basis of a volume well under one million shares per day for many months previously, the shares had traded at a volume well in excess of one million shares on 15 of the 20 trading days to the 28 January 2000. On the nine of those days the volume

²⁹ TB 4 p 9.

³⁰ TB 4 p 10.

had exceeded 3 million shares. The share price had risen from \$0.29 to close on 28 January 2000 at \$0.73 an increase of 151%. The intraday high reached during the period was \$0.92, an increase of 217%.

Newspaper reports:

195. It was plain that there were rumours abounding in the market. Those rumours were reflected in newspaper reports. A stock market gossip column in the Apple Daily on 15 January 2000³¹, the day after the share price had risen by 68.54%, said:

“Nevertheless, Cheong Ming (1196) really is a bit weird. Elisa said that at the moment it was not known what it was all about and attention would have to be kept paying on it.” (sic)

A further column in Apple Daily on the same day³² rated the stock as “Wait & Sell”, noting that after rising and breaking through a 50 day line the stock had picked up strength to see its price surge four days in a row.

196. On 22 January 2000, the Apple Daily stock market gossip column³³ linked Cheong Ming and two other stocks, both of which had seen significant rises, to the Cheung Kong Group. At that time it was considered in the market that the Cheung Kong Group were involved in, and interested in expanding in technology or Internet related shares, and the linking of any company to that Group raised the inference of the dot com euphoria that was gripping the market.

A stock “in play”:

197. Mr Rigby described the circumstances of Cheong Ming shares, in the light of the volume and price movements that we have described, and with regard to the references to Cheong Ming in the newspapers, as being a stock that was potentially “in play”. By that description he said that he meant that Cheong Ming was a company that was:

“open to a change in its regular business that could bring it to the attention of deal-hungry merchant bankers, syndicates interested in stock manipulation, and speculators aware of the upside potential of the Cheong Ming share price in such situations”.³⁴

³¹ TB 4 p 145.

³² TB 4 p 146.

³³ TB 4 p 147.

³⁴ TB 5 p 319-320.

That, taken with the existence of the dot com boom, created a situation where virtually unknown stocks, Mr Rigby said, could suddenly burst into life with their prices appreciating by large percentages or multiples in a very short periods of time.

198. We accept the description, “in play”, as an accurate description of the state of Cheong Ming shares as at 28 January 2000. A person interested in speculating on the stock market, who had the time to devote to following market trends, and who saw the movements in Cheong Ming would have every reason to regard the stock is one to be closely watched, if not one to speculate in.

Chapter 11

Felix Yau's explanation for the share purchases

Funds available to Felix Yau to acquire shares:

199. Felix Yau's assertion to the SFC on interview, and in evidence before us, was that his acquisition of the Cheong Ming shares on 31 January 2000, was part of a plan he had devised for the allocation of a bonus sum that he had been due to receive from Peregrine.

200. On 26 January 2000, Felix Yau received a bonus from Peregrine in the sum of \$984,000.00. He had, prior to that date arranged new employment, but had not been able to give notice to Peregrine of that new employment, because to do so would have resulted in there being no bonus payment to him. The bonus sum, together with other funds he held, in all totalling \$1.4 million, was placed on a fixed deposit account in his own name with the Bank of East Asia on that same day.

201. On 31 January 2000, before he embarked upon the Cheong Ming share purchases, Felix Yau had a credit balance in the sum of \$490,466.73, (ostensibly in the name of Gwennie Chen), in his share trading account at Core Pacific. Consequently he had available to him, at the time the share purchases were made, at least \$1.8 million.

Payment for the shares:

202. On 31 January 2000, Felix Yau acquired a total of 530,000 shares at a total cost of \$437,193.29. When trading resumed on 11 February 2000, he acquired a further 270,000 shares, at a total cost of \$985,137.70. His total outlay, had he not sold any shares and been required to settle all acquisitions in cash, was \$1,422,330.99. It is clear that he had more than that sum available in liquid resources, albeit some of the cash being on interest-bearing term deposit. His position was all the easier, bearing in mind that by selling all of his shares on 11 February 2000, he was not required to find funds to meet the purchases made on that day.

203. On 1 February 2000, a personal cheque was drawn by Gwennie Chen payable to CEF in the sum of \$250,000. Gwennie Chen's evidence was that she simply signed blank cheques on her account and gave them to her husband whenever he asked for them, and that she did so without inquiring the reason why. The same time a sum of \$300,000 was

withdrawn from the Core Pacific share trading account, and deposited in Gwennie Chen's bank account, more than adequately covering the cheque that had been drawn.

204. Mr Ip's submission was that in the light of the fact that payment for the shares came from the Core Pacific share trading account, in the name of Gwennie Chen, and not by the direct application of the bonus received by Felix Yau, Felix Yau had misled the SFC as to the source of funds. Mr Ip sought to add that factor to the consideration of factors upon which he contended that Mr Yau was an insider dealer. We will deal with that submission in our assessment of the evidence.

Felix Yau's decision to invest in Cheong Ming:

205. The evidence of Felix Yau was that during January 2000, anticipating his bonus, he began looking for a suitable stock in which to invest. His evidence was that in the week of 22 January 2000, he read the article in Apple Daily which related the movement in the share price of Cheong Ming to the potential involvement of the Cheung Kong Group. Following a reading of that article he said that he studied the Cheong Ming share price and volume for recent months. He noted that during 1999 the price had been low and stable on small volume, and noted the significant difference in both volume and price during January.

206. He said that in particular he noted that the share price had dropped following the negative announcement on 28 January 2000, and viewed that as a buying opportunity. His evidence was that over the weekend of 29 and 30 January 2000, he went to the library of his old university, the Hong Kong University of Science and Technology at Sai Kung, where he studied the most recent annual report of Cheong Ming. His evidence was that he was familiar, through his work, with the nature of printing companies, and in particular that machinery used by printing companies would long out last accounting write-off periods. He found what he described as a "clean" company, notwithstanding that the profit was dropping. In particular he examined the Net Asset Value, (NAV), of the company compared to its share price, which he found to be considerably below the NAV.

207. He considered that the movement in the volume and share price demonstrated by the trading over January indicated that "there must be something cooking" with the company. That was the only explanation he could see for such a change in volume and share price.

208. His evidence was that after reflecting upon these matters he determined to invest in the company and, prior to trading opening on Monday 31 January 2000, he issued instructions to the brokers.

209. His explanation for splitting the trades between two brokers covered three factors. First he said that he used the two accounts interchangeably. Second, as he knew the account executive received a commission on the transactions he wished to share the business between the two dealers. He said that Kate Liu was the wife of a colleague in Peregrine, and that Kenneth Luk had previously had the majority of his transactions. Thirdly, he said that by giving the large order of 800,000 shares, split between two different brokers, there was less likelihood that the observers of the trading pattern would discern the extent of interest he was expressing in the counter. He knew that each broker would break the order down into smaller parts, again seeking to get the best price.

210. His explanation for making mobile phone calls to place the orders was that at the time of the orders were placed he was out of his office having breakfast. While the mobile phone information available to the Tribunal identified the various cells through which calls were made the Tribunal was not able to draw any particular inference from the location of those cells. The evidence was not such as to be able to identify particular locations a person may be in when a mobile telephone is connected to any particular cell. In the absence of such evidence no inference at all can be drawn from that fact.

Chapter 12

The assessment of the evidence

Gabriel Tse and Gwennie Chen:

211. We accept the evidence of both Gabriel Tse and Gwennie Chen that they knew nothing of the share trading undertaken by Felix Yau through accounts in their names. We accept the evidence of Felix Yau that they knew nothing of the trades. We are satisfied that both Gabriel Tse and Gwennie Chen knew that Felix Yau had established share trading accounts in their names and that he was undertaking share trading in those accounts, although they knew nothing of the details of that trading.

212. We are satisfied that both Gabriel Tse and Gwennie Chen were not in possession of relevant information at the time Felix Yau purchased Cheong Ming shares in share trading accounts in their names.

213. Consequently, while we are satisfied that by permitting their names to be used in share trading accounts by Felix Yau, both Gabriel Tse and Gwennie Chen have facilitated the deception by Felix Yau of his employers as to the fact of his trading, and have facilitated his otherwise concealed trading in Cheong Ming shares, neither Gabriel Tse nor Gwennie Chen should be characterised as insider dealers.

Felix Yau:

214. Having assessed the whole of the evidence a majority of the Tribunal has been unable to say, to the required standard of proof, that the transactions undertaken by Felix Yau in the acquisition of Cheong Ming shares on 31 January 2000, constitute insider dealing. The minority view is that Felix Yau's activities in the acquisition of Cheong Ming shares on that date do constitute insider dealing.

215. The Tribunal as a whole, found the circumstances of Felix Yau's trading in Cheong Ming shares to be highly suspicious. That is particularly so having regard to the fact that he undertook his trading through stock trading accounts in the names of persons other than himself. By trading in stock in the way he did, without going through his employers stockbroking arm, his trading avoided the scrutiny of his employer. Had he followed the proper procedure he would have been told by his employer that as Peregrine were involved in a transaction with Cheong Ming he

would not have been permitted to trade in Cheong Ming shares. In those circumstances no issue of insider dealing would ever have arisen with Felix Yau.

216. The Tribunal as a whole found Felix Yau to be a person of doubtful credibility. In reaching that conclusion the Tribunal bore in mind the fact that he was a person of clear record. However the Tribunal was obliged to have regard to the aspects of deception admitted by Felix Yau during the course of the Tribunal's inquiry.

217. Felix Yau admitted that he knew that he was not permitted to trade in shares in accounts other than share trading accounts opened at the place of his employer. It was perfectly plain that he knew why he was not permitted to trade elsewhere. Notwithstanding that plain knowledge Felix Yau chose to undertake share trading through three different accounts, the CEF account and the Core Pacific accounts to which we have already referred, and a further account at the Bank of China, (BOC). To trade through those accounts in the knowledge of the rules established at his places of employment was a deception of his employers. That deception was aggravated by the fact that all three accounts were in the names of persons other than Felix Yau himself.

218. The BOC account was in the name of Gwennie Chen. We have no evidence as to the particular circumstances of the BOC account, other than Felix Yau's admission that he used that account. In respect of both the CEF and the Core Pacific accounts, Felix Yau forged the signatures of Gabriel Tse and Gwennie Chen respectively. While it is highly likely that the account executives knew those signatures were forged, the management of both CEF and Core Pacific, both of whom were entitled to rely on the integrity of the documents presented to them, were deceived as to the signatures, and as to the true identity of the beneficial owner of the account.

219. Felix Yau admitted to us that in order to gain an accommodation allowance from his wife's employers, he and his wife on the one hand, and Gabriel Tse on the other, entered into a device whereby each purchased flats and leased those flats to the other. They each became the others landlord, and paid each other "rent", a sum which was in turn applied to mortgage repayments on the respective properties. They were not entitled to an accommodation allowance for the purchase of a property, but were entitled to a rental allowance which they received from their employer. The accommodation allowance was, in reality, being used to fund a mortgage. By the use of that deception Felix Yau and Gwennie

Chen were able to obtain an accommodation allowance, which in reality was applied to the reduction of a mortgage. We accept that the practice was one which was widely undertaken at the time, but nevertheless it was, and must have been understood by all involved, to have been a deception, not only of Gabriel Tse's and Gwennie Chen's employers, but also, potentially, the Inland Revenue Department.

220. Felix Yau was obliged to admit that he told a lie to Kenneth Luk in order to obtain the compensation agreement. We have had due regard to his explanation of his reasons for that lie, but the fact remains, notwithstanding that explanation, that by telling a lie he established himself as a person who was prepared to deceive others with whom he was involved, for his own purposes.

The majority view:

221. The majority of the Tribunal felt obliged to recognise and place appropriate weight on the fact that there was no "smoking gun" evidence, that is, evidence from which the inference to be drawn that Felix Yau had received relevant information would be compelling.

222. There was no evidence of any telephone conversations between Felix Yau and Kelvin Wu between the period when Cheong Ming's name was first suggested to Kelvin Wu, and the instructions given by Felix Yau to make the purchases. There was no direct evidence of any direct personal conversations between Felix Yau and Kelvin Wu in which relevant information was disclosed to Felix Yau.

223. There was no evidence that Felix Yau had accessed the relevant documents in the Peregrine computer system. The Tribunal were aware that in the normal course of events a networked computer system will retain a record as to the times at which documents are accessed, and, in all probability in a networked system, the identity of the terminal accessing a document. By the time the matter came for hearing by the Tribunal the relevant computer discs at Peregrine were no longer available, and consequently there was no evidence as to whether or not anyone, other than those entitled to access the relevant documents, had looked at those documents.

224. Although the evidence was that, at the relevant time, the telephones of both Kate Liu at CEF, and Kenneth Luk at Core Pacific, were monitored by recording, the SFC in the course of their investigation had not

obtained those recordings. Consequently, although precise evidence of the contents of the instructions given by Felix Yau to the brokers would have been available, it would not put before the Tribunal.

225. The Chairman notes that this is not the first occasion upon which SFC investigators have apparently failed to obtain brokerage telephone recordings in relation to suspicious transactions. Such recordings are of fundamental importance in the investigation of market misconduct and should be an early point of investigation when inquiries are being undertaken.

226. The majority of the Tribunal found the fact that Felix Yau used the names of persons other than himself to undertake his share trading to be highly suspicious. However, having regard to the extent of the trading that he had undertaken previously, there being no suggestion that any other trading was insider dealing, the majority took the view that Felix Yau's explanation that he did not wish his employers to know that he was trading on their time was an explanation that could not be dismissed. That attitude on the part of Felix Yau was consistent with the fact that he did not discuss his share trading activities with his wife.

227. The majority found the fact that Cheong Ming was plainly a stock in play in January 2000, to be highly significant. An astute investor, or an experienced investor, as Felix Yau plainly was, could well be expected to have observed not only the trend in the share price but also the public announcements prior to 30 January 2000, all to be indicators of a gamble worth taking. Weighing this factor with the dot com boom that was happening at the time, the majority were of the view that clear evidence of the receipt of relevant information would be required to displace the inference that Felix Yau made his investments on the basis of an astute examination of publicly available information.

228. Having regard to the state of the negotiations between Sega and Cheong Ming on the evening of Sunday 30 January 2000, it was the view of the majority that in normal circumstances a request to suspend Cheong Ming shares from trading would have been made prior to the commencement of trading on Monday 31 January 2000. The majority were of the view that Kelvin Wu, acting for Sega, and having no direct control over the issue of suspension of Cheong Ming, could not have anticipated that Somerly, on behalf of Cheong Ming, would not make such an application of the SEHK.

229. Had Kelvin Wu disclosed relevant information to Felix Yau, or Felix Yau discovered that information surreptitiously prior to the close of trading on Friday 28 January 2000, the majority took the view that Felix Yau would not have waited until Monday 31 January 2000, to commence trading. The fact that he did not trade prior to Monday 31 January 2000, tended to indicate to the majority that, at least up until the close of trading on Friday 28 January 2000, Felix Yau was not in possession of relevant information.

230. Had he come into possession of relevant information between the close of trading on Friday 28 January 2000, and the commencement of trading on Monday 31 January 2000, it is highly unlikely that he would have expected there to be trading in Cheong Ming that morning, and consequently there would have been no purpose in placing orders.

231. The majority did not find the fact that the sum actually paid to Felix Yau by way of a bonus was not directly applied in settlement of the share purchases to be inconsistent with his statement to that effect to the SFC. The majority accepts that a person may “ earmark ” anticipated funds for a particular purpose, but use other funds also available for that particular purpose, if that enables interest to be saved or is simply a more convenient process at the time that the anticipated funds are received.

232. Weighing all of these matters, while finding Felix Yau’s purchase and subsequent immediate sale of Cheong Ming shares to be highly suspicious, the majority were not satisfied to a high degree of probability that his actions constituted insider dealing.

The minority view:

233. The view of the minority of the Tribunal placed greater emphasis on the deceptions practised by Felix Yau detailed above. In addition the minority placed greater emphasis on the lie told by Felix Yau to Kenneth Luk in order to achieve compensation.

234. In the view of the minority the access available to Felix Yau to relevant information, either by access to documents from the insecure Peregrine computer system, or from Kelvin Wu’s desk, or by overhearing the telephone conversation involving Kelvin Wu, or by direct communication of knowledge from Kelvin Wu, was such that, in applying the appropriate burden of proof, the inference that Felix Yau must have received relevant information from one of those sources was appropriately

established.

235. The minority placed weight not only on the lie told by Felix Yau to Kenneth Luk, but also upon his insistence that there be a compensation arrangement. In the view of the minority had Felix Yau not been in possession of relevant information, he would not have seen the need to make a compensation arrangement, particularly, (in the absence of possession of relevant information), having regard to the risk that the share price might subsequently drop.

236. The minority took the view that the assurance with which the orders were placed on the morning of 31 January 2000, together with the sum committed, being well in excess of any previous investment made by Felix Yau, added weight to the inference that Felix Yau must have been in possession of relevant information.

237. Having regard to the deceptions practised on his employer, the minority rejected the reasons given by Felix Yau for his absence from the Peregrine office on the morning of 31 January 2000, taking the view that a financial advisor in Felix Yau's position would not be absent in such a manner unless he wished to establish a particular alibi for being absent.

238. Weighing all of these matters, it was the view of the minority that the allegation of insider dealing made against Felix Yau was established to a high degree of probability.

Chapter 13

Findings as to Insider Dealing

Findings:

239. Chapters 1 to 13 are now forwarded to the Financial Secretary in response to the questions raised by his notice of 25 September 2003.

240. For the foregoing reasons the Tribunal finds that there was not insider dealing in respect of Cheong Ming shares during the reference period by or on behalf of Gwennie Chen and Gabriel Tse.

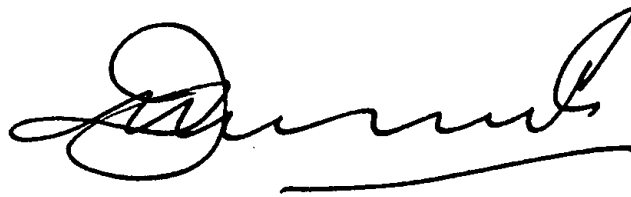
241. The foregoing reasons, by a majority, the Tribunal finds that there was not insider dealing in respect of Cheong Ming shares during the reference period by or on behalf of Felix Yau.

Applications for costs:

242. The Tribunal will resume its sittings at 2:30 p.m. on Friday 15 September 2006, where Gwennie Chen, Gabriel Tse, or Felix Yau may make such application as they may wish pursuant to the provisions of s 26A of the Ordinance for costs.

243. If any party wishes to make an application for costs, any evidence to be called in support of that application, and any submissions to be made in support must be given in writing, to Counsel for the Tribunal no later than 14 days prior to the resumed hearing date. If Counsel for the Tribunal wishes to call evidence in response, or make submissions in response, that evidence and submissions must be given in writing to the applicant for costs no later than 7 days prior to the resumed hearing.

244. If any of the three implicated parties do not intend to make an application for costs they must notify the Tribunal Secretary, and Counsel to the Tribunal, no later than 14 days prior to the resumed hearing date.



His Honour Judge John Saunders

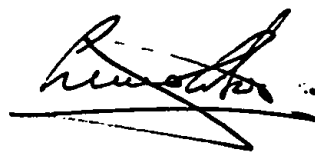
Deputy High Court Judge

Chairman



Mr Jeremy Nigel Gadbury

Member



Mr Lincoln Soo Hung Leung

Member

3 August 2006

Introduction

We now submit the second part of the Report of our findings in relation to the Financial Secretary's Notice pursuant to section 16 of the Securities (Insider Dealing) Ordinance Cap 395, (the Ordinance), dated 25 September 2003, requesting the Insider Dealing Tribunal to conduct an inquiry into certain dealings in the listed securities of Cheong Ming Investments Limited on 31 January 2000, (the Notice).

The second part of the Report constitutes our findings in relation to the third question raised by the Notice. By paragraph (c) of the Notice we are required to inquire into and determine the amount of any profit gained or loss avoided by those persons we identified as insider dealers.

It is the usual practice of the Tribunal, the same time as it considers the issues raised by paragraph (c) of the Notice, to consider questions of costs to be awarded to persons under s 26A of the Ordinance.

Chapter 14

Costs Orders

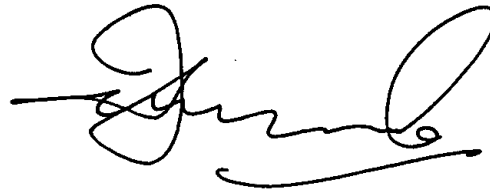
245. As no persons were identified as insider dealers it is not necessary for the Tribunal to examine issues of profit gained, loss avoided, financial penalties or other orders.

246. By virtue of s 26A(1)(b) of the Ordinance the Tribunal may award to any person whose conduct was, in whole or in part, the subject of the inquiry, such sum as it thinks fit in respect of the costs reasonably incurred by him in relation to the inquiry.

247. Felix Yau, Gwennie Chen, and Gabriel Tse, each being persons whose conduct was, in whole or in part, the subject of the inquiry, were invited to inform the Tribunal whether or not they wished to make an application for costs.

248. By letters dated 28 August 2006, both Gwennie Chen and Gabriel Tse notified the Tribunal that they did not wish to make an application for costs. By letter dated 29 August 2006, the solicitors for Mr Felix Yau notified the Tribunal that Mr Felix Yau did not wish to make an application for costs.

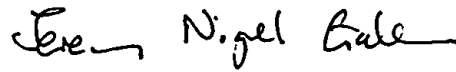
249. There being no applications for costs, the Tribunal makes no orders as to costs.



His Honour Judge John Saunders

Deputy High Court Judge

Chairman



Mr Jeremy Nigel Gadbury

Member



Mr Lincoln Soo Hung Leung

Member

14 September 2006

Insider Dealing Tribunal Inquiry into Cheong Ming Investments Limited

Annexure A

Layout of the 24th floor of the New World Tower occupied by the Corporate Finance Department of BNP Prime Peregrine Capital Limited

BNP Prime Peregrine Capital Limited

28451665

Machine Room
Ext. 1728Heggy
Law
1725

28697941

Alex Ko
1712Jasper
Tse
1224Peter Fu
1800Francis Leung
1823Maria Ng
1821Isadora Li
3490Tim Fu
1213

28451027

28455300

Frank Slevin
1228

284555041

Stacey
Wong
1715Catherine
Huang
3314Manda
Tang
1218Jacky
Wong
1724Timmy
Lee
3327Nancy
Chau
1238Helen
Ho
1204Snow
Lee
3501Jojo
Chiu
1279Salina
Lo
1709Stella
Chan
1713Ambrose
Lee
1221Julie
Sun
3518Jackie
Li
1208Kenneth
Kwok
1211Johnny
Lam
1949Ceell
Ng
3505Gloria
Cheng
1902Rudolf
Yu
3313Cynthia
Chow
3331Tanla
Wong
3589Dexter
Tao
1239Stanley
Tang
1227Michael
Li
1718Tony
Chan
1720Kenneth
Tseung
1231Joel
Chang
1729Zhang
Tianfeng
1265Amanda
Lu
1929Chris
Leahy
1990Felix
Yau
1950Kelvin
Wu
1236

Insider Dealing Tribunal Inquiry into Cheong Ming Investments Limited

Annexure B

Trading statistics for Cheong Ming shares on the Stock Exchange of Hong Kong
for the period from 1 January 2000 to 29 February 2000

Stock Historical Data

Stock	01196 - CHEONG MING
Date (dd/mm/yyyy)	01/01/2000 - 29/02/2000
Max / Min Closing Price	8 / 0.29
Max / Min Price	9.3 / 0.29
Weighted Average Price	4.243

Total Volume	268,992,000 shares
Daily Average	6,724,800 shares
Total \$ Turnover	1,141,274,005
Average \$ Turnover	28,531,850

Date	Volume	\$ Turnover	High	Low	Close	%Change	HSI Close
03/01/2000	0	0	--	--	0.290	0.00	17,369.63
04/01/2000	560,000	165,400	0.300	0.290	0.300	3.45	17,072.82
05/01/2000	100,000	29,500	0.295	0.295	0.300	0.00	15,846.72
06/01/2000	1,676,000	552,050	0.360	0.300	0.330	10.00	15,153.23
07/01/2000	692,000	233,300	0.350	0.310	0.330	0.00	15,405.63
10/01/2000	1,240,000	447,700	0.380	0.340	0.375	13.64	15,848.15
11/01/2000	810,000	321,450	0.410	0.380	0.410	9.33	15,862.10
12/01/2000	2,848,000	1,414,680	0.540	0.410	0.500	21.95	15,714.20
13/01/2000	1,856,000	842,810	0.480	0.440	0.445	-11.00	15,633.96
14/01/2000	15,324,000	9,625,130	0.790	0.460	0.750	68.54	15,542.23
17/01/2000	5,856,000	3,781,640	0.800	0.540	0.560	-25.33	15,574.56
18/01/2000	3,021,500	1,730,855	0.650	0.540	0.550	-1.79	15,789.20
19/01/2000	2,156,000	1,139,040	0.580	0.500	0.520	-5.45	15,275.34
20/01/2000	980,000	510,340	0.560	0.510	0.520	0.00	15,215.31
21/01/2000	6,422,000	4,036,360	0.710	0.520	0.670	28.85	15,108.41
24/01/2000	11,068,000	8,376,260	0.810	0.700	0.760	13.43	15,167.55
25/01/2000	4,348,000	3,150,400	0.770	0.700	0.730	-3.95	15,103.04
26/01/2000	8,914,000	6,899,760	0.830	0.710	0.780	6.85	15,427.72
27/01/2000	9,278,000	7,933,980	0.920	0.800	0.810	3.85	15,917.81
28/01/2000	6,400,000	4,712,380	0.800	0.700	0.730	-9.88	16,185.94
31/01/2000	5,194,000	4,661,520	0.990	0.730	0.970	32.88	15,532.34
01/02/2000	0	0	--	--	0.970	0.00	15,653.86
02/02/2000	0	0	--	--	0.970	0.00	15,789.82
03/02/2000	0	0	--	--	0.970	0.00	15,968.12
08/02/2000	0	0	--	--	0.970	0.00	16,228.73
09/02/2000	0	0	--	--	0.970	0.00	16,819.46
10/02/2000	0	0	--	--	0.970	0.00	16,845.17
11/02/2000	52,640,000	300,146,150	8.000	4.225	8.000	724.74	17,380.30
14/02/2000	26,070,000	187,046,800	9.300	6.500	7.200	-10.00	17,188.96
15/02/2000	25,996,000	197,071,700	8.100	7.050	7.300	1.39	16,688.16
16/02/2000	10,976,000	77,924,400	7.600	6.800	6.900	-5.48	17,043.39
17/02/2000	7,700,000	50,799,200	7.000	6.300	6.550	-5.07	16,981.23
18/02/2000	11,494,000	67,210,400	6.700	5.400	6.000	-8.40	16,599.16
21/02/2000	6,010,000	32,208,500	5.900	5.100	5.100	-15.00	16,322.37
22/02/2000	13,190,000	56,808,500	5.300	3.725	4.600	-9.80	16,255.17
23/02/2000	5,384,000	26,255,800	5.100	4.600	4.750	3.26	16,376.79
24/02/2000	3,496,000	16,848,750	5.150	4.575	4.625	-2.63	17,058.66

25/02/2000	6,784,500	27,955,500	4.600	3.850	4.050	-12.43	17,200.98
28/02/2000	3,888,000	13,346,650	3.875	3.100	3.450	-14.81	16,984.44
29/02/2000	6,620,000	27,087,100	4.500	3.400	4.450	28.99	17,169.44

Insider Dealing Tribunal Inquiry into Cheong Ming Investments Limited

Annexure C

The movement of the share price in Cheong Ming shares against the Hang Seng Index for the period from 3 January 2000 to 29 February 2000

Cheong Ming Holdings Limited Movement of Cheong Ming vs HSI during 3 Jan 2000 to 29 Feb 2000

