

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

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

SIU FUNG CERAMICS HOLDINGS LIMITED

between

June and September 1996

and on other related questions

Introduction

By a notice pursuant to section 16 of the Securities (Insider Dealing) Ordinance Cap. 395 dated 10 February 2001, The Hon. Donald Tsang, the then 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, the Siu Fung Ceramics Holdings Limited ("the company") has taken place, the Insider Dealing Tribunal is hereby required to inquire into and determine;

- (a) whether there has been insider dealing in relation to the company arising out of the dealings in the listed securities of the company by and/or on behalf of -
Mr.Lee Siu Fung during June 1996;
Mr.Lee Siu Fung and Lalertsuphakun Dusanee during July 1996;
Mr.William Lam Chun Ming and Mrs. Lisa Lam Lai San during July 1996;
Mr.Robert Warren Miller, Mr. Nicholas Anthony Prior, Mr. William Lam Chun Ming, Mr. Henry Tai Hon Leung during August and September 1996; and
Mr.Fabrice Christian Jacob, Mr. Christian Haas and Mr.Philippe Dharmelincourt during September 1996;*
- (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 The Hon Mr. Justice Lugar-Mawson as Chairman and Mr. Michael Sze Tsai Ping and Mr. Malcolm Antony Barnett as members, heard evidence and submissions from counsel for 116 days, between 21 October 2002 to 10 September 2003.

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 question (c) will be submitted at a later date.

Contents

	Page
Glossary	1-3
Chapter 1. Procedure, ambit of the Inquiry and structure of the report.	4-11
Chapter 2. The background to the Inquiry.	12-15
Chapter 3. The law & legal principles followed throughout the Inquiry and in writing the report.	16-28
Chapter 4. Holdings' share price between 2 January 1996 & 31 October 1996.	29-33
Chapter 5. The failure to list NHD on the NYSE.	34-39
Chapter 6. Who, other than the implicated persons, knew what about that failure?	40-57
Chapter 7. The SFH Group's liquidity and funding requests in the period from March 1996 to 28 October 1996.	58-80
Chapter 8. The information available to the public about the failure of the listing and the SFH Group's liquidity.	81-105
Chapter 9. Identification of 'relevant information'.	106-123
Chapter 10. The sale of the Holdings shares held in Li Man Yi, Wong Fong Kim and Wai Man Keung's names on 14 & 18 June 1996.	124-145
Chapter 11. The sale of 80 million Holdings shares held in Mrs. Lee's name on 2 & 8 July 1996.	146-154

Chapter 12.	The background to the sale of 6 million Holdings shares held in Lisa Lam's name on 2, 26 & 29 July 1996 and Search's sale of 43,142,000 Holdings shares held in Mordale's name between 2 August 1996 & 5 September 1996.	155-161
Chapter 13.	Lisa Lam, William Lam, Henry Tai, Nicholas Prior, and Robert Miller's knowledge of events in Holdings between November 1995 & 5 August 1996.	162-175
Chapter 14.	Search's decision to sell the 43,142,000 Holdings shares held in Mordale's name and the reasons behind it.	176-194
Chapter 15.	William and Lisa Lam's culpability in respect of Lisa Lam's sale of 6 million Holdings shares on 2, 26 & 29 July 1996.	195-204
Chapter 16.	William Lam, Henry Tai, Nicholas Prior and Robert Miller's culpability in respect of Search's sale of 43,142,000 Holdings shares between 2 August 1996 & 5 September 1996.	205-212
Chapter 17.	GAAP's sale of Holdings shares between 10 & 20 September 1996.	213-226
Chapter 18.	Summary of findings.	227-230
	Acknowledgements and attestation	231-232
	Introduction to Part 2 of the Report	233-234
Chapter 19.	Calculation of losses avoided.	235-243
Chapter 20.	Determination of penalties.	244-252

Chapter 21.	Costs and witness expenses.	253-265
Chapter 22.	The Tribunal's orders.	266-268
	Attestation to Part 2 of the Report.	269
	3 rd Report of the Tribunal with attestation.	270-272
	4 th Report of the Tribunal.	273-286
	Attestation to Part 4 of the Report.	287

Annexures

- Annexure 1. Details of legal representation at the Inquiry.
- Annexure 2. List of hearing days.
- Annexure 3. List of witnesses.
- Annexure 4. A table showing the:
- daily high/low price of Holdings' shares
 - daily closing price of Holdings' shares
 - daily turnover of Holdings' shares; and
 - the Hang Seng Index (HSI)
- for the period 2 January 1996 to 31 October 1996.
- Annexure 5. A graph comparing the daily closing price of Holdings' shares and the HSI for the period 2 January 1996 to 31 October 1996.
- Annexure 6. A graph showing the daily closing price and turnover Holdings' shares for the period 2 January 1996 to 7 November 1996.
- Annexure 7. Calculation of losses avoided.
- Annexure 8. Witness expenses paid by the Tribunal.
- Annexure 9. The costs of the Inquiry.

Glossary

Throughout this report, references to dollars (\$) are to Hong Kong dollars, words and expressions employing the masculine gender include the feminine and neuter genders and words and expressions in the singular include the plural and vice-versa. Where we have provided the definition of any word or expression given in any ordinance, the definition extends to all grammatical variations and cognate expressions of that word or expression.

Save where the context otherwise requires it, the following terms and abbreviations are used throughout this report:

Term or abbreviation	Definition
ACMER	Subsidiary of Banque Worms
AGM	Annual General Meeting
Banque Worms	Banque Worms Nominees (Hong Kong) Ltd.
Beijing Sanitaryware	Siu Fung Ceramics (Beijing) Sanitaryware Co. Ltd.
Cazenove	Cazenove & Co. (Overseas) Ltd
CEF Brokerage	CEF GE Brokerage Ltd
CEO	Chief Executive Officer
CFO	Chief Financial Officer
CIO	Chief Investment Officer
Citicorp	Citicorp Capital Asia Ltd
Concept	Siu Fung Ceramics Concept Company Ltd
Concept Investors	Collectively, Search, Citicorp, HPEM, Prudential, Peregrine & Sun Hung Kai
COO	Chief Operating Officer
Coopers	Coopers & Lybrand Certified Public Accountants (Holdings auditors at the time of the listing)
CSFB or CS Boston	Credit Suisse First Boston
Dao Heng Bank	Dao Heng Bank Ltd
Deutsche Morgan	Deutsche Morgan Grenfell Hong Kong Ltd
Divestment memo	A IND memo dated 31 July 1996
DLJ	Donaldson, Lufkin & Jenrette Securities Corporation of Los Angeles, California
DOJ	Department of Justice, Government of the Hong Kong SAR

Dubois	A German ceramics equipment manufacturer acquired by Holdings in 1993
EBITDA	Earnings before interest tax depreciation and amortisation
Eddie Lui's cash flow	A cash flow forecast, dated 24 June 1996 prepared by Eddie Lui the CFO of both Holdings and NHD.
FSB	Financial Services Branch, Government of the Hong Kong SAR
FT	Financial Times
GAAP	Grande Arche Asia Pacifique
H&D	H&D (Holdings) Company Ltd
H&D (Asia)	H&D (Asia) Ltd.
Hang Seng Bank	Hang Seng Bank Ltd
Heimsoth	Heimsoth Keramische Öfen und Anlagen GmbH & Co KG
Holdings	Siu Fung Ceramics Holdings Ltd
HPem	HSBC Private Equity Management Ltd
HSBC	Hongkong and Shanghai Banking Corporation Ltd
HSBC Asset Management	HSBC Asset Management Hong Kong Ltd
HSI	Hang Seng Index
ICAC	Independent Commission Against Corruption
IND or SIN	Search's Investment Division
IPO	Initial public offering
IRR	Internal rate of return
James Capel	HSBC James Capel Asia Ltd
Jardine Fleming	Jardine Fleming Broking Ltd
J. A. Fu	J. A. Fu & Co
Kim Eng	Kim Eng Securities Ltd
Listing, or Spin-off	The proposed listing of NHD on the NYSE
Mordale	Mordale Profits Ltd
NASDAQ	National Association of Securities Dealers Automated Quotation System (USA)
Natwest	Wheelock Natwest Securities Ltd (now known as Natwest Securities Hong Kong Ltd.)
Netzsch	Erich Netzsch GmbH & Co Holding KG
NHD	NHD International Ltd
NHD Systems	NHD Systems (Asia) Ltd

NYSE	New York Stock Exchange
OC	Office of the Chairman at Search
The Ordinance	Securities (Insider Dealing) Ordinance, Cap. 395
PAM	Portfolio Asset Management Ltd
PAMA	Prudential Asset Management Asia Hong Kong Ltd
Peregrine	The Investment Company of China (a subsidiary of Peregrine Direct Investment Ltd)
PTP	Plantation Timber Project - a Search investment
PWC	PricewaterhouseCoopers Certified Public Accountants (formerly Price Waterhouse)
Red Book	IND quarterly report
Rowe Price-Fleming	Rowe Price-Fleming International Inc
SCB	Standard Chartered Bank Ltd
SCMP	South China Morning Post
Search	Search Investment Group
Search China	Search China Ventures Ltd
SEC	Securities & Exchange Commission USA
Section 16 notice	Notice given under s.16 of the Ordinance
Section 18 authorisation	Authorisation given under s.18 of the Ordinance
Section 33 notice	Notice given under s.33 of the SFC Ordinance
SEHK	The Stock Exchange of Hong Kong
SFC	Securities & Futures Commission Hong Kong
SFC Ordinance	Securities & Futures Commission Ordinance, Cap. 24
SFH Group	Siu Fung Ceramics Holdings Ltd Group of Companies - including Holdings, Concept & NHD
SIN	Search Investment Division (also known as IND)
Sun Hung Kai	Sun Hung Kai China Development Fund Ltd
Tanrich	Tanrich Securities Company Ltd
Tribunal	The Insider Dealing Tribunal
TVSN	TV Shopping Network - a Search investment
UBS	UBS Capital Asia Pacific Ltd
Welcon	Welcon Construction Co Ltd

Chapter 1

In this chapter we deal with the Tribunal's constitution; identify the implicated persons and the witnesses before the Tribunal; and outline the procedures we followed and the juridical basis of our findings. We also explain the structure of this report.

The Tribunal's constitution

As a result of the trading in Holdings' shares described in Chapter 2, the Securities & Futures Commission conducted an investigation. This led to The Hon Donald Tsang, the then Financial Secretary, on 10 February 2001 requesting the Insider Dealing Tribunal to conduct this inquiry. We have quoted the terms of his notice of that date in the introduction.

Pursuant to Section 15(2) of the Ordinance, Cap 395, The Hon Mr. Justice Lugar-Mawson was appointed the Chairman of the Tribunal and Mr. Michael Sze Tsai Ping and Mr. Malcolm Antony Barnett were appointed as members.

Mr. Sze is a Certified Public Accountant and a director of Baron Capital Ltd. He has served as a committee member on other public boards in Hong Kong, including the listing committee of the SEHK. Mr. Sze has previously sat as a member of the Insider Dealing Tribunal.

Mr Barnett is a solicitor and a company director; formerly he was a legal adviser to the HSBC Group. He has served as a committee member on many public boards in Hong Kong. Mr. Barnett has previously sat as a member of the Insider Dealing Tribunal.

References in this report to 'The Chairman' are to Mr. Justice Lugar-Mawson.

We appointed Mr. Michael Lunn SC, Mr. Peter Davies of counsel and Mrs. Winnie Ho Ng Wing yee, Government Counsel as Counsel to the Tribunal. The Counsel to the Tribunal were not prosecutors, neither were they counsel for the SFC. Their function was to present relevant evidence to us objectively, regardless of which way that evidence fell, be it in support of, or against, an allegation of insider dealing. Counsel to the Tribunal, however, were not constrained to remain neutral throughout the inquiry. Where appropriate, they were entitled to employ their advocacy skills to test and probe evidence.

The Tribunal's working method

Once the Tribunal was established we read the various materials the Financial Secretary had forwarded to us. These consisted of summaries of the SFC investigation, copies of records of interview and statements of various persons made during the course of that investigation and various accompanying documents. We directed ourselves that these materials were not evidence in the inquiry and were, at that stage, merely to serve as introductory material for the assistance of our understanding of the subject matter of the inquiry.

Identification of the implicated persons

Before the Inquiry started we determined, pursuant to paragraph 17 of the schedule to the Ordinance, that the persons named in the Financial Secretary's notice, together with Miss Li Man Yi, Mr. Wai Man Keung and Mr. Wong Fong Kim, were persons implicated or concerned in the subject matter of the inquiry. In the course of the Inquiry, on 1 November 2002, we determined that Mr. Daniel Chan Kwong Tat was a person implicated or concerned in the subject matter of the inquiry. From now on we refer to these persons as 'implicated persons'.

For ease of reference the implicated persons were as follows:

Full name	Referred to in this report as:
1. Mr. Siegfried Lee Siu Fung	Siegfried Lee
2. Ms. Li Man Yi	Li Man Yi
3. Mr. Wong Fong Kim	Wong Fong Kim
4. Mr. Wai Man Keung	Wai Man Keung
5. Mrs. Lelalertsuphakun Dusanee	Mrs. Lee
6. Mrs. Lisa Lam Lai San	Lisa Lam
7. Mr. William Lam Chun Ming	William Lam

8. Mr. Henry Tai Hon Leung	Henry Tai
9. Mr. Robert Warren Miller	Robert Miller
10. Mr. Nicholas Anthony Prior	Nicholas Prior
11. Mr. Fabrice Christian Jacob	Fabrice Jacob
12. Mr. Christian Haas	Christian Haas
13. Mr. Phillipe Dharmelincourt	Phillipe Dharmelincourt
14. Mr. Daniel Chan Kwong Tat	Daniel Chan

Paragraph 16 of the schedule to the Ordinance provides that all persons implicated or concerned in the subject matter of an Insider Dealing Tribunal inquiry are entitled to be present in person at any sitting of the Tribunal and to be represented by a barrister or solicitor. 'Salmon letters' (so named after Lord Justice Salmon who in the 1966 Royal Commission's report on Commissions of Inquiry 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) were sent to all persons whom we identified as persons implicated or concerned in the subject matter of the inquiry, informing them of that fact and advising them of their rights under paragraph 16 of the schedule. They were also served with a summary of the evidence produced by the SFC investigation and advised that preliminary meeting of the Tribunal would be held on 30 January 2002.

The preliminary meeting

At the preliminary meeting the Chairman delivered an opening statement at that preliminary hearing which dealt with a number of matters. In summary they were:

- Confirming the Inquiry's terms of reference.
- Disclosing the preliminary steps we had taken in the course of preparing for the inquiry.
- Outlining the procedures we proposed to follow in the course of the inquiry.

- Recognising the legal representatives appearing for the implicated persons.

The first schedule to this report gives details of the legal representation at the Inquiry.

At the preliminary hearing we pointed out that Counsel to the Tribunal would, of necessity, be involved in a large amount of administrative work, such as arranging for the attendance of witnesses and, when appropriate, ensuring that steps were taken to secure new evidence. To this end it was said that Counsel to the Tribunal might from time to time have to meet with the Chairman and the Tribunal members in chambers. However, it was anticipated that once the Inquiry commenced, such meetings would be kept to the minimum necessary to ensure the orderly progress of the Inquiry. We place on record that once the Inquiry commenced there were no meetings between Counsel to the Tribunal and ourselves at which matters of law or substantive evidence as opposed to purely administrative matters were discussed. A summary of the content of all meetings that were held was given at the hearing following them.

The inquisitorial process

The provisions of Part III of the Ordinance (including the schedule) envisage an inquisitorial process not an adversarial one. Although the inquisitorial process appears unusual - even sinister - to those brought up in the common law tradition, it is not. The process observes the basic principle embodied in all developed systems of justice in the Latin maxim '*audiatur et altera partes*' literally '*hear both or all parties*'. No decision can be reached until a fair opportunity has been given to all concerned in the inquiry to be heard, and to discuss and test the claims, arguments, considerations and evidence of the others.

In the inquisitorial process the judges are given a greater role, as it is believed that, thereby, it will be easier for them to arrive at the truth. The Tribunal, therefore, directs the inquiry; the witnesses called are the Tribunal's witnesses; and as the Inquiry progresses, new matters may be raised which require a line of investigation not previously thought necessary. The Tribunal has a broad discretion to receive and consider relevant material, whether by way of oral evidence, written statements, documents or otherwise. Neither is the Tribunal bound by the conventional rules of evidence that apply in adversarial proceedings.

We emphasise the inquisitorial nature of our function because throughout the many days of the Inquiry we actively sought and obtained evidence beyond that obtained by

the SFC. This was the consequence of the task entrusted to us by the Ordinance and the terms of reference. In doing so we uncovered what we regard as significant relevant evidence. Whilst the procedures we adopted were flexible, we were always aware that one of our primary considerations was fairness to all persons who were involved in the inquiry. At no time did we adopt any procedure which in our view may have resulted in unfairness to any such person.

The conduct of the Inquiry

The Inquiry was conducted in public over 116 days from Monday, 21 October 2002 to Wednesday, 10 September 2003. Save for two sessions held at the Technology Court in the High Court, where we received evidence from Paris by way of a live video link, all sessions were held at the Tribunal's courtroom on the 7th floor of Lippo Tower 2, Queensway, Hong Kong.

Over the course of the Inquiry we heard from 53 live witnesses, including all the implicated persons, considered the statements of 12 other witnesses who were not called to give oral evidence (including statements from three expert witnesses; Mr. Clive Rigby, called on behalf of the Tribunal; Mr. Thomas Heale called on behalf of Henry Tai, Nicholas Prior and Robert Miller and Mr. Richard Witts, called on behalf of Fabrice Jacob) and received 35 lever arch files full of documentary evidence. The second schedule to this report lists the hearing days and the third schedule lists the witnesses we heard from as well as those whose statements we considered.

There were two witnesses we would particularly have liked to have heard from - Robert Lewis a Senior Analyst at James Capel and Du Ying Tzyong (Y. T. Du) Holdings' CEO from mid-August 1996. We were unable to do so because Robert Lewis, who is in London, declined to attend and give evidence before us and no one appears to know Y. T. Du's current whereabouts.

We mainly sat in the mornings from 9.30 a.m. to 1 p.m. to enable the Tribunal members to attend to their professional commitments in the afternoons. When it was necessary to accommodate witnesses or speed up the progress of the Inquiry the Tribunal sat in the early evening from 4.30 to 7 p.m.

The Tribunal's proceedings were recorded and transcribed by WordWave International Asia. A transcript of each day's proceedings was ready either in the late afternoon of that day or the morning of the following day. The transcripts were made available to all

the implicated persons and their legal representatives as soon as they were ready, by e-mail.

Mr. Lunn, leading Counsel to the Tribunal, made an opening statement at the commencement of the inquiry. A copy of this had been served on the implicated parties earlier. Counsel for the implicated parties then delivered opening statements on behalf of William Lam, Lisa Lam, Henry Tai, Nicholas Prior and Robert Miller. Evidence was then called before us. The evidence took the form of the oral evidence of witnesses, witness statements or affirmations, various documentary exhibits and schedules. We were careful to remind ourselves that schedules and charts prepared for the hearing could not be relied upon unless they were proved from their source materials. Extracts and summaries of the evidence that we thought important appear throughout this Report. At the end of the evidence we had written submissions from Counsel to the Tribunal and those implicated persons, or their counsel, who chose to submit them and heard short oral addresses focusing on the salient points in those submissions. We then adjourned for discussion between ourselves.

Decisions on questions of fact & law

Paragraph 13 of the schedule to the Ordinance (the schedule is provided for in section 5(5)) provides that the three members of the Tribunal decide all questions of fact, but that the Chairman alone decides all questions of law. All our findings of fact in this report were made unanimously. Any reference in this report to the Tribunal making a decision on a question of law is to be read as being a decision made at the Chairman's direction.

The ambit of the Inquiry and the report's structure

We found as the inquiry progressed that it fell into five distinct, but not entirely unconnected, areas, namely:

1. Li Man Yi, Wai Man Keung, Wong Fong Kim Holdings share sales on 14 & 18 June 1996;
2. Mrs. Lee's Holdings share sales on 2 & 8 July 1996;
3. William Lam and Lisa Lam's Holdings share sales on 2, 26 & 29 July 1996;
4. Mordale's Holdings share sales between 2 August 1996 & 5 September 1996;

and

5. GAAP's Holdings share sales between 10 & 20 September 1996.

Areas 1 & 2 are to some extent interconnected, given the common factor of Siegfried Lee and Daniel Chan's involvement in both sets of transactions, as are areas 3 & 4, given the common factor of William Lam's involvement in both sets of transactions. It has therefore not been possible for us to deal with these areas by way of entirely separate narratives.

Chapters 2 to 17 of this report deal with the following issues:

- Chapter 2. - The background to the Inquiry.
- Chapter 3. - The law & legal principles we followed throughout the Inquiry and in writing this report.
- Chapter 4. - Holdings share price between 2 January 1996 & 31 October 1996.
- Chapter 5. - The failure to list NHD on the NYSE.
- Chapter 6. - Who, other than the implicated persons, knew what about that failure.
- Chapter 7. - The SFH Group's liquidity between March 1996 & 28 October 1996.
- Chapter 8. - The information available to the public about the failure of the listing and the SFH Group's liquidity.
- Chapter 9. - Identification of 'relevant information'.
- Chapter 10. - Li Man Yi, Wong Fong Kim and Wai Man Keung's sales of the Holdings shares held in their names on 14 & 18 June 1996.

- Chapter 11. - Mrs. Lee's sale of 80 million Holdings shares held in her name on 2 & 8 July 1996.
- Chapter 12. - The background to Lisa Lam's sale of 6 million Holdings shares held in her name on 2, 26 & 29 July 1996 and Search's sale of 43,142,000 Holdings shares held in Mordale's name between 2 August 1996 & 5 September 1996.
- Chapter 13. - Lisa Lam, William Lam, Henry Tai, Nicholas Prior, and Robert Miller's knowledge of events in Holdings between November 1995 & 5 August 1996.
- Chapter 14. - Search's decision to sell the 43,142,000 Holdings shares held in Mordale's name and the reasons behind it.
- Chapter 15. - William and Lisa Lam's culpability in respect of Lisa Lam's sale of 6 million Holdings shares on 2, 26 & 29 July 1996.
- Chapter 16. - William Lam, Henry Tai, Nicholas Prior and Robert Miller's culpability in respect of Search's sale of 43,142,000 Holdings shares between 2 August 1996 & 5 September 1996.
- Chapter 17. - GAAP's sale of Holdings shares through Banque Worms between 10 & 20 September 1996.

We summarise our conclusions in Chapter 18.

We did not have to inquire into any share dealings conducted by any of the implicated persons, or GAAP, or Search outside of the periods of time given in the section 16 notice.

We now provide our findings in relation to sub-paragraphs (a) and (b) of the terms of reference set out in the section 16 notice.

We intend after further submissions and representations from the parties to determine and deliver the appropriate orders and penalties pursuant to sub-paragraph (c) of the section 16 notice.

Chapter 2

In this chapter we set out the background to the Inquiry and deal with non-contentious facts, figures and events.

The company

Siegfried Lee, who holds a master's degree in ceramics engineering, founded what became the Siu Fung group of companies (SFH Group) in 1983. Its original business was selling German-made ceramic production machinery to factories in the Mainland. It was a highly successful company which soon grew into a very large enterprise. On 28 October 1993, Siu Fung Ceramics Holdings Ltd (Holdings), registered in Bermuda, was listed on the Stock Exchange of Hong Kong (SEHK). 334.5 million new ordinary shares of \$0.10 each were offered to the public at \$1.68 per share.

By this time Holdings' activities included:

- the engineering, design, manufacturing, marketing and sale of ceramics production lines on a turnkey basis and ceramic production machinery and equipment on a piecemeal basis;
- the sale of related accessories and replacement parts;
- the provision of technical support services;
- the holding of investments and properties; and
- making investments in Mainland joint ventures engaged in the manufacture and sale of ceramic products; including tiles, sanitary ware and tableware.

In 1994, a British Virgin Islands subsidiary called Siu-Fung Ceramics Concept Company Limited (Concept) was established to act as the new holding company for the group's ceramics joint ventures in the Mainland. This was not a publicly quoted company. A number of institutional investors purchased 35% of its issued share capital leaving Holdings with the remaining 65%. These institutional investors included:

- Search China (Search)

- Citicorp China Investment Management Limited (Citicorp)
- HSBC Private Equity Management Limited (HPEM)
- Prudential Asset Management Asia Limited (PAMA)
- The Investment Company of China (a subsidiary of Peregrine Direct Investment Limited) (Peregrine)
- Sun Hung Kai China Development Fund Limited (Sun Hung Kai)

Collectively, they are referred to as 'the Concept Investors' in this report.

In 1995 Holdings acquired a 100% interest in Heimsoth Keramische Öfen und Anlagen GmbH & Co KG (Heimsoth), a leading German kiln manufacturer and its operations were merged with those of Dubois (another German manufacturer acquired in 1993) under the umbrella of a new company called H & D Holdings Company Limited (H&D).

In March 1996 H & D entered into an agreement to acquire the ceramic production equipment business of Erich Netzsch GmbH & Co Holding KG (Netzsch) of Germany. A new subsidiary company of Holdings, called NHD International Limited (NHD) was incorporated in Bermuda to take over the undertaking of both H&D and Netzsch.

On 19 April 1996 Holdings, in two separate announcements, announced its Final Results for the nine months ended 31 December 1995 and a proposal for the separate listing of a NHD on the New York Stock Exchange (NYSE) by way of a public offering of shares. These announcements were published in the press the following day.

The final results' announcement showed that Holdings' profits for the nine-month period ended 31 December 1995 had fallen to \$119.35 million compared with \$412.244 million for the twelve-month period ended 31 March 1995. The Board of Directors explained this fall as being due to a dispute with a supplier over its exclusive distribution agreement with the SFH Group and the SFH Group undergoing a period of transition in expanding its presence into the international market.

Prior to the two announcements Holdings' shares had closed on the SEHK on 19 April 1996 at \$1.45, having traded that day in the range of \$1.41 to \$1.47. The closing price of Holdings shares slipped on each of the next five days of trading from \$1.38 on 22 April 1996 to \$1.29 on 29 April 1996.

Holdings' AGM was held on Friday, 28 June 1996. In the Annual Report the Chairman, Siegfried Lee, had made this reference to the proposed listing of NHD:

"As described in an announcement dated 19th April, 1996, it is proposed that NHD obtains a separate listing in the United States of America in conjunction with a public offering of its shares there."

Holdings shares on the SEHK closed at \$1.49 on Friday, 28 June 1996, the day of the 1996 AGM.

On 27 September 1996 Holdings announced its interim results for six months ended 30 June 1996. An overall loss of \$252.198 million was reported of which \$51.63 million was attributed to operating losses.

In respect of the proposed listing on the NYSE the Board, in that announcement, said that,

"In view of the ongoing operational restructuring programme now being carried out with the NHD companies, the Directors have decided not to pursue the previously announced proposal for a separate listing of NHD in the US for the time being."

On the same day (27 September 1996) Holdings announced a proposed rights issue of around 575 million new shares on the basis of 2 new shares for every 5 existing shares held at \$0.70 per share. However, on the next day of trading, 30 September 1996, Holdings' shares closed at \$0.67. They never traded at higher than \$0.70 after that.

Trading in Holdings' shares on the SEHK was suspended both on 5 October, on 16 October 1996 and finally on 28 October each time at the request of its Board of Directors. Trading in Holdings' shares on the SEHK never resumed after the suspension on 28 October 1996.

On 7 November 1996 Holdings announced that:

"The Group is currently experiencing serious cash flow problems...The suspension of trading in the shares of the Company on the Exchange will continue until further notice. It is currently envisaged that resumption of trading in the Company's shares is unlikely

to occur before an agreement is reached with the Banks for restructuring the Group's existing short term and long term indebtedness and a proposal formulated for an additional funding program for the group."

NHD was never listed on the NYSE.

Share sales

Between 19 April 1996 & 28 October 1996 the following persons and limited companies made substantial sales of Holding's shares, as follows:

- On 14 June 1996 Li Man Yi sold 1.4 million Holdings shares through Tanrich Securities receiving \$2,323,355.
- On 14 June 1996 Wong Fong Kim sold 6.36 million and on 18 June 1996, 2.66 million Holdings shares through J. A. Fu, receiving a total of \$14,655,225.
- On 18 June 1996 Wai Man Keung sold 6.52 million Holdings shares through J. A. Fu, receiving \$10,141,440.
- On 2 July 1996 Mrs. Lee sold 40 million and on 8 July another 40 million Holdings shares through CEF Brokerage, receiving a total of \$103,570,480.
- On 2 July 1996 Lisa Lam sold 200,000, on 26 July 1996 2 million and on 29 July 1996 3.8 million Holdings shares through Cazenove, receiving a total of \$7,584,983.
- Between 2 August 1996 & 5 September 1996 Mordale, a subsidiary of Search, sold 43,142,000 Holdings shares through Jardine Fleming, receiving a total of \$53,320,554.
- Between 10 & 20 September 1996 GAAP, a subsidiary of Banque Worms, sold 8,553,786 Holdings shares through James Capel, receiving a total of \$8,575,319.

Chapter 3

In this chapter we deal with the law. It is divided into two parts. Part 1 deals with the general legal principles that we found to be of relevance in the course of our deliberations. Part 2 deals with the relevant provisions of the Ordinance.

Part 1: General legal principles

The general legal principles that we found to be of relevance in this inquiry are:

The Standard of Proof

At the preliminary hearing on 30 January 2002 we identified the standard of proof applicable to these proceedings as being:

"...the civil standard and not the criminal standard of proof beyond a reasonable doubt. We recognize, however, that allegations of insider dealing are akin to allegations of professional misconduct involving deceit or moral turpitude and, as such, the degree of probability must be proportionate to the nature and gravity of the issues that we have to decide. Because of that, we say now that the standard that we will apply will be higher than that of a mere balance of probabilities. The standard that we will apply was aptly described by the Honourable Mr. Justice Stock sitting as chairman of the tribunal in the inquiry into Success Holdings Limited in 1994 as being 'proof to a high degree of probability.' "

Since then the Court of Final Appeal has confirmed that this is the applicable standard in trials and inquiries where matters akin to those before this Tribunal fall for determination¹. We have applied that standard of proof to all our decisions.

Separate consideration

We considered the case of each implicated person separately and reminded ourselves that a finding of insider dealing against one implicated person did not necessarily mean that the others were also culpable.

Securities & Futures Commission statements

With the consent of all the implicated persons the statement or statements to the investigating officers of the Securities & Futures Commission of each live witness

¹ See HKSAR v Lee Ming Tee FACC 1 of 2003 (unreported)

called by Counsel to the Tribunal were adopted by them as part of their evidence. With a few minor exceptions, each witness stated that the contents of his or her statement were true and accurate and each witness was given the opportunity to clarify or amend his or her statement.

Likewise, the statement or statements of each implicated person to the investigating officers of the Securities & Futures Commission were, on Mr. Lunn's application and without objection by any implicated person or his counsel, put into evidence. By this procedure they became evidence of what they had said to the Commission's investigating officers, subject to any live evidence they gave by way of clarification or amendment.

Whenever they wished to do so, we permitted each witness before us, including the implicated persons, to give their evidence-in-chief by way of a written statement and to make such amendments and clarifications to it as they wished by way of oral evidence.

In determining issues of fact we have attached such weight to the contents of each witnesses' statement as we consider fair and proper. In accordance with well-established legal principle we have made no findings of fact in relation to one implicated person based on the contents of another implicated person's statement.

Drawing of inferences

In arriving at our determination as to whether or not an implicated person had conducted, or been involved, in insider dealing, as well as in dealing with many other issues that arose during the Inquiry, it was necessary for us to consider whether certain facts established to our satisfaction from the evidence led us to infer other facts. That is not unusual in an Insider Dealing Tribunal inquiry. Commercial transactions of an unlawful or prohibited nature are rarely evidenced in writing and the truth of those transactions can often only be discerned indirectly. This is done by looking at the surrounding circumstances and the actions of the persons involved in the light of those circumstances. On the Chairman's instruction, we directed ourselves that any inference we drew from a set of facts proved to our satisfaction had to be the only reasonable inference which could be drawn from those established facts.

Consideration of factual evidence

Mr. Sze and Mr. Barnett are an accountant and a solicitor, respectively. Both have first hand experience of Hong Kong's financial markets and have a wealth of relevant experience and expertise in respect of those markets that the Chairman who is a High Court Judge does not have. Both Mr. Sze and Mr. Barnett were alert to the danger of becoming their own witnesses. The Chairman directed them that they could not provide 'evidence' from their own knowledge - in the sense that they could not rely upon their own knowledge of a fact or matter in arriving at their findings - but that they were entitled to use their fundamental professional experience and knowledge in assessing the evidence presented at the Inquiry and in deciding what weight to place upon it.²

No privilege against self-incrimination

By virtue of section 17(d) of the Ordinance all persons called before the Tribunal are bound to answer all questions put to them by the Tribunal, or with the Tribunal's consent; they have no privilege against self-incrimination. Section 19 of the Ordinance, however, provides that evidence given by any person at and for the purpose of the Inquiry (including any material or document received by or produced to the Tribunal under the Ordinance) is inadmissible against that person in civil proceedings arising out of their giving of evidence at the Inquiry and in all criminal proceedings except for perjury, or offences akin to perjury under the Crimes Ordinance.

Good character

All the implicated persons are of good character. In past inquiries, where applicable, the Tribunal has taken the implicated persons' good character into account in the course of its deliberations.

In this Inquiry we directed ourselves that the implicated persons' good character is relevant in two ways. First, it bolstered their credit in deciding what weight we should attach to their evidence and, secondly, it established that, because they had been of good character throughout their careers, they were, as a result, less likely to have committed the civil wrong of insider dealing.

² See *Wetherall v. Harrison* (1976) QB 773

Demeanour

While the ability to watch and listen to a witness giving his or her evidence is of considerable assistance in deciding what weight to give to that witness's evidence, we have borne in mind that demeanour is an imprecise concept and invariably subjective. These difficulties were increased when in respect of many of the witnesses two of us understood their evidence through an interpreter. We are aware that demeanour can only be a point of last resort and have cautioned ourselves accordingly when assessing the credibility of all the witnesses, including the implicated persons.

Lies

It has been impossible for us to carry out our task without assessing and forming our opinion on the credibility of the witnesses who gave evidence before us, including the implicated persons. In order to find a fact proved, we had to be satisfied that the evidence we relied on was reliable, which means that it was both accurate and honest evidence. Conversely, in respect of other pieces of evidence, we concluded that they were unbelievable, unreliable, inaccurate, or untruthful. This was a necessary part of our function as a tribunal of fact.

Lies by the implicated persons

We regret to say that we have concluded that certain of the implicated persons lied both in their statements to the Securities and Futures Commission and in their evidence before us. Lisa Lam, in fact, admitted that she had lied in certain of her answers given to the investigators from the Securities & Futures Commission in the course of an interview conducted on 12 March 1997 under section 33(4) of the Securities and Futures Commission Ordinance, Cap 24. As a result the question of the proper weight to be attached to the evidence we found to be untruthful is important. We are conscious of the fact that lies by themselves prove nothing, save that they have been told. We are also conscious of the fact that there may be reasons for lies that are consistent with the absence of any wrongdoing, or of the particular wrongdoing alleged. It is only if we exclude such reasons that an implicated person's lies, in conjunction with other evidence, can go to support an inference of insider dealing. This is in the sense that they can confirm, or tend to support, other evidence, which of itself is indicative of such conduct.

Where we have concluded that one of the implicated persons lied, we have borne in

mind that the reason for the lie may not have been a realization that they had committed insider dealing, but a realization, or fear, that they had committed some other wrongdoing, or a fear (whether justified or not) that others would view certain conduct as improper, or no more than a feeling that the truth was unlikely to be believed.

We have also borne in mind that before a lie may be used to support a particular allegation, we have first to be satisfied that the lie was both deliberate and material to the issue we had to decide.

Expert evidence

We had the assistance of three experts in the persons of Mr. Rigby, Mr. Heale and Mr. Witts to assist us address the issues set out in the first two paragraphs of the section 16 notice. We make two observations on their evidence.

Firstly, expert evidence is permitted in an inquiry under the Ordinance (as it is in a criminal or civil trial) to provide the Tribunal with information and opinion on matters relating to securities trading that is within the witness' expertise, but which is likely to be outside the Chairman and Members' experience and knowledge. Although in Insider Dealing Tribunal Inquiries the Members' knowledge of these matters may rival that of the expert. Although a witness called as an expert is entitled to express an opinion in respect of his findings, or the matters put to him, the Tribunal is entitled to come to its own conclusion on these matters based on the whole of the evidence put before it. Put shortly, we did not have to accept the evidence of any of the three expert witnesses; neither were we bound to act upon their evidence or opinions, in fact we came to our own conclusions in respect of many of the matters they dealt.

Secondly, subject to specific obligations imposed by particular ordinances (none of which apply in inquiries before the Insider Dealing Tribunal, it is well recognised that the overriding duty of an expert witness is to help the court on the matters within his expertise and that this duty overrides any obligation to the person from whom he has received instructions or by whom he is paid. Authority holds that the duties of an expert witness are as follows³:

³ See *National Justice Compania Naviera SA v. Prudential Insurance Co Ltd* [1993] 2 Lloyd's Rep 68)

1. Expert evidence presented to the Court should be, and should be seen to be, the independent product of the expert uninfluenced as to form or content by the exigencies of litigation.
2. An expert witness should provide independent assistance to the Court by way of objective unbiased opinion in relation to matters within his expertise. An expert witness should never assume the role of an advocate.
3. An expert witness should state the facts or assumption upon which his opinion is based. He should not omit to consider material facts which could detract from his concluded opinion.
4. An expert witness should make it clear when a particular question or issue falls outside his expertise.
5. If an expert's opinion is not properly researched because he considers that insufficient data is available, then this must be stated with an indication that the opinion is no more than a provisional one.
6. In cases where an expert witness who has prepared a report could not assert that the report contained the truth, the whole truth and nothing but the truth without some qualification, that qualification should be stated in the report.
7. If, after exchange of reports, an expert witness changes his view on a material matter having read the other side's expert's report or for any other reason, such change of view should be communicated (through legal representatives) to the other side without delay and when appropriate to the Court.
8. Where expert evidence refers to photographs, plans, calculations, analyses, measurements, survey reports or other similar documents, these must be provided to the opposite party at the same time as the exchange of reports.

We accept that the first proposition cannot be read too literally. Nothing is more useless than undirected evidence. An expert witness whose views were not conditioned by the shape of the litigation in which his report was required would be

unable to provide a report of any use whatever.

We stress these duties, however, because in this Inquiry we believe that all three expert witnesses failed to consider the evidence placed before them impartially and crossed the border from opinion to advocacy in arguing for a particular position. Advocacy is for counsel, not expert witnesses.

Part 2: the Ordinance

Section 9(1) of the Ordinance provides six instances of when the civil wrong of insider dealing takes place; two are relevant to this Inquiry, they are as follows:

Under section 9(1)(a) insider dealing takes place in relation to a listed corporation:

“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;”

Under section 9(1)(e) insider dealing takes place in relation to a listed corporation:

“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...”*

The word ‘corporation’ is defined in section 2(1) of the Ordinance (the General Definitions section) as:

‘ “corporation” means any company or other body corporate or an unincorporated body, incorporated or formed either in Hong Kong or elsewhere.’

Section 2(1) also defines the phrase 'securities' as meaning (among other things) 'shares' and 'listed securities' as meaning 'securities that are listed on the Unified Exchange' which is now called 'The Stock Exchange of Hong Kong'.

For insider dealing to be proved against a person under inquiry the Tribunal must be satisfied, to the requisite standard, of 4 matters; they are:

Firstly, that the securities in question are those of a 'listed corporation'.

There is no dispute that Holdings was at the material time (June to September 1996) a listed corporation as defined in section 2(1) of the Ordinance; that is, a corporation whose shares and other issued securities are listed on the Stock Exchange of Hong Kong and that all the dealings we were concerned with were of its listed securities.

From now on in this report, whenever the context requires it, we use the words 'corporation' and 'company' interchangeably and the word 'shares' interchangeably with the word 'securities' and the phrase 'listed securities'.

Secondly, that the person under inquiry must either be 'connected' with the corporation, or if he is not connected, be someone who received information relating to the corporation from a person whom he knew was 'connected' with the corporation, and whom he knew, or had reasonable cause to believe, held the information by virtue of his connection.

Section 4 of the Ordinance defines who are persons connected with a corporation for the purposes of section 9. They include, among others:

1. Under section 4(1)(a) an individual who is a director or employee of that corporation or a related corporation.

A 'related corporation' is defined in section 2(1) as including any corporation that is that corporation's subsidiary or holding company, or a subsidiary of that corporation's holding company. Section 2(1) provides that a subsidiary means any corporation which is a subsidiary within the meaning of section 2 of the Companies Ordinance, which provides in section 2(4) that:

“... a company shall...be deemed to be a subsidiary of another company, if-

(a) that other company-

(i) controls the composition of the board of directors of the first-mentioned company; or

(ii) controls more than half of the voting power of the first-mentioned company; or

(iii) holds more than half of the issued share capital of the first-mentioned company (excluding any part of it which carries no right to participate beyond a specified amount in a distribution of either profits or capital); or

(b) the first-mentioned company is a subsidiary of any company which is that other company's subsidiary.”

As Holdings held 65% of Concept's share capital and controlled more than half of Concept's voting power, Concept was a related corporation of Holdings.

2. Under section 4(1)(b), an individual who is a substantial shareholder in that corporation or a related corporation. Section 4(3) defines a substantial shareholder as being a person who has an interest of 10% or more of the share capital of that corporation.

3. Under section 4(1)(c), an individual who 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...”

4. Under section 4(1)(e), an individual who, whilst no longer a connected person as set out in subsections 4(1)(a) to (c), was such a connected person within the period of six

months immediately preceding the insider dealing.

Thirdly, that the person under inquiry must 'deal in' the securities himself, or counsel or procure another person to deal in them, knowing or having reasonable cause to believe that the other person would deal in them.

The ordinary meaning of the word 'counsel' is 'advise' or 'solicit'. There is no implication in the word that there should be any causal connection between the counselling and the offence. However, the counsellor is liable only for an offence if it is committed as a result of his counselling. It is, however, not necessary to prove that the counselling was a substantial cause of the commission of the offence.

To 'procure' means to produce by endeavour; you procure a thing by setting out to see that it happens and by taking the appropriate steps to produce that happening. There must be a causal link between what the alleged procurer did and the other's commission of the act.

Section 6 of the Ordinance defines 'dealing in securities' as being:

*"For the purposes of this Ordinance, a person deals in securities or their derivatives if (**whether as principal or agent**) he buys, sells, exchanges or subscribes for, or agrees to buy, sell, exchange or subscribe for, any securities...or acquires or disposes of, or agrees to acquire or dispose of, the right to buy, sell, exchange or subscribe for, any securities..."*
(emphasis supplied)

Fourthly, that at the time of dealing, the person under inquiry must be in possession of information, which he knows is 'relevant information'.

Before we deal with the meaning of the phrase 'relevant information,' we make it clear that before we made our findings of insider dealing against certain of the implicated persons not only were we satisfied that at the time of their dealing in Holdings shares they were in possession of relevant information, we were also satisfied that they knew, subjectively, that the information they had was relevant information. It was not enough for us to have found that they ought to have known it to be relevant information, or that a reasonable man or woman in his or her position ought to have known it to be relevant

information.

Section 8 of the Ordinance defines the phrase 'relevant information' as:

“ “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.”

For information to be 'relevant information' it must possess three elements, each of which must be proved to the Tribunal's satisfaction; they are:⁴

1. The information is known only to a few and is not generally known to the market; that is, to those individuals and institutions accustomed or likely to deal in the securities of the company.
2. It must be 'specific information'. Specific information is information which possesses sufficient particularity to be capable of being identified, defined and unequivocally expressed.
3. And it must be information of the kind, which, if it were known to the market, would be likely to materially affect the price of that company's listed securities.

The test of price sensitivity has to be applied at the time the alleged insider dealer's transaction took place. The exercise of determining how general investors would have behaved on that day, had they been in possession of that information, is an assessment. It is not a simple matter of deciding whether the information had a material impact on the market when it became general knowledge. The test is a hypothetical one, the Tribunal must ask itself: had this information been generally known on the day the insider traded would it, at that time, have been likely to have had a material impact on the company's share price? Evidence of how investors reacted once the information was stripped of its confidentiality and became public knowledge will often provide the answer. However, care must be taken to ascertain whether the investors' response was attributable to the information released, or whether it was,

⁴ See the Tribunal's report in *China Apollo Holdings Ltd* 2001 at p.28.

wholly or in part, attributable to other events or considerations.

Further, the test is not simply whether the information, along with other matters already known, would have been likely to affect the price of the company's securities; the test is whether it would have been likely to have affected their price materially. Thus information that would be likely to cause a mere fluctuation, or a slight change in price, is not sufficient; there must be the likelihood of change of sufficient degree to amount to a material change.

Not all important or interesting information concerning a company will necessarily be materially price sensitive. It may excite comment, it may be very interesting, but it may nevertheless be information of the kind that would be unlikely to have a material impact on the price of that company's securities.

Similarly, past tribunals have recognized that information concerning a company's affairs which, although important, is of a neutral or mixed nature may influence some investors to buy and some investors to sell, but will not thereby be likely to affect the price either up or down to a material degree; that is to say to a degree that causes more than a mere fluctuation or slight change.

Defences

Section 10 of the Ordinance provides for seven statutory defences. The defences only arise if the Tribunal is satisfied to the required standard that a transaction was an instance of insider dealing. If that is so, once any of the defences are raised, the burden of proof is on the person who seeks to rely on them and is discharged on a balance of probabilities. If that burden is discharged the person will not be identified as an insider dealer.

The defences provided for in section 10(3) and section 10(4) were raised in the Inquiry. Section 10(3) provides:

"A person who enters into a transaction which is an insider dealing shall not be held to be an insider dealer if he establishes that he entered into the transaction otherwise than with a view to the making of a profit or the avoiding of a loss (whether for himself or another) by the use of relevant information."

In considering that defence we followed the construction of section 10(3) adopted by this Tribunal in the **Hanny Holdings** inquiry report and followed in subsequent inquiries. In **Hanny Holdings** section 10(3) was construed narrowly, it was held that the defence is available to an implicated person only if the evidence shows, on a balance of probabilities, that the true reason or reasons for dealing were wholly unconnected with any desire or intention to make a profit or avoid a loss. It is not intended to provide an implicated person with a defence which would succeed on proof, on a balance of probabilities, that a genuine non-profit motive at least contributed to that person's reason or reasons for dealing. In the light of that test, in the case of a disposal of securities, the evidence must, on a balance of probabilities, show that circumstances compelled the implicated person to sell and that, without alternative resources, he or she had no choice but to sell at that time whether or not he or she had come into possession of the price sensitive information.

Section 10(4) provides:

*"A person who, as agent for another, enters into a transaction which is an insider dealing shall not be held to be an insider dealer if he establishes that he entered into the transaction as agent for another person **and** he did not select or advise on the selection of the securities to which the transaction relates."* (emphasis supplied)

We followed the construction of section 10(4) adopted by this Tribunal in the **China Apollo Holdings** inquiry report where it was held that this defence is only available to an agent who deals on an execution only basis. The law recognises that the acquisition or disposal of securities may be made by an individual acting either as principal acting for himself or as an agent acting for another. Accordingly, if the agent has relevant information at the time of his dealing, he will engage in insider dealing, even though he may not gain personally from the transaction. The logic of this is plain in circumstances where the agent engages in the transaction to benefit his principal. This is simple insider dealing and the fact that the individual deals as agent and not principal is irrelevant. However, where the agent deals on an execution only basis, neither selecting nor advising on the selection of the securities to which the transaction relates, such an approach hardly seems justified; hence this particular defence.

Chapter 4

In this chapter we track Holdings' share price during the period 2 January 1996 to 31 October 1996.

The table at Annexure 4 shows the:

- daily high/low price of Holdings shares
- daily closing price of Holdings shares
- daily turnover of Holdings shares; and
- the Hang Seng Index (HSI)

for the period 2 January 1996 to 31 October 1996.

The graph at Annexure 5 compares the daily closing price of Holdings shares and the HSI for the same period.

The graph at Annexure 6 shows the daily closing price and turnover of Holdings shares for the period 2 January 1996 to 7 November 1996. Interposed on this graph are the dates when the following announcements were made:

- The announcement of Holdings' final results for the 9 months ending 31 December 1995 on 19 April 1996;
- The announcement of a proposal to list NHD, on the NYSE on 9 April 1996;
- Negative statement made by Holdings' Board on 29 May 1996;
- Clarification announcement relating to '*recent reports*' concerning the proposed listing on 4 July 1996;
- The announcement relating to Mrs. Lee's two recent sales of Holdings' shares on 9 July 1996;
- The announcement of the appointment of Y. T. Du as CEO of Holdings on 10 August 1996;
- Press reports of the closure of NHD's Selb plant on 19 September 1996;

- The announcement confirming the closure of NHD's Selb plant and outlining an operational reorganization of its Holdings German subsidiaries on 23 September 1996;
- The announcement of Holdings interim results for the 6 months ending 30 June 1996; the cancellation the proposed listing of NHD on the NYSE and proposals for a proposed rights issue of new shares on 27 September 1996;
- The announcement of the postponement of Holdings proposed rights issue on 16 October 1996; and
- The announcement of Holdings cash flow problems on 7 November 1996.

By way of commentary:

In the period 2 January 1996 to 4 March 1996, Holdings' closing prices moved within a narrow range of \$1.08 to \$1.38. The average daily turnover was \$6 million shares. There were a few volume surges during this period as a result of favourable brokers' research reports on the Company. The HSI only moved up 200 points, or 1.77% over this period.

On 5 March 1996, the share price moved up \$0.05 to close at \$1.43 and the trading volume increased to 28.9 million.

On 6 March 1996, Holdings announced that it had agreed to buy a European ceramic production equipment company. The share price gained by \$0.12 that day to close at \$1.55. Trading volume increased to 40.9 million shares.

On Thursday 7 March 1996, Holdings identified the company as Netzsch, the market initially reacted favourably by opening higher at \$1.59. Later on in the day there was profit taking which pushed the price down by \$0.13 to \$1.46. It settled at \$1.47 on the following day, Friday, 8 March 1996.

The HSI fell by 7.3% on Monday, 11 March 1996 following worries that China might take military action against Taiwan over the weekend of 9/10 March 1996, and all blue chip stocks reported losses. Holdings' share price followed the market, losing \$0.16 to

close at \$1.31 on that day.

The price recovered to around the \$1.40 level in late March and stayed at that price level until mid April 1996.

On 16 April 1996, Holdings' share price and trading volume moved up again by 6.57% to \$1.46 (while the HSI only reported an increase of 0.75%) amid speculation that the soon to be announced financial results would be satisfactory. In the subsequent three trading days, the price held firm at around \$1.45 in active trading, and closed at that price on Friday, 19 April 1996.

In the evening of Friday on 19 April 1996, Holdings announced its final results for the nine months ended 31 December 1995. The results were below market expectations and this affected the share price. In the subsequent four trading days it moved down by \$0.14 from \$1.45 to \$1.31, and stayed at around that level until the second week of May 1996.

Starting from 7 May 1996, the price rose to the \$1.40 level. It traded flatly around that level over the following two weeks.

The share price moved up again on 24 May 1996 for four consecutive trading days, rising \$0.33 from \$1.41 to \$1.74 on 29 May 1996 in active trading. This represented an increase of 23%, the HSI only moved up by 1.5%. Trading volume also increased to a daily average of 43.6 million.

Profit taking set-in on 30 May 1996 and price dropped \$0.15 to \$1.59. It soon resumed its upward trend and the share price closed at \$1.79 on 10 June 1996. By then Holdings' share price had increased by 26.9% since 23 May 1996 (from \$1.41 to \$1.79) compared to a 0.5% gain for the HSI.

Starting on 11 June 1996, strong selling pressure drove the share price \$0.35 lower to close at \$1.44 on 19 June 1996. On Friday, 28 June 1996, the day of Holdings 1996 AGM and the last trading day in June 1996 the price closed at \$1.49.

Over the first four trading days of July, the share price moved down further to close at \$1.42 on 4 July 1996. At this time the HSI rose marginally to 11,182.

On 8 July 1996, the share price retreated from the \$1.40 mark to close at \$1.25 on 31 July 1996. Over the same period the HSI dropped from 11,177 to 10,681.

A high of \$1.31 was reached on 5 August 1996. Thereafter the share price remained in the region of \$1.20 until the end of August 1996 when it closed at exactly \$1.20. The HSI rose from 10,700 on 24 July 1996 to 11,159 on 30 August 1996.

The monthly turnover for May, June & July, respectively, was 389,501,851 shares, 401,282,524 shares and 387,645,584 shares. August's turnover was lower at 65,685,193 shares.

Over the first four trading days of September 1996 the share price moved downwards. It closed at \$1.15 on 5 September 1996, on the back of increased turnover. 74.12 million shares were traded during these four days. During the same period the HSI dropped from 11,159 on 30 August 1996 to 11,041 on 5 September 1996.

Between 6 September 1996 and 18 September 1996, the share price continued to drift downwards, closing at \$1.04 on 18 September 1996, on reduced turnover. Over these nine trading days the combined turnover amounted to 64.15 million. Over the same period the HSI rose from 11,026 to 11,594.

The market reacted adversely to the news on Thursday, 19 September 1996 of the closure of NHD's Selb plant. The share price dropped by \$0.08 to close at \$0.96 on an increased trading volume of 47.7 million.

The share price lost another \$0.04 to close at \$0.92 on Friday, 20 September 1996, following Holdings' formal announcement of the reorganization of its German subsidiary and the closure of the Selb plant.

Thereafter the share price continued to fall. It closed at \$0.76 on Monday, 23 September 1996, rose to close at \$0.80 on 24 September 1996 and closed at \$0.74 on 27 September 1996. Over this period the HSI rose marginally from 11,594 to 11,759.

Holdings' interim results for the 6 months to 30 June 1996 announced in the evening of 27 September 1996, which appeared in the newspapers on 30 September 1996, came as a shock to the market. The share price lost \$0.07 from the close of \$0.74 on 27 September 1996 to end at \$0.67 on Monday, 30 September 1996. It dropped another

\$0.04 to close at \$0.63 on 1 October 1996 and dropped a further \$0.05 to close at \$0.58 on 2 October 1996. Over this period the HSI rose from 11,759 to 11,952. Turnover over these three days amounted to 81.84 million.

Between 2 October and 14 October 1996 Holdings share price traded within a narrow range of \$0.58 to \$0.67 with an average daily turnover of around 20 million.

At 10:00 hours on 15 October 1996, Holdings requested a suspension of trading in its shares. Trading in the shares resumed on 17 October 1996, when the price fell sharply from \$0.65 to \$0.59, a drop of \$0.06.

The price stabilized at the \$0.59 level for the subsequent five trading days, ending up \$0.02 lower at \$0.57 on Friday, 25 October 1996.

At 9:56 hours on Monday 28 October 1996, Holdings again requested a suspension of trading in its shares. Trading in Holdings shares did not take place on that day and has never resumed.

Chapter 5

In this chapter we deal with the listing of NHD on the NYSE and its failure.

On 6th March 1996 Donaldson, Lufkin & Jenrette Securities Corporation (DLJ) of Los Angeles, California and H&D entered into an agreement in which DLJ were to act as financial advisor to H&D for a period of 12 months with respect to a listing of H&D's shares in the United States. The agreement provided for termination of the agreement upon written notice to that effect by either party. DLJ were to be the lead underwriter in the listing.

Following the incorporation of NHD in Bermuda, consequent upon the merger of H & D and the newly acquired Netzsch, the proposal became one of listing NHD on the NYSE.

Holdings' announcement of the proposal for the listing of NHD, on the NYSE appeared in the Hong Kong newspapers (including the *South China Morning Post*, from which we have taken the text of the announcement) on 19 April 1996. This announcement read as follows:

*"SIU-FUNG CERAMICS HOLDINGS LIMITED
(incorporated in Bermuda with limited liability)*

*PROPOSAL FOR THE SEPARATE LISTING OF
A SUBSIDIARY OF THE COMPANY IN THE
UNITED STATES OF AMERICA BY WAY OF A
PUBLIC OFFERING OF SHARES*

INTRODUCTION

The Directors of Siu-Fung Ceramics Holdings Limited (the 'Company') announce that a proposal is being formulated for a public offering (the 'Offering') in the United States of America (the "US") of common shares of its subsidiary NHD International Limited ("NHD International"). The Offering will be comprised of new shares to be issued by NHD International and existing shares in NHD International to be sold by the Company. NHD International intends to make application to list its common shares on the New York Stock Exchange. The Offering will be made only by means of a prospectus meeting the requirements of the Securities Act 1933 (as

amended) of the US.

THE PROPOSED OFFERING

NHD International was incorporated in Bermuda on 22nd March, 1996 and will become the new holding company for the existing subsidiaries of the Company (together the "NHD Group") which are principally engaged in the design engineering manufacture and sale of fully integrated ceramic production systems on a turnkey basis, as well as individual items of ceramic production equipment, in each of the following five traditional ceramic product categories: tiles, sanitaryware, tableware, heavy clay ceramics and technical ceramics. (The NHD Group includes the Netzsch Ceramics Group of Germany which was acquired by the Group in March 1996.) The NHD Group's operations are headquartered in Aachen, Germany and its principal markets cover Asia and Europe.

The Offering is intended to establish direct public ownership of a portion of the NHD Group in the US and Europe. The Directors of the Company are of the view that the Offering, if completed, will raise the international profile of the Company. Although the exact percentage shareholding which the Company will retain in NHD International following the Offering cannot be determined at this preliminary stage, it is expected that the Company will continue to own a controlling interest in NHD International following the Offering.

The Offering will not affect the other business of the Company which is principally comprised of its 34 joint ventures in the People's Republic of China engaged in the manufacture of ceramic products and the sale and distribution of such products.

Shareholders of, and potential investors in, the Company are advised that the proposed Offering is at a preliminary stage and the terms of the Offering if it is proceeded with, have yet to be finalised. A separate announcement will be made if and when details of the proposed Offering are finalised.

GENERAL

Particulars in this announcement relating to the proposed Offering are

being made solely for the purpose of providing information to the shareholders of, and potential investors in, the Company. It should be noted that the terms of the Offering have yet to be finalised and no assurance can be given that it will proceed. Further information will be provided to the shareholders of the Company in due course. In the meantime, shareholders and potential investors in the Company are advised to exercise caution when dealing in the shares of the Company.

*By order of the Board
Lee Siu Fung, Siegfried
Chairman*

Hong Kong, 19th April 1996”

In May 1996, DLJ withdrew as lead underwriter and Credit Suisse First Boston (CSFB) took over that role. Lazard Freres and Klienwort Benson were to be the other underwriters.

Christopher Morin was one of the team at CFSB handling the project. In his statement he described the work done by his colleagues and himself in respect of the listing:

“CSFB participated in several due diligence sessions that DLJ organized in the weeks prior to May 14, 1996. CSFB’s primary meetings and discussions with the company took place between May 14, when NHD asked CSFB to replace DLJ as lead manager, and June 10, when CSFB completed its due diligence investigation. CSFB’s extensive due diligence investigation took place in the United States, Hong Kong, China, Germany, and elsewhere. I and other members of CSFB’s team spoke with and met with dozens of representatives of the company and its parent and affiliates, counsel, accountants, investors, bankers, government officials, industry experts, customers, competitors, reporters, equity research analysts, and others. All discussions centered on CSFB’s effort to determine whether NHD was a company that CSFB should take public. Lazard and Kleimwort Benson participated in some of the due diligence sessions but relied primarily on CSFB’s work.”

Christopher Morin told us that DLJ gave no explanation as to why they had withdrawn

their support.

In his statement to the Tribunal he said that Holdings appeared in a hurry to list NHD in the United States. It had occurred to him in May or June 1996 that Holdings was on the verge of collapse, and that his colleagues and he were dissatisfied with the financial information Holdings supplied, and suspected that the listing was a rescue operation.

A letter of 14 May 1996 from Chao & Chung, the SFH Group's Hong Kong Solicitors, to Siegfried Lee (circulated to many others involved in organization of the listing) spoke of Friday, 14 June 1996 as being the day on which announcements would be published in the newspapers informing the public that there was to be an offering of NHD's shares in the United States and other international markets. Also on that day a circular announcing this was to be sent to the shareholders and notice given of a Special General Meeting.

Also on 14 May 1996 Chao & Chung advised the SEHK's Listing Division by letter of the proposed timetable for the listing.

A timetable headed "*Version 4-28 May 96 Timetable for Hong Kong events relating to IPO of NHD International,*" circulated widely by Chao and Chung on 28 May 1996, called for bulk printing of the circular on Thursday, 13 June 1996, the announcements and notices on 14 June 1996 and the Special General Meeting on 1 July 1996.

On 1 June 1996, Chao & Chung sent the draft circular to the Listing Division for their approval.

In a letter, dated 13 June 1996, enclosing a draft press release relating to the listing and the SEHK's 'Four Tests', Chao & Chung requested the Division's approval of the circular and press release by close of business on Friday, 14 June 1996.

However, on 12 June 1996 CSFB's Global Equity Valuation Committee met in New York to discuss the listing. We have seen the paper that was discussed at that meeting. Christopher Morin was one of its authors. The members of the committee concluded that they were not satisfied with the financial information supplied by Holdings. They came to the conclusion - in Christopher Morin's words in his statement:

"I believe that EVC agreed with the team that we did not have enough information and supporting documentation to forecast the company's future financial performance with confidence and determine a valuation that NHD and investors should have accepted. Specifically, we had not received, among other information, sufficient detail about the company's book of orders, sufficient information about Concept, sufficient information about Netzsch's financial condition, sufficient information about the integration of Netzsch...CSFB, Lazard and Kleinwort Benson decided not to proceed with NHD's IPO, because there appeared to be no prospect of NHD's meeting the requirements that CSFB had set during the due diligence process for a successful IPO. The decision effectively did mean "pulling the plug".

The views of the other underwriters were sought and they agreed with that decision.

Christopher Morin told us that, as a consequence of that decision, at some time after noon on 13 June 1996 in New York, which is in the early hours of 14 June 1996 in Hong Kong, his colleague Steven Unfried and he made a conference telephone call to Philip Erdoes of H&D and Siegfried Lee informing them of it. The fact and the content of the telephone call is noted in a memo dated 13 June 1996, which both Steven Unfried and he initialed; it reads:

"Inter Office Memorandum

To : NHD Team

From : Steve Unfried

Chris Morin

Date: June 13, 1996

Subject: NHD

Following today's EVC meeting, we spoke with Lazard and Kleinwort Benson and confirmed their agreement with CS First Boston's conclusions. We conveyed to Siegfried Lee and Philip Erdoes the unanimous view of the managers that NHD is not ready to complete an initial public offering and should postpone the offering until audited 1996 financial statements

and other information provide a better platform for marketing the story. Philip inquired about the specific reasons behind our conclusion, which we did not discuss. Siegfried thanked us for all of our efforts and said that he hopes that we have an opportunity to work together again."

He told us that the gist of the conversation was,

"...we would not undertake an offering until the company had satisfied our concerns which we believed the company would not be able to do until, at the earliest, publication of audited 1996 financial statements and delivery of other information."

Christopher Morin was shown Eddie Lui's cash flow, which bears the annotation "CSFB XLS 26/6/96". He said that the document had nothing to do with CSFB. Of the reference in that documents to the listing proceeds being receivable in April 1997 he said that CSFB had no understanding with Holdings about that. His words were:

"There was no understanding about what would take place in 1997. CSFB as a firm communicated on June 13th that the offering would not take place under our leadership until we had satisfied ourselves in many ways. Further, that now we would require waiting until 1996 financial statements were available because it would take that long to eliminate any of our concerns. If the company had been able in 1997 to produce answers to all of the questions and produce 1996 audited financial statements, it is possible that a team at CSFB would have resumed work on a transaction and perhaps had success."

Christopher Morin told us that after the telephone call CSFB did no more work towards the listing. He made it clear that CSFB had withdrawn from the listing and not merely advised that it be postponed.

Chapter 6

In this chapter we set out the evidence of who, with the exception of:

- The implicated persons;
- The personnel in the Concept Investors; and
- The officers of the HSBC;

knew what about the failure of the listing and how they came to be in possession of that knowledge.

Benjamin Li

Benjamin Li, Siegfried Lee's brother and Holdings' CEO, said that he learned of the 'postponement' - his word - of the listing from Siegfried Lee.

"Q. Were they his actual words, "The deal is postponed"; do you remember?

A. Yes. He said the investment bank needed some time to see the operation of Netzsch, the integration can really come together so that the valuation we like can be there. They can agree to.

Q. Which investment bank was it?

A. I think it is CS First Boston, I believe, they had the lead."

Of the time he learnt this, he said:

"...I think it is some time in June 15th or whatever because we were working on this circular and the timing, we could not hit the timetable, the target date, so the target date should be moved."

In one of his SFC interviews Benjamin Li was informed of Ernest Ip's e-mail from Joel Osnoss on 14 June 1996 and of a subsequent conversation Ernest Ip recalled having with Benjamin Li. Of that Benjamin Li said:

"I would say the same thing. I think the deal is postponed because I think that refers to the email from the office which I see in the exhibit and they are talking about they want to collect the money. Ernest call me about that and ask me if I know and I say, "The deal was postponed, that is all I know". I do not know anything about pull out."

In subsequent evidence, Benjamin Li said that he thought that his brother, Siegfried, told him of the postponement of the listing on 14 June 1996.

Eddie Lui

Eddie Lui, the CFO of both Holdings and NHD, recalled a conversation with Daniel Chan in which Daniel Chan told him that Siegfried Lee had said, *"...the IPO cannot be done."*

Originally, he placed the date of this conversation as *"...not before 28 June."* On his being recalled to give further evidence in March 2003, when Daniel Chan suggested to him that the date of their conversation was 14 June 1996, he replied:

"He told me on 15th June we would not be listed."

In re-examination he was asked:

"Q. Mr. Chan's conversation with you. As I understood it, he was putting to you that that took place on 14th June; do you agree or not?"

A. If you ask me exactly whether it is on the 14th, I can only say that I recall that the conversation was being held before the circular was out, so I cannot recall whether it would be the night of the 13th or the morning of the 14th, I cannot tell.

Q. But one of the other?"

A. It should be - it was within that time-frame."

Originally he said he had not spoken to Siegfried Lee about the matter. However, when shown HSBC's records of the information given to them, he said:

"Q. Did you have any discussions with Lee Siu Fung about the urgent need for finance at this stage, 18th June.

A. I should have.

Q. What did he tell you about the status of the IPO?"

A. According to my recollection, it would be the same as was mentioned here about the PE ratio. It is because the bankers have reduced the PE ratio, the amount, that is why he disagreed.

Q. Did he also tell you he called a halt to the listing?"

A. Actually, whether he asked to halt it or the other party or Philip Erdoes did it, I do not know.

Q. I appreciate that, but what did Siegfried Lee tell you?"

A. He just mentioned that the PE ratio was too low and was not going ahead with it."

Albert Lee

Albert Lee, the company secretary of Holdings and CFO of Concept told us that Daniel Chan had told him on 14 June 1996 that listing date was postponed. As a result he told Amy Chan to instruct the printers not to print the shareholders' circular.

He could not recall the meetings with HSBC at which he is described as being present in the bank's meeting notes of 21 & 27 June 1996, however he could recall that he went to the bank and that at *"... some of the meetings I was with Eddie Lui and Daniel Chan."*

Amy Chan

Amy Chan, Holdings' Assistant Company Secretary, told us that she was in charge of the bulk printing of the shareholders' circular.

She was out of Hong Kong on the day it was anticipated that the print order be placed. On her return Albert Lee told her that the bulk printing of the circular could not be done and the matter was pending. Someone, but not her, had told the printer not to print. No one told her why it had been stopped.

Chao & Chung and the SEHK

Benjamin Li advised Tien Yo Chao the senior partner of Chao & Chung of the underwriters' decision on 18 June 1996 and Tien Yo Chao gave the following advice in a fax to Benjamin Li of the same date¹:

"I refer to our telephone discussion this morning concerning the question as to whether we need to say anything (i) to the public, and (ii) to the Stock Exchange arising from the delay over the US offering, especially since you also expect shortly to announce an issue of convertible notes.

Having reviewed (i) the preliminary announcement concerning the proposed US offering issued on 19th April 1996, (ii) the way we have been

¹ N.B. Holdings' liquidators have waived legal professional privilege.

communicating with the Stock Exchange right up to last Friday concerning the progress of the offering and (iii) the text I have in mind for the sort of announcement to be issued regarding the convertible note issue to be released as and when it happens, I advise that

(1) no separate announcement need be issued for the time being to inform the public about the delay, as the 19th April announcement was cast in sufficiently tentative language;

(2) we ought however to inform the Stock Exchange about the delay and that the circular and announcement cleared by the Stock Exchange last Friday will not be released in the immediate future; and

(3) the part of the announcement about the convertible note issue which deals with the use of proceeds should make a low key reference to the delay, and this is where, as you were suggesting this morning, the reference to developing Netzsch so as to realise its potential and enhance the NHD offering value should be made.

Please let me know whether you agree with the above. In particular, I suggest (2) above should be done by no later than this Friday."

Benjamin Li, apparently, thought that he knew better than the company's solicitor, for no notification as advised by Tien Yo Chao in paragraph (2) of his fax was ever sent to the SEHK. The proposal to issue convertible notes was not proceeded with.

Tien Yo Chao's advice in paragraph (1) of his fax appears sound, as it was the evidence of Anne Chapman, the Vice President of the Listing Division of the SEHK, that the announcement of 19 April 1996 was only a preliminary one and not one made under Chapter 14 of the SEHK Listing Rules as a notifiable transaction. As the announcement contained no timetable setting out the time frame in which the proposed IPO was to take place, there was no requirement under the Rules for the timetable set out in Chao & Chung's letter to her Division of 14 May 1996 to be met, or disclosed to the public.

However on Friday, 28 June 1996, the day of Holdings' AGM, the Oriental Daily ran

this article:

"Share price of Siu-Fung (0395) rallies. In an analysis of the spin-off of NHD for listing in the United States, Cheung-kwun (transliteration) of this column wrote yesterday that market rumoured widely that the plan would be finalized by the end of this month and investors would make surprisingly good profits, with each NHD share reaping a profit of HK\$17. After taking into account Siu-Fung's total issued shares, this amounts to a profit of about two dollars per share. The amount is not exactly the same as what Cheung-kwun has predicted. It is not sure yet if the shareholders would benefit from it.

Rumours also spread that Siu-Fung has already issued US\$50 million worth of convertible loan bonds, which would be announced later in detail.

Informed source also disclosed that the senior management of Siu Fung had visited a number of European countries earlier and acquired several well-known brands of porcelain ware and table napkin in Britain and Germany, thus further expanding its business."

This article led the SEHK, to send the following fax to Holdings, addressed to Albert Lee Holdings' Company Secretary, on the same day:

"We refer to an article which appeared in Oriental Daily News today (the "Article"). A copy of the Article is enclosed herewith for your reference.

We are writing to express our concern over the source of information, as well as the accuracy of the contents as contained therein and would like to have your comments and confirmation of the correctness and accuracy of the information contained in the Article, in particular to the issuance of US\$50 million convertible bonds by the Company. Furthermore, we would like to know whether such transaction may be "notifiable Transactions" under Chapter 14 of the Listing Rules, or notifiable under Paragraph 2 of the Listing Agreement."

Holdings passed the fax to Chao & Chung for them to draft a reply. Chao & Chung's draft read:

"We refer to your fax of earlier today.

We confirm that neither the Company nor any of our Directors was the source of the information contained in the Article.

As to the accuracy of the contents

1. As you already know, the proposed listing in the U.S. of our subsidiary NHD International is still in progress but is unlikely to be completed in the near future.

2. The Company has not issued any convertible bonds or similar instruments, although the Company is currently considering different means of raising financing, which may be of a pure debt or of an equity nature (or a combination).

We also confirm that the Company has not recently entered into any transaction which falls into any category of "Notifiable Transaction" under Chapter 14 of the Listing Rules or is otherwise notifiable under paragraph 2 of the Listing Agreement."

Benjamin Li, however, again thought that he knew better than the company's solicitors, for he sent the following reply to the SEHK on the same day:

"We refer to your fax of earlier today.

We confirm that neither the Company nor any of our Directors was the source of the information contained in the Article and that the information therein is incorrect.

We also confirm that the Company has not recently entered into any transaction which falls into any category of "Notifiable Transaction" under Chapter 14 of the Listing Rules or is otherwise notifiable under paragraph 2 of the Listing Agreement."

The next day, 29 June 1996, Hans Wong of the SEHK's Listing Division spoke to Albert

Lee about the status of the listing. A handwritten note of Hans Wong appears against the SEHK's copy of the *Sing Pao's* report of the AGM recording:

"Confirmed with Albert Lee on 29/6 that there was a delay in New York for the spin-off plan, don't know the exact timing right now, will inform the Exchange when appropriate"

This conversation led to Benjamin Li sending the following fax to the SEHK on the same day - 29 June 1996:

"We refer to the telephone conversation between your Mr. Hans Wong and our Mr. Albert Lee today.

We confirm that the proposed separate listing in the U.S. of our subsidiary, NHD International Limited, is still in progress. We will keep you informed if there is any further development."

On 2 July 1996 Hans Wong of the SEHK's Listing Division telephoned Benjamin Li about the sale of 40 million Holdings shares on the Exchange that day. This was Mrs. Lee's sale of the first tranche of her 80 million Holdings shares. Benjamin Li replied to that enquiry by fax, stating:

"We refer to the telephone conversation between your Mr. Hans Wong and Our Dr. Benjamin Li earlier today.

We hereby confirm that the 40,000,000 share transaction at the market as you mentioned does not relate to any placement of our Company's shares.

We also confirm that, at the time being, there is no planning for any share placing by the Company."

In Chapter 8 we quote from the press articles that appeared shortly after Holdings' AGM on 28 June, including the articles in the *Apple Daily* and the *Standard*. These two articles led the SEHK to send the following fax to Holdings on the same day (2 July 1996) for the attention of Albert Lee.

"We refer to our telephone conversation between your Mr. Albert Lee and

our Mr. Derek Chan. We also refer to the articles which appeared in Hong Kong Standard and Apple Daily News today (the "Articles"). Copies of the Articles are enclosed herewith for your reference.

We are writing to express our concern over the source of information contained in the Articles. We are especially concerned that detailed information regarding the spin-off of NHD International including the offering mechanism, shareholding structure, total fund to be raised, the range of offer price, and the use of proceeds from the spin-off has been leaked to the market. Since all the above information is supposed to be included in the major transaction document which we have not cleared and not been publicly announced by the Company, we hereby request a detail explanation for the leakage.

The Division will keep monitor the share price and trading volume of the Company and will require the Company to issue an announcement in case of unusual movement."

And on 3 July 1996 following the article in the *Hong Kong Economic Journal* on that day concerning Mrs. Lee's sale of her shares and stating that Siegfried Lee had "indicated last week that...the listing of NHD on the New York Stock Exchange would have to be deferred to sometime after October this year" (referred to in Chapter 8) SEHK sent the following fax to Holdings for the attention of both Siegfried Lee and Benjamin Li:

"We are writing to express our extreme concern on two recent events of the Company. We refer to an article which appeared in Hong Kong Economic Journal today (the "Article"). Copy of the Article is enclosed herewith for your reference. We also refer to your fax of 2nd July, 1996 (the "Fax") as well as the telephone conversation between your Mr. Albert Lee and our Mr. Hans Wong (the "Conversation").

Firstly, in the morning of 2nd July, 1996 the Division received a telephone notification from Ms. Jessie Fok of Chao and Chung ("Ms. Fok"), on behalf of the Company, stating that a possible placing and subscription transaction might proceed. Immediately, we explicitly expressed our

concern to Ms. Fok that to maintain an orderly market, placing should not be done during the trading hours, otherwise it might lead to immediate suspension. However, it has come to our attention that at 3:32 p.m. on the same day, a block of 40 million of the Company's shares (the "Shares") was transacted at HK\$1.30 per Share. We immediately enquired Ms. Fok as well as the Company. The Division was subsequently notified and confirmed by the Company that the 40,000,000 share transaction did not relate to any placement of the Shares by the Company, and the Company was not aware of the identity of the parties involved in the transaction. Further, the Company also confirmed that, at the time being, there was no planning for any share placing. However, based on the information in the Article, we enquired the Company this morning through the Conversation. Very much to our surprise, as confirmed by your Mr. Albert Lee, approximately 40 million shares of the Company were sold by the wife of the chairman of the Company, Mr. Lee Siu Fung ("Mrs. Lee"). We hereby express our serious concern on such conflict on the information.

Further, please confirm whether Mrs. Lee possessed any price sensitive information at the time of the disposal of Shares. In addition, please accompanied us by a sequence of events regarding this matter.

Secondly, we are aware that there was a significant increase in the trading volume on 2nd July 1996 and the leakage of information regarding the spin-off of NHD International (the "Spin-off"). To ensure even dissemination of price-sensitive information to the market, we therefore expect that an announcement will be issued by the Company giving relevant information regarding the Spin-off.

In the meantime, please provide us with a draft announcement for our review as soon as possible so that the announcement can be released tomorrow."

The two letters were referred to Chao & Chung for them to draft a reply, which they did. This time Benjamin Li obviously felt that he could not improve upon their work, for the reply faxed to the SEHK on 3 July 1996 faithfully reproduces Chao & Chung's text. It reads:

"We refer to your faxes of 2nd July, 1996 and 3rd July, 1996 respectively.

With regard to the questions raised in your fax of 2nd July, 1996, although we have not been able to identify the source of information contained in the Articles, we can confirm that neither the Company nor any of our directors is responsible for the leakage. As you know, although the listing proposal is still in progress, the original timetable has been put back and the listing is unlikely to happen in the immediate future. Accordingly, the information contained in the Articles concerning the listing proposal is not currently correct.

With regard to the questions raised in your fax of 3rd July, 1996 the sequence of events is as follows:-

Preliminary discussions were held in the morning of 2nd July 1996 as to the feasibility of equity fund raising by way of private share placement. The Company consulted Chao and Chung on the legal technicalities if such a proposal was to proceed. Such preliminary proposal was subsequently abandoned and at approximately 4:30 p.m. on the same day, we received a call from the Stock Exchange in which Dr. Benjamin Li of the Company confirmed with Mr. Hans Wong of the Stock Exchange that he was not aware of the identity of the party/parties that was/were involved in the 40 million share transaction as described by Mr. Hans Wong. Subsequently, Dr. Benjamin Li asked the other directors to make enquiries as to the identity of the party/parties involved and at approximately 6:00 p.m. on the same day, Mr. Lee Siu Fung confirmed with Mr. Albert Lee that his wife had sold the 40 million shares.

We do not regard that there is conflict. Dr. Li's conversation was based on his own personal knowledge and that of the other officers present in the office at the time. He subsequently came to know of the identity of the seller of the 40 million shares at approximately 6:00 p.m.

As regards whether Mrs. Lee possessed any price sensitive information at the time of the disposal of the 40 million shares, the Company is not in a position to confirm or otherwise on her behalf. However, in the Company's opinion, we do not regard the Company to have entered into any recent

transactions or whether there are any developments in our activities which could be regarded as price sensitive.

As regards the "significant increase" in the trading volume, we note that such volume was approximately 58 million on 2nd July, 1996. As 40 million shares are already accounted for by the aforementioned placement of 40 million shares, the balance of approximately 18 million is in line with the general average recent trading volume of the Company."

On 5 July 1996, Holdings made a teletex announcement under Siegfried Lee's name as Chairman, dated 4 July 1996, clarifying certain press reports about the proposed listings. We quote the announcement in full in Chapter 8. This was done at the SEHK's request following the exchange of correspondence just quoted. Chao & Chung cleared the text of the announcement with the SEHK and as well as appearing on the teletex system it was published in various newspapers on the following day, 5 July 1996.

The exchange of correspondence and telephone calls at the end of June and the beginning of July 1996 led to differences between members of SEHK's Listing Division and Holdings' senior officers. In an attempt to resolve these disputes and restore a good working relationship between the SEHK and Holdings, Anne Chapman requested that Holdings' senior management meet members of her Division on 8 July 1996.

Anne Chapman and Chris Davies attended that meeting on behalf of the SEHK, Albert Lee and Daniel Chan represented Holdings. Afterwards the SEHK prepared a brief note of the discussion. In it Albert Lee is recorded as informing the SEHK that:

*"Spin-off postponed for 2-3 months. Company to confirm to stop processing and status of the major transaction.
Possible paragraph 2 announcement."*

The meeting, however, appears to have solved nothing, for on the next day, 9 July 1996 the newspapers ran a number of articles about Mrs. Lee's sale of the second tranche of 40 million shares as well as speculating about the time table for the listing. The gist of those articles is précised in Chapter 8. The SEHK sent two faxes to Holdings that day, both for the attention of Daniel Chan. One related to the sale of Mrs.

Lee's shares and its contents are of no concern. The other was a long one and in it the SEHK sought to obtain a definite answer about the status of the listing. The relevant paragraphs read:

"1. We were advised in the Meeting that the Spin-off had been postponed and would not take effect in the near future. This is different from the statement in the Announcement that "the proposal is in still in progress". Please confirm in writing as to the current status of the Spin-off to clarify the apparent discrepancy. In this regard, the Company may be required to issue a clarification announcement.

2. Please advise whether the Division should stop reviewing the draft Spin-off document which, as advised by Chao and Chung on 14th June, 1996, legal advisers to the Company, should be ready for bulk-printing and filing to the U.S. Securities and Exchange Commission, until the Spin-off is reactivated."

Chao & Chung were again asked to draft a reply, which Holdings accepted without making their own amendments. This reply, signed by Siegfried Lee, was faxed to the SEHK of 10 July 1996. In it we find the following masterpiece of obfuscation:

"There is no discrepancy between the contents of the Announcement and information supplied to the Exchange at the Meeting. The Company would like to clarify that the "postponement" refers to the postponement of the original proposed timetable of the Spin-off as opposed to the proposed Spin-off itself discussions in relation to which are still in progress."

The letter continued:

"The status of the proposed Spin-off since the announcement made on 19th April 1996 (the "First Announcement") and the Announcement therefore still remains substantially as it was described therein. We do not see the need to issue a clarification announcement because the original proposed timetable (the subject of the postponement) has never been announced nor made known to the public in the first place and therefore the fact that this has been postponed should not require any public clarification by the Company."

And went on to state:

"The decision to postpone the timetable was made at the beginning of the following week (week starting 17th June, 1996) and in a telephone conversation on 19th April 1996 between Mr. Tien-yo Chao of Messrs. Chao and Chung and Mr. Derek Chan, the Exchange was informed of the postponement and that the documents which had been cleared would not be released and dispatched in accordance with the previous timetable. As things now stand, there is no need for the Division to review or further comment on the existing documentation as certain of the details given in the latest drafts (in relation to which you have already given clearance) would inevitably have to be altered when terms relating to the Spin-off are finalised and the revised timetable determined."

In the context of this Inquiry it is accepted that the reference to a telephone conversation on "...19 April 1996" is an error and that the reference should have been to "...19 June 1996." Neither Derek Chan of the SEHK nor Tien Yo Chao had any recollection of that conversation on that day; both accepted that it probably took place.

The letter appears to have mollified the SEHK's officials, for they approved, after many drafts, the public announcement made by Holdings on 10 July that we reproduce in full in Chapter 8. We are surprised that they accepted the excuses and half truths peddled to them by and on Holdings' behalf, for we have no doubt that the listing's failure should have been announced in clear and accurate terms on 14 June 1996 in a paid for newspaper announcement, pursuant to Holdings obligations to the SEHK under the listing agreement.

The newspaper articles in mid-August reporting on Y.T. Du's appointment as Holding's CEO again led the SEHK to query the listings' status. This time the matter appears to have been smoothed over in personal meeting between Siegfried Lee and Herbert Hui the SEHK's Deputy Chief Executive.

There was further flurry of correspondence between the SEHK, Chao & Chung and Holdings around the time of Holdings' announcement of 24 September dealing with the operational reorganization of its German subsidiaries.

On 27 September 1996, Chao & Chung were asked to advise and comment on the two announcements that appeared on that day. A short fax of Tien Yo Chao's to Benjamin Li and Amy Chan enclosing his annotations to the drafts of interim results announcement contains the phrase:

"Should we not come clean now and say something more clear-cut about the NHD spin-off?"

It was at his suggestion and his drafting (Benjamin Li no doubt feeling that he could not 'improve' on it) that the announcement of Holdings interim results on 27 September 1996 contained the phrase:

"In view of the ongoing operational restructuring programme now being carried out with the NHD companies, the Directors have decided not to pursue the previously announced proposal for a separate listing of NHD in the US for the time being."

Even at that late stage Holdings failed to "...come clean" and tell the SEHK that the real reason for the listing not proceeding was that the underwriters had withdrawn for it on the night of 13/14 June 1996.

Coopers

Ernest Ip, an accountant with Coopers in 1996, told us that in 1996 Coopers were the auditors for both Holdings and Concept. He started work on NHD's listing in early March 1996.

Of the work involved he said:

"We had been working very hard during the course of these transactions to produce all these reports, which means that we had been spending a lot of our time during that period to complete the transactions."

He said that on 14 June 1996 he received an e-mail from Joel Osnoss, a colleague in New York, headed "Interesting news re: NHD" and reading:

"I just got a call from Gil Melman. Apparently, First Boston has backed out, believing that the deal will have to wait until more of a track record has

been established. Ernest, please call me at home this morning (HK time) to discuss our approach to collecting both of our fees. I think its got to be a unified effort. My home number is 914-669-8163. Please note that I will be asleep after 11 o'clock (dreaming of what might have been)."

Of the status of the listing following this email, he said:

"A. At that time when I saw this email, I think the first reaction I had is to call the management to understand what has happened. Basically, Benjamin Li told me that this was the case that the First Boston people have backed out of the transaction because they would like to wait for a while for the company to achieve more of a track record and the transaction may be activated any time again.

Q. For the current purposes, what was its status?

A. I think that the email describes it, it is the end of this transaction."

Ernest Ip confirmed that he did no work at all on the listing after receiving Joel Osnoss' email.

Rowe Price Fleming

Rowe Price-Fleming held a portfolio of 17 million Holdings shares. In 1996, Mark Edwards was the manager in charge of that portfolio. He had joined Rowe Price-Fleming's Hong Kong office from London on 1 July 1996. On 17 July 1996 he visited Holdings with Vijay Haijani an analyst with BZW. They met Lisa Lam, described in his note of the meeting as the "Deputy Chief Executive". He told us that the purpose of his visit was to check that there was no reason for Rowe Price-Fleming to hold on to the Holdings shares. He had formed the view that they should sell their Holdings portfolio, but didn't want to do so without first meeting the company. He went on to say:

"...if they gave me inside information, then I would actually be prohibited from dealing, so they certainly would not be able to give me information that was not public. But what they could do is discuss broadly the strategy, the structure of the business; that would be in the public domain."

He had earlier said:

"Portfolio managers spend their whole life visiting companies; that is really what we do, visiting companies, and making investments. So this was completely run-of-the-mill."

The relevant parts of his note of that meeting, the truth of which he confirmed before us, read:

"Plans to list NHD (eg on Nasdaq??) are still being considered by the mgt(sic)".

His conclusions arising from the meeting, set out in his note, were:

"SF would be an interesting exposure to a buoyant PRC building materials market, but the problem is that austerity has hit that market hard. Its core business remains the NHD German manufacturing operation, where the worry would be that it is dependent on sales to the same struggling JV's & cost competitiveness in Germany is tough to achieve. Profits look to remain lacklustre until 1997 at the earliest & meantime the company has to fund its PRC network.

The only piece of good news short term would be a listing of NHD.

Sell on any strength arising from this IPO."

He was questioned about these aspects of his note, in examination-in-chief:

Q. Then you go on to say: "The only piece of good news short-term would be a listing of NHD." What was that all about?

A. They merged the three German businesses, Netzsch, Heimsoth and Dubois, and they were talking about an IPO, I think ideally they were planning a Nasdaq listing, and that definitely would have given a boost to the stock short-term.

Q. Did this come up in your conversation with Lisa Lam?

A. I think she said that they were still thinking about it. They were still looking at it, yes. That, again, was in the media, that was the plan. That was the reason really why I hung on, because I thought that would happen and that would let the stock run quite strongly, and that would be the moment to cut back.

Q. What was your view of the proposed listing? Did you know about it before you went to the meeting, from the notes?

A. I knew that they were from the brokers, I knew that they were planning; that was one of the positive angles on the stock, that they were planning to list. I thought originally it was going to be a German listing, but they were talking about a Nasdaq listing.

Q. That was on 17th July. When you went into the meeting and this came up, do you recall what was said? Did you ask about it?

A. I think that they said it was still planned, yes. They did not have any information as to when.

Q. Immediately after that, in that note you say: "Sell on any strength arising from this IPO."

A. Right.

Q. That falls in with what you have just said; you seem to have been heartened by the news, were you?

A. The listing would have lifted the stock to 1.50 or so in my view, and that would have been then the chance to--I was trying not to sell at the bottom, that was my perception.

Q. Is that the reason why you hung on for a bit?

A. Exactly, yes.

In cross-examination by Mr. Harris:

Q. There are one or two other things I want to take you to. The penultimate sentence of the "Conclusion" paragraph: "The only piece of good news short-term would be a listing of NHD." Can I assume that that is your conclusion from information that was available to you?

A. Yes.

Q. That is not something that was said to you by Lisa Lam?

A. No.

...

Q. In fact, as far as the listing was concerned, Lisa Lam did not seem terribly well informed about that herself?

A. Yes.

Q. Is that a fair comment?

A. Yes.

Mark Edwards in fact held on to Rowe Price-Fleming's Holdings portfolio until 5 September 1996. He said this about the circumstances under which he came to sell it:

"I was away on holiday in August for two weeks. When I returned from my holidays, there was already bad news in the Chinese press. I was talking to some brokers, they told me that there was an article in the Chinese press that the float would not go ahead, therefore on the following week on 5 September 1996, I placed an order with BZW for 3.5m shares at discretion."

Q. Do you recall whether the prospect of an IPO was still in the air?

A. I am pretty sure it had been announced either in the paper or I think it was generally announced that it had been postponed.

Q. What was the view of brokers you were talking to at the time?

A. Their view was that one should not wait for the IPO because it might not happen.

Q. Then you were selling right down through October 1996?

A. Yes.

Q. Why did you do it gradually, rather than get out all at once?

A. The liquidity, initially. I thought there would not be sufficient liquidity. Ideally, we were trying to sell and not drive the share price down. We started off with nearly 3 million at 1.15, but then the stock lurched down later in the month, and by that stage it was a small holding; the stock, as I say, had fallen. So I took the decision that I wanted to cut, to get right out of it.

His next sale was on 16 September 1996; by 2 October 1996 he had sold Rowe Price-Fleming's entire Holdings portfolio.

Chapter 7

In this chapter we summarise the evidence we have of the SFH Group's liquidity and funding requests in the period from March 1996, when H&D entered into the agreement to acquire Netzsch, to the cessation of trading in Holdings shares on 28 October 1996.

Before 14 June 1996

The purchase price of Netzsch was US\$25 million. Siegfried Lee borrowed this from the HSBC. The loan was secured by his personal guarantee, supported by an all monies charge on the residual value of his newly acquired property at 72 Deep Water Bay Road and the security of 150 million of his Holdings shares. Repayment of the Netzsch acquisition loan was predicated on the basis of the listing of NHD going ahead. Repayment was called for within 30 days of the listing or by 31 December 1996, whichever date was earlier. In addition Siegfried Lee guaranteed a letter of credit advanced by the Dao Heng Bank to Netzsch's German bankers for DM25 million. This was secured by a deposit of 500 million of his Holdings shares with the Dao Heng Bank.

The statutory 'Form F1' filed with the US Securities and Exchange Commission said that the first use of the listings' proceeds was:

"The Company will use the net proceeds of the Offering (i) to repay approximately \$25 million of indebtedness incurred in connection with the Netzsch Acquisition, (ii) to repay \$10 million of indebtedness to Siu Fung and (iii) for general corporate purposes, including - costs associated with the Netzsch Acquisition."

As early as 21 March 1996 Eddie Lui had warned Siegfried Lee, and others, that:

"IPO in New York will be the only way we can generate some cash and reduce our gearing ratio in short period of time. We need supporting from everyone in the group and we have to try every single way to rescue ourselves from the current critical situation."

He called for efforts *"..to rescue ourselves from the current critical situation."*

In May 1996, NHD's German management advised Siegfried Lee of their urgent funding needs and expressed their concerns about the company's future. In particular a memo of 20 May 1996 addressed to Siegfried Lee, headed "Sales NHD Q2/96/Backlog/NHD/cash situation" reads:

"The overdue payments to suppliers is roundabout 12 Mio DM...it seems to us, that a major part of the PRC backlog cannot be handled as real orders, because there is no LC opened and no down-payment are paid up till now. We can only feel responsible for the order backlog, if the orders in questions are proved. We therefore ask you to analyze very carefully and let us know the results, as these figures are a very crucial part of the management information contributed to the IPO procedure."

....

"As you know from various discussions, we are strongly suffering the actual cash situation, which can only be solved by a short term cash injection (example: the 4 Mio DM for the Russia business are not available today and the project is jeopardized)."

....

"We as the responsible managers for the operative business are deeply concerned about the future of the company under these circumstances."

Eddie Lui told us that he was aware of the difficulties in the German side of the business set out in that memo.

On 10 May 1996, Lisa Lam told Concept's Board of Directors that Concept's funding needs of US\$50 million would be met by Holdings, following the listing of NHD.

On 1 June 1996 a fax from Gordana Blatnik of SF Ceramics Americas, Holdings US subsidiary, speaks of NHD's cash balance in the US being only US\$38,000 and of there being insufficient money to pay the next week's payroll. The same fax pleads for an urgent wire transfer of US\$83,000 in order to pay the filing fee with the US Securities & Exchange Commission in order to obtain their clearance of the listing on the NYSE.

Lisa Lam attended a meeting with Coopers, Concept's auditors, on 21 March 1996 at which Coopers raised their concerns about Concept's cash flow position for the following year. Coopers' notes of the meeting say:

"Based on our calculation, there will be a net cash outflow of HK\$526M (see attached). In addition, bank and other loans of the JVs amounting to HK\$694M are due for repayment in 1996 but are not included in the cash flow forecast ..."

Lisa Lam is recorded in the same notes as having suggested alternative means of funding Concept, namely:

*"(a) Loan or capital injection from Siu-Fung Ceramics Holdings and the 13 institutional investors;
(b) Proceeds received by Siu-Fung Ceramics Holdings through the IPO of H&D Group."*

Ernest Ip of Coopers said this of the importance of the proceeds of the listing to Holdings:

*"Q. How important then was it to Holdings to have the proceeds of the IPO, from your perspective as auditor or the company?
A. It is important to the group's operations in the sense that most of the joint ventures in which the group has an interest in are at the initial start up stage and all these joint ventures need to spend money on capital expenditure, as a result, those proceeds are essential for them to complete their business expansion."*

On 9 May 1996, Lisa Lam sent out the papers for a meeting of Concept's directors to be held on 10 May 1996. They included copies of the 1996 first quarter results, the 1995 unaudited management accounts and extracts from the 1995 preliminary draft audited accounts. The income statement for the first quarter of 1996 described the combined turnover of the joint ventures at half of that budgeted and the losses as being around four times as great. The draft accounts showed Concept's losses for 1995 to be in the region of \$70 million.

Paragraph 8 of Raymond Leung of HPEM's notes of the meeting held on 10 June 1996, reads:

"The management commented that Concept will be unable to fund these

requirements out of its own cashflow and the funding will come from Holdings following the IPO of NHD."

Lisa Lam who attended that meeting told us that she had provided that information.

She also said that when Albert Lee was providing Cliff Cheung of PAMA with information about the servicing of the Beijing Sanitary Ware loan, she butted in and said:

"You know it is Holdings' intention to put in money or capitalise the loans. Terms and conditions will have to be discussed and Holdings' ability to put in more money will largely be dependent on the NHD listing."

She told us that she 'believed' that Siegfried Lee had asked her to relay that information to the directors at the meeting.

After 14 June 1996

In his statement to the Tribunal Daniel Chan said this about the consequences of the changed status of the listing:

"... the financial arrangements of the Holdings and its group of companies would be upset. I therefore informed Eddie Lui of the said status of the IPO application with the view to enabling him to make some relevant arrangements on the financial matters of the Holdings and its group of Companies."

He confirmed in his evidence that there was a connection between the failure of the listing and Holdings' funding needs:

"I told Albert so he can help hold up the bulk printing, then I told Eddie, since he is the group CFO, that with the IPO status changed, that would affect the cash planning of the company so he would need to reassess the cash flow planning."

.....

"Q. Is the truth of the matter that you acted very closely with Lee Siu Fung in dealing with the consequences of the failed IPO?"

A. Yes, we approached Hongkong Bank on the 18th and we started to act on the 19th.

Q. Were you taking instructions from Lee Siu Fung about what information to give, what to request?

A. That is correct.

Q. Did you report to him the bank's reaction?

A. Yes."

The fact cannot be escaped that Siegfried Lee had parlayed almost all of his available personal assets in supporting Netzsch's acquisition. The listing was the object behind his gamble. If successful it would provide funding for NHD and Concept, repay Netzsch's acquisition costs and return to him his personal Holdings share portfolio that he had pledged to the HSBC to secure the loans he needed to make the acquisition. The listings' failure was a devastating blow to his scheme, severe financial problems that he had not accounted for loomed before him.

Siegfried Lee, however, wouldn't have it that the listings' failure led to funding problems:

"Q. The postponement of the IPO in the terms described presented a problem for Holdings, did it not?

A. No, there would be a need for cash.

Q. I suggest that you rectified the problem and you did two things: the first thing is, you looked after your own interests and sold your nominee share?

A. That is incorrect."

Approaches to HSBC, Hang Seng Bank & Dao Heng Bank

Siegfried Lee, however, accepted that on 18 June 1996 he, through Daniel Chan, asked the HSBC for bridging finance. He sought a personal loan of \$300 million in cash and offered Holdings' shares as security. It is clear that this was no more than 'window dressing' as by then he had already pledged 650 million Holdings' shares to the HSBC and the Dao Heng Bank as security for earlier loans those banks had granted to him and had insufficient unencumbered shares to secure a loan of that size. The loan was refused.

An internal memo of the HSBC of 21 June 1996, sent from Roger Wong of the HSBC's Corporate & Institutional Banking Division, to David Tam the Senior Executive of the Division reads as follows:

Event: A meeting at L10 1QRC with the Chief Executive Officer (Dr. Benjamin Li), chief Operation Officer (Daniel Chan), Director of Finance (Albert Lee) and Chief Finance Officer (Eddie Lui) of Siu-Fung Ceramics Holdings Ltd ("SFCHL") at 10:00am on 21 June 96.

Prelims: On 14 Jun 96, Siegfried, the chairman of SFCHL, called a halt to the sub-listing exercise of NHD (SFCHL's newly-merged subsidiary comprising Netzsch, Heimsoth and Dubois) on the New York Stock Exchange after finding the underwriters unreasonable to reduce the P/E ratio from 12 to 7 and net IPO proceeds from HKD1,400m to HKD550m. On the following working day, 18 Jun 96, Siegfried phoned our AGM Head of Corporate Banking to seek for bridging finance before an alternate equity raising exercise is finalized. On the afternoon of 18 Jun 96 and the morning of 19 Jun 96, telephone conversations were made between DWHT and Daniel/Eddie. A lunch meeting was held between RW and Daniel/Eddie on 19 Jun 96. Daniel requested this meeting with DWHT and DSL after the lunch.

Reality: If the low P/E were the real reason, SFCHL may need a push to immediately revive the sub-listing exercise of NHD for easing its tight cash flow. The remaining cash shortfall may then be obtained through private placements and issuing convertible notes. I suspect that teething troubles in merging Netzsch with Heimsoth and Dubois are the real reason for the lack of an underwriting support. Our James Capel was invited to underwrite at a late stage and decided not to participate in.

Problem: SFCHL will need HKD300m cash to meet the forthcoming payments of (1) loan instalments plus interest; (2) HKD70m cash dividend; and (3) HKD100m cash compensation for the redundant employees of Netzsch, let alone the additional working capital requirement for meeting NHD's aggressive sales forecast and the USD25m bridging loan repayment drawn down on 26 Mar 96.

Solution: SFCHL is reluctant to issue HKD300m convertible notes at a large discount to meet the immediate cash shortfall, as all sorts of rumours may then go around as to NHD.

Proposal: To avoid the embarrassment, Siegfried would like to obtain HKD300m cash from us personally for injecting into SFCHL through a private placement. Siegfried is willing to pledge his shares of SFCHL as security. I have advised Daniel that the proposal is not feasible. The repayment ability looks doubtful.

Exposure: Siu-Fung group maintains HKD1,335m banking facility with us. ECR of HKD680m is supported by SFCHL's HKD1,390m NW as at FYE 31 Dec 95. Liquidity was low at 0.68/0.44 CR/QR and DER increased from 0.68 to 1.25. The gearing of SFCHL is high at 0.81, after including the latest USD25m bridging loan."

In cross-examination, Siegfried Lee denied that he was the source of the information, contained in that memo, either directly or indirectly. He did, however, accept that he had told the HSBC that the listing was postponed. Given that told the bank officers that, it is difficult to believe that they imagined the claimed reason behind the postponement, or learnt of it from some one other than Siegfried Lee.

Eddie Lui's cash flow was presented to the HSBC at a lunchtime meeting on 24 June 1996. It calls for three term loans of US\$10, US\$15 and US\$20 million in each of June, July and September 1996; two injections of equity funding of US\$30 million each in July and September 1996. Proceeds from the listing are shown as receivable in April 1997. Eddie Lui confirmed to us that a colleague and himself had prepared the forecast.

An internal HSBC memo of 25 June 1996 from Roger Wong to David Tam (and others) reporting on the 24 June 1996 lunch meeting identifies Daniel Chan as having claimed that Siegfried Lee had made arrangements to deal with an estimated cash shortfall of HK\$800 million in the third quarter of 1996.

The same memo notes that there is likely to be delay on Holdings' part in repaying the installment due on 28 June 1996 in respect of the Beijing Sanitary Ware equipment loan. It is said that if the repayment is delayed for more than a week it will

lead to a downgrading of Holdings' credit rating with the bank. Holdings was unable to meet the repayment of the equipment loan when it fell due and requested and was granted an extension.

David Tam in a lengthy memo to Raymond Or, the General Manager of the HSBC dated 29 June 1996, in which he discusses the bank's view of Holdings' financial problems, describes Eddie Lui's forecast as "...*alarming*." The SFH Groups' indebtedness to the HSBC is given as \$1,103 million out of total facilities of \$1,753 million.

The penultimate paragraph of David Tam's memo reads:

"Given the extent of our exposure to the Siu Fung Group, it would be in our interest to manage down the Group's risk while keeping the business running. The Siu Fung group will need to manage the numerous important issues which it now faces as soon as possible and we have to keep on top of their progress. Where necessary, we should arrange for EISA to help with the funding issue."

In a handwritten note endorsed on the memo, Raymond Or commented:

"There is little doubt that the group is facing a short-term liquidity problem. DWHT has set out the areas that the group need to address. The most immediate issue is to address the short-term liquidity problem. SL has advised he has placed 80m SF shares to investors, raising about \$100m which he will on loan to SF. He indicates he will personally raise another \$100m in the next few weeks. I have also asked SL to prepare a more meaningful cash flow projection to ensure everybody know their right position. I have also exerted pressure for SL to commence discussion with the institutional investors of Siu Fung Concept with a view for the latter to put in more monies (whether in the form of advances or equity) knowing Siu Fung Holding has lent USD80m to Siu Fung Concept."

When shown in cross-examination an internal HSBC memo of 28 June 1996, sent by Roger Wong to David Tam setting out the SFH Group's exposure to the bank - said to be "*total facilities of \$1.32 billion; drawn down \$1.073 billion*" - Eddie Lui said:

"Q. Was it the case in broad terms that existing facilities had been almost totally used up?

A. Should be the case.

Q. Was that why you were having these frequent meetings with HSBC, to address new facility?

A. It should be the case."

On 26 July 1996 the HSBC downgraded the SFH Group's credit rating from level 2 to level 3 meaning 'fair' on a seven step grading system with 1 being the best and 7 being the worst.

By the end of July 1996, Roger Wong was required to send David Tam a weekly report on the SFH Group's position with the HSBC. On his part, David Tam was disseminating these to officers higher up in the bank's hierarchy.

On 26 July 1996, Concept's management entered into an agreement with the Dao Heng Bank under which the Bank was to organize and underwrite a 3-year syndicated US\$30 million loan, available in late September 1996. Holdings were to guarantee the loan. On the basis of the availability of the Dao Heng Bank syndicated loan, the Hang Seng Bank extended a US\$30 million 3-month short term bridging loan to Concept in early August 1996. Concept's directors voted to accept it on 5 August 1996. As matters turned out The Dao Heng Bank was unable to find other banks willing to join in the syndicated loan.

On 14 August 1996, Mr. Paul Li, the manager of the HSBC's Corporate & Institutional Banking Division commented in an internal memo addressed to David Tam:

"The recent drawdown of the Bridging loan of USD30m granted to SFCCL by Hang Seng Bank has provided a temporary relief to their liquidity problem. It is now imperative that SFCHL has to actually obtain additional equities from the institutional investors of SFCCL (though indications were obtained from most of its institutional investors that they will seriously consider to inject USD30m new equity to SFCCL) or 20% share placement for SFCHL to raise USD40m.

It is also essential that SFCCL and NHD has to obtain additional working capital lines from PRC banks and European banks which amount to

USD60m and DEM40-50m respectively. We have to be updated on their working capital requirements and the progress of their negotiation with banks. In this respect, NHD has recruited Thomas Rademacher, an experienced financial expert highly regarded by Trinkaus, as its MD & CEO to look after its financial and banking facilities. The appointment of Y.T. Du as the CEO of SFCHL effective 1 Sept 96 will hopefully put the financial position of SFCHL under a better control.

As regards the extension of 2Q96 instalment loan repayment of USD4m for the equipment loan of USD52.75m granted to SFCCL (extended from 28 June 96 for 2 months to 30 August 96), we may be requested to give them a moratorium period over one year. In that case, a Debenture over the assets of SFBSW has to be obtained by us. An interim review by us has to be conducted by the end of August 96.

In view of the very large exposure by HSBC Group to this group (HKD1,987m, ECR HKD1,337m), we have to be very careful in handling this relationship. We should give them continuous support whilst not to incur any additional unnecessary exposure. Close contact by our senior management and NTD CBC (me and Roger Wong) with them has to be maintained with an aim to grasp the progress of their equity raising efforts, obtain their cash flow forecasts preferably on a monthly basis, ascertain their sales order position, update their working capital requirement and new banking facilities obtained, corporate and management restructuring and strategy, and most importantly what steps they have taken to meet the listing requirements of NHD in NYSE to enable the listing to be put forward in 1Q97 (which I regard as the best solution for the liquidity issue of this group).

We have monitored this relationship very closely while maintaining supportive and amicable attitude in our daily contacts."

Despite the hopes in that memo for an improvement in the SFH Groups' position with its bankers, it never did.

Approaches to the Concept Investors

Around this time the Concept Investors were approached to see if they were prepared to assist in raising funds. A meeting of just three of those investors - Prudential, HPEM & Search - was held on 25 June 1996. The purpose of the meeting was to discuss the level of cash the SFH Group required, the method and/or options to raise funds, and related issues. The three investors represented at that meeting required to see a detailed verification of the level of the cash requirements of the SFH Group and details of the proposed use of the funds before they agreed to provide any injection of cash. Concept's management were required to provide a detailed cash flow forecast.

Raymond Leung of HPEM made a note of what was discussed. His note records:

"Raising of Funds

2.1 The cash requirement by the SFH Group was originally intended to be met by the cash proceeds from the initial public offering (IPO) of 30% of the shares in NHD, on the NYSE in July 1996. The proceeds expected to be raised at the IPO was approximately US\$180 million.

2.2 The planned listing of NHD has now been postponed, and is not expected to be rescheduled until after 1996, i.e. a delay of approximately 6-9 months. As a result, SFH needs to raise funds from alternative sources in order to meet its short-term liabilities in its subsidiary companies, NHD and Concept.

2.3 The instrument and terms in which the Funds will be injected into the SFH Group are under discussion. It was proposed that a set of draft terms should be prepared and discussed amongst the Investors in the next meeting.

3. Other Related Issues

The following issues were also discussed.

3.1 Management in SFH

The investors present at the meeting agreed that the appointment of a CEO and a CFO to oversee the financial controls and strategic decisions

on the PRC joint ventures in Concept was necessary.

S F Lee has suggested that a suitable candidate has been found, but the contract has not yet been signed. He is therefore reluctant to reveal the identity of this candidate.

The appointment of the new CEO will have an impact on investors' confidence in SFH and in Concept as well as the market perception of the Group, which may determine the outcome of the fund raising in Concept and in SFH.

The Investors agreed that a meeting with the incoming CEO was necessary to discuss with him:

- (i) his plans for recovery of SFH Group's financial performance; and*
- (ii) his commercial background and operating experience in industrial companies.*

3.2 Restructuring of the investment in Concept

Pursuant to the Shareholders' Agreement at the time of investment in Concept, the Investors have a right to convert their Ordinary shares in Concept (valued at cost) into the Ordinary shares of SFH on 31 December 1997 at the then market price discounted by 10%.

The Investors agreed that as a pre-condition for the injection of new funds into SFH, the rights attached to the Ordinary shares in Concept held by the Investors should be restructured and improved. The draft terms for discussions in relation to 2.3 above should incorporate the revised terms attached to the Investors' existing holding in Concept Ordinary shares."

On 2 July 1996, representatives of Search, PAMA and HPEM met with Siegfried Lee and Benjamin Li. Raymond Leung's note of that meeting records Siegfried Lee as confirming that the Siu Fung Group needed US\$60 Million. This is the amount the same group of investors had estimated the group's needs to be at their meeting on 25 June 1996. The need for a cash flow projection to verify the cash requirement and the proposed use was raised and Siegfried Lee promised to provide a detailed cash flow. The meeting considered "...hypothetical terms of a new convertible issue

of US\$60 to \$80 million". It was said that this would "...provide an opportunity for the restructuring and reorganisation of NHD to increase profitability, and a possible listing of its shares in due course."

On 12 July 1996, all Concept's directors met at the SFH Group's head office in Tsim Sha Tsui. Concept, HPEM and Citicorp made three separate notes of that meeting.

The revised agenda, circulated to the directors on 9 July 1996, was as follows:

- "1. To note the new appointment of the Chief Executive Officer.*
- 2. To note the current financial situation and its impact on NHD and SFH.*
- 3. To consider the proposal of fund raising.*
- 4. Any other business."*

The meeting was tape recorded, apparently without the knowledge of the participants. We have heard extracts from the recording, which is not of high quality, and have transcripts of parts of it.

The appointment of Y. T. Du as CEO was addressed, as was Concept's current financial situation and its impact on NHD and Holdings; US\$78 million and US\$40 million were identified as owing to Holdings and NHD respectively. The proposed finance plan was addressed and US\$30 million was sought as an equity injection from shareholders.

The significance of the monies that Concept owed to Holdings and NHD was addressed on a number of occasions by a variety of speakers. In particular:

Eddie Lui:

"To date, Siu Fung Concept owes Siu Fung Group a total of US\$78 million. At the same time, on top of that, it owes NHD US\$40 million. ... (not clearly heard) ..., that means apart from Siu Fung Concept itself having cash flow problems, Siu Fung Group is, basically, ... (inaudible) ... given a, a very heavy burden.."

Siegfried Lee:

Of the delay in listing:

"... the initial problem is that Concept owed NHD a lot of funds. This gave NHD financial difficulty in operation in relation to, ah, Concept. As Holding, ah, holds 100 per cent of NHD, NHD was made to - financial difficulty was caused to Holding as well, though Holding had posted over \$70 million to, ah, Concept. We did believe and we tried many methods before. That was to say by listing NHD we would have ample funds to continue advancing loans to Concept. As you know, because of the delay in the listing, we had no means to continue advancing loans to Concept."

Of a proposed US\$90 million capital injection:

"With such a sum injected according to ratio, not only Concept's problem would be resolved but also we at Siu Fung ... (not clearly heard) ... would be resolved."

Of Concept's financial position:

"Now it becomes a bank debt of US\$190 million, okay? At the same time, it owes Holding US\$110 million, okay? We now say that we have a financial problem."

Concept's note of the meeting summarizes the position in this way:

*"2. Current Financial Situation and its Impact on NHD and SFCH
Mr. Eddie Lui stated that the Company suffered a loss in the past 2 years, which created a serious cash flow problem to the Company. As a result, the operations of the Company was affected. Such deficit was mainly due to the expensive local finance. It was also noted that the Company still owed SFCH totally USD78 million and NHD totally USD40 million. That also brought SFCH and NHD into a situation of cash flow problem as well as the Company."*

It is apparent from the transcript of the tape recording that the non-executive directors were trying vainly to obtain financial information from management. William Lam said to Siegfried Lee:

"... But the trouble is here - though the management may be aware of what is going on, other share -, other directors have insufficient information to accept the extent of the problem

...Actually, before there is information, no decision can be made,"

And Cliff Cheung of PAMA said:

"The Board considers the information very important and before the information is available, any other topic is basically academic."

Raymond Leung's note of the meeting, sent as an internal memo to his superiors in HPEM on 18 July 1996, states:

"... despite pressure from HPEM and other institutional investors, the Group has not provided any reliable and detailed information on its financial situation. The Group's reversal of its assurance that investors would be able to meet the new CEO prior to his joining, indicate that HPEM should be wary of statements made by the Group. At the meeting on 12 July 1996 no current useful data was provided, and again it was promised that it would be available within a week. It is not possible for HPEM to make an informed assessment as to the seriousness of the situation, without this information.

.....

The current situation is highly unsatisfactory and is viewed as critical. HPEM should review its current stance towards the Group with a view to assessing whether additional pressure can be applied to the Group to provide the investors with the required information. Only once HPEM has the required information can it assess what action is appropriate. HPEM should not tolerate the breaking of promises or assurances by the Group"

The meeting ended with an agreement that the detailed information the non-executive directors wanted would be made available within a week, and with Siegfried Lee stating that he hoped the plan could be finalized before the end of that month (July 1996).

The information requested was not readily forthcoming; after a week had passed Raymond Leung had to chase after it. He believed that he spoke to Lisa Lam as she was "... *our primary contact.*" There were no secondary contacts. He was not sure if Lisa Lam was the one preparing it or somebody else. The response he got was that once the information was ready it would be released to the Concept investors.

Following on from the 12 July 1996 directors' meeting, Concept's management prepared a presentation dated 26 July 1996, seeking to give in it the information the non-executive directors required. Albert Lee told us that YT Du was in charge of the content and layout of the presentation. The financial forecasts were provided by each joint venture's accounting team and then reviewed by Benjamin Li, Lisa Lam and himself. Everybody put in a lot of work in doing this, including Benjamin, Lisa Lam, Eddie Lui, Daniel Chan and himself. They worked together on it at Holdings' head office.

On 27 July 1996, there was a videoconference in which Siegfried Lee, Y.T. Du, Cliff Cheung and Vincent Kwan, who were all in Hong Kong, and William Lam, who was in Singapore, took part. In his interview with the SFC in June 1997 Cliff Cheung of PAMA said that this videoconference was to review the presentation ahead of the meeting on 29 July 1996.

Concept's directors met on 29 July 1996 to discuss the presentation. There can be no doubt that it called for an unrealistic fund raising exercise, both in size and time frame. Holding's proposed equity injection was no longer to be in cash, but was described as "*US\$60 million, being the conversion of existing loan from SFH into equity.*" On the other hand the Concept investors were being asked to make their equity contribution in cash.

This meeting was also tape-recorded, the partial transcript of that meeting shows that Y.T. Du addressed the meeting by reference to the presentation. He indicated, in terms, that he would address specific topics, namely; sources and use of funds; overall funding needs for the next 3 years; business forecast and the action plan and Holdings' financial forecast.

Having identified a funding shortfall of US\$260 million in Concept, Y. T. Du said:

"So the company so far has tried everything to cover the shortage either through NHD funding or through Holdings lending the money to Concept. As I say, I do not think that is sufficient...I apologise that the company has not communicated that to the investors before."

After Y.T. Du had addressed the topics identified above William Lam responded:

"I mean, you have got to appreciate that the confidence level of the number is down to if not zero, close to zero. I can briefly speak on behalf of this group here, none of these people believe these numbers."

Cliff Cheung of PAMA supported that view:

"I think I would just like to echo that comment by saying that the only thing that is consistent with others, all these projections, has been that, you know, they have always been grossly over-stated. ... Grossly understated of losses."

Of the difficulties that lay ahead in the non-executive directors persuading their companies to invest more monies William Lam said:

"...because, actually, I think it is quite difficult, if not impossible, for some of us to even open our mouth in front of our people generally."

The meeting was inconclusive and was adjourned to 1 August 1996.

In his note of the meeting Raymond Leung of HPEM observed of Y.T. Du's address:

"1.3 He emphasised that both Concept and SFH are suffering from a cashflow shortfall in the short and medium term, and that his arrival would be subject to the success of raising such funds. Without such funding, the chances of a turnaround of the SFH Group are slim."

Of NHD's debts, he commented:

4.1 SFH inherited debts from the acquisition of Netszch in March 1996 and its other German subsidiaries. These borrowings totalled

approximately US\$40 million, due to a number of banks in Germany and Dao Heng Bank, and US\$10 million of which will be due in August 1996."

He shared William Lam's lack of confidence in the management's figures:

"5.2 The non-executive Directors and Investors have been highly dissatisfied with performance to date against expectations projected by the management and the existing financial controls in Concept..."

Of the importance of full financial information, he noted:

"5.3 The timing of the equity injection is subject to the provision of full financial information by the management and the new business plan to be drafted by the new CEO, both of which is expected to be available in three months' time..."

5.4 Given that the investors would be unable to commit to any form of new money into Concept until such time that sufficient information is available, the discussions on the various possible structures through which the Investors would be able to participate were hypothetical."

Concept's directors met again on 1 & 2 August 1996. The 1 August 1996 meeting was at Holding's head office, the 2 August Meeting was at Peregrine's office. Again these meetings were tape-recorded. The partial transcript of the tape recording of the 1 August 1996 meeting shows that it started with Y. T. Du speaking of the current financial state of the company:

"We had a loan, the company had a loan of \$10 million maturing yesterday, we have asked for the postponement of that payment for a week, and we have received a preliminary commitment from the bank for a \$30 million bridge loan. We are hoping that we can draw down that loan next week but we still don't have the final arrangement in place. The committee has approved this. We just need one more approval but they are confident we can almost draw down the amount probably Monday. And that loan will be lent to Concept."

When Y.T. Du asked those present if there was any objection to the company entering into the US\$30 million bridging loan, which was the 3-month facility granted by the Hang Seng Bank, Ringo Chui of Sun Hung Kai and he entered into a heated dialogue:

"Chui: I am a bit concerned on the increased borrowing of Concept now.

Du: What's your suggestion? You only have two choices. You can do this or file bankruptcy.

In dealing with Ringo Chui's suggestion that consideration be given to selling assets Y.T. Du said:

"Du: Yes, we can. But I don't think timing is the issue. How long do you think it takes to sell a plant? Have you sold a plant before?

Chui: No.

Unidentified speaker: How long do you think? At least 6 months.

Du: Yes. At least 6 months. I don't think the company can wait for another 6 months."

....

Du: NHD within a couple of weeks will file bankruptcy if we don't give them money. If NHD did go into bankruptcy, they will put Concept into bankruptcy because Concept owed a lot of money to NHD."

Chui: If we put more money into Concept and if that's not enough to save NHD, and Concept we would lose even more money...(inaudible)...I am not prepared to take that risk. I am prepared to lost all my investment. That's our point."

Du: Yeah, you have already said it. You said you are willing to let the company to go under.

Chui: I am not. If I have the choice, I won't let the company to go under but I ... I don't have ... I don't have the choice.

Du: Yeah you don't want to put any money in. I understand that.

Chui: Because the management cannot give me a proposal that is acceptable to our shareholders..."

Concept's directors met again on 5 August 1996 at which they, with the exception of Ringo Chui of Sun Hung Kai, who abstained from voting, resolved to accept the US\$30 million facility from the Hang Seng Bank and the Dao Heng Bank syndicated

loan. There is no tape-recording of this meeting, so far as we are aware. Present at it for were Siegfried Lee, Benjamin Li, Daniel Chan, Lisa Lam and Albert Lee, all executive directors of Concept. Representing the Concept Investors were Adrian Lam for Citicorp, Michael Tsang and Raymond Leung for HPEM, Cliff Cheung and Janson Law for PAMA, William Lam and Henry Tai for Search, Kenneth Chen and Winnie Fok for Peregrine and Ringo Chui and Philip Poon for Sun Hung Kai.

Paragraphs 5 to 8 of the formal minutes of that meeting, signed by Siegfried Lee, who chaired it, read:

"5. The directors considered the proposal and noted that the bulk of the Bridge Loan would be used to repay existing indebtedness of the Company which was due for repayment. It was noted that the borrowing of the Bridge Loan would not therefore materially alter the net indebtedness of the Company. The Long-Term Loan would be used to refinance the Bridge Loan which would be due for repayment in approximately 3-4 months. The non-executive directors received assurances from the executive members of the Board present at the meeting that no representations of any material kind were sought by either Hang Seng Bank Limited or by Dao Heng Bank Limited that could not be made by and on behalf of the Company and that all the conditions applicable to the proposed Bridge Loan and the proposed Long-Term Loan could readily be satisfied by the Company.

6. The meeting reviewed a financial forecast presented by the executive directors which indicated that the Company would be trading at a profit by 1997 and had been circulated to the directors before the meeting. The directors stated that discussions had taken place with Holdings, the largest shareholder of the Company, which was owed approximately US\$84 million, and certain other shareholders. In those discussions, Holdings had indicated that it would give serious consideration to agreeing a capitalisation of approximately US\$60 million of that debt and the other shareholders (except. Sun Hung Kai China Development Fund Limited) had indicated that they would give serious consideration to injecting new equity capital of up. to US\$30 million in aggregate, in each case on terms to be agreed.

7. The board noted that the Bridge Loan (of US\$30 million) would be refinanced by the Long-Term Loan. The balance of the Long-Term Loan (US\$20 million) would be available for working capital and should not be drawn without further approval of a majority of shareholders (excluding Holdings).

8. On the basis of the financial forecast provided by the executive directors, and following discussions between the directors, the Board was satisfied that the Company would be able to service and repay the Bridge Loan, the Long Term Loan (and its other liabilities) when due.”

Raymond Leung’s notes of that meeting record the following:

“Summary of Discussion - Notes to the Meeting

1. With regard to the US\$106 million of loan in repayment projected in 1998, it was confirmed that approximately US\$77 million was mandatory. The Investors’ original understanding was that the bulk of this repayment would be discretionary. It was therefore requested that the management and the executive directors give assurances that the cashflow of Concept would be sufficient to service the liabilities of the Company as they fell due. Such representation was agreed and was provided in the notes to the meeting.

2. SFH would not commit to capitalisation of US\$60 million of the loan to Concept and its JV’s, and the Investors would not commit to give their best efforts to inject a total of US\$30 million new equity. The notes to the meeting reflected that both parties would give serious consideration to this capital restructuring and new equity injection.

... ..

Notes on the Administration

... ..

6. The Investors requested, and the management agreed, that monthly meetings be held from now up to the business plan had been approved and for 6 months thereafter, in addition to the weekly operating meetings. The monthly meetings will be attended by members of the Board at their option.

7. YT rejected the idea of providing the Investors with a set of goals and timing of his expected achievements during the next three months. He stated that the above meetings held at weekly and monthly internals would be sufficient for the Investors to monitor the progress of the Company.

8. (a) The Investors requested the following information from the management:

(i) Financial statements of all the companies and P1's within the Concept Group, in particular their balance sheet as at 30 June 1996 or latest where available;

(ii) consolidated summary of liabilities and debts analysed by month of the projected due date; and

(iii) An analysis of the commitments and contingent liabilities of the Concept Group.

The management agreed to provide these information by 20 August 1996.

(b) Once the above information have been received and if the quality of such information was considered inadequate by the Investors, it was suggested that an external professional accountant/consultant firm should be employed to verify such information. The question of who should be responsible for the fees of the professional firm remained unresolved at this meeting."

The same directors, again with the exception of Ringo Chui, signed a minute recording their understanding of what had been agreed at the meeting as well as their understanding of written legal advice on their personal liability as directors in approving the acceptance of the loan that the non-executive investors, with the exception of Citicorp, had obtained from Richards Butler, solicitors. That minute reflects the matters contained in the formal minute and Raymond Leung's notes that we have just referred to.

There is no indication that the requested information referred to in Raymond Leung's note was ever provided. And, notwithstanding the reference in those note to their being monthly directors' meetings in the future, we have no evidence of any further

meetings between Concept's management and the Concept Investors, or between the Concept Investors or any sub-groupings of them, after 5 August 1996.

As we said earlier on in this chapter the Dao Heng Bank was unable to find other banks willing to join in the syndicated loan.

The only other meeting of relevance in relation to the SFH Group's liquidity, is the one on 5 September 1996 when Fabrice Jacob met Y. T. Du who informed him in Fabrice Jacob's words in his report to his superiors in GAAP in Paris that:

" It was confirmed that a total of HK\$5 billion has been injected through loans and equity into New Concept, and that New Concept is currently experiencing a cash crisis. A new cash call is being considered, either at the holding level or at the New Concept level through convertible bonds to provide the necessary working capital".

This is a matter we deal with in Chapter 17.

Chapter 8

In this chapter we review the evidence of the information available to the public about the financial health of Holdings and the other companies in the SFH Group, and the NHD listing in the period 2 January 1996 to 8 November 1996.

Period 2 January 1996 to 18 April 1996

There is brief reference in the *Apple Daily* of 18th January 1996 and again, three months later, in the *Hong Kong Economic Times* of 18th April 1996 to the possibility of a listing of the SFH Group's German operations.

On 7 March 1996, the *Hong Kong Economic Journal* wrote:

"The newly formed company would consider spinning off in due course."

An extract from an unidentified local Chinese newspaper on 23rd March 1996 includes the statement:

"... market participants are worried that the plan to spin-off Dubois may be hampered by Lee Sheung Yam's (Peter Lee) departure."

A report of 23 March 1996 in the *Sing Tao Daily* reads:

"Although the company still has to bear the loss coming from New Concept in 1995 and 96, since Heimsoth possesses an international sales network which can be utilized immediately and can provide kilns for ceramic production, it is expected that there would be substantial growth in the profits coming from the sales of turnkey production lines and machinery in 1996."

Wheelock NatWest Securities Analysts' research note on Holdings of 29 January 1996 makes no reference to a prospective IPO. Schroders issued a positive research note on 27 February 1996, but made no reference to a possible listing. Kim Eng Securities in a positive internal research paper of 7 March 1996 also made no mention of the possibility of a listing.

Period 19 April 1996 to 10 June 1996

At 14:59 on Wednesday, 6 March 1996, Holdings made an announcement through

the SEHK teletex that H&D had entered into an agreement to acquire a European ceramic production equipment business. The target company was said to be a significant worldwide supplier of turnkey ceramics production systems. On Thursday, 7 March 1996, Holdings announced, in a paid advertisement, that the target company was Netzsch.

On the evening of Friday, 19 April 1996, Holdings announced its final results for the nine months ended 31 December 1995. Holdings' profit had fallen from HK\$412.24 million for the 12 months to 31 March 1995 to HK\$119.35 million for the 9 months to 31 December 1995. The Board of Directors explained this fall as being due to a dispute with a supplier over its exclusive distribution agreement with the Group and the Group undergoing a period of transition in expanding its presence into the international market.

In respect of the acquisition of Netzsch, it was claimed in the same announcement that:

"The Netzsch acquisition contributes significant technology and customer synergies to the Group, including a range of presses used in tile manufacturing thereby alleviating the Group's need to source such products from third parties. Under the name NHD, the Group's newly merged subsidiary comprising Netzsch, Heimsoth and Dubois business becomes the only provider with a complete line of in-house products for turnkey systems in each of the five traditional ceramic product markets.

The newly created NHD positions the Group to become the world's number one systems integrator for the ceramics industry. With a backlog that is at a historical high, the Group is confident of a satisfactory level of turnover and profits of its turnkey production line and piecemeal machinery business for the coming year.

As described in a separate announcement, it is proposed that NHD obtains a separate listing in the United States of America in conjunction with a public offering of its shares there."

Of the performance of Concept, it was stated in the same announcement that:

“...the joint ventures of the Group’s subsidiaries, Siu-Fung Ceramics Concept Company Limited, (‘Concept’) continued to perform in line with the Group’s expectation as these joint ventures underwent transition in 1995, with operations transforming from development to production. This is reflected by the increase in the number of factories now in production and the increased factory production turnover overall.

For the nine month period ended 31st December 1995, Concept’s joint ventures achieved a turnover of approximately HK\$245 million for the sales of ceramic tiles and tableware, representing a 42% increase over the turnover recorded for the twelve month period ended 31st March 1995. There were four more factories coming into production during the period under review, bringing the total of joint ventures in production to twenty-two. Despite the increase in turnover and in the number of factories in production, the joint ventures in aggregate still suffered a loss due to the higher cost traditionally associated with a start-up operation.”

The announcement concluded with the assertion that:

“Overall, the Board is exceptionally pleased with the strategic development achieved during the period under review, and believes that the Group’s immediate prospects have fundamentally improved based on its expanded capabilities to capitalize on the growth of worldwide ceramics industry. With our latest acquisition, the Board is confident that NHD is in a strong position to become the largest provider of production systems and machinery to the traditional ceramic products industry and believe that the Group’s revenue base will be broadened by NHD’s continuing penetration into the international market. As the majority of Concept’s joint ventures will be in production by the end of 1996, the Group will further strengthen its position as one of the leading ceramics products of China.”

The announcement gave the date of Holdings’ AGM as Saturday, 28 June 1996.

Page 12 of Holdings’ Annual Report for 1995, also dated 19 April 1996, under the heading “Review of Operations” states that Holdings’ turnover of \$836 million given in the profit & loss account related to the sale of turnkey production lines and piecemeal

machinery only. This indicates that the operating profit of \$143.8 million given in the profit & loss account related to the activities of H&D Holdings (but not Netzsch, as Netzsch had not been acquired by 31 December 1995). The same paragraph, as well as the Chairman's Statement, states that Concept's joint ventures achieved a turnover of \$245 million in the 9 months ending 31 December 1995.

The Directors Report stated that the five largest customers of the group, representing 62% of the Group's sales, were non-consolidated subsidiaries and associated companies of Holdings.

The consolidated balance sheet as at 31 December 1995 showed that Holdings had invested HK\$1,803 million in unlisted investments, mainly in Concept. This represented 74% of the group's total assets.

Extracts from Concept's audited consolidated accounts for the year ending 31 December 1995 were with the Annual Report's financial statements. These showed that Concept's cash and bank balances amounted to only \$16.6 million against current liabilities of \$385 million and non-current liabilities of \$897 million; turnover was \$25 million against a loss for the year of \$72 million. In short the extracts from Concept's accounts showed that at the end of 1995 it was \$1,292 million in debt and that its loss exceeded three times its income.

Holdings' announcement of the proposal for the listing of NHD on the NYSE also appeared in the Hong Kong newspapers on 19 April 1996. We have reproduced that announcement in Chapter 5.

An article in the *Hong Kong Economic Times* for 20 April 1996 commented that Holdings' poor results for the 9 months ending 31 December 1995 had caught many investors by surprise, given that the market had expected that the company's profit would decrease by only 20 to 30%. The article concluded that there would be significant selling pressure and that \$1.20 would be the right price to buy. Another shorter article in the same paper on the same day said that the stock still had a favourable trend in the medium to long term.

Wheelock NatWest Securities on 20 April 1996 changed its recommendation from "Add" to "Reduce":

“...given the possible huge dilutionary effects in FY97 and the uncertainty surrounding the proposed listing of its turnkey systems division.”

Kim Eng's research note of 19 April 1996 recommended a *“Hold”* saying:

“...the spin-off is viewed as a strategy to give short-term support to the share price”.

Kim Eng also commented:

“...we believe the group will have difficulty in luring investors willing to subscribe for shares in the new company” and “the credibility of management is wearing thin.”

New China Hong Kong Securities recommended a *“Sell”* in its research note of 22 April 1996.

Daiwa Institute of Research retained its *“Hold”* recommendation in its research note of 22 April 1996.

Securities Asia also kept a *“Hold”* recommendation in its of 22 April 1996.

Peregrine in its research note of 22 April 1996 downgraded its recommendation from *“Buy”* to *“Hold”* citing:

“A separate listing of NHD on the NYSE takes the beef out of Siu Fung's earnings, effectively making it a holding company ...”

The only research note rating Holdings a *“Buy”*, issued in the immediate aftermath of the 19 April announcements is HSBC James Capel's of 22 April 1996. They believed that:

“...benefits from an increase in rating of NHD can outweigh the potential dilution in earnings and subsequent holding company discount”.

On 6 May 1996 the *Hong Kong Economic Times* described Holdings' shares as being severely over-sold at \$1.24.

The *Oriental Daily News* on the same date recommended investors who had paid \$1.44 for their shares to "...cut loss by selling the stock at the current price level" if they were short term investors. The *Oriental Daily News* alternative recommendation was to hold "...on to for the time being in the medium to long term."

An article in the *Hong Kong Economic Journal* on 16th May 1996 referred to "NHD's plan to be listed in the States" and "there is now a plan for spinning off NHD in another round of fund-raising." In mentioning the joint ventures in the Mainland the article states:

"The attributable loss is higher than last year" and "it is believed that profits would not come by until next year the earliest...Siu Fung's future hinges on the 34 joint ventures in the Mainland. From the estimates disclosed, things should be changing for the better in 1997, and a good harvest can be expected in 1998. But there is not without reservation as to whether the progress is satisfactory. There are always things unexpected when investing in the Mainland. One cannot help but wonder what the off-loading of stakes by major shareholders and changes in the management level forebode. If everything develops in the way it is supposed to be, Siu Fung would be a good investment in the medium term. But the price trend shows that it is only suitable for short term trading".

On 27 May 1996 the *Hong Kong Daily News* stated:

"some good news is believed to be looming...it is believed to be related to the spin-off of its ceramic production line NHD on the New York Stock Exchange...."only 6 out of the Group's existing 22 joint ventures manage to contribute profits. It is believed that the other joint ventures cannot break even until they have gone into full operations. The spin-off of the German ceramics plant in New York can bring in capital, which would provide further resources for the Group's joint ventures in the future".

On 29 May 1996, the *Hong Kong Economic Times* commented on the tremendous increase in Holdings' share price and turnover and stated:

"...sources pointed out that it was related to the news that Siu Fung would spin-off its operations".

The *Oriental Daily* and the *Hong Kong Daily News* also referred to NHD's listing in articles on 29 May 1996.

The sudden increase in Holdings' share price and trading volume in late May 1996 led the SEHK to request a public announcement. At 14:35 hrs on 29 May 1996 at the request of SEHK, Holdings announced, under the signature of Benjamin Li, that the Board was unaware of any reason for the increase. The announcement read as follows:

"We have noted the recent increase in the price and trading volume of the shares of the Company and wish to state that the Board is not aware of any reason for such increase.

We also confirm that there are no negotiations or agreements relating to intended acquisitions or realisations which are discloseable under paragraph 3 of the Listing Agreement and the Board is not aware of any matter discloseable under the general obligation imposed by paragraph 2 of the Listing Agreement, which is or may be of a price-sensitive nature.

On the other hand, we are aware that the proposed separate listing of our subsidiary NHD International Limited in United States of America (which was announced on April 22, 1995) is still in progress."

The press interviewed Siegfried Lee on 2 June 1996 resulting in articles in at least four Chinese-language newspapers on 3rd June 1996. We have seen the reports appearing in the *Apple Daily*, the *Ming Pao Daily News*, the *Oriental Daily* and the *Sing Tao Daily*. The general theme is that the listing is imminent. The *Oriental Daily* writes of the listing that

"...sources in the banking industry had it that the news would be made public on the 3rd of June U.S. time"

A short research note of Peregrine on 3 June 1996 quotes Siegfried Lee telling the *Sing Tao Daily* that the NHD listing "*will proceed as planned*". Peregrine reiterates its "*Hold*" recommendation.

The *Oriental Daily* on 5th June 1996 referred to its article of 2 days earlier suggesting that the listing would be announced on 4th June and stated that "*nothing came by*".

The *Sing Tao Daily* continued to anticipate the listing in an article on 7th June 1996.

Period 11 June 1996 to 5 September 1996

A short article in the *Sing Tao Daily* for 14 June 1996, commented that if details of the listing were announced "*...at any time*", this should stimulate the stock price.

On 20 June 1996 an article in the *Apple Daily* advanced three explanations for the recent decline in share price; (1) the market maker in Holdings shares had overbought and was unable to maintain the share price at the current high level; (2) the major buying brokers had stopped their activities; and (3):

"that the company originally intended to announce something last week but finally failed to keep its word."

On 24 June 1996 the *Apple Daily* suggested, "*the major factor that dictates the stock price of Siu Fung is the spin-off concept*". There is again reference to "*the joint venture operation in the mainland, which is still running at a loss*". When referring to the December 1995 results it says "*the operating profits for its core business ... is still much weaker than its previous year's performance.*"

On 25 June 1996, the *Oriental Daily News* commented that Holdings would gain \$1.50 per share if the listing succeeded and that the reason for the recent fall in the share price was due to the financial problem of the market makers. The article went on to say that there should be no problems regarding the listing, which would be announced by the end of the month.

On 28 June 1996, the *Oriental Daily* ran this article:

"Share price of Siu-Fung (0395) rallies. In an analysis of the spin-off of NHD for listing in the United States, Cheung-kwun (transliteration) of this

column wrote yesterday that market rumoured widely that the plan would be finalized by the end of this month and investors would make surprisingly good profits, with each NHD share reaping a profit of HK\$1.7. After taking into account Siu-Fung's total issued shares, this amounts to a profit of about two dollars per share. The amount is not exactly the same as what Cheung-kwun has predicted. It is not sure yet if the shareholders would benefit from it.

Rumours also spread that Siu-Fung has already issued US\$50 million worth of convertible loan bonds, which would be announced later in detail.

Informed source also disclosed that the senior management of Siu Fung had visited a number of European countries earlier and acquired several well-known brands of porcelain ware and table napkin in Britain and Germany, thus further expanding its business."

This article led the SEHK to raise queries with Holdings about the source and accuracy of the information given in it; a subject we have dealt with in Chapter 6.

On Saturday, 29 June 1996, following the AGM on Friday, 28 June 1996, a number of articles about Holdings appeared in the *Apple Daily*, the *Sing Tao Daily*, the *Ming Pao Daily News*, the *Hong Kong Economic Times*, the *Hong Kong Economic Journal* and the *Eastern Express*. All the articles dealt with statements attributed to Siegfried Lee regarding the timetable for the listing.

The *Apple Daily* reported that:

"Siu Fung Ceramics Holding's (395) plan for spinning off NHD for listing in New York will be adjourned to next year before it can materialise. Lee Siu-fung, Chairman of Siu Fung, indicated yesterday that it was hoped that the re-organization of NHD will be finalized within 6 months and that the spin-off will be completed before the AGM of the coming year."

The *Hong Kong Economic Times* took a reference to "...within 6 months" as referring to Holdings announcement of 19 April 1996 and spoke of the restructuring as being completed in October 1996.

The *Hong Kong Economic Journal* reported, under the headline "*Spin-off postponed until end of year*" that:

"...there is now news that the flotation plan might have to be postponed. Although Lee Siu-fung, chairman of the Group, did not give a detailed timetable of the spin-off listing of NHD yesterday, hint was given that the opportune moment for listing would not appear until after this October."

The *Eastern Express* quoted Siegfried Lee as saying "*there is no timetable at present*" for the New York listing and that the restructuring should precede the listing.

On 2 July 1996, an article in the *Hong Kong Economic Journal* stated that:

"Lee did not respond directly when being asked whether the Group would be faced with funding pressure if the listing plan of NHD could not be materialized in the near future, but only said that he was under all sorts of pressure every day."

Also on 2 July 1996, the *Apple Daily* carried a long article containing many details of the listing. We quote extensively from it:

"The spin-off program of NHD of Siu Fung has been adjourned to the end of September. Market sources indicate that according to Siu Fung's original spin-off plan, the NHD shares held by Siu Fung would have a value of \$2.0 per share upon the listing of NHD...However, there are also sources which indicate that the proposed spin-off has encountered a lot of problems. If the spin-off program falls through, Siu Fung will be subject to severe financial pressure."

Sources have it that the NHD listing was originally planned to be announced formally by the end of last month but there is still no sign that it will be made public. Siegfried Lee, Chairman of Siu Fung, indicated that NHD would not be spun-off before its corporate restructuring is finished by end of September. NHD International comprises 3 subsidiaries of Siu Fung, namely Netzsch, Heimsoth and Dubois. Siu Fung acquired these 3 companies respectively in 1996, 1995 and 1993. At present, NHD is the second largest manufacturer of ceramic products production lines. Siu

Fung has already indicated in April that it would spin-off NHD for listing on the New York Stock Exchange.

Market practitioners said that NHD originally planned to issue 5.20 million new shares and 3.8 million old shares. The total number of shares in issue upon listing is 30 million shares and Siu Fung would still hold a 70% stake. The issue price was planned to be US\$18. Basing on the adjusted profits of NHD on the presumption that MID already acquired Netzsch and Heimsoth in January 1995, the profit per share for the year 1995 after dilution is US\$1.80, i.e. NHD would be floated at a P.E. ratio of 10 times.

If the spin-off is successful, the market capitalization of NHD will exceed US\$500 million. Siu Fung would cash in US\$70 million only by selling the old shares, meaning that each Siu Fung share will receive \$0.38. Siu Fung will still retain 70% interest in NHD. Basing on the calculation of US\$18.0 per shares, the NHD share it holds for each Siu Fung share will be valued at \$2.

The profit of NHD for the year 1995 drops

It is learned that the profit of NHD for the year 1994 exceeds US\$70 million, being an 84% increase than that of the previous year. However, the adjusted profit for the year 1995 has dropped to US\$55 million (assuming that Netzsch and Heimsoth were already acquired by January 1995).

According to the listing procedures generally in the U.S., Siu Fung should be able to firm up the terms and have NHD listed...However, it still gets tangled up with problems. It is said that such problems mainly stem from the concerns arising from the due diligence work.

For the 9 months ended December 1995 the profits attributable to shareholders of Siu Fung decreased significantly by 71% to \$119 million. According to the annual report for the year ended March 1993, the long and short-term loans of Siu Fung totalled \$274 million. However, the \$100 million used for the acquisition of Heimsoth which does not exceed 15% of its net asset value (which is estimated to be under \$330 million)

have not been included. Lee indicated recently that the debts to assets ratio was approximately 80%. The proceeds from the shares offer of NHD were mainly for the repayment of liabilities. Market sources indicated that Siu Fung would actively push ahead the spin-off of NHD in a bid to ease its financial pressure.

If NHD can float at the original planned price, the stock price of Siu Fung would no doubt increase substantially. However as there are still lot of uncertainties concerning the spin-off, purchase of Siu Fung shares is a high risk and high return investment."

And an equally apparently well-informed article in the *Hong Kong Standard*, on the same day, under the headline "Dow listing to reap Siu Fung \$596m" gave details of the proposed listing and the use of funds, saying:

"Although Siu Fung's chairman Siegfried Lee Siu-fung last week said the listing plan might be postponed until the end of this year, the source said the application was still in progress.

However, the source said the listing plan might not gain the approval from the Securities and Exchange Commission for two to three months."

Also on 2 July 1996, the *Sing Tao Daily* reported "It is hoped that the reorganization will be completed within 6 months and that details of the spin-off ... will be shortly announced." And the *Ming Pao Daily News* stressed the importance of the money that the listing might raise. Its headline read:

"If NHD can go public in the U.S., Siu Fung expects that its debts can be reduced by half".

On 3 July 1996, a *Hong Kong Economic Journal* article states that Mrs. Lee "...had originally intended to sell 80 million shares" and went on to state that Siegfried Lee had "indicated last week that the listing of NHD on the New York Stock Exchange would have to be deferred to sometime after October this year".

On 4 July 1996, a *Hong Kong Daily News* article commented that:

“...supporters are disappointed because there is no sign of the subsidiary being listed in the near future despite having been waiting for so long”.

The article drew a contrast with the optimistic note of the newspaper reports of one month earlier.

At 09:47 hrs on 5 July 1996, at the request of SEHK, Holdings made a teletex announcement under Siegfried Lee's name as Chairman and dated 4 July 1996, clarifying certain press reports about the proposed IPO. It read as follows:

“The Board of Directors (the “Board”) of Siu-Fung Ceramics Holdings Limited (the “Company”) has noted certain recent reports in newspapers containing detailed information regarding a proposed separate listing of a subsidiary of the Company in the United States of America by way of public offering of shares including information on the proposed offering mechanism, shareholding structure and certain other financial data. The Board wishes to advise the public that such information did not originate from the company and that it is not aware of its source. Shareholders and potential investors in the Company are therefore advised not to rely on the contents of such reports. Discussions regarding the listing proposal aforementioned is still in progress and details have yet to be finalised.

The Company has already published an announcement regarding the listing proposal aforementioned on 19th April, 1996. A separate announcement will be made if and when details of the proposed listing are indeed finalised. In the meantime, shareholders and potential investors in the Company are advised to exercise caution when dealing in the shares of the Company.”

The same announcement also appeared in various newspapers on 5 July 1996.

On 9 July 1996, an interview with the *Hong Kong Economic Times*, attributed the following remarks to Siegfried Lee:

“Since the plan to spin-off NHD is blocked, Lee Siu Fung did not deny that the Group may have difficulties in reducing the debt ratio and interest expenditure this year.”

Also on 9 July 1996 the *Apple Daily* attributed to a "market source" that there were:

"...some obstacles in Siu Fung's spin-off listing of NHD, which might probably have to be delayed until the fourth quarter, thus making (the company's) short term liquidity a bit tight. In addition, funds managed by Hongkong Bank had (been) continuously selling the shares earlier on, leading to worry that whether there are some changes in the relationship between Siu Fung and its major creditor, Hongkong Bank."

Another article in the *Apple Daily* for 9 July 1996, commented:

"Whether the stock is worth investing in depends on whether the spin-off of NHD can be materialised".

Also on 9 July 1996, the *Hong Kong Economic Journal* reported that Siegfried Lee and his wife had sold another 40 million shares and *Reuters* in its subscription service put out the item that:

"The controlling shareholder of HK based ceramics and machinery maker Siu Fung cuts his stake in the firm by a total 3.1% points on July 2 & 8."

On 10 July 1996 a *Hong Kong Economic Times* commented that:

"Market rumours have it that the plan has to be deferred until late this year or early next year before it can be materialized. Lee Siu Fung refused to comment on the time of the spin-off ..."

Later in the article it is said:

"Since the plan to spin-off NHD is blocked, Lee Siu Fung did not deny that the Group might have difficulties in reducing the debt ratio and interest expenditure this year".

At 09:42 hrs on 10 July 1996, at the request of SEHK, Holdings made another teletex announcement under Siegfried Lee's name as Chairman and dated 9 July 1996, confirming Mrs Lee's sale of 80 million Holdings shares, in two trenches of 40 million

each, on 2 & 8 July 1996 at a price of \$1.30. It read as follows:

"The Board of Directors (the "Board") of Siu-Fung Ceramics Holdings Limited (the "Company") noted the recent increase in the trading volume of the shares in the Company and hereby confirms that two recent disposal of shares in the Company have been made by Ms. Lelalertsuphakun Dusanee, the wife of the Chairman of the Company on 2nd July, 1996 and 8th July, 1996, each in respect of 40,000,000 shares in the Company at a price of HK\$1.30 per share. Save as aforementioned the Board is not aware of any other reasons for such increase.

Apart from the said disposals and the proposed separate listing of a subsidiary of the Company in the United States of America by way of a public offering of shares which has already been the subject of two previous recent announcements made by the company on 19th April, 1996 and 4th July, 1996, the Board is not aware of any matter discloseable under the general obligation imposed by paragraph 2 of the Listing Agreement, which is or may be of a price-sensitive nature. The Board also confirms that there are no negotiations or agreements relating to intended acquisitions or realisations which are discloseable under paragraph 3 of the Listing Agreement.

The Board further confirms that it is not presently aware of any intention by any of the substantial shareholders of the Company to dispose or to further dispose of its shares.

Made by the order of the Board of which individually and jointly accept responsibility for the accuracy of this statement (except the independent non-executive directors Mr. Kwee Chong Kok, Michael who is currently not in Hong Kong and Dr. Chiang Chen Yuen who cannot be contacted)."

The announcement was widely reported in the press, we have evidence that it was reported in the *Wen Wei*, the *Oriental Daily* and the *Apple Daily* as well as by Reuters.

On 13 July 1996, the *Hong Kong Economic Times* in a short article commented:

"..it has acquired NHD some time earlier, and plans to spin it off after the restructuring of business".

On 14 July 1996, the *Wen Wei Po* in short article said:

"...the company is considering to spin-off its operations in the U.S., ..."

An article in an unidentified Chinese-language newspaper on 19 July 1996 said:

"It is rumoured that the reasons for Siu Fung's delay in spin-off were similar, that is no agreement had been reached on the price."

On 19 July 1996, the *Hong Kong Economic Times* reported that Holdings had announced that Jurgen Schafer had resigned his position as executive director effective from 10 July 1996. This was said to be one of the steps taken towards the listing. Lisa Lam, described as *"...the group's vice CEO"* is attributed as saying that Jurgen Schafer was still the Director of Operations of the subsidiary NHD International and as the group does not want the board of the parent company to have any over-lap in the management with the subsidiaries, any Siu Fung director who holds managerial position in a subsidiary will have to resign from the board of Siu Fung in order to maintain the independence of the subsidiaries.

On 6 August 1996, an article in the *Sing Tao Daily* suggested that Holdings' share price had dropped on uncertainty and predicted that:

"...unless it (Holdings) finally agreed with its underwriter and the spin-off could be finalised at the end of the year, it will be difficult for the share price to break through the current level".

On Saturday, 10 August 1996, at a press conference, Holdings announced Y. T. Du's appointment as Chief Executive Officer & Managing Director of Holdings, NHD and Concept with effect from 1 September 1996. At that press conference Y. T. Du said that Holdings would review or reassess the proposed IPO of NHD and he did not rule out the possibility that it could be shelved. The next day, 11 August 1996, the press conference was reported in a number of newspapers. We have seen the articles from the *Apple Daily*, the *Sing Tao Daily*, the *Ming Pao Daily News* and the *Oriental Daily*.

In its report, *The Apple Daily* attributed to Siegfried Lee a denial of market rumours that Holdings had financial problems and an assertion that the group "...all along" had adequate funds.

The article continued:

"Siegfried Lee pointed out that if NHD's spin-off plan was successful, the listing proceeds would partly be used for the repayment of debts to reduce the debt ratio of the group to 40%. He indicated yesterday that the debt ratio of Siu Fung was around 80% which was not considered to be high. Even the spin-off plan is shelved, there will not be significant impact on the group's financial situation. He emphasized that the group was cash rich for the time being."

Y. T. Du is quoted as saying:

"...that there would not be further expansion plans for Siu Fung Ceramics and that it would only concentrate on the management of the current business, so as to contribute profits to the mainland operation and NHD."

The *Apple Daily* followed up on its 11 August 1996 report with an article on 12 August 1996, stating that:

"...the failure on its part to get NHD spun-off in the U.S. markets makes its fans lose all their confidence."

The same article again indicated a perception that it was not Holdings' decision to withdraw or postpone the listing, but something that had been forced on them. The article continued:

"...there are a lot of market rumours saying that the company was in great troubles."

The *Sing Tao Daily* report of the press conference said:

"He also said that the approximate 80% debt to asset ratio was considered to be healthy for a rapidly-growing industrial stock."

Y.T. Du also indicated that there were 3 ways to reduce the debt ratio, namely: (1) provide abundant funds for operational requirements; (2) issue additional shares to increase the value of the company; (3) using different types of debt financing to match the debt restructuring initiatives of different businesses. However, the company does not have any specific plan for the time being."

The *Sing Tao Daily* also ran a follow-up article on 12 August 1996, suggesting that external forces were preventing the listing when it wrote:

"Boss Lee has had his hope of making the company Hong Kong's largest industrial stock dashed with the withholding of a spin off."

The *Ming Pao Daily News* quoted Siegfried Lee as saying:

"Siegfried Lee also said that the sale of 80 million Siu Fung shares was for the purpose of enlarging the shareholder's base and to introduce more fund investors into the company to enhance corporate governance image. This has nothing to do with bearish sentiment towards the future development of the company. When asked about why he subsequently increased his stake in the company, he explained that it was because he had opted for scrip dividend instead of cash dividend."

The *Oriental Daily* reported this, under the headline:

"Spin-off of NHD will be reviewed again":

"When asked about the spin-off of NHD, Du indicated that he would review the project after he has assumed his office. The major consideration is that as Siu Fung presently has a lot of different businesses, which move, including the spin-off of NHD, would be most beneficial to the shareholders? If it is confirmed that the spin-off will go ahead, the timing for the listing is also a very important consideration."

Reuters (quoting the *Hong Kong Economic Times*) said this in its subscription service:

"12Aug96 HONG KONG: SIU-FUNG MAY SCRAP NEW YORK

SPINOFF PLAN

HONG KONG, Aug 12 (Reuter) - Ceramics and machinery maker Siu-Fung Ceramics Holdings Ltd is reconsidering its plan to spin off subsidiary NHD International Ltd for a listing in New York, Hong Kong Economic Times said on Monday. The company needed to reconsider the plan and did not dismiss the possibility of scrapping it, the Chinese-language daily quoted chief executive designate Ying Tzyong Du as saying. Siu-Fung officials were not immediately available for comment. Du has been appointed the firm's chief executive and managing director and will take over on September 1."

A formal announcement of Y. T. Du's appointment appeared in the *South China Morning Post* for 12 August 1996.

On 13 August 1996 an article in the *Oriental Daily*, under the headline "*Siu Fung's review on spin-off plan subject to suspicion*," highlighted Mrs. Lee's sale of 80 million shares in July, adding that the sale: "*cast doubts on the credibility of the spin-off plan*." The article continued:

"The person in charge of the company has changed his attitude towards the spin-off plan from a positive stance to a cautious one. Further the listing timetable has been delayed time and time again and also the share sales during the period attracted allegations of conflict of interests. Lee's public credibility was no doubt affected."

Wheelock NatWest Research in a short research document of 12 August 1996 reported that Holdings:

"is evaluating the listing plan of its machinery division again..(it)...may result in scrapping of the whole listing proposal...We are very dubious of the company's genuine intention and in particular, we have to point out ... the chairman and his wife cashed out by disposing 80m shares, or 5.7% of total outstanding shares. Our view towards Siu Fung's fundamental remains negative. If the speculative interests on the U.S. listing is gone, there is hardly any support for Siu Fung's share price."

Wheelock NatWest Research downgraded its recommendation from "Reduce" to "Sell".

On 28 August 1996 the *Hong Kong Economic Journal* noted changes to the Holdings Board of Directors in consequence of restructuring and attributed these assertions to Y. T. Du in respect of the IPO of NHD:

"He said that there was no major obstacle in the spin-off plan. However, it is not impossible that the plan may finally be scrapped. He was going to re-assess whether it would be better for Siu-Fung to remain as a single company comprising the 3 major operations of machineries, ceramic wares and ceramic tiles production, or to opt for separate development. ... It would take about 2 to 3 months for the re-assessment to be done. Even though it may be decided that the listing plan were to proceed, it is still difficult to say whether the plan could be implemented at the end of the year. However, since the investment banker has been selected, and the prospectuses have been drafted, timing would not be a major factor once it has been decided that the plan would be proceeded."

An article in the *Oriental Daily* for 4 September 1996 dealt with the response of other banks to Dao Heng Bank's attempts to arrange the US\$30 million syndicated loan for Concept. Under the heading: *"The debt ratio is pretty high. The banks show lukewarm response"*, the article stated:

"Sources have it that while the interest spread offered is quite attractive, the gearing ceiling in the terms of the loan, according to certain banks, is set at a very high level. As it is still unclear as to the operating efficiency of the company's mainland plants, the banks show only mild responses to the initial underwriting of the loan."

.....

One foreign banker said that as the loan interest spread is quite large, it is quite attractive to the investors. However, as the gearing ceiling in the terms of the loan is set at a high level, the banks are quite worried that Siu Fung Concept may over-borrow in short-term loans. In addition, the management of the company failed to address in detail the issue of the operating efficiency of the mainland plants which the banks are very

much concerned. Therefore, even if the banks want to underwrite the loan, it is not easy to get the green light from their head-quarter."

Siegfried Lee is quoted as saying that:

"...the debt/asset ratio of the company was around 80% which was still considered to be healthy as far as a rapidly growing industrial counter was concerned."

Also on 4 September 1996, the *Tin Tin Daily News* noted an increase in trading volume of Holdings shares and commented:

"Market rumours have it that the share price of the Group had been falling recently because the shares were under the pressure of a big sell order. Investors are not advised to trade in the stock".

Period 6 September 1996 to 8 November 1996

On 7 September 1996, the *Oriental Daily* mentioned the IPO as a live issue adding that:

"It has always been Siu Fung's intention to spin-off NHD in the US."

On 17 September 1996 an article appeared in a German newspaper, *Handelsblatt* reporting that NHD's factory in Selb in Germany had advised its employees of its insolvency. This news filtered through to Hong Kong and on Thursday, 19 September 1996, *Reuters*, quoting an article in the *Hong Kong Economic Journal* of the same date, ran an item reporting that Holdings was going to close the Selb plant and lay off 468 staff. The closure was said to be part of a restructuring plan and would save about \$100 million.

In the evening of 19 September 1996, Holdings formally announced the reorganization of its German subsidiary and the closure of the loss-making plant at Selb. The announcement appeared in various newspapers in Hong Kong, we have seen the *South China Morning Post* announcement.

On 20 September 1996, an article in the *Hong Kong Economic Journal* article referred to the Selb plant having made a loss of about \$100 million for the 4-month

period to the end of July 1996.

On 22 September 1996, an article in the *Oriental Daily* commented on the virtually uninterrupted decline of Holdings share price since 10 June 1996. It contained the phrase:

"Spinning off NHD seems to be a mere puff-up".

At 10:29 hrs on 24 September 1996 at the request of the SEHK, Holdings made another teletex announcement under Siegfried Lee's signature and dated 23 September 1996, about its operational reorganization of its German subsidiaries. The announcement concluded with the words:

"The Board wishes to state that neither the cessation of operations at the plant operated by Netzsch Selb nor the liquidation of Netzsch will have a material impact on the Company's existing or future long term business strategies and objectives or the previously announced possibility of a separate listing of one of the Company's subsidiaries in the United States of America."

This announcement lead to slight rally in the share price and to an article in the *South China Morning Post*, under the by-line of "Nicholas Reynolds," which read:

"Shares in Siu-Fung Ceramics clawed back some of their lost ground yesterday after the company said the closure of its German plant would not affect a planned spin-off."

Siu-Fung, which designs and installs ceramics production lines, gained 5.26 per cent to 80 cents in turnover of \$25. 17 million. The counter had slumped during Monday's trade, losing 17.3 per cent and setting a new 52-week low."

Even after yesterday's rebound, the shares are still 50.6 per cent down for the year."

Brokers said the recovery was sparked by the announcement made by Siu-Fung's board of directors through the Hong Kong stock exchange

yesterday morning.

The directors said the company's plan to spin off a unit in the United States would go ahead and would not be affected by the closure of the German plant and liquidation of the plant operator.

The planned spin-off was first reported in July when executives of the company said it could take place as early as this month. Brokers said renewed speculation of an exceptional gain resulting from the spin-off fuelled the recovery.

The closure of the plant, operated by Siu Fung's German subsidiary, NHD International, would mean laying off of 468 workers.

Siu Fung directors said the closure was part of a reorganisation of the German subsidiaries."

Reuters quoted this Article in full in their subscription service on the same day.

Unfortunately, we have no idea of the circumstances under which the unnamed brokers made the various claims attributed to them in the report, which, given the benefit of hindsight, was unrealistically optimistic about Holdings' prospects.

On the evening of Friday, 27 September 1996, Holdings made two separate published announcements. We have seen the ones that appeared in the *South China Morning Post* on the following Monday, 30 September 1996.

One related to a proposed 2 for 5 rights issue of 575 million shares at \$0.70 each.

The other related to Holdings six months' interim results for the period ended 30 June 1996. There was a \$252 million loss made up of an operating loss of \$52 million, three exceptional items totalling \$133.8 million and a share of Concept's losses of \$65.8 million. The exceptional losses included \$85 million operational loss by the NHD plant at Selb; a \$14 million provision stemming from the reorganisation of NHD and \$34.8 million in provision for bad debts. The announcement went on to state that the operating loss of \$52 million for the 6 months ended 30 June 1996 against a profit of HK\$124.6 million for the 6 months ended 30 September 1995 was due to a

change in accounting policy, in which sales of equipment to its 100% owned ceramics joint ventures in China were booked as inter-company sales.

Hidden among the verbiage was the statement:

"In view of the ongoing operational restructuring programme now being carried out with the NHD companies, the Directors have decided not to pursue the previously announced proposal for a separate listing of NHD in the US for the time being."

On 28 September 1996, the *Hong Kong Standard* mentioned the listing at the end of an article describing Holdings' "disappointing" interim results, the company's debts, the rights issue and the closure of the Selb plant and attributed to Y. T. Du a claim that:

"...the project had been postponed until the restructuring of NHD had started."

The *South China Morning Post* of the same day mentioned the cancellation of the listing in its second paragraph, after reporting the half-year loss and the rights issue.

A *Reuters* report of 30 September 1996 (one of four Reuter's reports dealing with Holdings on that day) quoting an unnamed dealing director at a regional brokerage, said:

"The company's move of calling off its US listing plan disappointed investors and that triggered selling, especially on dilution fear on the company's rights issue plan."

An article in the *Bloomberg* subscription service on 30 September 1996, was scathing about the interim results; it commented:

"...the results bring up the following concerns: (1) the credibility of the management is very low, (2) the disclosure of information is extremely poor and (3) the expansion pace of the company is too fast."

.....

...the company obviously must have paid a high price to buy a company near bankruptcy - Netzsch, purchased in April. The cost must have been less than 25% of Siu-Fung Ceramics' total net asset value at that time; otherwise, the company would have had to disclose the financial accounts of Netzsch and the details of the acquisition. This means that the price must have been less than \$367m. However, after the acquisition, Netzsch made a \$134m loss in six months of operation.

.....

...the results were certainly well below the market expectation for a full year profit of \$210 million."

At 10:00 hrs on 15 October 1996, Holdings requested a suspension of trading in its shares pending an announcement. On 17 October 1996, it was stated in a published announcement that the Board had decided to postpone the timetable for the rights issue by approximately one month.

At 9:56 hrs on Monday, 28 October 1996, Holdings again requested suspension of trading in its shares pending an announcement. On 7 November 1996, Holdings announced that the Group had a serious cash flow problem. The announcement appeared in various newspapers in Hong Kong on 8 November 1996. We have seen the *South China Morning Post* announcement. Trading in Holdings' shares never resumed.

Chapter 9

In this chapter we deal with the question of whether or not 'relevant information' existed.

We dealt with the definition of the term '*relevant information*' in Chapter 3, where we said that for information to be '*relevant information*' it must possess 3 elements, each of which must be proved to our satisfaction. They are:

1. The information is known only to a few and is not generally known to the market; that is, to those individuals and institutions accustomed or likely to deal in the securities of the company.
2. It must be '*specific information*'.
3. It must be information of the kind which, if it were known to the market, would be likely to materially affect the price of that company's listed securities.

The two matters that might constitute 'relevant information' are the listing's failure and the consequent effect that failure had on the SFH Group's (including Holdings) liquidity.

The listing's failure

Mr. Rigby's view

As we said in Chapter 4, Holdings share price rallied substantially at the end of May 1996. In the four consecutive trading days from 24 to 29 May it rose from \$1.41 to \$1.74, an increase of 23%. Trading volume also increased to a daily average of 43.6 million. On 29 May 1996, at the SEHK's request, Holdings announced that its Board of Directors were unaware of any reason for these increases, but noted:

"On the other hand, we are aware that the proposed separate listing of our subsidiary NHD International Limited in United States of America (which was announced on April 22, 1996) is still in progress."

Mr. Rigby says this of that price rally:

"The price rally from May 3rd through June 10th was attributed by the press essentially, to the pending IPO. An imminent IPO with its attendant

enhancement of value is now clearly an important feature in the investing public's mind...Knowledge of whether or not a NHD IPO would occur was initially a piece of information with value to a buyer, if such a person could beat the crowd by getting in early, as the IPO would have been a bullish factor. Either it happened and the share price would rise or it would not happen and the price would not go down much...As the story of a likely IPO was disseminated through the market the share price rose to the point where if the IPO went ahead the price might still go up somewhat but if the IPO failed, then prices would, all things being equal, drop back."

Clearly the market was unaware that on the night of the 13/14 June 1996, Christopher Morin and Steven Unfried had told Siegfried Lee that CSFB and the other underwriters would no longer support the listing.

Mr. Rigby is of the opinion that the listing's failure was relevant information and that it remained so up to the 27 September 1996 announcement.

He said this of the newspaper articles appearing on Saturday, 29 June 1996, reporting Siegfried Lee's comments at Holdings 1996 AGM on the previous day (Friday, 28 June 1996):

"...we have a series of articles with conflicting details but a common theme of delay caused by a desire to get a better price at the IPO. SL seems to have missed few opportunities, in the interviews he gave, to talk up his company's prospects, so whilst investors might well have been concerned at a delay in the spin off timetable, the general impression was created that it would only be for a few months."

Mr. Lunn argued, quite forcibly, that we should accept Mr. Rigby's view. He pointed out that Siegfried Lee's remarks at the AGM were not formal announcements cleared with the SEHK, as were the announcement of the plan for the listing on 19 April 1996 and the 4 July 1996 announcement denying that anyone at Holdings was the source of the detailed information regarding the listing contained in recent newspaper reports.

Mr. Lunn pointed out that the 29 June 1996 newspaper articles are inconsistent with each other and might be factually unreliable. On inconsistency, *The Hong Kong*

Economic Journal article spoke of a postponement "until after this October." The *Apple Daily* spoke of an "adjournment to next year" and of "...the spin-off (being) completed before the AGM of the coming year." The *Hong Kong Standard* report of 2 July 1996 indicated that the listing was still in being; three different versions were being claimed. On reliability, before us Siegfried Lee denied making the remarks attributed to him in the *Ming Pao* of 3 June 1996 where he is said to have "...indicated that the spin-off of NHD is now in its final stage." He claimed he was in Beijing at that time.

Mr. Lunn also relied on the words used by Holdings itself. The 4 July 1996 announcement asserted that:

"Discussions regarding the listing proposal aforementioned is still in progress and details have yet to be finalised."

Holding's press announcement of 10 July 1996 referred again to the proposed listing as well as the earlier announcements of 19 April 1996 and 4 July 1996 in terms that indicated it was still in being and asserted that Holdings' Board knew of nothing that was discloseable.

Mr. Rigby is of the view that the 4 July 1996 announcement clearly implied that the listing was a live issue, requiring no more than finalisation of its details and that a member of the public seeing it could be forgiven for believing that the announcement had been sanctioned by the SEHK and was therefore "gospel". He believed that an investor in Holdings shares would have found this statement "distinctly reassuring."

In this connection, Mr. Lunn drew our attention to the evidence of David Wong, the executive director of CEF Brokerage who arranged the sale of Mrs. Lee's 80 million Holdings shares on 2 & 8 July 1996, in which he said this of his own reaction to the 4 July 1996 announcement:

"A. We were certainly under the impression that the listing would proceed."

Q. Your reason for that?

A. Based on the formal announcement by the company."

Q. Can I take it is your evidence, as a broker, you would rely very much on these public announcements and their veracity; is that right?

A. I think any professional investor will rely on a formal announcement by the company rather than an isolated newspaper report.

Q. What about the rest of the market, the punters, the institutional investors?

A. I think the professional investors would be more likely to rely than short-term punters. They could not care less, probably, if they are short-term investors. But for medium to long-term investors, they would very much rely on any formal announcement by a list (sic) firm."

Of the reliance he placed on newspaper articles generally, David Wong said:

"Like I said earlier, I do not place a lot of reliance on newspapers reports. If it were a public announcement by the company, then I would react to it. It could be just rumour, or they misquoted the chairman, I think, if you are just referring to a newspaper report."

In cross-examination by Mr. Huggins, David Wong maintained that there was a distinction to be drawn between newspaper articles and company announcements:

"I think one has to understand what a market rumour is. Last year I mentioned that my experience of newspaper reporters, often times they have misquoted chairmen of listed companies, and I regard those newspaper articles as just rumours, market rumours, until they have been clarified by the company, if they are of any price-sensitive nature."

He maintained his earlier expressed view of the impact of the 4 July 1996 announcement:

" My reading of this announcement is that the proposed listing is still underway and we are waiting for a further announcement from the company.

.....

Well, in reading the announcement of 4th July I am of the view that the listing is still in progress and it would have been in the foreseeable future."

To him the 'foreseeable future' was:

"If we are talking of a postponement of more than six months or three months, that is not in the foreseeable future in my dictionary."

Of the contrast between the phrase 'in progress' and the word 'delayed' he said,

" The company announcement mentioned that the listing was still in progress. It did not say it was delayed."

When pressed by Mr. Huggins, he said:

"A. For myself, I would tend to put more reliance on a formal announcement by the company than market rumours appearing on newspaper articles.

Q. I quite agree. But are you saying that which I fear you are saying namely, that anyone looking at the 4th July announcement and the terms of that announcement, would or should have discounted completely the news that the listing had been delayed? If you are not saying that, I am going to sit down, but if you are saying it, I want you to explain why you come to that conclusion?

A. I do not want to speculate what state of mind that particular investor has. For me, I would look at - I would place more reliance on the company announcement, for sure.

His cross-examination concluded:

"Q. So it is still in progress, but it has been delayed?

A. It was in progress, the impression I got reading the announcement, it would happen in the then foreseeable future. "In the then foreseeable future" did not mean more than a few months to me."

It certainly is the case that Mark Edwards, whose evidence we summarised in Chapter 6, and who is an experienced fund manager, was of the view until early September 1996 that a listing of NHD was on the cards - though he believed it to be a NASDAQ listing, not one on the NYSE.

Holdings' 24 September 1996 teletex announcement, which we quoted in chapter 8, concluded with the words:

"The Board wishes to state that neither the cessation of operations at the plant operated by Netzsch Selb nor the liquidation of Netzsch will have a material impact on...the previously announced possibility of a separate listing of one of the Company's subsidiaries in the United States of America."

However by then the deliberately misleading phrase "...still in progress" employed in the early July 1996 announcements had been dropped and the announcement referred to the listing being no more than a possibility. Further the identity of the company likely to be listed was left uncertain.

Mr. Rigby's view of the newspaper reports covering Y. T Du's press conference on 10 August 1996, at which he is reported as saying that he did not rule out the possibility that the listing could be shelved, is that:

"Within a few days of August 13, I believe it fair to say that the market had assimilated the notion that the future IPO was quite possibly not going to happen at worst or be delayed at best. In the face of conflicting rumors and reports with speculative press comment pointing both ways but official announcements leaving the door still open to an IPO the market had had a reasonable time to take positions and the price had partly discounted the possibility of IPO failure."

Mr. Lunn further reminded us that Holdings' senior management deliberately concealed the fact that CSFB and the other underwriters had withdrawn their support for the listing on the night of 13/14 June 1996 from the SEHK. On 8 July 1996, Albert Lee and Daniel Chan told the SEHK officials that there would be a delay of 2-3 months, yet on the same day Siegfried Lee and Daniel Chan told Citicorp that the listing was delayed to "...early next year. The SEHK's attempts to reconcile the information they received on 8 July with the 4 July 1996 announcement was met with the masterpiece of obfuscation given in Siegfried Lee's letter, drafted by Chao & Chung, of 10 July 1996 that we quoted in chapter 6. At no stage did anyone at Holdings tell the SEHK the truth. We express concern that a firm of Hong Kong solicitors appear to have encouraged their clients to withhold the truth from the SEHK and the investing public.

Even in the 27 September 1996 announcement, in its laconic declaration that:

"In view of the ongoing operational restructuring programme now being carried out with the NHD companies, the Directors have decided not to pursue the previously announced proposal for a separate listing of NHD in the US for the time being."

Holdings withheld the real reason for the listing's failure from the public and maintained the fiction that the decision was the company's and not something that had been forced upon it over three months earlier.

Mr. Heale's view

Mr. Heale accepts that the listing's failure was relevant information in that the public knew nothing about it and it was materially price sensitive. However, it is his view that it became public knowledge on 29 June 1996 as a result of the newspaper articles reporting on the AGM.

Mr. Heale attaches no weight to the 4 July 1996 announcement. His view is that although the listing was a live issue it was only in terms of an indicated plan. There never was a certainty that it would take place, or that the American Securities and Exchange Commission would approve it. Up to the AGM, the emphasis in the press regarding a listing had been on the *"when"* as opposed to the *"if"*. After the AGM the emphasis switched to an *"if"* and not a *"when"*. The message being put forward was that the listing had been postponed to an indeterminate date falling in the 9-month period of somewhere between September 1996 and the date of the next AGM in 1997. In those circumstances, any investor would be increasingly likely to sell.

Mr. Heale disagrees with Mr Rigby's assertion that the investing public would treat the 4 July 1996 announcement as *"gospel"*. If they had, then they would have been more inclined to hold on to their shares, but that didn't happen. Holdings share price steadily declined throughout July 1996, starting the month at a close of \$1.44 on 1 July 1996 and ending at a close of \$1.25 on 31 July 1996. To him, this demonstrates that there was a supply of shares in excess of demand at every given price and was, no doubt, due in part to a number of investors placing greater weight on the press reports than the 4 July 1996 announcement. Once the share price started its decline this would have led other short-term investors to sell as they saw their actual losses grow against their expected gains.

Mr. Heale “broadly agree(s)” with Mr. Rigby’s view of the newspaper reports covering Y. T. Du’s press conference on 10 August 1996 and that after 13 August 1996 no investor should have held a realistic expectation that the listing was going to take place. He differs from Mr. Rigby in that he believes that at the press conference Y. T. Du was simply confirming Holdings’ position about the listing and that nothing had changed since 29 June 1996.

It is, however, the case that all of the newspaper reports covering the 10 August 1996 press conference that we have seen convey the false message that the possibility of shelving the listing was a decision that lay solely within the Holdings’ power and would be one made in the best interests of the shareholders. The *Oriental Daily* article spoke of Y. T. Du claiming that:

“The major consideration is that as Siu Fung presently has a lot of different businesses, which move, including the spin-off of NHD, would be most beneficial to the shareholders?”

None of the reports mention, for the simple reason that their authors did not know about it, that in mid-June, two months before Y. T. Du’s press conference, CSFB and the other underwriters had withdrawn their support for the listing at the last minute and that there was no realistic prospect of it happening, if at all, until the second quarter of 1997. Neither is there any hint in the reports that the proceeds from the listing were urgently required to meet the SFH Group’s cash needs.

Mr. Witts’ view

Mr. Witts’ view is similar to Mr. Heale’s, that the listing’s failure became public knowledge on 29 June 1996 as a result of the newspaper articles reporting on the AGM.

Mr. Witts takes the view that it was not surprising that CSFB advised Holdings, a young and expanding group, to delay the listing until they had reorganized and absorbed Netzsch. He says that it is not unusual for underwriters to recommend that a listing be postponed. Therefore the specific news that the listing had been postponed at the underwriters’ request would neither be material, nor would the investing public have viewed it as unusual, or as an adverse comment on Holdings’ financial viability.

He takes the view that although the public were told nothing about CSFB and the other underwriters withdrawing their support at the AGM on 28 June 1996, what they were told was essentially to the same effect, namely that NHD needed to be reorganized or restructured and that the listing was delayed for an indeterminate period and possibly until the annual general meeting in the following year. To him what mattered to the market was whether the listing was about to happen, or not about to happen, not whether underwriters were involved in its postponement.

The Tribunals' view

We find that it is impossible to date precisely when the investing public became aware of the listing's failure. On one view they never were informed that it had failed, only that Holdings had decided not to pursue it, which was a lie as the listing ceased to be viable once CSFB and the other underwriters withdrew their support for it in mid-June 1996.

We do not accept Mr. Witts' view that although nothing was said at the AGM on 28 June 1996 about CSFB and the other underwriters withdrawing their support, what the public were told was essentially to the same effect. In so far as anything concrete was said about the listing at the AGM and in the subsequent press announcements, it was a lie. The listing was not "*...in progress*" it was dead. CSFB and the other underwriters had withdrawn their support. As we said in Chapter 5, Christopher Morin made it clear in his evidence that CSFB had withdrawn from the listing and not merely advised that it be postponed. He confirmed that after the telephone call on 13/14 June 1996 CSFB did no more work on the listing. It is also the case that no one either at Holdings, or at Chao & Chung, did any more work on the listing past mid-June 1996. Neither did Coopers. If Siegfried Lee, Benjamin Li, or anybody else at Holdings, entertained a genuine belief after mid-June 1996 that, somehow or other, the listing could be revived they were living in cloud-cookoo-land - and there is no evidence before us that they were.

We accept Mr. Rigby and Mr. Lunn's arguments that the listing's failure was relevant information. It was specific information, which was not known to those accustomed, or likely, to deal in Holdings shares, but which, if known by them, would have been likely to materially affect the price of those shares. It was therefore 'relevant information' within the meaning of the Ordinance.

We also agree with and accept, without repeating them, Mr. Rigby and Mr. Lunn's arguments that in view of the terms of the 4 July 1996 announcement and deliberate obfuscations by Holdings' senior management, it did not become public knowledge on 29 June 1996 as a result of the newspaper articles reporting on the AGM.

However, we believe that by mid-August 1996, after Y. T. Du's press conference on 10 August 1996 and the references in the press reports of that conference to the possibility of the listing being reviewed, which we considered in Chapter 8, the investing public would be aware that the listing was unlikely to go ahead in the foreseeable future, if at all.

Mark Edwards in his evidence spoke of brokers telling him on his return from a two weeks holiday in August 1996 that there was *"bad news in the Chinese press"* concerning Holdings and of *"an article in the Chinese press that the float would not go ahead."*

Although we cannot say that it was the article Mark Edward's broker contacts told him about, it is the case that on 12 August 1996 the *Sing Tao Daily* ran an article containing the phrase:

"Boss Lee has had his hope of making the company Hong Kong's largest industrial stock dashed with the withholding of a spin off".

And, as we said in Chapter 8, there were others in a similar vein.

We are therefore satisfied that the listing's failure came into the public domain no earlier than 10 August 1996. Up to then it was 'relevant information' within the meaning of the Ordinance.

Liquidity problems

In chapter 7 we reviewed the evidence relating to the SFH Group's liquidity in the period March 1996 to November 1996. And in chapter 8 we reviewed the Holdings Annual Report for 1995 and the few newspaper articles covering the period up to August 1996 that made any reference to Holdings suffering from financial pressures as opposed to commenting on the listing.

We accept that it is to be expected that a rapidly expanding company, such as Holdings was, would have large capital requirements, which could only be met for as long as it had the support of its bankers. We can also accept that the investing public would be aware of Holdings' gearing from the 1995 Annual Report. Anyone reading that report would have known that around \$762 million had to be found between December 1995 and December 1996.

In its memorandum of 13 June 1996, CSFB expressed a variety of concerns about Holdings and its Mainland joint ventures and Mr. Morin said that the information giving rise to them had come from extensive world-wide due diligence on CSFB's part. We therefore accept that there was a body of information about Holdings' liquidity and funding needs that was known to the investing public.

Clearly, however, the investing public was unaware of the discussions and meetings that were taking place in late June, throughout July and in early August 1996 between the Concept investors and Concept's management, between the Concept investors themselves and between the representatives of HPEM, PAMA and Search. Neither was the investing public aware of the meetings between Siegfried Lee and the HSBC, or of the SFH Group's negotiations with the Hang Seng Bank and the Dao Heng Bank, or of the Concept paper, or the presentation.

Mr. Rigby's view

Mr. Rigby says this of the significance of knowledge of the SFH Group's liquidity problems:

"The knowledge that the proceeds from the IPO were an essential part of the group's funding, due to cash flow problems was also price sensitive.

As it became apparent that the cash flow problems were very serious - even terminally so, that non public knowledge of the status of the IPO became, not simply, something which could help a trader make money by buying shares but, rather, a crucial piece of information on which the very existence of the company might depend. Existing holders of the shares, possessed of this nonpublic knowledge, would know whether to remain a shareholder or sell out to avoid losses on the downside."

He is of the opinion that:

“...the degree of the cashflow problems remained materially price sensitive non-public information until 27th September, 1996”.

27 September 1996 is the date Holdings announced its very poor six months' interim results for the period ended 30 June 1996.

Mr. Heale's view

Mr. Heale is of the opinion that none of the information about Holdings cash needs was price sensitive and that the investing public knew them.

Mr. Heale asked us not to simply extract figures from the various notes of the meetings held in June, July and August 1996 that might have had a negative impact on the market and consider them in isolation, fearing that to do so would distort the impact that news would have on the market. He reminded us that not only was funding being discussed (and approved) at those meetings, but the management was also giving assurances about the SFH Group's financial health. In particular, at the 1 August 1996 meeting Siegfried Lee, as well as Concept's executive directors and management, gave assurances about its ability to pay its liabilities as they fell due.

Mr. Heale is of the view that the investing public was on notice that Holdings' fortunes were linked with the listing and once it became clear that the listing was postponed investors should have been concerned about Holdings' cash flow. The fact that they were is reflected in the share price's downward movement throughout July 1996. By the end of July 1996, those shareholders who were speculating on an early listing would have already sold, or decided to sell, their shares and Holding's share price had discounted any benefit from the listing. Had the information that Mr. Rigby asserts is relevant been released to the market in isolation at the end of July 1996, the market reaction, had there been one, would have been no more than a mild acceleration of the existing downward trend, which could not be characterised as a material reaction. By way of contrast, the market's reaction to the release of Holdings' results on 27 September 1996, when the share price dropped 9.46% from a closing price of \$0.74 on 27 September to a closing price of \$0.67 on the next trading day of 30 September 1996, is an example of a material reaction.

It is his argument that the Concept Investors had bought into the proposition that Siegfried Lee was the man who would corner the Chinese ceramics market. The existing Chinese ceramics market used old-fashioned technology and produced poor

quality and outdated product ranges. Production was small and fragmented. Concept was to replace that with large-scale production levels from state-of-the-art facilities. On that basis any investment in any of the companies in the SFH Group - be it in Holdings or Concept - was a long term, capital intensive "China-play"; one in which the cash flow requirements of any part of the SFH Group should be viewed from the perspective of the long term investor who stood to reap the benefits when the factories came on-line and the Chinese construction industry recovered following the end of the Central Government's anti-inflationary policies. The SFH Group as well as Concept's strategy was a capital hungry one. Before cash flow could be generated and money could be made the factories needed to be built. In these circumstances it is Mr. Heale's view that a long-term investor would be less likely to attach weight to short term funding needs.

Mr. Heale also queried whether what the Concept Investors were told in the various June, July and August 1996 meetings was correct. Concept's business (and by extension the SFH Group's Business) was based around the capital-intensive construction of ceramic manufacturing plants in China (some of which were only just becoming cash flow positive and some of which were still under construction and therefore required capital) and there was no operating revenue. The only sources of working capital were debt and equity; a cash flow as such was simply not available to the SFH Group and Concept until such time as the factories started to generate distributable revenue. In the absence of a cash flow and historical trading data, any sort of cash flow predictions would have been both hard to produce and speculative. In fact, Mr. Heale thinks it unlikely that the cash-flow needs were, or could have been, accurately assessed. So far as he can see, there were no assumptions (such as selling prices, manufacturing volumes, fuel costs, interest rates, labour costs, power failures, market demand, transport availability, customer credit terms, production runs, machine failure rates, etc) made in the figures provided to the Concept Investors on which revenue forecasts for factories that were only just going into production could be based. It appears to him that not only was this information not provided, but that the Concept Investors failed to ask the right questions to elicit the necessary information from the management.

To him, it is relevant to note that the position of Concept's financial controller had not been filled during the time Lisa Lam worked for the company. She herself had expressed frustration with the poor quality of the financial figures from the joint ventures. She was aware that Concept owed NHD money, but she was unaware of

how significant NHD or Netzsich considered the loans to be. Similarly, Lisa Lam did not think that the figures the joint ventures provided her with were reliable because they massaged the figures to meet internal guidelines. If the staff working at Concept and Holdings did not know the true financial position of these companies, it is unlikely that the Concept Investors would or could have known.

He also points out that the Concept Investors themselves were aware of these shortcomings and appeared to have had little confidence in the information that they were being provided with. At the meeting on 29 July 1996, William Lam had spoken of the *"confidence level of the number(s)" being "down to if not zero, close to zero"*. Subsequent events proved that lack of confidence to be justified. The quality of the management information was so poor that Coopers, the auditors, felt unable to sign Concept's audited report. From Ernest Ip's evidence it is clear that as late as 1 October 1996 there were substantial amounts of information about Concept's subsidiaries still outstanding for the year ending 31 December 1995. If Concept's management were unable to provide accurate information to its auditors to meet its statutory obligations, then it is unlikely that accurate information was given to the Concept investors in July and August 1996.

Mr. Witts' view

Mr. Witts' view is again similar to Mr. Heale's, that none of the information about Holdings cash needs was price sensitive and that the investing public knew them.

The Tribunals' view

We cannot accept Mr. Heale and Mr. Witts' view that Holding's cash needs were effectively in the public domain and that by the end of July 1996 those shareholders who were speculating on an early listing would have already sold, or decided to sell, their shares. That is certainly not what happened to Rowe Price-Fleming's portfolio. Mark Edwards met Lisa Lam on 17 July 1996 - 14 days before the end of July. His note records the following about his knowledge of Holdings' financial position at that time:

"Main points

SF has some 33 JV's in the PRC with around half majority owned & the rest as minorities (est 10% mkt share in tiles). Ownership structure is via SF's 65% owned stake in SF Concept with HK institutions owning the remaining 35%. SF Concept has been funding the JV's & gradually

increasing its stakes over time. Profitability varies depending on the maturity of the JV & its distribution network. Overall the PRC JV's would remain in loss in 96 but hopefully moving into profit by end 97. Business has been hit hard by the austerity measures, which has hit demand for housing & building materials.

.....

Financials

In 12/95 t/o of \$836m & op profit of \$144m all came from equipment sales by NHD. The distribution business (JV's) had sales of \$245m (+42%) & SF's share of losses was \$35m (\$29m). The share of assets i.e. unlisted investments at 31/12/95 was \$1.8bn.

Cash flow; in 9m to 31/12/95 there was a cash outflow of \$578m (\$209m). Gearing at 31/12/95 was 50% (15%) but that excludes deferred income, & debt at the JV level. Of total assets of \$2.4bn, \$1.8bn relates to the PRC investments which contributed losses of \$35m in 9months to 31/12/95."

Mr. Davies questioned him about how he came by that information:

Q. You went to the meeting with Vijay Harjani?

A. Yes.

Q. Was he well informed about the company?

A. There had been some broker notes published on the company relating to 1995 and to the first half of 1996. So that was generally known. Sorry, the actual balance sheets for the individual joint ventures, that detail was not revealed. Lisa did not know them; she said the finance director would know that information.

Q. Do you remember – it is a long time ago now – anything about the meeting?

A. From my point of view, it was actually a rather unsatisfactory meeting, because I had hoped to meet the finance director, who would have –

Q. Who was that? Do you know who that was?

A. I am sorry, I do not know. He was unavailable, and Lisa, I do not think – I am not sure whether she had been at the company all that long. She did not know a huge amount about the company. So the details were very broad; it was a sort of general overview of what businesses they had where.

Q. What was her view of the prospects of the company that you remember she told you about?

A. She did not really comment on the prospects. It was more -- I think she gave the impression that China was definitely slowing, but she was not really commenting on current sales, for example; it was much more the structure that we were talking about.

Q. Was she open with regard to the questions you asked, and information?

A. Reasonably. Quite a lot of the stuff she said "I would have to defer to - I would have to refer you back to my boss", she said.

... ..

Q. Then "Main Points", in the next paragraph -- do you see the second-to-last sentence in that paragraph: "Overall the PRC JVs would remain in loss in 96 but hopefully moving into profit by end of 97." Did that interest you, the fact that it might be moving?

A. That would be the reason -- if I thought they had moved into profit by the end of 1997, that might have been a reason to hold on to the stock, yes.

Q. Did she expand on that with, that in mind, with you holding the stock?

A. Not enormously, no, she did not. That was the company's aim; they admitted that they had lost money in 1995, and they thought they would still lose money in 1996, but the aim was to be profitable by 1997. This would not surprise me; in most Chinese joint ventures, that would be the sort of profile of a Hong Kong investing company, that would be the profile, two or three years to get into profit.

... ..

Q. Then "Financials", going down, and you seem -- would you have got this information from her?

A. No. Most of that relates to 1995, which was in the broker notes.

Q. Do you see in the second part of that paragraph, "... there was a cash outflow of \$578 million"?

A. Yes, that worried me. That was clearly -- that was the whole problem: they put a lot of money in, but cashflow was negative.

It is clear from his evidence that Lisa Lam gave Mark Edwards very little help and useful information, and that the source of the information contained in his note of the 17 July 1996 meeting was published documents of Holdings that were already in the public domain. The paucity of the information Mark Edwards had stands in sharp

contrast to the plethora of information that was made known to the Concept Investors in July and early August 1996 that we reviewed in Chapter 7. The 26 July 1996 presentation alone runs to 121 pages.

It is also the case that in late July 1996, HSBC, Holdings' principal banker, to whom it was indebted for over \$1 billion, was of the view that the market was unaware that there was a liquidity problem in Holdings. This is seen in Roger Wong's memo to David Tam of 26 July 1996 recommending a downgrading of the SFH Group's credit rating, where he said:

"The above fund raising exercises may not be successful if there is a credit squeeze. As SFCHL's liquidity problem has not yet been spread in the market, it makes a commercial sense that SFCHL would take a more serious view in servicing the loan repayments of other banks and may eventually request us to extend our loan repayments in the coming two months to the end of SEP 96." [emphasis supplied]

Our view is that although, as the weeks from mid-June 1996 passed without any concrete progress on the listing being announced and Holdings share price declined, the savvy investor may have suspected that Holdings was not in the best financial shape - particularly so after Y. T. Du's press conference on 10 August 1996 and the somewhat gloomy press reports that followed it; the *Apple Daily* going so far as to comment:

"...the failure on its part to get NHD spun-off in the U.S. markets makes its fans lose all their confidence."

... ..

"...there are a lot of market rumours saying that the company was in great troubles."

That suspicion amounted to no more than sensitivity to market rumour. We are satisfied that until Holdings formally announced its six months results on 27 September 1996 the investing public were unaware of the depth of the SFH Group's liquidity problems caused by the listing's failure. We are satisfied that those problems were specific information, which was not known to those accustomed, or likely, to deal in Holdings shares before 27 September 1996, but which, if known by them, would

have been likely to materially affect the price of those shares. They were therefore 'relevant information' within the meaning of the Ordinance.

Chapter 10

In this chapter we deal with the sale of the Holdings shares held in Li Man Yi, Wong Fong Kim and Wai Man Keung's names on 14 & 18 June 1996. This is the first of the five areas of inquiry that we identified in Chapter 1.

The transactions

Li Man Yi

The majority of the 1.4 million Holdings shares sold in Li Man Yi's account with Tanrich on 14 June 1996 came from the purchase of 1.52 million Holdings shares on 18, 19 & 22 April 1996. They were paid for by a cashier's order for \$1,892,911.32 and a personal cheque drawn on Daniel Chan's HSBC account for \$138,652.74. Immediately before the payments were made Daniel Chan's HSBC account had received a credit of \$2 million from Mrs. Lee's bank account.

The net proceeds of sale (\$2,323,355.85) were credited to Li Man Yi's bank account on 19 June 1996. On 21 June 1996 a cheque in the same amount was drawn on that bank account in favour of Lee Man Shou, who is Daniel Chan's wife. On the same day (21 June 1996) a cashier's order for \$2,317,000 was drawn on Lee Man Shou's account in favour of Siegfried Lee and credited to his HSBC account.

Wong Fong Kim

On 18 & 19 April 1996 4.538 million Holdings shares were bought in Wong Fong Kim's account with J.A. Fu. On 12 June 1996, a further 4,482,688 Holdings shares were deposited into that account.

On 14 June 1996 6.36 million Holdings shares were sold in that account and 2.66 million were sold on 18 June 1996. The net proceeds of sale of both tranches of shares came to \$14,655,225.63.

J.A. Fu paid a total of \$9,963,413.43 to Wong Fong Kim by three cheques; one dated 19 June 1996 and two dated 21 June 1996. In addition (and also on 21 June 1996) J. A. Fu paid two cheques one for \$5 million and the other for \$5,141,440.61 into Wong Fong Kim's HSBC account. The total of these two cheques (\$10,141,440.61) matches exactly the net proceeds of sale of 6.52 million Holdings shares credited to Wai Man Keung's J.A. Fu account on 18 June 1996.

On 24 June 1996 a cashier's order in favour of Siegfried Lee for \$17 million was drawn

on Wong Fong Kim's HSBC account and credited to Siegfried Lee's HSBC account on the same day.

On 24 June 1996 a cheque in favour of Welcon for \$3 million was drawn on Wong Fong Kim's HSBC and credited to Welcon's HSBC account on the same day.

Wai Man Keung

An account in Wai Man Keung's name was opened with Kim Eng on 7 March 1996. On 6, 7 & 15 March 1996 a total of 6.52 million Holdings shares were bought in this account. They were paid for by three cheques drawn on Welcon's HSBC account. On 7 & 11 March 1996 two cheques of Siegfried Lee's, each for \$5 million, were credited to that account. On 17 April 1996 the same number of shares (6.52 million) were withdrawn from that account.

On 10 June 1996, 6.52 million Holdings shares were deposited into an account opened in Wai Man Keung's name with J. A. Fu. All of them were sold on 18 June 1996. The net proceeds of sale were \$10,141,440.61. As we have already said, J.A. Fu paid two cheques (one for \$5 million and the other for \$5,141,440.61) into Wong Fong Kim's HSBC account on 21 June 1996 and the payment matches exactly the net proceeds of sale of this tranche of shares.

The account holders' evidence

Li Man Yi

Li Man Yi is Daniel Chan's sister in law. She knew that he was an accountant working at Holdings. At his request, she allowed him to use her account with Tanrich to deal in Holdings shares. Daniel Chan funded these dealings either by depositing money in her account for her to make settlement, or by making direct payment to Tanrich.

She purchased the 1.5 million Holdings shares on 18, 19 & 22 April 1996 and sold the 1.4 million Holdings shares on 14 June 1996 at Daniel Chan's request. He had phoned her and instructed her to sell, and to ask the brokers to draw the settlement cheque in favour of her sister, Lee Man Shou, who is Daniel Chan's wife.

Wong Fong Kim

Wong Fong Kim told us that at the end of 1993 Daniel Chan took him to open an account with J.A. Fu, telling him that Siegfried Lee would use the account to trade in Holdings shares. He denied knowing that Siegfried Lee was doing that to avoid

reporting the transactions to the SEHK.

Wong Fong Kim told us that he was not in Hong Kong on 14 June 1996 at the time the first tranche of 6.36 million Holdings shares were sold in that account. He told the SFC that he had returned to Hong Kong from Beijing at Siegfried Lee's request in June 1996, following a telephone call from Lee. The Immigration Department's records show that his first entry into Hong Kong in June 1996 was at 00:23 hours on 17 June 1996. After he arrived in Hong Kong Siegfried Lee told him to sell the shares in his account, which he had done.

He told the SFC that he only came to know that there were nine million or so Holdings shares in that account after Lee Siu Fung telephoned him in Beijing asking him to return to Hong Kong.

Jorge Fu, a partner in J. A. Fu, told us this about the operation of Wong Fong Kim's account at his firm:

"Regarding the trades in Wong's account, it was Daniel whom I contacted most of the time. After WONG placed the order, I would fax Daniel the exact amount and the statement. I would also inform Daniel the details of any odd sum or outstanding balance."

Jorge Fu had told the SFC that he had faxed a confirmation of the sale of the first tranche of 6.36 million Holdings shares on 14 June 1996 to Daniel Chan. However, in evidence he modified this answer saying:

"... we were only reporting the trading of the day to Daniel, like the buy and sell, but he only knew about those tradings. He did not buy anything or sell anything from Mr Wong's account, so we were only reporting to him."

Jorge Fu's evidence is at odds with Wong Fong Kim's who told the SFC that he had conducted no securities trades in 1995 and 1996 other than the sell order to J. A. Fu on 18 June 1996.

Before us, Wong Fong Kim confirmed his account to the SFC that, on Daniel Chan's instructions, he paid the proceeds of sale to Siegfried Lee amounting to around \$17 million by way of a cashier's draft and that, also on Daniel Chan's instructions, he had

drawn the cheque dated 24 June 1996 for \$3 million in favour of Welcon.

He told us that Siegfried Lee's explanation to the SFC that the payment related to a sum of money repaid by Yunan Government through himself was "...definitely false".

In evidence Wong Fong Kim denied knowing that the listing had been called off:

"Q. Did he tell you, that is Lee Siu Fung, that the proposed public offering, the listing in New York had been cancelled, called off?

A. He would not discuss such matters with me.

Q. Did anyone else at the company tell you that on that day, the 18th or the 17th?

A. No.

Q. So at the time, as you say at answer 37, (of his SFC statement) you gave instructions to JA Fu to sell, you were unaware of that fact, were you, that is, that the IPO had been called off?

A. Correct, I did not know."

Wai Man Keung

Wai Man Keung told the SFC in his interview that although the account in his name with J.A. Fu was his, he was unable to remember the circumstances behind the opening of the account.

It was his story before us, and it is one which appears nowhere in either of the accounts he gave to the SFC, that Siegfried Lee's two cheques of \$5 million each dated 7 and 11 March 1996 respectively, drawn in favour of Welcon, were a deposit in respect of renovation works at Siegfried Lee's home at 72, Deep Water Bay Road, Hong Kong Island to be carried out by Welcon, which is his company. The cheques were post-dated and he gave no receipts for them.

As the \$10 million was not needed until the end of April, or early May 1996, he decided to invest it for his own benefit. At his request, Siegfried Lee introduced him to Kim Eng and a share trading account was opened in his name on 7 March 1996 and he made three purchases of Holdings shares beginning on 6 March 1996. Quite how he could start to do this one day before the account was opened was never explained.

Matters did not go as he had planned, for on 16 April 1996 Siegfried Lee asked him if

he had paid the suppliers and on learning that he had not, Lee asked for repayment of the money. When he was unable to do so Lee accepted delivery of the shares instead.

Siegfried Lee gave him the account opening documents for the account in his name at J.A. Fu to sign. He delivered the Holdings shares to Siegfried Lee by way a letter of instruction to Kim Eng. After that he had no idea what happened to the shares.

He claimed that he had been confused and apprehensive when the SFC interviewed him, that is why he told them a different story.

In cross-examination Wai Man Keung denied that the following passage in Siegfried Lee's opening statement to the Tribunal and subsequently adopted in the course of his evidence, was true:

"I hereby confirm that Li Man Yi, Wong Fong Kim and Wai Man Keung who sold the company's shares on 14th and 18th of June 1996 respectively, were acting on my behalf in the course of their dealings, the above three persons were actually carrying out the instructions given by me to Daniel Chan Kwong Tat. I have never told the above three persons or Daniel Chan Kwong Tat the reasons causing me to buy or sell the company's stocks."

He denied a suggestion made in cross-examination that he was acting as Siegfried Lee's nominee in these matters.

When the SFC asked him how Wai Man Keung had placed the order to sell the 6.52 million shares, Jorge Fu replied:

"Daniel phoned to place order, but I don't remember if it was me, or Ms Kwong, who received the order. Daniel said he was selling the shares for Wai."

He went on to say that he had paid the net proceeds of the sale of those shares into Wong Fong Kim's bank account, on Daniel Chan's instructions.

Siegfried Lee

In his SFC interview on 19 June 1998 Siegfried Lee was asked specifically about Li Man Yi Wong Fong Kim Wai Man Keung's dealings. He answered:

*"The answer is that these three accounts, are nothing related to me.
Repeat again definitely no."*

Before us he accepted that he had used their brokers' accounts to trade in Holdings shares and that the three of them were acting on his behalf as his nominees when the shares were sold in their respective accounts on 14 & 18 June 1996. The admission was as follows:

"Q. Is it right that for our purposes, from March 1996 through until the sales on 14th and 18th June, the transactions involving buying, selling, withdrawing, depositing Holdings shares were all done at your behest?

A. Yes, for those three accounts.

Q. When monies were required to be sent to brokers to pay for shares that had been bought, you caused the monies to flow to pay the brokers?

A. Yes.

Q. When proceeds were generated, you gave instructions for the disposal of the proceeds?

A. Yes."

In respect of Wai Man Keung's account of how he came to own the Holdings shares in his name, Siegfried Lee said in his statement to us of 28 February 2003 (as well as repeating it in evidence before us) that he had given Wai \$10 million and asked him to buy shares in his name (Wai's) for Siegfried Lee's benefit. Mr. Barnett put Wai Man Keung's story to Siegfried Lee:

"MR BARNETT: He (Wai Man Keung) has told us something rather different. He has told us that you did give him the money as advance payments for the contracts and because he realised that there was an interval between the time when you gave him the money and he would actually need it to pay the contractors, he decided to invest the money in, as it happened, Siu Fung Holdings shares. He also told us that after he had invested, you, perhaps then realising that the monies were not needed for the contractors yet, asked for the money back. He said, "There is a problem, the money is now invested." To which you said, "Never mind, give me the shares." Which he did. He maintains that that investment was his own and that it was not your investment. I think all this happened a little bit

earlier, in March. So this is rather different from your explanation that the shares bought and sold in the account of Mr Wai were your own and that this was purely a nominee transaction?

A. I think if I did something wrong, I want to tell the truth, I do not want to hide away from the truth. I think what he said, he was protecting me and it was not correct and he was only my nominee.

MR BARNETT: Just to repeat, he asserts that the shares were bought by him in March, although he knows nothing about the sale that occurred later, he asserts they were his shares and you deny that, do you, you are quite sure that this was a nominee transaction conducted for yourself?

A. Yes."

In his SFC interview on 27 February 1998 Siegfried Lee said this about the telephone conversation with Christopher Morin and Steven Unfried on the evening of 13/14 June 1996.

"I don't recall the above 2 persons you have mentioned. All I remember is that around that time, discussion on the matter could not proceed according to schedule. It was merely delayed."

In evidence before us he said,

"I recall that that was a telephone call at my home. I recall that that was early time because we needed to adjust for the US time. I recall that was a telephone call between Philip Erdoes, myself and the personnel from CS First Boston."

In cross-examination, Mr. Lunn reminded Siegfried Lee of Christopher Morin's evidence about this phone call and he said:

"I do not remember exactly, but I remember that he did call and that was in a conference call together with Philip Erdoes and, as mentioned in core bundle 1, page 284A, that they would have to look at the matter for another two quarters. They would require the 1996 financial statement. This is what they told me, they need a complete year or one quarter more or two quarters, that is what the telephone ...

Q. One quarter more, you keep saying that?

A. *[In English] One quarter or two quarters to complete [indistinct], because due to the phone call they are really polite, they tell me. [Interpreted] They were very polite at that time. You can see that my answer was, "Okay, we will co-operate again later. We will work together again later." That was why at that time my impression was not that they were out of this matter. They just wanted a complete financial statement for 1996. What we had in mind was that we asked, "Can we do just one more quarter?" Or something like that.*

Q. *Did you ask that?*

A. *I told him clearly that we would work on the restructuring first.*

Q. *Did you ask him, "Can we do just one more quarter?" Or not?*

A. *I do not remember clearly."*

He confirmed that after the call CSFB had done no more work on the listing.

He was shown Eddie Liu's cash flow, which provides for receipt of the listing's proceeds in April 1997, and asked:

"Q. It never was a question of the IPO being postponed, as you said a few minutes ago, for one quarter or even for two quarters, was it?

A. Yes, if you have to complete the audited financial statements for 1996 then you have to postpone it for two quarters."

Mr. Lunn asked Siegfried Lee why the sales in Li Man Yi, Wong Fong Kim and Wai Man Keung's accounts began on 14 June 1996:

"Q. Why did you start selling shares on 14th June in these nominee accounts?

A. I do not remember.

Q. Really? There had not been any trading for quite some time, had there? Suddenly on 14th June you were a seller and you liquidated your positions by the end of the 18th in the nominee account?

A. I do not wish to answer.

THE CHAIRMAN: I am afraid that is one you are going to have to answer.

A. I have mentioned that in my declaration.

Q. The question is why you sold them, why?

A. Maybe I thought that the company needed the money.

Q. Was it because you had been told that morning by Mr Morin that the IPO was off and that it would require audited financial statements for the year 1996 and other information to be satisfactory before it could be considered; was that the reason?

A. Yes, you can see that on his phone call to me notifying me that it was postponed.

Q. That is why you sold the shares that same day?

A. Correct.

Q. The postponement of the IPO in the terms described presented a problem for Holdings, did it not?

A. No, there would be a need for cash."

Mr. Lunn reminded him of the declaration and undertaking he had given to the SEHK prior to the listing of Holdings and to the SEHK's Listing Rules and asked:

"Q. Do you accept that following your conversation with Credit Suisse First Boston, if it be in the early hours of 14th June 1996, of the fact that the IPO would not proceed with the three underwriters at least and until the audited 1996 financial statements of Holdings and other information had been put in place, that you were possessed of information that was materially price-sensitive that was not published?

A. The postponement, I believe that is price-sensitive information.

Q. Therefore, just taking the model code that we have in front of us for the moment, page 56, paragraph A1, you should not have dealt in the securities, that is, Holdings shares on 14th and 18th June 1996?

A. Correct."

Daniel Chan

In his statement to the SFC of 23 August 1998, as well as in his statement submitted to us of 5 March 2003, Daniel Chan said that he acted on Siegfried Lee's instructions in dealing in Holdings shares through brokers' accounts held in other person's names. They included dealings in the name of his sister-in-law Li Man Yi with Tanrich; Wong Fong Kim with both Tanrich and J.A. Fu and Wai Man Keung with J.A. Fu.

However, when first interviewed by the SFC about his role in these matters, Daniel Chan had said:

"Q. Did Lee Siu Fung ask you to handle the procedures of his securities trading?

A. No."

... ..

"Q. Have you ever placed orders with broker firm on behalf of LEE?

A. Yes. There was a time when LEE increased his shareholding in Siu-Fung and the company repurchased its own shares. During that period, I placed orders for his trades with Lee Tat Securities Co. [translation] The Trades for himself was conducted in his name and the repurchase was conducted in the name of Siu-Fung. That happened quite a few years ago. I don't remember when it was."

Daniel Chan told us that the sale of the 1.4 million Holdings shares in Li Man Yi's Tanrich account on 14 June 1996 was done on Siegfried Lee's instructions, as was the payment of the proceeds of their sale to Siegfried Lee. He said this in respect of his arrangement with Li Man Yi:

"I only said to her that it was for my own shares trading. I only told her that I borrowed her share trading account to trade in shares."

Earlier, he had said:

"... she trusted in me and she knew my character."

Daniel Chan told us that he acted on Siegfried Lee's instructions in arranging for the delivery of the 4.44 million and 6.52 million Holdings shares deposited into Wong Fong Kim and Wai Man Keung's accounts with J.A. Fu on 10 June 1996 and it was he who placed the orders dealing in those accounts in their names. And that he had paid the net proceeds of the sale of the shares in Wai's name into Wong Fong Kim's bank account.

Daniel Chan said that he knew that CSFB's commitment would be known on 14 June 1996. In cross-examination by Mr. Lunn he was asked:

"Q. You say that on 14th June you were telephoned by Mr. Lee Siu Fung and asked to go to his home?

A. Yes.

Q. Prior to that and what he told you on that morning, did you have any inkling of how things were going with the IPO?

A. Before that I should know that on that day, being the 14th, we should know whether the underwriter would go ahead with our IPO proposal because we need to know whether we are going to do the bulk print on that date."

Chao & Chung's timetable had called for bulk printing of the circular on Thursday, 13 June 1996.

In the course of his evidence Daniel Chan admitted that Siegfried Lee told him of the listing's postponement on 14 June 1996. However, he claimed that this was after he had received Siegfried Lee's instructions to sell the three nominees' Holdings shares. His evidence about this was as follows: in cross-examination by Mr. Lunn, he said that, at around 8 a.m. on that day, Siegfried Lee telephoned him and asked him to go to Lee's home in Hong Lok Yuen before he went to Holding's head office at Concordia Plaza. The relevant part of the cross-examination went as follows:

"Q. So you were going from the wrong direction from work, from the office?

A. Yes, because I did need to go to his home first.

Q. What passed between the two of you at his home?

A. Nothing.

Q. Tell us what happened. You troubled to drive all the way to Hong Lok Yuen; what happened?

A. I cannot recall whether Mr Lee arranged for the driver to come and pick me up or I took the taxi myself to go to his home.

Q. Never mind about that, what happened when you got there?

A. Nothing. He just asked me to go to his home and then I waited until the market opened, to buy those shares.

Q. You are not giving an answer to the question. With respect, Mr Chan, do yourself justice. He called you to go there, what did he say to you when you got there?

A. He asked me to go to his home, however, the conversation happening on that day on the 14th, I really cannot recall the details of that conversation.

Q. Nothing at all?

A. *He said something, he did say something, I just do not recall. Of course, there would be some conversation happening between us, we must have said something to each other; it is just that I cannot recall what has been said.*

Q. *Where were you when he told you to sell the shares in the nominee accounts?*

A. *At his home.*

Q. *So that is one thing you do remember?*

A. *Yes.*

Q. *That was it?*

A. *Yes.*

Q. *I suppose you thought to yourself, "Why on earth could he not tell me that on the telephone?"*

A. *No, I did not think that. Sometimes, on some rare occasions he asked me to go to his home before I went to the office.*

Q. *Are you making up this testimony?*

A. *Definitely not.*

Q. *Did you forget that you had deposited the 10 million shares on 10th June?"*

A. *You mean that I forgot it at the time?*

Q. *Yes, when you were giving your evidence?*

A. *You mean testifying where, here or where?*

Q. *Yes, here. When you told this court you got a phone call and you were told to go to, as it now turns out, Hong Lok Yuen. Had you forgotten that the shares had been deposited four days earlier?*

A. *But that 10 million shares has nothing to do with the fact that I went to Hong Lok Yuen.*

He went on to say that Siegfried Lee had told him:

"...that he and the underwriter in regard to the PE ratio pricing did not reach an agreement, but he did say to me he called a halt to the exercise. Also, one more point, it mentions in his document that the PE ratio was reduced from 12 to 7 and also the size of the proceeds, this information he did not ever tell me."

He claimed that this was when he:

"... went to ask Mr. Lee about the bulk printing matter. That was the time that he told me about the listing was postponed because of the PE ratio. Then I later relayed this information back to Albert Lee and Eddie Lui."

.....

" I told Albert so he can help hold up the bulk printing, then I told Eddie, since he is the group CFO, that with the IPO status changed, that would affect the cash planning of the company so he would need to reassess the cash flow planning."

As to events after 14 June 1996, various memoranda of the HSBC record Daniel Chan's contact with them in mid to late June 1996. The memo of 21 June 1996 refers to him requesting a loan of \$300 million cash to Siegfried Lee secured on Holdings shares and Roger Wong's response to him being that *"... the proposal is not feasible. The repayment ability looks doubtful."* He is noted as being present at the lunch meeting on 24 June 1996 when Eddie Lui's cash flow was handed over to the bank. The memo of 25 June 1996, noting Holding's delay in repayment of the installment due on in respect of the equipment loan on 28 June 1996, identifies him as having told the bank that Siegfried Lee had made arrangements to deal with an estimated cash shortfall of HK\$800 million in the 3rd quarter of 1996.

Daniel Chan accepted that he had these contacts with the HSBC on Siegfried Lee's behalf after he came to know of the listing's failure. He said this about it:

"Q. Is the truth of the matter that you acted very closely with Lee Siu Fung in dealing with the consequences of the failed IPO?

A. Yes, we approached Hongkong Bank on the 18th and we started to act on the 19th.

Q. Were you taking instructions from Lee Siu Fung about what information to give, what to request?

A. That is correct.

Q. Did you report to him the bank's reaction?

A. Yes."

In his statement to the Tribunal Daniel Chan said this of his knowledge of the consequences of the listing's failure:

"... the financial arrangements of the Holdings and its group of companies would be upset. I therefore informed Eddie Lui of the said status of the IPO application with the view to enabling him to make some relevant arrangements on the financial matters of the Holdings and its group of companies."

Conclusions

Li Man Yi

Although Li Man Yi admits allowing her brother-in-law Daniel Chan to use her account at Tanrich to trade in Holdings shares and, in particular, that she sold 1.4 million Holdings shares on 14 June 1996 and remitted the net proceeds to her sister, Lee Man Shou, at Daniel Chan's request, she denies that she was aware when she did so that the listing had been postponed or called off. There is no direct evidence to the contrary.

We are satisfied that there is no evidence that Li Man Yi was in possession of relevant information at the time of her dealing in Holdings shares on 14 June 1996. The evidence points to the conclusion that Daniel Chan and Siegfried Lee used her as an uninformed nominee in effecting that transaction. We are satisfied that it would be inappropriate and unjustified to make a finding of insider dealing against her.

Wong Fong Kim

We are satisfied that there is no evidence that Wong Fong Kim was aware of the listing's postponement or cancellation at the time he said he ordered the sale of the Holdings shares in his account with J.A. Fu on 18 June 1996. He appears to have acted as Siegfried Lee's uninformed nominee in effecting this sale. On his account, he was not involved in the sale of the shares on 14 June 1996 and there is no evidence to the contrary.

We are satisfied that there is no evidence that Wong Fong Kim was in possession of relevant information at the time he ordered the sales on 18 June 1996. We are satisfied that it would be inappropriate and unjustified to make a finding of insider dealing against him.

Wai Man Keung

When discussing Wai Man Keung's account we referred to it as a 'story,' for we are

satisfied that it was no more than that. If the total of \$10 million that Siegfried Lee paid him in early March 1996 was in respect of renovation work at Lee's Deep Water Bay Road property why did he not issue a receipt and why are the payments not reflected in Welcon's accounts? Why was there a need for cheques intended to pay suppliers to be post-dated and be dated four days apart from each other? We note that the first of the two cheques is dated the day after the first purchase of shares and the day before settlement was required. The second cheque is dated the same day as settlement of over \$4.6 million that was required in respect of the purchase of the second tranche of shares.

We are satisfied that, although Wai Man Keung willingly lent his name to the use of an account at J.A. Fu for Siegfried Lee's benefit and that Daniel Chan operated that account in depositing 6.52 million shares into it and ordering their sale and the disposal of the net proceeds of sale, there is no evidence that Wai Man Keung was aware of the listing's postponement or cancellation at the time of the sale of the 6.52 million Holdings shares in that account on 18 June 1996. Accordingly, there is no evidence that he was possessed of relevant information at the time of that sale. We are satisfied that it would be inappropriate and unjustified to make a finding of insider dealing against him.

Siegfried Lee

Given that he was both a director (section 4(1)(a) of the Ordinance) and a substantial shareholder in Holdings (section 4(1)(6) of the Ordinance), there is no dispute that Siegfried Lee was a person connected with Holdings at the time of the sale of the Holdings shares held on his behalf by Li Man Yi, Wong Fong Kim and Wai Man Keung. His position and shareholdings are set out in Holdings' Annual Report for 1995 as well as in various public notices published under his name.

Siegfried Lee's admission before us that the sales of shares in the accounts in the names of Li Man Yi, Wong Fong Kim and Wai Man Keung were done at his behest is supported by Daniel Chan's evidence, as well as Wong Fong Kim and Li Man Yi's. Neither Wong Fong Kim nor Li Man Yi claimed to have had a beneficial interest in the Holdings shares sold in their accounts. On that evidence, as well as the evidence of the source of the funding for the purchase of the shares and the subsequent use of the net proceeds, we have no doubt that Siegfried Lee owned the beneficial interest in the Holdings shares sold by Li Man Yi, Wong Fong Kim and Wai Man Keung on 14 & 18 June 1996.

Relying on Siegfried Lee's clear admission, together with the strong circumstantial evidence in support (in particular the close sequence in time of his receipt of news of the listing's failure in the conference call he had with Stephen Unfried, Christopher Morin and Philip Erdoes on 13/14 June 1996) we are satisfied that that information was the reason for the sale of those shares.

We have no doubt that this information was relevant information; being specific information about Holdings which was not generally known to those persons who are accustomed or would be likely to deal in Holdings shares, but which would if it were known to them be likely materially to affect the price of SFH shares.

It is clear to us that Siegfried Lee also knew that as a consequence of the listing's failure a second piece of relevant information came into being; namely that the SFH Group had a severe and immediate funding problem. In layman's terms it was in 'a cash crisis'.

His actions following his conference call with Stephen Unfried, Christopher Morin and Philip Erdoes on the night of 13/14 June 1996 support that conclusion. On 18 June 1996, through Daniel Chan, he asked the HSBC for bridging finance in the shape of a personal loan of \$300 million. He offered Holdings shares as security. This was a specious offer as he already had pledged 650 million of his Holdings shares to the HSBC and the Dao Heng Bank and had nothing like that number of unencumbered shares to secure a loan of that size.

Eddie Lui's cash flow speaks eloquent volumes of the SFH Group's desperate funding needs. Daniel Chan between 21 & 25 June 1996, in conversations with the HSBC, described Holdings as having an \$800 million cash shortfall in the 3rd quarter of 1996. And on 28 June 1996, Holdings required a time extension from the HSBC as it was unable to meet the second quarter repayment of its equipment loan.

These problems cannot have come as a surprise to Siegfried Lee. As early as 21 March 1996 Eddie Lui had warned him that:

"IPO in New York will be the only way we can generate some cash and reduce our gearing ratio in short period of time"

In the same memo Eddie Lui called for efforts:

“...to rescue ourselves from the current critical situation”

On 10 May 1996, Lisa Lam had told Concept's Board of Directors that Concept's funding needs of US\$50 million would come from Holdings following the listing. And in May NHD's German Management had advised Siegfried Lee of their immediate desperate funding needs and expressed their deep concern about the company's future.

We are satisfied that Siegfried Lee engaged in insider dealing when he a person connected with Holdings and in knowing possession of relevant information in relation to Holdings, effected, either directly, or indirectly through Daniel Chan, the sale of the:

- 1.4 million Holdings shares in which he had the beneficial interest held in Li Man Yi's name with Tanrich on 14 June 1996;
- 6.36 million and 2.66 million Holdings shares in which he had the beneficial interest held in Wong Fong Kim's name with J.A. Fu on 14 & 18 June 1996; and
- 6.52 million Holdings shares in which he had the beneficial interest held in Wai Man Keung's name with J.A. Fu on 18 June 1996.

Daniel Chan

At the time of the sale of the shares in Li Man Yi, Wong Fong Kim and Wai Man Keung's nominee accounts Daniel Chan was a director of both Holdings and Concept as may be seen in Holdings 1995 Annual Report. He is therefore, a person connected with Holdings by virtue of section 4(1)(a) of the Ordinance.

We do not believe Daniel Chan when he says that Siegfried Lee informed him of the listing's failure only after giving him instructions on 14 June 1996 to sell the shares held in Li Man Yi, Wong Fong Kim and Wai Man Keung's names. In his evidence Siegfried Lee admitted the obvious connection between his receipt of the news of the listing's failure from Stephen Unfried and Christopher Morin and the sale of the Holdings shares in those three persons' accounts. It beggars belief that Siegfried Lee failed to pass on that information to the man he trusted to run his covert nominee accounts at

the time he told him to sell those shares. We are satisfied that Daniel Chan was aware of the listing's failure before he arranged for the sale of the shares held in Li Man Yi, Wong Fong Kim and Wai Man Keung's accounts.

We are also satisfied that Daniel Chan was aware of the negative impact of the listing's postponement on the SFH Group's immediate funding problems. In his statement to us he said he informed Eddie Liu of the postponement:

"... in view to enabling him to make some relevant arrangements on the financial matters of Holdings and its Group of Companies."

The evidence of events before 14 June 1996 shows that Daniel Chan was on the circulation list of the memoranda from NHD's German Management in May 1996. He is recorded as being present at the Concept Directors Board meeting on 10 May 1996 at which Lisa Lam advised that the funding needs of Concept, estimated to be approximately US\$50 million *"...will come from Holdings, following the IPO of NHD."*

In the evidence of events after 14 June 1996, both Eddie Lui and Daniel Chan are recorded in the HSBC's memoranda as being in contact with the HSBC on the afternoon of 18 June 1996 as well as the morning of 19 June 1996 trying to raise finance. The same memoranda show that on 18 June 1996 Daniel Chan contacted the bank requesting a \$300 million loan be extended to Siegfried Lee. They also show that between 21 & 25 June 1996 he informed the HSBC of Holding's predicted \$800 million cash shortfall in the third quarter of 1996. They also show that he was present at the lunch meeting at which Eddie Lui handed his cash flow to the HSBC officers.

Daniel Chan was asked about that lunch meeting; he admitted being at the lunch, but denied knowing about the cash flow. The evidence was as follows:

"Q. On the 14th you had asked Eddie Lui to set about addressing the cash flow consequences of the failed IPO, had you not?"

A. Yes.

Q. So presumably when he came up with one, you read it?"

A. I did not see that before.

Q. Really?"

A. That is true.

Q. You were at the lunch with Eddie Lui and Roger Wong, 24th June?"

A. Yes.

Q. Did you see Eddie Lui handing over a cashflow forecast?

A. Yes.

Q. But you did not read it?

A. No, I did not read that in advance to that.

Q. Did you ask him for a copy of it afterwards?

A. I cannot recall as to that, but I recall definitely I did not read that before.

It is because he was in charge of the whole finance department so he should have full authority over that in preparing that."

Later, he was asked about the provision in the cash flow for receipts of an initial public offering in April 1997, as shown in the cash flow:

"Q. You never asked Eddie Lui in the days that followed for the cash flow forecast that you had asked him to prepare urgently after you met Lee Siu Fung?

A. I really did not. I only recall that Hongkong Bank asked us to be conservative with the figures, and with the forecast.

Q. Because, of course, if you had seen this document when you were at the meeting with the Stock Exchange on 8th July you would have realised that what Albert Lee was putting forward to them was false, would you not?

A. That is why I tell you that I have not seen this document."

Daniel Chan also took part in the loan negotiations between Holdings and the Dao Heng Bank in July 1996, and between Holdings and the Hang Seng Bank in July and August 1996.

As Eddie Lui was then the CFO of both Holdings and NHD, it is logical that Daniel Chan should have turned to him for assistance in addressing Holding's funding needs and sources immediately after Siegfried Lee told him of the listing's failure. We have no doubt that Eddie Lui's cash flow reflects their mutual understanding of the immediate impact of the failure on the SFH Group's sources of funding.

We are satisfied that at the time Daniel Chan dealt in the Holdings shares held in Li Man Yi, Wong Fong Kim and Wai Man Keung's accounts on 14 & 18 June 1996, (or counselled or procured them to do so, knowing or having reasonable cause to believe that they would deal) he was in possession of relevant information in relation to

Holdings namely, that the listing had failed; and that as a consequence of that the SFH Group, including Holdings, had a severe and immediate funding problem.

Daniel Chan claimed both in his statement and in his evidence that he acted solely upon the instructions of his boss, Siegfried Lee. We take it that in making this claim he was raising the defence provided for in section 10(4) of the Ordinance namely, that he entered into the transactions as Siegfried Lee's agent, neither selecting or advising on the selection of the securities sold.

We do not find that he has established a section 10(4) defence. Although the evidence has satisfied us that Daniel Chan played the role of Siegfried Lee's right-hand man, he was more than a mere servitor, he was one of Holdings' directors. When Holdings was listed on the SEHK on 22 September 1993, Daniel Chan, as a director of Holdings, gave a written undertaking to the SEHK to (among other things) comply with the Securities (Disclosure of Interests) Ordinance, Cap 396. Siegfried Lee made a similar declaration.

There was evidence before us that Daniel Chan made returns under the Securities (Disclosure of Interests) Ordinance on Siegfried Lee's behalf of Lee's trading in Holdings shares.

Wong Fong Kim's account at J.A. Fu through which Daniel Chan conducted trades on Siegfried Lee's behalf was opened on 14 November 1993. An account in the name of Daniel Chan's brother-in-law Wong Yin Fai was opened at Tanrich in 1993. Daniel Chan told the SFC that he carried out trades in that account on Siegfried Lee's instructions. In making that admission he added:

"Although I myself also have an account at Lee Tat, I have not used it to trade for a long time because I knew that if I traded in the shares of my company, I would have to declare such trades."

Daniel Chan admitted to us that he had forged Wong Fong Kim's signature on account opening documentation for an account opened in Wong Fong Kim's name at Tanrich. He said he had done this on Siegfried Lee's instructions. Earlier Wong Fong Kim had told us that he knew nothing about an account in his name with Tanrich. Daniel Chan went on to say that he should have notified Mr. Wong about the account and believed that he had done so, but Wong Fong Kim must have had forgotten about it. Daniel

Chan put none of this to Wong Fong Kim in cross-examination.

In his cross-examination, Mr. Lunn suggested to Daniel Chan that he had agreed with Siegfried Lee to open and operate accounts in the names of nominees to enable Siegfried Lee to trade in Holdings shares that he owned beneficially without Lee having to report those trades, as the law required him to do. Daniel Chan denied that suggestion. We do not believe his denial.

The fact that he made returns under the Securities (Disclosure of Interests) Ordinance on Lee's behalf, coupled with his admission set out above, shows that he was well aware of both his and Lee's legal obligations. By effecting Lee's share trading through nominee accounts Daniel Chan must have known that Lee was deliberately evading them. That conclusion is re-enforced when one takes into account the circuitous way in which proceeds of sale were paid in order to avoid Siegfried Lee's connection with the shares and the proceeds of their sale.

Siegfried Lee's failure to give notice under the Securities (Disclosure of Interests) Ordinance of his trading in Holdings shares on 14 & 18 June 1996 through Li Man Yi, Wong Fong Kim and Wai Man Keung's accounts, as he was required to do, exposes him to liability for a criminal offence. It would appear that Daniel Chan knowingly assisted Lee to commit that offence. We are not a criminal court and it is not for us to make findings outside of our jurisdiction. Indeed, as we said in Chapter 3, evidence given before us cannot be used in a criminal trial. Nevertheless there is *prima facie* evidence that Daniel Chan conspired with Siegfried Lee to breach the provisions of the Securities (Disclosure of Interests) Ordinance.

We set out the parameters of the section 10(4) defence in Chapter 3. A previous Inquiry has held that the defence is only available to an agent who deals on an execution only basis, neither selecting nor advising on the selection of the securities to which the transaction relates. Although it is true that Daniel Chan neither advised nor selected the securities involved, his assistance to Siegfried Lee in avoiding compliance with his duty of notification under the Securities (Disclosure of Interests) Ordinance went far beyond that of a mere agent doing no more than executing trades ordered by his principal and is conduct out-with the parameters of section 10(4).

We are satisfied that Daniel Chan, a person connected with Holdings and in knowing possession of relevant information in relation to Holdings, engaged in insider dealing

when he, as party to a joint enterprise with Siegfried Lee, dealt in Holdings shares:

- by counselling or procuring Li Man Yi to sell the 1.4 million Holdings shares in which Siegfried Lee had the beneficial interest held in her name with Tanrich on 14 June 1996, knowing or having reasonable cause to believe that she would sell them;
- by selling 6.36 million and 2.66 million Holdings shares in which Siegfried Lee had the beneficial interest held in Wong Fong Kim's name with J.A. Fu on 14 & 18 June 1996; and
- by selling 6.52 million Holdings shares in which Siegfried Lee had the beneficial interest held in Wai Man Keung's name with J.A. Fu on 18 June 1996.

Chapter 11

In this chapter we deal with the sale of the 80 million Holdings shares in Mrs. Lee's account at CEF Brokerage on 2 & 8 July 1996. This is the second of the five areas of inquiry that we identified in Chapter 1.

Opening of the account

David Wong, the executive director of CEF Brokerage whose evidence we quoted in chapter 9, told us that on 27 June 1996 Siegfried Lee opened a margin account with CEF Brokerage with a limit of \$25 million. On 28 June 1996, 40 million Holdings shares were deposited into that account and remained there until at least June 1996. Shares were also purchased in that account.

On 2 July 1996 an account was opened in Mrs. Lee's name with CEF Brokerage and on the same day she deposited 80 million Holdings shares into it.

David Wong said it was Siegfried Lee who raised the question of the disposal of the 80 million Holdings shares:

"...Mr Lee who initially contacted us and asked us whether we would have clients who might have an interest in taking up 80 million existing shares. The initial conversation, I do not recall whether he specifically told us the seller was his wife or it was actually him, but he was the person that I spoke to initially."

He said that he sounded out the market and suggested to Siegfried Lee that shares be sold in two equal tranches of 40 million. Siegfried Lee agreed and they reached an agreement that the price be \$1.30 per share, which was at a discount to the market price. David Wong asked Siegfried Lee why he wanted to sell the shares and Siegfried Lee told him that he would use the proceeds to channel back to Siu Fung.

Sale of the 80 million Holdings shares

At 15:32 hours on 2 July 1996, 40 million Holdings shares were sold in Mrs. Lee's CEF Brokerage account at \$1.30 per share. The then market price was \$1.43. CEF Brokerage paid Mrs. Lee the net proceeds of sale, \$51,785,240, by cheque dated 4 July 1996.

On 8 July 1996 the second tranche of 40 million shares was sold and the net proceeds, in the same amount (\$51,785,240), were paid to Mrs. Lee by cheque dated 10 July 1996.

Use of the proceeds of sale

Mrs. Lee paid the total net proceeds of sale over to Siegfried Lee by two cheques, each for \$51,785,240, dated 4 & 10 July 1996 respectively. These are the dates the proceeds of sale, in identical amounts, were credited to her bank account.

Following the credit to his bank account on 4 July 1996 of the first sum of \$51,785,240 Siegfried Lee drew a cheque dated 4 July 1996 for \$15 million in favour of Ng Woon Yee, who is Daniel Chan's mother. On 10 July 1996, which is the day the second amount of \$51,785,240 was credited to his account, Siegfried Lee drew a cheque in favour of Daniel Chan for \$10 million and one in favour of Ocean Glory Limited for \$4 million.

On 4 July 1996, Siegfried Lee drew a cheque for \$11 million in favour of H&D (Asia). On 5 July 1996 he drew a cheque for \$21 million, also in favour of H&D (Asia). On 10 July 1996 he drew a cheque for \$8 million in favour of NHD Systems.

Mrs. Lee's evidence

In her statement Mrs. Lee said that, save for a short time while Siegfried Lee was building his business when she worked for him as an office assistant, she has no working experience. She was a housewife and mother. She also said that in the 1990s she joined with other housewives who were engaged in property speculation.

She seldom visited the SFH Group's offices at Concordia Plaza and had no involvement with the business of the company. She had, however, visited New York with Siegfried Lee in May 1996 and was aware that the purpose of his visit was to discuss listing matters.

She said of her husband's money:

"The actual situation at the time is my money is mine and his money, the best, his money is also mine."

She came by the 80 million Holdings shares when that company was listed. In her statement she describes her anticipation of the money she would make when she sold those shares. She wanted to use the money to buy a big and luxurious house to show the family's wealth. The house at 72 Deep Water Bay Road, Hong Kong Island met the bill. She found it herself. It had been bought in 1995 for \$280 million in Siegfried Lee's sole name and not jointly with herself. Of that she said:

"... I think I said this, I said to him: "Why are you so soon signing the agreement in your own name? I think it should be half and half so I would have a share in that property as well, I will pay."

Q. What was his reply?

A. He said: "Of course it is half and half."

It would appear that the Lees never lived in this house.

Siegfried Lee mortgaged the house to the HSBC in September 1995 to secure a loan of around \$100 million. In March 1996 when the HSBC loan of US\$25 million to H&D to acquire Netzsch was obtained it was, among other things, supported not only by Siegfried Lee's personal guarantee for HK\$200 million but by the residual value of the 'all monies' legal charge over the house.

Mrs. Lee had been anxious to sell her Holdings shares from the time they were allotted, but had been prevented from so doing by Peter Lee, Holdings' former CFO, and Siegfried Lee.

In her evidence she said that she sold the 80 million Holdings shares held in her name as a result of Siegfried Lee telling her that she could now do so. He stipulated the price and quantity to be sold - 80 million at \$1.30 per share.

Of price and quantity she said:

"A. At that time I did not think of the price, in fact, when I was told that somebody was willing to buy, I was already very, very happy because that would mean that I would have money in hand."

Q. Secondly, did you ask Siegfried why only 80 million shares and not your entire shareholding?

A. I cannot recall whether I asked that question or not. I only remember that I was very, very happy somebody was willing to buy."

Of her immediate agreement to Siegfried Lee's sale conditions she said in her statement:

"All along, my thinking was that as my shares were worth over 100 million, I better have them sold and applied the proceeds to discharge the mortgage so that we could really say we owned the House. As I mention before, it was always my thought that we were so rich and we should not borrow money from bank."

In cross-examination Mr. Lunn, questioned her on her knowledge of the 13/14 June 1996 conference call between Siegfried Lee, Philip Erdoes and Stephen Unfried and Christopher Morin:

"Q. This (the phone call) was in the early hours of the morning. The listing for which he had gone all the way to New York was now off; did he not tell you about this?

A. That may be a big deal, it may be a very important matter for him, but to me, I do not think so because all I care about the listing is when it is listed I would have more shares, that means I would have more money. To me, it was not exactly that important. Also, if you are talking about the telephone, he has 30-odd factories in China and there are many factories in Germany and he is a workaholic and people working in China, they got up at 6 o'clock and 6:00 a.m. in the morning and also the time in Germany and America, the other side of our time, so he was talking all day on the phone ever since very early in the morning. But I have to take care of my household and I have to take care of my children."

When Mr. Lunn asked her if Siegfried Lee had ever discussed the listing's postponement with her, she said:

"A. I cannot recall. Also, he is not a person who would sit down with me and tell me something happened in the company, he would not do that to me."

Siegfried Lee's evidence

Siegfried Lee confirmed in evidence Mrs. Lee's assertion that she had expressed her desire to sell her Holdings shares from the time the company was listed in 1993 and that Peter Lee and he had persuaded her not to.

He claimed that David Wong had requested that he sell Holdings shares. When reminded of David Wong's evidence that it was he who had raised the issue, Siegfried Lee was adamant that David Wong was wrong. He said of that

"A. I only remember very clearly that Mr Wong told me that in order for them to support us, he needed a substantial lot size of shares and it had to be at an attractive price.

Q. How long before 2nd July did David Wong say such a thing to you?

A. I really cannot remember clearly.

Q. Months, days, weeks?

A. All together about 10 days.

.....

All I knew was that the buyer was Mr Wong's company. We never discussed reselling the shares and that is what Mr. Wong told me, that in order to provide us with support he needed a substantial lot of shares."

He accepted that he had agreed with Mrs. Lee to use the proceeds to pay off the HSBC mortgage on 72 Deep Water Bay Road and that he did not do so once he received the proceeds of sale.

As to their personal relationship, Siegfried Lee claimed that he was a male chauvinist and that he did not discuss his problems with his wife. He said that his wife:

"... did not have business acumen and she was responsible for the caring of the two children, that is why, good or bad I did not tell her."

He accepted that the 10 million Holdings shares he had given to Lisa Lam in the autumn of 1995 were shares registered in Mrs. Lee's name and that he 'borrowed' them to make that gift. He denied Mr. Lunn's suggestion that the shares were treated as the family's communal assets.

Daniel Chan

Daniel Chan told us that after the SFH Group moved to Concordia Plaza Mrs. Lee seldom came to the offices. He had rarely witnessed Siegfried Lee and Mrs. Lee discussing business. He agreed with the suggestion that it did not appear to him that she was well versed with the SFH Group's business. He also agreed that he had helped her in her property speculations.

Before us Daniel Chan accepted that the payment of \$15 million to his mother, Ng Woon, the payment of \$10 million to himself and the payment of \$4 million to Ocean Glory Ltd were all for the exclusive benefit of Siegfried Lee and the proceeds had been squirreled away off-shore for his benefit. These matters are outwith our area of inquiry.

Ada Lee

Ada Lee, Lee Siu Fung's secretary and no relation to him, told us that Mrs. Lee seldom came to the office. She agreed that Mrs. Lee's role was that of Siegfried Lee's wife and that she was not involved in the business. Ada Lee told us that she had witnessed the account opening documentation for CEF Brokerage account in Mrs. Lee's name. She had filled in the details on the forms on Siegfried Lee's instructions and had then taken them downstairs for Mrs. Lee to collect as she drove past the office.

Conclusions**Mrs. Lee**

It is Mrs. Lee's claim that she was duped by her husband and tricked into selling her shares in the belief that he would use the proceeds to repay the mortgage on 72 Deep Water Bay Road. There is no direct evidence that counters that claim, or confirms that she knew about the listing's failure.

We were invited to have regard to the following pieces of circumstantial evidence and conclude that Siegfried Lee had told Mrs. Lee about the listings' failure and the resulting funding problems and that she was aware that the purpose of selling the shares was not to repay the mortgage, but to channel the proceeds of sale to SFH Group companies, or even move some of it offshore.

The 13/14 June 1996 conference call in which Stephen Unfried and Christopher Morin informed Siegfried Lee that CSFB would not underwrite the listing was

received by Siegfried Lee at the Lees' matrimonial home in Hong Lok Yuen and was disseminated very quickly to others within Siegfried Lee's immediate circle of supporters. Even on his own version of events, Daniel Chan knew about it sometime on 14 June 1996, as did Benjamin Li and Albert Chan. Eddie Lui thought he knew about it on 15 June 1996. Even Amy Chan knew about it on her return from holiday.

Although he was very coy about what passed between them when they met, Daniel Chan said that on the morning of 14 June 1996 at around 8 a.m., Siegfried Lee had summoned him to Lee's home at Hong Lok Yuen before he went to Concordia Plaza. Daniel Chan also said that such a summons was unusual. Daniel Chan accepted that in the past he had assisted Mrs. Lee in her personal business ventures in real property and share speculation.

In the days following 14 June 1996 there were urgent meetings with HSBC between various parties from Holdings including Benjamin Li, Daniel Chan, Eddie Lui and Albert Lee in various attempts to borrow money from the bank and arrange the rollover of the equipment loan repayment due on 28 June 1996.

Neither were Benjamin Li, Daniel Chan, Eddie Lui and Albert Lee the only ones to be informed of the listing's failure. By 25 June 1996 the representatives of Prudential, HPEM and Search (three of the Concept Investors) knew about it. At their meeting that day they were aware, at least, of the fact of the listing's postponement for 6-9 months and the need to find other funding to meet Holding's liabilities in NHD and Concept.

On 2 July 1996 the representatives of Prudential, HPEM and Search met Siegfried Lee and Benjamin Li to discuss the problems arising from the listing's failure.

Given that so many persons, including the representatives of the substantial shareholders in Concept, were told about the listing's failure why wasn't Mrs. Lee?

The fact cannot be escaped that Siegfried Lee had parlayed almost all of his available personal assets in supporting Netzsch's acquisition. The listing was the Golden Goose that would pay for his gamble. If successful it would provide funding for NHD and Concept, repay Netzsch's acquisition costs and return to him the personal assets he had pledged to the HSBC to secure the loans he needed to make the acquisition. The listing's failure was a devastating blow to his scheme. It brought

in its wake severe financial problems that he had not accounted for. Surely he would have shared that information with his wife, who held a considerable portfolio of Holdings shares?

We were also invited to consider the fact that David Wong told us that Siegfried Lee had told him that he (Lee) intended to channel the proceeds of sale back Holdings. Siegfried Lee arranged for Mrs. Lee to deliver both the account opening forms and share scrip to David Wong. Would he have done that and taken the risk that David Wong might raise the question of the proceeds intended use, if he had lied to Mrs. Lee about that intended use?

Conclusions

Mrs. Lee

We have to say that we were not impressed with Mrs. Lee's evidence. We find it strange, given that she had held her 80 million Holdings shares since the autumn of 1993, that her wish to see the Deep Water Bay Road house free of mortgage came at the very time her husband and his companies were under severe financial pressure. We are also aware that there appears to be an inconsistency in her claims. On the one hand she spoke of wanting to gain the proceeds of sale for herself, yet on the other hand expressed concern to see that the mortgage was redeemed. This would not have brought her any immediate financial gain, only the rather bourgeois satisfaction of seeing the family unencumbered by debt.

The circumstantial evidence against Mrs. Lee is certainly very strong, but we do not believe that the only reasonable inference which can be drawn from it is that she was aware of the listing's failure and the funding problems that it caused, both of which pieces of information were relevant information, when she sold her 80 million Holdings shares in two lots of 40 million on 2 & 8 July 1996. Accordingly we have decided that it would be inappropriate and unjustified to make a finding of insider dealing against her.

Siegfried Lee

In discussing, in Chapter 10, Siegfried Lee's complicity in the sale of the Holdings shares held in Li Man Yi, Wong Fong Kim and Wai Man Keung's names on 14 & 18 June 1996 we have already found that he knew of the listing's failure and the consequential acute funding problem or cash crisis it caused in the SFH Group of Companies, including Holdings.

We are satisfied that Siegfried Lee engaged in insider dealing when he, a person connected with Holdings and in knowing possession of relevant information in relation to Holdings, counselled or procured Mrs. Lee to sell the 80 million Holdings shares registered in her name on 2 and 8 July 1996, knowing or having reasonable grounds to believe she would sell them.

Chapter 12

In the following five chapters we deal with:

- Lisa Lam's sale through Cazenove of 200,000 Holdings shares on 2 July 1996; 2 million Holdings' shares on 26 July 1996 and 3.8 million Holdings shares on 29 July 1996, and
- Mordale's sale between 2 August to 5 September 1996 through Jardine Fleming of 43,142,000 Holdings shares.

These are the third and fourth areas of inquiry that we identified in Chapter 1.

Lisa Lam's sales

We deal first with the background behind Lisa Lam's sales.

Lisa Lam - biography

Lisa Lam is a graduate of Hong Kong University. She qualified as a Chartered Financial Analyst in 1992. She joined Concept as Deputy CEO in October 1995 and became one of its directors in February 1996. For the five years prior to that, she had been employed by PAMA as a financial analyst, making direct investments, and as a Vice-President with Shaw Investments, where she was responsible for direct investments in China. She is William Lam's wife.

William Lam - biography

William Lam is a graduate of Manchester University, UK and a post-graduate MBA of the University of Wales Institute of Science & Technology, UK. He trained as a Chartered Accountant. He joined Search in September 1993, before that having been employed by both PAMA and Shaw Investments. He was the Senior Vice-President heading Search's Direct Investment Division both at the time of the sales of Holdings' shares in the account of his wife Lisa Lam in July 1996 and at the time Mordale Profits sold its holding of 43 million Holdings' shares in August and early September 1996. He became a director of Concept in 1994. Henry Tai replaced him as director on 2 May 1996.

Lisa Lam - share acquisition

Siegfried Lee gave Lisa Lam 10 million Holdings shares in August 1995 as an incentive for her to come and work for him.

Lisa Lam - share disposal

In April 1996, on William Lam's instructions, an account in Lisa Lam's name was opened with Cazenove. On 22 April 1996 certificates for 10 million Holdings shares were deposited with Cazenove. Lisa Lam gave oral instructions permitting William Lam to operate her account. He placed all orders on the account.

Between 7 May 1996 and 10 June 1996, which is outside the period of time we are concerned with in the Inquiry, 3,948,000 Holdings shares were sold, realising \$6,492,009.

On 2 July 1996 200,000 Holdings shares were sold. The net proceeds were deposited into Lisa Lam's HSBC account on 4 July 1996.

On 26 July 1996 2 million Holdings shares were sold. The net proceeds were deposited into the same account on 30 July 1996.

On 29 July 1996, 3.8 million Holdings shares, the balance of Lisa Lam's 10 million shares, were sold; the net proceeds were deposited into Lisa Lam's HSBC account on 31 July 1996. In total she received \$7,584,983 from the sale of those shares in the period 2 July 1996 to 26 July 1996.

William and Lisa Lam's joint dealing in those shares on the three dates in question has not been challenged.

Cazenove's records show that the sale of the 2 million shares on 26 July 1996 began at 14:48hrs at \$1.29 continued at \$1.28 and ended at \$1.27. Chan Kai Wah, of Cazenove, said that William Lam gave him no instructions as to the price limit. William Lam agreed that he gave instructions by telephone to Cazenove to effect that sale. His mobile phone records show that a call was made from Singapore to Cazenove in Hong Kong immediately before the sale of the shares started.

William Lam further said that he had instructed Cazenove to sell the remaining Holdings shares on the morning of 29 July 1996. Cazenove's records show that their sale started at 10.31 hrs and continued until 16:54 hrs. The price at which they were sold started at \$1.28 and ended at \$1.22. Chan Kai Wah said William Lam gave him no instructions as to price limit.

Lisa Lam told us that in the two telephone conversations she had with William Lam in Australia in the night of 26 July 1996 it is likely that she reminded him to sell the shares as completion of their purchase of Flat B, 10/F Bowen Place, 11A Bowen Road, Hong Kong was due to take place on 30 July 1996.

Mordale's sales

Mordale is subsidiary of Search. At the time we are concerned with the relevant senior management of Search consisted of four men: Robert Miller, Nicholas Prior, William Lam and Henry Tai.

Robert Miller - biography

Robert Miller is a graduate of Cornell University, USA, holding a degree in Hospitality Management. He first came to Hong Kong in the late 1950's and, with others, founded the Duty Free Shoppers Group in the early 1960s. He is a successful businessman who has become extremely wealthy. He established the Search group for the benefit of his family and himself as a private investment company in the early 1990s. He is its Chairman. In 1996, Nicholas Prior and he constituted the OC (Office of the Chairman).

Robert Miller told us that in 1994 to 1996 he was involved in approving various investments and divestments made by Search in Holdings and Concept. He denied a suggestion that he operated with a hands-on style of management, but accepted that he was kept in the 'information link' on a need to know basis. In late July and early August 1996 he was mainly in England, either in London, or in North Yorkshire supervising the fitting out of his shooting lodge at Gunnerside. For part of the time he resided at the King's Arms Hotel in Swaledale, North Yorkshire before moving in to the Lodge. The evidence before us was that while out of Hong Kong he was kept informed of both his business and social affairs by a very efficient personal assistant, Janice Chan, who sent him a large volume of faxes each day relating to his commercial business affairs, his private business affairs and his social affairs. His decision was required on many matters and he communicated these back to Hong Kong by return fax, noting in his personal manuscript diary the total number of pages contained in each fax transmission.

Nicholas Prior - biography

Nicholas Prior qualified as a chartered accountant in 1973. In his career he has been a management consultant and the financial director of an investment bank. In 1994 he was appointed the President and CIO of Search. Robert Miller and he constituted the OC at the top of a hierarchical pyramid of decision-making. The Direct Investment Division was one of 5 divisions within Search. William Lam was in charge of it and had the job-title of 'Senior Vice President'. Henry Tai was one of three Vice-Presidents and Vincent Kwan was one of three managers.

He told us that in 1996 his wife was critically ill and he was very preoccupied with caring for her and their children. She died in October 1996.

William Lam - biography

William Lam's biography is already given on page 155.

Henry Tai - biography

Henry Tai joined Search as a Vice-President of the Direct Investment Division on 1 March 1996. By then he had been a chartered accountant for 10 years and had 2 years' experience of investment banking with Prudential Asia UBS. He was appointed a director of Concept with effect from 2 May 1996.

He told us that in June 1996 he was put in charge of Search's investment in Holdings, which constituted about US\$30 million of the US\$100 million portfolio for which he was responsible. He said that he did not have the benefit of a lot of time to read up on the files and acquaint himself with the investments for which he was responsible. In fact he never did, because within two months of his joining Search he spent five weeks in Australia completing Search's investment in TV Shopping Networks and after that *"...things just piled up"*. He therefore depended on Vincent Kwan and William Lam's knowledge to bring himself up to speed and deal with the issues. He obtained information he needed informally by just asking them for it.

William Lam told us that Henry Tai and he worked as a team, sharing information with one another.

Mordale's earlier purchase & sale of Holdings shares

On 1 June 1995, Search purchased US\$10 million worth of Holdings shares from Siegfried Lee.

In September 1995, Search invested a further US\$10 million in a convertible note issued by Holdings.

By 26 January 1996 Search had sold off its portfolio of Holdings shares. It realised a net profit of US\$ 3.09 million on their sale, which represented a gross internal rate of return (IRR) of 101.4%.

On 30 January 1996 William Lam sent a memo reporting on the completion of the sale to Robert Miller and Nicholas Prior. Nicholas Prior was then in Hong Kong and Robert Miller was in London. Nicholas Prior faxed the note to him there and endorsed on it the message:

"Not bad, but time consuming and occasionally quite hairy! Most of the profit is in last year, but we are now 100% out of the stock. We still have the PRC company (SF Concepts) and the convertible bond, which I think is sufficient exposure for this company."

Robert Miller faxed back on the same day, commenting that it was a "Good result".

Mordale - share acquisition

An internal memo of 6 May 1996, written by Henry Tai and Vincent Kwan, proposed that Search purchase up to US\$10 million in value of Holdings shares. Robert Miller initialed this and Henry Tai made a note on it recording Nicholas Prior's agreement.

The proposal envisaged three scenarios, two in which a listing of NHD occurred and one in which it did not. If it did not, the risk factor was described as being

"If an IPO does not occur now, we believe that SFH management will continue to seek an IPO for NHD in the near future, say in 6 months' time. In any event, we expect the acquisition of Netzch will increase SFH's earnings potential."

And the investment strategy was said to be:

"If listing does not occur in June, we may have to hold this investment for six to twelve months."

A further memo of 13 May 1996, again written by Henry Tai and Vincent Kwan and initialed by both Nicholas Prior and Robert Miller, approved the purchase of Holdings' shares at a higher price than that authorized in the 6 May memo. Nicholas Prior wrote a note on this memo for Robert Miller's attention, in which he said:

"This is a bet on the IPO of NHD to be completed soon on NASDAQ...Our investment strategy is to take advantage of the SFH's potential price appreciation after the listing of NHD. We plan to divest this investment within three months after listing of NHD, say at about HK\$1.80 - \$2.20/share."

Vincent Kwan told us that he thought the idea of purchasing Holdings shares, including the possibility of retaining them for 6 to 12 months if the listing did not happen, was developed within the team.

Robert Miller told us that he dealt with the memo of 6 May 1996 while he was in London. He said he would have accepted Nicholas Prior's view that the investment was a bet on NHD being listed soon. He had no recollection of having spoken to any one in Search about Holdings in May or June 1996, or of how he learned of the postponement of the listing. He had no recollection of having spoken to Nicholas Prior about the postponement of the listing at any time earlier than 31 July 1996.

In May 1996, William Lam opened an account with Jardine Fleming on Search's behalf in the name of Mordale Profits. Starting on 8 May and ending on 12 June 1996, Holdings shares were bought and sold in this account. By 12 June 1996 the account held 43.142 million shares.

Mordale - share disposal

On 2 August 1996 Mordale Profits started selling the Holdings shares it held in the Jardine Fleming account. The sales continued on every trading day until 5 September 1996; by then all the 43.142 million shares had been sold.

Steven So, of Jardine Fleming, said that he received the instructions to sell on 2 August 1996 either from William Lam or Henry Tai. In answer to questions from the SFC he said of the order to sell:

"He told me to sell all the shares for him but I told him it was not possible in one day."

Thereafter he was in daily contact with either William Lam or Henry Tai, saying:

"A. I would tell them of the market situation, so to estimate how much shares could be sold that day. If the market situation is better, then it would be able to sell more shares. If the market situation is not so good, then sell less shares. So that would be the main thing I would tell them."

Stephen So confirmed in evidence his answer to the SFC that Search was in no hurry to sell.

Mordale's dealing in those shares in the period 2 August 1996 to 5 September 1996 has not been challenged.

Mordale Profit's Jardine Fleming account was closed on 18 September 1996. In total Mordale received \$53,320,553.

Chapter 13

Having dealt with the background behind Lisa Lam and Mordale's share sales in chapter 12, in this chapter we summarise the evidence of what was known by Lisa Lam, William Lam, Henry Tai, Nicholas Prior, and Robert Miller as well as representatives of the other Concept investors in the period from the beginning of November 1995 to 5 August 1996.

Concept

As we said in chapter 2, Concept was set up in 1994 to act as the holding company for the SFH Group's Mainland ceramics joint ventures. Search was one of the original investors (the Concept investors) who between them purchased 35% of its issued share capital. Search invested US\$10 million in Concept. The investment agreement gave the Concept investors an option to convert the Concept shares into Holdings shares at a 10% discount on, or after, 4 December 1997. Search was one of the Concept investors; the others were Citicorp, HPEM, PAMA, Peregrine and Sun Hung Kai.

A rights issue

In November & December 1995 Concept offered its existing shareholders the opportunity to take up, pro rata their existing shareholding, a new issue of US\$15 million Concept shares. Only Holdings took up the offer.

Concept's yearly projection for 1996 indicated a funds shortfall of US\$46.9 million.

At a meeting of 29 December 1995, Concept's directors approved a change in the debt equity ratio, permitting Concept to make further bank borrowings. They noted that Concept was undercapitalized and agreed that any borrowing would only be a short term financing strategy, and that in the long run, Concept should raise additional equity to alleviate the interest burden.

Both William and Lisa Lam were at that meeting.

10 May 1996 - Concept's directors meet

Concept's directors held a meeting on 10 May 1996. On 9 May, Lisa Lam sent out the papers for the meeting to the directors. They included copies of the 1996 first quarter results, the 1995 unaudited management accounts and extracts from the 1995 preliminary draft audited accounts.

The income statement for the first quarter of 1996 described the combined turnover of the joint ventures at half of that budgeted and the losses as being around four times as great. The draft accounts showed Concept's losses for 1995 to be in the region of US\$70 million.

Henry Tai told us that he had written on Search's copy of the covering letter: *"What is the cashflow situation?"* and that Vincent Kwan had replied by writing on the same letter *'negative cashflow, negative gross margin'*.

As we said in Chapter 7, Lisa Lam attended the directors meeting. She told us that she had provided the information found in paragraph 8 of Raymond Leung of HPEM's note of that meeting, reading:

"The management commented that Concept will be unable to fund these requirements out of its own cashflow and the funding will come from Holdings following the IPO of NHD."

Lisa Lam said that when Albert Lee was providing Cliff Cheung of PAMA with information about the servicing of the Beijing Sanitary Ware loan, she butted in and said:

"You know it is Holdings' intention to put in money or capitalise the loans. Terms and conditions will have to be discussed and Holdings' ability to put in more money will largely be dependent on the NHD listing."

She told us that she *"believed"* that Siegfried Lee had asked her to relay that information to the directors at the meeting.

Henry Tai is recorded in Raymond Leung's note as being at the meeting; he accepted that he was. Henry Tai made no notes of the meeting - in fact he made no notes of any Concept Directors' meetings that he attended. He told us that he *'believed'* he had not read the accompanying documents before he attended the meeting. He had no recollection of the non-executive directors expressing concern at the meeting about the future funding requirements of Concept and its joint ventures (estimated at US\$50 million), nor of Lisa Lam asserting that Concept would be unable to fund those requirements out of its non-existent cashflow and that

funding would be coming from Holdings following NHD's listing, as is recorded in the Raymond Leung's notes. He told us that he did not know the financial situation of the company at that stage.

Although William Lam is described in Raymond Leung's note as being present at the meeting, he told us that he believed he was not. He said that no one had told him of the concerns the non-executive directors expressed at the meeting about Concept's future funding requirements, or that the aggregate funding required was around US\$50 million, or that Concept's management had asserted that funding would come from Holdings following NHD's listing, or that Concept's management had agreed to provide revised projections within four weeks of the meeting.

Vincent Kwan is also described in the note as being at the meeting. He said that he had no reason to believe that paragraph 8 of Raymond Leung's note was untrue.

There is no record of Nicholas Prior attending this meeting.

25 May 1996 - the Concept investors meet

The Concept investors met between themselves on 25 May 1996. Adrian Lam of Citicorp's note of that meeting records Henry Tai as being present, together with Vincent Kwan, representing Search. The same note states that the purpose of the meeting was to discuss the early conversion of Concept shares into Holdings share should Concept not be listed by December 1997. The note contains this reference to NHD's listing:

"In view of the importance of NHD's listing on our proposed early conversion, we must keep track of its latest development."

Henry Tai told us that whilst he was aware in 'general terms' that the investors were talking about early conversion of Concept shares into Holdings shares, he had no recollection of the meeting.

There is no record of either William Lam or Nicholas Prior attending this meeting.

25 June 1996 - Prudential, HPEM & Search meet

Raymond Leung's note of the meeting of representatives of just three of the Concept investors (Prudential, HPEM & Search) on 25 June 1996 records William Lam as

being present. William Lam told us that he had no memory of attending it until Raymond Leung's note was produced. He said that neither any member of Concept's management, nor any of the other investors, had informed him of the postponement of the listing. However, as an entry in his diary for 26 June 1996 refers to Siegfried Lee against the time 11:30, he - by logical deduction not memory - believes it likely that he sought confirmation of the postponement from Siegfried Lee on 26 June 1996.

Although Raymond Leung records him as being present, Henry Tai told us he had no recollection of attending this meeting or of the matters discussed at it. He was, however, asked:

"Q. Whether or not you knew it from this meeting, did you come to know that there was a link between the postponement of the IPO and the need of the group to raise cash?"

A. I have no recollection of that. More importantly, Holdings itself is a listed company, so it could raise funds itself by share placement."

Whilst prepared to accept, on the basis of what is in the note that he knew on 25 June 1996 of the postponement of the NHD listing, he said:

"I think I would accept that I would know that the postponement of the listing - I would accept the postponement of the listing. But the specific time-frame of six to nine months, I am not sure."

Nicholas Prior was not at this meeting. He told us that no one had made him aware of the matters discussed at it.

The Concept paper

On 27 June 1996, Michael Tsang of HPEM drafted a document headed: *"A summary of indicative terms for a private placement of existing shares in NHD International Ltd"*. Over the following days this document was faxed to and fro, with amendments, between HPEM, PAMA and Search. On 9 July 1996 a copy was sent to Siegfried Lee, in William Lam's name, but under Henry Tai's signature. Copies were also sent to PAMA and HPEM.

The paper contained, among other things, the following statement:

"2. The spin off of NHD has been delayed. It is expected that NHD will be consolidated in the coming year and the spin off be effected then. SFH Group is now looking for alternative means to strengthen its capital base and to raise additional working capital in the amount of [US\$60M]."

It ended by identifying three pre-conditions,

"1. Provision of cashflow forecasts for SFH Group including Concept and the reconciliation of Concept's use of funds and indebtedness to date.

2. The strengthening of the management team of SFH and Concept including [the appointment of CFO/CEO to the satisfaction of the investors].

3. SF Lee will inject US\$30M into SFH Group."

William Lam told us that he did not *"...recall specifically"* if he had discussed this proposal with Siegfried Lee around 9 July 1996, but volunteered the guess that *"...either myself or my subordinates must have discussed it one way or the other."*

Despite the flurry of activity in late June and early July 1996, nothing more appears to have been done to further the ideas set out in the paper and no reference is made to it in any of Search's Executive Committee agendas or minutes. In his evidence Henry Tai said that *"...it died at birth."* And William Lam said that he was not aware of Siegfried Lee responding to it.

The annotated cashflow

Also on 27 June 1996 Henry Tai sent a fax relating to Concept to William Lam, who was then at Search's Singapore office. The attachment to the fax included a one page *"Cashflow for 15/6/96 - 30/5/97"* with an apparent printout date of *"26/6/96"*; two pages addressing *"Due Diligence Areas to be covered"* and a one page *"List of Potential Investors"*. The cashflow is identical to Eddie Lui's cashflow forecast, save for the addition of seven footnotes and a different printout date.

As we noted in Chapter 7, Eddie Lui's cashflow forecast called for huge term loans and equity injections in the immediate 3-month period in order to meet Concept's liabilities.

On the document faxed to William Lam cash receipts from the NHD listing are shown as falling due in April 1997 and footnotes 5, 6 & 7 speak of the listing taking place in April 1997. In fact footnote 6 states categorically:

"(NHD) IPO will take place by April 1997 with an estimate earning of US\$40 million and 10 times P.E."

Notwithstanding this, Henry Tai claimed that it was not until April 1997, at least, that he had any understanding of a definite postponement of the listing. He didn't remember any one in Search's IND discussing the matter. And he had no recollection of what his reaction was when he learnt that the listing had been postponed.

28 June 1996 - IND executive committee meeting

Search's IND executive committee met on 28 June 1996; the minutes of the meeting, prepared by Kenneth Lee, show Henry Tai, William Lam and Nicholas Prior as being present, along with others.

The minutes record this about Search's investment in Holdings:

"5.2 Siu Fung Holdings: Proposed spin off of NHD will be delayed for 9 months. SF is seeking US\$30 million from pre IPO placement to be completed before end of July. SF is willing to buy back our US\$8 million investment in the shares of Siu Fung Holdings, providing a profit to us. In turn, the US\$8 million plus profit will be invested in the pre IPO placement of NHD."

Henry Tai said he had no recollection of the meeting, but he "...thought the meeting probably took place as recorded."

Nicholas Prior said he could not recall whether he had seen the minutes prior to Mr. Huggins showing them to him in the course of the Inquiry. He had no recollection of the meeting.

2 July 1996 - meeting Siegfried Lee, Benjamin Li and representatives of Search, PAMA & HPEM

Raymond Leung's note of the 2 July 1996 meeting between Siegfried Lee, Benjamin Li and representatives of Search, PAMA and HPEM (discussed in Chapter 7) records William Lam and Henry Tai as being Search's representatives. Henry Tai told us that he had no recollection of this meeting.

Holding's announcement in early July 1996

Nicholas Prior said that from the time Search purchased the Holdings shares they tracked their price and this was part of the information faxed each day to Robert Miller. Nicholas Prior accepted that he would have been aware of the newspaper articles about Holdings such as those of 3 June 1996 regarding Mrs. Lee's sale of the first tranche of her shares.

Robert Miller said that he was faxed the announcement appearing in the South China Morning Post on 10 July 1996 in which Holdings confirmed Mrs Lee's sale of 80 million Holdings shares, in two tranches of 40 million each, on 2 & 8 July 1996 at a price of \$1.30. He had no recollection of speaking to Nicholas Prior about these sales.

William Lam did not recall seeing the announcement, but recalled someone talking to him about it.

12 July 1996 - Concept directors' meeting

William Lam and Lisa Lam are both shown as having been present in the 3 separate notes of the 12 July 1996 Concept's directors' meeting made by Concept, HPEM and Citicorp. Henry Tai is not shown as being present, neither is Nicholas Prior.

As we said in Chapter 7, where we quote William Lam's words to Siegfried Lee, it is apparent from the transcript of the tape that the non-executive directors were trying vainly to obtain financial information from Concept's management.

William Lam agreed with a suggestion in cross-examination that what Concept's management was seeking at the meeting was repayment of monies owed to Holdings and NHD. This was not attractive to the investors, who thought that they had a better alternative in the Concept paper.

Lisa Lam, who was also present at the meeting, agreed the non-executive directors were frustrated about the reliability of the information supplied by Concept's management.

As we said in Chapter 7, Raymond Leung had to chase after the information promised. He thought he spoke to Lisa Lam about this, who said that once the information was ready it would be released to them.

Henry Tai said he did not attend the meeting - none of the notes records him as being present and his voice is not found on the tape - and he had no recollection of being briefed on it afterwards. The only thing Henry Tai could remember about that meeting was William Lam getting angry. Vincent Kwan had made the comment that he had never seen William Lam *"...being (so) angry about the way - the unprofessionalism of the management."* Henry Tai said he was aware that item 2 on the revised agenda - *"To note the current financial situation and its impact on NHD and SFH."* - was an issue, but he had no recollection of being aware that one of the documents accompanying the agenda spoke of Concept's debts to Holdings and NHD amounting to US\$78 million and US\$40 million respectively. He had no recollection of reading that paper.

Nicholas Prior said that, although he did not attend any of the series of meetings held by the Concept investors in July and early August 1996, he was aware that *"...perhaps not all, but certainly some"* meetings were taking place. The feedback he got from IND - he can't remember who at IND - was that whatever problems Concept and the SFH Group had were a cashflow problems, which were *"...eminently solvable."* Therefore there was no need for him focus any further on that unless something of a concrete nature came up. The representatives from Search who had attended the meetings gave him no note of the meetings. He said that his subordinates would only talk to him if something came out of the meetings that they thought was really important. They might have given him *"...an overview of what they thought the consequence would be, but they would not go into the detail of what was said or anything of that nature."*

The Concept presentation

Following on from the 12 July 1996 directors' meeting, Concept's management prepared a presentation, seeking to give in it the information the Concept investors required.

On 24 July 1996, an internal letter was circulated to the executive directors of Concept, including Lisa Lam, advising them that:

"...an informal meeting will be held on Monday, 29th July, 1996 at 2:30 p.m. to review the 1996 forecast and to discuss the outstanding matters arising from the last board meeting on 12th July, 1996. The relevant materials will be despatched to you no later than 27th July, 1996."

In chapter 7 we summarised what Albert Lee told us about how the presentation was put together in Holdings' head office. He said that Lisa Lam had been part of the reviewing team and had put a lot of work into the project.

For her part, however, Lisa Lam denied being involved in the preparation of the presentation. Albert Lee had not "...remembered correctly" when he said she had. She had not been "...allocated a part." The only input she had made was in the evening of 26 July 1996, when she attended a late-night meeting held in the head office's pantry to discuss the document. No one else could remember such a meeting in the pantry.

Although she remembered having "...quite a light" lunch with Y.T. Du on 24 July 1996 at which he "...shared some of his thoughts with me in general terms on the prospects of obtaining funding for Concept". She did not "...believe (it to be) the case" that the purpose of the lunch was to discuss the forthcoming meeting when the presentation would be put forward.

The distribution list attached to the copy of the presentation obtained from KPMG, Holdings' liquidators, bears handwritten notes describing the delivery of the report to Cliff Cheung of PAMA and to Search as: "(1) Handcarried by SF on 27/7/96."

William Lam's three telephone calls

In the early hours of 26 July 1996, William Lam, who was then out of Hong Kong in Australia, used his mobile phone to make a series of phone calls. The first was to his home, the second, which followed immediately on from the first was to Siegfried Lee's home. It lasted for 19.7 minutes. The third was another one to his home.

Siegfried Lee told us that he remembered the phone conversation he had with William Lam that night because William Lam had called him from Australia proposing the acquisition of a tele-commercial company selling shoes. William Lam sounded drunk. Siegfried Lee emphatically denied that the conversation concerned the information contained in the presentation that was to be the subject of the videoconference to be held between the two of them on the following day.

William Lam, too, said that the conversation was about Search's investment in TVSN and the possibility of Siegfried Lee advertising tableware on it. He too denied that the conversation was about information contained in the Presentation, neither did he discuss this with his wife, Lisa Lam, in the 2 phone conversations he admitted having with her that night.

A video conference

William Lam accepted that he took part in the 27 July videoconference with Siegfried Lee, Y.T. Du, Cliff Cheung and Vincent Kwan. In the course of it documents from the presentation were faxed to him in Singapore.

William Lam told us that the information in the package was:

"Not good enough to make an informed decision about an investment, and not good enough to give us enough confidence that what they ask for is exactly what they need. So they were asking for X number and they produced this package and said, that is the basis of why we need that X number and it presents a question mark in our mind."

Cliff Cheung of PAMA told the SFC when interviewed in June 1997 that it was either William Lam or Vincent Kwan who had asked him to take part in the videoconference. He believed he had the presentation with him at the time, but could not remember the consensus of opinion on its adequacy.

29 July 1996 - Concept directors' meeting

William Lam, although no longer a director of Concept, attended the inconclusive Concept directors meeting on 29 July 1996. We have dealt with that meeting and William Lam's contribution to the debate in Chapter 7.

Henry Tai was not at this meeting; he returned to Hong Kong in the evening of that day.

Neither was Nicholas Prior at this meeting; he flew to Australia later that evening. He told us that he was aware "*...in general terms*" and probably from William Lam, that there was going to be a meeting to discuss, among other things, the fund-raising effort. He agreed that he was aware that it was an important meeting.

30 July 1996 - the Concept investors meet with HSBC

In his statement to the Tribunal William Lam recalls that certain of the Concept investors met Raymond Or, the HSBC's General Manager and other officers of the bank, at the bank's headquarters at 1 Queen's Road Central on 30 July 1996 to discuss the SFH Group's funding needs. He said that although no detailed points of substance were discussed, the tone of the meeting was positive. The bank wanted investors to put in new equity but indicated "*...their full support in general terms.*"

In Search's electronic diary, against William Lam and Henry Tai's initials, there is a reference to a meeting at the HSBC on that date. William Lam, however, told us that he remembers Henry Tai was not at the meeting and Henry Tai has no recollection of attending.

For his part, Raymond Or remembered attending a meeting with some of the Concept investors at a later stage, when the company was already in default. He did not think he met them on 30 July 1996, if in fact there was a meeting on that day.

Search's 2nd Quarter 1996 Red Book

As part of its internal control procedures IND compiled an internal quarterly report known as the Red Book in which details of the standing of all of Search's investments appeared. As to how the Red Book was compiled, Henry Tai said that the manager and vice-president in charge of them wrote the bulk of the individual investment reviews. He edited them and passed them to William Lam who wrote the overview and submitted the book to the OC.

In the Red Book for the second quarter of 1996 Search's three investments in Holdings and Concept are addressed separately, each under the cover of the initials "HT/ VK".

Under "Siu Fung Ceramics Concept Co Ltd" it reported that:

"In order to strengthen SFC's management, the group will hire a new CEO from Goldman Sach to oversee the operation.

....

(G) Latest Development

The company is seeking an additional US\$30 million funding for working capital and pay for capital expenditure. SFC investors will meet with the company on 10 July 96 to review the situation. TND will make use of this opportunity to negotiate better terms for the existing deal."

Under "Siu Fung Ceramics Holdings Ltd - Shares" it reported that:

"(D) Divestment Strategy

The company's management informed us that NHD's IPO has been postponed. The underwriter CS Boston (sic) would like to see the actual performance of NHD in 1996 before taking the company public. We expect the acquisition of Netzch will increase SFH's earnings in 1996 and the IPO of NHD would probably take place in 1997. In view of the latest development, we plan to hold on to this investment until 1997."

Under "Siu Fung Ceramics Holdings Ltd - Notes" it reported that:

"(F) Latest Development of the Group

The proposed spin-off of "NHD" on NYSE has been postponed. We expect the spin-off of NHD will continue. We expect substantial increase in SFH share price when NHD is spin-off, and we will look for early conversion of the notes in SFH shares.

IND will closely monitor SFH's share price with a view to look for early conversion of the notes into SFH shares."

In the "Overview of IND's Portfolio" section against "Siu Fung" it reported that:

"The group is currently under "cash crunch" resulting from over-expansion and lack of financial control. We are working with the company to look for a solution to protect our investment."

Henry Tai said that he "...probably" would have reviewed it and "...presumably" read those reports before they were sent to William Lam. He accepted responsibility for what appears under his initials. He said he did not know where the information about the management of the company advising of the postponement of the listing came from. No one in management had told him of this. And of the statement "*In view of the latest development, we plan to hold on to this investment until 1997.*" He said that although he would have reviewed it, he did not really take any notice of it. It would have been neutral information to him. He said that the completed Red Book was not circulated to him.

William Lam accepted that he had written the Overview Section of the Red Book.

Nicholas Prior was quite certain that he did not see the Red Book until after he got back from Australia. It would not have been the first thing he would have looked at. Essentially, he used the Red Book towards the end of the year, mostly as a reference for writing up "*...the general year-end stuff, budgets, bonuses, salary reviews, the sort of round up we would give Mr. Miller on the performance of the company as a whole.*"

Robert Miller did not recall reading any of the specific references to Holdings and Concept in the Red Book, or even if it was sent to him at Gunnerside. In that connection, we note that the IND Executive Committee minutes of 31 July 1996 report William Lam as saying that "*...the Red Book will be sent out to-day*" and that a fax of the same date from Robert Miller's private office asked him whether he wished to receive the "White (not Red) Book" by fax or courier. A further private office fax of 2 August 1996 states "*...We have sent you to-day a box of courier package to Gunnerside Lodge*".

1 & 2 August 1996 - resumed meetings of Concept's directors

Raymond Leung's note of that meeting records that both William Lam and Henry Tai were present at both meetings of Concept Directors of 1 & 2 August 1996.

William Lam told us he was present at the 1 August meeting, but left after 15 minutes.

Henry Tai accepted that he was present at both meetings; Nicholas Prior was not, he was in Australia.

5 August 1996 meeting

Henry Tai, on Search's behalf, initialed the formal minutes of the meeting of 5 August at which Concept's directors - with the exception of Ringo Chui of Sun Hung Kai, who abstained from voting - resolved to accept the US\$30 million facility from the Hang Seng Bank. He also signed a minute recording the directors' understanding of Richard Butler's advice on the directors' personal liability in approving the acceptance of the facility.

There is no record of William Lam attending this meeting; Nicholas Prior was still in Australia.

Robert Miller's knowledge of the meetings

Robert Miller told us that he has no recollection of anyone at Search reporting to him information from the meetings of 10 May, 25 June, 2, 12 & 29 July and 1, 2 & 5 August 1996.

Chapter 14

In this chapter we summarize the evidence dealing with Search's decision to sell the Holding's shares held by Mordale and the reasons behind it.

The OC

Within Search there was a hierarchical structure by which investment and divestment decisions were made. Proposals were made by IND and approved by the OC, a duopoly consisting of Robert Miller and Nicholas Prior.

Nicholas Prior said this of the dual control system that operated within the OC:

"Mr. BARNETT: But did the system of the dual controls work really in the same way whether he (Robert Miller) was in Hong Kong or in England? In other words...-

A. It was under a lot of strain at the time.

Mr. BARNETT: What I mean is, when two approvals were required, they would be required whether you were both here or away?

A. Yes. They could be verbal...could I just - Mr. Miller was the centre of our universe. We had no internal audit or compliance or other department. Should there be any dispute, Mr. Miller was the only person that we had to convince."

31 July 1996 - IND executive committee meeting

Nicholas Prior, William Lam and Henry Tai are shown as being present at an IND executive committee meeting on 31 July 1996. Nicholas Prior told us that he took part in this meeting by telephone from Australia. His mobile phone records show a 57.8 minute long telephone in the afternoon of that day.

The minutes of the meeting record the following decisions as being taken:

"Divestment Approval

4.1 Siu Fung Holding: The rationale was outlined. NAP authorised IND to dispose of all the shares at not less than HK\$1.15 per share.

Monitoring

5.1 Siu Fung Concept: NAP and WCL agreed that any further investment into this company or the Group must be preceded by a clear and accurate quantification of all the problems of this group."

Nicholas Prior told us that the discussion about the disposal of Holdings' shares was very short and was along the lines that *"...they already knew I wanted to dispose of them and there was not much to discuss."*

As to what he was told about the Concept directors' meeting on 29 July 1996, he said this:

"...that the meeting had not achieved very much. I was aware that there was some acrimony in the meeting, but it did not seem to change IND's view that the funding needs within principally Concept - the view was that these were entirely solvable. Whether they told me they had actually been solved, which as I understand it they had, I do not actually remember."

Although William Lam told us that he could not remember having spoken to Nicholas Prior obtaining his approval to the sale of the shares, he must be mistaken in that assertion, for the minutes of the 31 July 1996 IND Executive Committee identify Nicholas Prior and he as, not only present at that meeting, but agreeing that:

"...any further investment into this company (Concept/Holdings?) or the Group must be preceded by a clear and accurate quantification of all the problems of this group."

31 July 1996 - the divestment memo

A great deal of time at the inquiry was taken up with a consideration of an internal memo of Search's; this document, which came to be known as *'the divestment memo'*, reads as follows (We have added paragraph numbering for ease of reference):

"To: OC

From: Henry Tai/William Lam

Subject: Siu Fung Ceramics Holdings Ltd (SFH)

Date: 31 July 1996

Background

1. IND has invested in 43M SFH shares at an average cost of HK\$1.45 per share. The total cost of investment is US\$8M. The rationale of the investment is to take advantage of the proposed spin off of NHD which should substantial enhance the value of SFH share price.
2. SFH share price went up to HK\$1.7 since our investment. On the announcement of the postponement of the NHD spin off the share price has since been steadily decreasing to the present level of HK\$1.25.

Status update

3. SFH has signed on a new CEO, YT Du, to manage its operations. Du had worked for Price Waterhouse in USA for 9 years, and was CEO of a US Corporation for several years before being recruited by Goldman Sachs 6 years ago. We have met with Du. Du appears to be a solid operator and is aware of the lack of depth of management in SFH.
4. Following the delay in the NHD spin off, SFH has informed shareholders of Concept on 29 July that SFH Group, including Concept, is in a cash crisis. SFH is still putting together a comprehensive cashflow plan. Based on preliminary information, it appears that SFH Group needs additional funding for 1996 and 1997 in the region of US\$170M. The amount of funding needs is enormous compared with its existing debt level of US\$228M.
5. We have been informed that a US\$10M loan from Dao Heng Bank is due for repayment today and that SFH is unlikely to meet this payment. Moreover, US\$16.7M accounts payable by Netzsch will also become payable next week. The failure by SFH and Netzsch to meet these payments may lead to the appointment of liquidator.
6. SFH is working hard to put together a rescue plan. They have approached Hong Kong Bank yesterday, which are supportive but is unwilling to put up the US\$10M facilities immediately without an overall plan which would include equity injection.

Assessment and Recommendation

7. *In view of the postponement of the NHD spin off and the short term funding needs noted above, IND recommend that we should dispose of our SFH shares. We will monitor the progress of the proposal spin off to take advantage of the resultant enhancement in SFH share price when it occurs. IND seek approval to sell SFH shares at an average price not less than HK\$1.15 per share. This is expected to give a loss of US\$1.67M.*
8. *We will continue to work with SFH management to come up a plan to protect our investment in Concept and SFH convertibles of US\$10M each.*

Approved by:

NAP (Yes/No)"

It was addressed to the OC. Henry Tai and William Lam have initialed below their names at the top of the memo. Nicholas Prior has initialed above his initials and below the words "*Approved by:*" at the foot of the memo and deleted the word "*No*" in the parenthesis. He also added the annotation "*O.K*" and wrote the date "*31/VII/96*" below his typed initials. The memo purports to be dated - and therefore *prima facie* written, sent and dealt with - on 31 July 1996; which, for reasons we deal with shortly, cannot be so.

It is a 2-page memo; we saw the original sheet of the first page, but only a photocopy of the 2nd page. The lack of an original 2nd page could not be accounted for. The 2nd page has provision for approval by Nicholas Prior only. All other internal memoranda of Search's of a similar nature addressed to the OC relating to investment proposals, or the modification of existing investments, that we saw had typed on them provision for both Robert Miller and Nicholas Prior's approval in a 'Yes/No' box. Nicholas Prior could not point us to any others that followed the same format in this respect as the divestment memo. He was asked and answered this in reply to Mr. Barnett's questions of him:

MR BARNETT: Apart from the July 31st divestment memo, are you aware of any other IND proposals for approval, either for an investment or divestment, which do not contain provision for the two signatures?

A. Contain provision?

MR BARNETT: i.e. your initials on the left, usually, and Mr. Miller's on the right - this is the only one?

A. From what I have seen recently, I think that is right, yes."

However, as we have not seen every memo of Search's addressed to the OC that there ever was, we cannot, of course, say that the divestment memo was unique in this respect.

William Lam and Henry Tai, the putative authors of the divestment memo were both rather coy about claiming responsibility for it and its contents. So much so, that we, at times, were left with the impression that somehow it had written itself by magic.

Henry Tai on the divestment memo

Henry Tai accepted that he was the author of the first 6 paragraphs. He said that the references to information given at the 29 July 1996 meeting came from either Vincent Kwan or William Lam, because he was not in Hong Kong at the time of the meeting; it is accepted that he was out of Hong Kong on that day. The references to the Siu Fung Group's additional funding needs being US\$170 million came from calculations he made from information found in the presentation. He could not recall from where he got the references to the US\$10 million Dao Heng Bank loan repayment, the US\$16.7 million accounts payable by Netsch and the HSBC's unwillingness to put up US\$10 in facilities. Neither could he recall who wrote paragraphs 7 & 8, but "...in his mind, it..." - by which we take him to mean the whole document - "...was a collective effort".

These answers, in part, appear strange. At NHD's request, the Dao Heng Bank had issued a stand-by letter of credit in favour of Bayerische Vereinsbank AG for a maximum of DM25 million; this expired on 15 October 1996. The Dao Heng Bank had also lent NHD US\$10 million by way of term loan that was repayable in one lump sum on 31 July 1996.

The annotated version of Eddie Lui's cashflow forecast that Henry Tai faxed to William Lam on 27 June 1996, refers to the Dao Heng Bank term loan - annotated in

Henry Tai's handwriting "*N's working capital*" - as being due for repayment in July 1996.

The US\$10 million Dao Heng Bank loan, but not the DM25 million letter of credit, is referred to in a Holding's repayment schedule that Henry Tai faxed to Raymond Leung of HPEM on 31 July 1996 and Y.T. Du at the meeting with the Concept Investors on 1 August 1996 had spoken of a \$10 million loan maturing "*yesterday*" (31 July 1996) which Concept had asked be extended for a week.

On a copy of that schedule that the SFC found in his room at Search's offices, Henry Tai had made manuscript annotations dated "*1/8/96*" referring to DM25 million and an apparent conversion rate of DEM to USD, which results in the USD equivalent of DM25 million being US\$16.7 million, beneath the column for October 1996. On another version of the schedule, also found in his room, are annotations in his handwriting referring to: "*DM25m guarantee*" and "*DM25m AP*". At the 1 August 1996 meeting, Y.T. Du had spoken of NHD being placed in "*bankruptcy*" within two weeks if money was not made available to it.

As we said earlier, there is good reason to believe that paragraphs 5 and 6 of the divestment memo reflect matter discussed at both the 1 & 2 August 1996 meetings at which Henry Tai was present throughout.

Henry Tai told us that he had no recollection either of having spoken to Robert Miller about the proposal to sell the shares set out in the divestment memo, or of the discussions and decision at the 31 July 1996 Executive Committee meeting.

William Lam on the divestment memo

For his part, William Lam told us that his "*...personal input*" in the divestment memo was in the Assessment and Recommendation section, paragraphs 7 & 8. By "*...personal input*" he meant "*...it can either be written by myself or (it) can be written by my colleagues and subject to my changes.*" Like Henry Tai, he did not know where the information in paragraph 6 about the HSBC's unwillingness to put up US\$10 in facilities came from.

William Lam had no recollection of having spoken to Robert Miller either at the time the divestment memo was written, or at any later time. It was, he said, very unlikely that he did. When cross-examined about mobile telephone records, which showed

that his telephone had been used on 2 August 1996 to make two telephone calls to the King's Arms Hotel and one to Gunnerside Lodge, he said he had no recollection of the calls. The records show that they were of two, three and one minute's duration respectively.

Nicholas Prior on the divestment memo

Nicholas Prior, the man who approved the recommendation in the divestment memo, was in Australia on 31 July. He did not return to Hong Kong until 14 August 1996 and signed the memo on his return, back-dating it to 31 July 1996.

When asked whether or not he was told on a date earlier than 14 August 1996 in terms that "...SFH has informed shareholders of Concept on 29 July that SFH Group, including Concept, is in a cash crisis" as is claimed in paragraph 4 of the divestment memo, he replied:

"I cannot swear definitively that they told me that. What I have said in my previous discussions with the SFC was that, having already made it quite clear to ND what my view was, really there was not an enormous need for a great deal of detail. But the tone of the meetings, insofar as I remember it and this is not that great - was that the problems had been solved."

He said he could not remember if he was given the other specific pieces of information set out in paragraphs 1 to 6 of the divestment memo on a date earlier than 14 August 1996, save that he did not believe he was given the information in paragraph 5 about the US\$10 million Dao Heng loan and the US\$16.7 million Netzsch accounts payable.

He was asked and answered this about the recommendation in paragraph 7 of the memo reading: *"In view of the postponement of the NHD spin-off and the short-term funding needs noted above, IND recommend that we should dispose of our SFH shares."*

"Q. Were you given that recommendation, twin-barrelled, as it were?"

A. Again, I have no recollection. What I remember of this conversation - and I remember that it was in a conference call format, which is in my SFC transcript somewhere - my memory of it was very much, "We have

finally come up with the recommendation you wanted and now we propose to sell the shares", and I said, "Right go ahead".

Q. But you cannot recall whether they gave you this half page of information?

A. It definitely was not Search's style to read out documents like that."

In his interview with the SFC in March 1998 when asked whether what he had been told over the telephone while in Australia was consistent with the contents of the divestment memo, he replied:

"I would say there was a difference of emphasis. I think that the memo was written in a -- and I have covered this in my previous testimony. There is -- when people are looking for an approval, they tend to 'over-egg the custard' to a certain extent. But, very broadly, I would say that it was as discussed."

Before us he said he could not remember if the information given in the phone call was "...broadly consistent" with the memo's contents.

Nicholas Prior told the SFC that Robert Miller had approved the divestment of the Holdings shares before their disposal. He believed but was "...not 100% sure" that Henry Tai or William Lam had contacted Robert Miller. He agreed that it was what he would have expected to happen.

Nicholas Prior was "...absolutely sure" that he did not speak to Robert Miller himself from Australia. He gave as his explanation for not doing so his difficult personal circumstances (his wife's illness), the time difference between Hong Kong and Australia and the difficulty of effecting contact with Robert Miller.

We find this last part of his explanation surprising; as we have said Janis Chan of Robert Miller's private office at Search, was in daily contact with him where ever he was in the world and on each day in July and August 1996 she faxed to him a large number of documents relating to his commercial business affairs, his private business affairs and his social affairs.

Robert Miller on the divestment memo

Robert Miller has given two accounts of this matter. The SFC interviewed him on 17 October 1997. Before then, on 14 October 1996, the SFC had executed a search warrant at Search's office and on 15 October 1996 they informed him by notice that he was a person under investigation. He was accompanied by a solicitor at that interview. He told us that at that interview he took the matter seriously and answered the questions truthfully, and to the best of his ability.

At the start of the interview he was informed of the SFC's general suspicions in these terms:

"...your staff and representatives would appear to have come into possession of information relating to the business prospects of SFH, namely, amongst other matters, that (i) a spin-off listing in America of one of its subsidiaries had been postponed and (ii) that the SFH Group was in a cash crisis. Acting upon this information, which was not generally known to the investing public, a decision was taken at the end of July 1996 to sell out the 43.142 million shares of SFH held at that time by Mordale Profits Limited. This decision is believed to have been taken with your approval. And, on the basis that when this information did become generally known, the SFH share price collapsed, Mordale Profits Limited was able to avoid a financial loss by its timely divestment."

Of the approval mechanism that operated in the OC, he told the SFC:

"Q. Could that be an and/or approval or both approving?"

A. Well, depending on who is - I travel extensively, and sometimes this is given verbally over the telephone, I am briefed, verbally over the telephone, and I give a you know yes, go-ahead, over the telephone.

Q. Could there ever be a situation where an investment was either - a commitment was entered into or a divestment was entered into without you being aware of it?"

A. No."

Of the information given to him whilst he was out of Hong Kong and in the absence of a copy of the divestment memo he told the SFC:

"A. They would read it on the telephone or I would talk with Mr. Prior and get a summary."

He said he had seen the divestment memo on his return to Hong Kong in November 1996, but added:

"...I probably would have a telephone conversation about the divesting of the shares. They wanted to sell the shares. I think Mr. Prior was away too. I think we were both away.

Q. Mr. Prior was away, yes.

A. Which was sort of unusual, so there was probably some phone conversations on this.

Q. Do you have any recollection of specifically who you spoke to on the phone?

A. It would probably be either to Henry or to William; I don't recall who.

Q. You don't recall?

A. No.

Q. When you got back and physically saw the memo, was there anything in the memo that struck you as being either a surprise or at odds with what you'd been told over the phone?

A. No."

Of what details in the divestment memo were relayed to him over the telephone, he said:

"Q. At the time that you had your telephone conversation as to the divestment, were you aware of the point brought out in the second line, that SFH Group is in a 'cash crisis'?

A. Was I aware of that before I got - - -

Q. During the conversation.

A. Well, they would have told me there was a cash crisis. I mean, there was some - I think it was the chairman's wife had been selling shares or something; didn't that happen in early July?"

....

Q. If I can take you back to paragraph 4, items there that seem to be raised up as reasons for selling are: firstly, the SFH Group is in cash

crisis, secondly, the NHD spin-off is delayed; and, right at the end, there is a need for US\$170 million additional funding.

A. It doesn't look good, does it?

Q. But you read this when you come back on 13th November-

A. No, they would have sort of discussed this or read it to me over the phone. I would have been fully briefed on this, you know, verbally."

The interviewer pointed out to him that the divestment memo referred to Holdings informing the shareholders of Concept on 29 July that the SFH Group - including Concept - were in a cash crisis. He denied having been told that that the information came from a shareholders' meeting.

He was asked:

"What I am saying is that when you had your telephone conversation, did you have reason to believe that what you were being told was generally available and widely publicised, or coming from a limited source, namely Concept?

A. No, it was generally available information. We were just simply acting quickly on it.

Q. Who did you assume it was generally available to?

A. Everybody.

Q. All investing public?

A. Yes. I had no reason to believe that any of this was privileged information. There's no way at all.

....

Q. So, if I have understood you correctly, are you saying that you were briefed as to the need to disinvest, and, whatever you were told, you had no reason to believe that that was anything other than was generally available to the wider investing public?

A. That's right."

In his evidence before us Robert Miller told us that he was at Gunnerside between 30 July and 2 August and 7 to 29 August 1996.

Mr. Huggins referred him to his explanation to the SFC of receiving a telephone call briefing him of the reasons for selling the shares, and he replied:

"A. I had no recollection of any conversation with anybody at Search at that time, but I was assuming that if a conversation had taken place, it would have followed along those lines, so I was hypothecating."

....

Could you in fact, at the time you had this interview, actually recall in your mind any conversation with anyone in which you gave your approval for this divestment?

A. No, I have no recollection whatsoever of any conversation with anyone at Search on that day."

....

"Q. In any event, at this period of time, I think you have already told us that you have no recollection at all of anyone having spoken to you on the telephone, or otherwise, when you were in Gunnerside at the end of July, about seeking your approval for a divestment; is that correct?

A. That is correct."

In cross-examination by Mr. Lunn, he was asked:

"Q. Given that there had been a search warrant executed at your premises, that you were told that you were a person under investigation, when you went to this interview - you realised this was a serious matter, did you not?

A. Yes.

Q. So if it be the case that you had no recollection of these events taking place, why did you not tell the interviewer that?

A. I think, suffice to say, Mr. Lunn, that my recollection now and my recollection at the time of the interview is that there was really not sufficient time to be fully prepared.

Q. Why not tell the interviewer that?

A. Perhaps because it is the first time I have ever been interviewed and I was not sure how the interview process would take place.

Q. Or did you say what you did say because you had been briefed about the divestment at the time of the making of the divestment?

A. Not that at all, no."

Robert Miller did, however, confirm his answer to the SFC that he had seen the divestment memo when he returned to Hong Kong on either 13 or 14 November 1996.

Search sells its Holding's shares

As we have already said, Mordale started selling the Holdings' shares it held on 2 August 1996 and the sales continued on every trading day until 5 September 1996.

2 August 1996 - fax from Henry Tai to Nicholas Prior

On 2 August 1996, Henry Tai sent a fax to Nicholas Prior in Australia reporting on the developments in the discussions between Concept's management and investors. In its relevant parts, it reads:

"Further to my memo to OC dated July 29, Concept had a meeting yesterday. Concept is arranging for a bank loan in the amount of US\$30M which requires board approval. In view of the temporary liquidity issues of Siu Fung, the Concept directors are taking legal advice from Richards Butler to ensure that the directors representing the Investors will not be liable to potential legal claims."

Henry Tai accepted that the reference to "...my memo to OC dated 29 July" was a mistaken reference to the divestment memo.

In the fax he went on to seek an indemnity from Search for all liabilities that he might incur by signing the proposed resolution. Nicholas Prior replied, endorsing on the fax his acceptance of the proposed resolution and agreeing to Search indemnifying Henry Tai.

5 August 1996 meeting

Henry Tai, on Search's behalf, initialed the formal minutes of the meeting of 5 August at which Concept's directors - with the exception of Ringo Chui of Sun Hung Kai, who abstained from voting - resolved to accept the US\$30 million facility from the Hang Seng Bank. He also signed a minute recording the directors' understanding of Richards Butler's advice on the directors' personal liability in approving the acceptance of the facility.

5 August 1996 - memo William Lam to OC

Towards the end of the inquiry, on day 111 (2 June 2003), we were shown a memo that William Lam had sent to the OC on 5 August 1996. We were told that it had been recovered from archived computer files taken from the hard drives of computers that Search had replaced.

The memo reviews IND's investment strategy and contains a list of those of Search's investments identified as candidates for divestment in the next 18 months. Search's investment both in Holding and Concept are on the list. They are specifically referred to in a footnote, which reads:

"Both SF Convertible and SF Concept shares have downside protections. SF Convertible has very strong debt features should the share price drop sharply. The minimum return for SF Convertible is a 12% IRR guaranteed plus principal repayment. While SF Concept can be exchanged into the listed company at cost, I have assumed a 20% loss in share price drop after conversion. The above assumes the short term problem being solved, which I believe is likely to happen. We continue to work closely with the Company to help it get out from its short term problem. The Company has recently arranged a US\$30 million bridge loan from Hang Seng Bank and another US\$30 million term loan from Dao Heng Bank which indicates strong banking support behind the Group."

William Lam was unable to recall whether or not he had sent this memo to the OC.

Neither Nicholas Prior nor Robert Miller were questioned about this memo. We note that it was written when Nicholas Prior was in Australia and Robert Miller was in England. It is not found among the faxes that Janis Chan sent to Robert Miller on a daily basis in August 1996.

7 August 1996 - fax from Henry Tai to Nicholas Prior

On 7 August 1996, Henry Tai sent another fax to Nicholas Prior in Australia, referring to his earlier fax of 2 August and reporting upon the Concept's directors' acceptance, at their meeting of 5 August 1996, of both the Hang Seng bridging loan and the term Dao Heng Bank syndicated. He enclosed with the fax copies of the formal minutes of the meeting and the advice from Richards Butler on the directors' personal liability in

passing the resolution. He again asked for an indemnity in respect of his actions in approving the loans. He went on to say:

"In addition to the 2 loans, I believe that further new funding would be required in the coming months. The new CEO, Y.T. Du, has already started to assess the financial and operating situation of SFH and Concept and will keep us informed of his progress.

In the meantime, SFH shares are being traded in the range of HK\$1.25 - 1.30 and we are disposing of our shareholdings in an orderly manner. We have already sold 12 million of our 43 million SFH shares at an average price of HK\$1.256. Assuming we can dispose of all our shares at HK\$1.25, our expected loss will be approximately US\$0.85M."

Nicholas Prior replied by way of an endorsement on the fax, asking Henry Tai to write a one-page summary for the OC. He told us this was because he wanted Robert Miller to have the information contained in the fax.

8 August 1996 - fax to OC from Henry Tai

The next day, 8 August 1996 Henry Tai wrote the one page summary Nicholas Prior had requested. It was addressed to the OC and began by referring to:

"..my memo of 31 July in which I noted SFH Group's liquidity problem, this is a short note to update the status."

It continued by replicating verbatim the information in the fax he had sent to Nicholas Prior on 7 August 1996.

Nicholas Prior said that, although when he was in Hong Kong he received copies of non-personal faxes sent to Robert Miller, they were not sent to him whilst he was in Australia in August 1996. He had no recollection of having received this memo.

Robert Miller said that he had received this memo; it had been faxed to him at Gunnerside. However he said he had no recollection of how he reacted to it, or of asking anyone why it was that the shares were being sold, or having been told - prior to his seeing the memo - that the shares were being sold, or that their sale was

because there was a cash crisis following the cancellation or postponement of the listing.

6 September 1996 - memo from Vincent Kwan to OC

On 6 September 1996, Vincent Kwan, Henry Tai's subordinate, wrote a memo to the OC reporting upon the completion of the sale of Search portfolio of Holdings' shares on 5 September 1996. It reported a net loss of US\$1.06 million on the portfolio's liquidation.

The memo passed upwards to the OC via Henry Tai, who initialed it. In fact Vincent Kwan told us that it was possible that its authorship was a joint venture between Henry Tai and himself.

In paragraph 3 of the memo there is the passage:

"...However in July 1996, SFH announced that the NHD's spin off plan was postponed and informed the shareholders of Concept that the Group is in a cash crisis, as a result of the delay listing. In view of these negative developments we disposed of this investment to cut loss."

Nicholas Prior initialed the memo to acknowledge that he had received it.

On behalf of Robert Miller, Mr. Huggins accepted that although Janis Chan had sent him a copy of this memo, however, when he came to give evidence before us he had no recollection of receiving it.

Delay in Search's sale of the Holdings' portfolio

Nicholas Prior, William Lam and Henry Tai all said, both in their evidence before us and in their answers to the SFC, that the only rationale for the sale of Search's portfolio of Holding's shares was the postponement of the listing. There was no other reason and the public knew of the postponement at the time of their sale. The evidence shows that by, at least, 28 June 1996 (see: the IND Executive Committee meeting of 28 June 1996) all three men knew that the listing had been postponed.

According to them, the hoped for success of the listing was the sole reason Search had bought these shares. In Nicholas Prior's own words in his manuscript note to Robert Miller on 13 May 1996 *"...This is a bet on the IPO of NHD to be completed*

soon on NASDAQ..." The bet, therefore, having been lost, why did it take Search over one month before Search started to sell this portfolio?

William Lam answered the question this way:

"A. ...we have been travelling quite extensively and I think from my personal perspective I have not attended to all the transactions as promptly as I could have. But there was pressure, I think from Nick in particular on my side, that the reason was no longer there, so the action was delayed. But it was the same, if you look at when we first bought the shares we bought them well after the announcement was made so with the very limited human resources within the Search Group I think we did not react to the situation fast enough.

Q. Are you saying it took you five weeks to react to the information which was in fact the cause?

A. I think that five weeks I was away most of the time.

Q. Is that your evidence then that it took you five weeks to react?

A. Yes.

Q. Being away of course does not stop you selling shares, does it?

A. It does let me focus my mind and sit down and ask my colleague to focus on one thing, but we have got other things to attend to."

Henry Tai gave the SFC a similar explanation, asserting he learnt of the postponement from the newspaper article of 2 July 1996 and Holdings' announcement of 4 July 1996:

"After we saw the news and the announcement I was saying that, Nick Prior in fact did make enquiries of us, us meaning William Lam and myself, as to whether we should be disposing of the Siu Fung shares, given the rationale for going in no longer existed. We kind of agreed with that, but at the time both William and I were travelling quite extensively and, frankly, we didn't have the time to - we had a number of investee companies and a number of activities that were happening in Australia, and for William in Singapore, so that [Siu Fung] wasn't really the highest priority on our list, to get onto it, so we didn't act on it for a while."

He thought he had two conversations with Nicholas Prior about the disposal of the portfolio in July 1996.

Nicholas Prior said that he believed that he sent Robert Miller a newspaper cutting of either the formal announcement, or a newspaper article, of Mrs. Lee's sale of her 80 million Holdings' shares in early July 1996.

Of Robert Miller's response he said:

"He was a lot more negative about it than I was. I was reasonably ambivalent about it, which I probably would not be today. He was quite gut reactive about it I think is the best way to put it. Nothing specific but he was not happy about it. The end of the conversation would have been something like "What are you going to do about it?" And I said, "There will be a proposal from IND some time in the near future."

Of IND's action, or rather lack of it, he said:

In examination in chief:

"So what I in fact said to IND was, since the rationale for this hold has gone, either find another rationale or give me a proposal to dispose of it.

Q. Given that you had told IND that, can you help the tribunal at to why it took five weeks, 28th June to 31st July?

A. Believe me, I was not happy about it, I was not happy about it but I needed for them to make that decision.

Q. Did you tell them, "Give me a proposal to either sell or hold, but give us the reasons"?

A. Yes.

Q. Nothing happened?

A. I am afraid not.

Q. You did nothing about it?

A. I asked again."

In cross-examination:

"Q. Is that really right, you and Mr. Miller waiting for others to respond, knowing between you that there was, you thought, a problem?"

A. Let me explain this to you. The IND group was a profit center. The people in the IND group were separately incentivised in their performance. There was some discussion about, at some time in the future, outsourcing the venture capital arm of our business into a third party fund in which Search would have an interest in the management company. There was an effort to keep the thing - we were trying to run it on the basis that they ran their business as a business. That was the plan.

Q. So it is your evidence that you and Mr. Miller sat around for some weeks waiting for some response from IND?"

A. But there was no panic. Nobody thought anything was going to go wrong with this business.

Q. When you came to deal with the matter on 31st July, it was done there and then, was it not, on the telephone, you in Australia?"

A. There was a proposal there."

Chapter 15

In this chapter we discuss whether or not William and Lisa Lam engaged in insider dealing when they sold Lisa Lam's Holdings shares on 2, 26 & 29 July 1996.

William Lam

In his SFC interviews, the first of which was on 6 May 1997, only 10 months after the events in question, William Lam was repeatedly asked how and when he learned of the listing's postponement. In his answers, he claimed that no one, either from Holdings' management, or from any of the other Concept investors, had informed him about it. All he knew was that it had been "...rumoured in the market" and that it was "...announced" in the *Hong Kong Standard* for 2 July 1996. Those answers were clearly wrong. The evidence shows that he was at the meeting between HPEM, PAMA and Search on 25 June 1996, as a result of what was discussed at that meeting, he must have been aware that the listing had been postponed and was not expected to take place until after the beginning of 1997 at the earliest, a delay of 6 to 9 months and that, as a result, Holdings needed to raise funds, estimated to be US\$60 million, from alternative sources in order to meet its short term liabilities.

In his statement to the Tribunal, William Lam claimed to have no memory of this meeting until Raymond Leung's notes were produced at the Inquiry; we are sceptical of this claimed loss of memory.

We cannot say for sure whether or not the failure of the listing was discussed at the meeting that he deduces from his diary note he had with Siegfried Lee on 26 June 1996, but it would be surprising if it were not.

On 27 June 1996 Henry Tai faxed the annotated version of Eddie Lui's cash flow to William Lam. This, in two places, refers to the listing taking place in April 1997. He appears to have taken part in the discussions concerning the Concept paper.

William Lam was present at the 28 June 1996 IND Executive Committee Meeting at which the postponement of the listing and the provision of funds to NHD was discussed.

William Lam was present at the 2 July 1996 meeting between Siegfried Lee, Benjamin Li and the representatives of HPEM, PAMA and Search at which Siegfried Lee confirmed that the funding need was US\$60 million and at which hypothetical

terms for funding were discussed. Raymond Leung's note of the meeting refers to a *"...possible listing of the shares in due course."*

William Lam was at the Concept directors' meeting on 12 July 1996 at which the SFH Group's debts and funding needs were made abundantly clear. Siegfried Lee's suggested solution was that the Concept Investors put in a further US\$90 million capital injection; three times more than the US\$30 million Siegfried Lee offered to put in. William Lam is recorded on tape as questioning the adequacy of the information given by Concept's management and making it clear that accurate information is necessary before any decision can be made. He acknowledged in his evidence that a further capital injection was never an attractive proposal to the Concept investors. Their preferred solution was the suggested private placement set out in the Concept paper to which Siegfried Lee failed to respond.

The video-conference held on 27 July 1996 was to permit Search in the persons of William Lam in Singapore and Vincent Kwan in Hong Kong and PAMA, in the person of Cliff Cheung, to review the key parts of the presentation with Siegfried Lee and Y.T. Du. Given that arrangements had been made before 27 July 1996 for both William Lam and Siegfried Lee to participate in the video-conference, we cannot accept that neither of them mentioned the presentation in their telephone conversation in the early hours of 26 July 1996; we reject their evidence of the substance of this conversation as a fanciful invention.

As we said in chapter 13, William Lam was of the view that the information in the presentation was *"...not good enough to make an informed decision about an investment."*

In his interview on 6 May 1997, his own solicitor advising him at the interview asked William Lam what the meaning of the noun *'postponement'* used in the divestment memo meant to him:

"Q. What I am saying is did you say "postponement of the NHD spin-off", by those words do I take it that it was postponed or that it was dead in the water?"

He replied:

A. Yes, postponement is probably more mellow word here, but it looks like there is no foreseeable future that it is coming back."

We have no doubt whatsoever that William Lam was aware both of the listing's failure and Holdings' consequent urgent need for alternative sources of funding by 25 June 1996 at the latest. He was certainly aware of those two matters at the time he instructed Cazenove to sell Lisa Lam's shares on 2, 26 & 29 July 1996.

Lisa Lam

Lisa Lam told us that she made a conscious decision, when interviewed by them on 12 March 1997, not to tell the SFC the truth in respect of her dealings in Holdings shares. She acknowledged that she had been notified in advance and in writing about the subject matter of the interview, namely the issue of insider dealing in Holdings shares in the period 1 July to 28 September 1996, and that before the interview started she was informed that she had, under pain of criminal sanction, to answer the interviewer's truthfully and to the best of her ability.

In that interview she was asked a very simple and direct question:

"Q. Have you traded in Siu-Fung shares?"

She answered:

"A. In 1995, LEE Sheung Yam, gave some shares to the staff at the annual dinner. I got 30,000 or so but I sold them out very quickly."

She made no mention of the 10 million Holdings shares Siegfried Lee had given her, nor of their sale in July 1996, despite the fact that their sale took place within the period the interviewer had drawn to her attention at the start of the interview.

It was William Lam, in his SFC interview on 6 May 1997, who told the SFC of his wife's ownership of those shares and their sale in July 1996. Prior to William Lam making that information known to the SFC, Lisa Lam had not sought to correct the misinformation she had given the SFC.

Before us, she denied that her decision not to tell the truth and to reveal that shareholding and those dealings was because she had been in possession of

material price sensitive information at the time of the sales. Her explanations were that she believed she was assisting the SFC in an investigation of others' share dealings; she had not been notified that she was a person under investigation, or even suspicion; she had done nothing wrong and she did not want others probing into her private affairs. We can understand the last of her concerns, but the first three do not impress us. The Section 33 Notice served on her on 19 February 1997 could have left her in no doubt that the SFC were concerned with the share dealings of any person, including herself, in the period 1 July 1996 to 27 September 1996. We have, however, not used this untruth as in any way determinative of the issues we had to decide in this inquiry.

Lisa Lam told us that in March 1996, when she met with Ernest Ip of Coopers in connection with the listing, she told him that up to that date there had been no success in getting an equity injection.

In her statement to the Tribunal, Lisa Lam said that she had:

"...no specific recollection of what, when and how I learnt of the postponement of the NHD listing."

She went on to say that if her husband, William Lam, was aware of the postponement of the listing as early as 25 June 1996 *"....he certainly did not pass this information to me."*

Mark Edwards, who met her on 17 July 1996, was asked and answered these questions in cross-examination by Mr. Harris, her counsel:

"Q. There are one or two other things I want to take you to. The penultimate sentence of the "Conclusion" paragraph: "The only piece of good news short-term would be a listing of NHD." Can I assume that that is your conclusion from information that was available to you?

A. Yes.

Q. That is not something that was said to you by Lisa Lam?

A. No.

Q. Correct?

A. Correct.

Q. In fact, as far as the listing was concerned, Lisa Lam did not seem terribly well informed about that herself?

A. Yes.

Q. Is that a fair comment?

A. Yes."

However, in cross-examination by Mr. Lunn, Lisa Lam accepted that she knew that the listing had been either abandoned or postponed by the time of the Concept directors' meeting on 12 July 1996. That concession was made in face of the transcript of that meeting which shows she was present. Siegfried Lee's remarks at that meeting on the delay in the listing (*"As you know, because of the delay in the listing, we had no means to continue advancing loans to Concept."*) assume that his audience already knew of listing's failure.

Siegfried Lee, Eddie Lui, Albert Lee, Daniel Chan and Lisa Lam are all shown as being present at the meeting, both in Concept's own notes of the meeting and Raymond Leung's note. Siegfried Lee, Eddie Lui, Albert Lee and Daniel Chan all told us that they knew of the listing's failure on 14 June 1996, the very day Christopher Morin and Steven Unfried told Siegfried Lee that CSFB was no longer prepared to offer underwriting support. Lisa Lam, whatever her real duties within the SFH Group were - for it was never made clear exactly what duties she had - was not the tea-girl, she was Concept's Deputy CEO. She is a well-qualified financial professional. She had twice referred to the listing as a source of funding for Concept, once to Coopers on 21 March 1996 and again at the directors' meeting on 10 May 1996. As Concept's Deputy CEO she had a duty to deal with the question of the source of its future funding, all the more so because it was a loss-making and under capitalized company.

We have asked ourselves, why, if the other members of Concept's senior management knew about the listing's failure and the consequences that the failure would have for Concept's future funding needs on the day it occurred, didn't Lisa Lam know about it? The only answer we can come up with is that she did know about it on that day and has untruthfully maintained that she did not.

We accept Albert Lee's evidence that Lisa Lam worked on the Concept presentation with the other team members and himself over a period of time. We do not believe her when she said that she only became involved in its preparation in the late

evening of 26 July 1996 in the Headquarter's pantry. We agree with Mr. Lunn that given her position as Concept's Deputy CEO, her responsibility for joint-ventures in the PRC and the vital importance of the document, it beggars belief that she was not aware of the presentation's contents until such a late stage. It also beggars belief that she did not discuss the presentation at the lunch she remembers having with Y.T. Du on 24 July 1996.

We have no doubt whatsoever that Lisa Lam was aware both of the listing's failure and Holding's consequent urgent need for alternative sources of funding on 14 June 1996 the day the CSFB informed Siegfried Lee of the withdrawal of their underwriting support. She was certainly aware of those two matters at the time her husband, William Lam, with her consent instructed Cazenove to sell her Holdings' shares on 2, 26 & 29 July 1996.

Connected persons

Lisa Lam was Concept's Deputy CEO in July 1996, Concept was a related corporation of Holdings, Lisa Lam is therefore a person connected with Holdings pursuant to section 4(1)(a) of the Ordinance.

William Lam was an employee and Senior Vice-President of Search's IND up to September 1996. He was also one of Concept's directors until 2 May 1996, when Henry Tai replaced him. However, although he was not one of Concept's directors after 2 May 1996, he had access to papers circulated by Concept, attended meetings of both Concept's shareholders and directors, as well as informal meetings of fellow shareholders between either themselves, or Concept's senior management. We are satisfied that he occupied a position which may reasonably be expected to have given him access to relevant information concerning Holdings by virtue of the business relationship existing between Search (his employer) and Concept, a related corporation of Holdings, and that he was a person connected with Holdings pursuant to section 4(1)(c)(i) of the Ordinance. He was also a connected person pursuant to section 4(1)(e) of the Ordinance by reason of the fact that he was a director of Concept within the six months immediately preceding the sale of Search's portfolio of Holdings shares in August 1996.

Dealing

In Chapter 12 we dealt with the undisputed evidence of how Cazenove came to sell the balance of Lisa Lam's Holdings shares (6 million in total) on 2, 26 & 29 July 1996.

Cazenove acted on William Lam's instructions - not Lisa Lam's. William and Lisa Lam appear to have treated Lisa Lam's portfolio of 10 million Holdings shares as joint property, notwithstanding the fact she came by them as a gift from Siegfried Lee. We are satisfied that William Lam and Lisa Lam dealt in those shares jointly (or that, at the very least, William Lam dealt in them on Lisa Lam's behalf as her agent) which is sufficient for the purposes of section 6 of the Ordinance to make them both dealers in the sale of those shares.

Conclusion

As we said in chapter 9, we are satisfied that the listing's failure remained relevant information until at least 10 August 1996 and the consequential funding problems that the failure caused the SFH Group (including Holdings) and its inability to address those problems adequately, remained relevant information until 27 September 1996. We are satisfied that both William Lam and Lisa Lam, both being connected persons, were aware of the listing's failure and the consequential funding problems and knew that both pieces of information were relevant information, at the time of the sale of Lisa Lam's Holdings shares on 2, 26 & 29 July 1996.

Section 10(3) defence

In the course of the Inquiry, no doubt anticipating an adverse finding against them, William and Lisa Lam sought to establish a defence under section 10(3) of the Ordinance.

As we said in Chapter 3, where we set out the text of the subsection and explained how this defence arises and how it is established, earlier decisions of the Tribunal establish that section 10(3) is construed narrowly. The defence is available to an implicated person only if the evidence establishes, on a balance of probabilities, that the true reason or reasons for his dealing were wholly unconnected with any desire or intention on his part to make a profit or avoid a loss. It is not intended to provide an implicated person with a defence that a genuine non-profit motive contributed to his reason or reasons for dealing. In the light of that test, in the case of a disposal of securities, the evidence must show, on a balance of probabilities, that circumstances compelled the implicated person to sell and that, without alternative resources, he had no choice but to sell at that time, regardless of whether or not he had come into possession of the relevant information.

In their statements to the Tribunal, William Lam and Lisa Lam both claim that the sale of Lisa Lam's 10 million Holdings shares on 2, 26 & 29 July 1996 had:

"...nothing whatsoever to do with the making of any profit or the avoidance of any loss by the deliberate abuse of any relevant information. Those shares were sold for only one purpose which was to provide us with sufficient means comfortably to acquire the property at Bowen Road and thereafter to service the related borrowing."

The price of their flat, Flat B, 10/F Bowen Place was \$15,700,000. Stamp duty, legal and agents' fees, and insurance premiums added another \$620,804 to the cost, making the gross cost of acquisition \$16,320,804. Completion took place on 30 July 1996.

To buy it, they borrowed \$10,990,000 from the Standard Chartered Bank; \$9,490,000 by way of mortgage, \$1,500,000 by way of overdraft. Their mortgage application form gives their combined annual income as \$3,505,000.

They paid \$5,330,804 out of their own resources:

The net amounts they received from the sale of Lisa Lam's 10 million Holdings shares were:

- in the period up to 10 June 1996 - \$ 6,492,099.
- in July 1996 - \$7,584,983.
- Total - \$14,077,082

They received a net sum of \$1,589,682 from the proceeds of the sale of their flat at Euston Court.

From those figures it can be seen that by 10 June 1996 the sale of just less than 40% of Lisa Lam's 10 million Holdings shares had raised \$6,492,099, which together with the \$10,990,000 advanced by the Standard Chartered Bank, provided sufficient funds for William and Lisa Lam to purchase the Bowen Place flat without having to

use either the proceeds of sale of their Euston Court flat or the proceeds of sale of the remaining 6 million Holdings shares in July 1996.

On 16 August 1996 part of the proceeds of the July 1996 sales of Lisa Lam's Holdings shares were placed in a \$5 million term deposit opened in her name with the HSBC. The balance was used to discharge the \$1.5 million overdraft with the Standard Chartered Bank. Lisa Lam held the \$5 million term deposit until at least December 1996.

Lisa Lam said this when we questioned her about the figures:

"MR BARNETT: So you had other uses for most of the \$14 million you got from the sale of the shares?"

A. No, it was kept as a cash reserve in case we had to discharge that mortgage liability.

MR BARNETT: What do you mean by a cash reserve, you mean it was kept on deposit with the bank?

A. Yes."

...

"MR SZE: Just to follow up on Mr Barnett's question: when you said you needed about \$5 million of the sale of the shares for the property, for the Bowen Place property, in fact by say the end of June you have already sold about \$6 million or \$7 million worth of proceeds from the shares. During the relevant period, what we call the relevant period here, you sold about 6 million of the shares, which is about \$7 million. So you already would have about \$7 million of the proceeds before the relevant period, so you do not need to sell the shares during the relevant period?"

A. I did not see the mortgage being a source of fund, it is a liability, it is something we would have to discharge.

MR SZE: What I am saying is, during the relevant period you do not need to sell the shares for the purchase of the Bowen Place?

A. But once we incurred the liability, I felt that we needed the security to be in a position to discharge that liability if needed."

Those explanations come nowhere near establishing that circumstances compelled William and Lisa Lam to sell the shares on 2, 26 & 29 July 1996 and that they had no choice but to sell on those dates, regardless of whether or not they had come into

possession of the relevant information. They were in possession of more than adequate alternative resources to complete their purchase of the Bowen Place flat. From the fact that the Standard Chartered Bank granted them facilities of nearly \$11,000,000 it is quite obvious that their combined income was more than sufficient to service a debt of that amount. Discharging the mortgage would have been a luxury for them, not a necessity.

Conclusion

We are satisfied that both William Lam and Lisa Lam, both of whom were persons connected with Holdings and in knowing possession of relevant information in relation to Holdings, engaged in insider dealing when they sold the 6 million Holdings shares held in Lisa Lam's name in three tranches on 2, 26 & 29 July 1996. We are also satisfied that neither William Lam, nor Lisa Lam, have established a defence under section 10(3) of the Ordinance.

Chapter 16

In this chapter we discuss whether or not William Lam, Henry Tai, Nicholas Prior and Robert Miller engaged in insider dealing at the time of the sale of Search's portfolio of Holdings shares held by its subsidiary Mordale in the period 2 August to 5 September 1996.

The failure of the listing

By 25 June 1996, at the latest, William Lam and Henry Tai, by their attendance at the meeting of representatives of HPEM, PAMA and Search on that day, must have been aware of the listing's failure. William Lam had the good grace to accept that he was at this meeting; Henry Tai claimed to have no recollection of attending. Nicholas Prior must have become aware of the listing's failure when he attended IND's Executive Committee meeting on 28 June 1996. As we have already said the length of the postponement of the listing is described in the notes of the 25 June 1996 meeting as being 6-9 months and in the notes of the 28 June 1996 IND Executive Committee meeting as being 9 months. It is also apparent from the context of Raymond Leung's notes of the 25 June 1996 meeting that Siegfried Lee, or some one else in Concept's senior management, and not a journalist, must have been the source of the information.

The SFH Group's needs

The causal link between the listing's failure and its consequences for the funding needs of the SFH Group must have been immediately apparent to the Concept investors. Eddie Lui's cash flow revealed what the SFH Group's bankers regarded as an "*alarming*" position. An annotated copy of Eddie Lui's cash flow passed among the representatives of HPEM, PAMA and Search. The same representatives scurried about discussing and drafting proposals for alternative sources of funding, as may be seen from the Concept paper. The problem they faced in their work was that none of them had access to reliable financial information about Concept and the SFH Group in general and the senior management was slow in providing it.

The 12 July 1996 meeting must have been a shambles; that much is evident from the notes of the meeting and the tape transcripts. Although he didn't attend this meeting, Henry Tai spoke of William Lam's anger at the managements' lack of professionalism.

Neither did the presentation dated 26 July 1996 provide a solution, as is evidenced by William Lam's comment to Y.T. Du at the meeting on 29 July 1996 that the investors

had "...if not zero, close to zero confidence" in the numbers given in it.

Given that the Dao Heng Bank debt of US\$10 million could not be paid when due, together with the other known problems, it is not surprising that five of the Concept investors took the comfort of securing legal advice in early August, and Henry Tai obtaining an indemnity in director's liabilities from Search, before being prepared to agree to the Hang Seng Bank's US\$30 million loan and the Dao Heng Bank's ill-fated syndicated loan.

The divestment memo

We were invited by Mr. Huggins to engage in an in-depth examination of the divestment memo and not only trace the source of each of the statements in it, but weigh the information given in each paragraph and sentence in isolation. This we decline to do. The divestment memo is not a classical text with each individual sentence conveying its own arcane meaning. It is straight-forward, plainly written, recommendation from two well-qualified financial professionals - William Lam and Henry Tai - to their superiors that a certain course of action be followed for the reasons given in it.

It identifies succinctly, in paragraph 7, the information upon which the recommendation to sell Mordale's Holding's shares was made:

"In view of the postponement of the NHD spin-off and the short term funding needs noted above, IND recommend that we should dispose of our SFH shares."

The "...short term funding needs" are identified in paragraph 4:

"Based on preliminary information, it appears that SFH Group needs additional funding for 1996 and 1997 in the region of US\$170M."

They are said to be:

"....enormous compared with its existing debt level of US\$228M."

And paragraph 4 also describes, correctly, why those funding needs have arisen:

"Following the delay in the NHD spin off, SFH has informed shareholders of Concept on 29 July that SFH Group, including Concept, is in a cash crisis."

We readily accept that there is no magic in the words "cash crisis" employed in that sentence. It is neither a term of art nor science; it does no more than convey concisely the true situation in the SFH Group at that time. The listing, its expected source of finance in the summer of 1996, had failed and in consequence it was short of funds. Many other phrases - 'short of funds', 'liquidity problem', 'short term liquidity problem' even 'low on the readies' - would have conveyed the same information.

We, as equally readily, accept that given support and possibly a more realistic appreciation of the problems it had on its senior management's part, the SFH Group could have recovered from those problems. But that is not the issue in this Inquiry. The truth of the matter is that by the end of July 1996 a portfolio of Holdings shares was no longer an attractive proposition for Search. The rationale for that portfolio's creation, given in Search's memo of 6 May 1996 - an early listing of NHD - had gone down the drain. Quite literally CSFB had "pulled the plug" on it at a late stage. Not only had it gone down the drain, it had dragged along a whole raft of funding problems in its wake.

Search was not a charity; it would be difficult for Search to dispose of its investment in Concept, as it was not a publicly quoted company. It would also be difficult for Search to dispose of the US\$10 million convertible note it held in Holdings. For those two investments, the storm would have to be weathered. Paragraph 7 of the divestment memo puts the position with admirable concision:

"We will continue to work with SFH management to come up with a plan to protect our investment in Concept and SFH convertibles of US\$10M each."

The portfolio of Holdings shares, however, was a different matter; they were marketable and could be disposed of relatively easily. Once the depth of the SFH Group's funding problems, and the management's seeming inability to face up to them realistically, became known at the end of July 1996 it made perfect commercial sense for Search to cut its losses and get rid of those shares.

Delay in the disposal of the Holdings shares

We do not accept the contention put before us that the decision within Search to sell

the shares rested on the listing's failure alone and was made tentatively in late June, and that Robert Miller and Nicholas Prior sat waiting patiently for William Lam and Henry Tai to come up with a proposal to sell them. Search was not a complex organization requiring the approval of a number of committees for its investment decisions. It existed for the benefit of one man - Robert Miller - and his family. Investment recommendations and decisions on them could be made quickly. There is no doubt that when the decision to sell the shares was made it was done over the telephone and reached immediately.

William Lam and Henry Tai

As we said in Chapter 15, we are satisfied that William Lam was aware of the listing's failure by 25 June 1996 at the latest. We are satisfied that his colleague Henry Tai was also aware of the listing's failure by 25 June 1996 at the latest. The investing public did not know this at the time.

In chapter 15, we have already given our conclusion that William Lam knew of the consequential funding problems that the failure caused the SFH Group (including Holdings) and of the management's inability to address those problems adequately up to the sale of the final tranche of Lisa Lam's Holdings shares on 29 July 1996. We are also satisfied that William Lam remained aware of them and that Henry Tai was aware of them, and that both men knew that they were relevant information, at the time they wrote the divestment memo in the first few days of August 1996, as well as at the time of the sale, via Mordale, of Search's portfolio of Holdings shares in the period 2 August to 5 September 1996. Given that both of them were active participants in the discussions that took place in July and early August 1996 addressing those funding problems and précised them succinctly in the divestment memo, how could the position be otherwise?

Nicholas Prior

Nicholas Prior's position is not so clear. As we have said, he must have been aware of the listing's failure by 28 June 1996, at the latest, when he attended the IND Executive Committee meeting. However, he took no part in any of the July and early August 1996 discussions, either with the representatives of the other Concept Investors, or with the SFH Group's senior management. He accepted that he knew discussions were taking place, but believed that the problems had been solved.

He was not physically present at the 31 July 1996 IND Executive Committee meeting.

He took part in that meeting by telephone from Australia. The notes of the meeting are sparse; we have quoted them in full in Chapter 14. His immigration and telephone records bear out the fact that he was in Australia on 31 July 1996.

Nicholas Prior accepted that he was informed of the divestment memo and authorised the share sale while in Australia, but could not remember if he was given the specific pieces of information set out in paragraphs 1 to 6; save that he did not believe he was given the information in paragraph 5 about the US\$10 million Dao Heng Bank loan and the US\$16.7 million Netzsch accounts payable.

He could not remember even if the information given in the phone call was “...*broadly consistent*” with the memo’s contents, saying that “...*it was not Search’s style to read out documents like that over the telephone.*”

His memory of the phone conversation was that “...*it was very much, “We have finally come up with the recommendation you wanted and now we propose to sell the shares”, and I said, “Right go ahead”. And that when “...people are looking for an approval, they tend to ‘over-egg the custard’ to a certain extent. But, very broadly, I would say that it was as discussed.*”

He did not see the divestment memo until he returned from Australia on 14 August 1996, when he signed it and backdated his signature to 31 July 1996.

We accept that in June, July and August 1996 he was pre-occupied by a concern both for his wife, who was then in the terminal stage of her illness, and for the welfare of his children on her death.

The most that we can say, bearing in mind the high standard of proof required in this Inquiry, is that, although Nicholas Prior must have known of the listing’s failure by 28 June 1996, when he attended the IND executive committee meeting on that day, and although there remains a suspicion that he knew more about the funding problems that the listing’s failure caused the SFH Group (including Holdings), as well as its inability to address those problems adequately, than he is prepared to admit, we are not satisfied that Nicholas Prior was aware that those funding problems and the listing’s failure, were relevant information on 31 July 1996 when he, by telephone from Australia, approved the recommendation later set out in the divestment memo that Mordale’s portfolio of Holdings shares be sold. Accordingly we have decided that it would be

inappropriate and unjustified to make a finding of insider dealing against him.

Robert Miller

Robert Miller has given two accounts of the matter; we have summarized them in chapter 14. He told the SFC interviewer that he approved the sale of the Holdings shares over the telephone after having been briefed of the reasons for their sale. Before us he claimed to have no recollection of this matter.

Mr. Lunn invited us to be sceptical of Robert Miller's explanation of the basis upon which he made his factual statements to the SFC. It was argued that, as Robert Miller is an educated, highly experienced and very successful businessman, it beggars belief that, if he had no recollection of events, he failed to tell the SFC investigator that.

We were invited to accept as true Robert Miller's account to the SFC that he was briefed over the telephone on the divestment proposal when he was at his estate in Gunnerside, North Yorkshire and that he approved it. It was argued that not only is that what the procedures within Search called for, but it is consistent with Robert Miller's lack of response on receiving Henry Tai's memo of 8 August 1996, which refers to "*..my memo of 31 July*" and reports on the ongoing disposal of the shares.

From what we saw when he gave evidence, it is clear that Robert Miller is a man who attends to detail. His personal handwritten daily diary records not only the share and currency prices of a number of investments and currencies that were of interest to him in mid-1996 (including the daily closing price of Holdings shares, which heads the list) but also the number of pages of correspondence faxed to him each day from Hong Kong by Janis Chan. If the 8 August 1996 was the first time that he learned of the ongoing disposal of Mordale's Holdings shares at a loss, not only would the reference to an earlier memo have bemused him; but why did he not ask for an explanation of the reasons for the sale as the shares were effectively his property? Yet, there is no evidence that he made any response.

Although not advanced by Mr. Lunn as a reason why we should infer knowledge to Robert Miller, there is the mystery of the form of the divestment memo itself - an original front page addressed to OC, but a photocopy second page, with no approval box for Robert Miller's initials, which is quite unlike the form of the other investment proposal memos we have seen.

We make no bones about it; we were highly sceptical about the authenticity of the divestment memo. One does not need to be a master forger to make a false document on a photocopier. Although criticised for doing so in Mr. Huggins' closing submissions, we make no apology for harbouring these suspicions and voicing them; it was our duty as a tribunal of inquiry to do so. However our enquires failed to reveal any misdoing and we must accept that the divestment memo in the form we considered it is a genuine document and that it never had an approval box for Robert Miller's initials.

Set against these matters is the fact that Robert Miller attended none of the meetings with the Concept investors in June, July and August 1996. Neither did he attend any of the IND Executive Committee meetings in that period. The divestment memo is found nowhere amongst the faxes Janis Chan sent to Robert Miller in August 1996. In the absence of evidence entitling us to do so it would be speculative to say that Janis Chan's records have been doctored.

And, although we know that William Lam made three phone calls to Gunnerside on 2 August 1996 (which, given there is no evidence that William Lam was interested in joining Robert Miller in shooting grouse on 'The Glorious 12th', we can safely assume were to Robert Miller in connection with Search's affairs) we cannot say that these calls related to the divestment memo's contents.

Although there remains a suspicion that Robert Miller knew about the listing's failure, as well as the funding problems in the SFH Group that the failure caused, there is no evidence that proves, to the standard required, that he did know. Accordingly we have decided that it would be inappropriate and unjustified to make a finding of insider dealing against him.

Connected persons

We dealt with William Lam's status as a connected person in chapter 15.

Henry Tai was an employee and Vice-President of IND at Search and one of Concept's directors in the period July to September 1996; Concept was a related corporation of Holdings. Henry Tai is therefore a person connected with Holdings pursuant to section 4(1)(a) of the Ordinance.

Conclusion

As we said in chapter 9, we are satisfied that the listing's failure remained relevant

information until at least 10 August 1996 and the consequential funding problems that the failure caused the SFH Group (including Holdings), as well as its inability to address those problems adequately, remained relevant information until 27 September 1996. We are satisfied that both William Lam and Henry Tai, both being connected persons, were aware of the listing's failure and the consequential funding problems, and knew that these two matters were relevant information, at the time they counselled and procured their superiors, Robert Miller and Nicholas Prior, to sell Search's portfolio of Holdings shares held by its subsidiary, Mordale, in the period 2 August to 5 September 1996.

We are therefore satisfied that William Lam and Henry Tai engaged in insider dealing when they, both of whom were persons connected with Holdings and in knowing possession of relevant information in relation to Holdings, dealt in Holdings shares by counselling or procuring their superiors, Robert Miller and Nicholas Prior, to sell Search's portfolio of Holdings shares held by its subsidiary, Mordale in the period 2 August to 5 September 1996, knowing or having reasonable cause to believe that they would sell them.

Chapter 17

In this chapter we deal with GAAP's sale of Holdings shares through Banque Worms between 10 and 20 September 1996. This is the fifth and last of the areas of inquiry that we identified in Chapter 1 and in it we have been concerned with the actions of three men - Fabrice Jacob, Christian Haas and Philippe Dhamelincourt.

Fabrice Jacob

Fabrice Jacob, a French citizen, has a degree in Business Administration and a MBA. From February 1989 to March 1995 he was the vice-president in the mergers and acquisitions department in Banque Worms head office in Paris. In March 1995, he was sent to Hong Kong as senior vice-president of Banque Worms Hong Kong branch under the supervision of the general manager Antoine Fossorier. In 1996, he was in charge of investment banking for Banque Worms Hong Kong branch and reported on the investments under his management to Christian Haas and Philippe Dhamelincourt in Paris.

Christian Haas

Christian Haas, a French citizen, has degrees in political science and in law. From May 1992 to February 1997, he was Chairman and Managing Director of ACMER, another subsidiary of Banque Worms. ACMER owned 99.61% of GAAP's holding company. He was also one of the managing directors of Banque Worms in charge of investment; only the Chairman and CEO were above him. Christian Haas came to Hong Kong twice per year.

Philippe Dhamelincourt

Philippe Dhamelincourt, a French citizen, is a graduate of the Ecole Supérieure de Commerce de Paris and a certified public accountant. In 1996 he was the head of the Banque Worms Investment Department in Paris.

Acquisition of SFH shares by GAAP

All Banque Worms' Asian investments were made through its subsidiary, GAAP. In 1993, GAAP took a pre-listing placement of Holdings shares. The initial shareholding was 38,220,551 shares. On 14 September 1995 it received 2,506,265 additional shares by way of scrip dividend and a further 306,970 shares on 29 July 1996. The investment was made because Holdings was well known to Banque Worms Hong Kong branch; they considered it to be a successful company and Siegfried Lee a good manager and entrepreneur.

Christian Haas was appointed a non-executive director of Holdings. As he was not resident in Hong Kong, Antoine Fossorier, the manager of Banque Worms' Hong Kong branch, acted as his alternate and attended board meetings on his behalf.

On 30 June 1995, GAAP opened a Securities Account with BWNL. This was a non-discretionary account in respect of which only Christian Haas and Philippe Dhamelincourt could give instructions.

Decision to Divest

By February 1996 GAAP had become disillusioned with its investment in Holdings. The main factors contributing to this were Peter Lee's resignation, Siegfried Lee's purchase of the house in Deep Water Bay, the problems encountered by the joint venture companies in PRC and Christian Haas's concern that he was unable to perform his director's duties properly because no one in Holdings was keeping him informed of developments within the company. A decision was, therefore, made to sell the whole of GAAP's Holdings portfolio.

As Christian Haas and Philippe Dhamelincourt were based in Paris with a 6-hour time difference to contend with, it was left to Fabrice Jacob in Hong Kong to carry out the sale. There was great trust between the three; Christian Haas described Fabrice Jacob as *"...one of my best colleagues"* to whom he had given *"...a margin to manoeuvre."*

Nevertheless, it would appear that Christian Haas and Philippe Dhamelincourt were kept well informed of events in Hong Kong. They received information from Fabrice Jacob, Antoine Fossorier, who attended Holdings board meetings on Christian Haas's behalf, and also from other people at the Hong Kong branch of Banque Worms. As Jacob said in his evidence:

"Mr. Fossorier and his team probably had more frequent meetings because again they were lending money to the company and they had more reasons to get updated information as to what was happening. But this was most likely at a more junior level, I should say, as opposed to the top."

Further, Fabrice Jacob was in daily contact with Christian Haas and Philippe Dhamelincourt. In his SFC interview on 25 February 1997, he said this:

“Q: How were orders normally placed by GAAP to you?”

A: Always by telephone.

Q: How did you place your orders to the brokers?”

A: Also by telephone

Q: How did CH [Christian Haas] monitor the price and decide when to sell?”

A: Everyday I sent him the confirmation after disposal of Siu Fung shares as contained in Annex 3 to FJ-4. I also discussed with him on the phone daily. He had the closing price everyday faxed to him by me.”

Sales in February & March 1996

On 6 or 7 February 1996 Fabrice Jacob received instructions to start selling GAAP's Holdings portfolio. A handwritten fax dated 7 February 1996, signed by both Christian Haas and Philippe Dhamelin court , confirms a telephone conversation on that morning on the subject of SFC:

*“...de céder sur le marche ‘soignant’ au minimum la moite de notre ligne”
(Translation: to sell on the market wisely a minimum of half of our line)*

Fabrice Jacob replied by fax on the same day, in English:

“This is to confirm my understanding that you are interested in selling some Siu Fung shares in the “most intelligent manner”, and you want me to proceed accordingly”

To which Christian Haas replied by way of an annotation on Fabrice Jacob's fax “Yes of course”.

Acting on these instructions, Fabrice Jacob sold 200,000 Holdings shares on 7 February 1996 through BNWL. He then watched the market and when a rally occurred in March made further sales of around 16 million shares on 5 - 8 March 1996. Of this Fabrice Jacob told the SFC:

“Then Siu Fung price started to drop and given the strong volatility of the share as can be seen by FJ-8, it was decided by GAAP and me to wait for the next rally which occurred in early March 1996 and the same strategy was implemented afterwards.”

Fabrice Jacob's meeting with Siegfried Lee & Benjamin Li

On 11 March 1996 Fabrice Jacob sent a memo to Christian Haas informing him of the sale of 16 million Holdings shares in early March and of Holdings announcement on 6 March of the acquisition of Netzsch. He also informed them of information he had received from Siegfried Lee and Benjamin Li at a meeting he had with them on 8 March 1996, in particular, that:

"Netzsch will be merged very soon with Heimsoth and Dubois. NHD will be listed in New York on the Nasdaq in June, 1996. DLJ, First Boston and Lazard Brothers have been appointed as underwriters, on the basis of a 15x PER, and a market capitalization of US\$800 million."

... ..

"Given the fact that our position has substantially decreased, that volumes have vanished and that the company should announce a number of events in 1996, I have stopped selling and prefer to wait for the next rally."

He added that in the listing 50% new shares would be sold and 50% *"existing shares to be sold by Siu Fung Holdings"* which would provide substantial extra cash for SFH.

At the bottom of the report, Fabrice Jacob added a handwritten note reading:

"Strong drop of the market today".

Notwithstanding the receipt of this information (which was doubtless price sensitive as Holdings did not announce its intention to list NHD until 20 April 1996) the strategy of selling on rallies was adhered to, for on 11 March, the trading day following 8 March 1996, when there was a 10.88% drop in Holdings' share price, Fabrice Jacob informed Christian Haas and Philippe Dhamelincourt that *"volumes had vanished"* and that he preferred to wait for amongst other things, the public announcement of the listing.

Christian Haas' resignation from Holdings board

On 1 March 1996 Christian Haas wrote to Siegfried Lee indicating that he preferred to resign as a director of Holdings. Siegfried Lee replied on 1 April 1996, enclosing a letter of resignation to take effect on 10 April 1996 for Christian Haas's signature and return. It was returned on 2 April 1996. Holdings' Annual Report for 1995 shows Christian Haas as having resigned as a director on 10 April 1996.

Sales in April, May & June 1996

The next rally occurred in the middle of April 1996. On 17 April 1996, Philippe Dhamelincourt sent a fax to Fabrice Jacob, copied to Christian Hass, which said:

"We confirm our wish to take advantage of the share price rise. Please sell 4 million shares above HK\$1.5."

Sales were made on 18 & 19 April down through May and early June, though at prices less than \$1.50, that price was only achieved on 27 May 1996. The 4 million limit on sales was also exceeded. Christian Haas cites this as an example of Fabrice Jacob exercising his discretion.

The last sale was on 11 June 1996. Fabrice Jacob told the SFC that the reason for this was:

"...when we learnt the forthcoming listing of NHD on the New York Stock Exchange I then recommended to my boss to stop selling to take advantage of the impact of the spin-off on the share price of the holding company."

Christian Haas confirmed this, when he said in evidence:

"In June he convinces us to stop selling for objective reasons coming from his appreciation from the market. Then he has this meeting, he writes what he has been writing. He says 'What are your views?' We say 'okay', we have no reason to tell him 'do not do anything.' He has decided on his own to stop the selling process and I think he had convinced us to do so."

No sales in July & August 1996

There were no sales in July and August 1996. Christian Haas and Philippe Dhamelincourt appear to have been concerned about this. Christian Haas told us:

"We contacted him again and spoke to him frequently on the telephone. We said to him, 'Fabrice, sell'."

5 September 1996 meeting with Y. T. Du.

On Thursday, 5 September 1996, Fabrice Jacob met Y. T. Du. According to Fabrice Jacob this meeting was at the HSBC's premises, though he did not state which. It was a short meeting, lasting no longer than 45 minutes. It was arranged by Robert Lewis, a Senior Analyst at James Capel, who also attended it along with Fabrice Jacob. Y. T. Du was aware that Fabrice Jacob was calling on GAAP's behalf. He had not met Y. T. Du before, but knew that he was a former director of Goldman Sachs.

When interviewed by the SFC on 11 April 1997, Y. T. Du was terse in his replies about what was discussed at this meeting:

“Q: Did you mention to him that the US IPO was called off?”

A: I don't recall.

Q: Did you mention to him that the financial condition of Siu-Fung was very tight?”

A: I don't think so.

Q: Did you discuss with him a new cash call was being considered...?”

A: I don't think so.”

When the SFC interviewed him in May 1997, Robert Lewis said that the meeting was a “typical company visit.” He did not prepare a meeting note. He could not recall what was said about the listing. He could not recall if he talked to anyone about the meeting after it was over, but did not think there was any reason for him to speak to anyone about it. He was able to recollect that Y. T. Du did not appear to have a good grasp of details.

We have no way of expanding on what these two men told the SFC investigators for, as we said in Chapter 1, Robert Lewis declined to attend and give evidence before us and nobody appears to know Y. T. Du's current whereabouts.

6 September 1996, Fabrice Jacob reports to Christian Haas & Philippe Dhamelincourt

On 6 September 1996, Fabrice Jacob sent a written report (in English) of this meeting to Christian Haas and Philippe Dhamelincourt. We quote it in full:

“This one-on-one was organised by Hong Kong Bank for me to meet the

new CEO of Siu Fung, who joined the company only a week ago.

Y T Du is an ex-Director of Goldman Sachs Asia, and therefore has a profile quite similar to Peter Lee's profile. His strategy is to give much more visibility to Siu Fung while improving the overall communication of the group. One of his first actions will be to consolidate New Concept with Siu Fung, which he hopes to do by the end of the year.

He admitted that there were real communication problems when the US IPO for NHD was called off, as well as when Siegfried Lee's wife sold 80 million shares at HK\$1.30 on 2nd July, 1996.

We were also told that the New York listing was called off at the last minute at the request of the underwriters (DLJ, CSFB, Lazard), as opposed to a request of the company. It was confirmed that a total of HK\$5 billion has been injected through loans and equity into New Concept, and that New Concept is currently experiencing a cash crisis. A new cash call is being considered, either at the holding level or at the New Concept level through convertible bonds to provide the necessary working capital.

The Chinese joint ventures seem not to operate according to budget. The most obvious example is the Beijing sanitary ware factory, operating at 10% capacity.

The financial condition of Siu Fung seems to be very tight, and the possibility to raise additional funds in Hong Kong is questionable since major names (such as HSBC, Prudential, Wardley, Search) have already burnt their fingers on New Concept.

Share price went down last week from HK\$1.20 to HK\$1.11, in relatively heavy volumes (86 million shares in 5 days). We still hold 8.5 million shares.

Situation is therefore worrying. However, one can notice that:

- HSBC, which has approximately HK\$900 million of exposure, will not let it down.*

- *Shareholders at the New Concept level cannot let it down either given their heavy exposures.*
- *Siegfried Lee and his wife hold together 61% of the company. Assuming the shareholders of New Concept convert their shares in the holding company in November, 1997, as they are entitled to, and assuming the share price used as a benchmark for conversion is HK\$1.11. Their combined holding would drop to 44%. This strong dilution should encourage the management to push up the price, as they have done in the past on several occasions.*

I suggest to watch carefully the share price and the volumes, and to wait for the next rally to sell our last block. I also suggest to set a stop-loss threshold (such as HK\$1.00 per share) to avoid being trapped if the company was to go under.

Please let me have your views on this matter."

Fabrice Jacob told the SFC in his interview of 25 February 1997 that Y. T. Du had told him of the problems set out in that report as a result of questions put to him by Robert Lewis and himself. He went on to say:

"Most of the information was known to professionals, brokers and analysts. I agree with you that Siu-Fung did not make any public announcement regarding any of these specific topics. However they came as no surprise to Robert Lewis and myself, so there were rumours flying around and the matters discussed were confirmation."

Sales recommence

On the evening of Monday, 9 September 1996, Christian Haas and Philippe Dhamelincourt confirmed their acceptance of Fabrice Jacob's recommendation on the basis that "...the reason why the selling had stopped was no longer valid" and Fabrice Jacob started selling the balance of GAAP's Holdings portfolio on Tuesday, 10 September.

On 19 September 1996 Fabrice Jacob faxed Christian Haas and Philippe

Dhamelincourt reporting that he had sold 3 million shares *“with the current”* at around \$1.07, but when the institutional investors started *“unburdening themselves in large parcels”* the price had fallen through *the “symbolic threshold of HK\$1.00”* and he had sold 5.5 million shares in one block at around \$0.97, leaving a small balance of 33,786 shares which would be disposed of the next day. He in fact did so at \$0.8974 per share. This disposed of the entirety of GAAP’s Holdings portfolio.

Was Fabrice Jacob in possession of relevant information?

The case against Fabrice Jacob is based on the premise that having received information, on 5 September 1996, which he knew to be relevant information, from Y. T. Du, whom he knew to be a director and CEO of Holdings and thereby a person connected with Holdings, and whom he knew or had reasonable cause to believe held that information by virtue of that connection, he counselled or procured Christian Haas and Philippe Dhamelincourt to sell the balance of GAAP’s portfolio of Holdings shares. Mr. Lunn argued that in consequence he is culpable of insider dealing pursuant to section 9(1)(e) of the Ordinance.

Fabrice Jacob’s 6 September 1996 report to Christian Haas and Philippe Dhamelincourt shows that as a result of his meeting with Y. T. Du he was in possession of the following pieces of information, all of which were undoubtedly specific in nature, namely:

- that the listing had been called off, at the last minute, at the request of the underwriters as opposed to a request of the company;
- that HK\$5 billion has been injected through loans and equity into Concept, and Concept was currently experiencing a cash crisis;
- that a new cash call was being considered, either at Holdings’ level or at Concept’s level through convertible bonds to provide the necessary working capital; and
- that the Chinese joint ventures do not seem to operate according to budget.

The remaining passages in that report appear to us to be no more than Fabrice Jacob’s informed comments on what Y. T. Du had told him, rather than specific pieces of

information passed to him at the meeting.

The listing's failure

Fabrice Jacob told the SFC in his interview of 25 February 1997, that he had learned from brokers and market rumours that the underwriters had pulled out in the summer of 1996 and that "...this was confirmed by Mr. Du later on." Acting on that confirmation he advised Christian Haas and Philippe Dhamelin court to authorise the resumption of GAAP's divestment of its Holdings portfolio that had been agreed upon seven months earlier in February 1996.

In that interview and a subsequent one on 27 November 1997, Fabrice Jacob never sought to hide from the SFC the fact that the share sales had only recommenced because of the confirmation he received from Y. T. Du. He *'insist(ed)'* in that interview that:

"Mr. Du disclosed this fact as early as August to the Hong Kong Economic Times which is a Hong Kong newspaper."

And in a letter to the SFC of 20 February 1997, he stated quite categorically that:

"It was only after GAAP understood that such listing plans were cancelled and after I met with Mr. Y.T. Du that it was decided to sell the remaining block of shares, even though it was at a loss."

We have already expressed our conclusion that the listing's failure came into the public domain no earlier than 10 August 1996 and ceased to be relevant information after that date. The only advantage Fabrice Jacob had over the investing public after his 5 September 1996 meeting with Y. T. Du was confirmation that the brokers' and market rumours concerning the reasons for the listing's failure were true. We do not believe that this additional knowledge elevates what he knew back into the status of relevant information. Put simply, we are satisfied that after 10 August 1996 the investing public were aware that the listing had failed and was not going to happen in the foreseeable future, if at all. We are satisfied that the investing public would have made their decisions regarding an investment in Holdings shares with that in mind. All that Fabrice Jacob knew on 5 September 1996 over and above the investing public (some of whom, given his reference to brokers and market rumours in the summer of 1996, might have known it) was the reason why the listing had failed.

Holdings liquidity

There is no evidence, or even a suggestion of evidence, that at the meeting Y. T. Du gave Fabrice Jacob any of the documents or details about Holdings' funding problems that the Concept Investors were provided with in late June, July and early August 1996. The information that Y. T. Du allegedly gave him about Holdings' cash problems at the 5 September 1996 meeting is far less detailed and specific. He took no part in the Concept Investors' meetings in late June, July & early August 1996 and had nowhere near the vast wealth of detail that Lisa Lam, William Lam and Henry Tai had at the time of their dealings in Holdings shares.

Fabrice Jacob told us that his reference to Concept "... *currently experiencing a cash crisis*" in the paragraph of the report dealing with loans and equity injection was based on his own analysis and not on something that Y. T. Du told him at the meeting. His choice of the words "*cash crisis*" was based on his deductions from the contents of Holdings' 1995 Annual Report and other details he already knew about, including his knowledge of Holding's joint venture companies arising from visits to some of those factories and discussions with business partners of Banque Worms. He claimed that in using the phrase he was not referring to a new or different state of affairs.

We note that Christian Haas and Philippe Dhamelincourt told us that they did not consider the reference to a 'cash crisis' in that paragraph indicated to them that Fabrice Jacob was reporting on something that was new or significant.

As we said in Chapter 9, we accept that it is to be expected that a rapidly expanding company, such as Holdings was, would have large capital requirements and that the investing public would be aware of Holdings' gearing from the 1995 Annual Report. Anyone reading that report would have known that Holdings needed to find around \$762 million between December 1995 and December 1996.

In the absence of evidence from Y. T. Du and Robert Lewis of their recollection of what was said at the meeting, and how it was said, we feel that we must accept Fabrice Jacob's claim that this was his own phrase and not Y. T. Du's reported speech.

It is Fabrice Jacob's claim that although Y. T. Du dealt with the three remaining matters in the report they were already known to the investing public by 5 September 1996. Those three matters are:

- that HK\$5 billion has been injected through loans and equity into Concept;
- that a new cash call was being considered, either at Holdings' level or at Concept's level through convertible bonds to provide the necessary working capital; and
- that the Chinese joint ventures do not seem to operate according to budget.

It is certainly the case that Holdings reported none of these matters to the public either by way of a paid-for press announcement cleared with SEHK, or over the SEHK's teletex service. It is also the case that we can find no press reports that recount those three matters in the same terms as they are expressed in the report. There were, however, press reports in August and September 1996 referring to rumours of troubles at Holdings; we have quoted some of them in Chapter 8. These show a growing publicly expressed concern over Holdings' debts and funding arrangements and an awareness of its need to raise loan capital.

The article in the *Oriental Daily* for 4 September 1996 reporting in considerable detail on the Dao Heng Bank syndicated loan, which appeared the day before Fabrice Jacob met Y. T. Du, referred in direct terms to problems with Holdings' arrangements for bank funding. The article shows that by early September 1996 there were known concerns within the banking industry about the support Holdings was receiving from its bankers and about its debt equity ratio of 80%.

In relation to Holdings' Mainland joint ventures, as we said in Chapter 9, Mr. Morin said that the information giving rise to the concerns about Holdings and its Mainland joint ventures expressed in CSFB's memorandum of 13 June 1996, had come from market participants. That was in mid-June 1996. Two months later, in August 1996, the *Apple Daily* in its report of Y. T. Du's 10 August 1996 press conference reported Siegfried Lee as claiming that the joint ventures in the Mainland had entered into a consolidation stage, that 22 had commenced production and the remaining 10 were expected to commence production by the end of the year. The *Hong Kong Economic Times* in its report of the press conference spoke of Concept having to share a loss on the joint ventures of \$35.12 million in the last year. The *Oriental Daily* report for 4 September 1996, which we have just referred to, commented in its first paragraph:

“...it is still unclear as to the operating efficiency of the company’s mainland plants, the banks show only mild responses to the initial underwriting of the loan”

The existence of these reports lends credence to Fabrice Jacob’s claim that by 5 September 1996 the investing public knew about all of the matters in the report.

This matter has caused us considerable difficulty. On the one hand it is clear that, at a private meeting between the two of them and Robert Lewis, Y. T. Du gave Fabrice Jacob specific information about Holdings which, on any view, was price sensitive. On the other hand it appears clear that what Y. T. Du told Fabrice Jacob was information that was available to the investing public had they taken the trouble to look for it. After much debate between the three of us we take the view that by 5 September 1996 the investing public were aware of the specific information Y. T. Du gave to Fabrice Jacob at that meeting. We have decided that it would be inappropriate and unjustified to make a finding of insider dealing against Fabrice Jacob.

We, however, make this adverse comment. In his report Mr. Witts describes the meeting of 5 September between Y. T. Du and Fabrice Jacob as follows:

“Such meetings are perfectly normal and routine within the investment community whereby investors, whether existing or potential, meet management of publicly listed companies and it is also very common for stockbrokers to act as the intermediary in arranging such meetings.”

Normal and routine they may be, but we accept Mr. Lunn’s argument that they should be deplored. On the company’s part, their purpose is to put the company in the best light possible offering inducements to the analyst to recommend the company’s stock. On the analyst’s part, their purpose is to glean information personally from top officers so that they can make recommendations to their clients. Under the SEHK’s Listing Rules information about major events of a listed company should be disseminated evenly and fairly to the whole of the public by regulated public announcements. The incentives and temptations to pass on inside information to a selected few on these occasions are disproportionate and far outweigh any benefit such meetings might contribute to the health of the market. The dangers that such analysts’ meetings can cause is amply exemplified in this case where by his attendance at one such meeting Fabrice Jacob brought a SFC investigation and an Insider Dealing Tribunal Inquiry

down not only upon his own head, but also upon the heads of his two colleagues in Paris.

The position of Christian Haas and Philippe Dhamelincourt

The case against Christian Haas and Philippe Dhamelincourt is based on the premise that they sold the balance of GAAP's portfolio of Holdings shares after receiving information, which they knew to be relevant information, indirectly from Y. T. Du through Fabrice Jacob, knowing that Y. T. Du (a director and CEO of Holdings) was connected with Holdings and knowing, or having reasonable grounds to believe, that he held that information by reason of his connection; and that in consequence they are culpable of insider dealing pursuant to section 9(1)(e) of the Ordinance.

It follows that as we have decided that it would be inappropriate and unjustified to make a finding of insider dealing against Fabrice Jacob it would be as equally inappropriate and unjustified to make a finding of insider dealing against Christian Haas and Philippe Dhamelincourt.

Chapter 18

In this chapter we summarise our findings in relation to questions (a) and (b) of the Financial Secretary's section 16 notice.

Siegfried Lee

Siegfried Lee a person connected with Holdings and in knowing possession of relevant information in relation to Holdings, engaged in insider dealing in two instances:

Firstly, when he effected, either directly, or indirectly through Daniel Chan, the sale of the:

- 1.4 million Holdings shares in which he had the beneficial interest held in Li Man Yi's name with Tanrich on 14 June 1996;
- 6.36 million and 2.66 million Holdings shares in which he had the beneficial interest held in Wong Fong Kim's name with J.A. Fu on 14 & 18 June 1996; and
- 6.52 million Holdings shares in which he had the beneficial interest held in Wai Man Keung's name with J.A. Fu on 18 June 1996.

Secondly, when he counselled or procured his wife Lelalertsuphakun Dusanee (Mrs. Lee) to sell the 80 million Holdings shares registered in her name on 2 and 8 July 1996, knowing or having reasonable grounds to believe that she would sell them.

Daniel Chan

Daniel Chan a person connected with Holdings and in knowing possession of relevant information in relation to Holdings, engaged in insider dealing when he, as party to a joint enterprise with Siegfried Lee, dealt in Holdings shares:

- by counselling or procuring Li Man Yi to sell the 1.4 million Holdings shares in which Siegfried Lee had the beneficial interest held in her name with Tanrich on 14 June 1996, knowing or having reasonable cause to believe that she would sell them;

- by selling 6.36 million and 2.66 million Holdings shares in which Siegfried Lee had the beneficial interest held in Wong Fong Kim's name with J.A. Fu on 14 & 18 June 1996; and
- by selling 6.52 million Holdings shares in which Siegfried Lee had the beneficial interest held in Wai Man Keung's name with J.A. Fu on 18 June 1996.

Daniel Chan has failed to establish a defence under section 10(4) of the Ordinance.

Lisa Lam

Lisa Lam, a person connected with Holdings and in knowing possession of relevant information in relation to Holdings, engaged in insider dealing when William Lam and she dealt in Holdings shares by selling the 6 million Holdings shares held in her name in three tranches on 2, 26 & 29 July 1996.

Lisa Lam has failed to establish a defence under section 10(3) of the Ordinance.

William Lam

William Lam, a person connected with Holdings and in knowing possession of relevant information in relation to Holdings, engaged in insider dealing when:

- Lisa Lam and he dealt in Holdings shares by selling the 6 million Holdings shares held in Lisa Lam's name in three tranches on 2, 26 & 29 July 1996.
- Henry Tai and he dealt in Holdings shares by counselling or procuring their superiors, Robert Miller and Nicholas Prior, to sell Search's portfolio of Holdings shares held by its subsidiary, Mordale in the period 2 August to 5 September 1996, knowing or having reasonable cause to believe that they would sell them.

William Lam has failed to establish a defence under section 10(3) of the Ordinance in respect of the first transaction.

Henry Tai

Henry Tai, a person connected with Holdings and in knowing possession of relevant information in relation to Holdings, engaged in insider dealing when William Lam and he dealt in Holdings shares by counselling or procuring their superiors, Robert Miller and Nicholas Prior, to sell Search's portfolio of Holdings shares held by its subsidiary,

Mordale in the period 2 August to 5 September 1996, knowing or having reasonable cause to believe that they would sell them.

Li Man Yi

It would be inappropriate and unjustified to make a finding of insider dealing against Li Man Yi.

Wong Fong Kim

It would be inappropriate and unjustified to make a finding of insider dealing against Wong Fong Kim.

Wai Man Keung

It would be inappropriate and unjustified to make a finding of insider dealing against Wai Man Keung.

Mrs. Lee

It would be inappropriate and unjustified to make a finding of insider dealing against Mrs. Lee (Lelalertsuphakun Dusanee).

Nicholas Prior

It would be inappropriate and unjustified to make a finding of insider dealing against Nicholas Prior.

Robert Miller

It would be inappropriate and unjustified to make a finding of insider dealing against Robert Miller.

Fabrice Jacob

It would be inappropriate and unjustified to make a finding of insider dealing against Fabrice Jacob.

Christian Haas

It would be inappropriate and unjustified to make a finding of insider dealing against Christian Haas.

Phillipe Dharmelincourt

It would be inappropriate and unjustified to make a finding of insider dealing against Phillippe Dharmelincourt.

For the avoidance of doubt, we again state that our findings are unanimous.

In the light of the above findings Chapters 1 to 18 (inclusive) of the Tribunal's report are now sent to the Financial Secretary, pursuant to the provisions of section 21(3)(a) of the Ordinance.

On a future date, we will hear representations in respect of the requirement, contained in paragraph (c) of the Financial Secretary's notice, that we determine the amount of profit gained or loss avoided as a result of the insider dealing we have found took place and thereafter decide upon the consequent orders and penalties.

Acknowledgements

The Chairman places on record his appreciation of the assistance given to him by the two members of the Tribunal, Mr. Michael Sze and Mr. Malcolm Barnett, both for their contribution during the hearings and their methodical, patient and highly professional approach to their consideration of the evidence. Tribunal members play a vital role in insider dealing inquiries and Hong Kong is fortunate to have the services of people of such high calibre.

We are grateful for the assistance given to us by all the counsel and solicitors involved in the inquiry. Without exception, they carried out their respective duties with professionalism, vigour and courtesy. Their level of assistance, especially in the submission of detailed, written arguments, made our work a good deal easier.

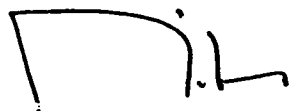
We are grateful also for the reliable and efficient support rendered by the Tribunal's staff, WordWave (Asia) (the court reporters) and Abraham Wong, Hoffman & Associates (the interpreters).

Signed

A handwritten signature in black ink, appearing to read "G. Ligar-Mawson!". The signature is written in a cursive, flowing style.

The Hon Mr. Justice Ligar-Mawson

Chairman

A handwritten signature in black ink, appearing to read "M. Sze Tsai Ping". The signature is written in a stylized, blocky cursive style.

Mr. Michael Sze Tsai Ping

Member

A handwritten signature in black ink, appearing to read "M. Barnett". The signature is written in a simple, curved, cursive style.

Mr. Malcolm Antony Barnett

Member

Dated: 18 March 2004

Introduction

We have pleasure in submitting the second part of the report of our findings in relation to question (c) of the Financial Secretary's notice pursuant to section 16 of Securities (Insider Dealing) Ordinance Cap. 395 (the Ordinance) dated 10 February 2001, requesting the Insider Dealing Tribunal to conduct an inquiry into certain dealings in the listed securities of Siu Fung Ceramics Holdings Limited between June and September 1996 (the section 16 notice).

With this second part of the report are the orders we have made under sections 23, 26, 26A & 27 of the Ordinance.

The first part of the report, comprising of chapters 1-18 inclusive, of our findings in relation to questions (a) & (b) of the section 16 notice was submitted to the Financial Secretary on 18 March 2004. The same chapters were also sent to the Department of Justice and the solicitors representing the implicated persons and made available to the public.

By paragraph (c) of the section 16 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.

As subsection 23(2) of the Ordinance provides that the Tribunal shall not make an order in respect of any person under subsection 23(1) without first giving that person the opportunity of being heard, we sat on 18, 19 and 25 May 2004 to hear submissions from the implicated persons and Counsel to the Tribunal relating to:

1. the calculation of the amount of any profit gained or loss avoided as a result of the insider dealings we found proved;
2. the appropriate financial penalties and orders under section 23 of the Ordinance consequent on our findings of insider dealing;

3. what witness expenses should be granted under section 26 of the Ordinance;
4. what cost should be awarded to the implicated persons under section 26A of the Ordinance; and
5. what orders, if any, should be made under section 27 of the Ordinance.

Of the fourteen implicated persons, Robert Miller, Nicholas Prior and Li Man Yi chose not to make submissions to us. Siegfried Lee could not be contacted. Wong Fong Kim, Christian Haas, Philippe Dhamelincourt and Daniel Chan made written submissions, but did not attend the hearings. Counsel represented Wai Man Keung, Mrs. Lee, Lisa Lam, William Lam, Henry Tai and Fabrice Jacob in making their submissions.

We believe that justice requires that further inquiries be carried out, and that we hear further evidence and submissions, on whether or not we can and should identify either Mordale or Search (or both corporations) as having engaged in insider dealing and if each (or both) did, what orders should be made against them. As our function in respect of this Inquiry has not yet ended we propose to hold further hearings for this purpose. Until those hearings are ended we make no penalty or cost orders against either William Lam or Henry Tai and reserve our decision on these matters.

Save where the context otherwise requires it, the same terms and abbreviations used in the first part of the report are used in this second part.

Chapter 19

In this chapter we calculate the losses avoided by Siegfried Lee, Lisa Lam, William Lam, Henry Tai and Daniel Chan.

By paragraph (c) of the section 16 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. None of the five implicated persons we identified as insider dealers made, or were involved in the making of, any profit from their trading, they only avoided, or were involved in the making of, losses.

The principles behind the calculation

The Ordinance is silent on how we should calculate losses avoided. The principles behind their calculation are set out in the Court of Final Appeal's judgment in **Insider Dealing Tribunal v. Shek Mei Ling** [1999] 1 HKLRD 879. The basis of the calculation involves comparing two elements, one actual: the shares were sold and the other notional: what would have happened had the shares been retained? The actual element in the calculation comprises the amount the insider dealer realised from his sale of the shares before the market learned of the bad news. The notional element comprises the market value of the shares at an appropriate date. That date is not drawn out of thin air; it is arrived at by the Tribunal taking the date on which the information was made public (a known date) and then, if necessary, projecting forward over a number of days until it arrives at the date on which it is satisfied that the market had a reasonable opportunity to digest the information. An allowance is made in respect of notional transaction costs.

In carrying out this exercise the Tribunal looks at the share's trading record. The date on which the information became known to the market is usually capable of precise determination and the trading statistics on, and after, that date will normally show the effect the information had on the market. If a significant increase in volume or value, or both, is seen on a day, or a number of days, within a reasonable period of time after the release of the information it is not unreasonable for the Tribunal to accept that day as being the appropriate date. In appropriate circumstances, it may well be the actual date on which the information was made public.

On what date did the information become public?

The complication in this Inquiry is in determining the date on which the information became known to the market. As we said in Chapter 9 there are two matters in this

Inquiry that constitute 'relevant information', the listing's failure and the effect that the failure had on Holdings' liquidity. We decided that the listing's failure came into the public domain no earlier than 10 August 1996 and that the investing public were unaware of the depth of Holdings' liquidity problems until the evening of Friday, 27 September 1996 when Holdings' six months' interim results for the period ended 30 June 1996 were published. Which of those two dates should we take in arriving at the appropriate date for our calculation of losses avoided?

Mr. Harris for William and Lisa Lam asked us to take 10 August 1996 as this date. It was his argument that the loss was avoided (and their wrongdoing crystallized) when either of the two pieces of relevant information was released into the public domain and we had found that Lisa and William Lam had dealt with Holdings' shares in reliance on both pieces of relevant information, and not exclusively in reliance on the second one in time. Further, the listing's failure set in train the liquidity problems and those - the subsequent and second piece of relevant information - could therefore be regarded as a 'supervening event' affecting share prices in the market and should be disregarded for the purpose of ascertaining any loss avoided.

We do not agree. Holdings had a severe liquidity problem well before 10 August 1996. In fact it had one right from the moment it acquired Netzsch. The listing was to be its cure. It was not a case of 'everything in the garden being rosy' until the night of 13/14 June 1996. We reviewed the evidence of this in Chapter 7, and said at page 62:

"The fact cannot be escaped that Siegfried Lee had parlayed almost all of his available personal assets in supporting Netzsch's acquisition. The listing was the object behind his gamble. If successful it would provide funding for NHD and Concept, repay Netzsch's acquisition costs and return to him his personal Holdings share portfolio that he had pledged to the HSBC to secure the loans he needed to make the acquisition. The listing's failure was a devastating blow to his scheme; severe financial problems that he had not accounted for loomed before him."

The listing's failure caused (a phrase we admit using in Chapter 9, at page 122), or set in train, the liquidity problem only to the extent that Holdings had no alternative plan to cure its existing liquidity problem and was thrown into the desperate unplanned measures of seeking further substantial banking support from the HSBC,

Hang Seng Bank and Dao Heng Bank as well as equity injections from the Concept Investors.

The 'supervening event' argument advanced by Mr. Harris relied on comments made by Nazareth VP in **Shek Mei Ling v. Insider Dealing Tribunal** [1998] 4 HKC 37 at page 50 (C-G) (the decision which was the subject of the Court of Final Appeal's judgment reported at [1999] 1 HKRD 879) where the learned Vice President discussed the application of the test for the determination of losses avoided set out in section 21(d)(2)(A) of the United States Securities Exchange Act 1932 to the Hong Kong insider dealing regime.

The Court of Final Appeal did not follow the Court of Appeal's decision and reasoning. They decided the point from first principles as a matter of statutory interpretation. At page 884 (A-C) of the Court of Final Appeal's decision, Lord Nicholls of Birkenhead discounted the supervening event argument, saying:

"In one sense, any increase in the insider dealer's profit due to favourable extrinsic factors such as these [in context: factors beside the disclosure of the information] might be said not to form part of the insider dealer's profit gained 'as a result of the insider dealing. On this approach, when calculating the insider dealer's profit for the purpose of s.23, the profit made on the sale should be adjusted, downwards or upwards, to reflect the extent to which sale price was increased or diminished by favourable or unfavourable extraneous factors.

This approach is not the approach adopted in practice by the tribunal, nor do I think it would be correct... although I would not exclude altogether the possibility there might be exceptional circumstances when some allowance would be called for."

Mr. Huggins for Henry Tai also asked us to take 10 August 1996, or a short time thereafter, such as Monday 12 August 1996 when the market re-opened, as the reference date.

His first argument was that, as Nicholas Prior and Robert Miller had made it clear that in all likelihood Search would have sold Mordale's Holdings shares once the news that the listing would not happen in the foreseeable future became public on 10

August 1996, we should therefore proceed on the basis that it is more likely than not that Mordale would have decided to sell the shares on 10 August 1996, when it could have done so quite legitimately at the prevailing market price. Accordingly, any loss avoided should be determined by reference to the number of shares that Mordale sold between 2 August and 10 August and by reference to the differences in price between that prevailing on 10 August 1996 and the prices at which those shares were sold before that date.

In the event that we rejected that argument, Mr. Huggins' second argument was that we should not take 27 September 1996 (nor any date shortly thereafter) as the reference date. There was no material movement in Holdings share price from early July to 20 September 1996, when it fell from over \$1 to around \$0.80, and on 27 September 1996 when it fell from \$0.80 to \$0.60. Mr. Huggins attributes two extraneous factors to these falls, neither of which Henry Tai knew about before they became public, namely: the closure of the Selb plant in Germany, which was made public in a press report on 20 September 1996 followed by a company announcement on 24 September 1996 and the 27 September 1996 announcement of a colossal interim loss of HK\$252 million.

Mr. Huggins says that it is plain that it was these two extraneous factors which led to the dramatic drops in the share price in September 1996 and that these were quite separate from any disclosure to the public about the Company's "liquidity problems" following the "failure of the listing" which we found were made public as of 27 September 1996.

Again we do not agree. The first argument looks for its support to that part of the Court of Final Appeal's judgment in **Insider Dealing Tribunal v. Shek Mei Ling**, where, at page 886(F-G), Lord Nichols said:

"Failing cogent Evidence that, in any event, the shares would have been sold before the Market announcement, the date will usually be the date by which the Market learned and absorbed the information. This will usually be the appropriate date because it can normally be expected that, save for the misuse of the confidential information, the insider dealer would still have held his shares at that date and, hence, would have suffered loss accordingly."

The evidence that Nicholas Prior and Robert Miller would in all likelihood have sold Mordale's Holdings shares once the news about the listing's failure became public on 10 August 1996 is not as cogent as Mr. Huggins would have us believe.

In Chapter 14, at pages 191 to 194 we reviewed the evidence behind Search's sale. It shows that by, at least, 28 June 1996 Nicholas Prior, William Lam and Henry Tai knew that the listing had been postponed, yet over one month passed before the decision to sell the shares was made on Wednesday, 31 July 1996 and Search began selling two days later on Friday, 2 August 1996. The reasons given for that delay (William Lam and Henry Tai were travelling extensively and were too busy to attend to writing a sale recommendation - Nicholas Prior was waiting for them to make recommendation, although "...not happy about it.") do not have a convincing air about them. As we said in Chapter 16, at page 208, Search was not a complex organization requiring the approval of a number of committees for its investment decisions. It existed for the benefit of one man - Robert Miller - and his family. Investment recommendations and decisions on them could be made quickly. Further, the decision to sell came only once the depth of the SFH Group's funding problems, and the management's seeming inability to face up to them realistically, became known to the Concept Investors by the end of July and the beginning of August 1996. The divestment memo itself gave, in paragraph 7, a dual reason for the sale recommendation:

"In view of the postponement of the NHD spin-off and the short term funding needs noted above, IND recommend that we should dispose of our SFH shares."

The second argument, based on extraneous factors, ignores the Court of Final Appeal's view in **Insider Dealing Tribunal v. Shek Mei Ling** that when calculating 'profit gained' and 'loss avoided' intervening events affecting the share price are to be ignored. We again refer to that part of Lord Nicholls' judgment at page 883(I) to page 884(C) which we have already quoted.

Neither is it right to regard the 27 September 1996 announcement as an extraneous factor and "...something quite separate from any disclosure to the public about the Company's "liquidity problems" following the "failure of the listing" ", as Mr. Huggins argued. At no time did Holdings make any disclosure in those terms and it would have been highly surprising had they done so. This argument misrepresents what

we said in the final paragraph of Chapter 9, at pages 122 & 123, which is clear and unambiguous.

Having rejected both Mr. Harris and Mr. Huggins' arguments, we are of the view that we should take 27 September 1996 as being the date on which the information became public for the purpose of arriving at the appropriate date for our calculation of losses avoided.

Henry Tai - no penalty?

Mr. Huggins raised a further argument that Henry Tai could not be visited with any penalty. This was based on the contention that the only findings of counselling or procuring, or both, by Henry Tai that we made related to his participation in the writing of the divestment memo. We doubted that this was written on 31 July 1996, the date appearing on it, rather the evidence indicates that it was written on a later date in early August 1996. For our part, we cannot locate a finding of ours in such clear terms. Our conclusions on this issue (at Chapter 16, at page 212) are not expressed in those terms.

The evidence shows that Search's decision to sell the Mordale portfolio of Holdings shares was made at the 31 July 1996 IND executive committee meeting which Nicholas Prior participated in by telephone link with Australia. Given that we doubted the accuracy of the date on the divestment memo it necessarily follows that this meeting pre-dated the writing of the divestment memo. William Lam and Henry Tai are shown as being present at that meeting. The meeting minute records the decision in these terms:

"4.1 Siu Fung Holding: The rationale was outlined. NAP authorised IND to dispose of all the shares at not less than HK\$1.15 per share."

Relying on the juxtaposition of the date of the IND executive committee meeting and the likely true date of the divestment memo Mr. Huggins argued that no penalty can be imposed on Henry Tai because Search made its decision to sell the Holdings shares (which resulted in any avoidance of loss) before and without regard to any insider dealing committed by Henry Tai in the divestment memo.

This ingenious argument, which we do not accept, ignores the fact that the divestment memo was not in itself the act of insider dealing by either of its authors,

William Lam and Henry Tai. It is no more than a summary of the relevant information they possessed at the time of the 31 July 1996 IND executive committee meeting, supplemented with details gained from the Concept Investors meetings on 1 & 2 August 1996 and a recommendation to sell Mordale's portfolio of Holdings shares. This is a point which we thought we had made clear in the third paragraph of page 208 (Chapter 16).

Daniel Chan - a correction

In Chapter 10 we concluded that Daniel Chan engaged in insider dealing when he, as party to a joint enterprise with Siegfried Lee, dealt in Holdings shares by selling 6.36 million and 2.66 million Holdings shares in which Siegfried Lee had the beneficial interest held in Wong Fong Kim's name with J.A. Fu on 14 & 18 June 1996. We have revisited the evidence relating to the sale on 18 June 1996 and find that our conclusion that he dealt in the Holdings shares held in Wong Fong Kim's name on that day is not supported by the evidence. Wong Fong Kim himself said that it was he who had given the instruction to J. A. Fu to sell those shares on 18 June 1996 on Siegfried Lee's behalf; there is no evidence that Daniel Chan effected that sale.

Our conclusion, therefore, in Chapter 10, at pages 144 & 145 of this report in respect of Daniel Chan's involvement in respect of the sale of the shares held in Wong Fong Kim's name should read:

"We are satisfied that Daniel Chan, a person connected with Holdings and in knowing possession of relevant information in relation to Holdings, engaged in insider dealing when he, as party to a joint enterprise with Siegfried Lee, dealt in Holdings shares:

... ..

- by selling 6.36 million Holdings shares in which Siegfried Lee had the beneficial interest held in Wong Fong Kim's name with J.A. Fu on 14 June 1996;..."

A consequential amendment is also required to the summary of our findings in respect of Daniel Chan in Chapter 18, page 227 of the first part of this report.

When did the market digest the information?

Acting on the advice of Mr. Shek Kam Por, an officer with the Enforcement Division of the SFC, whose statement was put in evidence before us on 18 May 2004, we decided that the market digested the information by close of business on Thursday, 3

October 1996. That is four trading days after the 27 September 1996 announcement.

Our reasons for choosing that date are based on the trading statistics of Holdings shares in the days following the 27 September 1996 announcement. On Monday, 30 September 1996, the first trading day after the announcement, the share price dropped 9.46% to close at \$0.67 on a turnover of 27,836,000 shares. On the subsequent 2 trading days, 1 & 2 October 1996, the price closed at \$0.63 and \$0.58 on a turnover of 20,379,970 shares and 33,630,037 shares respectively. On 3 October 1996, the price recovered 8.62% to close at \$0.63 on a turnover of 36,299,865 shares. On Friday, 4 October 1996, the price closed at \$0.62 on a reduced turnover of 10,813,432 shares. The closing price of \$0.62 held for the first two trading days of the following week on an average daily turnover of 6,185,865, before recovering on Wednesday, 9 October 1996 to \$0.67 on a turnover of 39,223,865. In view of the heavy turnover from 30 September 1996 to 3 October 1996, compared with the reduced turnover on 4 October 1996, we are of the view that the relevant information was fully digested and absorbed by the investing public by the close of business on 3 October 1996.

As to the market value of the shares at the appropriate date, we have again followed Mr. Shek's advice and adopted a weighted average method (total monetary turnover divided by the number of shares traded) which has been used in previous inquiries¹ in arriving at this. The 4-day weighted average price of Holdings shares from 30 September 1996 to 3 October 1996 was \$0.63, which is the same as the closing price on 3 October 1996.

Schedules setting out the calculations of the net losses avoided as a result of Siegfried Lee, Lisa Lam, William Lam, Henry Tai and Daniel Chan's insider dealing are at annexure 7. In arriving at them a deduction of estimated transaction costs of 0.413% made up of a minimum broker's commission of 0.25%; a transaction levy of 0.013%; and stamp duty of \$1.50 for every \$1,000 of value has been made.

¹ See: Emperor (China Concepts) Investments Ltd Inquiry, Hannay Holdings Ltd Inquiry & China Apollo Holdings Ltd Inquiry.

In summary they are.

	Account name	Loss avoided (\$)
Siegfried Lee	Li Man Yi	1,444,998.55
	Wong Fong Kim	8,996,094.77
	Wai Man Keung	6,050,805.00
	Mrs. Lee	53,378,632.00
		69,870,530.32
Daniel Chan	Li Man Yi	1,444,998.55
	Wong Fong Kim	6,429,533.55 ²
	Wai Man Keung	6,050,805.00
		13,925,337.10
Lisa Lam	Lisa Lam	3,820,594.67
William Lam	Lisa Lam	3,820,594.67
	Mordale	25,037,250.11
		28,857,844.78
Henry Tai	Mordale	25,037,250.11

² Sale on 14 June 1996 only.

Chapter 20

In this chapter we deal with the penalties and consequential orders against Siegfried Lee, Lisa Lam, William Lam, Henry Tai and Daniel Chan.

Section 23(1) of the Ordinance sets out the penalties we may impose. It reads as follows:

“(1) At the conclusion of an inquiry or as soon as is reasonably practicable thereafter, where a person has been identified in a determination under section 16(3) or in a written report prepared under section 22(1) as an insider dealer, the Tribunal may in respect of such person make any or all of the following orders -

- (a) an order that that person shall not, without the leave of the High Court, be a director or a liquidator or a receiver or manager of the property of a listed company or any other specified company or in any way, whether directly or indirectly, be concerned or take part in the management of a listed company or any other specified company for such period (not exceeding 5 years) as may be specified in the order;...*
- (b) an order that that person pay to the Government an amount not exceeding the amount of any profit gained or loss avoided by that person as a result of the insider dealing;*
- (c) an order imposing on that person a penalty of an amount not exceeding three times the amount of any profit gained or loss avoided by any person as a result of the insider dealing.”*

Financial orders

We deal with the orders under subsection 23(1)(b) & (c) first.

To be within the scope of either, or both orders, there must be a ‘profit’ that is ‘gained’ by the person in question, or a ‘loss’ that is ‘avoided’ by that person, whether he be the insider dealer or someone else, as a result of the insider dealing. There were no profits gained by any of the five implicated persons we identified as insider dealers, only losses avoided. We calculated those losses in Chapter 19.

For ease of reference we refer to orders under subsection 23(1)(b) as 'disgorgement orders' and orders under subsection 23(1)(c) as 'penalty orders.'

A disgorgement order cannot be made against an insider dealer who counsels or procures others to deal, but does not do so himself and therefore neither makes a gain, nor avoids a loss. However, a penalty order of up to three times the amount of any profit gained or loss avoided by the person, or persons, whose dealing he counselled or procured can be made against him. This is the position with respect to William Lam and Henry Tai in relation to the sale of Mordale's portfolio of Holdings shares and Daniel Chan in relation to the sale of Siegfried Lee's shares held by the nominees, Li Man Yi, Wong Fong Kim and Wai Man Keung.

Although not so described in the Ordinance a penalty order is comparable to a fine. Its purpose is to deter insider dealing by leaving a person who engages in insider dealing substantially out of pocket.

A disgorgement order made need not necessarily be for the same amount as the amount of profit gained, or loss avoided; it could be less for the subsection says an amount "...not exceeding the amount of any profit gained or loss avoided."

Principles of assessment

In the Court of Appeal's decision in **Shek Mei Ling v. Insider Dealing Tribunal** [1998] 4 HKC 37 (C.A.), Nazareth VP outlined the principles adopted in the Success Holdings Inquiry in assessing financial penalties under section 23(1) of the Ordinance, saying at page 51 D to 52 B:

- "(1) The fact that the insider dealer presented to the SFC investigators a false story does not go in aggravation of the penalties which would otherwise be posed. It is merely that he who admits fraud at the very outset will be credited for that fact.*
- (2) The effect of an admission before the Insider Dealing Tribunal especially at an early stage is a fact which goes in mitigation of the penalty, though in a strong case that will carry less weight than in a case where the evidence is not strong.*

- (3) *Where an admission is put forward on a basis which is believed, the credit for the admission will be less than it would otherwise be.*
- (4) *Financial penalties are to accord with the gravity of the wrongdoing, and are to be increased by reason of the substantial wealth of the insider dealer.*
- (5) *The Tribunal should not impose a financial penalty on an assumption that someone else will pay.*
- (6) *In determining whether to disqualify an insider dealer from holding offices as a director of a listed company, or of listed companies, there come into play a number of considerations. The determination will take into account the need to ensure the integrity of the securities market; to protect the public from further abuse by that person of the privileged position of trust which the office carries; to deter others from breaching that trust and to mark the disapproval of the investment community with the conduct of the insider dealer.*
- (7) *In determining whether to disqualify an insider dealer from holding offices as a director of a private company, one should have regard to the connection, if any, of the company with the insider dealing, and any relationship between the insider dealer and the private company; and the impact upon the individual of such a disqualification.*
- (8) *Where an incident in, or in connection with, the inquiry, gives rise to a justified sense of grievance, the Tribunal should recognize this and take that fact into account in determining the appropriate penalties.*
- (9) *In making its orders under section 23(1)(b) and (c) and section 27, the Tribunal should have regard to the totality of the financial burden imposed by these orders."*

Nazareth VP went on to say that these principles have been adopted in other inquiries and that they are particularly appropriate to penalty orders, where it is more open to us to look at the overall picture and attach such weight as we consider appropriate to the wider mitigating, or, indeed, aggravating features in each insider's

case. He also said that in addition, and where applicable, the general sentencing principles applied in criminal cases should also be taken into consideration for guidance.

None of these remarks were doubted in the subsequent Court of Final Appeal decision in that case and we have taken those principles into account in assessing the financial penalties.

Disgorgement orders

We take the view that, as the purpose of a disgorgement order is to strip the insider dealer of the amount of the profit gained, or loss avoided, by him as a result of his insider dealing, it is only in very exceptional circumstances, such as his patent lack of means, that it will be appropriate to award a lesser sum than the profit gained, or loss avoided.

In this regard, we are aware that Siegfried Lee is now bankrupt in Hong Kong. He has not responded to the publication of the first part of this report. He is believed to reside in Beijing, but neither the Tribunal nor the SFC knows his present address. There are however reasons to believe that Siegfried Lee is not totally without assets. In Chapter 11, at page 151, we referred to Daniel Chan admitting squirreling away \$25 million offshore for Siegfried Lee's benefit. We propose to proceed on the basis that Siegfried Lee remains a wealthy man and that eventually his assets will be tracked down. To do otherwise would be to reward mendacity.

We find that neither Siegfried Lee, Lisa Lam nor William Lam have any exceptional circumstances, which would justify our making no, or a lower, disgorgement order against them.

The losses avoided by Siegfried Lee, Lisa Lam and William Lam are set out in Chapter 19 of this part of the report, at page 243. We order under section 23(1)(b) of the Ordinance that:

1. Siegfried Lee will pay to the Government the loss he avoided of \$69,870,530. on the sale of the Holdings shares held in Li Man Yi, Wong Fong Kim, Wai Man Keung and Mrs. Lee's names; and
2. Lisa Lam will pay to the Government one half and William Lam will pay to the

Government the other half of the loss of \$3,820,594 they avoided on the sale of the Holdings shares held in Lisa Lam's name. For the avoidance of doubt each of them will pay the Government \$1,910,297.

Cents are ignored and the figures are rounded down to the nearest dollar.

Penalty orders

We do not propose to set out in this report all matters advanced by way of mitigation. Counsel made helpful submissions in this respect and these can be found in the transcript of proceedings. All five persons we found to be insider dealers are of previous good character. We take the view that previous good character counts for little. Those who have committed criminal offences, or engaged in previous acts of insider dealing, are very rarely placed in positions of authority within listed companies or put in a position to commit insider dealing.

Our findings are as follows, as in the case of the disgorgement orders cents are ignored and the figures are rounded down to the nearest dollar:

Siegfried Lee

Siegfried Lee has made no representations to us in mitigation of penalty. We can find none. He was motivated by greed throughout all his dealings. He displayed a cavalier attitude towards his duties as the chairman of a listed company. He was prepared to use his family members, as well as his subordinates and their family members, to execute his dishonest schemes. There is evidence that he has feathered a nest offshore to avoid his creditors in Hong Kong and he has expressed no remorse for his wrongdoing.

The amount of the penalty order that we consider appropriate in Siegfried Lee's case is double the loss of \$69,870,530 he avoided on the sale of the Holdings shares held in Li Man Yi, Wong Fong Kim, Wai Man Keung and Mrs. Lee's names, which amounts to \$139,741,060.

Lisa Lam

Lisa Lam admitted before us that she lied to the SFC about her dealings in Holdings shares in her interview of 12 March 1997. Though not a mitigating factor, we do not regard this as an aggravating one.

We accept Mr. Harris's submission that Lisa Lam was candid in her evidence before us, including her admitting that she lied to the SFC investigators, and that she assisted us by volunteering to identify the voices on the audio tape-recording of the 12 July 1996 meeting of Concept's directors.

The disposal of the Holdings shares held in Lisa Lam's name was by way of a straightforward sale and involved no subterfuge. No nominees, or other complicated schemes of arrangement were involved. Neither did Lisa and William Lam attempt to cover up their disposal. The SFC investigators appear to have had no difficulty in tracing both the disposal itself, and also the volume of shares disposed of. When compared with the loss avoided by Siegfried Lee (\$69,870,530.32) the loss avoided by Lisa and William Lam (\$3,820,594.67) is relatively modest.

We appreciate that our finding that Lisa Lam is an insider will have a devastating impact upon her as a professional person.

We were not, however, persuaded by Mr. Harris's argument that notwithstanding our rejection of Lisa and William Lam's section 10(3) defence we should accept as mitigation that at least part of the reasons for their disposal of the shares was related to the acquisition of their new Bowen Place property. We do not believe that it is any part of our function to make findings as to why William and Lisa Lam sold their shares. The decision to sell those shares was entirely in their hands, no one forced them to sell them.

The amount of the penalty order that we consider appropriate in Lisa Lam's case in respect of the sale of the Holdings shares held in her name is 50% of the loss avoided, which amounts to \$1,910,297.

William Lam - joint shareholding

Many of the factors that mitigate Lisa Lam's wrongdoing in relation to the sale of the Holdings shares held in Lisa Lam's name also mitigate William Lam's wrongdoing. We take into account the fact that he cooperated with the SFC, and volunteered to them the fact of the disposal of Lisa Lam's 10 million Holdings shares, despite her failure to mention this to the SFC investigators.

As we said in Chapter 15, at page 201, William and Lisa Lam appear to have treated Lisa Lam's Holdings shares as joint property, notwithstanding the fact she came by

them as a gift from Siegfried Lee and that they dealt in those shares jointly (or that, at the very least, William Lam dealt in them on Lisa Lam's behalf as her agent). We are satisfied that he had a beneficial interest in them and their proceeds of sale.

We appreciate that our finding that William Lam is an insider dealer will have a devastating impact upon him as a professional person.

Our rejection of the Bowen Place property argument applies as much to William Lam as it does to Lisa Lam.

The amount of the penalty order that we consider appropriate in William Lam's case in respect of the sale of the Holdings shares held in Lisa Lam's name is 50% of the loss avoided, which amounts to \$1,910,297.

William Lam and Henry Tai - Mordale portfolio

There was no evidence before us that either William Lam or Henry Tai avoided a personal loss on the sale of the Mordale portfolio of Holdings shares. The loss avoided went to Search's benefit. Neither was there any evidence that William Lam or Henry Tai made any money out of their insider dealing; or that either, or both, of them received a promotion, or a salary increase, or a bonus as a result. William Lam in fact left Search of his own volition shortly after the Mordale portfolio was disposed of. As matters currently stand, Search, the true beneficiary of their insider dealing, retains the fruits of its officers' wrongdoing and escapes both a disgorgement and a penalty order.

We can under section 16(4) of the Ordinance identify a corporation as an insider dealer. However, no argument was advanced to us that we find that either Mordale or Search (which are both corporations as defined in section 2(1) of the Ordinance) as opposed to Robert Miller or Nicholas Prior engaged in insider dealing and if each, or both, corporations did, what orders should be made against them. After much deliberation we believe that justice requires that further inquiries be carried out and that we hear further evidence and submissions on these matters. As our function in respect of this Inquiry has not yet ended we propose to hold further hearings for this purpose.

Until those hearings are ended we will make no penalty orders against either William Lam or Henry Tai, neither will we make a costs order against them in respect of the

Mordale share dealing. We shall reserve our decision on the percentage of the costs that we deem attributable to the Mordale share dealing until those hearings are ended.

Daniel Chan

Daniel Chan made a written representation to us in mitigation of penalty. He claims that he was just carrying out his boss's instructions and had no idea that in doing so he committed acts of insider dealing. He asked us to take into consideration that he did not gain financially from his acts; that he cooperated with all the parties concerned after the case was instituted; that he has been physically and mentally distressed by the case; that he has had to expend time and money in defending himself and; that his career is blemished as result of our findings.

We are satisfied that Daniel Chan was Siegfried Lee's trusted lieutenant who was taken wholly into his confidence and that he was fully aware that Li Man Yi, Wong Fong Kim & Wai Man Keung were no more than bare nominees in holding the legal interest in Siegfried Lee's Holdings shares. He was fully aware of the reason why Siegfried Lee instructed him to effect the sale of those shares in June 1996.

The amount of the penalty order that we consider appropriate in Daniel Chan's case is 100% of the loss avoided in the sale of Siegfried Lee's Holdings shares held in Li Man Yi's name on 14 June 1996 and Wai Man Keung's name on 18 June 1996, and Wong Fong Kim's name on 14 June 1996, which amounts to \$13,925,337.

Disqualification orders

We now deal with the orders under subsection 23(1)(a), which we refer to as disqualification orders.

A disqualification order can take many forms. For example, it can relate to a listed company or a private company or both; it can prohibit a person from being a director, a liquidator, a receiver and a manager or any combination of these. It can also prohibit indirect management of companies. The maximum period of disqualification we can order is five years.

Given the serious nature of insider dealing, it would be exceptional for us to make no disqualification order and we are of the view that there are no exceptional circumstances in this Inquiry arising from either the nature of the insider dealing

committed, or the personal circumstances of the insider dealers identified, that would justify us not making one.

In arriving at our decision we have taken into account the need to ensure the integrity of the securities market; protect the public from further abuse by the insider of the privileged position of trust which that office carries; deter others from breaching that trust; and mark the disapproval of the investment community of insider dealing generally. We gave individual consideration to the circumstances of each insider dealer and have taken into account the impact upon him, or her, of a disqualification order.

With the exception of Siegfried Lee, who in our view is totally unfit to have the management of any limited company, our orders in case of the four other people we identified as insider dealers are confined to listed companies. We do not consider it necessary to extend their disqualification orders to private limited companies.

We consider it proper that Siegfried Lee should be disqualified for the maximum permitted period of five years from being a director or a liquidator or a receiver or a manager of the property of both a listed and a private company, or in any way whether directly or indirectly being concerned or taking part in the management of a listed and a private company without leave of the Court of First Instance of the High Court. We consider it proper that Daniel Chan should be disqualified for a period of two years, and Lisa Lam, William Lam and Henry Tai should be disqualified for a period of one year, from being a director or a liquidator or a receiver or a manager of the property of a listed company, or in any way whether directly or indirectly concerned or taking part in the management of a listed company without leave of the Court of First Instance of the High Court.

Although the further inquiry whether or not either Mordale or Search engaged in insider dealing and if each, or both, corporations did, what orders should be made against them has still to take place, we have made the disqualification orders against William Lam and Henry Tai at this time as we have already found that they were insider dealers and justice requires that they serve their period of disqualification without delay.

Chapter 21

In this chapter we deal with issues of costs and witness expenses.

Witness expenses

Section 26 of the Ordinance empowers the Tribunal, in its discretion, to pay to a witness appearing before it, out of funds provided for that purpose by the Legislative Council, such sum for his expenses and loss of time as the Tribunal may determine. Details of the witness expenses we paid are at annexure 8.

Expenses of investigation & inquiry

Section 27 empowers the Tribunal to make an award of costs against persons identified as insider dealers. The section provides:

'At the conclusion of an inquiry or as soon as is reasonably practicable thereafter, the Tribunal may order any person who has been identified as an insider dealer in a determination under section 16(3) or as an officer of a corporation in a determination under section 16(4), as the case may be, to pay to the Government such sums as it thinks fit in respect of the expenses of and incidental to the inquiry and any investigation of his conduct or affairs made for the purposes of the inquiry.'

The assessment and apportionment of costs is always a 'judgment of Solomon', the best we can do is to say that the five identified insider dealers should bear between them all of the total costs of the Inquiry, which have been calculated at \$22,963,390.67.

These costs include:

- The Tribunal's costs, that is the fees and salaries of the Tribunal members and staff and expenses such as interpretation services, court reporting services and photocopying directly attributable to the inquiry itself. In keeping with the practice in previous inquiries, establishment expenses are not included;
- The witnesses' expenses;
- The costs of the Department of Justice;

- The costs of the Securities & Futures Commission; and
- The costs awarded to those of the implicated persons against whom no finding of insider dealing was made.

Annexure 9 gives details of these costs.

We consider it just that Siegfried Lee should bear the bulk of the costs of the Inquiry.

As we said in Chapter 20 of this part of the report, at page 251, we reserve our decision on liability for the costs that we deem attributable to the sale of the Mordale portfolio of Holdings shares until the hearings in respect of Mordale and Search's potential liability are ended. We reserve 30% of the total costs of the inquiry until a decision has been made on those issues.

Those remaining balance of the costs will therefore be borne by the identified insider dealers in the following proportions:

Siegfried Lee - 40% of the total cost of the Inquiry.

Lisa Lam in respect of the dealings in Holdings shares registered in her name - 10% of the total costs of the Inquiry.

William Lam - in respect of the dealings in Holdings shares registered in Lisa Lam's name - 10% of the total costs of the Inquiry.

Daniel Chan - 10% of the total costs of the Inquiry.

Cost of the implicated persons against whom no finding of insider dealing was made

Section 26A(1) of the Ordinance gives the Tribunal a discretion to award to a person whose conduct has been the subject of an inquiry the costs reasonably incurred by that person. The costs so awarded constitute a charge on the general revenue and may be taxed under the provisions of Order 62 of the Rules of the High Court.

In this Inquiry we did not identify Li Man Yi, Wai Man Keung, Wong Fong Kim, Mrs. Lee, Robert Miller, Nicholas Prior, Fabrice Jacob, Christian Haas and Philippe Dhamelincourt as insider dealers. Li Man Yi, Robert Miller and Nicholas Prior have made no application for costs under section 26A. The other six persons have.

The exercise of the discretion to award costs is subject to the provisions of subsection 26A(5), which provides:

“(5) This section shall not apply to any person referred to in subsection (1) who is –

- (a) a person who has been identified as an insider dealer in a determination under section 16(3);*
- (b) ...(inapplicable in this Inquiry)*
- (c) a person who and in respect of whom it appears to the Tribunal has by his own acts or omissions caused or brought about (whether wholly or in part) the Tribunal to inquire into his conduct subsequent to the institution of the inquiry or during the inquiry; or*
- (d) any other person who has by his own act or omissions caused or brought about (whether wholly or in part) the institution of the inquiry under section 16.”*

The inquiry referred to in the subsection is the inquiry instituted by the Financial Secretary under section 16 of the Ordinance - this Inquiry - and not the SFC's investigation.

If the Tribunal concludes that none of the provisions of section 26A(5) apply to the applicant, it is an accepted principle of the common law system of justice that costs 'follow the event.' This means that, unless statute provides otherwise, or in the absence of a statutory provision, there are good reasons for making a different order, costs are granted to the successful party in the litigation.¹ Good reasons would be cases where the successful party brought about the litigation; or did something connected with the institution, or the conduct of the litigation calculated to occasion unnecessary litigation and expense; or did some wrongful act in the course of the

¹ This principle is enshrined in Order 62 Rule 3(2) of the Rules of the High Court, Cap 4 (Subsidiary Legislation).

transaction of which the other party to the litigation complains². There is nothing in section 26A to suggest that this principle should not be followed.

In considering whether subsections 26A(5)(c)&(d) apply the Tribunal is not exercising a discretion, rather it is deciding whether, in the factual circumstances of each applicant's individual case, there is reason to find that he, by his own acts or omissions (whether wholly or in part), caused or brought about the institution of the inquiry, or caused the Tribunal to inquire into his conduct subsequent to the institution of the inquiry or during its course.

Previous Tribunals have held that the qualifying phrase '*...wholly or in part*' in subsection 26A(5)(d) means that it is sufficient if the applicant's acts or omissions have materially contributed to the institution of the inquiry and that they need not be the sole cause of its institution. Their meaning in subsection 26A(5)(c) has not fallen for interpretation before this Inquiry. By extension, we take it that it is sufficient if the applicant's acts or omissions have materially contributed to the Tribunal's decision to inquire into his conduct subsequent to the institution of the inquiry, or during its course.

It is an inescapable fact that virtually all Insider Dealing Tribunal inquiries are caused to a material degree by the acts or omissions of the implicated parties, no matter how innocent those acts or omissions may subsequently be found to be, and that a strict interpretation of subsection 26A(5) would lead to all implicated persons against whom no finding of insider dealing is made being deprived of the benefit of the section. Clearly something more is required. In deciding how 'material' is material previous Tribunals have relied on an analogy taken from criminal procedure. There it is an accepted principle that costs will be denied to person acquitted of a criminal offence where his conduct has brought suspicion on himself and/or misled the investigating authorities into thinking that the case against him is stronger than it is.

In *R v. Kwok Moon-yan* [1989] 2 HKLR 396, the Court of Appeal held, at page 401, that:

"We do not view this (the test) as meaning that there must be both a bringing of suspicion and a misleading before a successful (party) will (be) deprived of his costs. If it is the view of the Court that a man has brought

² See: *See Ho Shi Kwong v Chiang Chun Yuan* [2002] 3 HKLRD 419 (CA) & *Ritter v Godfrey* [1920] 2 KB 47 (CA).

suspicion on himself, or having done that, he has also misled the prosecution, either by the very bringing of that suspicion, or some other matter, into thinking the case against him is stronger than it is then these, either separately or combined, are factors which lie for the consideration ...”

In deciding whether the applicants should be awarded their costs we found it instructive to look at matters earlier Tribunals considered relevant in deciding this issue.

In the **Chinese Estates** inquiry Johnson Lam was awarded his costs on the basis that:

“There is no evidence that ... he brought any suspicion upon himself When interviewed by the SFC, he explained the circumstances surrounding his purchase of the Chinese Estates shares. Nothing in those circumstances (which the Tribunal found to be proven) can be the subject of criticism.”

In the same Inquiry, however, Joseph Lau, who was found not to be an insider dealer by a majority, was not awarded costs. The Tribunal took into account that as Chairman of Chinese Estates he stood in a position of good faith in relation to its shareholders and that he *“must have ... perceived”* that the question whether the specific information he held would be likely materially to affect the price of Chinese Estates shares if generally known was *“borderline.”*

The Tribunal went on to say:

“(Mr. Lau) must surely have realised the real risk that the news of the sale of Entertainment Building, even though he himself did not consider it price sensitive, may well be seen by investigating authorities at a later time to be a probable cause of any share price rise. Yet, despite this risk-knowing that Hong Kong monetary supervisors do monitor and possibly do investigate these matters - he avoided the path of caution.”

In the **Hanny Inquiry**, the Tribunal considered the position of two exonerated implicated parties: Fay Loi Loi and Connie Li. The Tribunal's ruling in respect of Fay Loi's application was:

"Although an implicated party, Fay Loi Loi was not identified as an insider dealer. When interviewed by the SFC the Tribunal is satisfied that she co-operated fully and truthfully with the investigating officers. There can be no suggestion therefore that to any material degree she brought about the inquiry conducted by the Tribunal."

The same Tribunal, however, found that Connie Li had not co-operated fully and truthfully with the SFC, and ruled on her application as follows:

"If a person, under investigation by the SFC and under an obligation to co-operate fully and truthfully, conspires with others to tell an (sic) falsehood to the SFC - especially a person caught up in the middle of events - that person cannot complain if as a result of his or her central role and questionable co-operation, he or she is implicated in an inquiry. The falsehood told by Connie Li was a material one. The Tribunal is satisfied that it coloured a good deal of her testimony during the inquiry and would no doubt have increased the scepticism of the SFC during the course of the investigation as to her true role ... In the circumstances, the Tribunal is satisfied that positive reasons exist to deny Connie Li her costs."

In **Stime Watch**, the Tribunal refused costs to Mohammed Adil, saying:

"... we are sure that...he was willingly and knowingly assisting Mr. Wong to trade in Stime Shares and, crucially, did so knowing his role in doing so was to act as camouflage for Mr. Wong's improper activities in this regard by lending his own name and company bank account and his personal bank account for the use of Mr. Wong's trading activities ... when inquiries were undertaken by the SFC [Adil] lied to them."

Those reports indicate that three factors have influenced earlier Tribunals when deciding whether to refuse an award of costs under subsection 26A(5). All need not be present; any one of them, or any combination of them will suffice. Firstly, was the

applicant aware - or given his position within the company or relationship to an identified insider dealer should he have been aware - that what he was doing could incur suspicion and/or cause an inquiry to be instituted? Secondly, did the applicant willingly and knowingly assist a person identified as an insider dealer trade in the shares in the company under investigation knowing that his role in doing so was to act as a camouflage for the insider's dealing? Thirdly, did the implicated person lie during the investigation, or was he otherwise uncooperative to such an extent that this aroused the investigators' suspicions?

We now deal with the applicants' applications separately.

Wong Fong Kim

Wong Fong Kim, who was not named in the section 16 notice and to whom subsection 26A(5)(c) applies, made a written costs application through his solicitors. It is his contention that he was not made an implicated person until after he had made a statement to the SFC and that we might not have implicated him had he been given a chance to make a statement thereafter and clear his name.

We were satisfied that Wong Fong Kim acted as Siegfried Lee's uninformed nominee at the time he ordered the sale of Holdings shares in his account with J. A. Fu on 18 June 1996 as well as at the time Daniel Chan ordered the sale of the Holdings shares in his account on 14 June 1996. In fact, he was one of a number of nominees whom Siegfried Lee used to disguise his dealings in Holdings shares.

We were also satisfied that Wong Fong Kim told the truth in regard to his actions as nominee, both when interviewed by the SFC and when giving evidence before us.

Can it then be said that by being Siegfried Lee's uninformed nominee Wong Fong Kim brought suspicion upon himself and materially contributed to our decision to inquire into his conduct subsequent to the institution of the inquiry? We believe that it can, for these reasons.

His statement of 13 May 2002 to the SFC indicates that his allegiance to Siegfried Lee was, as Mr. Davies put it in argument before us, *"wooden, total and unquestioning."* By way of illustration, at Q. 21, when asked why he agreed to open the account with J A Fu? He replied:

"Lee Siu Fung was my boss. He just asked me to open an account with J A Fu. He didn't tell me why."

At Q. 22, when asked what was the purpose of opening the account? He replied:

"I didn't know his purpose of requiring me to do so"

At Q. 23, when asked did he ask why? He replied:

"I just came to Hong Kong at that time and I didn't know anything about this. Therefore I didn't ask Lee Siu Fung why I had to do so."

At Q. 24, when asked who placed the orders? He replied:

"I placed the orders of a portion of the securities trades... according to the instructions given to me by Chan Kwong Tat. In addition, Lee Siu Fung or Chan Kwong Tat might have placed a portion of them directly. I don't know how the securities were deposited into my account in April and June 1996. However, I knew about the disposals."

At Q. 25, when asked why Wong Yin Fai transferred around 4 million Holdings shares to the account on 10 June 1996? He replied:

"At that time, Lee Siu Fung just asked me to dispose of the shares in the J A Fu account... However I didn't know how the relevant shares were deposited... Neither did I ask."

Numerous dealings in his account were then put to him; he could give no useful explanation of any of them.

In answer to Q. 37, he speaks of Siegfried Lee summoning him back to Hong Kong from Beijing and ordering to dispose of around 9 million Holdings shares, which he did not even know existed. Siegfried Lee did not tell him why he had to come all the way back to Hong Kong to telephone the brokers, when he could just have easily telephoned them from Beijing, neither did he ask Lee why he had to do this.

His answer to Q. 49 shows that, on 24 June 1996, he acted on Daniel Chan's instructions in obtaining the cashiers' order for \$17 million in favour of Siegfried Lee and issuing the cheque for \$3 million in favour of Welcon. There is no evidence that Wong Fong Kim questioned Daniel Chan about these transactions, which, clearly, were an attempt by Siegfried Lee and Daniel Chan to disguise how the proceeds were being distributed and must have looked as such to the SFC investigators.

Wong Fong Kim was not a mere minor functionary of Lee's. He held a responsible position within the Siu Fung Group being the Director and General Manager of one of the joint venture factories in Anhui in the Mainland.

In itself there is nothing wrong in another person holding and dealing in another's shares as their nominee, but there are risks in doing so, particularly when the nominee knowingly does so to camouflage another's trading and fails to acquaint himself with the reasons why he is doing so, as Wong Fong Kim appears to have failed to do so. To all outward appearances Wong Fong Kim, who held a responsible position in the SFH Group, was the legal and beneficial owner of the shares in question and it took the full force of the Inquiry to determine that he was not. In those circumstances it lies ill for him to argue that his acts did not bring suspicion upon himself and did not mislead us before the Inquiry started into thinking that the case against him was stronger than it proved to be.

We are of the view that subsection 26A(5)(c) applies in his case and that Wong Fong Kim is not entitled to his costs.

Wai Man Keung

Wai Man Keung, who was not named in the section 16 notice and to whom subsection 26A(5)(c) applies, made a written costs application through his solicitors. They argued that the provisions of the subsection do not catch Wai Man Keung and that costs should normally follow the event.

We disagree, by being Siegfried Lee's unquestioning nominee Wai Man Keung, like Wong Fong Kim, brought suspicion upon himself from the outset. He compounded that by persistently denying, untruthfully, both in his SFC interviews and in his evidence before us, that he was Lee's nominee. In Chapter 10 of this report, at page 137, we referred to his account as a '*story*'; it was no more than that.

His actions clearly brought suspicion upon himself and materially contributed to our decision to inquire into his conduct subsequent to the institution of the inquiry. We are of the view that subsection 26A(5)(c) applies in Wai Man Keung's case and that he is not entitled to his costs.

Mrs. Lee

Mrs. Lee, who was named in the section 16 notice and to whom subsection 26A(5)(d) applies, made an application for costs through her counsel Mr. Bernard Mak.

It was the sale of her 80 million Holdings shares on 2 & 8 July 2004 that brought upon her and Holdings the attention of the HKSE and ultimately the attention of the SFC. We agree with Mr. Davies that in effect her sales started the whole of this Inquiry. She was also Siegfried Lee's wife with whom he was living in June and July 1996, and he was very much involved in insider dealing.

Mr. Mak argued that Mrs. Lee stuck to her account of the reasons for her sale throughout the SFC investigation and the Inquiry and that we ultimately decided that it would be inappropriate and unjustified to make a finding of insider dealing against her. It is however the case that we were not impressed by Mrs. Lee's evidence (see Chapter 11, page 153). We reached the decision we did because there was no direct evidence that she sold her shares because she was in possession of relevant information concerning Holdings and although the circumstantial evidence against her on that issue was very strong, we did not believe it was the only reasonable inference which could be drawn.

Given her relationship to Siegfried Lee, whose wife she was, and with whom she was living in the spring and summer of 1996, she should have been aware that the sale of the 80 million Holdings shares registered in her name could incur suspicion and cause an inquiry into the circumstances of that sale to be instituted. It was in fact the sale of those shares that first aroused the interest of the SEHK's Listing Division. Although she may not have done any other provable positive act to mislead the investigating authorities into thinking that the case against her was stronger than it was she is in our view caught by the provisions of subsection 26A(5)(d) and is not entitled to her costs.

Fabrice Jacob

Fabrice Jacob, who was named in the section 16 notice and to whom subsection 26A(5)(d) applies, made an application for costs through his counsel Mr. David Stokes.

Fabrice Jacob's evidence was that GAAP's decision to sell its portfolio of Holdings shares had been taken in early February 1996 before arrangements for the listing had started and that he did not know or believe that the information he received from Y. T. Du at the analysts' meeting at HSBC premises on 5 September 1996, which he attended along with Robert Lewis could be relevant information. It was his view that what he told his principals in GAAP, Christian Hass and Philippe Dhamelincourt in his report of that meeting was already in the market.

This was the position he took at the outset of the SFC investigation, as did Robert Lewis who told the SFC that the meeting was a *"typical company visit."* In a letter to the SFC of 20 February 1997, Fabrice Jacob stated quite categorically that:

"It was only after GAAP understood that such listing plans were cancelled and after I met with Mr. Y T. Du that it was decided to sell the remaining block of shares, even though it was at a loss".

He maintained this position throughout the investigation and the Inquiry. We commented on this in Chapter 17, of this report, where we said at page 222:

"Fabrice Jacob never sought to hide from the SFC the fact that the share sales had only recommenced because of the confirmation he received from YT. Du..."

Fabrice Jacob cooperated fully in SFC's investigation and in the Inquiry. He readily made himself available for interview by the SFC and provided them with documents they requested. At no time did he lie to the SFC, or to us, or seek to be evasive or uncommunicative.

It is true, as Mr. Davies reminded us, that in Chapter 17 of this report, at pages 225 to 226 we made an adverse comment on analysts' meetings with companies' senior management staff. We do not resile from that comment, but we agree with Mr.

Stokes that Fabrice Jacob's position, and the question whether he should be deprived of his costs, falls to be assessed according to what was normal and acceptable practice in 1996 and it appears to us, after hearing Mr. Stokes, that in 1996 the dangers inherent in such meetings was not fully appreciated.

We are pleased to note that the SFC has now published guidelines to analysts on how they should handle non-public price sensitive information and that these are readily available on the SFC's website³.

Although Fabrice Jacob's acts brought about the institution of the inquiry against him, it cannot be said that he was aware that what he did could incur suspicion and/or cause the institution of an inquiry. He told no lies during the investigation, neither was he evasive or uncooperative. In our view he is not caught by the provisions of subsection 26A(5)(d) and is entitled to his costs, but not the whole sum claimed.

Mr. Stokes told us that Fabrice Jacob's costs in relation to the inquiry amount to \$5,115,357.82. Given that only a very short part of the Inquiry related to the sale of GAAP's Holdings shares, that appears to us to be an exorbitant amount. We believe that only 10% of that figure should be allowed, which when the cents are ignored and the figure rounded down to the nearest dollar amounts to \$511,535.

Christian Haas & Philippe Dhamelincourt

As we said in Chapter 17 of this part of the report, at page 226, the case against Christian Haas and Philippe Dhamelincourt was based on the premise that they sold the balance of GAAP's portfolio of Holdings shares after receiving information, which they knew to be relevant information, indirectly from Y. T. Du through Fabrice Jacob. As we made no finding of insider dealing against Fabrice Jacob, we made no finding against either Christian Haas or Philippe Dhamelincourt and it follows that just as much as we are satisfied the Fabrice Jacob is entitled to his costs, so too are Christian Haas and Philippe Dhamelincourt.

Christian Haas and Philippe Dhamelincourt were not legally represented before us. Their application is for reimbursement of the expenses they incurred in respect of travel to Hong Kong, accommodation here, the cost of the videoconference link with the Tribunal in May 2003 and the fees of a French advocat in respect of advice given to

³ www.hksfc.org.hk

them in France on the legal procedures in Hong Kong. Christian Hass' claim is for €17,303.15; Philippe Dhamelincourt's claim is for €13,061.59 and those are the costs we award them. The Hong Kong dollar equivalents at €100 to \$976.10 (the mid-market exchange rate on 19 October 2004) when the cents are ignored and the figure rounded down to the nearest dollar are \$168,896 and \$127,494 respectively.

Chapter 22

In this chapter we set out our orders under sections 23 and 27 of the Ordinance. In all cases cents are ignored and the figures are rounded down to the nearest dollar.

We order that:

Siegfried Lee Siu Fung shall:

1. not without leave of the Court of First Instance of the High Court of the Hong Kong Special Administrative Region be a director or a liquidator or a receiver or a manager of the property of both a listed and a private company or in any way whether directly or indirectly be concerned or take part in the management of a both a listed and a private company for a period of five years;
2. pay to the Government of the Hong Kong Special Administrative Region the sum of \$69,870,530 under section 23(1)(b) of the Ordinance;
3. pay to the Government of the Hong Kong Special Administrative Region a penalty of \$139,741,060 under section 23(1)(c) of the Ordinance; and
4. pay to the Government of the Hong Kong Special Administrative Region \$9,185,356 being 40% of the costs of the Inquiry under section 27 of the Ordinance.

Daniel Chan Kwong Tat shall:

1. not without leave of the Court of First Instance of the High Court of the Hong Kong Special Administrative Region be a director or a liquidator or a receiver or a manager of the property of a listed company or in any way whether directly or indirectly be concerned or take part in the management of a listed company for a period of two years;
2. pay to the Government of the Hong Kong Special Administrative Region a penalty of \$13,925,337 under section 23(1)(c) of the Ordinance; and

3. pay to the Government of the Hong Kong Special Administrative Region \$2,296,339 being 10% of the costs of the Inquiry under section 27 of the Ordinance.

Lisa Lam Lai San shall:

1. not without leave of the Court of First Instance of the High Court of the Hong Kong Special Administrative Region be a director or a liquidator or a receiver or a manager of the property of a listed company or in any way whether directly or indirectly be concerned or take part in the management of a listed company for a period of one year;
2. pay to the Government of the Hong Kong Special Administrative Region the sum of \$1,910,297 under section 23(1)(b) of the Ordinance;
3. pay to the Government of the Hong Kong Special Administrative Region a penalty of \$1,910,297 under section 23(1)(c) of the Ordinance; and
4. pay to the Government of the Hong Kong Special Administrative Region \$2,296,339 being 10% of the costs of the Inquiry under section 27 of the Ordinance.

William Lam Chun Ming shall:

1. not without leave of the Court of First Instance of the High Court of the Hong Kong Special Administrative Region be a director or a liquidator or a receiver or a manager of the property of a listed company or in any way whether directly or indirectly be concerned or take part in the management of a listed company for a period of one year;
2. pay to the Government of the Hong Kong Special Administrative Region the sum of \$1,910,297 under section 23(1)(b) of the Ordinance;
3. pay to the Government of the Hong Kong Special Administrative Region a penalty of \$1,910,297 under section 23(1)(c) of the Ordinance in respect of the loss avoided on the sale of the Holdings shares held in Lisa Lam's name; and

4. pay to the Government of the Hong Kong Special Administrative Region \$2,296,339 being 10% of the costs of the Inquiry under section 27 of the Ordinance.

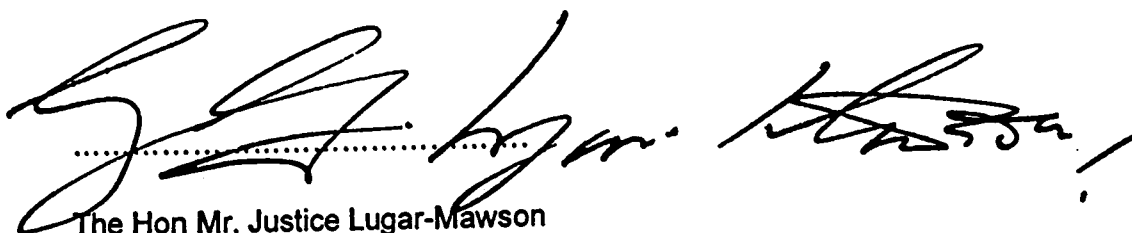
Henry Tai Hon Leung shall not without leave of the Court of First Instance of the High Court of the Hong Kong Special Administrative Region be a director or a liquidator or a receiver or a manager of the property of a listed company or in any way whether directly or indirectly be concerned or take part in the management of a listed company for a period of one year.

Until the further hearings in respect of Search and Mordale's potential liability are ended we make no penalty or cost orders against either William Lam or Henry Tai in respect of their insider dealing in counselling and procuring their superiors, Robert Miller and Nicholas Prior, to sell Search's portfolio of Holdings shares held by its subsidiary Mordale whilst in possession of relevant information. We reserve our decision on these matters until the hearings are ended.

All the orders for financial penalties and costs shall be paid on or before 31 March 2005. If not paid on or before that date the payment will bear interest at the judgment rate until payment.

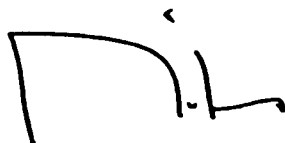
Pursuant to section 29 of the Ordinance, this Order will be registered with the Court of First Instance of the High Court of the Hong Kong Special Administrative Region and become for all purposes an order of the Court of First Instance made within the jurisdiction of that court.

Signed



The Hon Mr. Justice Ligar-Mawson

Chairman

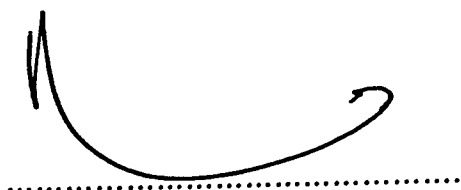


Nil

.....

Mr. Michael Sze Tsai Ping

Member



.....

Mr. Malcolm Antony Barnett

Member

Dated: Monday, 25 October 2004

SIU FUNG CERAMICS HOLDINGS LIMITED

3rd Report of the Tribunal

1. In a Report dated 25 October 2004, the Tribunal, as then constituted, comprising Lugar-Mawson J., Chairman, Mr Michael Sze Tsai-ping, and Mr Malcolm A Barnett, members, made certain orders in relation to insider dealing found to have taken place in relation to the listed securities of Siu Fung Ceramics Holdings Limited.

2. On 30 August 2005 the appointment of Lugar Mawson J. as Chairman of the Tribunal expired. On 25 August 2005, Deputy High Court Judge Saunders was appointed by the Chief Executive, pursuant to paragraph 8 of the Schedule to the Securities (Insider Dealing) Ordinance, Cap 395, (the Ordinance), as a temporary member to act in place of the Chairman, with effect from 31 August 2005.

3. In the 2nd Report of the Tribunal, dated 25 October 2004, the following statement was made:

“We can under section 16 (4) of the Ordinance identify a corporation as an insider dealing. However, no argument was advanced to us that we find that either Mordale or Search (which are both corporations as defined in section 2 (1) of the Ordinance) as opposed to Robert Miller or Nicolas Prior engaged in insider dealing and if each, or both, corporations did, what orders should be made against them. After much deliberation we believe that justice requires that further inquiries be carried out and that we hear further evidence and submissions on these matters. As our function in respect of this inquiry has not yet ended we propose to hold further hearings

for this purpose.”

4. Subsequent to the delivery of the 2nd Report the Tribunal, comprising Deputy High Court Judge Saunders, and members Mr Sze and Mr Barnett, has sought and obtained advice from its counsel in relation to that statement, and the future course of action to be taken by the Tribunal.

5. Following consideration of that advice the Chairman has, pursuant to paragraph 13 of the Schedule to the Ordinance, as a matter of law, determined that it would not, in the circumstances, be fair to extend the inquiry to Mordale or Search, since it would not be possible to afford to those parties a proper opportunity to make representations on matters which materially affect their interest, but upon which the Tribunal had already come to a conclusion.

6. Consequently the Tribunal has concluded that to proceed to determine whether or not Mordale or Search engaged in insider dealing would constitute a breach of the provisions of paragraph 16 of the Schedule to the Ordinance.

7. The Tribunal has accordingly determined that it will not conduct any further enquiries into Mordale or Search.

8. In its Report the Tribunal further said:

“Until those hearings are ended we will make no penalty orders against either William Lam or Henry Tai, neither will we make a costs order against them in respect of the Mordale share dealing. We shall reserve our decision on the percentage of the costs that we deem attributable to the Mordale share dealing until those hearings are ended.”

9. The question of the appropriate penalty orders against Mr Tai and Mr Lam, costs, and the determination of the appropriate percentage of costs attributable to the Mordale share dealing consequently now arises.

10. The Tribunal intends to conduct a hearing into those issues, on a date to be fixed. The Tribunal accordingly directs that the junior counsel to the Tribunal should liaise with the solicitors and counsel for Mr Lam and Mr Tai as soon as convenient, to determine an appropriate date upon which that hearing shall take place. Counsel should also liaise with the Secretary to the Tribunal as to dates suitable to Tribunal members.

11. Counsel are invited to discuss together the format of the hearing and the extent to which further evidence and submissions will be required, bearing in mind the submissions and evidence already before the Tribunal. Counsel to the Tribunal is to advise the Tribunal within 14 days whether or not agreement can be reached on these matters. If agreement cannot be reached, the Tribunal will schedule a directions hearing to resolve matters.

Dated 14th March 2006



Deputy High Court Judge Saunders
Chairman



Mr Michael Sze Tsai-ping



Mr Malcolm Antony Barnett

Members

SIU FUNG CERAMICS HOLDINGS LIMITED

4th Report of the Tribunal

Background:

1. In a Report dated 18 March 2004, the Tribunal, as then constituted, comprising Lugar-Mawson J., Chairman, Mr Michael Sze Tsai Ping, and Mr Malcolm A Barnett, members, made certain orders in relation to insider dealing found to have taken place in the listed securities of Siu Fung Ceramics Holdings Limited. Those orders included findings that there had been insider dealing on the part of Mr Henry Tai and Mr William Lam.

2. The 2nd Report of the Tribunal, dated 25 October 2004, are dealt with questions of penalty orders, disgorgement orders, and disqualification orders against other persons found in the report dated 18 March 2004, to be insider dealers, as well as Henry Tai and William Lam. The 2nd Report left open for future consideration, by way of further hearings, issues in relation to two companies, Mordale and Search, the former, a shareholder in Siu Fung, and a wholly owned subsidiary of the latter.

3. On 30 August 2005 the appointment of Lugar Mawson J. as Chairman of the Tribunal expired. On 25 August 2005, Deputy High Court Judge Saunders was appointed by the Chief Executive, pursuant to paragraph 8 of the Schedule to the Securities (Insider Dealing) Ordinance,

Cap 395, (the Ordinance), as a temporary member to act in place of the Chairman, with effect from 31 August 2005.

4. The extension of the inquiry to Mordale and Search was a matter that may impact upon the issue of penalty orders to be imposed against Henry Tai and William Lam. In its 2nd Report the Tribunal had said:

“Until those hearings are ended we will make no penalty orders against either William Lam or Henry Tai, neither will we make a costs order against them in respect of the Mordale share dealing. We shall reserve our decision on the percentage of the costs that we deem attributable to the Mordale share dealing until those hearings are ended.”

5. The 3rd Report of the Tribunal, and dated 14 March 2006, recorded the Tribunal’s decision not to extend the inquiry to Mordale or Search. In its 3rd Report, the Tribunal determined that it would be unfair to extend the inquiry to Mordale or Search. The question of the appropriate penalty orders against Henry Tai and William Lam, costs, and the determination of the appropriate percentage of costs attributable to the Mordale share dealing consequently now arises for decision.

6. In its 3rd Report, the Tribunal gave directions in relation to the hearing of submissions in relation to the penalty orders, and other orders that might be made against Henry Tai and William Lam. Following those directions, a hearing was fixed in order that submissions may be heard from both Henry Tai and William Lam as to those orders. That hearing took place on Friday 21 July 2006.

7. At that hearing Henry Tai was represented by Mr Marc

Harvey and Ms Edel Logan, solicitors of Messrs Linklaters, solicitors for Mr Tai. William Lam did not appear at that hearing. Submissions were made by Mr Harvey and counsel to the Tribunal. At the conclusion of the hearing the Tribunal invited Henry Tai to file an affirmation as to his means. That affirmation was made on 15 August 2006, and was duly filed with the Tribunal, together with further submissions in writing from Mr Harvey. In reaching its decision the Tribunal has had full regard to the oral submissions made both by counsel to the Tribunal and by Mr Harvey, the contents of the affirmation, and the subsequent submissions made in writing.

8. William Lam offered no proper explanation for his non-appearance at that hearing. The Tribunal was concerned that, as a matter of fairness, it should be made plain to William Lam that if he elected not to appear before the Tribunal, or to make any submissions, or put any material before the Tribunal, a decision would be made in the absence of any information on his part.

9. The Tribunal consequently fixed a hearing for 10 a.m. on Monday 16 October 2006, to hear any submissions that William Lam may wish to make or to hear any evidence he may wish to give or call from others.

10. William Lam duly received notification of that hearing date and informed the secretary to Tribunal that he would not come to that hearing. On the day of the hearing however a letter was placed before the Tribunal from solicitors for William Lam, making brief submissions on his behalf.

11. At that hearing the Tribunal considered written submissions made by counsel to the Tribunal, and the submissions made in writing by William Lam's solicitors.

Factual circumstances:

12. Mordale is a single purpose vehicle within a group of companies called Search China, (Search), which, between 2 August 1996 and 5 September 1996, held 43,142,000 shares in Siu Fung Ceramics Holdings Ltd, (Holdings). Search was a group of private companies established for the purpose of making and managing investments for the family trust of Mr Robert Miller. Mr Miller is the Chairman of the group, and Mr Nicholas Prior was the chief investment officer and was in charge of the day-to-day operations of Search. Together, Mr Miller and Mr Prior comprised the "office of the Chairman" of Search and had overall control of the group.

13. The Search Group had three main divisions, one of which was the investment division which was headed by William Lam as vice president, who worked as a team with Henry Tai, the vice president of the direct investment division of Search.

14. Henry Tai and William Lam were, jointly, immediately responsible for the activities of Mordale, under the overall supervision of the office of the Chairman of Search. In its 1st Report the Tribunal found that Henry Tai and William Lam were both persons connected with Holdings and were in knowing possession of relevant information by 25 June 1996, at the latest. Both Henry Tai and William Lam were found to have engaged in insider dealing in relation to Holdings, both being

persons connected with Holdings who were in knowing possession of relevant information, and dealt in the shares of Holdings by counselling or procuring their superiors, Mr Miller and Mr Prior, to sell the shares held by Mordale in Holdings in the period 2 August 1996 to 5 September 1996, knowing or having reasonable cause to believe that they would sell them.

15. In the same Report the Tribunal found that it was not satisfied that there was sufficient evidence, to the appropriate standard of proof, to enable it to make findings of insider dealing against Mr Miller and Mr Prior.

16. Both Henry Tai and William Lam were employees of Search and, in respect of the shares held by Mordale in Holdings, neither benefited personally nor avoided any personal loss, as a result of their acts of insider dealing. Both received their normal salary during the relevant period, and there is no evidence to suggest that either received any bonus or additional remuneration as a result of any benefit that may have accrued to Search consequent upon any act of insider dealing on the part of Henry Tai or William Lam.

Relevant legal propositions:

17. A corporate entity such as Search or Mordale exists as a matter of law and whilst being considered, at law, a legal person, a corporate entity does not, in the sense that a natural person does, have a mind of its own. The matter is best put in the judgement of Lord Hoffmann in *Meridian Global Funds Management Asia Limited v Securities Commission* [1995] AC 500 (PC, NZ), at p 506:

“Any proposition about a company necessarily involves a reference to a set of rules. The company exists because there is a rule, (usually in a statute), which says that a *persona ficta* shall be deemed to exist and have certain of the powers, rights and duties of a natural person. But there would be little sense in deeming such a *persona ficta* to exist unless they were also rules to tell one what acts would count as acts of the company. It is therefore a necessary part of a corporate personality that there should be rules by which acts are attributed to the company. These may be called ‘the rules of attribution’.”

It is by the application of these rules, attributing the mind and actions of individuals to a company, that the company achieves a personality and a corporate mind. The rules of attribution enable the mind and actions of the individuals who are the directors or employees of a company to be attributed to the company.

18. It is not in dispute that Henry Tai and William Lam were, subject to the ultimate approval of Mr Miller and Mr Prior in their joint capacity as the office of Chairman of Search, the natural persons immediately responsible for the acts of Search in relation to its shareholding in Holdings, held in the name of Mordale.

19. Even were that not so, it is a well-established principle of law that those who counsel and procure offences will be treated as though they had committed the primary offence. In the same way the Securities (Insider Dealing) Ordinance, Cap 395, (SIDO), draws no distinction in relation to the penalties to be imposed or the orders to be made by a Tribunal on a person found to be an insider dealer, whether that person is one who himself deals in any listed securities or one who counsels and procures another to deal in such listed securities. Thus, to counsel and procure an act of insider dealing is itself an act of insider dealing: see SIDO s 9(2).

20. In making the following orders the Tribunal has had regard to these principles.

The submissions made:

Henry Tai:

21. The fundamental position taken by Mr Harvey for Henry Tai was that no penalty or costs orders should be made against him.

22. It was first submitted that in the absence of Search and Mordale as parties in the substantive hearing it would be unfair for the Tribunal to make any penalty or costs orders against Henry Tai.

23. It is right that neither Search nor Mordale were parties to the substantive hearing. But all of the natural persons who were engaged in the decision-making process in relation to both Search and Mordale, namely Mr Miller, Mr Prior, Henry Tai and William Lam, were present and had a full opportunity to say anything that might have been said in relation to the steps taken which resulted in Henry Tai and William Lam being found to have committed acts of insider dealing. While as a matter of law the Chairman found it necessary to find that it would be unfair to Search and Mordale to bring them into the proceedings at a late stage, after certain findings had been made upon which they had not been heard, no particular area was suggested by Mr Harvey in which there was any deficiency in the evidence, or where there might be further evidence which might have assisted Henry Tai.

24. We are satisfied that had there been any basis, other than

those put before us, why Henry Tai should not share the burden of financial penalties or costs orders that might otherwise be made against him, there was nothing to prevent Henry Tai from putting that basis to us.

25. Mr Harvey raised the question of the delay since the events in issue. The insider dealing found to be established against Henry Tai and William Lam occurred in August and September 1996, 10 years prior to the penalty phase of the hearing. In the course of the argument the Tribunal acknowledged to Mr Harvey that there is an element of oppression that naturally arises from a long delay in any court inquiry, whether it is civil litigation or quasi-criminal or criminal litigation; that is a factor relevant to sentence.

26. But at the same time we must have regard to the fact that in any insider dealing proceeding, no matter how diligent the authorities are, there will be a delay between the events taking place and ultimately being dealt with by the court. That delay arises firstly because, inevitably, the act of obtaining information, in whatever relevant way, to enable a transaction to constitute an insider dealing transaction, will not be an act which is particularly obvious, in the way that a criminal assault will be immediately obvious. It is usually necessary for the relevant authorities to examine trading statistics to ascertain circumstances which might require investigation. Thus, the discovery of potential insider dealing, and the commencement of investigation into that dealing, may often not occur until sometime after the dealing.

27. Further, where, as in this case, a large number of parties are involved in various aspects of the allegations before the Tribunal, the investigation and any subsequent Tribunal hearing will often be complex

and prolonged. In the present case the substantive hearing itself was 116 days. All of these are matters which add to the delay.

28. Henry Tai and William Lam will have been aware of their potential involvement in these proceedings following their initial interviews with the Securities & Futures Commission in April 1997. They became aware of the fact that they would be facing Insider Dealing Tribunal proceedings when they received Salmon letters on or about 19 December 2001. Insofar as penalty is concerned the real period of delay with which we are concerned is, in our view, the period from the receipt of the Salmon letters to the present time, a period of about five years.

29. We have due regard to this delay in fixing the penalty in relation to both Henry Tai and William Lam.

30. Mr Harvey sought to lessen the role of Henry Tai, arguing that his actual involvement in the insider dealing had not been identified. We are satisfied, as was the Court of Appeal, that the role played by both Henry Tai and William Lam in various meetings together with the documentary evidence, including the divestment memorandum, made it plain that both Henry Tai and William Lam were directly responsible for the decision made, by which Search chose to sell Mordale's shares in Holdings, thereby avoiding a loss in excess of HK\$25 million. We are of the view that both played a significant role in counselling and procuring Search to so act.

31. Mr Harvey, relying upon *Insider Dealing Tribunal v Shek Mei Ling* [1999] 2 HKCFAR 205, sought to compare the role played by Henry Tai with that played by those other persons found to be insider

dealers. While such a comparison may usefully be made in many cases we took the view that it could not usefully be made in this case, where those other insider dealers were acting for their own benefit, and not as here, for the benefit of an employer.

32. There are two aspects in which this matter may be considered. First, the extent of the involvement of the person concerned in the act of insider dealing, be it counselling and procuring as here, or the obtaining and acting upon insider information. Second, there is the purpose for which the insider dealing is undertaken.

33. In the circumstances of the present case we took the view that the acts of Henry Tai and William Lam were quite distinct from, and could not be usefully compared with, those other persons found to be insider dealers. In so doing we accepted that Henry Tai and William Lam were acting as employees, and not in their personal capacity.

34. There is no precise evidence as to the income earned by either Henry Tai or William Lam as senior employees of Search. Neither has told us what their income was at that time. Undoubtedly, holding senior positions in a very wealthy organisation, they were well paid in any terms. Henry Tai left Search in about September or October 1997, and began work for UBS in about November 1997. In submissions made to us we were informed that he has now been out of employment since 2004, having been previously suspended by UBS pending the outcome of the inquiry in January 2002, and his employment terminated in 2004, apparently consequent upon the finding made against him.

35. The submission was made that Henry Tai was severely

prejudiced in any opportunities to secure a job in the financial services industry by reason of the finding that he had been an insider dealer. That is not a matter of mitigation, but is a consequence of Henry Tai's own acts. Any person in the financial services industry who chooses to act in a way which exposes himself to allegations of insider dealing, does so in the full knowledge of the consequences of such a finding. It is inevitable that opportunities for employment will be reduced for a person who chooses to engage in insider dealing.

36. In imposing the penalty that we do, we have regard to the fact that the Tribunal has already made an order prohibiting both Henry Tai and William Lam from being directors of listed companies for a period of one year. That one year has now expired.

37. At our request, Henry Tai placed before us an affirmation indicating that his net worth is presently in the region of \$14 million. He is not a significantly wealthy man, but at the same time cannot be said to be impecunious. We accept that a significant portion of his present wealth is comprised of his half share of his matrimonial home. The balance is comprised of cash and funds. We have had due regard to this personal balance sheet in fixing the penalty order.

William Lam:

38. The solicitors for William Lam drew the Tribunal's attention to the fact that a costs order has already been made against both William Lam and his wife. That is right, but it needs to be borne in mind that William Lam was found to be an insider dealer in two capacities, first in his personal capacity, the Tribunal having dealt in all respects with costs

and penalties on the matter in the 2nd Report, and second in his capacity as an executive of Search. In this respect questions of costs and penalties remain at large. The fact that a costs order has been made against William Lam in relation to his insider dealing in his personal capacity is irrelevant, except in so far as the Tribunal must have regard to the totality of the penalty in costs orders made in respect of William Lam.

39. William Lam has elected to put little before us in relation to his personal situation. We are told that he is employed in Shanghai and that he is “taking a positive view in life”. An assertion is made that he is unlikely to settle the costs and penalties already imposed upon him within 20 years. There is however no evidence to substantiate that assertion. It is plainly a deliberate act upon the part of William Lam not to put that information before us. We are not told the nature of his employment, its duration, or the income that he receives. Unlike Henry Tai, William Lam has elected to put nothing before us in relation to his personal circumstances or his assets or liabilities. In all of the circumstances, and in the absence of any further information, we draw the inference that William Lam is or may be able to meet further orders.

The special position of corporate officers:

40. In paragraph 17 above we set out a passage from a decision of the Privy Council, being authority which sets out the basis upon which the law deals with the mind and decisions of a corporate entity. We are of the view that the Tribunal should state clearly to the business world that businessmen cannot hide behind corporate entities in insider dealing, nor can those who accept office, or well-paid senior employment, in corporate entities, expect to act with impunity for the benefit of the

owners of the corporation.

41. Both Henry Tai and William Lam held important corporate executive positions for which they were undoubtedly well paid. An aspect of holding those types of positions is that they carry with them not only responsibility to the corporation, but responsibility to the public at large for the acts of the corporation. While we accept the fact that neither personally benefited from the decision of Search to avoid a very substantial loss through the sale of Mordale's shares in Holdings, based upon insider information, their role in ensuring that Search had the necessary information to so act means that they must accept responsibility to some extent for the insider dealing that took place as a result of their counselling.

Penalty order:

42. We have regard to all of the foregoing matters and in particular to the personal balance sheet put before us on the part of Henry Tai. Weighing all of these matters we are satisfied that justice would be done if both Henry Tai and William Lam were each to pay a penalty, pursuant to s 23(1)(c) SIDO, in the sum of HK\$100,000.00.

Costs:

43. The circumstances of this case are unusual because, through matters beyond the control of the Tribunal, the corporation which has benefited financially from the acts of insider dealing by Henry Tai and William Lam, namely Search, was not a party to the proceedings. Consequently no disgorgement order can be made against Search. The

Tribunal has already made orders in relation to 70% of the costs of the proceedings¹. In the normal course of events, had Mordale and Search been parties to the Inquiry from inception, and a disgorgement order made against Search, we have little doubt that Search would have been ordered to pay the remaining 30% of the costs of the proceedings.

44. We do not think it just, in all of the circumstances of the case, particularly having regard to the fact that neither Henry Tai nor William Lam benefited personally in relation to any insider dealing that might be attributed to Mordale or Search, that a costs order in relation to the Tribunal proceedings should be made against either Henry Tai or William Lam, in their capacity as officers of Mordale or Search.

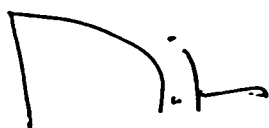
Registration of orders:

45. The orders for financial penalties are to be paid on or before 31 March 2007. If they are not paid on or before that date the sums due will bear interest at judgement rate until payment. Pursuant to s 29 SIDO, this Order will be registered with the Court of First Instance of the High Court of the Hong Kong Special Administrative Region and become for all purposes an order of the Court of First Instance made within the jurisdiction of that court.

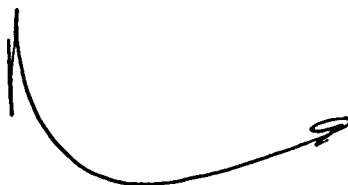
¹ As to 40%, to be paid by Siegfried Lee Siu Fung, as to 10% to be paid by Daniel Chan Kwong Tat, as to 10% to be paid by Lisa Lam Lai San, as to 10% to be paid by William Lam in relation to dealing in his personal capacity.

A handwritten signature in black ink, appearing to be 'Saunders', with a long horizontal stroke extending to the right.

Deputy High Court Judge Saunders
Chairman

A handwritten signature in black ink, appearing to be 'Michael Sze Tsai Ping', with a large 'N' and a 'P'.

Mr Michael Sze Tsai Ping
Member

A handwritten signature in black ink, appearing to be 'Malcolm Antony Barnett', with a large 'M' and a long horizontal stroke.

Mr Malcolm Antony Barnett
Member

Dated 2 November 2006

Insider Dealing Tribunal Inquiry into Siu Fung Ceramics Holdings Limited

Annexure 1

Legal representation at the Inquiry

Annexure 1 - Legal representation at the Inquiry

Michael Lunn SC

Peter Davies

Winnie Ho

1. Siegfried Lee	<i>In person</i>	
2. Li Man Yi	<i>In person</i>	
3. Wong Fong Kim	Vincent Chin	So, Keung, Yip & Sin
4. Wai Man Keung	<i>In person*</i>	
5. Mrs. Lee	Bernard Mak	Li & Partners
6. Lisa Lam	Graham Harris	K B Chau & Co
7. William Lam	Graham Harris	K B Chau & Co
8. Henry Tai	Adrian Huggins SC	Linklaters
9. Robert Miller	Adrian Huggins SC	Linklaters
10. Nicholas Prior	Adrian Huggins SC	Linklaters
11. Fabrice Jacob	David Stokes	Richards Butler
12. Christian Haas	<i>In person</i>	
13. Phillipe Dhamelincourt	<i>In person</i>	
14. Daniel Chan	<i>In person**</i>	

* On one occasion Finney Chan counsel instructed by Lam & Lai represented Wai Man Keung.

** On several occasions Anson Wong counsel instructed by Pang Wan & Choi represented Daniel Chan

Insider Dealing Tribunal Inquiry into Siu Fung Ceramics Holdings Limited

Annexure 2

List of hearing days

Annexure 2 - List of hearing days

Day 1	21 October 2002	Day 59	12 February 2003
Day 2	22 October 2002	Day 60	13 February 2003
Day 3	23 October 2002	Day 61	14 February 2003
Day 4	24 October 2002	Day 62	17 February 2003
Day 5	25 October 2002	Day 63	18 February 2003
Day 6	28 October 2002	Day 64	19 February 2003
Day 7	1 November 2002	Day 65	20 February 2003
Day 8	7 November 2002	Day 66	21 February 2003
Day 9	11 November 2002	Day 67	24 February 2003
Day 10	12 November 2002	Day 68	25 February 2003
Day 11	13 November 2002	Day 69	26 February 2003
Day 12	14 November 2002	Day 70	27 February 2003
Day 13	15 November 2002	Day 71	28 February 2003
Day 14	18 November 2002	Day 72	3 March 2003
Day 15	19 November 2002	Day 73	4 March 2003
Day 16	20 November 2002	Day 74	5 March 2003
Day 17	21 November 2002	Day 75	6 March 2003
Day 18	22 November 2002	Day 76	7 March 2003
Day 19	25 November 2002	Day 77	10 March 2003
Day 20	26 November 2002	Day 78	11 March 2003
Day 21	27 November 2002	Day 79	12 March 2003
Day 22	28 November 2002	Day 80	13 March 2003
Day 23	29 November 2002	Day 81	14 March 2003
Day 24	2 December 2002	Day 82	17 March 2003
Day 25	3 December 2002	Day 83	18 March 2003
Day 26	4 December 2002	Day 84	19 March 2003
Day 27	5 December 2002	Day 85	20 March 2003
Day 28	6 December 2002	Day 86	21 March 2003
Day 29	9 December 2002	Day 87	24 March 2003
Day 30	10 December 2002	Day 88	25 March 2003
Day 31	11 December 2002	Day 89	26 March 2003
Day 32	12 December 2002	Day 90	27 March 2003
Day 33	13 December 2002	Day 91	28 March 2003
Day 34	17 December 2002	Day 92	31 March 2003
Day 35	18 December 2002	Day 93	1 April 2003
Day 36	19 December 2002	Day 94	2 April 2003
Day 37	20 December 2002	Day 95	3 April 2003
Day 38	6 January 2003	Day 96	4 April 2003
Day 39	7 January 2003	Day 97	7 April 2003
Day 40	8 January 2003	Day 98	8 April 2003
Day 41	9 January 2003	Day 99	9 April 2003
Day 42	10 January 2003	Day 100	10 April 2003
Day 43	13 January 2003	Day 101	19 May 2003
Day 44	14 January 2003	Day 102	20 May 2003
Day 45	15 January 2003	Day 103	21 May 2003
Day 46	16 January 2003	Day 104	22 May 2003
Day 47	17 January 2003	Day 105	23 May 2003
Day 48	20 January 2003	Day 106	26 May 2003
Day 49	21 January 2003	Day 107	27 May 2003
Day 50	22 January 2003	Day 108	28 May 2003
Day 51	23 January 2003	Day 109	29 May 2003
Day 52	24 January 2003	Day 110	30 May 2003
Day 53	27 January 2003	Day 111	2 June 2003
Day 54	28 January 2003	Day 112	3 June 2003
Day 55	29 January 2003	Day 113	5 June 2003
Day 56	30 January 2003	Day 114	8 September 2003
Day 57	10 February 2003	Day 115	9 September 2003
Day 58	11 February 2003	Day 116	10 September 2003

Insider Dealing Tribunal Inquiry into Siu Fung Ceramics Holdings Limited

Annexure 3

List of witnesses

Schedule 3: Witnesses

Name	Description	Day evidence given
Chan Kwong Tat Daniel	COO of SFH Group and President Concept	86 to 89
Chan Derek	Senior Manager Listing Division SEHK	45 to 48
Chan Kai Wah	Sales & Dealing Director Cazenove	37
Chan Siu Mei Amy	Assistant Company Secretary Holdings	26 to 28
Chan Sun Man Janis	Personal Assistant to Robert Miller.	111 & 113
Chao Tien Yo	Partner Chao and Chung Solicitors	62 to 65
Chapman Anne	Team Leader Corporate Finance Department, Listing Division SEHK	43 & 44
Chen Wei On Kenneth	Assistant Director Peregrine Director of Concept	54 & 55
Cheung Leung Hong Cliff	Director PAMA Director of Concept	50 to 54
Chui Yu wing Ringo	Assistant Manager Sun Hung Kai Director of Concept	33 & 34 & 48
Dhamelincourt Philippe	Head of the Investment Department Banque Worms General Manager ACMER Chairman GAAP	106
Du Ying Tzyong	CEO and Managing Director Holdings	Read
Edwards Mark	Fund Manager Rowe Price-Fleming	15
Fok Jessie	Associate Solicitor Chao and Chung	68
Fok Kin Wah Winnie	Director Peregrine	58
Fong Ying Chun	Customer Service Executive HK CSL Limited	Read
Fu Hau Tat Eric	Broker J.A. Fu	36 & 37
Fu Jorge Alberto	Sole proprietor of J.A. Fu	36
Haas Christian	Chairman and Managing Director ACMER Deputy Managing Director Banque Worms	105
Heale Thomas	Expert witness acting for Robert Miller Nicholas Prior & Henry Tai	Read
Ho Sui Kwong Alan	Deputy Managing Director HPEM Non-executive Director of Concept	19 to 21 - 51 & 52
Hunt Christopher	Sales Executive Wheelock Natwest Securities	Read
Ip Ernest	Partner Coopers Holdings's auditors	14 & 15
Jacob Fabrice	Senior Vice President Banque Worms	112
Kwan Po Chiu Vincent	Investment manager Search	58 to 61
Ku Wan Chun	Personal loan manager Standard Chartered Bank	Read
Lam Chung Ming William	Senior Vice President & Head of IND Search	96 to 101 & 111
Lam Kin Sun Adrian	Citicorp Capital Asia Ltd Director Concept	52 & 53
Lam Lai San Lisa	Deputy CEO & Director Concept	93 to 96

Name	Description	Day evidence given
Law Hung Kuen Jan son	Manager PAMA	48 to 50
Lee Albert	Company Secretary of Holdings CFO Concept	21 to 25
Lelalertsuphakun Dusanee (Mrs. Lee)	Siegfried Lee Lee's wife	90 to 92
Lee Mun Yee Ada	Siegfried Lee's secretary	61
Lee Sheung Yam Peter	Deputy Chairman Holdings to March 1996 Executive Director Concept to March 1996	13
Lee Siu Fung Siegfried	Chairman Holdings	75 to 86
Leung Yiu Hung Raymond	Manager HPEM	29 to 33
Lewis Robert	Research analyst James Capel	Read
Li Xiao Yi Benjamin	Siegfried Lee's brother COO Concept Executive Director Holdings	10 to 12 - 56 & 57
Li Man Yi	Daniel Chan's sister-in-law	71
Lui Sai Kit Eddie	CFO Holdings & NHD	4 to 6 - 17 & 72
Miller Robert Warren	Chairman Search	102 & 103
Morin Christopher	Investment banker CSFB New York	9
Muirhead Christine	Senior Manager SFC	68 & 69
Ng Chun Man	Broker Tanrich Securities	36
Ng Yuen Tin	Deputy Head of Corporate Banking Division Hang Seng Bank	17 & 18
Or Raymond	General Manager HSBC	67
Patterson Michael	Business Reporter Eastern Express	Read
Prior Nicholas Anthony	President & CIO Search	103 to 107
Rigby Clive	Expert witness for the Tribunal	Read
Scott Thomas	Institutional Salesman James Capel	Read
So An Fai Steven	Broker Jardine Fleming	37
Tai Hon Leung Henry	Vice President of IND Search Director Concept	108 to 111
Tam Wai Hung David	Senior Executive Corporate and Institutional Banking Division HSBC	66 to 68
Tan, Dr Boon Tou	Director of SFH Chairman of Siu-Fung Ceramics Beijing Sanitaryware Managing Director of Dubois, Asia	Read
Tsang, Michael	Director of HPEM Former Director Concept	16 & 17
Tse Gisa	Director Kim Eng Securities	Read
Tsui Linda	Assistant Manager Finance Department Holdings	15
Wai Man Keung	Building contractor & Siegfried Lee's friend	73 & 74
Witts Richard	Expert witness acting for Fabrice Jacob	Read

Name	Description	Day evidence given
W ong David	Executive Director of CEF Brokerage	35 & 38
Wong Fong Kim	Director Concept	71
Wong Hans	Executive Listing Division SEHK	39 to 41- 44 & 45
Wong Patrick	General Manager Dao Heng Bank	18 & 19
Wong Roger	Manager HSBC	65 & 66
Wu Sau Wai Carmen	Executive Officer Settlement Department Jardine Fleming	37
Yu Sharon	Assistant Manager Citicorp	<i>Read</i>

- The names of the implicated persons are shaded.
- A total of 53 oral witnesses were called
- In addition the Tribunal read the written statements of 13 witnesses

Insider Dealing Tribunal Inquiry into Siu Fung Ceramics Holdings Limited

Annexure 4

A table showing the:

- daily high/low price of Holdings' shares
- daily closing price of Holdings' shares
- daily turnover of Holdings' shares; and
- the Hang Seng Index (HSI)

for the period 2 January 1996 to 31 October 1996.

Stock Historical Data

Stock	00395 - SIU-FUNG HOLD
Date (dd/mm/yyyy)	02/01/1996 - 31/10/1996
Max / Min Closing Price	1.79 / 0.57
Max / Min Price	1.83 / 0.57
Weighted Average Price	1.285

Total Volume	2,521,448,790 shares
Daily Average	12,122,350 shares
Total \$ Turnover	3,239,714,293
Average \$ Turnover	15,575,549

Date	Volume	\$ Turnover	High	Low	Close	%Change	HSI Close
02/01/1996	2,362,000	2,640,440	1.140	1.080	1.080	0.00	10,204.87
03/01/1996	1,012,000	1,112,800	1.110	1.090	1.100	1.85	10,397.44
04/01/1996	3,522,000	4,152,540	1.230	1.120	1.220	10.91	10,573.90
05/01/1996	5,076,000	6,368,300	1.280	1.210	1.260	3.28	10,529.90
08/01/1996	3,917,080	4,816,767	1.280	1.190	1.190	-5.56	10,466.67
09/01/1996	2,152,000	2,602,560	1.230	1.190	1.220	2.52	10,427.20
10/01/1996	1,274,000	1,531,800	1.220	1.190	1.190	-2.46	10,304.63
11/01/1996	1,953,442	2,307,075	1.200	1.160	1.180	-0.84	10,429.82
12/01/1996	24,588,573	27,583,655	1.240	1.200	1.200	1.69	10,540.01
15/01/1996	4,006,000	4,845,460	1.240	1.180	1.220	1.67	10,634.50
16/01/1996	4,766,000	5,961,560	1.280	1.210	1.280	4.92	10,671.15
17/01/1996	8,012,000	10,578,960	1.350	1.280	1.320	3.13	10,593.82
18/01/1996	39,666,000	52,824,740	1.430	1.320	1.380	4.55	10,536.49
19/01/1996	24,268,000	33,527,020	1.430	1.340	1.350	-2.17	10,764.09
22/01/1996	5,860,000	7,708,860	1.350	1.290	1.300	-3.70	10,955.33
23/01/1996	4,022,000	5,248,920	1.330	1.290	1.330	2.31	10,957.22
24/01/1996	2,709,735	3,543,821	1.320	1.290	1.290	-3.01	10,960.21
25/01/1996	4,684,000	5,981,500	1.330	1.250	1.250	-3.10	11,103.08
26/01/1996	6,440,655	7,937,006	1.270	1.210	1.220	-2.40	11,111.87
29/01/1996	5,726,000	7,340,340	1.340	1.230	1.340	9.84	11,058.97
30/01/1996	21,604,000	29,892,240	1.420	1.340	1.350	0.75	11,201.46
31/01/1996	7,431,540	10,162,791	1.390	1.320	1.330	-1.48	11,359.70
01/02/1996	2,200,000	2,951,800	1.360	1.330	1.350	1.50	11,362.80
02/02/1996	4,694,262	6,208,990	1.340	1.310	1.330	-1.48	11,469.40
05/02/1996	3,416,000	4,582,600	1.390	1.300	1.340	0.75	11,484.12
06/02/1996	4,472,000	5,993,340	1.370	1.330	1.330	-0.75	11,391.38
07/02/1996	5,160,590	6,771,658	1.330	1.300	1.300	-2.26	11,388.59
08/02/1996	6,265,000	7,988,960	1.320	1.240	1.260	-3.08	11,331.77
09/02/1996	10,574,278	13,443,654	1.320	1.240	1.260	0.00	11,310.28
12/02/1996	1,431,573	1,795,448	1.260	1.250	1.260	0.00	11,256.59
13/02/1996	2,800,000	3,465,400	1.260	1.220	1.240	-1.59	11,200.19
14/02/1996	1,682,000	2,101,480	1.270	1.240	1.250	0.81	11,364.46
15/02/1996	3,759,557	4,808,144	1.290	1.260	1.280	2.40	11,471.81
16/02/1996	1,792,459	2,274,520	1.280	1.260	1.260	-1.56	11,594.99
22/02/1996	1,952,000	2,453,000	1.270	1.250	1.260	0.00	11,338.45
23/02/1996	2,239,000	2,810,220	1.270	1.250	1.270	0.79	11,390.41
26/02/1996	528,000	657,640	1.250	1.230	1.240	-2.36	11,210.42

27/02/1996	672,000	834,400	1.250	1.230	1.240	0.00	11,197.02
28/02/1996	2,714,229	3,474,519	1.290	1.270	1.270	2.42	11,264.65
29/02/1996	1,600,000	2,011,540	1.290	1.240	1.240	-2.36	11,125.68
01/03/1996	2,776,000	3,517,220	1.270	1.250	1.270	2.42	11,194.94
04/03/1996	6,528,000	8,614,580	1.340	1.270	1.330	4.72	11,254.05
05/03/1996	28,976,000	40,558,920	1.470	1.340	1.430	7.52	11,454.08
06/03/1996	40,980,024	61,878,174	1.560	1.450	1.550	8.39	11,378.73
07/03/1996	25,396,524	37,820,359	1.590	1.440	1.460	-5.81	11,194.48
08/03/1996	7,982,000	11,683,780	1.480	1.440	1.470	0.68	11,217.79
11/03/1996	10,396,000	13,712,580	1.380	1.250	1.310	-10.88	10,397.45
12/03/1996	5,826,000	7,928,560	1.400	1.330	1.350	3.05	10,602.45
13/03/1996	5,296,000	6,898,680	1.330	1.290	1.300	-3.70	10,249.48
14/03/1996	2,964,000	3,882,680	1.320	1.300	1.310	0.77	10,451.75
15/03/1996	5,311,311	7,138,845	1.360	1.320	1.330	1.53	10,557.58
18/03/1996	1,562,000	2,086,120	1.350	1.320	1.330	0.00	10,601.28
19/03/1996	1,928,000	2,617,780	1.360	1.340	1.360	2.26	10,880.50
20/03/1996	2,650,000	3,603,000	1.360	1.350	1.360	0.00	10,836.53
21/03/1996	7,118,000	10,060,860	1.440	1.360	1.430	5.15	11,027.96
22/03/1996	10,385,393	15,214,641	1.520	1.400	1.430	0.00	11,026.73
25/03/1996	11,234,000	16,371,000	1.490	1.430	1.450	1.40	11,111.76
26/03/1996	5,390,000	7,703,500	1.470	1.400	1.400	-3.45	10,984.47
27/03/1996	3,426,000	4,786,300	1.420	1.380	1.390	-0.71	11,066.57
28/03/1996	2,872,818	3,979,171	1.400	1.370	1.380	-0.72	11,030.58
29/03/1996	1,996,000	2,723,520	1.380	1.340	1.350	-2.17	10,957.20
01/04/1996	1,948,000	2,592,220	1.370	1.310	1.330	-1.48	10,926.84
02/04/1996	3,157,934	4,334,274	1.390	1.350	1.380	3.76	11,144.64
03/04/1996	3,544,000	4,932,960	1.420	1.370	1.390	0.72	11,139.88
09/04/1996	1,065,114	1,463,679	1.390	1.360	1.390	0.00	11,107.37
10/04/1996	2,222,000	3,066,660	1.400	1.360	1.370	-1.44	11,077.55
11/04/1996	1,636,000	2,239,540	1.380	1.360	1.360	-0.73	10,892.57
12/04/1996	2,658,000	3,648,960	1.380	1.370	1.370	0.74	10,849.80
15/04/1996	2,068,000	2,835,760	1.390	1.360	1.370	0.00	10,949.57
16/04/1996	11,316,000	16,016,400	1.460	1.370	1.460	6.57	11,032.98
17/04/1996	21,492,000	32,593,640	1.550	1.460	1.490	2.05	10,962.69
18/04/1996	17,418,393	25,440,234	1.500	1.420	1.430	-4.03	10,909.29
19/04/1996	10,680,875	15,467,928	1.470	1.410	1.450	1.40	10,818.49
22/04/1996	8,495,595	11,870,374	1.450	1.370	1.380	-4.83	10,909.98
23/04/1996	4,142,000	5,610,060	1.380	1.340	1.360	-1.45	10,889.05
24/04/1996	2,888,000	3,936,660	1.380	1.340	1.340	-1.47	10,898.69
25/04/1996	5,982,000	7,893,720	1.340	1.300	1.310	-2.24	10,753.38
26/04/1996	4,220,000	5,506,680	1.340	1.290	1.290	-1.53	10,732.79
29/04/1996	2,216,000	2,935,740	1.340	1.310	1.310	1.55	10,835.75
30/04/1996	2,552,065	3,306,979	1.310	1.280	1.290	-1.53	10,964.53
01/05/1996	3,684,000	4,768,820	1.310	1.280	1.290	0.00	10,907.01
02/05/1996	2,472,000	3,187,780	1.300	1.280	1.290	0.00	10,929.90

03/05/1996	4,286,000	5,423,420	1.290	1.240	1.260	-2.33	10,734.24
06/05/1996	2,896,000	3,686,120	1.280	1.260	1.270	0.79	10,697.54
07/05/1996	14,054,000	18,656,540	1.360	1.260	1.360	7.09	10,702.17
08/05/1996	14,762,000	20,235,120	1.390	1.330	1.370	0.74	10,617.32
09/05/1996	7,467,737	10,286,638	1.390	1.370	1.380	0.73	10,573.00
10/05/1996	3,954,000	5,403,660	1.380	1.350	1.370	-0.72	10,597.73
13/05/1996	17,086,000	24,174,800	1.440	1.390	1.440	5.11	10,746.00
14/05/1996	12,722,000	18,324,320	1.460	1.420	1.440	0.00	10,817.88
15/05/1996	16,912,000	24,015,520	1.450	1.390	1.400	-2.78	10,863.83
16/05/1996	11,042,000	15,630,620	1.450	1.380	1.410	0.71	10,833.41
17/05/1996	10,464,000	14,655,480	1.420	1.390	1.400	-0.71	10,816.85
20/05/1996	5,682,057	7,953,216	1.400	1.390	1.400	0.00	10,987.59
21/05/1996	3,573,057	5,062,578	1.420	1.410	1.410	0.71	11,088.77
22/05/1996	2,152,000	3,029,140	1.410	1.400	1.410	0.00	11,082.79
23/05/1996	2,828,000	3,994,400	1.420	1.400	1.410	0.00	11,030.84
24/05/1996	32,318,655	47,268,337	1.480	1.420	1.470	4.26	11,019.16
27/05/1996	18,026,000	27,078,500	1.520	1.480	1.490	1.36	11,081.69
28/05/1996	55,158,000	87,299,940	1.650	1.490	1.640	10.07	11,107.02
29/05/1996	68,936,000	119,417,440	1.790	1.640	1.740	6.10	11,200.56
30/05/1996	48,598,000	80,406,460	1.740	1.570	1.590	-8.62	11,157.07
31/05/1996	30,428,000	50,093,200	1.690	1.580	1.660	4.40	11,264.73
03/06/1996	28,432,000	48,686,500	1.740	1.680	1.700	2.41	11,059.81
04/06/1996	9,122,524	15,526,740	1.730	1.680	1.690	-0.59	11,086.91
05/06/1996	7,700,000	13,004,520	1.710	1.670	1.680	-0.59	11,092.51
06/06/1996	25,760,885	44,270,976	1.740	1.670	1.720	2.38	11,225.83
07/06/1996	24,944,890	43,589,132	1.770	1.730	1.750	1.74	11,196.55
10/06/1996	27,856,524	50,011,387	1.830	1.750	1.790	2.29	11,143.24
11/06/1996	40,396,000	71,053,580	1.820	1.690	1.710	-4.47	10,993.55
12/06/1996	21,282,000	36,662,780	1.750	1.700	1.710	0.00	10,958.67
13/06/1996	13,738,000	23,623,500	1.740	1.700	1.720	0.58	10,866.02
14/06/1996	14,306,000	23,578,760	1.680	1.620	1.640	-4.65	10,864.99
18/06/1996	32,882,000	52,011,120	1.620	1.540	1.550	-5.49	10,952.78
19/06/1996	36,845,000	54,165,560	1.550	1.410	1.440	-7.10	10,904.47
21/06/1996	22,467,800	32,437,422	1.490	1.400	1.480	2.78	10,855.29
24/06/1996	13,138,000	19,040,820	1.470	1.430	1.440	-2.70	10,959.72
25/06/1996	40,344,000	60,840,540	1.540	1.450	1.510	4.86	10,982.77
26/06/1996	22,040,000	33,800,300	1.560	1.500	1.510	0.00	11,059.92
27/06/1996	12,386,000	18,497,520	1.520	1.480	1.480	-1.99	11,002.45
28/06/1996	7,640,000	11,450,200	1.510	1.480	1.490	0.68	11,020.90
01/07/1996	16,182,000	23,423,760	1.490	1.430	1.440	-3.36	11,002.61
02/07/1996	58,656,000	78,454,140	1.440	1.380	1.420	-1.39	11,084.43
03/07/1996	26,245,999	36,647,239	1.430	1.380	1.410	-0.70	11,063.28
04/07/1996	29,761,000	42,227,990	1.440	1.400	1.420	0.71	11,181.82
05/07/1996	15,374,000	21,688,260	1.430	1.390	1.390	-2.11	11,177.13
08/07/1996	67,196,000	88,962,220	1.400	1.300	1.400	0.72	10,890.05
09/07/1996	11,387,782	15,808,688	1.400	1.360	1.370	-2.14	10,929.63

10/07/1996	12,358,000	17,059,840	1.390	1.370	1.380	0.73	10,911.76
11/07/1996	11,152,000	15,533,520	1.410	1.370	1.370	-0.72	10,921.35
12/07/1996	18,412,000	25,009,920	1.380	1.330	1.340	-2.19	10,802.68
15/07/1996	25,900,000	35,103,340	1.400	1.310	1.380	2.99	10,800.13
16/07/1996	14,582,000	19,616,320	1.370	1.340	1.340	-2.90	10,627.98
17/07/1996	13,810,000	18,401,200	1.360	1.300	1.310	-2.24	10,609.10
18/07/1996	10,646,000	13,987,660	1.340	1.300	1.320	0.76	10,711.24
19/07/1996	7,270,000	9,539,860	1.340	1.300	1.310	-0.76	10,845.30
22/07/1996	7,226,000	9,459,260	1.310	1.300	1.300	-0.76	10,798.29
23/07/1996	3,436,000	4,524,360	1.330	1.310	1.310	0.77	10,865.31
24/07/1996	11,108,000	14,198,880	1.310	1.260	1.270	-3.05	10,699.86
25/07/1996	4,442,000	5,647,660	1.290	1.260	1.270	0.00	10,706.97
26/07/1996	7,540,000	9,701,660	1.310	1.270	1.270	0.00	10,705.57
29/07/1996	6,840,000	8,587,440	1.290	1.220	1.230	-3.15	10,651.80
30/07/1996	4,819,868	6,002,526	1.270	1.220	1.250	1.63	10,585.86
31/07/1996	3,300,716	4,119,719	1.270	1.240	1.250	0.00	10,681.42
01/08/1996	2,488,687	3,122,835	1.260	1.240	1.250	0.00	10,789.87
02/08/1996	7,960,000	9,818,300	1.260	1.230	1.230	-1.60	10,961.97
05/08/1996	20,521,328	25,912,960	1.320	1.220	1.310	6.50	11,071.43
06/08/1996	29,933,732	39,647,534	1.350	1.280	1.280	-2.29	11,134.60
07/08/1996	4,702,000	6,002,620	1.290	1.260	1.260	-1.56	11,127.54
08/08/1996	6,584,000	8,314,980	1.280	1.250	1.280	1.59	11,164.36
09/08/1996	5,841,312	7,485,048	1.300	1.260	1.260	-1.56	11,104.03
12/08/1996	6,250,000	7,941,040	1.290	1.250	1.250	-0.79	11,181.88
13/08/1996	6,942,000	8,665,240	1.260	1.240	1.240	-0.80	11,165.67
14/08/1996	10,112,000	12,547,140	1.270	1.230	1.250	0.81	11,166.77
15/08/1996	3,932,000	4,862,280	1.250	1.220	1.230	-1.60	11,158.39
16/08/1996	5,640,000	6,939,120	1.240	1.220	1.220	-0.81	11,175.98
19/08/1996	5,166,000	6,352,300	1.240	1.220	1.220	0.00	11,213.48
20/08/1996	8,804,000	10,628,860	1.230	1.190	1.220	0.00	11,312.51
21/08/1996	5,934,000	7,131,640	1.220	1.190	1.210	-0.82	11,436.50
22/08/1996	6,016,000	7,305,240	1.240	1.200	1.210	0.00	11,478.77
23/08/1996	6,186,000	7,604,880	1.240	1.210	1.240	2.48	11,424.64
27/08/1996	7,310,194	8,856,509	1.230	1.190	1.200	-3.23	11,338.93
28/08/1996	4,924,000	5,943,160	1.210	1.200	1.200	0.00	11,379.49
29/08/1996	4,394,000	5,315,740	1.220	1.200	1.200	0.00	11,328.21
30/08/1996	6,044,000	7,229,600	1.210	1.180	1.200	0.00	11,159.02
02/09/1996	12,252,000	14,463,680	1.200	1.170	1.180	-1.67	11,106.57
03/09/1996	22,852,000	25,722,680	1.200	1.140	1.150	-2.54	10,957.18
04/09/1996	16,442,000	18,698,020	1.190	1.150	1.160	0.87	11,076.95
05/09/1996	22,581,000	25,693,280	1.170	1.140	1.150	-0.86	11,040.51
06/09/1996	11,293,000	12,632,310	1.140	1.090	1.110	-3.48	11,025.59
09/09/1996	4,704,267	5,196,378	1.120	1.090	1.100	-0.90	11,212.60
10/09/1996	15,468,000	17,427,540	1.150	1.060	1.130	2.73	11,223.62
11/09/1996	3,799,000	4,235,580	1.130	1.090	1.100	-2.65	11,236.36
12/09/1996	5,240,000	5,778,300	1.120	1.090	1.100	0.00	11,251.72

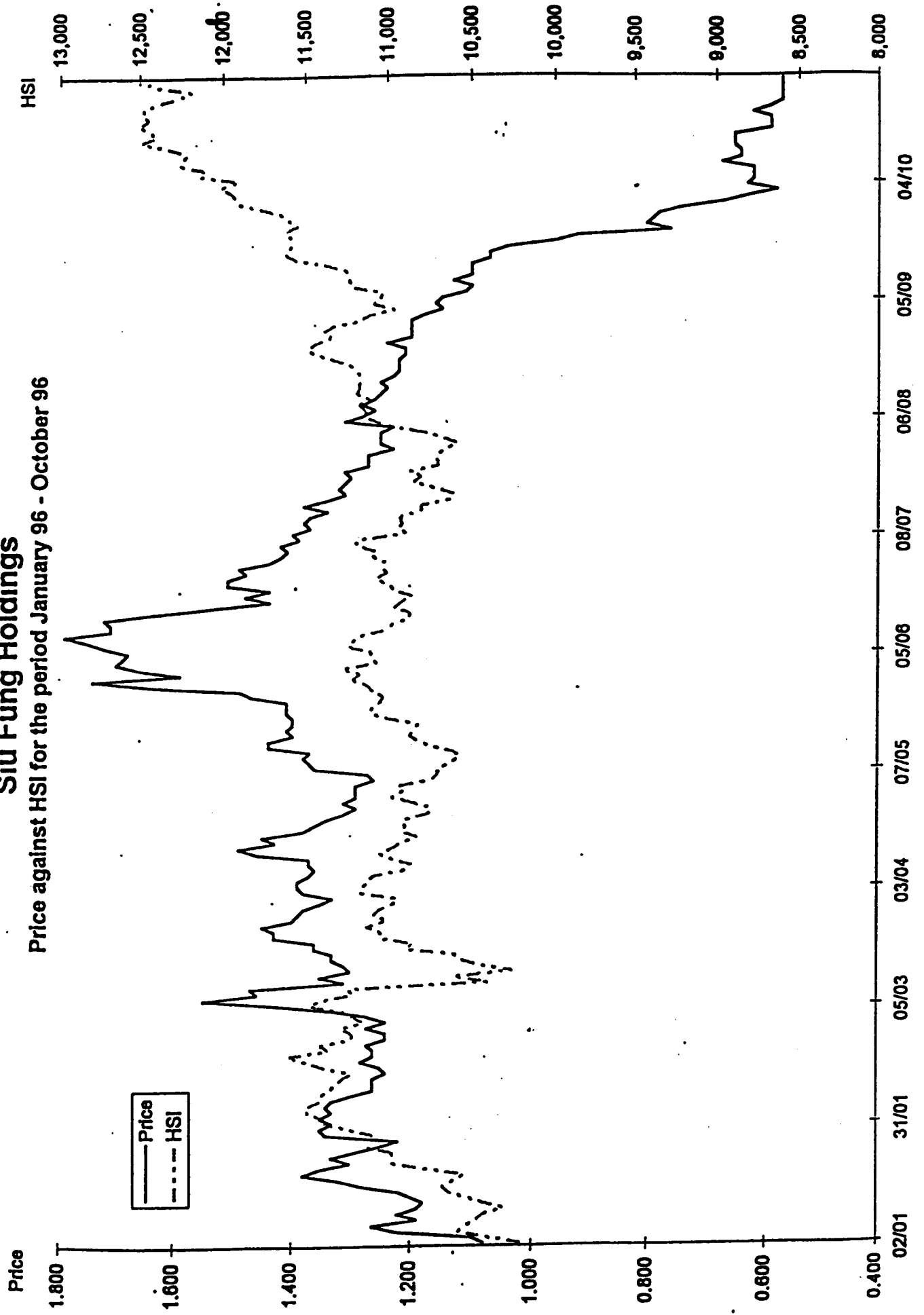
13/09/1996	2,764,000	3,044,660	1.110	1.090	1.100	0.00	11,369.04
16/09/1996	9,796,985	10,584,995	1.100	1.060	1.070	-2.73	11,567.90
17/09/1996	4,795,000	5,135,570	1.090	1.050	1.070	0.00	11,621.61
18/09/1996	6,289,865	6,658,876	1.070	1.030	1.040	-2.80	11,594.03
19/09/1996	47,774,326	46,682,773	1.040	0.950	0.960	-7.69	11,586.68
20/09/1996	29,418,307	26,806,439	0.960	0.880	0.920	-4.17	11,592.36
23/09/1996	44,821,878	36,674,119	0.900	0.760	0.760	-17.39	11,622.13
24/09/1996	30,676,000	25,170,280	0.860	0.760	0.800	5.26	11,546.70
25/09/1996	10,946,001	8,837,241	0.830	0.790	0.790	-1.25	11,603.53
26/09/1996	13,751,868	10,856,325	0.810	0.760	0.780	-1.27	11,636.13
27/09/1996	23,136,582	17,279,727	0.790	0.720	0.740	-5.13	11,759.39
30/09/1996	27,836,000	18,463,580	0.690	0.640	0.670	-9.46	11,902.43
01/10/1996	20,379,970	13,186,023	0.660	0.630	0.630	-5.97	11,921.22
02/10/1996	33,630,037	19,938,483	0.630	0.570	0.580	-7.94	11,951.88
03/10/1996	36,299,865	22,971,123	0.660	0.580	0.630	8.62	12,014.56
04/10/1996	10,813,432	6,690,991	0.640	0.610	0.620	-1.59	11,905.51
07/10/1996	9,192,000	5,680,740	0.630	0.600	0.620	0.00	12,133.07
08/10/1996	6,258,000	3,872,400	0.630	0.610	0.620	0.00	12,106.76
09/10/1996	39,223,865	26,132,795	0.690	0.630	0.670	8.06	12,250.57
10/10/1996	18,436,000	12,242,560	0.680	0.630	0.640	-4.48	12,242.47
11/10/1996	8,519,777	5,497,491	0.650	0.640	0.640	0.00	12,218.40
14/10/1996	22,754,000	14,951,180	0.680	0.630	0.650	1.56	12,330.35
15/10/1996	0	0	-	-	0.650	0.00	12,490.70
16/10/1996	0	0	-	-	0.650	0.00	12,396.18
17/10/1996	18,122,590	11,051,833	0.680	0.590	0.590	-9.23	12,436.80
18/10/1996	8,755,409	5,242,467	0.620	0.580	0.590	0.00	12,510.05
22/10/1996	4,766,000	2,825,680	0.600	0.580	0.590	0.00	12,444.66
23/10/1996	11,504,000	7,108,820	0.630	0.590	0.620	5.08	12,492.37
24/10/1996	10,652,000	6,393,140	0.630	0.590	0.590	-4.84	12,473.56
25/10/1996	7,688,000	4,481,120	0.590	0.570	0.570	-3.39	12,388.38
28/10/1996	0	0	-	-	0.570	0.00	12,262.77
29/10/1996	0	0	-	-	0.570	0.00	12,192.17
30/10/1996	0	0	-	-	0.570	0.00	12,405.47
31/10/1996	0	0	-	-	0.570	0.00	12,477.56

Annexure 5

A graph comparing the daily closing price of Holdings' shares and the HSI for the period 2 January 1996 to 31 October 1996.

Siu Fung Holdings

Price against HSI for the period January 96 - October 96

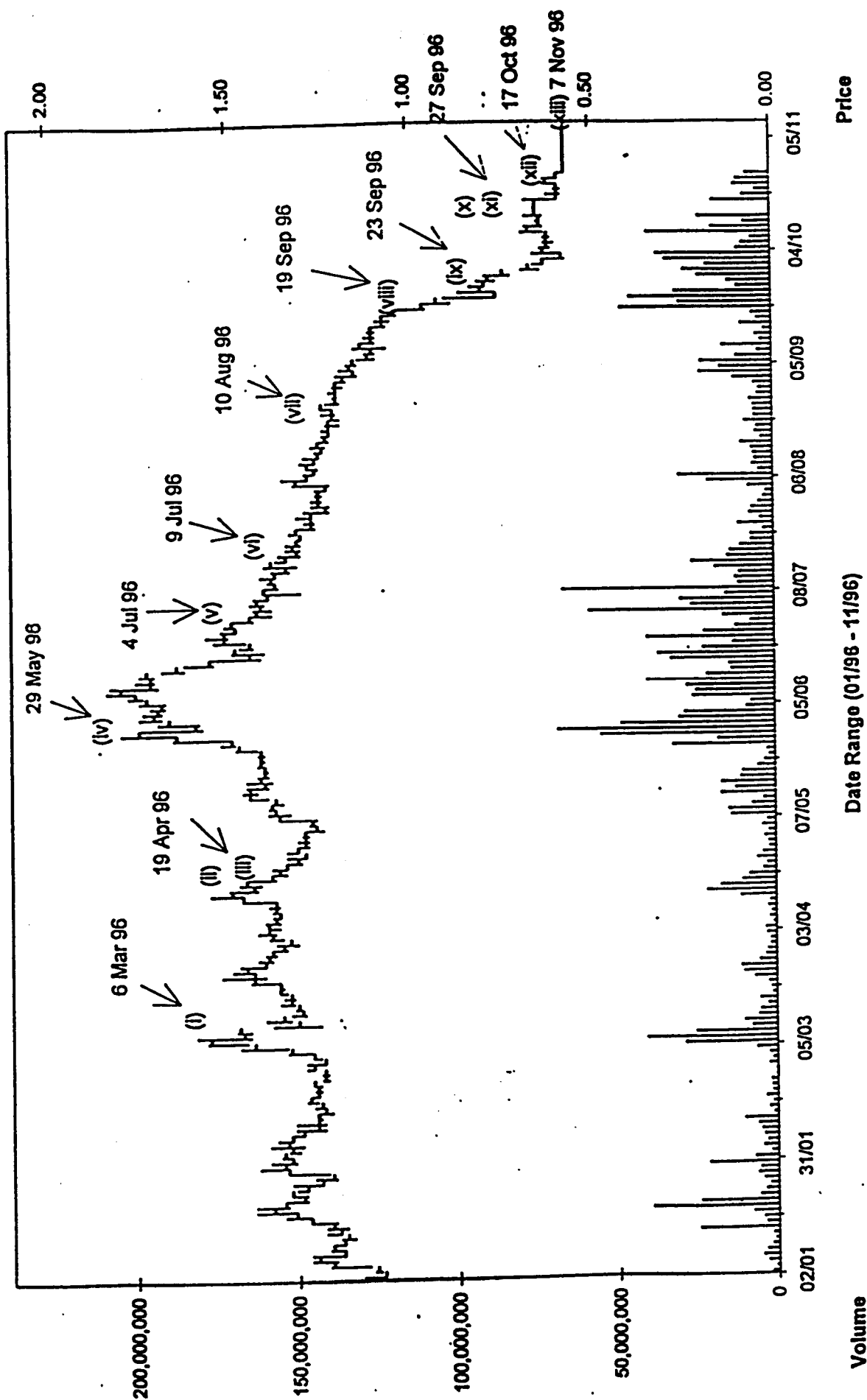


Insider Dealing Tribunal Inquiry into Siu Fung Ceramics Holdings Limited

Annexure 6

A graph showing the daily closing price and turnover Holdings' shares for the period 2 January 1996 to 7 November 1996.

STOCK CODE : 0395 - SIU-FUNG HOLD



Insider Dealing Tribunal Inquiry into Siu Fung Ceramics Holdings Limited

Annexure 7

Calculation of losses avoided

Siu Fung Ceramics Holdings Limited
Computation of Loss Avoided - Siegfried Lee

Account Name	Transaction Date	Quantity of Shares Sold	Net Sale Proceeds	Notional Sale Proceeds at Re- rated price of \$0.63	Notional Transaction Cost (0.413%)	Notional Net Sale Proceeds	Notional Net Loss Avoided
(a)	(b)	(c)	HK\$ (d)	HK\$ (e)	HK\$ (f)	HK\$ (g) = (e) - (f)	HK\$ (h) = (d) - (g)
Li Man Yi	14/06/1996	1,400,000	2,323,355.89	882,000.00	3,642.66	878,357.34	1,444,998.55
Wong Fong Kim	14/06/1996	6,360,000	10,419,785.47	4,006,800.00	16,548.08	3,990,251.92	6,429,533.55
Wong Fong Kim	18/06/1996	2,470,000	3,936,512.19	1,556,100.00	6,426.69	1,549,673.31	2,386,838.88
Wong Fong Kim	18/06/1996	190,000	298,927.97	119,700.00	494.36	119,205.64	179,722.33
Sub-total		9,020,000	14,655,225.63	5,682,600.00	23,469.14	5,659,130.86	8,996,094.77
Wai Man Keung	18/06/1996	6,520,000	10,141,440.61	4,107,600.00	16,964.39	4,090,635.61	6,050,805.00
Lelalertsuphakun Dusanee	02/07/1996	40,000,000	51,785,240.00	25,200,000.00	104,076.00	25,095,924.00	26,689,316.00
Lelalertsuphakun Dusanee	08/07/1996	40,000,000	51,785,240.00	25,200,000.00	104,076.00	25,095,924.00	26,689,316.00
Sub-total		80,000,000	103,570,480.00	50,400,000.00	208,152.00	50,191,848.00	53,378,632.00
Total		96,940,000	130,690,502.13	61,072,200.00	252,228.19	60,819,971.81	69,870,530.32

Siu Fung Ceramics Holdings Limited
Computation of Loss Avoided - Daniel Chan

Account Name	Transaction Date	Quantity of Shares Sold	Net Sale Proceeds	Notional Sale Proceeds at Re-rated price of \$0.63	Notional Transaction Cost (0.413%)	Notional Net Sale Proceeds	Notional Net Loss Avoided
(a)	(b)	(c)	HK\$ (d)	HK\$ (e)	HK\$ (f)	HK\$ (g) = (e) - (f)	HK\$(h) = (d) - (g)
Li Man Yi	14/06/1996	1,400,000	2,323,355.89	882,000.00	3,642.66	878,357.34	1,444,998.55
Wong Fong Kim	14/06/1996	6,360,000	10,419,785.47	4,006,800.00	16,548.08	3,990,251.92	6,429,533.55
Wai Man Keung	18/06/1996	6,520,000	10,141,440.61	4,107,600.00	16,964.39	4,090,635.61	6,050,805.00
Total		14,280,000	22,884,581.97	8,996,400	37,155.13	8,959,244.87	13,925,337.10

Siu Fung Ceramics Holdings Limited
Computation of Loss Avoided - Lisa Lam

Account Name	Transaction Date	Quantity of Shares Sold	Net Sale Proceeds	Notional Sale Proceeds at Re-rated price of \$0.63	Notional Transaction Cost (0.413%)	Notional Net Sale Proceeds	Notional Net Loss Avoided
(a)	(b)	(c)	HK\$ (d)	HK\$ (e)	HK\$ (f)	HK\$ (g) = (e) - (f)	HK\$ (h) = (d) - (e)
Lisa Lam Lai San	02/07/1996	200,000	286,810.56	126,000.00	520.38	125,479.62	161,330.94
Lisa Lam Lai San	26/07/1996	2,000,000	2,551,896.18	1,260,000.00	5,203.80	1,254,796.20	1,297,099.98
Lisa Lam Lai San	29/07/1996	3,800,000	4,746,276.53	2,394,000.00	9,887.22	2,384,112.78	2,362,163.75
Total		6,000,000	7,584,983.27	3,780,000.00	15,611.40	3,764,388.60	3,820,594.67

Siu Fung Ceramics Holdings Limited
Computation of Loss Avoided - William Lam

Account Name	Transaction Date	Quantity of Shares Sold	Net Sale Proceeds	Notional Sale Proceeds at Re-rated price of \$0.63	Notional Transaction Cost (0.413%)	Notional Net Sale Proceeds	Notional Net Loss Avoided
(a)	(b)	(c)	HK\$ (d)	HK\$ (e)	HK\$ (f)	HK\$ (g) = (e) - (f)	HK\$ (h) = (d) - (g)
Lisa Lam Lai San	02/07/1996	200,000	286,810.56	126,000.00	520.38	125,479.62	161,330.94
Lisa Lam Lai San	26/07/1996	2,000,000	2,551,896.18	1,260,000.00	5,203.80	1,254,796.20	1,297,099.98
Lisa Lam Lai San	29/07/1996	3,800,000	4,746,276.53	2,394,000.00	9,887.22	2,384,112.78	2,362,163.75
Mordale Profits Limited	02/08/1996	2,000,000	2,460,992.74	1,260,000.00	5,203.80	1,254,796.20	1,206,196.54
Mordale Profits Limited	05/08/1996	8,400,000	10,504,317.08	5,292,000.00	21,855.96	5,270,144.04	5,234,173.04
Mordale Profits Limited	06/08/1996	1,600,000	2,048,464.70	1,008,000.00	4,163.04	1,003,836.96	1,044,627.74
Mordale Profits Limited	07/08/1996	2,000,000	2,542,654.08	1,260,000.00	5,203.80	1,254,796.20	1,287,857.88
Mordale Profits Limited	08/08/1996	2,900,000	3,644,395.46	1,827,000.00	7,545.51	1,819,454.49	1,824,940.97
Mordale Profits Limited	09/08/1996	1,800,000	2,286,954.86	1,134,000.00	4,683.42	1,129,316.58	1,157,638.28
Mordale Profits Limited	12/08/1996	1,294,000	1,631,180.37	815,220.00	3,366.86	811,853.14	819,327.23
Mordale Profits Limited	13/08/1996	1,600,000	1,989,508.89	1,008,000.00	4,163.04	1,003,836.96	985,671.93
Mordale Profits Limited	14/08/1996	1,600,000	1,977,718.03	1,008,000.00	4,163.04	1,003,836.96	973,881.07
Mordale Profits Limited	16/08/1996	800,000	979,936.08	504,000.00	2,081.52	501,918.48	478,017.60
Mordale Profits Limited	19/08/1996	1,000,000	1,225,616.71	630,000.00	2,601.90	627,398.10	598,218.61
Mordale Profits Limited	20/08/1996	400,000	482,001.08	252,000.00	1,040.76	250,959.24	231,041.84
Mordale Profits Limited	21/08/1996	870,000	1,041,160.39	548,100.00	2,263.65	545,836.35	495,324.04
Mordale Profits Limited	22/08/1996	1,220,000	1,473,261.18	768,600.00	3,174.32	765,425.68	707,835.50
Mordale Profits Limited	28/08/1996	700,000	839,109.46	441,000.00	1,821.33	439,178.67	399,930.79
Mordale Profits Limited	29/08/1996	680,000	819,401.54	428,400.00	1,769.29	426,630.71	392,770.83
Mordale Profits Limited	30/08/1996	1,000,000	1,189,068.78	630,000.00	2,601.90	627,398.10	561,670.68
Mordale Profits Limited	02/09/1996	680,000	797,189.14	428,400.00	1,769.29	426,630.71	370,558.43
Mordale Profits Limited	03/09/1996	1,750,000	2,063,615.62	1,102,500.00	4,553.33	1,097,946.68	965,668.95
Mordale Profits Limited	04/09/1996	2,300,000	2,646,902.78	1,449,000.00	5,984.37	1,443,015.63	1,203,887.15
Mordale Profits Limited	05/09/1996	8,548,000	9,461,009.97	5,385,240.00	22,241.04	5,362,998.96	4,098,011.01
Sub-total		43,142,000	52,104,458.94	27,179,460.00	112,251.17	27,067,208.83	25,037,250.11
Total		49,142,000	59,689,442.21	30,959,460.00	127,862.57	30,831,597.43	28,857,844.78

Siu Fung Ceramics Holdings Limited
Computation of Loss Avoided - Henry Tai

Account Name	Transaction Date	Quantity of Shares Sold	Net Sale Proceeds	Notional Sale Proceeds at Re-rated price of \$0.63	Notional Transaction Cost (0.413%)	Notional Net Sale Proceeds	Notional Net Loss Avoided
(a)	(b)	(c)	HK\$ (d)	HK\$ (e)	HK\$ (f)	HK\$ (g) = (e) - (f)	HK\$ (h) = (d) - (g)
Mordale Profits Limited	02/08/1996	2,000,000	2,460,992.74	1,260,000.00	5,203.80	1,254,796.20	1,206,196.54
Mordale Profits Limited	05/08/1996	8,400,000	10,504,317.08	5,292,000.00	21,855.96	5,270,144.04	5,234,173.04
Mordale Profits Limited	06/08/1996	1,600,000	2,048,464.70	1,008,000.00	4,163.04	1,003,836.96	1,044,627.74
Mordale Profits Limited	07/08/1996	2,000,000	2,542,654.08	1,260,000.00	5,203.80	1,254,796.20	1,287,857.88
Mordale Profits Limited	08/08/1996	2,900,000	3,644,395.46	1,827,000.00	7,545.51	1,819,454.49	1,824,940.97
Mordale Profits Limited	09/08/1996	1,800,000	2,286,954.86	1,134,000.00	4,683.42	1,129,316.58	1,157,638.28
Mordale Profits Limited	12/08/1996	1,294,000	1,631,180.37	815,220.00	3,366.86	811,853.14	819,327.23
Mordale Profits Limited	13/08/1996	1,600,000	1,989,508.89	1,008,000.00	4,163.04	1,003,836.96	985,671.93
Mordale Profits Limited	14/08/1996	1,600,000	1,977,718.03	1,008,000.00	4,163.04	1,003,836.96	973,881.07
Mordale Profits Limited	16/08/1996	800,000	979,936.08	504,000.00	2,081.52	501,918.48	478,017.60
Mordale Profits Limited	19/08/1996	1,000,000	1,225,616.71	630,000.00	2,601.90	627,398.10	598,218.61
Mordale Profits Limited	20/08/1996	400,000	482,001.08	252,000.00	1,040.76	250,959.24	231,041.84
Mordale Profits Limited	21/08/1996	870,000	1,041,160.39	548,100.00	2,263.65	545,836.35	495,324.04
Mordale Profits Limited	22/08/1996	1,220,000	1,473,261.18	768,600.00	3,174.32	765,425.68	707,835.50
Mordale Profits Limited	28/08/1996	700,000	839,109.46	441,000.00	1,821.33	439,178.67	399,930.79
Mordale Profits Limited	29/08/1996	680,000	819,401.54	428,400.00	1,769.29	426,630.71	392,770.83
Mordale Profits Limited	30/08/1996	1,000,000	1,189,068.78	630,000.00	2,601.90	627,398.10	561,670.68
Mordale Profits Limited	02/09/1996	680,000	797,189.14	428,400.00	1,769.29	426,630.71	370,558.43
Mordale Profits Limited	03/09/1996	1,750,000	2,063,615.62	1,102,500.00	4,553.33	1,097,946.68	965,668.95
Mordale Profits Limited	04/09/1996	2,300,000	2,646,902.78	1,449,000.00	5,984.37	1,443,015.63	1,203,887.15
Mordale Profits Limited	05/09/1996	8,548,000	9,461,009.97	5,385,240.00	22,241.04	5,362,998.96	4,098,011.01
Total		43,142,000	52,104,458.94	27,179,460.00	112,251.17	27,067,208.83	25,037,250.11

Insider Dealing Tribunal Inquiry into Siu Fung Ceramics Holdings Limited

Annexure 8

Witness expenses paid by the Tribunal

Annexure 8 - Witness expenses paid by the Tribunal

Name of Witness	Foreign currency	HK\$
1. Mr. Michael Tsang Ling Him: expenses for his travel from Singapore to testify before the Tribunal on 20 & 21 November 2002.	S\$2,931.21	\$13,090.82
2. Mr. Alan Ho Sui Kwong: expenses in respect of his testimony before the Tribunal on 25-27 November 2002 and 23 & 24 Jan 2003.		\$16,500.00
3. Mr. Christopher Morin: expenses in respect of his travel from New York to testify before the Tribunal on 11 November 2002.	US\$12,232.45	\$95,419.22
4. Mr. Clive Rigby: expert witness's fees.		\$332,816.66
5. Ernst & Young: accountant's fees for the hire of professional services, including review of Siu Fung Ceramic Holdings Ltd's company documents, meeting with the Counsel to the Tribunal, preparing a draft report on the financial condition of the Siu Fung Ceramic Holdings Ltd group and photocopying charges.		\$327,046.00

Insider Dealing Tribunal Inquiry into Siu Fung Ceramics Holdings Limited

Annexure 9

The costs of the Inquiry

Annexure 9 - The Costs of the Inquiry

		HK\$
1.	Witness expenses	784,872.70
2.	Costs of the Department of Justice	16,628,126.34
3.	Costs of the Securities & Futures Commission	149,413.00
4.	Costs of the Tribunal	
	Interpretation Services	332,500.00
	Court reporting services	1,361,100.00
	Fees of the Tribunal Members	1,203,750.00
	Cost of the Chairman and Tribunal Staff	1,633,901.63
	Photocopying and charges for transcripts	14,622.00
	Miscellaneous (including hire of Technology Court and tape transcription)	47,180.00
		4,593,053.63
5.	Costs of the implicated persons against whom no finding of insider dealing was made.	
	Fabrice Jacob	511,535.00
	Christian Hass (€17,303.15)	168,896.00
	Philippe Dhamelincourt (€13,061.59)	127,494.00
		807,925.00
	Total	<u>\$22,963,390.67</u>