

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

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

CHINNEY ALLIANCE GROUP LIMITED

between

22nd September and 4th October 1999 (inclusive)

and on other related questions



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

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

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

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

Lau Chung Yin, Joseph and Pui Li, Rozalia during the period from 22 September 1999 to 4 October 1999 (both dates inclusive);

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

Dated this 25th day of September 2002.

(Antony Leung)
Financial Secretary

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ABBREVIATIONS

APC Capital (Holdings)	—	APC Capital (Holdings) Limited
APC/ APC Securities	—	APC Securities Company Limited
China Travel	—	China Travel International Investment Hong Kong Limited
Chinney Investments	—	Chinney Investments Limited
Chinney/ Chinney Alliance	—	Chinney Alliance Group Limited
Comway Contracting	—	Comway Contracting (Hong Kong) Limited
Distacom	—	Distacom Communications Limited
Goldstone	—	Goldstone Trading Limited
Hon Kwok Land	—	Hon Kwok Land Investment Company Limited
HSBC	—	The Hongkong & Shanghai Banking Corporation Limited
Kingsway Securities Limited	—	Kingsway SW Securities Limited.
Multi-Investment	—	Multi-Investment Group Limited
SEHK	—	The Stock Exchange of Hong Kong Limited

ABBREVIATIONS (Cont'd)

SFC	— Securities and Futures Commission
SUNDAY	— Mandarin Communications Limited (trading as “SUNDAY”)
Tai Fook/ Tai Fook Securities	— Tai Fook Securities Company Limited
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CHAPTER 1

INTRODUCTION

Dharmala Holdings Limited was listed on the Stock Exchange of Hong Kong Limited ("SEHK") on 15th October 1993. Its core business was the sale and distribution of industrial products and equipment. By late 1998 it had changed its name to Chinney Alliance Group Limited ("Chinney"). Its controlling structure comprised Chinney Investments Limited ("Chinney Investments"), Chinney Holdings Limited and Multi-Investment Group Limited ("Multi-Investment") which held some 14.67% of the issued shares of Chinney, with an option on other shares which if exercised would take its shareholding to 33.87%.¹

In September 1999, the board of Chinney wished to obtain a capital injection by way of a direct placement of new shares (the "direct placement"), equivalent to about 20% of its then issued capital, to independent third parties subject to a proviso that a proportionate number of the new shares were to be subscribed for by Multi-Investment at the same placing price.

With that in view, Chinney informed the SEHK of the proposal and trading in Chinney shares was suspended at the commencement of trading on 23rd September 1999.

Later that same day however the SEHK informed the board of Chinney that the subscription by Multi-Investment would in its view be a connected transaction and as such would require the approval of independent shareholders.

Following that the board of Chinney decided to not proceed with their plans relating to the direct placement and a notice to that effect was published in the Hong Kong press on the following day, the

¹ Charts summarising the structure of the Chinney group are at Annexure "A".

24th September.² Trading in Chinney shares was also resumed at 10:00 a.m. on the 24th September.

During trading on 24th September, the price of Chinney shares increased by some 60% to \$0.20 by mid-afternoon. On the close of trading on 22nd September, the closing price had been \$0.12.³

During the day's trading on 24th September, members of the board of Chinney and its related companies Chinney Investments and Multi-Investment were informed that two placees were interested in resuming the placement of Chinney's shares on a "top-up" basis, so that the objections of the SEHK as to Multi-Investment's role could be circumvented.

One of those potential placees was a Mr. Bernard POULIOT ("Mr. POULIOT") who had previously been the managing director of Chinney in its earlier guise as Dharmala Holdings Limited until he had resigned on 15th September 1998, i.e. about one year previously. The other potential placee was Mr. Richard SIEMENS ("Mr. SIEMENS"), through his and his wife's company Goldstone Trading Limited ("Goldstone").

Mr. POULIOT and Mr. SIEMENS were both directors and shareholders of Distacom Communications Limited ("Distacom") which was a privately owned company involved in the telecommunications industry. One of its interests was a 60% indirect shareholding in a well-known mobile telephone company, held by Mandarin Communications Limited (but trading as "SUNDAY"), which operated a mobile telephone network in Hong Kong. Particularly Mr. SIEMENS' connection with SUNDAY had been widely reported and was well known in business circles in Hong Kong.

Mr. POULIOT had first expressed some form of interest in the then proposed Chinney placement on 23rd September. He had expressed

² That notice is at Annexure "B".

³ A history of Chinney's share price and turnover is at Annexure "C".

this interest to Kenneth LAM Kin Hing ("Mr. LAM") who was a director of Chinney and the managing director of its sometimes placing agent APC Securities Company Limited ("APC"). When the direct placement proposal was aborted Mr. POULIOT remained interested.

This was taken further on 24th September 1999 and a meeting was held about mid-day amongst Mr. POULIOT, Mr. LAM and the chairman of Chinney Dr. James WONG Sai Wing ("Dr. WONG"). At that meeting the placement size of about 200 million shares was discussed and Mr. POULIOT informed the others that Mr. SIEMENS was a potential placee.

Following upon that meeting, a follow-up meeting was held in the afternoon of the same day at the premises of Chinney at which Stephen YU Sek Kee ("Mr. YU") a director and the chief financial officer of Chinney was present together with Mr. LAM who represented the interests of Mr. POULIOT and Mr. SIEMENS. Also present was Herman FUNG Man Hei ("Mr. FUNG"), the managing director of Chinney Investments Limited. Joseph LAU Chung Yin ("Joseph LAU"), the corporate finance director of Chinney Investments Limited and director of Multi-Investment also attended the meeting. The meeting initially went from some time after 2:30 p.m. to about 3:30 p.m.

During the meeting Mr. LAM disclosed to the others present that Mr. POULIOT and Mr. SIEMENS were now proposed placees, and a discussion ensued concerning, inter alia, the price and size of the placement. Prior to 3:30 p.m. the general terms of the placement had been effectively agreed between Mr. YU, who represented Chinney and Mr. LAM for the placees.

Accordingly at about 3:30 p.m. the SEHK was formally notified and trading in Chinney's shares was once again suspended.

Joseph LAU was on the morning of 24th September 1999 an existing Chinney shareholder. Between noon and 2:48 p.m. on 24th September, he had sold some 2,950,000 Chinney shares which he had previously purchased on 22nd September and the morning of 24th September on his account at Tai Fook Securities Company Limited ("Tai

Fook”). In respect of that sale, he realized a profit of some \$69,000 at an average sale price of about 0.155. That sale exhausted his holding of Chinney shares and occurred prior to his attending the afternoon meeting held on 24th September.

But then either during or after that meeting between 3:17 p.m. and 3:30 p.m. Joseph LAU placed orders for the purchase of a total of 6,000,000 Chinney shares at an average price of about \$0.20 on his same Tai Fook account.

In other words, the orders he placed to effect the purchase of the 6,000,000 Chinney shares were placed either during the course of or immediately after the meeting he attended at Chinney's premises where the parties succeeded in arriving at an agreement in principle as to the placement of Chinney shares in favour of Mr. POULIOT and Mr. SIEMENS.

On the same day the 24th September 1999 at around 10:00 a.m., a friend of Joseph LAU, Rozalia PUI, purchased some 750,000 Chinney shares on her account at Tai Fook. Rozalia PUI and Joseph LAU had known each other for about ten years. They had first met while studying in the United States and had become working colleagues when they returned to Hong Kong and had then both worked for China Travel International Investment Hong Kong Limited (“China Travel”). Joseph LAU left that firm and eventually worked at Chinney, but Rozalia PUI had remained there and was an Assistant Investment Manager with China Travel in September 1999.

On the morning of the 30th September Chinney publicly announced the terms of the “top-up” placement agreement and trading in Chinney shares resumed at 10:00 a.m. that day.⁴ Its closing price on that day was \$0.42, a 106% advance on its closing price on 24th September of \$0.20.

⁴ See Annexure “D”.

On the 30th September and the 13th and 19th October 1999 Joseph LAU sold the 6,000,000 Chinney shares purchased on his account, and from 19th October paid funds totalling \$1,503,912 to Rozalia PUI which included the profits of trading in the 6,000,000 Chinney shares.

The transactions in Chinney shares in both Joseph LAU's and Rozalia PUI's trading accounts at Tai Fook attracted the attention of the Securities and Futures Commission ("SFC") and following an investigation by the SFC and a report to the then Financial Secretary a notice was issued to the Chairman of the Insider Dealing Tribunal pursuant to section 16(2) of the Securities (Insider Dealing) Ordinance Cap 395 ("The Ordinance"). That notice appears at (i) to this Report.

CHAPTER 2

PROCEDURE

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

The Tribunal's Terms of Reference

The Tribunal's Terms of Reference are governed by that notice dated the 25th September 2002 sent to the Chairman by the Financial Secretary pursuant to the provisions of section 16(2) of the Ordinance.

That notice instituted the present inquiry and required the Tribunal to inquire into suspected insider dealing in Chinney's shares between 22nd September and 4th October 1999 inclusive arising out of Chinney share dealings by Joseph LAU and Rozalia PUI.

The appointment of members and counsel assisting

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

Following that two lay members were selected by the Chairman and appointed to the Tribunal on the 15th December 2003.

Those members are Mr. YEUNG Yuen Bun, Benny who is a practicing solicitor and a partner of Messrs. Cheng, Yeung & Co. and Mr. PANG Hon Chung who is the Director of Finance and General Manager of Lotus International Limited.

On the 25th February 2004 the Tribunal appointed Mr. Peter T.K. IP of the Hong Kong Bar and Mr. Wesley WONG, then Senior Government Counsel of the Department of Justice as counsel assisting this Tribunal.

The service of Salmon letters

Following that the Tribunal was provided with the various witness statements, documentary exhibits and records of interviews which were to form part of the evidence before the Tribunal. From that material, and following meetings with counsel assisting, the Tribunal determined that Joseph LAU and Rozalia PUI should be regarded as implicated parties. They were served with Salmon letters⁵ to that effect on 26th March 2004. On that date or shortly thereafter all statements, records of interview and exhibits which had earlier been served on the Tribunal were served on the implicated parties together with other documents such as the synopsis of the case which had earlier been provided to the Tribunal.

The Salmon letters specified a date for a preliminary hearing of matters germane to the inquiry. That preliminary hearing took place on the 8th April 2004.

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

At that hearing both the implicated parties sought leave to be represented by counsel for the purposes of the inquiry. Leave was granted and Joseph LAU was thenceforth represented by Mr. Jonathan Harris instructed by Messrs. Richards Butler, Solicitors.

Rozalia PUI was on the 8th April 2004 initially represented by Messrs. Yuen & Partners Solicitors and subsequently from the 18th May

⁵ Salmon letters are so named after Lord Salmon who first suggested this procedure as being appropriate for the notification of persons whose interests may be effected by the findings of a Tribunal of Inquiry.

2004 by Mr. Bernard MAK and Mr. Hectar PUN instructed by Messrs. Cheung, Tong & Rosa Solicitors.

At that preliminary hearing of 8th April 2004 the procedures of the Tribunal were explained together with its powers and, in brief form, the more fundamental aspects of the law which would be applied, such as the standard of proof. In particular the Chairman confirmed the Terms of Reference of the Tribunal in open court and detailed what steps had been undertaken in the constitution of the Tribunal and what preliminary steps had been undertaken by the Tribunal up to that point in time. A directions hearing was set down for 18th May 2004.

At that directions hearing, inter alia, a date for the commencement of the substantive hearing was set. That was the 1st June 2004.

The substantive hearing

The substantive hearing commenced on that day with an opening statement to the inquiry by counsel assisting. Evidence was then called.

Eventually 21 witnesses including the implicated parties were called before the Tribunal, or their statements were read to the Tribunal, over 28 sitting days.

Those witnesses were:

	Name	Present Occupation	General relevance to the inquiry
TW ⁶ 1	Dr. WONG Sai Wing, James ("Dr. WONG")	Chairman, Chinney Investments Limited	Chairman of five listed companies including Chinney, Chinney Investments Limited and Hon Kwok Land Investment Co. Ltd. – Controlled the Chinney Group in 1999 and together with Mr. LAM (TW 6) initiated the "top-up" placement and the meeting in the afternoon of 24 th September.
TW 2	FUNG Man Hei, Herman ("Mr. FUNG")	Vice Chairman, Hon Kwok Land Investment Co. Ltd. and Managing Director, Chinney Investments Limited	Managing Director, Chinney Investments Limited and Director, Multi-Investment in 1999. Was present at the meeting of 24 th September with Joseph LAU who was his subordinate at the time, Mr. YU (TW 3) and Mr. LAM (TW 6).

⁶ "TW" refers to "Tribunal Witness".

Name		Present Occupation	General relevance to the inquiry
TW 3	YU Sek Kee, Stephen ("Mr. YU")	Director, Chinney Alliance Group Ltd.; Managing Director, Chinney Alliance and Chinney Engineering Limited	Director of Chinney in 1999. Executive Director and Chief Financial Officer of Chinney. Present at the meeting of 24 th September with Mr. FUNG (TW 2). Joseph LAU and Mr. LAM (TW 6).
TW 4	Adrian J. BRADBURY	Director, Quam Capital	In 1999, Director of APC Capital Limited. Assisted Mr. LAM (TW 6) in preparing the formal placement documents.
TW 5	CHEUNG Mo Yin, Eva ("Ms. Eva CHEUNG")	Associate Director, Rex Capital Hong Kong Limited	Assistant Manager, Listing Division, the Stock Exchange of Hong Kong Limited in 1999. Contacted Mr. LUK (TW 7) and/or Mr. YU (TW 3) of Chinney in the afternoon of 24 th September to enquire about Chinney's share price rise. Instrumental in suspending Chinney shares that afternoon at 3:33 p.m.

	Name	Present Occupation	General relevance to the inquiry
TW 6	LAM Kin Hing, Kenneth ("Mr. LAM")	Managing Director, Quam Securities Limited	Director of Chinney and Managing Director of APC Capital (Holdings) Ltd. and APC Securities Co. Ltd. in 1999. Put forward Mr. POULIOT to Dr. WONG as being interested in reviving the "shelved" placement of 23 rd September as a "top-up" placement. Attended the meeting with Mr. FUNG (TW 2), Mr. YU (TW 3) and Joseph LAU in the afternoon of 24 th September as the representative of Messrs. POULIOT and SIEMENS.
TW 7	LUK Chi Chung, Peter ("Mr. LUK")	Company Secretary and Financial Controller, Chinney Alliance; Director, Hon Kwok Land Investment Co. Ltd. and Chinney Investments Ltd.	1999 Company Secretary of Chinney. Involved in the suspension of trading in Chinney shares on 24 th September.

	Name	Present Occupation	General relevance to the inquiry
TW 8	Bernard POULIOT ("Mr. POULIOT")	Chairman, Quam Ltd.	Director and also a shareholder of Distacom Communications Ltd. Participated in the "top-up" placement. Met with Dr. WONG and Mr. LAM at noon on 24 th September and proposed the "top-up" placement. Did not attend the afternoon meeting of 24 th September.
TW 9	WOO King Wai ("Mr. WOO")	Architect, Comway Contracting (Hong Kong) Limited	General Manager and Partner, Comway Contracting (Hong Kong) Limited in 1999. Provided the \$1 million cheque to Joseph LAU's present wife which funded the purchase of the 6 million Chinney shares.
TW 10	Richard John SIEMENS ("Mr. SIEMENS")	Chairman, E-Kong Group Limited; Co-Chairman, Sunday Communications Ltd.	Director and Shareholder of Distacom Communications Ltd., Goldstone Trading Ltd. in 1999. Associate of Mr. POULIOT. Participated in the "top-up" placement.

Name		Present Occupation	General relevance to the inquiry
TW 11	TANG Chung Kwan, Eric ("Eric TANG")	Sales person of Citibank Group in relation to derivatives	Broker, Tai Fook Securities in 1999. Took orders from Joseph LAU to purchase the Chinney shares and participated in recorded telephone calls with Joseph LAU and to a lesser extent with Rozalia PUI.
TW 12	LEE Kam Ming	Assistant Managing Director, China Overseas Housing Projects Co. Ltd.	Senior Electrical and Mechanical Engineer, China Overseas Housing Projects Co. Ltd. in 1999. Participated in various work meetings with Rozalia PUI.
TW 13	HO Wai Wah	Investment Manager, China Travel International Investment Hong Kong Ltd.	Investment Manager, China Travel International Investment Hong Kong Ltd. in 1999. Rozalia PUI's work supervisor. Gave evidence of dates of meetings attended by Rozalia PUI.
TW 14	Peter RANDALL ("Mr. RANDALL")	Consultant	Provided expert evidence as to the price sensitivity of information concerning the placement negotiations and agreement.

Name		Present Occupation	General relevance to the inquiry
TW 15	FUNG Sau Hong, Stella ("Miss Stella FUNG")	Senior Manager, Enforcement Division of SFC	Provided expert evidence as to the price sensitivity of information concerning the placement negotiations and agreement.
TW 16	TSOI So Fan, Maria ("Ms. Maria TSOI")	SFC Translator	Translated from Chinese into English various documentary exhibits provided to the Tribunal.
TW 17	LAU Ching Yin, Joseph ("Joseph LAU")	Director of Business Development of Rambus Company LLC	Implicated Party.
TW 18	NG Yan, Noel ("Ms. Noel NG")	Bank Officer	Was the secretary of Joseph LAU at the relevant time. Gave evidence of what time he attended the meeting in the afternoon of 24 th September.
TW 19	PUI Li, Rozalia ("Rozalia PUI")	Housewife	Implicated Party.
TW 20	HO Tsui Shan, Vicky	Investigator of Security Department of SUNDAY	Produced Joseph LAU's mobile telephone records for 24 th September 1999.
TW 21	Ms. Christine Muirhead POON Ling	Senior Manager, Enforcement Division of SFC	Produced various schedules and admitted facts.

Each of those witnesses including each implicated party was open to questioning by counsel assisting and by each, or the other, implicated party. Counsel assisting was allowed to cross-examine the two implicated parties. The evidence of Mr. HO Wai Wah (TW 13), Ms. Maria TSOI (TW 16) and Ms. Christine Muirhead (TW 21) was given wholly by statement.

Once the substantive hearing commenced there were no more meetings between counsel assisting and the Tribunal. All matters of a "housekeeping" nature were dealt with in open court so far as possible or by way of correspondence if that was more convenient. That correspondence was available to the implicated parties for their perusal.

The substantive hearing was conducted on an inquisitorial basis. That meant the Tribunal was itself responsible for what evidence was called before it, though in this regard it sought the advice of counsel assisting and considered any application for the calling of a witness by counsel for the implicated parties. On one occasion the Tribunal allowed the application of Mr. Jonathan Harris for Joseph LAU that the evidence of a proposed expert witness, Mr. Toby Heale, on the matter of the price sensitivity of the information as to a placement of Chinney's shares, part of the subject matter of the inquiry, be not admitted. A copy of the Chairman's ruling in that regard is at Annexure "E". Mr. Heale was eventually replaced by TW 14, Mr. Peter RANDALL.

At the end of the evidence submissions were made by counsel assisting the Tribunal and by counsel representing the implicated parties.

Following those submissions the Tribunal retired to consider its findings in respect of paragraphs (a) and (b) of our Terms of Reference and provided an interim report* to the Financial Secretary. The interim report was subsequently incorporated as Chapters 1 to 8 into this final report of the Tribunal, which now goes on to include our findings as to paragraph (c) of the Terms of Reference in Chapter 9 and, after further submissions from the parties, also the appropriate orders made by us.

* signed by the members on 5th November 2004.

CHAPTER 3

THE LAW

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

The Provisions of the Ordinance

So far as Joseph LAU was concerned, we considered his role as a potential insider dealer pursuant to the provisions of section 9(1)(a) of the Ordinance.

Those provisions are as follows:

"9. When insider dealing takes place

- (1) Insider dealing in relation to a listed corporation takes place –
 - (a) when a person connected with that corporation who is in possession of information which he knows is relevant information in relation to that corporation deals in any listed securities of that corporation or their derivatives (or in the listed securities of a related corporation or their derivatives) 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;"

Pursuant to those provisions we were required to determine whether he was a person "connected" with Chinney within the meaning of that term in section 4 of the Ordinance.

Section 4 is as follows:

"4. "Connected with a corporation"

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

- (a) he is a director or employee of that corporation or a related corporation; or
 - (b) he is a substantial shareholder in the corporation or a related corporation; or
 - (c) he occupies a position which may reasonably be expected to give him access to relevant information concerning the corporation by virtue of –
 - (i) any professional or business relationship existing between himself (or his employer or a corporation of which he is a director or a firm of which he is a partner) and that corporation, a related corporation or an officer or substantial shareholder in either of such corporations; or
 - (ii) his being a director, employee or partner of a substantial shareholder in the corporation or a related corporation; or
 - (d) he has access to relevant information in relation to the corporation by virtue of his being connected (within the meaning of paragraph (a), (b) or (c)) with another corporation, being information which relates to any transaction (actual or contemplated) involving both those corporations or involving one of them and the listed securities of the other or their derivatives or to the fact that such transaction is no longer contemplated; or (*Amended 29 of 1994 s. 4*)
 - (e) he was at any time within the 6 months preceding any insider dealing in relation to the corporation a person connected with the corporation within the meaning of paragraph (a), (b), (c) or (d). (*Amended 29 of 1994 s. 4*)
- (2) A corporation is a person connected with a corporation for the purposes of section 9 so long as any of its directors or employees is a person connected with that other corporation within the meaning of subsection (1).
 - (3) In subsection (1), “substantial shareholder” (大股東) in relation to a corporation means a person who has an interest in the relevant share capital of that corporation which has a nominal value equal to or more than 10% of the nominal value of the relevant share capital of that corporation."

So far as Rozalia PUI was concerned, we were to consider her role pursuant to the provisions of section 9(1)(e) of the Ordinance.

That provision is in these terms:-

“9. When insider dealing takes place

- (1) Insider dealing in relation to a listed corporation takes place –
- (a)
 - (b)
 - (c)
 - (d)
 - (e) when a person who has information which he knows is relevant information in relation to that corporation which he received (directly or indirectly) from a person –
 - (i) whom he knows is connected with that corporation; and
 - (ii) whom he knows or has reasonable cause to believe held that information by virtue of being so connected, deals in the listed securities of that corporation or their derivatives (or in the listed securities of a related corporation or their derivatives) or counsels or procures another person to deal in those listed securities or their derivatives;
 - (f)”

Common to the roles of both Joseph LAU and Rozalia PUI and in the course of determining whether they had breached the above provisions we were to consider the point of time at which any relevant information possessed by either of them as required by the provisions of section 9(1)(a) and (e) came into existence.

What is “dealing in listed securities” is defined by section 6 of the Ordinance as follows:-

“6. "Dealing in securities or their derivatives"

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 their derivatives or acquires or disposes of, or agrees to acquire or dispose of, the right to buy, sell, exchange or subscribe for, any securities or their derivatives. (*Amended 29 of 1994 s. 5*)”

What is “relevant information” is defined by section 8 of the Ordinance as follows:-

“8. "Relevant Information"

In this Ordinance “relevant information” (有關消息) 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.”

Further and detailed consideration of the terms of section 8 will be given in due course in Chapter 5.

General Principles of Law

Standard of Proof

The Tribunal adopted that standard of proof in its view properly applicable to findings of insider dealing under the Ordinance.

That standard of proof was proof to a high degree of probability. It is a genuinely high standard of proof and reflects the serious nature of a finding of insider dealing made against an implicated person. It is the standard appropriate to the matters at issue in this inquiry. It is the same standard which has been adopted in previous inquiries and in that regard we adopt the comments of the Tribunal contained within the Parkview Report:

“The standard of proof should be simply stated and remain the same throughout. It is a high standard of proof – not the highest reserved for criminal allegations – but nonetheless high. It is not appropriate to say that within a given inquiry the more serious the allegation the higher the standard should be. The standard at all times is high. “A high degree of probability” refers to the top end of the civil standard. It is set high because the issues are serious. A finding of insider dealing against an individual is a finding of wrongdoing

which will adversely affect his or her reputation. It carries with it penal sanctions and public obloquy.”⁷

Moreover, we agree with the comments made by the Tribunal in the Chevalier Report where it was said:-

“... This Tribunal agrees that at the outset the standard of proof should be stated as proof to a high degree of probability and adds that that standard should be applied throughout the inquiry on every issue (regardless of the fact that one issue may have more dire consequences than another) and in respect of every implicated person (regardless of who he or she may be).

In addition it is desirable, although not essential, that there is consistency between one inquiry and another. In all previous inquiries under CAP 395 the standard adopted has been proof to a high degree of probability. We have not been persuaded that the proper standard is the higher (criminal) one.”⁸

With respect to Mr. MAK for Rozalia PUI who argued that we should apply the criminal standard of proof it seems to us that the standard of proof to a high degree of probability properly reflects the fundamentally civil nature of the proceedings but recognizes that nature carries with it some quasi-criminal characteristics such as public opprobrium for the acts of an insider dealer and the ability of the Tribunal to impose, inter alia, a penalty for such an activity.

Inferences

During the course of this inquiry on frequent occasions the Tribunal considered whether in determining an issue it was appropriate to draw an inference against an implicated party. This was particularly so in considering whether Joseph LAU had come into possession of relevant

⁷ Report of the Insider Dealing Tribunal of Hong Kong concerning dealings in the listed securities of Hong Kong Parkview Group Limited, p. 19.

⁸ Report of the Insider Dealing Tribunal of Hong Kong concerning dealings in the listed securities of Chevalier (OA) International Limited, p. 24.

information at the meeting he attended in the afternoon of 24th September 1999 during which or shortly after which he had commenced the purchase of 6 million Chinney shares and whether or not Rozalia PUI had acted with Joseph LAU at any particular time in the purchase of the Chinney shares.

In regard to such drawing of inferences the Tribunal directed itself that any inference to be drawn against an implicated party from a set of facts proven to the Tribunal's satisfaction must be the only reasonable inference which could be drawn from those established facts.

Considerations of Fact and Law

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

So far as the Tribunal's findings of facts were concerned, the Tribunal proceeded on the basis that it should strive to be unanimous in such findings but that otherwise a finding of fact could be on the basis of the decision of a majority of the members. As it happens the members were unanimous in their findings.

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

Further as the two lay members of the Tribunal had considerable experience in the operation of listed companies and of the Hong Kong financial markets, they were directed in terms of the comments of Lord Widgery C.J. in *Wetherall - v - Harrison* (1976) QB 773:

“it is not improper for a justice who has special knowledge of the circumstances forming the background to a particular case to draw on that special knowledge in interpretation of the evidence

which he has heard. I stress that last sentence, because it would be quite wrong if the magistrate went on, as it were, to give evidence to himself in contradiction of that which has been heard in court. He is not there to give evidence to himself, still more is he not there to give evidence to other justices; but that he can employ his basic knowledge in considering, weighing up and assessing the evidence given before the court is I think beyond doubt.”

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

The cases of each implicated party considered separately

The Tribunal directed itself that the role of each implicated party should be considered separately and that a finding of culpability or an exoneration of one did not necessarily mean that the same finding would be arrived at in respect of the other. It should be said however for reasons which are set out in Chapters 6 and 7, that in large part evidence relating to one implicated person's case was common to that of the other and so was taken into consideration by us in considering the cases of each of the implicated parties.

Character

In considering the role of each implicated party the Tribunal reminded itself that both implicated parties were persons of good character. That enhanced their credibility as witnesses and rendered them of a lesser propensity to commit unlawful acts.

Lies

Nevertheless, as will be seen, we concluded that both implicated parties had told lies in the course of their evidence to the Tribunal, and

indeed in statements they had made in the course of their interviews by SFC officers. We reminded ourselves however of the law as stated in the Public International Investments Limited Report as follows:-

“To the extent that we may decide that lies have been told to the SFC or to this Tribunal we are conscious of the fact that there may be reasons for lies consistent with absence of any wrongdoing, or of the particular wrongdoing alleged, and that it is only if we exclude such reasons that lies may support the allegation of that particular wrongdoing. We are also conscious of the fact that although a lie of itself proves nothing, save that the lie has been told, “lies can in conjunction with other evidence tend to support an inference of guilt in the sense that they can confirm or tend to support other evidence which of itself is indicative of guilt. ... we have ... borne well in mind the question whether a lie may have been motivated not by a realization of guilt of insider dealing, but by a realization of guilt of some other wrongdoing or by a conclusion or fear (whether justified or not) that certain conduct would be viewed by others as improper, or by a feeling that the truth was unlikely to be believed ... also that before a lie may be used to support a particular allegation, we have first to be satisfied that the lie was deliberate, and that it is material to the issue we have to decide”.

In the present case, though we concluded at the end of the day that both Joseph LAU and Rozalia PUI had lied to us in their evidence, we restricted the use of those lies to our assessment of their individual credibility. We particularly did not apply them to support the evidence against Joseph LAU. There was no need to, as that evidence was overwhelming in any event.

So far as Rozalia PUI was concerned her lies, though instrumental in our rejection of her credibility, could provide no independent proof of her culpability, and in the absence of any evidence of her dealing with relevant insider information, could have no

independent bearing on our findings as to culpability so far as she was concerned.

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

The previous statements of witnesses and implicated parties made to SFC investigators in the form of records of interview as well as their written statements produced to the Tribunal were accepted as evidence by us in addition to any oral evidence given by the witnesses and implicated parties.

What weight we attached to the contents of the previous statement or record of interview varied in the circumstances of the particular statement. How soon after the event it was made and whether it was an admission against interest or exculpatory were matters we took into account. If the information provided was hearsay (whether in previous statements and recorded interviews or oral evidence) we accepted it as evidence but were aware of the inherent weaknesses of evidence of that sort.

In admitting such evidence before us we were doing so in accordance with the provisions of section 17(a) of the Ordinance which is as follows:-

“17. Powers of Tribunal

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

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

Finally, in dealing with the evidence of the two expert witnesses Peter RANDALL (TW 14) and Stella FUNG (TW 15) we bore in mind their expertise but reminded ourselves that, as with any other witness, we could accept or reject all or part of their evidence. Their evidence was considered by us in the context of the other evidence in the case.

CHAPTER 4

THE EVIDENTIAL BACKGROUND AND ISSUES ARISING BEFORE THE TRIBUNAL

In this Chapter, we do not propose to set out the evidence or issues before us other than in general terms. More detailed recitations of the evidence and issues will be given in later chapters of the Report when we deal with specific matters which became important to our findings.

But for present purposes we think it would be appropriate to give a brief summary of the evidence relating to the important issues such as when and how the placement information evolved and the evidence relating to the issue of the knowledge of the two implicated parties concerning that information. Their activities in dealing in Chinney shares at or about the time of their potential exposure to that information and the issues arising from that will also be summarised.

The Evidential Background

The movement in Chinney share prices and turnover

The movement in price and turnover of Chinney shares during the relevant period was common ground. The historical price and turnover movements of the shares before, during and after the relevant period are tabulated at Annexure "C".

For present purposes those movements can be summarised as follows:-

Following Chinney's announcement of an audited consolidated net loss of \$301 million for the year ending 31st December 1998 on the 31st May 1999 its share price declined over the next three months by some 27% from \$0.102 on 31st May to \$0.074 by 31st August 1999.

Daily turnover which was 9,460,000 on the 31st May varied considerably over the next few months averaging about 10 million shares, although it reached a peak of 240,500,000 shares on 21st June 1999. On other day's trading was as low as 50,000 shares.

By the end of August 1999 when the share price had fallen to \$0.074 the average turnover had dropped to less than a million for that month.

During the first three weeks of September to 22nd September interest in Chinney shares revived somewhat and the share price rose to \$0.127. Turnover during September showed considerable and steady daily increases to reach 72,378,000 on the 22nd September. This was despite the announcement of another loss of \$209 million (unaudited) for the six months ended 30th June 1999 on the 14th September.

On the 24th September, the day of the placement negotiations concerning Mr. POULIOT and Mr. SIEMENS (through his company Goldstone) receiving a placement of some 200 million Chinney shares, the shares closed, at the time of their suspension at about 3:33 p.m. that day, at \$0.206 and turnover had reached 198,103,028.

When trading resumed on 30th September 1999, following Chinney's announcement of the agreed "top-up" placement to Mr. POULIOT and Goldstone, turnover reached 675,350,013 and the price closed at \$0.425.

During this whole period the Hang Seng Index had not significantly increased or decreased.

The development of placement negotiations

Around the 20th September 1999 Chinney's directors had begun to consider the possibility of a direct placement of about 20% of the company's issued share capital to various third parties from a related company Multi-Investment with a proportional new issue to that company to maintain its shareholding.

Trading in Chinney shares was suspended at 10:00 a.m. on the 23rd September because of that proposed placement. But during that day the SEHK informed Chinney that it regarded Multi-Investment as a connected party so that the placement required the approval of independent shareholders.

The proposed direct placement then did not proceed, and Chinney made a public announcement prior to trading on the morning of the 24th September to the effect that the proposed direct placement was "shelved". Chinney shares accordingly resumed trading at 10:00 a.m. that day.

Around noon on the 24th September a meeting occurred between Mr. Bernard POULIOT, a director of Distacom the major (though indirect) shareholder of Mandarin Communications Limited which traded as "SUNDAY" (TW 8), Kenneth LAM, managing director of APC Capital (Holdings) and APC Securities (TW 6), and Dr. WONG, the Chairman of both Chinney Investments, the parent company of Chinney, and Chinney (TW 1), as to a potential "top-up" placement to Mr. Bernard POULIOT, and perhaps another, within the broad parameters of price and volume of the originally proposed direct placement.

Following on from that meeting was another meeting which commenced after 2:30 p.m. in Chinney's office premises at Hang Seng Building in Central.

That meeting was attended by Kenneth LAM, Herman FUNG the managing director of Chinney Investments and a director of Multi-Investment (TW 2), Stephen YU, a director of Chinney (TW 3) and for at least a part of the time Joseph LAU. Neither Mr. POULIOT or Mr. SIEMENS attended but were represented by Mr. LAM.

During that meeting negotiations proceeded to a stage that it was thought advisable to suspend trading in Chinney shares. Negotiations had approached a final agreement which involved Mr. POULIOT and Mr. SIEMENS (through his company Goldstone) taking a significant placement of Chinney shares. That agreement was conveyed to Eva CHEUNG (TW 5) an officer within the Listing Division of the

SEHK who had been in contact with either Peter LUK, the company secretary of Chinney (TW 7) or Stephen YU concerning surges in the price of Chinney shares during that afternoon, and trading in Chinney shares was again suspended at 3:33 p.m.

The implicated parties' share dealings

All that evidence fell to be considered by us in conjunction with the share dealings of Joseph LAU and Rozalia PUI during the 22nd and 24th September (there being no trading in Chinney shares on 23rd September).

Joseph LAU in the afternoon of 22nd September and the morning of 24th September had purchased 2,950,000 Chinney shares.

Eric TANG (TW 11) a broker at Tai Fook Securities had, on the orders of Joseph LAU from noon to 2:48 p.m. on 24th September then sold the whole of that considerable number of Chinney shares then held by Joseph LAU, and in the afternoon of the same day, less than half an hour later, on Joseph LAU's instructions from 3:17 p.m. had commenced to purchase an even greater number of Chinney shares (6 million) on Joseph LAU's account. The relevant trading history of Joseph LAU's account with Tai Fook Securities is at Annexure "F" to this Report.

Also during that day, on the morning of the 24th September, Eric TANG had, on Rozalia PUI's instructions, purchased 750,000 Chinney shares on her account at Tai Fook Securities. The trading history of Rozalia PUI's account is at Annexure "G" to this Report.

The Fundamental Issues

The 22nd September 1999 "direct" placement proposal

The first issue was, so far as both Joseph LAU and Rozalia PUI's dealings in Chinney shares are concerned from 22nd September 1999 through to 2:48 p.m. on 24th September (the 23rd September being a suspension from trading), whether those dealings were conducted on the basis of knowledge of the circumstances surrounding the proposed and

then “shelved” direct placement of 22nd and 23rd September, and whether if so that knowledge consisted of relevant information in the terms of section 8 of the Ordinance.

It should be remembered that details of that proposal were published, together with the news of its being “shelved”, early on the morning of the 24th September. Accordingly the only trading with possible relevant information in mind concerning that placement must have occurred only on the 22nd September, the shares being suspended from trading on the 23rd September.

For present purposes we should say that, as will be seen from what follows in this Report, we concluded that Joseph LAU (and Rozalia PUI) were not insider dealing on the basis of information concerning the direct placement proposal of 22nd September 1999.

Firstly, in that regard as is set out in Chapter 6 there was simply insufficient evidence before us as to what Joseph LAU (and therefore Rozalia PUI) knew of that placement at the time he was trading in Chinney shares in the afternoon of the 22nd September. Secondly, as will be seen in Chapter 5 we were not satisfied that information concerning the direct placement was price sensitive within the terms of section 8 of the Ordinance.

Accordingly, the question of whether insider dealing arose from Joseph LAU's exposure to information of the direct placement proposal of 22nd September 1999 became an issue which was able to be dealt with by us quite briefly.

The 24th September 1999 “top-up” placement proposal

We then went on and considered whether the new information of Mr. POULIOT's and Mr. SIEMENS' involvement in the “top-up” placement which replaced the earlier proposed direct placement was relevant information, including being price sensitive, for the purposes of section 8 of the Ordinance and, if so, at what time during the afternoon of 24th September when negotiations took place concerning that “top-up” placement and the involvement of Messrs. POULIOT and SIEMENS did

that information become relevant, and at what time may Joseph LAU, who was present during at least part of those negotiations have become aware of that relevant information. As will be seen, for the reasons set out in Chapter 5, we concluded that the information which came into existence during the meeting in the afternoon of 24th September was relevant information for the purposes of section 8 of the Ordinance. It was at that time, and for the first time, that we could be satisfied on the evidence that relevant information for the purposes of that section (and therefore for the purposes of section 9 of the Ordinance) came into existence.

Summary of issues concerning Joseph LAU

As we have said the possibility of Joseph LAU's purchases of Chinney shares in the afternoon of the 22nd September 1999 was quite quickly resolved by us. We were not presented with sufficient evidence of his knowledge of that placement or of its price sensitivity so as to warrant any finding of insider dealing. His purchases of Chinney shares on the morning of 24th September were made after the information concerning the direct placement had been made public. Little time was taken up before or by the Tribunal in regard to any possible insider dealing arising out of the 22nd September direct placement information.

The real issues concerning Joseph LAU's potential insider dealing arose out of his attendance at the meeting held to discuss the "top-up" placement in Chinney's offices in the afternoon of the 24th September.

It should be borne in mind that Joseph LAU's evidence was to the effect that though he was present at those afternoon negotiations he was never aware that it was proposed Messrs. POULIOT and SIEMENS were to be the placees, and that in any event the 6 million Chinney shares he purchased through Eric TANG at Tai Fook either during or immediately after the meeting that afternoon were in fact purchased on behalf of Rozalia PUI and not for himself.

Rozalia PUI in her evidence supported Joseph LAU in regard to the purchase of the 6 million Chinney shares being for her.

So, in short, if Joseph LAU did come into possession of relevant information during his attendance at the “top-up” placement negotiations on the afternoon of the 24th September, the important issue which then arose was whether he purchased those 6 million Chinney shares on his own behalf or wholly or partly on behalf of Rozalia PUI.

Summary of issues concerning Rozalia PUI

The evidence concerning Rozalia PUI was much less direct than that concerning Joseph LAU. Her trading in Chinney shares was limited. She traded only once during the relevant period as can be seen from her account history at Annexure “G”. That transaction was the purchase of 750,000 Chinney shares shortly after the commencement of trading on the morning of 24th September.

She could never have traded with information concerning the 22nd September direct placement as relevant information as that information was in the public domain before she traded on the 24th September.

So far as Rozalia PUI was concerned she purchased no Chinney shares on her account in the afternoon of 24th September. Her purchases were restricted to the morning of that day when the only information in existence which she may realistically have had access to concerned the “shelved” direct placement. As we have said that information was in the public domain on the morning of 24th September when those purchases were made and accordingly we concluded that the information concerning the direct placement even if it had ever been capable of being relevant information for the purposes of section 8 of the Ordinance at some earlier time, was no longer so. Further, there was no sufficient evidence before us capable of establishing Rozalia PUI had ever been a party to any such information. Rozalia PUI's role therefore came to be examined primarily by us as to her connection, if any, with Joseph LAU's purchases of 6 million Chinney shares in the afternoon of 24th September 1999. The issues were whether she had possession of information concerning the “top-up” placement and whether, if so, she had any

financial interest in those 6 million Chinney shares, i.e. whether Joseph LAU had bought those shares wholly or partly for her.

We now mention some particular areas of evidence which had a bearing on the issues we have just set out.

The evidence of Eric TANG

Regarding the dealings with which we were concerned the orders to purchase the shares were placed by Joseph LAU with Eric TANG of Tai Fook. Many of the telephone calls between Joseph LAU and Eric TANG were recorded. They, so far as they became relevant to the issues we considered, are set out in transcript form at Annexure "H" to this Report.

There were few telephone calls between Eric TANG and Rozalia PUI. So far as the one recorded on the morning of 24th September is concerned it is set out in transcript form at Annexure "I" to this Report.

The contents of those phone calls, and particularly those between Joseph LAU and Eric TANG, were particularly relevant to our determination as to what Joseph LAU was aware of at the time of his trading in the 6 million Chinney shares during the afternoon of 24th September 1999 as to the progress in the negotiations concerning the proposed "top-up" placement to Messrs. POULIOT and SIEMENS. The contents of those telephone calls were in our view highly probative as to Joseph LAU's knowledge of relevant information at the time of his trading in the Chinney shares and were relevant also to the issue as to whether he had been trading on his own behalf or on behalf of Rozalia PUI.

The expert evidence

Important to our considerations as to the price sensitivity of the information concerning the placements generally, and particularly as to whether the information available to those present at the meeting in the afternoon of the 24th September, and potentially to Joseph LAU, was

price sensitive and therefore capable of being relevant information for the purposes of section 8 of the Ordinance, was the evidence of two expert witnesses.

The first was Stella FUNG (TW 15) of the SFC's Enforcement Division. The other was Mr. Peter RANDALL (TW 14) who was for many years and is still presently involved in various aspects of the securities industry in Hong Kong.

We will deal with the issues concerning the price sensitivity of the information which may have become available to the implicated parties together with other matters relevant as to what if any information become relevant information in Chapter 5 of this Report, and with the issues concerning Joseph LAU and Rozalia PUI in Chapters 6 and 7 of this Report when we come to consider their roles as potential insider dealers.

CHAPTER 5

RELEVANT INFORMATION

Insider dealing can only take place on the basis of relevant information as defined by section 8 of the Ordinance. If the subject information falls short of being relevant information then there has been no insider dealing.

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

“In this Ordinance “relevant information” (有關消息) 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.”

It can be seen that there are three elements to the definition of relevant information. To paraphrase them:

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

Secondly, the information must not be generally known to that segment of the market which does or which would likely deal in Chinney shares; and

Thirdly, the information would, if so known, likely have a material effect on the price of Chinney shares.

We will in this Chapter deal with each of those matters in turn and determine whether any relevant information concerning Chinney came into existence and, if so, when.

We should add that obviously the information we are concerned with is that pertaining to Chinney's two proposed placements during the period between the 22nd September to 24th September 1999 inclusive.

Specific information

Before we embark on an analysis of the evidence relevant to the development of the information concerning the proposed Chinney placements some understanding of the concept of specific information is required.

There have been many approaches to, and attempts at, determining what is required of information before it is “specific” for the purposes of section 8 of the Ordinance.

For the purposes of this Tribunal we adopt what was said by the Tribunal in the *Firstone International Holdings Limited inquiry*.⁹

There, the Tribunal said at page 58:

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

That is a test based upon the terms of the Singapore High Court's judgment in *Public Prosecutor – v – GCK Choudrie (1981) 2 Co. Law 141* which held that information was specific if it possessed sufficient particularity to be capable of being “identified, defined and unequivocally expressed”.

⁹ See Report of the Insider Dealing Tribunal of Hong Kong concerning dealings in the listed securities of Firstone International Holdings Limited.

That judgment was itself in part based upon a definition offered in the New South Wales Supreme Court's decision in *Ryan – v – Triguboff* (1976) 1 NSW LR 588 at 596 that “specific information must be capable of being pointed to and identified and must be capable of being expressed unequivocally”.

It is not necessary that all particulars or details of the transaction, event or matter be precisely known. Nor does it necessarily follow that the information is not specific if the transaction is one which had not been formally agreed but is still under contemplation or negotiation. Indeed a transaction which is under contemplation only may still within its proposed parameters carry with it sufficient information so as to be specific.¹⁰ Given our subsequent findings we might add that in our view, a mere proposal for a “top-up” placement which was under serious commercial contemplation by the parties, that is Chinney on the one hand and identified placees on the other, and which was under immediate negotiation was, without more, specific information so long as the general parameters of the proposal were known. Where there has been an agreement in principle to that effect then that is a further particular rendering the information even more specific (and no doubt potentially more price sensitive).

The placements

In our view the events from 22nd September through to 24th September 1999 when information concerning the placement proposals considered by Chinney changed and developed can be divided into two separate but closely related placement proposals.

The direct placement

The first is the placement contemplated during the period from 22nd September 1999 to the point in time on the 23rd September when the

¹⁰ See the comments on this point in the Firststone International Holdings Limited Inquiry Report at page 59-60.

placement, which involved Chinney's major shareholder Multi-Investment, was aborted by the board of Chinney as a result of the SEHK informing it that independent shareholder approval was required due to Multi-Investment's connection with Chinney. That proposed direct placement included a proportionate issue of new shares to Multi-Investment so as to allow it to maintain its shareholding in Chinney.

We were satisfied that the information so far as the initially proposed direct placement of the 22nd September was concerned was specific. That information differed somewhat from the information which was to come into being during the course of the meeting on the 24th September which gave birth to the "top-up" placement but in our view was specific in its own right.

On that date i.e. the 22nd September the size of the placement had been determined to within quite close working parameters i.e., it was to be a quantity of new shares representing 20% of the share capital of Chinney as stated by the announcement of Chinney dated 23rd September 1999 and published the following day, to independent third parties. The price of the placed shares had also been agreed, at least to within relatively close working limits. The format of the placement was to be by way of a direct placement with Multi-Investment being provided with a proportional issue of the new shares. Accordingly, in regard to that information we are satisfied that it was specific when it came into being on the 22nd September, though as we have said we concluded eventually, for the reasons set out later in this Chapter it was not established to be price sensitive, and could not therefore have been relevant information. Further we could not be satisfied that either Joseph LAU (or Rozalia PUI) possessed that information at any relevant time. The direct placement information, we were satisfied, was not established to have been used by them as the basis of any insider dealing.

One thing we wish to emphasise is that in our view although the proposed direct placement of the 22nd September was a separate identifiable transaction to that which eventually came into being on the 24th September there was a significant informational continuity between the two proposed placements in terms of size and even share price.

They differed in method (one being a direct placement and the other a “top-up” placement) and more importantly in the identity of the placees, and they were separate proposals because of the earlier direct placement being “shelved” or aborted, but in our view the proposed placement put forward on the 24th September was not a wholly new proposal. The terms as to general size and price of the 24th September placement proposal were inherited from the earlier proposal of 22nd September. What was new concerning the 24th September proposal was its structure (i.e. it was a “top-up” as opposed to a direct placement) and the involvement of Messrs. POULIOT and SIEMENS as placees. Because the 24th September proposal was a fresh proposal, though it contained elements of the earlier one, we had to consider afresh when information concerning it became relevant information for the purposes of section 8 of the Ordinance.

The proposed “top-up” placement of 24th September

The second proposed placement was put forward as a proposal on the morning of 24th September and was under negotiation through to the suspension of trading in Chinney shares on that day at 3:33 p.m.

Matters involving the “top-up” placement progressed quite quickly. There was an initial contact between Mr. POULIOT and Kenneth LAM on the evening of 23rd September at which Mr. POULIOT expressed some degree of interest in participating in a placement of Chinney shares even if the direct placement was aborted. The evidence of Mr. LAM and Mr. POULIOT agrees as to that.

As a result of that a meeting took place between Mr. POULIOT and Dr. WONG the Chairman of Chinney at about noon on the following day 24th September in the offices of Chinney in the Hang Seng Building at which Mr. LAM was present. According to Mr. LAM he had spoken to Mr. SIEMENS either before or after the noon meeting with Dr. WONG and Mr. POULIOT, but that in any event Mr. SIEMENS' name was mentioned to Dr. WONG during this meeting. Mr. POULIOT's evidence was that he had mentioned Mr. SIEMENS' name as a possible placee to Dr. WONG at that meeting. Dr. WONG's evidence was also

that Mr. POULIOT had mentioned Mr. SIEMENS' name and also his connection with "SUNDAY" and "Hutchison Telecom".

From that evidence we accept that at an early stage, around noon on 24th September, what was being put forward was that Mr. POULIOT and Mr. SIEMENS, two of the primary individuals involved in Distacom, the controlling parent of "SUNDAY", a well-known Hong Kong telecommunications company, were interested in substantially participating in the placement of up to 20% of Chinney's existing share capital, though precise details such as the actual level of their participation and the price of the placed shares were still in issue.

Dr. WONG organised a follow-up meeting commencing after 2:30 p.m. that afternoon to further the proposal.

Mr. POULIOT did not attend the meeting at 2:30 p.m. Nor did Dr. WONG or Mr. SIEMENS. It was attended by Mr. LAM, who in his evidence said he had by this time spoken to Mr. SIEMENS who had told him to "deal through POULIOT". Others at the meeting were Mr. FUNG, the managing director of Chinney Investments Limited and Mr. YU, a director of Chinney. Joseph LAU was also present. According to Mr. FUNG, Joseph LAU acted as his assistant and they were responsible for the interests of Multi-Investment in the placement negotiations. Mr. LUK was the company secretary of Chinney. He also attended the meeting, but according to his evidence this was only after the SEHK, through Eva CHEUNG had contacted him about rapid price rises in Chinney shares that afternoon. He said he only went into the meeting to deal with the question of the suspension of Chinney's shares. He did not participate in the meeting proper and did not know of the details of the placement.

Joseph LAU according to Mr. LAM had come and gone on occasion during the course of the meeting. According to Joseph LAU he had been late for the meeting, arriving at 3:00 p.m., and it had effectively ended shortly after he arrived so that he had returned to his office by about 3:10 p.m.

Insofar as the issues of what precisely was discussed and when it was discussed during the meeting held in the afternoon of 24th September are concerned the primary witnesses, in no particular order, were Dr. WONG, Kenneth LAM, Herman FUNG, Stephen YU and Joseph LAU. Messrs. Bernard POULIOT and Rick SIEMENS although not present may have been informed of the progress of the meeting indirectly.

We will briefly summarise their evidence so far as it is relevant as to the development of the placement information during the meeting.

Evidence concerning the meeting

Mr. LAM

We turn firstly to the evidence of Mr. LAM. That evidence consisted of his three recorded statements to the SFC dated 18th January 2000, 19th July 2000 and 30th March 2001 as well as his oral evidence before the Tribunal.

He said he had spoken to Mr. SIEMENS about 2:00 p.m. on the 24th September just before the meeting was to commence and had done so to be in a position to have the consents of both Mr. POULIOT and Mr. SIEMENS for him to negotiate for them. He had been working on behalf of Mr. POULIOT since he had organized and attended the meeting with Dr. WONG and Mr. POULIOT earlier that same day.

Mr. LAM, according to his evidence, knew that the identities of the two proposed placees were Messrs. POULIOT and SIEMENS and had both their consents to negotiate on their behalf before he went into the meeting at 2:30 p.m.

He said at that meeting the deal rapidly progressed to an agreement and that during the meeting he had mentioned Messrs. POULIOT and SIEMENS' names. He did not remember when he had mentioned their names, but he wanted to convince Mr. FUNG and Mr. YU about the benefits of the placement, so he had also mentioned both Messrs. POULIOT's and SIEMENS' connection with SUNDAY. One of

his bargaining points was their connection with companies with high-tech communications expertise and the “flavour” of that in the market at that time. He said he thought Joseph LAU had left the meeting on about two occasions. He remembered he had to move aside to let him in and out. His recollection, unlike the others, was that the 2:30 p.m. meeting took place in Mr. FUNG's office and not the conference room, though he thought he may have spoken to Mr. YU about the matter briefly in the conference room before the 2:30 p.m. meeting so as to explain to him what had earlier been discussed with Dr. WONG and Mr. POULIOT. We do not think Mr. LAM's differing recollection as to which room the meeting took place in adversely affects either his or any other witnesses' credibility. It is the sort of honest mistake a witness would make in trying to recollect events of some five years ago. We regarded Mr. LAM as a generally reliable witness although perhaps, as he was a broker selling the “top-up” placement “deal”, may have been prone to regard the deal as being more substantive or complete when others present (and indeed his clients Messrs. POULIOT and SIEMENS) thought it still under negotiation.

Mr. FUNG

Mr. FUNG made five recorded statements to the SFC dated 30th December 1999, 10th January 2000, 30th March 2000, 15th August 2000 and 30th March 2001. He also gave oral evidence.

Mr. FUNG said in his evidence that placements by Chinney were always under consideration during September 1999 as Chinney needed money. By 22nd September a direct placement was proposed. He thought he had heard indirectly that Mr. POULIOT may have been involved, but in any event he, FUNG, had not had a lot to do with the proposed direct placement as Multi-Investment's only interest was in getting a proportion of the new shares issued to maintain its investment in Chinney. He said the 22nd September direct placement was to be about 20% of the issued capital of Chinney. He thought APC Securities, i.e. Mr. LAM's company, was to be involved (Mr. LAM had said APC Securities was on “stand-by” for the direct placement). FUNG and Joseph LAU, according to Mr. FUNG's statement to the SFC on 15th August 2000 attended a meeting about the proposed direct placement on

22nd September at 6:00 p.m., and at 7:00 p.m. learned that the SEHK did not approve of the proposal because Multi-Investment was regarded as a connected party.

He said on the 24th September at about 1:00 p.m. Dr. WONG had told him that the direct placement would now be a “top-up” placement and there would be a meeting that afternoon with Stephen YU and Kenneth LAM about that. He, FUNG, was to attend to represent the interests of Multi-Investment. He then told Joseph LAU to attend so as to assist him in the meeting. In his statement to the SFC of 30th December 1999 he had said that when Joseph LAU came into the meeting the names of Messrs. POULIOT and SIEMENS were mentioned as the proposed placees.

In his statement to the SFC of 10th January 2000 he said that he knew in advance of the meeting that Mr. POULIOT and Mr. SIEMENS would be involved as he had been told this by Mr. LAM. It is true to say that in the balance of his statements to the SFC he continued to suggest that during the body of the 2:30 p.m. meeting he knew that Messrs. POULIOT and SIEMENS were to be the placees but that it was only toward the end of the meeting that he learnt that Goldstone was to be the corporate vehicle used by Mr. SIEMENS.

In his oral evidence before the Tribunal however he said his recollection was that he first learned from Mr. LAM that Mr. SIEMENS was to be a placee during the meeting of the afternoon of 24th September, when Mr. LAM said the placees were to be Mr. POULIOT and a company controlled by Mr. SIEMENS. He said he had been pressing Mr. LAM to reveal the names of the placees.

When the name of Mr. SIEMENS was mentioned the meeting was still going on according to his recollection, although it was getting close to 3:30 p.m. He said he remembered that vividly because when both the names of Messrs. POULIOT and SIEMENS had been mentioned by Mr. LAM he, FUNG, had suggested they break for a rest while a suspension of trading was applied for.

He said he did not recollect Joseph LAU leaving the meeting at any time or of making any phone calls while he was in the meeting.

We regarded the evidence of Mr. FUNG as being generally reliable. Although there were some inconsistencies in his evidence, particularly between his oral evidence and the contents of his statements to the SFC in our view those inconsistencies were due to the passage of time since the events we were concerned with.

Mr. YU

Mr. YU made two recorded statements to the SFC on the 17th January 2000 and 27th July 2000 as well as giving oral evidence.

Mr. YU said in his evidence much the same as Mr. FUNG had said, though with some differences. He said Chinney at the relevant time was short of money and was interested in placement proposals. He was aware of the proposed direct placement of 22nd September but not of who the proposed placees were. He knew APC was to be involved in that proposed placement and that it had been eventually aborted.

In his statement of 17th January 2000 to the SFC he said Dr. WONG had notified him after lunch on 24th September 1999 to attend a meeting concerning a proposed placement to Mr. POULIOT. He said he, Mr. LAM, Mr. FUNG and Joseph LAU attended that meeting to discuss that proposed placement and that it turned into a "deal" during the course of the meeting. He said during the meeting Mr. SIEMENS' name was mentioned and that this was probably before Eva CHEUNG from the SEHK rang. He said Mr. SIEMENS' background was discussed at the meeting and subsequently after agreeing price the deal was done. He then rang Eva CHEUNG back some 15 to 30 minutes after she had last rung and asked her to suspend trading. The documents took him and Mr. LUK the company secretary of Chinney another 15 minutes to prepare and send and then the shares of Chinney were suspended.

He did not remember Joseph LAU making any phone calls during the meeting. He thought all four of those at the meeting had been present from the beginning. In cross-examination he agreed that

Mr. POULIOT's name was mentioned during the meeting before that of Mr. SIEMENS, but said he thought Mr. SIEMENS' name would have been mentioned before about 3:00 p.m. and that to his recollection the identity of the placees had been made known early in the meeting. That was because in a "top-up" placement it was vital to know the names of the placees and that Mr. FUNG had been asking who they were.

Mr. YU struck us as a very reliable witness. His recollection of the course of events was on all fours with the timetable of Eva CHEUNG's communications with Chinney and the suspension of trading after the preparation of the notification in that regard to the SFC.

When did the "top-up" placement information become specific?

We are perfectly satisfied that during the course of the afternoon meeting of the 24th September an agreement in principle was reached concerning the size and price of the placement, its nature as a "top-up" placement and the identity of the two placees, i.e. Messrs. POULIOT and SIEMENS.

In terms of the "top-up" placement under discussion during the meeting the identity of the placees, the approximate price range and the approximate size of the placement were generally understood and agreed before trading in Chinney's shares was suspended at 3:33 p.m. although precise details may still have been subject to negotiation. That is because the size of the placement and the price of the placement were generally known, and inherited, from the earlier proposal of 22nd September. Mr. POULIOT from his evidence, which we accept, was aware of the general size of the placement and the approximate price of the placement as well as the approximate share of it he and his likely partner Mr. SIEMENS would take, before the meeting on 24th September where Mr. LAM acted as his and SIEMENS representative. Mr. YU who we regarded as a reliable witness was also able to tell us that although price was not agreed until about 15 minutes before 3:30 p.m. at the 24th September meeting, the general details were already known before that at about 3:00 p.m. Mr. YU had good reason to pay particular attention to the course of the meeting as he was responsible for the previous suspension of trading on 23rd September under the "shelved"

direct placement and did not want another abortive suspension of trading of Chinney's shares. He had raised with Eva CHEUNG the SEHK representative a possible suspension of Chinney shares at 3:00 p.m. and had been told by her that no suspension of trading should be requested by Chinney unless the basic terms of the placement were agreed. He was the only Chinney director present at the meeting (the others being directors of Chinney Investments, Multi-Investment and APC Securities) and was understandably concerned that those matters be dealt with properly. His recollection was that the only matter which remained to be agreed to that time was the share price.

From the evidence of Mr. FUNG, Mr. LAM and Mr. YU we are satisfied that it was highly probable that the identity of both Messrs. POULIOT and SIEMENS as placees or as potential placees was revealed at an early stage of the meeting. That is because it was in Mr. LAM's interests to reveal the strength of the deal he was offering. Mr. LAM was the broker of the deal. He wanted to sell it to Mr. FUNG and Mr. YU. His best bargaining points in negotiating price were the identities of the placees (i.e. Messrs. POULIOT and SIEMENS) and their ability to bring with them their reputations for high-tech communications expertise and their connections in that regard. He had already revealed their identities to Dr. WONG earlier that day and there was no reason not to do so at the afternoon meeting.

On the other side of the table was Mr. FUNG. He wanted to know the identity of both placees. That was important from the point of view of Multi-Investment's interests. There was every reason for Mr. LAM to divulge the identities of the placees to the meeting at an early stage and every reason for Mr. FUNG to want them revealed.

Given the interests of the parties we think it highly likely that both Mr. POULIOT's and Mr. SIEMENS' names were mentioned before 3:00 p.m. as Mr. YU recollects. It is difficult to discern any reason why the identities of the placees would not have been revealed to the meeting between the commencement of the meeting and 3:00 p.m. when the SEHK rang to enquire as to price rises in Chinney's shares that afternoon. We are also satisfied that there would have been more than a mere momentary mention of their names and that their identities and special

background would have formed a significant part of the discussion thenceforth amongst those present at the meeting.

As we say we find considerable support for this conclusion also in the evidence of Mr. YU and Eva CHEUNG. Ms. CHEUNG gave evidence of recording various phone contacts she had with the Chinney management as its share price rose during the afternoon of the 24th September. One such documented contact was at 3:00 p.m., during the course of the meeting. We are satisfied from the evidence of Mr. YU that it was that contact which he refers to when he said that at that time the only outstanding matter, the other matters being resolved, was the price and after a further period of time after Ms. CHEUNG rang the price was agreed and he was able to ring Ms. CHEUNG back and say there would be a further application to suspend trading made by Chinney. He said he and Mr. LUK then took a further few minutes to prepare and send the relevant documents and that about 15 minutes after he rang Eva CHEUNG back the shares were finally suspended from trading. That time frame supports Mr. YU in his evidence that by about 3:00 p.m. the identities of the placees were known. For the Tribunal's purposes we do not think it relevant that subsequently Mr. SIEMENS was to use his investment vehicle Goldstone as the nominal placee. He was, essentially, the second placee.

So, by about that time or shortly thereafter the price and quantity of shares relating to the placement had been, if not finally agreed, decided to within workable limits. Accordingly certainly before 3:17 p.m. (when Joseph LAU commenced purchasing Chinney shares) during the afternoon of 24th September at the meeting held at Chinney's premises in Hang Seng Building we are satisfied that the general size of the placement was known, the proportion to be taken up by Messrs. POULIOT and SIEMENS was generally known, their identities had been revealed and were known to the meeting, the structure of the proposed placement was understood and the price of the placement to Messrs. POULIOT and SIEMENS was known within general working parameters but still subject to negotiation. We are satisfied by that time the placement and its terms had been agreed in principle.

We might add so far as the question of quantity and price is concerned Mr. POULIOT's evidence was to the effect that at his original meeting with Dr. WONG on the morning of 24th September it was understood the placement size was to be up to a maximum of 20% of Chinney's issued capital (i.e. the same size as the previously proposed direct placement) although the precise size and price and split between himself and Mr. SIEMENS was not decided until the weekend. Nevertheless he had received a phone call from Mr. LAM about 3:00 p.m. saying that Chinney had agreed to go ahead with the placement, subject to the final agreement as to price and size, and there would be a discount to market price. At that time Mr. POULIOT was asking for a price of 10.5 cents a share. He eventually got 11 cents a share. He was guided by the previously proposed placement's price.

Mr. SIEMENS' evidence in this regard was that he had been contacted by Mr. POULIOT on the afternoon of 24th September and asked to make a quick decision as to investing in Chinney to the extent of 90 million shares at 11 cents. Mr. POULIOT was to take up 110 million. He said this conversation took place before the suspension of Chinney's shares, though he was not sure at what time it took place. We do not think Mr. POULIOT's and SIEMENS' evidence in this regard in any way undermines the specificity of the information which came into being during the meeting in the afternoon of 24th September.

We are, from all the evidence, satisfied that certainly before 3:17 p.m. when Joseph LAU commenced buying Chinney shares, bearing in mind that trading in Chinney shares was suspended at 3:33 p.m. and that it had taken some time to prepare and forward the document required to effect that suspension, there had been an understanding arrived at as to the general size and price and structure of the placement although the precise details were not yet agreed, and that the identities of the placees were known and had been revealed to those at the meeting.

Accordingly, we are satisfied that before 3:17 p.m. on the afternoon of 24th September 1999 during the meeting at which were present Mr. FUNG, Mr. YU, Mr. LAM and, for at least some period of time, Joseph LAU the information available to those at the meeting was specific for the purposes of section 8 of the Ordinance. That

information had by then at the latest changed in form from a mere proposal or discussion of possibilities, as it had perhaps been at the outset of the meeting, to a serious commercial negotiation resulting in an agreement in principle requiring only the resolution of a few remaining details such as the precise price of the shares issued to the placees.

Was the “top-up” placement information generally known?

There is no doubt that the further specific information concerning the proposed “top-up” placement involving the participation as placees of Mr. POULIOT and Mr. SIEMENS which came into being at the meeting held in the afternoon of 24th September 1999 amongst Mr. FUNG, Mr. LAM, Mr. YU and Joseph LAU was not generally known to that segment of the market accustomed to or likely to deal in Chinney shares. That is quite simply because the information in large part came specifically into existence during the course of that meeting and there was simply insufficient time before the suspension of trading in Chinney shares on the afternoon of that same day for the information to have become generally known. Even taking into account that part of the information which existed at the time of or came into being at the earlier noon meeting between Dr. WONG, Mr. POULIOT and Mr. LAM, there was still insufficient time in the next few hours before the suspension of trading at 3:33 p.m. for that part of the information to have become generally known within the terms of section 8 of the Ordinance.

When did the placement information become price sensitive?

In determining this question we took into account the evidence of the two witnesses we accepted as being experts in this field.

Firstly, Miss Stella FUNG (TW 15) is presently employed within the Enforcement Division of the SFC as a Senior Manager. Before joining the SFC on 17th April 2000 she had been a fund manager in the Chase Manhattan Bank in Hong Kong for over four years. Prior to that she had worked as an economic and equity research analyst in

various other brokerage houses in Hong Kong for five years. Those firms were all well respected in the securities industry in Hong Kong.

Miss FUNG provided us with her opinion as to whether the placement information we were concerned with in the course of this inquiry was price sensitive. She was asked both in her supplementary witness statement and in her evidence to provide her opinion in this regard in respect of a number of scenarios.

The questions she addressed were as follows:

Whether the following information was price sensitive:-

- “1: information (i) consisting of solely a contemplated direct placement on 22 September 1999 and (ii) consisting of solely a contemplated top-up placement on 24 September 1999;
- 2: information (i) consisting of a contemplated direct placement involving Mr. Bernard Pouliot as placee on 22 September 1999 and (ii) consisting of a contemplated top-up placement involving the said Pouliot as placee on 24 September 1999; and
- 3: information (i) consisting of a contemplated direct placement involving both the said Pouliot as well as Mr. John Richard Siemens as placees on 22 September 1999 and (ii) consisting of a contemplated top-up placement involving both the said Messrs. Pouliot and Siemens as placees on 24 September 1999.”

She summarises in her report or statement her conclusions as follows:

As to Question 1

“In general, if a listed company places new shares to independent investors at a discount to market price of the shares merely for the purpose of raising cash (i.e. without disclosing a specific usage of the proceeds and/or any strategic shareholders), the market reaction to the share placement is likely

to be negative. ... Therefore, the market reaction to a mere share placement by Chinney is likely to be negative, irrespective of the form of the share placement (i.e. direct or top-up).

As to Question 2

The information that Pouliot would be involved in the share placement of Chinney would likely raise the share price of Chinney significantly when it was generally known to the investing public. Although Pouliot was not as well known as Siemens, his background and experience in the high-tech industry would likely help Chinney to diversify into the fast-growing high-tech industry. This will greatly enhance Chinney's prospects and its attractiveness to the investing public. ...

As to Question 3

The information that both Pouliot and Siemens would be involved in the share placement of Chinney would likely lift Chinney's share price substantially when the information was released to the market. Siemens was more famous than Pouliot in the high-tech industry and therefore share price might be re-rated even higher than in the case when only Pouliot was involved in the share placement. ...”

The second expert witness we heard from was Mr. Peter RANDALL (TW 14) who is a member of the Securities Institute of the United Kingdom and a member of the London Stock Exchange since 1985. He is a member also of the Hong Kong Securities Institute and worked in Hong Kong for James Capel & Co. and later James Capel (Far East) Limited. He has provided management and counselling services with his own company to brokerages and investment banks both in Hong Kong and elsewhere since 1997.

He was asked the same questions addressed by Miss FUNG. He responded to those questions both in a written statement provided to us and by way of his oral evidence.

His conclusions were expressed in his statement, inter alia, as follows:-

As to Question 1

“45. In my opinion, information consisting solely of a contemplated direct placement of CA (i.e. Chinney) shares on 22nd September 1999 had it been known to those persons accustomed or likely to deal in the listed securities of CA, would have been unlikely to ‘materially affect’ the price of these securities.

46. I consider that the effect on the share price, of issuing more stock and placing it with new shareholders would be balanced by the increase in funds available to the company as the result of the new issue. The effects of such dilution would only be marked if the price of the new stock was at a substantial discount to the existing share price. I do not consider the discount of 13.39% to the closing price on 22nd September to be substantial, bearing in mind that the price of the placing was determined with reference to an average of the daily closing price over the previous ten days. The placing price of \$0.11 was at a 12.36% premium to this average. The difference between the discount and the premium of just over 1% is not significant.

....

49. In my opinion, information consisting solely of a contemplated top-up placement of CA shares on 24th September 1999 had it been known to those persons accustomed or likely to deal in the listed securities of CA, would have been likely to ‘materially affect’ the price of these securities.

50. I consider that the effect on the share price, of MIG (Multi-Investment) placing stock with independent third parties and then subscribing for new stock parri passu would be material. On 24th September 1999 CA was trading at \$0.206 and a high volume of shares were exchanged. The top-up placing valued CA stock at \$0.11. This was effectively a 46.6% discount.

51. It is my opinion that this is such a wide discount to the share price that I believe persons accustomed or likely to deal in the listed securities of CA would have viewed this in a negative way and the price would have fallen.

As to Question 2

52. In my opinion, information consisting of a contemplated direct placement involving Bernard Pouliot as placee of CA shares on 22nd September 1999 had it been known to those persons accustomed or likely to deal in the listed securities of CA, would have been likely to 'materially affect' the price of these securities.

53. I consider the identity of Mr. Pouliot as being significant. As a previous Managing Director of CA, his decision to participate in the placing would have improved investor confidence in CA which would have resulted in the share price improving. It is my opinion that any negative dilutive effects of the placing would have been more than compensated for, in investors' minds, by the view that Mr. Pouliot's connections with the group and his interest in Distacom may improve the trading position of CA.

54. It is my opinion that was such information known then the share price would have materially improved.

55. In my opinion, information consisting of a contemplated top-up placement involving the said Mr. Pouliot as placee of CA shares on 24th September 1999 had it been known to those persons accustomed or likely to deal in the listed securities of CA, would have been likely to 'materially affect' the price of these securities.

56. I consider that the effect on the share price, of MIG placing stock with independent third parties and then subscribing for new stock parri passu would be material. On 24th September 1999, CA was trading at \$0.206 and a high volume of shares were exchanged. The top-up placing valued CA stock at \$0.11. This was effectively a 46.6% discount. In my opinion, the identity of Mr. Pouliot had it be known to persons accustomed or likely to deal in the listed securities would have been insufficient to offer enough support to the share price to stop it from falling.

As to Question 3

62. In my opinion, information consisting of a contemplated top-up placement involving the said Mr. Pouliot as well as John Richard Siemens as placees of CA shares on 24th September 1999 had it been known to those persons accustomed or likely to deal in the listed securities of CA, would have been likely to 'materially affect' the price of these securities.

63. Notwithstanding the discount offered on the top up placing, the identity of Mr. Pouliot and Mr. Siemens as placees would have been given investors confidence that Chinney was taking steps to get involved in the dot com boom and that the perceived benefits of this participation were more than worth the large discount to the current share price that Chinney was prepared to offer stock at."

The proposed direct placement

We will briefly return to the proposed direct placement of 22nd September and explain why we do not consider information concerning it to have been price sensitive, thereby rendering it incapable of being "relevant information" under the provisions of the Ordinance.

The proposed direct placement of 22nd September and 23rd September was purely for the purpose of raising cash for Chinney. As Dr. WONG and Mr. FUNG said in their evidence, Chinney needed cash. Chinney had some three months before in its annual report published in May 1999 revealed an audited net loss of \$301 million for the year ended 31st December 1998. It further announced on 14th September 1999 an unaudited net loss of \$209 million for the six months ending June 1999.

Any placement purely for the purpose of reducing debt, without any strategic interest being involved, would not in our view raise expectations of a rise in the price of Chinney shares. We accept Mr. RANDALL's and particularly Miss FUNG's opinions in this regard.

Even if information of the direct placement, if known, would have caused Chinney's price to fall as Miss FUNG said and thereby

render it price sensitive we do not think realistically that is relevant to our inquiry into either Joseph LAU's (or Rozalia PUI's) roles. Whilst it may be an interesting academic point, Joseph LAU did not trade to make a loss on the 22nd September, and if he mistook the nature of the relevant information or any part of it, then he in our view did not "know" the information was relevant as required by section 9 of the Ordinance. The same applies to Rozalia PUI's Chinney share purchases on the morning of the 24th September.

In any event, as we have said, Mr. RANDALL's view was that if known the direct placement information would not have had a material effect on the price of Chinney shares. On the basis of that difference between our expert witnesses we could not be sure at the end of the day as to whether the information of that proposed 22nd September placement was price sensitive whether positively or negatively or at all.

There was no convincing evidence before us that any strategic investor was involved in the proposed 22nd September direct placement. Mr. FUNG had heard "indirectly" (in his words) that Mr. POULIOT may have been involved, and Mr. LAM said he thought Mr. POULIOT had "lukewarm" interest in that placement. Mr. POULIOT said he had not expressed any interest and had been told about it by Mr. LAM only after Chinney's shares were suspended on 23rd September.

We had no basis to find that Mr. POULIOT or any other strategic investor were specifically involved in that proposed placement. At most it was a vague possibility. Any such view formed by an investor would have been no more than speculation or a view based on mere rumour. It cannot have been based on real information to that effect.

Any of Joseph LAU's share purchases on the 22nd September must therefore at most, have been made simply with some information concerning merely a proposed direct placement in mind. We are of the view as we have said from the evidence of both Stella FUNG and Mr. RANDALL that such purchases could not have been established to have been made on the basis of information (as opposed to rumour) which was price sensitive.

We have now set out our reasons for concluding that the evidence before us was insufficient to allow us to conclude to a high degree of probability that information concerning the placement of 22nd September was price sensitive. Further in Chapter 6 we will briefly set out our reasons why the evidence was insufficient to allow us to conclude what if anything Joseph LAU, and therefore Rozalia PUI knew of that placement.

Therefore, we do not in this Report go in detail into the question of potential insider dealing in respect of the aborted placement of 22nd September.

The proposed “top-up” placement

According to both Miss FUNG and Mr. RANDALL, information that Mr. POULIOT and Mr. SIEMENS were to be significant placees in the “top-up” placement, negotiated and in large part agreed on the 24th September, was price sensitive.

As we have said we are satisfied that prior to 3:17 p.m. at the latest during the 24th September meeting, Mr. LAM had revealed the names of both placees, i.e. Mr. POULIOT and Mr. SIEMENS (though it may be the name of the company which was to be used as Mr. SIEMENS' investment vehicle was not revealed until later).

We accept from Miss FUNG's and Mr. RANDALL's evidence that in the third quarter of 1999 the Hong Kong market was prone to place a premium on the shares of companies which became, or were thought to be becoming, involved in the high-tech communications industry.

In her witness statement of 2nd April 2001 Miss FUNG says:

“...I would like to comment on an interesting phenomenon in the local stock market in the third quarter of 1999. I observed that shares of second/third liners which diversified (or proposed to diversify) into the technology, telecommunication or internet businesses (i.e. the so-called

"high-tech" business) through share placements to high-tech related companies or by acquiring investment projects involved in the high-tech business generally out-performed that of the stock market as a whole. To demonstrate this, I have compiled statistics of the share price performance of these second/third liners each on the first three trading days following its announcement. ... The outstanding price performances of these companies helped to promote a bullish market sentiment surrounding the involvement of high-tech business by listed companies. It was viewed by the market at that time that any involvement with high-tech business would greatly increase the company's attractiveness and hence its rating to the investing public. The average increase in share price for all the 14 companies was 20%."

It is interesting to note that one of the market events Miss FUNG relies upon to support her statements concerning the "euphoria" surrounding high technology stocks, including high-tech telecommunications stocks was a placement involving a company Goldtron Holdings Limited ("Goldtron") and a group of placees which included Mr. SIEMENS. She said:

"The most similar case with that of Chinney was the new share placement of Goldtron Holdings Limited ("Goldtron")(stock code: 0524) to 8 placees led by Siemens, which took place just about a week earlier than that of Chinney. Goldtron's share price was re-rated up 42.8% after the announcement, and set a good example for the successor that involved in the similar exercise."

We regard this as a pertinent observation by Miss FUNG bearing in mind Mr. SIEMENS' presentation before us as a witness who did not particularly care about his involvement in the Chinney "top-up" placement and only did so as a favour to Mr. POULIOT. In our view Mr. SIEMENS may well have been more interested and involved in the Chinney placement than his evidence suggested, considering his recent track record of success in a similar placement.

After dealing with the history of placements involving strategic high-tech investors Miss FUNG concludes:

“It can be seen that during the relevant period in question, the investing public's euphoria towards the high-tech industry was so overwhelming that if there was a whiff of information that a listed entity was about to be involved in the high-tech business, the investing public would chase the stock in a frenzy, resulting in sharp jumps in the stocks' prices. Thus, anyone in possession of information that a listed entity was about to be connected with the high-tech industry ahead of the public announcement would most likely be assured of huge profits by buying into that stock.”

Mr. RANDALL's views as to the sensitivity of the market during this period are similar. He says in his report provided to us on 18th August 2004 that:

“In my opinion, it is important to note that the period 1998 to 2000 was a time of rapid technological progress. This was matched in global stock-markets by a heightened investor appetite for market situations that involved technology, media or telecommunications. Indeed many leading investment banks established TMT groups to facilitate investors demand. This period was referred to colloquially as the 'dot com boom'.

The effects of this market sentiment was to afford significant premia to those groups or companies that had or could be said to have a chance of participating in activities that involved technology, media or telecommunications.”

So far as the 24th September “top-up” placement was concerned, Mr. RANDALL was of the view that information concerning such a placement would have done, and did when released on the market, materially affect the share price.

In his view there was a negative aspect to the information concerning that placement, namely the 46.6% discount represented by the placement value of \$0.11 per share. That was such a large discount to the closing share price on 24th September of \$0.20 that in Mr. RANDALL's view investors in the category of those accustomed or likely to deal in Chinney's shares would have regarded the placement

information simpliciter in a negative light and the price would have fallen.

However the added factor of both Mr. POULIOT and Mr. SIEMENS being placees in Mr. RANDALL's view would have overcome the negative effect of the large discount offered to the placees and resulted in a material improvement to the share price.

We accept also the observations of Miss FUNG as to the actual effect the information contained in the eventual 29th September 1999 announcement of the placement had on the market.

In her view the information contained in that announcement had entirely accounted for the 106% jump in Chinney's share price on that day in comparison to its closing price on 24th September 1999.

In our view the information contained in that announcement, namely the size and price of the placement to Messrs. POULIOT and SIEMENS, their resulting shareholding in the enlarged share capital of Chinney and their connection with the technology and communications industry, was effectively the same information which came into existence before 3:17 p.m. at the latest during the 24th September meeting.

We are satisfied that information that Messrs. POULIOT and SIEMENS were to be placees of slightly over 10% of the enlarged capital of Chinney, given their connections to the high-tech telecommunications industry in Hong Kong, together with the euphoria associated with stocks of companies perceived as possibly moving into that field in a meaningful way in the middle of 1999 was likely to have, once released, a materially positive effect on the Chinney share price.

Conclusion

As we have stated in our findings set out in this Chapter, we are satisfied that both Mr. POULIOT's name and that of Mr. SIEMENS had been provided to the meeting involving Herman FUNG, Stephen YU, Kenneth LAM and Joseph LAU before 3:17 p.m. on the afternoon of 24th September and that by that time at the latest the information concerning

the proposed placement as it existed in that meeting was specific information and price sensitive. This information was unknown to the market at that time.

Therefore, by 3:17 p.m. on the 24th September 1999 for the reasons we have stated the information concerning the placement was specific, unknown to the market and price sensitive in the terms of section 8 of the Ordinance and that accordingly the placement information as it existed at that time in the meeting was relevant information for the purposes of that section.

CHAPTER 6

THE ROLE OF JOSEPH LAU

To put what follows into perspective the following is a schedule of Joseph LAU's Chinney share purchases and sales on the 22nd and 24th September 1999 (the trading of Chinney shares being suspended on the 23rd September):

<u>Date</u>	<u>No. of Shares Bought</u>	<u>Purchase Price (HK\$)</u>	<u>No. of Shares Sold</u>	<u>Sale Price (before charges) (HK\$)</u>
22.9.99	300,000	37,800.00		
	440,000	57,200.00		
	1,000,000	131,000.00		
	Total: <u>1,740,000</u>	<u>\$226,000.00</u>		
24.9.99	200,000	24,600.00		
(up to 2:48 p.m.)	50,000	6,250.00		
	560,000	73,360.00		
	400,000	52,800.00		
	Total: <u>1,210,000</u>	<u>\$157,010.00</u>		
			550,000	83,600.00
			700,000	107,100.00
			600,000	92,400.00
			300,000	46,500.00
			300,000	46,800.00
			300,000	47,100.00
			200,000	31,600.00
	Total purchase:	<u>\$383,010.00</u>	Total sales:	<u>\$455,100.00</u>
			Profit:	\$72,090.00
			(less charges and fees)	
24.9.99	150,000	28,350.00		
(after 3:17 p.m.)	650,000	123,500.00		
	200,000	38,000.00		
	400,000	77,200.00		
	400,000	77,600.00		
	200,000	39,000.00		
	180,000	35,460.00		
	200,000	39,600.00		
	10,000	1,990.00		
	3,000,000	600,000.00		

<u>Date</u>	<u>No. of Shares Bought</u>	<u>Purchase Price (HK\$)</u>	<u>No. of Shares Sold</u>	<u>Sale Price (before charges) (HK\$)</u>
	60,000	12,240.00		
	550,000	112,750.00		
	<u>6,000,000</u>	<u>1,185,690.00</u>		

Before embarking upon a factual determination of Joseph LAU's role in these dealings and state of knowledge of the relevant information we will summarise the evidence he gave before the Tribunal. The following summary is broad and is intended to provide only sufficient detail to place the particular issues, when we deal with them and the evidence relating to them, in a more understandable perspective.

Joseph LAU's evidence

We will briefly summarise Joseph LAU's evidence. We will later deal with particular aspects of it in greater detail when we come to consider particular issues concerning his role in these matters.

His evidence was before us in two forms, by way of statements made by him and by way of his oral evidence. Firstly Joseph LAU was interviewed by the SFC on 4 occasions. Those interviews were recorded. They took place on the following dates:-

- (1) 13th January 2000
- (2) 26th May 2000
- (3) 3rd July 2000
- (4) 4th September 2000.

He also provided a written statement to the Tribunal dated 31st August 2004.

His oral evidence which adopted the contents of his Tribunal statement as his evidence in chief was to the effect that at around lunchtime on the 24th September he had received a telephone call from Rozalia PUI, who was an old friend and ex-colleague he had known since

they were both students in the United States nearly 10 years earlier. She had asked him to purchase about \$1 million worth of Chinney shares for her because she was going to be busy in the afternoon and would be unable to do so herself. He agreed to do so, partly because he owed her \$280,000 which he had borrowed so as to join the American Club. Subsequently after he returned to his office at some time after 2:30 p.m. he was told by his secretary Ms. Noel NG that he was supposed to be at a meeting with Mr. FUNG. The meeting was in the conference room. He joined it shortly after 3:00 p.m. Mr. FUNG, Mr. LAM and Mr. YU were present. When he went in and joined the meeting he heard only that there was a possible placement being discussed before Mr. YU and Mr. LAM left to deal with phone calls and other matters. So nothing further was said. About 10 minutes after joining the meeting (i.e. about 3:15 p.m.) he returned to his own office. Effectively the only information he had learnt in the brief time anything was said in the meeting was that another placement was being proposed. He did not learn who the placees were nor did he learn that trading in Chinney shares would be suspended.

He said although the meeting was adjourned to 4:30 p.m. it did not resume that day and he only became involved again in the placement discussions and organisation of the placement the following week.

He said while he was in the meeting he did not take the discussion about the proposed placement very seriously.

After he returned from the meeting he recollected that he had promised Rozalia PUI to purchase \$1 million worth of Chinney shares for her and contacted Mr. TANG of Tai Fook to do so. Between 3:17 p.m. and 3:30 p.m. he gave instructions to Mr. TANG to purchase 6,000,000 Chinney shares. Those purchases cost about \$1,190,290. They were purchased on his account.

He said he did not discuss with Rozalia PUI her repayment of the cost of those shares because she had told him she intended to hold them only for a short while and so he thought it a waste of time for her to transfer funds to his account. Instead he used the sum of \$1 million recently borrowed by his present wife from her company Conway

Contracting (Hong Kong) Ltd. ("Comway Contracting") (of which she was a shareholder and director) for the purposes of purchasing a flat. That cheque had been deposited into his bank account and so he drew against that cheque to pay Tai Fook for the purchase of the Chinney shares.

Eventually on their resumption of trading on the 30th September the price of Chinney shares had risen to a level so as to allow him, with Rozalia PUI's permission, to sell half of those purchased (i.e. 3 million) to generate funds to reimburse him for their purchase price.

Over the 13th and 19th October the balance of the shares were sold and those funds, together with the amount of the earlier debt of \$280,000 he owed Rozalia PUI were repaid to her. He said that in making repayment he had overpaid Rozalia PUI some \$263,853 as he had mistakenly included in the amount paid to Rozalia PUI the profits he had made in dealing in Hon Kwok Land shares on the 23rd September.

He said he had asked Mr. TANG whether Tai Fook could book the 6,000,000 Chinney shares transactions to Rozalia PUI's account rather than his own, but TANG had told him that could not be done. He said he had made this request of Mr. TANG around the 13th October 1999, after he had disposed of some of the purchased Chinney shares.

Joseph LAU as a potential insider dealer

We considered Joseph LAU as a person potentially in breach of the provisions of section 9(1)(a) of the Ordinance.

That subsection is as follows:-

"9. When insider dealing takes place

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

- (a) when a person connected with that corporation who is in possession of information which he knows is relevant information in relation to that corporation deals in any listed securities of that corporation or their derivatives (or in the listed securities of a related corporation or their derivatives)

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;”

As will be seen there was no sufficient suggestion in the evidence before us that Joseph LAU may have counselled or procured another person to deal in Chinney's shares or that he disclosed relevant information to any other person and we became primarily concerned therefore with Joseph LAU's own dealings pursuant to the provisions of section 9(1)(a) only.

“Dealing in securities” is defined in the Ordinance by the terms of section 6 as follows:

“6. “Dealing in securities or their derivatives”

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 their derivatives or acquires or disposes of, or agrees to acquire or dispose of, the right to buy, sell, exchange or subscribe for, any securities or their derivatives. (*Amended 29 of 1994 s. 5*)”

Obviously Joseph LAU's sales and purchases of Chinney shares during the course of the operation of his trading account at Tai Fook Securities through Eric TANG his account executive were “dealings” for the purposes of section 6.

Joseph LAU potentially trading with information concerning the direct placement proposal of 22nd September

We did not find Joseph LAU's purchases of Chinney shares on the 22nd September, nor his purchases and sales on the morning and afternoon (up to 2:48 p.m.) of 24th September, to have been established as being a breach of the provisions of section 9(1)(a) of the Ordinance.

As we have said we did not find that information concerning the direct placement as proposed on the 22nd September could be established to have been the subject of insider dealing by Joseph LAU (or therefore Rozalia PUI) as we were not satisfied that information qualified

as relevant information pursuant to section 8 of the Ordinance at the time Joseph LAU traded in Chinney shares on the 22nd September.

We will briefly give reasons here for our further conclusion that Joseph LAU had not in any event been proven to have had possession of the information concerning the direct placement.

According to Mr. FUNG's statements of 10th January 2000 and 15th August 2000, whilst Joseph LAU had become involved in the direct placement before 6:00 p.m. on the 22nd September 1999, precisely when he had become involved was not clear. More importantly, what he knew of that placement proposal before the close of trading on that day was never the subject of any substantial evidence before us. We have considerable doubt as to the state of information concerning the direct placement as of the close of trading on the 22nd September by which time Joseph LAU had purchased 1,740,000 Chinney shares. That is because Mr. FUNG said in his oral evidence that he had been told by Dr. WONG about the direct placement only in the afternoon of 22nd September when Joseph LAU was not present and that people did not start to put together the direct placement until after 6:00 p.m. on that day.

That is as far as the reliable evidence goes as to Joseph LAU's state of knowledge on the 22nd September of the direct placement.

Accordingly there is considerable uncertainty in the evidence as to when Joseph LAU found out about the direct placement proposal and what he knew of it during his trading on the 22nd September 1999.

Obviously as details of the direct placement proposal were released to the public (together with the fact that it had been shelved) before the resumption of trading in Chinney shares on the 24th September 1999 Joseph LAU's purchases on the morning of that day cannot have been with any insider information of that, now aborted, proposal.

Of course those purchases and sales of Chinney shares by Joseph LAU on the 22nd and 24th September which occurred before 2:48 p.m. of that day were relevant to our considerations of Joseph LAU's credibility as a witness and to our considerations concerning his state of

knowledge at the time he made his purchases of Chinney shares from 3:17 p.m. onwards in the afternoon of 24th September.

Joseph LAU potentially trading with information concerning the “top-up” placement proposal of 24th September

Joseph LAU's role in this regard was to form the central focus of the Tribunal's inquiry.

As we have said we are satisfied that the information concerning the “top-up” placement proposal of the 24th September 1999 became relevant information for the purposes of section 8 of the Ordinance prior to 3:17 p.m. on the 24th September during the course of the meeting attended by Mr. FUNG, Mr. LAM, Mr. YU and Joseph LAU. Accordingly we examined the role of Joseph LAU in large part so far as his dealings in Chinney shares after that point in time may have amounted to insider dealing.

Issues

There are a number of issues which arise in considering the potential culpability of Joseph LAU pursuant to the provisions of section 9(1)(a) of the Ordinance. We will deal with them in order.

(i) Was Joseph LAU a person "connected" with Chinney?

Section 9(1)(a) of the Ordinance requires that a person, before he can be considered an insider dealer, be a person “connected” with the listed corporation.

There is no doubt that Chinney was a listed corporation and its shares were those we are concerned with. Joseph LAU was neither a director or employee of Chinney at any material time. He was a director of Chinney Investments which held 100% of the shares of Multi-Investment which in turn held a substantial part of Chinney's shares, about 15% on 22nd September 1999. He was also a director of Multi-Investment.

Section 4 of the Ordinance defines when a person is connected with a corporation for the purposes of section 9.

Section 4, inter alia, is in these terms:

“4. “Connected with a corporation”

- (1) A person is connected with a corporation for the purposes of section 9 if, being an individual –
 - (a) he is a director or employee of that corporation or a related corporation; or
 - (b) ...
 - (c) he occupies a position which may reasonably be expected to give him access to relevant information concerning the corporation by virtue of –
 - (i) any professional or business relationship existing between himself (or his employer or a corporation of which he is a director or a firm of which he is a partner) and that corporation, a related corporation or an officer or substantial shareholder in either of such corporations; or
 - (ii) his being a director, employee or partner of a substantial shareholder in the corporation or a related corporation; or
 - (d) he has access to relevant information in relation to the corporation by virtue of his being connected (within the meaning of paragraph (a), (b) or (c)) with another corporation, being information which relates to any transaction (actual or contemplated) involving both those corporations or involving one of them and the listed securities of the other or their derivatives or to the fact that such transaction is no longer contemplated; or
(*Amended 29 of 1994 s. 4*)
 - (e)”

Section 4(1)(a)

Firstly, there is no doubt Joseph LAU was a director of Chinney Investments and of Multi-Investment at all relevant times. The initial

question is therefore whether Chinney Investments or Multi-Investment were corporations “related” to Chinney. That would mean Joseph LAU, by way of his directorships in Chinney Investments or Multi-Investment, was a person connected to Chinney, pursuant to section 4(1)(a).

The definition of “related corporation” as contained within section 2 of the Ordinance is as follows:-

“‘related corporation’ (有連繫機構), in relation to a corporation, means –

- (a) any corporation that is that corporation's subsidiary or holding company or a subsidiary of that corporation's holding company;
- (b) any corporation a controller of which is also a controller of that corporation;”

(emphasis added)

Paragraph (a) of the section 2 definition simply does not apply. Neither Chinney Investments nor Multi-Investment were subsidiaries of Chinney. Nor, as neither held more than 50% of Chinney's shares, were they its holding company. Nor were either a subsidiary of Chinney's holding company.

But in our view Chinney Investments and Multi-Investment were corporations related to Chinney pursuant to the provisions of paragraph (b) of the definition.

Dr. WONG was the controller of Chinney Investments and Multi-Investment for the simple reason he was the person “in accordance with whose directions or instructions the directors of the corporations were accustomed to act” (see definition of “controller” in section 2 of the Ordinance). From the evidence of Dr. WONG himself, Mr. FUNG, Mr. LAM and other witnesses it was quite apparent that Dr. WONG was the person within the Chinney group of companies to whom the other directors deferred, and that not just in respect of this transaction, but generally his instructions were complied with throughout the group.

Accordingly Dr. WONG was also the controller of Chinney for the same reasons. On the evidence before us it was never in issue that Dr. WONG was in fact the person who, whatever his or anyone else's

nominal title was, (and he was the Chairman of both Chinney and Chinney Investments) gave the orders concerning Chinney. He therefore was the controller of all three companies and, according to paragraph (b) of the definition of “related corporation” in section 2 of the Ordinance, Chinney Investments and Multi-Investment were related companies to Chinney.

For that reason we are satisfied that Chinney and both Chinney Investments and Multi-Investment were related for the purposes of the Ordinance and that by the operation of section 4(1)(a) Joseph LAU was connected to Chinney by reason of his directorship of two related companies.

There are other basis upon which Joseph LAU was connected to Chinney. That is pursuant to sections 4(1)(c)(i) and (ii) and 4(1)(d) of the Ordinance.

Section 4(1)(c)(i)

As to the provisions of section 4(1)(c)(i), we have said Joseph LAU occupied the position of director of corporate finance of Chinney Investments and was a director of its 100%-owned subsidiary Multi-Investment. The business relationship between Multi-Investment and Chinney was close generally. Multi-Investment had common directors with Chinney (Mr. FUNG and Dr. WONG). Both companies shared Mr. LUK as company secretary and Multi-Investment was a substantial shareholder in Chinney. The companies were therefore structurally closely associated. When the direct placement of 22nd September was proposed the directors of Multi-Investment were consulted. Multi-Investment was the instrument used to allow the direct placement to change in form to a “top-up” placement. Multi-Investment's directors worked closely with Chinney to ensure its shareholding was not diluted. In our view, there was a continuing business relationship between the two companies during the relevant time. The same can be said also of the relationship between Chinney Investments and Chinney at that time.

There is no doubt that it was because of his position in both Chinney Investments and Multi-Investment that Joseph LAU was in a position to access relevant information concerning Chinney on the afternoon of 24th September during the course of the meeting at Chinney's offices at the Hang Seng Building. That was because it was due to his position within each of Chinney Investments and Multi-Investment that he attended the meeting on the afternoon of 24th September as Mr. FUNG's assistant to mind the interests of Multi-Investment (and therefore of Chinney Investments its holding company) in respect of the "top-up" placement negotiations. His position within Multi-Investment would reasonably be expected to give him access to the relevant information concerning Chinney because of the business relationship between Multi-Investment and Chinney at that time.

Accordingly by virtue of section 4(1)(c)(i) of the Ordinance Joseph LAU is connected to Chinney.

Section 4(1)(c)(ii)

Further, Joseph LAU as an executive director of Multi-Investment at all relevant times, was also connected to Chinney as a result of Multi-Investment being a substantial shareholder in Chinney pursuant to section 4(3) of the Ordinance. His position within Multi-Investment was as a director and assistant to Mr. FUNG. Both he and Mr. FUNG attended the afternoon meeting of 24th September to represent Multi-Investment's interests. Joseph LAU was also the director of corporate finance of Chinney Investments, Multi-Investment's holding company. In our view his position in both companies led him to attend that meeting and so have access to the relevant information. He was therefore also connected to Chinney pursuant to the provisions of section 4(1)(c)(ii) of the Ordinance.

Section 4(1)(d)

Finally, as will be seen we also find that Joseph LAU had access to relevant information in relation to Chinney by virtue of his being connected to both Chinney Investments and Multi-Investment and because of the same meeting he attended on behalf of Multi-Investment

and, effectively, its holding company Chinney Investments on the afternoon of 24th September. He was connected therefore with Chinney because he had access to the relevant information as a result of his being connected with Chinney Investments and Multi-Investment and, because of that connection, having access to the relevant information concerning the placement proposal of 24th September with which both the latter corporations were concerned. He was therefore also connected to Chinney pursuant to the provisions of section 4(1)(d) of the Ordinance.

We accordingly conclude that for the above reasons and on the above different basis Joseph LAU was connected to Chinney for the purposes of section 9(1)(a) of the Ordinance.

(ii) Was Joseph LAU in possession of relevant information concerning Chinney?

We have, for the reasons set out in Chapter 5, concluded that relevant information concerning Chinney certainly came into existence before 3:17 p.m. on the 24th September 1999 during the meeting held in Chinney's offices that afternoon and attended by Mr. LAM, Mr. FUNG, Mr. YU and Joseph LAU.

The important question was whether Joseph LAU became aware of that information at that time. The essential price sensitive information was the revealing of the identities of Messrs. POULIOT and SIEMENS as the placees. We were particularly concerned therefore with whether Joseph LAU had heard those individuals' names mentioned as placees during the course of his attendance at the meeting. He said in his evidence before us that he did not.

We have however concluded that during the course of the meeting Joseph LAU did hear the names of the proposed placees, i.e. Mr. POULIOT and Mr. SIEMENS, and was well aware of their identities during the meeting and was accordingly in possession of that knowledge when he set about purchasing 6,000,000 Chinney shares between 3:17 p.m. and 3:30 p.m. either during the meeting or after he had left the meeting.

In this regard the evidence of Mr. FUNG, Mr. YU and Mr. LAM is relevant.

Evidence relating to the divulging of relevant information during the meeting held in the afternoon of the 24th September

We have earlier referred in Chapter 5 to the evidence of those present at that meeting but will now summarise it so far as it is relevant to Joseph LAU's presence in the meeting and what was said while he was there.

Mr. FUNG's evidence

Mr. FUNG made five recorded statements to the SFC dated 30th December 1999, 10th January 2000, 30th March 2000, 15th August 2000 and 30th March 2001 as well as giving oral evidence before us.

In his five statements Mr. FUNG's evidence was to the effect that on 24th September after lunch Dr. WONG had told him that Mr. POULIOT would take up the aborted placement with another person and there would be a meeting with Mr. YU and Mr. LAM that afternoon at around 2:30 p.m. He then arranged for Joseph LAU to attend and went to the meeting in the conference room of Chinney. Mr. YU and Mr. LAM were there and Joseph LAU arrived shortly afterwards. When Joseph LAU entered the meeting Mr. POULIOT and Mr. SIEMENS' names were mentioned as placees. Joseph LAU's role was to "attend and listen". During the meeting Joseph LAU took notes and discussed matters with Mr. FUNG. Mr. FUNG wanted to know who the placees were because he wanted to be sure that Multi-Investment, which he and Joseph LAU represented, would not be left disadvantaged after selling its shares to the placees in the "top-up" placement. He told the SFC that Mr. POULIOT's name was known at an early stage but Goldstone (Mr. SIEMENS' investment vehicle) was not revealed as the second placee until later in the meeting. He said that Joseph LAU remained in the conference room during the course of the meeting.

In his oral evidence before us Mr. FUNG said that SIEMENS' name had been mentioned by Mr. LAM as the second placee before there

had been any mention of a trading suspension. At that time Joseph LAU was present. "Distacom" the company behind SUNDAY of which both Messrs. POULIOT and SIEMENS were shareholders and directors was also mentioned. He said he had always known Mr. POULIOT would be involved in the "top-up" placement and had even indirectly heard Mr. POULIOT may have been involved in the proposed but aborted 22nd September placement as well.

He agreed that he had not mentioned Messrs. POULIOT and SIEMENS' names as potential placees before the meeting to Joseph LAU, but was sure that both those persons' names were mentioned during the meeting while Joseph LAU was present. He said both names had been revealed by the end of the meeting. The meeting to his recollection ended around 3:30 p.m. He did not recollect Joseph LAU leaving the meeting at any stage or making any telephone calls during the meeting.

Mr. YU's evidence

Mr. YU made two recorded statements to the SFC on the 17th January 2000 and 27th July 2000.

The evidence of those statements was to the effect that Dr. WONG had contacted him after lunch on the 24th September to attend a meeting that afternoon because Dr. WONG had spoken to Mr. POULIOT about the placement and Mr. POULIOT was interested. He said that the meeting took place at 2:30 p.m. and he, Mr. FUNG, Mr. LAM and Joseph LAU were those present. He said the meeting was broken into two sessions, firstly from 2:30 to 3:30 p.m. and later from 4:30 to about 5:00 p.m. or 6:00 p.m. He thought they may have discussed Mr. SIEMENS as the second placee before 3:30 p.m.

In his oral evidence before us he said he, Mr. FUNG, Mr. LAM and Joseph LAU were in attendance at the early stages of the meeting and later Mr. LUK, the company secretary attended. Mr. Bradbury (Mr. LAM's assistant from APC Securities) attended the second stage of the meeting from 4:30 p.m.

His recollection was that the meeting knew of SIEMENS' involvement as a placee before the SEHK rang during the meeting to enquire why Chinney's price was surging. He remembered that Mr. LAM had briefed the meeting on Mr. SIEMENS' background and there had been a discussion about Mr. SIEMENS.

He said about 10 minutes after the SEHK rang they agreed the final sticking point of the placement which was the price. He said they had already agreed upon Mr. POULIOT and Mr. SIEMENS as the placees. He said after the price was agreed he rang the SEHK officer back (i.e. Eva CHEUNG TW 5) and told her the shares could be suspended as agreement had been reached as to the placement. He said following that it took about another 15 minutes or so to prepare the written suspension request with Mr. LUK and send it to the SEHK effecting the suspension. Before doing this he had told those at the meeting that he was asking the SEHK to suspend trading in the company's shares.

His recollection was that the meeting was in the conference room of Chinney, that all four participants were on time and present from the beginning of the meeting, nobody arriving late. He could not remember Joseph LAU making mobile phone calls during the meeting. He recollected that Mr. POULIOT's name was the first mentioned as a potential placee but that Mr. SIEMENS' name would have been mentioned before 3:00 p.m. He said most of the discussion was about price because the identity of the proposed placees was clear at an early stage of the meeting. He said it was important in a "top-up" placement to know the identity of the placees. Mr. FUNG, representing Multi-Investment had asked who they were.

Mr. LAM's evidence

Mr. LAM made three recorded statements to the SFC on the 18th January 2000, 19th July 2000 and 30th March 2001.

Those statements contained evidence to the effect that he had first spoken to Mr. POULIOT about the proposed direct Chinney placement of 23rd September on that day shortly before he learned that that placement was to be aborted. When he rang Mr. POULIOT back to

tell him that, Mr. POULIOT said he would be interested if there was to be another placement.

So Mr. LAM arranged a meeting between himself, Mr. POULIOT and Dr. WONG at noon on the 24th September. After that meeting Mr. LAM and Dr. WONG had lunch. Dr. WONG organised a meeting between Mr. LAM, Mr. YU, Mr. FUNG and Joseph LAU for 2:30 p.m. that afternoon.

At the 2:30 p.m. meeting he mentioned both the names of Mr. POULIOT and Mr. SIEMENS as the proposed placees. He spoke of Mr. POULIOT's affiliation with Distacom and SUNDAY and said that Mr. SIEMENS was also interested in the placement. He said during the meeting he spoke generally about those things with Mr. FUNG. He said Joseph LAU was present but had walked in and out of the meeting.

At the commencement of the 2:30 p.m. meeting with Mr. FUNG, Mr. YU and Joseph LAU it was still uncertain whether the deal would go through. But an agreement was rapidly reached during the course of the meeting. He said he remembered Joseph LAU came in and out of the meeting because he had to move to let him in and out. He did not remember what was discussed while Joseph LAU was absent from the meeting. He said the identity of the two placees and their high-tech communications experience was one of his bargaining points during the course of the meeting.

Other witnesses' evidence

Eva CHEUNG was on the 24th September 1999 an officer within the Listing Division of the SEHK. She made one recorded statement to the SFC on the 4th July 2000. In that statement she said she had contacted Mr. LUK the company secretary of Chinney during the course of the afternoon of the 24th September as a result of the surge in Chinney's share price.

The times at which she called Chinney and spoke to Mr. LUK were 2:25 p.m., 3:00 p.m. and 3:30 p.m. She said at 3:30 p.m. it was

confirmed to her the terms of a placement had been agreed and that trading in Chinney's shares was therefore suspended.

Dr. WONG and Mr. POULIOT confirmed in substance what Mr. LAM had said concerning the events leading up to the 24th September 2:30 p.m. meeting. Neither attended that meeting. Dr. WONG in his single interview with the SFC on 11th April 2000 said that when he met Mr. POULIOT at noon on the 24th September 1999 with Mr. LAM Mr. POULIOT had mentioned that Mr. SIEMENS was also interested and in his oral evidence expanded on that and said Mr. POULIOT had mention SIEMENS' SUNDAY connection and Hutchison Telecom experience.

Mr. POULIOT in his two statements to the SFC of 28th March 2000 and 23rd March 2001 said when he had met with Dr. WONG and Mr. LAM at noon on the 24th September he had mentioned SIEMENS' name to Dr. WONG as a person he would invite to join him as a placee. He said following that noon meeting he subsequently spoke to Mr. SIEMENS before 3:00 p.m. and Mr. SIEMENS agreed in principle to join the "top-up" placement as a placee. He said he then told Mr. LAM. In his oral evidence he said that at the noon meeting with Dr. WONG and Mr. LAM he had told Dr. WONG that if he were to come in as a placee "he would do it with SIEMENS" and he said that when Mr. SIEMENS agreed in principle to be a placee he was 70% sure the deal would go ahead.

Curiously, he did not know of the 2:30 p.m. meeting taking place and thought Mr. LAM was dealing with Dr. WONG at that time. He said, and emphasised in his evidence, that the deal was not absolutely certain until the documents were signed and that occurred only early in the following week. He also emphasised that although Mr. SIEMENS had agreed in principle to be a placee on Friday the 24th September, he and Mr. SIEMENS did not finally agree between themselves the "split" and size of their respective placements until that weekend.

Mr. SIEMENS in his single statement to the SFC of 23rd May 2000 said he was first approached about the placement by Mr. POULIOT in the afternoon of 24th September. Mr. POULIOT told him of the

placement and that he, POULIOT, was definitely joining in and asked Mr. SIEMENS to make a quick decision.

Mr. SIEMENS said he would probably join, but would let him know later. He thought Mr. POULIOT had assumed he would say "yes". Mr. POULIOT mentioned that his, SIEMENS, Distacom connection would be of advantage to Chinney.

In his oral evidence he could not remember Mr. LAM ringing him about the placement on the 24th September, but confirmed that Mr. POULIOT would have assumed after their conversation that if necessary Mr. SIEMENS would become a placee.

Joseph LAU's evidence

Joseph LAU also gave evidence as to the course of the meeting in the afternoon of 24th September.

In his oral evidence before us which adopted his Tribunal witness statement he said that after he returned from lunch on the 24th September he was in his office when at about 3:00 p.m. his secretary Ms. Noel NG told him that he had to attend a meeting involving Mr. FUNG. He knew nothing else about the meeting. He did not regard it as important and took his time going to the meeting. When he got there around 3:05 p.m. Mr. FUNG, Mr. YU and Mr. LAM were present. He did not know what they had been talking about. After he entered the conference room he was able to detect from the conversation of the other three that they were talking about a placement. He did not know of any particular purpose as to why he had been asked to join the meeting. He was there only a short time. Mr. LAM during that time was busy answering his mobile phone and would leave the conference room to do so. Mr. YU also left the room and returned. There was no substantive discussion and no one mentioned Messrs. POULIOT's or SIEMENS' names. No one brought him up to date on what had been discussed. After he had been in the room for only about 10 minutes Mr. YU adjourned the meeting to 4:30 p.m. and he, Joseph LAU, returned to his office. As the meeting never resumed at 4:30 p.m. that was the scope of his exposure to information about the placement. In other words apart

from learning that the meeting concerned a placement he gained no other material information from it.

We should commence by saying that we place no weight on Joseph LAU's evidence. For the reasons we set out immediately hereunder and in the next section of this Chapter we are satisfied he spent his few days in the witness box doing little more than lying to the Tribunal.

Firstly, his evidence as to not having any information in the course of his presence at the meeting is directly contradicted by what he told the SFC investigators in his interview of the 13th January 2000. That was the first occasion he was interviewed by the SFC and less than four months after the events we are dealing with.

In that interview he said this concerning the afternoon meeting of the 24th September:-

- “151 Interviewer: Well, at what time was the meeting held?
152. Joseph LAU: After I came back from lunch. It was 2:40, 2:45 p.m. already.
153. Interviewer: It was held at 2:40, 2:45 p.m. [Joseph LAU: Yes.] So, that is, the ...
154. Joseph LAU: That is, the meeting was already on its way. I was pushed inside to attend it.
155. Interviewer: It was already on its way and you were pushed inside to attend it. And the share placement of Chinney Alliance was being talked about. [Joseph LAU: Right.] So, to whom were the shares to be placed?
156. Joseph LAU: I had no idea of that at that time. [Interviewer: Yes.] Because their documentation, like what I said just now ... I don't know if you can comprehend ... you might not have fully understood what I said, that it, because APC was

responsible for the documentation and we were just, er, to read the documentation from the standpoint of CIL, the standpoint of Chinney Investment. But the documentation was yet to be ready, so actually we did not confirm to whom they would be placed. That is, if you asked me to whom they would be placed, at that moment I had no idea as to whom would be confirmed as the placee(s).

157. Interviewer: Even though you did not put down in writing to whom they would be placed, did you, em, mention that?

158. Joseph LAU: Er, that was mentioned. He did mention that, but ...

159. Interviewer: Who was "he"?

160. Joseph LAU: Kenneth Lam did mention that. [Interviewer: Yes.] But he had been talking about that for a long time, so actually I, [Interviewer: Right.] we did not take it very seriously when we were listening [Interviewer: Right.] because without any confirmation, that simply could not be regarded as something true.

161. Interviewer: Right. To whom were they to be placed?

162. Joseph LAU: At that time - I have said this once just now - I heard them say that they would be placed to, they would likely be placed to ... actually before that, on the 23rd, we were suspended from trading, but it was said that (the shares) were intended to be placed to, er, Rick Siemens, and to (sighed) er, Bernard Pouliot. [Interviewer: Right.] But as that had been mentioned for too many times, actually it was not taken seriously. Actually without any confirmation from them, we just did not know to whom they would be placed. [Interviewer: Right.] So, at that moment, I actually came out after listening to what he said inside. As his documentation was not yet ready and would not be duly prepared until later at 5 or 6 p.m. before they would be taken

to us, [Interviewer: Right.] so actually, no ... I listened to it but basically it was meaningless”

(emphasis added)

In his later interviews he resciled from this position and said that the only information he gained from the meeting was that there was another placement proposed. That was his position also in evidence. In cross-examination as to why he had seemingly said Messrs. POULIOT's and SIEMENS' names were mentioned by Mr. LAM during the course of the afternoon of 24th September meeting he explained his answer by saying that at the time of the interview he was aware those names must have been mentioned then. We reject his explanation in that regard. The context and content of his lengthy answer at line 162 quite obviously conveys his intention to tell the interviewer that he heard those names mentioned during (and before) the course of the meeting. What he said at line 162 fundamentally contradicts his assertions in his later interviews and his witness statement and oral evidence that Messrs. POULIOT's and SIEMENS' names were not mentioned in his presence at that meeting and that he had no idea on the 24th September that they were the proposed placees.

Secondly, Joseph LAU's oral evidence (and the evidence of his Tribunal witness statement and the contents of his SFC interviews of 26th May 2000, 3rd July 2000 and 4th September 2000) to the effect that he did not learn of the identity of the placees on the 24th September and did not know of a deal or agreement being reached during the meeting or that the suspension of trading in Chinney shares was discussed in the meeting is contradicted also by the contents of tape-recorded telephone conversations¹¹ he had with his broker Mr. TANG, the relevant parts commencing at about 3:24 p.m. on the afternoon of the 24th September during and after Joseph LAU's purchase of 6,000,000 Chinney shares (the placing of orders for which commenced at 3:17 p.m. only a few minutes after he had left the meeting, on Joseph LAU's own evidence).

¹¹ Those tape recordings are not exhaustive of the possible conversations between Mr. TANG and Joseph LAU.

At 3:24:11 p.m. the following conversation ensued:-

"24/9/99

15:24:11

* * * (Telephone recording · Paragraph 66) * * *

(Telephone ringing)

979. T (Eric TANG): Hello?

980. L (Joseph LAU): Eric?

981. T : Speaking, Joseph. Er - have got them, er, have got you 2 million all together.

982. L : Er - OK.

983. T : Yes.

984. L : huh, it seems to have been suspended. Not yet, OK.

985. T : Not yet, not yet.

986. L : (Inaudible) It's going to be suspended now, because it may be suspended at anytime now.

987. T : Yeah, OK.

988. L : Let me see, you get me ---- as many as possible now.

989. T : Get as many as possible? Get all of them?

990. L : Get all of them, get 3 million, yep.

991. T : Yeah, OK, OK. Sure, sure, sure. Sure, sure.

(Telephone hung up)"

(emphasis added)

That conversation suggests Joseph LAU well knew that trading in Chinney shares may well be suspended in the immediate future.

At 3:27:41 p.m. the following conversation ensued:-

"24/9/99

15:27:41

* * * (Telephone recording · Paragraph 68) * * *

(Sounds of dialing)(Telephone ringing)

1007. L (Joseph LAU): Joseph.

1008. T (Eric TANG): Joseph, totally, er, 6.1 million

1009. L : Good. This one may resume trading and you, you may then find that you can only trade at \$1. (T: Yeah.) Now, I don't mind getting as many as possible. (T: Yeah, OK.) It's just entered into an agreement with Simon Murray (inaudible). (T: OK.) Sunday will also join as an equity partner. (T: Yeah, OK.) Anyway, (T: Yes.) you, you give the quotation later if necessary.

1010. T : OK.

1011. L : OK, bye.

1012. T : OK, bye-bye.

(Telephone hung up)"

(emphasis added)

That conversation is quite probative. Joseph LAU is obviously suggesting that an agreement has been entered into involving Mr. Simon Murray (Messrs. POULIOT and SIEMENS' co-director in Distacom) and involved SUNDAY (in which Distacom has a controlling interest).

Whilst Joseph LAU seems to have extrapolated somewhat from the basic information concerning the involvement of Messrs. POULIOT and SIEMENS in the Chinney placement and gone on to the next level of their commercial connections there is no doubt that he was aware of the fundamental nature of the agreement which had been entered into.

Later at 4:06:21 p.m. (after the suspension of trading in Chinney shares and the closure of the market) the following conversation ensued:-

"24/9/99

16:06:21

* * * (Telephone recording · Paragraph 75) * * *

(Ringing tone)

1070. T (Eric TANG): Hello, hello.

1071. L (Joseph LAU): Is it Eric?

1072. T : Speaking, Joseph.

1073. L : Ai -- I bought too little in quantity.

1074. T : Bought too little in quantity? (Laugh)

1075. L : La Sing (foul language), really bought too little in quantity.

1076. T : (Laugh)

1077. L : When you see the announcement tomorrow, you will know why, ai --

1078. T : (Laugh)

1079. L : It's not the case that I don't -- want to earn [money], that is, don't want, don't want to earn [money], but, ai -- sometimes nothing can be done about it.

1080. T : No, but you, in fact, why did you sell them during the course?
1081. L : Well, no, well, I sold them, it made no difference, if I held them, I sold them ... I can buy them back.
1082. T : I see, I see.
1083. L : That is, in fact, there is no -- how can I put it?
1084. T : But when you sold them, you sold them -- at a lower price.
1085. L : No, I know. It's because I - (in a small voice) don't know if the deal can work out or not.
1086. T : What?
1087. L : [I] don't know if the deal can work out or not.
1088. T : I see, I see.
1089. L : At the time of selling, in fact, [I] don't know if the deal can work out or not.
1090. T : Um, um, um.
1091. L : It's the case that after about half an hour, I discussed and agreed with them, and knew that it worked, it's not until then I bought them back.
1092. T : Oh, I see, I see."

(emphasis added)

It is apparent from that conversation that Joseph LAU was well aware of the "deal" which was in the making on the 24th September and was not sure until sometime in the afternoon of the 24th September that

the deal would work out. Earlier that day, in the morning and up to 2:48 p.m. (shortly before he attended the meeting) he had sold his holding of Chinney shares entirely and recommenced purchasing only at 3:17 p.m. that afternoon. His short history of trading given to Mr. TANG during this conversation and his reasons for so trading mesh closely with the actual trading history of his account and point to an actual gain of information by him during the meeting in the afternoon of the 24th September.

The content of these conversations strongly suggests that Joseph LAU was trading in the afternoon of 24th September from 3:17 p.m. onwards with knowledge of Messrs. SIEMENS and POULIOT's connection with the forthcoming placement. In any event these conversations completely undermine Joseph LAU's credibility as a witness. In our judgment he was lying in his evidence before us when he said he learnt nothing during the course of the meeting on the 24th September other than that a placement was contemplated. When asked about these recorded conversations in cross-examination by counsel assisting the Tribunal, Joseph LAU said that he did not remember what his "thought process" was during the course of these conversations and thought that he was simply unintentionally lying to Mr. TANG so as to impress him. When asked by the Tribunal why an executive director of a limited company would unintentionally lie to a stock dealer in that way about the affairs of a listed company he said he did so because he was really an architect by training and was unsure of his responsibility as a director of a company.

In our judgment Joseph LAU was not lying to Mr. TANG. The chances of Joseph LAU coincidentally concocting a story so as to impress Mr. TANG concerning an imagined SUNDAY connection with a Chinney placement which was in fact agreed that same afternoon in a meeting at which he was at some time present is nonsense. The "story" is too much on all fours with what actually happened to have been imaginary.

Other aspects of his evidence were unsatisfactory. He took every opportunity to answer "I don't remember". Even allowing for the natural slippage in memory over the five years it took this matter to come

before the Tribunal Joseph LAU's failure in memory seemed somewhat excessive to us and unexplained. In our view he avoided difficult questions with that response. In saying that we gave him credit for being asked in considerable detail about matters which occurred five years ago and appreciated that some people have better memories than others, but came to the view at the end of the day that Joseph LAU found it more convenient to his case to not remember matters on occasion.

Accordingly we dismiss Joseph LAU as a witness of truth concerning what he knew of the contents of the meeting of the afternoon of the 24th September.

Analysis of evidence

As we have found, for the reasons set out in the previous Chapter, the information concerning both Messrs. POULIOT and SIEMENS' participation in the "top-up" placement became known to those present at that meeting before 3:17 p.m. on the 24th September.

We accept Messrs. FUNG, YU and LAM (the other three present at that meeting) as witnesses of truth and generally reliable witnesses. There were some differences between and amongst them as to how events transpired during the meeting and, indeed, in Mr. LAM's case even which room within the Chinney offices in the Hang Seng Building the meeting was held in.

But these differences in their detailed recollections did not detract from the fundamental common ground of their evidence that Joseph LAU was present at the meeting, regardless of whether he arrived at the same time or later than them, and that he was a substantial participant in the meeting in the sense that he was there to assist Mr. FUNG regardless of whether he occasionally left the meeting as Mr. LAM recollected.

From their evidence as to Joseph LAU's presence in the meeting and what was discussed in the meeting as well as from the evidence of the tape-recorded conversations between Joseph LAU and Mr. TANG we are satisfied that Joseph LAU became aware, as the result of

his presence in the meeting, that Messrs. POULIOT and SIEMENS were to become placees in the proposed “top-up” placement and that they were connected to the company SUNDAY.

In that latter regard he told us in his oral evidence that he was unaware of the identity or background of Mr. SIEMENS. But at line 432 of his 13th January 2000 recorded interview he said the following:-

“432 Interviewer: You said just now that you had read from the newspaper that er, Rick Siemens (Joseph LAU: That's right.) and Bernard ...

433. Joseph LAU: I have not seen him. I have not met him.

434. Interviewer: Right. Where on the newspapers did you see them?

435. Joseph LAU: Em, (they) said a lot of things all the time, on what Distacom wanted to do.

436. Interviewer: Right.

437. Joseph LAU: Because I seem to remember that Distacom is the major shareholder of Sunday.

438. Interviewer: Right. So do you know that earlier on Distacom had been rumoured that they would buy a shell?

439. Joseph LAU: No, you asked me just now what shell Distacom was rumoured to be buying.

...

445. Joseph LAU: I am sure about this. [Interviewer: That is, which shell?] I am not sure about this because, er, I believe, er, for something like this, different persons have different opinion. Okay? It can be rumoured that a number of companies (was in mind). It can be rumoured that there were several prospective companies through which it would like to get a backdoor listing. But I feel that, er, only the one that materializes counts. Well, well ...

446. Interviewer: So, when there was the rumour, i.e. that it would buy a shell to get a backdoor listing, do you, er, do you know whether the share price of these few, well, so-called target companies fluctuated due to the rumour?
447. Joseph LAU: Sorry, that was not my concern.
448. Interviewer: Yes.
449. Joseph LAU: That was not my concern.
450. Interviewer: Right. That is, have you noticed ...
451. Joseph LAU: Because I was not responsible for speculating on stocks. I think you should ask those who speculate on stocks and they will have a better idea. [Interviewer: Yes.] That is, you'll have a better idea if you ask APC because they are engaged in securities.
452. Interviewer: No, I am not talking about whether you are engaged in securities or not ...
453. Joseph LAU: No, I would not have paid attention to ...
454. Interviewer: What I mean is whether you have noticed ...
455. Joseph LAU: I would not have paid attention to, er, what asset injection they made, nor would I have paid attention to what company they had approached as the vehicle because these were not my concern.
456. Interviewer: Yes. Then why did you say that you had read about these two persons from the newspaper?
457. Joseph LAU: Because we, everyday we had someone cutting out the newspapers for us.

458. Interviewer: What every day?
459. Joseph LAU: In our company every day there was someone who would cut out the newspapers.
460. Interviewer: Someone cut out the newspapers every day [Joseph LAU: Yes.] for your perusal. [Joseph LAU: Yes.] So, that means that the, the so-called rumours about the backdoor listing in the past would have been read by you. You would have the chance to read them, right?
461. Joseph LAU: Yes, every now and then you would come across them."

(emphasis added)

In our judgment once again when taking into account the contents of his interview of 13th January 2000 and also that of his conversations with Mr. TANG referred to above Joseph LAU was lying to us when he said he was unaware of the background of Mr. SIEMENS. We are satisfied he was aware of SIEMENS' connection with SUNDAY. In cross-examination as to the inconsistency between his evidence before the Tribunal and the contents of his 13th January 2000 interview in this regard he suggested that in his interview his answers reflected his state of knowledge concerning Mr. SIEMENS' connection with Distacom and SUNDAY as of the date of the interview. But from the context of the questions and answers given in that interview we are satisfied that Joseph LAU was expressing to the interviewer his state of knowledge of Mr. SIEMENS' background as of the 24th September 1999.

We accept from the evidence of Mr. FUNG, Mr. YU and Mr. LAM that not only were the names of Messrs. POULIOT and SIEMENS mentioned as the proposed placees but their connection to Distacom and SUNDAY was also discussed at the meeting.

We are satisfied that when Joseph LAU became aware of the identity of Messrs. POULIOT and SIEMENS as the proposed placees for the "top-up" placement, he was aware also of their background from what

was said at the meeting and from his own knowledge of Messrs. POULIOT and SIEMENS.

We should mention that Noel NG his secretary on 24th September 1999 gave evidence at the request of Joseph LAU, she not having been interviewed by the SFC. She said in her evidence, which incorporated a witness statement made to the Tribunal, that Joseph LAU had been late back from lunch on the 24th September and had not gone into the meeting until about 3:00 p.m. She said she estimated he was in the meeting 10 minutes before he returned to his office. She agreed her time estimates were estimates only and may have been 5 minutes out. She thought Mr. FUNG had told her the meeting was to start at 2:00 p.m., not 2:30 p.m. So far as her estimates of time are concerned there is some support for her evidence in the timing of a telephone call between herself and Eric TANG at 3:01 p.m.

During that telephone call she informed TANG that Joseph LAU had "just walked out to a meeting" and she would ask Joseph LAU to call TANG back. What then followed was a further phone call between TANG and Joseph LAU at 3:03 p.m. to discuss a person "Tina" who had spoken to TANG about some matter. During that very brief conversation it is fairly obvious from Joseph LAU's constrained manner that he may well have been in a meeting or hurrying into one.

In any event we do not think this evidence adds significantly to the evidence in the case we have dealt with. Whether Joseph LAU was late for the 2:30 p.m. meeting on the 24th September or on time, or whether he was in that meeting for 10 minutes or longer we are satisfied that he obtained the information concerning the placement being agreed, the identity of the placees, and the fact that steps were to be taken to suspend trading in Chinney shares, whilst he was in that meeting. Ms. NG's evidence does however support the contention that Joseph LAU had left the meeting by 3:17 p.m. and was then in a position to place the series of Chinney share purchase orders with Mr. TANG of Tai Fook that he did and which commenced at that time. We do not think it matters though whether Joseph LAU telephoned Mr. TANG and placed orders for the purchase of the Chinney shares by way of leaving the meeting to do so, or

only after the meeting finished. It is common ground that he did place those orders with Mr. TANG.

(iii) Did Joseph LAU know the information he possessed was “relevant information”?

We are satisfied that Joseph LAU was present in the meeting held on the afternoon of 24th September 1999 involving Mr. FUNG, Mr. YU and Mr. LAM at which the identities of Mr. POULIOT and Mr. SIEMENS as the proposed placees were revealed. We are satisfied that Joseph LAU was aware of the impact of the background of Mr. POULIOT and Mr. SIEMENS and their connection through Distacom with SUNDAY.

This, as we have said, is apparent from the contents of the tape-recorded conversations between Joseph LAU and Mr. TANG. It is also apparent from the contents of Joseph LAU's first recorded interview of the 13th January 2000 which, given its relatively recent taking after the events of 24th September 1999, and its admission by Joseph LAU regarding the mention of Messrs. POULIOT and SIEMENS' names during the afternoon meeting of 24th September 1999 and his admission of knowing Mr. SIEMENS' connection to SUNDAY we regard as the more reliable of his statements to the SFC, the statements which followed being in our view mainly exculpatory attempts to distance himself from the relevant information and his responsibility for the Chinney trading on his account which took place on the afternoon of 24th September 1999.

There is no doubt in our view that Joseph LAU was aware also of the likely effect on the market which existed for Chinney shares, of such information.

In his statements to the SFC he displayed considerable knowledge of firstly, there being market rumours that SUNDAY may have been seeking a backdoor listing. He admitted in his evidence and Tribunal statement that he had heard rumours of a possible connection between SUNDAY and Chinney from his friends and from the newspapers. He was obviously aware that the effect of those rumours was to increase the price of Chinney shares.

His recorded telephone conversations with Mr. TANG also establish his understanding that any confirmation in the market place of SUNDAY in some way being perceived as being involved with Chinney would have a positive and material effect on Chinney's share price. He knew of the connection between Messrs. POULIOT and SIEMENS and SUNDAY. His whole course of conduct and conversations with Mr. TANG make it certain that he was trading with an awareness of the effect that news of the "top-up" placement and the identity of its placees would likely have on the market.

Further, Joseph LAU was not an inexperienced share trader. He was trading in Chinney shares during the high-tech communications boom of the late 1990s. He received newspaper cut outs relating to the financial sector on a regular if not daily basis. We find it difficult to accept that he would not have been aware of the likely impact of the news of Messrs. POULIOT and SIEMENS becoming substantial shareholders in Chinney on its share price.

Finally, and again from the recorded conversations between Joseph LAU and Mr. TANG, it is very obvious that Joseph LAU was aware of the impact that the SUNDAY connection, via the placement agreement, would have on demand for Chinney shares. That is apparent from the excerpt of the recorded conversation of 24th September 1999 at 16:06 hours reproduced above. It is also apparent from a later portion of that same conversation which went as follows:-

"1124. T (Eric TANG): I confirm the details about your last 6 million, yep.
Well, er -- let me see, there are many, because -- well,
er -- 19 cents --

1125. L (Joseph LAU): 19 cents.

1126. T : There are 850,000.

1127. L : 850,000.

1128. T : Yes.

1129. L : Did you ask your brothers to buy?

1130. T : What, sorry.

1131. L : Did you ask your brothers to buy? (Laugh)

1132. T : Er – everyone knows this is – –

1133. L: : I see, I see, I see, ok, but with my confirmation.

1134. T : Yes (Laugh), ok.”

(emphasis added)

We are perfectly satisfied that the very high probability was, at the time Joseph LAU was purchasing Chinney shares, that he was aware that the relevant information which he held as to Messrs. POULIOT and SIEMENS' involvement in the “top-up” placement was likely price sensitive in the terms of section 8 of the Ordinance.

We now come to the final and perhaps fundamental question concerning Joseph LAU's role.

(iv) Was Joseph LAU trading in Chinney shares in the afternoon of 24th September 1999 on his own behalf?

Joseph LAU's case was that around lunchtime on the 24th September he had been contacted by Rozalia PUI, an old friend, who had asked him to purchase about \$1 million worth of Chinney shares (representing 8–9 million shares) for her in the afternoon of 24th September. The reason she gave him was that she would be at a meeting that afternoon and would not have time to do so herself. He thought Rozalia PUI had asked him to purchase the shares for her as she trusted his judgment more than she did that of Mr. TANG of Tai Fook, where her account was also held and who was her account executive. Joseph LAU also thought he owed Rozalia PUI a favour as he had earlier borrowed \$280,000 from her. So Joseph LAU, according to his evidence agreed to her request. Subsequently he attended the afternoon

meeting concerning the “top-up” placement. His evidence was that after leaving that meeting he remembered his promise to purchase shares for Rozalia PUI and contacted Mr. TANG at Tai Fook in order to do so. His evidence was that all of the shares purchased on his personal account at Tai Fook in the afternoon of 24th September were, in reality, purchased on behalf of Rozalia PUI.

Rozalia PUI's evidence was substantially to the same effect, and we will in the course of this Chapter deal with her evidence so far as it is relevant to Joseph LAU's case. In the following chapter, i.e. Chapter 7, we will further deal with her evidence so far as it is relevant to her own case. Obviously much of what we say regarding her evidence in this Chapter will be applicable also to our examination of her role in Chapter 7.

But for present purposes we can briefly summarise her evidence as follows:-

She had met Joseph LAU in about 1990 when both were students in the United States. They maintained contact when they returned to Hong Kong and at one stage both were employed within China Travel. There, she worked under Joseph LAU's supervision. Joseph LAU eventually left China Travel and moved to the job he held within the Chinney group of companies.

She said she had traded in stocks in Hong Kong since about 1992. Her trading was in 2nd and 3rd line shares and on a short-term basis. She had a trading account at Tai Fook where Mr. TANG was her account executive (as a result of Joseph LAU's suggestion) as well as one at Kingsway Securities Limited. She and Joseph LAU occasionally discussed the background of and general information concerning his company, and for her investment activities she paid particular attention to Chinney and Hon Kwok Land (a related company).

She said around the end of 1998 she lent Joseph LAU about \$300,000 at his request and he did not repay that debt. That was the major reason why on the 24th September when she wished to purchase more Chinney shares she decided to ask Joseph LAU to purchase them

for her. Another reason was that she was busy that afternoon with a meeting. But she hoped that if Joseph LAU purchased the shares she asked him to purchase, then when it came time for their settlement, he would include the amount of the loan in the settlement monies. She was embarrassed to ask him directly for the money.

Accordingly she asked Joseph LAU to purchase Chinney shares for her that afternoon. She told him she was going to be busy and could not purchase the shares herself.

We are quite satisfied that both Joseph LAU and Rozalia PUI were lying when they proffered that version of events to the Tribunal.

Firstly, we have no doubt that any suggestion that Rozalia PUI could not buy shares on her own account that afternoon because she was at a meeting or was going to be busy is nonsense. Mr. TANG was her account executive as he was Joseph LAU's. There was no reason Rozalia PUI could not have given Mr. TANG reasonably detailed instructions as to how to go about purchasing whatever quantity of shares she required. The suggestion that Joseph LAU would have purchased her shares with greater efficiency or circumspection is facile. The reality was that Joseph LAU used Mr. TANG to purchase the shares in any event. If Rozalia PUI really thought the price of Chinney would rise as a result of market forces as she said in her evidence then it is not difficult to imagine a set of instructions to Mr. TANG which would allow the purchase of the 8-9 million shares she wished for about \$1 million, but with a safety valve of discontinuance of purchase if the price dropped.

As it turned out Joseph LAU failed to purchase the 8-9 million shares Rozalia PUI said she wanted. He achieved only 6 million shares at a cost of over \$1 million.

We further think it a specious suggestion that Joseph LAU, a corporate finance director of a limited company, was in a better more convenient position to buy the shares than Rozalia PUI herself. Both were busy people. It seems unlikely that Rozalia PUI would assume Joseph LAU had the time to spend on her share dealing when she did not.

Secondly, we place no weight on Rozalia PUI's convoluted explanation as to using Joseph LAU to purchase shares for her in the hopes he would, at settlement, spontaneously repay the loan she said he owed her. If she wished to adopt such a roundabout way of having any such loan repaid she could have done so at any time with any of her share purchases. Rozalia PUI was an executive. She was in a position of responsibility within China Travel. We are satisfied she was more than capable of reminding Joseph LAU of the outstanding debt without resorting to such an uncertain subterfuge. We do not think there is any truth in her evidence in this regard.

Thirdly, it is apparent from the tape-recorded conversations Joseph LAU was having with Mr. TANG during and after his purchase of the 6 million Chinney shares in the afternoon of 24th September that Joseph LAU was purchasing these shares on his own behalf. His instructions to Mr. TANG were in our view given in a manner which was redolent of his own decision making and interest in the transactions rather than him simply attempting to carry out any instructions, general or detailed, that he may have been given by Rozalia PUI.

Indeed if Joseph LAU were purchasing these shares on behalf of Rozalia PUI then it seems incomprehensible to us that he would not have told Mr. TANG that at the time of purchase rather than telling Mr. TANG about the "deal" or "agreement" which had been reached with SUNDAY. He was obviously representing to Mr. TANG at that time not that he was an uninterested purchaser of Chinney shares for a friend, but that he was vigorously buying the shares on his own behalf as a result of the completion of some deal he had been involved in which would cause their price to rise when that information were released.

Fourthly, Joseph LAU paid for the cost of the Chinney shares he had purchased on the afternoon of 24th September, from his current account with the HSBC no. 399722833 on the 29th September 1999, by way of a cheque for \$862,476.39 (which represented the balance outstanding to Tai Fook after taking into account the balance of funds already in his Tai Fook account of some \$485,000).

Within his HSBC current account at the time he drew the cheque for \$862,476.39 was a balance of \$1,005,182. That balance was almost entirely due to the deposit of a cheque for \$1 million on the 28th September in that account. That \$1 million cheque was issued by Conway Contracting, which was where Joseph LAU's present wife was a director and 40% shareholder. At that time they were not married but were planning to be. He said she had borrowed the \$1 million from her company against her future share in profits for the purpose of their purchasing a flat. So when the \$1 million cheque was paid into his bank account he simply used the funds to pay the balance of the money he owed Tai Fook. Again, the evidence of Joseph LAU that the \$1 million cheque was for the purchase of a flat for he and his present wife and was coincidentally available to him when he was to settle with Tai Fook for the purchase of Chinney shares on the afternoon of 24th September we reject.

We do not accept that the cheque was in fact borrowed to pay for a flat. Joseph LAU admitted that he and his wife had no specific premises in mind and had not contacted any property agent. In those circumstances the borrowing of \$1 million from his wife's company for the purpose of purchasing a flat seems somewhat unreal. We accept from the evidence of Mr. WOO King Wai the General Manager of Conway Contracting that he was told by Corina AU YEUNG (Joseph LAU's present wife) that she wished to borrow the money to purchase a flat, but in our view that was not so. The cheque itself was made out in favour of Joseph LAU. It was a bearer cheque. It was dated 27th September and paid into Joseph LAU's account on the 28th September the same day Joseph LAU drew a cheque in favour of Tai Fook. All of that suggests a degree of urgency in getting funds into Joseph LAU's account. And during one of his recorded conversations with Mr. TANG on 24th September, Joseph LAU told Mr. TANG that he could pay \$1 million into his Tai Fook account on "Monday" (which indeed would have been 27th September, the date appearing on the Conway Contracting cheque).

It seems to us that the high likelihood is that Joseph LAU asked his present wife to borrow the money on his behalf from her company as a matter of urgency so as to enable him to pay his Tai Fook debt. We might add that even if this were not so the whole financial inconvenience

to Joseph LAU of purchasing and paying for the shares he said he purchased for Rozalia PUI renders his evidence of doing her that as a favour unrealistic. Why not simply ask her to pay?

The answer to that question given by both Joseph LAU and Rozalia PUI was that as she intended to hold the shares for only a short time Joseph LAU would be quickly reimbursed.

With respect to that logic Joseph LAU's account was operating on a T+2 basis. In other words he would likely have to pay for the shares prior to their eventual sale. That was even more the case as a result of Chinney shares being suspended on the 24th September, a fact which we have found Joseph LAU was aware of.

In short, we find that both Joseph LAU's and Rozalia PUI's evidence as to the method of payment for the Chinney share purchases made on Joseph LAU's account at Tai Fook in the afternoon of 24th September to be of no weight and we reject it.

We might conclude in this regard by saying that in Joseph LAU and Rozalia PUI's evidence (and including their statements to the SFC) there are a number of inconsistencies which in our view strongly suggest that they finally gave their evidence to this Tribunal with a content designed to explain away what they perceived as the case against Joseph LAU. That approach to their evidence resulted in the inconsistencies between their evidence in its final form before this Tribunal and what they had originally told their SFC interviewers. Those inconsistencies further reduced their credibility. Those inconsistencies were exemplified by Rozalia PUI's insistence to the SFC investigators that she had asked Joseph LAU to purchase the 6 million Chinney shares for her as she was busy with a meeting that afternoon. Evidence was called before us from her colleague at China Travel at the time, HO Wai Wah, whose statement was read without challenge, to the effect that China Travel's records showed meetings on the hotel construction project Rozalia PUI was responsible for at that time were held on the 22nd and 29th September 1999, and were usually held on Wednesdays. Mr. LEE Kam Ming, the onsite contractor Rozalia PUI would meet with, said the meetings held at the site were very informal, though if the meeting was held at China Travel

they were more formal, but that phone calls could be made. He said phone calls were difficult to make only at the architects meetings which were held on the 9th and 23rd of each month. Once that evidence was before the Tribunal Rozalia PUI's evidence altered somewhat from what she had told the SFC interviewers and she told us the primary reason she asked Joseph LAU to purchase the shares was to give him an opportunity to repay the debt he owed her.

Accordingly for the above recited reasons we reject the evidence of Joseph LAU and Rozalia PUI to the effect that Joseph LAU purchased Chinney shares on the afternoon of 24th September on behalf of Rozalia PUI.

We are satisfied from the other evidence before us that Joseph LAU purchased the shares on his own behalf. A comparison of the share trading accounts of Joseph LAU and Rozalia PUI at Tai Fook suggests very strongly that Joseph LAU did not purchase the 6,000,000 Chinney shares on the afternoon of 24th September for Rozalia PUI, but rather did so for himself. That is because trading in Chinney by Rozalia PUI on her account was at times in quite the opposite direction to that which was occurring with the 6,000,000 Chinney shares traded in Joseph LAU's account.

For example in the morning of the 24th September she had purchased, in 3 batches, 750,000 Chinney shares. During that same morning and early afternoon Joseph LAU sold his entire stock of 2,950,000 Chinney shares. That was of course before the afternoon meeting. But the operation of the two accounts show separate minds at work and that trend continued throughout the days after the 24th September.

On the 30th September when Joseph LAU sold 3,000,000 Chinney shares in his account at Tai Fook, Rozalia PUI purchased 100,000 in hers.

By the 13th October when Joseph LAU sold 500,000 Chinney shares in his account Rozalia PUI had sold all of her Chinney shares on

the 6th October and 8th October. There were still 2,500,000 Chinney shares in Joseph LAU's account which were not sold until 19th October.

It seems to us that Rozalia PUI, if she owned the remaining 3,000,000 shares in Joseph LAU's account, after the 30th September sale of 3,000,000 shares to cover Joseph LAU's costs, had no reason to approach those in her own account in a way different to those in Joseph LAU's account. The operation of the two accounts show two different minds at work. Further, as a general but important comment from the history of her account it is obvious Rozalia PUI was a relatively small time operator. The expenditure of \$1 million in a single share speculation on one afternoon was entirely out of character.

In our judgment it is more than highly probable Joseph LAU purchased those Chinney shares in his account for himself. That is plain also from the timing of his purchase of the shares immediately after he left the meeting and the contents of his recorded conversations with Mr. TANG. His method of payment for those shares from his own bank account from funds borrowed by his wife underlines that conclusion.

Before we conclude this particular issue we should deal with one further matter which arose on the evidence before us. It was Joseph LAU's and Rozalia PUI's evidence that a series of payments were made by Joseph LAU to Rozalia PUI whereby Joseph LAU paid Rozalia PUI her profits from her purchase of the 6,000,000 Chinney shares and the loan amount he owed her.

On the 30th September 3,000,000 of the 6,000,000 Chinney shares purchased by Joseph LAU on the afternoon of 24th September were sold by him. That resulted in \$1,187,394 being paid to him by a Tai Fook cheque dated 5th October 1999. Joseph LAU banked that cheque into his HSBC account and retained those funds. According to both Joseph LAU and Rozalia PUI that amount of money, generated by the sale of 3,000,000 of the purchased Chinney shares, was retained by Joseph LAU to reimburse him for the cost of purchase of the whole of the 6,000,000 shares.

He said the next sales of the balance of the shares purchased in the afternoon of 24th September occurred on the 13th October and the 19th October by which time all the 6,000,000 Chinney shares purchased on the 24th September had been disposed of.

As a result of the sales of 13th October Tai Fook sent Joseph LAU a cheque dated 15th October in the amount of \$221,635. As a result of the sales of 19th October Tai Fook sent Joseph LAU a cheque dated 21st October for \$720,838.

He said on the 20th October (according to the date on the cheque) he issued to Rozalia PUI a cheque for \$221,635 and on the 21st October a cheque for \$720,838. Those two cheques represented the profit realized by the sale of the remaining 3,000,000 Chinney shares. He also issued a cheque to her dated the 29th October for \$387,933 which he described as a mistaken overpayment of the debt of \$280,000 he owed her. In Rozalia PUI's evidence she said she did not make any particular calculations concerning these payments and did not notice the overpayment.

On the face of it these transactions support Joseph LAU's and Rozalia PUI's assertions that Joseph LAU had purchased the 6 million Chinney shares on the afternoon of 24th September on behalf of Rozalia PUI. But there are certain matters which caused us to reject these transactions as support for the evidence of Joseph LAU and Rozalia PUI.

Firstly, the SFC sent a letter by fax to Chinney dated the 15th October 1999 alerting Dr. WONG and Mr. FUNG to the SFC concerns as to dealings in Chinney shares conducted prior to the announcement on 29th September of the "top-up" placement and requesting that the names of all those individuals within the group aware of the proposed placement be provided. Mr. FUNG gave evidence, which we accept as it is supported by the documentation and correspondence, that Dr. WONG handed that letter to him asking him to deal with it. According to his SFC statement of 30th March 2000 Mr. FUNG then spoke to various people including Joseph LAU for the purpose of replying to the SFC. In his oral evidence, Mr. FUNG said he would certainly have shown the SFC letter of 15th October 1999 to Joseph

LAU. He said as Joseph LAU was a director of Multi-Investment he must have read the letter. According to Mr. FUNG, Joseph LAU would have been summoned to Dr. WONG's office with Mr. FUNG to discuss the letter. Additionally, it was the practice of the Chinney Group that all directors would read SFC letters. A reply dated 23rd October 1999 was sent to the SFC under the hand of Mr. FUNG. That reply provided Joseph LAU's personal details as one of the persons involved in the placement. Subsequently the SFC, for separate reasons, wished to know who had seen their letter of the 15th October 1999. They made that request by way of a letter dated 22nd March 2000. In his reply to that letter Mr. FUNG provided the names of five people (including himself) who had seen the SFC letter of 15th October 1999. Joseph LAU was the fourth person on that list in his capacity as a director of Multi-Investment.

We are satisfied that it is highly likely Joseph LAU, regardless of his denial, saw the SFC letter dated 15th October 1999 and was alerted to the SFC investigation on or shortly after that date.

That in our view explains Mr. TANG's recollection of Joseph LAU asking him in October 1999 if the money withdrawals relating to the share purchases Joseph LAU made on the afternoon of 24th September could be in some way be regarded or "treated" as belonging to Rozalia PUI's account. Mr. TANG recollects this conversation in his evidence in chief as being between 5th–19th October 1999, and later in cross-examination by Mr. Harris for Mr. LAU as probably being around the 5th October and finally in re-examination by Mr. IP as being around or on the 19th October. Taken together with all of the other evidence we are satisfied Joseph LAU was attempting to cover his tracks once he had become aware of the SFC enquiry into Chinney share trading by those involved in the placement negotiations.

We accept also Mr. TANG's evidence that Joseph LAU had attempted to convince Mr. TANG to provide false information to, or at least not to cooperate with, the SFC interviewers. As a result of that Mr. TANG told the Tribunal that he had told the SFC interviewer during his first interview of 7th January 2000 that Joseph LAU had told him that the shares were being purchased on behalf of Rozalia PUI. Mr. TANG was not a particularly good witness and seemed at ease with agreeing to

conflicting suggestions put to him in cross-examination and re-examination. But we accept the tenor of his evidence that he had had approaches made to him by Joseph LAU both before and after he, Mr. TANG, had spoken to the SFC interviewers as to what had been, or could be, said by Mr. TANG to those interviewers.

Further, after Rozalia PUI had been interviewed for the first time by the SFC on the 12th February 2000, some four minutes after the lengthy interview concluded, she telephoned Joseph LAU's mobile phone and they then had a 73-minute conversation. Both said in evidence they spoke only of casual matters and did not discuss the contents of Rozalia PUI's interview. With respect to that we reject their evidence. We are satisfied Joseph LAU, from that evidence and the evidence of Mr. TANG was actively engaged in keeping abreast of what the SFC was being told. We are satisfied also it was highly probable he was trying to pervert the SFC investigation.

That conclusion is strengthened, not weakened, in our view by the existence of three receipts signed by Rozalia PUI. Those receipts were issued in the normal course by Tai Fook when monies representing the sale of the 6 million Chinney shares were paid to Joseph LAU on the 5th October 1999 (\$1,187,394); 15th October 1999 (\$221,635) and 21st October 1999 (\$720,838). He said in his evidence, and was supported by Rozalia PUI in hers that upon payment by his cheques to Rozalia PUI of these sums he got her to sign the receipts provided to him by Tai Fook.

We can see no credible reason for him doing so in the normal course of events. Neither of them, according to their evidence, had worried about documentation for the alleged purchase of Chinney shares by Joseph LAU on behalf of Rozalia PUI on the 24th September. They had operated on trust and in a most informal way. We do not accept that there was a sudden surge of documentary formality arising between them so far as these receipts were concerned. In our view this was another "cover-up" by Joseph LAU to disguise the true position, i.e. that he had purchased the 6 million Chinney shares on the afternoon of 24th September for himself.

He said he had Rozalia PUI sign the receipts and intended to return them to Tai Fook as he was supposed to do. Doing that would simply have caused confusion as the receipts were directed to Joseph LAU as the account holder. Another person's signature placed upon the receipts as "authorized signatory" would not have made sense. Further, Rozalia PUI signed receipts not only for the two cheques representing the "profits" paid to her, but also for the proceeds of sale of the 3 million Chinney shares which both she and Joseph LAU said was retained by Joseph LAU to reimburse him for the cost of the whole of the 6 million shares. If that money was properly retained by Joseph LAU because of the arrangement between them then what purpose was there for Rozalia PUI to sign a receipt for it when she simply never received it? There was, in short, no basis in reality for the evidence of Joseph LAU and Rozalia PUI concerning the coming into existence of the three receipts. All in all the evidence of repayments of profits by Joseph LAU to Rozalia PUI in respect of the sale of the 6,000,000 Chinney shares in our view was a result of Joseph LAU becoming aware of the SFC investigation after the 15th October 1999.

That there was an element of panic involved in this reaction is evidenced by the inconsistency between his evidence that a \$280,000 debt was repaid by him at the same time to Rozalia PUI, but that the actual sum paid to her was some \$260,000 overpaid.

In fact his evidence in this regard even on his own version of events seems to be in error as the overpayment was \$281,439. Assuming as Joseph LAU and Rozalia PUI say that the proceeds of the sale of the first batch of 3,000,000 Chinney shares on the 30th September in the sum of \$1,187,394 (though again in fact including brokerage and stamp duty the cost of the shares was \$1,190,142 even excluding the amount of any levy) were retained by Joseph LAU to reimburse him for the cost of purchase of the whole of the 6,000,000 shares, then the proceeds of sale of the remaining 3,000,000 shares represented pure profit and were paid to Joseph LAU's account by two Tai Fook cheques in the sums of \$221,635 and \$720,838 dated 15th October and 21st October respectively. That is a total profit of \$942,473. Together with the \$280,000 loan both implicated parties allege was outstanding, Joseph LAU's total repayment to Rozalia PUI should have been \$1,222,473.

But in fact he paid to her by four cheques in amounts of \$173,506, \$221,635, \$720,838 (dated 19th October, 20th October and 21st October respectively and all three marked “profits for #385”, i.e. Chinney) and \$387,933 (dated 29th October and not specifically marked for any purpose) a total payment/repayment of \$1,503,912. That represents an overpayment of \$281,439.

We dismiss Joseph LAU's evidence that the overpayment was a miscalculation he did not notice at the time. He earned about \$130,000 a month from his employment within the Chinney Group. If these payments had been normal transactions we are sure he would have not made such a miscalculation. In our view in his hurry to set up these payments to Rozalia PUI he got the amounts wrong.

Finally, we should say this. The “profits” paid to Rozalia PUI went into her Hang Seng Bank account no. 154995882. Those monies (totalling \$942,473) accounted for the major part of its balance of \$1,177,095 on the 26th October 1999. On the 30th October Joseph LAU's fourth cheque (presumably on her evidence representing the mistaken overpayment of the \$280,000 loan) for \$387,933 was paid into the account. At the same time two further amounts of exactly \$1 million and \$3 million were paid in. That resulted in an account balance of \$5,512,261, of which about \$1.5 million was made up by Joseph LAU's four cheques.

Rozalia PUI in her evidence could not remember where the sums of \$1 million and \$3 million which were paid into her account had come from. We found that extraordinary. Her income was \$20,000 per month at that time and she got similar monthly amounts from her husband and her father. One would have expected her to remember where these monies came from. Further, on the 3rd November 1999 she paid out the whole \$5,500,000 odd in her account. She said she paid it into another of her bank accounts and then spent it on handbags, diamonds and other investments.

Her evidence in this regard again caused us considerable doubt about her veracity. We considered taking the matter further but

concluded further evidence of the flow of these funds would not carry our conclusions any further forward.

Conclusion

The purchases of Chinney shares by Joseph LAU on the afternoon of the 24th September 1999 were dealings undertaken by him on his own behalf whilst he was knowingly in possession of relevant information concerning Chinney, a corporation connected with him.

We identify those dealings by Joseph LAU as insider dealings, and him as an insider dealer, pursuant to section 9(1)(a) of the Ordinance.

CHAPTER 7

THE ROLE OF ROZALIA PUI

Rozalia PUI could in no way be considered as a person connected with Chinney. She was simply an associate of Joseph LAU.

Accordingly, we considered her role from the point of view of section 9(1)(e) of the Ordinance only. That is the only possible provision of the Ordinance under which she could be found to be an insider dealer.

Her trading history in Chinney shares was entirely, during periods we are concerned with, conducted in her Tai Fook account and was as follows:-

Date	Purchase	Sold	Amount (\$)
24/9/1999	750,000		(98,832)
30/9/1999	100,000		(35,154)
4/10/1999		200,000	89,605
5/10/1999	100,000		(32,647)
6/10/1999		100,000	36,835
8/10/1999		650,000	258,861

Rozalia PUI had not purchased Chinney shares prior to the 24th September. Accordingly she could in no way have purchased Chinney shares on her own account on the basis of any insider information relevant or otherwise relating to the direct placement proposal of 22nd September. By the time she made her purchases of 750,000 Chinney shares on the morning of 24th September the information concerning the “shelved” direct placement was in the public arena.¹²

¹² See Annexure “B”.

From the summaries of the evidence given in previous chapters of this Report, and particularly in Chapter 6, it will be obvious that Rozalia PUI at no time purchased Chinney shares on her account after the relevant information concerning the “top-up” placement came into being on the afternoon of the 24th September before trading in Chinney shares was suspended on that day. She subsequently purchased Chinney shares only after their resumption of trading on the 30th September and after the public announcement of the “top-up” placement on that date.

Accordingly, the only live consideration as to Rozalia PUI as a potential insider dealer which arose was as to whether she may have had an interest in the dealings conducted in Joseph LAU's trading account at Tai Fook when he purchased 6,000,000 Chinney shares between 3:17 p.m. and 3:29 p.m. on the 24th September by procuring him to do so after having learnt of the relevant information from him pursuant to section 9(1)(e) of the Ordinance.

For the reasons we have given in the previous chapter in dealing with Joseph LAU's role, we are entirely satisfied that the dealings in 6,000,000 Chinney shares conducted by him after 3:17 p.m. on the 24th September 1999, and before the suspension of trading on that day and therefore before the general publication of information concerning the “top-up” placement involving Messrs. POULIOT and SIEMENS on the 30th September, in his Tai Fook account were insider dealings he conducted entirely on his own behalf.

In arriving at that conclusion we rejected the evidence of both Joseph LAU and Rozalia PUI that the shares had been purchased by Joseph LAU for Rozalia PUI. We gave our reasons for disbelieving their evidence in that regard in Chapter 6.

Having rejected their evidence as unworthy of any credit, the remaining evidence going to suggest that Rozalia PUI may have had an interest in the 6,000,000 Chinney shares was simply what appeared to be a series of payments to her by Joseph LAU of profits from the purchase and sale of those 6,000,000 shares, evidenced by receipts signed by Rozalia PUI. We rejected that evidence as proof of Rozalia PUI having any interest in the 6,000,000 Chinney share dealings conducted by Joseph

LAU. We were entirely satisfied that the three cheques paid to Rozalia PUI marked to the effect they were her profits from the sale of those Chinney shares and the fourth cheque paid to her were part of a reasonably elaborate (but poorly executed) cover-up put together by Joseph LAU with Rozalia PUI's connivance so as to allow him to escape the SFC inquiry into Chinney share trading he realized was underway when he saw the SFC letter dated 15th October 1999 to that effect.

Moreover, there was never any evidence or real possibility that Joseph LAU during the relevant time frame of about between 3:00 p.m. to 3:30 p.m. on the 24th September spoke to Rozalia PUI after he left the meeting he had attended that afternoon, told her of what he had learnt and was then in return procured by her to trade in Chinney shares which he then did. There was neither evidence to suggest that happened nor any time or good reason for that rather convoluted sequence of events to occur. That would however have been the only possible basis on the evidence upon which section 9(1)(e) could inculcate Rozalia PUI in respect of the purchase by Joseph LAU of the 6,000,000 Chinney shares on the afternoon of the 24th September 1999.

Accordingly, for the reasons we gave in Chapter 6 in determining the role of Joseph LAU as an insider dealer we are satisfied that, having rejected both his evidence and that of Rozalia PUI as to her interest in the 6,000,000 Chinney shares purchased by Joseph LAU in the afternoon of 24th September, Rozalia PUI's only role in those dealings was to assist Joseph LAU in his attempts to evade detection as an insider dealer.

Why would she do so? In our view the only real answer to that is her long standing friendship with Joseph LAU which involved some degree of a financial relationship and, perhaps, her finding herself fully committed to maintaining her false story once she had given it to the SFC interviewer at her very first interview on the 12th February 2000.

In that regard firstly Rozalia PUI, in our view, may well have been fed some general information concerning the placement Chinney was attempting on the 22nd September and 23rd of September 1999. That explains her purchase of 750,000 Chinney shares on the morning of 24th

September because even though the direct placement had been "shelved", she may well have been aware that there was a possibility that the placement efforts would continue. We emphasise however that there was no sufficient proof that there was ever any specific information transferred to her by Joseph LAU concerning either the direct placement of 22nd September or the "top-up" placement of 24th September.

There was no doubt there was earlier on some general dissemination of information relevant to share trading finding its way to her from Joseph LAU. That is evident in the similarity in their trading accounts of the stocks purchased. Both traded in Hon Kwok Land stocks and in Chinney stocks. Both purchased Chinney shares for the first time during the relevant period and she admitted they discussed his company affairs. From the transcript of her only recorded conversation with Eric TANG, held at 9:37 a.m. on 24th September it is obvious she sought information from Joseph LAU.¹³ There was obviously some form of financial relationship between them as well, as Joseph LAU paid Rozalia PUI sums of money which were well in excess of those needed for the "cover-up" exercise embarked upon by them in relation to the payment to Rozalia PUI of the profits of the 6,000,000 Chinney share dealings. It may be she was concerned about some aspects of their previous financial relationship so as to cause her to help Joseph LAU disguise his share dealings as her own.

In any event, we are satisfied that when events rapidly accelerated from about 2:30 p.m. in the meeting of the afternoon of 24th September 1999 so that an agreement in principle concerning the "top-up" placement was concluded or imminent by 3:00 p.m. on that day, things moved simply too quickly for there to have been time for Joseph LAU to have transferred the relevant information to Rozalia PUI. He was more interested in ensuring he had purchased as many Chinney shares as possible.

¹³ See Annexure "I".

Conclusion

Rozalia PUI simply did not receive the relevant information. She purchased no Chinney shares on her own behalf. She had no financial interest in those purchased by Joseph LAU. She was not an insider dealer. Her role could best be described as that of an individual who, because of her past friendship with Joseph LAU provided a false story to the SFC in an attempt to help him extricate himself from the SFC investigation and who by doing so found herself implicated in that investigation. We make no finding of insider dealing against her.

CHAPTER 8

CONCLUSION

In response to the notice provided to the Tribunal under the hand of the Financial Secretary dated 25th September 2002 we have determined as follows:-

(a) There had been insider dealing in relation to Chinney Alliance Group Limited shares during the period from 22nd September 1999 to 4th October 1999 inclusive. That insider dealing occurred on the afternoon of the 24th September 1999 when Mr. LAU Chung Yin Joseph purchased six million of the said shares.

(b) The sole insider dealer was Mr. LAU Chung Yin Joseph.

We deal with the amount we find to be the attributable profit for the purposes of section 16(3)(c) of the Ordinance in the following chapter when we consider also what orders to make and penalties to impose on Joseph LAU pursuant to section 23(1)(b) and (c) of the Ordinance.

A hearing in that regard was held on 22nd December 2004 subsequent to the present determinations being notified to the Financial Secretary, the parties and counsel assisting on the 5th November 2004.

CHAPTER 9

PENALTIES AND CONSEQUENTIAL ORDERS

On the 5th November 2004 this Tribunal completed an interim report in this inquiry and subsequently provided copies to the Financial Secretary, counsel assisting and the implicated parties.

In that Report we set out our reasons for finding that Joseph LAU Chung Yin was an insider dealer in terms of paragraphs (a) and (b) of the Financial Secretary's Notice of 25th September 2002. That Report further stated our reasons for finding the only other implicated party namely Rozalia PUI Li not to be an insider dealer.

Following our Interim Report we received a further statement from Stella FUNG Sau Hong (TW 15) dated 3rd December 2004 addressing the calculation of the amount of profit both actual and notional obtained by Joseph LAU as a result in his insider dealing in Chinney shares, for the purposes of paragraph (c) of the Financial Secretary's Notice.

A hearing date was set down for the 22nd December 2004 to deal with the further evidence of Stella FUNG and for any representations to be made by counsel assisting and by counsel for Joseph LAU. Rozalia PUI sought to make no submission as to costs or otherwise.

On that day the 22nd December 2004 we accepted the evidence of Stella FUNG concerning her calculation of the profit made by Joseph LAU in his insider dealing.

There was nothing controversial in her approach to the calculation of that profit. She adopted the principles of *The Insider Dealing Tribunal - v - Shek Mei Ling (1999) 2HKC 1*. For the purposes of the present inquiry, where Joseph LAU had no pre-existing shareholding in Chinney prior to his insider dealing the applicable principles, as relied upon by Stella FUNG in her statement, were as follows:-

“... ”

- (b) Where there was no existing shareholding involved, then profit gained is:
 - (i) if sale was before publication of relevant information, actual realised profit;
 - (ii) if sale was after publication of relevant information but before full dissemination, actual realised profit; and
 - (iii) if there is no sale and/or sale after full dissemination of published relevant information, notional profit. Notional profit is the difference between the purchase price of a security and the value of the security as measured by the re-rated trading price of the security for a reasonable period after public dissemination of relevant information.
- (c) Transaction costs, if any, are deducted from the gross profit gained.”

We might comment on one matter concerning the method of Stella FUNG's calculation of a re-rated trading price for Chinney shares following the announcement by Chinney on the 30th September of the details of its placement of 205,318,985 Chinney shares at \$0.11 per share to Mr. POULIOT and to Mr. SIEMENS' company Goldstone.

Stella FUNG took a re-rating period of two trading days, i.e. the 30th September (the day trading in Chinney shares resumed) and the 4th October. They were sequential trading days as there was no trading in the Hong Kong market on 1st to 3rd October 1999.

She declined to incorporate into her re-rating calculation Chinney share prices on the 5th and 6th October. In our view she was right not to do so as on the 5th October there was a market rumour that Chinney was to place a further 400 million new shares onto the market at a price of \$0.30 each. That rumour was evidenced by various

newspaper articles published on the 6th October. That afternoon Chinney announced that it had no further share placement under negotiation, presumably in order to rebut that rumour.

Quite what the circumstances were to enable Chinney to make that announcement are not the subject matter of this inquiry, but we note with some surprise that on 13th October Chinney in fact announced a new placement of 450 million new shares at 30 cents each.

The point Stella FUNG made before us which we accept is that the events of the 5th and 6th October would have “skewed” her re-rating of the Chinney share price following the announcement of 30th September if she had taken the price of Chinney shares on the 5th and 6th October into account in her re-rating of the shares. We also are of the view that the two days she did take into account, i.e. the 30th September and 4th October were sufficient due to the time gap between them. We are satisfied that the information released on the 30th September would have been fully disseminated in the market by the 4th October.

Accordingly we accept:-

- (1) that the 3,000,000 Chinney shares sold by Joseph LAU on the 30th September 1999 provided him with an actual profit of \$592,738 net of transaction costs;
- (2) that the 3,000,000 Chinney shares retained by Joseph LAU after the announcement of 30th September (but sold by him some weeks later) earned him a notional profit at the end of the re-rating period, that is by the 4th October 1999, of \$725,748 net of transaction costs. That is based upon a re-rated share price of \$0.442 per share.

Those findings and calculations are summarised in the following table:-

Date	Shares Bought	Shares Sold	Amount (\$)*
24/9/1999	6,000,000	0	(1,190,267)
30/9/1999	0	3,000,000	1,187,871
Notional 30/9/99-4/10/99	0	Notional 3,000,000	1,320,882 [†]
Total	6,000,000	6,000,000	\$1,318,486

* Net of transaction cost

[†] Re-rated value

Finding as to amount of profit made by Joseph LAU

On the basis of those matters we are satisfied that the amount of profit made by Joseph LAU in his insider dealing in Chinney shares was in total \$1,318,486, and we answer the question raised by paragraph (c) of the Financial Secretary's Notice accordingly.

Orders made

We will now proceed to deal with the orders we make in respect of Joseph LAU.

Two sections of the Ordinance are relevant.

Firstly, section 23 is in these terms:-

“23. Orders etc. of Tribunal

(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 – (*Amended 61 of 1995 s. 8*)

- (a) an order that that person shall not, without the leave of the Court of First Instance, 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; (*Amended 25 of 1998 s. 2*)

- (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.

(2) The Tribunal shall not make an order in respect of any person under subsection (1) without first giving the person, and, in the case of a person that is a corporation, an officer concerned in the management of the corporation, an opportunity of being heard.”

Section 27 is in these terms:-

“27. Expenses of investigation and inquiry

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.

(Amended 61 of 1995 s. 11)”

Section 23(1)(a)

In our view Joseph LAU's insider dealing was cynical and planned. It is obvious from the recorded telephone conversations he had with Eric TANG that he had executed his insider dealing, albeit in a somewhat amateurish way, in a blatant manner on the 24th September.

We regard Joseph LAU's breach of the provisions of section 9(1)(a) of the Ordinance as serious. In our judgment a period of disqualification of 4 years from any managerial or director's role in respect of a listed company or other limited company is appropriate.

Accordingly we order that Joseph LAU shall not, without the leave of the Court of First Instance be a director, or a liquidator, or a receiver, or manager of the property of a listed company or of any other limited company, or in any way whether directly or indirectly be concerned or take part in the management of such a company for a period of 4 years.

Section 23(1)(b)

We accept from the evidence of Stella FUNG, as we have said, that the profit gained by Joseph LAU as a result of his insider dealing was \$1,318,486.

An order under section 23(1)(b) is designed so far as is fair and reasonable to separate the insider dealer from his profits attributable to his insider dealing.

In the present case there seems no good reason to depart from that purpose. In our view the fact that Joseph LAU, once he had learnt of the SFC investigation into these matters, chose to pay the amounts of profit he gained on the eventual sale of the Chinney shares to Rozalia PUI in an unsuccessful attempt to distance himself from his insider dealings has no bearing upon the fact that he had in fact made such a profit.

Accordingly we order that Joseph LAU Chung Yin pay to the Government of the Hong Kong Special Administrative Region the amount of \$1,318,486 pursuant to the provisions of section 23(1)(b) of the Ordinance.

Section 23(1)(c)

In determining what amount, if any, we should order Joseph LAU to pay as a penalty under the provisions of section 23(1)(c) of the Ordinance we take into account the totality of the financial orders made against him and we bear in mind that Joseph LAU is presently unemployed (though it was not suggested he could not afford the level of penalty we propose) and that his wife appears to be seriously ill.

In our view, balancing those matters advanced in mitigation before us with the circumstances of the insider dealing itself and the Hong Kong community's interest in the deterrence of insider dealers we regard a penalty of \$700,000 as appropriate.

Accordingly we order that Joseph LAU Chung Yin pay to the Government of the Hong Kong Special Administrative Region a penalty pursuant to the provisions of section 23(1)(c) of the Ordinance in the amount of \$700,000.

Section 27

The costs of the present inquiry were in large part occasioned by Joseph LAU. That includes in large measure the costs related to that part of our function which was directed towards inquiring into the role of Rozalia PUI. That is because we are satisfied, for the reasons we have given in Chapters 6 and 7 of this Report, that Rozalia PUI's involvement and her assertion that the Chinney share transactions were her own was brought about by her attempts to cover up the role of Joseph LAU.

Her role in this regard we are satisfied was brought about primarily at the instigation of Joseph LAU though we appreciate that she was, certainly initially, a willing participant in the attempted cover-up, and her own actions in that regard brought about a substantial part of the present inquiry. If we were empowered under the Ordinance to do so we would have ordered her to pay a substantial part of the expenses of this inquiry.

Accordingly in our judgment Joseph LAU should pay \$1,800,000 of the total expenses of \$2,923,355.02 of this inquiry.¹⁴ We do not order him to pay the full expenses as we consider that to be too onerous. We also believe that some recognition should be given to the

¹⁴ The total expenses comprise:

1. Tribunal's expenses \$1,688,890.95
2. Department of Justice expenses \$1,198,064.07
3. SFC expenses \$36,400.00.

sensible approach taken by him (through his counsel Mr. Jonathan Harris) in agreeing much of the evidence called before the Tribunal. We might add that the expenses incurred by the Department of Justice in respect of obtaining Mr. Toby Heale as an expert witness and costs incidental thereto are not part of our calculation of expenses as Mr. Heale's evidence was ruled inadmissible by the Tribunal (see Annexure "E").

Summary of Findings and Orders Made

In answer to paragraph (c) of the Financial Secretary's Notice pursuant to section 16(2) of the Securities (Insider Dealing) Ordinance Cap. 395 dated 25th September 2002, we find the profit gained by Joseph LAU Chung Yin as a result of his insider dealing to be HK\$1,318,486.

Section 23(1)(a)

Joseph LAU Chung Yin is disqualified from acting as a director or manager or otherwise as stated above, of listed and limited companies for a period of 4 years.

Section 23(1)(b)

Joseph LAU Chung Yin will pay the profits of HK\$1,318,486 of his insider dealing to the Government of the Hong Kong Special Administrative Region.


Section 23(1)(c)

Joseph LAU Chung Yin will pay a penalty of \$700,000 to the Government of the Hong Kong Special Administrative Region.

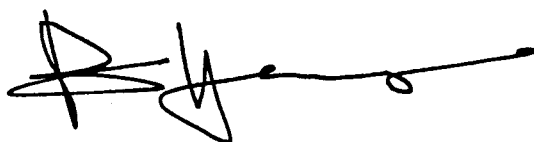
Section 27

Joseph LAU Chung Yin will pay \$1,800,000 of the costs of this inquiry to the Government of the Hong Kong Special Administrative Region.

We finally order that in respect of all financial payments we have ordered he make that Joseph LAU have 28 days to pay from the date these orders are served upon him pursuant to section 23(5) of the Ordinance.

A handwritten signature in black ink, featuring a large, stylized 'M' followed by a cursive 'cMahon'.

The Honourable Mr. Justice McMahon
Chairman

A handwritten signature in black ink, starting with a large 'Y' and ending with a long horizontal stroke.

Mr. Benny YEUNG Yuen Bun
Member

A handwritten signature in black ink, featuring a large 'P' and a cursive 'ang'.

Mr. PANG Hon Chung
Member

24th December 2004

ANNEXURES

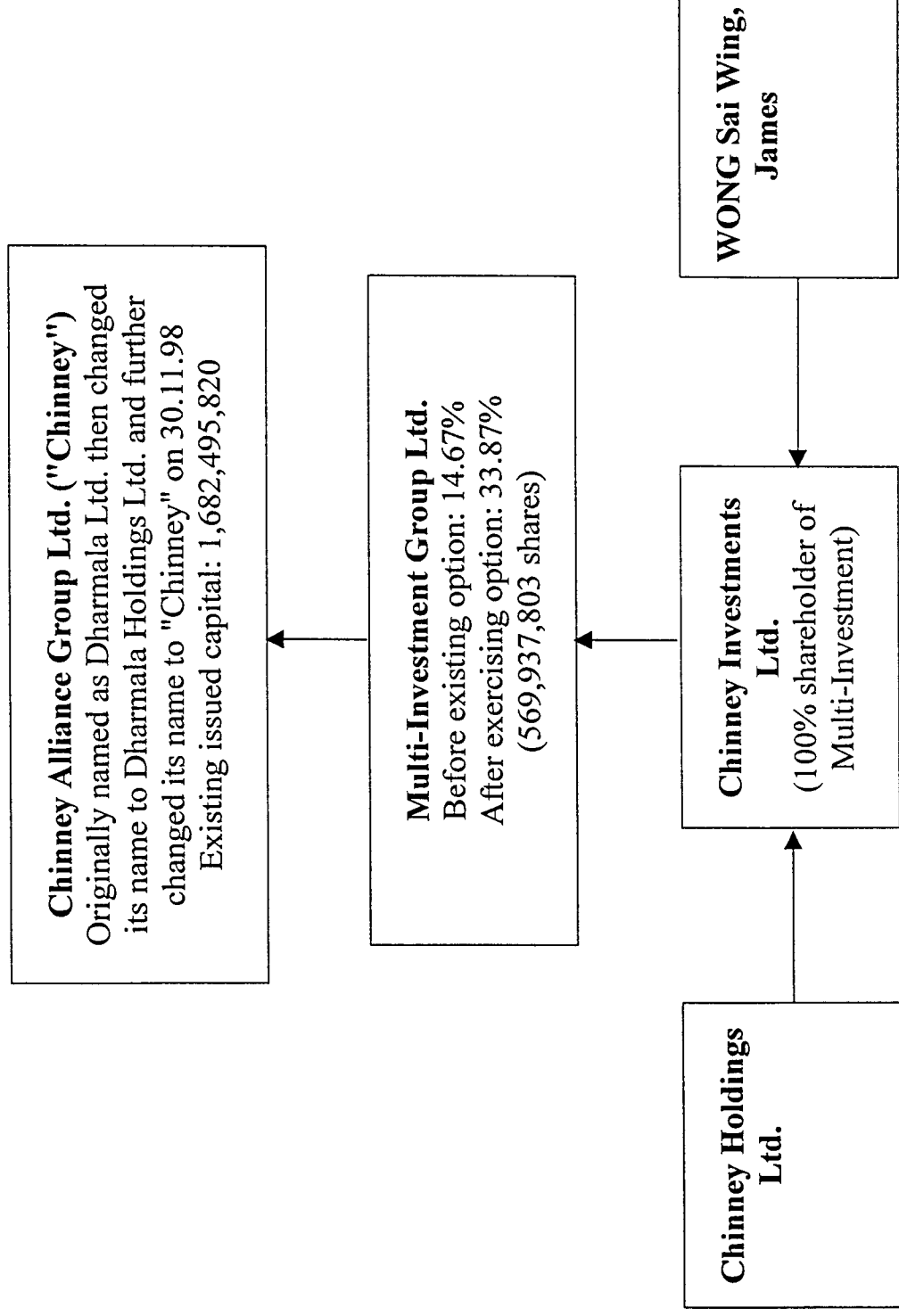
- Annexure A — CHARTS SUMMARISING THE STRUCTURE OF THE CHINNEY GROUP
- Substantial Shareholdings of Chinney Alliance Group Ltd. before the Placement and Subscription
 - Substantial Shareholdings of Chinney Alliance Group Ltd. after the Placement and Subscription
- Annexure B — ANNOUNCEMENT OF CHINNEY ALLIANCE GROUP LIMITED PUBLISHED IN THE PRESS ON 24TH SEPTEMBER 1999
- Annexure C — A HISTORY OF CHINNEY'S SHARE PRICE AND TURNOVER
- Annexure D — ANNOUNCEMENT OF CHINNEY ALLIANCE GROUP LIMITED PUBLISHED IN THE PRESS ON 30TH SEPTEMBER 1999
- Annexure E — RULING
- Annexure F — THE RELEVANT TRADING HISTORY OF JOSEPH LAU'S ACCOUNT WITH TAI FOOK SECURITIES COMPANY LIMITED
- Annexure G — THE RELEVANT TRADING HISTORY OF ROZALIA PUI'S ACCOUNT WITH TAI FOOK SECURITIES COMPANY LIMITED
- Annexure H — TELEPHONE CALLS BETWEEN JOSEPH LAU AND ERIC TANG IN TRANSCRIPT FORM
- Annexure I — TELEPHONE CALLS BETWEEN ERIC TANG AND ROZALIA PUI IN TRANSCRIPT FORM

CHARTS SUMMARISING THE STRUCTURE OF
THE CHINNEY GROUP

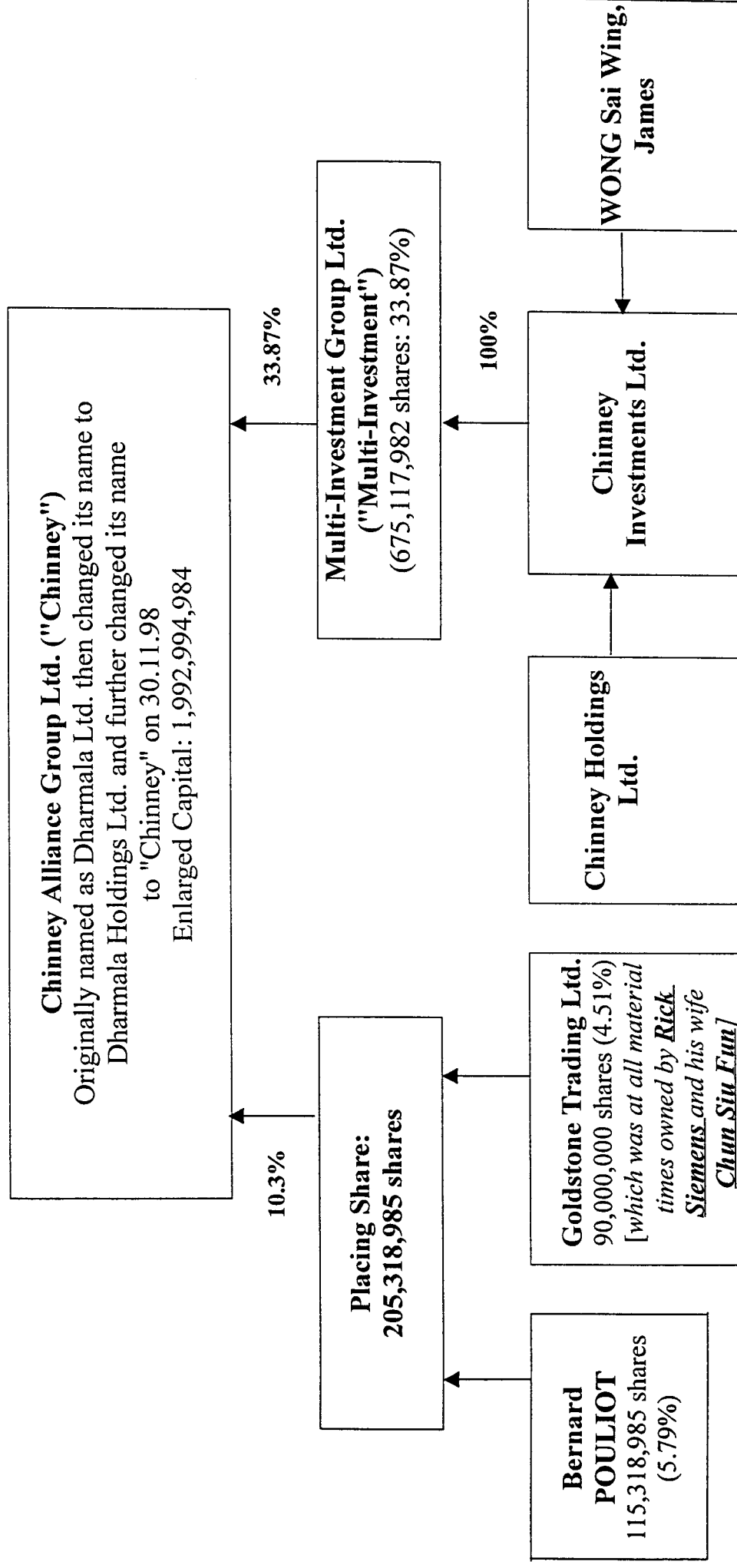
- Substantial Shareholdings of Chinney Alliance Group Ltd.
before the Placement and Subscription
- Substantial Shareholdings of Chinney Alliance Group Ltd.
after the Placement and Subscription

Substantial Shareholdings of Chinney Alliance Group Limited

before the Placement and Subscription



Substantial Shareholdings of Chinney Alliance Group Limited
after the Placement and Subscription



Annexure “B”

ANNOUNCEMENT OF CHINNEY ALLIANCE GROUP LIMITED
PUBLISHED ON THE PRESS DATED 24TH SEPTEMBER 1999

The Stock Exchange of Hong Kong Limited takes no responsibility for the contents of this announcement, makes no representation as to its accuracy or completeness and expressly disclaims any liability whatsoever for any loss howsoever arising from or in reliance upon the whole or any part of the contents of this announcement.

**Chinney Alliance Group Limited**

(Incorporated in Bermuda with limited liability)

ANNOUNCEMENT

Termination of negotiation relating to placement of new shares of the Company.

At the request of the Company, trading in the shares of the Company was suspended with effect from 10:00 a.m. today, pending an announcement on the placement of the new shares of the Company. The initial plan was to place about 20% new shares to independent third parties with the proviso that a proportional number of such shares was to be subscribed by Multi-Investment Group Limited, a substantial shareholder of the Company, at the same placing price. The placing, as subsequently clarified with The Stock Exchange of Hong Kong Limited (the "Stock Exchange"), would be a connected transaction requiring independent shareholders' approval.

As a result, the placing was shelved and application has been made to the Stock Exchange to resume trading of the shares of the Company with effect from 10:00 a.m. tomorrow.

By Order of the Board
Stephen Sek-Kee Yu
Director

Hong Kong SAR, 23rd September, 1999

香港聯合交易所有限公司對本公佈之內容概不負責，對其準確性或完整性亦不發表任何聲明，並明確表示概不就因本公佈全部或任何部份內容而產生或因倚賴該等內容而引致之任何損失承擔任何責任。



建聯集團有限公司
Chinney Alliance Group Limited

(於百慕達註冊成立之有限公司)

公 佈

終止磋商有關配售本公司新股之事宜。

應本公司之要求，本公司之股份由本日上午十時正開始暫停買賣，有待刊登有關配售本公司新股之公佈。初時之計劃為配售約20%之新股予獨立第三者，附有條件規定該等股份其中一個比例數目將由本公司之主要股東Multi-Investment Group Limited以相同之配售價認購。後與香港聯合交易所有限公司（「聯交所」）澄清，該配售將構成一項關連交易而須獲獨立股東之批准。

因此，配售已被擱置，而本公司已向聯交所申請本公司之股份由明日上午十時正起恢復買賣。

承董事會命

董事

余錫祺

香港特別行政區，一九九九年九月二十三日

Annexure “C”

A HISTORY OF CHINNEY'S SHARE PRICE AND TURNOVER

TRADING STATISTIC

Stock Code : 00385 - CHINNEY ALLI

Date Range : Apr 1999 - Oct 1999 Total

Min Price : 0.030 Daily Average : 5,906,110,570 shares

Max Price : 0.520 Average Price : 41,014,657 shares

0.126

DATE	NO. OF SHARES	HIGH	LOW	CLOSE	% CHANGE	HSI
01/04/1999	0	0.034	0.034	0.034	0.00	11,072.980
07/04/1999	50,000	0.034	0.034	0.034	0.00	11,514.870
08/04/1999	100,000	0.032	0.032	0.032	-5.88	11,727.840
09/04/1999	116,000	0.033	0.030	0.033	3.13	11,914.100
12/04/1999	0	0.038	0.038	0.038	15.15	11,744.740
13/04/1999	140,000	0.040	0.040	0.040	5.26	11,899.690
14/04/1999	320,000	0.041	0.041	0.041	2.50	11,834.130
15/04/1999	1,820,000	0.040	0.040	0.040	-2.44	11,962.230
16/04/1999	0	0.040	0.040	0.040	0.00	12,490.300
19/04/1999	60,000	0.040	0.040	0.040	0.00	12,756.440
20/04/1999	1,020,000	0.040	0.040	0.040	0.00	12,409.780
21/04/1999	50,000	0.038	0.038	0.038	-5.00	12,543.760
22/04/1999	938,000	0.040	0.039	0.039	2.63	12,933.540
23/04/1999	400,000	0.043	0.039	0.043	10.26	12,905.300
25/04/1999	21,000	0.041	0.041	0.041	-4.65	13,127.020
27/04/1999	30,000	0.040	0.040	0.041	0.00	13,364.790
28/04/1999	0	0.041	0.041	0.041	0.00	13,133.390
29/04/1999	0	0.041	0.041	0.041	0.00	13,179.700
30/04/1999	60,000	0.041	0.041	0.041	0.00	13,333.200
03/05/1999	960,000	0.042	0.041	0.047	14.63	13,337.070
04/05/1999	190,000	0.056	0.050	0.056	19.15	13,559.690
05/05/1999	6,770,000	0.108	0.055	0.106	89.29	13,586.210
06/05/1999	8,700,000	0.106	0.093	0.097	-8.49	13,570.240
07/05/1999	3,825,000	0.100	0.083	0.083	-14.43	12,997.430
10/05/1999	3,260,000	0.092	0.084	0.087	4.82	13,163.200
11/05/1999	19,816,000	0.125	0.083	0.123	41.38	12,874.370
12/05/1999	53,517,000	0.164	0.132	0.158	28.46	13,012.970
13/05/1999	430,470,000	0.129	0.100	0.117	-25.95	13,053.670
14/05/1999	48,690,000	0.123	0.112	0.116	-0.85	12,855.520
17/05/1999	39,982,000	0.127	0.113	0.116	0.00	12,533.600
18/05/1999	22,130,000	0.123	0.118	0.121	4.31	12,627.100
19/05/1999	16,019,000	0.121	0.118	0.119	-1.65	12,403.140
20/05/1999	7,830,000	0.119	0.115	0.116	-2.52	12,375.420
21/05/1999	53,832,000	0.131	0.117	0.118	1.72	12,272.140
24/05/1999	15,810,000	0.119	0.112	0.114	-3.39	12,436.360
25/05/1999	5,470,000	0.115	0.113	0.114	0.00	12,346.910
26/05/1999	6,430,000	0.114	0.106	0.108	-5.26	12,409.160
27/05/1999	9,010,000	0.110	0.101	0.105	-2.78	12,308.530
28/05/1999	16,190,000	0.114	0.106	0.110	4.76	12,059.250
31/05/1999	9,460,000	0.110	0.101	0.102	-7.27	12,147.120

TRADING STATISTIC

Stock Code : 00385 - CHINNEY ALLI

Date Range : Apr 1999 - Oct 1999 Total : 5,906,110,570 shares
 Min Price : 0.030 Daily Average : 41,014,657 shares
 Max Price : 0.520 Average Price : 0.126

DATE	NO. OF SHARES	HIGH	LOW	CLOSE	% CHANGE	HSI
01/06/1999	9,685,000	0.106	0.101	0.104	1.96	12,363.560
02/06/1999	13,594,000	0.112	0.102	0.109	4.81	12,458.640
03/06/1999	5,960,000	0.112	0.104	0.106	-2.75	12,471.610
04/06/1999	3,150,000	0.109	0.104	0.104	-1.89	12,415.540
07/06/1999	1,436,000	0.105	0.103	0.105	0.96	12,837.390
08/06/1999	5,090,000	0.108	0.104	0.104	-0.95	12,864.860
09/06/1999	21,160,000	0.110	0.100	0.102	-1.92	12,874.420
10/06/1999	13,440,000	0.103	0.100	0.100	-1.96	12,839.210
11/06/1999	8,600,000	0.100	0.082	0.090	-10.00	12,992.760
14/06/1999	6,480,000	0.094	0.083	0.093	3.33	13,007.570
15/06/1999	2,200,000	0.092	0.089	0.090	-3.23	12,935.410
16/06/1999	2,900,000	0.090	0.085	0.089	-1.11	13,155.120
17/06/1999	23,520,000	0.116	0.088	0.113	26.97	13,408.270
21/06/1999	240,500,000	0.105	0.090	0.092	-18.58	13,994.230
22/06/1999	29,160,000	0.094	0.090	0.092	0.00	14,004.880
23/06/1999	18,750,000	0.093	0.088	0.090	-2.17	13,975.040
24/06/1999	17,100,000	0.091	0.086	0.086	-4.44	13,780.120
25/06/1999	19,080,000	0.096	0.087	0.089	3.49	13,784.510
28/06/1999	3,970,000	0.092	0.087	0.087	-2.25	13,840.290
29/06/1999	13,420,000	0.088	0.083	0.085	-2.30	13,765.490
30/06/1999	6,389,000	0.085	0.081	0.083	-2.35	13,532.140
02/07/1999	12,600,000	0.086	0.082	0.083	0.00	14,184.580
05/07/1999	13,252,000	0.090	0.082	0.090	8.43	14,506.740
06/07/1999	3,808,000	0.088	0.083	0.086	-4.44	14,372.610
07/07/1999	15,628,000	0.095	0.086	0.093	8.14	14,257.440
08/07/1999	29,920,000	0.103	0.092	0.098	5.38	14,225.300
09/07/1999	11,144,000	0.098	0.093	0.097	-1.02	14,222.570
12/07/1999	17,970,000	0.106	0.096	0.098	1.03	14,061.840
13/07/1999	8,710,000	0.100	0.094	0.096	-2.04	13,960.930
14/07/1999	7,190,000	0.095	0.090	0.090	-6.25	13,575.570
15/07/1999	4,600,000	0.091	0.089	0.091	1.11	13,753.890
16/07/1999	1,748,000	0.090	0.088	0.089	-2.20	13,545.240
19/07/1999	410,000	0.089	0.085	0.085	-4.49	13,447.130
20/07/1999	1,300,000	0.088	0.085	0.087	2.35	13,600.400
21/07/1999	320,000	0.085	0.083	0.085	-2.30	13,419.660
22/07/1999	10,438,000	0.094	0.089	0.093	9.41	13,369.060
23/07/1999	3,420,000	0.093	0.088	0.090	-3.23	13,093.700
26/07/1999	3,270,000	0.093	0.085	0.085	-5.56	12,866.520
27/07/1999	360,000	0.085	0.081	0.084	-1.18	13,075.090
28/07/1999	2,390,000	0.086	0.084	0.085	1.19	13,140.420

TRADING STATISTIC

Stock Code : 00385 - CHINNEY ALLI

Date Range : Apr 1999 - Oct 1999 Total : 5,906,110,570 shares
 Min Price : 0.030 Daily Average : 41,014,657 shares
 Max Price : 0.520 Average Price : 0.126

DATE	NO. OF SHARES	HIGH	LOW	CLOSE	% CHANGE	HSI
29/07/1999	1,100,000	0.086	0.084	0.086	1.18	13,117.840
30/07/1999	1,600,000	0.086	0.084	0.086	0.00	13,186.860
02/08/1999	150,000	0.086	0.084	0.086	0.00	13,435.430
03/08/1999	190,000	0.083	0.082	0.084	-2.33	13,473.840
04/08/1999	1,580,000	0.084	0.080	0.080	-4.76	13,591.020
05/08/1999	1,050,000	0.081	0.080	0.081	1.25	13,254.340
06/08/1999	1,120,000	0.080	0.075	0.080	-1.23	13,167.060
09/08/1999	0	0.080	0.080	0.080	0.00	12,945.470
10/08/1999	500,000	0.080	0.080	0.079	-1.25	12,596.710
11/08/1999	0	0.079	0.079	0.079	0.00	12,437.800
12/08/1999	200,000	0.082	0.082	0.078	-1.27	12,779.750
13/08/1999	3,880,000	0.074	0.066	0.071	-8.97	12,608.180
16/08/1999	1,170,000	0.074	0.070	0.070	-1.41	12,894.780
17/08/1999	1,000,000	0.069	0.067	0.069	-1.43	12,783.160
18/08/1999	1,700,000	0.070	0.070	0.070	1.45	12,993.100
19/08/1999	0	0.070	0.070	0.070	0.00	13,403.590
20/08/1999	0	0.070	0.070	0.070	0.00	13,566.740
23/08/1999	50,000	0.066	0.066	0.066	-5.71	13,573.660
24/08/1999	160,000	0.066	0.066	0.068	3.03	13,633.870
25/08/1999	2,676,000	0.070	0.067	0.070	2.94	13,479.130
26/08/1999	1,680,000	0.074	0.068	0.074	5.71	13,506.380
27/08/1999	500,000	0.074	0.074	0.074	0.00	13,363.130
30/08/1999	0	0.074	0.074	0.074	0.00	13,888.660
31/08/1999	200,000	0.070	0.070	0.074	0.00	13,482.770
01/09/1999	600,000	0.070	0.068	0.070	-5.41	13,544.190
02/09/1999	110,000	0.068	0.067	0.068	-2.86	13,367.560
03/09/1999	530,000	0.066	0.066	0.066	-2.94	13,178.310
06/09/1999	2,154,000	0.073	0.069	0.072	9.09	13,365.160
07/09/1999	5,500,000	0.084	0.070	0.078	8.33	13,396.090
08/09/1999	5,440,000	0.090	0.080	0.085	8.97	13,356.630
09/09/1999	984,000	0.085	0.082	0.082	-3.53	13,854.880
10/09/1999	2,110,000	0.083	0.078	0.083	1.22	13,855.930
13/09/1999	30,840,000	0.097	0.085	0.097	16.87	13,860.850
14/09/1999	25,470,000	0.100	0.089	0.093	-4.12	13,804.030
15/09/1999	17,250,000	0.096	0.092	0.092	-1.08	13,430.600
17/09/1999	14,700,000	0.100	0.090	0.100	8.70	13,484.840
20/09/1999	29,476,000	0.105	0.100	0.104	4.00	13,472.370
21/09/1999	57,933,142	0.125	0.105	0.116	11.54	13,420.460
22/09/1999	72,378,000	0.135	0.114	0.127	9.48	13,187.620
23/09/1999	0	0.127	0.127	0.127	0.00	13,214.440

TRADING STATISTIC

Stock Code : 00385 - CHINNEY ALLI

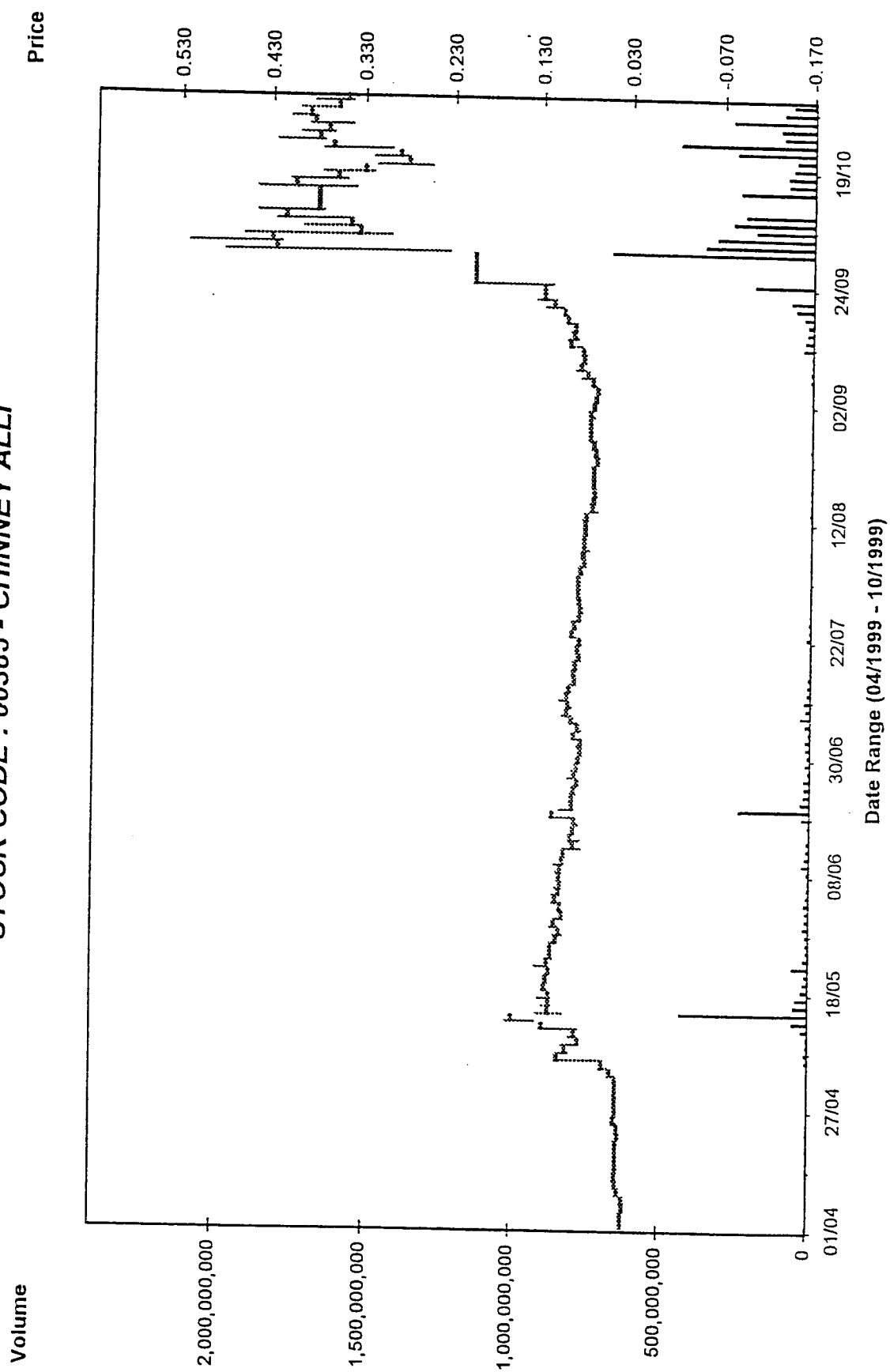
Date Range : Apr 1999 - Oct 1999 Total : 5,906,110,570 shares

Min Price : 0.030 Daily Average : 41,014,657 shares

Max Price : 0.520 Average Price : 0.126

DATE	NO. OF SHARES	HIGH	LOW	CLOSE	% CHANGE	HSI
24/09/1999	198,103,028	0.206	0.118	0.206	62.20	13,032.070
27/09/1999	0	0.206	0.206	0.206	0.00	12,760.460
28/09/1999	0	0.206	0.206	0.206	0.00	12,844.930
29/09/1999	0	0.206	0.206	0.206	0.00	12,834.890
30/09/1999	675,350,013	0.480	0.235	0.425	106.31	12,733.240
04/10/1999	364,803,000	0.520	0.420	0.430	1.18	12,875.860
05/10/1999	327,431,254	0.460	0.300	0.335	-22.09	12,998.890
06/10/1999	196,569,133	0.395	0.335	0.345	2.99	13,017.980
07/10/1999	272,258,000	0.425	0.345	0.415	20.29	13,113.200
08/10/1999	232,720,000	0.445	0.375	0.380	-8.43	13,112.420
11/10/1999	0	0.380	0.380	0.380	0.00	12,992.720
12/10/1999	0	0.380	0.380	0.380	0.00	12,759.350
13/10/1999	249,227,000	0.445	0.340	0.405	6.58	12,475.870
14/10/1999	88,762,000	0.410	0.350	0.360	-11.11	12,486.820
15/10/1999	91,239,000	0.375	0.320	0.330	-8.33	12,299.000
19/10/1999	71,167,000	0.315	0.255	0.280	-15.15	12,134.130
20/10/1999	61,648,000	0.320	0.280	0.290	3.57	12,498.560
21/10/1999	261,870,000	0.375	0.300	0.365	25.86	12,523.000
22/10/1999	449,949,000	0.425	0.375	0.380	4.11	12,863.080
25/10/1999	105,340,000	0.400	0.365	0.370	-2.63	13,034.180
26/10/1999	118,930,000	0.390	0.345	0.385	4.05	12,797.380
27/10/1999	275,778,000	0.410	0.385	0.390	1.30	12,709.070
28/10/1999	106,016,000	0.400	0.360	0.360	-7.69	12,758.880
29/10/1999	74,921,000	0.385	0.345	0.350	-2.78	13,256.950

STOCK CODE : 00385 - CHINNEY ALLI



Annexure “D”

ANNOUNCEMENT OF CHINNEY ALLIANCE GROUP LIMITED
PUBLISHED ON THE PRESS DATED 30TH SEPTEMBER 1999

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Chinney Alliance Group Limited

(Incorporated in Bermuda with limited liability)

PLACING AND SUBSCRIPTION OF SHARES

SUMMARY

Multi-Investment Group Limited ("Multi-Investment"), a substantial shareholder of Chinney Alliance Group Limited (the "Company"), has on 28th September, 1999 agreed to place, on a best efforts basis, (the "Placing") 205,318,985 existing shares of HK\$0.01 each in the Company (the "Placing Shares") through APC Securities Company Limited (the "Placing Agent") to independent investors at a price of HK\$0.11 per Placing Share and to subscribe (the "Subscription") for 310,499,164 new ordinary shares of HK\$0.01 each in the Company (the "New Shares") also at a price of HK\$0.11 per New Share which is the same as the placing price. The Placing Shares amount to approximately 12.20% and 10.30% of the existing and enlarged issued share capital of the Company following the completion of the Subscription.

The intended use of the net proceeds of the Subscription of approximately HK\$33 million is described below.

Multi-Investment is the registered owner of 246,880,303 shares of HK\$0.01 each in the Company, representing approximately 14.67% of the issued share capital of the Company. In addition to this holding, Multi-Investment has exercised an option (the "Option") on 22nd September, 1999 to purchase an additional 323,057,500 shares of HK\$0.01 each in the capital of the Company (the "Option Shares") from The Sumitomo Bank, Limited (acting as agent on behalf of six banks) ("Sumitomo"). The purchase of the Option Shares is completed on 29th September, 1999. Multi-Investment at present beneficially holds 569,937,803 shares of HK\$0.01 in the Company representing approximately 33.87% of the total issued ordinary shares prior to the Placing and the Subscription.

The percentage of shareholding of Multi-Investment in the Company immediately after completion of the Placing but before completion of the Subscription will be approximately 21.67% and immediately after completion of both the Placing and the Subscription will be approximately 33.87%.

PLACING AND SUBSCRIPTION AGREEMENT DATED 28TH SEPTEMBER, 1999

Vendor

Multi-Investment, a company incorporated in the British Virgin Islands and a substantial shareholder of the Company, is a wholly owned subsidiary of Chinney Investments, Limited, a company listed on The Stock Exchange of Hong Kong Limited (the "Stock Exchange").

Number of Shares to be placed

205,318,985 Shares of HK\$0.01 each in the Company (the "Shares") representing approximately 12.20% and 10.30% of the existing and enlarged issued share capital of the Company respectively following the completion of the Subscription.

Placing Agent

The Placing Agent is an associated company of the Company and has agreed to place the Placing Shares on a best efforts basis. Fees payable to the Placing Agent are 2.5% of the Subscription proceeds.

Places

The places and their respective allotments of the Placing Shares are set out below:

	No. of Placing Shares	% of existing issued share capital	% of enlarged issued share capital
Mr. Bernard Pouliot	115,318,985	6.85%	5.79%
Goldstone Trading Limited	90,000,000	5.35%	4.51%
Total	205,318,985	12.20%	10.30%

The places and their respective beneficial owners are independent of and not connected with the directors, chief executive or substantial shareholders of the Company or its subsidiaries or any of their respective associates (as defined in the Rules Governing the Listing of Securities on the Stock Exchange). Similarly, the places are independent of Chinney Investments, Limited and Multi-Investment and their respective subsidiaries and associates. Mr. Bernard Pouliot was previously group managing director of the Company prior to his resignation effective 15th September, 1998. Goldstone Trading Limited is jointly beneficially owned by Mr. Rick Siemens and Ms. Chun Siu Fun.

Mr. Pouliot and Mr. Siemens are both directors and shareholders of Distacom Communications Limited ("Distacom"), a privately owned company incorporated in 1979 involved in the telecommunications industry. Distacom is independent of and has no current business engagements nor other relationships with the Company. The directors of the Company (the "Directors") consider that the places' background and experience in technology and telecommunications businesses will be beneficial in assisting the Company to identify and source suitable opportunities in the field of technology and telecommunications. Currently no specific acquisitions are under negotiation.

PLACING AND SUBSCRIPTION PRICE

The placing price is HK\$0.11 per Share, which is the same as the subscription price. This price was agreed after arm's length negotiations and represents:

- a discount of approximately 46.60% to the closing price of HK\$0.206 per Share prior to suspension of trading of Shares at 3:33 p.m. on 24th September, 1999;
- a discount of approximately 13.39% to the closing price of HK\$0.127 per Share on the last full day of stock trading on 22nd September, 1999; and
- a premium of approximately 12.36% over the average closing price of HK\$0.0979 per Share as quoted on the Stock Exchange for the last ten trading days on which Shares were traded for a full day during the period up to and including 22nd September, 1999.

COMPLETION OF THE PLACING

The Placing is unconditional. Completion will take place on or before 5th October, 1999.

SUBSCRIPTION FOR THE NEW SHARES

The subscriber for the New Shares is Multi-Investment which is the registered owner of 246,880,303 Shares representing approximately 14.67% of the existing issued share capital of the Company. As detailed above, Multi-Investment has exercised an Option on 22nd September, 1999 to purchase an additional 323,057,500 Shares from Sumitomo. The purchase of the Option Shares is completed on 29th September, 1999 and Multi-Investment at present beneficially holds 569,937,803 shares of HK\$0.01 each in the Company representing approximately 33.87% of the total issued ordinary shares prior to the Placing and the Subscription.

Number of Shares to be placed
205,318,985 Shares of HK\$0.01 each in the Company (the "Shares") representing approximately 12.20% and 10.30% of the existing and enlarged issued share capital of the Company respectively following the completion of the Subscription.

Placing Agent

The Placing Agent is an associated company of the Company and has agreed to place the Placing Shares on a best efforts basis. Fees payable to the Placing Agent are 2.5% of the Subscription proceeds.

Placees

The placees and their respective allotments of the Placing Shares are set out below:

	No. of Placing Shares	% of existing issued share capital	% of enlarged issued share capital
Mr. Bernard Pouliot	115,318,985	6.85%	5.79%
Goldstone Trading Limited	90,000,000	5.35%	4.51%
Total	205,318,985	12.20%	10.30%

The placees and their respective beneficial owners are independent of and not connected with the directors, chief executive or substantial shareholders of the Company or its subsidiaries or any of their respective associates (as defined in the Rules Governing the Listing of Securities on the Stock Exchange). Similarly, the placees are independent of Chinney Investments, Limited and Multi-Investment and their respective subsidiaries and associates. Mr. Bernard Pouliot was previously group managing director of the Company prior to his resignation effective 15th September, 1998. Goldstone Trading Limited is jointly beneficially owned by Mr. Rick Siemens and Ms. Chun Siu Fun.

Mr. Pouliot and Mr. Siemens are both directors and shareholders of Distacom Communications Limited ("Distacom"), a privately owned company incorporated in 1979 involved in the telecommunications industry. Distacom is independent of and has no current business engagements nor other relationships with the Company. The directors of the Company (the "Directors") consider that the placees' background and experience in technology and telecommunications businesses will be beneficial in assisting the Company to identify and source suitable opportunities in the field of technology and telecommunications. Currently no specific acquisitions are under negotiation.

PLACING AND SUBSCRIPTION PRICE

The placing price is HK\$0.11 per Share, which is the same as the subscription price. This price was agreed after arm's length negotiations and represents:

- a discount of approximately 46.60% to the closing price of HK\$0.206 per Share prior to suspension of trading of Shares at 3:33 p.m. on 24th September, 1999;
- a discount of approximately 13.39% to the closing price of HK\$0.127 per Share on the last full day of stock trading on 22nd September, 1999; and
- a premium of approximately 12.36% over the average closing price of HK\$0.0979 per Share as quoted on the Stock Exchange for the last ten trading days on which Shares were traded for a full day during the period up to and including 22nd September, 1999.

COMPLETION OF THE PLACING

The Placing is unconditional. Completion will take place on or before 5th October, 1999.

SUBSCRIPTION FOR THE NEW SHARES

The subscriber for the New Shares is Multi-Investment which is the registered owner of 246,880,303 Shares representing approximately 14.67% of the existing issued share capital of the Company. As detailed above, Multi-Investment has exercised an Option on 22nd September, 1999 to purchase an additional 323,057,500 Shares from Sumitomo. The purchase of the Option Shares is completed on 29th September, 1999, and Multi-Investment at present beneficially holds 569,937,803 Shares, representing an approximate interest of 33.87% of the issued share capital of the Company before the Placing and the Subscription.

MANDATE TO ISSUE NEW SHARES

The Directors were granted a general mandate on 30th June, 1999 to allot and issue and otherwise deal with up to 310,499,164 new Shares, which mandate is in force and has not been amended or revoked. No Shares have been allotted, issued or otherwise dealt with pursuant to such mandate.

RANKING OF THE NEW SHARES

The New Shares will, when issued and allotted, rank pari passu in all respects with the existing Shares of the Company.

CONDITIONS OF THE SUBSCRIPTION

Completion of the Subscription is conditional upon the following matters:

- the Listing Committee of the Stock Exchange granting listing of and permission to deal in all of the New Shares; and
- completion of the Placing.

Application will be made to the Listing Committee of the Stock Exchange for the listing of and permission to deal in the New Shares.

COMPLETION OF THE SUBSCRIPTION

The Subscription will take place within two business days after the satisfaction of the conditions and is expected to take place on or before 13th October, 1999.

SHAREHOLDING OF MULTI-INVESTMENT BEFORE AND AFTER THE PLACING AND THE SUBSCRIPTION

The number of Shares and percentage of shareholding of Multi-Investment in the Company immediately before completion of the Placing, immediately after completion of the Placing but before completion of the Subscription, and immediately after completion of both the Placing and the Subscription are as follows:

Immediately before completion of the Placing	Immediately after completion of the Placing but before completion of the Subscription	Immediately after completion of both the Placing and the Subscription
569,937,803 Shares representing approximately 33.87% of the existing issued share capital	364,618,818 Shares representing approximately 21.67% of the existing issued share capital	675,117,982 Shares representing approximately 33.87% of the issued share capital as enlarged by the Subscription

The existing issued share capital of the Company is HK\$16,824,958.20 divided into 1,682,495,820 Shares.

REASONS FOR THE PLACING AND THE SUBSCRIPTION

In view of current market conditions, the Directors consider the Placing is a good opportunity to raise capital for the Company and provide funds for future investment in businesses involved in the fields of technology and telecommunications. The Placing will provide cash inflow to strengthen the financial position of the Company.

USE OF PROCEEDS

All costs and expenses incurred by Multi-Investment in connection with the Placing and the Subscription are to be borne by the Company.

The net proceeds of the Subscription will amount to approximately HK\$33 million, of which approximately HK\$10 million will be used for the general working capital of the Company and approximately HK\$23 million will be reserved to provide funds for possible future investment in technology and/or telecommunications businesses. There are however currently no specific such acquisition under negotiation.

RESUMPTION OF TRADING

At the request of the Company, trading in the Shares of the Company on the Stock Exchange has been suspended with effect from 3:33 p.m. on 24th September, 1999. Application has been made to the Stock Exchange to resume trading in the Shares of the Company on the Stock Exchange at 10:00 a.m. on Thursday, 30th September, 1999.

By Order of the Board
Stephen Sek-Kee Yu
Director

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Annexure “E”

RULING

INSIDER DEALING TRIBUNAL

**IN THE MATTER of the Securities
(Insider Dealing) Ordinance, Cap 395**

and

**IN THE MATTER of an Inquiry into
certain dealings in the listed securities of
Chinney Alliance Group Limited**

Tribunal: Chairman: The Hon Mr. Justice McMahon

Members: Mr. Benny YEUNG Yuen-bun

Mr. PANG Hon-chung

Date of Hearing: 15th June 2004

Date of Determination: 16th June 2004

Date of Reasons for Determination
being handed down: 29th June 2004

REASONS FOR DETERMINATION

On the 15th June Mr. Jonathan Harris representing the implicated person Joseph LAU made an application that the evidence of Mr. Toby Heale, who was to be one of two expert witnesses to give evidence before this Tribunal, be excluded. Mr. Heale was to give evidence as to the price sensitivity of information concerning a proposed placement of Chinney Alliance Group Ltd. ("Chinney") shares, as that information evolved during discussions held on the 24th September 1999. That issue forms a major part of the subject matter of this inquiry.

On the 16th June I ruled Mr. Heale's evidence to be inadmissible. I said at that time I would give reasons for that ruling in due course and I now do so.

Section 8 of the Ordinance concerns what amounts to relevant information for the purposes of an insider dealing. It is in these terms:

"8. "Relevant information"

In this Ordinance "relevant information" (有關消息) 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. (*emphasis added*)

Mr. Toby Heale is a person of considerable experience in things pertaining to the trading of shares of listed companies on a stock exchange and has particular experience in this regard in Hong Kong. There was no challenge mounted to his expertise. The purpose of his giving evidence in this inquiry was to assist us with his opinion as to whether the information arising out of negotiations on the 24th September 1999 as to a placement of Chinney stock to two Hong Kong persons Mr. Bernard Pouliot and Mr. Rick Siemens was price sensitive in terms of section 8 of the Ordinance.

Mr. Harris's objection to Mr. Heale's evidence was based, quite simply, on the fundamental allegation that Mr. Heale had stepped outside the parameters of his expertise and had proceeded to offer, in the terms of his witness statement, opinion evidence as to the credibility of the evidence of other witnesses, including the implicated parties, on the basis of the contents of their witness statements, and purported to make findings of fact which were within the sole jurisdiction and responsibility of the Tribunal and that he had generally offered opinions on matters outside his experience and expertise.

The contents of Mr. Heale's statement in my view do extend beyond the proper parameters of his expertise and particularly that part of his expertise which was to be the basis of his evidence before this Tribunal.

A few examples of the contents of his witness statement serve to illustrate this.

He analyses the documentary evidence in an attempt to determine the state of Joseph LAU's knowledge of the progress and content of the placement discussions:-

"The question remains: did Joseph Lau hear the dialogue between Kenneth Lam and Stephen Yu, but see below. At 15:17 hrs Joseph Lau made a phone call, - and he made it to Eric Fung of Tai Fook Securities, so it would appear that he did go in and out of the meeting. However, (at 2/096/164) Joseph Lau claimed he never left the meeting.

Dr Wong did not attend this meeting. At (4/011/24) Joseph Lau states he stayed in the meeting for 10 minutes only, but the meeting went on until 3.30. Conflicting evidence exists, but there is proof that Mr Lau knew the content of the meeting.

At (4/014/33) Joseph Lau states that: "Mr Lam said APC has the intention to do the top-up placement but no documentation were ready, nothing specific was known to us, so basically we just finished the meeting and walked back to the office."

However, Joseph Lau made some most telling telephone calls referred to in detail below where he placed some share buying orders and during which he also discussed information that could only have been gleaned from the meeting.

Joseph Lau knew that APC wanted to do the top-up placement for CAL and that top-up placement would not meet the same objections as the placement on 23rd September had met from the HKSE (4/015/11). Therefore, APC had found a way round the problem that had faced CAL with the previous placing attempt the day before."

He draws conclusions as to how widespread the knowledge of the identity of the placees was and whether Joseph LAU was aware of their identity:

"On (4/018/28) Joseph Lau claimed that nothing about the buyers was mentioned at the meeting and he never knew the identities of the placees. The identity of the buyers was

common knowledge the day before and only the names they would use remained unknown. [Note the names they would use only refers to the booking names, such as the company that would actually hold the shares. This is marginally different from a nominee, but the effect is largely the same in terms of importance]. That is no guarantee that Mr Lau knew the previous day, however.

.....

At (4/032/5) Joseph Lau said that: "we don't know who the placees were." This is not true in the strictest sense, but depending who 'we' might be and also in what he means by: 'who'. Certainly during the 23rd a number of people in MIG, CI and CAL knew who the buyers were going to be, (i.e. all those mentioned above who had attended the various meetings) but that is not a guarantee that Joseph Lau knew then. Also they knew who the Principals were, but they didn't know what names the Principals might use. This is despite the protestation of Joseph Lau when he said: "we don't know" and "who the buyers would be".

He deals with the credibility of Joseph LAU:

"The identity of the buyers (placees) at a top-up placement was of critical interest to CI because CI would need to know that they could get their shares back. [This is just part of the procedure for a top-up placement. Existing shares are lent to the buyers and replaced with pari passu new shares at a later date. The lent shares need then to be returned.] This is entirely contrary to the claim by Joseph Lau at (3/226/24): We are not interested." The truth is they were interested and it is also true to say that the identities of the buyers (placees) was

known. JL also claims at (3/226/31)" It's not determined — it wasn't determined at the meeting either as a conditional or unconditional placement so we don't know."

.....

Joseph Lau is wrong when he says the meeting on the 24th September in the afternoon was "a very preliminary stage" (3/228/32). It wasn't. It resulted in "a done deal" according to Kenneth Fung at the end of the meeting after 15:00 hrs.

Joseph Lau is wrong when he claims, "I did not know" when answering "Why would the Stock Exchange allow the suspension? (of CAL shares at 15:33 hrs. on 24th September) He did know the shares would be suspended, and reference to the telephone call with Eric Tong demonstrates that. (10/278+9/end+top)."

and eventually concludes that Joseph LAU knew of the price sensitive information:

"Lau, in interview, said he was talking rubbish when he made the remarks above. (3/279/all). However, Sunday is the company associated with Mr Rick Siemens and it is reasonable to conclude that Mr Lau knew that. In fact, Mr Lau has made exactly the connection Mr Siemens was worried about. Mr Siemens also had been working with Mr Simon Murray beforehand.

.....

In the afternoon he bought heavily at higher prices because it had become fact to Mr Lau that the placing would go ahead. Mr Lau says: "You'll understand why after you have read the announcement tomorrow." Therefore, I believe Mr Lau knew

the price sensitive, relevant information that had been generated at the meeting Mr Lau had attended."

To a lesser extent Mr. Heale offers his opinion as to the credibility of the other implicated party Rozalia PUI and approaches the issue of her state of knowledge:

"Both Mr Lau and Ms Pui claim that, during a telephone call during lunchtime, on 24th September Ms Pui gave Mr Lau instructions to buy 8 to 9 million CAL shares carefully during the afternoon.

There is no record of this call. I flag a limit to my knowledge because I do not know about telephone companies' records. I assume they are both accurate and complete. Therefore if such a call took place it would be logged. There is no such log.

.....

Ms Pui maintains she had to attend a meeting in the afternoon of 24th September, but no record of any such meeting exists. Pui claims that she rang Lau on the (mobile) phone during lunchtime to place an order with him. (6/123/286), but no record of such a call exists.

In Ms Pui's statement on 6/132/386. In answer to the question: "Why did you approach Joseph Lau?" answers: "He's my friend...that's it. It's so simple."

Ms Pui also states that her reason for buying the shares of CAL so heavily was ... "I don't have much knowledge about it (laughing). No, I have little knowledge about securities

trading. There are so many companies. That's it" In answer to a question about CAL's business sector Pui replies: "does it deal in investments? Investments right? Probably" (laughing). "Or conglomeration. I don't know." (6/159/691). Later in response to the same question Pui replies, "There wasn't any logic. I mean I didn't have a special reason." (6/159/697)

I do not know when Ms Pui dealt, and I am not convinced I know when Ms Pui placed the order to buy the shares in question, or if in fact, she ever did. Therefore, I cannot opine whether or not Ms Pui ever had price sensitive inside information at a relevant time, or even if she had it at all."

He speculates about a profit sharing agreement between Joseph LAU and Rozalia PUI:

"..... There could be an interpretation that would suggest that if Ms Pui bought CAL shares at that time when she would make the money to repay the loan because Joseph Lau says, (3/044/362) "After this execution, all had been repaid". If 'this execution' means the purchases and sales by Ms. Pui in CAL shares, then it could be inferred there might be a profit sharing agreement."

Mr. Heale, in arriving at his opinions, has proceeded on the wrong basis. He has analyzed the evidence, consisting of the witness statements of other witnesses including those of Joseph LAU and Rozalia PUI and arrived at or attempted to arrive at conclusions of fact concerning the state of knowledge of those persons and made comments as to the reliability of

those persons' evidence. Such functions are exclusively those of the Tribunal.

An expert witness is allowed in evidence to express opinions to a court or tribunal on subject matters material to the resolution of issues which the court or tribunal is not completely familiar with and where the court or tribunal would be assisted in its knowledge and understanding of those matters by an expert's opinion.

An expert so far as possible should not give evidence as to the ultimate issue which has to be determined by the court or tribunal, i.e. the issue the resolution of which is the reason the court or tribunal has been convened.

Certainly an expert should not purport to express opinions on matters which lie peculiarly within the responsibility and function of the court or tribunal, e.g. the question of credibility of witnesses or, generally, findings of fact. These are matters in respect of which courts and tribunals require, in the usual course, no assistance.

It is true that over the years there has been recognition that expert witnesses on occasion have to give evidence in terms which are indistinguishable from their providing an opinion on the ultimate issue before the court or tribunal.

In R – v – Stockwell (1993) 97 Cr. App. R. 260 Taylor C.J. said:-

"Whether an expert can give his opinion on what has been called the ultimate issue, has long been a vexed question. There is a school of opinion supported by some authority doubting whether he can (see Wright (1821) Russ & Ry. 456, 458). On the other hand, if there is such a

prohibition, it has long been more honoured in the breach than the observance (see the passage at page 164 in the judgment of Parker L.J. in *Director of Public Prosecutions v. A and B.C. Chewing Gum Ltd.* [1968] 1 Q.B. 159 and the cases cited at page 501 of *Cross on Evidence* (7th ed.).

Professor Cross at page 500 of that work said:

"It is submitted that the better and simpler solution, largely implemented by English case law, and in civil cases recognised in explicit statutory provision, is to abandon any pretence of applying any such rule, and merely to accept opinion whenever it is helpful to the court to do so, irrespective of the status or nature of the issue to which it relates."

The same view is expressed by Tristram and Hodgkinson in their work on *Expert Evidence Law and Practice* at pages 152 to 153, where, after referring to the case of *Wright* they say that in that case the expert witness could not express an opinion as to whether the particular facts before the court constituted an act of insanity. He could, however, state what types of behaviour demonstrated insanity in persons generally, from which the jury could draw inferences in that particular case. The learned authors went on as follows:

"There is little doubt however that such a distinction is not now rigorously observed, and given that expert evidence of this kind is to be put before a jury, it may be suspected that the often casuistic distinction between the general and the particular is either ignored by juries, or seen as a distinction of form rather than substance. It has been suggested too that some defences in criminal proceedings can in effect only be raised by adducing expert evidence, and that: 'it would put an insuperable difficulty in the way of insanity' if such evidence were to be excluded by an ultimate issue or other analogous rule."

The rationale behind the supposed prohibition is that the expert should not usurp the functions of the jury. But since counsel can bring the witness so close to opining on the ultimate issue that the inference as to his view is obvious, the rule can only be, as the authors of the last work referred to say, a matter of form rather than substance."

But those statements should not be misunderstood. The judgment did not mean that expert witnesses have open season to express their views on the range of issues of credibility and fact which arise in a case or inquiry and in respect of which the court or tribunal is responsible for providing, and is best qualified to provide, an answer. The judgment simply means that in the circumstances of some cases an ultimate issue to be determined by the court or tribunal may be an issue which itself falls within the ambit of a particular sort of expertise and can be best resolved by reference to the evidence of experts in that area. That is not the position in the present case.

Rather it is apparent from Mr. Heale's statement that he has purported to make findings of fact which in the general course of events would have been matters this Tribunal itself may have come to consider. And in the course of doing that he has assessed the reliability of various witnesses including that of Joseph LAU and Rozalia PUI.

That is something which, quite simply, he should not have done. He should have restricted his witness statement to his opinion, and the reasons for that opinion, as to whether information suggesting a proposed placement of a certain quantity of Chinney shares to either or both of Messrs. Pouliot and Siemens as of the 24th September 1999 was price sensitive. He should have examined the factors which would have made that information more or less price sensitive and again given reasons why in his opinion that was so. As it is he has, in my view, intruded heavily into areas which are solely within the fact finding jurisdiction of the Tribunal.

He may have done so as the result of the questions he was asked to answer in the course of his witness statement.

Those questions were as follows:

1. Whether, during the period of investigation, relevant price sensitive inside information regarding the shares of Chinney Alliance Group existed and if it existed, when it came into being; and
2. Having read the materials provided, whether the information apparently in the possession of Mr. Joseph LAU and Ms. Rozalia PUI was relevant price sensitive inside information regarding the shares of Chinney Alliance Group, at the time they traded, if in fact they did. [paragraphs 7 and 8 of Heale's expert report at 16:E2:238]

In my view those questions go too far and wrongly suggested to Mr. Heale that his brief was much wider than it should properly have been. In particular the second question asked of Mr. Heale may well have prompted him to embark upon the general fact finding exercise he did.

Nevertheless, for whatever reason, Mr. Heale's proposed evidence, as set out in his witness statement, extends beyond the parameters of what evidence he is required and qualified to properly give.

I considered whether the offending parts of Mr. Heale's statement could reasonably be excised and his evidence be restricted to that which could be properly heard by the Tribunal.

Somewhat reluctantly in view of the cost involved, I have decided that that cannot be done in fairness to the implicated parties. For one thing at least one implicated party, should Mr. Heale give evidence, could fairly conclude that Mr. Heale has unnecessarily prejudged matters relating to that party's credibility.

For another this Tribunal in exploring the basis of Mr. Heale's opinions may well have to reopen the complained of matters contained in Mr. Heale's witness statement so as to determine how and on what facts or assumptions Mr. Heale arrived at a particular opinion.

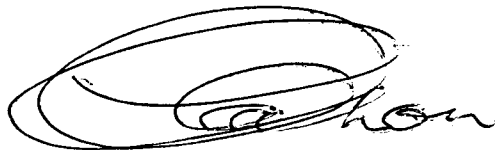
In short, allowing Mr. Heale's evidence, as contained in his witness statement before the Tribunal would give rise to an unnecessary and unacceptable risk of perceived unfairness. Accordingly it was excluded as evidence and we have directed ourselves to ignore it.

I should conclude by saying this. Only extremely rarely, if ever, would an expert witness properly be required to look at case papers, i.e. witness depositions, exhibits, etc. and be asked to or be allowed to make findings of fact or findings as to the credibility of witnesses, or as to what the state of a person's knowledge was at a particular time, or as to what was said in the presence of a person. Those are matters purely for the court or tribunal.

It is far better in proceedings such as the present inquiry for an expert witness, if his opinion is sought on a particular matter, to be provided with a specific question or questions to answer which fall plainly within his expertise and if convenient be based on hypothetical factual backgrounds or scenarios which reflect possible findings of fact from the

anticipated evidence to be before the court or tribunal. The expert's access to the case papers should be for the purpose of him understanding the context of the matters on which his opinion is sought and the questions asked of him.

Obviously the actual evidence will inevitably develop so as to diverge from any such scenarios originally put to the expert witness at the time he made his statement. That being so further evidence in that regard can be obtained from the expert at the time he gives oral evidence. It may occasionally be desirable for a supplementary witness statement to be made by him dealing with that additional evidence.

A handwritten signature in black ink, appearing to read 'McMahon', with a large, loopy flourish above it.

(The Hon. Mr. Justice McMahon)
Judge of the Court of First Instance
& Chairman of the Insider Dealing Tribunal

Annexure “F”

THE RELEVANT TRADING HISTORY
OF JOSEPH LAU'S ACCOUNT WITH
TAI FOOK SECURITIES COMPANY LIMITED

MONTHLY STATEMENT (Cash Account)

Lau Chung Yin

Date 日期: 1999/10/04
Page 頁數: 1
A/C No 客戶編號: 02-89046-00-780

Balance Brought Forward 承上結存 (1999/08)

Current Month Transaction(s) 本月收支:

0.00

(日期) Date	(項目) Reference	(說明) Description	(金額) Amount	(餘額) Balance (HKD)
990906	990908 BN99045273	00279 - #TUNG FONG HUNG (東方紅)	200.000 @0.4550	-91,353.51
990908	990908 MR99016812	Fund Deposit		-91,353.51
990910	990914 SN99046061	00279 - #TUNG FONG HUNG (東方紅)	104.000 @0.6600	91,353.51
990913	990915 SN99046347	00279 - #TUNG FONG HUNG (東方紅)	96.000 @0.6700	63,371.85
990913	990915 BN99048616	00160 - #HON KWOK LAND (漢國置業)	200.000 @0.6100	63,371.85
990915	990915 MR99017609	Fund Deposit		132,439.97
990922	990924 BN99052236	00385 - #CHINNEY ALLI (建聯集團)	200.000 @0.6200	114,515.01
				0.00
			440.000 @0.1300	-226,378.38
			1,000.000 @0.1310	
990923	990927 SN99050271	00160 - #HON KWOK LAND (漢國置業)	400.000 @0.6300	258,991.20
990924	990928 SN99050705	00385 - #CHINNEY ALLI (建聯集團)	550.000 @0.1520	32,112.82
			700.000 @0.1530	433,329.09
			600.000 @0.1540	
			300.000 @0.1550	
			300.000 @0.1560	
			300.000 @0.1570	
			200.000 @0.1580	
990924	990928 BN99053334	00385 - #CHINNEY ALLI (建聯集團)	200.000 @0.1230	-1,347,918.30
			50.000 @0.1250	-862,476.39
			560.000 @0.1310	
			400.000 @0.1320	
			150.000 @0.1850	
			650.000 @0.1900	
			300.000 @0.1900	
			400.000 @0.1930	
			400.000 @0.1940	
			200.000 @0.1950	
			150.000 @0.1970	
			200.000 @0.1980	
			10.000 @0.1990	
			3,200.000 @0.2000	
			50.000 @0.2040	
			550.000 @0.2050	

MONTHLY STATEMENT (Cash Account)

Date 日期: 1999/10/04

Page 10

A/C No 客戶編號: 02-89046-00-780

Current Month Transaction(s) 本月收支:

(日期) Date	(項目) (項目)	(說明) (說明)	(金額) Amount	(餘額) Balance
Trans	Value	Reference	Description	
990929	990929	MR99019140	Fund Deposit	
				862,476.39
				0.00

Pending Settlement Transaction(s) 尚未交收項三:

(日期)	Date	(項目)	Trans	Value	Reference	(說明)	Description	(金額)	Amount	(港幣)	Balance (ND)
990930	99:005	SN99052177	00385	- #CHINNEY ALLI			(建聯集團)	500,000	@0.3350	1,187,370.72	1,187,370.72
								500,000	@0.3900		
								500,000	@0.3950		
								500,000	@0.4000		
								500,000	@0.4050		
								500,000	@0.4100		

Securities Positions 證券地位:

(股票編號: 名稱)	(現金)	(待交收)	(結存)	(收市價)	(市值)
Name of Stock	Current	Pending	Outstanding	Closing prices	Market value
00385 - #CHINNEY ALLI (達聯集團)	6,000,000	-3,000,000	3,000,000	0.4250	1,275,000.00

Outstanding balance including pending settlement 總計應收待交收項目 (HKD 萬幣)
Securities Value 證券價值

Securities Value 證券價值

1,187,870.72

1.275.000.00

In order to make sure that fund deposits of clients can be credited to their accounts promptly, please fax your bank pay-in slip copy to our company at 25377647 with your account number and name stated on it.

一、請將原單及單據寄回本公司，並將該單據寄回本公司之轉帳單號及業務員ID 2537647，在請件時請註明姓名。

End of Statement

MONTHLY STATEMENT (Cash Account)

Lau Chung Yin

Date 日期: 1999/11/01
Page 頁數: 1
A/C No 客戶編號: C2-39045-00-730

Balance Brought Forward 承上結存 (1999/09)

0.00

Current Month Transaction(s) 本月收支:

(日期) Date	(項目) Reference	(說明) Description	(金額) Amount	(結存) Balance (K.D.)
990930	991005 SN99052177	00385 - #CHINNEY ALLI (建聯集團)	500,000 @0.3850	1,187,370.72
			500,000 @0.3900	
			500,000 @0.3950	
			500,000 @0.4000	
			500,000 @0.4050	
			500,000 @0.4100	
991005	991005 MP99013340	Fund Withdrawal		-1,187,393.48
991008	991008 IN99034827	Accrued Interest (1999/9/01 - 1999/9/30)		-486.19
991008	991008 IN99034828	Segregate Interest (1999/9/01 - 1999/9/30)		8.95
991013	991013 SN99055037	00385 - #CHINNEY ALLI (建聯集團)	500,000 @0.4150	221,635.82
991015	991015 MP99013898	Fund Withdrawal		-221,635.82
991019	991021 SN99056125	00385 - #CHINNEY ALLI (建聯集團)	570,000 @0.2600	720,838.80
			500,000 @0.2650	
			500,000 @0.3050	
			500,000 @0.3100	
			430,000 @0.3150	
991021	991021 MP99014115	Fund Withdrawal		-720,838.80

Outstanding Balance Including Pending Settlement 總結存包括待交收項目 (HKD 港幣)

0.00

Securities Value 證券值

0.00

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To continue our quality service, we have completed all Y2K rectification work and are Y2K ready. Besides, we have also formulated contingency plans to address the possibility of system failure. For more information, please contact your account manager or our Customer Service Dept. on 28012662-3.

為貫徹向客戶提供優質服務的承諾, 本公司已完成所有修正千年蟲問題的工作, 並已制定緊急應變措施確保一旦系統發生問題時仍能維持對客戶的服務, 如欲查詢詳情, 可向貴客戶經理或致電28012662-3本公司客戶服務部查詢。

End of Statement

Annexure “G”

THE RELEVANT TRADING HISTORY
OF ROZALIA PUT'S ACCOUNT WITH
TAI FOOK SECURITIES COMPANY LIMITED

MONTHLY STATEMENT (Cash Account)

Date 日期: 1999/10/04

Page 頁數: 1

A/C No 客戶編號: 02-19439-22-780

PUT, Li Rozalia

Balance Brought Forward 承上結存 (1999/08)

7.10

Current Month Transaction(s) 本月收支:

Trans Date	Value	Reference	Description	Amount	Balance (HKD)
990907	990907	IN99027963	Segregate Interest (1999/8/01 - 1999/8/31)	0.02	7.12
990913	990915	BN99048485	00160 - #HON KWOK LAND (漢國置業)	30,000 @0.6000 -55,443.67	-55,436.55
990915	990915	MR99017656	Fund Deposit	60,000 @0.6200	
990923	990927	SN99050163	00160 - #HON KWOK LAND (漢國置業)	90,000 @0.6500 55,436.55	0.00
990924	990928	BN99053163	00385 - #CHINNEY ALLI (建聯集團)	400,000 @0.1300 58,242.06	58,242.06
				250,000 @0.1320 -98,832.02	-40,589.96
				100,000 @0.1340	
990928	990928	MR99019114	Fund Deposit	40,589.96	0.00

Pending Settlement Transaction(s) 尚未交收項目:

Trans Date	Value	Reference	Description	Amount	Balance (HKD)
990930	991005	BN99055133	00385 - #CHINNEY ALLI (建聯集團)	100,000 @0.3500 -35,154.85	-35,154.85

Securities Positions 證券結存:

Stock	Current	Pending	Outstanding	Closing Price	Value
00385 - #CHINNEY ALLI (建聯集團)	750,000	100,000	850,000	0.4250	361,250.00

Outstanding Balance Including Pending Settlement 總結存包括待交收項目 (HKD 港幣)

Securities Value 證券值

-35,154.85

361,250.00

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End of Statement

ACTAD - All Account Payment C/Ds 所有賬項收支
BN/CN - Bank/Cash Note 銀行/現金
DI - Bonus Dividend/Voucher/Share 紅利/獎券/股票
KUCN - PO 支票
SBAI - Settlement/Share Redemption 結算/股票贖回

DCDD - Dividend C/D 股息
DNR - Interest Payment 利息
MCMD - Memo C/D 存單
PDR - Payment 支付
SSBI - Settlement/Share Redemption 結算/股票贖回

MUAC - Minimum Deposit/Virement 最低存款/撥款
MPAR - Virement/Deposit 撥款/存款
SD - Service Charge Debit 服務費
SUCC - Suma/Suma/Virement 總和/總和/撥款
SUCC - Suma/Suma/Virement 總和/總和/撥款

100001

187

MONTHLY STATEMENT (Cash Account)

Date 日期: 1999/11/01

Page 頁數: 1

A/C No 客戶編號: 02-19439-22-780

FUI, Li Rozalia



Balance Brought Forward 承上結存 (1999/09)

0.00

Current Month Transaction(s) 本月收支:

Date	Account No	Reference	Description	Amount	Balance (HKD)
990930	991005	BN99055133	00385 - #CHINNEY ALLI (建聯集團)	100,000 @0.3500	-35,154.85
991004	991006	SN99052455	00385 - #CHINNEY ALLI (建聯集團)	200,000 @0.4500	89,605.10
991005	991007	BN99055939	00385 - #CHINNEY ALLI (建聯集團)	100,000 @0.3250	-32,647.53
991006	991008	SN99053171	00385 - #CHINNEY ALLI (建聯集團)	100,000 @0.3700	36,835.93
991008	991008	MF99013548	Fund Withdrawal		-58,638.60
991008	991008	BN99033337	Segregate Interest (1999/9/01 - 1999/9/30)		5.19
991008	991012	SN99053874	00385 - #CHINNEY ALLI (建聯集團)	650,000 @0.4000	258,861.20
991012	991012	MF99013718	Fund Withdrawal		-258,362.11

Outstanding Balance Including Pending Settlement 總結存包括待交收項目 (HKD 港幣)

4.28

Securities Value 證券值

0.00

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為確保客戶之存款能準時入賬, 請將經銀行存入本公司之款項存款收條傳真至25377647, 並請註明賬號及姓名。

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End of Statement

ACHD - Account Payment In/Out 賬項交收
BNCH - Bank Note 支票
CH - Cash 現金
CHCD - Cash Withdrawal 現金提取
CHSD - Cash Deposit 現金存入
CHWD - Cash Withdrawal 現金提取
CHWD - Cash Withdrawal 現金提取

CHDD - Dividend Cash 股息
CHIR - Interest Payment 利息
CHMD - Memo Cash 備用現金
CHPD - Payment 付款
CHSD - Cash Deposit 現金存入
CHWD - Cash Withdrawal 現金提取

MEMO - Memo Cash 備用現金
MPMR - Memo Cash 備用現金
SD - Service Charge 服務費
CHCO - Cash Deposit 現金存入
CHCO - Cash Deposit 現金存入

11月11日 11:11

000001 158

Annexure "H"

TELEPHONE CALLS BETWEEN
JOSEPH LAU AND ERIC TANG IN TRANSCRIPT FORM

24/9/99

14:31:22

* * * (Telephone recording • Paragraph 52) * * *

(Telephone ringing)

[T = Eric TANG]
[L = Joseph LAU]

840. T: Hello?

841. L: Eric?

842. T: Speaking. Joseph.

843. L: Are you stepping it up now?

844. T: Now? Yes. I'm selling it now.

845. L: What's the spread being stepped up now? How's
it doing?

846. T: Well, now, it's – er – ai, it's gone up to 155.

847. L: Well, then you step it up from 5, 6, 7, 8, 9, and so
on.

848. T: Yes, have been doing that, have been doing that.

849. L: OK.

850. T: It's being left there.

851. L: OK

852. T: OK, bye-bye.

853. L: Bye-bye.

24/9/99

14:47:15

* * * (Telephone recording • Paragraph 54) * * *

859. T: Hello. Eric. [T = Eric TANG]
860. L: Eric? [L = Joseph LAU]
861. T: Speaking. Joseph.
862. L: Is it all gone?
863. T: Yes, all sold just now.
864. L: Amen. So soon.
865. T: So soon (laugh)? I've been, have been, have been
queuing for a number of different prices.
866. L: I know that. The people didn't have a chat with
you all along, they just, for each board lot, almost ----
867. T: Right. I saw people taking up one million by one
million.
868. L: Ai (sigh). (T: Yes.) Doesn't matter. We'll have
share placement a moment later. Don't worry about that.
869. T: Yes (laugh).
870. L: (Laugh)
871. T: Do you want to get the breakdown now?
872. L: Er ---- are you done with my friend?

873. T: Er ---- your friend just arrived at the reception. I
just come back to ----

874. L: OK. You handle her first.

875. T: I handle her first? OK, fine ----

876. L: OK, bye-bye.

877. T: Bye-bye.

(Telephone hung up)

24/9/99

15:01:20

* * * (Telephone recording • Paragraph 55) * * *

878. N : Mr Lau's office. [N = Ms. Noel NG]
[T = Eric TANG]

879. T: Hi, Novel. (N: Yes.) May I speak to Joseph
please?

880. N : He was just out for a meeting. (T: Yeah --) I
think he should – should come back very soon. (T: Yeah,
yeah.) You're in the office. Right?

881. T: I'm in the office.

882. N : Let me ask him to call you back.

883. T: Thank you.

884. N : Thanks, bye-bye.

885. T: Bye-bye.

(Telephone hung up)

24/9/99

15:03:59

* * * (Telephone recording • Paragraph 56) * * *

886. T: Hello? [T = Eric TANG]
[L = Joseph LAU]
887. L: Eric?
888. T: Speaking. Joseph.
889. L: What's the matter?
890. T: Ah, nothing ---- er ---- that is, would like to tell
you that ---- I've finished Tina's matters.
891. L: Yes, yes, yes.
892. T: Yes, well ---- yep..... (inaudible)
893. L: Well ---- you, you tell me this, that sum after
you've receive the money.
894. T: Sure, sure.
895. L: OK, thank you.
896. T: OK, bye-bye.

(Telephone hung up)

24/9/99

15:17:42

* * * (Telephone recording • Paragraph 59) * * *

914. T: Yes, Joseph. [T = Eric TANG]
[L = Joseph LAU]

915. L: Eric?

916. T: Yes.

917. L: Get me a million at this price now.

918. T: Get a million. OK, sure.

919. L: OK, thanks.

(Telephone hung up)

24/9/99

15:18:14

* * * (Telephone recording • Paragraph 60) * * *

(Sounds of dialling) (Telephone ringing)

[T = Eric TANG]

[L = Joseph LAU]

920. L: Hello?

921. T: Hello, er, Joseph?

922. L: Speaking.

923. T: Yes, Eric. It's now doing 19 cents, I've got you
650,000. (L: Hmm, hmm.) Well, besides, as for the
other one at 189, only 50,000 have been bought. That
means 7, 700,000. Well, another one for 300,000 is still
being put up at 189.

924. L: Er – doesn't matter. Now, you, at this price,
you – just – take up as many as possible. Getting one
million shares will do.

925. T: To get a million all together. (L: Yep.) OK, sure,
OK.

926. L: Bye-bye.

927. T: Sure.

(Telephone hung up)

24/9/99

15:18:58

* * * (Telephone recording • Paragraph 61) * * *

(Telephone ringing)

[T = Eric TANG]

[L = Joseph LAU]

928. T: Hello? Yes?

929. L: Hello? Eric?

930. T: Yes, Eric speaking.

931. L: How is 385 doing now?

932. T: Er, it's doing 189 now, er, 191.

933. L: 191, er – 191, are there, are there 600,000?

934. T: 191. Now, now, 19 cents is also available, 19
cents is available.

935. L: Yep.

936. T: Yes.

937. L: 19 cents, 600,000 then.

938. T: You want to – round it up to 600,000?

939. T: Yep.

940. T: OK, fine. You, you, I call you back later.

941. L: OK, thank you.

(Telephone hung up)

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15:20:52

* * * (Telephone recording • Paragraph 62) * * *

942. T: Hello? Hello? [T = Eric TANG]
[L = Joseph LAU]
943. L: Hello? Eric?
944. T: Hello. Eric speaking.
945. L: Yep.
946. T: Yes, just now – er – not the whole block was got.

(L: Yep.) Do you want to hurry up to, take up the
remaining odd sum since the people are taking it up
swiftly?

947. L: Yep, yep. What is the amount of the shortfall?
948. T: It's doing 192, 194 now.
949. L: Yep, yep.
950. T: Yes.
951. L: How many did I ask for just now?..... (inaudible)
952. T: Er – one moment please.

(Telephone ringing)

953. T: As for 385, you order..... (inaudible) how many
is still needed for the first order? Yes, 300,000, right?
One moment please. The shortfall is 300,000.

954. L: The shortfall is 300,000. Er – what is the price
now?

955. T: It's now doing 195.

956. L: Wow, it's soared so sharply.

957. T: Right. The people are seizing it impatiently.

958. L: Yep.

959. T: Yep ----

960. L: To get those 300,000.

961. T: To get those 300,000. I'll do it in the market. OK.

(Telephone hung up)

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15:21:59

* * * (Telephone recording • Paragraph 63) * * *

(Telephone ringing)

[T = Eric TANG]

[L = Joseph LAU]

962. L: Hello?

963. T: Yes, this is Eric. Well, now, er, 300,000 at 190
have been got, and 300,000 at 195 have been got.

964. L: Yep, yep.

965. T: OK. Thank you.

966. L: Good.

(Telephone hung up)

24/9/99

15:22:44

* * * (Telephone recording • Paragraph 64) * * *

(Telephone ringing)

[T = Eric TANG]

[L = Joseph LAU]

967. T: Hello? Yes?

968. L: Eric?

969. T: Speaking, Joseph. Just called you.

970. L: No matter what the price is, just get me one
million more.

971. T: OK, sure, thank you.

972. L: OK.

(Telephone hung up)

24/9/99

15:23:42

* * * (Telephone recording • Paragraph 65) * * *

(Telephone ringing)

[N = Ms. Noel NG]

[T = Eric TANG]

973. N : Mr Lau's office.

974. T: Er, may I speak to Joseph Lau please?

975. N : Er, he's on the phone now. May I know who's
calling?

976. T: Er, could you tell him that this is Eric?

977. N : Yeah, sure, thank you, bye-bye.

978. T: Bye-bye.

(Telephone hung up)

24/9/99

15:24:11

* * * (Telephone recording • Paragraph 66) * * *

(Telephone ringing)

[T = Eric TANG]

[L = Joseph LAU]

979. T: Hello?

980. L: Eric?

981. T: Speaking, Joseph. Er – have got them, er, have
got you 2 million all together.

982. L: Er – OK.

983. T: Yes.

984. L: huh, it seems to have been suspended. Not
yet, OK.

985. T: Not yet, not yet.

986. L: (Inaudible) It's going to be suspended now,
because it may be suspended at anytime now.

987. T: Yeah, OK.

988. L: Let me see, you get me ---- as many as possible
~~now~~.

989. T: Get as many as possible? Get all of them?

990. L: Get all of them, get 3 million, yep.

991. T: Yeah, OK, OK. Sure, sure, sure. Sure, sure.

(Telephone hung up)

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15:26:06

* * * (Telephone recording • Paragraph 67) * * *

992. T: Hello? Yes? [T = Eric TANG]
[L = Joseph LAU]
993. L: How's it, Eric?
994. T: Yes, Joseph.
995. L: (Inaudible)
996. T: Well, yes. I've got you er ---- let me see, 3... 3.39
million.
997. L: Add 2 million more.
998. T: Yep, add 2 million more.
999. L: No, just now you've already ----
1000. T: Yes, yes, there were 2 million before, i.e. 5
million in total, 5.39 million.
1001. L: 5.39 ---- round it up to 6 million then.
1002. T: Get 6 million in total.
1003. L: Yep.
1004. T: OK, sure.
1005. L: Bye-bye.
1006. T: OK.

(Telephone hung up)

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15:27:41

* * * (Telephone recording • Paragraph 68) * * *

(Sounds of dialling) (Telephone ringing) [T = Eric TANG]

[L = Joseph LAU]

1007. L: Joseph.

1008. T: Joseph, totally, er, 6.1 million.

1009. L: Good. This one may resume trading and you,

you may then find that you can only trade at \$1. (T:

Yeah.) Now, I don't mind getting as many as possible.

(T: Yeah, OK.) It's just entered into an agreement with

Simon Muray (inaudible). (T: OK.) Sunday will also

join as an equity partner. (T: Yeah, OK.) Anyway, (T:

Yes.) you, you give the quotation later if necessary.

1010. T: OK.

1011. L: OK, bye.

1012. T: OK, bye-bye.

(Telephone hung up)

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15:30:31

* * * (Telephone recording • Paragraph 70) * * *

(Telephone ringing)

[T = Eric TANG]

[L = Joseph LAU]

1013. T: Hello?

1014. L: Hello. Eric?

1015. T: Speaking.

1016. L: How is 385 doing now?

1017. T: It's doing 197, 199 now.

1018. L: 197, 199, er – are there 300,000 at 199?

1019. T: Er – not any now. It's now doing 19, 197 (L: Yep.)

and 20 cents. Only 120,000 at 20 cents.

1020. L: Yep.

1021. T: 700,000 at 201.

1022. L: Yep.

1023. T: Yes.

1024. L: Er ---- get me 300,000.

1025. T: Get 300,000 more.

1026. L: Yep.

1027. T: Sure.

1028. L: OK, thank you, bye-bye.

(Telephone hung up)

24/9/99

15:32:16

* * * (Telephone recording • Paragraph 71) * * *

(Ringing tone)

[T = Eric TANG]

[L = Joseph LAU]

1029. T : Hello, yes.

1030. L : Hello, Eric?..... (Inaudible)

1031. T : Eric speaking. Well, I'm unable to get 30.

Now they were suspended, I'm able to get 200,000 only,
at 201.

1032. L : At 201?

1033. T : Yes.

1034. L : Ok, thank you.

1035. T : Ok, thank you.

(Telephone hung up)

24/9/99

16:06:21

* * * (Telephone recording • Paragraph 75) * * *

(Ringing tone)

[T = Eric TANG]

[L = Joseph LAU]

1070. T : Hello, hello.
1071. L : Is it Eric?
1072. T : Speaking, Joseph.
1073. L : Ai -- I bought too little in quantity.
1074. T : Bought too little in quantity? (Laugh)
1075. L : La Sing (foul language), really bought too little in quantity.
1076. T : (Laugh)
1077. L : When you see the announcement tomorrow, you will know why, ai --
1078. T : (Laugh)
1079. L : It's not the case that I don't -- want to earn [money], that is, don't want, don't want to earn [money]. but, ai -- sometimes nothing can be done about it.
1080. T : No, but you, in fact, why did you sell them during the course?

1081. L : Well, no, well, I sold them, it made no difference, if I held them, I sold them I can buy them back.
1082. T : I see, I see.
1083. L : That is, in fact, there is no -- how can I put it?
1084. T : But when you sold them, you sold them -- at a lower price.
1085. L : No, I know. It's because I -- (in a small voice) don't know if the deal can work out or not.
1086. T : What?
1087. L : [I] don't know if the deal can work out or not.
1088. T : I see, I see.
1089. L : At the time of selling, in fact, [I] don't know if the deal can work out or not.
1090. T : Um, um, um.
1091. L : It's the case that after about half an hour, I discussed and agreed with them, and knew that it worked, it's not until then I bought them back.
1092. T : Oh, I see, I see.

1093. L : You, you, now, the whole, now everyone
knows that it'll be there on Sunday (sic).
1094. T : I see, understand.
1095. L : Then, come on, then, it can reach, come on,
one dollar.
1096. T : (Laugh)
1097. L : Ai, anyway.
1098. T : Yep, yes.
1099. L : Em – then you have helped me Tina fix it,
right (sic).
1100. T : Yes.
1101. L : Have you deposited the stocks into her account?
1102. T : Into which account the stocks have been
deposited?
1103. L : (inaudible) Did she ask you to take up
[orders]?
1104. T : Ah? The amount for today?
1105. L : What, did she ask you to help take up?
1106. T : Who?
1107. L : Did Tina ask you to help take up just now?

1108. T : Tina?
1109. L : Yep, no?
1110. T : Ask me to help take up?
1111. L : No, she didn't ask you to buy.
1112. T : She didn't.
1113. L : Ai, it's okay then, perhaps she what what.
1114. T : Yep, yep.
1115. L : Anyway, you tell me several numbers.
1116. T : Eric -- his number?
1117. L : No, I bought it all over again just now.
1118. T : I see, you bought it all over again, ok. Em --
let me see, ouch, I have sent out the amounts.
1119. L : What?
1120. T : Er -- just a moment please. (Noise) Er -- you,
er, your selling transaction, do you need to know the
details.
1121. L : Er, I only want to know my purchase, I know
about my purchase --
1122. T : Those of your 6 million in the later stage.
1123. L : Yep.

1124. T : I confirm the details about your last 6 million,
yep. Well, er -- let me see, there are many, because --
-- well, er -- 19 cents --
1125. L : 19 cents.
1126. T : There are 850,000.
1127. L : 850,000.
1128. T : Yes.
1129. L : Did you ask your brothers to buy?
1130. T : What, sorry.
1131. L : Did you ask your brothers to buy? (Laugh)
1132. T: : Er -- everyone knows this is --
1133. L : I see, I see, I see, ok, but with my
confirmation.
1134. T : Yes (Laugh), ok.
1135. L : (Laugh) continue.
1136. T : Then, well, er -- then 189, there are 150,000.
1137. L : 950,000 at 189.
1138. T : No, it's 150,000.
1139. L : What?
1140. L : Er, sorry, 150,000; 189, it's 150,000.

1141. T : One --
1142. L : Ah, here, here, it's 1 million. It's 850,000 at 19 cents. [L: Um.] Well, 150,000 at 189. [L: Yes.] It adds up to exactly 1 million. [L: Yes.] Then for another million, it's that: 400,000 each at 193, 194.
1143. L : 400,000 each at 193, 194.
1144. T : Yes, then at 195, it's 200,000.
1145. L : At 195 -- it's 200,000.
1146. T : Yes, well, then, it comes to the last 4 million.
1147. L : Yes.
1148. T : Well, er, 3 million at 20 cents.
1149. L : 3 million at 20 cents.
1150. T : Yes.
1151. L : Yes.
1152. T : Then, for others, it's that, 180,000 at 197.
1153. L : 180,000 at 197.
1154. T : 200,000 at 198.
1155. L : 200,000 at 198.
1156. T : Er, 10,000 at 199.
1157. L : 10,000 at 199.

1158. T : Yes, 550,000 at 205.
1159. L : 550,000 at 205.
1160. T : Yes, then 60,000 at 204.
1161. L : 60,000 at 204.
1162. T : Then it's probably complete. Add one and
then add 3 million, then add 550,000, then add [60,000],
right, 4 million, right right. (Inaudible)
1163. L : That is, the last million, the (inaudible)
million (inaudible) there is 1 million.
1164. T : What, the last?
1165. L : 61, 62, I see, ok.
1166. T : Yes, then --
1167. L : 1 million, the last, I, come on, now it has
reached 21 cents already, at 2063, I have 'keyed in' all
the amounts.
1168. T : Yes, (laugh) I know, I know.
1169. L : Ai, it's really funny indeed, (inaudible)
1170. T : But the stock [price] was pushed up indirectly
by you.

1171. L : No, if it's not suspended, we would be in greater trouble, because just now (inaudible) the people..... have signed. [Tang: Um.] Ai, never mind. [T: Um.] It doesn't matter, er, there is enough money in my account, right? If it's only for margin?
1172. T : Only for margin --
1173. L : It doesn't matter even if it's not enough, I, in fact, I'm prepared to give you money [on Monday ...]
1174. T : Right, right, I think, I need to refer to the amounts.
1175. L : I, in fact (Inaudible) won't do margin (Inaudible)
1176. T : Over a million --
1177. L : It's probably owing, 6 comes up as 6, 6 comes up as 6, 6 million, twelve, that is, 1.2 million plus 40,000, I owe you 1 million odd approximately.
1178. T : Plus 400,000. 40,000 is -- what is it as to the addition of 40,000?
1179. L : 160.
1180. T : 160.

1181. L : It's 240,000 at 160, right, I (Inaudible) a million odd is just about enough, it's probably around 1 million, probably enough for 'keying in'.
1182. T : Yes, a million odd, I -- a million odd.
1183. L : Okay then, you -- let me know on Monday.
1184. T : Okay.
1185. L : Okay?
1186. T : Okay, okay.
1187. L : Thank you.
1188. T : Thank you, okay, bye bye.
1189. L : Bye bye.

Annexure “I”

TELEPHONE CALLS BETWEEN
ERIC TANG AND ROZALIA PUI IN TRANSCRIPT FORM

Date: 24th September 1999
Time: 9:37:41

* (Playing tape) *

(Telephone rings)

Pui : China Travel Services.

Tang : Hello. Huh – Rozalia [Pui: Speaking.] I'm Eric, [Pui: Yep.] of Tai
Fook. Yep. That one. Er, you can just call me Eric. [Pui: Yep.]
Hello. Er, I would like to ask you, Er, as far as (stock code) 385 is
concerned, Er – (do you want to) continue? [Pui: Yep.] Continue.
OK.

Pui : Today, would it –

Tang : Er, it would resume trading today.

Pui : (It) would resume trading, wouldn't it?

Tang : Yes, it would.

Pui : OK. Er, please monitor it for me. Er, the same, \$100,000.

Tang : OK. [Pui: Huh.] That is.....(inaudible) Er – hundred thousand dollars planning?

Pui : Yep. Almost like this. That is Er, Er, in that region – that is regarding the current price, is it 800,000 shares or 900,000 shares?

Tang : If you use the current price –

Pui : In fact, do you think it would rise or drop? I don't know.

Tang : Er – I have talked with Joseph last night, [Pui: Yep.] he said that – it might drop a bit today. [Pui: I see. OK.] May be even more.
[Pui: I see. OK.] Huh. In a word, the value will be \$100,000.

Pui : Er, no, if it really drops, 1 million shares will also be OK.

Tang : That is if you –

Pui : Can buy an addition 100? [Tang: I see. OK] However, the maximum is \$120,000. Huh. [Tang: I see. OK.] You make the calculation for me. That is Er – about \$100,000. However, if it's

[B = Rozalia PUI]
[T = Eric TANG]

332. B : Okay, er, keep an eye for me. Er, also 100,000 dollars.
333. T : Okay.
334. B : Huh.
335. T : That is (In short) Er – hundred thousand dollar value?
336. B : Yes. Yes. Yes. Something like that. That is, er, er, more, more or less – that is, isn't it that if, at the present price 800,00 shares can be purchased? Or is it 900,000 shares?
337. T : Er - - if you use this price again - -
338. B : Actually, do you think it will rise or fall? I have no idea.
339. T : Er - - I talked with Joseph last night. [B: Yes.] He said that - - it may, may perhaps fall a bit today.
340. B : Oh, okay.
341. T : So perhaps it may be a bit more.
342. B : Oh, okay.

343. T : Huh, so, in short, I'll keep in mind 100,000
dollars in value.
344. B : Er, no, if, that is, it falls, 1,000,000 shares is
also okay.
345. T : That is, if it - -
346. B : 100 more can be bought [T: Oh, okay.]?
Actually the maximum is 120,000. Huh. [T:
Oh, okay.] You just calculate that for me. That
is, er - around, er, 100,000 dollars. But if it can
be done, er, 120,000 is the maximum value,
cash value.
347. T : Oh, okay. No problem.
348. B : Yes, Yes. Thank you very much. Bye bye.
349. T : Okay. Okay. Yes. Thank you very much. Bye
bye.

(Telephone hung up)

24/9/99

10:07:46

* * * (Telephone recording • Paragraph 21) * * *

(Ringing tone)

[B = Rozalia PUI]

[T = Eric TANG]

392. B : China Travel (sound of clearing the throat).

393. T : Hello, Ah [B: Yes.] Rozalia? [B: Yes, yes.]
Eric. [B: Yes.] Regarding 385, [B: Hah.] um, a
total of, er, 750,000 have been bought for you.

Er. In value, it has been calculated as 98400.

394. B : Yes, yes. Well, er, how much is it per share at
the moment?

395. T : At the moment it is - -

396. B : At how much per share did you buy them for me
now?

397. T : Now, just now, I, okay, 250,000 were bought
for you [B: Okay.] at 13 cents, 132; [B: Okay
okay.] and 100,00 at 134. [B: Okay.] Do you
still want to need ~~any more~~ or is that quite
enough?

398. B : That's quite enough (laugh) [T: Okay.] Er,
700,000 in total, is it, in other words?

399. T : 750,000, 750,000 –

400. B : 750,000, well, 750,000 shares, [B: ... shares,
right.] Okay, okay, 0.132 was the highest
value –

401. T : The highest value was 134, 134, (inaudible) [B:
134, well, okay.] 100,000 only. [B: 100,000.
Okay. All right.] Well, there were 400,000 at
130 cents [B: Oh, okay, thank you very much.
(sound of telephone (ringing) at the background.)
25(0,000 shares) at 132.

402. B : Okay. [T: Yes.] Thank you very much. [T: All
right. Don't mention it.] Thank you. Bye bye.

403. T : Thank you. All right.

(Telephone hung up)