

REPORT OF THE INSIDER DEALING TRIBUNAL OF HONG KONG

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

FOUNDER HOLDINGS LIMITED

between

18 May 2001 and 28 August 2001 (inclusive)

and on other related questions

Introduction

By a notice pursuant to section 16 of the Securities (Insider Dealing) Ordinance Cap. 395 dated 6 May 2005 (amended by an Amendment Notice dated 17 November 2008), the Financial Secretary of the Hong Kong Special Administrative Region, requested the Insider Dealing Tribunal to conduct an inquiry. The notice read as follows:

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

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

- (a) whether there has been insider dealing in relation to the company connected with or arising out of the dealings in the listed securities of the company by or on behalf of Julie Kennel, Cheung Shuen Lung, Cheung Siu Lung, Yip Ka Yeung Albert, Peking University Founder Group Corporation and Super Highway Limited between 18 May 2001 and 28 August 2001 (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.”

In compliance with the notice, the Insider Dealing Tribunal, comprising of The Hon Mr Justice Saunders as Chairman and Mr Eric Ng Kwok Wai and Mr James Wardell as members, heard evidence and submissions from counsel for a total of 28 days, between 5 November 2008 and 8 May 2009.

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



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

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

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

- (a) whether there has been insider dealing in relation to the company connected with or arising out of the dealings in the listed securities of the company by or on behalf of Julie Kennel on 26 July 2001;
- (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 6th day of May 2005.

(Henry Tang)
Financial Secretary

財經事務及庫務局局長

香港雪廠街
中區政府合署



SECRETARY FOR FINANCIAL
SERVICES AND THE TREASURY

Central Government Offices,
Ice House Street,
Hong Kong

The Hon. Mr Justice Saunders
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

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

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- (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 Julie Kennel, Cheung Shuen Lung, Cheung Siu Lung, Yip Ka Yeung Albert, Peking University Founder Group Corporation and Super Highway Limited between 18 May 2001 and 28 August 2001 (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 17th day of November 2008.

(Professor K C Chan)
Acting Financial Secretary

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Chapter 1

Background¹

1. Founder Holdings Ltd (Founder) has been listed on the Hong Kong Stock Exchange (HKSE) since 1995. The company, together with its subsidiaries, (collectively, “the Group”) was principally engaged in the business of the development of computer software, the integration of computer systems, and sales of information products.

2. As at 31 December 2000, Founder was the 68th largest Hang Seng 100 stock, and the 14th largest China affiliated enterprise stock, on the HKSE.

3. A wholly-owned subsidiary of Founder was Beijing Founder Order Computer System Company Limited, (Founder Order).

4. As at 31 December 2000, Peking University, through a wholly owned subsidiary, Peking University Founder Group Corporation, (PUF) held 393 million shares in Founder, that shareholding constituting 34.01% of the issued share capital of Founder. PUF was the only substantial shareholder, that is holding more than 10% of the issued share capital in Founder, at that time.

5. At Annex 1 of this Report is a corporate association chart setting out these various entities.

¹ Throughout this Report, the expression “TB” will be used to refer to the bundles of statements and documents produced to the Tribunal by the Securities and Futures Commission, (SFC). The expression “TR” will be used to refer to the transcript of the evidence.

6. In 1998 and 1999 respectively, Founder had recorded net losses of \$165.7 million and \$223.1 million². Despite these very substantial losses Founder had returned to profit in 2000, reporting a net profit of \$181 million for the calendar year ended 31 December 2000³.

7. In the year 2000, the turnover increased from the 1999 year turnover of \$1,583 million, to \$2,088 million. The most significant contributor to the increased turnover and profit was the non-media sector, which comprised principally Founder Order.

8. At all relevant times Alan Cheung Shuen Lung, (Alan Cheung), was a member of the board of directors of Founder, and held the title of President of the company. Alan Cheung was based in Hong Kong, and was responsible for overseeing the overall operation of Founder, the management of its overseas subsidiaries, and reporting on the business performance of Founder to the board of directors. In addition, during the relevant period he was a director of PUF, and held a position as a Research Fellow of the Enterprise Research Institute at Peking University.

9. He was one of the founders of the Group, and, according to the 2000 annual report of Founder, had extensive experience in the information technology industry.

² All references to currency in this Report are to Hong Kong Dollars, except where otherwise indicated.

³ See Founder Holdings Ltd Annual Report, 2000, TB 8, Ex SF-5.

10. Before trading on the HKSE commenced on 28 August 2001, Founder issued a profit warning⁴ (the 1st Announcement), stating that it expected to record a substantial loss for the six months ended 30 June 2001. After the release of that announcement, Founder's share price plunged 18.52%, and \$1.35, to close at \$1.10 on that day. On the same day, the Hang Seng index, (HSI), rose slightly, by 66 points, or 0.6%, to 11,301.

11. The next two days saw a further reduction in the share price, by 14.6% on 29 August 2001, to \$0.94, and by 4.3% on 30 August 2001 to \$0.90. On 29 August 2001, the HSI rose by 59 points, and on 30 August 2001, it dropped 74 points.

12. Newspaper reports on 30 August 2001, speculating that the loss suffered by Founder for the first half-year would be in the order of RMB100 million excited a further announcement (the 2nd Announcement⁵) from the board of Founder on 31 August 2001.

13. Notwithstanding occasional share price rebounds, the Founder share price continued to fall, closing at \$0.68 on 14 September 2001, down 24.4% from the closing price on 30 August 2001. In that same period, the HSI fell by 17.9% to 9308 points. It is worthy of note that on the basis of the published accounts for the year 2000, Founder's net asset value (NAV) was \$0.68.

14. On the morning of 19 September 2001, Founder published its interim results for the six months ended 30 June 2001. These revealed a net loss of \$119.8 million, compared with a net profit of \$51 million for the

⁴ TB 8 Ex SF-7.

⁵ TB 8, Ex SF-8.

same period the year before. Upon publication of that information the share price rose 5.9% to close at \$0.72, the HSI rising by 2.7% to close at 9,558. Notwithstanding that price rise, the closing price of Founder shares at the end of trading on 19 September 2001, was 27.7% lower than the re-rated price of \$0.996 following the profit warning announcement.

15. Alan Cheung is closely related to a number of persons who, personally, or through entities controlled by them, dealt in Founder shares during the period between 18 April 2001 and 19 September 2001. At Annex 2 of this Report is a diagram setting out the relevant family and corporate relationships that will be considered in the course of this Report.

16. Dealings in Founder shares during the period between 18 April 2001 and 31 August 2001, on the part of Super Highway, Julie Kennel, and PUF, attracted the attention of the Securities and Futures Commission, (SFC). Those three entities all had links to Alan Cheung. An investigation was undertaken, and a report was made to the Financial Secretary.

17. On 6 May 2005, the Financial Secretary issued a Notice, (the Notice), pursuant to s 16(2) of the Securities (Insider Dealing) Ordinance Cap 395, (SIDO), directing the Tribunal to make inquiry into and determine:

- (a) whether there has been insider dealing in relation to Founder connected with or arising out of the dealings in the listed securities of Founder by or on behalf of Julie Kennel on 26 July 2001;

- (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.

18. For reasons which are set out in paragraphs 37-38 below, the Notice was subsequently amended on 17 November 2008⁶, by altering paragraph (a) to read:

- “(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 Julie Kennel, Cheung Shuen Lung, Cheung Siu Lung, Yip Ka Yeung Albert, Peking University Founder Group Corporation and Super Highway Limited between 18 May 2001 and 28 August 2001 (both dates inclusive);”

19. In this Report we set out the course of our inquiry and the determinations that we have made.

⁶ The Amended Notice is set out at page iv of this Report.

Chapter 2

Procedure

20. In this Chapter we set out, in brief, the history of this Tribunal's establishment following its receipt of the Notice under s 16(2) SIDO, and the steps taken by the Tribunal for the purposes of its conduct of the inquiry into the matters required by its terms of reference.

21. The Tribunal's terms of reference are governed by the Notice, dated 6 May 2005, sent to the chairman, Mr Justice Saunders, by the Financial Secretary. The Notice instituted the present Inquiry and required the Tribunal to enquire into suspected insider dealing by the only person named in the Notice, Julie Kennel.

22. In September 2005, the Chairman received from the legal advisers to the Financial Secretary, the Department of Justice, a synopsis of the background facts and evidence which were relevant to the subject matter of the Inquiry, and a list of the companies and persons who were connected with the subject matter of the Inquiry. A supplemental synopsis, clarifying the first synopsis was required. This was received by the Chairman on 27 January 2006.

23. The synopses, while useful to the Tribunal in preparing for the Inquiry, did not constitute evidence, and were not used by the Tribunal in any way in the ultimate consideration of the evidence presented.

The appointment of members and counsel assisting:

24. On 24 August 2006, two lay members were appointed by the Financial Secretary to the Tribunal. Those members were Mr Eric Ng Kwok Wai, and Mr James Wardell. Mr Ng is a certified public accountant and the managing director of Eric Ng CPA Limited. Mr Wardell is also a certified public accountant and is the executive chairman of Horwath Corporate Advisory Services Limited.

25. On 9 October 2006, Tribunal appointed Mr Nicholas Cooney, Barrister-at-Law of the Hong Kong Bar as counsel assisting the Tribunal. On 21 March 2007, the Tribunal appointed Mr Jonathan Kwan, also a Barrister-at-Law of the Hong Kong Bar, as junior counsel assisting the Tribunal.

The service of Salmon letters:

26. Following the appointment of counsel, that Tribunal was provided with the various witness statements, documentary evidence, exhibits and records of interviews which would form the evidence to be put before the Tribunal. From that material, and following meetings with counsel assisting, and the advice of counsel assisting, the Tribunal determined that in addition to the person named notice, Ms Julie Kennel, five other persons or entities should also be treated as implicated persons in the Inquiry, namely Alan Cheung, S L Cheung, Super Highway, PUF, and Yip Ka Yeung, Albert, (Albert Yip).

27. On 2 April 2007, counsel to the Tribunal, on the authority of the Tribunal, issued Salmon letters⁷ to each of the six persons intended by the Tribunal to be treated as implicated persons. The Salmon letter specified a date for the preliminary hearing of matters germane to the Inquiry. That preliminary hearing took place on Monday 28 May 2007.

The preliminary hearing:

28. At the preliminary hearing, Alan Cheung, and S L Cheung, were represented by solicitors, and Super Highway was represented by its director, Mdm Liu Chun Ping, (Mdm Liu). There was no appearance by either Julie Kennel, PUF, or Albert Yip.

29. The Tribunal was informed that the Salmon letter addressed to Julie Kennel had been served on her at an address in Vancouver, Washington State, United States of America. The Tribunal was subsequently informed that prior to the commencement of the Inquiry, Julie Kennel had died. Despite the fact that the Salmon letter had been served on her, Julie Kennel did not instruct solicitors or counsel, prior to her death, and she took no part in the Inquiry.

30. The Salmon letter addressed to PUF was duly served on that entity at Peking University, in Beijing, PRC. PUF did not acknowledge receipt of the Salmon letter and took no part in the proceedings.

31. The only address available to the SFC in relation to Albert Yip was an address in Taipei City Taiwan, to which the Salmon letter was sent.

⁷ Salmon letter is so named after Lord Salmon who first suggested this procedure is being appropriate for the notification of persons whose interests may be affected by the findings of a Tribunal of Inquiry.

The letter was returned, undelivered, marked “no such person”. Notwithstanding the relationship of Albert Yip to other implicated parties no other address was ever located for him, and he took no part in the proceedings. Enquiries at the Immigration Department showed that Albert Yip had left Hong Kong on 11 April 2002, and had not returned to Hong Kong since that day.

32. At the preliminary hearing the Tribunal announced its intention to commence the substantive Inquiry on Monday 16 July 2007.

The Judicial Review Proceedings:

33. The prompt dispatch of the Inquiry was further delayed by judicial review proceedings that were taking place in other insider dealing Inquiries. On 15 June 2007, Alan Cheung and S L Cheung applied to adjourn the proceedings consequent upon a decision of the Court of Appeal in another matter, involving the interpretation of SIDO, which would potentially have had the effect of bringing the proceedings to an end. As the decision of Court of Appeal was to go to the Court of Final Appeal, the Inquiry was adjourned, on this occasion sine die, to be brought on at 14 days notice, once the decision of the Court of Final Appeal was known.

34. The decision of the Court of Final Appeal was given on 18 March 2008. The effect of the decision was that the Tribunal was able to continue with the Inquiry, however the Tribunal recognised that as a result of that decision, the power contained in s 23(1)(c) SIDO, which enabled the Tribunal to impose on a person identified as an insider dealer a penalty of an amount not exceeding three times the amount of any profit

gained or loss avoided by that person as a result of the insider dealing, may no longer be lawfully exercised by the Tribunal.

35. Following the decision of the Court of Final Appeal, the Tribunal resumed sitting on Tuesday 29 April 2008. As the Chairman of the Tribunal was at that time engaged in a different Inquiry that had also been delayed by the proceedings leading to the decision of the Court of Final Appeal, and had High Court commitments that could not be changed, it was not possible to resume the substantive hearing until Wednesday 5 November 2008.

36. Throughout the substantive hearing Alan Cheung was represented by Mr Jonathon Harris SC and Ms Rachel Lam, instructed by Norton Rose, solicitors. S L Cheung and Super Highway were represented by Mr William Wong and Mr Harry Liu, instructed by Tsang & Lee, solicitors.

37. The substantive hearing began on Wednesday 5 November 2008, at which time a submission was made that the Notice by which the Tribunal was established did not permit the Tribunal to inquire into the activities of Alan Cheung, S L Cheung, or Super Highway, but was restricted so as to permit the Tribunal only to investigate the dealings in the listed securities of Founder by or on behalf of Julie Kennel.

38. Upon a ruling by the Chairman on the legal issue as to the scope of the Notice, the Tribunal was obliged to again to adjourn the proceedings, this time to enable the Department of Justice to advise the Financial Secretary upon the consequences of that ruling. On 17 November 2008, having considered that advice, the Financial Secretary

amended the Notice to make it clear that the activities of Alan Cheung, S L Cheung, and Super Highway, as well as Albert Yip, and PUF were properly the subject of the Inquiry.

39. At the request of counsel for S L Cheung and Super Highway, proceedings were yet further adjourned to enable both parties to instruct an expert to give evidence on their behalf.

40. On 8 January 2009, Mr Jonathan Kwan was obliged to resign his position as junior counsel to the Tribunal by virtue of his commitments as Presenting Officer before the Market Misconduct Tribunal. In his place, the Tribunal appointed Mr Derek Chan, Barrister-at-Law of the Hong Kong Bar, as junior counsel to the Tribunal.

41. The substantive hearing finally resumed on Monday 12 January 2009.

42. Over 23 further days of sitting, concluding on Friday 8 May 2009, a total of 13 oral witnesses were called by counsel to the Tribunal, or the parties.

43. Those witnesses were, (TW - Tribunal Witness), (CW - S L Cheung & Super Highway's Witnesses):

Name		General relevance to the inquiry
TW 1 (Day 6)	Mr Lau Fai, Lawrence ("Lawrence Lau")	Finance and Accounting Manager of Founder Hong Kong Limited in 2001. He worked under Mr Sammy Fung. Received Founder Order

Name		General relevance to the inquiry
		April 2001 management accounts on 18 May 2001 and forwarded it to Mr Sammy Fung.
TW 2 (Day 7)	Mr Li Chi Kat	Broker at Grand Securities Co. Limited in 2001. Broker of Super Highway Limited in 2001.
TW 3 (Day 7)	Mdm Liu Yuen Shan, Kitty	Broker of HSBC Broking Securities (Asia) Limited in 2001. Broker of Super Highway Limited in 2001.
TW 4 (Day 7)	Mr Yeung Kam Wing	Associate Director of HSBC Broking Securities (Asia) Limited in 2001. Broker of Super Highway Limited & Julie Kennel in 2001.
TW 5 (Day 7)	Ms Woo Chang Sau Wei, Anissa (“Anissa Woo”)	Account Executive at S.W. Woo & Co. Limited in 2001. Broker of Super Highway Limited in 2001.
TW 6 (Day 8)	Mdm Leung Yuk Kuen	Worked at the office of Dragon Tide Limited, owned by Mr Cheung Siu Lung in 2001.
TW 7 (Days 9-11)	Mr Fung Man Yin, Sammy (“Sammy Fung”)	Group Financial Controller of Founder Holdings Limited in 2001. Reported to Alan Cheung and the Board of Directors of Founder Holdings Limited.
TW 8 (Days 12-13)	Mdm Chu Nien Shian (“Mdm Chu”)	Younger sister of Julie Kennel and wife of Alan Cheung. Authorized user of Julie Kennel’s HSBC account in 2001.

Name		General relevance to the inquiry
TW 9 (Days 14-15)	Ms Fung Sau Hong, Stella ("Ms Stella Fung")	Expert Witness. Senior Manager, Enforcement Division of the Securities and Futures Commission in 2001.
TW 10 (Days 16 and 25)	Mdm Liu Chun Ping ("Mdm Liu")	Implicated Party. Sister-in-law of Mr Cheung Siu Lung. Director of Super Highway Limited in 2001.
TW 11 (Days 17-19 and 25)	Mr Cheung Siu Lung ("S L Cheung")	Implicated Party. Brother of Mr Alan Cheung.
TW 12 (Days 19, 23-25)	Mr Cheung Shuen Lung, Alan ("Alan Cheung")	Implicated Party. Vice President and Executive Director of Peking University Founder Group Corporation. Also the President and Executive Director of Founder Holdings Ltd. in 2001.
CW 13 (Day 26)	Mr David John White ("Mr White")	Expert Witness for Mr Cheung Siu Lung and Super Highway Limited.

44. Each of the oral witnesses, including the implicated parties and Mr White, were open to questioning by counsel assisting, and by counsel for each implicated party, and by the members of the Tribunal.

Tribunal procedure:

45. Prior to the issue of Salmon letters the Tribunal had consulted

its counsel privately, in the absence of the parties, in order to determine to whom Salmon letters should be issued, and as to procedural matters. Once the substantive hearing commenced there were no further private meetings between counsel assisting and the Tribunal. Any matters of a “housekeeping” nature were dealt with in open court.

46. The substantive hearing was conducted on an inquisitorial basis. That meant the Tribunal was itself responsible for the evidence that was called before it, though in this regard it had, prior to the commencement of the substantive hearing, sought the advice of counsel assisting, and duly considered any application for the calling of a witness by counsel for the implicated parties. If in the course of the substantive hearing the Tribunal took the view that further matters should be explored, it gave instructions to its counsel in that respect, in open court.

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

Chapter 3

The Law

48. 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.

“Insider Dealing” and “connected persons”:

49. The circumstances in which insider dealing in relation to a listed corporation takes place are set out in s 9 of the Ordinance. In this Inquiry the listed corporation with which the Tribunal was concerned was Founder.

50. In the context of this Inquiry the Tribunal has had regard to the provisions of s 4 of the Ordinance in which a person “connected” with the corporation is defined in the following way, (words irrelevant to the present Inquiry have been omitted):

- “(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....;
 - (b) (omitted)
 - (c) he occupies a position which may reasonably be expected to give him access to relevant information concerning the Corporation by virtue of –

- (ii) his being a director, in the corporation...;
- (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....”

51. In the context of this Inquiry the primary allegation was that Alan Cheung was a connected person by virtue of the provisions of s 4(1)(a) or (c)(ii) or (d), in that he was a director of Founder, and that further, as president of Founder, he had access to relevant information in relation to Founder.

52. Save as to a submission that Alan Cheung did not, at appropriate times, have any relevant information, there was no dispute by any of the counsel for the implicated parties that Alan Cheung constituted, in terms of the definition, a person connected with Founder. There being no real argument that Alan Cheung was not a connected person, the essential preliminary issue, to be considered in Chapter 9 below, is whether or not he was in possession of relevant information that might have existed, and if he was, when he came to be in possession of that relevant information.

53. Next, the Tribunal has had regard to the following provisions of s 9 of the Ordinance, (again, words irrelevant to the present Inquiry have been omitted):

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

- (a) when a person connected with that corporation who is in possession of information which he knows is relevant information in relation to that corporation deals in any listed securities of that corporation... or counsels or procures another person to deal in such listed securities knowing or having reasonable cause to believe that such person would deal in them;
- (b) (omitted)
- (c) when relevant information in relation to that corporation is disclosed directly or indirectly, by a person connected with that corporation, to another person and is the first-mentioned person knows that the information is relevant information in relation to the corporation and knows or has reasonable cause for believing that the other person will make use of the information for the purpose of dealing, or counselling or procuring another to deal, in the listed securities of that corporation.....
- (d) (omitted)
- (e) when a person who has information which he knows is relevant information in relation to that corporation which he received (directly or indirectly) from a person-
 - (i) whom he knows is connected with that corporation; and
 - (ii) whom he knows or has reasonable cause to believe held that information by virtue of being so connected,deals in the listed securities of that corporation...or counsels or procures another person to deal in those listed securities”

54. In his final address to us, counsel for the Tribunal put the issues to be considered in relation to each of the implicated parties in the

form of a short statement, relating that statement to the relevant provision of the Ordinance. Using that as a base we consider that the allegations made by counsel for the Tribunal may best be put in the following way:

A: In respect of the dealing in Founder shares by Super Highway and/or Mdm Liu:

- (i) whether or not, contrary to s 9(1)(a) of the Ordinance, Alan Cheung, being a connected person, and being in possession of relevant information which he knew to be relevant information in relation to Founder, counselled or procured S L Cheung to deal in the listed securities of Founder, he knowing or having reasonable cause to believe that S L Cheung would deal in those securities;
- (ii) whether or not, contrary to s 9(1)(c) of the Ordinance, Alan Cheung, being a connected person, and being in possession of relevant information which he knew to be relevant information in relation to Founder, disclosed, directly or indirectly, that information to S L Cheung, he knowing or having reasonable cause to believe that S L Cheung would make use of the information for the purpose of dealing in, or counselling or procuring others to deal in, the listed securities of Founder;
- (iii) whether or not, contrary to s 9(1)(e) of the Ordinance, S L Cheung, being a person who had information which he knew to be relevant information in relation to Founder, which he received directly from Alan Cheung, a person whom he knew was connected with Founder and whom he had reasonable

cause to believe held that information by virtue of being so connected, dealt in the listed securities of Founder;

- (iv) whether or not, contrary to s 9(1)(e) of the Ordinance, S L Cheung, being a person who had information which he knew to be relevant information in relation to Founder, which he received directly from Alan Cheung, a person whom he knew was connected with Founder and whom he had reasonable cause to believe held that information by virtue of being so connected, counselled or procured Mdm Liu and/or Super Highway to deal in the listed securities of Founder;

B: In respect of the dealings in Founder shares in the HSBC account of Julie Kennel:

- (v) whether or not, contrary to s 9(1)(a) of the Ordinance, Alan Cheung, being a connected person, and being in possession of relevant information which he knew to be relevant information in relation to Founder, counselled or procured Mdm Chu and/or Julie Kennel to deal in the listed securities of Founder, he knowing or having reasonable cause to believe that Mdm Chu and/or Julie Kennel would deal in those securities;
- (vi) whether or not, contrary to s 9(1)(c) of the Ordinance, Alan Cheung, being a connected person, and being in possession of relevant information which he knew to be relevant information in relation to Founder, disclosed, directly or indirectly, that information to Mdm Chu and/or Julie Kennel, he knowing or having reasonable cause to believe that Mdm Chu and/or Julie

Kennel would make use of the information for the purpose of dealing in, or counselling or procuring others to deal in, the listed securities of Founder;

- (vii) whether or not, contrary to s 9(1)(e) of the Ordinance, Julie Kennel, being a person who had information which she knew to be relevant information in relation to Founder, which she received directly from Alan Cheung, a person whom she knew was connected with Founder and whom she had reasonable cause to believe held that information by virtue of being so connected, dealt in the listed securities of Founder;

C: In respect of the dealings in Founder shares in the Morgan Stanley account of PUF:

- (viii) whether or not, contrary to s 9(1)(a) of the Ordinance, Alan Cheung, being a connected person, and being in possession of relevant information which he knew to be relevant information in relation to Founder, counselled or procured Albert Yip to deal in the listed securities of Founder, he knowing or having reasonable cause to believe that Albert Yip would deal in those securities;
- (ix) whether or not, contrary to s 9(1)(c) of the Ordinance, Alan Cheung, being a connected person, and being in possession of relevant information which he knew to be relevant information in relation to Founder, disclosed, directly or indirectly, that information to Albert Yip, and/or S L Cheung, and/or PUF he knowing or having reasonable cause to believe that Albert Yip

would make use of the information for the purpose of dealing in, or counselling or procuring others to deal in, the listed securities of Founder;

- (x) whether or not, contrary to s 9(1)(e) of the Ordinance, Albert Yip, being a person who had information which he knew to be relevant information in relation to Founder, which he received directly from Alan Cheung, a person whom he knew was connected with Founder and whom he had reasonable cause to believe held that information by virtue of being so connected, dealt in the listed securities of Founder;
- (xi) whether or not, contrary to s 9(1)(e) of the Ordinance, S L Cheung, being a person who had information which he knew to be relevant information in relation to Founder, which he received directly from Alan Cheung, a person whom he knew was connected with Founder and whom he had reasonable cause to believe held that information by virtue of being so connected, dealt in the listed securities of Founder;
- (xii) whether or not, contrary to s 9(1)(e) of the Ordinance, PUF, being a corporation which had information which it knew to be relevant information in relation to Founder, which it received directly from Alan Cheung, a person whom it knew was connected with Founder and whom it had reasonable cause to believe held that information by virtue of being so connected, dealt in the listed securities of Founder.

Dealing in Listed Securities:

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

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

56. It was not suggested by any counsel that the transactions scrutinised by the Tribunal in these proceedings did not constitute “dealing in listed securities” as defined by the Ordinance.

Relevant Information:

57. In simple terms, the case advanced by counsel for the Tribunal, was that Alan Cheung, in the course of his duties as a director and President of Founder had, on about 21 May 2001, or subsequently thereto, become aware that substantial losses were expected to be recorded by the Founder Group for the first six months of 2001, which information subsequently formed the basis of a profit warning given by Founder to the public in an announcement made on 27 August 2001. What constitutes “relevant information”, and whether or not it existed in this case as, in any Insider Dealing Inquiry, a significant matter, and will be considered, as to the law, in Chapter 4, and as to the factual circumstances, in Chapter 9 of this Report.

Standard of Proof:

58. The relevant standard of proof to be applied in insider dealing

proceedings is now settled by the decision of the Court of Final Appeal in *Koon Wing Yee v IDT* (2008) 11 HKCFAR 170, [2008] 3 HKLRD 372. That standard is the civil standard of proof, the balance of probabilities. When considering the evidence, the Tribunal had regard to, and applied, the following passage from the judgment of Sir Anthony Mason NPJ, at paras 88-90 of *Koon Wing Yee*:

“88 The use of the expression “standard of proof to a high degree of probability” must now be understood in the light of this Court’s recent judgment in *A Solicitor (24/7) v The Law Society of Hong Kong* where Bokhary PJ (with whom the other members of the Court agreed) said:

“... it is misleading to speak of ‘a high degree of probability.’”

89 In that case, this Court accepted the correctness of the approach to the civil standard of proof expressed by Lord Nicholls of Birkenhead in *Re H & Others (Minors) (Sexual Abuse: Standard of Proof)* [1996] AC 563, where his Lordship said at 596B-G:

‘The balance of probability standard means that a court is satisfied an event occurred if the court considers that, on the evidence, the occurrence of the event was more likely than not. When assessing the probabilities the court will have in mind as a factor, to whatever extent is appropriate in the particular case, that the more serious the allegation the less likely it is that the event occurred and, hence, the stronger should be the evidence before the court concludes that the allegation is established on the balance of probability....’

90 In *A Solicitor*, this Court held that nothing turned on the Solicitors Disciplinary Tribunal having spoken in terms of “the higher degree of probability commensurate with the gravity of the allegations” because, on a fair reading, its Statement of Findings did not suggest any misunderstanding of the civil standard of proof on the Tribunal’s part. The same comment applies here,

particularly in the light of the second and third paragraphs quoted above from the Tribunal's decision.”

59. The Tribunal, in assessing the evidence had due regard to the serious nature of insider dealing and in particular noted the comments made by Sir Anthony Mason NPJ at paragraphs 45-47 of the judgment in *Koon Wing Yee*. The Tribunal accepts that a serious allegation such as that of insider dealing will require strong evidence to establish the allegation in accordance with the required standard of proof.

Inferences:

60. As with many insider dealing inquiries, there was little dispute about the primary facts. Most were largely established by the relevant documentation available to the Tribunal. The facts, as they are stated in this Report, are the facts found by the Tribunal. Where there is a dispute as to the facts we will indicate the parameters of the dispute and the relevant evidence.

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

62. An inference may, of course, be drawn from evidence, provided that the evidence consists of primary facts which have been admitted or appropriately proved and the inference was a compelling one

which was the only reasonable inference which could be drawn from those primary facts.

63. In dealing with inferences the Tribunal noted the following principles enunciated by Ribeiro PJ in *Nina Kung v Wang Din Shin* (2005) HKCFAR 387 at § 184:

“A related principle should be applied in tandem. Where, as in the present case, the court is invited to reach a conclusion of forgery as an inference to be drawn on the basis of circumstantial evidence, any such inference must be properly grounded in the primary facts found. The court guards against indulging in conjecture under the guise of drawing an inference when the primary evidence does not logically and reasonably justified the particular inference in question.”

64. 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.

Good character:

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

Considerations of Fact & Law:

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

67. So far as the Tribunal's findings of fact were concerned, the Tribunal proceeded on the basis that it should strive to be unanimous in such findings, but that otherwise a finding of fact could be on the basis of a decision of a majority of the members. In the event, all findings made by the Tribunal were made unanimously.

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

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

69. Accordingly, the lay members were aware that they should not provide themselves or the Tribunal with “evidence” from their own

knowledge of the defence, procedures, or any other matters germane to these proceedings, but that they were to restrict the use of their professional experience and knowledge only to assessing the evidence actually presented to the Tribunal. In this Inquiry, there were no particular matters within the special knowledge of the members of the Tribunal to which we had regard.

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

70. The previous statements of witnesses and that of the implicated parties, made to SFC investigators in the form of formal records of interview, or memoranda of interview, as well as any written statements produced to the Tribunal, were accepted as evidence by us in addition to any oral evidence given by the witnesses and the implicated parties. What weight we attached to the contents of the previous statements 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.

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

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

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

Expert witnesses:

72. In dealing with the evidence of the expert witness called by counsel for the Tribunal, Ms Stella Fung, we bore in mind her expertise, but reminded ourselves that, as with any other witness, we could accept or reject all or part of her evidence. Her evidence was considered by us in the context of the other evidence in the case. Further, in assessing Ms Fung's evidence we bore in mind that while she held appropriate qualifications to enable her to express an opinion, she was an employee of the SFC, the body that was instrumental in bringing the proceedings before us.

73. Mr Wong sought to assert that Ms Stella Fung was not qualified to comment on the Founder Order management accounts, asserting that she had no expertise to do so. We understood this to constitute an assertion that because Ms Stella Fung was not a certified public accountant, it was not open to her to express a view on the likely effect of the information contained in the Founder Order management accounts on the investing public.

74. First, we note Stella Fung's qualifications, including an M Sc in Finance, and that she is a Certified International Investment Analyst. We note to her experience as a research analyst. We are satisfied that those qualifications, and that experience, are such that she is quite able to consider accounts, and to express an opinion on those accounts in relation to the view that might be taken by the results demonstrated by those accounts by the investing public.

75. Ms Stella Fung did not express an opinion on the accounts, from accounting point of view. She reviewed the information contained in

the management accounts and expressed, as she was perfectly well qualified and entitled, a view on the effect of that information on the investing public, had that formation been made public at the time it became known to Alan Cheung and the other members of the Founder board.

76. In relation to Mr White, the expert called by S L Cheung and Super Highway, again we bore in mind his expertise, and we noted that while an independent expert, he was employed by S L Cheung and Super Highway.

Witnesses who lie:

77. In considering circumstances where it might be said there was a lie, we had regard to the statement of Peter Smith J. in *EPI Inc v Symphony PLC* [2005] 1 WLR 3456 at 3471:

“Second, witnesses can regularly lie. However, lies themselves do not mean necessarily that the entirety of that witness’s evidence is rejected. A witness may lie in a stupid attempt to bolster a case, but the actual case nevertheless remains good irrespective of the lie. A witness may lie because the case is a lie.”

78. In dealing with such circumstances, we have asked ourselves two questions. First, we have decided whether or not there was a lie. If we were not satisfied, to the appropriate standard of proof, that the statement was a lie, we have disregarded it entirely. Second, if we have been satisfied that there was a lie, we have recognised that the mere fact that there was a lie is not in itself evidence of guilt. We accept that a person may lie for many reasons, and that those reasons, as pointed out by Peter Smith J., may be innocent. A person may lie to bolster a true explanation,

to protect somebody else, to conceal disgraceful conduct other than the insider dealing complained of, or out of panic or confusion.

79. That said, we recognised that a person may also lie, simply in order to conceal their involvement in the conduct which is the subject of the Inquiry, irrespective of whether that conduct might be considered reprehensible. In each circumstances necessary to consider how the lie, if established should be dealt with.

80. If we have concluded, or are not sure, that there was an innocent reason for a lie, then we have disregarded that particular statement. We accept too, that even if a person has lied, then that lie may not necessarily be a basis upon which the whole of their evidence should be rejected. Other parts of their evidence may well be perfectly credible, particularly when reference is had to objective facts, documents, the motive of a person, or the overall probability of a particular event occurring.

81. Mr Wong reminded us of the following passage from the Chinese Estates Holdings Inquiry⁸:

“While the ability to watch and listen to a witness giving his or her evidence is of considerable assistance in deciding what weight to give that witness’s evidence, it must be remembered that demeanour is an imprecise concept and invariably subjective. The difficulties are increased when a member of the Tribunal is forced to hear evidence through an interpreter. In *R v Ng Wing Ming* [1995] 1 HKCLR 64 Litton JA, (as he then was) described the difficulties of relying too heavily on demeanour in the following terms:

⁸ Report of the Insider Dealing Tribunal of Hong Kong on whether insider dealing took place in relation to the listed securities of Chinese Estates Holdings Ltd dated 25 June 1999 at p 34.

‘Demeanour is a notoriously uncertain guide to the truth for obvious reasons. A witness comes into court as a total stranger to the judge who can hardly be expected to read from his or her facial expressions or ‘body language’ indications as to truthfulness or otherwise. The inherent probabilities in most cases would be the first point of reference for the trial judge in seeking to ascertain the truth. Demeanour could only be a point of last resort.’

In assessing the credibility of the various witnesses, the Tribunal cautioned itself in accordance with that dicta.”

We agree with that proposition, and have acted accordingly.

The case of each implicated party considered separately:

82. The Tribunal directed itself that the role of each implicated party should be considered separately, and that a finding of culpability or the exoneration of one person did not necessarily mean that the same finding would be arrived at in respect of another person. It should be said however, that evidence relating to one implicated person’s case was in many situations, identical or relevant to that of other implicated persons, and so was taken into consideration by us in considering the cases of each of the implicated parties.

The question of delay:

83. Mr Harris and Mr Wong both reminded us of the very long period of time between the events at issue and the hearing. The relevant transactions in the shares took place between March 2000 and September 2000. The hearing did not begin until May 2007, and in June 2008 had to be adjourned, and did not resume until November 2007. Again, after dealing with procedural matters it was necessary to adjourn until

12 January 2009 when the substantive hearing finally began, ultimately concluding on Friday 8 May 2009.

84. Quite properly, both counsel reminded us that we should take that long delay into account in assessing the evidence of the witnesses, bearing in mind the numerous occasions on which witnesses said they could not now adequately recall or explain what they did at the time, or what they said in their witness statements. We have duly taken that delay into account.

85. That said, we do note that Alan Cheung was interviewed by the SFC in January 2002, and S L Cheung was first interviewed by the SFC in September 2002. At that time, each of them had present with them a legal advisor.

86. Both Alan Cheung and S L Cheung, when interviewed, must have known why they were being interviewed. They had had legal advice prior to, and after the interview. They had every opportunity to ensure that appropriate documents were located and duly kept, and that they made a record of any other matters that they might consider to be relevant, even if not asked about those matters by the SFC. They had the opportunity, if they wished, to set down in writing, with the assistance of legal advisers, when things were still fresh in their minds, any relevant circumstances surrounding their dealings in Founder shares.

87. In those circumstances the consequence of any delay is very much less than circumstances where, for the first time, a witness has asked to recollect events that took place at six to seven years earlier. That said, we recognise the relevance of the delay on memory, and have duly taken it

into account. We recognize of course, as has a number of Tribunals, that delay is a matter which may be relevant in mitigation penalty should persons implicated ultimately be found to be insider dealers.

Chapter 4

The Law as to Relevant Information

88. Insider dealing can only take place on the basis of relevant information as defined by s 8 of the Ordinance. If the subject information falls short of being relevant information then there has been no insider dealing. We have identified the case advanced by counsel for the Tribunal is to relevant information in paragraph 57 above.

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

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

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

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

Second, the information must not be generally known to that segment of the market which deals or which would likely deal in Founder shares; and

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

Specific Information:

91. What may or may not amount to specific information will depend always on the particular factual circumstances of a case. We will consider the particular factual circumstances of this case in Chapter 6 et seq.

92. We adopt the discussion as to specific information contained in the *Asia Orient Holdings Ltd Inquiry*⁹, and apply the principles therein enunciated, in the circumstances of this case. That discussion expanded upon the discussion of the concept of specific information in the Report of the Tribunal in *Firststone International Holdings Limited*¹⁰, which formed the basis of the submission by counsel to the Tribunal.

93. It is accordingly appropriate that we set out that passage, although it is extensive.

“Specific Information:

76. What may or may not amount to specific information will depend always on the particular factual circumstances of a case. We will consider the particular factual circumstances of this case in Chapters 6-9.

77. There have been a number of approaches to, and attempts at, determining what is required of information before it

⁹ Report of the Insider Dealing Tribunal Hong Kong on whether insider dealing took place in relation to the listed securities of Asia Orient Holdings Ltd dated 8 September 2006, see paras 76-81.

¹⁰ Report of the Insider Dealing Tribunal of Hong Kong on whether insider dealing took place in relation to listed securities in Firststone International Holdings Limited Inquiry dated 8 July 2004, p 58.

is “specific” for the purposes of s 8 of the Ordinance. For the purpose of this Inquiry we adopt the test used by the Tribunal in *Firststone International Holdings Limited Inquiry*¹¹, and adopted by the Tribunal in both the *Chinese Estates Holdings Limited Inquiry*¹², and the *Chinney Alliance Group Limited Inquiry*¹³. That test is in the following terms:

“We have directed ourselves that information concerning a company’s affairs is sufficiently specific if it carries with it such particulars as to a transaction, 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.”

78. We accept that specific information is to be contrasted with mere rumour, vague hopes and worries, and with unsubstantiated conjecture¹⁴.

79. For information to be characterised as “specific information”, there is no requirement that the information should be precise¹⁵. As was said by an earlier Tribunal¹⁶:

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

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

“In general, specific information might typically be that a bid was going to be made. Precise information would be the price at which that it was going to be made. On that

¹¹ Report of the Insider Dealing Tribunal of Hong Kong on whether insider dealing took place in relation to listed securities in *Firststone International Holdings Limited Inquiry* dated 8 July 2004, p 58.

¹² Report of the Insider Dealing Tribunal of Hong Kong on whether insider dealing took place in relation to the listed securities of *Chinese Estates Holdings Limited* dated 25 June 1999, p 39.

¹³ Report of the Insider Dealing Tribunal of Hong Kong on whether insider dealing took place in relation to the listed securities of *Chinney Alliance Group Ltd* dated 24 December 2004, p 35.

¹⁴ See *Chinese Estates*, (supra fn 6), at p 39.

¹⁵ Supra at pp. 39-40. See also the Report of the Insider Dealing Tribunal of Hong Kong on whether insider dealing took place in relation to the listed securities of *Stime Watch International Holdings Limited*, dated 14 February 2003, at p 83.

¹⁶ See Report of the Insider Dealing Tribunal of Hong Kong on whether insider dealing took place in relation to the listed securities of *Public International Investments Limited* dated 5 August 1995, at p 236.

basis, precise information would be narrow, exact and definitive.¹⁷

It will always be the case that specific information need not be precise, but precise information will necessarily be specific. In determining whether information is specific it will be necessary for the Tribunal to look objectively at the information and ask where it should be placed on a scale rising from rumour, innuendo, hint, general information up to specific or precise information.¹⁸ Whether information may be characterised as specific may be resolved, in part, by the Court assessing whether that information would be likely materially to affect the price of shares. The more likely it is that the information would affect a share price, then the more likely it is that that information will be found to be specific. Thus, where the evidence in a particular case demonstrates that upon the information becoming public the share price was affected, then it is more likely that that information will be found to be sufficiently specific to fall within terms of s 8.

81. In “*Insider Dealing*”¹⁹, Ms Hannigan gives a number of examples of specific or precise information. The clearest example of specific or precise information, and one which featured in the great majority of prosecutions under the English insider dealing legislation²⁰, is a knowledge of an impending takeover bid. Equally clear is knowledge of a forthcoming share placing, even if the details of the placement are not known: see *R v Cross* [1991] BCLC 125 at 132 CA.”

94. In the 2nd edition of *Insider Dealing*, at p 63, Ms Hannigan gives examples of specific or precise information. These include:

“substantial losses made by a company even though the precise magnitude of the losses is not yet clear”.

Authority cited for the proposition is *R v Goodman*, unreported, but see *Financial Times*, 1 May 1991; and 16 June 1992. A similar view is

¹⁷ HC Debs, Session 1992-93, Standing Committee B, 10 June 1993 Col 174, cited in “*Insider Dealing*”, 2nd Ed, Longman, Brenda Hannigan, p 63.

¹⁸ See “*Insider Dealing*” (supra fn 11), at p 64-5.

¹⁹ Op cite 12, at p 63.

²⁰ The Company Securities (Insider Dealing) Act 1985.

expressed in *Market Abuse and Insider Dealing*, Butterworths, 2002, Rider Alexander & Linklater, at para 1.8:

“The classic example that is often given of insider dealing is where a director of the company learns in a board meeting that his company’s profit forecasts are about to be revised to a significant extent and then goes on to the stock market and trades on the basis of this information before it is made publicly available.”

95. We have taken all of these matters into account. We are satisfied that specific information may constitute knowledge of a company’s financial state of affairs, where that knowledge goes beyond general knowledge in the market that a company may be particularly financially well off, or experiencing some financial difficulties.

96. We are of the view that knowledge of substantial losses that might be made by a company, even though the precise magnitude of the losses is not yet clear, would constitute specific information.

Information not generally known:

97. By its very nature, inside information is information which is known only to a few and is not generally known to the market, the market being defined in s 8 as “those persons who are accustomed or would be likely to deal in the listed securities of that corporation”.

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

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

The dissemination of relevant information by a recipient of that information:

100. As may be seen from paragraph 54 above, in a number of the situations we are required to consider, the allegation made, particularly against Alan Cheung, is that he "counselled or procured" others to deal in Founder shares.

101. We accept the submission that the meaning of the expression "counsel or procure" should follow its definition in criminal law. We are satisfied that the following passage from Archbold Hong Kong 2009, §§ 17-19 appropriately reflects the definition of the word "counsel" that we should apply:

"The ordinary meaning of the word "counsel" is "advise" or "solicit": *R v Calhaem* [1985] QB 808; 81 Cr App R 131 CA (Eng); it includes "ordering encouraging or persuading": *R v Lee* (Unreported, Crim App 306/1992 CA). "Counselling" does not by implication require proof that the counselling was a substantial cause of the commission of the offence: *Stephen's Digest* 4th Edn Art 39; nor even of any causal connection as such between the advice, etc, and the offence thereafter committed: *Calhaem* above. However, there must be a meeting of minds, or "consensus" between the counsellor and the principal offender."

102. Thus, where counselling and procuring is engaged, it will not be sufficient to establish insider dealing on the part of Alan Cheung if all that can be established is that he disclosed information to other persons. It is incumbent upon counsel making the allegation to establish not only mere disclosure, (ie, “tipping”), but also counselling or procuring, that is, active encouragement in the acquisition of the shares by the person to whom the information has been disclosed.

103. The same principle must equally apply to any party who has allegedly received information from Alan Cheung, knowing Alan Cheung to be a connected person, and subsequently passed that information on to another to deal in Founder shares; (the s 9(1)(e) situation).

The knowledge of the recipient of the information:

104. We accept, of course, by virtue of the provisions of s 9(1)(e)(i) and (ii), that the person who has received the information must know that the information is information received from a connected person, who has that information by reason of the connection. If he does not know that the information has come from connected person, who has the information by reason of that connection, and the recipient acts upon that information, his action in dealing in the securities will not constitute insider dealing.

105. In the present case, because of the family involvements of the various implicated parties, no suggestion was made that if information had been received by way of Alan Cheung, the recipient would have not have appreciated that he had that information by virtue of his position as a director of, and President of, Founder.

106. It is essential too, by virtue of provisions of s 9(1)(e), that the recipient of the information must know that the information is relevant information. Thus, if a person receives information that is relevant information, but that recipient of information is not aware of the fact that it is relevant information, and he acts upon that information, any such dealing in securities will not constitute insider dealing.

Chapter 5

The Ultra Vires Issue

107. As has been noted in paragraph 38 above, on 17 November 2008, the Financial Secretary amended the Notice consequent upon a complaint by both counsel for Alan Cheung, S L Cheung, and Super Highway for that the terms of the Notice were not sufficient to entitle the Tribunal to inquire into the activities of anyone other than Julie Kennel.

108. On 10 November 2008, having heard argument on the scope of the Notice, the Tribunal ruled that the terms of reference were not sufficiently wide to cover the activities of Alan Cheung, S L Cheung, Super Highway, PUF or Albert Yip. At the request of counsel to the Tribunal, the proceedings were adjourned to enable counsel to the Tribunal to give advice to, and take further instructions from the Financial Secretary.

109. The Financial Secretary subsequently amended Notice, and the Tribunal resumed its Inquiry on Tuesday, 18 November 2008.

110. On that date, no further complaint was made as to the terms of the Notice, although an application was made by counsel for S L Cheung and Super Highway for an adjournment. The reason for that adjournment was quite unrelated to the amendment of the Notice. The adjournment was for the purpose of obtaining expert evidence to be called by S L Cheung and Super Highway, in response to expert evidence that had been filed by counsel to the Tribunal two weeks earlier.

111. No complaint at all was made that the Financial Secretary was not entitled to amend the Notice. In fact, Mr Wong, in the course of argument on the scope of the notice, had recognised that the appropriate course, should the Notice be confined to permitting the Tribunal to inquire only into the activities of Julie Kennel, would be, if so requested by counsel to the Tribunal, to adjourn the Inquiry to enable counsel to take instructions with a view to having the Notice amended²¹.

112. Mr Harris, sensibly, did not join in the submission made by Mr Wong. His submission in the argument as to the scope of the Notice had also recognised that the Financial Secretary should, if the Notice did not encompass all those who ought to be subject to inquiry, amend the Notice²².

113. The essence of the complaint now made by Mr Wong as to the amendment of the Notice was that as the Tribunal had power to disqualify a person from holding a directorship of a company should that person be found to be insider dealer, although not a criminal proceeding, the Tribunal's proceeding was penal in nature. Consequently, it was argued, a strict interpretation should be applied to the powers of the Financial Secretary. That strict interpretation, Mr Wong argued, meant that once a Tribunal Inquiry was instituted by a Notice, that Notice could not be amended as there was nothing in the legislation which permitted an amendment.

114. Mr Wong accepted that an amendment to the Notice could be made prior to, or at the first sitting of the Tribunal, at which sitting the Tribunal is required by s 18 of the Schedule to the Ordinance to determine

²¹ See Transcript, Day 1, p 18 l. 6-12.

²² See Transcript, Day 1 p. 7 l. 13-22.

whether the conduct of any persons subject to the Inquiry or whether a person is in any way implicated or concerned in the subject matter of the Inquiry.

115. The first sitting of the Tribunal had been held on Monday, 28 May 2007, at which time S L Cheung was represented by solicitors, and Super Highway by its director, Ms Liu. Both had received Salmon letters which informed them that their conduct was considered to be implicated or concerned in the subject matter of the Inquiry. At no stage in the course of that hearing did either complain that the Notice was not sufficiently wide to bring them within the scope of the Inquiry.

116. The issue as to the scope of the Notice was only raised when the Tribunal resumed on 5 November 2008, at which time no suggestion was made by Mr Wong that there was no power to amend the Notice. Subsequent to the Tribunal's ruling on the matter, the amendment was made and both S L Cheung and Super Highway submitted themselves to the Tribunal without further objection.

117. They cannot now to say that while it may have been open to the Financial Secretary to amend the Notice on the first day of the hearing, it is not open to him to amend the Notice prior to the substantive hearing. By submitting to the jurisdiction of the Tribunal and participating in all that followed consequent upon the amendment of the Notice they have waived any right they might have had to take objection to the scope of the terms of reference contained in the Notice.

118. The point was open to be taken on the first day. It was not taken. It cannot be right that an implicated party, having appropriately

received a Salmon letter, having received all of the relevant evidence and the opening statement of counsel for the Tribunal, can sit quietly by on the first day, when procedural matters are considered, say nothing at all, then on a subsequent day set for the commencement of the substantive hearing of submissions and evidence, say that he ought to be released from the Tribunal and that no amendment can be made to the Notice, because it is not the first sitting day of the Tribunal. To support such an argument would be to put form over substance in a way that is simply not acceptable.

119. In any event, on a proper interpretation of the expression “at the first sitting”, the argument is not open.

120. In our view, the expression “at the first sitting” of the Tribunal does not refer solely and only to the very first day upon which the Tribunal sits, but ought to encompass any sittings of the Tribunal up to the commencement of the opening submissions by counsel for the Tribunal. That is the beginning of the Inquiry proper, sittings prior to that date are administrative in nature, they are merely directions hearings, dealing with procedural matters. It is not until counsel for the Tribunal rises to open the proceedings that we have reached “the first sitting” of the Tribunal. It must be open to the Financial Secretary to amend the Notice at any time prior to the beginning of the Inquiry proper.

121. Further, as was found in November 2008, when the Notice was held to be insufficiently wide in scope to include the activities of S L Cheung and Super Highway, it would plainly have been open to the Financial Secretary to issue a new Notice. Such a new Notice could instruct the Tribunal to investigate the activities of any persons whose names were omitted from the first Notice.

122. Having issued a new Notice, there would have been nothing to prevent him from establishing this Tribunal as the same Tribunal to hear the issues arising from that Notice. There would have been nothing to prevent the Tribunal from hearing the issues arising from both Notices at the same time. If that is the case then it is difficult to see why there should be no right in the Financial Secretary to amend a Notice prior to the opening statement by counsel to the Tribunal, and the commencement of the substantive hearing of the Inquiry.

123. The Legislature plainly recognised the difficulty involved in bringing a new implicated party, who has not been a party since counsel opened the substantive proceedings, into an Inquiry that has already been commenced. They did so by amending s 17 of the Schedule of the Ordinance requiring the Tribunal to determine who will be subject to Inquiry, effectively, prior to the commencement of the Inquiry proper.

124. Mr Wong contended that the absence of specific power to amend, and therefore he said, any power to amend, was not irrational having regard to:

- (a) the interest of certainty and finality in the matter as serious as this;
- (b) the interest of fairness;
- (c) the power of the SFC to have a thorough investigation before instituting any inquiries.

125. None of these three matters justify a finding that it is not open to the Financial Secretary to amend the Notice. Indeed, to the contrary, each is an argument justifying the power to amend. A timely amendment is in the interest of certainty and finality. Fairness is a matter which extends to the Financial Secretary, as well as implicated parties. The decision to put the matter before the Financial Secretary for consideration is a matter for the SFC. It is for them to decide, and to take the consequences of that decision, of how thorough their investigation is, before seeking to have the Tribunal established.

126. The amendment did not detract in any way from issues of certainty or finality. Mr Wong did not suggest any factual matter or procedural matter in relation to either certainty or finality that might have been detrimentally affected. With certainty and finality comes expedition. It is facile to suggest that the Tribunal should have proceeded to hear the whole of the evidence and deal only with Julie Kennel and that another Tribunal should be established to hear the whole of the evidence again in order to deal with other implicated parties.

127. Neither did Mr Wong suggest that his clients were in any way deprived of a fair hearing by the amendment. He made no application for an adjournment based on unfairness, in fact, despite the fact that his clients had known precisely all of the evidence they faced for over 12 months, they were granted an adjournment to prepare evidence that ought to have been prepared much earlier. By amending the Notice at the time it was amended, prior to the commencement of the Inquiry proper, the Financial Secretary acted with scrupulous fairness.

128. Mr Wong did not suggest that the SFC ought to make any further investigation before his clients were brought to the Tribunal. The whole of the evidence, only with the exception of the expert evidence of Ms Stella Fung, upon which counsel for the Tribunal was to rely had been available Mr Wong's clients for well over 18 months. It is difficult to see what point was being made.

129. For the foregoing reasons we were satisfied that the Financial Secretary was perfectly lawfully entitled to amend the Notice, at the time it was amended, and that S L Cheung and Super Highway were properly before the Tribunal and that it was open to the Tribunal to find them liable for insider dealing activities as alleged.

130. The argument based on ultra vires fails.

Chapter 6

The events leading to the impugned share dealing

131. In this chapter we set out the facts as we find them to be. Where there has been a dispute as to the facts we shall indicate that, and set out how we have resolved that dispute.

132. As at 31 December 2000, Peking University, through a wholly owned subsidiary, PUF held 393 million shares in Founder, that shareholding constituting 34.01% of the issued share capital of Founder. PUF was the only substantial shareholder, that is holding more than 10% of the issued share capital, in Founder, at that time. A wholly-owned subsidiary of Founder was Founder Order.

133. In 1998 and 1999 respectively Founder had recorded net losses of \$165.7 million and \$223.1 million²³. Despite these very substantial losses Founder had returned to profit in 2000, reporting a net profit of HK\$181 million for the calendar year ended 31 December 2000²⁴.

134. In the year 2000, the turnover increased from the 1999 year turnover of \$1,583 million, to \$2,088 million. The most significant contributor to the increased turnover and profit was the non-media sector, which comprised principally Founder Order. In 1999, Founder Order had contributed \$316 million, or 19.96 % of the turnover. In the year 2000, Founder Order had contributed \$846 million, or 40.51% of the turnover, an

²³ All references to currency in this Report are to Hong Kong Dollars, except where otherwise indicated.

²⁴ See Founder Holdings Ltd Annual Report, 2000, TB 8, Ex SF-5.

increase of 168%²⁵. The contribution of Founder Order to the gross profit of Founder increased from \$50 million in 1999, 25% of the gross profit, to \$251,000,000, 58% of the gross profit. The annual report for 2000²⁶, recognised this substantial increase:

“The substantial increase in turnover from non-media sector during the year under review was mainly attributable to the acquisition of Beijing Founder Order Computer System Company Limited (“Founder Order”) in the second half of 1999.”

135. At all relevant times Alan Cheung was a member of the board of directors of Founder, and held the title of President of the company. Alan Cheung was based in Hong Kong, and was responsible for overseeing the overall operation of Founder, the management of its overseas subsidiaries, and reporting the business performance of Founder to the board of directors. In addition, during the relevant period he was a director of PUF, and held a position as a Research Fellow of the Enterprise Research Institute at Peking University.

136. He was one of the founders of the Group, and, according to the 2000 annual report of Founder, had extensive experience in the information technology industry.

137. Founder had a number of subsidiaries in the PRC. The usual practice was that at monthly, or quarterly, intervals these subsidiaries, including Founder Order, would send management accounts to Sammy Fung who was the Group Financial Controller, based in Hong Kong. Sammy Fung would review, adjust and consolidate these accounts and report to the board of directors of Founder. If a subsidiary had incurred

²⁵ See Founder Holdings Ltd Annual Report, 2000, TB 8, Ex SF-5 p 9.

²⁶ TB 8 Ex SF-5, p 11.

unexpected or exceptionally large losses Sammy Fung would report the position to Alan Cheung and the Board of Directors of Founder.

138. On 18 April 2001, Founder Order's April 2001 accounts, showing a pre-tax loss of \$41 million, were sent to Sammy Fung. On the same day, Sammy Fung sent those accounts, by e-mail, to Wang Hui Min in Beijing, one of Alan Cheung's assistants, and an assistant financial controller of Founder. Wang Hui Min immediately sent the accounts, by e-mail, to the executive directors of Founder in Beijing.

139. On 21 May 2001, Sammy Fung sent the Founder Order accounts to Alan Cheung by e-mail. On that day a directors meeting was held, at which Alan Cheung was present, to discuss the unexpected loss.

140. A further meeting was held on 2 June 2001, at which Alan Cheung, Wei Xin, a Founder director based in Beijing, and two directors of Founder Order met the four-month result of Founder Order. Also discussed in the meeting was the Founder Order target for the first six months of 2001, which was to achieve a turnover of RMB140 million, with a gross profit of 30% and a profit of RMB10 million. Against that forecast, Founder Order was showing a loss of RMB41 million after the six months. Minutes were taken of this meeting, which were produced to us.

141. Sammy Fung received the management accounts of Founder Order for the first six months of 2001, from Lawrence Lau, on Friday 13 July 2001, at 5:25 p.m. He forwarded that information to both Wei Xin and Alan Cheung on the afternoon of Monday 16 July 2001. In his evidence before the Tribunal Alan Cheung said that he could not recall

when he received the June management accounts, but accept that that he “probably”, or “possibly” received them on 16 July 2001.

142. We have no doubt at all that he received those accounts on 16 July 2001. Those management accounts revealed an unaudited operating loss of RMB61 million.

143. From 2 May 2001 to 15 June 2001, Founder’s share price fluctuated around \$2.00. The shares dropped from \$2.125 on 2 May 2001, to a low of \$1.86, on 14 May 2001, but rebounded to close at \$2.05 on 15 June 2001. During this period the turnover averaged 19.95 million shares per day. During this period, the Hang Seng Index (HSI) lost 712 points, (5.15%), reducing from 13,814 to 13,102.

144. During the period 16 June 2001 to 27 August 2001, the share price was on a downward trend and with reduced turnover. In that period the closing price dropped 34.2% from \$2.05 on 15 June 2001, to \$1.35 on 27 August 2001. In comparison, the HSI dropped 1868 points, or 14.3%, from 13,103, to 11,235.

145. Before trading commenced on 28 August 2001, Founder issued a profit warning²⁷ (the 1st Announcement) stating that it expected to record a substantial loss for the six months ended 30 June 2001. The 1st Announcement contained the following statement:

“The Board of Directors (the “Board”) of Founder Holdings Limited (the “Company”, which together with its subsidiaries are collectively referred to as the “Group”) announces that based on the unaudited financial statements of the Group, the Group is expected to record a

²⁷ TB 8 Ex SF-7.

substantial loss for the six months ended 30 June 2001 principally attributable to the following reasons:

1. Unexpected slowdown in the non-media systems integration business especially in the banking sector.
2. Delay in the completion of certain sales contracts for our non-media systems integration business.
3. Over-expansion of our operational team of non-media systems integration business.

For the year ended 31 December 2000, our non-media systems integration business accounted for 40.5% of the Group's consolidated turnover and contributed to 57.8% of the Group's Consolidated gross profit."

146. After the release of the 1st Announcement on 28 August 2001, Founder's share price plunged 18.52%, and \$1.35, to close at \$1.10 on that day. On the same day, the HSI rose slightly, by 66 points, or 0.6%, to 11,301.

147. The next two days saw a further reduction in the share price, by 14.6% and 4.3% on 29 August 2001, to \$0.94, and on 30 August 2001 to \$0.90. On 29 August 2001, the HSI rose by 59 points, and on 30 August 2001, it dropped 74 points.

148. On 29 August 2001, ABN-Amro published a research report²⁸ in respect of Founder. The report was headlined:

"The last hope has faded".

That headline was followed with the following statement:

²⁸ TB 8, Ex SF-16.

“Contrary to management’s expectation, the non-media system integration business failed to become a major earnings boost for Founder. Together with the company’s poor transparency, we have downgraded the stock from reduce to SELL.”

149. The gist of this research report was published in a number of local newspapers on 30 August 2001, the newspaper reports particularly referring to a statement in the research report that management now expected the group to incur a net loss of roughly RMB100 million in the first half of the year 2001.

150. These newspaper reports excited a further announcement (the 2nd Announcement²⁹) from the board of Founder on 31 August 2001. The 2nd Announcement, while continuing to advise shareholders and investors to exercise caution when dealing with the shares of Founder, contained the following statement:

“The board of directors (the “Board”) of Founder Holdings Ltd (the “Company”, which together with its subsidiaries are collectively referred to as the “Group”) noted certain press articles appearing in today’s newspapers reporting about the loss figure of the Group for the six months ended 30 June 2001. The Company has not, and the senior management and directors of the Company have confirmed to the Company that they have not, save and except for the information contained in the Company’s profit warning announcement dated 27 August 2001, made any disclosure or announcement regarding the loss figure of the Group for the six months ended 30 June 2001.

The Board also noted certain articles in today’s press reporting the loss of two substantial clients for the Group’s non-media systems integration business during the first half of 2001. We wish to clarify that the contents of such press articles are not accurate and the Board is not aware of the source of such information.”

²⁹ TB 8, Ex SF-8.

151. Notwithstanding occasional share price rebounds, the Founder share price continued to fall, closing at \$0.68 on 14 September 2001, down 24.4% from the closing price on 30 August 2001. In that same period, the HSI fell by 17.9% to 9,308 points. It is worthy of note that on the basis of the published accounts for the year 2000, Founder's net asset value (NAV) was \$0.68.

152. In this Report we will refer to the period between 18 April 2001, on which day Sammy Fung had sent Founder Order's four months accounts to Alan Cheung's assistant, Wang Hui Min, and 28 August 2001, the day on which the 1st Announcement was published as "the relevant period".

153. On the morning of 19 September 2001, Founder published its interim results for the six months ended 30 June 2001. These revealed a net loss of \$119.8 million, compared with a net profit of \$51 million for the same period the year before. Upon publication of that information the share price rose 59% to close at \$0.72, the HSI arising by 2.7% to close at 9,558. Notwithstanding that price rise, the closing price of Founder shares at the end of trading on 19 September 2001 was 27.7% lower than the re-rated price of \$0.996 following the profit warning announcement.

Chapter 7

The impugned share dealing

154. Alan Cheung is closely related to a number of persons who, personally, or through entities controlled by them, dealt in Founder shares during the relevant period.

155. Julie Kennel was the sister of Mdm Chu, the wife of Alan Cheung, and consequently Alan Cheung's sister-in-law. Julie Kennel lived in Vancouver, Washington State, United States of America, and unfortunately died sometime in 2007. The precise date of her death did not form part of the evidence. Between April 2000, and October 2000, Julie Kennel had accumulated 3,844,000 shares in Founder through a share broking account, in her own name, with HSBC Broking Securities (Asia) Ltd (HSBC Broking). HSBC broking was formerly known as Wardley Securities Ltd. This share broking account was operated entirely by Mdm Chu and her sister Sandy Ku, although Alan Cheung was also a signatory to the account.

156. Between the end of October 2000, and 3 May 2001, there were no movements at all within Julie Kennel's share broking account. On 3 May 2001, 500,000 shares from the account were sold at \$2.15. On 26 July 2001, the remaining 3,344,000 shares were sold at prices ranging from \$1.73 to \$1.77.

157. The total proceeds of the sale of the shares were \$7,520,707.34. With the exception of a cash sum of \$500,000, which was received by

Mdm Chu, the proceeds of the sale of these shares eventually went to a bank account held by Sandy Ku. Both Julie Kennel and Sandy Ku used the residential address of Alan Cheung and his wife Mdm Chu, as their mailing address. Mdm Chu and Sandy Ku were the authorised signatories to Julie Kennel's bank account, and Alan Cheung and Mdm Chu were the authorised signatories to Sandy Ku's bank account.

158. Set out in Annex 3 is a chart showing the dealings in Julie Kennel's HSBC Broking account prior to, and during, the relevant period.

159. Super Highway Ltd, (Super Highway), is a company incorporated in the British Virgin Islands, (BVI). The sole shareholder and director of Super Highway during the relevant period was Mdm Liu, who is the sister-in-law of Alan Cheung's younger brother, S L Cheung. Mdm Liu, was employed by a company named Dragon Tide Ltd (Dragon Tide), where she undertook a general administrative work.

160. Super Highway had 8 share broking accounts, five of which were used for trading Founder shares during the relevant period:

- (i) at HSBC Broking;
- (ii) at Grand Securities Company Ltd, (Grand Sec);
- (iii) at S W Woo & Company Ltd, (S W Woo);
- (iv) at China Pacific Securities Ltd, (China Pacific);
- (v) at SBI E2-Capital Securities Ltd (E2-Capital).

According to the account opening documentation provided by the various brokers, Mdm Liu, the sole director of Super Highway, authorised S L Cheung to place trading orders for all of the accounts, except that at S W Woo.

161. Between 10 March 2000 and 19 September 2000, through the various accounts, Super Highway had accumulated 64,898,000 shares in Founder. In October 2000, Super Highway made a net disposal of 1,978,000 shares in Founder. Subsequently, trading in Founder shares by Super Highway became less active, and between 1 November 2000, and 17 May 2001 only 100,000 shares were bought, and 618,250 shares were sold. Consequently, by 17 May 2001, Super Highway held 62,401,750 shares in Founder.

162. Between 22 May 2001, and 21 August 2001, Super Highway sold 10,818,000 Founder shares. During that period, on three occasions only, Super Highway acquired Founder shares. Those acquisitions, totalling 686,000 shares were on 20 June 2001, 336,000 shares, on the same day 164,000 shares were sold; on 28 June 2001 300,000 shares were acquired, and on 9 July 2001 50,000 shares were acquired.

163. Set out in Annex 4 is a chart showing the dealings in Super Highway's various share broking accounts, prior to, and during, the relevant period.

164. The proceeds of sales of Founder shares by Super Highway between 22 May 2001 and 21 August 2001, totalled \$17,518,881.02. All of those funds were deposited into a bank savings account held by Super

Highway. Of that sum, \$1,367,897.98 was applied in the acquisition of the 686,000 shares referred to in paragraph 162 above.

165. S L Cheung used Super Highway's share trading account with E-2 Capital, and Grand Sec to deal in Founder shares on a personal basis. Between 15 June 2001, and 7 August 2001, S L Cheung bought 280,000 Founder shares, and sold 2,190,000 Founder shares, a net disposal of 1,910,000 shares. Acquisitions were made on 15 June 2001, of 200,000 shares, 27 July 2001, of 20,000 shares, and 3 August 2000 of 60,000 shares. Instructions for all acquisitions and disposals were placed by Mdm Liu, on the instructions of S L Cheung.

166. The sale proceeds from the disposal of shares totalled \$3,992,086.23, and were credited to a bank account held by Mdm Liu at the Bank of China. Part of the proceeds were made for the acquisition set out in paragraph 26 above, and the balance of \$3,914,721.30 was withdrawn in cash, between 30 July 2001 and 7 September 2001.

167. Established within Peking University was an entity, the precise structure of which was not made known to us, called Peking University Education Foundation, (PUEF). PUEF was not a party in the proceedings, nor was anybody from PUEF called to give evidence. The evidence of S L Cheung was that a person named Deng Ya was principally responsible for the administration of PUEF. His evidence was that a substantial portion of the share dealing undertaken by him, through Super Highway, was dealing on behalf of PUEF, on instructions from Deng Ya. S L Cheung did not produce to us any records or documentation to substantiate this assertion, nor was he able in oral evidence to precisely define just what portion of that share dealing was attributable to PUEF.

168. PUF, of which Alan Cheung was a director, also traded in Founder shares during the relevant period. PUF held a share broking account with Morgan Stanley Dean Witter (Morgan Stanley). This account was a margin account which had been open on 1 December 1997. There were four signatories to the account, including S L Cheung and Albert Yip, who was also Alan Cheung's brother-in-law. One of the signatories, Cheung Yuk Fung, (a person unrelated to either Alan Cheung or S L Cheung), was the chairman of PUF. All instructions in respect of the trading during the relevant period were given by Albert Yip.

169. Between 20 July 2001 and 16 August 2001, on the instructions of Albert Yip, PUF sold 5,150,000 shares. The sale proceeds from these disposals totalled \$7,941,597.13.

170. Set out in Annex 5 is a chart showing the dealings in PUF's Morgan Stanley share broking account, prior to, and during, the relevant period.

171. Immediately prior to the disposals the account was in debit to the extent of approximately \$11 million. During the relevant period, Morgan Stanley made margin calls on five occasions, totalling \$6,301,393.80. The final margin call was made on 9 August 2001. Of the shares sold by PUF, 1,700,000 were sold in the period 10 August 2001 to 16 August 2001. The whole of the proceeds of the sales were used to reduce the debit balance in the account. However, on 8 November 2001, a sum of \$1.5 million was withdrawn from the account and remitted to a bank account at E. Sun Bank, Taipei, to the credit of a company called Founder Investments Limited. That company is not part of the Group.

172. The share trading set out in the preceding paragraphs was the subject of our Inquiry.

Chapter 8

The issues for the Tribunal

173. Inevitably, in a case of insider dealing, it is first necessary to establish whether or not “relevant information”, as that expression is used in the Ordinance, existed or not. In dealing with the evidence in this respect we applied the law as set out in Chapter 4 above, to the facts found.

174. The case advanced by counsel for Tribunal was that the information contained in the April 2001 management accounts, and the six monthly management accounts received in July 2001, of Founder Order , separately, constituted relevant information under s 8 of the Ordinance.

175. If that information was relevant information, it was next necessary for counsel for the Tribunal to establish that Alan Cheung knew that the information was relevant information.

176. If he knew the information as to the losses contained in the April management accounts of Founder Order, or the six monthly accounts of Founder Order, was relevant information, then next stage was to establish whether or not he passed that information to his brother, S L Cheung, or Julie Kennel, Albert Yip or PUF. If he did, the case then required that it be established that the share trading that followed took place because that information had been given to those undertaking the share trading.

177. Mr Wong sought to characterise the case for counsel for the Tribunal in relation to relevant information, as a contention that it was the profit warning that constituted the relevant information. As may be seen from paragraph 57 above, that is clearly not the case.

178. We have set out in paragraph 54 above the way in which we have viewed the allegations made against the various implicated parties.

179. It must be noted at this stage, that counsel for the Tribunal advanced a case that Alan Cheung counselled or procured his wife, Mdm Chu, through Julie Kennel's account, to deal in Founder shares. A case was also advanced that Julie Kennel counselled or procured Mdm Chu to deal in Founder shares personally, through the Julie Kennel account. Notwithstanding these submissions, made at the final stage of the hearing, at no stage was it sought to make Mdm Chu an implicated party in the proceedings by serving on her a Salmon letter.

Chapter 9

The relevant information

180. Mr Wong submitted that there was insufficient evidence to establish that relevant information existed. In particular, he drew our attention to what he described as “the danger of drawing any trend from only two years accounting figures”.

181. It is right that there were subsequently significant audit adjustments made to the preliminary figures that had been received by Sammy Fung, and, quite properly, passed on by him to Alan Cheung. The submissions made were primarily based upon answers given in cross-examination of Sammy Fung.

182. We have no doubt at all that the information, both in May 2001, that Founder Order had reported unaudited losses in April 2001, in the region of \$41 million and in July 2001, that Founder Order had reported unaudited losses in June 2001 in the order of \$57 million, constituted relevant information.

183. That the information would be likely to have had an adverse effect on the share price of Founder was recognised and accepted by Alan Cheung. In cross-examination by counsel for the Tribunal the following exchanges occurred:

Day 19 p. 36, line 22 to p 37 line 10:

“Q During the course of that meeting on 21 May, the results of Founder Order for the first four months were reported to you, verbally perhaps?

A That is possible, that’s right.

Q The fact that your chief financial officer or controller has submitted or has reported on Founder Order’s financial situation indicates that he must have considered it to be an exceptional circumstance?

A You may put it that way.

Q As you had told the SFC investigators, the directors felt it was a very big problem?

A Yes. I said if there was such a big loss, that would be a big problem.

Q What effect do you think there would be on the share price of Founder Holdings Ltd if the public knew that Founder Order’s Management had reported a loss of some \$40 million and that the chief financial controller had brought this to the attention of the board of directors?

A Of course, it would be an adverse effect.”

Day 19 p 38 line 9-30:

“Q Yes, I want to move further on. Sammy Fung told the SFC when he was interviewed that he reported to you the June 2001 management accounts, and that was on 16 July 2001?

(Exchange in relation to translation omitted)

A I don’t remember, but it is possible.

Q Again, if the public knew that Founder Order’s Management was reporting a loss and at that time it is \$57 million, as mentioned earlier which is in an unaudited loss, but that the chief financial controller had brought this to the attention

of the directors for their consideration, would you say, just like the April accounts, and that this would have an adverse effect on the share price of Founder Holdings Ltd?

A Yes, of course, there would be an adverse effect.”

184. Alan Cheung’s responses, acknowledging that the information of the unaudited losses would have an adverse effect on the share price of Founder, is a plain acceptance that the unaudited losses constituted specific information which if generally known would likely materially affect the price of Founder shares.

185. Mr White, the expert called by S L Cheung, made a similar, although qualified acceptance, that the information would have an adverse effect on the Founder share price. The cross-examination was as follows:

Day 26 p 21, line 11 – p 22 line 3:

“Q Mr White, I am not actually concerned with an announcement by the directors. It may be that the directors before making an announcement want to have audited figures. What I am concerned about is in May and, again, in July 2000, a leak, so somebody says to somebody, “Look, the management accounts of Founder Order have reported a loss of 41 million. Now, these are unaudited.” now, a person could be expected to think, well, an audit might go either way but it might actually get worse, which is exactly what happened.

Surely, on a leak, it wouldn't be ignored by the investor, it would have an adverse effect or the investor would expect or fear that it would have an adverse effect if other people start to hear about this on the price of Founder Holdings Ltd?

A I would accept that proposition, that there could be an adverse effect. However, I would say this, that I have seen other announcements where there have been announcements about various things on the Stock Exchange which have leaked into the newspaper but it is not until there is actually a confirmed report that you will get a substantial movement in the share price

because it actually has been confirmed by the directors of the company. I can't speculate as to what impact it may have had.”
(sic)

186. Mr White further recognised the significance of the loss figures in the following exchange with Tribunal Member, Mr Wardell:

Day 26, p 22 line 12- p 23 line 23:

“Mr Wardell: Mr White, I stand to be corrected, and I am doing this from memory, I am taking you to the actual hearing, but my understanding is that the chief executive of this Founder Group was of the opinion that the information that was revealed by the four months figures was, in fact, price-sensitive?

A Yes.

Mr Wardell: If he was of that view, would you concur with him that the information would be price sensitive?

A My feeling on that is that if he felt it was price-sensitive, then he should have gone through the process of making a price-sensitive announcement, continuous disclosure process.

Mr Wardell: That is another matter?

A Having not done that, it depends on whether he was fully conversant with how that would have played through into the process. Now, taking him on face value, he may have known exactly how it would have played through into audit adjustments, and etc. I'm not sure whether he knew all of that information, if that is in his mind. If he comes to this Tribunal and says it was price-sensitive, whether he is fully conversant of the total group and how the impacts of all the different audit adjustments would be, etc, that is another matter.

Mr Wardell: He is the chief executive of the group?

A Yes, I accept that.

Mr Wardell: If the chief executive of the group says, “I believe it to be a price-sensitive matter”, what is your opinion? Would you agree with him that it must be a price-sensitive matter? Because you are not a director of the company?

A I’m not in a position to be a person of knowledge within the company to know whether that Management result was going to translate into a group result. I am not in the same position he is.

Mr Wardell: So what do you consider his view to be then? Would you consider it to be an informed view?

A As chief executive, it should be an informed view.”

187. Notwithstanding the qualification to his answer in the passage as set out in paragraph 185 above, the important part of the answer given is the acceptance by Mr White of the fundamental proposition. It may well be right that on occasions a leak of relevant information might not move the share price. That may particularly be so where the information is conveyed by way of a newspaper, where the credibility of the source is not known or the credibility of the columnist making the statement is not high.

188. But where the source of the information is a director of the company, we have no doubt at all that information that a subsidiary, particularly one which provided a substantial part of the previous year’s profit, was disclosing substantial losses, that information would be likely, materially, to have an adverse effect on the share price of the listed company. It needs to be borne in mind that the requirement is not that the information “must” have an adverse effect, but that it is “likely, materially”, to have an adverse effect.

189. It is quite right that in both May 2001, and July 2001, when the figures were presented to the Board, audit adjustments had not been undertaken. Those audit adjustments might well move the figure either further into losses, or reduce the losses. It is right too, that Founder Order was only part of the Group, and that significant profit advances in other parts of the Group might result in there being no adverse overall consequence at the end of the financial year.

190. But in our view none of these matters detract from the real possibility, (“the likelihood”; see s 8 of the Ordinance), that the significant losses being reported by the major source of the previous year’s profit increase, if then known to the investing public, would have a material effect on the share price of Founder Shares. That Founder Order had been the major profit contributor to the Group in the previous year is of considerable significance.

191. There is nothing to indicate that there was any information in the public domain that the business of Founder Order was retreating. Ms Stella Fung was quite right when she said that the investing public “would re-rate the share price downwards to reflect the disappointment (of the performance of Founder Order).”

192. It is not without significance is that the profit warning, informing the public of the substantial slowdown in business and profitability of Founder Order, precisely reflects the information that was received by Alan Cheung in May 2001, and again in July 2001.

193. It was not suggested by Alan Cheung that he did not, in either May 2001 or July 2001, hold any other view in relation to the information

as to the extent all likely effect of the losses, from that expressed by him in cross-examination we have set out above.

194. Mr Wong reminded us of the statement by the Tribunal in the Tingyi Inquiry³⁰ in the following terms:

“Before information can qualify as being specific information about the company it must be real information. If it is misinformation it cannot be real information. To describe a company as prosperous and stable when it is in the throes of the financial crisis is to provide no information about that company at all. To describe Hong Kong as a large state in the middle of Europe is to provide no information about Hong Kong.”³¹

195. Although this Tribunal, with respect to the Tribunal in the Tingyi Inquiry, does not entirely agree with the proposition contained in the third sentence, the principle enunciated is plainly right. But it does not in any way affect our conclusion that the information relied upon by counsel for the Tribunal in this Inquiry constituted relevant information.

196. In our view, in the circumstances of the extent of the losses reported in this case, it is no answer to say that future audit adjustments might be such that the information was misinformation. That that was so in the present case is demonstrated by the end result, in which the audit adjustments did not ultimately have the effect of reducing the extent of the losses.

197. For the foregoing reasons we conclude that the information of the losses potentially being suffered by Founder Order, and received by

³⁰ Report of the Insider Dealing Tribunal of Hong Kong on whether insider dealing took place in relation to the listed securities of Tingyi (Cayman Islands) Holding Corp. between 12 July 2000 and 28 July 2000, dated 8 December 2006.

³¹ Fn 30 at pp37-38.

Alan Cheung in May 2001, and July 2001, constituted relevant information as that expression is used in s 8 of the Ordinance.

198. We are in no doubt at all that Alan Cheung was aware of the draft accounts showing substantial pre-tax losses. He was aware of that information at least by 21 May 2001 when he was present at the meeting of directors at which the information was discussed. According to Founder, no minutes were kept of this meeting. However, Alan Cheung acknowledged in his interview that the loss reported by the Founder Order management was “a very big problem”.

199. We have no doubt that this set of draft accounts was discussed in the meeting held on 2 June 2001, at which Alan Cheung was present. Also discussed in the meeting was the Founder Order target for the first six months of 2001, which was to achieve a turnover of RMB140 million, with a gross profit of 30% and a profit of RMB10 million. Against that forecast, Founder Order was showing a loss of RMB41 million after four of the six months.

200. The minutes of the meeting are revealing. The following matters were recorded as having been discussed:

- (a) business income realised during the first half of the year would be RMB140 million, with a gross profit of 30%;
- (b) there would be “a relatively large reduction in realised profits” as compared to 2000, “mainly due to a great increase in the number of staff members and expenditure”;

- (c) Founder Order management would take steps to reduce expenditure, and to “scramble for a goal of achieving RMB10 million profit for the first half of 2001”;
- (d) “the business performance of Founder Order would be closely related not only to the survival and development of Founder Order but also to the stability as well as the development of Founder Holdings and even of the Founder Group”.

201. We accept the submission of counsel for the Tribunal that forecast a business income of RMB140 million for the first half of 2001 was unrealistic, given that sales for the first four months, albeit unaudited, only amounted to RMB44 million. In order to achieve RMB140 million it would be necessary for Founder Order to be able to report a turnover of RMB100 million for May and June alone. That was quite unrealistic. In fact the turnover for the first half of 2001 amounted to only RMB87 million.

202. We accept the submission that it was equally unrealistic to predict a profit target of RMB10 billion for the first half of 2001. First, there was an unaudited loss already reported RMB44 million in only four months. That meant that Founder Order would have to achieve a net operating profit in excess of RMB54 million in May and June 2001 alone, to recover from the loss and achieve the profit target.

203. Using the 30% gross profit margin as reported by Founder Order management for the first half of 2001, in order to achieve a gross profit of RMB54 million in May and June 2001, Founder Order would have reported a turnover of RMB180 million in May and June alone to achieve

the gross profit. Even allowing for the consequence of positive audit adjustments that was plainly unrealistic.

204. That Alan Cheung said in an interview with the SFC that he only paid attention in time to the profit target of RMB10 million is simply unbelievable.

205. We are accordingly further satisfied that not only was Alan Cheung in possession of the relevant information, but that he knew it was relevant information.

Chapter 10

Alan Cheung

206. Having satisfied ourselves that the information received by Alan Cheung in May 2001 and June 2001, was relevant information, and known to him to be relevant information, we turn now to consider whether the evidence establishes that Alan Cheung disclosed that relevant information to S L Cheung, knowing or having reasonable cause for believing that S L Cheung would make use of the information for the purpose of dealing, or counselling or procuring others to deal in Founder shares, or that Alan Cheung counselled or procured S L Cheung to deal in Founder shares.

207. Although the evidence establishes that Sammy Fung received the Founder Order management accounts on 18 April 2001, the evidence does not establish precisely whether or not Alan Cheung received those accounts prior to 21 May 2001. The evidence establishes that at 5.43 p.m. on that afternoon Sammy Fung e-mailed the draft accounts to Alan Cheung's assistant, Wang Hui Min, but it does not establish that he forwarded them on to Alan Cheung. What the evidence does establish is that he forwarded them to the executive directors of Founder in Beijing. Wang Hui Min was not called as a witness before us.

208. There is no direct evidence of any conversation between Sammy Fung and Alan Cheung, relating to the accounts, prior to those accounts being submitted to the directors of Founder Holdings on 21 May 2001.

209. The evidence establishes that there were three telephone conversations between Alan Cheung and S L Cheung on the afternoon of 18 May 2001, totalling 12.68 minutes in duration. But in the absence of appropriately compelling evidence that Alan Cheung was aware of the draft accounts that time, we are unable to draw the inference, to the standard required, that in the course of those telephone conversations the accounts were discussed. Equally, we are unable to draw the inference that the accounts were discussed in to telephone conversations on the afternoon of 20 May 2001, totalling 66 seconds in duration.

210. On 21 May 2001, the results for Founder Order containing the relevant information was submitted to the Directors of Founder Holdings for their consideration. That afternoon, and in the early evening, there were a total of four telephone conversations between Alan Cheung and S L Cheung. As these were all mobile telephone calls, we draw the inference that the calls were between those two individuals. It is open to us to draw the inference that in the course of those telephone calls the potential loss was discussed, and that S L Cheung, became aware of that loss.

211. Annexed to this Report, as Annex 6, is a table prepared by counsel to the Tribunal. The table covers the period 18 May 2001 to 27 August 2001. The table sets out the share transactions undertaken by Super Highway and Mdm Liu, on behalf Super Highway, showing also telephone conversations made between the mobile telephones, or home telephones of Alan Cheung and S L Cheung. Significant events are also noted.

212. We have weighed this information carefully. We note that in the course of that period, Super Highway sold 10,818,000 Founder shares.

However it is significant that during the same period a total of 916,000 shares were acquired by Super Highway.

213. In determining whether or not we are able to draw the inference, to the required standard of proof, that Alan Cheung informed S L Cheung of the content or nature of the management accounts that he had received, we have taken into account the following factors:

- (a) the telephone conversations were between brothers, who had an elderly father, who was not in good health. A reasonable inference to draw from regular telephone conversations in those circumstances is that they were discussing their father's health;
- (b) there were other parties who were associated with S L Cheung, and Founder, particularly through his association with the PUF, who would have had access to the information and who would have been able to give him the information. These include Wei Xin and Zhang Zhou Dong, neither of whom gave evidence;
- (c) when the business of Founder Order was acquired by Founder, Kui Man Chun and Li Wenjin were directors of Founder Order. It is plain from the Mexican Gold transaction, (discussed in Chapter 14 below), that there was a close association between both of those gentlemen and S L Cheung. Following the acquisition of Founder Order by Founder, both Kui and Li remained with Founder Order, and may well have had access to the relevant information and discussed it with S L Cheung;

- (d) S L Cheung had previously worked in Founder, and was well acquainted with many of the staff there, particularly Sammy Fung will also have access to the relevant information;
- (e) Super Highway disposed of only 17.3% of the shares it held in Founder during the relevant period;
- (f) during the relevant period Super Highway made acquisitions in respect of a total of 916,000 shares; and
- (g) the evidence of S L Cheung was that a great proportion of the Founder shares held by Super Highway were held on some form of trust for Peking University or PUEF. Despite the fact that they were not tested in any way, we are unable to entirely discount the statements put in evidence from Deng Ya, or Peking University itself, because neither Deng Ya, nor anyone from Peking University was called to give evidence.

214. We have found the coincidence of timing of Alan Cheung learning of the likely losses in Founder Order, and the commencement of sales of Founder shares by Super Highway to justifiably raise suspicion, indeed even serious suspicion, in the mind of the SFC.

215. We found both Alan Cheung, S L Cheung, and Mdm Chu to be entirely unsatisfactory witnesses. That they were “unable to remember” the details or context of financial transactions involving many millions of dollars, in a number of cases millions of dollars of cash kept at various homes, we found extraordinary. We were compelled to the view that they may have been deliberately concealing from us the truth of their knowledge

of these activities. But not all of these transactions were transactions which could be directly related to alleged insider dealing. If, in their denial of memory, they were lying to us, those lies may equally have been to conceal other unrelated matters, and not to conceal insider dealing.

216. The ABN-Amro research report published on 29 August 2001, (see paragraph 148 above), referred to the “poor transparency” of Founder. We are compelled to say that that description is entirely consistent with the approach of Alan Cheung to his evidence and, it appears, to his responsibilities to the public shareholders in Founder.

217. We have weighed into the balance all of the foregoing factors. Having done so, we have concluded that, other than having strong suspicion arising from the circumstances, we are unable to say, to the high standard of proof that is required, that the inference can be drawn, that Alan Cheung disclosed relevant information to S L Cheung.

218. We are satisfied that there is no evidence at all, other than a bare inference that there may have been disclosure of information, upon which the inference may be drawn that Alan Cheung counselled or procured S L Cheung to deal in Founder shares. In this respect we refer to the statement of the law as to counselling or procuring in paragraphs 100-102 above.

219. In addition to the matters set out in paragraphs 211-216, preventing us from drawing the appropriate inference as to the disclosure of relevant information by Alan Cheung, the fact that the ultimate beneficiary of the proceeds of sale of shares has not been established with any degree of particularity is a further factor standing in the way of the appropriate

inference. It was a matter of concern to us that the SFC chose to present this case to us without having been able to trace the movement of funds arising from the sale of shares in Founder to their ultimate end, and not to explain to us why that should be so. It was necessary for us on occasions to ask counsel to the Tribunal to have further tracing exercises undertaken in relation to funds. Not surprisingly, these were not entirely productive of conclusions, having regard to the time elapsed since these events occurred.

220. For all of the foregoing reasons we are unable to conclude to the appropriate standard of proof that Alan Cheung disclosed relevant information to S L Cheung.

Chapter 11

S L Cheung and Super Highway dealings

221. In their interviews with the SFC, both S L Cheung and Mdm Liu asserted that Mdm Liu had established Super Highway, with her husband, Chu Tung Shan, with the intention that this company should be used to carry out their own investments. They said that “later”, this company was “borrowed” by S L Cheung because Mdm Liu and her husband did not use it.

222. The case advanced by counsel for the Tribunal was that Super Highway was established by Mdm Liu for, and at the request of S L Cheung, and that throughout all trading of shares through Super Highway was for either S L Cheung himself, or upon his instruction.

223. Mr Wong did not address this issue in his submissions.

224. We are quite satisfied that Super Highway was in all respects the alter ego of S L Cheung, and as it was established at his request. The only available inference from the fact that S L Cheung took no overt part in the establishment of the company can be that he wished to conceal his involvement from any examination by outside authorities.

225. Mdm Liu was employed by a company called Dragon Tide Ltd, to handle general administration work of that company. Dragon Tide is a company owned by S L Cheung. Super Highway was a British Virgin Islands (BVI), company, acquired by Mdm Liu in early February 1999.

226. On 12 February 1999, less than two weeks after Mdm Liu had taken control of Super Highway the company applied to open a bank account at the China & South Sea Bank Ltd, which was later to become part of the Bank of China. The authorised signatories to this account were Albert Yip, S L Cheung, and his wife. Neither Mdm Liu nor her husband had any signing rights in respect of the account when opened, although she did become a signatory to the account in 2002.

227. Mdm Liu's evidence was that any share trading undertaken upon orders placed by her with the various share brokers who held accounts for Super Highway, were under the instructions of S L Cheung. It was quite apparent from her evidence that she was a naive person, unfamiliar with matters of finance, and entirely uncomfortable with her involvement in these proceedings. She was quite unaware of the activities of Super Highway, other than that she had from time to time, on the instructions of S L Cheung, placed orders in relation to buying or selling shares, or, again upon his instruction, signed various documents.

228. We were left in no doubt at all that Super Highway was acquired upon the instruction of S L Cheung, and that it was in all respects owned, controlled and operated by him. That S L Cheung should have used Mdm Liu in this way, and then allowed her to be exposed to cross-examination these matters, to her serious embarrassment, does him no credit at all.

229. His administration of the company was shoddy to say the least. He did not keep proper records of transactions, and was obliged to go to Sammy Fung and seek the assistance of Sammy Fung's accounting expertise in an effort to keep some sort of track of the share dealing

transactions, and other money transactions that had taken place in the accounts of Super Highway. Even then he did not produce to us any proper accounts of Super Highway which might adequately disclose what had taken place.

230. That S L Cheung should have concealed his activities through Super Highway in this matter, and kept the accounts of Super Highway in the way he did, is entirely consistent with the lack of transparency referred to in paragraph 216 above.

231. Having said all that, for the reasons set out in the previous chapter, we have been unable to draw the inference that S L Cheung possessed relevant information at the time the impugned sales were made. It necessarily follows that as we are unable to conclude that S L Cheung possessed relevant information, we cannot conclude that any of the share dealings undertaken consequent upon his instructions during the relevant period constituted insider dealing.

Chapter 12

The Julie Kennel dealings

232. The evidence establishes that the relevant information came into existence as early as May 2001, and the case for counsel for the Tribunal was that Alan Cheung disclosed that information to his brother, S L Cheung in the course of telephone conversations on about 21 May 2001.

233. Julie Kennel had, by October 2000, accumulated 3,844,000 Founder shares in a share broking account in her own name, which with HSBC Broking. The account was operated entirely by Alan Cheung's wife, Mdm Chu, and her sister, Sandy Ku.

234. Mdm Chu asserted that the account belonged to Julie Kennel, and was operated by herself and Sandy Ku, in accordance with her instructions. It is open to us however to draw the inference that some persons were using Julie Kennel's name to conceal the dealings in Founder shares. That inference is open from the following facts:

- (a) the residential address of Alan Cheung was used as the mailing address for the account;
- (b) the authorised signatories to the account were Mdm Chu and Sandy Ku;
- (c) of the proceeds of sale, \$500,000 were received by Mdm Chu, and \$7 million was paid into Sandy Ku's HSBC account.

235. Of that \$7 million, \$5,950,000 was withdrawn, (as US\$850,000), and paid into the account of Sandy Ku's husband, Ku Ping Chau. There is no evidence as to what happened to the remaining \$1 million.

236. The evidence of both Mdm Chu and Sandy Ku was entirely unsatisfactory. Both asserted that they were quite unable to remember any of the very substantial transactions that have occurred, nor were they able to shed any light upon what happened to the proceeds of sale of the shares.

237. We have found the whole circumstances to be suspicious, certainly raising an inference that the true beneficiaries of the share trading and the accounts were either Mdm Chu or Sandy Ku or her husband. But in the absence of proper evidence as to who ultimately received the proceeds of the sale of the shares we are unable, having regard to the appropriate standard of proof, to find that the true beneficiary of the accounts was not Julie Kennel.

238. Although the involvement of Mdm Chu and Sandy Ku is extremely suspicious in the circumstances, we are unable to discount the inference that Julie Kennel, living as she did in Vancouver, Washington State, USA, had appointed Mdm Chu and Sandy Ku to administer the account on her behalf.

239. The disposal of all of the remaining shares in the account on 26 July 2001 is suspicious. But we are obliged to have regard to the fact that:

- (a) sales of the shares began on 3 May 2001, before Alan Cheung could have become aware of the relevant information;
- (b) although Alan Cheung became aware of the relevant information on 21 May 2001, disposal of the shares did not take place until 26 July 2001, over two months later. No reason was advanced by counsel for the Tribunal why, if Alan Cheung had disclosed the information to his wife, sales should not take place until that later time;
- (c) neither Julie Kennel nor Sandy Ku were interviewed by the SFC, and Sandy Ku was not called to give evidence. We accept Mr Harris's submission that having regard to the transactions identified flowing between the various accounts, in the absence of evidence from either Julie Kennel or Sandy Ku, determination of the extent of the involvement and interests of each of them, or anyone else, in the account cannot be made in accordance with the required standard of proof;
- (d) although Alan Cheung was a signatory to the Julie Kennel account, on no occasion did he signed any documents;
- (e) there is no evidence to suggest that Alan Cheung or Mdm Chu benefited personally from the share trades in question;
- (f) we are unable to discount the explanation given by Mdm Chu that the share trades occurred on 26 July 2001, namely that both of her brothers-in-law were born on 26 July. We accept

that that is a circumstance which cannot be fabricated, although it might be coincidental.

240. For the foregoing reasons we have been unable to draw the inference that the sales of shares through the account of Julie Kennel on 26 July 2001, were as a result of relevant information being conveyed by Alan Cheung to either Mdm Chu or Sandy Ku. It follows that we are unable to hold any person liable for insider dealing in respect of the transactions through that account.

Chapter 13

The PUF dealings

241. The trading by PUF took place in a Morgan Stanley account. The evidence establishes that all instructions in relation to the account were given by Albert Yip. Between 20 July 2001 and 16 August 2001, in 10 relatively modest trades, PUF disposed of 5,150,000 shares in Founder.

242. Immediately before those disposals PUF held 123 million Founder shares, and there was a debit balance on the account, (a margin account) of \$11 million. Between 20 July 2001 and 9 August 2001, Morgan Stanley made five margin calls on PUF as follows: 20 July 2001, US\$149,620; 1 August 2001, US\$179,537; 2 August 2001, US\$198,016; 8 August 2001, US\$146,057; and 9 August 2001, US\$134,641.

243. The existence of those margin calls alone is sufficient to raise a real doubt as to whether the sales were made as a result of inside information or consequent upon the margin calls. That is particularly so when regard is had to the fact that only 4.18% of the shares held by PUF was sold during the relevant period.

244. Further, on 28 and 29 August 2001, the first and second days after publication of the profit warning announcement by Founder, PUF sold a further 1.4 million and 1.7 million Founder shares respectively.

245. In the light of all that information we are quite unable to draw the inference that the sales by PUF were as a result of inside information.

246. We are obliged too, to take into account the SFC interviews of Wei Xin and Lu Yong Long, both of whom were directors of PUF. Both asserted that the transactions undertaken in Founder shares by Albert Yip through the Morgan Stanley PUF account were unauthorised.

247. In the whole of the circumstances while the coincidence of the disposal of Founder shares amongst relatives of Alan Cheung gives rise to an inference that Albert Yip had received relevant information either directly from Alan Cheung or via S L Cheung, the inference is not one which can be drawn to the appropriate standard of proof.

248. We think that counsel to the Tribunal may well be right in his submission that Albert Yip stole \$1.5 million from the Morgan Stanley account, by transferring that sum to a bank account in Taiwan, having a similar name to Founder, but in fact bearing no relationship to that company. But that fact does not elevate the suspicious coincidence that exists on the evidence to establish to the appropriate standard of proof, insider dealing by either PUF or Albert Yip.

Chapter 14

The Mexican Gold issue

249. In the course of the evidence certain circumstances surrounding Founder's acquisition of Founder Order in the second half of 1999 came to light. It is appropriate that we should comment on the evidence before us in that respect.

250. Annexed hereto as Annex 7 is a flow chart prepared by counsel for the Tribunal demonstrating the circumstances which appear to have occurred in relation to the acquisition of Founder Order.

251. Those circumstances demonstrate that Mexican Gold, a BVI holding company, was originally acquired by Founder itself. Shortly before the agreement between Founder and Mexican Gold to purchase a company called Sparkling Idea Ltd, (which was the owner of the corporate entity that subsequently became Founder Order), S L Cheung's sister-in-law, Mdm Liu became one of two directors of Mexican Gold, and that she signed, on behalf of Mexican Gold, transfer documents formally transferring Sparkling Idea to Founder.

252. Alan Cheung signed those documents on behalf of Founder. Although Mdm Liu recognized her signatures on the various Mexican Gold related documents she did not recall the circumstances in which she signed them, nor who instructed her to sign them.

253. Alan Cheung denied any knowledge of Mdm Liu's involvement in the transaction with Mexican Gold. We accept the submission of counsel to the Tribunal that that is incredible.

254. The transaction was presented to the public as an arms length transaction. Mr Harris reminded us, quite properly, that professional advisers, Herbert Smith, solicitors were involved in the transaction. That does not dispel the inference that arises from the circumstances that the transaction was not truly arms length.

255. That Mexican Gold, the vendor of Founder Order to Founder should have begun its existence in relation to this transaction by being acquired by Founder is an extraordinary circumstance. That a sister-in-law of Alan Cheung, the President of Founder, a person with no commercial experience and no prior involvement in the business being sold to Founder, should have been a director of Mexican Gold is an extraordinary circumstance. That Mexican Gold, a company established by Founder, should come to acquire Sparkling Idea, a company which was the owner of a corporate entity subsequently to become Founder Order, and then sell Sparkling Idea to Founder, is yet again an extraordinary circumstance. These are all extraordinary circumstances which raise an immediate and powerful inference that the transaction was not the innocent arms length transaction that was presented to the public.

256. When it was able, Mexican Gold sold 50% of the Founder shares that had been issued to it in consideration for the purchase of Sparkling Idea. At that time, January 2000, the Founder share price was fluctuating between \$5.00 and \$7.00 per share. The sale of Founder shares

by Mexican Gold in all probability netted between \$600 million and \$875 million.

257. A substantial portion of that sum appears to have been paid to Super Highway. S L Cheung sought to explain those payments as ultimately going to Peking University or PUF, as donations. The inference is raised that the most substantial shareholder in Founder has personally benefited, to the exclusion of the public shareholders in Founder, from the very substantial price paid by Founder to acquire Founder Order.

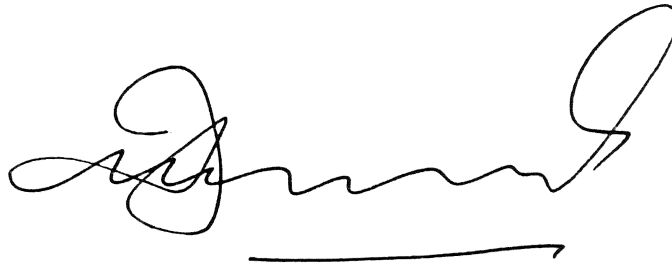
258. The transaction is complex, and the foregoing description of it may neither be entirely correct nor sufficiently comprehensive. It does not fall within our remit to pass any judgment upon such a transaction. But we are obliged to say that the circumstances raise an inference that fraudulent activities may have taken place, which at first sight appear to have been very substantially to the disadvantage of the public shareholders of Founder.

259. We must leave it to the Financial Secretary to take such advice as he thinks appropriate on the transaction, and such steps as he thinks appropriate consequent upon the advice.

Chapter 15

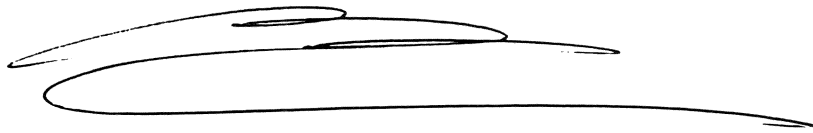
Conclusions

260. For the foregoing reasons the Tribunal finds that it has not been established that there was insider dealing in respect of the listed securities of Founder by or on behalf of any of the persons named in the Amended Notice, Julie Kennel, Cheung Shuen Lung, Cheung Siu Lung, Yip Ka Yeung Albert, Peking University Founder Group Corporation and Super Highway Limited between 18 May 2001 and 28 August 2001 (both dates inclusive).

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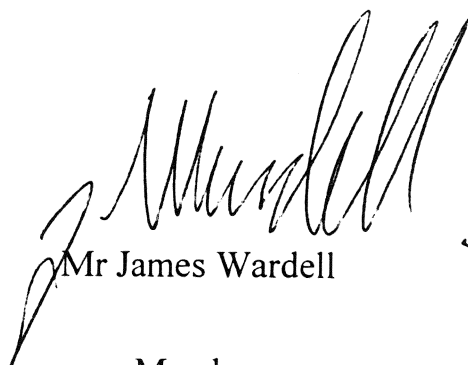
The Honourable Mr Justice Saunders

Chairman

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Mr Eric Ng Kwok Wai

Member

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Mr James Wardell

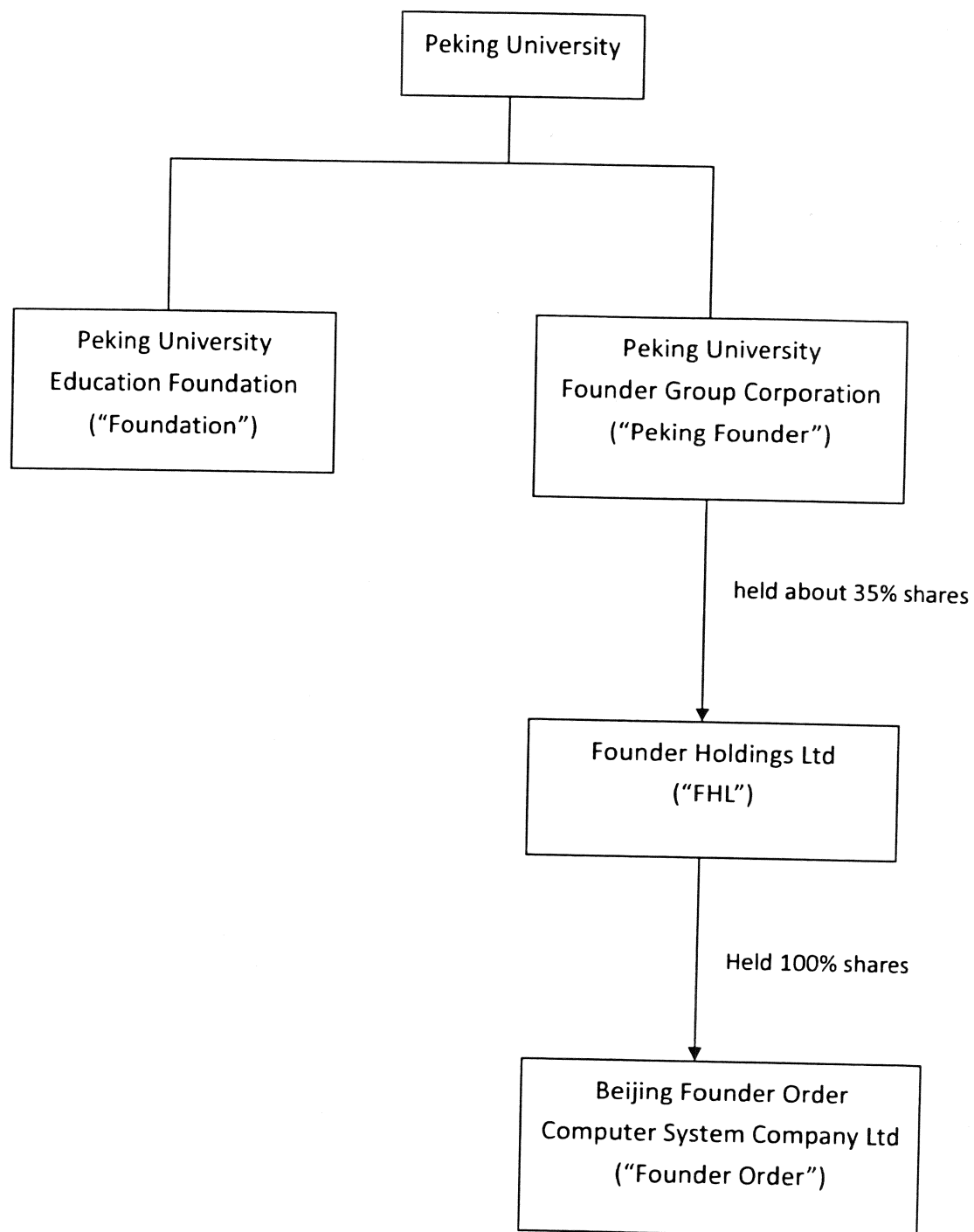
Member

Dated 5th November 2009

Insider Dealing Tribunal Inquiry into Founder Holdings Limited

Annex 1:

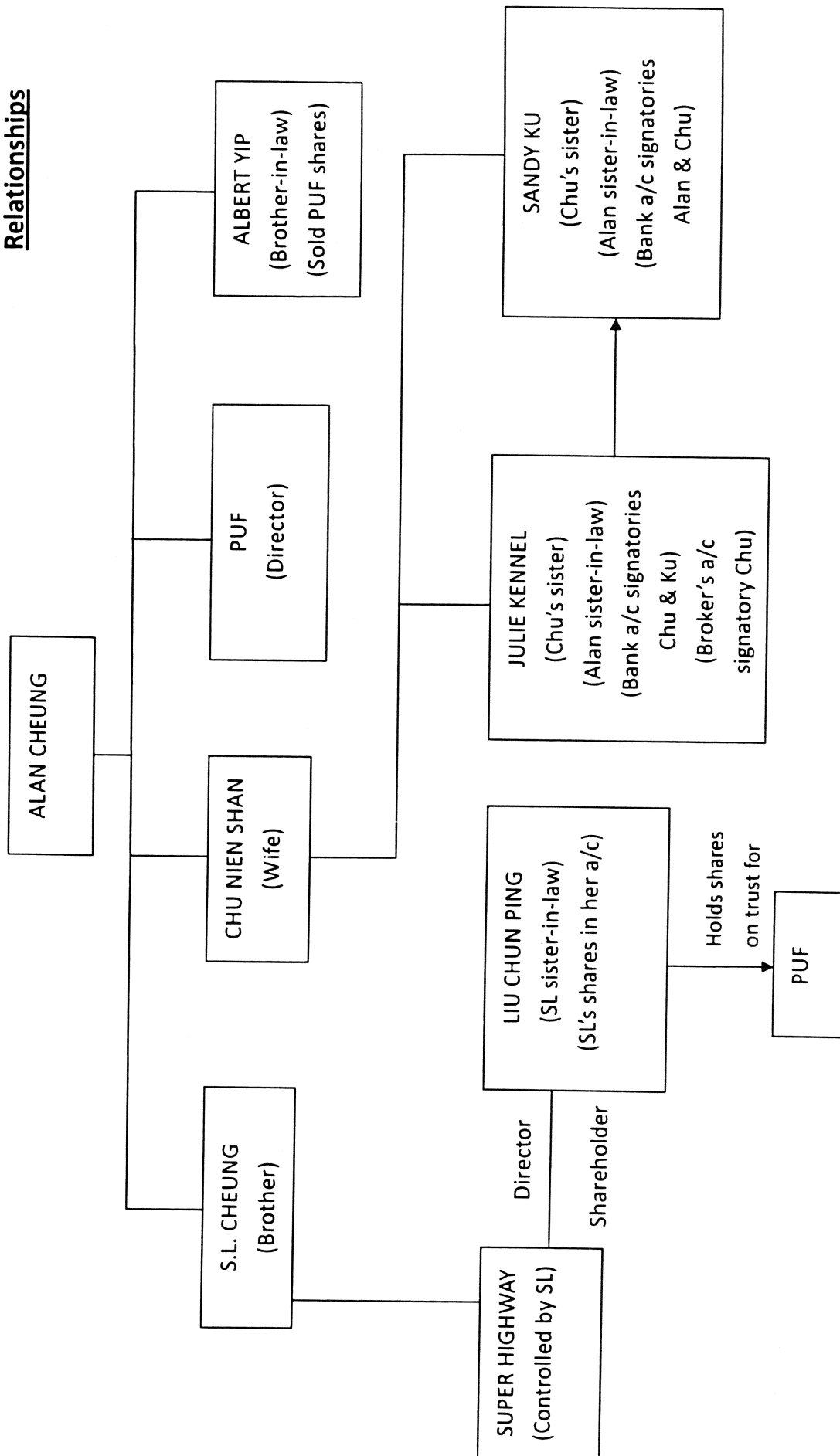
A corporate association chart setting out Peking University and its various entities

Corporate Association Chart

Insider Dealing Tribunal Inquiry into Founder Holdings Limited

Annex 2:

A diagram setting out the implicated parties and their relevant family and corporate relationships

Relationships

Insider Dealing Tribunal Inquiry into Founder Holdings Limited

Annex 3:

A chart showing the dealings in Julie Kennel's HSBC Broking account prior to and during the relevant period

Dealings in Founder shares by Julie Kennel between January 2000 and September 2001

Date	Description	Buy	Sell	Price (\$)	Broker	Balance
21/01/2000	Buy	100,000		5.150	HSBC Broking	100,000
01/02/2000	Buy	100,000		5.200	HSBC Broking	200,000
01/02/2000	Buy	100,000		5.250	HSBC Broking	300,000
01/02/2000	Buy	100,000		5.300	HSBC Broking	400,000
02/02/2000	Buy	200,000		5.000	HSBC Broking	600,000
06/03/2000	Sell		58,000	8.600	HSBC Broking	542,000
06/03/2000	Sell		142,000	8.650	HSBC Broking	400,000
28/03/2000	Sell		186,000	8.600	HSBC Broking	214,000
28/03/2000	Sell		14,000	8.650	HSBC Broking	200,000
28/04/2000	Buy	100,000		4.200	HSBC Broking	300,000
08/05/2000	Buy	72,000		4.375	HSBC Broking	372,000
08/05/2000	Buy	74,000		4.400	HSBC Broking	446,000
08/05/2000	Buy	54,000		4.425	HSBC Broking	500,000
08/05/2000	Buy	100,000		4.550	HSBC Broking	600,000
09/05/2000	Buy	100,000		4.200	HSBC Broking	700,000
10/05/2000	Buy	174,000		4.325	HSBC Broking	874,000
10/05/2000	Buy	26,000		4.350	HSBC Broking	900,000
10/05/2000	Buy	234,000		4.375	HSBC Broking	1,134,000
10/05/2000	Buy	66,000		4.400	HSBC Broking	1,200,000
25/05/2000	Sell		200,000	4.350	HSBC Broking	1,000,000
13/06/2000	Buy	100,000		3.375	HSBC Broking	1,100,000
13/06/2000	Buy	300,000		3.400	HSBC Broking	1,400,000
13/06/2000	Buy	100,000		3.425	HSBC Broking	1,500,000
29/06/2000	Buy	200,000		3.525	HSBC Broking	1,700,000
30/06/2000	Buy	500,000		3.475	HSBC Broking	2,200,000
13/07/2000	Buy	20,000		4.350	HSBC Broking	2,220,000
13/07/2000	Buy	118,000		4.375	HSBC Broking	2,338,000
13/07/2000	Buy	62,000		4.425	HSBC Broking	2,400,000
29/08/2000	Buy	200,000		3.550	HSBC Broking	2,600,000
01/09/2000	Buy	154,000		3.475	HSBC Broking	2,754,000
01/09/2000	Buy	246,000		3.500	HSBC Broking	3,000,000
01/09/2000	Buy	100,000		3.525	HSBC Broking	3,100,000
12/09/2000	Buy	174,000		3.200	HSBC Broking	3,274,000
12/09/2000	Buy	70,000		3.275	HSBC Broking	3,344,000
22/09/2000	Buy	200,000		2.600	HSBC Broking	3,544,000
16/10/2000	Buy	70,000		1.880	HSBC Broking	3,614,000
16/10/2000	Buy	70,000		1.890	HSBC Broking	3,684,000
16/10/2000	Buy	64,000		1.900	HSBC Broking	3,748,000
16/10/2000	Buy	96,000		1.910	HSBC Broking	3,844,000
03/05/2001	Sell		500,000	2.150	HSBC Broking	3,344,000
26/07/2001	Sell		300,000	1.730	HSBC Broking	3,044,000
26/07/2001	Sell		1,648,000	1.740	HSBC Broking	1,396,000
26/07/2001	Sell		752,000	1.750	HSBC Broking	644,000
26/07/2001	Sell		474,000	1.760	HSBC Broking	170,000
26/07/2001	Sell		170,000	1.770	HSBC Broking	0

Insider Dealing Tribunal Inquiry into Founder Holdings Limited

Annex 4:

A chart showing the dealings in Super Highway's various share broking accounts prior to and during the relevant period

Detailed breakdown of dealings in Founder shares by Super Highway between March 2000 and September 2001

Date	Description	Buy	Sell	Amount (HK\$)	Broker
10/03/2000	Buy	530,000		4,287,085.27	Core Pacific
13/03/2000	Buy	150,000		1,109,266.05	HSBC Broking
13/03/2000	Buy	400,000		3,047,921.48	Core Pacific
14/03/2000	Buy	602,000		4,144,738.17	Core Pacific
16/03/2000	Buy	4,000		26,235.86	HSBC Broking
17/03/2000	Buy	80,000		558,146.16	Core Pacific
17/03/2000	Sell		80,000	576,266.11	Core Pacific
20/03/2000	Buy	72,000		501,027.65	HSBC Broking
20/03/2000	Sell		20,000	145,435.94	HSBC Broking
21/03/2000	Buy	100,000		742,856.40	Core Pacific
21/03/2000	Buy	400,000		2,931,271.20	Core Pacific
21/03/2000	Sell		150,000	1,130,618.65	Core Pacific
22/03/2000	Buy	130,000		946,640.23	Core Pacific
22/03/2000	Sell		50,000	376,041.72	Core Pacific
23/03/2000	Sell		80,000	567,300.60	Core Pacific
24/03/2000	Sell		200,000	1,489,229.05	Core Pacific
24/03/2000	Sell		652,000	4,893,735.85	Core Pacific
27/03/2000	Sell		100,000	821,814.75	Core Pacific
29/03/2000	Buy	100,000		783,010.80	HSBC Broking
29/03/2000	Sell		186,000	1,482,256.32	Core Pacific
30/03/2000	Buy	100,000		762,933.60	Core Pacific
30/03/2000	Buy	100,000		772,972.70	HSBC Broking
30/03/2000	Sell		100,000	786,950.10	Core Pacific
31/03/2000	Sell		300,000	2,271,199.20	Core Pacific
03/04/2000	Buy	100,000		737,984.35	Grand Sec
03/04/2000	Buy	346,000		2,540,971.43	HSBC Broking
05/04/2000	Buy	800,000		5,064,976.76	HSBC Broking
05/04/2000	Sell		50,000	311,292.37	HSBC Broking
06/04/2000	Buy	400,000		2,559,843.50	HSBC Broking
07/04/2000	Buy	64,000		439,423.94	Grand Sec
07/04/2000	Buy	250,000		1,702,134.04	HSBC Broking
10/04/2000	Sell		64,000	455,597.71	Grand Sec
10/04/2000	Sell		400,000	2,809,466.80	HSBC Broking
11/04/2000	Buy	170,000		1,139,969.76	Grand Sec
11/04/2000	Buy	210,000		1,406,735.92	HSBC Broking
12/04/2000	Buy	100,000		677,521.75	HSBC Broking
12/04/2000	Buy	250,000		1,686,611.80	Grand Sec
12/04/2000	Sell		170,000	1,187,308.48	Grand Sec
12/04/2000	Sell		418,000	2,902,019.33	HSBC Broking
13/04/2000	Buy	50,000		321,259.20	Grand Sec
13/04/2000	Buy	200,000		1,307,365.53	HSBC Broking
14/04/2000	Sell		50,000	321,229.77	Grand Sec
14/04/2000	Sell		50,000	321,294.27	HSBC Broking
17/04/2000	Buy	260,000		1,291,807.07	HSBC Broking
17/04/2000	Sell		260,000	1,417,186.27	HSBC Broking
18/04/2000	Buy	200,000		1,182,400.58	HSBC Broking
18/04/2000	Sell		200,000	1,130,760.65	HSBC Broking
19/04/2000	Buy	200,000		1,134,221.30	HSBC Broking
19/04/2000	Sell		72,000	373,000.82	HSBC Broking
20/04/2000	Buy	200,000		993,697.90	HSBC Broking
20/04/2000	Sell		122,000	625,952.14	HSBC Broking
25/04/2000	Buy	150,000		662,597.60	Grand Sec
25/04/2000	Sell		150,000	733,351.13	Grand Sec
26/04/2000	Buy	100,000		429,097.78	HSBC Broking
26/04/2000	Sell		130,000	593,154.64	Grand Sec

Detailed breakdown of dealings in Founder shares by Super Highway between March 2000 and September 2001

Date	Description	Buy	Sell	Amount (HK\$)	Broker
27/04/2000	Buy	130,000		512,258.81	Grand Sec
27/04/2000	Buy	900,000		3,558,241.45	HSBC Broking
28/04/2000	Buy	150,000		607,260.05	HSBC Broking
02/05/2000	Buy	100,000		481,888.80	Grand Sec
02/05/2000	Buy	150,000		746,528.19	HSBC Broking
03/05/2000	Buy	100,000		479,379.78	Grand Sec
03/05/2000	Buy	192,000		911,141.23	HSBC Broking
04/05/2000	Buy	50,000		227,096.52	HSBC Broking
04/05/2000	Buy	100,000		456,790.55	Grand Sec
05/05/2000	Buy	100,000		449,171.98	HSBC Broking
05/05/2000	Sell		50,000	227,894.96	HSBC Broking
05/05/2000	Sell		100,000	463,169.35	Grand Sec
08/05/2000	Buy	100,000		438,471.27	Grand Sec
08/05/2000	Buy	350,000		1,531,198.56	HSBC Broking
09/05/2000	Buy	200,000		838,119.35	HSBC Broking
10/05/2000	Buy	726,000		3,165,832.08	HSBC Broking
12/05/2000	Buy	206,000		890,364.21	HSBC Broking
16/05/2000	Buy	100,000		459,210.08	HSBC Broking
16/05/2000	Sell		100,000	485,581.12	Grand Sec
16/05/2000	Sell		100,000	488,169.10	HSBC Broking
17/05/2000	Buy	1,200,000		6,381,011.36	Grand Sec
17/05/2000	Buy	2,950,000		15,534,004.88	HSBC Broking
19/05/2000	From HSBC	3,000,000			S.W. Woo
19/05/2000	To S.W. Woo		3,000,000		HSBC Broking
25/05/2000	Buy	2,874,000		12,491,235.00	S.W. Woo
26/05/2000	Buy	200,000		692,715.90	Grand Sec
26/05/2000	Buy	1,450,000		4,982,943.08	HSBC Broking
26/05/2000	Buy	14,000,000		41,453,242.99	S.W. Woo
29/05/2000	Buy	4,888,000		15,370,700.24	S.W. Woo
30/05/2000	Buy	1,000,000		3,139,182.78	S.W. Woo
01/06/2000	Buy	1,000,000		3,409,440.52	S.W. Woo
02/06/2000	Buy	3,910,000		14,792,297.23	S.W. Woo
05/06/2000	Buy	360,000		1,352,284.33	S.W. Woo
07/06/2000	Buy	100,000		363,927.63	Grand Sec
07/06/2000	Buy	550,000		2,014,998.58	S.W. Woo
07/06/2000	From Grand	1,950,000			HSBC Broking
07/06/2000	From S.W. Woo	26,762,000			HSBC Broking
07/06/2000	To HSBC		1,950,000		Grand Sec
07/06/2000	To HSBC		26,762,000		S.W. Woo
14/06/2000	Buy	130,000		455,280.80	Grand Sec
16/06/2000	Buy	400,000		1,445,364.00	S.W. Woo
19/06/2000	Buy	100,000		361,415.00	Grand Sec
19/06/2000	Buy	250,000		902,098.76	S.W. Woo
23/06/2000	Buy	110,000		414,037.50	S.W. Woo
26/06/2000	Buy	60,000		222,871.60	Grand Sec
26/06/2000	Buy	620,000		2,297,527.40	Core Pacific
27/06/2000	Buy	50,000		183,681.80	Core Pacific
27/06/2000	Buy	50,000		181,963.51	Grand Sec
27/06/2000	Buy	160,000		582,663.30	S.W. Woo
27/06/2000	Buy	186,000		662,760.78	HSBC Broking
30/06/2000	Buy	200,000		692,709.00	Grand Sec
10/07/2000	Buy	18,000		68,655.84	S.W. Woo
10/07/2000	Buy	60,000		231,406.40	Grand Sec
10/07/2000	Buy	510,000		1,976,084.76	Core Pacific
11/07/2000	Buy	56,000		217,809.20	S.W. Woo

Detailed breakdown of dealings in Founder shares by Super Highway between March 2000 and September 2001

Date	Description	Buy	Sell	Amount (HK\$)	Broker
13/07/2000	Buy	200,000		873,241.00	S.W. Woo
14/07/2000	Buy	300,000		1,272,222.50	HSBC Broking
14/07/2000	Buy	350,000		1,482,800.60	Grand Sec
14/07/2000	Buy	736,000		3,148,788.46	S.W. Woo
17/07/2000	Buy	400,000		1,683,749.50	HSBC Broking
18/07/2000	Buy	100,000		419,056.50	HSBC Broking
18/07/2000	Buy	400,000		1,634,570.10	S.W. Woo
20/07/2000	Buy	100,000		431,602.00	HSBC Broking
20/07/2000	Buy	430,000		1,864,169.86	S.W. Woo
21/07/2000	Buy	100,000		438,715.60	Grand Sec
21/07/2000	Buy	350,000		1,515,625.00	Core Pacific
24/07/2000	Buy	330,000		1,438,841.10	HSBC Broking
24/07/2000	Buy	470,000		2,044,086.90	Core Pacific
24/07/2000	Buy	516,000		2,239,158.12	Grand Sec
24/07/2000	Buy	550,000		2,406,433.50	S.W. Woo
25/07/2000	Buy	50,000		210,783.00	HSBC Broking
25/07/2000	Buy	150,000		627,455.00	Grand Sec
25/07/2000	Buy	180,000		785,819.60	S.W. Woo
25/07/2000	Buy	200,000		835,602.50	Core Pacific
27/07/2000	Buy	30,000		123,458.80	HSBC Broking
27/07/2000	Buy	90,000		365,858.70	S.W. Woo
27/07/2000	Buy	130,000		529,982.64	Ten & Ten
27/07/2000	Buy	240,000		978,883.66	Core Pacific
28/07/2000	Buy	50,000		195,727.00	HSBC Broking
28/07/2000	Buy	150,000		587,550.71	Grand Sec
28/07/2000	Buy	200,000		791,639.62	S.W. Woo
28/07/2000	Buy	210,000		824,811.56	Core Pacific
28/07/2000	Buy	400,000		1,594,365.49	Ten & Ten
31/07/2000	Buy	10,000		37,642.50	Ten & Ten
31/07/2000	Buy	26,000		101,125.96	Core Pacific
31/07/2000	Buy	70,000		272,261.26	HSBC Broking
31/07/2000	Buy	192,000		752,849.14	S.W. Woo
01/08/2000	Buy	84,000		330,242.07	Grand Sec
01/08/2000	Buy	200,000		787,948.55	Ten & Ten
01/08/2000	Buy	212,000		840,520.24	S.W. Woo
01/08/2000	Buy	890,000		3,544,655.90	HSBC Broking
02/08/2000	Buy	200,000		787,925.00	BNP
02/08/2000	Buy	270,000		1,073,785.48	Core Pacific
02/08/2000	Buy	300,000		1,191,924.50	HSBC Broking
02/08/2000	Buy	310,000		1,227,049.31	Grand Sec
02/08/2000	Buy	340,000		1,350,845.45	Ten & Ten
02/08/2000	Buy	400,000		1,581,970.50	China Pacific
02/08/2000	Buy	400,000		1,585,385.70	S.W. Woo
02/08/2000	Sell		18,000	71,731.80	Core Pacific
03/08/2000	Buy	50,000		196,988.17	Ten & Ten
03/08/2000	Buy	80,000		315,170.40	HSBC Broking
03/08/2000	Buy	110,000		434,952.11	Grand Sec
03/08/2000	Buy	120,000		474,341.60	China Pacific
03/08/2000	Buy	160,000		633,602.26	BNP
03/08/2000	Buy	350,000		1,387,650.50	S.W. Woo
04/08/2000	Buy	100,000		392,832.60	China Pacific
04/08/2000	Buy	110,000		432,605.60	Core Pacific
04/08/2000	Buy	110,000		436,383.42	Ten & Ten
04/08/2000	Buy	146,000		575,300.55	Grand Sec
04/08/2000	Buy	150,000		590,943.76	HSBC Broking

Detailed breakdown of dealings in Founder shares by Super Highway between March 2000 and September 2001

<u>Date</u>	<u>Description</u>	<u>Buy</u>	<u>Sell</u>	<u>Amount (HK\$)</u>	<u>Broker</u>
04/08/2000	Buy	300,000		1,189,415.00	S.W. Woo
07/08/2000	Buy	40,000		156,581.60	HSBC Broking
07/08/2000	Buy	50,000		193,218.50	Core Pacific
07/08/2000	Buy	50,000		193,257.00	Grand Sec
07/08/2000	Buy	80,000		311,164.30	Ten & Ten
07/08/2000	Buy	92,000		354,467.20	BNP
07/08/2000	Buy	330,000		1,292,695.10	China Pacific
08/08/2000	Buy	20,000		76,788.20	Ten & Ten
08/08/2000	Buy	30,000		115,178.36	HSBC Broking
08/08/2000	Buy	50,000		193,353.30	China Pacific
08/08/2000	Buy	100,000		386,435.00	S.W. Woo
09/08/2000	Buy	1,500,000		6,097,630.00	S.W. Woo
10/08/2000	Buy	130,000		534,842.71	Grand Sec
11/08/2000	Buy	50,000		209,528.76	BNP
11/08/2000	Buy	120,000		502,866.60	S.W. Woo
11/08/2000	Buy	170,000		713,645.70	China Pacific
11/08/2000	Buy	234,000		983,295.47	Grand Sec
11/08/2000	Buy	2,658,000		11,100,127.12	Ten & Ten
17/08/2000	Buy	100,000		401,502.00	Ten & Ten
18/08/2000	Buy	200,000		803,004.00	Ten & Ten
18/08/2000	Buy	300,000		1,192,162.10	China Pacific
18/08/2000	Buy	500,000		1,990,283.00	Grand Sec
18/08/2000	From S.W. Woo	4,000,000			BNP
18/08/2000	To BNP		4,000,000		S.W. Woo
21/08/2000	Buy	30,000		116,707.51	Grand Sec
21/08/2000	Buy	252,000		985,207.04	Core Pacific
22/08/2000	Sell		30,000	118,781.09	Grand Sec
22/08/2000	Sell		50,000	198,009.24	Core Pacific
23/08/2000	Buy	30,000		116,707.51	Grand Sec
24/08/2000	Buy	30,000		112,923.88	Ten & Ten
24/08/2000	Buy	38,000		143,060.00	Grand Sec
24/08/2000	Buy	50,000		188,199.50	Core Pacific
25/08/2000	Buy	20,000		70,678.10	China Pacific
25/08/2000	Buy	100,000		348,805.93	Ten & Ten
25/08/2000	Buy	150,000		523,297.51	Grand Sec
29/08/2000	Sell		50,000	178,077.86	Ten & Ten
31/08/2000	Sell		30,000	105,351.85	Ten & Ten
01/09/2000	Buy	300,000		1,054,122.00	Grand Sec
04/09/2000	Sell		20,000	74,219.06	Ten & Ten
04/09/2000	Sell		200,000	732,113.00	Grand Sec
05/09/2000	Sell		170,000	635,742.89	Grand Sec
07/09/2000	Buy	120,000		421,929.55	Ten & Ten
07/09/2000	Buy	250,000		877,288.79	Grand Sec
11/09/2000	Buy	50,000		168,129.53	Ten & Ten
11/09/2000	Buy	120,000		406,590.00	Grand Sec
15/09/2000	Sell		50,000	178,077.86	Ten & Ten
15/09/2000	Sell		100,000	356,096.00	Grand Sec
18/09/2000	Buy	20,000		66,259.80	China Pacific
18/09/2000	Buy	50,000		169,434.94	Ten & Ten
18/09/2000	Buy	90,000		303,186.60	Grand Sec
19/09/2000	Buy	30,000		94,102.59	Ten & Ten
19/09/2000	Buy	50,000		156,864.51	Grand Sec
19/09/2000	Buy	170,000		535,846.60	China Pacific
19/09/2000	Buy	250,000		787,925.00	HSBC Broking
05/10/2000	Buy	10,000		24,344.08	Ten & Ten

Detailed breakdown of dealings in Founder shares by Super Highway between March 2000 and September 2001

Date	Description	Buy	Sell	Amount (HK\$)	Broker
05/10/2000	Sell		150,000	362,394.24	Core Pacific
05/10/2000	Sell		438,000	1,052,762.58	HSBC Broking
11/10/2000	Sell		600,000	1,210,474.00	Core Pacific
12/10/2000	Sell		100,000	199,255.00	Core Pacific
18/10/2000	Sell		150,000	251,060.80	Core Pacific
20/10/2000	From HSBC	10,000,000			Grand Sec
20/10/2000	Sell		150,000	249,565.70	Core Pacific
20/10/2000	To Grand		10,000,000		HSBC Broking
23/10/2000	Sell		300,000	570,865.20	Core Pacific
31/10/2000	Sell		100,000	182,281.60	Grand Sec
02/11/2000	Sell		100,000	211,665.00	Grand Sec
08/11/2000	From Grand	10,000,000			HSBC Broking
08/11/2000	To HSBC		10,000,000		Grand Sec
21/12/2000	Buy	100,000		195,527.40	China Pacific
21/12/2000	Sell		60,000	118,032.10	China Pacific
03/01/2001			40,000		China Pacific
11/01/2001	Sell		44,000	100,801.64	Grand Sec
18/01/2001	Sell		64,250	140,755.83	Grand Sec
05/04/2001	Sell		250,000	498,037.00	Grand Sec
04/05/2001	Sell		100,000	209,175.00	Grand Sec
22/05/2001	From S.W. Woo	5,000,000			E2-Capital
22/05/2001	Sell		1,000,000	2,067,270.00	E2-Capital
22/05/2001	To E2-Capital		5,000,000		S.W. Woo
23/05/2001	Sell		54,000	110,265.04	Grand Sec
24/05/2001	Sell		200,000	408,472.00	E2-Capital
25/05/2001	Sell		200,000	418,435.00	E2-Capital
30/05/2001	Sell		46,000	96,219.52	Grand Sec
06/06/2001	Sell		30,000	65,740.20	Grand Sec
07/06/2001	Sell		32,000	66,138.08	Grand Sec
08/06/2001	Sell		200,000	443,253.00	Grand Sec
11/06/2001	Sell		200,000	448,233.00	Grand Sec
20/06/2001	Buy	336,000		691,366.88	E2-Capital
20/06/2001	Sell		164,000	326,778.20	E2-Capital
27/06/2001	Sell		220,000	443,839.70	E2-Capital
28/06/2001	Buy	300,000		587,180.00	E2-Capital
09/07/2001	Buy	50,000		89,350.20	Grand Sec
11/07/2001	Sell		28,000	51,037.53	Grand Sec
18/07/2001	Sell		100,000	181,285.40	Grand Sec
27/07/2001	Sell		840,000	1,453,471.24	Grand Sec
30/07/2001	Sell		60,000	103,413.12	E2-Capital
30/07/2001	Sell		60,000	103,392.36	Grand Sec
01/08/2001	Sell		82,000	139,696.43	E2-Capital
08/08/2000	Sell		550,000	847,330.70	E2-Capital
08/08/2001	Sell		220,000	335,344.84	HSBC Broking
08/08/2001	Sell		370,000	567,177.82	S.W. Woo
08/08/2001	Sell		774,000	1,191,522.59	Grand Sec
09/08/2001	Sell		100,000	141,470.80	E2-Capital
09/08/2001	Sell		100,000	141,470.80	HSBC Broking
09/08/2001	Sell		1,114,000	1,578,658.33	Grand Sec
10/08/2001	Sell		100,000	141,470.80	HSBC Broking
10/08/2001	Sell		750,000	1,061,032.00	S.W. Woo
10/08/2001	Sell		1,680,000	2,399,343.30	China Pacific
14/08/2001	Sell		100,000	146,451.80	HSBC Broking
14/08/2001	Sell		150,000	215,195.40	E2-Capital
14/08/2001	Sell		150,000	216,688.50	S.W. Woo

Detailed breakdown of dealings in Founder shares by Super Highway between March 2000 and September 2001

<u>Date</u>	<u>Description</u>	<u>Buy</u>	<u>Sell</u>	<u>Amount (HK\$)</u>	<u>Broker</u>
20/08/2001	Sell		700,000	979,516.73	HSBC Broking
21/08/2001	Sell		444,000	629,266.79	HSBC Broking
04/09/2001	Buy	226,000		208,672.75	HSBC Broking
04/09/2001	Buy	400,000		360,371.38	Grand Sec
06/09/2001	Buy	200,000		182,664.30	Ten & Ten
06/09/2001	Buy	300,000		274,042.86	Grand Sec
10/09/2001	Buy	100,000		88,336.16	Grand Sec
10/09/2001	Buy	154,000		135,738.40	China Pacific
10/09/2001	Buy	300,000		264,963.60	Ten & Ten
11/09/2001	Buy	100,000		87,314.94	S.W. Woo
11/09/2001	Buy	120,000		104,799.41	Grand Sec
11/09/2001	Buy	170,000		148,439.94	Ten & Ten
12/09/2001	Buy	200,000		151,812.30	Ten & Ten
12/09/2001	Buy	300,000		228,871.00	China Pacific
12/09/2001	Buy	300,000		228,088.76	Grand Sec
12/09/2001	Buy	1,030,000		784,571.16	S.W. Woo
13/09/2001	Buy	74,000		54,969.40	China Pacific
14/09/2001	Buy	150,000		106,386.90	Ten & Ten
17/09/2001	Buy	120,000		77,080.52	Ten & Ten
17/09/2001	Buy	230,000		147,261.70	Grand Sec
18/09/2000	Buy	670,000		449,020.19	Core Pacific

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Annex 5:

A chart showing the dealings in PUF's Morgan Stanley share broking account prior to and during the relevant period

Cash flow (HK\$) of Peking University Founder Group Company's account (46-H0310) with Morgan Stanley

Date	Opening Balance HK\$	Remittance from 16-H0310 (HK\$)	(illegible) HK\$	Sale of Stock 418 HK\$	Purchase of Stock 418 HK\$	Income from sales of other stocks/ dividends HK\$	Purchase of other stocks HK\$	Remittance to 16- H0310 (HK\$)	Remittance to 16- H0310 (US\$)	Remittance to 45- H0310 (US\$)	Remittance to 45- H0310 (SEK)	(illegible) HK\$	Closing Balance HK\$	Details
10.11.00	(6,584,141.84)			814,453.50									(5,769,688.34)	300,000 shares
13.11.00	(5,788,688.34)				(595,208.72)								(6,384,898.06)	240,000 shares
15.11.00	(6,384,898.06)				(800,722.06)								(7,185,620.12)	360,000 shares
20.11.00	(7,185,620.12)			1,145,716.00									(6,039,904.12)	500,000 shares
01.12.00	(6,039,904.12)				(1,084,023.00)								(7,123,927.12)	500,000 shares
06.12.00	(7,123,927.12)	32,865.50											(7,091,061.62)	
08.12.00	(7,091,061.62)							(632,347.00)					(7,723,408.62)	
11.12.00	(7,723,408.62)	632,347.00											(7,091,061.62)	
11.12.00	(7,091,061.62)			1,910,855.20									(5,180,206.42)	800,000 shares
20.12.00	(5,180,206.42)				(1,866,829.00)								(7,047,035.42)	800,000 shares
21.12.00	(7,047,035.42)							(654,931.50)					(7,701,966.92)	
22.12.00	(7,701,966.92)							(620,554.34)					(8,322,521.26)	
27.12.00	(8,322,521.26)							(592,087.84)					(8,914,609.10)	
29.12.00	(8,914,609.10)	313,413.50											(8,601,195.60)	
02.01.01	(8,601,195.60)	208,045.25											(8,393,150.35)	
09.01.01	(8,393,150.35)	428,520.87											(8,064,629.48)	
12.01.01	(8,064,629.48)	1,056,050.20											(7,008,579.28)	
11.04.01	(7,008,579.28)			1,472,822.34									(5,535,756.94)	
09.04.01	(5,535,756.94)		300,000.00										(5,235,756.94)	880,000 shares
10.04.01	(5,235,756.94)		200,000.00										(5,035,756.94)	Swift payment
11.04.01	(4,917,066.74)									(5,911,630.21)			(4,917,066.74)	Swift payment
14.05.01	(10,828,696.95)				(225,032.81)								(10,828,696.95)	Purchase of US\$757,609.82 @ 7.8030
24.05.01	(11,053,729.86)		100,000.00										(11,053,729.86)	120,000 shares
24.07.01	(10,953,729.86)			875,824.34									(10,953,729.86)	Swift payment
03.08.01	(10,077,905.52)			343,015.82									(10,077,905.52)	500,000 shares
05.08.01	(9,734,889.70)			349,369.90									(9,734,889.70)	200,000 shares
07.08.01	(9,385,519.80)			1,664,500.12									(8,385,519.80)	200,000 shares
10.08.01	(7,721,019.68)			300,429.80									(7,721,019.68)	990,000 shares
13.08.01	(7,420,589.88)			1,924,547.47									(7,420,589.88)	200,000 shares
14.08.01	(5,496,042.41)			1,089,998.60									(5,496,042.41)	1,360,000 shares
16.08.01	(4,428,043.81)			368,621.00									(4,428,043.81)	750,000 shares
17.08.01	(4,057,422.81)			738,437.88									(4,057,422.81)	250,000 shares
20.08.01	(3,318,984.93)			306,852.20									(3,318,984.93)	500,000 shares
21.08.01	(3,012,132.73)		200,000.00										(3,012,132.73)	200,000 shares
30.08.01	(2,812,132.73)												(2,812,132.73)	Swift payment
31.08.01	(1,222,078.33)			1,590,054.40									(1,222,078.33)	1,400,000 shares
03.09.01	493,944.33			1,716,022.68									493,944.33	1,700,000 shares
04.09.01	1,316,885.68			822,941.35									1,316,885.68	900,000 shares
05.09.01	5,977,694.07			4,660,806.39									5,977,694.07	5,194,000 shares
06.09.01	6,347,351.05			369,656.98									6,347,351.05	400,000 shares
10.09.01	6,897,830.56			550,479.51									7,351,150.96	600,000 shares
19.09.01	7,351,150.96			453,320.40									7,351,150.96	500,000 shares
08.10.01	7,285,378.62			591,219.37				(65,772.34)					7,285,378.62	Purchase of US\$8,432.48 by swift payment
													7,816,597.99	680,000 shares

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Annex 6:

A table setting out the share transactions undertaken by Super Highway and Mdm Liu, on behalf Super Highway, showing also telephone conversations made between the mobile telephones, or home telephones of Alan Cheung and S L Cheung for the period 18 May 2001 to 27 August 2001

Table of Founder Holdings share transactions of SHL and LIU CP against phone calls between Alan Cheung ("Alan") & SL Cheung ("SL")
For the period 18.5.01 to 27.8.01.

SL's Mobile Phone records:	V10/D16/A6	Alan Mobile:	9198 1666
Alan's Mobile Phone records	V10/D16/A9	Alan Home:	2491 1608
SHL's trading records (by broker):	V9/D12/A10-20	SL Mobile:	9260 3388
LIU CP's Founder share trading records:	V11/D18	SL Home:	2491 6898

Date	Time	Call	Client	Broker	No. of shares/price
18.5.01 (Fri)		Sammy Fung received April 01 Founder Order management accounts with HK\$41m loss			
	12:27 (74 sec)	SL mobile to Alan home			
	14:54 (49 sec)	Alan home to SL mobile			
	16:13 (638 sec):	SL mobile to Alan home			
	16:22	Song Jie (F.Order Fin Dept) emailed Founder Order April 01 management accounts to Lawrence Lau [V3/S-14/p.353]			
	16:41	Lawrence Lau forwarded above email to Sammy Fung [V3/S-14/p.353]			
	17:43	Sammy Fung forwarded above email to Wang Hui Min [V3/S-14/p.353]			
20.5.01 (Sun)	16:43 (22 sec)	Alan home to SL mobile			
	19:04 (44 sec)	Alan mobile to SL mobile			
21.5.01 (Mon)		Results of Founder Order for the four months ended 30 April 2001 submitted to Directors for consideration [V9/D6]			
	15:14 (64 sec)	Alan mobile to SL mobile			
	15:21 (15 sec)	Alan mobile to SL mobile			
	15:31 (5 sec)	SL mobile to Alan mobile			
	20:18 (24 sec)	Alan home to SL mobile			
22.5.01 (Tue)			SHL	SW Woo	Withdrew 5,000,000 shares (deposited in E2-Capital)
			SHL	E2-Capital	Sold 1,000,000 at \$1.075
23.5.01 (Wed)			SHL	Grand Sec	Sold 54,000 at \$2.05
24.5.01 (Thurs)			SHL	E2-Capital	Sold 200,000 at \$2.05
25.5.01 (Fri)			SHL	E2-Capital	Sold 200,000 at \$2.1

27.5.01 (Sun)	21:15 (12 sec)	Alan home to SL mobile			
	21:16 (32 sec)	Alan home to SL mobile			
	21:53 (62 sec)	Alan home to SL mobile			
	21:57 (59 sec)	SL mobile to Alan home			
	22:16 (14 sec)	Alan mobile to SL mobile			
28.5.01 (Mon)	9:01am	Cui Shu Yu (Founder Elect) emailed to Lawrence Lau Founder Electronics' April 01 statements [V3/S-16/p.480]			
29.5.01 (Tue)	12:18 (7 sec)	Alan mobile to SL mobile			
	16:44 (55 sec)	SL mobile to Alan home			
30.5.01 (Wed)			SHL	Grand Sec	Sold 46,000 at \$2.1
31.5.01 (Thurs)	20:55 (101 sec)	Alan home to SL mobile			
2.6.01 (Sat)		Meeting with Founder Order Management [Minutes at V1/S-5/p.372]			
	11:48 (7 sec)	SL mobile to Alan home			
3.6.01 (Sun)	21:01 (65 sec)	SL mobile to Alan mobile			
	21:40 (13 sec)	Alan mobile to SL mobile			
	21:40 (15 sec)	Alan mobile to SL mobile			
4.6.01 (Mon)	21:35 (86 sec)	Alan mobile to SL mobile			
6.6.01 (Wed)			SHL	Grand Sec	Sold 30,000 at \$2.2
7.6.01 (Thurs)			SHL	Grand Sec	Sold 32,000 at \$2.075
8.6.01 (Fri)			SHL	Grand Sec	Sold 200,000 at \$2.225
11.6.01 (Mon)			SHL	Grand Sec	Sold 200,000 at \$2.25
14.6.01 (Thurs)			Liu CP	Grand Sec	Bought 100,000 at \$2.15, 2.075
15.6.01 (Fri)			Liu CP	E2-Capital	Bought 100,000 at \$1.96
17.6.01 (Sun)	12:19 (8 sec)	Alan mobile to SL mobile			

	18:40 (49 sec)	SL mobile to Alan home			
18.6.01 (Mon)	9:32 (127 sec)	Alan mobile to SL mobile			
	16:30 (40 sec)	Alan home to SL mobile			
20.6.01 (Wed)			SHL	E2-Capital	Bought 336,000 at \$2.05
			SHL	E2-Capital	Sold 164,000 at \$2.0
			Liu CP	E2-Capital	Sold 100,000 at \$2.0
21.6.01 (Thurs)			Liu CP	HSBC Broking	Withdrew 1,190,000 shares to E2 Capital
			Liu CP	E2-Capital	Sold 50,000 at \$2.075
			Liu CP	Grand Sec	Sold 50,000 at \$2.075
22.6.01 (Fri)			Liu CP	E2-Capital	Sold 100,000 at \$2.1
24.6.01 (Sun)	16:45 (5 sec)	SL mobile to Alan home			
	16:58 (8 sec)	Alan home to SL mobile			
25.6.01 (Mon)	13:54 (25 sec)	SL mobile to Alan home			
	14:00 (4 sec)	SL mobile to Alan home			
27.6.01 (Wed)			SHL	E2-Capital	Sold 220,000 at \$2.025
28.6.01 (Thurs)			SHL	E2-Capital	Bought 300,000 at \$1.95
29.6.01 (Fri)	10:28 (43 sec)	Alan mobile to SL mobile			
	17:41 (2 min)	Alan Mobile to Sammy Mobile (9468 7054)			
	20:56 (95 sec)	SL mobile to Alan home			
30.6.01 (Sat)	10:12 (13 sec)	Alan home to SL mobile			
	12:28 (6 sec)	SL mobile to Alan home			
2.7.01 (Mon)	10:37 (16 sec)	Alan home to SL mobile			
	10:48(9 sec):	Alan home to SL mobile			
	15:14 (60 sec)	Alan home to SL mobile			
3.7.01 (Tue)	8:18 (20 sec)	SL mobile to Alan mobile			

	8:25 (30 sec)	SL mobile to Alan mobile			
	8:27 (12 sec)	SL mobile to Alan mobile			
9.7.01 (Mon)			SHL	Grand Sec	Bought 50,000 at \$1.78
10.7.01 (Tue)	12:43 (120 sec)	Alan mobile to SL mobile			
11.7.01 (Wed)		Sammy Fung received review timetable for 2001 interim results from EY [V9/D6]			
			SHL	Grand Sec	Sold 28,000 at \$1.83
	16:16 (56 sec)	Alan home to SL mobile			
	16:18 (1 min)	Alan mobile to Sammy Fung office (2611 4103)			
13.7.01 (Fri)	17:25	Lawrence Lau forwarded Founder Order's management accounts for 1st 6 months of 2001 to Sammy Fung [V3/S-14/p.327/Q28]			
16.7.01 (Mon)		Sammy Fung forwarded same information to Wei Xin and Alan Cheung [V3/S-14/p.327-328/Q28]			
			Liu CP	E2-Capital	Sold 200,000 at \$1.90
17.7.01 (Tue)			Liu CP	E2-Capital	Sold 330,000 at \$1.83
			Liu CP	E2-Capital	Sold 38,000 at \$1.84
			Liu CP	E2-Capital	Sold 50,000 at \$1.85
18.7.01 (Wed)			SHL	Grand Sec	Sold 100,000 at \$1.82
			Liu CP	E2-Capital	Sold 100,000 at \$1.80
			Liu CP	E2-Capital	Sold 20,000 at \$1.82
			Liu CP	E2-Capital	Sold 90,000 at \$1.83
			Liu CP	Grand Sec	Sold 50,000 at \$1.82
19.7.01 (Thurs)			Liu CP	E2-Capital	Sold 180,000 at \$1.79
22.7.01 (Sun)	11:56 (10 sec)	SL mobile to Alan mobile			
23.7.01 (Mon)	12:57	Liu Ying (Founder Elect.) emailed Founder Elect. 2001 mid-year audited statements to Lawrence Lau [V3/S-16/p.501]			
25.7.01 (Wed)	11:27 (2 min)	Alan mobile to SL home			
26.7.01 (Thurs)			Liu CP	E2-Capital	Sold 350,000 at \$1.74

27.7.01 (Fri)	[no time]		SHL	Grand Sec	Sold 840,000 at \$1.74, \$1.73
	11:45		Liu CP	E2-Capital	Sold 200,000 at \$1.74
	11:45		Liu CP	E2-Capital	Sold 202,000 at \$1.76
	15:38 (49 sec)	Alan mobile to SL mobile			
	15:59		Liu CP	E2-Capital	Bought 20,000 at \$1.73
	16:20 (44 sec)	Alan mobile to SL mobile			
	16:28 (10 sec)	Alan mobile to SL mobile			
	17:29 (2 min)	Alan Mobile to Sammy Mobile (9468 7054)			
	18:52 (26 sec)	SL mobile to Alan mobile			
	19:13 (70 sec)	Alan mobile to SL mobile			
28.7.01 (Sat)	11:21 (2 min)	Alan mobile to SL home			
29.7.01 (Sun)	7:07 (20 sec)	Alan home to SL mobile			
	7:51 (23 sec)	SL mobile to Alan home			
<i>Phone records of SL's mobile beyond 29 July 2001 unavailable</i>					
30.7.01 (Mon)			SHL	Grand Sec	Sold 60,000 at \$1.73
			SHL	E2-Capital	Sold 60,000 at \$1.73
			Liu CP	E2-Capital	Sold 20,000 at \$1.73
31.7.01 (Tue)	14:49 (1 min)	Alan mobile to SL mobile			
1.8.01			SHL	E2-Capital	Sold 82,000 at \$1.71
2.8.01 (Thurs)	21:36 (1 min)	Alan mobile to SL mobile			
3.8.01			Liu CP	E2-Capital	Bought 20,000 at \$1.69
			Liu CP	E2-Capital	Bought 40,000 at \$1.71
7.8.01 (Tue)	10:27 (2 min)	Alan mobile to SL mobile			
	14:18 (4 min)	Alan mobile to Sammy office (2611 4103)			
8.8.01 (Wed)			SHL	Grand Securities	Sold 774,000
			SHL	HSBC Broking	Sold 220,000 at \$1.53
			SHL	SW Woo	Sold 370,000
			SHL	E2-Capital	Sold 550,000

9.8.01 (Thurs)	14:30 to 17:30	Meeting with EY about their proposed audit adjustments re: Founder Order and noted that the estimated loss of Founder Order after audit adjustments amounted to HK\$84M [V9/D6]			
			SHL	Grand Securities	Sold 1,114,000
			SHL	HSBC Broking	Sold 100,000 at \$1.42
			SHL	E2-Capital	Sold 100,000 at \$1.42
10.8.01 (Fri)		Alan Cheung informed about loss figure of Founder Order, who in turn asked Founder Order MD to check whether audit adjustments appropriate [V9/D6]			
			SHL	HSBC Broking	Sold 100,000 at \$1.42
			SHL	China Pacific	Sold 1,680,000
			SHL	SW Woo	Sold 750,000 at \$1.42
Call records from Alan Cheung's Mobile missing from 10 August 01 to 18 August 01					
14.8.01 (Tue)			SHL	HSBC Broking	Sold 100,000 at \$1.47
			SHL	SW Woo	Sold 150,000 at \$1.45
			SHL	E2-Capital	Sold 150,000 at \$1.44
16.8.01 (Thurs)		Internal management meeting to discuss results of Founder Order [V9/D6]			
19.8.01 (Sun)	16:03 (1 min)	Alan mobile to SL mobile			
	16:03 (1 min)	Alan mobile to SL mobile			
	19:41 (1 min)	Alan mobile to SL mobile			
20.8.01 (Mon)		Received reply from Founder Order management reasons for substantial loss incurred by Founder Order [V9/D6]			
	15:02 (1 min)	Alan mobile to SL mobile			
	15:21 (1 min)	Alan mobile to SL mobile			
20.8.01			SHL	HSBC Broking	Sold 700,000
21.8.01 (Tue)		Founder Management decided to make profit warning announcement [V9/D6]			
			SHL	HSBC Broking	Sold 444,000
	17:40 (1 min)	Alan mobile to SL mobile			
22.8.01 (Wed)		Draft of profit warning announcement circulated to Founder Directors for approval [V9/D6]			
	16:23 (1 min)	Alan mobile to SL mobile			
24.8.01 (Fri)		Draft of profit warning announcement submitted to HKEx for comments [V9/D6]			
	13:35 (1 min)	Alan mobile to SL mobile			
	15:14 (3 min)	Alan mobile to Sammy office (2611 4103)			

	15:17 (1 min)	Alan mobile to SL mobile			
28.8.01		Publication of Profit Warning Announcement			

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Annex 7:

A flowchart demonstrating the circumstances which appear to have occurred in relation to the acquisition of Founder Order

MEXICAN GOLD FLOWCHART (updated 6 April 2009)

